LAWS

of the

STATE OF UTAH

passed at the

2001 GENERAL SESSION

2001 FIRST SPECIAL SESSION

and

Initiatives Approved by the Voters in the 2000 General Election

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LAWS

of the

STATE OF UTAH, 2001

Passed at the
GENERAL SESSION
of the
FIFTY-FOURTH LEGISLATURE

Convened at the Capitol in the City of Salt Lake
January 15, 2001
and Adjourned Sine Die on
February 28, 2001

INSERT
CERTIFICATION

CHAPTER 1
S. B. 6
Passed January 24, 2001
Approved February 8, 2001
Effective April 30, 2001

REPEAL OF 1933 UTAH CODE REVISION STATUTES

Sponsor: Millie M. Peterson

This act modifies the Statutes Title. This act repeals certain obsolete and lapsed provisions relating to the 1933 recodification of the Utah code.

This act affects sections of Utah Code Annotated 1953 as follows:

REPEALS:
68-2-1, Utah Code Annotated 1953
68-2-3, Utah Code Annotated 1953
68-2-4, Utah Code Annotated 1953
68-2-5, Utah Code Annotated 1953
68-2-6, Utah Code Annotated 1953
68-2-7, Utah Code Annotated 1953
68-2-8, Utah Code Annotated 1953
68-2-9, Utah Code Annotated 1953
68-2-10, Utah Code Annotated 1953

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

Section 1. Repealer.

This act repeals:

Section 68-2-1, Short title Effective date.

Section 68-2-3, General repeal -- Of prior laws -- Exceptions and reservations.

Section 68-2-4, Laws of 1933 deemed subsequent to revision.

Section 68-2-5, Tenure of office not affected -- Exceptions.

Section 68-2-6, Accrued rights not affected by repeal.

Section 68-2-7, Effect on limitation of actions.

Section 68-2-8, Effect on offenses committed.

Section 68-2-9, Effect on suits and prosecutions pending.

Section 68-2-10, "Heretofore" and "hereafter" defined.

CHAPTER 2
S. B. 9
Passed January 24, 2001
Approved February 8, 2001
Effective April 30, 2001

REPEAL OF AUTHORIZATION FOR CONSTRUCTION OF CERTAIN FACILITIES COMPLETED

Sponsor: Beverly Ann Evans

This act modifies a chapter entitled "Corrections Facilities Funding." This act repeals obsolete and lapsed construction authorizations and accompanying requirements.

This act affects sections of Utah Code Annotated 1953 as follows:

REPEALS:
63-57b-1, as enacted by Chapter 14, Laws of Utah 1984, Second Special Session
63-57b-2, as enacted by Chapter 14, Laws of Utah 1984, Second Special Session

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

Section 1. Repealer.

This act repeals:

Section 63-57b-1, Construction of projects authorized -- Priorities -- Cost limitation.

Section 63-57b-2, Approval of local governing bodies.

CHAPTER 3
S. B. 10
Passed January 24, 2001
Approved February 8, 2001
Effective April 30, 2001

SUNSET REAUTHORIZATIONS

Sponsor: Millie M. Peterson

This act reauthorizes certain state entities and programs that would otherwise sunset before the 2002 Annual General Session of the Utah Legislature.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
63-55-219, as last amended by Chapters 51 and 194, Laws of Utah 2000
63-55-226, as last amended by Chapters 32, 51, 194 and 263, Laws of Utah 2000
63-55-258, as last amended by Chapter 66, Laws of Utah 2000
63-55-263, as last amended by Chapters 1, 78 and 281, Laws of Utah 2000
63-55b-131, as last amended by Chapter 248, Laws of Utah 2000

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

Section 1. Section 63-55-219 is amended to read:

63-55-219. Repeal dates, Title 19.

(1) Title 19, Chapter 2, Air Conservation Act, is repealed July 1, 2009.

(2) Title 19, Chapter 3, Radiation Control Act, is repealed July 1, 2002.

(3) Title 19, Chapter 4, Safe Drinking Water Act, is repealed July 1, 2009.

(4) Title 19, Chapter 5, Water Quality Act, is repealed July 1, 2009.

(5) Title 19, Chapter 6, Part 1, Solid and Hazardous Waste Act, is repealed July 1, 2009.

(6) Title 19, Chapter 6, Part 3, Hazardous Substances Mitigation Act, is repealed July 1, 2010.

(7) Title 19, Chapter 6, Part 4, Underground Storage Tank Act, is repealed July 1, 2008.

(8) Title 19, Chapter 6, Part 6, Lead Acid Battery Disposal, is repealed July 1, [~~2001~~] 2006.

(9) Title 19, Chapter 6, Part 7, Used Oil Management Act, is repealed July 1, 2009.

(10) Title 19, Chapter 6, Part 8, Waste Tire Recycling Act, is repealed July 1, 2005.

Section 2. Section 63-55-226 is amended to read:

63-55-226. Repeal dates, Title 26.

(1) Title 26, Chapter 1, Department of Health Organization, is repealed July 1, [~~2001~~] 2006.

(2) Title 26, Chapter 4, Utah Medical Examiner Act, is repealed July 1, 2010.

(3) Title 26, Chapter 9f, Utah Telehealth Commission, is repealed July 1, 2002.

(4) Title 26, Chapter 10, Family Health Services, is repealed July 1, 2010.

(5) Title 26, Chapter 18, Medical Assistance Act, is repealed July 1, 2004.

(6) Title 26, Chapter 33a, Utah Health Data Authority Act, is repealed July 1, 2004.

Section 3. Section 63-55-258 is amended to read:

63-55-258. Repeal dates, Title 58.

(1) Title 58, Chapter 3a, Architects Licensing Act, is repealed July 1, 2003.

(2) Title 58, Chapter 5a, Podiatric Physician Licensing Act, is repealed July 1, 2002.

(3) Title 58, Chapter 9, Funeral Services Licensing Act, is repealed July 1, 2008.

(4) Title 58, Chapter 13, Health Care Providers Immunity from Liability Act, is repealed July 1, 2006.

(5) Title 58, Chapter 15, Health Facility Administrator Act, is repealed July 1, 2005.

(6) Title 58, Chapter 16a, Utah Optometry Practice Act, is repealed July 1, 2009.

(7) Title 58, Chapter 17a, Pharmacy Practice Act, is repealed July 1, 2006.

(8) Title 58, Chapter 20a, Environmental Health Scientist Act, is repealed July 1, 2003.

(9) Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act, is repealed July 1, 2005.

(10) Title 58, Chapter 24a, Physical Therapist Practice Act, is repealed July 1, 2003.

(11) Title 58, Chapter 26, Certified Public Accountant Licensing Act, is repealed July 1, 2002.

(12) Title 58, Chapter 28, Veterinary Practice Act, is repealed July 1, 2004.

(13) Title 58, Chapter 31b, Nurse Practice Act, is repealed July 1, 2005.

(14) Title 58, Chapter 37, Utah Controlled Substances Act, is repealed July 1, 2007.

(15) Title 58, Chapter 37a, Utah Drug Paraphernalia Act, is repealed July 1, 2007.

(16) Title 58, Chapter 37b, Imitation Controlled Substances Act, is repealed July 1, 2007.

(17) Title 58, Chapter 40, Recreational Therapy Practice Act, is repealed July 1, 2005.

(18) Title 58, Chapter 41, Speech-language Pathology and Audiology Licensing Act, is repealed July 1, 2009.

(19) Title 58, Chapter 42a, Occupational Therapy Practice Act, is repealed July 1, 2005.

(20) Title 58, Chapter 44a, Nurse Midwife Practice Act, is repealed July 1, 2010.

(21) Title 58, Chapter 46a, Hearing Instrument Specialist Licensing Act, is repealed July 1, 2003.

(22) Title 58, Chapter 47b, Massage Therapy Practice Act, is repealed July 1, 2004.

(23) Title 58, Chapter 49, Dietitian Certification Act, is repealed July 1, 2005.

(24) Title 58, Chapter 53, Landscape Architects Licensing Act, is repealed July 1, 2008.

(25) Title 58, Chapter 58, Preneed Funeral Arrangement Act, is repealed July 1, [~~2001~~] 2011.

(26) Title 58, Chapter 59, Professional Employer Organization Licensing Act, is repealed July 1, 2002.

(27) Title 58, Chapter 66, Utah Professional Boxing Regulation Act, is repealed July 1, 2005.

(28) Title 58, Chapter 67, Utah Medical Practice Act, is repealed July 1, 2006.

(29) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, is repealed July 1, 2006.

(30) Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act, is repealed July 1, 2006.

(31) Title 58, Chapter 71, Naturopathic Physician Practice Act, is repealed July 1, 2006.

(32) Title 58, Chapter 72, Acupuncture Licensing Act, is repealed July 1, 2002.

(33) Title 58, Chapter 73, Chiropractic Physician Practice Act, is repealed July 1, 2006.

Section 4. Section 63-55-263 is amended to read:

63-55-263. Repeal dates, Titles 63, 63A, and 63C.

(1) (a) Title 63, Chapter 25a, Part 1, Commission on Criminal and Juvenile Justice, is repealed July 1, 2002.

(b) Title 63, Chapter 25a, Part 3, Sentencing Commission, is repealed January 1, [~~2002~~] 2012.

(2) The Crime Victims' Reparations Board, created in Section 63-25a-404, is repealed July 1, 2007.

(3) The Resource Development Coordinating Committee, created in Section 63-28a-2, is repealed July 1, 2004.

(4) Title 63, Chapter 38c, State Appropriations and Tax Limitation Act, is repealed July 1, 2005.

(5) Title 63, Chapter 75, Families, Agencies, and Communities Together for Children and Youth At Risk Act, is repealed July 1, 2001.

(6) Title 63, Chapter 88, Navajo Trust Fund, is repealed July 1, 2005.

(7) Sections 63A-4-204 and 63A-4-205, authorizing the Risk Management Fund to provide coverage to nonstate entities, are repealed July 1, [~~2001~~] 2006.

(8) Title 63A, Chapter 7, Utah Sports Authority Act, is repealed July 1, 2003.

(9) Title 63A, Chapter 10, State Olympic Coordination Act, is repealed July 1, 2003.

Section 5. Section 63-55b-131 is amended to read:

63-55b-131. Repeal dates, Title 31A.

(1) Section 31A-22-626 is repealed July 1, 2004.

(2) Section 31A-23-315 is repealed July 1, [~~2001~~] 2006.

CHAPTER 4
S. B. 13
Passed January 24, 2001
Approved February 8, 2001
Effective April 30, 2001

REPEAL OF ATTORNEYS AND COUNSELORS PROVISIONS

Sponsor: Terry R. Spencer

This act modifies the Judicial Code by repealing Chapter 51, Attorneys and Counselors, and moving two of the sections from that chapter to other parts of the code.

This act affects sections of Utah Code Annotated 1953 as follows:

RENUMBERS AND AMENDS:
38-2-7, (Renumbered from 78-51-41, as last amended by Chapter 100, Laws of Utah 1989)
78-2-4.5, (Renumbered from 78-51-45, as enacted by Chapter 83, Laws of Utah 2000)

REPEALS:
78-51-1, Utah Code Annotated 1953
78-51-2, as last amended by Chapter 214, Laws of Utah 1971
78-51-3, as last amended by Chapter 214, Laws of Utah 1971
78-51-4, as last amended by Chapter 214, Laws of Utah 1971
78-51-5, Utah Code Annotated 1953
78-51-6, as last amended by Chapter 214, Laws of Utah 1971
78-51-7, as last amended by Chapter 214, Laws of Utah 1971
78-51-8, Utah Code Annotated 1953
78-51-9, Utah Code Annotated 1953
78-51-10, Utah Code Annotated 1953
78-51-11, Utah Code Annotated 1953
78-51-12, as last amended by Chapter 12, Laws of Utah 1981
78-51-13, Utah Code Annotated 1953
78-51-14, Utah Code Annotated 1953
78-51-15, Utah Code Annotated 1953
78-51-16, as last amended by Chapter 20, Laws of Utah 1995
78-51-17, Utah Code Annotated 1953
78-51-18, Utah Code Annotated 1953
78-51-19, Utah Code Annotated 1953
78-51-20, Utah Code Annotated 1953
78-51-21, as last amended by Chapter 215, Laws of Utah 1971
78-51-22, as last amended by Chapter 175, Laws of Utah 1957
78-51-23, Utah Code Annotated 1953
78-51-24, as last amended by Chapter 195, Laws of Utah 1963
78-51-25, as last amended by Chapter 196, Laws of Utah 1963
78-51-26, Utah Code Annotated 1953
78-51-27, Utah Code Annotated 1953
78-51-28, as last amended by Chapter 20, Laws of Utah 1995
78-51-29, Utah Code Annotated 1953
78-51-30, as last amended by Chapter 216, Laws of Utah 1971
78-51-31, Utah Code Annotated 1953
78-51-32, Utah Code Annotated 1953
78-51-33, Utah Code Annotated 1953
78-51-34, Utah Code Annotated 1953
78-51-35, as last amended by Chapter 20, Laws of Utah 1995
78-51-36, Utah Code Annotated 1953
78-51-37, Utah Code Annotated 1953
78-51-38, Utah Code Annotated 1953
78-51-39, Utah Code Annotated 1953
78-51-40, Utah Code Annotated 1953
78-51-42, Utah Code Annotated 1953
78-51-43, as last amended by Chapter 20, Laws of Utah 1995
78-51-44, Utah Code Annotated 1953

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

Section 1. Section 38-2-7, which is renumbered from Section 78-51-41 is renumbered and amended to read:

[~~78-51-41~~]. 38-2-7. Attorney's lien.

The compensation of an attorney and counselor for services is governed by agreement, express or implied, which is not restrained by law. From the commencement of an action, or the service of an answer containing a counterclaim or at the time that the attorney and client enter into a written or oral employment agreement, the attorney who is so employed has a lien upon the client's cause of action or counterclaim, which attaches to any settlement, verdict, report, decision, or judgment in the client's favor and to the proceeds thereof in whosoever hands they may come, and cannot be affected by any settlement between the parties before or after judgment. Any written employment agreement shall contain a statement that the attorney has a lien upon the client's cause of action or counterclaim.

Section 2. Section 78-2-4.5, which is renumbered from Section 78-51-45 is renumbered and amended to read:

[~~78-51-45~~]. 78-2-4.5. Admission to state bar -- Criminal history background checks.

(1) The Utah State Bar shall require each person applying for admission to the Utah State Bar to submit a complete set of fingerprints for the purpose of conducting a national criminal history background check.

(2) Fingerprints of applicants for admission to the Utah State Bar shall be submitted to the Department of Public Safety, Bureau of Criminal Identification to be used to conduct a criminal history background check and to the Federal Bureau of Investigation to obtain a national criminal history background check.

(3) The criminal history background information obtained from the Department of Public Safety and the national criminal history background information obtained from the Federal Bureau of Investigation pursuant to this section may be used by the Utah State Bar to determine an applicant's character, fitness, and suitability for admission to the Utah State Bar.

Section 3. Repealer.

This act repeals:

Section 78-51-1, Utah State Bar -- Qualification for membership.

Section 78-51-2, Board of commissioners -- Number -- Term -- Vacancies.

Section 78-51-3, Territorial divisions.

Section 78-51-4, Number of commissioners from each division.

Section 78-51-5, Nomination of commissioners.

Section 78-51-6, Election of commissioners.

Section 78-51-7, Organization of board.

Section 78-51-8, Meetings -- Annual and special -- Notice.

Section 78-51-9, Bylaws.

Section 78-51-10, Admission to practice law -- Qualifications -- Enrollment -- Oath -- Fees.

Section 78-51-11, Roll of attorneys and counselors.

Section 78-51-12, Disciplinary proceedings -- Rules established by board -- Disciplinary committees -- Written response to complainants -- Proceedings subject to open meetings law.

Section 78-51-13, Board of commissioners -- Powers -- Conduct of members of bar holding judicial office.

Section 78-51-14, Rules and regulations -- Supreme Court to approve.

Section 78-51-15, Hearings and witnesses.

Section 78-51-16, Rights of accused.

Section 78-51-17, Record of proceedings.

Section 78-51-18, Findings and report.

Section 78-51-19, Review by Supreme Court -- Inherent powers of courts not affected.

Section 78-51-20, Studies and recommendations by state bar.

Section 78-51-21, Annual license -- Fees -- Disbursement of funds.

Section 78-51-22, Issuance of license -- Form.

Section 78-51-23, Powers of board respecting funds.

Section 78-51-24, Active and inactive members of bar.

Section 78-51-25, Practicing without a license prohibited -- Action or proceedings to enforce -- Exception.

Section 78-51-26, Duties of attorneys and counselors.

Section 78-51-27, Certain conduct forbidden -- Penalty.

Section 78-51-28, Exceptions.

Section 78-51-29, Permitting use of name forbidden -- Penalty.

Section 78-51-30, Partnership with public prosecutor.

Section 78-51-31, Deceit and collusion.

Section 78-51-32, Authority of attorneys and counselors.

Section 78-51-33, Proof of authority for appearance.

Section 78-51-34, Change of attorney.

Section 78-51-35, Effect -- Notice of change.

Section 78-51-36, Notice to appoint successor.

Section 78-51-37, Conviction of crime -- Judgment of disbarment -- Duty of clerks of court.

Section 78-51-38, Suretyship -- Attorney forbidden to assume.

Section 78-51-39, Certain officials not to practice law.

Section 78-51-40, Corporations and associations forbidden to practice -- Exceptions.

Section 78-51-42, Refusing to pay over money -- Penalty.

Section 78-51-43, Exception -- Demand for bond.

Section 78-51-44, Exception on giving bond.

CHAPTER 5
S. B. 14
Passed January 24, 2001
Approved February 8, 2001
Effective April 30, 2001

ACCOUNTS OF POLITICAL SUBDIVISIONS - REPEAL

Sponsor: Terry R. Spencer

This act modifies a chapter entitled "Accounts of Political Subdivisions." This act repeals certain obsolete and duplicative re quirements governing public construction work.

This act affects sections of Utah Code Annotated 1953 as follows:

REPEALS:
51-3-1, Utah Code Annotated 1953
51-3-2, Utah Code Annotated 1953
51-3-3, as last amended by Chapter 84, Laws of Utah 1997
51-3-4, Utah Code Annotated 1953

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

Section 1. Repealer.

This act repeals:

Section 51-3-1, Estimate of cost of public works.

Section 51-3-2, Accounts to show detail and distribution.

Section 51-3-3, Publication of costs of public works.

Section 51-3-4, Records open to inspection -- Copies to be furnished.

CHAPTER 6
S. B. 15
Passed January 31, 2001
Approved February 8, 2001
Effective April 30, 2001

REPEAL OF COMMISSIONERS OF DEEDS PROVISIONS

Sponsor: Beverly Ann Evans

This act modifies the Notarization and Authentication Title by repealing certain obsolete and lapsed sections relating to commissioners of deeds.

This act affects sections of Utah Code Annotated 1953 as follows:

REPEALS:
46-2-1, as last amended by Chapter 66, Laws of Utah 1984
46-2-2, Utah Code Annotated 1953
46-2-3, Utah Code Annotated 1953
46-2-4, Utah Code Annotated 1953
46-2-5, Utah Code Annotated 1953
46-2-6, as last amended by Chapter 67, Laws of Utah 1984
46-2-7, Utah Code Annotated 1953
46-2-8, as last amended by Chapter 66, Laws of Utah 1984
46-2-9, as last amended by Chapter 67, Laws of Utah 1984

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

Section 1. Repealer.

This act repeals:

Section 46-2-1, Appointment -- Term -- Removal.

Section 46-2-2, Powers.

Section 46-2-3, Place of residence and date commission expires affixed to signature.

Section 46-2-4, Force and effect of official acts.

Section 46-2-5, Official oath.

Section 46-2-6, Oaths and seals of commissioners to be filed.

Section 46-2-7, Fees.

Section 46-2-8, Copy of laws to accompany commission.

Section 46-2-9, Commissioners of other states and countries residing here.

CHAPTER 7
S. B. 18
Passed January 24, 2001
Approved February 8, 2001
Effective April 30, 2001

REPEAL OF DEFINITION OF LAW

Sponsor: Terry R. Spencer

This act modifies the Judicial Code by repealing the statutory definition of law.

This act affects sections of Utah Code Annotated 1953 as follows:

REPEALS:
78-27-19, as last amended by Chapter 248, Laws of Utah 1988

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

Section 1. Repealer.

This act repeals:

Section 78-27-19, "Law" defined.

CHAPTER 8
S. B. 32
Passed January 31, 2001
Approved February 8, 2001
Effective April 30, 2001

LEGISLATIVE PROCESS COMMITTEE-DUTIES AND RESPONSIBILITIES

Sponsor: Leonard M. Blackham

This act modifies sections governing the Legislative Process Committee by modifying committee membership and duties relating to in-depth budget reviews.

This act affects sections of Utah Code Annotated 1953 as follows:

REPEALS:
36-17-3, as last amended by Chapter 22, Laws of Utah 1994

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

Section 1. Repealer.

This act repeals:

Section 36-17-3, Additional members and duties.

CHAPTER 9
S. B. 99
Passed January 24, 2001
Approved February 8, 2001
Effective April 30, 2001
(Section 59-12-102 takes effect on July 1, 2001)

REVISOR'S STATUTE

Sponsor: Michael G. Waddoups
D. Chris Buttars
David L. Gladwell
Parley Hellewell
Peter C. Knudson
Ed P. Mayne
Terry R. Spencer
Pete Suazo

This act modifies parts of the Utah Code to make technical corrections including wording, cross references, numbering changes, and repealing the Utah Sesquicentennial Coordinating Council.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
4-37-503, as last amended by Chapter 302, Laws of Utah 1998
7-5-5, as last amended by Chapter 260, Laws of Utah 2000
7-15-1, as last amended by Chapters 100 and 171, Laws of Utah 1999
7-15-3, as last amended by Chapter 171, Laws of Utah 1999
8-5-5, as enacted by Chapter 132, Laws of Utah 1985
10-6-151, as last amended by Chapter 20, Laws of Utah 1995
10-7-3, as last amended by Chapter 269, Laws of Utah 1991
10-7-8, as last amended by Chapter 2, Laws of Utah 1970
10-8-62, as last amended by Chapter 285, Laws of Utah 1992
10-8-63, as last amended by Chapter 132, Laws of Utah 1985
11-13-1, as enacted by Chapter 14, Laws of Utah 1965
11-13-2, as last amended by Chapter 47, Laws of Utah 1977
11-13-5.6, as last amended by Chapter 337, Laws of Utah 1998
11-26-1, as last amended by Chapter 262, Laws of Utah 2000
13-8-5, as last amended by Chapter 238, Laws of Utah 2000
15-7-12, as enacted by Chapter 62, Laws of Utah 1983
16-4-12, as last amended by Chapter 75, Laws of Utah 2000
16-6a-809 (Effective 04/30/01), as enacted by Chapter 300, Laws of Utah 2000
17-18-1, as last amended by Chapter 149, Laws of Utah 2000
17-18-1.5, as last amended by Chapters 279 and 372, Laws of Utah 1999
17A-2-306, as renumbered and amended by Chapter 186, Laws of Utah 1990
17A-2-307, as renumbered and amended by Chapter 186, Laws of Utah 1990
17A-2-309, as renumbered and amended by Chapter 186, Laws of Utah 1990
17A-2-423, as renumbered and amended by Chapter 186, Laws of Utah 1990
17A-2-543, as last amended by Chapter 254, Laws of Utah 2000
17A-2-556, as last amended by Chapters 75 and 254, Laws of Utah 2000
17A-2-712, as last amended by Chapter 254, Laws of Utah 2000
17A-2-747, as last amended by Chapter 254, Laws of Utah 2000
17A-2-826, as renumbered and amended by Chapter 186, Laws of Utah 1990
17A-2-1037, as renumbered and amended by Chapter 186, Laws of Utah 1990
17A-2-1038, as last amended by Chapters 254 and 318, Laws of Utah 2000
17A-2-1058, as renumbered and amended by Chapter 186, Laws of Utah 1990
17A-2-1225, as last amended by Chapter 349, Laws of Utah 2000
17A-2-1236, as last amended by Chapter 349, Laws of Utah 2000
17A-2-1264, as last amended by Chapters 348 and 349, Laws of Utah 2000
17A-2-1312, as renumbered and amended by Chapter 186, Laws of Utah 1990
17A-2-1316, as renumbered and amended by Chapter 186, Laws of Utah 1990
17A-2-1322, as renumbered and amended by Chapter 186, Laws of Utah 1990
17A-2-1413, as last amended by Chapter 254, Laws of Utah 2000
17A-2-1414, as renumbered and amended by Chapter 186, Laws of Utah 1990
17A-2-1439, as last amended by Chapter 254, Laws of Utah 2000
17A-2-1448, as last amended by Chapter 254, Laws of Utah 2000
17A-2-1449, as last amended by Chapter 254, Laws of Utah 2000
19-6-505, as renumbered and amended by Chapter 112, Laws of Utah 1991
19-6-804, as renumbered and amended by Chapter 51, Laws of Utah 2000
20A-3-304, as last amended by Chapters 75 and 328, Laws of Utah 2000
20A-5-404, as last amended by Chapter 75, Laws of Utah 2000
21-2-8, as renumbered and amended by Chapter 133, Laws of Utah 2000
23-13-2, as last amended by Chapters 44 and 195, Laws of Utah 2000
30-3-35, as last amended by Chapter 97, Laws of Utah 2000
30-6-1, as last amended by Chapter 170, Laws of Utah 2000
31A-22-625, as enacted by Chapter 267, Laws of Utah 2000
31A-23-102, as last amended by Chapter 1, Laws of Utah 2000
31A-29-103, as enacted by Chapter 232, Laws of Utah 1990

31A-35-608, as last amended by Chapter 259, Laws of Utah 2000
34A-1-309, as last amended by Chapter 205 and renumbered and amended by Chapter 375, Laws of Utah 1997
34A-2-105, as last amended by Chapter 199, Laws of Utah 1999
35A-3-102, as last amended by Chapter 161, Laws of Utah 2000
36-12-8, as last amended by Chapter 165, Laws of Utah 2000
41-22-2 (Effective 04/30/01), as last amended by Chapter 300, Laws of Utah 2000
41-22-2 (Superseded 04/30/01), as last amended by Chapter 73, Laws of Utah 1999
46-4-105, as enacted by Chapter 74, Laws of Utah 2000
52-4-7.8, as enacted by Chapter 25, Laws of Utah 1997
53A-2-206, as last amended by Chapter 103, Laws of Utah 1994
53A-15-305, as last amended by Chapter 215, Laws of Utah 2000
53A-18-101, as enacted by Chapter 2, Laws of Utah 1988
53A-18-102, as last amended by Chapter 78, Laws of Utah 1990
53A-28-302, as enacted by Chapter 62, Laws of Utah 1996
54-4-28, Utah Code Annotated 1953
54-4-29, Utah Code Annotated 1953
54-4-30, Utah Code Annotated 1953
54-9-5, as last amended by Chapter 3, Laws of Utah 1988
54-13-1, as enacted by Chapter 131, Laws of Utah 1989
55-3-2.5, as enacted by Chapter 115, Laws of Utah 1975
55-5-6, as last amended by Chapter 285, Laws of Utah 1998
57-1-5, as last amended by Chapter 124, Laws of Utah 1997
59-1-503, as last amended by Chapter 86, Laws of Utah 2000
59-1-703, as last amended by Chapter 169, Laws of Utah 1993
59-1-704, as renumbered and amended by Chapter 3, Laws of Utah 1987
59-1-1005, as enacted by Chapter 35, Laws of Utah 1991
59-2-507, as renumbered and amended by Chapter 4, Laws of Utah 1987
59-2-509, as last amended by Chapter 74, Laws of Utah 1987
59-2-704, as last amended by Chapter 271, Laws of Utah 1995
59-2-1351.5, as last amended by Chapter 79, Laws of Utah 1996
59-2-1354, as repealed and reenacted by Chapter 3, Laws of Utah 1988
59-2-1361, as last amended by Chapter 4, Laws of Utah 1992
59-7-114, as repealed and reenacted by Chapter 169, Laws of Utah 1993
59-7-612, as last amended by Chapter 59, Laws of Utah 1999
59-10-540, as renumbered and amended by Chapter 2, Laws of Utah 1987
59-10-541, as renumbered and amended by Chapters 2 and 3, Laws of Utah 1987
59-10-603, as last amended by Chapter 345, Laws of Utah 1997
59-12-102 (Effective 07/01/01), as last amended by Chapter 253, Laws of Utah 2000
59-12-102 (Superseded 07/01/01), as last amended by Chapters 63 and 362, Laws of Utah 1999
59-12-111, as last amended by Chapter 86, Laws of Utah 2000
59-12-117, as last amended by Chapter 4, Laws of Utah 1993
59-13-202.5, as enacted by Chapter 174, Laws of Utah 2000
59-13-301.5, as enacted by Chapter 258, Laws of Utah 2000
59-13-307, as last amended by Chapter 271, Laws of Utah 1997
59-13-322, as enacted by Chapter 174, Laws of Utah 2000
59-22-101, as last amended by Chapter 1 and renumbered and amended by Chapter 229, Laws of Utah 2000
62A-4a-412, as last amended by Chapters 304 and 321, Laws of Utah 2000
62A-11-304.2, as last amended by Chapter 161, Laws of Utah 2000
63-55-258, as last amended by Chapter 66, Laws of Utah 2000
63-95-203, as enacted by Chapter 210, Laws of Utah 2000
63A-6-105, as last amended by Chapter 18, Laws of Utah 1999
63A-6-106, as last amended by Chapter 413, Laws of Utah 1998
63A-9-805, as renumbered and amended by Chapter 252, Laws of Utah 1997
63B-7-502, as enacted by Chapter 67, Laws of Utah 1998
67-1-9, as enacted by Chapter 252, Laws of Utah 1977
67-1a-1, as enacted by Chapter 68, Laws of Utah 1984
73-10b-2, as last amended by Chapter 282, Laws of Utah 2000
73-10d-4, as last amended by Chapter 245, Laws of Utah 1985
73-10d-7, as last amended by Chapter 245, Laws of Utah 1985
73-10h-8, as last amended by Chapter 10, Laws of Utah 1997
76-8-316, as enacted by Chapter 51, Laws of Utah 1995
76-10-1201, as last amended by Chapter 92, Laws of Utah 1977
76-10-1306, as enacted by Chapter 196, Laws of Utah 1973
78-14-5, as enacted by Chapter 23, Laws of Utah 1976
78-23-10, as enacted by Chapter 111, Laws of Utah 1981

REPEALS:
63C-5-101, as enacted by Chapter 233, Laws of Utah 1994
63C-5-103, as enacted by Chapter 233, Laws of

Utah 1994
63C-5-104, as enacted by Chapter 233, Laws of Utah 1994
63C-5-105, as enacted by Chapter 233, Laws of Utah 1994
63C-5-106, as enacted by Chapter 233, Laws of Utah 1994
63C-5-107, as enacted by Chapter 233, Laws of Utah 1994

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

Section 1. Section 4-37-503 is amended to read:

4-37-503. Fish Health Policy Board.

(1) There is created within the department the Fish Health Policy Board which shall establish policies designed to prevent the outbreak of, control the spread of, and eradicate pathogens that cause disease in aquatic animals.

(2) The Fish Health Policy Board shall:

(a) determine procedures and requirements for certifying a source of aquatic animals as health approved, including:

(i) the pathogens for which inspection is required to receive health approval;

(ii) the pathogens which may not be present to receive health approval; and

(iii) standards and procedures required for the inspection of aquatic animals;

(b) establish procedures for the timely reporting of the presence of pathogens and disease threats;

(c) create policies and procedures for, and appoint, an emergency response team to:

(i) investigate serious threats of disease;

(ii) develop and monitor a plan of action; and

(iii) report to:

(A) the commissioner of agriculture and food;

(B) the director of the Division of Wildlife Resources; and

(C) the chair of the Fish Health Policy Board; and

(d) develop unified statewide aquaculture disease control plans.

(3) The Fish Health Policy Board shall advise the commissioner of agriculture and food and the executive director of the Department of Natural Resources regarding:

(a) educational programs and information systems to educate and inform the public about practices that the public may employ to prevent the spread of disease; and

(b) communication and interaction between the department and the Division of Wildlife Resources regarding fish health policies and procedures.

(4) (a) (i) The Fish Health Policy Board shall consist of seven members as follows:

(A) one member shall be jointly appointed by the commissioner of agriculture and food and the executive director of the Department of Natural Resources;

(B) two members shall be appointed by the commissioner of agriculture and food;

(C) two members shall be appointed by the executive director of the Department of Natural Resources;

(D) one member shall be the state veterinarian; and

(E) one member shall be the director of the Division of Wildlife Resources.

(ii) Each member appointed under Subsections (4)(a)(i)(A) through (C) shall be knowledgeable about the control of aquatic diseases.

(iii) The member appointed under Subsection (4)(a)(i)(A) may not be an employee of, or a member of a board within, the Department of Agriculture and Food or Department of Natural Resources.

(iv) Of the members appointed under Subsection (4)(a)(i)(B), one shall be an employee of the Division of Animal Industry and one shall be a representative of the aquaculture industry.

(v) Of the members appointed under Subsection (4)(a)(i)(C), one shall be an employee of the Division of Wildlife Resources and one shall represent sport fishermen.

(b) Except as required by Subsection (4)(c), the term of office of board members, other than the state veterinarian and the director of the Division of Wildlife Resources, shall be four years.

(c) Notwithstanding the requirements of Subsection (4)(b), the commissioner and the executive director shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.

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

(e) The member appointed under Subsection (4)(a)(i)(A) shall serve as chair of the board.

(f) The board shall meet upon the call of the chair or a majority of the board members.

(g) (i) An action of the board shall be adopted upon approval of four or more voting members.

(ii) The chair may not vote.

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

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

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

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

(6) (a) The board shall make rules consistent with its responsibilities and duties specified in this section.

(b) Rules of the department and Fish Health Policy Board pertaining to the control of disease shall remain in effect until the Fish Health Policy Board enacts rules to replace those provisions.

Section 2. Section 7-5-5 is amended to read:

7-5-5. Revocation of trust authority -- Procedure.

(1) (a) The commissioner may issue and serve upon a trust company a notice of intent to revoke the authority of the trust company to exercise the powers granted by this chapter, if, in the commissioner's opinion, the trust company:

(i) [~~the trust company~~] is unlawfully or unsoundly exercising the powers granted under this chapter;

(ii) has unlawfully or unsoundly exercised the powers granted under this chapter;

(iii) has failed, for a period of five consecutive years, to exercise the powers granted by this chapter;

(iv) fails or has failed to comply with requirements upon which its permit is conditioned; or

(v) fails or has failed to comply with any rule of the commissioner.

(b) The notice shall:

(i) contain a statement of the facts constituting the alleged unlawful or unsound exercise of powers, or failure to exercise powers, or failure to comply; and

(ii) fix the time and place at which a hearing will be held to determine whether an order revoking authority to execute those powers should issue against the trust company.

(2) (a) If the trust company or its representative does not appear at the hearing, the commissioner may consider the trust company to be in default, and may issue a revocation order.

(b) If default has occurred, or if upon the record made at any hearing the commissioner finds that any allegation specified in the notice of charges has been established, the commissioner shall issue and serve upon the trust company an order:

(i) prohibiting it from accepting any new or additional trust accounts; and

(ii) revoking its authority to exercise any powers granted under this chapter.

(c) Any order issued under this section permits the trust company to continue to service all previously accepted trust accounts pending their expeditious divestiture or termination.

(3) A revocation order shall become effective 30 days after service of the order upon the trust company and shall remain effective and enforceable, unless it is stayed, modified, terminated, or set aside by action of the commissioner or by judicial review as provided for in Section 7-1-714.

Section 3. Section 7-15-1 is amended to read:

7-15-1. Definitions -- Civil liability of issuer -- Notice of action -- Collection costs -- Exemptions.

(1) As used in this chapter:

(a) "Check" means a payment instrument on a depository institution including a:

(i) check;

(ii) draft;

(iii) order; or

(iv) other instrument.

(b) "Issuer" means a person who makes, draws, signs, or issues a check, whether as corporate agent or otherwise, for the purpose of:

(i) obtaining from any person any money, merchandise, property, or other thing of value; or

(ii) paying for any service, wages, salary, or rent.

(c) "Mailed" means the day that a notice is properly deposited in the United States mail.

(2) (a) An issuer of a check is liable to the holder of the check if:

(i) the check:

(A) is not honored upon presentment; and

(B) is marked "refer to maker";

(ii) the account upon which the check is made or drawn:

(A) does not exist;

(B) has been closed; or

(C) does not have sufficient funds or sufficient credit for payment in full of the check; or

(iii) (A) the check is issued in partial or complete fulfillment of a valid and legally binding obligation; and

(B) the issuer stops payment on the check with the intent to:

(I) fraudulently defeat a possessory lien; or

(II) otherwise defraud the holder of the check.

(b) If an issuer of a check is liable under Subsection (2)(a), the issuer is liable for:

(i) the check amount; and

(ii) a service charge of $20.

(3) (a) The holder of a check that has been dishonored may:

(i) give written or oral notice of dishonor to the issuer of the check; and

(ii) waive all or part of the service charge imposed under Subsection (2)(b).

(b) Notwithstanding Subsection (2)(b), a holder of a check that has been dishonored may not collect and the issuer is not liable for the service charge imposed under Subsection (2)(b) if:

(i) the holder redeposits the check; and

(ii) that check is honored.

(4) If the issuer does not pay the amount owed under Subsection (2)(b) within 15 calendar days from the day on which the notice required under Subsection (5) is mailed, the issuer is liable for:

(a) the amount owed under Subsection (2)(b); and

(b) collection costs not to exceed $20.

(5) (a) A holder shall provide written notice to an issuer before:

(i) charging collection costs under Subsection (4) in addition to the amount owed under Subsection (2)(b); or

(ii) filing an action based upon this section.

(b) The written notice required under Subsection (5)(a) shall notify the issuer of the dishonored check that:

(i) if the amount owed under Subsection (2)(b) is not paid within 15 calendar days from the day on which the notice is mailed, the issuer is liable for:

(A) the amount owed under Subsection (2)(b); and

(B) collection costs under Subsection (4); and

(ii) the holder may file civil action if the issuer does not pay to the holder the amount owed under Subsection (4) within 30 calendar days from the day on which the notice is mailed.

(6) (a) If the issuer has not paid the holder the amounts owed under Subsection (4) within 30 calendar days from the day on which the notice required by Subsection (5) is mailed, the holder may offer to not file civil action under this section if the issuer pays the holder:

(i) the amount owed under Subsection (2)(b);

(ii) the collection costs under Subsection (4);

(iii) an amount that:

(A) is equal to the greater of:

(I) $50; or

(II) triple the check amount; and

(B) does not exceed the check amount plus $250; and

(iv) if the holder retains an attorney to recover on the dishonored check, reasonable attorney's fees not to exceed $50.

(b) (i) Notwithstanding Subsection (6)(a), all amounts charged or collected under Subsection (6)(a)(iii) shall be paid to and be the property of the original payee of the check.

(ii) A person who is not the original payee may not retain any amounts charged or collected under Subsection (6)(a)(iii).

(iii) The original payee of a check may not contract for a person to retain any amounts charged or collected under Subsection (6)(a)(iii).

(7) (a) A civil action may not be filed under this section unless the issuer fails to pay the amounts owed under Subsection (4) within 30 calendar days from the day on which the notice required by Subsection (5) is mailed.

(b) In a civil action, the issuer of the check is liable to the holder for:

(i) the check amount;

(ii) interest;

(iii) all costs of collection, including all court costs and reasonable attorneys' fees; and

(iv) damages:

(A) equal to the greater of:

(I) $100; or

(II) triple the check amount; and

(B) not to exceed the check amount plus $500.

(c) If an issuer is held liable under Subsection (7)(b), notwithstanding Subsection (7)(b), a court may waive all or part of the amounts owed under Subsections (7)(b)(ii) through (iv) upon a finding of good cause.

(d) (i) Notwithstanding Subsection (7)(b), all amounts charged or collected under Subsection (7)(b)(iv) shall be paid to and be the property of the original payee of the check.

(ii) A person who is not the original payee may not retain any amounts charged or collected under Subsection (7)(b)(iv).

(iii) The original payee of a check may not contract for a person to retain any amounts charged or collected under Subsection (7)(b)(iv).

(8) This section may not be construed to prohibit the holder of the check from seeking relief under any other applicable statute or cause of action.

(9) (a) Notwithstanding the other provisions of this section, a holder of a check is exempt from this section if:

(i) the holder:

(A) is a depository institution; or

(B) a person that receives a payment on behalf of a depository institution;

(ii) the check is a payment on a loan that originated at the depository institution that:

(A) is the holder; or

(B) on behalf of which the holder received the payment; and

(iii) the loan contract states a specific service charge for dishonor.

(b) A holder exempt under Subsection [~~(6)~~] (9)(a) may contract with an issuer for the collection of fees or charges for the dishonor of a check.

Section 4. Section 7-15-3 is amended to read:

7-15-3. Liability of financial institution upon wrongful dishonor.

If a person is liable to a holder under Section 7-15-1 or under a contract with a depository institution as provided in Subsection 7-15-1[~~(6)~~](9), and the liability is proximately caused by a financial institution's wrongful dishonor under Section 70A-4-402, any award against the financial institution under Section 70A-4-402 shall include all amounts awarded against the person to the holder under:

(1) Section 7-15-1; or

(2) the contract with the depository institution as provided in Subsection 7-15-1[~~(6)~~](9).

Section 5. Section 8-5-5 is amended to read:

8-5-5. Proceeds of resale of lots.

The proceeds from the subsequent resale of any lot or parcel, title to which has been revested in the municipality under Section 8-5-2 or 8-5-6, less the costs and expenses incurred in the proceeding, shall become part of the permanent care and improvement fund of the municipality, subject to subsequent disposition under [~~the~~] Title 10, Chapter 6, Uniform Fiscal Procedures Act for Utah Cities.

Section 6. Section 10-6-151 is amended to read:

10-6-151. Independent audits required.

Independent audits of all cities are required, to be performed in conformity with Title 51, Chapter 2, Audits of Political Subdivisions, Interlocal Organizations and Other Local Entities. In the case of a city organized under Title 10, Chapter 3, Part 12, [~~Optional~~] Alternative Forms of Municipal Government [~~Act~~], the council shall appoint an independent auditor for the purpose of complying with the requirements of this section and of Title 51, Chapter 2, Audits of Political Subdivisions, Interlocal Organizations and Other Local Entities.

Section 7. Section 10-7-3 is amended to read:

10-7-3. Joining with county to create and maintain local health department -- Adoption of ordinances and regulations required.

(1) The governing body of every municipality shall join with the governing body of the county in which the municipality is located to create and maintain a local health department as provided in Title 26A, Chapter 1, Part 1, Local Health Department Act.

(2) The municipality shall cooperate with the board of health of the local health department in the adoption of ordinances necessary for the protection of public health required in this title.

Section 8. Section 10-7-8 is amended to read:

10-7-8. Resolution on bond issue -- Election as provided by Utah Municipal Bond Act.

When the board of commissioners, city council or the town board of trustees of any city or town shall have decided that incurring such bonded indebtedness is advisable, it shall by resolution specify the purpose for which the indebtedness is to be created and the amount of bonds which it is proposed to issue, and shall provide for submitting the question of the issue of such bonds to the qualified electors of the city or town at the next general election, or at a special election to be called for that purpose by the board of commissioners, city council or board of trustees in such manner and subject to such conditions as is provided in [~~the~~] Title 11, Chapter 14, Utah Municipal Bond Act. This section does not require an election for the issuance of refunding bonds or other bonds not required by the Constitution to be voted at an election.

Section 9. Section 10-8-62 is amended to read:

10-8-62. Cemeteries -- Purchase and operation.

The city legislative body may:

(1) purchase, hold, and pay for lands within or without the corporate limits for the burial of the dead, and all necessary grounds for hospitals;

(2) have and exercise police jurisdiction over those lands, and over any cemetery used by the inhabitants of the city;

(3) survey, plat, map, fence, ornament, and otherwise improve, manage, and operate public burial and cemetery grounds;

(4) convey cemetery lots owned by the city, and pass ordinances for the protection and governing of these grounds consistent with Title 8, Chapter 5, Municipal Cemeteries;

(5) contract for the care and improvement of cemeteries and cemetery lots, and for any compensation for the care and improvement;

(6) receive deposits for the care of lots and invest the deposits by following the procedures and requirements of Title 51, Chapter 7, State Money Management Act; and

(7) pay the cost of the care from any proceeds from the investment.

Section 10. Section 10-8-63 is amended to read:

10-8-63. Burial of dead -- Vital statistics.

They may regulate the burial of the dead, consistent with Title 8, Chapter 5, Municipal Cemeteries, the registration of births and deaths, direct the returning and keeping of bills of mortality, and impose penalties on physicians, sextons, and others for any default therein.

Section 11. Section 11-13-1 is amended to read:

11-13-1. Title.

This [~~act~~] chapter may be cited as the "Interlocal Co-operation Act."

Section 12. Section 11-13-2 is amended to read:

11-13-2. Purpose of act.

It is the purpose of this [~~act~~] chapter:

(1) to permit local governmental units to make the most efficient use of their powers by enabling them to co-operate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and [~~pursuant to~~] under forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities; and

(2) to provide the benefit of economy of scale, economic development, and utilization of natural resources for the overall promotion of the general welfare of the state.

Section 13. Section 11-13-5.6 is amended to read:

11-13-5.6. Contract by public agencies to create new entities to own sewage and wastewater facilities -- Powers and duties of new entities -- Validation of previously created entities.

(1) It is declared that the policy of the state is to assure the health, safety, and welfare of its citizens, that adequate sewage and wastewater treatment plants and facilities are essential to the well-being of the citizens of the state and that the acquisition of adequate sewage and wastewater treatment plants and facilities on a regional basis in accordance with federal law and state and federal water quality standards and effluent standards in order to provide services to public agencies is a matter of statewide concern and is in the public interest. It is found and declared that there is a statewide need to provide for regional sewage and wastewater treatment plants and facilities, and as a matter of express legislative determination it is declared that the compelling need of the state for construction of regional sewage and wastewater treatment plants and facilities requires the creation of entities under the Interlocal Cooperation Act to own, construct, operate, and finance sewage and wastewater treatment plants and facilities; and it is the purpose of this law to provide for the accomplishment thereof in the manner provided in this section.

(2) Any two or more public agencies of the state may also agree to create a separate legal or administrative entity to accomplish and undertake the purpose of owning, acquiring, constructing, financing, operating, maintaining, and repairing regional sewage and wastewater treatment plants and facilities.

(3) A separate legal or administrative entity created in the manner provided herein is considered to be a political subdivision and body politic and corporate of the state with power to carry out and effectuate its corporate powers, including, but not limited to, the power:

(a) to adopt, amend, and repeal rules, bylaws, and regulations, policies, and procedures for the regulation of its affairs and the conduct of its business, to sue and be sued in its own name, to have an official seal and power to alter that seal at will, and to make and execute contracts and all other instruments necessary or convenient for the performance of its duties and the exercise of its powers and functions under the Interlocal Cooperation Act;

(b) to own, acquire, construct, operate, maintain, repair, or cause to be constructed, operated, maintained, and repaired one or more regional sewage and wastewater treatment plants and facilities, all as shall be set forth in the agreement providing for its creation;

(c) to borrow money, incur indebtedness and issue revenue bonds, notes or other obligations payable solely from the revenues and receipts derived from all or a portion of the regional sewage and wastewater treatment plants and facilities which it owns, operates, and maintains, such bonds, notes, or other obligations to be issued and sold in compliance with the provisions of [~~the~~] Title 11, Chapter 14, Utah Municipal Bond Act;

(d) to enter into agreements with public agencies and other parties and entities to provide sewage and wastewater treatment services on such terms and conditions as it considers to be in the best interests of its participants; and

(e) to acquire by purchase or by exercise of the power of eminent domain, any real or personal property in connection with the acquisition and construction of any sewage and wastewater treatment plant and all related facilities and rights-of-way which it owns, operates, and maintains.

(4) The provisions of Sections 11-13-25, 11-13-26, 11-13-27, 11-13-28, 11-13-29, 11-13-30, 11-13-31, 11-13-32, 11-13-33, 11-13-34, 11-13-35, and 11-13-36 [~~shall~~] do not apply to a legal or administrative entity created for regional sewage and wastewater treatment purposes under this section.

(5) All proceedings previously had in connection with the creation of any legal or administrative entity pursuant to this chapter, and all proceedings previously had by any such entity for the

authorization and issuance of bonds of the entity are validated, ratified, and confirmed; and these entities are declared to be validly created interlocal cooperation entities under this chapter. These bonds, whether previously or subsequently issued pursuant to these proceedings, are validated, ratified, and confirmed and declared to constitute, if previously issued, or when issued, the valid and legally binding obligations of the entity in accordance with their terms. Nothing in this section shall be construed to affect or validate any bonds, or the organization of any entity, the legality of which is being contested at the time this act takes effect.

(6) (a) The governing authority of each entity created under this section on or after May 4, 1998, shall, within 30 days of the creation, file a written notice of the creation with the State Tax Commission.

(b) Each written notice required under Subsection (6)(a) shall:

(i) be accompanied by:

(A) a copy of the agreement creating the entity; and

(B) a map or plat that delineates a metes and bounds description of the area affected and evidence that the information has been recorded by the county recorder; and

(ii) contain a certification by the governing authority that all necessary legal requirements relating to the creation have been completed.

Section 14. Section 11-26-1 is amended to read:

11-26-1. Definitions -- Ceiling on local charges based on gross revenues of public service provider.

(1) As used in this [~~part~~] chapter:

(a) (i) "Exchange access services" means telephone exchange lines or channels, and services provided in connection with them, which are necessary to provide access from the premises of a subscriber to the local switched public telecommunications network of the public utility to effect communication or the transfer of information.

(ii) "Exchange access services" does not include:

(A) private line services;

(B) long distance toll services;

(C) carrier access services;

(D) telephonic services that are not regulated by the Utah Public Service Commission; and

(E) services that emulate functions available in customer premises equipment.

(b) "Local charge" means one or more of the following charges paid by a public service provider to a county or municipality:

(i) a tax;

(ii) a license;

(iii) a fee;

(iv) a license fee;

(v) a license tax; or

(vi) a charge similar to Subsections (1)(b)(i) through (v).

(c) "Public service provider" means:

(i) a public utility; or

(ii) a person or entity engaged in the business of supplying:

(A) telephone service; or

(B) taxable energy as defined in Section 10-1-303.

(2) A county or a municipality may not impose upon, charge, or collect from a public service provider local charges:

(a) imposed on the basis of the gross revenues of the public service provider;

(b) derived from sales, use, or both sales and use of the service within the county or municipality; and

(c) in a total amount that is greater than 6% of gross revenues.

(3) The determination of gross revenues under this section may not include:

(a) the sale of gas or electricity as special fuel for motor vehicles;

(b) the sale of telephone service provided by a public utility regulated by the Utah Public Service Commission other than:

(i) exchange access services;

(ii) extended area service;

(iii) customer access line charges; and

(iv) any services for which a tax or other charge was being paid pursuant to this section as of January 1, 1992; or

(c) a local charge.

(4) This section may not be construed to:

(a) affect or limit the power of counties or municipalities to impose sales and use taxes under Title 59, Chapter 12, Part 2, Local Sales and Use Tax Act, or Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act; or

(b) grant any county or municipality the power to impose a local charge not otherwise provided for by law.

(5) This section takes precedence over any conflicting provision of law.

Section 15. Section 13-8-5 is amended to read:

13-8-5. Definitions -- Limitation on retention proceeds withheld -- Deposit in interest-bearing escrow account --

Release of proceeds -- Payment to subcontractors -- Penalty -- No waiver.

(1) As used in this section:

(a) (i) "Construction contract" means a written agreement between the parties relative to the design, construction, alteration, repair, or maintenance of a building, structure, highway, appurtenance, appliance, or other improvements to real property, including moving, demolition, and excavating for nonresidential commercial or industrial construction projects.

(ii) If the construction contract is for construction of a project that is part residential and part nonresidential, this section applies only to that portion of the construction project that is nonresidential as determined pro rata based on the percentage of the total square footage of the project that is nonresidential.

[~~(c)~~] (b) "Construction lender" means any person, including a bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, cooperative bank, small loan company, sales finance company, investment company, or any other financial institution that advances monies to a borrower for the purpose of making alterations or improvements to real property. A construction lender does not include a person or entity who is acting in the capacity of contractor, original contractor, or subcontractor.

[~~(b)~~] (c) "Contractor" means a person who, for compensation other than wages as an employee, undertakes any work in a construction trade, as defined in Section 58-55-102 and includes:

(i) any person engaged as a maintenance person who regularly engages in activities set forth in Section 58-55-102 as a construction trade; or

(ii) a construction manager who performs management and counseling services on a construction project for a fee.

(d) "Original contractor" is as provided in Section 38-1-2.

(e) "Owner" means the person who holds any legal or equitable title or interest in property. Owner does not include a construction lender unless the construction lender has an ownership interest in the property other than solely as a construction lender.

(f) "Public agency" means any state agency or political subdivision of the state that enters into a construction contract for an improvement of public property.

(g) "Retention payment" means release of retention proceeds as defined in Subsection (1)(h).

(h) "Retention proceeds" means monies earned by a contractor or subcontractor but retained by the owner or public agency pursuant to the terms of a construction contract to guarantee payment or performance by the contractor or subcontractor of the construction contract.

(i) "Subcontractor" is as defined in Section 38-1-2.

(j) "Successful party" has the same meaning as it does under Section 38-1-18.

(2) (a) This section is applicable to all construction contracts relating to construction work or improvements entered into on or after July 1, 1999, between:

(i) an owner or public agency and an original contractor;

(ii) an original contractor and a subcontractor; and

(iii) subcontractors under a contract described in Subsection (2)(a)(i) or (ii).

(b) This section does not apply to a construction lender.

(3) (a) Notwithstanding Section 58-55-603, the retention proceeds withheld and retained from any payment due under the terms of the construction contract may not exceed 5% of the payment:

(i) by the owner or public agency to the original contractor;

(ii) by the original contractor to any subcontractor; or

(iii) by a subcontractor.

(b) The total retention proceeds withheld may not exceed 5% of the total construction price.

(c) The percentage of the retention proceeds withheld and retained pursuant to a construction contract between the original contractor and a subcontractor or between subcontractors shall be the same retention percentage as between the owner and the original contractor if:

(i) the retention percentage in the original construction contract between an owner and the original contractor is less than 5%; or

(ii) after the original construction contract is executed but before completion of the construction contract the retention percentage is reduced to less than 5%.

(4) (a) If any payment on a contract with a private contractor, firm, or corporation to do work for an owner or public agency is retained or withheld by the owner or the public agency, as retention proceeds, it shall be placed in an interest-bearing account.

(b) The interest accrued under Subsection (4)(a) shall be:

(i) for the benefit of the contractor and subcontractors; and

(ii) paid after the project is completed and accepted by the owner or the public agency.

(c) The contractor shall ensure that any interest accrued on the retainage is distributed by the contractor to subcontractors on a pro rata basis.

(5) Any retention proceeds retained or withheld pursuant to this section and any accrued interest

shall be released pursuant to a billing statement from the contractor within 45 days from the later of:

(a) the date the owner or public agency receives the billing statement from the contractor;

(b) the date that a certificate of occupancy or final acceptance notice is issued to:

(i) the original contractor who obtained the building permit from the building inspector or public agency;

(ii) the owner or architect; or

(iii) the public agency;

(c) the date that a public agency or building inspector having authority to issue its own certificate of occupancy does not issue the certificate but permits partial or complete occupancy of a newly constructed or remodeled building; or

(d) the date the contractor accepts the final pay quantities.

(6) If only partial occupancy of a building is permitted, any retention proceeds withheld and retained pursuant to this section and any accrued interest shall be partially released within 45 days under the same conditions as provided in Subsection (5) in direct proportion to the value of the part of the building occupied.

(7) The billing statement from the contractor as provided in Subsection (5)(a) shall include documentation of lien releases or waivers.

(8) (a) Notwithstanding Subsection (3):

(i) if a contractor or subcontractor is in default or breach of the terms and conditions of the construction contract documents, plans, or specifications governing construction of the project, the owner or public agency may withhold from payment for as long as reasonably necessary an amount necessary to cure the breach or default of the contractor or subcontractor; or

(ii) if a project or a portion of the project has been substantially completed, the owner or public agency may retain until completion up to twice the fair market value of the work of the original contractor or of any subcontractor that has not been completed:

(A) in accordance with the construction contract documents, plans, and specifications; or

(B) in the absence of plans and specifications, to generally accepted craft standards.

(b) An owner or public agency that refuses payment under Subsection (8)(a) shall describe in writing within 45 days of withholding such amounts what portion of the work was not completed according to the standards specified in Subsection (8)(a).

(9) (a) Except as provided in Subsection (9)(b), an original contractor or subcontractor who receives retention proceeds shall pay each of its subcontractors from whom retention has been withheld each subcontractor's share of the retention received within ten days from the day that all or any portion of the retention proceeds is received:

(i) by the original contractor from the owner or public agency; or

(ii) by the subcontractor from:

(A) the original contractor; or

(B) a subcontractor.

(b) Notwithstanding Subsection (9)(a), if a retention payment received by the original contractor is specifically designated for a particular subcontractor, payment of the retention shall be made to the designated subcontractor.

(10) (a) In any action for the collection of the retained proceeds withheld and retained in violation of this section, the successful party is entitled to:

(i) attorney's fees; and

(ii) other allowable costs.

(b) (i) Any owner, public agency, original contractor, or subcontractor who knowingly and wrongfully withholds a retention shall be subject to a charge of 2% per month on the improperly withheld amount, in addition to any interest otherwise due.

(ii) The charge described in Subsection (10)(b)(i) shall be paid to the contractor or subcontractor from whom the retention proceeds have been wrongfully withheld.

(11) A party to a construction contract may not require any other party to waive any provision of this section.

Section 16. Section 15-7-12 is amended to read:

15-7-12. Obligations subject to chapter.

(1) Unless the official or official body of the issuer determines otherwise before or at the time of the original issuance of a registered public obligation, this act is applicable to such registered public obligation. When this act is applicable, the provisions of this act prevail over any inconsistent provision under any other law. Pursuant to Section 11-14-22, this act is specifically made applicable to registered public obligations issued under [~~the~~] Title 11, Chapter 14, Utah Municipal Bond Act, in accordance with Section 11-14-16.

(2) Nothing in this act limits or prevents the issuance of obligations in any other form or manner authorized by law.

(3) Unless determined otherwise pursuant to Subsection (1), this act is applicable with respect to obligations which have been approved before enactment of this act by vote, referendum, or hearing, which authorized or permitted the authorization of obligations in bearer and registered form, or in bearer form only, and such obligations need not be resubmitted for a further vote, referendum or hearing, for the purpose of

authorizing or permitting the authorization of registered public obligations under this act.

Section 17. Section 16-4-12 is amended to read:

16-4-12. Notice of delinquency -- Form.

If any portion of the assessment mentioned in the notice remains unpaid on the day specified therein when the stock shall be delinquent, the secretary shall, unless otherwise ordered by the board of directors, cause to be published in the same newspapers in which the notice hereinbefore provided for shall have been published a notice in the following form:

(Name of corporation in full; location of principal place of business). Notice. There are delinquent upon the following described stock, on account of assessment levied on [~~the~~] _____(month/day/year), (and assessment levied previously thereto, if any) the several amounts set opposite the names of the respective shareholders as follows: (Names, number of certificate, number of shares, and amount) and in accordance with law[~~,~~] (and an order of the board of directors made on [~~the~~] _____(month/day/year), if any such order shall have been made) so many shares of each parcel of the stock as may be necessary will be sold at the (particular place) on [~~the~~] _____(month/day/year), at the hour of ____, to pay the delinquent assessments thereon, together with the cost of advertising and expenses of the sale. (Name of secretary, with location of office).

Section 18. Section 16-6a-809 (Effective 04/30/01) is amended to read:

16-6a-809 (Effective 04/30/01). Removal of directors by judicial proceeding.

(1) (a) The applicable court may remove a director in a proceeding commenced either by the nonprofit corporation or by voting members holding at least 10% of the votes entitled to be cast in the election of the director's successor if the court finds that:

(i) the director engaged in:

(A) fraudulent or dishonest conduct; or

(B) gross abuse of authority or discretion with respect to the nonprofit corporation; or

(ii) (A) a final judgment has been entered finding that the director has violated a duty set forth in this Part [4] 8; and

(B) removal is in the best interests of the nonprofit corporation.

(b) For purposes of this Subsection (1), the applicable court is the:

(i) district court of the county in this state where a nonprofit corporation's principal office is located; or

(ii) if the nonprofit corporation has no principal office in this state:

(A) the district court of the county in which its registered office is located; or

(B) if the nonprofit corporation has no registered office, the district court for Salt Lake County.

(2) The court that removes a director may bar the director for a period prescribed by the court from:

(a) reelection;

(b) reappointment; or

(c) designation.

(3) If voting members commence a proceeding under Subsection (1), the voting members shall make the nonprofit corporation a party defendant.

(4) A director who is removed pursuant to this section may deliver to the division for filing a statement to that effect pursuant to Section 16-6a-1608.

Section 19. Section 17-18-1 is amended to read:

17-18-1. Powers -- Duties of county attorney -- Prohibitions.

(1) (a) In each county which is not within a prosecution district, the county attorney is a public prosecutor and shall:

(i) conduct on behalf of the state all prosecutions for public offenses committed within the county, except for prosecutions undertaken by the city attorney under Section 10-3-928 and appeals from them;

(ii) institute proceedings before the proper magistrate for the arrest of persons charged with or reasonably suspected of any public offense when in possession of information that the offense has been committed, and for that purpose shall attend court in person or by deputy in cases of arrests when required; and

(iii) when it does not conflict with other official duties, attend to all legal business required in the county by the attorney general without charge when the interests of the state are involved.

(b) All the duties and powers of public prosecutor shall be assumed and discharged by the county attorney.

(2) The county attorney:

(a) shall appear and prosecute for the state in the district court of the county in all criminal prosecutions;

(b) may[~~, subject to Title 67, Chapter 23, Public Attorneys Act,~~] appear and prosecute in all civil cases in which the state may be interested; and

(c) shall render assistance as required by the attorney general in all cases that may be appealed to the Supreme Court and shall prosecute the appeal from any crime charged by the county attorney as a misdemeanor in the district court.

(3) The county attorney shall:

(a) attend the deliberations of the grand jury;

(b) draw all indictments and informations for offenses against the laws of this state within the county;

(c) cause all persons indicted or informed against to be speedily arraigned;

(d) cause all witnesses for the state to be subpoenaed to appear before the court or grand jury;

(e) examine carefully into the sufficiency of all appearance bonds that may be tendered to the district court of the county;

(f) upon the order of the court, institute proceedings in the name of the state for recovery upon the forfeiture of any appearance or other bonds running to the state and enforce the collection of them; and

(g) perform other duties as required by law.

(4) The county attorney shall:

(a) ascertain by all practicable means what estate or property within the county has escheated or reverted to the state;

(b) require the assessor of taxes of the county to furnish annually a list of all real or personal property that may have so escheated or reverted; and

(c) file a copy of the list in the office of the state auditor and of the attorney general.

(5) The county attorney shall:

(a) each year on the first business day of August file a report with the attorney general covering the preceding fiscal year, stating the number of criminal prosecutions in the district, the character of the offenses charged, the number of convictions, the amount of fines and penalties imposed, and the amount collected; and

(b) call attention to any defect in the operation of the laws and suggest amendments to correct the defect.

(6) The county attorney shall:

(a) appear and prosecute for the state in the juvenile court of the county in any proceeding involving delinquency;

(b) represent the state in any proceeding pending before the juvenile court if any rights to the custody of any juvenile are asserted by any third person; and

(c) prosecute before the court any person charged with abuse, neglect, or contributing to the delinquency or dependency of a juvenile.

(7) [~~Subject to the requirements of Title 67, Chapter 23, Public Attorneys Act, the~~] The county attorney shall:

(a) defend all actions brought against the county;

(b) prosecute all actions for the recovery of debts, fines, penalties, and forfeitures accruing to the county;

(c) give, when required and without fee, an opinion in writing to county, district, and precinct officers on matters relating to the duties of their respective offices;

(d) deliver receipts for money or property received in an official capacity and file duplicates with the county treasurer; and

(e) on the first Monday of each month file with the auditor an account verified by oath of all money received in an official capacity during the preceding month, and at the same time pay it over to the county treasurer.

(8) A county attorney may not:

(a) in any manner consult, advise, counsel, or defend within this state any person charged with any crime, misdemeanor, or breach of any penal statute or ordinance;

(b) be qualified to prosecute or dismiss in the name of the state any case in which the county attorney has previously acted as counsel for the accused on the pending charge; or

(c) in any case compromise any cause or enter a nolle prosequi after the filing of an indictment or information without the consent of the court.

(9) If at any time after investigation by the district judge involved, the judge finds and recommends that the county attorney in any county is unable to satisfactorily and adequately perform the duties in prosecuting a criminal case without additional legal assistance, the attorney general shall provide the additional assistance.

Section 20. Section 17-18-1.5 is amended to read:

17-18-1.5. Powers -- Duties of county attorney within a prosecution district -- Prohibitions.

(1) In each county which is within a state prosecution district, the county attorney is a public prosecutor only for the purpose of prosecuting violations of county ordinances or as otherwise provided by law and shall:

(a) conduct on behalf of the county all prosecutions for violations of county ordinances committed within the county;

(b) have authority to grant transactional immunity for violations of county ordinances committed within the county;

(c) institute proceedings before the proper magistrate for the arrest of persons charged with or reasonably suspected of violations of county ordinances when in possession of information that the violation has been committed, and for that purpose shall attend court in person or by deputy in cases of arrests when required; and

(d) when it does not conflict with other official duties, attend to all legal business required in the county by the attorney general without charge when the interests of the state are involved.

(2) [~~Subject to Title 67, Chapter 23, Public Attorneys Act, the~~] The county attorney:

(a) may appear and prosecute in all civil cases in which the state may be interested; and

(b) shall render assistance as required by the attorney general in all civil cases that may be appealed to the Supreme Court and prosecute the appeal from any violation of a county ordinance.

(3) The county attorney shall:

(a) draw all informations for violations of a county ordinance;

(b) cause all persons informed against to be speedily arraigned;

(c) cause all witnesses for the county to be subpoenaed to appear before the court;

(d) upon the order of the court, institute proceedings in the name of the county for recovery upon the forfeiture of any appearance or other bonds running to the county and enforce the collection of them; and

(e) perform other duties as required by law.

(4) The county attorney shall:

(a) ascertain by all practicable means what estate or property within the county has escheated or reverted to the state;

(b) require the assessor of taxes of the county to furnish annually a list of all real or personal property that may have so escheated or reverted; and

(c) file a copy of the list in the office of the state auditor and of the attorney general.

(5) [~~Subject to Title 67, Chapter 23, Public Attorneys Act, the~~] The county attorney shall:

(a) defend all actions brought against the county;

(b) prosecute all actions for the recovery of debts, fines, penalties, and forfeitures accruing to the county;

(c) give, when required and without fee, an opinion in writing to county, district, precinct, and prosecution district officers on matters relating to the duties of their respective offices;

(d) deliver receipts for money or property received in an official capacity and file duplicates with the county treasurer; and

(e) on the first Monday of each month file with the auditor an account verified by oath of all money received in an official capacity during the preceding month, and at the same time pay it over to the county treasurer.

(6) A county attorney may not:

(a) in any manner consult, advise, counsel, or defend within this state any person charged with any crime, misdemeanor, or breach of any penal statute or ordinance;

(b) be qualified to prosecute or dismiss in the name of the county any case in which the county attorney has previously acted as counsel for the accused on the pending charge; or

(c) in any case compromise any cause or enter a nolle prosequi after the filing of an information without the consent of the court.

(7) The county attorney or his deputy may be sworn as a deputy district attorney for the purpose of public convenience for a period of time and subject to limitations specified by the district attorney.

Section 21. Section 17A-2-306 is amended to read:

17A-2-306. Bonds.

(1) The board of trustees may, at any time after its organization, adopt a resolution determining it desirable to issue the bonds of the district for purposes and in amounts stated in the resolution. The resolution shall specify whether the bonds are payable from taxes or from the operating revenues of the district, or both. Where the bonds are payable from taxes, in whole or in part, the board of trustees shall call a bond election. If at the election, the proposition to issue the bonds is approved, the board of trustees shall issue the bonds in the manner provided in [~~the~~] Title 11, Chapter 14, Utah Municipal Bond Act. If the bonds are payable solely from the operating revenues of the district, no election is required to approve their issuance, and such bonds shall be issued pursuant to the resolution and in the manner provided in Title 11, Chapter 14, Utah Municipal Bond Act. The board may reduce the amount of bonds.

(2) Any bonds authorized prior to April 28, 1986, by an electric service district created pursuant to Chapter 2, Part 3, County Improvement Districts for Water, [~~Sewage~~] Sewerage, Flood Control, Electric and Gas [~~Systems~~], are considered valid and binding if all of the following conditions have been met:

(a) a resolution has been adopted by the board of trustees of the electric service district, prior to April 28, 1986, for the purpose of authorizing the bonds, whether or not these bonds have been issued;

(b) the bonds are delivered and paid for;

(c) the electric service district which authorized the bonds complied with all of the requirements for electric service districts set forth in Section 17A-2-305; and

(d) the requirements of Subsection (1) are met.

(3) If any bonds have been authorized under the conditions described in Subsection (2), prior to April 28, 1986, the board of trustees of the electric service district may make any necessary changes in the specifications of the bonds or the proceedings authorizing the bonds.

Section 22. Section 17A-2-307 is amended to read:

17A-2-307. Resolution calling bond election -- Precincts and polling places.

If, under the provisions of Section 17A-2-306, the board shall determine to call an election on the

issuance of the bonds, the board shall adopt a resolution directing that an election be held in the district for the purpose of determining whether bonds in the amount, for the purpose, and with the maximum maturity specified in the resolution, shall be issued. The resolution calling the election shall be adopted, notice of the election shall be given, the election shall be held, voters' qualifications shall be determined, and the results thereof canvassed in the manner and subject to the conditions provided for in [~~the~~] Title 11, Chapter 14, Utah Municipal Bond Act. The board may for purposes of the election treat the entire district as a single precinct or may divide the district into such precincts and fix such polling places as it may see fit.

Section 23. Section 17A-2-309 is amended to read:

17A-2-309. Results of bond election -- Resolution -- Issuance of bonds -- Maximum bonded indebtedness.

(1) The results of the bond election shall be canvassed by the board of trustees and a resolution adopted by the board declaring the results, and a certified copy of the resolution filed in the records of the district. The results of all subsequent elections shall be similarly canvassed by the board of trustees and resolutions declaring the results of the elections adopted and filed.

(2) If, at the bond election, a majority of the qualified voters voting on any bond proposition vote in favor of the issuance of the bonds, the board of trustees shall proceed to issue the bonds. Bonds may be issued for the purpose of constructing or acquiring any improvement provided in Section 17A-2-301, or any part or combination of them, or for improving and extending the improvement or combination of improvements, and may include the payment of all legal, engineering, and fiscal agent expenses reasonably incurred in connection with the construction, acquisition, improving, and extending of these improvements and with the authorization and issuance of the bonds. The bonds shall be fully negotiable for all purposes and may not be issued in an amount which, together with all other existing indebtedness of the district then outstanding, will exceed in total principal amount 2.4% of the taxable value of taxable property in the district as computed from the last equalized assessment roll for county purposes made and completed prior to the issuance of the bonds. The taxable value of all tax equivalent property, as defined in Subsection 59-3-102(2), shall be included as a part of the total taxable value of taxable property in the district for purposes of the limitations. Bonds issued in the manner that they are payable solely from revenues to be derived from the operation of all or part of the facilities of the district may not be included as bonded indebtedness of the district for the purpose of this computation. All bonds not payable solely from revenues shall be the general obligations of the district, and the full faith, credit, and resources of the district shall be pledged for their payment; and regardless of any limitations contained elsewhere in the laws of Utah and this part, including Section 17A-2-312, the board of trustees shall cause to be levied annually on all taxable property in the district taxes sufficient to pay principal and interest on general obligation bonds as principal and interest fall due, or if the bonds are payable primarily from revenues, then anticipate and make up any amounts which may be necessary to pay the principal and interest by reason of deficiencies in revenues. The bonds shall be issued and sold in compliance with [~~the~~] Title 11, Chapter 14, Utah Municipal Bond Act.

Section 24. Section 17A-2-423 is amended to read:

17A-2-423. Resolution calling election for issuing general obligation and revenue bonds.

(1) If under the foregoing provisions the board is authorized to call an election on the issuance of the bonds, the board shall adopt a resolution directing that an election be held in the county or service area, as the case may be, for the purpose of determining whether bonds in the amount, for the purpose, and with the maximum maturity specified in the resolution, shall be issued. A proposition for issuing general obligation bonds and a proposition for issuing revenue bonds, or any combination thereof, may be submitted at the same election.

(2) Adoption of the resolution calling the election, determination of voters' qualifications, notice and conduct of the election, and the canvass of election results shall be accomplished in the manner prescribed in [~~the~~] Title 11, Chapter 14, Utah Municipal Bond Act. The board, for purposes of the election, may treat the entire district as a single precinct or divide the district into several precincts and it may fix such polling places as it [~~deems~~] considers appropriate.

Section 25. Section 17A-2-543 is amended to read:

17A-2-543. Contractual powers -- Bond issues -- Elections -- Limitations -- Uses.

Whenever the board of trustees considers it expedient it shall have power, for the purpose of constructing drains, drainage canals and other required improvements necessary to drain lands in the district or conserve the public health or welfare, to make a contract or contracts with the United States providing for the repayment of the principal and such other sums due thereunder at such times as may be agreed upon, or to issue bonds of the district to run not less than five years nor more than 40 years, and to bear interest, payable semiannually, at a rate not exceeding 8% per annum to be called "drainage district bonds," which bonds shall not be sold for less than 90% of their par value, and the proceeds of which shall be used for no other purpose than paying the cost of constructing such drains, drainage canals, or other like work considered necessary to drain lands within the district, or conserve the public health or welfare. Before such contract or contracts shall be made or bonds shall be issued, the board of trustees shall request the county legislative body to order, and the

county legislative body shall at once order a special election on the question of the issuance of bonds. The persons authorized to vote in, the giving of notice, the forms of ballots, and the manner of holding the election, and canvassing the results of the election, shall be as provided in [~~the~~] Title 11, Chapter 14, Utah Municipal Bond Act. The expenses of such election shall be paid out of the funds belonging to the drainage district. The terms and times of payment of the bonds so issued shall be fixed by the board of trustees. The bonds shall be issued for the benefit of the district authorizing the issue and shall bear the name and number of the district. The board of trustees shall keep a record of the bonds issued and sold or otherwise disposed of, and such record will also show the lands embraced in the district. In no case shall the amount of bonds exceed the benefits assessed. Each bond issued shall show expressly upon its face that it is to be paid by a tax assessed, levied, and collected on the lands within the drainage district. The board of trustees shall, by resolution, provide for the issuance and disposal of such bonds and for the payment of the interest thereon, the creation of a sinking fund for the ultimate redemption thereof, and for the date and manner of the redemption of the bonds. The board of [~~supervisors~~] trustees may sell or dispose of the bonds either at public or private sale. Before making any such sale, either private or public, the board of trustees shall give due notice of their intention to sell or dispose of the bonds, by publishing notice of sale at least once a week for four consecutive weeks in some newspaper having general circulation in the state and in the county where the district is situated, and by publishing in any other publication they consider advisable. The notice shall state that sealed proposals will be received by the board of trustees at their office, for the purchase of the bonds, until the day and hour fixed by the board of trustees. At the time appointed the board of trustees shall open the proposals, and award the purchase of the bonds to the highest responsible bidder, or may reject all bids. In case no bid is made and accepted as above provided, the board of trustees is hereby authorized to use the bonds for the construction of any ditches, drain or drains, drainage canal or drainage canals, or any other required improvement considered necessary to drain lands or for the public health or welfare.

Section 26. Section 17A-2-556 is amended to read:

17A-2-556. Form of release and discharge.

The release and discharge shall be substantially in the following form:

Release and discharge from liability for payment of the bonded indebtedness of ____ drainage district in ____ county, Utah, and from the lien of the equalized assessment of benefits and taxes and the benefit assessment roll.

Whereas, on [~~the~~] _____(month\day\year), ____ (the owner, part owner, mortgagee or other lien holders, as the case may be) paid to the county treasurer of ____ county, (in lawful money of the United States, or bonds, notes, warrants or matured interest coupons of the district, as the case may be) the sum of $____, being the total amount of the unpaid drainage district equalized assessment of benefits and taxes levied and assessed against that certain tract, lot or parcel of land located in ____ drainage district in ____ county, Utah, and particularly bounded and described as follows, to wit: (Insert description of property) ____ and, ____.

Whereas, there is on file with the treasurer of this drainage district a receipt showing payment in full,

Now, Therefore, in consideration of such payment and pursuant to law, the undersigned drainage district does by these presents release and discharge the above described tract, lot or parcel of land from the lien of and from the payment of all of the bonded indebtedness now existing against the same, and from the payment of any bonds now issued or that may hereafter be issued to refund the same, or any part thereof, and from the payment of any notes or warrants of the district heretofore issued or that may hereafter be issued in payment of interest on the indebtedness or refunded indebtedness, and releases and discharges said tract, lot or parcel of land from the payment of any of the unpaid equalized assessment of benefits and taxes levied or assessed against the same and from the lien of the benefit assessment roll of said drainage district.

In Witness Whereof, the said drainage district has executed this instrument and caused its corporate name and corporate seal to be hereunto affixed by its chair and secretary this _____(month\day\year), pursuant to a resolution of its board of trustees.

Attest:

_____(Name of drainage district.)By _____, President _____ Secretary.

The written release and discharge may be acknowledged before any officer authorized to take acknowledgments of deeds. The form of acknowledgment shall be substantially as follows: State of Utah, ss.County of ____

On [~~the~~] _____(month\day\year), personally appeared before me ____, who being by me duly sworn, did say that he is the chair of ____ drainage district which executed the above and foregoing instrument and that the instrument was signed in behalf of the drainage district by authority of a resolution of its board of trustees, and ____ acknowledged to me that the drainage district executed the same._____Notary Public.My Commission expires: ____(month\day\year)Residing at: ____.

Section 27. Section 17A-2-712 is amended to read:

17A-2-712. Additional powers of board.

(1) In addition to any of the powers granted in this part, the board of trustees of any irrigation district may acquire, purchase, construct, improve, enlarge, and operate, or contract for the construction, improvement, enlargement, and operation of:

(a) reservoir sites, reservoirs, water, water filings, water rights, canals, ditches, and all other related structures and works necessary or proper for the storage and conveyance of water for irrigation purposes and all other structures and facilities necessary or proper for the purposes of the irrigation district; and

(b) facilities for the generation of hydroelectric power and all other related structures and works necessary or proper for the generation of electricity, including hydroelectric power plants, turbine generators, penstocks, transformers, electrical equipment, and other facilities related to hydroelectric production plants, not including transmission facilities related to hydroelectric production plants.

(2) In addition to any of the powers granted in this part, the board of trustees of any irrigation district may enter into contracts for the sale of all or a portion of the electric power generated at a hydroelectric power plant, whether or not the electric power to be sold is surplus to the needs of the district, for the periods of time and under the terms and conditions the board deems necessary in order to accomplish the purposes of the district. Any sale of the electric power may be for the period and upon the terms and conditions as may be provided in contracts authorized by the board and entered into by the district and any purchaser of the electric power having, at the time of the commencement of the acquisition and construction of the electric power plant by the district, a system for distributing the electric power. Any revenues received by the district pursuant to power sale contracts may be used and pledged for the payment of the principal of and interest and any premium on bonds or notes of the district issued to pay all or part of the cost of acquiring, constructing, improving, or enlarging the facilities from which the hydroelectric power is generated, or for any other lawful purpose of the district. The boards of trustees of any two or more irrigation districts may, by appropriate resolutions, enter into agreements with one another by which the districts may jointly or cooperatively exercise any of the powers conferred by this section.

(3) The board may issue revenue bonds of the district, in the manner provided in this section:

(a) to pay for all or part of the costs of the acquisition, construction, improvement, or enlargement of any facilities described in Subsection (1) and other related structures and works and to pay expenses preliminary and incidental thereto;

(b) to pay interest on the bonds during acquisition, construction, improvement, or enlargement; and

(c) to provide for necessary reserves and to pay costs of issuance and sale of the bonds, including, without limitation, printing, registration, and transfer costs, legal, financial advisor's, and rating agency fees, insurance premiums, and underwriter's discount.

(4) The board may provide that any revenue bonds issued and sold under this section shall be payable solely out of a special fund into which the district issuing the revenue bonds shall be obligated to deposit, as from time to time received, all or a designated portion of the proceeds from the sale of the services furnished by the facilities of the irrigation district, including the facilities to be so acquired, constructed, improved, or enlarged, all pursuant to contracts to be entered into as authorized in this section.

(5) Revenue bonds of the district issued under the authority of this section shall be issued and sold in compliance with Title 11, Chapter 14, Utah Municipal Bond Act, and may be in the form and denominations and have the provisions and details as are permitted by [~~the~~] Title 11, Chapter 14, Utah Municipal Bond Act. The bonds and any evidences of participation interests in the bonds may be issued, executed, authenticated, registered, transferred, exchanged, and otherwise made to comply with Title 15, Chapter 7, Registered Public Obligations Act, or any other statute relating to the registration of bonds enacted to meet the requirements of Section 149(a) of the Internal Revenue Code of 1986, or any similar or successor federal law, and applicable regulations. Bonds may be issued under the authority of this section at one time or from time to time. If more than one issue or series of bonds is delivered under the authority of this section, the bonds of the respective issue or series shall have the priorities of payment as provided in the proceedings authorizing the bonds.

(6) Any resolution authorizing revenue bonds may contain covenants with the future holders of the bonds as to:

(a) the management and operation of the facilities of the irrigation district, including the facilities acquired, constructed, improved, enlarged, or operated pursuant to this section;

(b) the imposition and collection of rates for the services furnished thereby;

(c) the disposition of the revenues;

(d) the issuance of future bonds and the creation of future liens and encumbrances against these facilities and the revenues thereof;

(e) the carrying of insurance on these facilities and the disposition of the proceeds of insurance;

(f) the sale, disposal, or alienation of these facilities; and

(g) other pertinent matters deemed necessary or proper by the board to assure the merchantability of the bonds. These covenants and agreements may not be inconsistent with this section.

(7) When a district has issued revenue bonds and pledged for the payment thereof any revenues of the facilities of the irrigation district, including the facilities acquired, constructed, improved, enlarged, or operated pursuant to this section, the district shall establish rates and collect fees and charges for the services furnished by these facilities in that amount and at those rates which will be fully

sufficient at all times to pay the expenses of operating and maintaining these facilities, to provide a special fund sufficient to assure the prompt payment of principal of and interest on the bonds as principal and interest fall due, and to provide funds for reserves and contingencies and for a depreciation fund for repairs, extensions, and improvements to these facilities as considered necessary to assure adequate and efficient service, all as required by the bond resolution. No board or commission other than the board of trustees of the district has authority over or is required to approve the making or fixing of the fees and charges or the acquisition of property by the district or the issuance of its bonds.

(8) Any restrictions, limitations, or regulations in any other section of this part relative to the issuance of bonds or the execution of contracts pursuant to the authority contained in this section do not apply to the revenue bonds issued under this section or the execution of contracts under the authority of this section. Sections 17A-2-750, 17A-2-751, 17A-2-752, and 17A-2-753 do not apply to any contract entered into by an irrigation district under this section, nor to the issuance of any revenue bonds by an irrigation district under this section.

Section 28. Section 17A-2-747 is amended to read:

17A-2-747. Returns and canvass of election.

The board of trustees shall name a day for canvassing the returns of election, and if it appears that a majority of the votes cast are "For Dissolution -- Yes," then the board of trustees shall declare the district to be disorganized, and shall certify to the county clerk of the county in which the office of the district is located, stating the number of signers to the petition and the number of acre-feet of water allotted to them; that the election was called and set for [~~the _____ day of _____ month of _____ year~~] _____(month/day/year), that the election was held and that so many votes (stating the number) had been cast for, and that so many votes (stating the number) had been cast against the proposition; the certificates to bear the seal of the district, and the signatures of the chair and secretary of the board of trustees. And it shall be the duty of the clerk to have such certificate recorded with the county recorder of the respective counties embracing any lands of the district. Should it appear that a majority of the votes cast at the election were "For Dissolution -- No," then the board of directors shall declare the proposition lost and shall cause the result and the vote to be made a part of the records of the irrigation district.

Section 29. Section 17A-2-826 is amended to read:

17A-2-826. Sale of bonds.

Bonds issued under this part shall be sold in compliance with the provisions of [~~the~~] Title 11, Chapter 14, Utah Municipal Bond Act.

Section 30. Section 17A-2-1037 is amended to read:

17A-2-1037. Elections.

All district elections shall be held in accordance with the provisions of the elections code of the state of Utah as they now exist or may be amended for the holding of elections in general law cities in so far as the same are not in conflict with this part; provided all elections upon the issuance of bonds of a district shall be called, held, and conducted pursuant to the provisions of [~~the~~] Title 11, Chapter 14, Utah Municipal Bond Act, and the provisions of the election code shall not be applicable to any such bond election.

Section 31. Section 17A-2-1038 is amended to read:

17A-2-1038. Board of trustees -- Appointment -- Apportionment -- Qualifications -- Quorum -- Compensation -- Terms.

(1) (a) All powers, privileges, and duties vested in any incorporated district shall be performed by a board of trustees.

(b) The board may delegate the exercise of any duty to any of the offices created under this part.

(2) If 200,000 people or [~~less~~] fewer reside within the district boundaries:

(a) the board of trustees shall consist of trustees appointed by the legislative bodies of each municipality, county, or unincorporated area within any county on the basis of one trustee for each full unit of regularly scheduled passenger routes proposed to be served by the district in each municipality or unincorporated area within any county in the following calendar year;

(b) the number of service miles comprising a unit shall be determined jointly by the legislative bodies of the municipalities or counties comprising the district;

(c) trustees shall be appointed and added to the board or omitted from the board at the time scheduled routes are changed, or as municipalities, counties, or unincorporated areas of counties annex to or withdraw from the district using the same appointment procedures; and

(d) municipalities, counties, and unincorporated areas of counties in which regularly scheduled passenger routes proposed to be served by the district in the following calendar year is less than a full unit, as defined in Subsection (2)(a), may combine with any other similarly situated municipality or unincorporated area to form a whole unit and may appoint one trustee for each whole unit formed.

(3) If more than 200,000 people reside within the district boundaries, the board of trustees shall consist of 15 trustees appointed as described under Subsections (4) and (5).

(4) (a) Except as provided under Subsections (4)(b) and (c), the board shall apportion members to each county within the district based on:

(i) from the effective date of this act until the apportionment following the year 2000 decennial United States Census Bureau report, the proportion of population included in the district and residing within each county, rounded to the nearest 1/15 of the total transit district population; and

(ii) beginning with the first apportionment following the year 2000 decennial United States Census Bureau report, an average of:

(A) the proportion of population included in the district and residing within each county, rounded to the nearest 1/15 of the total transit district population; and

(B) the proportion of transit sales and use tax collected from areas included in the district and within each county, rounded to the nearest 1/15 of the total transit sales and use tax collected for the transit district.

(b) The board shall join an entire or partial county not apportioned a member under this subsection with an adjacent county for representation. The combined apportionment basis included in the district of both counties shall be used for the apportionment.

(c) If rounding to the nearest 1/15 of the total transit district apportionment basis under Subsection (4)(a) results in an apportionment of:

(i) more than 15 members, the county or combination of counties with the smallest additional fraction of a whole member proportion shall have one less member apportioned to it; or

(ii) less than 15 members, the county or combination of counties with the largest additional fraction of a whole member proportion shall have one more member apportioned to it.

(5) (a) If the unincorporated area of a county is at least 1/15 of the district's population, the county executive, with the advice and consent of the county legislative body, shall appoint one trustee to represent each 1/15 of the district's population within a county's unincorporated area population.

(b) If a municipality's population is at least 1/15 of the district's population, the chief municipal executive, with the advice and consent of the municipal legislative body, shall appoint one trustee to represent each 1/15 of the district's population within a municipality.

(c) The number of trustees appointed from a county and municipalities within a county under Subsections (5)(a) and (b) shall be subtracted from the county's total member apportionment under Subsection (4).

(d) If the entire county is within the district, the remaining trustees for the county shall represent the county or combination of counties if Subsection (4)(b) applies, or the municipalities within the county.

(e) If the entire county is not within the district, and the county is not joined with another county under Subsection (4)(b), the remaining trustees for the county shall represent a municipality or combination of municipalities.

(f) Except as provided under Subsections (5)(a) and (b), trustees representing counties, combinations of counties if Subsection (4)(b) applies, or municipalities within the county shall be designated and appointed by a simple majority of the chief executives of the municipalities within the county or combinations of counties if Subsection (4)(b) applies. The appointments shall be made by joint written agreement of the appointing municipalities, with the consent and approval of the county legislative body of the county that has at least 1/15 of the district's apportionment basis.

(g) Trustees representing a municipality or combination of municipalities shall be designated and appointed by the chief executive officer of the municipality or simple majority of chief executive officers of municipalities with the consent of the legislative body of the municipality or municipalities.

(h) The appointment of trustees shall be made without regard to partisan political affiliation from among citizens in the community.

(i) Each trustee shall be a bona fide resident of the municipality, county, or unincorporated area or areas which the trustee is to represent for at least six months before the date of appointment, and must continue in that residency to remain qualified to serve as a trustee.

(j) (i) Each trustee whose term has not expired and is serving on the effective date of this act shall continue to serve as a trustee until the expiration of the term for which the trustee was appointed, subject to the term limitations under which the trustee was initially appointed.

(ii) Beginning on the effective date of this act, any vacancy for which the successor has not taken the oath of office shall be filled in the following order:

(A) by a municipality eligible to make an appointment under Subsection (5)(b);

(B) by a county eligible to make an appointment for its unincorporated area under Subsection (5)(a); and

(C) as otherwise provided under this section.

(k) (i) All population figures used under this section shall be derived from the most recent official census or census estimate of the United States Bureau of the Census.

(ii) If population estimates are not available from the United States Bureau of Census, population figures shall be derived from the estimate from the Utah Population Estimates Committee.

(iii) All transit sales and use tax totals shall be obtained from the Tax Commission.

(l) After the initial apportionment immediately following the effective date of this act, the board shall be apportioned as provided under this section in conjunction with the decennial United States Census Bureau report every ten years.

(6) (a) Except the initial trustees, the terms of office of the trustees shall be three years or until their successors are appointed, qualified, seated, and have taken the oath of office.

(b) At the first meeting of the initial trustees, the directors shall designate by the drawing of lots 1/3 of their number to serve for one-year terms, 1/3 for two-year terms, and 1/3 for three-year terms.

(c) A trustee may not be appointed for more than two successive full terms.

(7) (a) Vacancies shall be filled by the official appointing the member creating the vacancy for the unexpired term, unless the official fails to fill the vacancy within 90 days.

(b) If the appointing official under Subsection (2) does not fill the vacancy within 90 days, the board of trustees of the authority shall fill the vacancy.

(c) If the appointing official under Subsection (5) does not fill the vacancy within 90 days, the governor, with the advice and consent of the Senate, shall fill the vacancy.

(8) (a) Each trustee may cast one vote on all questions, orders, resolutions, and ordinances coming before the board of trustees.

(b) A majority of all members of the board of trustees are a quorum for the transaction of business.

(c) The affirmative vote of a majority of all trustees present at any meeting at which a quorum was initially present shall be necessary and, except as otherwise provided, is sufficient to carry any order, resolution, ordinance, or proposition before the board of trustees.

(9) The district shall pay to each trustee:

(a) an attendance fee of $50 per board or committee meeting attended, not to exceed $200 in any calendar month to any trustee; and

(b) reasonable mileage and expenses necessarily incurred to attend board or committee meetings.

(10) (a) Members of the initial board of trustees shall convene at the time and place fixed by the chief executive officer of the entity initiating the proceedings.

(b) Immediately upon convening, the board of trustees shall elect from its membership a president, vice president, and secretary who shall serve for a period of two years or until their successors shall be elected and qualified.

(11) At the time of a trustee's appointment or during a trustee's tenure in office, a trustee may not hold:

(a) any elected public office with the United States, the state, or any political subdivision of either; or

(b) any employment, except as an independent contractor, with a county or municipality within the district.

Section 32. Section 17A-2-1058 is amended to read:

17A-2-1058. District may issue bonds.

Any district organized under this part may, in the manner and subject to the limitations and restrictions contained in [~~the Utah Municipal Bond Act,~~] Title 11, Chapter 14, Utah Municipal Bond Act, authorize, issue and dispose of its negotiable bonds for purposes of paying all or part of the cost of acquiring, improving, or extending any one or more improvements, facilities, or property authorized to be acquired under this part.

Section 33. Section 17A-2-1225 is amended to read:

17A-2-1225. Adoption, rejection, or modification of plan -- Plan submitted to voters -- When rejection required -- Petition for alternative plan.

(1) Once the hearings have been held, the legislative body may proceed to adopt, reject, or modify the project area redevelopment plan. The project area redevelopment plan may not be modified so as to add any real property to the project area without the legislative body holding a new hearing to consider the matter, notice of which shall be given in the same manner as provided in Section 17A-2-1222.

(2) (a) If the owners of 40% of the area of the property included within the project area proposed in the redevelopment plan, excluding property owned by public agencies or dedicated to public use, make objections in writing prior to or at the hearing and the objections are not withdrawn at or prior to the hearing, the plan may not be adopted until the proposition to so adopt the plan has been approved by a majority of the registered voters of the community voting thereon at an election called for this purpose.

(b) This election may be held on the same day and with the same election officials as any primary or general election held in the community and shall be held as nearly as practicable in conformity with the general election laws of the state.

(c) Upon the approval by the voters as set forth in Subsection (2)(a), the project area redevelopment plan shall be [~~deemed~~] considered adopted and the legislative body shall confirm the adoption by ordinance.

(3) If the owners of [~~two-thirds~~] 2/3 of the area of the property included within any project area proposed in the redevelopment plan, excluding property owned by public agencies or dedicated to public use, make objections in writing at or prior to the hearing, the legislative body may not adopt the project, and the proposed project may not be reconsidered by the legislative body for a period of three years.

(4) (a) Projects for which a preliminary plan has been prepared after April 1, 1993, and for which any of the following have occurred after July 1, 1993: the completion of the agency blight study, and the good faith commencement of the hearing by the agency under Section 17A-2-1221, must adopt a plan

within one year after a project area is designated under Section 17A-2-1206 for a redevelopment plan where the purpose is the elimination of blight, and within one year after a preliminary plan is prepared for a redevelopment plan where the purpose is economic development or education housing development.

(b) If the plan will be submitted to an election for approval by the registered voters of a community, the time limit for the plan adoption shall be increased by the time between the close of the public hearing held pursuant to Section 17A-2-1221 and the date of the next general election within the community.

(5) A majority of the owners of the area of the property included within the project area, excluding property owned by public agencies or dedicated to public use, may file a written petition requesting an alternative preliminary plan be formulated pursuant to Section 17A-2-1211.

Section 34. Section 17A-2-1236 is amended to read:

17A-2-1236. Actions on validity or enforceability of bonds -- Time for bringing action.

(1) In any suit, action, or proceeding involving the validity or enforceability of any bond issued under this part or the security for them, any such bond reciting in substance that it has been issued by the agency in connection with an area redevelopment, education housing development, or economic development project shall be conclusively [~~deemed~~] considered to have been issued for that purpose and the project shall be conclusively [~~deemed~~] considered to have been planned, located, and carried out in accordance with the provisions of this part.

(2) For a period of 30 days after the publication of the resolution authorizing the bonds, or a notice of bonds to be issued by the agency containing those items described in Subsection 11-14-21(3) in a newspaper having general circulation in the area of operation, any person may contest the legality of the resolution authorizing any bonds or any provisions made for the security and payment of the bonds. After the 30-day period no one has any cause of action to contest the regularity, formality, or legality of the bonds for any cause whatsoever.

Section 35. Section 17A-2-1264 is amended to read:

17A-2-1264. Affordable housing funds under redevelopment plans adopted on or after July 1, 1998.

(1) As used in this section:

(a) "Affordable housing" has the meaning as defined under Subsection 17A-2-1263(6).

(b) "Annual income" has the meaning as defined under regulations of the U.S. Department of Housing and Urban Development, 24 CFR, Part 813, as amended or as superseded by replacement regulations.

(c) "Board" means the Olene Walker Housing Trust Fund Board, established under Title 9, Chapter 4, Part 7, Olene Walker Housing Trust Fund.

(d) "Fair share ratio" means the ratio derived by:

(i) for a city or town, comparing the percentage of all housing units within the city or town that are publicly subsidized income targeted housing units to the percentage of all housing units within the whole county that are publicly subsidized income targeted housing units; or

(ii) for the unincorporated part of a county, comparing the percentage of all housing units within the unincorporated county that are publicly subsidized income targeted housing units to the percentage of all housing units within the whole county that are publicly subsidized income targeted housing units.

(e) "Family" has the meaning as defined under regulations of the U.S. Department of Housing and Urban Development, 24 CFR, Part 813, as amended or as superseded by replacement regulations.

(f) "Housing funds" means the funds allocated in the project area budget under Subsection (2)(a) for the purposes provided in Subsection (3).

(g) "Income targeted housing" means housing to be owned or occupied by a family whose annual income is at or below 80% of the median annual income for the county in which the housing is located.

(h) "Unincorporated" means not within a city or town.

(2) (a) A project area budget for a redevelopment plan that is adopted on or after July 1, 1998, may allocate tax increment funds payable to the agency over the life of the redevelopment plan for use as provided in Subsection (3).

(b) (i) Beginning May 1, 2000, before an agency may adopt a project area budget that allocates tax increment funds under Subsection (2)(a), the agency shall prepare and adopt a housing plan showing the uses for the housing funds and provide a copy of the plan to the taxing agency committee and board.

(ii) If an agency amends a housing plan prepared under Subsection (2)(b)(i), the agency shall provide a copy of the amendment to the taxing agency committee and board.

(c) (i) If an agency fails to provide housing funds in accordance with the project area budget and the housing plan, if applicable, the board may bring legal action to compel the agency to provide the housing funds.

(ii) In an action under Subsection (2)(c)(i), the court:

(A) shall award the board a reasonable attorney's fee, unless the court finds that the action was frivolous; and

(B) may not award the agency its attorney's fees, unless the court finds that the action was frivolous.

(3) (a) Each agency shall use all housing funds allocated under Subsection (2)(a) to:

(i) pay part or all of the cost of land or construction of income targeted housing within the community that created the agency, if practicable in a mixed income development or area;

(ii) pay part or all of the cost of rehabilitation of income targeted housing within the community that created the agency;

(iii) pay part or all of the cost of land or installation, construction, or rehabilitation of any building, facility, structure, or other housing improvement, including infrastructure improvements, related to housing located in a redevelopment project area where blight has been found to exist;

(iv) replace housing units lost as a result of the redevelopment, education housing development, or economic development;

(v) make payments on or establish a reserve fund for bonds:

(A) issued by the agency, the community, or the housing authority that provides income targeted housing within the community; and

(B) all or part of the proceeds of which are used within the community for the purposes stated in Subsection (3)(a)(i), (ii), (iii), or (iv); or

(vi) if the community's fair share ratio at the time of the first adoption of the project area budget is at least 1.1 to 1.0, make payments on bonds:

(A) that were previously issued by the agency, the community, or the housing authority that provides income targeted housing within the community; and

(B) all or part of the proceeds of which were used within the community for the purposes stated in Subsection (3)(a)(i), (ii), (iii), or (iv).

(b) As an alternative to the requirements of Subsection (3)(a), an agency may pay all housing funds to:

(i) the community for use as provided under Subsection (3)(a);

(ii) the housing authority that provides income targeted housing within the community for use in providing income targeted housing within the community; or

(iii) the Olene Walker Housing Trust Fund, established under Title 9, Chapter 4, Part 7, Olene Walker Housing Trust Fund, for use in providing income targeted housing within the community.

(4) The agency or community shall hold the housing funds, together with all interest earned by the housing funds and all payments or repayments for loans, advances, or grants from the housing funds, in a separately designated account until the funds are used pursuant to this section.

(5) In using housing funds under Subsection (3)(a), an agency may lend, grant, or contribute housing funds to a person, public body, housing authority, private entity or business, or nonprofit organization for use as provided in Subsection (3)(a).

(6) An agency may:

(a) issue bonds from time to time to finance a housing undertaking under this section, including the payment of principal and interest upon advances for surveys and plans or preliminary loans; and

(b) issue refunding bonds for the payment or retirement of bonds under Subsection (6)(a) previously issued by the agency.

(7) Expenditures or obligations incurred by an agency under this section shall constitute an indebtedness incurred by the agency.

Section 36. Section 17A-2-1312 is amended to read:

17A-2-1312. General obligation bonds authorized by petition of property owners -- Contest.

(1) With respect to any service district established under this part, if there is no individual residing in the service district, such that compliance with the election requirements of Article XIV, Section 8, Utah Constitution, and Section 11-14-2 is otherwise impossible, then, 75% of the owners of real property located in the district, as shown on the most recent assessment roll of the county or municipality, as the case may be, may by written petition require the governing body of the county or municipality which established the service district to issue general obligation bonds pledging the full faith and credit of the district in an amount which may lawfully be issued by the district but not to exceed the amount set forth in the petition. Except for the election provisions of [~~the~~] Title 11, Chapter 14, Utah Municipal Bond Act, the bonds required to be issued shall be issued in accordance with [~~the~~] Title 11, Chapter 14, Utah Municipal Bond Act. Any such petition to require issuance of bonds shall be equivalent to and have the same force and effect as an election approving the issuance of the bonds by a majority of the qualified electors of the district.

(2) Upon receiving the petition described in Subsection (1), the governing body of the county or municipality which established the district shall proceed to issue the bonds in accordance with [~~the~~] Title 11, Chapter 14, Utah Municipal Bond Act.

(3) The determination by the governing body that 75% of the owners of real property located in the district have duly filed a written petition requiring the issuance of bonds as provided in Subsection (1), shall be conclusive in any action or proceeding involving the validity of the petition or the district's authority to issue the bonds instituted after the expiration of the period provided in Subsection (4), for the filing of actions contesting the validity of the bonds and after the date of delivery of and payment for any part of the bonds.

(4) When the validity of any bond issue under this section is contested, the plaintiff or plaintiffs shall, within 40 days after the validity of the petition has been declared by the governing body, file with the clerk of the district court of the county in which the district is located, a verified written complaint setting forth specifically:

(a) the name of the party contesting the issuance of the bonds, and that he is an owner of property within the district; and

(b) the grounds of such contest. No such contest may be maintained and the issuance of the bonds may not be set aside or held invalid unless such a complaint is filed within the period prescribed in this section.

Section 37. Section 17A-2-1316 is amended to read:

17A-2-1316. Borrowing power -- Issuance of bonds and notes -- Use of proceeds.

(1) A service district may borrow money and incur indebtedness, issuing its bonds or notes therefor, including, without limitation:

(a) bonds payable in whole or in part from taxes levied on the taxable property in the service district;

(b) bonds payable from revenues derived from the operation of revenue-producing facilities of the service district;

(c) bonds payable from both such revenues and taxes;

(d) guaranteed bonds, payable in whole or in part from taxes levied on the taxable property in the service district;

(e) tax anticipation notes;

(f) bond anticipation notes;

(g) refunding bonds; and

(h) bonds payable in whole or in part from mineral lease payments as provided in Section 11-14-17.6.

(2) Tax anticipation notes are notes issued in anticipation of the collection of taxes and other revenues of a service district which are due and payable in not more than one year from their date of issue and, together with all other such notes then outstanding, do not exceed the estimated amount of taxes and other revenues to be collected from the date of issue until maturity.

(3) Bond anticipation notes are notes issued in anticipation of the receipt of the proceeds of bonds of the service district.

(4) All these bonds and notes shall be issued and sold in the manner, at either public or private sale, shall be in the form, and signed by the person or persons, who may, but need not, be officers of the county or municipality which established the service district and generally shall be issued in the manner and with the details as is provided for in proceedings of the governing authority of the service district authorizing the issuance of the bonds or notes; but all these bonds and notes and the interest on them shall be exempt from all taxation in this state, except for the corporate franchise tax, and all these bonds and notes may contain those terms and provisions as are permitted by and shall be issued in compliance with Title 11, Chapter 14, [~~the~~] Utah Municipal Bond Act.

(5) The proceeds of bonds or notes issued under the authority of this part shall be used to pay the costs of acquisition or construction of service district facilities or the providing of services including, without limitation:

(a) all costs of planning, designing, acquiring, and constructing a facility, including architectural, planning, engineering, legal, and fiscal advisor's costs;

(b) all costs incident to the authorization and issuance of the bonds or notes, including accountants' fees, attorneys' fees, financial advisors' fees, underwriting fees, including underwriting fees or bond discount, and other professional services and printing costs;

(c) interest estimated to accrue on bonds or notes for a reasonable time before, during, and for a reasonable time after the completion of the acquisition or construction of the facilities or services; and

(d) all amounts deemed necessary to establish one or more bond reserves and maintenance, repair, replacement, contingency funds and accounts, and all amounts necessary to provide working capital for the facility.

Section 38. Section 17A-2-1322 is amended to read:

17A-2-1322. Tax levy and bonds -- Approval by majority of electors voting in election -- Procedure for election.

(1) The governing authority of a county or municipality which has established a service district may levy a tax on all taxable property within the service district in addition to all other taxes on such property levied or imposed by the county or municipality or by any other public corporation, district, or political subdivision in which the service district is located, and may also issue bonds payable in whole or in part from these taxes. No tax may be levied and no bonds or guaranteed bonds shall be issued, however, unless authorized, except as otherwise provided in Section 17A-2-1325, by a majority of the qualified electors of the service district voting at an election for that purpose held as provided in this section.

(2) The proposition to levy the tax or to issue the bonds shall be submitted to the qualified electors of the service district at an election called and held and for which notice is given in the same manner as is provided in [~~the~~] Title 11, Chapter 14, Utah Municipal Bond Act, for the holding of bond elections. The proposition shall state the purpose or purposes for which the taxes are to be levied or the bonds are to be issued. In addition, a proposition for the issuance of bonds shall state the maximum amount of bonds to be issued, the maximum number

of years from their respective dates for which the bonds may run, and, if the bonds are to be payable in whole or in part from taxes, that fact and that taxes may be levied on all taxable property in the service district to pay the principal of and interest on the bonds. The purpose or purposes may be stated in general terms and need not specify the particular projects or services for which the taxes are to be levied or the bonds are to be issued nor the specific amount of the proceeds of the taxes or of the bonds to be expended for each project or service. If bonds are to be payable in part from tax proceeds and in part from the operating revenues of the service district or from any combination of them, the proposition shall so indicate but need not specify how the bonds are to be divided as to source of payment. If the bonds are to be issued as guaranteed bonds, the proposition shall also clearly state that fact together with the name or names of the guarantors. A proposition for the levy of taxes and for the issuance of bonds may be combined as a single proposition.

Section 39. Section 17A-2-1413 is amended to read:

17A-2-1413. District powers -- Powers of board of trustees -- Other provisions applicable.

(1) (a) Each water conservancy district established under this part:

(i) shall have perpetual succession; and

(ii) except as provided in Subsection (1)(b), may exercise the power of eminent domain, as provided by law, to take any property necessary to exercise powers granted to the district.

(b) Notwithstanding Subsection (1)(a)(ii), a water conservancy district may not:

(i) exercise the power of eminent domain to acquire title to or beneficial use of vested water rights for transmountain diversion; and

(ii) carry or transport water in transmountain diversion, the title to which has been acquired by a municipality by virtue of eminent domain proceedings.

(2) The board of trustees may, on behalf of the district:

(a) take by appropriation, grant, purchase, bequest, devise, or lease, and hold and enjoy water, waterworks, water rights, sources of water supply, and any real and personal property within or without the district necessary or convenient to exercise fully its powers;

(b) sell, lease, encumber, alienate, or otherwise dispose of water, waterworks, water rights, and sources of water supply for any beneficial use within or without the district, and fix rates and terms for the sale, lease, or other disposal of water;

(c) acquire, construct, operate, control, and use any works or facilities within or without the district necessary or convenient to exercise its powers;

(d) construct, establish, or maintain works or facilities:

(i) across or along any public street or highway;

(ii) in, upon, or over any vacant public lands which are now, or may become, the property of this state in accordance with Title 53C, School and Institutional Trust Lands Management Act, and Title 65A, State Lands, except that any such action upon school or institutional trust lands may only be undertaken with the consent of the director of the School and Institutional Trust Lands Administration, acting pursuant to Sections 53C-1-102 and 53C-1-303; or

(iii) across any streams of water or watercourses;

(e) contract with any agency of the United States, person, or corporation, public or private, for the construction, preservation, operation, or maintenance of tunnels, drains, pipelines, reservoirs, regulating basins, diversion canals and works, dams, power plants, and any necessary incidental works;

(f) acquire perpetual rights to the use of water from the works referred to in Subsection (2)(e) and to sell perpetual rights to the use of water from those works to persons and corporations, public and private;

(g) list in separate ownership the lands within the district which are susceptible of irrigation from district sources and to make an allotment of water to all those lands, which allotment of water may not exceed the maximum amount that the board determines could be beneficially used on the lands;

(h) levy assessments, as provided for by this part, against lands within the district to which water is allotted on the basis of:

(i) a uniform district-wide value per acre-foot of irrigation water; or

(ii) a uniform unit-wide value per acre-foot of irrigation water provided that the board divides the district into units and fixes a different value per acre-foot of water in the respective units;

(i) fix rates for the sale, lease, or other disposal of water, other than irrigation water, at rates that are equitable, although not necessarily equal or uniform, for like classes of service;

(j) adopt and modify plans and specifications for the works for which the district was organized;

(k) investigate and promote water development;

(l) appropriate and otherwise acquire water and water rights within or without the state;

(m) develop, store, and transport water;

(n) acquire stock in canal companies, water companies, and water users' associations;

(o) make and adopt plans for and to acquire, construct, operate, and maintain dams, reservoirs, canals, conduits, pipelines, tunnels, power plants, and any works, facilities, improvements, and property necessary or convenient for those purposes;

(p) generate, distribute, or sell electric power from hydroelectric power plants owned, operated, licensed, or leased by the district if, as determined by the board, the electric power plant was acquired or constructed as an incidental and not the primary purpose of a project for the conservation, development, storage, transportation, or distribution of water;

(q) invest any surplus money in the district treasury pursuant to Title 51, Chapter 7, State Money Management Act;

(r) refund bonded indebtedness incurred by the district pursuant to rules prescribed by the board;

(s) borrow money and to issue bonds or other evidence of indebtedness;

(t) construct works and improvements on land not subject to acquisition by condemnation held by the district for a term of not less than 50 years under lease, easement, or otherwise and to issue bonds to pay the costs for which bonds may be issued as in this part;

(u) acquire, construct, operate, or maintain works for the irrigation of land;

(v) sell water and water services to individual customers and to charge sufficient rates for the water and services supplied; however, no sale of water for domestic or culinary use shall be made to a customer located within the limits of any incorporated municipality without the consent of the municipality, except as provided by Subsection 17A-2-1439(7);

(w) make and collect fees for customer connections to the works of the district and for permitting and supervising the making of the connections;

(x) use the proceeds of connection charges for any lawful corporate purpose, including the construction or acquisition of facilities, payment of principal of and interest on bonds, and the creation of a reserve for such purposes;

(y) own property for its corporate purposes within the boundaries of incorporated municipalities; and

(z) adopt a fiscal year, which may end June 30 or December 31.

(3) (a) The provisions of Title 17B, Chapter 2, Part 4, Board of Trustees, except Section 17B-2-402, apply to each water conservancy district to the same extent as if the water conservancy district were a local district under Title 17B, Chapter 2, Local Districts.

(b) (i) If a change in the expiration date of the term of a board of trustees member is necessary to comply with the requirements of Subsection 17B-2-403(1), the term of each board member whose term expires on a day other than the first Monday in January shall be extended to the first Monday in January after the normal expiration date next following the special district election date under Section 17A-1-305.

(ii) If a change in the length of the term of a board of trustees member is necessary to comply with the requirements of Subsection 17B-2-403(2), the change may not take effect until the expiration of the term of the member whose term length is to be changed.

Section 40. Section 17A-2-1414 is amended to read:

17A-2-1414. Who may enter into contracts -- Permissible purposes of contracts -- Agreements and leases -- Elections for water purchase contracts.

(1) Any water conservancy district and any incorporated municipality located within or without the boundaries of the district or other district created under any law of this state are expressly authorized and empowered to enter into contracts with each other and with any other person or corporation, public or private, for any of the following purposes:

(a) the joint operation of water facilities owned by any district or municipality;

(b) the exchange of water, water rights, or facilities;

(c) the leasing of water or water facilities; or

(d) the sale of water.

(2) (a) Any agreement about the operation or use of water facilities owned by a municipality or district by another municipality or district, the joint operation of facilities, or the lease of water or water facilities, may provide for the joint use of water facilities owned by one of the contracting parties under appropriate arrangements for reasonable compensation.

(b) Any agreement may provide for the renting or loan of water by one contracting party to the other or for the sale of water by one party and its purchase by another. No limitation contained in any existing law requiring the water of any district to be supplied to its own residents on a priority basis shall be applicable to any contract made under this section.

(c) Any contract for the sale of water may run for a term of years as may be specified. The contract may require the purchasing party to pay for a minimum amount of water annually, provided the water is available, without regard to actual taking or use. The contract may provide for the payment for water sold or contracted to be sold from any of the following sources of revenue:

(i) the general funds or other funds of the purchasing municipality or district;

(ii) the proceeds of class B assessments imposed under the Water Conservancy Act;

(iii) the proceeds of water distributed and sold through the distribution system of the purchasing district or municipality; or

(iv) any combination of these sources of payment.

(d) The governing body of any municipality agreeing to purchase water under a contract, for the

purpose of complying with any pertinent constitutional requirement or for any other reason, may call an election for that purpose. The election shall be conducted in the manner provided in [~~the~~] Title 11, Chapter 14, Utah Municipal Bond Act.

Section 41. Section 17A-2-1439 is amended to read:

17A-2-1439. Contracts providing for payment in installments -- Issuance and sale of bonds -- Sinking fund -- Covenants -- Default -- Revenue obligations -- Refunding bonds.

(1) (a) (i) To pay for construction, operation, and maintenance of works, and expenses preliminary and incidental to them, the board may enter into contracts with the United States of America or its agencies, providing for payment in installments.

(ii) To pay for all or part of the cost of the construction or acquisition of any works, to pay for the improvement and extension of them, to pay expenses preliminary and incidental to them, to pay interest on the bonds during acquisition and construction, to provide for necessary reserves, and to pay costs of issuance and sale of the bonds (including, without limitation, printing, registration and transfer costs, legal fees, financial advisor's fees, and underwriter's discount), the board may issue the bonds of the district as provided in this section.

(b) The indebtedness or obligation represented by any bonds issued by or any contract entered into by the board may be payable in whole or in part from all or part of the revenues derived by the district from the operation of all or any designated portion of its works, from the proceeds of assessments and taxes levied under this part, or from any combination of those revenues, assessments, and taxes.

(c) The indebtedness or obligation represented by any bonds issued by or any contract entered into by the board may be incurred for the acquisition, construction, or both, of all or part of any works, for the improvement or extension of any works, or for a system of works for the distribution of water or for the treatment of water or both, whether or not the works of the district so acquired, constructed, improved, or extended include a source of water supply.

(d) (i) These bonds shall be issued and sold in compliance with Title 11, Chapter 14, Utah Municipal Bond Act, and may be in the form and denominations and have provisions and details permitted by [~~the~~] Title 11, Chapter 14, Utah Municipal Bond Act, except that the bonds shall mature serially or otherwise and contract payment installments shall fall due at any time or times not later than 50 years from their date.

(ii) The bonds and any evidences of participation interests in the bonds may be issued, executed, authenticated, registered, transferred, exchanged, and otherwise made to comply with Title 15, Chapter 7, Registered Public Obligations Act, or any other statute relating to the registration of bonds enacted to meet the requirements of Section 103 of the Internal Revenue Code of 1954, as amended, or any similar or successor federal law, and applicable regulations.

(2) (a) Bonds may be issued hereunder at one time or from time to time.

(b) If more than one issue or series of bonds is delivered hereunder, the bonds of the respective issues or series shall have priorities of payment as provided in the proceedings authorizing the bonds.

(3) (a) Any resolution authorizing the issuance of bonds or the entering into of a contract indebtedness or obligation payable in installments hereunder shall provide for the creation of a sinking fund into which shall be paid from the revenues, assessments, and taxes, any or all, pledged to the payment in the authorizing resolution sums fully sufficient to pay the principal of and interest on the bonds or on the contract indebtedness or obligation and to create a reserve for contingencies as required by the resolution.

(b) Any resolution so authorizing bonds or the entering into of a contract indebtedness or obligation may contain those covenants with the future holders of the bonds or the other contracting party as to the management and operation of the properties and works of the district, the imposition and collection of fees and charges, including taxes and assessments, for the water and services furnished thereby, the disposition of the fees and revenues, the issuance of future bonds and the incurring of future contract indebtedness or obligations and the creation of future liens and encumbrances against the works and the revenues thereof, the carrying of insurance on the works and the disposition of the proceeds of insurance, the sale, disposal, or alienation of the works, and other pertinent matters considered necessary or proper by the board to assure the merchantability of the bonds or the execution of the contract.

(c) These covenants and agreements may not be inconsistent with this section.

(4) (a) It may be provided in the resolution that any holder of the bonds or any contracting party may by appropriate legal action compel performance of all duties required of the board and the officials of the district by this part and the resolution authorizing the bonds or contract.

(b) If any bond issued or any contract entered into hereunder is permitted to go into default as to any installment of principal or interest, any court of competent jurisdiction may, pursuant to the application of the holder of any bond or of the other contracting party, appoint a receiver to operate the works of the district and to collect and distribute the revenues thereof under the resolution, this part, and as the court may direct.

(5) (a) When the district has issued bonds or entered into a contract and pledged any revenues of the works for the payment of them as provided in this part, the district shall impose and collect fees and charges for water and services furnished by the works in that amount and at those rates fully sufficient at all times (in conjunction with the

proceeds of available taxes and assessments if the bonds or contract indebtedness or obligation are also payable in part from the proceeds of assessments and taxes levied under this part) to pay the expenses of operating and maintaining the works, to provide a sinking fund sufficient to assure the prompt payment of principal of and interest on the bonds or contract indebtedness or obligation as principal and interest fall due, and to provide those funds for reserves and contingencies and for a depreciation fund for repairs, extensions, and improvements to the works as considered necessary to assure adequate and efficient service, all as may be required by the resolution.

(b) No board or commission other than the board of trustees of the district has authority over or is required to approve the making or fixing of fees and charges, the acquisition of property by the district, the issuance of its bonds, or the entering into of a contract.

(6) (a) The board of any district that issues or has issued any bonds under this part, or that enters or has entered into any contracts under this part, may issue bonds hereunder for the purpose of refunding all or any part of the outstanding bonds, or the outstanding indebtedness or obligation represented by the contracts, or in part for the purpose of the refunding and in part for the purpose of acquiring, constructing, improving, or extending works for the district.

(b) If bonds are issued solely for refunding purposes, the election required by Section 17A-2-1440 is not a condition precedent to the issuance of the bonds.

(c) Refunding bonds so authorized:

(i) may be sold and the proceeds thereof applied to or deposited in an escrow and invested pending the retirement of the outstanding bonds; or

(ii) may be delivered in exchange for the outstanding bonds.

(d) The refunding bonds shall be authorized and secured in the manner herein provided for the issuance and securing of other bonds and may, but are not required to, have the same source of security and payment as the bonds refunded.

(7) (a) If bonds have been issued or a contract indebtedness or obligation has been incurred hereunder payable in whole or in part from revenues to be derived from supplying water to the inhabitants of territory which was not at the time of the issuance of the bonds or the entering into of the contract contained within the corporate limits of any municipality or any other district created for the purpose of supplying water to the territory, the district shall thereafter be the sole public corporation or political subdivision authorized to supply water to this area.

(b) No municipal corporation or other district into which any part of the territory is incorporated or included has authority either to supply water to the inhabitants of the corporation or district or to grant a franchise for the supplying of the water.

(c) Nothing contained in this Subsection (7) prevents the modification of this restriction contained by the district if modification does not in any way jeopardize the prompt payment of principal of and interest on the bonds of the district then outstanding or of the payment of installments of indebtedness or obligation under a contract.

Section 42. Section 17A-2-1448 is amended to read:

17A-2-1448. Validation of proceedings -- Changes.

(1) If proceedings have been adopted under authority of this part purporting to create any conservancy district thereunder, all proceedings had in connection with the creation of each such district are hereby validated, ratified and confirmed notwithstanding any failure to comply with any one or more pertinent statutory provisions and each such district is declared to be a validly created and existing district under authority of the law.

(2) It is expressly found and determined that all taxable property lying in each such district will be benefitted by the construction of the improvements to be constructed by such district to an amount not less than the aggregate of the taxes and assessments to be levied against such property to pay for the cost of such improvements.

(3) All proceedings had in connection with the appointment election and organization of board of trustees for each such district are ratified and approved and each such board of trustees is declared to be de facto and de jure governing body of each such district. If in any such district an election has been held on the approval of a contract with the United States of America or on the issuance of the bonds of the district or both, all proceedings had in connection with the calling and holding of each such election are validated, ratified and confirmed despite any irregularity which may have occurred therein and any contract so approved by any such election and any bonds so authorized at any such election are validated and confirmed and the board of trustees and officers of each such district are authorized and empowered to proceed to do all things necessary to the execution of such contract or to the issuance of such bonds as the case may be and each such contract when duly executed and all such bonds when delivered and paid for are declared to be valid and binding obligations of such district in accordance with the terms thereof and to be fully negotiable for all purposes.

(4) All construction contracts heretofore entered into by any such district for the construction or acquisition of works or facilities for such district are validated, ratified, and confirmed and declared to be valid obligations of such district in accordance with the terms thereof. The board of [~~directors~~] trustees of any such district may make such changes in any contract or in any bond proceedings or bonds hereby validated as may in its opinion be desirable for the best interests of such district without in any wise impairing or making ineffective any of the curative effect of this section. Any such change or changes may be so made despite the fact

that such change or changes may be inconsistent with the proceedings at which any such contract, if voted at an election, or any such bonds, where voted, and no new election to approve or authorize such change or changes shall be necessary.

Section 43. Section 17A-2-1449 is amended to read:

17A-2-1449. Validation of proceedings and actions -- Changes in validated contracts, bond proceedings or bonds authorized.

(1) All proceedings that have been adopted and actions taken before May 13, 1969, under authority of this part, purporting to create any water conservancy district thereunder or purporting to provide for the inclusion of any additional area or areas in any such district, including all petitions filed and all notices given, published and mailed in connection with any such creation and any such inclusion, are hereby validated, ratified and confirmed, notwithstanding any failure to comply with any one or more pertinent statutory provisions and each such district as so created or enlarged is declared to be a validly created and existing district.

(2) It is expressly determined that all taxable property lying in each such district shall be benefitted by any improvements constructed before or after this part takes effect to an amount not less than the aggregate of the taxes and assessments levied against such property to pay for the cost of such improvements.

(3) All proceedings and actions taken with respect to the appointment, election and organization of a board of trustees and officers thereof for each such district are validated, ratified and confirmed and each such board of trustees is declared to be the de facto and de jure governing body of each such district. If in any such district an election has been held, before May 13, 1969, on the question of approving a contract with the United States of America or on the question of the issuance of the bonds of the district, or both, all proceedings and actions concerned with the calling, holding and conduct of any such elections are validated, ratified and confirmed despite any irregularities which may have occurred in connection therewith.

(4) Any contract so approved at such an election and any bonds so authorized at such an election are validated, ratified and confirmed. The board of trustees and officers of each such district may do all things necessary to execute any such contract or issue such bonds, and each such contract when executed and all such bonds when delivered and paid for shall be valid and binding obligations of such district in accordance with the tenor and terms thereof. Any contracts made by such district for the construction or acquisition of works or facilities for such district are validated, ratified and confirmed and shall be valid obligations of such district in accordance with the terms thereof. Changes made after May 13, 1969 by the board of [~~directors~~] trustees of any such district in any contract, bond proceedings or bonds hereby validated shall be considered not to nullify any curative effect of this section.

Section 44. Section 19-6-505 is amended to read:

19-6-505. Long-term agreements for joint action -- Construction, acquisition, or sale of interest in management facilities -- Issuance of bonds.

(1) (a) Two or more public entities, which for the purposes of this section shall only include any political subdivision of the state, the state and its agencies, and the United States and its agencies, may enter into long-term agreements with one another pursuant to Title 11, Chapter 13, Interlocal Cooperation Act, and any one or more public entities may enter into long-term agreements with any private entity or entities for joint or cooperative action related to the acquisition, construction, ownership, operation, maintenance, and improvement of solid waste management facilities, regardless of whether the facilities are owned or leased by a public entity or entities, private entity or entities, or combination of them and pursuant to which solid waste of one or more public entities, any private entity or entities, or combination of them, are made available for solid waste management pursuant to the terms, conditions, and consideration provided in the agreement.

(b) Any payments made by a public entity for services received under the agreement are not an indebtedness of the public entity within the meaning of any constitutional or statutory restriction, and no election is necessary for the authorization of the agreement.

(c) Any public entity or any public entity in combination with a private entity agreeing to make solid waste management facilities available may, in the agreement, agree to make available to other public entities a specified portion of the capacity of the solid waste management facilities, without regard to its future need of the specified capacity for its own use and may in the agreement agree to increase the capacity of its solid waste management facilities from time to time, as necessary, in order to take care of its own needs and to perform its obligations to the other parties to the agreement.

(2) (a) Two or more public entities or any one or more public entities together with any private entity or entities may construct or otherwise acquire joint interests in solid waste management facilities, or any part of them, for their common use, or may sell to any other public or private entity or entities a partial interest or interests in its solid waste management facility.

(b) Any public entity otherwise qualifying under [~~the~~] Title 11, Chapter 14, Utah Municipal Bond Act or [~~the~~] Title 11, Chapter 17, Utah Industrial Facilities and Development Act may issue its bonds pursuant to these acts for the purpose of acquiring a joint interest in solid waste management facilities, or any part thereof, whether the joint interest is to be acquired through construction of new facilities or the purchase of an interest in existing facilities.

Section 45. Section 19-6-804 is amended to read:

19-6-804. Restrictions on disposal of tires -- Penalties.

(1) (a) After January 1, 1994, an individual, including a waste tire transporter, may not dispose of more than four whole tires at one time in a landfill or any other location in the state authorized by the executive secretary to receive waste tires, except for purposes authorized by board rule.

(b) Tires are exempt from this Subsection (1) if the original tire has a rim diameter greater than 24.5 inches.

(c) No person, including a waste tire transporter, may dispose of waste tires or store waste tires in any manner not allowed under this [~~chapter~~] part or rules made under this part.

(2) The operator of the landfill or other authorized location shall direct that the waste tires be disposed in a designated area to facilitate retrieval if a market becomes available for the disposed waste tires or material derived from waste tires.

(3) An individual, including a waste tire transporter, may dispose of shredded waste tires in a landfill in accordance with Section 19-6-812, and may also, without reimbursement, dispose in a landfill materials derived from waste tires that do not qualify for reimbursement under Section 19-6-812, but the landfill shall dispose of the material in accordance with Section 19-6-812.

(4) (a) An individual, including a waste tire transporter, violating this section is subject to enforcement proceedings and a civil penalty of not more than $100 per waste tire or per passenger tire equivalent disposed of in violation of this section. A warning notice may be issued prior to taking further enforcement action under this Subsection (4).

(b) A civil proceeding to enforce this section and collect penalties under this section may be brought in the district court where the violation occurred by the board, the local health department, or the county attorney having jurisdiction over the location where the tires were disposed in violation of this section.

(c) Penalties collected under this section shall be deposited in the trust fund.

Section 46. Section 20A-3-304 is amended to read:

20A-3-304. Application for absentee ballot -- Time for filing and voting.

(1) As used in this section, "absent elector" means a person who:

(a) is physically, emotionally, or mentally impaired;

(b) will be serving as an election judge or who has election duties in another voting precinct;

(c) is detained or incarcerated in a jail or prison as a penalty for committing a misdemeanor;

(d) suffers a legal disability;

(e) is prevented from voting in a particular location because of religious tenets or other strongly held personal values;

(f) is called for jury duty in state or federal court; or

(g) otherwise expects to be absent from the voting precinct during the hours the polls are open on election day.

(2) A registered voter who is or will be an absent elector may file an absentee ballot application with the appropriate election officer for an official absentee ballot.

(3) (a) Except as provided in Subsection (3)(b), each election officer shall prepare blank applications for absentee ballot applications in substantially the following form:

"I, ____, a qualified elector, in full possession of my mental faculties, residing at ____ Street, ____ City, ____ County, Utah [~~and~~] to my best knowledge and belief am entitled to vote by absentee ballot at the next election.

I apply for an official absentee ballot to be voted by me at the election.

Date _____ (month\day\year) Signed _____

Voter"

(b) Each election officer shall prepare blank applications for absentee ballot applications for regular primary elections and for the Western States Presidential Primary in substantially the following form:

"I, ____, a qualified elector, in full possession of my mental faculties, residing at ____ Street, ____ City, ____ County, Utah to my best knowledge and belief am entitled to vote by absentee ballot at the next election.

I apply for an official absentee ballot for the _____ political party to be voted by me at the primary election.

I understand that I must be affiliated with or authorized to vote the political party's ballot that I request.

Dated _____ (month\day\year) ____ Signed _____

Voter"

If requested by the applicant, the election officer shall:

(i) mail or fax the application blank to the absentee voter; or

(ii) deliver the application blank to any voter who personally applies for it at the office of the election officer.

(4) (a) (i) Except as provided in Subsections (4)(a)(ii) and (iii), the voters shall file the

application for an absentee ballot with the appropriate election officer no later than the Friday before election day.

(ii) Overseas applicants shall file their applications with the appropriate election officer no later than 20 days before the day of election.

(iii) Voters applying for an absentee ballot for the Western States Presidential Primary shall file the application for an absentee ballot with the appropriate election officer not later than the Tuesday before election day.

(b) Persons voting an absentee ballot at the office of the election officer shall apply for and cast their ballot no later than the day before the election.

(5) (a) A county clerk may establish a permanent absentee voter list.

(b) The clerk shall place on the list the name of any person who:

(i) requests permanent absentee voter status; and

(ii) meets the requirements of this section.

(c) (i) Each year, the clerk shall mail a questionnaire to each person whose name is on the absentee voter list.

(ii) The questionnaire shall allow the absentee person to verify the voter's residence and inability to vote at the voting precinct on election day.

(iii) The clerk may remove the names of any voter from the absentee voter registration list if:

(A) the voter is no longer listed in the official register; or

(B) the voter fails to verify the voter's residence and absentee status.

(d) The clerk shall provide a copy of the permanent absentee voter list to election officers for use in elections.

Section 47. Section 20A-5-404 is amended to read:

20A-5-404. Election forms -- Preparation and contents.

(1) (a) For each election, the election officer[~~: (a)~~] shall prepare, for each voting precinct, a:

(i) ballot disposition form;

(ii) total votes cast form;

(iii) tally sheet form; and

(iv) pollbook.

(b) For each election, the election officer shall:

(i) provide a copy of each form to each of those precincts using paper ballots; and

(ii) provide a copy of the ballot disposition form and a pollbook to each of those voting precincts using an automated voting system.

(2) The election officer shall ensure that the ballot disposition form contains a space for the judges to identify:

(a) the number of ballots voted;

(b) the number of substitute ballots voted, if any;

(c) the number of ballots delivered to the voters;

(d) the number of spoiled ballots;

(e) the number of registered voters listed in the official register;

(f) the total number of voters voting according to the pollbook; and

(g) the number of unused ballots.

(3) The election officer shall ensure that the total votes cast form contains:

(a) the name of each candidate appearing on the ballot, the office for which the candidate is running, and a blank space for the election judges to record the number of votes that the candidate received;

(b) for each office, blank spaces for the election judges to record the names of write-in candidates, if any, and a blank space for the election judges to record the number of votes that the write-in candidate received;

(c) a heading identifying each ballot proposition and blank spaces for the election judges to record the number of votes for and against each proposition; and

(d) a certification, in substantially the following form, to be signed by the judges when they have completed the total votes cast form:

"TOTAL VOTES CAST

At an election held at ____ in ____ voting precinct in _____(name of entity holding the election) and State of Utah, on _____(month\day\year), the following named persons received the number of votes annexed to their respective names for the following described offices: Total number of votes cast were as follows:

Certified by us ____, ____, ____, Judges of Election."

(4) The election officer shall ensure that the tally sheet form contains:

(a) for each office, the names of the candidates for that office, and blank spaces to tally the votes that each candidate receives;

(b) for each office, blank spaces for the election judges to record the names of write-in candidates, if any, and a blank space for the election judges to tally the votes for each write-in candidate;

(c) for each ballot proposition, a heading identifying the ballot proposition and the words "Yes" and "No" or "For" and "Against" on separate lines with blank spaces after each of them for the election judges to tally the ballot proposition votes; and

(d) a certification, in substantially the following form, to be signed by the judges when they have completed the tally sheet form:

"Tally Sheet

We the undersigned election judges for voting precinct #_____, _____(entity holding the election) certify that this is a true and correct list of all persons voted for and ballot propositions voted on at the election held in that voting precinct on _____(date of election) and is a tally of the votes cast for each of those persons. Certified by us ____, ____, ____, Judges of Election."

(5) The election officer shall ensure that the pollbook:

(a) identifies the voting precinct number on its face; and

(b) contains:

(i) a section to record persons voting on election day, with columns entitled "Ballot Number" and "Voter's Name";

(ii) another section in which to record absentee ballots;

(iii) a section in which to record voters who are challenged; and

(iv) a certification, in substantially the following form:

"We, the undersigned, judges of an election held at _____ voting precinct, in _____ County, state of Utah, on _____(month\day\year), having first been sworn according to law, certify that the information listed in this book is a true statement of the number and names of the persons voting in the voting precinct at the election, and that the total number of persons voting at the election was ____."

_____

_Judges of Election

Section 48. Section 21-2-8 is amended to read:

21-2-8. Fees of county officers.

(1) As used in this section, "county officer" means all of the county officers enumerated in Section 17-53-101 except county recorders, county constables, and county sheriffs.

(2) (a) Each county officer shall collect, in advance, for exclusive county use and benefit:

(i) all fees established by the county legislative body under [~~this section~~] Section 17-53-211; and

(ii) any other fees authorized or required by law.

(b) As long as the displaced homemaker program is authorized by Section 35A-3-114, the county clerk shall:

(i) assess $20 in addition to whatever fee for a marriage license is established under authority of this section; and

(ii) transmit $20 from each marriage license fee to the Division of Finance to be credited to the displaced homemaker program.

(c) As long as the Children's Legal Defense Account is authorized by Section 63-63a-8, the county clerk shall:

(i) assess $10 in addition to whatever fee for a marriage license is established under authority of this section and in addition to the $20 assessed for the displaced homemaker program; and

(ii) transmit $10 from each marriage license fee to the Division of Finance for deposit in the Children's Legal Defense Account.

(3) This section does not apply to any fees currently being assessed by the state but collected by county officers.

Section 49. Section 23-13-2 is amended to read:

23-13-2. Definitions.

As used in this title:

(1) "Activity regulated under this title" means any act, attempted act, or activity prohibited or regulated under any provision of Title 23 or the rules, and proclamations promulgated thereunder pertaining to protected wildlife including:

(a) fishing;

(b) hunting;

(c) trapping;

(d) taking;

(e) permitting any dog, falcon, or other domesticated animal to take;

(f) transporting;

(g) possessing;

(h) selling;

(i) wasting;

(j) importing;

(k) exporting;

(l) rearing;

(m) keeping;

(n) utilizing as a commercial venture; and

(o) releasing to the wild.

(2) "Aquatic animal" has the meaning provided in Section 4-37-103.

(3) "Aquatic wildlife" means species of fish, mollusks, crustaceans, aquatic insects, or amphibians.

(4) "Aquaculture facility" has the meaning provided in Section 4-37-103.

(5) "Bag limit" means the maximum limit, in number or amount, of protected wildlife that one person may legally take during one day.

(6) "Big game" means species of hoofed protected wildlife.

(7) "Carcass" means the dead body of an animal or its parts.

(8) "Certificate of registration" means a document issued under this title, or any rule or proclamation of the Wildlife Board granting authority to engage in activities not covered by a license, permit, or tag.

(9) "Closed season" means the period of time during which the taking of protected wildlife is prohibited.

(10) "Conservation officer" means a full-time, permanent employee of the Division of Wildlife Resources who is POST certified as a peace or a special function officer.

(11) "Dedicated hunter program" means a program that provides:

(a) expanded hunting opportunities;

(b) opportunities to participate in projects that are beneficial to wildlife; and

(c) education in hunter ethics and wildlife management principles.

(12) "Division" means the Division of Wildlife Resources.

(13) (a) "Domicile" means the place:

(i) where an individual has a fixed permanent home and principal establishment;

(ii) to which the individual if absent, intends to return; and

(iii) in which the individual, and the individual's family voluntarily reside, not for a special or temporary purpose, but with the intention of making a permanent home.

(b) To create a new domicile an individual must:

(i) abandon the old domicile; and

(ii) be able to prove that a new domicile has been established.

(14) "Endangered" means wildlife designated as such pursuant to Section 3 of the federal Endangered Species Act of 1973.

(15) "Fee fishing facility" has the meaning provided in Section 4-37-103.

(16) "Feral" means an animal which is normally domesticated but has reverted to the wild.

(17) "Fishing" means to take fish or crayfish by any means.

(18) "Furbearer" means species of the Bassariscidae, Canidae, Felidae, Mustelidae, and Castoridae families, except coyote and cougar.

(19) "Game" means wildlife normally pursued, caught, or taken by sporting means for human use.

(20) (a) "Guide" means a person who receives compensation or advertises services for assisting another person to take protected wildlife.

(b) Assistance under Subsection (20)(a) includes the provision of food, shelter, or transportation, or any combination of these.

(21) "Guide's agent" means a person who is employed by a guide to assist another person to take protected wildlife.

(22) "Hunting" means to take or pursue a reptile, amphibian, bird, or mammal by any means.

(23) "Intimidate or harass" means to physically interfere with or impede, hinder, or diminish the efforts of an officer in the performance of the officer's duty.

(24) "Nonresident" means a person who does not qualify as a resident.

(25) "Open season" means the period of time during which protected wildlife may be legally taken.

(26) "Pecuniary gain" means the acquisition of money or something of monetary value.

(27) "Permit" means a document, including a stamp, which grants authority to engage in specified activities under this title or a rule or proclamation of the Wildlife Board.

(28) "Person" means an individual, association, partnership, government agency, corporation, or an agent of the foregoing.

(29) "Possession" means actual or constructive possession.

(30) "Possession limit" means the number of bag limits one individual may legally possess.

(31) (a) "Private fish installation" means a body of water where privately owned, protected aquatic wildlife are propagated or kept.

(b) "Private fish installation" does not include any aquaculture facility or fee fishing facility.

(32) "Private wildlife farm" means an enclosed place where privately owned birds or furbearers are propagated or kept and which restricts the birds or furbearers from:

(a) commingling with wild birds or furbearers; and

(b) escaping into the wild.

(33) "Proclamation" means the publication used to convey a statute, rule, policy, or pertinent information as it relates to wildlife.

(34) (a) "Protected aquatic wildlife" means aquatic wildlife as defined in Subsection (3), except as provided in Subsection (34)(b).

(b) "Protected aquatic wildlife" does not include aquatic insects.

(35) (a) "Protected wildlife" means wildlife as defined in Subsection (49), except as provided in Subsection (35)(b).

(b) "Protected wildlife" does not include coyote, field mouse, gopher, ground squirrel, jack rabbit, muskrat, and raccoon.

(36) "Released to the wild" means to [~~turn~~] be turned loose from confinement.

(37) (a) "Resident" means a person who:

(i) has been domiciled in the state of Utah for six consecutive months immediately preceding the purchase of a license; and

(ii) does not claim residency for hunting, fishing, or trapping in any other state or country.

(b) A Utah resident retains Utah residency if that person leaves this state:

(i) to serve in the armed forces of the United States or for religious or educational purposes; and

(ii) complies with Subsection (37)(a)(ii).

(c) (i) A member of the armed forces of the United States and dependents are residents for the purposes of this chapter as of the date the member reports for duty under assigned orders in the state if the member:

(A) is not on temporary duty in this state; and

(B) complies with Subsection (37)(a)(ii).

(ii) A copy of the assignment orders must be presented to a wildlife division office to verify the member's qualification as a resident.

(d) A nonresident attending an institution of higher learning in this state as a full-time student may qualify as a resident for purposes of this chapter if the student:

(i) has been present in this state for 60 consecutive days immediately preceding the purchase of the license; and

(ii) complies with Subsection (37)(a)(ii).

(e) A Utah resident license is invalid if a resident license for hunting, fishing, or trapping is purchased in any other state or country.

(f) An absentee landowner paying property tax on land in Utah does not qualify as a resident.

(38) "Sell" means to offer or possess for sale, barter, exchange, or trade, or the act of selling, bartering, exchanging, or trading.

(39) "Small game" means species of protected wildlife:

(a) commonly pursued for sporting purposes; and

(b) not classified as big game, aquatic wildlife, or furbearers and excluding cougar and bear.

(40) "Spoiled" means impairment of the flesh of wildlife which renders it unfit for human consumption.

(41) "Spotlighting" means throwing or casting the rays of any spotlight, headlight, or other artificial light on any highway or in any field, woodland, or forest while having in possession a weapon by which protected wildlife may be killed.

(42) "Tag" means a card, label, or other identification device issued for attachment to the carcass of protected wildlife.

(43) "Take" means to:

(a) hunt, pursue, harass, catch, capture, possess, angle, seine, trap, or kill any protected wildlife; or

(b) attempt any action referred to in Subsection (43)(a).

(44) "Threatened" means wildlife designated as such pursuant to Section 3 of the federal Endangered Species Act of 1973.

(45) "Trapping" means taking protected wildlife with a trapping device.

(46) "Trophy animal" means an animal described as follows:

(a) deer – any buck with an outside antler measurement of 24 inches or greater;

(b) elk – any bull with six points on at least one side;

(c) bighorn, desert, or rocky mountain sheep – any ram with a curl exceeding half curl;

(d) moose – any bull;

(e) mountain goat – any male or female;

(f) pronghorn antelope – any buck with horns exceeding 14 inches; or

(g) bison – any bull.

(47) "Waste" means to abandon protected wildlife or to allow protected wildlife to spoil or to be used in a manner not normally associated with its beneficial use.

(48) "Water pollution" means the introduction of matter or thermal energy to waters within this state which:

(a) exceeds state water quality standards; or

(b) could be harmful to protected wildlife.

(49) "Wildlife" means:

(a) crustaceans, including brine shrimp and crayfish;

(b) mollusks; and

(c) vertebrate animals living in nature, except feral animals.

Section 50. Section 30-3-35 is amended to read:

30-3-35. Minimum schedule for visitation for children 5 to 18 years of age.

(1) The visitation schedule in this section applies to children 5 to 18 years of age.

(2) If the parties do not agree to a visitation schedule, the following schedule shall be considered the minimum visitation to which the noncustodial parent and the child shall be entitled:

(a) (i) one weekday evening to be specified by the noncustodial parent or the court from 5:30 p.m. until 8:30 p.m.; or

(ii) at the election of the noncustodial parent, one weekday from the time the child's school is regularly dismissed until 8:30 p.m., unless the court directs the application of Subsection (2)(a)(i);

(b) (i) alternating weekends beginning on the first weekend after the entry of the decree from 6 p.m. on Friday until 7 p.m. on Sunday continuing each year; or

(ii) at the election of the noncustodial parent, from the time the child's school is regularly dismissed on Friday until 7 p.m. on Sunday, unless the court directs the application of Subsection (2)(b)(i);

(c) holidays take precedence over the weekend visitation, and changes shall not be made to the regular rotation of the alternating weekend visitation schedule;

(d) if a holiday falls on a regularly scheduled school day, the noncustodial parent shall be responsible for the child's attendance at school for that school day;

(e) (i) if a holiday falls on a weekend or on a Friday or Monday and the total holiday period extends beyond that time so that the child is free from school and the parent is free from work, the noncustodial parent shall be entitled to this lengthier holiday period; or

(ii) at the election of the noncustodial parent, visitation over a scheduled holiday weekend may begin from the time the child's school is regularly dismissed at the beginning of the holiday weekend until 7 p.m. on the last day of the holiday weekend;

(f) in years ending in an odd number, the noncustodial parent is entitled to the following holidays:

(i) child's birthday on the day before or after the actual birthdate beginning at 3 p.m. until 9 p.m.; at the discretion of the noncustodial parent, he may take other siblings along for the birthday;

(ii) [~~Human Rights~~] Martin Luther King, Jr. Day beginning 6 p.m. on Friday until Monday at 7 p.m. unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled;

(iii) spring break or Easter holiday beginning at 6 p.m. on the day school lets out for the holiday until 7 p.m. on the Sunday before school resumes;

(iv) Memorial Day beginning 6 p.m. on Friday until Monday at 7 p.m., unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled;

(v) July 24th beginning 6 p.m. on the day before the holiday until 11 p.m. on the holiday;

(vi) Veteran's Day holiday beginning 6 p.m. the day before the holiday until 7 p.m. on the holiday; and

(vii) the first portion of the Christmas school vacation as defined in Subsection 30-3-32(3)(b) plus Christmas Eve and Christmas Day until 1 p.m., so long as the entire holiday is equally divided;

(g) in years ending in an even number, the noncustodial parent is entitled to the following holidays:

(i) child's birthday on actual birthdate beginning at 3 p.m. until 9 p.m.; at the discretion of the noncustodial parent, he may take other siblings along for the birthday;

(ii) [~~President's~~] Washington and Lincoln Day beginning at 6 p.m. on Friday until 7 p.m. on Monday unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled;

(iii) July 4th beginning at 6 p.m. the day before the holiday until 11 p.m. on the holiday;

(iv) Labor Day beginning at 6 p.m. on Friday until Monday at 7 p.m. unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled;

(v) the fall school break, if applicable, commonly known as U.E.A. weekend beginning at 6 p.m. on Wednesday until Sunday at 7 p.m. unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled;

(vi) Columbus Day beginning at 6 p.m. the day before the holiday until 7 p.m. on the holiday;

(vii) Thanksgiving holiday beginning Wednesday at 7 p.m. until Sunday at 7 p.m; and

(viii) the second portion of the Christmas school vacation as defined in Subsection 30-3-32(3)(b) plus Christmas day beginning at 1 p.m. until 9 p.m., so long as the entire Christmas holiday is equally divided;

(h) Father's Day shall be spent with the natural or adoptive father every year beginning at 9 a.m. until 7 p.m. on the holiday;

(i) Mother's Day shall be spent with the natural or adoptive mother every year beginning at 9 a.m. until 7 p.m. on the holiday;

(j) extended visitation with the noncustodial parent may be:

(i) up to four weeks consecutive at the option of the noncustodial parent;

(ii) two weeks shall be uninterrupted time for the noncustodial parent; and

(iii) the remaining two weeks shall be subject to visitation for the custodial parent consistent with these guidelines;

(k) the custodial parent shall have an identical two-week period of uninterrupted time during the children's summer vacation from school for purposes of vacation;

(l) if the child is enrolled in year-round school, the noncustodial parent's extended visitation shall be 1/2 of the vacation time for year-round school breaks, provided the custodial parent has holiday and phone visits;

(m) notification of extended visitation or vacation weeks with the child shall be provided at least 30 days in advance to the other parent; and

(n) telephone contact shall be at reasonable hours and for reasonable duration.

(3) Any elections required to be made in accordance with this section by either parent concerning visitation shall be made a part of the decree and made a part of the visitation order.

Section 51. Section 30-6-1 is amended to read:

30-6-1. Definitions.

As used in this chapter:

(1) "Abuse" means attempting to cause, or intentionally or knowingly causing to an adult or minor physical harm or intentionally placing another in fear of imminent physical harm.

(2) "Cohabitant" means an emancipated person pursuant to Section 15-2-1 or a person who is 16 years of age or older who:

(a) is or was a spouse of the other party;

(b) is or was living as if a spouse of the other party;

(c) is related by blood or marriage to the other party;

(d) has one or more children in common with the other party;

(e) is the biological parent of the other party's unborn child; or

(f) resides or has resided in the same residence as the other party.

(3) Notwithstanding Subsection (2), "cohabitant" does not include:

(a) the relationship of natural parent, adoptive parent, or step-parent to a minor; or

(b) the relationship between natural, adoptive, step, or foster siblings who are under 18 years of age.

(4) "Court clerk" means a district court clerk or juvenile court clerk.

(5) "Department" means the Department of Human Services.

(6) "Domestic violence" means the same as that term is defined in Section 77-36-1.

(7) "Ex parte protective order" means an order issued without notice to the defendant in accordance with this chapter.

(8) "Foreign protective order" means a protective order issued by another state, territory, or possession of the United States, tribal lands of the United States, the Commonwealth of Puerto Rico, or the District of Columbia which shall be given full faith and credit in Utah, if the protective order is similar to a protective order issued in compliance with Title 30, Chapter 6, Cohabitant Abuse Act, or Title 77, Chapter 36, Cohabitant Abuse Procedures Act, and includes the following requirements:

(a) the requirements of due process were met by the issuing court, including subject matter and personal jurisdiction;

(b) the respondent received reasonable notice; and

(c) the respondent had an opportunity for a hearing regarding the protective order.

(9) "Law enforcement unit" or "law enforcement agency" means any public agency having general police power and charged with making arrests in connection with enforcement of the criminal statutes and ordinances of this state or any political subdivision.

(10) "Peace officer" means those persons specified in Title 53, Chapter 13, Peace Officer Classifications.

(11) "Protective order" means a restraining order issued pursuant to this chapter subsequent to a hearing on the petition, of which the petitioner has given notice in accordance with this chapter.

Section 52. Section 31A-22-625 is amended to read:

31A-22-625. Catastrophic coverage of mental health conditions.

(1) As used in this section:

(a) (i) "Catastrophic mental heath coverage" means coverage in a health insurance policy or health maintenance organization contract that does not impose any lifetime limit, annual payment limit, episodic limit, inpatient or outpatient service limit, or maximum out-of-pocket limit that places a greater financial burden on an insured for the evaluation and treatment of a mental health condition than for the evaluation and treatment of a physical health condition.

(ii) "Catastrophic mental health coverage" may include a restriction on cost sharing factors, such as deductibles, copayments, or coinsurance, prior to reaching any maximum out-of-pocket limit.

(iii) "Catastrophic mental health coverage" may include one maximum out-of-pocket limit for physical health conditions and another maximum out-of-pocket limit for mental health conditions, provided that, if separate out-of-pocket limits are established, the out-of-pocket limit for mental health conditions may not exceed the out-of-pocket limit for physical health conditions.

(b) (i) "50/50 mental health coverage" means coverage in a health insurance policy or health maintenance organization contract that pays for at least 50% of covered services for the diagnosis and treatment of mental health conditions.

(ii) "50/50 mental health coverage" may include a restriction on episodic limits, inpatient or outpatient service limits, or maximum out-of-pocket limits.

(c) "Large employer" means an employer that does not come within the definition of "small employer."

(d) (i) "Mental health condition" means any condition or disorder involving mental illness that falls under any of the diagnostic categories listed in

the Diagnostic and Statistical Manual, as periodically revised.

(ii) "Mental health condition" does not include the following when diagnosed as the primary or substantial reason or need for treatment:

(A) marital or family problem;

(B) social, occupational, religious, or other social maladjustment;

(C) conduct disorder;

(D) chronic adjustment disorder;

(E) psychosexual disorder;

(F) chronic organic brain syndrome;

(G) personality disorder;

(H) specific developmental disorder or learning disability; or

(I) mental retardation.

(e) "Small employer" is as defined in Section 31A-30-103.

(2) (a) At the time of purchase and renewal, an insurer shall offer to each small employer that it insures or seeks to insure a choice between catastrophic mental health coverage and 50/50 mental health coverage.

(b) In addition to Subsection (2)(a), an insurer may offer to provide:

(i) catastrophic mental health coverage, 50/50 mental health coverage, or both at levels that exceed the minimum requirements of this section; or

(ii) coverage that excludes benefits for mental health conditions.

(c) A small employer may, at its option, choose either catastrophic mental health coverage, 50/50 mental health coverage, or coverage offered under Subsection (2)(b), regardless of the employer's previous coverage for mental health conditions.

(d) An insurer is exempt from the 30% index rating restriction in Subsection 31A-30-106(1)(b) and, for the first year only that catastrophic mental health coverage is chosen, the 15% annual adjustment restriction in Subsection 31A-30-106(1)(c)(ii), for any small employer with 20 or less enrolled employees who chooses coverage that meets or exceeds catastrophic mental health coverage.

(3) (a) At the time of purchase and renewal, an insurer shall offer catastrophic mental health coverage to each large employer that it insures or seeks to insure.

(b) In addition to Subsection (3)(a), an insurer may offer to provide catastrophic mental health coverage at levels that exceed the minimum requirements of this section.

(c) A large employer may, at its option, choose either catastrophic mental health coverage, coverage that excludes benefits for mental health conditions, or coverage offered under Subsection (3)(b).

(4) (a) An insurer may provide catastrophic mental health coverage through a managed care organization or system in a manner consistent with the provisions in Chapter 8, Health Maintenance Organizations and Limited Health Plans, regardless of whether the policy or contract uses a managed care organization or system for the treatment of physical health conditions.

(b) (i) Notwithstanding any other provision of this title, an insurer may:

(A) establish a closed panel of providers for catastrophic mental health coverage; and

(B) refuse to provide any benefit to be paid for services rendered by a nonpanel provider unless:

(I) the insured is referred to a nonpanel provider with the prior authorization of the insurer; and

(II) the nonpanel provider agrees to follow the insurer's protocols and treatment guidelines.

(ii) If an insured receives services from a nonpanel provider in the manner permitted by Subsection (4)(b)(i)(B), the insurer shall reimburse the insured for not less than 75% of the average amount paid by the insurer for comparable services of panel providers under a noncapitated arrangement who are members of the same class of health care providers.

(iii) Nothing in this Subsection (4)(b) may be construed as requiring an insurer to authorize a referral to a nonpanel provider.

(c) To be eligible for catastrophic mental health coverage, a diagnosis or treatment of a mental health condition must be rendered:

(i) by a mental health therapist as defined in Section 58-60-102; or

(ii) in a health care facility licensed or otherwise authorized to provide mental health services pursuant to Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act, or Title 62A, Chapter 2, Licensure of Programs and Facilities, that provides a program for the treatment of a mental health condition pursuant to a written plan.

(5) The commissioner may disapprove any policy or contract that provides mental heath coverage in a manner that is inconsistent with the provisions of this section.

(6) The commissioner shall:

(a) adopt rules as necessary to ensure compliance with this section; and

(b) provide general figures on the percentage of contracts and policies that include no mental health coverage, 50/50 mental health coverage, catastrophic mental health coverage, and coverage that exceeds the minimum requirements of this section.

(7) The Health and Human Services Interim Committee shall review:

(a) the impact of this section on insurers, employers, providers, and consumers of mental health services before January 1, 2004; and

(b) make a recommendation as to whether the provisions of this section should be modified and whether the cost-sharing requirements for mental health conditions should be the same as for physical health conditions.

(8) (a) An insurer shall offer catastrophic mental health coverage as part of a health maintenance organization contract that is governed by Chapter 8, Health Maintenance Organizations and Limited Health Plans, that is in effect on or after January 1, 2001.

(b) An insurer shall offer catastrophic mental health coverage as a part of a health insurance policy that is not governed by Chapter 8, Health Maintenance Organizations and Limited Health Plans, that is in effect on or after July 1, 2001.

(c) This section does not apply to the purchase or renewal of an individual insurance policy or contract.

(d) Notwithstanding Subsection (8)(c), nothing in this section may be construed as discouraging or otherwise preventing insurers from continuing to provide mental health coverage in connection with an individual policy or contract.

(9) This section shall be repealed in accordance with Section 63-55-231.

Section 53. Section 31A-23-102 is amended to read:

31A-23-102. Definitions.

As used in this chapter:

(1) Except as provided in Subsection (2):

(a) "Escrow" is a license category that allows a person to conduct escrows, settlements, or closings on behalf of a title insurance agency or a title insurer.

(b) "Limited license" means a license that is issued for a specific product of insurance and limits an individual or agency to transact only for those products.

(c) "Search" is a license category that allows a person to issue title insurance commitments or policies on behalf of a title insurer.

(d) "Title marketing representative" means a person who:

(i) represents a title insurer in soliciting, requesting, or negotiating the placing of:

(A) title insurance; or

(B) escrow, settlement, or closing services; and

(ii) does not have a search or escrow license.

(2) The following persons are not acting as agents, brokers, title marketing representatives, or consultants when acting in the following capacities:

(a) any regular salaried officer, employee, or other representative of an insurer or licensee under this chapter who devotes substantially all of the officer's, employee's, or representative's working time to activities other than those described in Subsection (1) and Subsections 31A-1-301(51), (52), and (54) including the clerical employees of persons required to be licensed under this chapter;

(b) a regular salaried officer or employee of a person seeking to purchase insurance, who receives no compensation that is directly dependent upon the amount of insurance coverage purchased;

(c) a person who gives incidental advice in the normal course of a business or professional activity, other than insurance consulting, if neither that person nor that person's employer receives direct or indirect compensation on account of any insurance transaction that results from that advice;

(d) a person who, without special compensation, performs incidental services for another at the other's request, without providing advice or technical or professional services of a kind normally provided by an agent, broker, or consultant;

(e) a holder of a group insurance policy, or any other person involved in mass marketing, but only:

(i) with respect to administrative activities in connection with that type of policy, including the collection of premiums; and

(ii) if the person receives no compensation for the activities described in Subsection (2)(e)(i) beyond reasonable expenses including a fair payment for the use of capital; and

(f) a person who gives advice or assistance without direct or indirect compensation or any expectation of direct or indirect compensation.

(3) "Actuary" means a person who is a member in good standing of the American Academy of Actuaries.

(4) "Agency" means a person other than an individual, and includes a sole proprietorship by which a natural person does business under an assumed name.

[~~(6)~~] (5) "Bail bond agent" means any individual:

(a) appointed by an authorized bail bond surety insurer or appointed by a licensed bail bond surety company to execute or countersign undertakings of bail in connection with judicial proceedings; and

(b) who receives or is promised money or other things of value for this service.

[~~(5)~~] (6) "Broker" means an insurance broker or any other person, firm, association, or corporation that for any compensation, commission, or other thing of value acts or aids in any manner in soliciting, negotiating, or procuring the making of any insurance contract on behalf of an insured other than itself.

(7) "Captive insurer" means:

(a) an insurance company owned by another organization whose exclusive purpose is to insure

risks of the parent organization and affiliated companies; or

(b) in the case of groups and associations, an insurance organization owned by the insureds whose exclusive purpose is to insure risks of member organizations, group members, and their affiliates.

(8) "Controlled insurer" means a licensed insurer that is either directly or indirectly controlled by a broker.

(9) "Controlling broker" means a broker who either directly or indirectly controls an insurer.

(10) "Controlling person" means any person, firm, association, or corporation that directly or indirectly has the power to direct or cause to be directed, the management, control, or activities of a reinsurance intermediary.

(11) "Insurer" is as defined in Section 31A-1-301, except the following persons or similar persons are not insurers for purposes of Part 6, Broker Controlled Insurers:

(a) all risk retention groups as defined in:

(i) the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499;

(ii) the Risk Retention Act, 15 U.S.C. Sec. 3901 et seq.; and

(iii) Title 31A, Chapter 15, Part II, Risk Retention Groups Act;

(b) all residual market pools and joint underwriting authorities or associations; and

(c) all captive insurers.

(12) (a) "Managing general agent" means any person, firm, association, or corporation that:

(i) manages all or part of the insurance business of an insurer, including the management of a separate division, department, or underwriting office;

(ii) acts as an agent for the insurer whether it is known as a managing general agent, manager, or other similar term;

(iii) with or without the authority, either separately or together with affiliates, directly or indirectly produces and underwrites an amount of gross direct written premium equal to, or more than 5% of, the policyholder surplus as reported in the last annual statement of the insurer in any one quarter or year; and

(iv) either adjusts or pays claims in excess of an amount determined by the commissioner, or that negotiates reinsurance on behalf of the insurer.

(b) Notwithstanding Subsection (12)(a), the following persons may not be considered as managing general agent for the purposes of this chapter:

(i) an employee of the insurer;

(ii) a U.S. manager of the United States branch of an alien insurer;

(iii) an underwriting manager that, pursuant to contract:

(A) manages all the insurance operations of the insurer;

(B) is under common control with the insurer;

(C) is subject to Title 31A, Chapter 16, Insurance Holding Companies; and

(D) is not compensated based on the volume of premiums written; and

(iv) the attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or inter-insurance exchange under powers of attorney.

(13) "Producer" is a person who arranges for insurance coverages between insureds and insurers.

(14) "Qualified U.S. financial institution" means an institution that:

(a) is organized or, in the case of a U.S. office of a foreign banking organization licensed, under the laws of the United States or any state;

(b) is regulated, supervised, and examined by U.S. federal or state authorities having regulatory authority over banks and trust companies; and

(c) has been determined by either the commissioner, or the Securities Valuation Office of the National Association of Insurance Commissioners, to meet the standards of financial condition and standing that are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.

(15) "Reinsurance intermediary" means a reinsurance intermediary-broker or a reinsurance intermediary-manager as these terms are defined in Subsections (16) and (17).

(16) "Reinsurance intermediary-broker" means a person other than an officer or employee of the ceding insurer, firm, association, or corporation who solicits, negotiates, or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of the insurer.

(17) (a) "Reinsurance intermediary-manager" means a person, firm, association, or corporation who:

(i) has authority to bind or who manages all or part of the assumed reinsurance business of a reinsurer, including the management of a separate division, department, or underwriting office; and

(ii) acts as an agent for the reinsurer whether the person, firm, association, or corporation is known as a reinsurance intermediary-manager, manager, or other similar term.

(b) Notwithstanding Subsection (17)(a), the following persons may not be considered

reinsurance intermediary-managers for the purpose of this chapter with respect to the reinsurer:

(i) an employee of the reinsurer;

(ii) a U.S. manager of the United States branch of an alien reinsurer;

(iii) an underwriting manager that, pursuant to contract:

(A) manages all the reinsurance operations of the reinsurer;

(B) is under common control with the reinsurer;

(C) is subject to Title 31A, Chapter 16, Insurance Holding Companies; and

(D) is not compensated based on the volume of premiums written; and

(iv) the manager of a group, association, pool, or organization of insurers that:

(A) engage in joint underwriting or joint reinsurance; and

(B) are subject to examination by the insurance commissioner of the state in which the manager's principal business office is located.

(18) "Reinsurer" means any person, firm, association, or corporation duly licensed in this state as an insurer with the authority to assume reinsurance.

(19) "Surplus lines broker" means a person licensed under Subsection 31A-23-204(5) to place insurance with unauthorized insurers in accordance with Section 31A-15-103.

(20) "Underwrite" means the authority to accept or reject risk on behalf of the insurer.

Section 54. Section 31A-29-103 is amended to read:

31A-29-103. Definitions.

As used in this chapter:

(1) "Board" means the board of directors of the pool created in Section 31A-29-104.

(2) "Health care facility" means any entity providing health care services which is licensed under Title 26, Chapter 21.

(3) "Health care provider" has the same meaning as provided in Section 78-14-3.

(4) "Health care services" means any service or product used in furnishing to any individual medical care or hospitalization, or incidental to furnishing medical care or hospitalization, and any other service or product furnished for the purpose of preventing, alleviating, curing, or healing human illness or injury.

(5) (a) "Health insurance" means any:

(i) hospital and medical expense-incurred policy;

(ii) nonprofit health care service plan contract; and

(iii) health maintenance organization subscriber contract.

(b) "Health insurance" does not include any insurance arising out of the Workers' Compensation Act or similar law, automobile medical payment insurance, or insurance under which benefits are payable with or without regard to fault and which is required by law to be contained in any liability insurance policy[;].

(6) "Health maintenance organization" has the same meaning as provided in Section 31A-8-101.

(7) "Health plan" means any arrangement by which a person, including a dependent or spouse, covered or making application to be covered under the pool has access to hospital and medical benefits or reimbursement including group or individual insurance or subscriber contract; coverage through a health maintenance organization, preferred provider prepayment, group practice, or individual practice plan; coverage under an uninsured arrangement of group or group-type contracts including employer self-insured, cost-plus, or other benefits methodologies not involving insurance; coverage under a group type contract which is not available to the general public and can be obtained only because of connection with a particular organization or group; and coverage by medicare or other governmental benefit. The term includes coverage through health insurance.

(8) "Insured" means an individual resident of this state who is eligible to receive benefits from any insurer, health maintenance organization, or other health plan.

(9) "Insurer" means an insurance company authorized to transact disability insurance business in this state, health maintenance organization, and a self-insurer not subject to federal preemption.

(10) "Medicaid" means coverage under Title XIX of the Social Security Act, 42 U.S.C. Sec. 1396 et seq., as amended.

(11) "Medicare" means coverage under both Part A and B of Title XVIII of the Social Security Act, 42 U.S.C. 1395 et seq., as amended.

(12) "Plan of operation" means the plan developed by the board in accordance with Section 31A-29-105 and includes the articles, bylaws, and operating rules adopted by the board under Section 31A-29-106.

(13) "Pool" means the Utah Comprehensive Health Insurance Pool created in Section 31A-29-104.

(14) "Pool Fund" means the Comprehensive Health Insurance Pool Enterprise Fund created in Section 31A-29-120.

(15) "Pool policy" means an insurance policy issued under this chapter.

(16) "Third-party administrator" has the same meaning as provided in Section 31A-1-301.

Section 55. Section 31A-35-608 is amended to read:

31A-35-608. Premiums and authorized charges.

(1) A bail bond surety or bail bond agent may not, in any bail transaction or in connection with that transaction, directly or indirectly, charge or collect money or other valuable consideration from any person except to:

(a) pay the premium on the bail at the rates established by the bail bond surety;

(b) provide collateral;

(c) reimburse himself for actual expenses, as described in Subsection (2), incurred in connection with the bail bond transaction; or

(d) to reimburse himself, or to establish a right of action against the principal or any indemnitor, for actual expenses the bail bond surety or bail bond agent incurred:

(i) in good faith; and

(ii) which were by reason of breach by the defendant of any of the terms of the written agreement under which the undertaking of bail or bail bond was written.

(2) (a) A bail bond surety may bring an action in a court of law to enforce its equitable rights against the principal and the principal's indemnitors in exoneration if:

(i) a bail bond agent did not establish a written agreement; or

(ii) there is only an incomplete writing.

(b) Reimbursement claimed under this Subsection (2) may not exceed the sum of:

(i) the principal sum of the bail bond or undertaking; and

(ii) any reasonable expenses that:

(A) are verified by receipt;

(B) in total do not amount to more than the principal sum of the bail bond or undertaking; and

(C) are incurred in good faith by the bail bond surety, its agents, and employees by reason of the principal's breach.

(3) This section does not affect or impede the right of a bail bond agent to execute undertaking of bail on behalf of a nonresident agent of the bail bond surety the bail bond agent represents.

Section 56. Section 34A-1-309 is amended to read:

34A-1-309. Attorneys' fees.

(1) In all cases coming before the commission in which attorneys have been employed, the commission is vested with full power to regulate and fix the fees of the attorneys.

(2) In accordance with Title 63, Chapter 46b, Administrative Procedures Act, an attorney may file an application for hearing with the Division of Adjudication to appeal a decision or final order to the extent it concerns the award of attorney fees.

(3) (a) The commission may award reasonable attorneys' fees on a contingency basis when disability or death benefits or interest on disability or death benefits are generated.

(b) Attorney fees awarded under Subsection [~~(2)~~] (3)(a) shall be paid by the employer or its insurance carrier out of the award of disability or death benefits, or interest on disability or death benefits.

(4) (a) If the commission orders that only medical benefits be paid, the commission may award reasonable attorneys' fee on a contingency basis for medical benefits ordered paid if:

(i) the commission's informal dispute resolution mechanisms were fully used by the parties prior to adjudication; and

(ii) at no time were disability or death benefits or interest on disability or death benefits at issue in the adjudication of the medical benefit claim.

(b) Attorneys' fees awarded under Subsection (3)(a) shall be paid by the employer or its insurance carrier in addition to the payment of medical benefits ordered.

Section 57. Section 34A-2-105 is amended to read:

34A-2-105. Exclusive remedy against employer, and officer, agent, or employee of employer Employee leasing arrangements.

(1) The right to recover compensation pursuant to this chapter for injuries sustained by an employee, whether resulting in death or not, shall be the exclusive remedy against the employer and shall be the exclusive remedy against any officer, agent, or employee of the employer and the liabilities of the employer imposed by this chapter shall be in place of any and all other civil liability whatsoever, at common law or otherwise, to the employee or to the employee's spouse, widow, children, parents, dependents, next of kin, heirs, personal representatives, guardian, or any other person whomsoever, on account of any accident or injury or death, in any way contracted, sustained, aggravated, or incurred by the employee in the course of or because of or arising out of the employee's employment, and no action at law may be maintained against an employer or against any officer, agent, or employee of the employer based upon any accident, injury, or death of an employee. Nothing in this section, however, shall prevent an employee, or the employee's dependents, from filing a claim for compensation in those cases in accordance with Chapter 3, Utah Occupational Disease Act.

(2) The exclusive remedy provisions of this section apply to both the client company and the employee leasing company in an employee leasing arrangement under Title 58, Chapter 59, Professional Employer Organization Licensing Act.

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

(i) "Temporary employee" means an individual who for temporary work assignment is:

(A) an employee of a temporary staffing company; or

(B) registered by or otherwise associated with a temporary staffing company.

(ii) "Temporary staffing company" means a company that engages in the assignment of individuals as temporary full-time or part-time employees to fill assignments with a finite ending date to another independent entity.

(b) If the temporary staffing company secures the payment of workers' compensation in accordance with Section [~~35A-3-201~~] 34A-2-201 for all temporary employees of the temporary staffing company, the exclusive remedy provisions of this section apply to both the temporary staffing company and the client company and its employees and provide the temporary staffing company the same protection that a client company and its employees has under this section for the acts of any of the temporary staffing company's temporary employees on assignment at the client company worksite.

Section 58. Section 35A-3-102 is amended to read:

35A-3-102. Definitions.

As used in this chapter:

(1) "Applicant" means a person who requests assistance under this chapter.

(2) "Average monthly number of families" means the average number of families who received cash assistance on a monthly basis during the previous federal fiscal year, starting from October 1, 1998 to September 30, 1999, and continuing each year thereafter.

(3) "Cash assistance" means a monthly dollar amount of cash a client is eligible to receive under Section 35A-3-302.

(4) "Child care services" means care of a child for a portion of the day that is less than 24 hours in a qualified setting, as defined by rule, by a responsible person who is not the child's parent or legal guardian.

(5) "Date of enrollment" means the date on which the applicant was approved as eligible for cash assistance.

(6) "Director" means the director of the division.

(7) "Diversion" means a single payment of cash assistance under Section 35A-3-303 to a client who is eligible for but does not require extended cash assistance under Part 3, Family Employment Program.

(8) "Division" means the Division of Employment Development.

(9) "Education or training" means:

(a) basic remedial education;

(b) adult education;

(c) high school education;

(d) education to obtain the equivalent of a high school diploma;

(e) education to learn English as a second language;

(f) applied technology training;

(g) employment skills training; or

(h) on-the-job training.

(10) "Full-time education or training" means training on a full-time basis as defined by the educational institution attended by the parent client.

(11) "General assistance" means financial assistance provided to a person who is not otherwise eligible for cash assistance under Part 3, Family Employment Program, because that person does not live in a family with a related dependent child.

(12) "Parent client" means a person who enters into an employment plan with the division to qualify for cash assistance under Part 3, Family Employment Program.

[~~(14)~~] (13) (a) "Passenger vehicle" means a self-propelled, two-axle vehicle intended primarily for operation on highways and used by an applicant or client to meet basic transportation needs and has a fair market value below 40% of the applicable amount of the federal luxury passenger automobile tax established in 26 U.S.C. Sec. 4001 and adjusted annually for inflation.

(b) "Passenger vehicle" does not include:

(i) a commercial vehicle, as defined in Section 41-1a-102;

(ii) an off-highway vehicle, as defined in Section 41-1a-102; or

(iii) a motor home, as defined in Section 13-14-102.

[~~(13)~~] (14) "Plan" or "state plan" means the state plan submitted to the Secretary of the United States Department of Health and Human Services to receive funding from the United States through the Temporary Assistance for Needy Families Block Grant.

(15) "Single minor parent" means a person under 18 years of age who is not married and has a minor child in his care and custody.

Section 59. Section 36-12-8 is amended to read:

36-12-8. Legislative Management Committee -- Research and General Counsel Subcommittee -- Budget Subcommittee -- Audit Subcommittee -- Duties -- Members -- Meetings.

(1) There is created within the Legislative Management Committee three subcommittees having equal representation from each major political party. The subcommittees, their membership, and their functions are as follows:

(a) The Research and General Counsel Subcommittee, comprising six members, shall

recommend to the Legislative Management Committee a person or persons to hold the positions of director of the Office of Legislative Research and General Counsel and legislative general counsel.

(b) The Budget Subcommittee, comprising six members, shall recommend to the Legislative Management Committee a person to hold the position of legislative fiscal analyst.

(c) The Audit Subcommittee, comprising four members, shall:

(i) recommend to the Legislative Management Committee a person to hold the position of legislative auditor general; and

(ii) (A) review all [~~request~~] requests for audits;

(B) prioritize those requests; and

(C) hear all audit reports and refer those reports to other legislative committees for their further review and action as appropriate.

(2) The members of each subcommittee of the Legislative Management Committee shall be appointed from the membership of the Legislative Management Committee by an appointments committee comprised of the speaker and the minority leader of the House of Representatives and the president and the minority leader of the Senate.

(3) Each subcommittee of the Legislative Management Committee shall meet as often as necessary to perform its duties. They may meet during and between legislative sessions.

Section 60. Section 41-22-2 (Effective 04/30/01) is amended to read:

41-22-2 (Effective 04/30/01). Definitions.

As used in this chapter:

(1) "Advisory council" means the Off-highway Vehicle Advisory Council appointed by the Board of Parks and Recreation.

(2) "All-terrain type I vehicle" means any motor vehicle 50 inches or less in width, having an unladen dry weight of 800 pounds or less, traveling on three or more low pressure tires, having a seat designed to be straddled by the operator, and designed for or capable of travel over unimproved terrain.

(3) "All-terrain type II vehicle" means any other motor vehicle, not defined in Subsection (2), (9), or [~~(19)~~] (20), designed for or capable of travel over unimproved terrain. This term does not include golf carts, any vehicle designed to carry a disabled person, any vehicle not specifically designed for recreational use, or farm tractors as defined under Section 41-1a-102.

(4) "Board" means the Board of Parks and Recreation.

(5) "Dealer" means a person engaged in the business of selling off-highway vehicles at wholesale or retail.

(6) "Division" means the Division of Parks and Recreation.

(7) "Low pressure tire" means any pneumatic tire six inches or more in width designed for use on wheels with rim diameter of 12 inches or less and utilizing an operating pressure of ten pounds per square inch or less as recommended by the vehicle manufacturer.

(8) "Manufacturer" means a person engaged in the business of manufacturing off-highway vehicles.

(9) "Motorcycle" means every motor vehicle having a saddle for the use of the operator and designed to travel on not more than two tires.

(10) "Motor vehicle" means every vehicle which is self-propelled.

(11) "Off-highway vehicle" means any snowmobile, all-terrain type I vehicle, all-terrain type II vehicle, or motorcycle.

(12) "Off-highway implement of husbandry" means every all-terrain type I vehicle, motorcycle, or snowmobile which is used by the owner or his agent for agricultural operations.

(13) "Operate" means to control the movement of or otherwise use an off-highway vehicle.

(14) "Operator" means the person who is in actual physical control of an off-highway vehicle.

(15) "Organized user group" means an off-highway vehicle organization incorporated as a nonprofit corporation in the state under Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, for the purpose of promoting the interests of off-highway vehicle recreation.

(16) "Owner" means a person, other than a person with a security interest, having a property interest or title to an off-highway vehicle and entitled to the use and possession of that vehicle.

(17) "Public land" means land owned or administered by any federal or state agency or any political subdivision of the state.

(18) "Register" means the act of assigning a registration number to an off-highway vehicle.

(19) "Roadway" is used as defined in Section 41-6-1.

(20) "Snowmobile" means any motor vehicle designed for travel on snow or ice and steered and supported in whole or in part by skis, belts, cleats, runners, or low pressure tires.

(21) "Street or highway" means the entire width between boundary lines of every way or place of whatever nature, when any part of it is open to the use of the public for vehicular travel.

Section 61. Section 41-22-2 (Superseded 04/30/01) is amended to read:

41-22-2 (Superseded 04/30/01). Definitions.

As used in this chapter:

(1) "Advisory council" means the Off-highway Vehicle Advisory Council appointed by the Board of Parks and Recreation.

(2) "All-terrain type I vehicle" means any motor vehicle 50 inches or less in width, having an unladen dry weight of 800 pounds or less, traveling on three or more low pressure tires, having a seat designed to be straddled by the operator, and designed for or capable of travel over unimproved terrain.

(3) "All-terrain type II vehicle" means any other motor vehicle, not defined in Subsection (2), (9), or [~~(19)~~] (20), designed for or capable of travel over unimproved terrain. This term does not include golf carts, any vehicle designed to carry a disabled person, any vehicle not specifically designed for recreational use, or farm tractors as defined under Section 41-1a-102.

(4) "Board" means the Board of Parks and Recreation.

(5) "Dealer" means a person engaged in the business of selling off-highway vehicles at wholesale or retail.

(6) "Division" means the Division of Parks and Recreation.

(7) "Low pressure tire" means any pneumatic tire six inches or more in width designed for use on wheels with rim diameter of 12 inches or less and utilizing an operating pressure of ten pounds per square inch or less as recommended by the vehicle manufacturer.

(8) "Manufacturer" means a person engaged in the business of manufacturing off-highway vehicles.

(9) "Motorcycle" means every motor vehicle having a saddle for the use of the operator and designed to travel on not more than two tires.

(10) "Motor vehicle" means every vehicle which is self-propelled.

(11) "Off-highway vehicle" means any snowmobile, all-terrain type I vehicle, all-terrain type II vehicle, or motorcycle.

(12) "Off-highway implement of husbandry" means every all-terrain type I vehicle, motorcycle, or snowmobile which is used by the owner or his agent for agricultural operations.

(13) "Operate" means to control the movement of or otherwise use an off-highway vehicle.

(14) "Operator" means the person who is in actual physical control of an off-highway vehicle.

(15) "Organized user group" means an off-highway vehicle organization incorporated as a nonprofit corporation in the state under Title 16, Chapter 6, Utah Nonprofit Corporation and Co-operative Association Act, for the purpose of promoting the interests of off-highway vehicle recreation.

(16) "Owner" means a person, other than a person with a security interest, having a property interest or title to an off-highway vehicle and entitled to the use and possession of that vehicle.

(17) "Public land" means land owned or administered by any federal or state agency or any political subdivision of the state.

(18) "Register" means the act of assigning a registration number to an off-highway vehicle.

(19) "Roadway" is used as defined in Section 41-6-1.

(20) "Snowmobile" means any motor vehicle designed for travel on snow or ice and steered and supported in whole or in part by skis, belts, cleats, runners, or low pressure tires.

(21) "Street or highway" means the entire width between boundary lines of every way or place of whatever nature, when any part of it is open to the use of the public for vehicular travel.

Section 62. Section 46-4-105 is amended to read:

46-4-105. Use of electronic records and electronic signatures -- Variation by agreement.

(1) This chapter does not require a record or signature to be created, generated, sent, communicated, received, stored, or otherwise processed or used by electronic means or in electronic form.

(2) (a) This chapter applies only to transactions between parties each of which has agreed to conduct transactions by electronic means.

(b) Whether or not the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct.

(3) (a) A party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means.

(b) The right granted by [~~this~~] Subsection (3)(a) may not be waived by agreement.

(4) (a) Except as otherwise provided in this chapter, the effect of any of its provisions may be varied by agreement.

(b) The presence in certain provisions of this chapter of the words "unless otherwise agreed," or words of similar import, does not imply that the effect of other provisions may not be varied by agreement.

(5) Whether an electronic record or electronic signature has legal consequences is determined by this chapter and other applicable law.

Section 63. Section 52-4-7.8 is amended to read:

52-4-7.8. Electronic meetings -- Authorization -- Requirements.

(1) As used in this section:

(a) "Anchor location" means the physical location from which the electronic meeting originates or from which the participants are connected.

(b) "Electronic meeting" means a public meeting convened or conducted by means of a telephonic, telecommunications, or computer conference.

(c) "Electronic notice" means electronic mail or fax.

(d) "Monitor" means to:

(i) hear, live, by speaker, or by other equipment, all of the public statements of each member of the public body who is participating in a meeting; or

(ii) see, by computer screen or other visual medium, all of the public statements of each member of the public body who is participating in a meeting.

(e) "Participate" means the ability to communicate with all of the members of a public body, either verbally or electronically, so that each member of the public body can hear or see the communication.

(f) "Public hearing" means a meeting at which comments from the public will be accepted.

(g) "Public statement" means a statement made in the ordinary course of business of the public body with the intent that all other members of the public body receive it.

(2) A public body may, by following the procedures and requirements of this section, convene and conduct an electronic meeting.

(3) Each public body convening or conducting an electronic meeting shall:

(a) give public notice of the meeting pursuant to Section 52-4-6 by:

(i) posting written notice at the anchor location; and

(ii) providing written or electronic notice to:

(A) at least one newspaper of general circulation within the state; and

(B) to a local media correspondent;

(b) in addition to giving public notice required by Subsection [~~(1)~~] (3)(a), provide:

(i) notice of the electronic meeting to the members of the public body at least 24 hours before the meeting so that they may participate in and be counted as present for all purposes, including the determination that a quorum is present; and

(ii) a description of how the members will be connected to the electronic meeting;

(c) establish written procedures governing the electronic meeting at which one or more members of a public body are participating by means of a telephonic or telecommunications conference;

(d) establish one or more anchor locations for the public meeting, at least one of which is in the building and city where the public body would normally meet if they were not holding an electronic meeting;

(e) provide space and facilities at the anchor location so that interested persons and the public may attend and monitor the open portions of the meeting; and

(f) if the meeting is a public hearing, provide space and facilities at the anchor location so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

(4) Compliance with the provisions of this section by a public body constitutes full and complete compliance by the public body with the corresponding provisions of Sections 52-4-3 and 52-4-6.

Section 64. Section 53A-2-206 is amended to read:

53A-2-206. Exchange and interstate compact students -- Inclusion in attendance count -- Annual report -- Requirements for exchange student agencies.

(1) A school district may include membership and attendance of students for the purpose of apportionment of state monies if:

(a) the student is an exchange student sponsored by an agency approved by the State Board of Education, and the enrollment is in compliance with rules and enrollment limits set by the state board; or

(b) the student is enrolled under an interstate compact, established between the State Board of Education and the state education authority of another state, under which a student from one compact state would be permitted to enroll in a public school in the other compact state on the same basis as a resident student of the receiving state; or

(c) the student is receiving services under the Compact on Placement of Children.

(2) The board shall make an annual report to the Legislature on the number of exchange students and the number of interstate compact students sent to or received from public schools outside the state.

(3) (a) The board shall require each approved exchange student agency to provide it with a sworn affidavit of compliance prior to the beginning of each school year.

(b) The affidavit shall include the following assurances:

(i) that the agency has complied with all applicable rules of the board;

(ii) that a household study, including a background check of all adult residents, has been made of each household where an exchange student is to reside, and that the study was of sufficient scope to provide reasonable assurance that the exchange student will receive proper care and supervision in a safe environment;

(iii) that host parents have received training appropriate to their positions, including information about enhanced criminal penalties under Subsection 76-5-406(10) for persons who are in a position of special trust;

(iv) that a representative of the exchange student agency shall visit each student's place of residence at least once each month during the student's stay in Utah;

(v) that the agency will cooperate with school and other public authorities to ensure that no exchange student becomes an unreasonable burden upon the public schools or other public agencies;

(vi) that each exchange student will be given in [~~their~~] the exchange student's native language names and telephone numbers of agency representatives and others who could be called at any time if a serious problem occurs; and

(vii) that alternate placements are readily available so that no student is required to remain in a household if conditions appear to exist which unreasonably endanger the student's welfare.

(4) (a) The board shall provide each approved exchange student agency with a list of names and telephone numbers of individuals not associated with the agency who could be called by an exchange student in the event of a serious problem.

(b) The agency shall make a copy of the list available to each of its exchange students in [~~their~~] the exchange student's native language.

Section 65. Section 53A-15-305 is amended to read:

53A-15-305. Resolution of disputes in special education -- Hearing request -- Timelines -- Levels -- Appeal process -- Recovery of costs.

(1) The Legislature finds that it is in the best interest of students with disabilities to provide for a prompt and fair final resolution of disputes which may arise over educational programs and rights and responsibilities of students with disabilities, their parents, and the public schools.

(2) Therefore, the State Board of Education shall adopt rules meeting the requirements of 20 U.S.C. Section 1415 governing the establishment and maintenance of procedural safeguards for students with disabilities and their parents or guardians as to the provision of free, appropriate public education to those students.

(3) The timelines established by the board shall provide adequate time to address and resolve disputes without unnecessarily disrupting or delaying the provision of free, appropriate public education for students with disabilities.

(4) Prior to seeking a hearing or other formal proceedings, the parties to a dispute under this section shall make a good faith effort to resolve the dispute informally at the school building level.

(5) (a) If the dispute is not resolved under Subsection (4), a party may request a due process hearing.

(b) The hearing shall be conducted under rules adopted by the board in accordance with 20 U.S.C. Section 1415.

(6) (a) A party to the hearing may appeal the decision issued under Subsection (5) to a court of competent jurisdiction under 20 U.S.C. Section 1415[~~(e)~~](i).

(b) The party must file the judicial appeal within 30 days after issuance of the due process hearing decision.

(7) If the parties fail to reach agreement on payment of attorney fees, then a party seeking recovery of attorney fees under 20 U.S.C. Section 1415[~~(e)~~](i) for a special education administrative action shall file a court action within 30 days after issuance of a decision under Subsection (5).

Section 66. Section 53A-18-101 is amended to read:

53A-18-101. School district tax anticipation notes.

(1) A local school board may borrow money in anticipation of the collection of taxes or other revenue of the school district so long as it complies with [~~the~~] Title 11, Chapter 14, Utah Municipal Bond Act.

(2) The board may incur indebtedness under this section for any purpose for which district funds may be expended, but not in excess of the estimated district revenues for the current school year.

(3) Revenues include all revenues of the district from the state or any other source.

(4) The district may incur the indebtedness prior to imposing or collecting the taxes or receiving the revenues. The indebtedness bears interest at the lowest obtainable rate or rates.

Section 67. Section 53A-18-102 is amended to read:

53A-18-102. Additional indebtedness -- Election.

A local school board may require the qualified electors of the district to vote on a proposition as to whether to incur indebtedness, subject to conditions provided in [~~the~~] Title 11, Chapter 14, Utah Municipal Bond Act, under the following circumstances:

(1) if the debts of the district are equal to school taxes and other estimated revenues for the school year, and it is necessary to create and incur additional indebtedness in order to maintain and support schools within the district; or

(2) the local school board determines it advisable to issue school district bonds to purchase school sites, buildings, or furnishings or to improve existing school property.

Section 68. Section 53A-28-302 is amended to read:

53A-28-302. State financial assistance intercept mechanism -- State treasurer duties -- Interest and penalty provisions.

(1) (a) If one or more payments on bonds are made by the state treasurer as provided in Section 53A-28-301, the state treasurer shall:

(i) immediately intercept any payments from the Uniform School Fund or from any other source of operating monies provided by the state to the board that issued the bonds that would otherwise be paid to the board by the state; and

(ii) apply the intercepted payments to reimburse the state for payments made pursuant to the state's guaranty until all obligations of the board to the state arising from those payments, including interest and penalties, are paid in full.

(b) The state has no obligation to the board or to any person or entity to replace any monies intercepted under authority of Subsection (1).

(2) The board that issued bonds for which the state has made all or part of a debt service payment shall:

(a) reimburse all monies drawn by the state treasurer on its behalf;

(b) pay interest to the state on all monies paid by the state from the date the monies were drawn to the date they are repaid at a rate not less than the average prime rate for national money center banks plus 1%; and

(c) pay all penalties required by this chapter.

(3) (a) The state treasurer shall establish the reimbursement interest rate after considering the circumstances of any prior draws by the board on the state, market interest and penalty rates, and the cost of funds, if any, that were required to be borrowed by the state to make payment on the bonds.

(b) The state treasurer may, after considering the circumstances giving rise to the failure of the board to make payment on its bonds in a timely manner, impose on the board a penalty of not more than 5% of the amount paid by the state pursuant to its guaranty for each instance in which a payment by the state is made.

(4) (a) (i) If the state treasurer determines that amounts obtained under this section will not reimburse the state in full within one year from the state's payment of a board's scheduled debt service payment, the state treasurer shall pursue any legal action, including mandamus, against the board to compel it to:

(A) levy and provide property tax revenues to pay debt service on its bonds when due as required by [~~the~~] Title 11, Chapter 14, Utah Municipal Bond Act; and

(B) meet its repayment obligations to the state.

(ii) In pursuing its rights under Subsection (4)(a), the state shall have the same substantive and procedural rights under Title 11, Chapter 14, Utah Municipal Bond Act, as would a holder of the bonds of a board.

(b) The attorney general shall assist the state treasurer in these duties.

(c) The board shall pay the attorney's fees, expenses, and costs of the state treasurer and the attorney general.

(5) (a) Except as provided in Subsection (5)(c), any board whose operating funds were intercepted under this section may replace those funds from other board monies or from ad valorem property taxes, subject to the limitations provided in this subsection.

(b) A board may use ad valorem property taxes or other monies to replace intercepted funds only if the ad valorem property taxes or other monies were derived from:

(i) taxes originally levied to make the payment but which were not timely received by the board;

(ii) taxes from a special levy made to make the missed payment or to replace the intercepted monies;

(iii) monies transferred from the capital outlay fund of the board or the undistributed reserve, if any, of the board; or

(iv) any other source of money on hand and legally available.

(c) Notwithstanding the provisions of Subsections (5)(a) and (b), a board may not replace operating funds intercepted by the state with monies collected and held to make payments on bonds if that replacement would divert monies from the payment of future debt service on the bonds and increase the risk that the state's guaranty would be called upon a second time.

Section 69. Section 54-4-28 is amended to read:

54-4-28. Merger, consolidation, or combination.

No public utility shall combine, merge nor consolidate with another public utility engaged in the same general line of business in this state, without the consent and approval of the Public [~~Utilities~~] Service Commission, which shall be granted only after investigation and hearing and finding that such proposed merger, consolidation or combination is in the public interest.

Section 70. Section 54-4-29 is amended to read:

54-4-29. Acquiring voting stock or securities of like utility only on consent of commission.

Hereafter no public utility shall purchase or acquire any of the voting securities or the secured obligations of any other public utility engaged in the same general line of business without the consent and approval of the Public [~~Utilities~~] Service

Commission, which shall be granted only after investigation and hearing and finding that such purchase and acquisition of such securities, or obligations, will be in the public interest.

Section 71. Section 54-4-30 is amended to read:

54-4-30. Acquiring properties of like utility only on consent of commission.

Hereafter no public utility shall acquire by lease, purchase or otherwise the plants, facilities, equipment or properties of any other public utility engaged in the same general line of business in this state, without the consent and approval of the Public [~~Utilities~~] Service Commission. Such consent shall be given only after investigation and hearing and finding that said purchase, lease or acquisition of said plants, equipment, facilities and properties will be in the public interest.

Section 72. Section 54-9-5 is amended to read:

54-9-5. Funding -- Power sales contracts -- Fee in lieu of ad valorem property taxes -- Bond issues -- Outlay declared for public purpose.

(1) A city or town participating in common facilities under authority contained in this chapter may furnish money and provide property, both real and personal, and, in addition to any other authority now existing, may issue and sell, either at public or privately negotiated sale, general obligation bonds or revenue bonds, pledging either the revenues of its entire electric system or only its interest or share of the revenues derived from the common facilities in order to pay its respective share of the costs of the planning, financing, acquisition, and construction.

(2) Capacity or output derived by a city or town from its ownership share of common facilities not then required by the city or town for its own use and for the use of its customers may be sold or exchanged by the city or town for a consideration, for a period, and upon other terms and conditions as may be determined by the parties prior to the sale and as embodied in a power sales contract entered into by the city or town; and any revenues arising under the power sales contract may be pledged by the city or town to the payment of revenue bonds issued to pay its respective share of the costs of the common facilities. Each power sales contract entered into by a city or town with a consumer which is not exempt by Article XIII, Sec. 2, Utah Constitution, for the sale or exchange to the consumer of capacity or output derived by the city or town from its ownership share of common facilities shall contain a provision for payment of an annual fee to the city or town by the consumer in lieu of ad valorem property taxes based upon the taxable value of the percentage of the ownership share of the city or town in the common facilities which is used to produce the capacity or output that is sold or exchanged by the city or town to or with consumer, which fee in lieu of ad valorem property taxes shall be paid over by the city or town to the county treasurer for distribution as per distribution of other ad valorem tax revenues.

(3) Any city or town acquiring or owning an undivided interest in common facilities may contract with a county or counties to pay, solely from the revenues derived from the interest of the city or town in the common facilities, to the county or counties in which the common facilities are located, an annual fee in lieu of ad valorem property taxes based upon the taxable value of the percentage of the ownership share of the city or town in the common facilities, which fee in lieu of ad valorem property taxes shall be paid over by the city or town to the county treasurer of the county or counties in which the common facilities are located for distribution as per distribution of other ad valorem tax revenues. Bonds shall be issued under the applicable provisions of [~~the~~] Title 11, Chapter 14, Utah Municipal Bond Act, and of Title 55, Chapter 3, Public Works Program, authorizing the issuance of bonds for the acquisition and construction of electric public utility properties by cities or towns.

(4) All moneys paid or property supplied by any city or town for the purpose of carrying out powers conferred by this chapter are declared to be for a public purpose; but before a city or cities, town or towns, or power utility undertakes the construction of transmission facilities in which it or they have a common ownership interest, the city or cities, town or towns, or power utility shall, if the construction results in a duplication, in whole or part, of existing transmission in purpose or function, before construction endeavor to attain the equivalent capacity for a comparable term and comparable cost by purchase or contract with the duplicated facility. If the contract cannot be executed within six months from the date the city or cities, town or towns, or power utility request to contract with the owner of the duplicated facility, then the city or cities, town or towns, or power utility may proceed to construct the proposed transmission facilities notwithstanding the duplication.

Section 73. Section 54-13-1 is amended to read:

54-13-1. Definitions.

As used in this chapter, "intrastate pipeline transportation" and "pipeline facilities" have the definitions set forth in the Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. Section [~~1671 et seq~~] 60101.

Section 74. Section 55-3-2.5 is amended to read:

55-3-2.5. Bond issues governed by Municipal Bond Act.

Any county, city, or incorporated town may issue bonds under [~~the~~] Title 11, Chapter 14, Utah Municipal Bond Act, for the purpose of acquiring, through purchase, construction, or any combination of them, improving, enlarging, extending, or repairing any project or utility authorized in Section 55-3-1, or any combination of these projects and utilities. It is the purpose and intent of the Legislature that the procedures for the

issuance of bonds and other matters relating to bonds issued for the purposes provided in Title 55, Chapter 3, Public Works Program, shall be hereafter governed by the provisions of [~~the~~] Title 11, Chapter 14, Utah Municipal Bond Act.

Section 75. Section 55-5-6 is amended to read:

55-5-6. Definitions.

As used in this chapter:

(1) "Food service" includes restaurant, cafeteria, snack bar, vending machines for food and beverages, and goods and services customarily offered in connection with them.

(2) (a) "Public office building" means all county courthouses, all city or town halls, and all buildings used primarily for governmental offices of the state or any county, city, or town.

(b) "Public office building" does not include capitol hill facilities as defined in Section [~~63A-7-102~~] 63C-9-102, public schools, state colleges, or state universities.

Section 76. Section 57-1-5 is amended to read:

57-1-5. Creation of joint tenancy presumed -- Tenancy in common.

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

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

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

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

(3) A sole owner of real property shall create a joint tenancy in himself and another or others:

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

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

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

(5) A "joint tenancy" is converted into a "tenancy in common" by a joint tenant by making a bona fide conveyance of the joint tenant's interest in the property to himself and another which terminates the joint tenancy.

(6) This act has no retrospective operation and shall govern instruments executed and recorded on or after May 5, 1997.

Section 77. Section 59-1-503 is amended to read:

59-1-503. Assessment and payment of deficiency.

(1) Following a redetermination of a deficiency by the commission, the entire amount redetermined as the deficiency by the decision of the commission, which has become final, shall be assessed and shall be paid within 30 days from the date the notice and demand is sent from the commission.

(2) If the taxpayer does not file a petition with the commission within the time prescribed for filing the petition, the deficiency, notice of which has been sent to the taxpayer, shall be assessed, and shall be paid within 30 days from the date the notice and demand is sent from the commission.

Section 78. Section 59-1-703 is amended to read:

59-1-703. Collection procedure -- Review -- Bond for stay -- Sale of seized property.

(1) If any liability which is due and payable under Sections 59-1-701 and 59-1-702 is not paid, the collection shall be made in the same manner as is provided for the collection of delinquent taxes in Sections 59-7-526 and 59-7-527. In addition, the commission may issue a warrant of like terms, force, and effect directed to any legally authorized representative of the commission. In the execution of the warrant the authorized representative shall have all the powers conferred by law upon sheriffs, but is entitled to no fee or compensation in excess of actual expenses paid in the performance of such duty.

(2) The appropriateness of any termination or jeopardy assessment shall be reviewable under the procedures prescribed by the commission by rule. The amount of any termination or jeopardy assessment is reviewable only in the manner prescribed in Title 59, Chapter 1, Parts 5 and 6.

(3) In any proceeding brought to enforce payment of any liability made due and payable by virtue of this section or Section 59-1-701 or 59-1-702, the finding of the commission, whether made after notice to the taxpayer or not, shall be for all purposes presumptive evidence of jeopardy.

(4) After a petition has been filed with the commission and when the amount which the commission has determined to be assessable has become final, any unpaid portion which has been stayed by bond[~~,~~] shall be collected as part of the tax upon notice and demand from the commission, and any remaining portion of the assessment shall be abated. If the amount already collected exceeds the amount which should have been assessed, the excess shall be credited or refunded to the taxpayer without the filing of claim. If the amount the

commission has determined to be assessable is greater than the amount actually assessed, the difference shall be assessed, and collected as part of the tax, upon notice and demand by the commission.

(5) The commission may abate the jeopardy assessment if it finds that jeopardy does not exist. The abatement may not be made after a decision of the commission in respect of the deficiency has been rendered or, if no petition is filed with the commission, after the expiration of the period for filing petition. The period of limitation on making assessments and levies or a proceeding for collection, in respect of any deficiency, shall be determined as if the jeopardy assessment so abated had not been made. The running of the period of limitation shall be suspended from the date of such jeopardy assessments until the expiration of the 10th day after the assessment is abated.

(6) The collection of all or any part of any jeopardy assessment may be stayed by filing with the commission a bond in the amount and under conditions established by the commission. The taxpayer has the right to waive the stay at any time in respect of all or part of the amount covered by the bond. If, as a result of the waiver, any part of the amount covered by the bond is paid, then the bond shall, at the request of the taxpayer, be proportionately reduced. If any portion of the jeopardy assessment is abated, or if a notice of deficiency is mailed to the taxpayer in a lesser amount, the bond shall, at the request of the taxpayer, be proportionately reduced.

(7) If a bond is given before the taxpayer has filed his petition pursuant to Chapter 1, Part 5, the bond shall contain a condition that the amount of the deficiency assessment, the collection of which is stayed by the bond, will be paid on notice and demand at any time after the expiration of such period, together with interest thereon from the date of the jeopardy notice and demand until the date of notice and demand under this subsection. The bond shall be conditioned upon the payment of that part of the assessment (collection of which is stayed by the bond) which is not abated by a decision of the commission and has become final. If the commission determines that the amount assessed is greater than the amount which should have been assessed, then the bond shall, at the request of the taxpayer, be proportionately reduced when the decision of the commission is rendered.

(8) When a jeopardy assessment is made, the property seized for the collection of the tax may not be sold until a notice of deficiency is issued and the time for filing a petition for redetermination has expired. If a petition for redetermination is filed (whether before or after the making of the jeopardy assessment) the property may not be sold until the commission's decision on the petition becomes final unless the taxpayer consents to the sale, the commission determines that the expenses of conservation and maintenance would greatly reduce the net proceeds, or the property is perishable.

Section 79. Section 59-1-704 is amended to read:

59-1-704. Restraint of collection restricted.

(1) Except as otherwise provided in Parts 5, 6, and 7 of Chapter 1 and Chapters 2, 6, 7, 10, and 12 and the rules promulgated thereunder, no suit for the purpose of restraining the assessment or collection of any tax, penalty, or interest imposed under Chapter 1, 2, 6, 7, 10, or 12 may be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed.

(2) No suit may be maintained in any court for the purpose of restraining the assessment or collection of the amount of the state tax liability[~~,~~] of a transferee or of a fiduciary of property of a taxpayer.

Section 80. Section 59-1-1005 is amended to read:

59-1-1005. Suits against commission and its employees.

(1) A taxpayer may bring a civil suit against the commission for recovery of actual damages and costs incurred by the taxpayer if:

(a) the commission or one of its employees intentionally or recklessly takes possession of a taxpayer's property in disregard [~~to~~] of its published procedures, laws, or rules; or

(b) otherwise intentionally or recklessly disregards published procedures, laws, or rules.

(2) An award of actual damages and court costs in a suit under this section may not exceed $100,000.

(3) If the court finds that the civil action brought by the taxpayer is frivolous, the court may impose a penalty of up to $10,000 against the taxpayer.

Section 81. Section 59-2-507 is amended to read:

59-2-507. Land included as agricultural -- Site of farmhouse excluded -- Taxation of structures and site of farmhouse.

(1) Land under barns, sheds, silos, cribs, greenhouses and like structures, lakes, dams, ponds, streams, and irrigation ditches and like facilities is included in determining the total area of land actively devoted to agricultural use. Land which is under the farmhouse and land used in connection with the farmhouse[~~,~~] is excluded from that determination.

(2) All structures which are located on land in agricultural use, the farmhouse and the land on which the farmhouse is located, and land used in connection with the farmhouse, shall be valued, assessed, and taxed using the same standards, methods, and procedures that apply to other taxable structures and other land in the county.

Section 82. Section 59-2-509 is amended to read:

59-2-509. Change of ownership.

Continuance of valuation, assessment, and taxation under this part depends upon continuance of the land in agricultural use and compliance with

the other requirements of this part, and not upon continuance in the same owner of title to the land. Liability [~~to~~] for the rollback tax attaches when a change in use or other withdrawal of the land occurs, but not when a change in ownership of the title takes place, if the new owner both:

(1) continues the land in agricultural use under the conditions prescribed in this part; and

(2) files a new application for valuation, assessment, and taxation as provided in Section 59-2-508.

Section 83. Section 59-2-704 is amended to read:

59-2-704. Assessment studies -- Sharing of data -- Factoring assessment rates -- Corrective action.

(1) Each year, to assist in the evaluation of appraisal performance of taxable real property, the commission shall conduct and publish studies to determine the relationship between the market value shown on the assessment roll and the market value of real property in each county. The studies shall include measurements of uniformity within counties and use statistical methods established by the commission. County assessors may provide sales information to the commission for purposes of the studies. The commission shall make the sales and appraisal information related to the studies available to the assessors upon request.

(2) The commission shall, each year, order each county to adjust or factor its assessment rates using the most current studies so that the assessment rate in each county is in accordance with that prescribed in Section 59-2-103. The adjustment or factoring may include an entire county, geographical areas within a county, and separate classes of properties. Where significant value deviations occur, the commission shall also order corrective action.

(3) If the commission determines that sales data in any county is insufficient to perform the studies required under Subsection (1), the commission may conduct appraisals of property within that county.

(4) If a county fails to implement factoring or corrective action ordered under Subsection (2), the commission shall:

(a) implement the factoring or corrective action; and

(b) charge 100% of the reasonable implementation costs to that county.

(5) If a county disputes the factoring or corrective action ordered under Subsection (2), the matter may be mediated by the Multicounty Appraisal Trust.

(6) The commission may change the factor for any county which, after a hearing before the commission, establishes that the factor should properly be set at a different level for that county. The commission shall establish the method, procedure, and timetable for the hearings authorized under this section, including access to information to ensure a fair hearing. The commission may establish rules to implement this section.

Section 84. Section 59-2-1351.5 is amended to read:

59-2-1351.5. Disposition of property struck off to county.

(1) (a) All property acquired by the county under this part may be disposed of for a price and upon terms determined by the county legislative body.

(b) If property is sold under a contract of sale and title remains in the county, the equity of the purchaser shall be subject to taxation as other taxable property.

(c) The county clerk may execute deeds for all property sold under this subsection in the name of the county and attest the same by seal, vesting in the purchaser all of the title of all taxing entities in the real estate so sold.

(d) (i) Money received from the sale of property under this section shall first be applied to the cost of administering and supervising the property.

(ii) Any remaining money shall be apportioned to state and other taxing entities with an interest in the taxes last levied upon the property in proportion to their respective interests in the taxes.

(iii) The treasurer shall settle with the taxing entities on funds remaining as provided in Section 59-2-1366.

(iv) Money in excess of claims under this subsection shall be paid to the state treasurer and treated as unclaimed property under Title 67, Chapter 4a, Unclaimed Property Act.

(2) (a) The county legislative body may rent or lease any property held in the name of the county any time after the tax sale for a price and upon terms determined by the governing body.

(b) Lands leased may be sold at the discretion of the county executive, with the approval of the county legislative body, during the term of the lease, but any sale shall be made subject to the lease.

(c) The county executive, with the approval of the county legislative body, may enter into leasehold terms for asphalt, oil, or gas that the county considers to be in the best interest of the county as long as:

(i) the mineral, asphalt, oil, or gas is produced from, or attributable to, the property leased; and

(ii) each lease for oil and gas reserves a royalty of not less than 12-1/2%.

(d) If considered to be in the best interests of the county, the county executive may:

(i) enter into agreements for the pooling or unitizing of acreage with others for unit operations for the production of oil or gas, or both, and for the apportionment of oil or gas royalties, or both, on an acreage or other equitable basis; and

(ii) with the consent of its lessee, change any and all terms of leases issued by it to facilitate the efficient and economic production of oil and gas from the property under its jurisdiction.

(e) All leases for mineral, asphalt, or oil and gas already entered into by county governing bodies are ratified.

(3) (a) Money received as rents from the rental or leasing of property held in the name of the county shall first be applied to the cost of administering and supervising the property.

(b) Any remaining money shall be apportioned to state and other taxing entities with an interest in the taxes last levied upon the property in proportion to their respective interests in the taxes.

(c) The treasurer shall settle with the taxing entities on funds remaining as provided in Section 59-2-1366.

(d) Money in excess of these claims shall be paid to the state treasurer and treated as unclaimed property under Title 67, Chapter 4a, Unclaimed Property Act.

Section 85. Section 59-2-1354 is amended to read:

59-2-1354. Notice of intention to foreclose -- Service of notice.

Before the commencement of any action, 30 [~~days~~] days' written notice of intention to do so shall be given to the owner, if known, by enclosing the notice in an envelope plainly addressed to the owner at the owner's post office address, as shown on the last assessment roll of the county in which the real estate is located, postage prepaid. If the post office address of any owner does not appear on the assessment roll, notice shall be addressed to the owner at the general delivery at the post office in the city, town, or precinct where the real estate is located, postage prepaid. Service of the notice is complete when deposited in the United States mail.

Section 86. Section 59-2-1361 is amended to read:

59-2-1361. Notice of findings -- Proceedings in district court -- Injunction -- Determining taxes due -- Security during proceedings.

(1) (a) Notice that the commission has made a finding and declaration under Section 59-2-1359 shall be given to the owner of the property in the same manner as is provided by law for the giving of the notice of assessment by the commission.

(b) The notice required by this section shall include a notice of the location and time of the hearing in which the findings of the commission may be protested.

(c) (i) The hearing must be scheduled at least ten days after the mailing of the notice.

(ii) The owner, lessee, contractor, or operator of the property shall be afforded the opportunity to protest the commission's findings at the hearing.

(2) After the scheduled hearing, the taxes shall become immediately due and payable if any of the following occur:

(a) the owner, contractor, lessee, or operator of the property fails to appear at the hearing; or

(b) the commission sustains the findings.

(3) If the taxes are not paid within ten days from the date due, the commission may commence a proceeding in court in its name, but for the benefit of the state and the taxing entities interested in the taxes, in the district court of the county in which the property is located to determine the lien of the taxes and to foreclose the lien.

(4) In any proceeding the court may order any of the following:

(a) enjoin and restrain the destruction or removal of the property or any part of the property;

(b) appoint a receiver to operate the property; and

(c) order and direct that the proceeds from the property, or so much of it as may be necessary to pay the amount of the taxes, be withheld and impounded or paid on account of the taxes from time to time as the court may direct.

(5) In determining the amount of taxes due for any year for which the levy has not been fixed and for the purposes of the proceeding in court, the commission shall use the levy prevailing within the taxing entity where the property is located for the last preceding year.

(6) In any court proceeding brought to enforce the payment of taxes made due and payable under this section, the findings of the commission shall be for all purposes presumptive evidence of the necessity for the action for the protection of the public revenues and of the amount of taxes to be paid.

(7) (a) Payment of taxes due under this section will not be enforced through the proceedings authorized by this section prior to the expiration of the time otherwise allowed for payment of taxes if the owner, lessee, contractor, or other person operating the property furnishes security approved by the commission that the person will timely submit all required returns and tax payments.

(b) The commission may, from time to time, require additional security for the payment of taxes.

(8) The commission may promulgate rules to implement this section.

Section 87. Section 59-7-114 is amended to read:

59-7-114. Section 338, Internal Revenue Code -- Elections.

(1) Transactions for which an election has been made or considered to be made for federal purposes under Section 338, Internal Revenue Code, shall be treated as provided in this section. An election is not available for state purposes unless an election is made or considered to be made for federal purposes.

(2) If an election is made or considered to be made for federal purposes under Section 338, Internal

Revenue Code, other than under Subsection 338(h)(10):

(a) the target corporation shall file a separate entity one-day tax return for state purposes, as is required for federal purposes, and shall include in such return the gain or loss on the deemed sale of assets in its adjusted income;

(b) the gain or loss on the deemed sale of assets shall be apportioned to this state using the apportionment fraction of the target corporation calculated on a separate entity basis for the most recent preceding taxable year consisting of 180 days or more; and

(c) the due date of the one-day return shall be the same as the due date of the return which includes the taxable period of the target corporation which immediately precedes the one-day return.

(3) If an election is made for federal purposes under Subsection 338(h)(10), Internal Revenue Code, the following shall apply:

(a) if the target corporation is a member of a unitary group immediately preceding the acquisition date, the target corporation shall be included in a combined return to the extent of its income through the acquisition date, and the gain or loss on the deemed sale of assets shall be included in the combined income of the unitary group;

(b) if the target corporation is not a member of a unitary group immediately preceding the acquisition date, the target corporation shall file a short period return for the period ending on the acquisition date and shall include in such return the gain or loss on the deemed sale of assets in its adjusted income; and

(c) any gain or loss which is not recognized for federal purposes on stock sold or exchanged by a member of a selling consolidated group as defined in Section 338, Internal Revenue Code, may not be included in the adjusted income of the selling corporation.

(4) There is a rebuttable presumption that the gain or loss on the deemed sale of assets constitutes business income.

(5) The new basis of the target corporation's assets shall be determined under Section 338, Internal Revenue Code.

(6) The target corporation shall be treated as a new corporation as of the day after the acquisition date.

(7) The commission may prescribe such rules as necessary to provide for the equitable treatment of any transaction subject to Section 338, Internal Revenue Code.

Section 88. Section 59-7-612 is amended to read:

59-7-612. Credits for research activities conducted in the state -- Carry forward -- Commission to report modification or repeal of federal credits -- Tax Review Commission study.

(1) (a) For taxable years beginning on or after January 1, 1999, but beginning before December 31, 2010, a taxpayer meeting the requirements of this section shall qualify for the following nonrefundable credits for increasing research activities in this state:

(i) a research credit of 6% of the taxpayer's qualified research expenses for the current taxable year that exceed the base amount provided for under Subsection (4); and

(ii) a credit for payments to qualified organizations for basic research as provided in Section 41(e), Internal Revenue Code, of 6% for the current taxable year that exceed the base amount provided for under Subsection (4).

(b) If a taxpayer qualifying for a credit under Subsection (1)(a) seeks to claim the credit, the taxpayer shall:

(i) claim the credit or a portion of the credit for the taxable year immediately following the taxable year for which the taxpayer qualifies for the credit;

(ii) carry the credit or a portion of the credit forward as provided in Subsection (4)(f); or

(iii) claim a portion of the credit and carry forward a portion of the credit as provided in Subsections (1)(b)(i) and (ii).

(c) The credits provided for in this section do not include the alternative incremental credit provided for in Section 41(c)(4), Internal Revenue Code.

(2) For purposes of claiming a credit under this section, a unitary group as defined in Section 59-7-101 is considered to be one taxpayer.

(3) Except as specifically provided for in this section:

(a) the credits authorized under Subsection (1) shall be calculated as provided in Section 41, Internal Revenue Code; and

(b) the definitions provided in Section 41, Internal Revenue Code, apply in calculating the credits authorized under Subsection (1).

(4) For purposes of this section:

(a) the base amount shall be calculated as provided in Sections 41(c) and 41(h), Internal Revenue Code, except that:

(i) the base amount does not include the calculation of the alternative incremental credit provided for in Section 41(c)(4), Internal Revenue Code;

(ii) a taxpayer's gross receipts include only those gross receipts attributable to sources within this state as provided in Part 3, Allocation and Apportionment of Income -- Utah UDITPA Provisions; and

(iii) notwithstanding Section 41(c), Internal Revenue Code, for purposes of calculating the base amount, a taxpayer:

(A) may elect to be treated as a start-up company as provided in Section 41(c)(3)(B) regardless of whether the taxpayer meets the requirements of Section 41(c)(3)(B)(i)(I) or (II); and

(B) may not revoke an election to be treated as a start-up company under Subsection (4)(a)(iii)(A);

(b) "basic research" is as defined in Section 41(e)(7), Internal Revenue Code, except that the term includes only basic research conducted in this state;

(c) "qualified research" is as defined in Section 41(d), Internal Revenue Code, except that the term includes only qualified research conducted in this state;

(d) "qualified research expenses" is as defined and calculated in Section 41(b), Internal Revenue Code, except that the term includes only those expenses incurred in conducting qualified research in this state;

(e) notwithstanding the provisions of Section 41(h), Internal Revenue Code, the credits provided for in this section shall not terminate if the credits terminate under Section 41, Internal Revenue Code; and

(f) notwithstanding the provisions of Sections 39 and 41(g), Internal Revenue Code, governing the carry forward and carry back of federal tax credits, if the amount of a tax credit claimed by a taxpayer under this section exceeds the taxpayer's tax liability under this chapter for a taxable year, the amount of the credit exceeding the liability:

(i) may be carried forward for a period that does not exceed the next 14 taxable years; and

(ii) may not be carried back to a taxable year preceding the current taxable year.

(5) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may make rules for purposes of this section prescribing a certification process for qualified organizations to ensure that amounts paid to the qualified organizations are for basic research conducted in this state.

(6) If a federal tax credit under Section 41, Internal Revenue Code, is modified or repealed, the commission shall report the modification or repeal to the Tax Review Commission within 60 days after the day on which the modification or repeal becomes effective.

(7) (a) Except as provided in Subsection (7)(b), the Tax Review Commission shall review the credits provided for in this section on or before the earlier of:

(i) October 1 of the year after the year in which the commission reports under Subsection (6) a modification or repeal of a federal tax credit under Section 41, Internal Revenue Code; or

(ii) October 1, 2004.

(b) Notwithstanding Subsection (7)(a), the Tax Review Commission is not required to review the credits provided for in this section if the only modification to a federal tax credit under Section 41, Internal Revenue Code, is the extension of the termination date provided for in Section 41(h), Internal Revenue Code.

(c) The Tax Review Commission shall address in a review under this section the:

(i) cost of the credit;

(ii) purpose and effectiveness of the credit;

(iii) whether the credit benefits the state; and

(iv) whether the credit should be:

(A) continued;

(B) modified; or

(C) repealed.

(d) If the Tax Review Commission reviews the credits provided for in this section, the Tax Review Commission shall report its findings to the Revenue and Taxation Interim Committee on or before the November interim meeting of the year in which the Tax Review Commission reviews the credits.

Section 89. Section 59-10-540 is amended to read:

59-10-540. Transferees.

(1) The liability at law or in equity of a transferee of property of any person liable in respect of any tax (including additions to tax, penalties or interest) imposed by this chapter, shall be assessed, paid, and collected in the same manner and subject to the same provisions and limitations as in the case of the tax to which the liability relates, except that the period of limitations for assessment against the transferee shall be extended by one year for each successive transfer, in order of transfer (from the person originally liable to the transferee involved), but not by more than three years in the aggregate. As used in this section, "transferee" includes donee, heir, legatee, devisee, and distributee.

(2) (a) If, before the expiration of the period of limitations for assessment of liability of the transferee, a claim has been filed by the commission in any court against the person originally liable or the last preceding transferee, based upon the liability of the person originally liable, then the period of limitation for assessment of liability of the transferee shall in no event expire prior to one year after such claim has been finally allowed, disallowed, or otherwise disposed of.

(b) If, before expiration of the time prescribed in Subsection (1) or (2) (a) for the assessment of the liability, the commission and the transferee have both consented in writing to its assessment after such time, the liability may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. For the purpose of determining the period of limitation on credit or refund to the transferee of overpayments of tax made by such transferee or overpayments of tax made by the transferor as to

which the transferee is legally entitled to credit or refund, such agreement and any extension thereof are considered an agreement and extension thereof referred to in Section 59-10-516. If the agreement is executed after the expiration of the period of limitation for assessment against the original taxpayer, then in applying the limitations under Section 59-10-529 on the amount of the credit or refund, the periods specified in Section 59-10-529 shall be increased by the period from the date of such expiration to the date of the agreement.

(3) If any person is deceased, the period of limitation for assessment against him shall be the period that would be in effect if he had lived.

(4) Notwithstanding the provisions of Section 59-10-545 (relating to confidentiality of return information) the commission shall use its powers to make available to a transferee evidence necessary to enable the transferee to determine the liability of the original taxpayer and of any preceding transferees, but without undue hardship to the original taxpayer or preceding transferee.

Section 90. Section 59-10-541 is amended to read:

59-10-541. Violations -- Civil and criminal penalties.

(1) Every person who, without fraudulent intent, fails to make, render, sign, or verify any return, or to supply any information within the time required by or under the provisions of this chapter, is liable [~~to~~] for a penalty as provided in Section 59-1-401.

(2) It is unlawful for any person, with intent to evade any tax, to fail to timely remit the full amount of tax required by this chapter. A violation of this section is punishable as provided in Section 59-1-401.

(3) Any person who knowingly or intentionally makes, renders, signs, or verifies any false or fraudulent return or statement or supplies any false or fraudulent information is guilty of a criminal violation as provided in Section 59-1-401.

(4) Any person who, with intent to evade any tax or any requirement of this chapter, or any lawful requirement of the commission, fails to pay the tax, or to make, render, sign, or verify any return, or to supply any information, within the time required by or under this chapter, or who, with like intent, makes, renders, signs, or verifies any false or fraudulent return or statement, or supplies any false or fraudulent information, is liable [~~to~~] for a civil penalty as provided in Section 59-1-401, and is also guilty of a criminal violation as provided in Section 59-1-401.

Section 91. Section 59-10-603 is amended to read:

59-10-603. Business tax credit -- Limitations.

(1) (a) A business entity that purchases and completes or participates in the financing of a residential energy system to supply all or part of the energy required for a residential unit owned or used by the business entity and situated in Utah is entitled to a tax credit as provided in this Subsection (1).

(b) (i) A business entity is entitled to a tax credit equal to 25% of the costs of a residential energy system installed with respect to each residential unit it owns or uses, including installation costs, against any tax due under this chapter for the taxable year in which the energy system is completed and placed in service.

(ii) The total amount of the credit under this Subsection (1) may not exceed [$] $2,000 per residential unit.

(iii) The credit under this Subsection (1) is allowed for any residential energy system completed and placed in service on or after January 1, 1997, but prior to January 1, 2001.

(c) If a business entity sells a residential unit to an individual taxpayer prior to making a claim for the tax credit under this Subsection (1), the business entity may:

(i) assign its right to this tax credit to the individual taxpayer; and

(ii) if the business entity assigns its right to the tax credit to an individual taxpayer under Subsection (1)(c)(i), the individual taxpayer may claim the tax credit as if the individual taxpayer had completed or participated in the costs of the residential energy system under Section 59-10-602.

(2) (a) A business entity that purchases or participates in the financing of a commercial energy system is entitled to a tax credit as provided in this Subsection (2) if:

(i) the commercial energy system supplies all or part of the energy required by commercial units owned or used by the business entity; or

(ii) the business entity sells all or part of the energy produced by the commercial energy system as a commercial enterprise.

(b) (i) A business entity is entitled to a tax credit equal to 10% of the costs of any commercial energy system installed, including installation costs, against any tax due under this chapter for the taxable year in which the commercial energy system is completed and placed in service.

(ii) The total amount of the credit under this Subsection (2) may not exceed $50,000 per commercial unit.

(iii) The credit under this Subsection (2) is allowed for any commercial energy system completed and placed in service on or after January 1, 1997, but prior to January 1, 2001.

(c) A business entity that leases a commercial energy system installed on a commercial unit is eligible for the tax credit under this Subsection (2) if the lessee can confirm that the lessor irrevocably elects not to claim the credit.

(d) Only the principal recovery portion of the lease payments, which is the cost incurred by a

business entity in acquiring a commercial energy system, excluding interest charges and maintenance expenses, is eligible for the tax credit under this Subsection (2).

(e) A business entity that leases a commercial energy system is eligible to use the tax credit under this Subsection (2) for a period no greater than seven years from the initiation of the lease.

(3) (a) A tax credit under this section may be claimed for the taxable year in which the energy system is completed and placed in service.

(b) Additional energy systems or parts of energy systems may be claimed for subsequent years.

(c) If the amount of a tax credit under this section exceeds a business entity's tax liability under this chapter for a taxable year, the amount of the credit exceeding the liability may be carried over for a period which does not exceed the next four taxable years.

Section 92. Section 59-12-102 (Effective 07/01/01) is amended to read:

59-12-102 (Effective 07/01/01). Definitions.

As used in this chapter:

(1) (a) "Admission or user fees" includes season passes.

(b) "Admission or user fees" does not include annual membership dues to private organizations.

(2) "Area agency on aging" is as defined in Section 62A-3-101.

(3) "Authorized carrier" means:

(a) in the case of vehicles operated over public highways, the holder of credentials indicating that the vehicle is or will be operated pursuant to both the International Registration Plan (IRP) and the International Fuel Tax Agreement (IFTA);

(b) in the case of aircraft, the holder of a Federal Aviation Administration (FAA) operating certificate or air carrier's operating certificate; or

(c) in the case of locomotives, freight cars, railroad work equipment, or other rolling stock, the holder of a certificate issued by the United States Interstate Commerce Commission.

(4) (a) For purposes of Subsection 59-12-104(43), "coin-operated amusement device" means:

(i) a coin-operated amusement, skill, or ride device;

(ii) that is not controlled through vendor-assisted, over-the-counter, sales of tokens; and

(iii) includes a music machine, pinball machine, billiard machine, video game machine, arcade machine, and a mechanical or electronic skill game or ride.

(b) For purposes of Subsection 59-12-104(43), "coin-operated amusement device" does not mean a coin-operated amusement device possessing a coinage mechanism that:

(i) accepts and registers multiple denominations of coins; and

(ii) allows the vendor to collect the sales and use tax at the time an amusement device is activated and operated by a person inserting coins into the device.

(5) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other fuels that does not constitute industrial use under Subsection (13) or residential use under Subsection (21).

(6) (a) "Common carrier" means a person engaged in or transacting the business of transporting passengers, freight, merchandise, or other property for hire within this state.

(b) (i) "Common carrier" does not include a person who, at the time the person is traveling to or from that person's place of employment, transports a passenger to or from the passenger's place of employment.

(ii) For purposes of Subsection (6)(b)(i), in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may make rules defining what constitutes a person's place of employment.

(7) "Component part" includes:

(a) poultry, dairy, and other livestock feed, and their components;

(b) baling ties and twine used in the baling of hay and straw;

(c) fuel used for providing temperature control of orchards and commercial greenhouses doing a majority of their business in wholesale sales, and for providing power for off-highway type farm machinery; and

(d) feed, seeds, and seedlings.

(8) "Construction materials" means any tangible personal property that will be converted into real property.

(9) (a) "Fundraising sales" means sales:

(i) (A) made by a public or private elementary or secondary school; or

(B) made by a public or private elementary or secondary school student, grades kindergarten through 12;

(ii) that are for the purpose of raising funds for the school to purchase equipment, materials, or provide transportation; and

(iii) that are part of an officially sanctioned school activity.

(b) For purposes of Subsection (9)(a)(iii), "officially sanctioned school activity" means a school activity:

(i) that is conducted in accordance with a formal policy adopted by the school or school district

governing the authorization and supervision of fundraising activities;

(ii) that does not directly or indirectly compensate an individual teacher or other educational personnel by direct payment, commissions, or payment in kind; and

(iii) the net or gross revenues from which are deposited in a dedicated account controlled by the school or school district.

(10) (a) "Hearing aid" means:

(i) an instrument or device having an electronic component that is designed to:

(A) (I) improve impaired human hearing; or

(II) correct impaired human hearing; and

(B) (I) be worn in the human ear; or

(II) affixed behind the human ear;

(ii) an instrument or device that is surgically implanted into the cochlea; or

(iii) a telephone amplifying device.

(b) "Hearing aid" does not include:

(i) except as provided in Subsection (10)(a)(i)(B) or (10)(a)(ii), an instrument or device having an electronic component that is designed to be worn on the body;

(ii) except as provided in Subsection (10)(a)(iii), an assistive listening device or system designed to be used by one individual, including:

(A) a personal amplifying system;

(B) a personal FM system;

(C) a television listening system; or

(D) a device or system similar to a device or system described in Subsections (10)(b)(ii)(A) through (C); or

(iii) an assistive listening device or system designed to be used by more than one individual, including:

(A) a device or system installed in:

(I) an auditorium;

(II) a church;

(III) a conference room;

(IV) a synagogue; or

(V) a theater; or

(B) a device or system similar to a device or system described in Subsections (10)(b)(iii)(A)(I) through (V).

(11) (a) "Hearing aid accessory" means a hearing aid:

(i) component;

(ii) attachment; or

(iii) accessory.

(b) "Hearing aid accessory" includes:

(i) a hearing aid neck loop;

(ii) a hearing aid cord;

(iii) a hearing aid ear mold;

(iv) hearing aid tubing;

(v) a hearing aid ear hook; or

(vi) a hearing aid remote control.

(c) "Hearing aid accessory" does not include:

(i) a component, attachment, or accessory designed to be used only with an:

(A) instrument or device described in Subsection (10)(b)(i); or

(B) assistive listening device or system described in Subsection (10)(b)(ii) or (iii); or

(ii) a hearing aid battery.

(12) (a) "Home medical equipment and supplies" means equipment and supplies that:

(i) a licensed physician prescribes or authorizes in writing as necessary for the treatment of a medical illness or injury or as necessary to mitigate an impairment resulting from illness or injury;

(ii) are used exclusively by the person for whom they are prescribed to serve a medical purpose; and

(iii) are listed as eligible for payment under Title 18 of the federal Social Security Act or under the state plan for medical assistance under Title 19 of the federal Social Security Act.

(b) "Home medical equipment and supplies" does not include:

(i) equipment and supplies purchased by, for, or on behalf of any health care facility, as defined in Subsection (12)(c), doctor, nurse, or other health care provider for use in their professional practice;

(ii) eyeglasses, contact lenses, or equipment to correct impaired vision; or

(iii) hearing aids or hearing aid accessories.

(c) For purposes of Subsection (12)(b)(i), "health care facility" includes:

(i) a clinic;

(ii) a doctor's office; and

(iii) a health care facility as defined in Section 26-21-2.

(13) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil, or other fuels in:

(a) mining or extraction of minerals;

(b) agricultural operations to produce an agricultural product up to the time of harvest or placing the agricultural product into a storage facility, including:

(i) commercial greenhouses;

(ii) irrigation pumps;

(iii) farm machinery;

(iv) implements of husbandry as defined in Subsection 41-1a-102(23) that are not registered under Title 41, Chapter 1a, Part 2, Registration; and

(v) other farming activities; and

(c) manufacturing tangible personal property at an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget.

(14) "Manufactured home" means any manufactured home or mobile home as defined in Title 58, Chapter 56, Utah Uniform Building Standards Act.

(15) For purposes of Subsection 59-12-104(14), "manufacturing facility" means:

(a) an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget; or

(b) a scrap recycler if:

(i) from a fixed location, the scrap recycler utilizes machinery or equipment to process one or more of the following items into prepared grades of processed materials for use in new products:

(A) iron;

(B) steel;

(C) nonferrous metal;

(D) paper;

(E) glass;

(F) plastic;

(G) textile; or

(H) rubber; and

(ii) the new products under Subsection (15)(b)(i) would otherwise be made with nonrecycled materials.

(16) (a) "Medicine" means:

(i) insulin, syringes, and any medicine prescribed for the treatment of human ailments by a person authorized to prescribe treatments and dispensed on prescription filled by a registered pharmacist, or supplied to patients by a physician, surgeon, or podiatric physician;

(ii) any medicine dispensed to patients in a county or other licensed hospital if prescribed for that patient and dispensed by a registered pharmacist or administered under the direction of a physician; and

(iii) any oxygen or stoma supplies prescribed by a physician or administered under the direction of a physician or paramedic.

(b) "Medicine" does not include:

(i) any auditory, prosthetic, ophthalmic, or ocular device or appliance; or

(ii) any alcoholic beverage.

(17) "Olympic merchandise" means tangible personal property bearing an Olympic designation, emblem, insignia, mark, logo, service mark, symbol, terminology, trademark, or other copyrighted or protected material, including:

(a) one or more of the following terms:

(i) "Olympic";

(ii) "Olympiad"; or

(iii) "Citius Altius Fortius";

(b) the symbol of the International Olympic Committee, consisting of five interlocking rings;

(c) the emblem of the International Olympic Committee Corporation;

(d) a United States Olympic Committee designation, emblem, insignia, mark, logo, service mark, symbol, terminology, trademark, or other copyrighted or protected material;

(e) any emblem of the Olympic Winter Games of 2002 that is officially designated by the Salt Lake Organizing Committee of the Olympic Winter Games of 2002; or

(f) the mascot of the Olympic Winter Games of 2002.

(18) (a) "Other fuels" means products that burn independently to produce heat or energy.

(b) "Other fuels" includes oxygen when it is used in the manufacturing of tangible personal property.

(19) "Person" includes any individual, firm, partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city, municipality, district, or other local governmental entity of the state, or any group or combination acting as a unit.

(20) "Purchase price" means the amount paid or charged for tangible personal property or any other taxable transaction under Subsection 59-12-103(1), excluding only cash discounts taken or any excise tax imposed on the purchase price by the federal government.

(21) "Residential use" means the use in or around a home, apartment building, sleeping quarters, and similar facilities or accommodations.

(22) (a) "Retail sale" means any sale within the state of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), other than resale of such property, item, or service by a retailer or wholesaler to a user or consumer.

(b) "Retail sale" includes sales by any farmer or other agricultural producer of poultry, eggs, or dairy products to consumers if the sales have an average monthly sales value of $125 or more.

(c) "Retail sale" does not include, and no additional sales or use tax shall be assessed against, those transactions where a purchaser of tangible personal property pays applicable sales or use taxes on its initial nonexempt purchases of property and then enters into a sale-leaseback transaction by which title to such property is transferred by the purchaser-lessee to a lessor for consideration, provided:

(i) the transaction is intended as a form of financing for the property to the purchaser-lessee; and

(ii) pursuant to generally accepted accounting principles, the purchaser-lessee is required to capitalize the subject property for financial reporting purposes, and account for the lease payments as payments made under a financing arrangement.

(23) (a) "Retailer" means any person engaged in a regularly organized retail business in tangible personal property or any other taxable transaction under Subsection 59-12-103(1), and who is selling to the user or consumer and not for resale.

(b) "Retailer" includes commission merchants, auctioneers, and any person regularly engaged in the business of selling to users or consumers within the state.

(c) "Retailer" does not include farmers, gardeners, stockmen, poultrymen, or other growers or agricultural producers producing and doing business on their own premises, except those who are regularly engaged in the business of buying or selling for a profit.

(d) For purposes of this chapter the commission may regard as retailers the following if they determine it is necessary for the efficient administration of this chapter: salesmen, representatives, peddlers, or canvassers as the agents of the dealers, distributors, supervisors, or employers under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of these dealers, distributors, supervisors, or employers, except that:

(i) a printer's facility with which a retailer has contracted for printing shall not be considered to be a salesman, representative, peddler, canvasser, or agent of the retailer; and

(ii) the ownership of property that is located at the premises of a printer's facility with which the retailer has contracted for printing and that consists of the final printed product, property that becomes a part of the final printed product, or copy from which the printed product is produced, shall not result in the retailer being deemed to have or maintain an office, distribution house, sales house, warehouse, service enterprise, or other place of business, or to maintain a stock of goods, within this state.

(24) "Sale" means any transfer of title, exchange, or barter, conditional or otherwise, in any manner, of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), for consideration. It includes:

(a) installment and credit sales;

(b) any closed transaction constituting a sale;

(c) any sale of electrical energy, gas, services, or entertainment taxable under this chapter;

(d) any transaction if the possession of property is transferred but the seller retains the title as security for the payment of the price; and

(e) any transaction under which right to possession, operation, or use of any article of tangible personal property is granted under a lease or contract and the transfer of possession would be taxable if an outright sale were made.

(25) (a) "Sales relating to schools" means sales by a public school district or public or private elementary or secondary school, grades kindergarten through 12, that are directly related to the school's or school district's educational functions or activities and include:

(i) the sale of textbooks, textbook fees, laboratory fees, laboratory supplies, and safety equipment;

(ii) the sale of clothing that:

(A) a student is specifically required to wear as a condition of participation in a school-related event or activity; and

(B) is not readily adaptable to general or continued usage to the extent that it takes the place of ordinary clothing;

(iii) sales of food if the net or gross revenues generated by the food sales are deposited into a school district fund or school fund dedicated to school meals; and

(iv) transportation charges for official school activities.

(b) "Sales relating to schools" does not include:

(i) gate receipts;

(ii) special event admission fees;

(iii) bookstore sales of items that are not educational materials or supplies; and

(iv) except as provided in Subsection (25)(a)(ii), clothing.

(26) "Senior citizen center" means a facility having the primary purpose of providing services to the aged as defined in Section 62A-3-101.

(27) "State" means the state of Utah, its departments, and agencies.

(28) "Storage" means any keeping or retention of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), in this state for any purpose except sale in the regular course of business.

(29) (a) "Tangible personal property" means:

(i) all goods, wares, merchandise, produce, and commodities;

(ii) all tangible or corporeal things and substances which are dealt in or capable of being possessed or exchanged;

(iii) water in bottles, tanks, or other containers; and

(iv) all other physically existing articles or things, including property severed from real estate.

(b) "Tangible personal property" does not include:

(i) real estate or any interest or improvements in real estate;

(ii) bank accounts, stocks, bonds, mortgages, notes, and other evidence of debt;

(iii) insurance certificates or policies;

(iv) personal or governmental licenses;

(v) water in pipes, conduits, ditches, or reservoirs;

(vi) currency and coinage constituting legal tender of the United States or of a foreign nation; and

(vii) all gold, silver, or platinum ingots, bars, medallions, or decorative coins, not constituting legal tender of any nation, with a gold, silver, or platinum content of not less than 80%.

(30) (a) "Use" means the exercise of any right or power over tangible personal property under Subsection 59-12-103(1), incident to the ownership or the leasing of that property, item, or service.

(b) "Use" does not include the sale, display, demonstration, or trial of that property in the regular course of business and held for resale.

(31) "Vehicle" means any aircraft, as defined in Section 72-10-102; any vehicle, as defined in Section 41-1a-102; any off-highway vehicle, as defined in Section 41-22-2; and any vessel, as defined in Section 41-1a-102; that is required to be titled, registered, or both. "Vehicle," for purposes of Subsection 59-12-104(36) only, also includes any locomotive, freight car, railroad work equipment, or other railroad rolling stock.

(32) "Vehicle dealer" means a person engaged in the business of buying, selling, or exchanging vehicles as defined in Subsection (31).

(33) (a) "Vendor" means any person receiving any payment or consideration upon a sale of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), or to whom the payment or consideration is payable.

(b) "Vendor" does not mean a printer's facility described in Subsection (23)(d).

Section 93. Section 59-12-102 (Superseded 07/01/01) is amended to read:

59-12-102 (Superseded 07/01/01). Definitions.

As used in this chapter:

(1) (a) "Admission or user fees" includes season passes.

(b) "Admission or user fees" does not include annual membership dues to private organizations.

(2) "Area agency on aging" is as defined in Section 62A-3-101.

(3) "Authorized carrier" means:

(a) in the case of vehicles operated over public highways, the holder of credentials indicating that the vehicle is or will be operated pursuant to both the International Registration Plan (IRP) and the International Fuel Tax Agreement (IFTA);

(b) in the case of aircraft, the holder of a Federal Aviation Administration (FAA) operating certificate or air carrier's operating certificate; or

(c) in the case of locomotives, freight cars, railroad work equipment, or other rolling stock, the holder of a certificate issued by the United States Interstate Commerce Commission.

(4) (a) For purposes of Subsection 59-12-104 (43), "coin-operated amusement device" means:

(i) a coin-operated amusement, skill, or ride device;

(ii) that is not controlled through vendor-assisted, over-the-counter, sales of tokens; and

(iii) includes a music machine, pinball machine, billiard machine, video game machine, arcade machine, and a mechanical or electronic skill game or ride.

(b) For purposes of Subsection 59-12-104 (43), "coin-operated amusement device" does not mean a coin-operated amusement device possessing a coinage mechanism that:

(i) accepts and registers multiple denominations of coins; and

(ii) allows the vendor to collect the sales and use tax at the time an amusement device is activated and operated by a person inserting coins into the device.

(5) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other fuels that does not constitute industrial use under Subsection (13) or residential use under Subsection (21).

(6) (a) "Common carrier" means a person engaged in or transacting the business of transporting passengers, freight, merchandise, or other property for hire within this state.

(b) (i) "Common carrier" does not include a person who, at the time the person is traveling to or from that person's place of employment, transports a passenger to or from the passenger's place of employment.

(ii) For purposes of Subsection (6)(b)(i), in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may make rules defining what constitutes a person's place of employment.

(7) "Component part" includes:

(a) poultry, dairy, and other livestock feed, and their components;

(b) baling ties and twine used in the baling of hay and straw;

(c) fuel used for providing temperature control of orchards and commercial greenhouses doing a majority of their business in wholesale sales, and for providing power for off-highway type farm machinery; and

(d) feed, seeds, and seedlings.

(8) "Construction materials" means any tangible personal property that will be converted into real property.

(9) (a) "Fundraising sales" means sales:

(i) (A) made by a public or private elementary or secondary school; or

(B) made by a public or private elementary or secondary school student, grades kindergarten through 12;

(ii) that are for the purpose of raising funds for the school to purchase equipment, materials, or provide transportation; and

(iii) that are part of an officially sanctioned school activity.

(b) For purposes of Subsection (9)(a)(iii), "officially sanctioned school activity" means a school activity:

(i) that is conducted in accordance with a formal policy adopted by the school or school district governing the authorization and supervision of fundraising activities;

(ii) that does not directly or indirectly compensate an individual teacher or other educational personnel by direct payment, commissions, or payment in kind; and

(iii) the net or gross revenues from which are deposited in a dedicated account controlled by the school or school district.

(10) (a) "Hearing aid" means:

(i) an instrument or device having an electronic component that is designed to:

(A) (I) improve impaired human hearing; or

(II) correct impaired human hearing; and

(B) (I) be worn in the human ear; or

(II) affixed behind the human ear;

(ii) an instrument or device that is surgically implanted into the cochlea; or

(iii) a telephone amplifying device.

(b) "Hearing aid" does not include:

(i) except as provided in Subsection (10)(a)(i)(B) or (10)(a)(ii), an instrument or device having an electronic component that is designed to be worn on the body;

(ii) except as provided in Subsection (10)(a)(iii), an assistive listening device or system designed to be used by one individual, including:

(A) a personal amplifying system;

(B) a personal FM system;

(C) a television listening system; or

(D) a device or system similar to a device or system described in Subsections (10)(b)(ii)(A) through (C); or

(iii) an assistive listening device or system designed to be used by more than one individual, including:

(A) a device or system installed in:

(I) an auditorium;

(II) a church;

(III) a conference room;

(IV) a synagogue; or

(V) a theater; or

(B) a device or system similar to a device or system described in Subsections (10)(b)(iii)(A)(I) through (V).

(11) (a) "Hearing aid accessory" means a hearing aid:

(i) component;

(ii) attachment; or

(iii) accessory.

(b) "Hearing aid accessory" includes:

(i) a hearing aid neck loop;

(ii) a hearing aid cord;

(iii) a hearing aid ear mold;

(iv) hearing aid tubing;

(v) a hearing aid ear hook; or

(vi) a hearing aid remote control.

(c) "Hearing aid accessory" does not include:

(i) a component, attachment, or accessory designed to be used only with an:

(A) instrument or device described in Subsection (10)(b)(i); or

(B) assistive listening device or system described in Subsection (10)(b)(ii) or (iii); or

(ii) a hearing aid battery.

(12) (a) "Home medical equipment and supplies" means equipment and supplies that:

(i) a licensed physician prescribes or authorizes in writing as necessary for the treatment of a medical illness or injury or as necessary to mitigate an impairment resulting from illness or injury;

(ii) are used exclusively by the person for whom they are prescribed to serve a medical purpose; and

(iii) are listed as eligible for payment under Title 18 of the federal Social Security Act or under the state plan for medical assistance under Title 19 of the federal Social Security Act.

(b) "Home medical equipment and supplies" does not include:

(i) equipment and supplies purchased by, for, or on behalf of any health care facility, as defined in Subsection (12)(c), doctor, nurse, or other health care provider for use in their professional practice;

(ii) eyeglasses, contact lenses, or equipment to correct impaired vision; or

(iii) hearing aids or hearing aid accessories.

(c) For purposes of Subsection (12)(b)(i), "health care facility" includes:

(i) a clinic;

(ii) a doctor's office; and

(iii) a health care facility as defined in Section 26-21-2.

(13) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil, or other fuels in:

(a) mining or extraction of minerals;

(b) agricultural operations to produce an agricultural product up to the time of harvest or placing the agricultural product into a storage facility, including:

(i) commercial greenhouses;

(ii) irrigation pumps;

(iii) farm machinery;

(iv) implements of husbandry as defined in Subsection 41-1a-102(23) that are not registered under Title 41, Chapter 1a, Part 2, Registration; and

(v) other farming activities; and

(c) manufacturing tangible personal property at an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget.

(14) "Manufactured home" means any manufactured home or mobile home as defined in Title 58, Chapter 56, Utah Uniform Building Standards Act.

(15) For purposes of Subsection 59-12-104(14), "manufacturing facility" means:

(a) an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget; or

(b) a scrap recycler if:

(i) from a fixed location, the scrap recycler utilizes machinery or equipment to process one or more of the following items into prepared grades of processed materials for use in new products:

(A) iron;

(B) steel;

(C) nonferrous metal;

(D) paper;

(E) glass;

(F) plastic;

(G) textile; or

(H) rubber; and

(ii) the new products under Subsection (15)(b)(i) would otherwise be made with nonrecycled materials.

(16) (a) "Medicine" means:

(i) insulin, syringes, and any medicine prescribed for the treatment of human ailments by a person authorized to prescribe treatments and dispensed on prescription filled by a registered pharmacist, or supplied to patients by a physician, surgeon, or podiatric physician;

(ii) any medicine dispensed to patients in a county or other licensed hospital if prescribed for that patient and dispensed by a registered pharmacist or administered under the direction of a physician; and

(iii) any oxygen or stoma supplies prescribed by a physician or administered under the direction of a physician or paramedic.

(b) "Medicine" does not include:

(i) any auditory, prosthetic, ophthalmic, or ocular device or appliance; or

(ii) any alcoholic beverage.

(17) "Olympic merchandise" means tangible personal property bearing an Olympic designation, emblem, insignia, mark, logo, service mark, symbol, terminology, trademark, or other copyrighted or protected material, including:

(a) one or more of the following terms:

(i) "Olympic[;]";

(ii) "Olympiad[;]"; or

(iii) "Citius Altius Fortius[;]";

(b) the symbol of the International Olympic Committee, consisting of five interlocking rings;

(c) the emblem of the International Olympic Committee Corporation;

(d) a United States Olympic Committee designation, emblem, insignia, mark, logo, service mark, symbol, terminology, trademark, or other copyrighted or protected material;

(e) any emblem of the Winter Olympic Games of 2002 that is officially designated by the Salt Lake Organizing Committee of the Winter Olympic Games of 2002; or

(f) the mascot of the Winter Olympic Games of 2002.

(18) (a) "Other fuels" means products that burn independently to produce heat or energy.

(b) "Other fuels" includes oxygen when it is used in the manufacturing of tangible personal property.

(19) "Person" includes any individual, firm, partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city, municipality, district, or other local governmental entity of the state, or any group or combination acting as a unit.

(20) "Purchase price" means the amount paid or charged for tangible personal property or any other taxable item or service under Subsection 59-12-103(1), excluding only cash discounts taken or any excise tax imposed on the purchase price by the federal government.

(21) "Residential use" means the use in or around a home, apartment building, sleeping quarters, and similar facilities or accommodations.

(22) (a) "Retail sale" means any sale within the state of tangible personal property or any other taxable item or service under Subsection 59-12-103(1), other than resale of such property, item, or service by a retailer or wholesaler to a user or consumer.

(b) "Retail sale" includes sales by any farmer or other agricultural producer of poultry, eggs, or dairy products to consumers if the sales have an average monthly sales value of $125 or more.

(c) "Retail sale" does not include, and no additional sales or use tax shall be assessed against, those transactions where a purchaser of tangible personal property pays applicable sales or use taxes on its initial nonexempt purchases of property and then enters into a sale-leaseback transaction by which title to such property is transferred by the purchaser-lessee to a lessor for consideration, provided:

(i) the transaction is intended as a form of financing for the property to the purchaser-lessee; and

(ii) pursuant to generally accepted accounting principles, the purchaser-lessee is required to capitalize the subject property for financial reporting purposes, and account for the lease payments as payments made under a financing arrangement.

(23) (a) "Retailer" means any person engaged in a regularly organized retail business in tangible personal property or any other taxable item or service under Subsection 59-12-103(1), and who is selling to the user or consumer and not for resale.

(b) "Retailer" includes commission merchants, auctioneers, and any person regularly engaged in the business of selling to users or consumers within the state.

(c) "Retailer" includes any person who engages in regular or systematic solicitation of a consumer market in this state by the distribution of catalogs, periodicals, advertising flyers, or other advertising, or by means of print, radio or television media, by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system.

(d) "Retailer" does not include farmers, gardeners, stockmen, poultrymen, or other growers or agricultural producers producing and doing business on their own premises, except those who are regularly engaged in the business of buying or selling for a profit.

(e) For purposes of this chapter the commission may regard as retailers the following if they determine it is necessary for the efficient administration of this chapter: salesmen, representatives, peddlers, or canvassers as the agents of the dealers, distributors, supervisors, or employers under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of these dealers, distributors, supervisors, or employers, except that:

(i) a printer's facility with which a retailer has contracted for printing shall not be considered to be a salesman, representative, peddler, canvasser, or agent of the retailer; and

(ii) the ownership of property that is located at the premises of a printer's facility with which the retailer has contracted for printing and that consists of the final printed product, property that becomes a part of the final printed product, or copy from which the printed product is produced, shall not result in the retailer being deemed to have or maintain an office, distribution house, sales house, warehouse, service enterprise, or other place of business, or to maintain a stock of goods, within this state.

(24) "Sale" means any transfer of title, exchange, or barter, conditional or otherwise, in any manner, of tangible personal property or any other taxable item or service under Subsection 59-12-103(1), for a consideration. It includes:

(a) installment and credit sales;

(b) any closed transaction constituting a sale;

(c) any sale of electrical energy, gas, services, or entertainment taxable under this chapter;

(d) any transaction if the possession of property is transferred but the seller retains the title as security for the payment of the price; and

(e) any transaction under which right to possession, operation, or use of any article of tangible personal property is granted under a lease or contract and the transfer of possession would be taxable if an outright sale were made.

(25) (a) "Sales relating to schools" means sales by a public school district or public or private elementary or secondary school, grades kindergarten through 12, that are directly related to the school's or school district's educational functions or activities and include:

(i) the sale of textbooks, textbook fees, laboratory fees, laboratory supplies, and safety equipment;

(ii) the sale of clothing that:

(A) a student is specifically required to wear as a condition of participation in a school-related event or activity; and

(B) is not readily adaptable to general or continued usage to the extent that it takes the place of ordinary clothing;

(iii) sales of food if the net or gross revenues generated by the food sales are deposited into a school district fund or school fund dedicated to school meals; and

(iv) transportation charges for official school activities.

(b) "Sales relating to schools" does not include:

(i) gate receipts;

(ii) special event admission fees;

(iii) bookstore sales of items that are not educational materials or supplies; and

(iv) except as provided in Subsection (25)(a)(ii), clothing.

(26) "Senior citizen center" means a facility having the primary purpose of providing services to the aged as defined in Section 62A-3-101.

(27) "State" means the state of Utah, its departments, and agencies.

(28) "Storage" means any keeping or retention of tangible personal property or any other taxable item or service under Subsection 59-12-103(1), in this state for any purpose except sale in the regular course of business.

(29) (a) "Tangible personal property" means:

(i) all goods, wares, merchandise, produce, and commodities;

(ii) all tangible or corporeal things and substances which are dealt in or capable of being possessed or exchanged;

(iii) water in bottles, tanks, or other containers; and

(iv) all other physically existing articles or things, including property severed from real estate.

(b) "Tangible personal property" does not include:

(i) real estate or any interest or improvements in real estate;

(ii) bank accounts, stocks, bonds, mortgages, notes, and other evidence of debt;

(iii) insurance certificates or policies;

(iv) personal or governmental licenses;

(v) water in pipes, conduits, ditches, or reservoirs;

(vi) currency and coinage constituting legal tender of the United States or of a foreign nation; and

(vii) all gold, silver, or platinum ingots, bars, medallions, or decorative coins, not constituting legal tender of any nation, with a gold, silver, or platinum content of not less than 80%.

(30) (a) "Use" means the exercise of any right or power over tangible personal property under Subsection 59-12-103(1), incident to the ownership or the leasing of that property, item, or service.

(b) "Use" does not include the sale, display, demonstration, or trial of that property in the regular course of business and held for resale.

(31) "Vehicle" means any aircraft, as defined in Section 72-10-102; any vehicle, as defined in Section 41-1a-102; any off-highway vehicle, as defined in Section 41-22-2; and any vessel, as defined in Section 41-1a-102; that is required to be titled, registered, or both. "Vehicle," for purposes of Subsection 59-12-104(36) only, also includes any locomotive, freight car, railroad work equipment, or other railroad rolling stock.

(32) "Vehicle dealer" means a person engaged in the business of buying, selling, or exchanging vehicles as defined in Subsection (31).

(33) (a) "Vendor" means:

(i) any person receiving any payment or consideration upon a sale of tangible personal property or any other taxable item or service under Subsection 59-12-103(1), or to whom such payment or consideration is payable; and

(ii) any person who engages in regular or systematic solicitation of a consumer market in this state by the distribution of catalogs, periodicals, advertising flyers, or other advertising, or by means of print, radio or television media, by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system.

(b) "Vendor" does not mean a printer's facility described in Subsection (23)(e).

Section 94. Section 59-12-111 is amended to read:

59-12-111. Licensee to keep records -- Failure to make return -- Penalties.

(1) Each person engaging or continuing in any business in this state for the transaction of which a license is required under this chapter shall:

(a) keep and preserve suitable records of all sales made by the person and other books or accounts necessary to determine the amount of tax for the collection of which the person is liable under this chapter in a form prescribed by the commission;

(b) keep and preserve for a period of three years all such books, invoices, and other records; and

(c) open such records for examination at any time by the commission or its duly authorized agent.

(2) If no return is made by any person required to make returns as provided in this chapter, the commission shall give written [~~notices~~] notice to the person to make the return within a reasonable time to be designated by the commission or, alternatively, the commission may make an estimate for the period or periods or any part thereof in respect to which the person failed to make a return, based upon any information in its possession or that may come into its possession of the total sales subject to the tax imposed by this chapter. Upon the basis of this estimate the

commission may compute and determine the amount of tax required to be paid to the state. The return shall be prima facie correct for the purposes of this chapter and the amount of the tax due thereon shall be subject to the penalties and interest as provided in Sections 59-1-401 and 59-1-402. Promptly thereafter the commission shall give to the person written notice of the estimate, determination, penalty, and interest.

(3) If any person not holding a sales tax license under Section 59-12-106 or a valid use tax registration certificate makes a purchase of tangible personal property for storage, use, or other consumption in this state and fails to file a return or pay the tax due within 170 days from the time the return is due, this person shall pay a penalty as provided in Section 59-1-401 plus interest at the rate and in the manner prescribed in Section 59-1-402 and all other penalties and interest as provided by this title.

Section 95. Section 59-12-117 is amended to read:

59-12-117. Refusal to make or falsifying returns -- Penalties -- Criminal violations.

(1) It is unlawful for any vendor to refuse to make any return [~~provided~~] required to be made in this chapter or to make any false or fraudulent return or false statement on any return or to evade the payment of the tax, or any part thereof imposed by this chapter or for any person to aid or abet another in any attempt to evade the payment of the tax or any part imposed by this chapter. Any person violating any of the provisions of this chapter, except as provided in Section 59-12-107, shall be guilty of a criminal violation as provided in Section 59-1-401. In addition to the foregoing penalties, any person who knowingly swears to or verifies any false or fraudulent return, or any return containing any false or fraudulent statement is guilty of the offense of perjury and on conviction thereof shall be punished in the manner provided by law. Any company making a false return or a return containing a false statement as aforesaid, is guilty of a criminal violation as provided in Section 59-1-401.

(2) Any person failing or refusing to furnish any return required to be made, failing or refusing to furnish a supplemental return or other data required by the commission, or rendering a false or fraudulent return shall be guilty of a criminal violation as provided in Section 59-1-401 for each such offense.

(3) Any person required to make, render, sign, or verify any report under this chapter, who makes any false or fraudulent return with intent to defeat or evade the assessment or determination of amount due required by law to be made shall be guilty of a criminal violation as provided in Section 59-1-401 for each such offense.

(4) Any violation of the provisions of this chapter, except as otherwise provided, shall be a criminal violation as provided in Section 59-1-401.

Section 96. Section 59-13-202.5 is amended to read:

59-13-202.5. Refunds of tax due to fire, flood, storm, or accident -- Filing claims and affidavits -- Commission approval -- Rulemaking -- Appeals -- Penalties.

(1) A retailer, wholesaler, or licensed distributor, who without fault, sustains a loss or destruction of 8,000 or more gallons of motor fuel in a single incident due to fire, flood, storm, accident, or the [~~commitment~~] commission of a crime and who has paid or is required to pay the tax on the motor fuel as provided by this part, is entitled to a refund or credit of the tax subject to the conditions and limitations provided under this section.

(2) (a) The claimant shall file a claim for a refund or credit with the commission within 90 days of the incident.

(b) Any part of a loss or destruction eligible for indemnification under an insurance policy for the taxes paid or required on the loss or destruction of motor fuel is not eligible for a refund or credit under this section.

(c) Any claimant filing a claim for a refund or credit shall furnish any or all of the information outlined in this section upon request of the commission.

(d) The burden of proof of loss or destruction is on the claimant who shall provide evidence of loss or destruction to the satisfaction of the commission.

(3) (a) The claim shall include an affidavit containing the:

(i) name of claimant;

(ii) claimant's address;

(iii) date, time, and location of the incident;

(iv) cause of the incident;

(v) name of the investigating agencies at the scene;

(vi) number of gallons actually lost from sale; and

(vii) information on any insurance coverages related to the incident.

(b) The claimant shall support the claim by submitting the original invoices or copy of the original invoices.

(c) This original claim and all information contained in it[~~,~~] constitutes a permanent file with the commission in the name of the claimant.

(4) Upon commission approval of the claim for a refund, the commission shall pay the amount found due to the claimant. The total amount of claims for refunds shall be paid from the Transportation Fund.

(5) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may promulgate rules to enforce this part, and may refuse to accept unsubstantiated evidence for the claim. If the commission is not satisfied with the evidence submitted in connection

with the claim, it may reject the claim or require additional evidence.

(6) Any person aggrieved by the decision of the commission with respect to a refund or credit may file a request for agency action, requesting a hearing before the commission.

(7) Any person who makes any false claim, report, or statement, either as claimant, agent, or creditor, with intent to defraud or secure a refund or credit to which the claimant is not entitled, is subject to the criminal penalties provided under Section 59-1-401, and the commission shall initiate the filing of a complaint for alleged violations of this part. In addition to these penalties, the person may not receive any refund or credit as a claimant or as a creditor of a claimant for refund or credit for a period of five years.

(8) Any refund or credit made under this section does not affect any deduction allowed under Section 59-13-207.

Section 97. Section 59-13-301.5 is amended to read:

59-13-301.5. Refund of taxes impacting Ute tribe and Ute tribal members.

(1) In accordance with this section, the Ute tribe may receive a refund from the state of amounts paid in accordance with Section 59-13-301 if:

(a) the amounts paid by the Ute tribe when it purchases the special fuel includes the amount paid in taxes on the special fuel;

(b) the special fuel is purchased for use by:

(i) the Ute tribe; or

(ii) a Ute tribal member from a retail station that is:

(A) wholly owned by the Ute tribe; and

(B) located on Ute trust land; and

(c) the governor and the Ute tribe execute and maintain an agreement meeting the requirements of Subsection (3).

(2) [~~(a)~~] In addition to the agreement required by Subsection (1), the commission shall enter into an agreement with the Ute tribe that:

[~~(i)~~] (a) provides an allocation formula or procedure for determining:

[~~(A)~~] (i) the amount of special fuel sold by the Ute tribe to a Ute tribal member; and

[~~(B)~~] (ii) the amount of special fuel sold by the Ute tribe to a person who is not a Ute tribal member; and

[~~(ii)~~] (b) provides a process by which:

[~~(A)~~] (i) the Ute tribe obtains a refund permitted by this section; and

[~~(B)~~] (ii) reports and remits special fuel tax to the state for sales made to persons who are not Ute tribal members.

(3) The agreement required under Subsection (1):

(a) may not:

(i) authorize the state to impose a tax in addition to a tax imposed under this chapter;

(ii) provide a refund, credit, or similar tax relief that is greater or different than the refund permitted under this section; or

(iii) affect the power of the state to establish rates of taxation; and

(b) shall:

(i) provide that the state agrees to allow the refund described in this section;

(ii) be in writing;

(iii) be signed by:

(A) the governor; and

(B) the chair of the Business Committee of the Ute tribe;

(iv) be conditioned on obtaining any approval required by federal law; and

(v) state the effective date of the agreement.

(4) (a) The governor shall report to the commission by no later than February 1 of each year as to whether or not an agreement meeting the requirements of this Subsection (4) is in effect.

(b) If an agreement meeting the requirements of this Subsection (4) is terminated, the refund permitted under this section is not allowed beginning the January 1 following the date the agreement terminates.

(5) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may make rules regarding the procedures for seeking a refund agreed to under the agreement described in Subsection (2).

Section 98. Section 59-13-307 is amended to read:

59-13-307. Supplier reports -- Signature required -- Penalties.

(1) Each supplier shall file with the commission, on or before the last day of each month, a report on forms prescribed by the commission showing the amount of fuel delivered or removed[~~,~~] during the preceding calendar month and any other information the commission may require to carry out the purposes of this part.

(2) The report shall be signed by the supplier or a responsible representative. This signature need not be notarized, but when signed is considered to have been made under oath. The report shall be accompanied by a remittance payable to the commission for the amount of special fuel tax due.

(3) A penalty is imposed under Section 59-1-401 upon each licensee and bonded supplier who fails to file any report as prescribed regardless of the imposition of other penalties under this part.

Section 99. Section 59-13-322 is amended to read:

59-13-322. Refunds of tax due to fire, flood, storm, or accident -- Filing claims and affidavits -- Commission approval -- Rulemaking -- Appeals -- Penalties.

(1) A retailer, wholesaler, or licensed supplier, who without fault, sustains a loss or destruction of 7,000 or more gallons of diesel fuel in a single incident due to fire, flood, storm, accident, or the [~~commitment~~] commission of a crime and who has paid or is required to pay the tax on the special fuel as provided by this part, is entitled to a refund or credit of the tax subject to the conditions and limitations provided under this section.

(2) (a) The claimant shall file a claim for a refund or credit with the commission within 90 days of the incident.

(b) Any part of a loss or destruction eligible for indemnification under an insurance policy for the taxes paid or required on the loss or destruction of special fuel is not eligible for a refund or credit under this section.

(c) Any claimant filing a claim for a refund or credit shall furnish any or all of the information outlined in this section upon request of the commission.

(d) The burden of proof of loss or destruction is on the claimant who shall provide evidence of loss or destruction to the satisfaction of the commission.

(3) (a) The claim shall include an affidavit containing the:

(i) name of claimant;

(ii) claimant's address;

(iii) date, time, and location of the incident;

(iv) cause of the incident;

(v) name of the investigating agencies at the scene;

(vi) number of gallons actually lost from sale; and

(vii) information on any insurance coverages related to the incident.

(b) The claimant shall support the claim by submitting the original invoices or copy of the original invoices.

(c) This original claim and all information contained in it[~~,~~] constitutes a permanent file with the commission in the name of the claimant.

(4) Upon commission approval of the claim for a refund, the commission shall pay the amount found due to the claimant. The total amount of claims for refunds shall be paid from the Transportation Fund.

(5) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may promulgate rules to enforce this part, and may refuse to accept unsubstantiated evidence for the claim. If the commission is not satisfied with the evidence submitted in connection with the claim, it may reject the claim or require additional evidence.

(6) Any person aggrieved by the decision of the commission with respect to a refund or credit may file a request for agency action, requesting a hearing before the commission.

(7) Any person who makes any false claim, report, or statement, either as claimant, agent, or creditor, with intent to defraud or secure a refund or credit to which the claimant is not entitled, is subject to the criminal penalties provided under Section 59-1-401, and the commission shall initiate the filing of a complaint for alleged violations of this part. In addition to these penalties, the person may not receive any refund or credit as a claimant or as a creditor of a claimant for refund or credit for a period of five years.

Section 100. Section 59-22-101 is amended to read:

CHAPTER 22. MODEL TOBACCO SETTLEMENT ACT

59-22-101. Title.

This chapter is known as the "Model Tobacco Settlement [~~Statute~~] Act."

Section 101. Section 62A-4a-412 is amended to read:

62A-4a-412. Reports and information confidential.

(1) Except as otherwise provided in this chapter, reports made pursuant to this part, as well as any other information in the possession of the division obtained as the result of a report is confidential and may only be made available to:

(a) a police or law enforcement agency investigating a report of known or suspected child abuse or neglect;

(b) a physician who reasonably believes that a child may be the subject of abuse or neglect;

(c) an agency that has responsibility or authority to care for, treat, or supervise a child who is the subject of a report;

(d) a contract provider that has a written contract with the division to render services to a child who is the subject of a report;

(e) any subject of the report, the natural parents of the minor, and the guardian ad litem;

(f) a court, upon a finding that access to the records may be necessary for the determination of an issue before it, provided that in a divorce, custody, or related proceeding between private parties, the record alone is:

(i) limited to objective or undisputed facts that were verified at the time of the investigation; and

(ii) devoid of conclusions drawn by the division or any of its workers on the ultimate issue of whether

or not a person's acts or omissions constituted any level of abuse or neglect of another person;

(g) an office of the public prosecutor or its deputies in performing an official duty;

(h) a person authorized by a Children's Justice Center, for the purposes described in Section 67-5b-102;

(i) a person engaged in bona fide research, when approved by the director of the division, if the information does not include names and addresses;

(j) the State Office of Education, acting on behalf of itself or on behalf of a school district, for the purpose of evaluating whether an individual should be permitted to obtain or retain a license as an educator or serve as an employee or volunteer in a school, limited to information with substantiated findings involving an alleged sexual offense, an alleged felony or class A misdemeanor drug offense, or any alleged offense against the person under Title 76, Chapter 5, Offenses Against the Person, and with the understanding that the office must provide the subject of a report received under Subsection (1)(k) with an opportunity to respond to the report before making a decision concerning licensure or employment; and

(k) any person identified in the report as a perpetrator or possible perpetrator of child abuse or neglect, after being advised of the screening prohibition in Subsection (2).

(2) (a) No person, unless listed in Subsection (1), may request another person to obtain or release a report or any other information in the possession of the division obtained as a result of the report that is available under Subsection (1)(k) to screen for potential perpetrators of child abuse or neglect.

(b) A person who requests information knowing that it is a violation of Subsection (2)(a) to do so is subject to the criminal penalty in Subsection (4).

(3) Except as provided in Subsection 62A-4a-116[~~(8)~~](9)(c), the division and law enforcement officials shall ensure the anonymity of the person or persons making the initial report and any others involved in its subsequent investigation.

(4) Any person who wilfully permits, or aides and abets the release of data or information obtained as a result of this part, in the possession of the division or contained on any part of the management information system, in violation of this part or Section 62A-4a-116, is guilty of a class C misdemeanor.

(5) The physician-patient privilege is not a ground for excluding evidence regarding a child's injuries or the cause of those injuries, in any proceeding resulting from a report made in good faith pursuant to this part.

Section 102. Section 62A-11-304.2 is amended to read:

62A-11-304.2. Issuance or modification of administrative order -- Compliance with court order -- Authority of office -- Stipulated agreements -- Notification requirements.

(1) Through an adjudicative proceeding the office may issue or modify an administrative order that:

(a) determines paternity in accordance with Section 78-45a-10;

(b) determines whether an obligor owes support;

(c) determines temporary orders of child support upon clear and convincing evidence of paternity in the form of genetic test results or other evidence;

(d) requires an obligor to pay a specific or determinable amount of present and future support;

(e) determines the amount of past-due support;

(f) orders an obligor who owes past-due support and is obligated to support a child receiving public assistance to participate in appropriate work activities if the obligor is unemployed and is not otherwise incapacitated;

(g) imposes a penalty authorized under this chapter;

(h) determines an issue that may be specifically contested under this chapter by a party who timely files a written request for an adjudicative proceeding with the office; and

(i) renews an administrative judgment.

(2) (a) An abstract of a final administrative order issued under this section or a notice of judgment-lien under Section 62A-11-312.5 may be filed with the clerk of any district court.

(b) Upon a filing under Subsection (2)(a), the clerk of the court shall:

(i) docket the abstract or notice in the judgment docket of the court and note the time of receipt on the abstract or notice and in the judgment docket; and

(ii) at the request of the office, place a copy of the abstract or notice in the file of a child support action involving the same parties.

(3) If a judicial order has been issued, the office may not issue an order under Subsection (1) that is not based on the judicial order, except:

(a) the office may establish a new obligation in those cases in which the juvenile court has ordered the parties to meet with the office to determine the support pursuant to Section 78-3a-906; or

(b) the office may issue an order of current support in accordance with the child support guidelines if the conditions of Subsection 78-45f-207(2)(c) are met.

(4) The office may proceed under this section in the name of this state, another state under Section 62A-11-305, any department of this state, the office, or the obligee.

(5) The office may accept voluntary acknowledgment of a support obligation and enter into stipulated agreements providing for the issuance of an administrative order under this part.

(6) The office may act in the name of the obligee in endorsing and cashing any drafts, checks, money orders, or other negotiable instruments received by the office for support.

(7) The obligor shall, after a notice of agency action has been served on him [~~under this part~~] in accordance with Section 63-46b-3, keep the office informed of:

(a) his current address;

(b) the name and address of current payors of income;

(c) availability of or access to health insurance coverage; and

(d) applicable health insurance policy information.

Section 103. Section 63-55-258 is amended to read:

63-55-258. Repeal dates, Title 58.

(1) Title 58, Chapter 3a, Architects Licensing Act, is repealed July 1, 2003.

(2) Title 58, Chapter 5a, Podiatric Physician Licensing Act, is repealed July 1, 2002.

(3) Title 58, Chapter 9, Funeral Services Licensing Act, is repealed July 1, 2008.

(4) Title 58, Chapter 13, Health Care Providers Immunity from Liability Act, is repealed July 1, 2006.

(5) Title 58, Chapter 15, Health Facility Administrator Act, is repealed July 1, 2005.

(6) Title 58, Chapter 16a, Utah Optometry Practice Act, is repealed July 1, 2009.

(7) Title 58, Chapter 17a, Pharmacy Practice Act, is repealed July 1, 2006.

(8) Title 58, Chapter 20a, Environmental Health Scientist Act, is repealed July 1, 2003.

(9) Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act, is repealed July 1, 2005.

(10) Title 58, Chapter 24a, Physical Therapist Practice Act, is repealed July 1, 2003.

(11) Title 58, Chapter [~~26~~] 26a, Certified Public Accountant Licensing Act, is repealed July 1, 2002.

(12) Title 58, Chapter 28, Veterinary Practice Act, is repealed July 1, 2004.

(13) Title 58, Chapter 31b, Nurse Practice Act, is repealed July 1, 2005.

(14) Title 58, Chapter 37, Utah Controlled Substances Act, is repealed July 1, 2007.

(15) Title 58, Chapter 37a, Utah Drug Paraphernalia Act, is repealed July 1, 2007.

(16) Title 58, Chapter 37b, Imitation Controlled Substances Act, is repealed July 1, 2007.

(17) Title 58, Chapter 40, Recreational Therapy Practice Act, is repealed July 1, 2005.

(18) Title 58, Chapter 41, Speech-language Pathology and Audiology Licensing Act, is repealed July 1, 2009.

(19) Title 58, Chapter 42a, Occupational Therapy Practice Act, is repealed July 1, 2005.

(20) Title 58, Chapter 44a, Nurse Midwife Practice Act, is repealed July 1, 2010.

(21) Title 58, Chapter 46a, Hearing Instrument Specialist Licensing Act, is repealed July 1, 2003.

(22) Title 58, Chapter 47b, Massage Therapy Practice Act, is repealed July 1, 2004.

(23) Title 58, Chapter 49, Dietitian Certification Act, is repealed July 1, 2005.

(24) Title 58, Chapter 53, Landscape Architects Licensing Act, is repealed July 1, 2008.

(25) Title 58, Chapter 58, Preneed Funeral Arrangement Act, is repealed July 1, 2001.

(26) Title 58, Chapter 59, Professional Employer Organization Licensing Act, is repealed July 1, 2002.

(27) Title 58, Chapter 66, Utah Professional Boxing Regulation Act, is repealed July 1, 2005.

(28) Title 58, Chapter 67, Utah Medical Practice Act, is repealed July 1, 2006.

(29) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, is repealed July 1, 2006.

(30) Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act, is repealed July 1, 2006.

(31) Title 58, Chapter 71, Naturopathic Physician Practice Act, is repealed July 1, 2006.

(32) Title 58, Chapter 72, Acupuncture Licensing Act, is repealed July 1, 2002.

(33) Title 58, Chapter 73, Chiropractic Physician Practice Act, is repealed July 1, 2006.

Section 104. Section 63-95-203 is amended to read:

63-95-203. Exemptions from committee activities.

Notwithstanding the other provisions of this Part 2 and Subsection 63-95-102(9), the following quasi-governmental entities are exempt from the study by the committee under Section 63-95-202:

(1) the Utah Housing Finance Agency created in Title 9, Chapter 4, Part 9; and

(2) the Workers' Compensation Fund [~~of Utah~~] created in Title 31A, Chapter 33.

Section 105. Section 63A-6-105 is amended to read:

63A-6-105. Duties of director -- Rate Committee membership and duties.

(1) The director of the Division of Information Technology Services shall:

(a) manage the delivery of efficient and cost-effective data processing and telecommunication services for all state agencies at the lowest practical cost;

(b) provide priority service to public safety agencies; and

(c) provide a semiannual report to the chief information officer as provided in Subsection 63D-1-301.5(5).

(2) The director may negotiate the purchase, lease, or rental of private or public data processing or telecommunication services or facilities.

(3) Where practical, efficient, and economically beneficial, the director shall use existing private and public data processing or telecommunication resources.

(4) The director shall prescribe a schedule of fees to be charged for all services rendered to any state agency by the division that are equitable and sufficient to recover all the costs of operation, including the cost of capital equipment and facilities.

(5) (a) The director shall provide the chief information officer and the state information technology review committee a written analysis of each state agency's annual information technology plan.

(b) That analysis shall:

(i) include an assessment of how the implementation of each plan will affect the costs, operations, and the services of the Division of Information Technology Services and state government; and

(ii) where appropriate, make alternative recommendations.

(6) (a) Before charging the fees, the director shall obtain approval of the fee schedules from the Rate Committee which shall consist of:

(i) the executive director;

(ii) the director of the Division of Finance;

(iii) the director of the Office of Planning and Budget;

(iv) the chief information officer;

(v) a representative of the agencies nominated by the Information Technology Policy and Strategy Committee established in Section 63D-1-302; and

(vi) a representative of the [~~agencies~~] agencies' administrative services managers nominated by the [~~agencies~~] agencies' administrative services managers coordination group.

(b) In appointing the agency representatives listed in Subsection (6)(a)(v) and (vi), the Rate Committee shall appoint:

(i) one representative from a large agency and one representative from a small agency; and

(ii) the representatives to four-year terms of office, except that initially one of the appointments shall be for a two-year term in order to stagger the appointments.

(c) In the event of a vacancy for any reason, the entity responsible for nominating the person who is vacating the position shall provide new nominations to the Rate Committee to fill the unexpired term.

(d) When modifying fees, the director shall attempt to provide sufficient notice to agencies and institutions so that they may reflect those fee changes in their budgets.

(7) (a) The director shall create advisory committees composed of representatives of user agencies.

(b) Those advisory committees may recommend policies and practices for the efficient and effective operation of the division.

(8) (a) The director shall create a Local Government Information Technology Review Committee whose membership shall include representatives from:

(i) the Chief of Police Association;

(ii) the Sheriff's Association;

(iii) the Associated Public Safety Communications Officers;

(iv) the Fire Chief Association; and

(v) the State School Bus Association.

(b) Representatives from additional agencies may be added upon a majority vote of the existing committee members.

Section 106. Section 63A-6-106 is amended to read:

63A-6-106. Subscription by state agencies and institutions.

(1) As used in this section:

(a) "Telecommunications" means the transmission or reception of signs, signals, writing, images, sounds, messages, data, or other information of any nature by wire, radio, light waves, or other electromagnetic means.

(b) "Telecommunications services and support" means providing the hardware, software, maintenance, and upkeep of equipment used in telecommunications.

(2) State agencies, after consultation with the state's chief information officer, may subscribe to the telecommunications services provided by the Division of Information Technology Services or may contract with alternate private providers of telecommunications services if the agency determines that the purchase of such services from a private provider will result in cost savings, increased efficiency, or improved quality of services to the agency without impairing the interoperability of the [~~states~~] state's telecommunication services.

(3) An institution of higher education may subscribe to the services provided by the division if:

(a) the president of the institution recommends that the institution subscribe to the services of the division; and

(b) the Board of Regents determines that subscription to the services of the division will result in cost savings or increased efficiency to the institution.

Section 107. Section 63A-9-805 is amended to read:

63A-9-805. Acquisition of federal surplus property -- Powers and duties -- Advisory boards and committees -- Expenditures and contracts -- Clearinghouse of information -- Reports.

(1) As used in this section:

(a) "Property" includes equipment, materials, books, and other supplies.

(b) "Property act" means Section 203(j) of the Federal Property and Administrative Services Act of 1949.

(2) The division may:

(a) acquire from the United States of America under and in conformance with the property act any property under the control of any department or agency of the United States that is usable and necessary for any purposes authorized by federal law;

(b) warehouse that property if it is not real property; and

(c) distribute that property within Utah to:

(i) tax-supported medical institutions, hospitals, clinics, and health centers;

(ii) school systems, schools, colleges, and universities;

(iii) other nonprofit medical institutions, hospitals, clinics, health centers, schools, colleges, and universities that are exempt from taxation under Section 501(c)(3) of the United States Internal Revenue Code of 1954;

(iv) civil defense organizations;

(v) political subdivisions; and

(vi) any other types of institutions or activities that are eligible to acquire the property under federal law.

(3) The division may:

(a) receive applications from eligible health and educational institutions for the acquisition of federal surplus real property;

(b) investigate the applications;

(c) obtain opinions about those applications from the appropriate health or educational authorities of Utah;

(d) make recommendations about the need of the applicant for the property, the merits of the applicant's proposed use of the property, and the suitability of the property for those purposes; and

(e) otherwise assist in the processing of those applications for acquisition of real and related personal property of the United States under the property act.

(4) The division may appoint advisory boards or committees.

(5) If required by law or regulation of the United States in connection with the disposal of surplus real property and the receipt, warehousing, and distribution of surplus personal property received by the division from the United States, the division may:

(a) make certifications, take action, and make expenditures;

(b) enter into contracts, agreements, and undertakings for and in the name of the state including cooperative agreements with the federal agencies providing for use by and exchange between them of the property, facilities, personnel, and services of each by the other;

(c) require reports; and

(d) make investigations.

(6) The division shall act as the clearinghouse of information for public and private nonprofit institutions, organizations, and agencies eligible to acquire federal surplus real property to:

(a) locate both real and personal property available for acquisition from the United States;

(b) ascertain the terms and conditions under which that property may be obtained;

(c) receive requests from those institutions, organizations, and agencies and transmit to them all available information in reference to that property; and

(d) aid and assist those institutions, organizations, and agencies in every way possible in those acquisitions or transactions.

(7) The division shall:

(a) cooperate with the departments or agencies of the United States;

(b) file a state plan of operation;

(c) operate according to that plan;

(d) take the actions necessary to meet the minimum standards prescribed by the property act;

(e) make any reports required by the United States or any of its departments or agencies; and

(f) comply with the laws of the United States and the regulations of any of the departments or agencies of the United States governing the allocation of, transfer of, use of, or accounting for any property donated to the state.

Section 108. Section 63B-7-502 is amended to read:

63B-7-502. Other capital facility authorizations and intent language.

(1) (a) It is the intent of the Legislature that if funding from General Obligation bonding is provided for construction of new facilities, the Division of Finance shall transfer any occupying agency funds that are currently being used for rent payments to the service fund for debt service on the bonds.

(b) The Division of Finance may not transfer agency funds for operation and maintenance costs, which will continue to be incurred by the occupying agency.

(2) It is the intent of the Legislature that Utah State University use institutional funds to plan, design, and construct the American West Heritage Center under the direction of the director of the Division of Facilities Construction and Management unless supervisory authority has been delegated.

(3) It is the intent of the Legislature that:

(a) Utah State University allow the construction of the Poisonous Plant Laboratory on state-owned property under the direction of the Federal Government with oversight by the director of the Division of Facilities Construction and Management and Utah State University as may be required; and

(b) no state funds be used for any portion of this project.

(4) It is the intent of the Legislature that:

(a) Weber State University use institutional funds to plan, design, and construct the Weight Training room addition under the direction of the director of the Division of Facilities Construction and Management unless supervisory authority has been delegated; and

(b) no state funds be used for any portion of this project.

(5) It is the intent of the Legislature that:

(a) the College of Eastern Utah, San Juan campus, use institutional and other funds to plan, design, and construct the Arts and Conference Center under the direction of the director of the Division of Facilities Construction and Management unless supervisory authority has been delegated; and

(b) no state funds be used for any portion of this project.

(6) It is the intent of the Legislature that:

(a) the University of Utah allow the construction of a privately owned West Health Science Mixed Use Facility on state-owned land located at the main campus of the University, under the oversight of the director of the Division of Facilities Construction and Management; and

(b) no state funds be used for any portion of this project.

(7) It is the intent of the Legislature that the Division of Facilities Construction and Management use up to $1,225,000 of the funds authorized for the Dead Horse Point Visitors Center project in Section 63B-6-102 for additional code upgrades and other critical repairs to the Dead Horse Point Visitors Center in addition to the modifications needed to meet [~~with~~] the Americans with Disabilities Act requirements.

(8) It is the intent of the Legislature that:

(a) the Division of Facilities Construction and Management proceed with the design of the Physical Education Building at Southern Utah University;

(b) the design include the full project scope, excluding funds for the purchase of the middle school;

(c) the 1999 Legislature rank the Physical Education Building at Southern Utah University as the top-ranked capital facility project for full funding in the 1999 annual general session of the Legislature; and

(d) the Division of Facilities Construction and Management proceed with the bidding process for construction of this project.

Section 109. Section 67-1-9 is amended to read:

67-1-9. Governor's residence -- Sources of funds.

(1) [~~The proceeds from the sale of the property required to be sold in Section 67-1-8.1 shall be used for the restoration of the Kearns' mansion and to the extent possible, the carriage house adjacent to the mansion, and thereafter, the~~] The Kearns' mansion shall be the official residence of the governor.

(2) The building board may apply for, accept and expend funds from federal and other sources for carrying out the purposes of Section 67-1-8.1 and this [~~act~~] section.

Section 110. Section 67-1a-1 is amended to read:

67-1a-1. Intent of Legislature.

It is the [~~purpose~~] intent of the Legislature to emphasize the significant responsibilities and duties assigned to the lieutenant governor of the state. As the second highest official of the state, the lieutenant governor is next in command of the executive department in the event of death, removal, resignation, or disability of the governor. The assignment of important responsibilities to the lieutenant governor is essential to the continuity of state government and for the effective use of funds appropriated to the office of lieutenant governor.

Section 111. Section 73-10b-2 is amended to read:

73-10b-2. Definitions.

As used in this chapter:

(1) "Drinking water project" means any work or facility necessary or desirable to provide water for human consumption and other domestic uses which

has at least 15 service connections or serves an average of 25 individuals daily for at least 60 days of the year and includes collection, treatment, storage, and distribution facilities under the control of the operator and used primarily with the system, and collection pretreatment or storage facilities used primarily in connection with the system but not under the operator's control.

(2) "Political subdivision" means any county, city, town, improvement district, metropolitan water district, water conservancy district, special service district, drainage district, irrigation district, separate legal or administrative entity created under Title 11, Chapter 13, Interlocal Cooperation Act, or any other entity constituting a political subdivision under the laws of Utah.

(3) "Sinking fund" means the 1983 general obligation water, wastewater, and drinking water bonds sinking fund created by Section 73-10b-12.

[~~(7)~~] (4) "Wastewater project" means any sewer, storm or sanitary sewage system, sewage treatment facility and system, lagoon, sewage collection facility and system, and related pipelines, and all similar systems, works, and facilities necessary or desirable to collect, hold, cleanse, or purify any sewage or other polluted waters of this state.

[~~(4)~~] (5) "Waters of this state" means any stream, lake, pond, marsh, watercourse, waterway, well, spring, irrigation system, drainage system, or other body or accumulation of water, whether surface, underground, natural, artificial, public, or private, or other water resource of the state, which is contained within or flows in or through Utah.

[~~(5)~~] (6) "Water project" means any work or facility necessary or desirable to conserve, develop, protect, or treat the waters of this state including, without limitation, any reservoir, diversion dam, irrigation dam and system, culinary water system, water work, water treatment facility, canal, ditch, aqueduct, pipeline, and related structures and facilities.

[~~(6)~~] (7) "Water project costs" or "wastewater project costs" or "drinking water project costs" means, as appropriate, the cost of acquiring and constructing any water project, wastewater project or drinking water project, including:

(a) the cost of acquisition and construction of any facility or any modification, improvement, or extension of a facility;

(b) any cost incident to the acquisition of any necessary property, easement, or right-of-way;

(c) engineering or architectural fees, legal fees, fiscal agents', and financial advisors' fees;

(d) any cost incurred for any preliminary planning to determine the economic and engineering feasibility of a proposed project;

(e) costs of economic investigations and studies, surveys, preparation of designs, plans, working drawings, specifications, and the inspection and supervision of the construction of any facility;

(f) interest accruing on loans made under this chapter during acquisition and construction of the water project, drinking water project, or wastewater project; and

(g) any other cost incurred by the political subdivision, the Board of Water Resources, the Division of Water Resources, the Water Quality Board, the Drinking Water Board, or the Department of Environmental Quality, in connection with the issuance of obligations of the political subdivision to evidence any loan made to it under this chapter.

Section 112. Section 73-10d-4 is amended to read:

73-10d-4. Notice of intention to enter privatization project -- Petition for election -- Election procedures -- Powers of political subdivision -- Public bidding laws not to apply.

(1) The governing authority of any political subdivision considering entering into a privatization project agreement shall issue a notice of intention setting forth a brief summary of the agreement provisions and the time within which and place at which petitions may be filed requesting the calling of an election in the political subdivision to determine whether the agreement should be approved. The notice of intention shall specify the form of the petitions. If, within 30 days after the publication of the notice of intention, petitions are filed with the clerk, recorder, or similar officer of the political subdivision, signed by at least 5% of the qualified electors of the political subdivision (as certified by the county clerks of the respective counties within which the political subdivision is located) requesting an election be held to authorize the agreement, then the governing authority shall proceed to call and hold an election. If an adequate petition is not filed within 30 days, the governing authority may adopt a resolution so finding and may proceed to enter into the agreement.

(2) If, under Subsection (1), the governing authority of a political subdivision is required to call an election to authorize an agreement, the governing authority shall adopt a resolution directing that an election be held in the political subdivision for the purpose of determining whether the political subdivision may enter into the agreement. The resolution calling the election shall be adopted, notice of the election shall be given, voting precincts shall be established, the election shall be held, voters' qualifications shall be determined, and the results shall be canvassed in the manner and subject to the conditions provided for in Title 11, Chapter 14, [~~the~~] Utah Municipal Bond Act.

(3) A political subdivision may, upon approval of an agreement as provided by Subsections (1) and (2) and subject to the powers and rules of the supervising agency:

(a) supervise and regulate the construction, maintenance, ownership, and operation of all

privatization projects within its jurisdiction or in which it has a contractual interest;

(b) contract, by entry into agreements with private owner/operators for the provision within its jurisdiction of the services of privatization projects;

(c) levy and collect taxes, as otherwise provided by law, and impose and collect assessments, fees, or charges for services provided by privatization projects, as appropriate, and, subject to any limitation imposed by the constitution, pledge, assign, or otherwise convey as security for the payment of its obligations under any agreements any revenues and receipts derived from any assessments, fees, or charges for services provided by privatization projects;

(d) require the private owner/operator to obtain any and all licenses as appropriate under federal, state, and local law and impose other requirements which are necessary or desirable to discharge the responsibility of the political subdivision to supervise and regulate the construction, maintenance, ownership, and operation of any privatization project;

(e) control the right to contract, maintain, own, and operate any privatization project and the services provided in connection with that project within its jurisdiction;

(f) purchase, lease, or otherwise acquire all or any part of a privatization project;

(g) with respect to the services of any privatization project, control the right to establish or regulate the rates paid by the users of the services within the jurisdiction of the political subdivision;

(h) agree that the sole and exclusive right to provide the services within its jurisdiction related to privatization projects be assumed by any private owner/operator;

(i) contract for the lease or purchase of land, facilities, equipment, and vehicles for the operation of privatization projects;

(j) lease, sell, or otherwise convey, as permitted by state and local law, but without any requirement of competitive public bidding, land, facilities, equipment, and vehicles, previously used in connection with privatization projects, to private owner/operators; and

(k) establish policies for the operation of any privatization project within its jurisdiction or with respect to which it has a contractual interest, including hours of operation, the character and kinds of services, and other rules necessary for the safety of operating personnel.

(4) Any political subdivision may enter into agreements with respect to privatization projects. Agreements may contain provisions relating to, without limitation, any matter provided for in this section or consistent with the purposes of this chapter.

(5) Any agreement entered into between a political subdivision and a private owner/operator for the provision of the services of a privatization project is considered an exercise of that political subdivision's business or proprietary power binding upon its succeeding governing authorities. Any agreement made by a political subdivision with a private owner/operator for payment for services provided or to be provided may not be construed to be an indebtedness or a lending of credit of the political subdivision within the meaning of any constitutional or statutory restriction.

(6) The provisions of the various laws of the state and the rules or ordinances of a political subdivision which would otherwise require public bidding in respect to any matter provided for in this chapter shall have no application to that matter.

Section 113. Section 73-10d-7 is amended to read:

73-10d-7. Agreements by political subdivisions for privatization projects -- Joint interests.

(1) Any one or more political subdivisions, or the United States or any of its agencies, may enter into long-term agreements with any person for joint or cooperative action related to the acquisition, construction, maintenance, ownership, operation, and improvement of privatization projects in accordance with the terms, conditions, and consideration provided in any long-term agreements. Any payments made by a political subdivision under a long-term agreement for joint or cooperative action may not be construed to be an indebtedness of or a lending of the credit of the political subdivision within the meaning of any constitutional or statutory restriction, and, except as required by this chapter and the constitution, no election is necessary for the authorization of any long-term agreement for joint or cooperative action.

(2) Any one or more political subdivisions may construct, purchase, or otherwise acquire joint interests in any privatization project or any part of a privatization project, for common use with any private entity or other political subdivision, or may sell or lease to any other political subdivision or person a partial interest in a privatization project. Political subdivisions may finance their joint interests in privatization projects in the manner provided for and subject to Title 11, Chapter 14, [~~the~~] Utah Municipal Bond Act, if otherwise eligible thereunder to finance capital improvement.

Section 114. Section 73-10h-8 is amended to read:

73-10h-8. Terms and conditions of sale -- Plan of financing -- Signatures -- Replacement -- Registration -- Federal rebate.

(1) In the issuance of bonds, the commission may determine by resolution:

(a) the manner of sale, including public or private sale;

(b) the terms and conditions of sale, including the price, whether at, below, or above face value;

(c) denominations;

(d) form;

(e) manner of execution;

(f) manner of authentication;

(g) place and medium of purchase;

(h) redemption terms; and

(i) other provisions and details it considers appropriate.

(2) The commission may by resolution adopt a plan of financing, which may include terms and conditions of arrangements entered into by the commission on behalf of the state with financial and other institutions for letters of credit, standby letters of credit, reimbursement agreements, and remarketing, indexing, and tender agent agreements to secure the bonds, including payment from any legally available source of fees, charges, or other amounts coming due under the agreements entered into by the commission.

(3) (a) Any signature of a public official authorized by resolution of the commission to sign the bonds may be a facsimile signature of that official imprinted, engraved, stamped, or otherwise placed on the bonds.

(b) If all signatures of public officials on the bonds are facsimile signatures, provision shall be made for a manual authenticating signature on the bonds by or on behalf of a designated authentication agent. A facsimile of the state seal may be imprinted, engraved, stamped, or otherwise placed on the bonds.

(c) If an official ceases to hold office before delivery of the bonds signed by that official, the signature or facsimile signature of the official is nevertheless valid for all purposes.

(4) The commission by resolution may provide for the replacement of lost, destroyed, or mutilated bonds or for the exchange of bonds after issuance for bonds of smaller or larger denominations. Bonds in changed denominations shall be exchanged for the original bonds in like aggregate principal amounts and in a manner that prevents the duplication of interest, and shall bear interest at the same rate, mature on the same date, and be as nearly as practicable in form as the original bonds.

(5) (a) Bonds may be registered as to both principal and interest or may be in a book entry form under which the right to principal and interest may be transferred only through a book entry.

(b) The commission may provide for the services and payment for the services of one or more financial institutions or other entities or persons, or nominees, within or outside the state, for the authentication, registration, and transfer, including record, bookkeeping, or book entry functions, exchange, and payment of the bonds.

(c) The records of ownership, registration, transfer, and exchange of the bonds, and of persons to whom payment with respect to the obligations is made, are private records or protected records as defined in Section 63-2-103.

(d) The bonds and any evidences of participation interests in the bonds may be issued, executed, authenticated, registered, transferred, exchanged, and otherwise made to comply with Title 15, Chapter 7, Registered Public Obligations Act, or any other act of the Legislature relating to the registration of obligations enacted to meet the requirements of Section 149, Internal Revenue Code of 1986, as amended, or any successor to it, and applicable regulations.

(6) The commission may, [~~be~~] by resolution, provide for payment to the United States of such amounts as may be necessary to comply with Section 148(f), Internal Revenue Code of 1986, as amended, and may enter into agreements with financial and other institutions and attorneys to provide for the calculation, holding, and payment of such amounts and provide for payment from any legally available source of fees, charges, or other amounts coming due under any agreements entered into by the commission.

Section 115. Section 76-8-316 is amended to read:

76-8-316. Influencing, impeding, or retaliating against a judge or member of the Board of Pardons and Parole.

(1) A person is guilty of a third degree felony if the person threatens to assault, kidnap, or murder a judge or a member of the Board of Pardons and Parole with the intent to impede, intimidate, or interfere with the judge or member of the board while engaged in the performance of the judge's or member's official duties or with the intent to retaliate against the judge or member on account of the performance of those official duties.

(2) A person is guilty of a second degree felony if the person commits an assault on a judge or a member of the Board of Pardons and Parole with the intent to impede, intimidate, or interfere with the judge or member of the board while engaged in the performance of the judge's or member's official duties, or with the intent to retaliate against the judge or member on account of the performance of those official duties.

(3) A person is guilty of a first degree felony if the person commits aggravated assault or attempted murder on a judge or a member of the Board of Pardons and Parole with the purpose to impede, intimidate, or interfere with the judge or member of the board while engaged in the performance of the judge's or member's official duties or with the purpose to retaliate against the judge or member on account of the performance of those official duties.

(4) As used in this section:

(a) "Immediate family" means parents, spouse, surviving spouse, children, and siblings of the officer.

(b) "Judge" means judges of all courts of record and courts not of record.

(c) "Judge or member" includes the members of the judge's or member's immediate family.

(d) "Member of the Board of Pardons and Parole" means appointed members of the board.

(5) A member of the Board of Pardons and Parole is an executive officer for purposes of [~~Subsections~~] Subsection 76-5-202(1)(k).

Section 116. Section 76-10-1201 is amended to read:

76-10-1201. Definitions.

For the purpose of this part:

(1) "Material" means anything printed or written or any picture, drawing, photograph, motion picture, or pictorial representation, or any [~~statute~~] statue or other figure, or any recording or transcription, or any mechanical, chemical, or electrical reproduction, or anything which is or may be used as a means of communication. Material includes undeveloped photographs, molds, printing plates, and other latent representational objects.

(2) "Performance" means any physical human bodily activity, whether engaged in alone or with other persons, including but not limited to singing, speaking, dancing, acting, simulating, or pantomiming.

(3) "Distribute" means to transfer possession of materials whether with or without consideration.

(4) "Knowingly" means an awareness, whether actual or constructive, of the character of material or of a performance. A person has constructive knowledge if a reasonable inspection or observation under the circumstances would have disclosed the nature of the subject matter and if a failure to inspect or observe is either for the purpose of avoiding the disclosure or is criminally negligent.

(5) "Exhibit" means to show.

(6) "Nudity" means the showing of the human male or female genitals, pubic area, or buttocks, with less than an opaque covering, or the showing of a female breast with less than an opaque covering, or any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state.

(7) "Sexual conduct" means acts of masturbation, sexual intercourse, or any touching of a person's clothed or unclothed genitals, pubic area, buttocks, or, if the person is a female, breast, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent or actual sexual stimulation or gratification.

(8) "Sexual excitement" means a condition of human male or female genitals when in a state of sexual stimulation or arousal, or the sensual experiences of humans engaging in or witnessing sexual conduct or nudity.

(9) "Sado-masochistic abuse" means flagellation or torture by or upon a person who is nude or clad in undergarments, a mask, or in a revealing or bizarre costume, or the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed.

(10) "Minor" means any person less than eighteen years of age.

(11) "Harmful to minors" means that quality of any description or representation, in whatsoever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse when it:

[~~(i)~~] (a) taken as a whole, appeals to the prurient interest in sex of minors;

[~~(ii)~~] (b) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and

[~~(iii)~~] (c) taken as a whole, does not have serious value for minors. Serious value includes only serious literary, artistic, political or scientific value for minors.

(12) "Contemporary community standards" means those current standards in the vicinage where an offense alleged under this act has occurred, is occurring, or will occur.

(13) "Public place" includes a place to which admission is gained by payment of a membership or admission fee, however designated, notwithstanding its being designated a private club or by words of like import.

Section 117. Section 76-10-1306 is amended to read:

76-10-1306. Aggravated exploitation of prostitution.

(1) A person is guilty of aggravated exploitation if:

(a) in committing an act of exploiting prostitution, as defined in section 76-10-1305, he uses any force, threat, or fear against any person; or

(b) the person procured, transported, or [~~pursuaded~~] persuaded or with whom he shares the proceeds of prostitution is under eighteen years of age or is the wife of the actor.

(2) Aggravated exploitation of prostitution is a felony of the second degree.

Section 118. Section 78-14-5 is amended to read:

78-14-5. Failure to obtain informed consent -- Proof required of patient -- Defenses -- Consent to health care.

(1) When a person submits to health care rendered by a health care provider, it shall be presumed that what the health care provider did was either expressly or impliedly authorized to be done. For a patient to recover damages from a health care provider in an action based upon the provider's failure to obtain informed consent, the patient must prove the following:

(a) that a provider-patient relationship existed between the patient and health care provider;

(b) the health care provider rendered health care to the patient;

(c) the patient suffered personal injuries arising out of the health care rendered;

(d) the health care rendered carried with it a substantial and significant risk of causing the patient serious harm;

(e) the patient was not informed of the substantial and significant risk;

(f) a reasonable, prudent person in the patient's position would not have consented to the health care rendered after having been fully informed as to all facts relevant to the decision to give consent. In determining what a reasonable, prudent person in the patient's position would do under the circumstances, the finder of fact shall use the viewpoint of the patient before health care was provided and before the occurrence of any personal injuries alleged to have arisen from said health care; and

(g) the unauthorized part of the health care rendered was the proximate cause of personal injuries suffered by the patient.

(2) It shall be a defense to any malpractice action against a health care provider based upon alleged failure to obtain informed consent if:

(a) the risk of the serious harm which the patient actually suffered was relatively minor;

(b) the risk of serious harm to the patient from the health care provider was commonly known to the public;

(c) the patient stated, prior to receiving the health care complained of, that he would accept the health care involved regardless of the risk; or that he did not want to be informed of the matters to which he would be entitled to be informed;

(d) the health care provider, after considering all of the attendant facts and [~~circumstanets~~] circumstances, used reasonable discretion as to the manner and extent to which risks were disclosed, if the health care provider reasonably believed that additional disclosures could be expected to have a substantial and adverse effect on the patient's condition; or

(e) the patient or his representative executed a written consent which sets forth the nature and purpose of the intended health care and which contains a declaration that the patient accepts the risk of substantial and serious harm, if any, in hopes of obtaining desired beneficial results of health care and which acknowledges that health care providers involved have explained his condition and the proposed health care in a satisfactory manner and that all questions asked about the health care and its attendant risks have been answered in a manner satisfactory to the patient or his representative; such written consent shall be a defense to an action against a health care provider based upon failure to obtain informed consent unless the patient proves that the person giving the consent lacked capacity to consent or shows by clear and convincing proof that the execution of the written consent was induced by the defendant's affirmative acts of fraudulent misrepresentation or fraudulent omission to state material facts.

(3) Nothing contained in this act shall be construed to prevent any person 18 years of age or over from refusing to consent to health care for his own person upon personal or religious grounds.

(4) The following persons are authorized and empowered to consent to any health care not prohibited by law:

(a) any parent, whether an adult or a minor, for his minor child;

(b) any married person, for a spouse;

(c) any person temporarily standing in loco parentis, whether formally serving or not, for the minor under his care and any guardian for his ward;

(d) any person 18 years of age or over for his or her parent who is unable by reason of age, physical or mental condition, to provide such consent;

(e) any patient 18 years of age or over;

(f) any female regardless of age or marital status, when given in connection with her pregnancy or childbirth;

(g) in the absence of a parent, any adult for his minor brother or sister; and

(h) in the absence of a parent, any grandparent for his minor grandchild.

(5) No person who in good faith consents or authorizes health care treatment or procedures for another as provided by this act shall be subject to civil liability.

Section 119. Section 78-23-10 is amended to read:

78-23-10. Allowable claims against exempt property.

(1) Notwithstanding other provisions of this chapter, but subject to the provisions of the Utah Uniform Consumer Credit Code:

(a) A creditor may levy against exempt property of any kind to enforce a claim for:

(i) alimony, support, or maintenance;

(ii) unpaid earnings of up to one month's compensation or the full-time equivalent of one month's compensation for personal services of an employee; or

(iii) state or local taxes.

(b) A creditor may levy against exempt property to enforce a claim for:

(i) the purchase price of the property or a loan made for the purpose of enabling an individual to purchase the specific property used for that purpose;

(ii) [~~lbor~~] labor or materials furnished to make, repair, improve, preserve, store, or transport the specific property; and

(iii) a special assessment imposed to defray costs of a public improvement benefiting the property.

(2) This section does not affect the right to enforce any statutory lien or security interest in exempt property.

Section 120. Repealer.

This act repeals:

Section 63C-5-101, Utah Pioneer Sesquicentennial Celebration -- Purpose.

Section 63C-5-103, Duties -- Responsibilities -- Quorum.

Section 63C-5-104, Removal of members -- Vacancies.

Section 63C-5-105, Staffing -- Division of State History -- Responsibilities.

Section 63C-5-106, Utah Pioneer Sesquicentennial Fund -- Use.

Section 63C-5-107, Repeal date.

CHAPTER 10
H. B. 4
Passed January 18, 2001
Approved February 8, 2001
Effective April 30, 2001

REPEAL OF PUBLIC WORKS PROGRAMS

Sponsor: Neil A. Hansen
David Clark
Peggy Wallace
David Litvack
Ron Bigelow
Stephen H. Urquhart
Carol Spackman Moss
Ty McCartney

This act modifies the Public Welfare Title. This act repeals obsolete provisions governing a public works program required by federal laws enacted in response to the 1932 depression.

This act affects sections of Utah Code Annotated 1953 as follows:

REPEALS:
55-3-1, as last amended by Chapter 20, Laws of Utah 1995
55-3-2, Utah Code Annotated 1953
55-3-2.5, as enacted by Chapter 115, Laws of Utah 1975
55-3-6, Utah Code Annotated 1953
55-3-7, Utah Code Annotated 1953
55-3-10, Utah Code Annotated 1953
55-3-15, Utah Code Annotated 1953
55-3-16, as last amended by Chapter 111, Laws of Utah 1957
55-3-17, Utah Code Annotated 1953
55-3-18, Utah Code Annotated 1953
55-3-19, Utah Code Annotated 1953
55-3-20, Utah Code Annotated 1953
55-3-21, Utah Code Annotated 1953
55-3-22, Utah Code Annotated 1953
55-3-25, Utah Code Annotated 1953
55-3-26, Utah Code Annotated 1953
55-3-28, Utah Code Annotated 1953
55-3-29, as last amended by Chapter 178, Laws of Utah 1986
55-3-30, Utah Code Annotated 1953
55-3-31, Utah Code Annotated 1953
55-3-32, Utah Code Annotated 1953
55-3-33, Utah Code Annotated 1953
55-3-34, Utah Code Annotated 1953
55-3-35, Utah Code Annotated 1953
55-3-36, Utah Code Annotated 1953
55-3-37, Utah Code Annotated 1953
55-3-38, Utah Code Annotated 1953
55-3-39, Utah Code Annotated 1953
55-3-40, Utah Code Annotated 1953
55-3-41, Utah Code Annotated 1953
55-3-42, Utah Code Annotated 1953
55-3-43, Utah Code Annotated 1953

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

Section 1. Repealer.

This act repeals:

Section 55-3-1, Public projects or service subject to industrial recovery program.

Section 55-3-2, Construction of provisions.

Section 55-3-2.5, Bond issues governed by Municipal Bond Act.

Section 55-3-6, Application of proceeds.

Section 55-3-7, Value of service rendered political subdivision by project paid from current funds.

Section 55-3-10, Rates for service to be reasonable and uniform -- May be revised.

Section 55-3-15, Fiscal year for segregation and application of revenue.

Section 55-3-16, Supervision by commission -- Proceedings authorizing bonds.

Section 55-3-17, Project accounts -- Annual reports -- Filing.

Section 55-3-18, Contents of ordinance or enactment.

Section 55-3-19, Impairment of lien or contract.

Section 55-3-20, Liberal construction of provisions.

Section 55-3-21, Severability of provisions.

Section 55-3-22, Effective date.

Section 55-3-25, Agencies, officers, employees -- Appointment -- Powers, duties, compensation fixed by governor.

Section 55-3-26, Expenditures from Emergency Relief Fund authorized.

Section 55-3-28, Program of public works.

Section 55-3-29, Construction and financing -- Acquiring, selling and leasing property -- Rules -- Penalty for violation.

Section 55-3-30, Powers of political subdivisions, singly or in combination, to participate in National Industrial Recovery Act.

Section 55-3-31, Authorizing governor to pledge faith and credit of state.

Section 55-3-32, Right of way over state land -- Acquiring -- Reversion to state on abandonment.

Section 55-3-33, Contracts -- Provisions to be included.

Section 55-3-34, Construction without letting of contracts.

Section 55-3-35, Emergency Relief Fund available.

Section 55-3-36, Short title -- 1935 Validating Act.

Section 55-3-37, Terms defined.

Section 55-3-38, Validation of bonds issued by public bodies for public works projects.

Section 55-3-39, Short title -- 1937 Validating Act.

Section 55-3-40, Definitions.

Section 55-3-41, Validating bonds issued by public bodies for public works projects.

Section 55-3-42, Validating proceedings heretofore taken.

Section 55-3-43, Payments to the United States, when and how made.

CHAPTER 11
H. B. 5
Passed January 25, 2001
Approved February 8, 2001
Effective April 30, 2001

SERIOUS HABITUAL OFFENDER COMPREHENSIVE ACTION PROGRAM AMENDMENT

Sponsor: DeMar Bud Bowman

This act modifies the Serious Habitual Offender Comprehensive Action Program (SHOCAP) Act. The act requires the designated agency to notify the serious habitual offender (SHO) and the parent or guardian when the SHO is included in the SHOCAP program.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
63-92-3, as last amended by Chapter 304, Laws of Utah 1999

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

Section 1. Section 63-92-3 is amended to read:

63-92-3. Establishment of local oversight committees -- Interagency information sharing.

(1) The Commission on Criminal and Juvenile Justice shall administer the statewide SHOCAP oversight committee and provide periodic review of the programs.

(2) Counties or municipalities implementing SHOCAP shall form a local oversight committee composed of the following persons, or their designees:

(a) the district juvenile court administrator;

(b) the superintendent of the local school district;

(c) the local county attorney;

(d) a member of the local county or municipal legislative body;

(e) the local county sheriff;

(f) a local chief of police;

(g) the local chief of probation for the Juvenile Court;

(h) the regional director of the Division of Youth Corrections;

(i) the regional director of the Division of Child and Family Services;

(j) a representative of a local public mental health provider; and

(k) any additional members considered appropriate by the local oversight committee.

(3) The local oversight committee shall develop, implement, and periodically review the following:

(a) standardized criteria as developed by the statewide SHOCAP oversight committee for determining who is a serious habitual offender (SHO);

(b) what information is needed on each offender for inclusion in the program;

(c) who will have access to the database;

(d) who will maintain the database and manage the information in the program;

(e) what the information in the database is to be used for; and

(f) penalties for improper use of the information in the database.

(4) The local oversight committee shall develop a written interagency information sharing agreement to be signed by the chief executive officer of each of the agencies represented on the oversight committee. The sharing agreement shall include the provisions requiring that:

(a) all records pertaining to a SHO be kept confidential;

(b) when a SHO is included in the SHOCAP program for the purposes of tracking and providing coordinated services, the local law enforcement agency or an agency designated by the interagency agreement shall as soon as reasonably possible notify the SHO and the parent or guardian of the SHO;

[~~(b)~~] (c) the disclosure of information to other staff members of signatory agencies be made only to those staff members who provide direct services or supervision to the SHO; and

[~~(c)~~] (d) all staff members of signatory agencies receiving confidential information concerning a SHO be subject to the confidentiality requirements of this chapter.

(5) Notwithstanding any other statutory provision, staff members of signatory agencies who provide direct services or supervision to SHOCAP youth may distribute photographs of SHOCAP youth to other staff members of signatory agencies who provide direct services or supervision to SHOCAP youth.

(6) The local oversight committee shall develop a program [~~which shall be~~] capable of maintaining the information determined to be necessary under Subsection (3).

CHAPTER 12
H. B. 9
Passed January 18, 2001
Approved February 8, 2001
Effective April 30, 2001
(Section 59-12-103 takes effect on July 1, 2001)

REPEAL OF OBSOLETE BONDING AUTHORIZATIONS AND RELATED PROVISIONS

Sponsor: Loraine T. Pace
Ron Bigelow
Richard M. Siddoway
David Clark
Stephen H. Urquhart

This act modifies provisions related to bonding. This act repeals obsolete and lapsed bonding authorizations and repeals a duplicate section relating to state bonding commissioners. This act moves language relating to certain water loans and makes technical corrections.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
11-27-2, as last amended by Chapter 227, Laws of Utah 1993
11-31-2, as enacted by Chapter 199, Laws of Utah 1987
11-31-3, as enacted by Chapter 199, Laws of Utah 1987
59-12-103 (Effective 07/01/01), as last amended by Chapters 147, 253, and 325, Laws of Utah 2000
59-12-103 (Superseded 07/01/01), as last amended by Chapter 325, Laws of Utah 2000
73-10c-4, as last amended by Chapter 199, Laws of Utah 1996
73-10c-5, as last amended by Chapter 282, Laws of Utah 2000

ENACTS:
73-10c-4.1, Utah Code Annotated 1953
73-10c-4.2, Utah Code Annotated 1953

REPEALS:
63-56a-1, as last amended by Chapter 243, Laws of Utah 1996
63-64-1, as enacted by Chapter 212, Laws of Utah 1986
63-64-2, as enacted by Chapter 212, Laws of Utah 1986
63-64-3, as enacted by Chapter 212, Laws of Utah 1986
63-64-4, as enacted by Chapter 212, Laws of Utah 1986
63-64-5, as last amended by Chapter 30, Laws of Utah 1992
63-64-6, as last amended by Chapter 3, Laws of Utah 1988
63-64-7, as enacted by Chapter 212, Laws of Utah 1986
63-64-8, as enacted by Chapter 212, Laws of Utah 1986
63-64-9, as enacted by Chapter 212, Laws of Utah 1986
63-64-10, as enacted by Chapter 212, Laws of Utah 1986
63-64-11, as enacted by Chapter 212, Laws of Utah 1986
63-64-12, as enacted by Chapter 212, Laws of Utah 1986
63-64-13, as enacted by Chapter 212, Laws of Utah 1986
63-64-14, as enacted by Chapter 212, Laws of Utah 1986
63-64-15, as enacted by Chapter 212, Laws of Utah 1986
63-64-16, as enacted by Chapter 212, Laws of Utah 1986
63-64-17, as enacted by Chapter 212, Laws of Utah 1986
63-64-18, as enacted by Chapter 212, Laws of Utah 1986
63-66-1, as enacted by Chapter 8, Laws of Utah 1986, Second Special Session
63-66-2, as enacted by Chapter 8, Laws of Utah 1986, Second Special Session
63-66-3, as enacted by Chapter 8, Laws of Utah 1986, Second Special Session
63-66-4, as last amended by Chapter 30, Laws of Utah 1992
63-66-5, as last amended by Chapter 3, Laws of Utah 1988
63-66-6, as enacted by Chapter 8, Laws of Utah 1986, Second Special Session
63-66-7, as enacted by Chapter 8, Laws of Utah 1986, Second Special Session
63-66-8, as enacted by Chapter 8, Laws of Utah 1986, Second Special Session
63-66-9, as enacted by Chapter 8, Laws of Utah 1986, Second Special Session
63-66-10, as enacted by Chapter 8, Laws of Utah 1986, Second Special Session
63-66-11, as enacted by Chapter 8, Laws of Utah 1986, Second Special Session
63-66-12, as enacted by Chapter 8, Laws of Utah 1986, Second Special Session
63-66-13, as enacted by Chapter 8, Laws of Utah 1986, Second Special Session
63-66-14, as enacted by Chapter 8, Laws of Utah 1986, Second Special Session
63-66-15, as enacted by Chapter 8, Laws of Utah 1986, Second Special Session
63-66-16, as enacted by Chapter 8, Laws of Utah 1986, Second Special Session
63-66-17, as enacted by Chapter 8, Laws of Utah 1986, Second Special Session
63-67-101, as enacted by Chapter 235, Laws of Utah 1987
63-67-102, as enacted by Chapter 235, Laws of Utah 1987
63-67-103, as enacted by Chapter 235, Laws of Utah 1987
63-67-104, as enacted by Chapter 235, Laws of Utah 1987
63-67-105, as last amended by Chapter 259, Laws of Utah 1991
63-67-106, as enacted by Chapter 235, Laws of Utah 1987
63-67-107, as enacted by Chapter 235, Laws of Utah 1987
63-67-108, as enacted by Chapter 235, Laws of

Utah 1987
63-67-109, as enacted by Chapter 235, Laws of Utah 1987
63-67-110, as enacted by Chapter 235, Laws of Utah 1987
63-67-111, as enacted by Chapter 235, Laws of Utah 1987
63-67-112, as enacted by Chapter 235, Laws of Utah 1987
63-67-113, as enacted by Chapter 235, Laws of Utah 1987
63-67-114, as enacted by Chapter 235, Laws of Utah 1987
63-67-115, as enacted by Chapter 235, Laws of Utah 1987
63-67-116, as enacted by Chapter 235, Laws of Utah 1987
63-67-117, as enacted by Chapter 235, Laws of Utah 1987
63-67-118, as enacted by Chapter 235, Laws of Utah 1987
63-69-1, as enacted by Chapter 11, Laws of Utah 1987, First Special Session
63-69-2, as enacted by Chapter 11, Laws of Utah 1987, First Special Session
63-69-3, as enacted by Chapter 11, Laws of Utah 1987, First Special Session
63-69-4, as enacted by Chapter 11, Laws of Utah 1987, First Special Session
63-69-5, as last amended by Chapter 259, Laws of Utah 1991
63-69-6, as enacted by Chapter 11, Laws of Utah 1987, First Special Session
63-69-7, as enacted by Chapter 11, Laws of Utah 1987, First Special Session
63-69-8, as enacted by Chapter 11, Laws of Utah 1987, First Special Session
63-69-9, as enacted by Chapter 11, Laws of Utah 1987, First Special Session
63-69-10, as enacted by Chapter 11, Laws of Utah 1987, First Special Session
63-69-11, as enacted by Chapter 11, Laws of Utah 1987, First Special Session
63-69-12, as enacted by Chapter 11, Laws of Utah 1987, First Special Session
63-69-13, as enacted by Chapter 11, Laws of Utah 1987, First Special Session
63-69-14, as enacted by Chapter 11, Laws of Utah 1987, First Special Session
63-69-15, as enacted by Chapter 11, Laws of Utah 1987, First Special Session
63-69-16, as enacted by Chapter 11, Laws of Utah 1987, First Special Session
63-69-17, as enacted by Chapter 11, Laws of Utah 1987, First Special Session
63-69-18, as enacted by Chapter 11, Laws of Utah 1987, First Special Session
63-74-1, as enacted by Chapter 228, Laws of Utah 1989
63-74-2, as enacted by Chapter 228, Laws of Utah 1989
63-74-3, as enacted by Chapter 228, Laws of Utah 1989
63-74-4, as enacted by Chapter 228, Laws of Utah 1989
63-74-5, as last amended by Chapter 259, Laws of Utah 1991
63-74-6, as enacted by Chapter 228, Laws of Utah 1989
63-74-7, as enacted by Chapter 228, Laws of Utah 1989
63-74-8, as enacted by Chapter 228, Laws of Utah 1989
63-74-9, as enacted by Chapter 228, Laws of Utah 1989
63-74-10, as enacted by Chapter 228, Laws of Utah 1989
63-74-11, as enacted by Chapter 228, Laws of Utah 1989
63-74-12, as enacted by Chapter 228, Laws of Utah 1989
63-74-13, as enacted by Chapter 228, Laws of Utah 1989
63-74-14, as enacted by Chapter 228, Laws of Utah 1989
63-74-15, as enacted by Chapter 228, Laws of Utah 1989
63-74-16, as enacted by Chapter 228, Laws of Utah 1989
63-74-17, as enacted by Chapter 228, Laws of Utah 1989
63-77-1, as enacted by Chapter 281, Laws of Utah 1990
63-77-2, as enacted by Chapter 281, Laws of Utah 1990
63-77-3, as enacted by Chapter 281, Laws of Utah 1990
63-77-4, as enacted by Chapter 281, Laws of Utah 1990
63-77-5, as last amended by Chapter 259, Laws of Utah 1991
63-77-6, as enacted by Chapter 281, Laws of Utah 1990
63-77-7, as enacted by Chapter 281, Laws of Utah 1990
63-77-8, as enacted by Chapter 281, Laws of Utah 1990
63-77-9, as enacted by Chapter 281, Laws of Utah 1990
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63-77-15, as enacted by Chapter 281, Laws of Utah 1990
63-77-16, as enacted by Chapter 281, Laws of Utah 1990
63-77-17, as enacted by Chapter 281, Laws of Utah 1990
63-83-1, as enacted by Chapter 4, Laws of Utah 1991, First Special Session
63-83-2, as enacted by Chapter 4, Laws of Utah 1991, First Special Session
63-83-3, as enacted by Chapter 4, Laws of Utah 1991, First Special Session
63-83-4, as enacted by Chapter 4, Laws of Utah 1991, First Special Session
63-83-5, as last amended by Chapter 10, Laws of

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63-83-6, as enacted by Chapter 4, Laws of Utah 1991, First Special Session
63-83-7, as enacted by Chapter 4, Laws of Utah 1991, First Special Session
63-83-8, as enacted by Chapter 4, Laws of Utah 1991, First Special Session
63-83-9, as enacted by Chapter 4, Laws of Utah 1991, First Special Session
63-83-10, as enacted by Chapter 4, Laws of Utah 1991, First Special Session
63-83-11, as enacted by Chapter 4, Laws of Utah 1991, First Special Session
63-83-12, as enacted by Chapter 4, Laws of Utah 1991, First Special Session
63-83-13, as enacted by Chapter 4, Laws of Utah 1991, First Special Session
63-83-14, as enacted by Chapter 4, Laws of Utah 1991, First Special Session
63-83-15, as enacted by Chapter 4, Laws of Utah 1991, First Special Session
63-83-16, as enacted by Chapter 4, Laws of Utah 1991, First Special Session
63-83-17, as enacted by Chapter 4, Laws of Utah 1991, First Special Session
63-84-1, as enacted by Chapter 4, Laws of Utah 1991, First Special Session
63-84-2, as last amended by Chapter 120, Laws of Utah 1994
63-84-3, as enacted by Chapter 4, Laws of Utah 1991, First Special Session
63-84-4, as enacted by Chapter 4, Laws of Utah 1991, First Special Session
63-84-5, as last amended by Chapter 10, Laws of Utah 1997
63-84-6, as enacted by Chapter 4, Laws of Utah 1991, First Special Session
63-84-7, as enacted by Chapter 4, Laws of Utah 1991, First Special Session
63-84-8, as enacted by Chapter 4, Laws of Utah 1991, First Special Session
63-84-9, as enacted by Chapter 4, Laws of Utah 1991, First Special Session
63-84-10, as enacted by Chapter 4, Laws of Utah 1991, First Special Session
63-84-11, as enacted by Chapter 4, Laws of Utah 1991, First Special Session
63-84-12, as enacted by Chapter 4, Laws of Utah 1991, First Special Session
63-84-13, as enacted by Chapter 4, Laws of Utah 1991, First Special Session
63-84-14, as enacted by Chapter 4, Laws of Utah 1991, First Special Session
63-84-15, as enacted by Chapter 4, Laws of Utah 1991, First Special Session
63-84-16, as enacted by Chapter 4, Laws of Utah 1991, First Special Session
63-84-17, as enacted by Chapter 4, Laws of Utah 1991, First Special Session
63-85-1, as enacted by Chapter 304, Laws of Utah 1992
63-85-2, as last amended by Chapter 82, Laws of Utah 1997
63-85-3, as enacted by Chapter 304, Laws of Utah 1992
63-85-4, as enacted by Chapter 304, Laws of Utah 1992
63-85-5, as last amended by Chapter 10, Laws of Utah 1997
63-85-6, as enacted by Chapter 304, Laws of Utah 1992
63-85-7, as enacted by Chapter 304, Laws of Utah 1992
63-85-8, as enacted by Chapter 304, Laws of Utah 1992
63-85-9, as enacted by Chapter 304, Laws of Utah 1992
63-85-10, as last amended by Chapter 4, Laws of Utah 1993
63-85-11, as enacted by Chapter 304, Laws of Utah 1992
63-85-12, as enacted by Chapter 304, Laws of Utah 1992
63-85-13, as enacted by Chapter 304, Laws of Utah 1992
63-85-14, as enacted by Chapter 304, Laws of Utah 1992
63-85-15, as enacted by Chapter 304, Laws of Utah 1992
63-85-16, as enacted by Chapter 304, Laws of Utah 1992
63-85-17, as enacted by Chapter 304, Laws of Utah 1992
63-86-1, as enacted by Chapter 304, Laws of Utah 1992
63-86-2, as last amended by Chapter 120, Laws of Utah 1994
63-86-3, as enacted by Chapter 304, Laws of Utah 1992
63-86-4, as enacted by Chapter 304, Laws of Utah 1992
63-86-5, as last amended by Chapter 10, Laws of Utah 1997
63-86-6, as enacted by Chapter 304, Laws of Utah 1992
63-86-7, as enacted by Chapter 304, Laws of Utah 1992
63-86-8, as enacted by Chapter 304, Laws of Utah 1992
63-86-9, as enacted by Chapter 304, Laws of Utah 1992
63-86-10, as last amended by Chapter 4, Laws of Utah 1993
63-86-11, as enacted by Chapter 304, Laws of Utah 1992
63-86-12, as enacted by Chapter 304, Laws of Utah 1992
63-86-13, as enacted by Chapter 304, Laws of Utah 1992
63-86-14, as enacted by Chapter 304, Laws of Utah 1992
63-86-15, as enacted by Chapter 304, Laws of Utah 1992
63-86-16, as enacted by Chapter 304, Laws of Utah 1992
63-86-17, as enacted by Chapter 304, Laws of Utah 1992
73-10b-1, as enacted by Chapter 353, Laws of Utah 1983
73-10b-2, as last amended by Chapter 282, Laws of Utah 2000
73-10b-3, as last amended by Chapter 112, Laws of Utah 1991
73-10b-4, as enacted by Chapter 353, Laws of Utah

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73-10b-5, as last amended by Chapter 112, Laws of Utah 1991
73-10b-6, as last amended by Chapter 112, Laws of Utah 1991
73-10b-7, as enacted by Chapter 353, Laws of Utah 1983
73-10b-8, as enacted by Chapter 353, Laws of Utah 1983
73-10b-9, as last amended by Chapter 259, Laws of Utah 1991
73-10b-10, as last amended by Chapter 3, Laws of Utah 1988
73-10b-11, as enacted by Chapter 353, Laws of Utah 1983
73-10b-12, as enacted by Chapter 353, Laws of Utah 1983
73-10b-13, as enacted by Chapter 353, Laws of Utah 1983
73-10b-14, as enacted by Chapter 353, Laws of Utah 1983
73-10b-15, as enacted by Chapter 353, Laws of Utah 1983
73-10b-16, as enacted by Chapter 353, Laws of Utah 1983
73-10b-17, as enacted by Chapter 353, Laws of Utah 1983
73-10b-18, as enacted by Chapter 353, Laws of Utah 1983
73-10b-19, as last amended by Chapter 61, Laws of Utah 1984
73-10b-20, as enacted by Chapter 353, Laws of Utah 1983
73-10b-21, as enacted by Chapter 353, Laws of Utah 1983
73-10b-22, as last amended by Chapter 21, Laws of Utah 1985
73-10g-1, as enacted by Chapter 4, Laws of Utah 1991, First Special Session
73-10g-2, as last amended by Chapter 82, Laws of Utah 1997
73-10g-3, as enacted by Chapter 4, Laws of Utah 1991, First Special Session
73-10g-4, as enacted by Chapter 4, Laws of Utah 1991, First Special Session
73-10g-5, as enacted by Chapter 4, Laws of Utah 1991, First Special Session
73-10g-6, as enacted by Chapter 4, Laws of Utah 1991, First Special Session
73-10g-7, as enacted by Chapter 4, Laws of Utah 1991, First Special Session
73-10g-8, as last amended by Chapter 10, Laws of Utah 1997
73-10g-9, as enacted by Chapter 4, Laws of Utah 1991, First Special Session
73-10g-10, as enacted by Chapter 4, Laws of Utah 1991, First Special Session
73-10g-11, as enacted by Chapter 4, Laws of Utah 1991, First Special Session
73-10g-12, as enacted by Chapter 4, Laws of Utah 1991, First Special Session
73-10g-13, as enacted by Chapter 4, Laws of Utah 1991, First Special Session
73-10g-14, as enacted by Chapter 4, Laws of Utah 1991, First Special Session
73-10g-15, as enacted by Chapter 4, Laws of Utah 1991, First Special Session
73-10g-16, as enacted by Chapter 4, Laws of Utah 1991, First Special Session
73-10g-17, as enacted by Chapter 4, Laws of Utah 1991, First Special Session
73-10g-18, as enacted by Chapter 4, Laws of Utah 1991, First Special Session
73-10g-19, as enacted by Chapter 4, Laws of Utah 1991, First Special Session
73-10g-20, as enacted by Chapter 4, Laws of Utah 1991, First Special Session
73-10h-1, as enacted by Chapter 304, Laws of Utah 1992
73-10h-2, as last amended by Chapter 82, Laws of Utah 1997
73-10h-3, as enacted by Chapter 304, Laws of Utah 1992
73-10h-4, as enacted by Chapter 304, Laws of Utah 1992
73-10h-5, as enacted by Chapter 304, Laws of Utah 1992
73-10h-6, as enacted by Chapter 304, Laws of Utah 1992
73-10h-7, as enacted by Chapter 304, Laws of Utah 1992
73-10h-8, as last amended by Chapter 10, Laws of Utah 1997
73-10h-9, as enacted by Chapter 304, Laws of Utah 1992
73-10h-10, as enacted by Chapter 304, Laws of Utah 1992
73-10h-11, as enacted by Chapter 304, Laws of Utah 1992
73-10h-12, as enacted by Chapter 304, Laws of Utah 1992
73-10h-13, as last amended by Chapter 4, Laws of Utah 1993
73-10h-14, as enacted by Chapter 304, Laws of Utah 1992
73-10h-15, as enacted by Chapter 304, Laws of Utah 1992
73-10h-16, as enacted by Chapter 304, Laws of Utah 1992
73-10h-17, as enacted by Chapter 304, Laws of Utah 1992
73-10h-18, as enacted by Chapter 304, Laws of Utah 1992
73-10h-19, as enacted by Chapter 304, Laws of Utah 1992
73-10h-20, as enacted by Chapter 304, Laws of Utah 1992
73-24-1, as enacted by Chapter 6, Laws of Utah 1986, Second Special Session
73-24-2, as enacted by Chapter 6, Laws of Utah 1986, Second Special Session
73-24-3, as enacted by Chapter 6, Laws of Utah 1986, Second Special Session
73-24-4, as enacted by Chapter 6, Laws of Utah 1986, Second Special Session
73-24-5, as last amended by Chapter 259, Laws of Utah 1991
73-24-6, as last amended by Chapter 3, Laws of Utah 1988
73-24-7, as enacted by Chapter 6, Laws of Utah 1986, Second Special Session
73-24-8, as enacted by Chapter 6, Laws of Utah 1986, Second Special Session
73-24-9, as enacted by Chapter 6, Laws of Utah

1986, Second Special Session
73-24-10, as enacted by Chapter 6, Laws of Utah 1986, Second Special Session
73-24-11, as enacted by Chapter 6, Laws of Utah 1986, Second Special Session
73-24-12, as enacted by Chapter 6, Laws of Utah 1986, Second Special Session
73-24-13, as enacted by Chapter 6, Laws of Utah 1986, Second Special Session
73-24-14, as enacted by Chapter 6, Laws of Utah 1986, Second Special Session
73-24-15, as enacted by Chapter 6, Laws of Utah 1986, Second Special Session
73-24-16, as enacted by Chapter 6, Laws of Utah 1986, Second Special Session
73-24-17, as enacted by Chapter 6, Laws of Utah 1986, Second Special Session
73-24-18, as enacted by Chapter 6, Laws of Utah 1986, Second Special Session

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

Section 1. Section 11-27-2 is amended to read:

11-27-2. Definitions.

As used in this chapter:

(1) "Advance refunding bonds" means refunding bonds issued for the purpose of refunding outstanding bonds in advance of their maturity.

(2) "Assessments" means a special tax levied against property within a special improvement district to pay all or a portion of the costs of making improvements in the district.

(3) "Bond" means any revenue bond, general obligation bond, tax increment bond, special improvement bond, or refunding bond.

(4) "General obligation bond" means any bond, note, warrant, certificate of indebtedness, or other obligation of a public body payable in whole or in part from revenues derived from ad valorem taxes and that constitutes an indebtedness within the meaning of any applicable constitutional or statutory debt limitation.

(5) "Governing body" means the council, commission, county legislative body, board of directors, board of trustees, board of education, board of regents, or other legislative body of a public body designated in this chapter that is vested with the legislative powers of the public body, and, with respect to the state, the State Bonding Commission created by Section [~~63-56a-1~~] 63B-1-201.

(6) "Government obligations" means:

(a) direct obligations of the United States of America, or other securities, the principal of and interest on which are unconditionally guaranteed by the United States of America; or

(b) obligations of any state, territory, or possession of the United States, or of any of the political subdivisions of any state, territory, or possession of the United States, or of the District of Columbia described in Section 103(a), Internal Revenue Code of 1986.

(7) "Issuer" means the public body issuing any bond or bonds.

(8) "Public body" means the state or any agency, authority, instrumentality, or institution of the state, or any municipal or quasi-municipal corporation, political subdivision, agency, school district, special district, or other governmental entity now or hereafter existing under the laws of the state.

(9) "Refunding bonds" means bonds issued under the authority of this chapter for the purpose of refunding outstanding bonds.

(10) "Resolution" means a resolution of the governing body of a public body taking formal action under this chapter.

(11) "Revenue bond" means any bond, note, warrant, certificate of indebtedness, or other obligation for the payment of money issued by a public body or any predecessor of any public body and that is payable from designated revenues not derived from ad valorem taxes or from a special fund composed of revenues not derived from ad valorem taxes, but excluding all of the following:

(a) any obligation constituting an indebtedness within the meaning of any applicable constitutional or statutory debt limitation;

(b) any obligation issued in anticipation of the collection of taxes, where the entire issue matures not later than one year from the date of the issue; and

(c) any special improvement bond.

(12) "Special improvement bond" means any bond, note, warrant, certificate of indebtedness, or other obligation of a public body or any predecessor of any public body that is payable from assessments levied on benefited property and from any special improvement guaranty fund.

(13) "Special improvement guaranty fund" means any special improvement guaranty fund established under Title 10, Chapter 6, Title 17A, Chapter 3, Part 2, County Improvement Districts, or any predecessor or similar statute.

(14) "Tax increment bond" means any bond, note, warrant, certificate of indebtedness, or other obligation of a public body issued under authority of Title 17A, Chapter 2, Part 16, Great Salt Lake Development Authority Act, or any similar statutes, including Title 17A, Chapter 2, Part 12, Utah Neighborhood Development Act.

Section 2. Section 11-31-2 is amended to read:

11-31-2. Definitions.

As used in this chapter:

(1) "Bonds" means any evidence or contract of indebtedness that is issued or authorized by a public body, including, without limitation, bonds, refunding bonds, advance refunding bonds, bond anticipation notes, tax anticipation notes, notes, certificates of indebtedness, warrants, commercial paper, contracts, and leases, whether they are

general obligations of the issuing public body or are payable solely from a specified source, including, but not limited to, annual appropriations by the public body.

(2) "Legislative body" means, with respect to any action to be taken by a public body with respect to bonds, the board, commission, council, agency, or other similar body authorized by law to take legislative action on behalf of the public body, and in the case of the state, the Legislature, the state treasurer, the commission created under Section [~~63-56a-1~~] 63B-1-201, and any other entities the Legislature designates.

(3) "Public body" means the state and any public department, public agency, or other public entity existing under the laws of the state, including, without limitation, any agency, authority, instrumentality, or institution of the state, and any county, city, town, municipal corporation, quasi-municipal corporation, state university or college, school district, special service district or other special district, improvement district, water conservancy district, metropolitan water district, drainage district, irrigation district, fire protection district, separate legal or administrative entity created under the Interlocal Cooperation Act or other joint agreement entity, redevelopment agency, and any other political subdivision, public authority, public agency, or public trust existing under the laws of the state.

Section 3. Section 11-31-3 is amended to read:

11-31-3. Issuance of bonds -- Registration for offer and sale.

(1) Any bonds authorized by law to be issued may be issued without regard to the treatment of interest [~~thereon~~] on those bonds for purposes of federal income taxation.

(2) (a) Any public body authorized to issue bonds may take any actions and enter into any agreements necessary or appropriate to register or qualify the bonds described in this section for offer and sale under the federal or any state's or nation's securities laws and to comply with those laws. [~~Such~~]

(b) Those actions and agreements on behalf of the state may be taken and entered into by the commission created under Section [~~63-56a-1~~] 63B-1-201 or by the state treasurer, as appropriate.

Section 4. Section 59-12-103 (Effective 07/01/01) is amended to read:

59-12-103 (Effective 07/01/01). Sales and use tax base -- Rate -- Use of sales and use tax revenues.

(1) A tax is imposed on the purchaser as provided in this part for amounts paid or charged for the following transactions:

(a) retail sales of tangible personal property made within the state;

(b) amounts paid to common carriers or to telephone or telegraph corporations, whether the corporations are municipally or privately owned, for:

(i) all transportation;

(ii) intrastate telephone service; or

(iii) telegraph service;

(c) sales of the following for commercial use:

(i) gas;

(ii) electricity;

(iii) heat;

(iv) coal;

(v) fuel oil; or

(vi) other fuels;

(d) sales of the following for residential use:

(i) gas;

(ii) electricity;

(iii) heat;

(iv) coal;

(v) fuel oil; or

(vi) other fuels;

(e) sales of meals;

(f) amounts paid or charged as admission or user fees for theaters, movies, operas, museums, planetariums, shows of any type or nature, exhibitions, concerts, carnivals, amusement parks, amusement rides, circuses, menageries, fairs, races, contests, sporting events, dances, boxing matches, wrestling matches, closed circuit television broadcasts, billiard parlors, pool parlors, bowling lanes, golf, miniature golf, golf driving ranges, batting cages, skating rinks, ski lifts, ski runs, ski trails, snowmobile trails, tennis courts, swimming pools, water slides, river runs, jeep tours, boat tours, scenic cruises, horseback rides, sports activities, or any other amusement, entertainment, recreation, exhibition, cultural, or athletic activity;

(g) amounts paid or charged for services:

(i) for repairs or renovations of tangible personal property; or

(ii) to install tangible personal property in connection with other tangible personal property;

(h) except as provided in Subsection 59-12-104(7), amounts paid or charged for cleaning or washing of tangible personal property;

(i) amounts paid or charged for tourist home, hotel, motel, or trailer court accommodations and services for less than 30 consecutive days;

(j) amounts paid or charged for laundry or dry cleaning services;

(k) amounts paid or charged for leases or rentals of tangible personal property if:

(i) the tangible personal property's situs is in this state;

(ii) the lessee took possession of the tangible personal property in this state; or

(iii) within this state the tangible personal property is:

(A) stored;

(B) used; or

(C) otherwise consumed;

(l) amounts paid or charged for tangible personal property if within this state the tangible personal property is:

(i) stored;

(ii) used; or

(iii) consumed; and

(m) amounts paid or charged for prepaid telephone calling cards.

(2) (a) Except as provided in Subsections (2)(b) and (c), beginning on July 1, 2001, a state tax and a local tax is imposed on a transaction described in Subsection (1) equal to the sum of:

(i) a state tax imposed on the transaction at a rate of 4.75%; and

(ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the transaction under this chapter other than this part.

(b) Notwithstanding Subsection (2)(a), beginning on July 1, 2001, a state tax and a local tax is imposed on a transaction described in Subsection (1)(d) equal to the sum of:

(i) a state tax imposed on the transaction at a rate of 2%; and

(ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the transaction under this chapter other than this part.

(c) Notwithstanding Subsections (2)(a) and (b), beginning on July 1, 2001, if a vendor collects a tax under Subsection 59-12-107(1)(b) on a transaction described in Subsection (1), a state tax and a local tax is imposed on the transaction equal to the sum of:

(i) a state tax imposed on the transaction at a rate of:

(A) 4.75% for a transaction other than a transaction described in Subsection (1)(d); or

(B) 2% for a transaction described in Subsection (1)(d); and

(ii) except as provided in Subsection (2)(d), a local tax imposed on the transaction at a rate equal to the sum of the following tax rates:

(A) the lowest tax rate imposed by a county, city, or town under Section 59-12-204, but only if all of the counties, cities, and towns in the state impose the tax under Section 59-12-204;

(B) the lowest tax rate imposed by a county, city, or town under Section 59-12-205, but only if all of the counties, cities, and towns in the state impose the tax under Section 59-12-205; and

(C) the tax rate authorized by Section 59-12-1102, but only if all of the counties in the state impose the tax under Section 59-12-1102.

(d) Tax rates authorized under the following do not apply to Subsection (2)(c)(ii):

(i) Subsection (2)(a)(i);

(ii) Subsection (2)(b)(i);

(iii) Subsection (2)(c)(i);

(iv) Section 59-12-301;

(v) Section 59-12-352;

(vi) Section 59-12-353;

(vii) Section 59-12-401;

(viii) Section 59-12-402;

(ix) Section 59-12-501;

(x) Section 59-12-502;

(xi) Section 59-12-603;

(xii) Section 59-12-703;

(xiii) Section 59-12-802;

(xiv) Section 59-12-804;

(xv) Section 59-12-1001;

(xvi) Section 59-12-1201; or

(xvii) Section 59-12-1302.

(3) (a) Except as provided in Subsections (4) through (9), the state taxes described in Subsections (2)(a)(i), (2)(b)(i), and (2)(c)(i) shall be deposited into the General Fund.

(b) The local taxes described in Subsections (2)(a)(ii) and (2)(b)(ii) shall be distributed to a county, city, or town as provided in this chapter.

(c) (i) Notwithstanding any provision of this chapter, each county, city, or town in the state shall receive the county's, city's, or town's proportionate share of the revenues generated by the local tax described in Subsection (2)(c)(ii) as provided in Subsection (3)(c)(ii).

(ii) The commission shall determine a county's, city's, or town's proportionate share of the revenues under Subsection (3)(c)(i) by:

(A) dividing the population of the county, city, or town by the total population of the state; and

(B) multiplying the percentage determined under Subsection (3)(c)(ii)(A) by the total amount of revenues generated by the local tax under Subsection (2)(c)(ii) for all counties, cities, and towns.

(iii) (A) Except as provided in Subsection (3)(c)(iii)(B), population figures for purposes of this section shall be derived from the most recent official census or census estimate of the United States Census Bureau.

(B) Notwithstanding Subsection (3)(c)(iii)(A), if a needed population estimate is not available from the United States Census Bureau, population figures shall be derived from the estimate from the Utah Population Estimates Committee created by executive order of the governor.

(C) For purposes of this section, the population of a county may only include the population of the unincorporated areas of the county.

(4) (a)Notwithstanding Subsection (3)(a), there shall be deposited in an Olympics special revenue fund or funds as determined by the Division of Finance under Section 51-5-4, for the use of the Utah Sports Authority created under Title 63A, Chapter 7, Utah Sports Authority Act:

(i) from January 1, 1990, through December 31, 1999, the amount of sales and use tax generated by a 1/64% tax rate on the taxable transactions under Subsection (1);

(ii) from January 1, 1990, through June 30, 1999, the amount of revenue generated by a 1/64% tax rate under Section 59-12-204 or Section 59-12-205 on the taxable transactions under Subsection (1); and

(iii) interest earned on the amounts under Subsections (4)(a)(i) and (ii).

(b) These funds shall be used:

(i) by the Utah Sports Authority as follows:

(A) to the extent funds are available, to transfer directly to a debt service fund or to otherwise reimburse to the state any amount expended on debt service or any other cost of any bonds issued by the state to construct any public sports facility as defined in Section 63A-7-103;

(B) to pay for the actual and necessary operating, administrative, legal, and other expenses of the Utah Sports Authority, but not including protocol expenses for seeking and obtaining the right to host the Winter Olympic Games;

(C) as otherwise appropriated by the Legislature; and

(D) unless the Legislature appropriates additional funds from the Olympics Special Revenue Fund to the Utah Sports Authority, the Utah Sports Authority may not expend, loan, or pledge in the aggregate more than:

(I) $59,000,000 of sales and use tax deposited into the Olympics Special Revenue Fund under Subsection (4)(a);

(II) the interest earned on the amount described in Subsection (4)(b)(i)(D)(I); and

(III) the revenues deposited into the Olympics Special Revenue Fund that are not sales and use taxes deposited under Subsection (4)(a) or interest on the sales and use taxes;

(ii) to pay salary, benefits, or administrative costs associated with the State Olympic Officer under Subsection 63A-10-103(3), except that the salary, benefits, or administrative costs may not be paid from the sales and use tax revenues generated by municipalities or counties and deposited under Subsection (4)(a)(ii).

(c) A payment of salary, benefits, or administrative costs under Subsection 63A-10-103(3) is not considered an expenditure of the Utah Sports Authority.

(d) If the Legislature appropriates additional funds under Subsection (4)(b)(i)(D), the authority may not expend, loan, pledge, or enter into any agreement to expend, loan, or pledge the appropriated funds unless the authority:

(i) contracts in writing for the full reimbursement of the monies to the Olympics Special Revenue Fund by a public sports entity or other person benefitting from the expenditure; and

(ii) obtains a security interest that secures payment or performance of the obligation to reimburse.

(e) A contract or agreement entered into in violation of Subsection (4)(d) is void.

(5) (a)Notwithstanding Subsection (3)(a), beginning on July 1, 2001, the amount of sales and use tax generated annually by a 1/16% tax rate on the taxable transactions under Subsection (1) shall be used as provided in Subsections (5)(b) through (g).

(b) (i) Beginning on July 1, 2001, $2,300,000 each year shall be transferred as dedicated credits to the Department of Natural Resources to:

(A) implement the measures described in Subsections 63-34-14(4)(a) through (d) to protect sensitive plant and animal species; or

(B) award grants, up to the amount authorized by the Legislature in an appropriations act, to political subdivisions of the state to implement the measures described in Subsections 63-34-14(4)(a) through (d) to protect sensitive plant and animal species.

(ii) Money transferred to the Department of Natural Resources under Subsection (5)(b)(i) may not be used to assist the United States Fish and Wildlife Service or any other person to list or attempt to have listed a species as threatened or endangered under the Endangered Species Act of 1973, 16 U.S.C. Sec. 1531 et seq.

(iii) At the end of each fiscal year:

(A) 50% of any unexpended dedicated credits shall lapse to the Water Resources Conservation and Development Fund created in Section 73-10-24;

(B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan Program subaccount created in Section 73-10c-5; and

(C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan Program subaccount created in Section 73-10c-5.

(c) Five hundred thousand dollars each year shall be deposited in the Agriculture Resource Development Fund created in Section 4-18-6.

(d) (i) One hundred thousand dollars each year shall be transferred as dedicated credits to the Division of Water Rights to cover the costs incurred in hiring legal and technical staff for the adjudication of water rights.

(ii) At the end of each fiscal year:

(A) 50% of any unexpended dedicated credits shall lapse to the Water Resources Conservation and Development Fund created in Section 73-10-24;

(B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan Program subaccount created in Section 73-10c-5; and

(C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan Program subaccount created in Section 73-10c-5.

(e) Fifty percent of the remaining amount generated by the 1/16% tax rate shall be deposited in the Water Resources Conservation and Development Fund created in Section 73-10-24 for use by the Division of Water Resources. In addition to the uses allowed of the fund under Section 73-10-24, the fund may also be used to:

(i) provide a portion of the local cost share, not to exceed in any fiscal year 50% of the funds made available to the Division of Water Resources under this section, of potential project features of the Central Utah Project;

(ii) conduct hydrologic and geotechnical investigations by the Department of Natural Resources in a cooperative effort with other state, federal, or local entities, for the purpose of quantifying surface and ground water resources and describing the hydrologic systems of an area in sufficient detail so as to enable local and state resource managers to plan for and accommodate growth in water use without jeopardizing the resource;

(iii) fund state required dam safety improvements; and

(iv) protect the state's interest in interstate water compact allocations, including the hiring of technical and legal staff.

(f) Twenty-five percent of the remaining amount generated by the 1/16% tax rate shall be deposited in the Utah Wastewater Loan Program subaccount created in Section 73-10c-5 for use by the Water Quality Board to fund wastewater projects [~~as defined in Section 73-10b-2~~].

(g) Twenty-five percent of the remaining amount generated by the 1/16% tax rate shall be deposited in the Drinking Water Loan Program subaccount created in Section 73-10c-5 for use by the Division of Drinking Water to:

(i) provide for the installation and repair of collection, treatment, storage, and distribution facilities for any public water system, as defined in Section 19-4-102;

(ii) develop underground sources of water, including springs and wells; and

(iii) develop surface water sources.

(6) (a) Notwithstanding Subsection (3)(a), beginning on July 1, 2001, the amount of sales and use tax generated annually by a 1/16% tax rate on the taxable transactions under Subsection (1) shall be used as provided in Subsections (6)(b) through (d).

(b) (i) Five hundred thousand dollars each year shall be deposited in the Transportation Corridor Preservation Revolving Loan Fund created in Section 72-2-117.

(ii) At least 50% of the money deposited in the Transportation Corridor Preservation Revolving Loan Fund under Subsection (6)(b)(i) shall be used to fund loan applications made by the Department of Transportation at the request of local governments.

(c) From July 1, 1997, through June 30, 2006, $500,000 each year shall be transferred as nonlapsing dedicated credits to the Department of Transportation for the State Park Access Highways Improvement Program created in Section 72-3-207.

(d) The remaining amount generated by the 1/16% tax rate shall be deposited in the class B and class C roads account to be expended as provided in Title 72, Chapter 2, Transportation Finances Act, for the use of class B and C roads.

(7) (a) Notwithstanding Subsection (3)(a), beginning on January 1, 2000, the Division of Finance shall deposit into the Centennial Highway Fund created in Section 72-2-118 a portion of the state sales and use tax under Subsection (2) equal to the revenues generated by a 1/64% tax rate on the taxable transactions under Subsection (1).

(b) Except for sales and use taxes deposited under Subsection (8), beginning on July 1, 1999, the revenues generated by the 1/64% tax rate:

(i) retained under Subsection 59-12-204(7)(a) shall be retained by the counties, cities, or towns as provided in Section 59-12-204; and

(ii) retained under Subsection 59-12-205(4)(a) shall be distributed to each county, city, and town as provided in Section 59-12-205.

(8) Notwithstanding Subsection (3)(a), beginning on July 1, 1999, the commission shall deposit into the Airport to University of Utah Light Rail Restricted Account created in Section 17A-2-1064 the portion of the sales and use tax under Sections 59-12-204 and 59-12-205 that is:

(a) generated by a city or town that will have constructed within its boundaries the Airport to University of Utah Light Rail described in the Transportation Equity Act for the 21st Century, Pub. L. No. 105-178, Sec. 3030(c)(2)(B)(i)(II), 112 Stat. 107; and

(b) equal to the revenues generated by a 1/64% tax rate on the taxable items and services under Subsection (1).

(9) (a) Notwithstanding Subsection (3)(a), for fiscal years beginning on or after fiscal year

2002-03, the commission shall on or before September 30 of each year deposit the difference described in Subsection (9)(b) into the Remote Sales Restricted Account created in Section 59-12-103.2 if that difference is greater than $0.

(b) The difference described in Subsection (9)(a) is equal to the difference between:

(i) the total amount of revenues the commission received from vendors collecting a tax under Subsection 59-12-107(1)(b) for the previous fiscal year; and

(ii) the total amount of revenues the commission received from vendors collecting a tax under Subsection 59-12-107(1)(b) for fiscal year 2000-01.

(10) (a) For purposes of amounts paid or charged as admission or user fees relating to the Olympic Winter Games of 2002, the amounts are considered to be paid or charged on the day on which the Salt Lake Organizing Committee for the Olympic Winter Games of 2002 or a person designated by the Salt Lake Organizing Committee for the Olympic Winter Games of 2002 sends a purchaser confirmation of the purchase of an admission or user fee described in Subsection (1)(f).

(b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission shall make rules defining what constitutes sending a purchaser confirmation under Subsection (10)(a).

Section 5. Section 59-12-103 (Superseded 07/01/01) is amended to read:

59-12-103 (Superseded 07/01/01). Sales and use tax base -- Rate -- Use of sales and use tax revenues.

(1) There is levied a tax on the purchaser for the amount paid or charged for the following:

(a) retail sales of tangible personal property made within the state;

(b) amount paid to common carriers or to telephone or telegraph corporations, whether the corporations are municipally or privately owned, for:

(i) all transportation;

(ii) intrastate telephone service; or

(iii) telegraph service;

(c) gas, electricity, heat, coal, fuel oil, or other fuels sold for commercial use;

(d) gas, electricity, heat, coal, fuel oil, or other fuels sold for residential use;

(e) meals sold;

(f) admission or user fees for theaters, movies, operas, museums, planetariums, shows of any type or nature, exhibitions, concerts, carnivals, amusement parks, amusement rides, circuses, menageries, fairs, races, contests, sporting events, dances, boxing and wrestling matches, closed circuit television broadcasts, billiard or pool parlors, bowling lanes, golf and miniature golf, golf driving ranges, batting cages, skating rinks, ski lifts, ski runs, ski trails, snowmobile trails, tennis courts, swimming pools, water slides, river runs, jeep tours, boat tours, scenic cruises, horseback rides, sports activities, or any other amusement, entertainment, recreation, exhibition, cultural, or athletic activity;

(g) services for repairs or renovations of tangible personal property or services to install tangible personal property in connection with other tangible personal property;

(h) except as provided in Subsection 59-12-104(7), cleaning or washing of tangible personal property;

(i) tourist home, hotel, motel, or trailer court accommodations and services for less than 30 consecutive days;

(j) laundry and dry cleaning services;

(k) leases and rentals of tangible personal property if the property situs is in this state, if the lessee took possession in this state, or if the property is stored, used, or otherwise consumed in this state;

(l) tangible personal property stored, used, or consumed in this state; and

(m) prepaid telephone calling cards.

(2) (a) Except for Subsection (1)(d), the rates of the tax levied under Subsection (1) shall be:

(i) 5% through June 30, 1994;

(ii) 4.875% beginning on July 1, 1994 through June 30, 1997; and

(iii) 4.75% beginning on July 1, 1997.

(b) The rates of the tax levied under Subsection (1)(d) shall be 2% from and after January 1, 1990.

(3) (a) For purposes of amounts paid or charged as admission or user fees relating to the Olympic Winter Games of 2002, the amounts are considered to be paid or charged on the day on which the Salt Lake Organizing Committee for the Olympic Winter Games of 2002 or a person designated by the Salt Lake Organizing Committee for the Olympic Winter Games of 2002 sends a purchaser confirmation of the purchase of an admission or user fee described in Subsection (1)(f).

(b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission shall make rules defining what constitutes sending a purchaser confirmation under Subsection (3)(a).

(4) (a) There shall be deposited in an Olympics special revenue fund or funds as determined by the Division of Finance under Section 51-5-4, for the use of the Utah Sports Authority created under Title 63A, Chapter 7, Utah Sports Authority Act:

(i) from January 1, 1990, through December 31, 1999, the amount of sales and use tax generated by a 1/64% tax rate on the taxable items and services under Subsection (1);

(ii) from January 1, 1990, through June 30, 1999, the amount of revenue generated by a 1/64% tax rate under Section 59-12-204 or Section 59-12-205 on the taxable items and services under Subsection (1); and

(iii) interest earned on the amounts under Subsections (4)(a)(i) and (ii).

(b) These funds shall be used:

(i) by the Utah Sports Authority as follows:

(A) to the extent funds are available, to transfer directly to a debt service fund or to otherwise reimburse to the state any amount expended on debt service or any other cost of any bonds issued by the state to construct any public sports facility as defined in Section 63A-7-103;

(B) to pay for the actual and necessary operating, administrative, legal, and other expenses of the Utah Sports Authority, but not including protocol expenses for seeking and obtaining the right to host the Winter Olympic Games;

(C) as otherwise appropriated by the Legislature; and

(D) unless the Legislature appropriates additional funds from the Olympics Special Revenue Fund to the Utah Sports Authority, the Utah Sports Authority may not expend, loan, or pledge in the aggregate more than:

(I) $59,000,000 of sales and use tax deposited into the Olympics special revenue fund under Subsection (4)(a);

(II) the interest earned on the amount described in Subsection (4)(b)(i)(D)(I); and

(III) the revenues deposited into the Olympics Special Revenue Fund that are not sales and use taxes deposited under Subsection (4)(a) or interest on the sales and use taxes;

(ii) to pay salary, benefits, or administrative costs associated with the State Olympic Officer under Subsection 63A-10-103(3), except that the salary, benefits, or administrative costs may not be paid from the sales and tax revenues generated by municipalities or counties and deposited under Subsection (4)(a)(ii).

(c) A payment of salary, benefits, or administrative costs under Subsection 63A-10-103(3) is not considered an expenditure of the Utah Sports Authority.

(d) If the Legislature appropriates additional funds under Subsection (4)(b)(i)(D), the authority may not expend, loan, pledge, or enter into any agreement to expend, loan, or pledge the appropriated funds unless the authority:

(i) contracts in writing for the full reimbursement of the monies to the Olympics special revenue fund by a public sports entity or other person benefitting from the expenditure; and

(ii) obtains a security interest that secures payment or performance of the obligation to reimburse.

(e) A contract or agreement entered into in violation of Subsection (4)(d) is void.

(5) (a) From July 1, 1997, the annual amount of sales and use tax generated by a 1/8% tax rate on the taxable items and services under Subsection (1) shall be used as follows:

(i) 50% shall be used for water and wastewater projects as provided in Subsections (5)(b) through (f); and

(ii) 50% shall be used for transportation projects as provided in Subsections (5)(g) through (h).

(b) Five hundred thousand dollars each year shall be transferred to the Agriculture Resource Development Fund created in Section 4-18-6.

(c) Fifty percent of the remaining amount generated by 50% of the 1/8% tax rate shall be transferred to the Water Resources Conservation and Development Fund created in Section 73-10-24 for use by the Division of Water Resources. In addition to the uses allowed of the fund under Section 73-10-24, the fund may also be used to:

(i) provide a portion of the local cost share, not to exceed in any fiscal year 50% of the funds made available to the Division of Water Resources under this section, of potential project features of the Central Utah Project;

(ii) conduct hydrologic and geotechnical investigations by the Department of Natural Resources in a cooperative effort with other state, federal, or local entities, for the purpose of quantifying surface and ground water resources and describing the hydrologic systems of an area in sufficient detail so as to enable local and state resource managers to plan for and accommodate growth in water use without jeopardizing the resource;

(iii) fund state required dam safety improvements; and

(iv) protect the state's interest in interstate water compact allocations, including the hiring of technical and legal staff.

(d) Twenty-five percent of the remaining amount generated by 50% of the 1/8% tax rate shall be transferred to the Utah Wastewater Loan Program subaccount created in Section 73-10c-5 for use by the Water Quality Board to fund wastewater projects [~~as defined in Section 73-10b-2~~].

(e) Twenty-five percent of the remaining amount generated by 50% of the 1/8% tax rate shall be transferred to the Drinking Water Loan Program subaccount created in Section 73-10c-5 for use by the Division of Drinking Water to:

(i) provide for the installation and repair of collection, treatment, storage, and distribution facilities for any public water system, as defined in Section 19-4-102;

(ii) develop underground sources of water, including springs and wells; and

(iii) develop surface water sources.

(f) Notwithstanding Subsections (5)(b), (c), (d), and (e), $100,000 of the remaining amount generated by 50% of the 1/8% tax rate each year shall be transferred as dedicated credits to the Division of Water Rights to cover the costs incurred in hiring legal and other technical staff for the adjudication of water rights. Any remaining balance at the end of each fiscal year shall lapse back to the contributing funds on a prorated basis.

(g) Fifty percent of the 1/8% tax rate shall be transferred to the class B and class C roads account to be expended as provided in Title 72, Chapter 2, Transportation Finances Act, for the use of class B and C road funds except as provided in Subsection (5)(h).

(h) (i) If H.B. 53, "Transportation Corridor Preservation," passes in the 1996 General Session, $500,000 each year shall be transferred to the Transportation Corridor Preservation Revolving Loan Fund, and if H.B. 121, "State Park Access Roads," passes in the 1996 General Session, from July 1, 1997, through June 30, 2006, $500,000 shall be transferred to the Department of Transportation for the State Park Access Highways Improvement Program. The remaining amount generated by 50% of the 1/8% tax rate shall be transferred to the class B and class C roads account.

(ii) At least 50% of the money transferred to the Transportation Corridor Preservation Revolving Loan Fund under Subsection (5)(h)(i) shall be used to fund loan applications made by the Department of Transportation at the request of local governments.

(6) (a) Beginning on January 1, 2000, the Division of Finance shall deposit into the Centennial Highway Fund created in Section 72-2-118 a portion of the state sales and use tax under Subsection (2) equal to the revenues generated by a 1/64% tax rate on the taxable items and services under Subsection (1).

(b) Except for sales and use taxes deposited under Subsection (7), beginning on July 1, 1999, the revenues generated by the 1/64% tax rate:

(i) retained under Subsection 59-12-204(7)(a) shall be retained by the counties, cities, or towns as provided in Section 59-12-204; and

(ii) retained under Subsection 59-12-205(4)(a) shall be distributed to each county, city, and town as provided in Section 59-12-205.

(7) Beginning on July 1, 1999, the commission shall deposit into the Airport to University of Utah Light Rail Restricted Account created in Section 17A-2-1064 the portion of the sales and use tax under Sections 59-12-204 and 59-12-205 that is:

(a) generated by a city or town that will have constructed within its boundaries the Airport to University of Utah Light Rail described in the Transportation Equity Act for the 21st Century, Pub. L. No. 105-178, Sec. 3030(c)(2)(B)(i)(II), 112 Stat. 107; and

(b) equal to the revenues generated by a 1/64% tax rate on the taxable items and services under Subsection (1).

Section 6. Section 73-10c-4 is amended to read:

73-10c-4. Credit enhancement and interest buy-down agreements -- Loans -- Hardship grants.

(1) On behalf of the state, the Water Quality Board and the Drinking Water Board may each enter into credit enhancement agreements with political subdivisions containing terms and provisions the acting board determines will reasonably improve the security for or marketability of drinking water and wastewater project obligations, including any of the following:

(a) a term providing security for drinking water and wastewater project obligations, as provided in Subsection 73-10c-6(2)(b), by agreeing to purchase the drinking water or wastewater project obligations of, or to make loans to, political subdivisions from a subaccount of the security account for the purpose of preventing defaults in the payment of principal and interest on drinking water and wastewater project obligations;

(b) a term making loans to political subdivisions to pay the cost of obtaining:

(i) letters of credit from banks, savings and loan institutions, insurance companies, or other financial institutions;

(ii) municipal bond insurance; or

(iii) other forms of insurance or security to provide security for drinking water and wastewater project obligations; and

(c) a term providing other methods and assistance to political subdivisions which are reasonable and proper to enhance the marketability of or security for drinking water and wastewater project obligations.

(2) (a) The Drinking Water Board and the Water Quality Board may each make loans from a security account subaccount to political subdivisions to finance all or part of drinking water and wastewater project costs [~~using the procedures established under Sections 73-10b-5, 73-10b-6, 73-10g-4, and 73-10g-5, as applicable~~] by following the procedures and requirements of Sections 73-10c-4.1 and 73-10c-4.2.

(b) These loans may only be made after credit enhancement agreements, interest buy-down agreements, and all other financing alternatives have been evaluated by the acting board and the board determines those options are unavailable or unreasonably expensive for the subdivision requesting assistance.

(c) Loans may be made from the security account subaccount at interest rates determined by the board.

(d) Loans may not be made from the $5,000,000 appropriated to the security account subaccount by the Legislature for fiscal year 1983-84.

(3) The Drinking Water Board and the Water Quality Board may each make loans or grants from the security account to political subdivisions for interest buy-down agreements for drinking water or wastewater project obligations.

(4) (a) Of the total amount of money annually available to the Drinking Water Board and Water Quality Board for financial assistance to political subdivisions, at least 10% shall be allocated by each board for credit enhancement and interest buy-down agreements.

(b) The requirement specified in Subsection (4)(a) shall apply only so long as sales and use tax is transferred to the Utah Wastewater Loan Program Subaccount and Drinking Water Loan Program Subaccount as provided in Section 59-12-103.

(5) To the extent money is available in the hardship grant subaccounts of the security account, the Drinking Water Board and the Water Quality Board may each make grants to political subdivisions that meet the drinking water or wastewater project loan considerations respectively, but whose projects are determined by the granting board to not be economically feasible unless grant assistance is provided.

(6) The Drinking Water and Water Quality Boards may at any time transfer money out of their respective hardship grant subaccounts of the security account to their respective loan program subaccounts.

Section 7. Section 73-10c-4.1 is enacted to read:

73-10c-4.1. Wastewater projects -- Loan criteria and requirements -- Process for approval.

(1) The Water Quality Board shall review the plans and specifications for a wastewater project before approval of any loan and may condition approval on the availability of loan funds and on assurances that the Water Quality Board considers necessary to ensure that loan funds are used to pay the wastewater project costs and that the wastewater project is completed.

(2) (a) Each loan shall specify the terms for repayment, with the term, interest rate or rates, including a variable rate, and security as determined by the Water Quality Board.

(b) The loan may be evidenced by general obligation or revenue bonds or other obligations of the political subdivision.

(c) Loan payments made by a political subdivision shall be deposited in the Water Quality Security Subaccount as described in Section 73-10c-5.

(d) The loans are subject to the provisions of Title 63, Chapter 65, State Financing Consolidation Act.

(3) In determining the priority for a wastewater project loan, the Water Quality Board shall consider:

(a) the ability of the political subdivision to obtain monies for the wastewater project from other sources or to finance the project from its own resources;

(b) the ability of the political subdivision to repay the loan;

(c) whether or not a good faith effort to secure all or part of the services needed from the private sector of the economy has been made; and

(d) whether or not the wastewater project:

(i) meets a critical local or state need;

(ii) is cost effective;

(iii) will protect against present or potential health hazards;

(iv) is needed to comply with minimum standards of the federal Water Pollution Control Act, Title 33, Chapter 26, United States Code, or any similar or successor statute;

(v) is needed to comply with the minimum standards of Title 19, Chapter 5, Water Quality Act, or any similar or successor statute;

(vi) is designed to reduce the pollution of the waters of this state; and

(vii) meets any other consideration considered necessary by the Water Quality Board.

(4) In determining the cost effectiveness of a wastewater project the Water Quality Board shall:

(a) require the preparation of a cost-effective analysis of feasible wastewater treatment or conveyance alternatives capable of meeting state and federal water quality and public health requirements;

(b) consider monetary costs, including the present worth or equivalent annual value of all capital costs and operation, maintenance, and replacement costs; and

(c) ensure that the alternative selected is the most economical means of meeting applicable state and federal wastewater and water quality or public health requirements over the useful life of the facility while recognizing environmental and other nonmonetary considerations.

(5) A loan may not be made for a wastewater project that is not in the public interest as determined by the Water Quality Board.

Section 8. Section 73-10c-4.2 is enacted to read:

73-10c-4.2. Drinking water projects -- Loan criteria and requirements -- Process for approval.

(1) The Drinking Water Board shall review the plans and specifications for a drinking water project before approval of any loan and may condition approval on the availability of loan funds and on the

assurances that the Drinking Water Board considers necessary to ensure that loan funds are used to pay the drinking water project costs and that the drinking water project is completed.

(2) (a) Each loan shall specify the terms for repayment, with the term, interest rate or rates, including a variable rate, and security as determined by the Drinking Water Board.

(b) The loan may be evidenced by general obligation or revenue bonds or other obligations of the political subdivision.

(c) Loan payments made by a political subdivision shall be deposited in the Drinking Water Security Subaccount as described in Section 73-10c-5.

(d) The loans are subject to the provisions of Title 63, Chapter 65, State Financing Consolidation Act.

(3) In determining the priority for a drinking water project loan, the Drinking Water Board shall consider:

(a) the ability of the political subdivision to obtain monies for the drinking water project from other sources or to finance such project from its own resources;

(b) the ability of the political subdivision to repay the loan;

(c) whether or not a good faith effort to secure all or part of the services needed from the private sector of the economy has been made; and

(d) whether or not the drinking water project:

(i) meets a critical local or state need;

(ii) is cost effective;

(iii) will protect against present or potential health hazards;

(iv) is needed to comply with minimum standards of the federal Safe Drinking Water Act, or any similar or successor statute;

(v) is needed to comply with the minimum standards of Title 19, Chapter 4, Safe Drinking Water Act, or any similar or successor statute; and

(vi) meets any other consideration considered necessary by the Drinking Water Board.

(4) In determining the cost effectiveness of a drinking water project the Drinking Water Board shall:

(a) require the preparation of a cost-effective analysis of feasible drinking water projects;

(b) consider monetary costs, including the present worth or equivalent annual value of all capital costs and operation, maintenance, and replacement cost; and

(c) ensure that the alternative selected is the most economical means of meeting applicable water quality or public health requirements over the useful life of the facility while recognizing environmental and other nonmonetary considerations.

(5) A loan may not be made for a drinking water project that is not in the public interest as determined by the Drinking Water Board.

Section 9. Section 73-10c-5 is amended to read:

73-10c-5. Water Development Security Account created -- Water Quality Security and Drinking Water Security Subaccounts created -- Use -- Revolving loan funds -- Hardship grants.

(1) There is established a restricted account within the General Fund known as the Water Development Security Account which includes the Water Quality Security Subaccount and the Drinking Water Security Subaccount.

(2) The Water Quality Security Subaccount consists of three subaccounts:

(a) the Utah Wastewater Loan Program Subaccount, which consists of:

(i) money appropriated to the subaccount by the Legislature;

(ii) money received from the repayment of the principal of loans made by the Water Quality Board under Sections [~~73-10b-5,~~] 73-10c-4[~~,~~] and 73-10c-6[~~, 73-10g-4, and 73-10h-4~~] from the Utah Wastewater Loan Program Subaccount; and

[~~(iii) except for payments, if any, necessary to comply with Section 148(f), Internal Revenue Code of 1986, income earned after June 30, 1984, on proceeds of bonds authorized by Sections 73-10b-5, 73-10g-4, and 73-10h-4; and~~]

[~~(iv)~~] (iii) money deposited in the subaccount under any other law;

(b) the Utah State Revolving Fund for Wastewater Projects Subaccount, which consists of:

(i) money appropriated to the subaccount by the Legislature;

(ii) money received from the Utah Wastewater Loan Program Subaccount applied to meet match requirements for federal funds under 33 U.S.C.A. 1251 et seq., federal Clean Water Act;

(iii) money received from the repayment of loans made by the Water Quality Board under Section 73-10c-4 from the Utah State Revolving Fund for Wastewater Projects Subaccount;

(iv) money received from the repayment of loans made by the Water Quality Board under Section 73-10c-4.5;

(v) money deposited in the subaccount under any other law;

(vi) money received under and subject to the restrictions of 33 U.S.C.A. 1251 et seq., federal Clean Water Act, and which is eligible for use in state revolving loan funds established to meet the requirements of the act; and

(vii) all investment income derived from money in the Utah State Revolving Fund for Wastewater Projects Subaccount; and

(c) the Hardship Grant Program for Wastewater Projects Subaccount, which consists of:

(i) money appropriated to the subaccount by the Legislature;

(ii) money received as interest payments on loans made by the Water Quality Board under Sections [~~73-10b-5,~~] 73-10c-4[,] and 73-10c-6, [~~73-10g-4, and 73-10h-4,~~] from the Utah Wastewater Loan Program Subaccount;

(iii) money deposited in the subaccount under any other law;

(iv) the Hardship Grant Assessment charged to State Revolving Fund loan recipients; and

(v) all investment income derived from money in the Utah Wastewater Loan Program Subaccount or the Hardship Grant Program for Wastewater Projects Subaccount.

(3) The Drinking Water Security Subaccount consists of three subaccounts:

(a) the Drinking Water Loan Program Subaccount, which consists of:

(i) money appropriated to the subaccount by the Legislature;

(ii) money received from the repayment of the principal of loans made by the Drinking Water Board under Sections [~~73-10b-6,~~] 73-10c-4[,] and 73-10c-6, [~~73-10g-5, and 73-10h-5,~~] from the Drinking Water Loan Program Subaccount; and

[~~(iii) except for payments, if any, necessary to comply with Section 148(f), Internal Revenue Code of 1986, income earned after June 30, 1984, on proceeds of bonds authorized by Sections 73-10b-6, 73-10g-5, and 73-10h-5; and~~]

[~~(iv)~~] (iii) money deposited in the subaccount under any other law;

(b) the State Revolving Fund for Drinking Water Projects Subaccount, which consists of:

(i) money appropriated to the subaccount by the Legislature;

(ii) money received from the Utah Drinking Water Loan Program Subaccount and applied to meet match requirements for federal funds under 42 U.S.C.A. 300f et seq., federal Safe Drinking Water Act;

(iii) money received from the repayment of loans made by the Drinking Water Board under Section 73-10c-4 from the State Revolving Fund for Drinking Water Projects Subaccount;

(iv) money deposited in the subaccount under any other law;

(v) money received under and subject to the restrictions of 42 U.S.C.A. 300f et seq., federal Safe Drinking Water Act, and which is eligible for use in state revolving loan funds established to meet the requirements of the act; and

(vi) all investment income derived from money in the State Revolving Fund for Drinking Water Projects Subaccount; and

(c) the Hardship Grant Program for Drinking Water Projects Subaccount, which consists of:

(i) money appropriated to the subaccount by the Legislature;

(ii) money received from interest payments on loans made by the Drinking Water Board under Sections [~~73-10b-6,~~] 73-10c-4[,] and 73-10c-6, [~~73-10g-5, and 73-10h-5,~~] from the Drinking Water Loan Program Subaccount;

(iii) money deposited in the subaccount under any other law;

(iv) the Hardship Grant Assessment charged to State Revolving Fund loan recipients; and

(v) all investment income derived from money in the Drinking Water Loan Program Subaccount or the Hardship Grant Program for Drinking Water Projects Subaccount.

(4) State monies in the Water Quality Security Subaccount and the Drinking Water Security Subaccount may be applied to meet match requirements for federal funds under 33 U.S.C.A. 1251 et seq., federal Clean Water Act and 42 U.S.C.A. 300f et seq., federal Safe Drinking Water Act.

(5) If the money in the security account is insufficient for the purposes for which the security account is established, the council shall ask the governor to request the Legislature to appropriate additional money to the account.

(6) (a) The Drinking Water Board and Water Quality Board may use the money in the appropriate security account subaccount only to the extent of the money available in the account, for the support of drinking water projects and wastewater projects in accordance with the terms of credit enhancement agreements, grant agreements, and loan agreements.

(b) Repayments to the security account from loans made by the acting board, monies allocated by the Legislature, and interest accrued on these monies shall remain available for use by that board for further project funding.

(7) Funds received under Section 1452 of the federal Safe Drinking Water Act, 42 U.S.C.A. 300f et seq., may be used for providing financial assistance to community water systems and nonprofit noncommunity water systems as defined and within the limits of that act.

Section 10. Repealer.

This act repeals:

Section 63-56a-1, Members -- Bond legislation to contain operation cost estimates of funded projects -- Expenses.

Section 63-64-1, General obligation bonds authorized -- Maximum amount.

Section 63-64-2, Projects authorized.

Section 63-64-3, Costs of issuance and sale.

Section 63-64-4, Time and manner of authorization, issuance and sale -- Interest rates -- Maturity.

Section 63-64-5, Manner of sale -- Form -- Security arrangements -- Signatures -- Seal -- Replacement or exchange -- Registration.

Section 63-64-6, Constitutional debt -- Limitation -- Computation.

Section 63-64-7, Annual tax.

Section 63-64-8, Sinking fund created -- Source and use of funds -- Separate accounts.

Section 63-64-9, Payment of interest, principal and redemption premiums.

Section 63-64-10, Abatement of annual tax.

Section 63-64-11, Investment of sinking fund -- Disposition of investment income.

Section 63-64-12, Deposit and investment of bond proceeds -- Disposition of investment income and unexpended proceeds.

Section 63-64-13, Refunding bonds.

Section 63-64-14, Certification of satisfaction of conditions precedent -- Conclusiveness.

Section 63-64-15, Tax exemption.

Section 63-64-16, Legal investment status.

Section 63-64-17, Publication of resolution -- Limitation on actions to contest legality.

Section 63-64-18, Report of proceedings to Legislature.

Section 63-66-1, General obligation bonds authorized -- Maximum amount.

Section 63-66-2, Prepayment of certificates authorized -- Costs of issuance and sale.

Section 63-66-3, Time and manner of authorization, issuance, and sale -- Interest rates -- Maturity.

Section 63-66-4, Manner of sale -- Form -- Security arrangements -- Signatures -- Seal -- Replacement or exchange -- Registration.

Section 63-66-5, Constitutional debt -- Limitation -- Computation.

Section 63-66-6, Annual tax.

Section 63-66-7, Sinking fund created -- Source and use of funds -- Separate accounts.

Section 63-66-8, Payment of interest, principal, and redemption premiums.

Section 63-66-9, Abatement of annual tax.

Section 63-66-10, Investment of sinking fund -- Disposition of investment income.

Section 63-66-11, Deposit and investment of bond proceeds -- Disposition of investment income and unexpended proceeds.

Section 63-66-12, Refunding bonds.

Section 63-66-13, Certification of satisfaction of conditions precedent -- Conclusiveness.

Section 63-66-14, Tax exemption.

Section 63-66-15, Legal investment status.

Section 63-66-16, Publication of resolution -- Limitation on actions to contest legality.

Section 63-66-17, Report of proceedings to Legislature.

Section 63-67-101, State Bonding Commission authorized to issue general obligation bonds -- Maximum amount.

Section 63-67-102, Projects authorized.

Section 63-67-103, Costs of issuance and sale.

Section 63-67-104, Time and manner of authorization, issuance, and sale -- Interest rates -- Maturity.

Section 63-67-105, Manner of sale -- Form -- Security arrangements -- Signatures -- Seal -- Replacement or exchange -- Registration -- Federal rebate.

Section 63-67-106, Constitutional debt -- Limitation -- Computation.

Section 63-67-107, Annual tax.

Section 63-67-108, Sinking fund -- Source and use of funds -- Separate accounts.

Section 63-67-109, Payment of interest, principal, and redemption premiums.

Section 63-67-110, Abatement of annual tax.

Section 63-67-111, Investment of sinking fund -- Disposition of investment income.

Section 63-67-112, Deposit and investment of bond proceeds -- Disposition of investment income and unexpended proceeds.

Section 63-67-113, Refunding bonds.

Section 63-67-114, Certification of satisfaction of condition precedent -- Conclusiveness.

Section 63-67-115, Tax exemption.

Section 63-67-116, Legal investment status.

Section 63-67-117, Publication of resolution or notice -- Limitation on actions to contest legality.

Section 63-67-118, Report to Legislature.

Section 63-69-1, State Bonding Commission authorized to issue general obligation bonds -- Maximum amount.

Section 63-69-2, Prepayment, refunding, and projects authorized.

Section 63-69-3, Costs of issuance and sale.

Section 63-69-4, Time and manner of authentication, issuance, and sale -- Interest rates -- Maturity.

Section 63-69-5, Manner of sale -- Form -- Security arrangements -- Signatures -- Seal -- Replacement or exchange -- Registration.

Section 63-69-6, Constitutional debt limitation -- Computation.

Section 63-69-7, Annual tax.

Section 63-69-8, Sinking fund created -- Source and use of funds -- Separate accounts.

Section 63-69-9, Payment of interest, principal, and redemption premiums.

Section 63-69-10, Abatement of annual tax.

Section 63-69-11, Investment of sinking fund -- Disposition of investment income.

Section 63-69-12, Deposit and investment of bond proceeds -- Disposition of investment income and unexpended proceeds.

Section 63-69-13, Refunding bonds.

Section 63-69-14, Certification of satisfaction of conditions precedent -- Conclusiveness.

Section 63-69-15, Tax exemption.

Section 63-69-16, Legal investment status.

Section 63-69-17, Publication of resolution or notice -- Limitation on actions to contest legality.

Section 63-69-18, Report to Legislature.

Section 63-74-1, State Bonding Commission authorized to issue general obligation bonds.

Section 63-74-2, Maximum amount -- Projects authorized.

Section 63-74-3, Bond proceeds may be used to pay costs of issuance and sale.

Section 63-74-4, Time and manner of authentication, issuance, and sale -- Interest rates -- Maturity.

Section 63-74-5, Manner of sale -- Form -- Security arrangements -- Signatures -- Seal -- Replacement or exchange -- Registration.

Section 63-74-6, Constitutional debt limitation.

Section 63-74-7, Annual tax -- Abatement of annual tax.

Section 63-74-8, Sinking fund created -- Source and use of funds -- Separate accounts.

Section 63-74-9, Payment of interest, principal, and redemption premiums.

Section 63-74-10, Investment of sinking fund -- Disposition of investment income.

Section 63-74-11, Deposit and investment of bond proceeds -- Disposition of investment income and unexpended proceeds.

Section 63-74-12, Refunding of bonds.

Section 63-74-13, Certification of satisfaction of conditions precedent -- Conclusiveness.

Section 63-74-14, Tax exemption.

Section 63-74-15, Legal investment status.

Section 63-74-16, Publication of resolution or notice -- Limitation on actions to contest legality.

Section 63-74-17, Report to Legislature.

Section 63-77-1, State Bonding Commission authorized to issue general obligation bonds.

Section 63-77-2, Maximum amount -- Projects authorized.

Section 63-77-3, Bond proceeds may be used to pay costs of issuance and sale.

Section 63-77-4, Time and manner of authentication, issuance, and sale -- Interest rates -- Maturity.

Section 63-77-5, Manner of sale -- Form -- Security arrangements -- Signatures -- Seal -- Replacement or exchange -- Registration.

Section 63-77-6, Constitutional debt limitation.

Section 63-77-7, Annual tax -- Abatement of annual tax.

Section 63-77-8, Sinking fund created -- Source and use of funds -- Separate accounts.

Section 63-77-9, Payment of interest, principal, and redemption premiums.

Section 63-77-10, Investment of sinking fund -- Disposition of investment income.

Section 63-77-11, Deposit and investment of bond proceeds -- Disposition of investment income and unexpended proceeds.

Section 63-77-12, Refunding of bonds.

Section 63-77-13, Certification of satisfaction of conditions precedent -- Conclusiveness.

Section 63-77-14, Tax exemption.

Section 63-77-15, Legal investment status.

Section 63-77-16, Publication of resolution or notice -- Limitation on actions to contest legality.

Section 63-77-17, Report to Legislature.

Section 63-83-1, State Bonding Commission authorized to issue general obligation bonds.

Section 63-83-2, Maximum amount -- Projects authorized.

Section 63-83-3, Use of bond proceeds for issuance and other costs.

Section 63-83-4, Manner of issuance -- Amounts, interest, and maturity.

Section 63-83-5, Terms and conditions of sale -- Plan of financing -- Signatures -- Replacement -- Registration -- Federal rebate.

Section 63-83-6, Constitutional debt limitation.

Section 63-83-7, Tax levy -- Abatement of tax.

Section 63-83-8, Creation of sinking fund.

Section 63-83-9, Payment of interest, principal, and redemption premiums.

Section 63-83-10, Investment of sinking fund money.

Section 63-83-11, Bond proceeds -- Deposits -- Investment -- Disposition of investment income and unexpended proceeds.

Section 63-83-12, Refunding of bonds.

Section 63-83-13, Certification of satisfaction of conditions precedent -- Conclusiveness.

Section 63-83-14, Tax exemption.

Section 63-83-15, Legal investment status.

Section 63-83-16, Publication of resolution or notice -- Limitation on actions to contest legality.

Section 63-83-17, Report to Legislature.

Section 63-84-1, State Bonding Commission authorized to issue general obligation bonds.

Section 63-84-2, Maximum amount -- Projects authorized.

Section 63-84-3, Bond proceeds may be used to pay costs of issuance and sale.

Section 63-84-4, Manner of issuance --Amounts, interest, and maturity.

Section 63-84-5, Terms and conditions of sale -- Plan of financing -- Signatures -- Replacement -- Registration -- Federal rebate.

Section 63-84-6, Constitutional debt limitation.

Section 63-84-7, Tax levy -- Abatement of tax.

Section 63-84-8, Creation of sinking fund.

Section 63-84-9, Payment of interest, principal, and redemption premiums.

Section 63-84-10, Investment of sinking fund money.

Section 63-84-11, Bond proceeds -- Deposits -- Investment -- Disposition of investment income and unexpended proceeds.

Section 63-84-12, Refunding of bonds.

Section 63-84-13, Certification of satisfaction of conditions precedent -- Conclusiveness.

Section 63-84-14, Tax exemption.

Section 63-84-15, Legal investment status.

Section 63-84-16, Publication of resolution or notice -- Limitation on actions to contest legality.

Section 63-84-17, Report to Legislature.

Section 63-85-1, State Bonding Commission authorized to issue general obligation bonds.

Section 63-85-2, Maximum amount -- Projects authorized.

Section 63-85-3, Use of bond proceeds for issuance and other costs.

Section 63-85-4, Manner of issuance -- Amounts, interest, and maturity.

Section 63-85-5, Terms and conditions of sale -- Plan of financing -- Signatures -- Replacement -- Registration -- Federal rebate.

Section 63-85-6, Constitutional debt limitation.

Section 63-85-7, Tax levy -- Abatement of tax.

Section 63-85-8, Creation of sinking fund.

Section 63-85-9, Payment of interest, principal, and redemption premiums.

Section 63-85-10, Investment of sinking fund money.

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Section 63-85-12, Refunding of bonds.

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Section 63-85-14, Tax exemption.

Section 63-85-15, Legal investment status.

Section 63-85-16, Publication of resolution or notice -- Limitation on actions to contest legality.

Section 63-85-17, Report to Legislature.

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Section 63-86-2, Maximum amount -- Projects authorized.

Section 63-86-3, Bond proceeds may be used to pay costs of issuance and sale.

Section 63-86-4, Manner of issuance -- Amounts, interest, and maturity.

Section 63-86-5, Terms and conditions of sale -- Plan of financing -- Signatures -- Replacement -- Registration -- Federal rebate.

Section 63-86-6, Constitutional debt limitation.

Section 63-86-7, Tax levy -- Abatement of tax.

Section 63-86-8, Creation of sinking fund.

Section 63-86-9, Payment of interest, principal, and redemption premiums.

Section 63-86-10, Investment of sinking fund money.

Section 63-86-11, Bond proceeds -- Deposits -- Investment -- Disposition of investment income and unexpended proceeds.

Section 63-86-12, Refunding of bonds.

Section 63-86-13, Certification of satisfaction of conditions precedent -- Conclusiveness.

Section 63-86-14, Tax exemption.

Section 63-86-15, Legal investment status.

Section 63-86-16, Publication of resolution or notice -- Limitation on actions to contest legality.

Section 63-86-17, Report to Legislature.

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Section 73-10b-5, Wastewater project loans.

Section 73-10b-6, Drinking water project loans.

Section 73-10b-7, Use of bond proceeds for loans and other costs.

Section 73-10b-8, Manner of issuance of bonds -- Amounts, interest and maturity.

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Section 73-10b-10, Constitutional debt limitation.

Section 73-10b-11, Tax levy.

Section 73-10b-12, Sinking fund.

Section 73-10b-13, Warrants for payments from sinking fund.

Section 73-10b-14, Abatement of tax.

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Section 73-10b-17, Refunding bonds.

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Section 73-10g-5, Drinking water project loans.

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Section 73-10g-7, Manner of issuance -- Amounts, interest, and maturity.

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Section 73-10g-9, Constitutional debt limitation.

Section 73-10g-10, Tax levy -- Abatement of tax.

Section 73-10g-11, Creation of sinking fund.

Section 73-10g-12, Payment of interest, principal, and redemption premiums.

Section 73-10g-13, Investment of sinking fund money.

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investment income and unexpended proceeds.
Section 73-10g-15, Refunding of bonds.
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Section 73-10g-17, Tax exemption.
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Section 73-10h-6, Use of bond proceeds for loans and other costs.
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Section 73-10h-8, Terms and conditions of sale -- Plan of financing -- Signatures -- Replacement -- Registration -- Federal rebate.
Section 73-10h-9, Constitutional debt limitation.
Section 73-10h-10, Tax levy -- Abatement of tax.
Section 73-10h-11, Creation of sinking fund.
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Section 73-10h-13, Investment of sinking fund money.
Section 73-10h-14, Bond proceeds -- Deposits -- Investments -- Disposition of investment income and unexpended proceeds.
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Section 73-24-1, General obligation bonds authorized -- Maximum amount.
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Section 73-24-6, Constitutional debt -- Limitation -- Computation.
Section 73-24-7, Annual tax.
Section 73-24-8, Sinking fund created -- Source and use of funds -- Separate accounts.
Section 73-24-9, Payment of interest, principal and redemption premiums.
Section 73-24-10, Abatement of annual tax.
Section 73-24-11, Investment of sinking fund -- Disposition of investment income.
Section 73-24-12, Deposit and investment of bond proceeds -- Disposition of investment income and unexpended proceeds.
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Section 73-24-14, Certification of satisfaction of conditions precedent -- Conclusiveness.
Section 73-24-15, Tax exemption.
Section 73-24-16, Legal investment status.
Section 73-24-17, Publication of resolution -- Limitation on actions to contest legality.
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CHAPTER 13
H. B. 10
Passed January 18, 2001
Approved February 8, 2001
Effective April 30, 2001

STATE INSTITUTIONS PROVISIONS REPEAL

Sponsor: Michael R. Styler
Darin G. Peterson
Stephen H. Urquhart
Bryan D. Holladay
Ron Bigelow
David Clark

This act modifies the State Institutions Title by repealing obsolete and lapsed sections.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
72-11-104, as renumbered and amended by Chapter 270, Laws of Utah 1998

REPEALS:
64-1-1, Utah Code Annotated 1953
64-1-2, Utah Code Annotated 1953
64-1-4, as last amended by Chapter 128, Laws of Utah 1959
64-1-5, Utah Code Annotated 1953
64-1-6, Utah Code Annotated 1953
64-1-7, as last amended by Chapter 67, Laws of Utah 1984
64-1-8, Utah Code Annotated 1953
64-1-9, Utah Code Annotated 1953

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

Section 1. Section 72-11-104 is amended to read:

72-11-104. Laws applicable to construction contracts and contractor's bonds.

(1) Construction contracts entered into by the committee under the authority of this chapter [~~are not subject to the provisions of Sections 64-1-4 and 64-1-5 and~~] shall be governed solely by this chapter, except that they are subject to the approval of the Division of Facilities Construction and Management.

(2) The provisions of Title 14, Chapter 1, Public Contracts requiring contractor's bonds are expressly made applicable to any construction contract under this chapter when the amount of the contract exceeds $1,000.

Section 2. Repealer.

This act repeals:

Section 64-1-1, Governing boards -- Governor to appoint.

Section 64-1-2, Vacancies -- Term of office.

Section 64-1-4, Buildings -- Repairs and construction -- Contracts for.

Section 64-1-5, Advertising for bids -- Proposals -- Awards.

Section 64-1-6, Monthly expenses -- Payment.

Section 64-1-7, Annual reports to Division of Archives.

Section 64-1-8, Biennial accounts -- Estimate of income and requirements.

Section 64-1-9, Remittance of proceeds of sales of products.

CHAPTER 14
H. B. 11
Passed January 18, 2001
Approved February 8, 2001
Effective April 30, 2001

STATE LOAN COMMISSIONERS AND LOAN AUTHORIZATION REPEAL

Sponsor: Bryan D. Holladay
Darin G. Peterson
David Clark
Stephen H. Urquhart
Ron Bigelow
Bradley A. Winn
Brent D. Parker
Paul Ray

This act modifies code sections creating and governing state loan commissioners by repealing obsolete and lapsed sections governing state loan commissioners. This act repeals provisions authorizing certain paid-off loans.

This act affects sections of Utah Code Annotated 1953 as follows:

REPEALS:
66-1-1, as last amended by Chapter 243, Laws of Utah 1996
66-1-3, Utah Code Annotated 1953
66-1-4, Utah Code Annotated 1953
66-6-1, as last amended by Chapter 92, Laws of Utah 1987
66-6-2, as enacted by Chapter 159, Laws of Utah 1961
66-6-3, as enacted by Chapter 159, Laws of Utah 1961
66-6-4, as last amended by Chapter 12, Laws of Utah 1994
66-7-1, as last amended by Chapter 92, Laws of Utah 1987
66-7-2, as enacted by Chapter 160, Laws of Utah 1961
66-7-3, as enacted by Chapter 160, Laws of Utah 1961
66-7-4, as enacted by Chapter 160, Laws of Utah 1961

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

Section 1. Repealer.

This act repeals:

Section 66-1-1, Members of state board.

Section 66-1-3, Payment of loans.

Section 66-1-4, Biennial report to governor.

Section 66-6-1, Authority to negotiate -- Use of proceeds.

Section 66-6-2, When loan to be made -- Amount of loan.

Section 66-6-3, Authority to secure funds to assure availability of loan balance.

Section 66-6-4, Repayment of loan.

Section 66-7-1, Authority to negotiate -- Use of proceeds.

Section 66-7-2, When loan to be made -- Amount.

Section 66-7-3, Authority to secure funds to assure availability of loan balance.

Section 66-7-4, Repayment of loan.

CHAPTER 15
H. B. 20
Passed January 25, 2001
Approved February 8, 2001
Effective April 30, 2001

STATE SYMBOL RECODIFICATION

Sponsor: Loraine T. Pace
Stephen H. Urquhart
Richard M. Siddoway
Ron Bigelow
David Clark

This act modifies sections relating to state symbols by recodifying state symbols into one section and making technical corrections.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:
63-13-5.5, Utah Code Annotated 1953

REPEALS:
63-13-6, Utah Code Annotated 1953
63-13-7, Utah Code Annotated 1953
63-13-7.1, as enacted by Chapter 213, Laws of Utah 1969
63-13-7.2, as enacted by Chapter 160, Laws of Utah 1971
63-13-7.3, as last amended by Chapter 109, Laws of Utah 1997
63-13-7.4, as enacted by Chapter 29, Laws of Utah 1991
63-13-7.5, as enacted by Chapter 67, Laws of Utah 1997
63-13-7.6, as enacted by Chapter 141, Laws of Utah 1997
63-13-8, Utah Code Annotated 1953
63-13-8.1, as enacted by Chapter 237, Laws of Utah 1994
63-13-8.2, as enacted by Chapter 57, Laws of Utah 1996
63-13-9, as enacted by Chapter 134, Laws of Utah 1955
63-13-10, as enacted by Chapter 122, Laws of Utah 1959
63-13-11, as enacted by Chapter 123, Laws of Utah 1959
63-13-11.4, as enacted by Chapter 254, Laws of Utah 1994
63-13-11.5, as enacted by Chapter 309, Laws of Utah 1983
63-13-11.7, as enacted by Chapter 147, Laws of Utah 1988
63-13-11.8, as enacted by Chapter 209, Laws of Utah 1990
63-13-11.9, as enacted by Chapter 9, Laws of Utah 1988
63-13-11.10, as enacted by Chapter 29, Laws of Utah 1996

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

Section 1. Section 63-13-5.5 is enacted to read:

63-13-5.5. State symbols.

(1) Utah's state animal is the elk.

(2) Utah's state bird is the sea gull.

(3) Utah's state centennial astronomical symbol is the Beehive Cluster located in the constellation of Cancer the Crab.

(4) Utah's state centennial star is Dubhe, one of the seven bright stars composing the Big Dipper in the constellation Ursa Major.

(5) Utah's state centennial tartan, which honors the first Scots known to have been in Utah and those Utahns of Scottish heritage, shall have a pattern or repeating-half-sett of white-2, blue-6, red-6, blue-4, red-6, green-18, red-6, and white-4 to represent the tartan worn anciently by the Logan and Skene clans, with the addition of a white stripe.

(6) Utah's state cooking pot is the dutch oven.

(7) Utah's state emblem is the beehive.

(8) Utah's state fish is the Bonneville cutthroat trout.

(9) Utah's state flower is the sego lily.

(10) Utah's state folk dance is the square dance, the folk dance that is called, cued, or prompted to the dancers and includes squares, rounds, clogging, contra, line, and heritage dances.

(11) Utah's state fossil is the Allosaurus.

(12) Utah's state fruit is the cherry.

(13) Utah's state gem is topaz, as is prominently found in the Thomas Mountain Range in Juab County, Utah.

(14) Utah's state grass is Indian rice grass.

(15) Utah's state insect is the honeybee.

(16) Utah's state mineral is copper.

(17) Utah's state motto is "Industry."

(18) Utah's state railroad museum is Ogden Union Station.

(19) Utah's state rock is coal.

(20) Utah's state song is "Utah We Love Thee" by Evan Stephens.

(21) Utah's state tree is the blue spruce.

Section 2. Repealer.

This act repeals:

Section 63-13-6, State flower.

Section 63-13-7, State tree.

Section 63-13-7.1, State gem.

Section 63-13-7.2, State animal.

Section 63-13-7.3, State fish.

Section 63-13-7.4, State rock.

Section 63-13-7.5, State fruit.

Section 63-13-7.6, State cooking pot.

Section 63-13-8, State song.

Section 63-13-8.1, State folk dance.

Section 63-13-8.2, State Centennial tartan.

Section 63-13-9, Sea gull.

Section 63-13-10, State emblem.

Section 63-13-11, State motto.

Section 63-13-11.4, State mineral.

Section 63-13-11.5, State insect.

Section 63-13-11.7, State fossil.

Section 63-13-11.8, State grass.

Section 63-13-11.9, Designation of railroad museum.

Section 63-13-11.10, State centennial star and astronomical symbol.

CHAPTER 16
H. B. 21
Passed January 26, 2001
Approved February 8, 2001
Effective April 30, 2001

MAILING REQUIREMENTS TO STATE AND POLITICAL SUBDIVISIONS

Sponsor: Roger E. Barrus
Glenn A. Donnelson
Paul Ray
Bryan D. Holladay
David Clark
Stephen H. Urquhart
Ron Bigelow
Loraine T. Pace

This act modifies provisions relating to mailing reports and payments. This act renumbers and consolidates sections relating to general filing requirements and makes technical corrections.

This act affects sections of Utah Code Annotated 1953 as follows:

RENUMBERS AND AMENDS:
68-3-8.5, (Renumbered from 63-37-1, as enacted by Chapter 179, Laws of Utah 1967)

REPEALS:
63-37-2, as enacted by Chapter 179, Laws of Utah 1967
63-37-3, as enacted by Chapter 179, Laws of Utah 1967

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

Section 1. Section 68-3-8.5, which is renumbered from Section 63-37-1 is renumbered and amended to read:

[~~63-37-1~~]. 68-3-8.5. Mailing reports and payments to government -- General requirements for determining when the report or payment is considered to be filed or made.

[~~Any~~] (1) As used in this section:

(a) "Payment" means monies required or authorized to be paid.

(b) "Report" means a report, claim, tax return, statement or other document.

(2) (a) A report or [~~any~~] payment required or authorized to be filed or made to the state of Utah, or to any political subdivision [~~thereof, which~~] of Utah, that is[~~: (1) Transmitted~~] transmitted through the United States mail, [~~shall be deemed~~] is considered to be filed or made and received by the state or political subdivisions on the date shown by the post office cancellation mark stamped upon the envelope or other appropriate wrapper containing it.

[~~(2) Mailed~~] (b) A report or payment that is either mailed but not received by the state or political subdivisions [~~where~~], or received [~~and~~] but the cancellation mark is illegible, erroneous, or omitted, [~~shall be deemed~~] is considered to be filed or made and received on the date it was mailed if:

(i) the sender establishes by competent evidence that the report, claim, tax return, statement or other document or payment was deposited in the United States mail on or before the date for filing or paying; and [~~in cases of such nonreceipt of any such report, tax return, statement, or other document required by law to be filed,~~]

(ii) the sender files with the state or political subdivision a duplicate within [~~thirty~~] 30 days after written notification is given to the sender by the state or political subdivisions of [~~its~~] nonreceipt of [~~such~~] the report, tax return, statement, or other document.

(c) If any report or payment is sent by United States mail and either registered or certified, a record authenticated by the United States post office of that registration or certification is considered to be competent evidence that the report or payment was delivered to the person or entity to which it was addressed and the date of registration or certification is considered to be the postmarked date.

(3) If the date for filing a report or making a payment falls upon a Saturday, Sunday, or legal holiday, the filing or payment is considered to be timely if it is performed on the next business day.

Section 2. Repealer.

This act repeals:

Section 63-37-2, Registered or certified mail -- Record as proof of delivery.

Section 63-37-3, Filing date falling on Saturday, Sunday or legal holiday.

CHAPTER 17
H. B. 22
Passed January 29, 2001
Approved February 8, 2001
Effective April 30, 2001

SEX OFFENDER LIFETIME REPORTING AMENDMENTS

Sponsor: DeMar Bud Bowman
Afton B. Bradshaw

This act modifies the Code of Criminal Procedure by requiring lifetime registration and notification of change of habitation by those sex offenders who have committed certain sexual offenses as specified in the act.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
77-27-21.5, as last amended by Chapter 201, Laws of Utah 2000

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

Section 1. Section 77-27-21.5 is amended to read:

77-27-21.5. Sex offender registration -- Information system -- Law enforcement and courts to report -- Registration -- Penalty -- Effect of expungement -- Internet registry.

(1) As used in this section:

(a) "Department" means the Department of Corrections.

(b) "Notification" means a person's acquisition of information from the department about a sex offender, including his place of habitation, physical description, and methodology of the offense, and other information as provided in Subsections (10) and (11).

(c) "Register" means to comply with the rules of the department made under this section.

(d) "Sex offender":

(i) means any person convicted by this state or who enters a plea in abeyance for violating Section 76-5-301.1, 76-5a-3, 76-7-102, 76-9-702.5, [~~76-5a-3,~~] or 76-10-1306, [~~or 76-5-301.1~~] or of committing or attempting, soliciting, or conspiring to commit a felony, under Title 76, Chapter 5, Part 4, Sexual Offenses, and any person convicted by any other state or the United States government of an offense which if committed or attempted in this state would be punishable as one or more of these offenses[~~. "Sex offender"~~]; and

(ii) also means all persons committed to a state mental hospital by reason of their mental incapacity and their commission or alleged commission of one or more offenses listed in this Subsection (1)(d).

(2) The department, to assist in investigating sex-related crimes and in apprehending offenders, shall:

(a) develop and operate a system to collect, analyze, maintain, and disseminate information on sex offenders and sex offenses; and

(b) make information collected and developed under this section available to the public.

(3) Any law enforcement agency shall, in the manner prescribed by the department, inform the department of:

(a) the receipt of a report or complaint of an offense listed in Subsection (1)(d), within three working days; and

(b) the arrest of a person suspected of any of the offenses listed in Subsection (1)(d), within five working days.

(4) Upon convicting a person of any of the offenses listed in Subsection (1)(d), or any lesser included offense, the convicting court shall within three working days forward a copy of the judgment and sentence to the department.

(5) A sex offender in the custody of the department shall be registered by agents of the department upon:

(a) being placed on probation;

(b) commitment to a secure correctional facility operated by or under contract to the department;

(c) release from confinement to parole status, termination or expiration of sentence, or escape;

(d) entrance to and release from any community-based residential program operated by or under contract to the department; or

(e) termination of probation or parole.

(6) A sex offender not in the custody of the department who is confined in a correctional facility not operated by or under contract to the department shall, upon release from confinement, be registered with the department by the sheriff of the county in which the offender is confined.

(7) A sex offender confined in a state mental hospital shall be registered with the department by the hospital. A sex offender committed to a state mental hospital shall be registered with the department by the hospital upon admission and upon discharge.

(8) [~~A~~] (a) Except as provided in Subsection (8)(b), a sex offender shall, for ten years after termination of sentence, register annually and again within ten days of every change of his place of habitation.

(b) (i) A sex offender convicted of any of the offenses listed in Subsection (8)(b)(ii) shall, for the offender's lifetime, register annually and again within ten days of every change of the offender's place of habitation. This registration requirement is not subject to exemptions and may not be terminated or altered during the offender's lifetime.

(ii) Offenses referred to in Subsection (8)(b)(i) are:

(A) any offense listed in Subsection (1)(d) if the offender has previously been convicted of an offense listed in Subsection (1)(d);

(B) Section 76-5-402.1, rape of a child;

(C) Section 76-5-402.3, object rape of a child;

(D) Section 76-5-403, forcible sodomy;

(E) Section 76-5-403.1, sodomy on a child; and

(F) Section 76-5-405, aggravated sexual assault.

(9) An agency that registers a sex offender on parole shall inform him of his duty to comply with the continuing registration requirements of this section, including:

(a) notification to an out-of-state agency of moving across state lines;

(b) notification to the state agencies in the states where the registrant presently resides and plans to reside when moving across state lines; and

(c) verification of address at least every 60 days pursuant to a parole agreement for lifetime parolees.

(10) A sex offender shall provide the department with the following information:

(a) all names or aliases the sex offender is or has been known by;

(b) the sex offender's name and address;

(c) a physical description, including the sex offender's age, height, weight, eye and hair color;

(d) the type of vehicle or vehicles the sex offender drives; and

(e) a current photograph of the sex offender.

(11) The department shall provide the following additional information:

(a) the crimes the sex offender was charged with and convicted of;

(b) a description of the sex offender's primary and secondary targets; and

(c) a description of the sex offender's method of offense.

(12) (a) A sex offender who knowingly fails to register under this section is guilty of a class A misdemeanor and shall be sentenced to serve a term of incarceration for not fewer than 90 days and also at least one year of probation.

(b) Neither the court nor the Board of Pardons and Parole may release a person who violates this section from serving a term of at least 90 days and of completing probation of at least one year. This Subsection (12)(b) supersedes any other provision of the law contrary to this section.

(13) Notwithstanding Title 63, Chapter 2, Government Records Access and Management Act, information in Subsections (10) and (11) collected and released under this section is public information.

(14) (a) If a sex offender is to be temporarily sent outside a secure facility in which he is confined on any assignment, including, without limitation, firefighting or disaster control, the official who has custody of the offender shall, within a reasonable time prior to removal from the secure facility, notify the local law enforcement agencies where the assignment is to be filled.

(b) This Subsection (14) does not apply to any person temporarily released under guard from the institution in which he is confined.

(15) Notwithstanding Sections 77-18-9 through 77-18-14 regarding expungement, a person convicted of any offense listed in Subsection (1)(d) is not relieved from the responsibility to register as required under this section.

(16) Notwithstanding Section 42-1-1, a sex offender may not change his name while under the jurisdiction of the department and until the registration requirements of this statute have expired, or if registration is under Subsection (8)(b), the offender may not change his name at any time.

(17) The department may make rules necessary to implement this section, including:

(a) the method for dissemination of the information; and

(b) instructions to the public regarding the use of the information.

(18) Any information regarding the identity or location of a victim shall be redacted by the department from information provided under Subsections (10) and (11).

(19) Nothing in this section shall be construed to create or impose any duty on any person to request or obtain information regarding any sex offender from the department.

(20) If the department chooses to post registry information on the Internet, the website shall contain a disclaimer informing the public of the following:

(a) the information contained on the site is obtained from sex offenders and the department does not guarantee its accuracy;

(b) members of the public are not allowed to publicize the information or use it to harass or threaten sex offenders or members of their families; and

(c) harassment, stalking, or threats against sex offenders or their families are prohibited and doing so may violate Utah criminal laws.

(21) The department shall construct the website so that users, before accessing registry information, must indicate that they have read the disclaimer, understand it, and agree to comply with its terms.

(22) The department, its personnel, and any individual or entity acting at the request or upon

the direction of the department are immune from civil liability for damages for good faith compliance with this section and will be presumed to have acted in good faith by reporting information.

(23) The department shall redact information that, if disclosed, could reasonably identify a victim.

(24) The website may also include information about sex offenders ordered to accept notification of their registry information as part of a condition of probation or parole.

CHAPTER 18
H. B. 23
Passed January 18, 2001
Approved February 8, 2001
Effective April 30, 2001

REPEAL OF BEDDING, UPHOLSTERED FURNITURE, QUILTED CLOTHING ADVISORY COMMITTEE

Sponsor: Neal B. Hendrickson

This act modifies the Utah Agricultural Code. This act repeals the Bedding, Upholstered Furniture, and Quilted Clothing Advisory Committee.

This act affects sections of Utah Code Annotated 1953 as follows:

REPEALS:
4-10-12, as last amended by Chapter 243, Laws of Utah 1996

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

Section 1. Repealer.

This act repeals:

Section 4-10-12, Advisory committee created -- Composition -- Terms of office -- Compensation -- Duties.

CHAPTER 19
H. B. 24
Passed January 18, 2001
Approved February 8, 2001
Effective April 30, 2001

REPEAL OF DAIRY ADVISORY BOARD

Sponsor: Michael R. Styler
Stephen H. Urquhart
Bryan D. Holladay
Ron Bigelow
David Clark

This act modifies the Utah Agricultural Code to repeal the Dairy Advisory Board.

This act affects sections of Utah Code Annotated 1953 as follows:

REPEALS:
4-3-15, as last amended by Chapter 276, Laws of Utah 1997

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

Section 1. Repealer.

This act repeals:

Section 4-3-15, Dairy Advisory Board created -- Composition -- Appointment -- Removal -- Compensation -- Responsibilities.

CHAPTER 20
H. B. 29
Passed January 30, 2001
Approved February 8, 2001
Effective February 8, 2001

ELECTION LAW - TECHNICAL AMENDMENTS

Sponsor: Bryan D. Holladay
Darin G. Peterson

This act modifies the Election Code to address the municipal primary canvass process, tie votes, the power of the Legislature to modify initiatives, misconduct of electors and offices in local initiatives and referenda, and the form of the special military write-in absentee ballot. This act directs clerks to prepare overseas citizen absentee voter ballots and makes technical corrections. This act has an immediate effective date.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
20A-1-304, as enacted by Chapter 1, Laws of Utah 1993
20A-3-404, as enacted by Chapter 1, Laws of Utah 1993
20A-4-401, as last amended by Chapter 3, Laws of Utah 2000
20A-7-212, as enacted by Chapter 1, Laws of Utah 1994
20A-7-512, as last amended by Chapter 165, Laws of Utah 1995
20A-7-612, as last amended by Chapter 165, Laws of Utah 1995

ENACTS:
20A-3-404.5, Utah Code Annotated 1953

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

Section 1. Section 20A-1-304 is amended to read:

20A-1-304. Tie votes.

[~~If~~] (1) Except as provided in Subsection (2), if two or more candidates for a position have an equal and the highest number of votes for any office, the election officer shall determine by lot which candidate is selected in a public meeting in the presence of each person subject to the tie within 30 days of the canvass or within 30 days of the recount if one is requested or held.

(2) For any municipal primary election, if two or more candidates for a position have an equal and the highest number of votes for any office, the election officer shall determine by lot which candidate is selected in a public meeting in the presence of each person subject to the tie within five days of the canvass or within five days of the recount if one is requested or held.

Section 2. Section 20A-3-404 is amended to read:

20A-3-404. Special military write-in absentee ballots.

(1) Notwithstanding any other provisions of this chapter, a military voter may apply for a special write-in absentee ballot not later than 30 days before an election.

(2) To qualify for a special write-in absentee ballot, a military voter shall:

(a) apply for a special write-in absentee ballot by submitting a federal postcard application form; and

(b) state on the form or on a separate paper submitted with the form that he is unable to vote by regular absentee ballot or in person because of his military service.

(3) Upon receipt of the application, the county clerk shall issue and mail a special military write-in ballot[~~, in substantially the following form, to the military voter who requested it~~].

[~~"~~OFFICIAL MILITARY WRITE-IN]
[ABSENTEE-VOTER BALLOT]

[~~Instructions: You may vote this ballot by:~~]

[~~1. Listing the name of the party for whose candidate for each office you wish to vote; or~~]

[~~2. By listing the name of the candidate, if known, or the person of your choice for whom you wish to vote. BALLOT~~]

[~~President/Vice-president _____~~]

[~~United States Senator _____~~]

[~~United States Representative _____~~"]

Section 3. Section 20A-3-404.5 is enacted to read:

20A-3-404.5. Special overseas citizen voter absentee ballot.

(1) As used in this section, "federal office" means President/Vice President of the United States, United States Senator, and United States Representative.

(2) Each county clerk, after consulting with the chief election officer, shall prepare a special overseas citizen voter ballot containing a means for the overseas citizen voter to vote for each federal office that will appear on the regular general election ballot.

Section 4. Section 20A-4-401 is amended to read:

20A-4-401. Recounts -- Procedure.

(1) (a) (i) For any regular primary, [~~municipal primary,~~] regular general, or municipal general election, or the Western States Presidential primary, when any candidate loses by not more than a total of one vote per voting precinct, the candidate may file a request for a recount with the appropriate election officer within seven days after the canvass.

(ii) For any municipal primary election, when any candidate loses by not more than a total of one vote per voting precinct, the candidate may file a request for a recount with the appropriate election officer within three days after the canvass.

(b) The election officer shall:

(i) supervise the recount;

(ii) recount all ballots cast for that office;

(iii) reexamine all unopened absentee ballots to ensure compliance with Chapter 3, Part 3; and

(iv) declare elected the person receiving the highest number of votes on the recount.

(2) (a) Any ten voters who voted in an election when any ballot proposition was on the ballot may file a request for a recount with the appropriate election officer within seven days of the canvass.

(b) The election officer shall:

(i) supervise the recount;

(ii) recount all ballots cast for that ballot proposition;

(iii) reexamine all unopened absentee ballots to ensure compliance with Chapter 3, Part 3; and

(iv) declare the ballot proposition to have "passed" or "failed" based upon the results of the recount.

(c) Proponents and opponents of the ballot proposition may designate representatives to witness the recount.

(d) The person or entity requesting the recount shall pay the costs of the recount.

(3) Costs incurred by recount under Subsection (1) may not be assessed against the person requesting the recount.

Section 5. Section 20A-7-212 is amended to read:

20A-7-212. Effective date.

(1) A proposed law submitted to the Legislature by initiative petition and enacted by them takes effect 60 days after the final adjournment of the session of the Legislature that passed it, unless a different effective date is included in the proposed law and the proposed law passes the Legislature by a two-thirds vote of the members elected to each house of the Legislature.

(2) (a) Any proposed law submitted to the people by initiative petition that is approved by the voters at any election does not take effect until at least five days after the date of the official proclamation of the vote by the governor.

(b) Any act or law submitted to the people by initiative that is approved by the voters at any election takes effect on the date specified in the initiative petition.

(c) If the initiative petition does not specify an effective date, a law approved by the voters at any election takes effect five days after the date of the official proclamation of the vote by the governor.

(3) (a) The governor may not veto a law adopted by the people.

(b) The Legislature may amend any [~~laws~~] initiative approved by the people at any legislative session [~~after the law has taken effect~~].

Section 6. Section 20A-7-512 is amended to read:

20A-7-512. Misconduct of electors and officers -- Penalty.

(1) It is unlawful for any person to:

(a) sign any name other than his own to any initiative petition;

(b) knowingly sign his name more than once for the same measure at one election;

(c) sign an initiative knowing he is not a legal voter; or

(d) knowingly and willfully violate any provision of this part.

(2) It is unlawful for any person to sign the verification for an initiative packet knowing that:

(a) he does not meet the residency requirements of Section 20A-2-105;

(b) he has not witnessed the signatures of those persons whose names appear in the initiative packet; or

(c) one or more persons whose signatures appear in the initiative packet is either:

(i) not registered to vote in Utah; or

(ii) does not intend to become registered to vote in Utah.

[~~(2)~~] (3) Any person violating this part is guilty of a class A misdemeanor.

(4) The county attorney or municipal attorney shall prosecute any violation of this section.

Section 7. Section 20A-7-612 is amended to read:

20A-7-612. Misconduct of electors and officers -- Penalty.

(1) It is unlawful for any person to:

(a) sign any name other than his own to any referendum petition;

(b) knowingly sign his name more than once for the same measure at one election;

(c) sign a referendum knowing he is not a legal voter; or

(d) knowingly and willfully violate any provision of this part.

(2) It is unlawful for any person to sign the verification for a referendum packet knowing that:

(a) he does not meet the residency requirements of Section 20A-2-105;

(b) he has not witnessed the signatures of those persons whose names appear in the referendum packet; or

(c) one or more persons whose signatures appear in the referendum packet is either:

(i) not registered to vote in Utah; or

(ii) does not intend to become registered to vote in Utah.

[~~(2)~~] (3) Any person violating this part is guilty of a class A misdemeanor.

(4) The county attorney or municipal attorney shall prosecute any violation of this section.

Section 8. Effective date.

If approved by two-thirds of all the members elected to each house, this act takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 21
H. B. 33
Passed January 30, 2001
Approved February 8, 2001
Effective April 30, 2001

CLARIFICATION OF TIME LIMITS FOR REUNIFICATION SERVICES

Sponsor: Matt Throckmorton

This act modifies the Judicial Code to address concerns that statutory time limits for achieving permanency for foster children are not consistently applied. This act clarifies time requirements for reunification services for children two years of age or younger. This act clarifies the finding that must be made by a court when permanency hearings are consolidated with hearings on termination of parental rights. This act requires the court to schedule dates for the six-month review and the permanency hearing at the adjudication hearing.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
78-3a-310, as last amended by Chapter 329, Laws of Utah 1997
78-3a-311, as last amended by Chapter 121, Laws of Utah 1999
78-3a-312, as last amended by Chapter 121, Laws of Utah 1999

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

Section 1. Section 78-3a-310 is amended to read:

78-3a-310. Adjudication -- Dispositional hearing -- Time deadlines.

(1) If, at the adjudication hearing, the court finds, by clear and convincing evidence, that the allegations contained in the petition are true, it shall conduct a dispositional hearing.

(2) The dispositional hearing may be held on the same date as the adjudication hearing, but shall be held no later than 30 calendar days after the date of the adjudication hearing.

(3) At the adjudication hearing or the dispositional hearing the court shall schedule [~~or direct the scheduling of~~] dates and times for:

(a) the six-month periodic review; and

(b) the permanency hearing.

Section 2. Section 78-3a-311 is amended to read:

78-3a-311. Dispositional hearing -- Reunification services -- Exceptions.

(1) The court may make any of the dispositions described in Section 78-3a-118, place the child in the custody or guardianship of any individual or public or private entity or agency, order protective supervision, family preservation, medical or mental health treatment, or other services.

(2) (a) Whenever the court orders continued removal at the dispositional hearing, and that the minor remain in the custody of the Division of Child and Family Services, it shall first establish a primary permanency goal for the minor and determine whether, in view of the primary permanency goal, reunification services are appropriate for the child and the child's family, pursuant to Subsection (3). In cases where obvious sexual abuse, abandonment, or serious physical abuse or neglect are involved, neither the division nor the court has any duty to make "reasonable efforts" or to, in any other way, attempt to provide reunification services, or to attempt to rehabilitate the offending parent or parents. In all cases, the child's health, safety, and welfare shall be the court's paramount concern in determining whether reasonable efforts to reunify should be made.

(b) (i) In addition to the primary permanency goal, the court shall establish a concurrent permanency goal. The concurrent permanency goal shall include a representative list of the conditions under which the primary permanency goal will be abandoned in favor of the concurrent permanency goal and an explanation of the effect of abandoning or modifying the primary permanency goal.

(ii) A permanency hearing shall be conducted in accordance with Subsection 78-3a-312(1)(b) within 30 days if something other than reunification is initially established as a child's primary permanency goal.

(iii) The court may amend a child's primary permanency goal before the establishment of a final permanency plan under Section 78-3a-312. The court is not limited to the terms of the concurrent permanency goal in the event that the primary permanency goal is abandoned. If, at anytime, the court determines that reunification is no longer a child's primary permanency goal, the court shall conduct a permanency hearing in accordance with Section 78-3a-312 within the earlier of 30 days of the court's determination or 12 months from the original removal of the child.

(c) If the court determines that reunification services are appropriate, it shall order that the division make reasonable efforts to provide services to the minor and his parent for the purpose of facilitating reunification of the family, for a specified period of time. In providing those services, the child's health, safety, and welfare shall be the division's paramount concern, and the court shall so order. The time period for reunification services may not exceed 12 months from the date that the child was initially removed from his home. Nothing in this section may be construed to entitle any parent to an entire 12 months of reunification services. If reunification services have been ordered, the court may terminate those services at any time. If, at any time, continuation of reasonable efforts to reunify a child is determined to be inconsistent with the final permanency plan for the child established pursuant to Subsection 78-3a-312, then measures shall be taken, in a timely manner, to place the child in accordance with the permanency plan, and to complete whatever

steps are necessary to finalize the permanent placement of the child.

(d) Any physical custody of the minor by the parent or a relative during the period described in Subsection (2)(c) does not interrupt the running of the period.

(e) (i) If reunification services have been ordered, a permanency hearing shall be conducted by the court in accordance with Section 78-3a-312 at the expiration of the time period for reunification services. The permanency hearing shall be held no later than 12 months after the original removal of the child.

(ii) If reunification services have not been ordered, a permanency hearing shall be conducted within 30 days, in accordance with Section 78-3a-312.

(f) With regard to a child who is [~~two years~~] 36 months of age or younger at the time the [~~court orders reunification services~~] child is initially removed from the home, the court shall:

(i) hold a permanency hearing eight months after the date of the initial removal, pursuant to Section 78-3a-312; and

(ii) order the discontinuance of those services after [~~six~~] eight months from the initial removal of the child from the home if the parent or parents have not made substantial efforts to comply with the treatment plan. [~~The burden is upon the parents, and the division if it supports continued reunification services, to show that the parents have made substantial efforts to comply with the plan during the first six months of reunification services.~~]

(g) With regard to a child in the custody of the division whose parent or parents have been ordered to receive reunification services but who have abandoned that child for a period of six months since the date that reunification services were ordered, the court shall terminate reunification services, and the division shall petition the court for termination of parental rights.

(3) (a) Because of the state's interest in and responsibility to protect and provide permanency for children who are abused, neglected, or dependent, the Legislature finds that a parent's interest in receiving reunification services is limited. The court may, under any circumstances, determine that efforts to reunify a child with his family are not reasonable or appropriate, based on the individual circumstances, and that reunification services should not be provided. In determining "reasonable efforts" to be made with respect to a child, and in making "reasonable efforts," the child's health, safety, and welfare shall be the paramount concern.

(b) There is a presumption that reunification services should not be provided to a parent if the court finds, by clear and convincing evidence, that any of the following circumstances exist:

(i) the whereabouts of the parents are unknown, based upon a verified affidavit indicating that a reasonably diligent search has failed to locate the parent;

(ii) the parent is suffering from a mental illness of such magnitude that it renders him incapable of utilizing reunification services; that finding shall be based on competent evidence from mental health professionals establishing that, even with the provision of services, the parent is unlikely to be capable of adequately caring for the child within 12 months;

(iii) the minor has been previously adjudicated as an abused child due to physical or sexual abuse, that following the adjudication the child was removed from the custody of his parent, was subsequently returned to the custody of that parent, and the minor is being removed due to additional physical or sexual abuse;

(iv) the parent has caused the death of another child through abuse or neglect or has committed, aided, abetted, attempted, conspired, or solicited to commit murder or manslaughter of a child or child abuse homicide;

(v) the minor has suffered severe abuse by the parent or by any person known by the parent, if the parent knew or reasonably should have known that the person was abusing the minor;

(vi) the minor has been adjudicated an abused child as a result of severe abuse by the parent, and the court finds that it would not benefit the child to pursue reunification services with the offending parent;

(vii) the parent's rights have been terminated with regard to any other child;

(viii) the child has been removed from his home on at least two previous occasions and reunification services were offered or provided to the family at those times; or

(ix) the parent has abandoned the child for a period of six months or longer; or

(x) any other circumstance that the court determines should preclude reunification efforts or services.

(4) (a) Failure of the parent to respond to previous services or comply with any previous treatment plan, the fact that the child was abused while the parent was under the influence of drugs or alcohol, a past history of violent behavior, whether a parent continues to live with an individual who abused the child, any patterns of the parent's behavior that have exposed the child to repeated abuse, or testimony by a competent professional that the parent's behavior is unlikely to be successful, shall be considered in determining whether reunification services are appropriate.

(b) The court shall also consider whether the parent has expressed an interest in reunification with the child, in determining whether reunification services are appropriate.

(5) If reunification services are not ordered pursuant to Subsection (3)(a), and the whereabouts

of a parent become known within six months of the out-of-home placement of the minor, the court may order the division to provide reunification services. The time limits described in Subsection (2), however, are not tolled by the parent's absence.

(6) If a parent is incarcerated or institutionalized, the court shall order reasonable services unless it determines that those services would be detrimental to the minor. In determining detriment, the court shall consider the age of the child, the degree of parent-child bonding, the length of the sentence, the nature of the treatment, the nature of the crime or illness, the degree of detriment to the child if services are not offered and, for minors ten years of age or older, the minor's attitude toward the implementation of family reunification services, and any other appropriate factors. Reunification services for an incarcerated parent are subject to the 12-month limitation imposed in Subsection (2). Reunification services for an institutionalized parent are subject to the 12-month limitation imposed in Subsection (2), unless the court determines that continued reunification services would be in the child's best interest.

(7) If, pursuant to Subsection (3)(b)(ii), (iii), (iv),(v), (vi), (vii), (viii), (ix), or (x), the court does not order reunification services, a permanency hearing shall be conducted within 30 days, in accordance with Section 78-3a-312.

Section 3. Section 78-3a-312 is amended to read:

78-3a-312. Permanency hearing -- Final plan -- Petition for termination of parental rights filed -- Hearing on termination of parental rights.

(1) (a) When reunification services have been ordered in accordance with Section 78-3a-311, with regard to a child who is in the custody of the Division of Child and Family Services, a permanency hearing shall be held by the court no later than 12 months after the original removal of the child.

(b) When no reunification services were ordered at the dispositional hearing, a permanency hearing shall be held within 30 days from the date of the dispositional hearing.

(2) (a) If reunification services were ordered by the court in accordance with Section 78-3a-311, the court shall, at the permanency hearing, determine whether the child may safely be returned to the custody of his parent. If the court finds, by a preponderance of the evidence, that return of the child would create a substantial risk of detriment to the child's physical or emotional well-being, the child may not be returned to the custody of his parent. The failure of a parent or guardian to participate in, comply with, in whole or in part, or to meet the goals of a court approved treatment plan constitutes prima facie evidence that return of the child to that parent would create a substantial risk of detriment.

(b) In making a determination under this Subsection (2), the court shall review the report prepared by the Division of Child and Family Services, a report prepared by the child's guardian ad litem, any report prepared by a foster care citizen review board pursuant to Section 78-3g-103, any evidence regarding the efforts or progress demonstrated by the parent, and the extent to which the parent cooperated and availed himself of services provided.

(3) (a) With regard to a case where reunification services were ordered by the court, if a child is not returned to his parent or guardian at the permanency hearing, the court shall order termination of reunification services to the parent, and make a final determination regarding whether termination of parental rights, adoption, guardianship, or long-term foster care is the most appropriate final plan for the child, taking into account the child's primary permanency goal established by the court pursuant to Section 78-3a-311. If the child clearly desires contact with the parent, the court shall take the child's desire into consideration in determining the final plan. In addition, the court shall establish a concurrent plan that identifies the second most appropriate final plan for the child. The court may not extend reunification services beyond 12 months from the date the child was initially removed from his home, in accordance with the provisions of Section 78-3a-311, except that the court may extend reunification services for no more than 90 days if it finds that there has been substantial compliance with the treatment plan, that reunification is probable within that 90 day period, and that the extension is in the best interest of the child. In no event may any reunification services extend beyond 15 months from the date the child was initially removed from his home. Delay or failure of a parent to establish paternity or seek custody does not provide a basis for the court to extend services for that parent beyond that 12-month period.

(b) The court may, in its discretion, enter any additional order that it determines to be in the best interest of the child, so long as that order does not conflict with the requirements and provisions of Subsection (3)(a). The court may order the division to provide protective supervision or other services to a child and the child's family after the division's custody of a child has been terminated.

(4) If the final plan for the child is to proceed toward termination of parental rights, the petition for termination of parental rights shall be filed, and a pretrial held, within 45 calendar days after the permanency hearing.

(5) Any party to an action may, at any time, petition the court for an expedited permanency hearing on the basis that continuation of reunification efforts are inconsistent with the permanency needs of the child. If the court so determines, it shall order, in accordance with federal law, that the child be placed in accordance with the permanency plan, and that whatever steps are necessary to finalize the permanent placement of the child be completed as quickly as possible.

(6) Nothing in this section may be construed to:

(a) entitle any parent to reunification services for any specified period of time;

(b) limit a court's ability to terminate reunification services at any time prior to a permanency hearing; or

(c) limit or prohibit the filing of a petition for termination of parental rights by any party, or a hearing on termination of parental rights, at any time prior to a permanency hearing. If a petition for termination of parental rights is filed prior to the date scheduled for a permanency hearing, the court may [~~schedule~~] consolidate the hearing on termination of parental rights [~~in lieu of~~] with the permanency hearing[~~; combine the permanency hearing and the hearing on termination of parental rights; or schedule the hearings separately~~]. If the court [~~schedules~~] consolidates the hearing on termination of parental rights [~~in lieu of~~] with the permanency hearing, it shall first make a finding whether reasonable efforts have been made by the Division of Child and Family Services to finalize the permanency goal for the child, and any reunification services shall be terminated in accordance with the time lines described in Section 78-3a-311 [~~and a~~]. A decision on the petition for termination of parental rights shall be made within 18 months from the date of the child's removal.

CHAPTER 22
H. B. 54
Passed January 29, 2001
Approved February 8, 2001
Effective April 30, 2001

WILDLIFE - HUNTING AND FISHING FEES

Sponsor: Michael R. Styler

This act modifies the Wildlife Resources Code of Utah to eliminate license fees set in statute and to allow the Wildlife Board to set license fees which must be approved by the Legislature. Provisions specifying fees are repealed January 1, 2003.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
23-14-18, as last amended by Chapter 211, Laws of Utah 1995
23-15-14, as enacted by Chapter 242, Laws of Utah 1998
23-19-17, as last amended by Chapter 195, Laws of Utah 2000
23-19-18, as last amended by Chapter 259, Laws of Utah 1995
23-19-21, as last amended by Chapter 259, Laws of Utah 1995
23-19-24, as last amended by Chapter 195, Laws of Utah 2000
23-19-25, as last amended by Chapter 195, Laws of Utah 2000
23-19-26, as last amended by Chapter 195, Laws of Utah 2000
23-19-27, as last amended by Chapter 126, Laws of Utah 1983
23-19-34.7, as last amended by Chapter 76, Laws of Utah 1986
23-19-40, as last amended by Chapter 195, Laws of Utah 2000
23-19-42, as last amended by Chapter 195, Laws of Utah 2000
23-26-4, as last amended by Chapter 195, Laws of Utah 2000

ENACTS:
63-55b-123, Utah Code Annotated 1953

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

Section 1. Section 23-14-18 is amended to read:

23-14-18. Establishment of seasons, locations, limits, and regulations by Wildlife Board.

(1) To provide an adequate and flexible system of protection, propagation, introduction, increase, control, harvest, management, and conservation of protected wildlife in this state and to provide for the use and development of protected wildlife for public recreation and food supply while maintaining a sustainable population of protected wildlife, the Wildlife Board shall determine the circumstances, time, location, means, and the amounts, and numbers of protected wildlife which may be taken.

(2) The Wildlife Board shall, except as otherwise specified in this code:

(a) fix seasons and shorten, extend, or close seasons on any species of protected wildlife in any locality, or in the entire state, if the board finds that the action is necessary to effectuate proper wildlife management and control;

(b) close or open areas to fishing, trapping, or hunting;

(c) establish refuges and preserves;

(d) regulate and prescribe the means by which protected wildlife may be taken;

(e) regulate the transportation and storage of protected wildlife, or their parts, within the boundaries of the state and the shipment or transportation out of the state;

(f) establish or change bag limits and possession limits;

(g) prescribe safety measures and establish other regulations as may be [~~deemed~~] considered necessary in the interest of wildlife conservation and the safety and welfare of hunters, trappers, fishermen, landowners, and the public;

(h) (i) prescribe when licenses, permits, tags, and certificates of registration shall be required and procedures for their issuance and use; and

[~~(h)~~] (ii) establish [~~the use,~~] forms[~~,~~] and fees [~~of~~] for licenses, permits, tags, and certificates of registration; and

(i) prescribe rules and regulations as it may [~~deem~~] consider necessary to control the use and harvest of protected wildlife by private associations, clubs, partnerships, or corporations, provided the rules and regulations do not preclude the landowner from personally controlling trespass upon the owner's properties nor from charging a fee to trespass for purposes of hunting or fishing.

(3) The Wildlife Board may allow a season on protected wildlife to commence on any day of the week except Sunday.

(4) The Wildlife Board shall establish fees for licenses, permits, tags, and certificates of registration in accordance with Section 63-38-3.2.

Section 2. Section 23-15-14 is amended to read:

23-15-14. State Fish Hatchery Maintenance Account -- Contents -- Use of account monies.

(1) There is created a restricted account within the General Fund known as the State Fish Hatchery Maintenance Account.

(2) The following monies shall be deposited into the account:

(a) $2.00 of each fishing license fee or combination license fee [~~as listed in Section 23-19-40~~]; and

(b) interest and earnings on account monies.

(3) Money in the account shall be used by the division, after appropriation by the Legislature, for

major repairs or replacement of facilities and equipment at fish hatcheries owned and operated by the division for the production and distribution of fish to enhance sport fishing opportunities in the state.

Section 3. Section 23-19-17 is amended to read:

23-19-17. Fishing and hunting license -- Resident 12 or older -- Use of fee.

(1) A resident 12 years of age or older, upon payment of the fee prescribed [~~in Section 23-19-40~~] by the Wildlife Board, may receive a combination license to fish and to hunt for small game as provided in the rules of the Wildlife Board.

(2) One dollar of the combination license fee shall be used for the hunter education program in any of the following:

(a) instructor and student training;

(b) assisting local organizations with development;

(c) maintenance of existing facilities; or

(d) operation and maintenance of the hunter education program.

(3) (a) Fifty cents of the combination license fee shall be used for the upland game program as follows:

(i) to acquire pen-raised birds; or

(ii) to capture and transplant upland game species.

(b) The combination license fee revenue designated for the upland game program by Subsection (3)(a) is in addition to any combination license fee revenue that may be used for the upland game program as provided by Sections 23-19-43 and 23-19-47.

Section 4. Section 23-19-18 is amended to read:

23-19-18. Fishing license -- Season.

(1) A person 14 years of age or older, upon payment of the fee prescribed [~~in Section 23-19-40~~] by the Wildlife Board, may receive a season fishing license.

(2) A person under 14 years of age may:

(a) fish without a license and take a 1/2 [~~a~~] bag and possession limit; or

(b) purchase a license and take a full bag and possession limit.

(3) A resident 65 years of age or older, upon payment of the fee prescribed [~~in Section 23-19-40~~] by the Wildlife Board, may receive a season fishing license.

Section 5. Section 23-19-21 is amended to read:

23-19-21. Fishing license -- Limited number of days.

(1) A person, upon paying the fee prescribed [~~in Section 23-19-40~~] by the Wildlife Board, may receive a license to fish:

(a) for one day; or

(b) for seven consecutive days.

(2) The effective date shall be indicated on the license.

Section 6. Section 23-19-24 is amended to read:

23-19-24. Small game hunting license -- Resident 14 or older -- Use of fee.

(1) A resident 14 years of age or older, upon payment of the fee prescribed [~~in Section 23-19-40~~] by the Wildlife Board, may receive a license to hunt small game.

(2) One dollar of the small game hunting license fee shall be used for the hunter education program.

(3) (a) Fifty cents of the small game hunting license fee shall be used for the upland game program as follows:

(i) to acquire pen-raised birds; or

(ii) to capture and transplant upland game species.

(b) The small game license fee revenue designated for the upland game program by Subsection (3)(a) is in addition to any small game license fee revenue that may be used for the upland game program as provided by Sections 23-19-43 and 23-19-47.

Section 7. Section 23-19-25 is amended to read:

23-19-25. Small game hunting license -- Resident 12 or 13 -- Use of fee.

(1) A resident under the age of 14 years and 12 years of age or older, upon payment of the fee prescribed [~~in Section 23-19-40~~] by the Wildlife Board, may receive a license to hunt small game.

(2) One dollar of the small game hunting license fee shall be used for the hunter education program.

(3) (a) Fifty cents of the small game hunting license fee shall be used for the upland game program as follows:

(i) to acquire pen-raised birds; or

(ii) to capture and transplant upland game species.

(b) The small game license fee revenue designated for the upland game program by Subsection (3)(a) is in addition to any small game license fee revenue that may be used for the upland game program as provided by Sections 23-19-43 and 23-19-47.

Section 8. Section 23-19-26 is amended to read:

23-19-26. Small game hunting license -- Nonresident 12 or older -- Use of fee.

(1) A nonresident 12 years of age or older, upon payment of the fee prescribed [~~in Section 23-19-40~~]

by the Wildlife Board, may receive a license to hunt small game.

(2) (a) Fifty cents of the small game hunting license fee shall be used for the upland game program as follows:

(i) to acquire pen-raised birds; or

(ii) to capture and transplant upland game species.

(b) The small game license fee revenue designated for the upland game program by Subsection (2)(a) is in addition to any small game license fee revenue that may be used for the upland game program as provided by Sections 23-19-43 and 23-19-47.

Section 9. Section 23-19-27 is amended to read:

23-19-27. Furbearer license -- Resident or nonresident.

A resident or nonresident, upon payment of the fee prescribed [~~in Section 23-19-40~~] by the Wildlife Board, may receive a license to take furbearers.

Section 10. Section 23-19-34.7 is amended to read:

23-19-34.7. Nonresident falconry meet license.

[~~Any~~] (1) A nonresident [~~participating~~] 14 years of age or older may participate in a falconry meet in this state [~~must be at least 14 years old and possess a valid falconry meet license. Such license shall be issued only to nonresidents,~~] upon payment of a fee prescribed [~~in Section 23-19-40, and~~] by the Wildlife Board.

(2) A nonresident falconry meet license shall be valid only for five consecutive days, the dates to be designated on the license. The holder of the license may engage in the sport of falconry on nongame wildlife species and [~~also~~] small game species, during the specified five-day period.

Section 11. Section 23-19-40 is amended to read:

23-19-40. Fees for licenses.

(1) Residents and nonresidents may engage in hunting, fishing, trapping, bird hunting in commercial areas, and falconry upon obtaining a license through the payment of one or more of the following applicable fees:

WILDLIFE LICENSE FEE SCHEDULE

Type of License	Age and Time	Fee
RESIDENT		
Combination	12 years or older	$31.75
Fishing	Under 65 (Season)	23.75
	65 years or older (Season)	13.75
	Any age (1-day)	6.75
	Any age (7-day)	14.75
Small Game	12-13 years	10.75
	14 years or older	16.75
Furbearer	Any age	29.00
NONRESIDENT		
Fishing	Any age (Season)	45.75
	Any age (1-day)	7.75
	Any age (7-day)	20.75
Small Game	12 years or older	44.75
Furbearer	Any age	154.00
Falconry	14 years or older (5-day)	15.00

(2) Statewide fish stamps or fees may not be imposed without legislative approval.

(3) Notwithstanding the provisions of Sections 23-19-17, 23-19-18, 23-19-21, 23-19-24, 23-19-25, 23-19-26, 23-19-27, and 23-19-34.7 authorizing the Wildlife Board to prescribe license fees, the fees listed in Subsection (1) shall be in effect through December 31, 2002.

(4) Notwithstanding the provisions of Section 23-26-4 authorizing the Wildlife Board to prescribe fees for Wildlife Heritage certificates, through December 31, 2002:

(a) a resident or nonresident, 12 years of age or older, upon payment of $20, may receive a Wildlife Heritage certificate; and

(b) a resident or nonresident, under 12 years of age, upon payment of $10, may receive a Wildlife Heritage certificate.

Section 12. Section 23-19-42 is amended to read:

23-19-42. Search and rescue surcharge.

(1) In addition to the fees imposed under this chapter, there is imposed a 25 cent surcharge on each fishing, small game, or combination license [~~listed in Section 23-19-40~~].

(2) This surcharge shall be deposited in the General Fund as a dedicated credit for the Search and Rescue Financial Assistance Program created under Section 53-2-107.

Section 13. Section 23-26-4 is amended to read:

23-26-4. Wildlife Heritage certificate -- Benefits -- Use of revenue.

(1) (a) A resident or nonresident, 12 years of age or older, upon payment of [~~$20~~] the fee prescribed by the Wildlife Board, may receive a Wildlife Heritage certificate.

(b) A resident or nonresident, under 12 years of age, upon payment of [~~$10~~] the fee prescribed by the Wildlife Board, may receive a Wildlife Heritage certificate.

(2) The Wildlife Heritage certificate allows the holder to receive the benefits and participate in the activities of the Wildlife Heritage program as determined by the Wildlife Board and the division.

(3) Revenue from the sale of Wildlife Heritage certificates shall be used for activities and projects that fulfill the program's purposes as specified in Section 23-26-2, including:

(a) information and education;

(b) the establishment and enhancement of nonconsumptive wildlife management areas that are managed consistent with Section 23-14-18;

(c) wildlife and ecosystem research; and

(d) administration, development, and promotion of the program.

(4) Revenue from the sale of Wildlife Heritage certificates may be used for emergency feeding of wildlife.

Section 14. Section 63-55b-123 is enacted to read:

63-55b-123. Repeal dates -- Title 23.

Section 23-19-40 is repealed January 1, 2003.

CHAPTER 23
H. B. 63
Passed January 31, 2001
Approved February 8, 2001
Effective July 1, 2001

OFF-HIGHWAY VEHICLE REGISTRATION AMENDMENTS

Sponsor: Brent H. Goodfellow

This act modifies the Motor Vehicle Code by amending certain off-highway vehicle registration provisions. This act takes effect on July 1, 2001.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
41-22-3, as last amended by Chapter 221, Laws of Utah 1993

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

Section 1. Section 41-22-3 is amended to read:

41-22-3. Registration of vehicles -- Application -- Issuance of stickers and card -- Proof of property tax payment -- Records.

(1) (a) Unless exempted under Section 41-22-9, [~~no~~] a person may not operate or transport and [~~no~~] an owner may not give another person permission to operate or transport any off-highway vehicle on any public land, trail, street, or highway in this state unless the off-highway vehicle has been registered under this chapter for the current year.

(b) Unless exempted under Section 41-22-9, [~~no~~] a dealer may not sell an off-highway vehicle which can be used or transported on any public land, trail, street, or highway in this state, unless it has been registered or is in the process of being registered under this chapter for the current year.

(2) The owner of any off-highway vehicle requiring registration under this chapter shall file an application for registration with the Motor Vehicle Division on forms approved by it.

(3) Each application for registration of an off-highway vehicle shall be accompanied by:

(a) evidence of ownership, a title, or a manufacturer's certificate of origin, and a bill of sale showing ownership, make, model, horsepower or displacement, and serial number;

(b) the past certificate of registration; or

(c) the fee for a duplicate.

(4) [~~With every initial registration, the Motor Vehicle Division shall assign a number which shall remain with the vehicle and be valid until ownership of the vehicle is transferred. The number shall be displayed on the vehicle in a manner prescribed by the board. With every initial and subsequent~~] Upon each annual registration, the Motor Vehicle Division shall issue numbered stickers to be affixed to the vehicles as prescribed by the board and a registration card, which shall be available for inspection on the vehicle at all times.

(5) The Motor Vehicle Division, before issuing a registration card and registration stickers, shall require from each applicant a certificate from the county assessor of the county in which the off-highway vehicle has situs for taxation. The certificate shall state one of the following:

(a) the property tax on the off-highway vehicle for the current year has been paid;

(b) in the county assessor's opinion, the tax is a lien on real property sufficient to secure the payment of the tax; or

(c) the off-highway vehicle is exempt by law from payment of property tax for the current year.

(6) (a) All records of the division made or kept pursuant to this section shall be classified by the Motor Vehicle Division in the same manner as motor vehicle records are classified under Section 41-1a-116.

(b) Division records are available for inspection in the same manner as motor vehicle records pursuant to Section 41-1a-116.

Section 2. Effective date.

This act takes effect on July 1, 2001.

CHAPTER 24
H. B. 184
Passed January 23, 2001
Approved February 8, 2001
Effective April 30, 2001

PUBLIC UTILITIES AMENDMENTS--REPEAL

Sponsor: David Ure
Patrice M. Arent

This act repeals H.B. 320, Chapter 352, Laws of Utah 2000.

This act enacts uncodified material.

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

Section 1. Repeal.

This act repeals H.B. 320, Chapter 352, Laws of Utah 2000.

CHAPTER 25
H. B. 41
Passed February 1, 2001
Approved February 19, 2001
Effective April 30, 2001

FIRE PREVENTION AMENDMENTS

Sponsor: Katherine M. Bryson

This act modifies the Public Safety Code by adding prevention education to the duties of the state fire marshal. This act also sets a standard for the adoption of a state fire code and allows for the acceptance of electronic documents and digital signatures by the Department of Public Safety.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
53-7-103, as renumbered and amended by Chapter 234, Laws of Utah 1993
53-7-104, as renumbered and amended by Chapter 234, Laws of Utah 1993
53-7-106, as renumbered and amended by Chapter 234, Laws of Utah 1993
53-7-202, as renumbered and amended by Chapter 234, Laws of Utah 1993
53-7-203, as last amended by Chapters 276 and 375, Laws of Utah 1997
53-7-204, as last amended by Chapter 192, Laws of Utah 1998
53-7-204.2, as last amended by Chapter 28, Laws of Utah 1995
53-7-205, as renumbered and amended by Chapter 234, Laws of Utah 1993
53-7-209, as renumbered and amended by Chapter 234, Laws of Utah 1993
53-7-210, as renumbered and amended by Chapter 234, Laws of Utah 1993
53-7-304, as last amended by Chapter 243, Laws of Utah 1996
53-7-305, as last amended by Chapter 86, Laws of Utah 2000

ENACTS:
53-7-108, Utah Code Annotated 1953

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

Section 1. Section 53-7-103 is amended to read:

53-7-103. State Fire Marshal Division -- Creation -- State fire marshal -- Appointment, qualifications, duties, and compensation.

(1) There is created within the department the State Fire Marshal Division.

(2) (a) The director of the division is the state fire marshal, who shall be appointed by the commissioner upon the recommendation of the Utah Fire Prevention Board created in Section 53-7-203 and with the approval of the governor.

(b) The state fire marshal is the executive and administrative head of the division, and shall be qualified by experience and education to enforce rules made under this chapter and perform the duties prescribed by the commissioner.

(3) The state fire marshal acts under the supervision and control of the commissioner and may be removed from his position at the will of the commissioner.

(4) The state fire marshal shall:

(a) enforce rules made under this chapter as provided in accordance with Section 53-7-104;

(b) complete the duties assigned by the commissioner;

(c) examine plans and specifications for school buildings, as required by Section 53A-20-104;

(d) approve modifications or additions to plans and specifications for school building construction adopted by the State Board of Education, as required by Section 53A-20-102;

(e) approve criteria established by the state superintendent for building inspectors, as required by Sections 10-9-106 and 17-27-105; [~~and~~]

(f) promote and support injury prevention public education programs; and

[~~(f)~~] (g) perform all other duties provided in this chapter.

(5) The state fire marshal shall receive compensation as provided by Title 67, Chapter 19, Utah State Personnel Management Act.

Section 2. Section 53-7-104 is amended to read:

53-7-104. Enforcement of rules -- Division of authority and responsibility.

(1) The authority and responsibility for enforcing rules made under this chapter is divided as provided in this section.

(2) The fire officers of any city or county shall enforce the rules of the state fire marshal in their respective areas.

(3) The state fire marshal may enforce the rules in:

(a) areas outside of corporate cities, fire protection districts, and special districts organized for fire protection purposes; and

(b) state-owned property, school district owned property, and privately owned property used for schools located within corporate cities and county fire protection districts, asylums, mental hospitals, hospitals, sanitariums, homes for the aged, residential health-care facilities, children's homes or institutions, or similar institutional type occupancy of any capacity.

(4) The state fire marshal may enforce the rules in corporate cities, counties, and fire protection districts, and special service districts organized for fire protection purposes upon [~~written~~] receiving a request [~~of~~] from the chief fire official or the local governing body.

Section 3. Section 53-7-106 is amended to read:

53-7-106. Adoption of fire code.

(1) [~~Subject to Section 53-7-204, the Uniform Fire Code, as promulgated by the International Fire Code Institute,~~] A fire code promulgated by a nationally recognized code authority and adopted by the Utah Fire Prevention Board pursuant to Section 53-7-204 is the state fire code, to which cities, counties, fire protection districts, and the state shall adhere in safeguarding life and property from the hazards of fire and explosion.

(2) (a) The legislative body of a political subdivision may make ordinances that are more restrictive in its fire code requirements than the state fire code, in order to meet the public safety needs of the political subdivision.

(b) The legislative body of a political subdivision shall provide to the Utah Fire Prevention Board one copy of each ordinance enacted under Subsection (2)(a).

(c) The state fire marshal shall keep an indexed copy of the ordinances.

(d) Copies of the ordinances are available from the state fire marshal on request.

Section 4. Section 53-7-108 is enacted to read:

53-7-108. Electronic writing.

(1) Any writing required or permitted by this chapter may be filed or prepared in an electronic medium and by electronic transmission subject to the ability of the recipient to accept and process the electronic writing.

(2) Any writing required by this chapter to be signed that is in an electronic medium shall be signed by digital signature in accordance with Title 46, Chapter 3, Utah Digital Signature Act.

Section 5. Section 53-7-202 is amended to read:

53-7-202. Definitions.

As used in this part:

(1) "Agricultural and wildlife fireworks" means a class C dangerous explosive that:

(a) uses sound or light when deployed; and

(b) is designated to prevent crop damage or unwanted animals from entering a specified area.

(2) "Board" means the Utah Fire Prevention Board created in Section 53-7-203.

(3) "Class A explosive" means a class A explosive as defined by the U.S. Department of Transportation in Part 173, Title 49, Code of Federal Regulations.

(4) "Class B explosive" means a class B explosive as defined by the U.S. Department of Transportation in Part 173, Title 49, Code of Federal Regulations.

(5) "Class C explosive" means a class C explosive as defined by the U.S. Department of Transportation in Part 173, Title 49, Code of Federal Regulations.

(6) (a) "Class C common state approved explosive" means a class C explosive that is:

(i) a cardboard or heavy paper cylindrical tube or cone that:

(A) produces a shower of color and sparks that reach a maximum height of 15 feet;

(B) may whistle or pop; and

(C) is not designed to explode or leave the ground;

(ii) a pyrotechnic wheel device that:

(A) may be attached to a post or tree; and

(B) contains up to six "driver" units or tubes;

(iii) any device that:

(A) spins, jumps, or emits popping sounds when placed on the ground;

(B) does not exceed a height of 15 feet when discharged; and

(C) does not travel laterally more than ten feet on a smooth surface when discharged;

(iv) a morning glory, suzuki, or flitter sparkler; and

(v) a single tube day type parachute that does not carry any flare or flame upon descent.

(b) "Class C common state approved explosive" does not mean:

(i) class C dangerous explosives; or

(ii) exempt explosives.

(7) (a) "Class C dangerous explosive" means a class C explosive that is:

(i) a firecracker, cannon cracker, salute, cherry bomb, or other similar explosive;

(ii) a skyrocket or any device other than a model rocket that uses combustible or explosive material and rises more than 15 feet when discharged;

(iii) a roman candle or other device that discharges balls of fire over 15 feet in height;

(iv) a tube or cone aerial firework that propels comets, shells, salutes, flash shells, or similar devices more than 15 feet into the air; and

(v) a chaser, whistler, or other device that darts or travels more than ten feet laterally on a smooth surface or exceeds 15 feet in height when discharged.

(b) A "Class C dangerous explosive" does not mean:

(i) class C common state approved explosives; or

(ii) exempt explosives.

(8) "Display fireworks" means an aerial shell, salute, flash shell, comet, sky battle, mine, and any similar class C explosive or class B explosive.

(9) (a) "Display operator" means the person who purchases and is responsible for setting up and discharging display fireworks.

(b) "Display operator" does not mean a fire department.

(10) "Exempt explosive" means a model rocket, toy pistol cap, emergency signal flare, snake or glow worm, party popper, trick noisemaker, match, and wire sparkler under 12 inches in length.

(11) (a) "Fireworks" means:

(i) class C explosives;

(ii) class C dangerous explosives; and

(iii) class C common state approved explosives.

(b) "Fireworks" does not mean:

(i) exempt explosives;

(ii) class A explosives; and

(iii) class B explosives.

(12) "Importer" means a person who brings class B or class C explosives into Utah for the general purpose of resale within the state or exportation to other states.

(13) (a) "Pyrotechnic" means any composition or device manufactured or used to produce a visible or audible effect by combustion, deflagration, or detonation.

(b) "Pyrotechnic" does not mean exempt explosives.

(14) "Retail seller" means a person who sells class C common state approved explosives to the public during the period authorized under Section 53-7-225.

(15) "State fire code" means a nationally recognized fire code adopted by the Utah Fire Prevention Board pursuant to Section 53-7-204.

[~~(15)~~] (16) "Trick noisemaker" includes a:

(a) tube or sphere containing pyrotechnic composition that produces a white or colored smoke as its primary effect when ignited; and

(b) device that produces a small report intended to surprise the user, including a:

(i) "booby trap," which is a small tube with a string protruding from both ends that ignites the friction sensitive composition in the tube when the string is pulled;

(ii) "snapper," which is a small paper-wrapped device containing a minute quantity of explosive composition coated on bits of sand that explodes producing a small report;

(iii) "trick match," which is a kitchen or book match coated with a small quantity of explosive or pyrotechnic composition that produces a small shower of sparks when ignited;

(iv) "cigarette load," which is a small wooden peg coated with a small quantity of explosive composition that produces a small report when the cigarette is ignited; and

(v) "auto burglar alarm," which is a tube that:

(A) contains pyrotechnic composition that produces a loud whistle and smoke when ignited;

(B) may contain a small quantity of explosive to produce a small explosive noise; and

(C) is ignited by a squib.

[~~(16)~~] (17) "Unclassified fireworks" means any of the following:

(a) a pyrotechnic device that is used, given away, or offered for sale, that has not been tested, approved, and classified by the U.S. Department of Transportation;

(b) an approved device that has been altered or redesigned since obtaining approval by the U.S. Department of Transportation;

(c) a pyrotechnic device that is being tested by a manufacturer, importer, or wholesaler before receiving approval by the U.S. Department of Transportation.

[~~(17)~~] (18) "Wholesaler" means any of the following:

(a) a person who sells class C common state approved explosives to a retailer;

(b) a person who sells class B explosives or class C dangerous explosives for display use.

Section 6. Section 53-7-203 is amended to read:

53-7-203. Utah Fire Prevention Board -- Creation -- Members -- Terms -- Selection of chair and officers -- Quorum -- Meetings -- Compensation -- Division's duty to implement board rules.

(1) There is created within the division the Utah Fire Prevention Board.

(2) The board shall be nonpartisan and be composed of ten members appointed by the governor as follows:

(a) a city or county official;

(b) a licensed architect;

(c) a licensed engineer;

(d) a member of the Utah State Firemen's Association;

(e) the state forester;

(f) the commissioner of the Labor Commission or the commissioner's designee;

(g) a member of the Utah State Fire Chiefs Association;

(h) a member of the Utah Fire Marshal's Association;

(i) a building inspector; and

(j) a citizen appointed at large.

(3) (a) Except as required by Subsection (3)(b), as terms of current board members expire, the governor shall appoint each new member or reappointed member to a four-year term.

(b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.

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

(5) A member whose term has expired may continue to serve until a replacement is appointed pursuant to Subsection (3).

[~~(5)~~] (6) The board shall select from its members a chair and other officers as the board finds necessary.

[~~(6)~~] (7) A majority of the members of the board is a quorum.

[~~(7)~~] (8) The board shall hold regular semiannual meetings for the transaction of its business at a time and place to be fixed by the board and shall hold other meetings as necessary for proper transaction of business.

[~~(8)~~] (9) (a) (i) Members who are not government employees shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

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

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

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

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

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

[~~(9)~~] (10) The division shall implement the rules of the board and perform all other duties delegated by the board.

Section 7. Section 53-7-204 is amended to read:

53-7-204. Duties of Utah Fire Prevention Board -- Local administrative duties.

(1) The board shall:

(a) make rules:

(i) adopting a nationally recognized fire code and the specific edition of [~~the Uniform Fire Code~~] that fire code as the state fire code to be used as the standard;

(ii) establishing minimum standards for the prevention of fire and for the protection of life and property against fire and panic in any:

(A) publicly owned building, including all public and private schools, colleges, and university buildings;

(B) building or structure used or intended for use as an asylum, a mental hospital, a hospital, a sanitarium, a home for the aged, an assisted living facility, a children's home or [~~institution~~] day care center, or any similar institutional type occupancy of any capacity; and

(C) place of assemblage where 50 or more persons may gather together in a building, structure, tent, or room for the purpose of amusement, entertainment, instruction, or education;

(iii) establishing safety and other requirements for placement and discharge of display fireworks based upon:

(A) the specific edition of the [~~Uniform Fire Code~~] nationally recognized fire code selected by the board under Subsection (1)(a)(i); and

(B) relevant publications of the National Fire Protection Association;

(iv) establishing minimum safety standards for retail storage, handling, and sale of class C common state approved explosives;

(v) defining methods to establish proof of competence to place and discharge display fireworks;

(vi) for deputizing qualified persons to act as deputy fire marshals, and to secure special services in emergencies;

(vii) implementing Sections 53-7-106 and 53-7-205;

(viii) setting guidelines for use of funding; and

(ix) establishing criteria for training and safety equipment grants for fire departments enrolled in firefighter certification;

(b) recommend to the commissioner a state fire marshal;

(c) develop policies under which the state fire marshal and his authorized representatives will perform;

(d) provide for the employment of field assistants and other salaried personnel as required;

(e) prescribe the duties of the state fire marshal and his authorized representatives;

(f) establish a statewide fire prevention, fire education, and fire service training program in cooperation with the Board of Regents;

(g) establish a statewide fire statistics program for the purpose of gathering fire data from all political subdivisions of the state;

(h) establish a fire academy in accordance with Section 53-7-204.2;

(i) coordinate the efforts of all people engaged in fire suppression in the state;

(j) work aggressively with the local political subdivisions to reduce fire losses; and

(k) regulate the sale and servicing of portable fire extinguishers and automatic fire suppression systems in the interest of safeguarding lives and property.

(2) The board may incorporate in its rules by reference, in whole or in part, nationally recognized and readily available standards and codes pertaining to the protection of life and property from fire, explosion, or panic.

(3) (a) The board may only make amendments to the [~~Uniform Fire Code~~] state fire code adopted under Subsection (1)(a)(i) in accordance with Section 53-7-205.

(b) The amendments may be applicable to the entire state or within a city, county, or fire protection district.

(4) The following functions shall be administered locally by a city, county, or fire protection district:

(a) issuing permits, including open burning permits pursuant to Sections 11-7-1 and 19-2-114;

(b) creating a local board of appeals in accordance with [~~Section 2.303 of the Uniform Fire Code~~] the state fire code; and

(c) establishing, modifying, or deleting fire flow and water supply requirements.

Section 8. Section 53-7-204.2 is amended to read:

53-7-204.2. Fire Academy -- Establishment -- Fire Academy Support Fund -- Funding.

(1) In this section:

(a) "Account" means the Fire Academy Support Account created in Subsection (4).

(b) "Property insurance premium" has the same meaning as provided in Section 31A-1-301.

(2) The board shall:

(a) establish a fire academy that:

(i) provides instruction and training for paid, volunteer, institutional, and industrial firefighters;

(ii) develops new methods of firefighting and fire prevention;

(iii) provides training for fire and arson detection and investigation;

(iv) provides public education programs to promote fire safety;

(v) provides for certification of firefighters, pump operators, instructors, and officers; and

(vi) provides facilities for teaching fire-fighting skills;

(b) establish a cost recovery fee in accordance with Section 63-38-3.2 for training commercially employed firefighters; and

(c) request funding for the academy.

(3) The board may:

(a) accept gifts, donations, and grants of property and services on behalf of the fire academy; and

(b) enter into contractual agreements necessary to facilitate establishment of the school.

(4) (a) To provide a funding source for the academy, there is created in the General Fund a restricted account known as the Fire Academy Support Account.

(b) The following revenue shall be deposited in the account to implement this section:

(i) the percentage specified in Subsection (5) of the annual tax for each year that is levied, assessed, and collected under Title 59, Chapter 9, Taxation of Admitted Insurers, upon property insurance premiums and as applied to fire and allied lines insurance collected by insurance companies within the state;

(ii) the percentage specified in Subsection (6) of all money assessed and collected upon life insurance premiums within the state;

(iii) the cost recovery fees established by the board;

(iv) gifts, donations, and grants of property on behalf of the fire academy; and

(v) appropriations made by the Legislature.

(5) The percentage of the tax specified in Subsection (4)(b)(i) to be deposited in the account [~~in~~] each fiscal year[~~:~~] is 25%.

[~~(a) 1993-94 is 6.25%;~~]

[~~(b) 1994-95 is 12.5%;~~]

[~~(c) 1995-96 is 18.75%; and~~]

[~~(d) 1996-97 and subsequent fiscal years is 25%.~~]

(6) The percentage of the money specified in Subsection (4)(b)(ii) to be deposited in the account [~~in~~] each fiscal year[~~:~~] is 5%.

[~~(a) 1993-94 is 1.25%;~~]

[~~(b) 1994-95 is 2.5%;~~]

[~~(c) 1995-96 is 3.75%; and~~]

[~~(d) 1996-97 and subsequent fiscal years is 5%.~~]

Section 9. Section 53-7-205 is amended to read:

53-7-205. State fire code amendments -- Board duties and responsibilities.

(1) The board shall receive from a city, county, or fire protection district requests for amendments to the [~~Uniform Fire Code~~] state fire code.

(2) The division or the board on its own initiative may make recommendations to the division for amendments to the [~~Uniform Fire Code~~] state fire code.

(3) (a) Within 45 days after receipt of a request or recommendation concerning an amendment, the board shall direct the division to convene an informal hearing concerning the amendment.

(b) The hearing shall be conducted in accordance with the rules of the board.

(c) The board shall decide to accept, modify, or reject the amendment.

(4) Within 15 days following the completion of the hearing, the board shall direct the division to [~~notify~~] send written notification, in a form prescribed by the board, to the city, county, or fire protection district of its decision [~~in writing~~].

(5) The board shall make rules incorporating the amendments accepted or modified under Subsection (3).

Section 10. Section 53-7-209 is amended to read:

53-7-209. Inspection of buildings by officials.

(1) A fire chief or officer may enter any building or premises not used as a private dwelling at any reasonable hour to inspect the building or premises and enforce the rules made under this part, including the [~~Uniform Fire Code~~] state fire code adopted under Section 53-7-204.

(2) The owner, lessee, manager, or operator of any building or premises not used as a private dwelling shall permit inspections under this section.

Section 11. Section 53-7-210 is amended to read:

53-7-210. Fire investigations by local officers -- Notification to division.

(1) The chief fire officer of any city, town, or county fire department, or of any fire district or special service district organized for fire protection purposes, or his authorized representative shall investigate the cause, origin, and circumstances of each fire occurring in his jurisdiction when property has been destroyed or damaged.

(2) The fire officer shall:

(a) begin the investigation immediately after the occurrence of the fire; and

(b) attempt to determine, among other things, whether the fire was the result of carelessness or of design.

(3) If the fire officer making this investigation determines that the fire appears to be [~~of~~] suspicious [~~or incendiary~~], or of unknown origin [~~he shall immediately~~], the officer may notify the division to request assistance.

Section 12. Section 53-7-304 is amended to read:

53-7-304. Liquefied Petroleum Gas Board -- Creation -- Composition -- Appointment -- Terms of officers -- Meetings -- Compensation.

(1) (a) There is created within the division the Liquefied Petroleum Gas Board.

(b) The board is composed of seven members:

(i) two Utah fire chiefs or marshals;

(ii) two members of the general public; and

(iii) three members who are representatives of the LPG industry.

(2) The fire chiefs or marshals and the members of the general public shall be appointed by the governor, on a nonpartisan basis.

(3) Members of the board who are representatives of the LPG industry shall have been legal residents of the state for at least one year immediately preceding the date of appointment and have been actively engaged in the LPG industry for a period of at least five years.

(4) The LPG industry representatives shall be appointed by the governor from a list of at least five but no more than the 12 nominees receiving the largest number of votes according to written ballots executed by representatives of the licensees under Subsection (7).

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

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

(c) Members serve from the date of appointment until a replacement is appointed.

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

(7) (a) The balloting of licensees shall be conducted by the division.

(b) For the appointments, the division shall forward to each licensee by registered or certified United States mail an official ballot for each staffed plant or facility held under Section 53-7-309, with instructions for executing the ballot and returning it to the division.

(8) (a) The board shall elect its own chair and vice chair at its first regular meeting each calendar year.

(b) All meetings of the board shall be held on a prescribed date, at least quarterly, and at any time a majority of the board members [~~makes~~] sends a request [~~in writing~~] to the board chair.

(c) [~~Any five members constitute~~] A majority of the members of the board is a quorum for the transaction of business.

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

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

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

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

Section 13. Section 53-7-305 is amended to read:

53-7-305. Board rulemaking -- Notice.

(1) (a) The board shall make rules as reasonably necessary for the protection of the health, welfare, and safety of the public and persons using LPG.

(b) The rules shall be in substantial conformity with the generally accepted standards of safety concerning LPG, and shall include the following conditions:

(i) the rules relating to safety in the storage, distribution, dispensing, transporting, and use of LPG in this state and in the manufacture, fabrication, assembly, sale, installation, and use of LPG systems, containers, apparatus, or appliances shall be reasonable; and

(ii) the rules shall conform as nearly as possible to the standards of the National Fire Protection Association, relating to the design, construction, installation, and use of systems, containers, apparatus, appliances, and pertinent equipment for the storage, transportation, dispensation, and use of LPG.

(2) The board may make rules:

(a) setting minimum general standards covering the design, construction, location, installation, and operation of equipment for storing, handling, transporting by tank truck or tank trailer, or using LPG;

(b) specifying the odorization of the gases and the degree of odorization;

(c) governing LPG distributors and installers and the installation of LPG systems, carburetion systems, and fueling systems; and

(d) prescribing maximum container removal rates.

(3) (a) When a proposed rule is filed, the board shall give at least ten days' notice to all license applicants and licensees under this chapter by sending a notice of the proposed new, revised, or amended rule together with a notice of hearing to the licensee's current address on file with the board.

(b) Any person affected by rulemaking under this part may submit [~~written~~] comment, in a format prescribed by the board, on the rule.

(c) A certificate citing the adoption and the effective date of a rule shall be signed by the members comprising a majority of the board.

(d) Within ten days after the adoption of the rule, the board shall send to each license applicant or licensee, at his current address on file, a notice of the adoption of the rule, including its effective date.

(e) A facsimile of any member's signature may be used under this section if authorized by the member.

CHAPTER 26
S. B. 5
Passed February 1, 2001
Approved February 21, 2001
Effective April 30, 2001

DISASTER RELIEF
APPROPRIATION REPEAL

Sponsor: Terry R. Spencer

This act modifies a chapter entitled "Disaster Relief." This act repeals an obsolete and lapsed appropriation.

This act affects sections of Utah Code Annotated 1953 as follows:

REPEALS:

63-52a-13, as enacted by Chapter 1, Laws of Utah 1991, Second Special Session

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

Section 1. Repealer.

This act repeals:

Section 63-52a-13, Appropriation -- Use of money -- Nonlapsing money -- Remaining money to be used upon declaration of a "state of emergency" by governor.

CHAPTER 27
S. B. 12
Passed February 1, 2001
Approved February 21, 2001
Effective April 30, 2001

TRAFFIC MANAGEMENT COMMITTEE AMENDMENTS

Sponsor: Peter C. Knudson

This act modifies Transportation Code provisions to amend the membership and certain duties of the Traffic Management Committee.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
72-6-115, as last amended by Chapter 270, Laws of Utah 1999

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

Section 1. Section 72-6-115 is amended to read:

72-6-115. Traffic Management Committee -- Appointment -- Duties.

(1) As used in this section, "committee" means the Traffic Management Committee created in this section.

(2) (a) There is created within the Department of Transportation the Traffic Management Committee comprising [~~seven~~] up to 13 members knowledgeable about traffic engineering, traffic flow, [~~or~~] air quality, or intelligent transportation systems as follows:

(i) [~~one member~~] two members designated by the executive director of the department;

(ii) one member designated by the Utah Association of Counties;

(iii) one member designated by the Department of Environmental Quality;

(iv) one member designated by the Wasatch Front Regional Council;

(v) one member designated by the Mountainland Association of Governments;

(vi) one member designated by the Commissioner of Public Safety; and

(vii) one member designated by the Utah League of Cities and Towns[~~.~~];

(viii) one member designated by the general manager of a public transit district with more than 200,000 people residing within the public transit district boundaries;

(ix) up to four additional members designated by the committee for one-year terms; and

(x) a designating entity under Subsections (2)(a)(i) through (viii) may designate an alternative member to serve in the absence of its designated member.

(b) The committee shall:

(i) advise the department on matters related to the implementation and administration of this section;

(ii) make recommendations to law enforcement agencies related to traffic flow and incident management during heavy traffic periods;

(iii) make recommendations to the department, counties, and municipalities on increasing the safety and efficiency of highways using current traffic management systems, including traffic signal coordination, traffic monitoring, freeway ramp metering, variable message signing, and incident management; and

(iv) evaluate the cost effectiveness of implementing a specific traffic management system on a highway considering:

(A) existing traffic volume in the area;

(B) the necessity and potential of reducing vehicle emissions in the area;

(C) the feasibility of the traffic management system on the highway; and

(D) whether traffic congestion will be reduced by the system.

[~~(c) (i) Except as required by Subsection (2)(c)(ii), as terms of current committee members expire, the appointing authority shall appoint each new member or reappointed member to a four-year term.~~]

[~~(ii) Notwithstanding the requirements of Subsection (2)(c)(i), the appointing authority shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the committee is appointed every two years.~~]

[~~(d)~~] (c) The committee shall annually elect a chair and a vice chair from its members.

[~~(e)~~] (d) When a vacancy occurs in the membership for any reason, the replacement shall be appointed [~~for the unexpired term~~].

[~~(f)~~] (e) The committee shall meet as it determines necessary to accomplish its duties.

[~~(g)~~] (f) Reasonable notice shall be given to each member of the committee prior to any meeting.

[~~(h)~~] (g) A majority of the committee constitutes a quorum for the transaction of business.

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

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

(ii) (A) State government officer and employee members who do not receive salary, per diem, or

expenses from their agency for their service may receive per diem and expenses incurred in the performance of their official duties from the committee at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

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

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

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

(3) (a) The Department of Transportation shall implement and administer traffic management systems to facilitate the efficient flow of motor vehicle traffic on state highways to improve regional mobility, and to reduce motor vehicle emissions where those improvements are cost effective, as determined by the committee in accordance with criteria under Subsection (2)(b).

(b) A traffic management system shall be designed to allow safe, efficient, and effective:

(i) integration of existing traffic management systems;

(ii) additions of highways and intersections under county and city administrative jurisdiction;

(iii) incorporation of other traffic management systems; and

(iv) adaptation to future traffic needs.

(4) (a) The cost of implementing and administering a traffic management system shall be shared pro rata by the department and the counties and municipalities using it.

(b) The department shall enter into an agreement or contract under Title 11, Chapter 13, Interlocal Cooperation Act, with a county or municipality to share costs incurred under this section.

(5) Additional highways and intersections under the administrative jurisdiction of a county or municipality may be added to a traffic management system upon application of the county or municipality after:

(a) a recommendation of the committee;

(b) approval by the department;

(c) determination of the appropriate cost share of the addition under Subsection (4)(a); and

(d) an agreement under Subsection (4)(b).

(6) The committee may establish technical advisory committees as needed to assist in accomplishing its duties under this section.

CHAPTER 28
S. B. 17
Passed February 1, 2001
Approved February 21, 2001
Effective April 30, 2001

HIGHWAY CONSTRUCTION BID LIMIT

Sponsor: Peter C. Knudson

This act modifies the Transportation Code to amend highway project bid limit provisions.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
72-6-107, as last amended by Chapter 365, Laws of Utah 1999

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

Section 1. Section 72-6-107 is amended to read:

72-6-107. Construction or improvement of highway -- Contracts -- Retainage.

(1) (a) The department shall make plans, specifications, and estimates prior to the construction or improvement of any state highway.

(b) Except as provided in Section 63-56-36.1 and except for construction or improvements performed with state prison labor, a construction or improvement project with an estimated cost exceeding [~~$40,000~~] the bid limit as defined in Section 72-6-109 for labor and materials shall be performed under contract awarded to the lowest responsible bidder.

(c) The advertisement for bids shall be published in a newspaper of general circulation in the county in which the work is to be performed, at least once a week for two consecutive weeks, with the last publication at least ten days before bids are opened.

(d) The department shall receive sealed bids and open the bids at the time and place designated in the advertisement. The department may then award the contract but may reject any and all bids.

(e) If the department's estimates are substantially lower than any responsible bid received, the department may perform any work by force account.

(2) If any payment on a contract with a private contractor for construction or improvement of a state highway is retained or withheld, the payment shall be retained or withheld and released as provided in Section 13-8-5.

(3) If the department performs a construction or improvement project by force account, the department shall:

(a) provide an accounting of the costs and expenditures of the improvement including material and labor;

(b) disclose the costs and expenditures to any person upon request and allow the person to make a copy and pay for the actual cost of the copy; and

(c) perform the work using the same specifications and standards that would apply to a private contractor.

(4) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the department shall establish procedures for:

(a) hearing evidence that a region within the department violated this section; and

(b) administering sanctions against the region if the region is found in violation.

CHAPTER 29
S. B. 40
Passed February 1, 2001
Approved February 21, 2001
Effective April 30, 2001

PENALTY FOR USE OF DYED DIESEL

Sponsor: Dan R. Eastman

This act modifies the Revenue and Taxation Code to provide certain penalties for using certain untaxed diesel fuel.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:
59-13-320.5, Utah Code Annotated 1953

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

Section 1. Section 59-13-320.5 is enacted to read:

59-13-320.5. Use of dyed diesel on highways prohibited -- Penalty.

(1) A person may not operate a motor vehicle on a highway if a fuel supply tank of the motor vehicle contains dyed diesel fuel, unless:

(a) permitted under federal law;

(b) (i) the motor vehicle is used on the highway only to travel from one parcel of land owned or operated by the owner to another parcel of land owned or operated by the owner; and

(ii) the motor vehicle's travel on the highway is necessary for furtherance of agricultural purposes; or

(c) the motor vehicle is special mobile equipment, as defined in Section 41-1a-102, including off-road motorized construction or maintenance equipment, that is only incidentally operated or moved on a highway in connection with a construction project.

(2) A person who violates Subsection (1) shall pay a penalty assessed by the commission as follows:

(a) the greater of $500 or $5 per gallon of dyed diesel fuel within each fuel supply tank of the motor vehicle, based on the maximum storage capacity of each fuel supply tank; or

(b) for a second and subsequent offense, the greater of $1,000 or $10 per gallon of dyed diesel fuel within each fuel supply tank of the motor vehicle, based on the maximum storage capacity of each fuel supply tank.

(3) The penalty imposed under this section:

(a) is in addition to any other taxes, interest, or penalties imposed under this chapter; and

(b) shall be deposited in the Transportation Fund.

(4) Upon making a record of its actions, and upon reasonable cause shown, the commission may waive, reduce, or compromise the penalty imposed under this section.

CHAPTER 30
S. B. 90
Passed February 1, 2001
Approved February 21, 2001
Effective April 30, 2001

VETERANS MEMORIALS ERECTED AND MAINTAINED BY COUNTIES

Sponsor: Gene Davis

This act modifies provisions relating to Veterans Memorials allowing counties to use public funds to decorate veterans' graves and memorials.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
71-2-2, as last amended by Chapter 227, Laws of Utah 1993

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

Section 1. Section 71-2-2 is amended to read:

71-2-2. Memorials by counties.

(1) The county legislative body of the several counties may erect and maintain, appropriate monies for, and contribute to the erection and maintenance of, memorials to the memory of veterans of the several wars in which the United States of America [~~shall have been a belligerent,~~] participated.

(2) Memorials may be in the form of grave adornments, public buildings, monuments, recreational areas and facilities, parks, and public places; provided, that no county legislative body may erect and maintain, [~~or~~] assist in, or contribute to, the erection or maintenance of any [~~such~~] memorial which [~~shall have its site~~] is outside of the boundaries of the county.

CHAPTER 31
S. B. 96
Passed February 1, 2001
Approved February 21, 2001
Effective April 30, 2001

COMMERCIAL DRIVERS LICENSE MEDICAL WAIVERS

Sponsor: Ed P. Mayne

This act modifies the Public Safety Code by amending provisions related to person applying for a medical waiver related to an intrastate commercial driving privilege.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
53-3-303.5, as last amended by Chapter 74, Laws of Utah 1999

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

Section 1. Section 53-3-303.5 is amended to read:

53-3-303.5. Driver License Medical Advisory Board -- Medical waivers.

(1) The Driver License Medical Advisory Board shall:

(a) advise the director of the division; and

(b) establish and recommend written functional ability profile guidelines and standards for determining the physical, mental, and emotional capabilities of applicants for specific types of licenses, appropriate to various driving abilities.

(2) (a) The Driver License Medical Advisory Board shall establish fitness standards, including provisions for a waiver of specified federal driver's physical qualifications under 49 CFR 391.41, for intrastate commercial [~~driver licenses under Title 53, Chapter 3, Part 4, Uniform Commercial Driver License Act~~] driving privileges.

(b) The standards under this Subsection (2) may only be implemented if the United States Department of Transportation (USDOT) will not impose any sanctions, including funding sanctions, against the state of Utah.

(3) In case of uncertainty of interpretation of these guidelines and standards, or in special circumstances, applicants may request a review of any division decision by a panel of board members. All of the actions of the director and board are subject to judicial review.

(4) (a) If [~~the applicant for an intrastate commercial driver license under Subsection (2) applies for the license under a waiver program~~] a person applies for a waiver established under Subsection (2), the applicant shall bear any costs directly associated with the cost of administration of the waiver program, with respect to the applicant's application, in addition to any fees required under Section 53-3-105.

(b) The division shall establish any additional fee necessary to administer the license under this Subsection (4) in accordance with Section 63-38-3.2.

CHAPTER 32
H. B. 31
Passed February 5, 2001
Approved February 21, 2001
Effective April 30, 2001

CHILD WELFARE OVERSIGHT PANEL AMENDMENTS

Sponsor: Trisha S. Beck

This act modifies the Human Services Code to amend the duties of the Child Welfare Legislative Oversight Panel and make technical changes. The act requires the executive branch and judicial branch to report to the panel regarding their compliance with statutory time limits for the permanency process for foster care children. The act authorizes the panel to receive reports from the executive branch and judicial branch concerning budget issues, and to make recommendations to legislative appropriations committees.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
62A-4a-207, as last amended by Chapter 13, Laws of Utah 1998

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

Section 1. Section 62A-4a-207 is amended to read:

62A-4a-207. Legislative Oversight Panel -- Responsibilities.

(1) (a) There is created the Child Welfare Legislative Oversight Panel composed of the following members:

(i) two members of the Senate, one from the majority party and one from the minority party, appointed by the president of the Senate; and

(ii) three members of the House of Representatives, two from the majority party and one from the minority party, appointed by the speaker of the House of Representatives.

(b) Members of the panel shall serve for two-year terms, or until their successors are appointed.

(c) A vacancy exists whenever a member ceases to be a member of the Legislature, or when a member resigns from the panel. Vacancies shall be filled by the appointing authority, and the replacement shall fill the unexpired term.

(2) The president of the Senate shall designate one of the senators appointed to the panel under Subsection (1) as the Senate chair of the panel. The speaker of the House of Representatives shall designate one of the representatives appointed to the panel under Subsection (1) as the House chair of the panel.

(3) The panel shall follow the interim committee rules established by the Legislature.

(4) The panel shall:

(a) examine and observe the process and execution of laws governing the child welfare system by the executive branch and the judicial branch;

(b) upon request, receive testimony from the public, the juvenile court, and from all state agencies involved with the child welfare system including, but not limited to, the division, other offices and agencies within the department, the attorney general's office, the Office of the Guardian Ad Litem Director, and school districts;

(c) receive reports from the Consumer Hearing Panel, described in Subsection 62A-4a-102(3), and consider and review the actions, reports, and recommendations of that panel;

(d) before October 1, 2002, and before October 1 of each year thereafter receive reports from the division, the attorney general, and the judicial branch identifying the cases not in compliance with the time limits established in Section 78-3a-308, regarding pretrial and adjudication hearings, Section 78-3a-311, regarding dispositional hearings and reunification services, and Section 78-3a-312, regarding permanency hearings and petitions for termination, and the reasons for the noncompliance;

[~~(d)~~] (e) receive recommendations from, and make recommendations to the governor, the Legislature, the attorney general, the division, the Office of the Guardian Ad Litem Director, the juvenile court, and the public;

(f) (i) receive reports from the executive branch and the judicial branch on budgetary issues impacting the child welfare system; and

(ii) recommend, as it considers advisable, budgetary proposals to the Health and Human Services Joint Appropriations Subcommittee, the Executive Offices and Criminal Justice Appropriations Subcommittee, and the Executive Appropriations Committee, which recommendation should be made before December 1 of each year;

[~~(e)~~] (g) study and recommend proposed changes to laws governing the child welfare system;

(h) study actions the state can take to preserve, unify, and strengthen the child's family ties whenever possible in the child's best interest, including recognizing the constitutional rights and claims of parents whenever those family ties are severed or infringed;

[~~(f)~~] (i) perform such other duties related to the oversight of the child welfare system as the panel considers appropriate; and

[~~(g)~~] (j) annually report its findings and recommendations to the president of the Senate, the speaker of the House of Representatives, the Health and Human Services Interim Committee, and the Judiciary Interim Committee.

(5) The panel has authority to review and discuss individual cases. When an individual case is discussed, the panel's meeting may be held in private.

(6) (a) The panel has authority to make recommendations to the Legislature, the governor, the Board of Juvenile Court Judges, the division, and any other statutorily created entity related to the policies and procedures of the child welfare system. The panel does not have authority to make recommendations to the court, the division, or any other public or private entity regarding the disposition of any individual case.

(b) The panel may hold public hearings, as it considers advisable, in various locations within the state in order to afford all interested persons an opportunity to appear and present their views regarding the child welfare system in this state.

(7) (a) All records of the panel regarding individual cases shall be classified private, and may be disclosed only in accordance with federal law and the provisions of Title 63, Chapter 2, Government Records Access and Management Act.

(b) The panel shall have access to all of the division's records, including those regarding individual cases. In accordance with Title 63, Chapter 2, Government Records Access Management Act, all documents and information received by the panel shall maintain the same classification that was designated by the division.

(8) In order to accomplish its oversight functions, the panel has:

(a) all powers granted to legislative interim committees in Section 36-12-11; and

(b) legislative subpoena powers under Title 36, Chapter 14, Legislative Subpoena Powers.

(9) Members of the panel shall receive salary and expenses in accordance with Section 36-2-2.

(10) (a) The Office of Legislative Research and General Counsel shall provide staff support to the panel.

(b) The panel is authorized to employ additional professional assistance and other staff members as it considers necessary and appropriate.

CHAPTER 33
H. B. 59
Passed February 5, 2001
Approved February 21, 2001
Effective April 30, 2001

WORKERS' COMPENSATION FUND

Sponsor: Kevin S. Garn

This act modifies the Insurance Code by amending when a Workers' Compensation Fund subsidiary may offer insurance coverage. This act also exempts the Workers' Compensation Fund from the Open and Public Meetings provisions.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
31A-33-103.5, as last amended by Chapter 107, Laws of Utah 1998
31A-33-104, as last amended by Chapter 375, Laws of Utah 1997

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

Section 1. Section 31A-33-103.5 is amended to read:

31A-33-103.5. Powers of Fund -- Limitations.

(1) The fund may form or acquire subsidiaries or enter into a joint enterprise:

(a) in accordance with Section 31A-33-107; and

(b) except as limited by this section and applicable insurance rules and statutes.

(2) Subject to applicable insurance rules and statutes, the fund may only offer:

(a) workers' compensation insurance in Utah;

(b) workers' compensation insurance in a state other than Utah to the extent necessary to:

(i) accomplish its purpose under Subsection 31A-33-102(1)(b); and

(ii) provide workers' compensation or occupational disease insurance coverage to Utah employers and their employees engaged in interstate commerce; and

(c) workers' compensation products and services in Utah or other states.

(3) Subject to applicable insurance rules and statutes, a subsidiary of the fund may:

(a) offer workers' compensation insurance coverage only:

(i) in a state other than Utah; and

(ii) (A) to insure the following against liability for compensation based on job-related accidental injuries and occupational diseases[~~;~~]:

(I) an employer, as defined in Section 34A-2-103, that has a majority of its employees, as defined in Section 34A-2-104, hired or regularly employed in Utah;

(II) an employer, as defined in Section 34A-2-103, whose principal administrative office is located in Utah; [~~or~~]

(III) a subsidiary or affiliate of an employer described in Subsection (3)(a)(ii)(A)(I) or (II); or

(IV) an employer, as defined in Section 34A-2-103, whose purchase of insurance arises solely out of the purchase of workers' compensation products and services from the fund or a fund subsidiary; or

(B) for a state fund organization that is not an admitted insurer in the other state:

(I) on a fee for service basis; and

(II) without bearing any insurance risk; and

(b) offer workers' compensation products and services in Utah and other states.

(4) The fund shall write workers' compensation insurance in accordance with Section 31A-22-1001.

(5) (a) The fund may enter into a joint enterprise that offers workers' compensation insurance and other coverage only in the state, provided:

(i) the joint enterprise offers only property or liability insurance in addition to workers' compensation insurance;

(ii) the fund may not bear any insurance risk associated with the insurance coverage other than risk associated with workers' compensation insurance; and

(iii) the offer of other insurance shall be part of an insurance program that includes workers' compensation insurance coverage that is provided by the fund.

(b) The fund or a subsidiary of the fund may not offer, or enter into a joint enterprise that offers, or otherwise participate in the offering of health or disability insurance.

Section 2. Section 31A-33-104 is amended to read:

31A-33-104. Workers' Compensation Fund exempted.

(1) The Workers' Compensation Fund is exempt from the provisions of:

(a) Title 52, Chapter 4, Open and Public Meetings;

[~~(a)~~] (b) Title 63, Chapter 2, Government Records Access and Management Act; and

[~~(b)~~] (c) Title 63A, Utah Administrative Services Code.

(2) The board may specifically exempt the Workers' Compensation Fund from any provisions of:

(a) Title 67, Chapter 19, Utah State Personnel Management Act; and

(b) Title 63, Chapter 56, Utah Procurement Code.

(3) The provisions of Title 63, Chapter 46b, Administrative Procedures Act, do not govern the initial determination of any person's eligibility for benefits under Title 34A, Chapter 2, Workers' Compensation Act, and Title 34A, Chapter 3, Utah Occupational Disease Act.

CHAPTER 34
H. B. 190
Passed February 1, 2001
Approved February 21, 2001
Effective April 30, 2001

ORIGINAL ISSUE LICENSE PLATE AMENDMENTS

Sponsor: Rebecca D. Lockhart

This act modifies the Motor Vehicle Act by amending the vehicle model year for vehicles allowed to use original issue license plates.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
41-1a-416, as last amended by Chapter 184, Laws of Utah 1994

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

Section 1. Section 41-1a-416 is amended to read:

41-1a-416. Original issue license plates -- Alternative stickers -- Rulemaking.

(1) The owner of a motor vehicle that is a model year [~~1968~~] 1973 or older may apply to the division for permission to display an original issue license plate of a format and type issued by the state in the same year as the model year of the vehicle.

(2) The owner of a motor vehicle who desires to display original issue license plates instead of license plates issued under Section 41-1a-401 shall:

(a) complete an application on a form provided by the division;

(b) supply and submit the original license plates that the owner desires to display to the division for approval; and

(c) pay the fees prescribed in Sections 41-1a-1206 and 41-1a-1211.

(3) The division, prior to approval of an application under this section, shall determine that the original issue license plates:

(a) are of a format and type issued by the state for use on a motor vehicle in this state;

(b) have numbers and characters that are unique and do not conflict with existing license plate series in this state;

(c) are legible, durable, and otherwise in a condition that serves the purposes of this chapter, except that original issue license plates are exempt from the provision of Section 41-1a-401 regarding reflectorization and Section 41-1a-403 regarding legibility from 100 feet; and

(d) are from the same year of issue as the model year of the motor vehicle on which they are to be displayed.

(4) An owner of a motor vehicle displaying original issue license plates approved under this section is not exempt from any other requirement of this chapter except as specified under this section.

(5) (a) An owner of a motor vehicle currently registered in this state whose original issue license plates are not approved by the division because of the requirement in Subsection (3)(b), may apply to the division for a sticker to allow the temporary display of the original issue license plates if:

(i) the plates otherwise comply with this section;

(ii) the plates are only displayed when the motor vehicle is used for participating in motor vehicle club activities, exhibitions, tours, parades, and similar activities and are not used for general daily transportation;

(iii) the license plates and registration issued under this chapter for normal use of the motor vehicle on the highways of this state are kept in the motor vehicle and shown to a peace officer on request; and

(iv) the sticker issued by the division under this subsection is properly affixed to the face of the original issue license plate.

(b) The sticker issued under this section shall be the size and form customarily furnished by the division.

(6) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the division may make rules for the implementation of this section.

CHAPTER 35
S. B. 4
Passed February 1, 2001
Approved February 22, 2001
Effective July 1, 2001

PROHIBITION OF INTIMACY WITH PERSON IN CUSTODY

Sponsor: Paula F. Julander

This act modifies the Criminal Code by creating the offenses of custodial sexual relations and custodial sexual misconduct. These offenses address inappropriate acts committed by a correctional officer, law enforcement officer, or other specified employee against a person in custody. The act provides definitions and penalties, and specifies the defense of compulsion. This act takes effect on July 1, 2001.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:
76-5-412, Utah Code Annotated 1953

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

Section 1. Section 76-5-412 is enacted to read:

76-5-412. Custodial sexual relations -- Custodial sexual misconduct -- Definitions -- Penalties -- Defenses.

(1) As used in this section:

(a) "Actor" means:

(i) a correctional officer, as defined in Section 53-13-104;

(ii) a law enforcement officer, as defined in Section 53-13-103; or

(iii) an employee of, or private provider or contractor for, the Department of Corrections or a county jail.

(b) "Person in custody" means a person, either an adult 18 years of age or older, or a minor younger than 18 years of age, who is:

(i) a prisoner, as defined in Section 76-5-101, and includes a prisoner who is in the custody of the Department of Corrections created under Section 64-13-2, but who is being housed at the Utah State Hospital established under Section 62A-12-201 or other medical facility;

(ii) under correctional supervision, such as at a work release facility or as a parolee or probationer; or

(iii) under lawful or unlawful arrest, either with or without a warrant.

(c) "Private provider or contractor" means any person or entity that contracts with the Department of Corrections or with a county jail to provide services or functions that are part of the operation of the Department of Corrections or a county jail under state or local law.

(2) (a) An actor commits custodial sexual relations if the actor commits any of the acts under Subsection (3):

(i) under circumstances not amounting to commission of, or an attempt to commit, an offense under Subsection (6); and

(ii) (A) the actor knows that the individual is a person in custody; or

(B) a reasonable person in the actor's position should have known under the circumstances that the individual was a person in custody.

(b) A violation of Subsection (2)(a) is a third degree felony, but if the person in custody is younger than 18 years of age, a violation of Subsection (2)(a) is a second degree felony.

(c) If the act committed under this Subsection (2) amounts to an offense subject to a greater penalty under another provision of state law than is provided under this Subsection (2), this Subsection (2) does not prohibit prosecution and sentencing for the more serious offense.

(3) Acts referred to in Subsection (2)(a) are:

(a) having sexual intercourse with a person in custody;

(b) engaging in any sexual act with a person in custody involving the genitals of one person and the mouth or anus of another person, regardless of the sex of either participant; or

(c) causing the penetration, however slight, of the genital or anal opening of a person in custody by any foreign object, substance, instrument, or device, including a part of the human body, with the intent to cause substantial emotional or bodily pain to any person, regardless of the sex of any participant.

(4) (a) An actor commits custodial sexual misconduct if the actor commits any of the acts under Subsection (5):

(i) under circumstances not amounting to commission of, or an attempt to commit, an offense under Subsection (6); and

(ii) (A) the actor knows that the individual is a person in custody; or

(B) a reasonable person in the actor's position should have known under the circumstances that the individual was a person in custody.

(b) A violation of Subsection (4)(a) is a class A misdemeanor, but if the person in custody is younger than 18 years of age, a violation of Subsection (4)(a) is a third degree felony.

(c) If the act committed under this Subsection (4) amounts to an offense subject to a greater penalty under another provision of state law than is provided under this Subsection (4), this Subsection (4) does not prohibit prosecution and sentencing for the more serious offense.

(5) Acts referred to in Subsection (4)(a) are the following acts when committed with the intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or gratify the

sexual desire of any person, regardless of the sex of any participant:

(a) touching the anus, buttocks, or any part of the genitals of a person in custody;

(b) touching the breast of a female person in custody;

(c) otherwise taking indecent liberties with a person in custody; or

(d) causing a person in custody to take indecent liberties with the actor or another person.

(6) The offenses referred to in Subsections (2)(a)(i) and (4)(a)(i) are:

(a) Section 76-5-401, unlawful sexual activity with a minor;

(b) Section 76-5-402, rape;

(c) Section 76-5-402.1, rape of a child;

(d) Section 76-5-402.2, object rape;

(e) Section 76-5-402.3, object rape of a child;

(f) Section 76-5-403, forcible sodomy;

(g) Section 76-5-403.1, sodomy on a child;

(h) Section 76-5-404, forcible sexual abuse;

(i) Section 76-5-404.1, sexual abuse of a child or aggravated sexual abuse of a child; or

(j) Section 76-5-405, aggravated sexual assault.

(7) (a) It is not a defense to the commission of the offense of custodial sexual relations under Subsection (2) or custodial sexual misconduct under Subsection (4), or an attempt to commit either of these offenses, if the person in custody is younger than 18 years of age, that the actor:

(i) mistakenly believed the person in custody to be 18 years of age or older at the time of the alleged offense; or

(ii) was unaware of the true age of the person in custody.

(b) Consent of the person in custody is not a defense to any violation or attempted violation of Subsection (2) or (4).

(8) It is a defense that the commission by the actor of an act under Subsection (2) or (4) is the result of compulsion, as the defense is described in Subsection 76-2-302(1).

Section 2. Effective date.

This act takes effect on July 1, 2001.

CHAPTER 36
S. B. 29
Passed February 9, 2001
Approved February 22, 2001
Effective April 30, 2001

FAMILIES, AGENCIES, AND COMMUNITIES TOGETHER FOR CHILDREN AND YOUTH AT RISK AMENDMENTS

Sponsor: Ron Allen
David H. Steele
Howard A. Stephenson
Dan R. Eastman
Karen Hale

This act modifies the Families, Agencies, and Communities Together for Children and Youth at Risk Act by changing the sunset date from July 1, 2001, to July 1, 2006.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
63-55-263, as last amended by Chapters 1, 78, and 281, Laws of Utah 2000

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

Section 1. Section 63-55-263 is amended to read:

63-55-263. Repeal dates, Titles 63, 63A, and 63C.

(1) (a) Title 63, Chapter 25a, Part 1, Commission on Criminal and Juvenile Justice, is repealed July 1, 2002.

(b) Title 63, Chapter 25a, Part 3, Sentencing Commission, is repealed January 1, 2002.

(2) The Crime Victims' Reparations Board, created in Section 63-25a-404, is repealed July 1, 2007.

(3) The Resource Development Coordinating Committee, created in Section 63-28a-2, is repealed July 1, 2004.

(4) Title 63, Chapter 38c, State Appropriations and Tax Limitation Act, is repealed July 1, 2005.

(5) Title 63, Chapter 75, Families, Agencies, and Communities Together for Children and Youth At Risk Act, is repealed July 1, [~~2001~~] 2006.

(6) Title 63, Chapter 88, Navajo Trust Fund, is repealed July 1, 2005.

(7) Sections 63A-4-204 and 63A-4-205, authorizing the Risk Management Fund to provide coverage to nonstate entities, are repealed July 1, 2001.

(8) Title 63A, Chapter 7, Utah Sports Authority Act, is repealed July 1, 2003.

(9) Title 63A, Chapter 10, State Olympic Coordination Act, is repealed July 1, 2003.

CHAPTER 37
S. B. 38
Passed February 9, 2001
Approved February 22, 2001
Effective April 30, 2001

HIGHWAY AUTHORITY WINTER ROAD CLOSURE AUTHORITY

Sponsor: Parley Hellewell

This act modifies the Transportation Code by amending a highway authority's ability to impose restrictions on the use of highways.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
72-7-408, as renumbered and amended by Chapter 270, Laws of Utah 1998

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

Section 1. Section 72-7-408 is amended to read:

72-7-408. Highway authority -- Restrictions on highway use -- Erection and maintenance of signs designating restrictions -- Penalty.

(1) (a) Subject to Subsection (1)(b), a highway authority may by rule or ordinance prescribe procedures and criteria which prohibit the operation of any vehicle or impose restrictions on the weight of a vehicle upon any highway under its jurisdiction.

(b) A highway authority may impose restrictions for a highway under Subsection (1)(a) if an engineering inspection concludes that, due to deterioration caused by climatic conditions, a highway will be seriously damaged or destroyed unless certain vehicles are prohibited or vehicle weights are restricted.

[~~(2) A highway authority may not prohibit the operation of any vehicle or restrict the weight of a vehicle under Subsection (1) for more than 90 days in any one calendar year.~~]

[~~(3)~~] (2) The highway authority imposing restrictions under this section shall erect signs citing the provisions of the rule or ordinance at each end of that portion of any highway affected. The restriction is effective only when the signs are erected and maintained.

[~~(4)~~] (3) Any person who violates any restriction imposed under the authority of this section is guilty of a class B misdemeanor.

CHAPTER 38
S. B. 50
Passed February 7, 2001
Approved February 22, 2001
Effective April 30, 2001

PROPERTY EXEMPT FROM EXECUTION

Sponsor: Carlene M. Walker

This act modifies the Judicial Code to change how life insurance benefits are exempted from judicial process.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
78-23-7, as enacted by Chapter 111, Laws of Utah 1981

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

Section 1. Section 78-23-7 is amended to read:

78-23-7. Exemption of unmatured life insurance contracts.

Except as provided in this section, an individual is entitled to an exemption of unmatured life insurance contracts owned by him. If the contracts have accrued dividends and loan values totaling more than [~~$1,500~~] $5,000 available to the individual, a judgment creditor may obtain a court order directing the individual debtor to pay the creditor, and authorizing the creditor on the debtor's behalf to obtain payment of, the amount of the accrued dividends and loan values exceeding [~~$1,500~~] $5,000 or the amount of the creditor's claim, whichever is less.

CHAPTER 39
S. B. 52
Passed February 7, 2001
Approved February 22, 2001
Effective April 30, 2001

COMMERCIAL DRIVERS LICENSE RAILROAD AND HIGHWAY GRADE REQUIREMENTS

Sponsor: David H. Steele

This act modifies the Public Safety Code by amending certain at grade railroad-highway crossing provisions and adding railroad-highway violations as grounds for disqualifying a commercial driver licence. The act provides for related civil penalties for employers.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
41-6-97, as last amended by Chapter 222, Laws of Utah 1999
41-6-98, as last amended by Chapter 33, Laws of Utah 1978
53-3-414, as last amended by Chapter 239, Laws of Utah 1995
53-3-415, as renumbered and amended by Chapter 234, Laws of Utah 1993

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

Section 1. Section 41-6-97 is amended to read:

41-6-97. Railroad grade crossings -- Certain vehicles must stop -- Exceptions -- Rules.

(1) A driver of a commercial motor vehicle as defined under Section 53-3-102, shall upon approaching a railroad grade crossing:

(a) unless Subsection (2) applies, slow down and check that the tracks are clear of an approaching train;

(b) stop within 50 feet but not closer than 15 feet, from the nearest rail of the railroad track before reaching the crossing if the tracks are not clear;

(c) obey all traffic control devices or the directions of a peace officer, or other crossing official at the crossing; and

(d) before preceding over a railroad grade crossing:

(i) ensure that the vehicle has sufficient space to drive completely through a railroad grade crossing without stopping; and

(ii) ensure that the vehicle has sufficient undercarriage clearance to safely and completely pass through the crossing.

[~~(1)~~] (2) (a) Except as provided in Subsection [~~(2)~~] (3), the driver of any vehicle described in [~~rules issued under Subsection (3)~~] 49 CFR 392.10 shall stop within 50 feet but not [~~less~~] closer than 15 feet, from the nearest rail of the railroad track before crossing, at grade, any track of a railroad.

(b) While stopped, the driver shall look in both directions along the track for any sign of an approaching train and look and listen for signals indicating the approach of any train.

(c) The driver may proceed across the railroad track only when the movement may be made with reasonable safety.

(d) [~~(i)~~] After stopping as required and upon safely proceeding, the driver shall only cross the railroad track in a gear that ensures no necessity for manually changing gears while traversing the crossing.

[~~(ii) Subsection (1)(d)(i) does not apply to school buses with automatic transmissions that may shift gears while crossing the railroad track.~~]

(e) The driver may not manually shift gears while crossing the railroad track.

[~~(2)~~] (3) This section does not apply at a:

(a) railroad grade crossing where traffic is controlled by a peace officer or [~~flagperson~~] or other crossing official;

(b) railroad grade crossing where traffic is regulated by a traffic-control signal; [~~or~~]

(c) railroad grade crossing where an official traffic-control device gives notice that the stopping requirements of this section are not applicable[~~.~~]; or

[~~(3) (a) The Department of Transportation shall adopt necessary rules describing the vehicles that must comply with the stopping requirements of this section.~~]

[~~(b) In making the rules, the Department of Transportation shall give consideration to the number of passengers carried by the vehicle and the hazardous nature of any substance carried by the vehicle.~~]

[~~(c) The rules shall correlate with and where possible conform to the most recent regulations of the United States Department of Transportation.~~]

(d) other railroad grade crossings excluded under 49 CFR 392.10.

Section 2. Section 41-6-98 is amended to read:

41-6-98. Duties respecting crawler type tractor, power shovel, derrick, or other equipment or structure.

(1) [~~No~~] A person [~~shall~~] may not operate or move any crawler type tractor, power shovel, derrick, roller or any equipment or structure having normal operating speed of ten or less miles per hour or a vertical body or load clearance of less than1/2 inch per foot of the distance between any two adjacent axles or in any event of less than nine inches measured above the level surface of a roadway upon or across any tracks at a railroad grade crossing without first complying with this section.

(2) Notice of [~~any such~~] an intended crossing under this section shall be given to [~~a station agent~~

~~of such~~] the railroad and a reasonable time shall be given to [~~such~~] the railroad to provide proper protection at [~~such~~] the crossing.

(3) (a) Before making [~~any such~~] a crossing under this section the person operating or moving [~~any such~~] the vehicle or equipment shall first stop [~~the same~~] within 50 feet but not [~~less~~] closer than [~~ten~~] 15 feet [~~nor more than fifty feet~~] from the nearest rail of [~~such~~] the railway [~~and while so~~].

(b) While stopped, the driver shall listen and look in both directions along [~~such~~] the track for any approaching train and for signals indicating the approach of a railroad train[~~, and shall not~~].

(c) The driver may proceed [~~until~~] across the track only when the crossing can be made safely.

(4) [~~No such crossing shall be made when warning is given by automatic signal or crossing gates or a flagman or otherwise of the immediate approach of a railroad train or car. If a flagman is provided by the railroad, movement over the crossing shall be made under his direction~~] The driver shall obey all traffic control devices or the directions of a peace officer or other crossing official at the crossing.

Section 3. Section 53-3-414 is amended to read:

53-3-414. CDL disqualification or suspension -- Grounds and duration -- Procedure.

(1) A person who holds or is required to hold a CDL is disqualified from driving a commercial motor vehicle for a period of not less than one year if convicted of a first offense of:

(a) driving a commercial motor vehicle while under the influence of alcohol, drugs, a controlled substance, or more than one of these;

(b) driving a commercial motor vehicle while the concentration of alcohol in his blood, breath, or urine is .04 grams or more;

(c) leaving the scene of an accident involving a commercial motor vehicle he was driving;

(d) using a commercial motor vehicle in the commission of a felony;

(e) refusal to submit to a test to determine the concentration of alcohol in his blood, breath, or urine; or

(f) driving a commercial motor vehicle while the person's commercial driver license is disqualified, suspended, canceled, or revoked.

(2) If any of the violations under Subsection (1) occur while the driver is transporting a hazardous material required to be placarded, the driver is disqualified for not less than three years.

(3) (a) Except as provided under Subsection (4), a driver of a commercial motor vehicle who holds or is required to hold a CDL is disqualified for life from driving a commercial motor vehicle if convicted of two or more of any of the offenses under Subsection (1) arising from two or more separate incidents.

(b) Subsection (3)(a) applies only to those offenses committed after July 1, 1989.

(4) (a) Any driver disqualified for life from driving a commercial motor vehicle under this section, who has both voluntarily enrolled in and successfully completed an appropriate rehabilitation program that meets the standards of the division, may apply to the division for reinstatement of his CDL.

(b) The applicant is not eligible for reinstatement until he has served a minimum disqualification period of ten years and has fully met the standards for reinstatement of commercial motor vehicle driving privileges established by rule of the division.

(c) If a reinstated driver is subsequently convicted of another disqualifying offense under this section, he is permanently disqualified for life and is ineligible to again apply for a reduction of the lifetime disqualification.

(5) A driver of a commercial motor vehicle who holds or is required to hold a CDL is disqualified for life from driving a commercial motor vehicle if he uses a commercial motor vehicle in the commission of any felony involving the manufacturing, distributing, or dispensing of a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance.

(6) A driver of a commercial motor vehicle who holds or is required to hold a CDL is disqualified for not less than 60 days from driving a commercial motor vehicle if he is convicted of two serious traffic violations and is disqualified for not less than 120 days if he is convicted of three serious traffic violations that:

(a) occur within three years of each other;

(b) arise from separate incidents; and

(c) involve the use or operation of a commercial motor vehicle.

(7) A driver of a commercial motor vehicle who is convicted of violating an out-of-service order while driving a commercial motor vehicle is disqualified from driving a commercial motor vehicle for a period not less than:

(a) 90 days but not more than one year if the driver is convicted of a first violation;

(b) one year but not more than five years if, during any ten-year period, the driver is convicted of two violations of out-of-service orders in separate incidents;

(c) three years but not more than five years if, during any ten-year period, the driver is convicted of three or more violations of out-of-service orders in separate incidents; [~~or~~]

(d) 180 days but not more than two years if the driver is convicted of a first violation of an out-of-service order while transporting hazardous materials required to be placarded or while operating a motor vehicle designed to transport 16 or more passengers, including the driver; or

(e) three years but not more than five years if, during any ten-year period, the driver is convicted of two or more violations, in separate incidents, of an out-of-service order while transporting hazardous materials required to be placarded or while operating a motor vehicle designed to transport 16 or more passengers, including the driver.

(8) A driver of a commercial motor vehicle who holds or is required to hold a CDL is disqualified for not less than 60 days if the division determines, in its check of his driver license status, application, and record prior to issuing a CDL or at any time after the CDL is issued, that the driver has falsified information required to apply for a CDL in this state.

(9) A driver of a commercial motor vehicle who is convicted of violating a railroad-highway grade crossing provision under Section 41-6-97, while driving a commercial motor vehicle is disqualified from driving a commercial motor vehicle for a period not less than:

(a) 60 days if the driver is convicted of a first violation;

(b) 120 days if, during any three-year period, the driver is convicted of a second violation in separate incidents; or

(c) one year if, during any three-year period, the driver is convicted of three or more violations in separate incidents.

[~~(9)~~] (10) (a) The division shall update its records and notify the CDLIS within ten days of suspending, revoking, disqualifying, denying, or cancelling a CDL to reflect the action taken.

(b) When the division suspends, revokes, cancels, or disqualifies a nonresident CDL, the division shall notify the licensing authority of the issuing state or other jurisdiction and the CDLIS within ten days after the action is taken.

(c) When the division suspends, revokes, cancels, or disqualifies a CDL issued by this state, the division shall notify the CDLIS within ten days after the action is taken.

[~~(10)~~] (11) (a) The division may immediately suspend or disqualify the CDL of a driver without a hearing or receiving a record of the driver's conviction when the division has reason to believe that the:

(i) CDL was issued by the division through error or fraud;

(ii) applicant provided incorrect or incomplete information to the division; or

(iii) driver no longer meets the fitness standards required to obtain a CDL.

(b) Suspension of a CDL under this Subsection (11) shall be in accordance with Section 53-3-221.

(c) If a hearing is held under Section 53-3-221, the division shall then rescind the suspension order or cancel the CDL.

Section 4. Section 53-3-415 is amended to read:

53-3-415. Limitations on employment of commercial motor vehicle drivers.

(1) An employer shall require each applicant for employment as a commercial motor vehicle driver to provide the information required in Section 53-3-416 regarding the applicant's employment history.

(2) An employer may not knowingly allow, permit, or authorize a driver to drive a commercial motor vehicle during any period when the driver has:

(a) a CDL that is suspended, revoked, or canceled by any state;

(b) lost the privilege to drive a commercial motor vehicle in a state;

(c) been disqualified from driving a commercial motor vehicle; or

(d) more than one license.

(3) An employer who violates Subsection (2)(a), (b), or (c) during the period the driver has been disqualified under Subsection 53-3-414(9), is subject to a civil penalty of not more than $10,000.

CHAPTER 40
S. B. 104
Passed February 8, 2001
Approved February 22, 2001
Effective April 30, 2001

MENTAL HEALTH PRACTICE AMENDMENTS

Sponsor: Karen Hale

This act modifies the Marriage and Family Therapist Licensing Act and the Judicial Code. This act reduces the amount of clinical experience required to qualify as a marriage and family therapist supervisor. This act adds professional counselors to the list of therapists who have a limited duty to warn or take precautions to provide protection from violent behavior of a client.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
58-60-307, as enacted by Chapter 159, Laws of Utah 2000
78-14a-101, as last amended by Chapter 21, Laws of Utah 1999

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

Section 1. Section 58-60-307 is amended to read:

58-60-307. Marriage and family therapist supervisors -- Qualifications.

(1) Each person acting as a marriage and family therapist supervisor shall:

(a) have at least [~~five~~] two years of clinical experience as a marriage and family therapist since the date of first licensure as a marriage and family therapist; and

(b) either:

(i) be approved as a supervisor by a national marriage and family therapist professional organization; or

(ii) meet the criteria established by rule.

(2) Persons who act as a supervisor without meeting the requirements of this section are subject to discipline for unprofessional conduct.

Section 2. Section 78-14a-101 is amended to read:

78-14a-101. Definitions.

As used in this chapter, "therapist" means:

(1) a psychiatrist licensed to practice medicine under Section 58-67-301, Utah Medical Practice Act or under Section 58-68-301, Utah Osteopathic Medical Practice Act;

(2) a psychologist licensed to practice psychology under Section 58-61-301;

(3) a marriage and family therapist licensed to practice marriage and family therapy under Section 58-60-304;

(4) a social worker licensed to practice social work under Section 58-60-204; [~~and~~]

(5) a psychiatric and mental health nurse specialist licensed to practice advanced psychiatric nursing under Title 58, Chapter 31b[~~.~~]; and

(6) a professional counselor licensed to practice professional counseling under Title 58, Chapter 60, Part 4, Professional Counselor Licensing Act.

CHAPTER 41
S. B. 105
Passed February 8, 2001
Approved February 22, 2001
Effective April 30, 2001

STATE SETTLEMENT AGREEMENTS AMENDMENTS

Sponsor: Peter C. Knudson

This act modifies the Utah Code by changing the requirements for settlement agreements involving the Utah Department of Transportation.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
63-38b-104, as last amended by Chapter 346, Laws of Utah 1998
72-1-303, as last amended by Chapter 72, Laws of Utah 1999

ENACTS:
63-38b-105, Utah Code Annotated 1953

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

Section 1. Section 63-38b-104 is amended to read:

63-38b-104. Legislative review and approval of settlement agreements.

(1) (a) [~~Except as provided in Subsection (1)(c) and before~~] Before legally binding the state by executing a settlement agreement that might cost government entities more than $500,000 to implement, an agency shall:

(i) submit the proposed settlement agreement to the governor for his approval or rejection as required by Section 63-38b-103; and

(ii) if the governor approves the settlement agreement, submit the settlement agreement to the Legislative Management Committee for its review and recommendations.

(b) The Legislative Management Committee shall review the settlement agreement and may:

(i) recommend that the agency execute the settlement agreement;

(ii) recommend that the agency reject the settlement agreement; or

(iii) recommend to the governor that he call a special session of the Legislature to review and approve or reject the settlement agreement.

[~~(c) The Department of Transportation need not submit settlement agreements resolving condemnation cases to the Legislative Management Committee, unless the difference between the Department of Transportation's original appraisal on the property and the amount of the settlement is greater than $500,000.~~]

(2) (a) [~~Except as provided in Subsection (2)(d) and before~~] Before legally binding the state by executing a settlement agreement that might cost government entities more than $1,000,000 to implement, an agency shall:

(i) submit the proposed settlement agreement to the governor for his approval or rejection as required by Section 63-38b-103; and

(ii) if the governor approves the settlement agreement, submit the settlement agreement to the Legislature for its approval in an annual general session or a special session.

(b) (i) If the Legislature approves the settlement agreement, the agency may execute the agreement.

(ii) If the Legislature rejects the settlement agreement, the agency may not execute the agreement.

(c) If an agency executes a settlement agreement without obtaining the Legislature's approval under this Subsection (2):

(i) the governor may issue an executive order declaring the settlement agreement void; or

(ii) the Legislature may pass a joint resolution declaring the settlement agreement void.

[~~(d) The Department of Transportation need not submit settlement agreements resolving condemnation cases to the Legislature, unless the difference between the Department of Transportation's original appraisal on the property and the amount of the settlement is greater than $1,000,000.~~]

Section 2. Section 63-38b-105 is enacted to read:

63-38b-105. Condemnation settlements involving the Department of Transportation.

(1) Notwithstanding the provisions of this chapter, the Department of Transportation need not obtain the approval of the governor or the Legislature in settlement agreements resolving condemnation cases.

(2) Settlement agreements involving condemnation cases for $1,000,000 to $2,000,000 over the Department of Transportation's original appraisal shall be presented to the Transportation Commission for approval or rejection.

(3) (a) Settlement agreements involving condemnation cases for more than $2,000,000 over the Department of Transportation's original appraisal shall be presented:

(i) to the Transportation Commission for approval or rejection; and

(ii) if the settlement is approved by the Transportation Commission, to the Legislative Management Committee.

(b) The Legislative Management Committee may recommend approval or rejection of the agreement.

(4) (a) The Department of Transportation may not enter into a settlement agreement that resolves a condemnation case and requires payment of $1,000,000 to $2,000,000 over the Department of

Transportation's original appraisal until the Transportation Commission has approved the agreement.

(b) The Department of Transportation may not enter into a settlement agreement that resolves a condemnation case and requires payment of more than $2,000,000 over the Department of Transportation's original appraisal until:

(i) the Transportation Commission has approved the agreement; and

(ii) the Legislative Management Committee has reviewed and approved the agreement.

Section 3. Section 72-1-303 is amended to read:

72-1-303. Duties of commission.

The commission has the following duties:

(1) determining priorities and funding levels of projects in the state transportation systems for each fiscal year based on project lists compiled by the department;

(2) determining additions and deletions to state highways under Chapter 4, Designation of State Highways;

(3) holding public hearings and otherwise providing for public input in transportation matters;

(4) making policies and rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, necessary to perform the commission's duties described under this section;

(5) in accordance with Section 63-46b-12, reviewing orders issued by the executive director in adjudicative proceedings held in accordance with Title 63, Chapter 46b, Administrative Procedures Act; [~~and~~]

(6) advising the department in state transportation systems policy[~~.~~]; and

(7) approving settlement agreements of condemnation cases subject to Section 63-38b-105.

CHAPTER 42
S. B. 118
Passed February 7, 2001
Approved February 22, 2001
Effective July 1, 2001

EMERGENCY MANAGEMENT ASSISTANCE ACT

Sponsor: Lyle W. Hillyard

This act modifies the Public Safety Code to adopt the Emergency Management Assistance Compact in order to join the coalition providing for mutual aid and resources to member states affected by disasters. This act takes effect on July 1, 2001.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
53-1-106, as last amended by Chapter 130, Laws of Utah 1999
53-2-101, as enacted by Chapter 234, Laws of Utah 1993
53-2-102, as enacted by Chapter 234, Laws of Utah 1993
53-2-104, as renumbered and amended by Chapter 234, Laws of Utah 1993

ENACTS:
53-2-201, Utah Code Annotated 1953
53-2-202, Utah Code Annotated 1953
53-2-301, Utah Code Annotated 1953

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

Section 1. Section 53-1-106 is amended to read:

53-1-106. Department duties -- Powers.

(1) In addition to the responsibilities contained in this title, the department shall:

(a) make rules and perform the functions specified in Title 41, Chapter 6, Traffic Rules and Regulations, including:

(i) setting performance standards for towing companies to be used by the department, as required by Section 41-6-102; and

(ii) advising the Department of Transportation regarding the safe design and operation of school buses, as required by Section 41-6-115;

(b) make rules to establish and clarify standards pertaining to the curriculum and teaching methods of a motor vehicle accident prevention course under Section 31A-19a-211;

(c) aid in enforcement efforts to combat drug trafficking using funds appropriated under Section 58-37-20;

(d) as part of the annual budget hearings, provide the Executive Offices, Criminal Justice, and Legislature Appropriations Subcommittee with a complete accounting of expenditures and revenues from the funds under Section 58-37-20;

(e) meet with the Department of Administrative Services to formulate contracts, establish priorities, and develop funding mechanisms for dispatch and telecommunications operations, as required by Section 63A-6-107;

(f) provide assistance to the Crime Victims' Reparations Board and Reparations Office in conducting research or monitoring victims' programs, as required by Section 63-25a-405;

(g) develop sexual assault exam protocol standards in conjunction with the Utah Hospital Association[~~, as required by Section 63-25a-409~~]; [~~and~~]

(h) engage in emergency planning activities, including preparation of policy and procedure and rulemaking necessary for implementation of the federal Emergency Planning and Community Right to Know Act of 1986, as required by Section 63-5-5[~~.~~]; and

(i) implement the provisions of Section 53-2-202, the Emergency Management Assistance Compact.

(2) (a) The department may establish a schedule of fees as required or allowed in this title for services provided by the department.

(b) The fees shall be established in accordance with Section 63-38-3.2.

Section 2. Section 53-2-101 is amended to read:

CHAPTER 2. EMERGENCY MANAGEMENT

Part 1. Comprehensive Emergency Management Act

53-2-101. Title.

This [~~chapter~~] part is known as the "Comprehensive Emergency Management Act."

Section 3. Section 53-2-102 is amended to read:

53-2-102. Definitions.

As used in this [~~chapter~~] part:

(1) "Attack" means a nuclear, conventional, biological, or chemical warfare action against the United States of America or this state.

(2) "Disaster" means a situation causing, or threatening to cause, widespread damage, social disruption, or injury or loss of life or property resulting from attack, internal disturbance, natural phenomena, or technological hazard.

(3) "Director" means the division director appointed under Section 53-2-103.

(4) "Division" means the Comprehensive Emergency Management Division created in Section 53-2-103.

(5) "Expenses" means actual labor costs of government and volunteer personnel, including workers compensation benefits, fringe benefits, administrative overhead, cost of equipment, cost of equipment operation, cost of materials, and the cost of any contract labor and materials.

(6) "Hazardous materials emergency" means a sudden and unexpected release of any substance that because of its quantity, concentration, or physical, chemical, or infectious characteristics presents a direct and immediate threat to public safety or the environment and requires immediate action to mitigate the threat.

(7) "Internal disturbance" means a riot, prison break, disruptive terrorism, or strike.

(8) "Natural phenomena" means any earthquake, tornado, storm, flood, landslide, avalanche, forest or range fire, drought, or epidemic.

(9) "State of emergency" means a condition in any part of this state that requires state government emergency assistance to supplement the local efforts of the affected political subdivision to save lives and to protect property, public health, welfare, and safety in the event of a disaster, or to avoid or reduce the threat of a disaster.

(10) "Technological hazard" means any hazardous materials accident, mine accident, train derailment, air crash, radiation incident, pollution, structural fire, or explosion.

Section 4. Section 53-2-104 is amended to read:

53-2-104. Division duties -- Powers.

(1) The division shall:

(a) respond to the policies of the governor and the Legislature;

(b) perform functions relating to comprehensive emergency management matters as directed by the commissioner;

(c) prepare, implement, and maintain programs and plans to provide for:

(i) prevention and minimization of injury and damage caused by disasters;

(ii) prompt and effective response to and recovery from disasters;

(iii) identification of areas particularly vulnerable to disasters;

(iv) coordination of hazard mitigation and other preventive and preparedness measures designed to eliminate or reduce disasters;

(v) assistance to local officials in designing local emergency action plans;

(vi) coordination of federal, state, and local emergency activities;

(vii) coordination of emergency operations plans with emergency plans of the federal government;

(viii) coordination of search and rescue activities;

(ix) coordination of rapid and efficient communications in times of emergency; and

(x) other measures necessary, incidental, or appropriate to this [~~chapter~~] part.

(2) The division may consult with the Legislative Management Committee, the Judicial Council, and legislative and judicial staff offices to assist them in preparing emergency succession plans and procedures under Title 63, Chapter 5b, Emergency Interim Succession Act.

Section 5. Section 53-2-201 is enacted to read:

Part 2. Emergency Management Assistance Compact

53-2-201. Title.

This part is known as the "Emergency Management Assistance Compact."

Section 6. Section 53-2-202 is enacted to read:

53-2-202. Compact.

(1) Article I. Purposes and Authorities.

(1) (a) This compact is made and entered into by and between the participating member states which enact this compact, hereinafter called party states. For the purposes of this agreement, the term "states" is taken to mean the several states, the Commonwealth of Puerto Rico, the District of Columbia, and all U.S. territorial possessions.

(b) The purpose of this compact is to provide for mutual assistance between the states entering into this compact in managing any emergency or disaster that is duly declared by the governor of the affected state, whether arising from natural disaster, technological hazard, man-made disaster, civil emergency aspects of resources shortages, community disorders, insurgency, or enemy attack.

(c) This compact shall also provide for mutual cooperation in emergency-related exercises, testing, or other training activities using equipment and personnel simulating performance of any aspect of the giving and receiving of aid by party states or subdivisions of party states during emergencies, such actions occurring outside actual declared emergency periods. Mutual assistance in this compact may include the use of the states' national guard forces, either in accordance with the National Guard Mutual Assistance Compact or by mutual agreement between states.

(2) Article II. General Implementation.

(2) (a) Each party state entering into this compact recognizes many emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential in managing these and other emergencies under this compact. Each state further recognizes that there will be emergencies which require immediate access and present procedures to apply outside resources to make a prompt and effective response to such an emergency. This is because few, if any, individual states have all the resources they may need in all types of emergencies or the capability of delivering resources to areas where emergencies exist.

(b) The prompt, full, and effective utilization of resources of the participating states, including any

resources on hand or available from the federal government or any other source, that are essential to the safety, care, and welfare of the people in the event of any emergency or disaster declared by a party state, shall be the underlying principle on which all articles of this compact shall be understood.

(c) On behalf of the governor of each state participating in the compact, the legally designated state official who is assigned responsibility for emergency management will be responsible for formulation of the appropriate interstate mutual aid plans and procedures necessary to implement this compact.

(3) Article III. Party State Responsibilities.

(3) (a) It shall be the responsibility of each party state to formulate procedural plans and programs for interstate cooperation in the performance of the responsibilities listed in this article. In formulating such plans, and in carrying them out, the party states, insofar as practical, shall:

(i) review individual state hazards analyses and, to the extent reasonably possible, determine all those potential emergencies the party states might jointly suffer, whether due to natural disaster, technological hazard, man-made disaster, emergency aspects of resource shortages, civil disorders, insurgency, or enemy attack;

(ii) review party states' individual emergency plans and develop a plan which will determine the mechanism for the interstate management and provision of assistance concerning any potential emergency;

(iii) develop interstate procedures to fill any identified gaps and to resolve any identified inconsistencies or overlaps in existing or developed plans;

(iv) assist in warning communities adjacent to or crossing the state boundaries;

(v) protect and assure uninterrupted delivery of services, medicines, water, food, energy and fuel, search and rescue, and critical lifeline equipment, services, and resources, both human and material;

(vi) inventory and set procedures for the interstate loan and delivery of human and material resources, together with procedures for reimbursement or forgiveness; and

(vii) provide, to the extent authorized by law, for temporary suspension of any statutes.

(b) The authorized representative of a party state may request assistance of another party state by contacting the authorized representative of that state. The provisions of this agreement shall only apply to requests for assistance made by and to authorized representatives. Requests may be verbal or in writing. If verbal, the request shall be confirmed in writing within 30 days of the verbal request. Requests shall provide the following information:

(i) a description of the emergency service function for which assistance is needed, such as, but not limited to, fire services, law enforcement, emergency medical, transportation, communications, public works and engineering, building inspection, planning and information assistance, mass care, resource support, health and medical services, and search and rescue;

(ii) the amount and type of personnel, equipment, materials and supplies needed, and a reasonable estimate of the length of time they will be needed; and

(iii) the specific place and time for staging of the assisting party's response and a point of contact at that location.

(c) There shall be frequent consultation between state officials who have assigned emergency management responsibilities and other appropriate representatives of the party states with affected jurisdictions and the United States government, with free exchange of information, plans, and resource records relating to emergency capabilities.

(4) Article IV. Limitations.

(4) (a) Any party state requested to render mutual aid or conduct exercises and training for mutual aid shall take such action as is necessary to provide and make available the resources covered by this compact in accordance with the terms hereof; provided that it is understood that the state rendering aid may withhold resources to the extent necessary to provide reasonable protection for such state.

(b) Each party state shall afford to the emergency forces of any party state, while operating within its state limits under the terms and conditions of this compact, the same powers, except that of arrest unless specifically authorized by the receiving state, duties, rights, and privileges as are afforded forces of the state in which they are performing emergency services. Emergency forces will continue under the command and control of their regular leaders, but the organizational units will come under the operational control of the emergency services authorities of the state receiving assistance. These conditions may be activated, as needed, only subsequent to a declaration of a state of emergency or disaster by the governor of the party state that is to receive assistance or commencement of exercises or training for mutual aid and shall continue so long as the exercises or training for mutual aid are in progress, the state of emergency or disaster remains in effect, or loaned resources remain in the receiving state, whichever is longer.

(5) Article V. Licenses and Permits.

Whenever any person holds a license, certificate, or other permit issued by any state party to the compact evidencing the meeting of qualifications for professional, mechanical, or other skills, and when such assistance is requested by the receiving party state, such person shall be deemed licensed, certified, or permitted by the state requesting assistance to render aid involving such skill to meet

a declared emergency or disaster, subject to such limitations and conditions as the governor of the requesting state may prescribe by executive order or otherwise.

(6) Article VI. Liability.

Officers or employees of a party state rendering aid in another state pursuant to this compact shall be considered agents of the requesting state for tort liability and immunity purposes; and no party state or its officers or employees rendering aid in another state pursuant to this compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith. Good faith in this article shall not include willful misconduct, gross negligence, or recklessness.

(7) Article VII. Supplementary Agreements.

Inasmuch as it is probable that the pattern and detail of the machinery for mutual aid among two or more states may differ from that among the states that are party hereto, this instrument contains elements of a broad base common to all states, and nothing herein contained shall preclude any state from entering into supplementary agreements with another state or affect any other agreements already in force between states. Supplementary agreements may comprehend, but shall not be limited to, provisions for evacuation and reception of injured and other persons and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, and equipment and supplies.

(8) Article VIII. Compensation.

Each party state shall provide for the payment of compensation and death benefits to injured members of the emergency forces of that state and representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within their own state.

(9) Article IX. Reimbursement.

Any party state rendering aid in another state pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or damage to or expense incurred in the operation of any equipment and the provision of any service in answering a request for aid and for the costs incurred in connection with such requests; provided, that any aiding party state may assume in whole or in part such loss, damage, expense, or other cost, or may loan such equipment or donate such services to the receiving party state without charge or cost; and provided further, that any two or more party states may enter into supplementary agreements establishing a different allocation of costs among those states. Article VIII expenses shall not be reimbursable under this provision.

(10) Article X. Evacuation.

(10) (a) Plans for the orderly evacuation and interstate reception of portions of the civilian population as the result of any emergency or disaster of sufficient proportions to so warrant shall be worked out and maintained between the party states and the emergency management or services directors of the various jurisdictions where any type of incident requiring evacuations might occur.

(b) Such plans shall be put into effect by request of the state from which evacuees come and shall include the manner of transporting such evacuees, the number of evacuees to be received in different areas, the manner in which food, clothing, housing, and medical care will be provided, the registration of the evacuees, the providing of facilities for the notification of relatives or friends, and the forwarding of such evacuees to other areas or the bringing in of additional materials, supplies, and all other relevant factors.

(c) Such plans shall provide that the party state receiving evacuees and the party state from which the evacuees come shall mutually agree as to reimbursement of out-of-pocket expenses incurred in receiving and caring for such evacuees, for expenditures for transportation, food, clothing, medicines and medical care, and like items. Such expenditures shall be reimbursed as agreed by the party state from which the evacuees come. After the termination of the emergency or disaster, the party state from which the evacuees come shall assume the responsibility for the ultimate support of repatriation of such evacuees.

(11) Article XI. Implementation.

(11) (a) This compact shall become operative immediately upon its enactment into law by any two states; thereafter, this compact shall become effective as to any other state upon its enactment by such state.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until 30 days after the governor of the withdrawing state has given notice in writing of such withdrawal to the governors of all other party states. Such action shall not relieve the withdrawing state from obligations assumed hereunder prior to the effective date of withdrawal.

(c) Duly authenticated copies of this compact and of such supplementary agreements as may be entered into shall, at the time of their approval, be deposited with each of the party states and with the federal emergency management agency and other appropriate agencies of the United States government.

(12) Article XII. Validity.

This act shall be construed to effectuate the purposes stated in Article I hereof. If any provision of this compact is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of this act and the applicability thereof to other persons and circumstances shall not be affected thereby.

(13) Article XIII. Additional Provisions.

Nothing in this compact shall authorize or permit the use of military force by the National Guard of a state at any place outside that state in any emergency for which the President is authorized by law to call into federal service the militia, or for any purpose for which the use of the Army or the Air Force would in the absence of express statutory authorization be prohibited under Section 1385 of Title 18, United States Code.

Section 7. Section 53-2-301 is enacted to read:

Part 3. Authority of the Governor to Enter Into Compact

53-2-301. Authority of governor to join compact.

The governor of Utah is authorized and directed to execute a compact on behalf of this state with any other state or states joining the Emergency Management Assistance Compact as provided in Section 53-2-202.

Section 8. Effective date.

This act takes effect on July 1, 2001.

CHAPTER 43
S. B. 125
Passed February 9, 2001
Approved February 22, 2001
Effective April 30, 2001

AGING AND ADULT SERVICES AMENDMENTS

Sponsor: Dan R. Eastman

This act modifies the Human Services Code. This act repeals the authority of the director of the Division of Aging and Adult Services to act as a court-appointed trustee, receiver, custodian, or guardian over a disabled or elder adult and makes conforming amendments.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
62A-3-301, as last amended by Chapter 254, Laws of Utah 1998
62A-3-304, as last amended by Chapter 13, Laws of Utah 1998

REPEALS:
62A-3-310, as last amended by Chapter 130, Laws of Utah 1996

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

Section 1. Section 62A-3-301 is amended to read:

62A-3-301. Definitions.

As used in this part:

(1) "Abuse" means:

(a) attempting to cause, or intentionally or knowingly causing physical harm or intentionally placing another in fear of imminent physical harm;

(b) physical injury caused by criminally negligent acts or omissions;

(c) unlawful detention or unreasonable confinement;

(d) gross lewdness; or

(e) deprivation of life sustaining treatment, except:

(i) as provided in Title 75, Chapter 2, Part 11, Personal Choice and Living Will Act; or

(ii) when informed consent, as defined in Section 76-5-111, has been obtained.

(2) "Adult" means a person who is 18 years of age or older.

(3) "Bodily injury" means physical pain, illness, or any impairment of physical condition.

(4) "Caretaker" means any person, corporation, or public institution that has assumed by relationship, contract, or court order the responsibility to provide food, shelter, clothing, medical, and other necessities to a disabled or elder adult.

(5) "Counsel" means an attorney licensed to practice in this state.

(6) "Disabled adult" means a person 18 years of age or older who is impaired because of mental illness, mental deficiency, physical illness or disability, or other cause, to the extent that he lacks sufficient understanding or capacity to make or communicate informed decisions concerning his person, or is unable to care for his own personal safety or provide necessities such as food, shelter, clothing, or medical care, without which physical injury or illness may occur. A person who is, in good faith, under treatment solely of a spiritual means, through prayer, in accordance with the tenets and practices of a recognized church or religious denomination, and by an accredited practitioner thereof shall not be considered a disabled or elder adult for that reason alone.

(7) "Elder abuse" means abuse, neglect, or exploitation of an elder adult.

(8) "Elder adult" means a person 65 years of age or older.

(9) "Emergency" means that a disabled or elder adult is at risk of death or immediate and serious harm to himself or others.

(10) "Emotional or psychological abuse" means deliberate conduct that is directed at a disabled or elder adult through verbal or nonverbal means, and that causes the disabled or elder adult to suffer emotional distress or to fear bodily injury, harm, or restraint.

(11) "Exploitation" means exploitation of a disabled or elder adult as that offense is described in Subsection 76-5-111(4).

(12) "Informed consent" means the same as that term is defined in Section 76-5-111.

(13) "Neglect" means:

(a) the failure of a caretaker to provide habilitation, care, nutrition, clothing, shelter, supervision, or medical care;

(b) a pattern of conduct by a caretaker, without the disabled or elder adult's informed consent, resulting in deprivation of food, water, medication, medical services, shelter, cooling, heating, or other services necessary to maintain minimum physical or mental health; or

(c) the failure or inability of a disabled adult to provide those services for himself.

(14) "Protected person" means a disabled or elder adult for whom the court has ordered protective services including disabled or elder adults for whom emergency protective services are established under the provisions of this part.

(15) "Protective services" means services provided by the offices of Adult Protective Services within the division, including investigation of allegations of abuse, emotional or psychological abuse, neglect, or exploitation, and other services provided either by voluntary agreement or as authorized by court order to assist disabled or elder

adults in need of protection, for the purpose of discontinuing and preventing further abuse, neglect, or exploitation. [~~Those services may include the services of guardian and conservator provided in accordance with Title 75, Utah Uniform Probate Code, when no other agency or individual can appropriately provide the service.~~] The services provided by the offices of Adult Protective Services shall be consistent, if at all possible, with the accustomed lifestyle of the disabled or elder adult.

Section 2. Section 62A-3-304 is amended to read:

62A-3-304. Adult protective services provided by division -- Costs -- Procedures.

(1) The division shall furnish, to the extent funded by the Legislature, adult protective services in response to referrals of abuse, neglect, or exploitation involving disabled or elder adults in need of protection. Those services may be provided by voluntary agreement or upon court order, in accordance with this section and Sections 62A-3-305, 62A-3-306, and 62A-3-309[~~, and 62A-3-310~~].

(2) Disabled or elder adults who receive protective services from the division shall receive those services knowingly and voluntarily, and without coercion in accordance with Subsection (4), unless the services are court ordered in accordance with Subsections (5), (6), and (7) and Sections 62A-3-305, 62A-3-306, 62A-3-307, 62A-3-308, and 62A-3-309.

(3) Costs incurred in providing protective services are the responsibility of the disabled or elder adult if:

(a) the disabled or elder adult to be protected is eligible for those services from another governmental agency;

(b) the disabled or elder adult to be protected is financially able to pay for those services according to rates established by the division and that payment is provided for as part of the written agreement for services described in Subsection (4)(b); or

(c) the court appoints a guardian and orders that the costs be paid from the disabled or elder adult's estate.

(4) (a) Protective services may be provided without a court order, after review by the division, for a disabled or elder adult who has the capacity to consent and who requests or knowingly and voluntarily consents to receive those services.

(b) Whenever the division provides adult protective services, a written agreement shall be executed by the division and the recipient, setting forth the purposes and limitations of the services to be provided. If consent to protective services is subsequently withdrawn by the disabled or elder adult, services provided under this section shall cease.

(5) Involuntary protective services may be provided to a disabled adult who does not consent or who lacks the capacity to consent to those services only upon court order in accordance with Section 62A-3-305.

(6) When protective services are furnished pursuant to court order in accordance with Sections 62A-3-305, 62A-3-306, 62A-3-307, 62A-3-308, and 62A-3-309, the disabled or elder adult receiving those services has the following rights prior to the provision of services:

(a) personal service of a copy of the petition for protective services which complies with Section 62A-3-305;

(b) the right to a hearing before a district court, with at least ten days' notice of the contents of the petition, the rights set forth in this section, and of the possible consequences of the hearing. This notice shall also be provided to all reasonably ascertainable persons and agencies having some responsibility for the disabled or elder adult's welfare, and to his guardian;

(c) the right to be present at the hearing described in Subsection (6)(b), unless the disabled or elder adult has knowingly and voluntarily waived the right to be present, or a licensed physician who is not the petitioner or an agent of the petitioner, has certified that the disabled or elder adult is physically unable to attend, in which case the court shall appoint a court investigator to personally interview that disabled or elder adult and determine his desires concerning the hearing. Waiver shall not be presumed by nonappearance of the disabled or elder adult, but shall be determined at the hearing on the basis of factual information supplied to the court;

(d) the right to counsel at the hearing, in preparation for the hearing, and at every significant stage of the protective service. If a disabled or elder adult is unable to afford counsel, the court shall appoint counsel, who shall be paid by the division in accordance with Subsection (3);

(e) the right to offer evidence on his behalf, to compel the attendance of witnesses, and to confront and cross-examine witnesses. The disabled or elder adult shall also be provided a written statement setting forth the reasons for and conditions of any protective order; and

(f) the right to the least possible restriction of his rights, consistent with his welfare and safety.

(7) Nothing in this section limits specific procedures under Title 75, Utah Uniform Probate Code, or under the protective placement process described in Section 62A-3-309, designed to safeguard the best interests of the person to be protected.

Section 3. Repealer.

This act repeals:

Section 62A-3-310, Director as trustee, receiver, custodian, or guardian.

CHAPTER 44
H. B. 15
Passed February 9, 2001
Approved February 22, 2001
Effective April 30, 2001

BICYCLE LAW AMENDMENTS

Sponsor: Marda Dillree

This act modifies the Motor Vehicles Code to amend certain operating and equipment provisions for bicycles and other human powered vehicles.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
41-6-71, as last amended by Chapter 138, Laws of Utah 1987
41-6-87, as last amended by Chapter 44, Laws of Utah 1989
41-6-87.3, as last amended by Chapter 59, Laws of Utah 1997
41-6-87.7, as last amended by Chapter 138, Laws of Utah 1987
41-6-90, as last amended by Chapter 138, Laws of Utah 1987
41-6-106.10, as enacted by Chapter 207, Laws of Utah 1975
41-6-140, as last amended by Chapter 312, Laws of Utah 1997

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

Section 1. Section 41-6-71 is amended to read:

41-6-71. Signals -- How made -- Exceptions for right hand signals.

[~~Signals required to be given by hand and arm shall be given~~]

(1) Except as provided in Subsection (2), a person operating a vehicle shall give the required hand and arm signals from the left side of the vehicle as follows:

[~~(1)~~] (a) Left turn: hand and arm extended horizontally;

[~~(2)~~] (b) Right turn: hand and arm extended upward; and

[~~(3)~~] (c) Stop or decrease speed: hand and arm extended downward.

(2) A person operating a bicycle or device propelled by human power may give the required hand and arm signals for a right turn by extending the right hand and arm horizontally to the right.

Section 2. Section 41-6-87 is amended to read:

41-6-87. Operation of bicycle or moped on and use of roadway -- Duties, prohibitions.

(1) A person operating a bicycle or a moped upon a roadway at less than the normal speed of traffic at the time and place and under the conditions then existing shall ride as near as practicable to the right-hand edge of the roadway except when:

(a) overtaking and passing another bicycle or vehicle proceeding in the same direction;

(b) preparing to make a left turn at an intersection or into a private road or driveway; [~~or~~]

(c) traveling straight through an intersection that has a right-turn only lane that is in conflict with the straight through movement; or

[~~(c)~~] (d) reasonably necessary to avoid conditions that make it unsafe to continue along the right-hand edge of the roadway including[~~, but not limited to,~~] fixed or moving objects, parked or moving vehicles, bicycles, pedestrians, animals, surface hazards, or [~~substandard width lanes that make it unsafe to continue along the right-hand edge. In this subsection, "substandard width lane" means~~] a lane that is too narrow for a bicycle and a vehicle to travel safely side by side within the lane.

(2) A person operating a bicycle or moped on a highway shall operate in the designated direction of traffic.

[~~(2)~~] (3) Persons riding bicycles or mopeds upon a roadway may not ride more than two abreast except on paths or parts of roadways set aside for the exclusive use of bicycles. Persons riding two abreast may not impede the normal and reasonable movement of traffic and [~~on a laned roadway~~] shall ride within a single lane.

[~~(3)~~] (4) If a usable path for bicycles has been provided adjacent to a roadway, bicycle riders [~~shall~~] may be directed by official traffic-control devices to use the path and not the roadway.

Section 3. Section 41-6-87.3 is amended to read:

41-6-87.3. Bicycles and human powered vehicle or device to yield right-of-way to pedestrians on sidewalks, paths, or trails -- Uses prohibited -- Negligent collision prohibited -- Speed restrictions -- Rights and duties same as pedestrians.

(1) A person operating a bicycle or any vehicle or device propelled by human power shall yield the right-of-way to any pedestrian and shall give audible signal before overtaking and passing a pedestrian.

(2) A person may not operate a bicycle or a vehicle or device propelled by human power on a sidewalk, path, or trail, or across a roadway in a crosswalk, where prohibited by official traffic-control devices or ordinance.

(3) A person may not operate a bicycle or any vehicle or device propelled by human power in a negligent manner so as to collide with any pedestrian or other person operating a bicycle or any vehicle or device propelled by human power.

(4) A person operating a bicycle or a vehicle or device propelled by human power on a sidewalk, path, or trail, or across a driveway, or across a roadway on a crosswalk may not operate at a speed

greater than is reasonable and prudent under the existing conditions, giving regard to the actual and potential hazards then existing.

[~~(4)~~] (5) Except as provided under [~~Subsection~~] Subsections (1) and (4), a person operating a bicycle or a vehicle or device propelled by human power on a sidewalk, path, or trail, or across a roadway on a crosswalk, has all the rights and duties applicable to a pedestrian under the same circumstances.

Section 4. Section 41-6-87.7 is amended to read:

41-6-87.7. Bicycles and mopeds -- Turn signals -- Exceptions.

(1) Except as provided in this section, a person riding a bicycle or moped shall comply with Section 41-6-69.

(2) [~~A signal of intention to turn right or left when required shall be given continuously during not less than the last 100 feet traveled by the bicycle or moped before turning, and shall be given while the bicycle or moped is stopped waiting to turn.~~] A person is not required to signal by hand and arm [~~need not be given~~] continuously if the hand is needed in the control or operation of the bicycle or moped.

(3) A person operating a bicycle or moped and who is stopped in a lane designated for turning traffic only is not required to signal prior to making the turning movement.

Section 5. Section 41-6-90 is amended to read:

41-6-90. Bicycles -- Lamps and reflective material required.

(1) Every bicycle in use at the times described in Section 41-6-118 shall be equipped with a:

(a) lamp of a type approved by the department which is on the front emitting a white light visible from a distance of at least 500 feet to the front; and [~~with a~~]

(b) (i) red reflector of a type approved by the department which is visible for 500 feet to the rear when directly in front of lawful lower beams of head lamps on a motor vehicle[~~.~~]; or

(ii) red taillight designed for use on a bicycle and emitting flashing or nonflashing light visible from a distance of 500 feet to the rear.

(2) Every bicycle when in use at the times described in Section 41-6-118 shall be equipped with reflective material of sufficient size and reflectivity to be visible from both sides for 500 feet when directly in front of lawful lower beams of head lamps on a motor vehicle, or in lieu of reflective material, with a lighted lamp visible from both sides from a distance of at least 500 feet.

(3) A bicycle or its rider may be equipped with lights or reflectors in addition to those required by Subsections (1) and (2).

Section 6. Section 41-6-106.10 is amended to read:

41-6-106.10. Sidewalk -- Driving prohibited -- Exception.

[~~No~~] Except for a bicycle or device propelled by human power, a person [~~shall drive any~~] may not operate a vehicle upon a sidewalk or sidewalk area except upon a [~~permanent or duly authorized or temporary~~] driveway.

Section 7. Section 41-6-140 is amended to read:

41-6-140. High intensity beams -- Red or blue lights -- Flashing lights -- Color of rear lights and reflectors.

(1) During the times specified in Section 41-6-118, any lighted lamp or illuminating device upon a motor vehicle, other than head lamps, spot lamps, auxiliary lamps, flashing turn signals, vehicular hazard warning lamps, and school bus warning lamps, which projects a beam of light of an intensity greater than 300 candlepower shall be so directed that no part of the high intensity portion of the beam will strike the level of the roadway on which the vehicle stands at a distance of more than 75 feet from the vehicle.

(2) Except as required in Sections 41-6-132 and 41-6-140.10, a person may not drive or move any vehicle or equipment upon any highway with any lamp or device capable of displaying a red or blue light visible from directly in front of the center of the vehicle.

(3) Flashing lights are prohibited except as authorized or required in Sections 41-6-90, 41-6-121.10, 41-6-130, 41-6-132, 41-6-133, 41-6-140.10, and 41-6-140.20.

(4) The alternately flashing lights described in Sections 41-6-132 and 41-6-140.10 may not be used on any vehicle other than a school bus or an authorized emergency vehicle. The rotating light described in Section 41-6-132 may not be used on any vehicle other than an authorized emergency vehicle.

(5) All lighting devices and reflectors mounted on the rear of any vehicle shall display or reflect a red color, except the stop light or other signal device, which may be red or yellow, and except that the light illuminating the license plate shall be white and the light emitted by a back-up lamp shall be white.

CHAPTER 45
H. B. 18
Passed January 31, 2001
Approved February 22, 2001
Contingently Effective
(Exception clause in Section 6)

INTERSTATE COMPACT FOR ADULT OFFENDER SUPERVISION

Sponsor: Gary F. Cox

This act modifies the Code of Criminal Procedure and a related provision regarding the Department of Corrections. The act establishes for Utah the Interstate Compact for Adult Offender Supervision and authorizes the governor to act on behalf of the state to join the compact. The act provides updated procedures for movement of adult parolees and probationers across state lines. The act creates the Interstate Compact Commission and the commission's functions and authority. The act provides for oversight and enforcement regarding participating states. This act takes effect the later of July 1, 2001, or upon the enactment of the compact into law by the thirty-fifth jurisdiction, in accordance with the compact provisions.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
64-13-6, as last amended by Chapter 279, Laws of Utah 1999

ENACTS:
77-28c-101, Utah Code Annotated 1953
77-28c-102, Utah Code Annotated 1953
77-28c-103, Utah Code Annotated 1953
77-28c-201, Utah Code Annotated 1953

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

Section 1. Section 64-13-6 is amended to read:

64-13-6. Department duties.

(1) The department shall:

(a) protect the public through institutional care and confinement, and supervision in the community of offenders where appropriate;

(b) implement court-ordered punishment of offenders;

(c) provide program opportunities for offenders;

(d) provide treatment for sex offenders who are found to be treatable based upon criteria developed by the department;

(e) provide the results of ongoing assessment of sex offenders and objective diagnostic testing to sentencing and release authorities;

(f) manage programs that take into account the needs and interests of victims, where reasonable;

(g) supervise probationers and parolees as directed by statute and implemented by the courts and the Board of Pardons and Parole;

(h) subject to Subsection (2), investigate criminal conduct involving offenders incarcerated in a state correctional facility; [~~and~~]

(i) cooperate and exchange information with other state, local, and federal law enforcement agencies to achieve greater success in prevention and detection of crime and apprehension of criminals[~~.~~]; and

(j) implement the provisions of Section 77-28c-102, Interstate Compact for Adult Offender Supervision.

(2) (a) By following the procedures in Subsection (2)(b), the department may investigate the following occurrences at state correctional facilities:

(i) criminal conduct of departmental employees;

(ii) felony crimes resulting in serious bodily injury;

(iii) death of any person; or

(iv) aggravated kidnaping.

(b) Prior to investigating any occurrence specified in Subsection (2)(a), the department shall:

(i) notify the sheriff or other appropriate law enforcement agency promptly after ascertaining facts sufficient to believe an occurrence specified in Subsection (2)(a) has occurred; and

(ii) obtain consent of the sheriff or other appropriate law enforcement agency to conduct an investigation involving an occurrence specified in Subsection (2)(a).

(3) Upon request, the department shall provide copies of investigative reports of criminal conduct to the sheriff or other appropriate law enforcement agencies.

(4) In accordance with Section 63-55-264, the department shall provide data to the Commission on Criminal and Juvenile Justice to show the criteria for determining sex offender treatability, the implementation and effectiveness of sex offender treatment, and the results of ongoing assessment and objective diagnostic testing. The Commission on Criminal and Juvenile Justice will then report these data to the Judiciary Interim Committee and to the appropriate appropriations subcommittee annually.

(5) The Department of Corrections shall collect accounts receivable ordered by the district court as a result of prosecution for a criminal offense according to the requirements and during the time periods established in Subsection 77-18-1(9).

Section 2. Section 77-28c-101 is enacted to read:

CHAPTER 28C. INTERSTATE COMPACT FOR ADULT OFFENDER SUPERVISION

Part 1. Purpose and Functions

77-28c-101. Title.

This chapter is known as the "Interstate Compact for Adult Offender Supervision."

Section 3. Section 77-28c-102 is enacted to read:

77-28c-102. Preamble.

PREAMBLE

Whereas: The Interstate Compact for the supervision of Parolees and Probationers was established in 1937, it is the earliest corrections "compact" established among the states and has not been amended since its adoption over 62 years ago;

Whereas: This compact is the only vehicle for the controlled movement of adult parolees and probationers across state lines, and it currently has jurisdiction over more than a quarter of a million offenders;

Whereas: The complexities of the compact have become more difficult to administer, and many jurisdictions have expanded supervision expectations to include currently unregulated practices such as victim input, victim notification requirements, and sex offender registration;

Whereas: After hearings, national surveys, and a detailed study by a task force appointed by the National Institute of Corrections, the overwhelming recommendation has been to amend the document to bring about an effective management capacity that addresses public safety concerns and offender accountability;

Whereas: Upon the adoption of this Interstate Compact for Adult Offender Supervision, it is the intention of the legislature to repeal the previous Interstate Compact for the Supervision of Parolees and Probationers on the effective date of this Compact.

Section 4. Section 77-28c-103 is enacted to read:

77-28c-103. Compact.

ARTICLE I
PURPOSE

(a) The compacting states to this Interstate Compact recognize that each state is responsible for the supervision of adult offenders in the community who are authorized pursuant to the by-laws and rules of this compact to travel across state lines both to and from each compacting state in such a manner as to track the location of offenders, transfer supervision authority in an orderly and efficient manner, and when necessary, return offenders to the originating jurisdictions. The compacting states also recognize that Congress, by enacting the Crime Control Act, 4 U.S.C. Section 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

(b) It is the purpose of this compact and the Interstate Commission created hereunder, through means of joint and cooperative action among the compacting states: To provide the framework for the promotion of public safety and protect the rights of victims through the control and regulation of the interstate movement of offenders in the community; to provide for the effective tracking, supervision, and rehabilitation of these offenders by the sending and receiving states; and to equitably distribute the costs, benefits, and obligations of the compact among the compacting states.

(c) In addition, this compact will: Create an Interstate Commission which will establish uniform procedures to manage the movement between states of adults placed under community supervision and released to the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies which will promulgate rules to achieve the purpose of this compact; ensure an opportunity for input and timely notice to victims and to jurisdictions where defined offenders are authorized to travel or to relocate across state lines; establish a system of uniform data collection, access to information on active cases by authorized criminal justice officials, and regular reporting of compact activities to heads of state councils, state executive, judicial, and legislative branches, and criminal justice administrators; monitor compliance with rules governing interstate movement of offenders and initiate interventions to address and correct noncompliance; and coordinate training and education regarding regulations of interstate movement of offenders for officials involved in such activity.

(d) The compacting states recognize that there is no "right" of any offender to live in another state and that duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any offender under supervision subject to the provisions of this compact and by-laws and rules promulgated hereunder. It is the policy of the compacting states that the activities conducted by the Interstate Commission created herein are the formation of public policies and are therefore public business.

ARTICLE II
DEFINITIONS

(a) As used in this compact, unless the context clearly requires a different construction:

(1) "Adult" means both individuals legally classified as adults and juveniles treated as adults by court order, statute, or operation of law.

(2) "By-laws" mean those by-laws established by the Interstate Commission for its governance, or for directing or controlling the Interstate Commission's actions or conduct.

(3) "Compact administrator" means the individual in each compacting state appointed pursuant to the terms of this compact responsible for the administration and management of the state's supervision and transfer of offenders subject to the terms of this compact, the rules adopted by the Interstate Commission and policies adopted by the state council under this compact.

(4) "Compacting state" means any state which has enacted the enabling legislation for this compact.

(5) "Commissioner" means the voting representative of each compacting state appointed pursuant to Article III of this compact.

(6) "Interstate Commission" means the Interstate Commission for Adult Offender Supervision established by this compact.

(7) "Member" means the commissioner of a compacting state or designee, who shall be a person officially connected with the commissioner.

(8) "Noncompacting state" means any state which has not enacted the enabling legislation for this compact.

(9) "Offender" means an adult placed under or subject to supervision as the result of the commission of a criminal offense and released to the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies.

(10) "Person" means any individual, corporation, business enterprise, or other legal entity, either public or private.

(11) "Rules" means acts of the Interstate Commission, duly promulgated pursuant to Article VIII of this compact, substantially affecting interested parties in addition to the Interstate Commission, which shall have the force and effect of law in the compacting states.

(12) "State" means a state of the United States, the District of Columbia, and any other territorial possessions of the United States.

(13) "State council" means the resident members of the State Council for Interstate Adult Offender Supervision created by each state under Article IV of this compact.

ARTICLE III
THE COMPACT COMMISSION

(a) The compacting states hereby create the "Interstate Commission for Adult Offender Supervision." The Interstate Commission shall be a body corporate and joint agency of the compacting states. The Interstate Commission shall have all the responsibilities, powers, and duties set forth herein; including the power to sue and be sued, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

(b) The Interstate Commission shall consist of Commissioners selected and appointed by resident members of a State Council for Interstate Adult Offender Supervision for each state. In addition to the commissioners who are the voting representatives of each state, the Interstate Commission shall include individuals who are not commissioners but who are members of interested organizations. Such noncommissioner members must include a member of the national organizations of governors, legislators, state chief justices, attorneys general, and crime victims. All noncommissioner members of the Interstate Commission shall be ex-officio (nonvoting) members. The Interstate Commission may provide in its by-laws for such additional, ex-officio, nonvoting members as it deems necessary.

(c) Each compacting state represented at any meeting of the Interstate Commission is entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the by-laws of the Interstate Commission.

(d) The Interstate Commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of 27 or more compacting states, shall call additional meetings. Public notice shall be given of all meetings and meetings shall be open to the public.

(e) The Interstate Commission shall establish an executive committee which shall include commission officers, members, and others as shall be determined by the by-laws. The Executive Committee shall have the power to act on behalf of the Interstate Commission during periods when the Interstate Commission is not in session, with the exception of rulemaking and/or amendment to the Compact. The Executive Committee oversees the day-to-day activities managed by the Executive Director and Interstate Commission staff; administers enforcement and compliance with the provisions of the compact, its by-laws, and as directed by the Interstate Commission; and performs other duties as directed by the Commission or set forth in the by-laws.

ARTICLE IV
THE STATE COUNCIL

(a) Each member state shall create a State Council for Interstate Adult Offender Supervision which shall be responsible for the appointment of the commissioner who shall serve on the Interstate Commission from that state. Each state council shall appoint as its commissioner the Compact Administrator from that state to serve on the Interstate Commission in such capacity under or pursuant to applicable law of the member state. While each member state may determine the membership of its own state council, its membership must include at least one representative from the legislative, judicial, and executive branches of government, victims groups, and compact administrators.

(b) Each compacting state retains the right to determine the qualifications of the compact administrator, who shall be appointed by the state council or by the Governor in consultation with the legislature and the judiciary.

(c) In addition to appointment of its commissioner to the National Interstate Commission, each state council shall exercise oversight and advocacy concerning its participation in Interstate Commission activities and other duties as may be determined by each member state including, but not limited to, development of policy concerning operations and procedures of the compact within that state.

ARTICLE V
POWERS AND DUTIES OF THE INTERSTATE COMMISSION

(a) The Interstate Commission shall have the following powers:

(1) To adopt a seal and suitable by-laws governing the management and operation of the Interstate Commission.

(2) To promulgate rules which shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact.

(3) To oversee, supervise, and coordinate the interstate movement of offenders subject to the terms of this compact and any by-laws adopted and rules promulgated by the compact commission.

(4) To enforce compliance with compact provisions, Interstate Commission rules, and by-laws, using all necessary and proper means including, but not limited to, the use of judicial process.

(5) To establish and maintain offices.

(6) To purchase and maintain insurance and bonds.

(7) To borrow, accept, or contract for services of personnel including, but not limited to, members and their staffs.

(8) To establish and appoint committees and hire staff which it deems necessary for the carrying out of its functions including, but not limited to, an executive committee as required by Article III which shall have the power to act on behalf of the Interstate Commission in carrying out its powers and duties hereunder.

(9) To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties, and determine their qualifications; and to establish the Interstate Commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation, and qualifications of personnel.

(10) To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of same.

(11) To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve, or use any property, real, personal, or mixed.

(12) To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed.

(13) To establish a budget and make expenditures and levy dues as provided in Article X of this compact.

(14) To sue and be sued.

(15) To provide for dispute resolution among compacting states.

(16) To perform such functions as may be necessary or appropriate to achieve the purposes of this compact.

(17) To report annually to the legislatures, governors, judiciary, and state councils of the compacting states concerning the activities of the Interstate Commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the Interstate Commission.

(18) To coordinate education, training, and public awareness regarding the Interstate movement of offenders for officials involved in such activity.

(19) To establish uniform standards for the reporting, collecting, and exchanging of data.

ARTICLE VI
ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION

(a) By-laws. The Interstate Commission shall, by a majority of the members, within 12 months of the first Interstate Commission meeting, adopt by-laws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact including, but not limited to:

(1) Establishing the fiscal year of the Interstate Commission;

(2) Establishing an executive committee and such other committees as may be necessary, providing reasonable standards and procedures:

(i) For the establishment of committees, and

(ii) Governing any general or specific delegation of any authority or function of the Interstate Commission;

(3) Providing reasonable procedures for calling and conducting meetings of the Interstate Commission, and ensuring reasonable notice of each such meeting;

(4) Establishing the titles and responsibilities of the officers of the Interstate Commission;

(5) Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the Interstate Commission. Notwithstanding any civil service or other similar laws of any compacting state, the by-laws shall exclusively govern the personnel policies and programs of the Interstate Commission; and

(6) Providing a mechanism for winding up the operations of the Interstate Commission and the equitable return of any surplus funds that may exist upon the termination of the compact after the payment and/or reserving of all of its debts and obligations;

(7) Providing transition rules for "start up" administration of the compact;

(8) Establishing standards and procedures for compliance and technical assistance in carrying out the compact.

(b) Officers and Staff.

(1) The Interstate Commission shall, by a majority of the members, elect from among its members a chairperson and a vice chairperson, each of whom shall have such authorities and duties as may be specified in the by-laws. The chairperson or, in his or her absence or disability, the vice chairperson, shall preside at all meetings of the Interstate Commission. The officers so elected shall serve without compensation or remuneration from the Interstate Commission; provided that subject to the availability of budgeted funds, the officers shall be reimbursed for any actual and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the Interstate Commission.

(2) The Interstate Commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the Interstate Commission may deem appropriate. The executive director shall serve as secretary to the Interstate Commission, and hire and supervise such other staff as may be authorized by the Interstate Commission, but shall not be a member.

(c) Corporate Records of the Interstate Commission. The Interstate Commission shall maintain its corporate books and records in accordance with the by-laws.

(d) Qualified Immunity, Defense, and Indemnification.

(1) The members, officers, executive director, and employees of the Interstate Commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of any actual or alleged act, error or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities; provided, that nothing in this paragraph shall be construed to protect any such person from suit and/or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

(2) The Interstate Commission shall defend the commissioner of a compacting state, or his or her representatives or employees, or the Interstate Commission's representatives or employees, in any civil action seeking to impose liability, arising out of any actual or alleged act, error or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities; provided, that the actual or alleged act, error, or omission did not result from intentional wrongdoing on the part of such person.

(3) The Interstate Commission shall indemnify and hold the commissioner of a compacting state, the appointed designee, or employees, or the Interstate Commission's representatives or employees, harmless in the amount of any settlement or judgement obtained against such persons arising out of any actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided, that the actual or alleged act, error, or omission did not result from gross negligence or intentional wrongdoing on the part of such person.

ARTICLE VII
ACTIVITIES OF THE INTERSTATE COMMISSION

(a) The Interstate Commission shall meet and take such actions as are consistent with the provisions of this compact.

(b) Except as otherwise provided in this compact and unless a greater percentage is required by the by-laws, in order to constitute an act of the Interstate Commission, such act shall have been taken at a meeting of the Interstate Commission and shall have received an affirmative vote of a majority of the members present.

(c) Each member of the Interstate Commission shall have the right and power to cast a vote to which that Compacting State is entitled and to participate in the business and affairs of the Interstate Commission. A member shall vote in person on behalf of the state and shall not delegate a vote to another member state. However, a state council shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the member state at a specified meeting. The by-laws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication. Any voting conducted by telephone, or other means of telecommunication or electronic communication, shall be subject to the same quorum requirements of meetings where members are present in person.

(d) The Interstate Commission shall meet at least once during each calendar year. The chairperson of the Interstate Commission may call additional meetings at any time and, upon the request of a majority of the members, shall call additional meetings.

(e) The Interstate Commission's by-laws shall establish conditions and procedures under which the Interstate Commission shall make its information and official records available to the public for inspection or copying. The Interstate Commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests. In promulgating such rules, the Interstate Commission may make available to law enforcement agencies records and information otherwise exempt from disclosure, and may enter into agreements with law enforcement agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

(f) Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the

compact. The Interstate Commission shall promulgate rules consistent with the principles contained in the "Government in Sunshine Act," 5 U.S.C. Section 552(b), as may be amended. The Interstate Commission and any of its committees may close a meeting to the public where it determines by two-thirds vote that an open meeting would be likely to:

(1) Relate solely to the Interstate Commission's internal personnel practices and procedures;

(2) Disclose matters specifically exempted from disclosure by statute;

(3) Disclose trade secrets or commercial or financial information which is privileged or confidential;

(4) Involve accusing any person of a crime, or formally censuring any person;

(5) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(6) Disclose investigatory records compiled for law enforcement purposes;

(7) Disclose information contained in or related to examination, operating, or condition reports prepared by, or on behalf of or for the use of, the Interstate Commission with respect to a regulated entity for the purpose of regulation or supervision of such entity;

(8) Disclose information, the premature disclosure of which would significantly endanger the life of a person or the stability of a regulated entity;

(9) Specifically relate to the Interstate Commission's issuance of a subpoena, or its participation in a civil action or proceeding.

(g) For every meeting closed pursuant to this provision, the Interstate Commission's chief legal officer shall publicly certify that, in his or her opinion, the meeting may be closed to the public, and shall reference each relevant provision authorizing closure of the meeting. The Interstate Commission shall keep minutes which shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll call vote (reflected in the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

(h) The Interstate Commission shall collect standardized data concerning the Interstate movement of offenders as directed through its by-laws and rules which shall specify the data to be collected, the means of collection, and data exchange and reporting requirements.

ARTICLE VIII
RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION

(a) The Interstate Commission shall promulgate rules in order to effectively and efficiently achieve the purposes of the compact, including transition rules governing administration of the compact during the period in which it is being considered and enacted by the states;

(b) Rulemaking shall occur pursuant to the criteria set forth in this article and the by-laws and rules adopted pursuant thereto. Such rulemaking shall substantially conform to the principles of the federal Administrative Procedure Act, 5 U.S.C.S. Section 551 et seq., and the Federal Advisory Committee Act, 5 U.S.C.S. App. 2, Section 1 et seq., as may be amended (hereinafter "APA"). All rules and amendments shall become binding as of the date specified in each rule or amendment.

(c) If a majority of the legislatures of the compacting states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the compact, then such rule shall have no further force and effect in any compacting state.

(d) When promulgating a rule, the Interstate Commission shall:

(1) Publish the proposed rule, stating with particularity the text of the rule which is proposed and the reason for the proposed rule;

(2) Allow persons to submit written data, facts, opinions, and arguments, which information shall be publicly available;

(3) Provide an opportunity for an informal hearing; and

(4) Promulgate a final rule and its effective date, if appropriate, based on the rulemaking record. Not later than 60 days after a rule is promulgated, any interested person may file a petition in the United States District Court for the District of Columbia or in the Federal District Court where the Interstate Commission's principal office is located for judicial review of such rule. If the court finds that the Interstate Commission's action is not supported by substantial evidence, (as defined in the APA), in the rulemaking record, the court shall hold the rule unlawful and set it aside.

(e) Subjects to be addressed within 12 months after the first meeting must at a minimum include:

(i) notice to victims and opportunity to be heard;

(ii) offender registration and compliance;

(iii) violations/returns;

(iv) transfer procedures and forms;

(v) eligibility for transfer;

(vi) collection of restitution and fees from offenders;

(vii) data collection and reporting;

(viii) the level of supervision to be provided by the receiving state;

(ix) transition rules governing the operation of the compact and the Interstate Commission during all or part of the period between the effective date of the compact and the date on which the last eligible state adopts the compact; and

(x) mediation, arbitration, and dispute resolution.

(f) The existing rules governing the operation of the previous compact superceded by this act shall be null and void 12 months after the first meeting of the Interstate Commission created hereunder.

(g) Upon determination by the Interstate Commission that an emergency exists, it may promulgate an emergency rule which shall become effective immediately upon adoption, provided that the usual rulemaking procedures provided hereunder shall be retroactively applied to said rule as soon as reasonably possible, in no event later than 90 days after the effective date of the rule.

ARTICLE IX
OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION BY THE INTERSTATE COMMISSION

(a) Oversight.

(1) The Interstate Commission shall oversee the Interstate movement of adult offenders in the compacting states and shall monitor such activities being administered in noncompacting states which may significantly affect compacting states.

(2) The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact which may affect the powers, responsibilities, or actions of the Interstate Commission, the Interstate Commission shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes.

(b) Dispute Resolution.

(1) The compacting states shall report to the Interstate Commission on issues or activities of concern to them, and cooperate with and support the Interstate Commission in the discharge of its duties and responsibilities.

(2) The Interstate Commission shall attempt to resolve any disputes or other issues which are subject to the compact and which may arise among compacting states and noncompacting states.

(3) The Interstate Commission shall enact a by-law or promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

(c) Enforcement. The Interstate Commission, in the reasonable exercise of its discretion, shall enforce the provisions of this compact using any or all means set forth in Article XII (b) of this compact.

ARTICLE X
FINANCE

(a) The Interstate Commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.

(b) The Interstate Commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the Interstate Commission and its staff which must be in a total amount sufficient to cover the Interstate Commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Interstate Commission, taking into consideration the population of the state and the volume of interstate movement of offenders in each compacting state and shall promulgate a rule binding upon all compacting states which governs said assessment.

(c) The Interstate Commission shall not incur any obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Interstate Commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

(d) The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission shall be subject to the audit and accounting procedures established under its by-laws. However, all receipts and disbursements of funds handled by the Interstate Commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the Interstate Commission.

ARTICLE XI
COMPACTING STATES, EFFECTIVE DATE, AND AMENDMENT

(a) Any state, as defined in Article II of this compact, is eligible to become a compacting state.

(b) The compact shall become effective and binding upon legislative enactment of the compact into law by no less than 35 of the states. The initial effective date shall be the later of July 1, 2001, or upon enactment into law by the thirty-fifth jurisdiction. Thereafter it shall become effective and binding, as to any other compacting state, upon enactment of the compact into law by that state. The governors of nonmember states or their designees will be invited to participate in Interstate Commission activities on a nonvoting basis prior to adoption of the compact by all states and territories of the United States.

(c) Amendments to the compact may be proposed by the Interstate Commission for enactment by the compacting states. No amendment shall become effective and binding upon the Interstate Commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

ARTICLE XII
WITHDRAWAL, DEFAULT, TERMINATION, AND JUDICIAL ENFORCEMENT

(a) Withdrawal.

(1) Once effective, the compact shall continue in force and remain binding upon each and every compacting state; provided, that a compacting state may withdraw from the compact ("withdrawing state") by enacting a statute specifically repealing the statute which enacted the compact into law.

(2) The effective date of withdrawal is the effective date of the repeal.

(3) The withdrawing state shall immediately notify the chairperson of the Interstate Commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The Interstate Commission shall notify the other compacting states of the withdrawing state's intent to withdraw within 60 days of its receipt thereof.

(4) The withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.

(5) Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the Interstate Commission.

(b) Default.

(1) If the Interstate Commission determines that any compacting state has at any time defaulted ("defaulting state") in the performance of any of its obligations or responsibilities under this compact, the by-laws, or any duly promulgated rules, the Interstate Commission may impose any or all of the following penalties:

(i) Fines, fees, and costs in such amounts as are deemed to be reasonable as fixed by the Interstate Commission;

(ii) Remedial training and technical assistance as directed by the Interstate Commission;

(iii) Suspension and termination of membership in the compact. Suspension shall be imposed only after all other reasonable means of securing compliance under the by-laws and rules have been exhausted. Immediate notice of suspension shall be given by the Interstate Commission to the governor, the chief justice or chief judicial officer of the state, the majority and minority leaders of the defaulting state's legislature, and the state council.

(2) The grounds for default include, but are not limited to, failure of a compacting state to perform such obligations or responsibilities imposed upon it by this compact, Interstate Commission by-laws, or duly promulgated rules. The Interstate Commission shall immediately notify the defaulting state in writing of the penalty imposed by the Interstate Commission on the defaulting state pending a cure of the default. The Interstate Commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the Interstate Commission, in addition to any other penalties imposed herein, the defaulting state may be terminated from the compact upon an affirmative vote of a majority of the compacting states and all rights, privileges, and benefits conferred by this compact shall be terminated from the effective date of suspension. Within 60 days of the effective date of termination of a defaulting state, the Interstate Commission shall notify the governor, the chief justice or chief judicial officer, and the majority and minority leaders of the defaulting state's legislature and the state council of such termination.

(3) The defaulting state is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination including any obligations, the performance of which extends beyond the effective date of termination.

(4) The Interstate Commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon between the Interstate Commission and the defaulting state. Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the Interstate Commission pursuant to the rules.

(c) Judicial Enforcement. The Interstate Commission may, by majority vote of the members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the Interstate Commission, in the federal district where the Interstate Commission has its offices, to enforce compliance with the provisions of the compact and its duly promulgated rules and by-laws, against any compacting state in default. In the event judicial enforcement is necessary the prevailing party shall be awarded all costs of such litigation including reasonable attorneys' fees.

(d) Dissolution of Compact.

(1) The compact dissolves effective upon the date of the withdrawal or default of the compacting state which reduces membership in the compact to one compacting state.

(2) Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Interstate Commission shall be wound up and any surplus funds shall be distributed in accordance with the by-laws.

ARTICLE XIII
SEVERABILITY AND CONSTRUCTION

(a) The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

(b) The provisions of this compact shall be liberally constructed to effectuate its purposes.

ARTICLE XIV
BINDING EFFECT OF COMPACT AND OTHER LAWS

(a) Other Laws.

(1) Nothing herein prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact.

(2) All compacting states' laws conflicting with this compact are superseded to the extent of the conflict.

(b) Binding Effect of the Compact.

(1) All lawful actions of the Interstate Commission, including all rules and by-laws promulgated by the Interstate Commission, are binding upon the compacting states.

(2) All agreements between the Interstate Commission and the compacting states are binding in accordance with their terms.

(3) Upon the request of a party to a conflict over meaning or interpretation of Interstate Commission actions, and upon a majority vote of the compacting states, the Interstate Commission may issue advisory opinions regarding such meaning or interpretation.

(4) In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by such provision upon the Interstate Commission shall be ineffective and such obligations, duties, powers, or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers, or jurisdiction are delegated by law in effect at the time this compact becomes effective.

Section 5. Section 77-28c-201 is enacted to read:

Part 2. Authority of the Governor to Enter Into Compact

77-28c-201. Authority of governor to join compact.

The governor of Utah is authorized and directed to execute a compact on behalf of this state with any other state or states joining the Interstate Compact for Adult Offender Supervision as provided in Section 77-28c-103.

Section 6. Effective date.

The initial effective date shall be the later of July 1, 2001, or upon the enactment of the compact contained in Section 77-28c-103 into law by the thirty-fifth jurisdiction in accordance with the compact provisions.

CHAPTER 46
H. B. 19
Passed February 7, 2001
Approved February 22, 2001
Effective April 30, 2001
(Section 70A-9a-525 takes effect on July 1, 2001)

FEES RECODIFICATION

Sponsor: Neil A. Hansen
Bryan D. Holladay
Stephen H. Urquhart
Merlynn T. Newbold
Carol Spackman Moss
Ron Bigelow
David Litvack
David Clark
Peggy Wallace
Ty McCartney

This act modifies the Fees Title. This act renumbers and amends sections related to fees and makes technical corrections.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
10-3-703.5, as enacted by Chapter 323, Laws of Utah 2000
17-25a-4, as enacted by Chapter 44, Laws of Utah 1990
34A-6-301, as renumbered and amended by Chapter 375, Laws of Utah 1997
35A-3-114, as last amended by Chapter 133, Laws of Utah 2000
41-6-44.10, as last amended by Chapters 89 and 334, Laws of Utah 2000
53-3-223, as last amended by Chapter 334, Laws of Utah 2000
63-55-235, as last amended by Chapter 133, Laws of Utah 2000
63-63a-8, as last amended by Chapter 133, Laws of Utah 2000
70A-9-403 (Repealed 07/01/01), as last amended by Chapter 133, Laws of Utah 2000
70A-9-404 (Repealed 07/01/01), as last amended by Chapter 133, Laws of Utah 2000
70A-9a-525 (Effective 07/01/01), as enacted by Chapter 252, Laws of Utah 2000
77-18-10, as last amended by Chapter 170, Laws of Utah 1998
78-6-14, as last amended by Chapter 215, Laws of Utah 1997
78-28-1, as last amended by Chapter 112, Laws of Utah 2000
78-31b-9, as last amended by Chapter 215, Laws of Utah 1997
78-46-1, as last amended by Chapter 21, Laws of Utah 1999
78-56-108, as last amended by Chapter 149, Laws of Utah 2000

RENUMBERS AND AMENDS:
13-1a-9 (Effective 04/30/01), (Renumbered from 21-1-2.5 (Effective 04/30/01), as last amended by Chapter 300, Laws of Utah 2000)
13-1a-9 (Superseded 04/30/01), (Renumbered from 21-1-2.5 (Superseded 04/30/01), as last amended by Chapter 313, Laws of Utah 1994)
17-16-21, (Renumbered from 21-2-8, as renumbered and amended by Chapter 133, Laws of Utah 2000)
17-21-18.5, (Renumbered from 21-2-3, as last amended by Chapter 79, Laws of Utah 1996)
17-22-2.5, (Renumbered from 21-2-4, as last amended by Chapter 167, Laws of Utah 1991)
17-25-2, (Renumbered from 21-3-3, as last amended by Chapter 44, Laws of Utah 1990)
17-25-3, (Renumbered from 21-3-3.5, as last amended by Chapter 44, Laws of Utah 1990)
17-25-4, (Renumbered from 21-3-4, as last amended by Chapters 38 and 227, Laws of Utah 1993)
17-25-5, (Renumbered from 21-3-5, as last amended by Chapter 198, Laws of Utah 1996)
63-38-3.3, (Renumbered from 21-7-2, as last amended by Chapter 181, Laws of Utah 1991)
67-1a-2.5 (Effective 04/30/01), (Renumbered from 21-1-2 (Effective 04/30/01), as last amended by Chapter 300, Laws of Utah 2000)
67-1a-2.5 (Superseded 04/30/01), (Renumbered from 21-1-2 (Superseded 04/30/01), as last amended by Chapter 313, Laws of Utah 1994)
67-3-1.5, (Renumbered from 21-1-3, Utah Code Annotated 1953)
78-5-135.5, (Renumbered from 21-7-19, as last amended by Chapter 59, Laws of Utah 1990)
78-7-35, (Renumbered from 21-1-5, as last amended by Chapters 149 and 323, Laws of Utah 2000)
78-7-35.1, (Renumbered from 21-1-4, as last amended by Chapter 176, Laws of Utah 1998)
78-7-36, (Renumbered from 21-7-3, as last amended by Chapter 161, Laws of Utah 1996)
78-7-37, (Renumbered from 21-7-4, as last amended by Chapter 161, Laws of Utah 1996)
78-7-38, (Renumbered from 21-7-4.5, as last amended by Chapter 147, Laws of Utah 1998)
78-7-39, (Renumbered from 21-7-4.6, as last amended by Chapter 147, Laws of Utah 1998)
78-7-40, (Renumbered from 21-7-4.7, as last amended by Chapter 147, Laws of Utah 1998)
78-7-41, (Renumbered from 21-7-5, as last amended by Chapter 59, Laws of Utah 1990)
78-7-42, (Renumbered from 21-7-6, as last amended by Chapter 59, Laws of Utah 1990)
78-7-43, (Renumbered from 21-7-7, Utah Code

Annotated 1953)
78-7-44, (Renumbered from 21-7-20, as enacted by Chapter 14, Laws of Utah 1996)
78-46-24, (Renumbered from 21-5-1, as repealed and reenacted by Chapter 219, Laws of Utah 1992)
78-46-25, (Renumbered from 21-5-1.5, as last amended by Chapter 38, Laws of Utah 1993)
78-46-26, (Renumbered from 21-5-2, Utah Code Annotated 1953)
78-46-27, (Renumbered from 21-5-3, Utah Code Annotated 1953)
78-46-28, (Renumbered from 21-5-4, as last amended by Chapter 74, Laws of Utah 1998)
78-46-29, (Renumbered from 21-5-4.5, as last amended by Chapter 219, Laws of Utah 1992)
78-46-30, (Renumbered from 21-5-8, as last amended by Chapter 153, Laws of Utah 1989)
78-46-31, (Renumbered from 21-5-11, as last amended by Chapter 227, Laws of Utah 1993)
78-46-32, (Renumbered from 21-5-14, as last amended by Chapter 153, Laws of Utah 1989)
78-46-33, (Renumbered from 21-5-14.5, as last amended by Chapter 219, Laws of Utah 1992)
78-46-34, (Renumbered from 21-5-15, as last amended by Chapter 159, Laws of Utah 1993)
78-46-35, (Renumbered from 21-5-16, Utah Code Annotated 1953)
78-46-36, (Renumbered from 21-5-17, as last amended by Chapter 40, Laws of Utah 1967)
78-46-37, (Renumbered from 21-5-18, as last amended by Chapter 153, Laws of Utah 1989)
78-46-38, (Renumbered from 21-6-5, as last amended by Chapter 90, Laws of Utah 1981)
78-46-39, (Renumbered from 21-7-16, as last amended by Chapter 198, Laws of Utah 1996)
78-46-40, (Renumbered from 21-7-17, Utah Code Annotated 1953)
78-46-41, (Renumbered from 21-7-18, Utah Code Annotated 1953)

REPEALS:
21-1-1, Utah Code Annotated 1953
21-6-1, Utah Code Annotated 1953
21-6-2, Utah Code Annotated 1953
21-6-3, as last amended by Chapter 75, Laws of Utah 2000
21-6-6, Utah Code Annotated 1953
21-6-7, Utah Code Annotated 1953
21-7-1, Utah Code Annotated 1953
21-7-9, Utah Code Annotated 1953
21-7-10, Utah Code Annotated 1953
21-7-11, Utah Code Annotated 1953
21-7-12, Utah Code Annotated 1953
21-7-13, Utah Code Annotated 1953
21-7-14, as last amended by Chapter 227, Laws of Utah 1993
21-7-15, Utah Code Annotated 1953

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

Section 1. Section 10-3-703.5 is amended to read:

10-3-703.5. Civil penalty for violation of municipal ordinance -- Administrative traffic proceedings -- Appeals.

(1) As used in this section, "municipality" means a municipality of the first class, as defined in Section 10-2-301, that had ordinances in effect on or before January 1, 2000 that provide a civil penalty for and administrative adjudication of moving traffic violations.

(2) (a) A municipality may, by ordinance, impose a civil penalty and provide adjudication for a violation of a municipal moving traffic ordinance, including regulations described in Section 41-6-17, through an administrative traffic proceeding.

(b) The default civil penalty for a municipal traffic ordinance shall be consistent with the uniform bail schedule adopted by the Judicial Council.

(c) A civil traffic violation constitutes a public offense for purposes of Section 77-7-15 and may be enforced as provided in that section.

(3) An administrative traffic proceeding:

(a) shall, except as provided in this section, be conducted in accordance with Section 10-3-703.7; and

(b) may not be held for:

(i) a moving violation that would be a class B misdemeanor in a criminal proceeding;

(ii) a violation of Title 41, Chapter 6, Article 5, Driving While Intoxicated and Reckless Driving; or

(iii) a traffic violation that occurs in conjunction with another criminal violation as part of a single criminal episode that will be prosecuted in a criminal proceeding.

(4) If a final administrative determination in an administrative traffic proceeding is for a violation:

(a) the civil penalty is subject to the fees or surcharges established in Subsections [~~21-1-5~~] 78-7-35(2)(d)(ii) and 63-63a-1(1)(b)(ii);

(b) the final administrative determination constitutes a conviction as defined in Section 53-3-102; and

(c) the final administrative determination may be appealed by a party in accordance with Section 10-3-703.7.

(5) (a) A municipality that has a population greater than 150,000, according to the last official federal census, shall remit to the state by June 30 of each fiscal year:

(i) $504,700 for fiscal year 2000-01; and

(ii) $580,400 for fiscal year 2001-02.

(b) A municipality that has a population less than 150,000, according to the last official federal census,

shall remit to the state by June 30 of each fiscal year:

(i) $388,600 for fiscal year 2000-01; and

(ii) $446,900 for fiscal year 2001-02.

(c) If a municipality repeals the ordinance described in Subsection (2)(a) prior to the end of a fiscal year, the municipality shall remit to the state the amount described in Subsection (5)(a) or (b) prorated according to the date the ordinance is repealed.

(d) Monies remitted to the state under this Subsection (5) shall be remitted to the state treasurer and deposited in the state General Fund.

Section 2. Section 13-1a-9 (Effective 04/30/01), which is renumbered from Section 21-1-2.5 (Effective 04/30/01) is renumbered and amended to read:

[~~21-1-2.5 (Effective 04/30/01)~~]. 13-1a-9 (Effective 04/30/01). Fees of Division of Corporations and Commercial Code.

In addition to the fees prescribed by Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, and Title 16, Chapter 10a, Utah Revised Business Corporation Act, the Division of Corporations and Commercial Code shall receive and determine fees pursuant to Section 63-38-3.2 for filing articles of incorporation or amendments of insurance corporations, of canal or irrigation corporations organized for furnishing water to lands owned by the members thereof exclusively, or of water users' associations organized in conformity with the requirements of the United States under the Reclamation Act of June 17, 1902, and which are authorized to furnish water only to their stockholders. No license fee may be imposed on insurance corporations, canal or irrigation corporations organized for furnishing water to lands owned by the members thereof exclusively, or water users' associations organized in conformity with the requirements of the United States under the Reclamation Act of June 17, 1902, and which are authorized to furnish water only to the stockholders at the time any such corporation files its articles of incorporation, articles of amendment increasing the number of authorized shares, or articles of merger or consolidation, any provision of Title 16, Chapter 10a, Utah Revised Business Corporation Act, to the contrary notwithstanding.

Section 3. Section 13-1a-9 (Superseded 04/30/01), which is renumbered from Section 21-1-2.5 (Superseded 04/30/01) is renumbered and amended to read:

[~~21-1-2.5 (Superseded 04/30/01)~~]. 13-1a-9 (Superseded 04/30/01). Fees of Division of Corporations and Commercial Code.

In addition to the fees prescribed by Title 16, Chapter 10a, Utah Revised Business Corporation Act, and Title 16, Chapter 6, Utah Nonprofit Corporation and Cooperative Association Act, the Division of Corporations and Commercial Code shall receive and determine fees pursuant to Section 63-38-3.2 for filing articles of incorporation or amendments of insurance corporations, of canal or irrigation corporations organized for furnishing water to lands owned by the members thereof exclusively, or of water users' associations organized in conformity with the requirements of the United States under the Reclamation Act of June 17, 1902, and which are authorized to furnish water only to their stockholders. No license fee may be imposed on insurance corporations, canal or irrigation corporations organized for furnishing water to lands owned by the members thereof exclusively, or water users' associations organized in conformity with the requirements of the United States under the Reclamation Act of June 17, 1902, and which are authorized to furnish water only to the stockholders at the time any such corporation files its articles of incorporation, articles of amendment increasing the number of authorized shares, or articles of merger or consolidation, any provision of Title 16, Chapter 10a, Utah Revised Business Corporation Act, to the contrary notwithstanding.

Section 4. Section 17-16-21, which is renumbered from Section 21-2-8 is renumbered and amended to read:

[~~21-2-8~~]. 17-16-21. Fees of county officers.

(1) As used in this section, "county officer" means all of the county officers enumerated in Section 17-53-101 except county recorders, county constables, and county sheriffs.

(2) (a) Each county officer shall collect, in advance, for exclusive county use and benefit:

(i) all fees established by the county legislative body under this section; and

(ii) any other fees authorized or required by law.

(b) As long as the displaced homemaker program is authorized by Section 35A-3-114, the county clerk shall:

(i) assess $20 in addition to whatever fee for a marriage license is established under authority of this section; and

(ii) transmit $20 from each marriage license fee to the Division of Finance to be credited to the displaced homemaker program.

(c) As long as the Children's Legal Defense Account is authorized by Section 63-63a-8, the county clerk shall:

(i) assess $10 in addition to whatever fee for a marriage license is established under authority of this section and in addition to the $20 assessed for the displaced homemaker program; and

(ii) transmit $10 from each marriage license fee to the Division of Finance for deposit in the Children's Legal Defense Account.

(3) This section does not apply to any fees currently being assessed by the state but collected by county officers.

Section 5. Section 17-21-18.5, which is renumbered from Section 21-2-3 is renumbered and amended to read:

[~~21-2-3~~]. 17-21-18.5. Fees of county recorder.

(1) The county recorder shall receive the following fees:

(a) for receiving, entering, and filing any instrument, paper, or notice, not otherwise provided for, other than bonds of public officers, $10;

(b) for recording any instrument, paper, or notice, including those provided for under Title 70A, Uniform Commercial Code, other than bonds of public officers, and not otherwise provided for, $10 for the first page, if the page is not larger than 8 1/2 inches x 14 inches in size, and $2 for each additional page, and if any instrument, paper, or notice contains more than one description, $1 for each additional description;

(c) for recording any instrument in which a right-of-way is described, which is connected with or is appurtenant to any tract of land described in the instrument, $1, but if the instrument contains a description of more than one right-of-way, $1 for each additional right-of-way, and if any instrument contains more than two names for either first or second party, or plaintiffs or defendants, for each additional name, $1;

(d) for recording, indexing, and abstracting mining location notices, and recording, indexing, and abstracting affidavits of labor affecting mining claims, $10 for the first page if that page is not larger than 8 1/2 inches by 14 inches in size, and $2 for each additional page; and

(e) for a location notice, affidavit, or proof of labor which contains names of more than two signers, $1 for each additional name, and for an affidavit or proof of labor which contains more than one mining claim, $1 for each additional mining claim.

(2) (a) Each county recorder shall record the mining rules of the several mining districts in each county without fee.

(b) Certified copies of these records shall be received in all tribunals and before all officers of this state as prima facie evidence of the rules.

(3) The county recorder shall receive the following fees:

(a) for copies of any record or paper, a reasonable fee determined and set by the county legislative body;

(b) for each certificate under seal, $2;

(c) for recording any plat of a subdivision into lots and blocks, $1 for each lot, and $30 for each sheet;

(d) for recording any other plat or map, $30 for each sheet and $1 for each lot or unit designation;

(e) for taking and certifying acknowledgments, including seal, $5 for one name and $2 for each additional name;

(f) for recording any license issued by the Division of Occupational and Professional Licensing, $10;

(g) for filing of federal tax lien, $10, and for the discharge of the lien, $10;

(h) for copies of microfilm, a charge per lineal foot as fixed by the county governing body, not to exceed the cost of reproduction of the film plus 10%; and

(i) for all services not enumerated in this section, a reasonable compensation.

Section 6. Section 17-22-2.5, which is renumbered from Section 21-2-4 is renumbered and amended to read:

[~~21-2-4~~]. 17-22-2.5. Fees of sheriff.

(1) The sheriff shall receive the following fees:

(a) for serving a notice, rule, order, subpoena, garnishment, summons, or summons and complaint, or garnishee execution, or other process by which an action or proceeding is commenced, on each defendant, including copies when furnished by plaintiff, $6;

(b) for taking or approving a bond or undertaking in any case in which he is authorized to take or approve a bond or undertaking, including justification, $2;

(c) for a copy of any writ, process or other paper when demanded or required by law, for each folio, 50 cents;

(d) for serving an attachment on property, or levying an execution, or executing an order of arrest or an order for the delivery of personal property, including copies when furnished by plaintiff, $25;

(e) for taking and keeping possession of and preserving property under attachment or execution or other process, the amount the court orders to a maximum of $5 per day;

(f) for advertising property for sale on execution, or any judgment, or order of sale, exclusive of the cost of publication, $5;

(g) for drawing and executing a sheriff's deed or a certificate of redemption, exclusive of acknowledgment, $5, to be paid by the grantee;

(h) for recording each deed, conveyance, or other instrument affecting real estate, exclusive of the cost of recording, $2, to be paid by the grantee;

(i) for serving a writ of possession or restitution, and putting any person entitled to possession into possession of premises, and removing occupant, $25;

(j) for holding each trial of right of property, to include all services in the matter, except mileage, $15;

(k) for conducting, postponing, or canceling a sale of property, $5;

(l) for taking a prisoner in civil cases from prison before a court or magistrate, for each mile necessarily traveled, in going only, $1;

(m) for taking a prisoner from the place of arrest to prison, in civil cases, or before a court or

magistrate, for each mile necessarily traveled, in going only, $1;

(n) for receiving and paying over money on execution or other process, as follows:

(i) if the amount collected does not exceed $1,000, 2% of this amount, with a minimum of $1; and

(ii) if the amount collected exceeds $1,000, 2% on the first $1,000 and 1-1/2% on the balance; and

(o) for executing in duplicate a certificate of sale, exclusive of filing it, $5.

(2) The fees allowed by Subsection (1)(f) for the levy of execution and for advertising shall be collected from the judgment debtor as part of the execution in the same manner as the sum directed to be made.

(3) When serving an attachment on property, an order of arrest, or an order for the delivery of personal property, the sheriff may only collect traveling fees for the distance actually traveled beyond the distance required to serve the summons if the attachment or those orders:

(a) accompany the summons in the action; and

(b) may be executed at the time of the service of the summons.

(4) (a) (i) When traveling generally to serve notices, orders, process, or other papers, the sheriff may receive $1 for each mile necessarily traveled, in going only, computed from the courthouse for each person served.

(ii) When transmitting notices, orders, process, or other papers by mail, the sheriff may receive $1 for each mile necessarily traveled, in going only, computed from the post office where received for each person served.

(b) The sheriff may only charge one mileage fee if any two or more papers are required to be served in the same action or proceeding at the same time and at the same address.

(c) If it is necessary to make more than one trip to serve any notice, order, process, or other paper, the sheriff may not collect more than two additional mileage charges.

(5) (a) For delivering an insane person to the Utah State Hospital, when the cost of delivery is payable by private individuals, the sheriff may collect $1 per mile for the distance from the county seat of his county to the Utah State Hospital.

(b) If the sheriff requires assistance to deliver the person to the Utah State Hospital, the sheriff may also charge the actual and necessary cost of that assistance.

Section 7. Section 17-25-2, which is renumbered from Section 21-3-3 is renumbered and amended to read:

[~~21-3-3~~]. 17-25-2. Fees for constables -- Civil.

(1) Constables may for their own use collect as compensation in civil matters the same fees as those specified for sheriffs in Section [~~21-2-4~~] 17-22-2.5.

(2) Constable fees that exceed the amounts in Section [~~21-2-4~~] 17-22-2.5 are recoverable:

(a) by the constable only if he has received prior approval for the increased fee from the party requesting the service; and

(b) by prevailing party as a cost of the action only if the court finds the service and increased fee are justifiable.

Section 8. Section 17-25-3, which is renumbered from Section 21-3-3.5 is renumbered and amended to read:

[~~21-3-3.5~~]. 17-25-3. Fees for constables -- Criminal.

(1) (a) In criminal matters constables shall be paid for each copy of a summons, subpoena, notice, court order, or other criminal paper, except a warrant of arrest;

(i) $5 for each defendant served; and

(ii) mileage of $1 per mile for each mile necessarily traveled in going only, to be computed from either the courthouse, or when transmitted by mail, from the post office where received.

(b) If more than one trip is necessary to serve, or diligently attempt to serve, service of process, mileage charges for more than two trips may be collected only if the party requesting the service of process has approved the additional mileage charges.

(c) Each charge shall be individually documented on the affidavit of return of service.

(2) Lower charges may be established by contract for services under this [~~subsection~~] section.

(3) If a constable serves process in a county other than the county where the process originated, travel expenses may not exceed the fee that would be charged if served by the sheriff of that county.

(4) (a) For each mile traveled for the purpose of serving, or to diligently attempt service of, a warrant of arrest, both in going to and returning from defendant's address, a fee of $1 may be charged.

(b) If more than one trip is necessary to serve, or diligently attempt to serve, a warrant of arrest, no more than two additional mileage charges may be collected.

(c) Each charge shall be individually documented on the affidavit of return of service.

(5) For arresting each prisoner and bringing him into court, or otherwise satisfying a warrant, a fee of $15 may be charged.

Section 9. Section 17-25-4, which is renumbered from Section 21-3-4 is renumbered and amended to read:

[~~21-3-4~~]. 17-25-4. Constables' fees in criminal cases -- Procedure.

Accounts against the county filed by constables for services in criminal cases shall be certified as correct by the county attorney or district attorney and shall be presented to the auditor. The county legislative body may reject such bills in all causes or proceedings in which the county attorney or district attorney has not in writing authorized the issuance of the warrant of arrest.

Section 10. Section 17-25-5, which is renumbered from Section 21-3-5 is renumbered and amended to read:

[~~21-3-5~~]. 17-25-5. Contracts for constable services.

The governing body of any municipality or county where a justice court exists may contract with any one or more of the constables appointed in the county where the court sits to provide services in criminal cases for the contracting governmental entity by any method and for any amount mutually agreed upon.

Section 11. Section 17-25a-4 is amended to read:

17-25a-4. Rates recoverable -- Exception.

(1) The rates recoverable through court action for service of process by a constable are governed by Section [~~21-2-4, 21-3-3.5~~] 17-22-2.5, 17-25-3, or [~~21-3-5~~] 17-25-5 when applicable.

(2) Constable fees that exceed the amounts in Section [~~21-2-4~~] 17-22-2.5 are recoverable in court:

(a) by the constable only if he has received prior approval for the increased fee from the party requesting the service; and

(b) by a prevailing party as a cost of the action only if the court finds the service and increased fee are justifiable.

Section 12. Section 34A-6-301 is amended to read:

34A-6-301. Inspection and investigation of workplace, worker injury, illness, or complaint -- Warrants -- Attendance of witnesses -- Recordkeeping by employers -- Employer and employee representatives -- Request for inspection by employees -- Compilation and publication of reports and information -- Division rules.

(1) (a) The division or its representatives, upon presenting appropriate credentials to the owner, operator, or agent in charge, may:

(i) enter without delay at reasonable times any workplace where work is performed by an employee of an employer;

(ii) inspect and investigate during regular working hours and at other reasonable times in a reasonable manner, any workplace, worker injury, occupational disease, or complaint and all pertinent methods, operations, processes, conditions, structures, machines, apparatus, devices, equipment, and materials in the workplace; and

(iii) question privately any such employer, owner, operator, agent, or employee.

(b) The division, upon an employer's refusal to permit an inspection, may seek a warrant under Section 77-23-211.

(2) The division or its representatives may require the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall receive fees and mileage in accordance with Section [~~21-5-4~~] 78-46-28. If any person fails or refuses to obey an order of the division to appear, any district court within the jurisdiction of which such person is found, or resides or transacts business, upon the application by the division, shall have jurisdiction to issue to any person an order requiring that person to appear to produce evidence if, as, and when so ordered, and to give testimony relating to the matter under investigation or in question, and any failure to obey such order of the court may be punished by the court as a contempt.

(3) (a) The commission shall make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, requiring employers to keep records regarding activities related to this chapter considered necessary for enforcement or for the development of information about the causes and prevention of occupational accidents and diseases and requiring employers, through posting of notices or other means, to inform employees of their rights and obligations under this chapter including applicable standards.

(b) The commission shall make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, requiring employers to keep records regarding any work-related death and injury and any occupational disease as follows:

(i) Each employer shall investigate or cause to be investigated all work-related injuries and occupational diseases and any sudden or unusual occurrence or change of conditions that pose an unsafe or unhealthful exposure to employees.

(ii) Each employer shall, within 12 hours of occurrence, notify the division of any:

(A) work-related fatality;

(B) disabling, serious, or significant injury; and

(C) occupational disease incident.

(iii) (A) Each employer shall file a report with the Division of Industrial Accidents within seven days after the occurrence of an injury or occupational disease, after the employer's first knowledge of the occurrence, or after the employee's notification of the same, in the form prescribed by the Division of Industrial Accidents, of any work-related fatality or any work-related injury or occupational disease resulting in medical treatment, loss of consciousness, loss of work, restriction of work, or transfer to another job.

(B) Each employer shall file a subsequent report with the Division of Industrial Accidents of any previously reported injury or occupational disease

that later resulted in death. The subsequent report shall be filed with the Division of Industrial Accidents within seven days following the death or the employer's first knowledge or notification of the death. A report is not required for minor injuries, such as cuts or scratches that require first-aid treatment only, unless a treating physician files, or is required to file, the Physician's Initial Report of Work Injury or Occupational Disease with the Division of Industrial Accidents. A report is not required for occupational diseases that manifest after the employee is no longer employed by the employer with which the exposure occurred, or where the employer is not aware of an exposure occasioned by the employment which results in an occupational disease as defined by Section 34A-3-103.

(iv) Each employer shall provide the employee with:

(A) a copy of the report submitted to the Division of Industrial Accidents;

(B) a statement, as prepared by the Division of Industrial Accidents, of the employee's rights and responsibilities related to the industrial injury or occupational disease.

(v) Each employer shall maintain a record in a manner prescribed by the commission of all work-related fatalities or work-related injuries and of all occupational diseases resulting in:

(A) medical treatment;

(B) loss of consciousness;

(C) loss of work;

(D) restriction of work; or

(E) transfer to another job.

(vi) The commission shall make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, to implement Subsection (3)(b) consistent with nationally recognized rules or standards on the reporting and recording of work-related injuries and occupational diseases.

(c) (i) The commission shall make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, requiring employers to keep records regarding exposures to potentially toxic materials or harmful physical agents required to be measured or monitored under Section 34A-6-202.

(ii) The rules made under Subsection (3)(c)(i) shall provide for employees or their representatives to observe the measuring or monitoring and to have access to the records thereof, and to records that indicate their exposure to toxic materials or harmful agents. Each employer shall promptly notify employees being exposed to toxic materials or harmful agents in concentrations that exceed prescribed levels and inform any such employee of the corrective action being taken.

(4) Information obtained by the division shall be obtained with a minimum burden upon employers, especially those operating small businesses.

(5) A representative of the employer and a representative authorized by employees shall be given an opportunity to accompany the division's authorized representative during the physical inspection of any workplace. If there is no authorized employee representative, the division's authorized representative shall consult with a reasonable number of employees concerning matters of health and safety in the workplace.

(6) (a) (i) Any employee or representative of employees who believes that a violation of an adopted safety or health standard exists that threatens physical harm, or that an imminent danger exists, may request an inspection by giving notice to the division's authorized representative of the violation or danger. The notice shall be in writing, setting forth with reasonable particularity the grounds for notice, and signed by the employee or representative of employees. A copy of the notice shall be provided the employer or the employer's agent no later than at the time of inspection. Upon request of the person giving notice, the person's name and the names of individual employees referred to in the notice shall not appear in the copy or on any record published, released, or made available pursuant to Subsection (7).

(ii) (A) If upon receipt of the notice the division's authorized representative determines there are reasonable grounds to believe that a violation or danger exists, the authorized representative shall make a special inspection in accordance with this section as soon as practicable to determine if a violation or danger exists.

(B) If the division's authorized representative determines there are no reasonable grounds to believe that a violation or danger exists, the authorized representative shall notify the employee or representative of the employees in writing of that determination.

(b) Prior to or during any inspection of a workplace, any employee or representative of employees employed in the workplace may notify the division or its representative of any violation of a standard that they have reason to believe exists in the workplace. The division shall, by rule, establish procedures for informal review of any refusal by a representative of the division to issue a citation with respect to any alleged violation and furnish the employees or representative of employees requesting review a written statement of the reasons for the division's final disposition of the case.

(7) (a) The division may compile, analyze, and publish, either in summary or detailed form, all reports or information obtained under this section, subject to the limitations set forth in Section 34A-6-306.

(b) The commission shall make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, necessary to carry out its responsibilities under this chapter,

including rules for information obtained under this section, subject to the limitations set forth in Section 34A-6-306.

(8) Any employer who refuses or neglects to make reports, to maintain records, or to file reports with the commission as required by this section is guilty of a class C misdemeanor and subject to citation under Section 34A-6-302 and a civil assessment as provided under Section 34A-6-307, unless the commission finds that the employer has shown good cause for submitting a report later than required by this section.

Section 13. Section 35A-3-114 is amended to read:

35A-3-114. Programs for displaced homemakers.

(1) For purposes of this section, "displaced homemaker" means an individual:

(a) who has been a homemaker for a period of eight or more years without significant gainful employment outside the home;

(b) whose primary occupation during the period of time described in Subsection (1)(a) was the provision of unpaid household services for family members;

(c) has found it necessary to enter the job market;

(d) is not reasonably capable of obtaining employment sufficient to provide self-support or necessary support for dependents, due to a lack of marketable job skills or other skills necessary for self-sufficiency; and

(e) has depended on:

(i) the income of a family member and lost that income; or

(ii) governmental assistance as the parent of dependent children and is no longer eligible for that assistance.

(2) The department shall establish, in cooperation with state and local governmental agencies, community-based organizations, and private employers, a program for the education, training, and transitional counseling of displaced homemakers, which includes referral services and the following services:

(a) employment and skills training, career counseling, and placement services specifically designed to address the needs of displaced homemakers;

(b) assistance in obtaining access to existing public and private employment training programs;

(c) educational services, including information on high school or college programs, or assistance in gaining access to existing educational programs;

(d) health education and counseling, or assistance in gaining access to existing health education and counseling services;

(e) financial management services which provide information on insurance, taxes, estate and probate matters, mortgages, loans, and other financial issues; and

(f) prevocational self-esteem and assertiveness training.

(3) The department shall:

(a) (i) contract with existing governmental or private agencies or community-based organizations that have demonstrated effectiveness in serving displaced homemakers to provide a program for displaced homemakers in each county or group of counties, as the population demands; or

(ii) establish a program for displaced homemakers in that area;

(b) coordinate its program for displaced homemakers with existing state or federal programs of a similar nature and, where possible, utilize existing physical resources;

(c) establish rules to implement this section, and may form an advisory committee for recommendations on the establishment and improvement of a program for displaced homemakers;

(d) encourage the placement of displaced homemakers in programs established under:

(i) the Job Training Partnership Act, 29 U.S.C. Section 1501; and

(ii) the Carl D. Perkins Vocational and Applied Technology Education Act, 20 U.S.C. Section 2301, et seq.; and

(e) prepare an evaluation of its program for displaced homemakers, including the success of placement of displaced homemakers in programs described in this section, and annually submit a written report of that evaluation to the Legislature.

(4) Displaced homemakers may act as peer counselors in programs for displaced homemakers.

(5) (a) Appropriate funds received by the state under Section [~~21-2-8~~] 17-16-21 shall be deposited as nonlapsing dedicated credits and used for the purposes of this section.

(b) Notwithstanding Subsection (5)(a), if the nonlapsing amount exceeds $300,000 at the end of any fiscal year, the excess shall lapse into the General Fund.

(6) The department shall establish procedures for payment and repayment, when possible, by clients to the department of the costs of services provided to displaced homemakers under this section.

Section 14. Section 41-6-44.10 is amended to read:

41-6-44.10. Implied consent to chemical tests for alcohol or drug -- Number of tests -- Refusal -- Warning, report -- Hearing, revocation of license -- Appeal -- Person incapable of refusal -- Results of test available -- Who may give test -- Evidence.

(1) (a) A person operating a motor vehicle in this state is considered to have given his consent to a chemical test or tests of his breath, blood, or urine for the purpose of determining whether he was operating or in actual physical control of a motor vehicle while having a blood or breath alcohol content statutorily prohibited under Section 41-6-44, 53-3-231, or 53-3-232, while under the influence of alcohol, any drug, or combination of alcohol and any drug under Section 41-6-44, or while having any measurable controlled substance or metabolite of a controlled substance in the person's body in violation of Section 41-6-44.6, if the test is or tests are administered at the direction of a peace officer having grounds to believe that person to have been operating or in actual physical control of a motor vehicle while having a blood or breath alcohol content statutorily prohibited under Section 41-6-44, 53-3-231, or 53-3-232, or while under the influence of alcohol, any drug, or combination of alcohol and any drug under Section 41-6-44, or while having any measurable controlled substance or metabolite of a controlled substance in the person's body in violation of Section 41-6-44.6.

(b) (i) The peace officer determines which of the tests are administered and how many of them are administered.

(ii) If an officer requests more than one test, refusal by a person to take one or more requested tests, even though he does submit to any other requested test or tests, is a refusal under this section.

(c) (i) A person who has been requested under this section to submit to a chemical test or tests of his breath, blood, or urine, may not select the test or tests to be administered.

(ii) The failure or inability of a peace officer to arrange for any specific chemical test is not a defense to taking a test requested by a peace officer, and it is not a defense in any criminal, civil, or administrative proceeding resulting from a person's refusal to submit to the requested test or tests.

(2) (a) If the person has been placed under arrest, has then been requested by a peace officer to submit to any one or more of the chemical tests under Subsection (1), and refuses to submit to any chemical test requested, the person shall be warned by the peace officer requesting the test or tests that a refusal to submit to the test or tests can result in revocation of the person's license to operate a motor vehicle.

(b) Following the warning under Subsection (2)(a), if the person does not immediately request that the chemical test or tests as offered by a peace officer be administered a peace officer shall serve on the person, on behalf of the Driver License Division, immediate notice of the Driver License Division's intention to revoke the person's privilege or license to operate a motor vehicle. When the officer serves the immediate notice on behalf of the Driver License Division, he shall:

(i) take the Utah license certificate or permit, if any, of the operator;

(ii) issue a temporary license effective for only 29 days; and

(iii) supply to the operator, on a form approved by the Driver License Division, basic information regarding how to obtain a hearing before the Driver License Division.

(c) A citation issued by a peace officer may, if approved as to form by the Driver License Division, serve also as the temporary license.

(d) As a matter of procedure, the peace officer shall submit a signed report, within ten calendar days after the date of the arrest, that he had grounds to believe the arrested person had been operating or was in actual physical control of a motor vehicle while having a blood or breath alcohol content statutorily prohibited under Section 41-6-44, 53-3-231, or 53-3-232, or while under the influence of alcohol, any drug, or combination of alcohol and any drug under Section 41-6-44, or while having any measurable controlled substance or metabolite of a controlled substance in the person's body in violation of Section 41-6-44.6, and that the person had refused to submit to a chemical test or tests under Subsection (1).

(e) (i) A person who has been notified of the Driver License Division's intention to revoke his license under this section is entitled to a hearing.

(ii) A request for the hearing shall be made in writing within ten calendar days after the date of the arrest.

(iii) Upon written request, the division shall grant to the person an opportunity to be heard within 29 days after the date of arrest.

(iv) If the person does not make a timely written request for a hearing before the division, his privilege to operate a motor vehicle in the state is revoked beginning on the 30th day after the date of arrest for a period of:

(A) 18 months unless Subsection (2)(e)(iv)(B) applies; or

(B) 24 months if the person has had a previous license sanction after July 1, 1993, under this section, Section 41-6-44.6, 53-3-223, 53-3-231, 53-3-232, or a conviction after July 1, 1993, under Section 41-6-44.

(f) If a hearing is requested by the person, the hearing shall be conducted by the Driver License Division in the county in which the offense occurred, unless the division and the person both agree that the hearing may be held in some other county.

(g) The hearing shall be documented and shall cover the issues of:

(i) whether a peace officer had reasonable grounds to believe that a person was operating a motor vehicle in violation of Section 41-6-44, 41-6-44.6, or 53-3-231; and

(ii) whether the person refused to submit to the test.

(h) (i) In connection with the hearing, the division or its authorized agent:

(A) may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers; and

(B) shall issue subpoenas for the attendance of necessary peace officers.

(ii) The division shall pay witness fees and mileage from the Transportation Fund in accordance with the rates established in Section [~~21-5-4~~] 78-46-28.

(i) If after a hearing, the Driver License Division determines that the person was requested to submit to a chemical test or tests and refused to submit to the test or tests, or if the person fails to appear before the Driver License Division as required in the notice, the Driver License Division shall revoke his license or permit to operate a motor vehicle in Utah beginning on the date the hearing is held for a period of:

(i) (A) 18 months unless Subsection (2)(i)(i)(B) applies; or

(B) 24 months if the person has had a previous license sanction after July 1, 1993, under this section, Section 41-6-44.6, 53-3-223, 53-3-231, 53-3-232, or a conviction after July 1, 1993, under Section 41-6-44.

(ii) The Driver License Division shall also assess against the person, in addition to any fee imposed under Subsection 53-3-205(14), a fee under Section 53-3-105, which shall be paid before the person's driving privilege is reinstated, to cover administrative costs.

(iii) The fee shall be cancelled if the person obtains an unappealed court decision following a proceeding allowed under this Subsection (2) that the revocation was improper.

(j) (i) Any person whose license has been revoked by the Driver License Division under this section may seek judicial review.

(ii) Judicial review of an informal adjudicative proceeding is a trial. Venue is in the district court in the county in which the offense occurred.

(3) Any person who is dead, unconscious, or in any other condition rendering him incapable of refusal to submit to any chemical test or tests is considered to not have withdrawn the consent provided for in Subsection (1), and the test or tests may be administered whether the person has been arrested or not.

(4) Upon the request of the person who was tested, the results of the test or tests shall be made available to him.

(5) (a) Only a physician, registered nurse, practical nurse, or person authorized under Section 26-1-30, acting at the request of a peace officer, may withdraw blood to determine the alcoholic or drug content. This limitation does not apply to taking a urine or breath specimen.

(b) Any physician, registered nurse, practical nurse, or person authorized under Section 26-1-30 who, at the direction of a peace officer, draws a sample of blood from any person whom a peace officer has reason to believe is driving in violation of this chapter, or hospital or medical facility at which the sample is drawn, is immune from any civil or criminal liability arising from drawing the sample, if the test is administered according to standard medical practice.

(6) (a) The person to be tested may, at his own expense, have a physician of his own choice administer a chemical test in addition to the test or tests administered at the direction of a peace officer.

(b) The failure or inability to obtain the additional test does not affect admissibility of the results of the test or tests taken at the direction of a peace officer, or preclude or delay the test or tests to be taken at the direction of a peace officer.

(c) The additional test shall be subsequent to the test or tests administered at the direction of a peace officer.

(7) For the purpose of determining whether to submit to a chemical test or tests, the person to be tested does not have the right to consult an attorney or have an attorney, physician, or other person present as a condition for the taking of any test.

(8) If a person under arrest refuses to submit to a chemical test or tests or any additional test under this section, evidence of any refusal is admissible in any civil or criminal action or proceeding arising out of acts alleged to have been committed while the person was operating or in actual physical control of a motor vehicle while under the influence of alcohol, any drug, combination of alcohol and any drug, or while having any measurable controlled substance or metabolite of a controlled substance in the person's body.

Section 15. Section 53-3-223 is amended to read:

53-3-223. Chemical test for driving under the influence -- Temporary license -- Hearing and decision -- Suspension and fee -- Judicial review.

(1) (a) If a peace officer has reasonable grounds to believe that a person may be violating or has violated Section 41-6-44, prohibiting the operation of a vehicle with a certain blood or breath alcohol concentration and driving under the influence of any drug, alcohol, or combination of a drug and alcohol or while having any measurable controlled substance or metabolite of a controlled substance in the person's body in violation of Section 41-6-44.6, the peace officer may, in connection with arresting the person, request that the person submit to a chemical test or tests to be administered in compliance with the standards under Section 41-6-44.10.

(b) In this section, a reference to Section 41-6-44 includes any similar local ordinance adopted in compliance with Subsection 41-6-43(1).

(2) The peace officer shall advise a person prior to the person's submission to a chemical test that a test result indicating a violation of Section 41-6-44 or 41-6-44.6 shall, and the existence of a blood alcohol content sufficient to render the person incapable of safely driving a motor vehicle may, result in suspension or revocation of the person's license to drive a motor vehicle.

(3) If the person submits to a chemical test and the test results indicate a blood or breath alcohol content in violation of Section 41-6-44 or 41-6-44.6, or if the officer makes a determination, based on reasonable grounds, that the person is otherwise in violation of Section 41-6-44, the officer directing administration of the test or making the determination shall serve on the person, on behalf of the division, immediate notice of the division's intention to suspend the person's license to drive a motor vehicle.

(4) (a) When the officer serves immediate notice on behalf of the division he shall:

(i) take the Utah license certificate or permit, if any, of the driver;

(ii) issue a temporary license certificate effective for only 29 days; and

(iii) supply to the driver, on a form to be approved by the division, basic information regarding how to obtain a prompt hearing before the division.

(b) A citation issued by the officer may, if approved as to form by the division, serve also as the temporary license certificate.

(5) As a matter of procedure, the peace officer serving the notice shall send to the division within ten calendar days after the date of arrest and service of the notice:

(a) the person's license certificate;

(b) a copy of the citation issued for the offense;

(c) a signed report on a form approved by the division indicating the chemical test results, if any; and

(d) any other basis for the officer's determination that the person has violated Section 41-6-44 or 41-6-44.6.

(6) (a) Upon written request, the division shall grant to the person an opportunity to be heard within 29 days after the date of arrest. The request to be heard shall be made within ten calendar days of the date of the arrest.

(b) A hearing, if held, shall be before the division in the county in which the arrest occurred, unless the division and the person agree that the hearing may be held in some other county.

(c) The hearing shall be documented and shall cover the issues of:

(i) whether a peace officer had reasonable grounds to believe the person was driving a motor vehicle in violation of Section 41-6-44 or 41-6-44.6;

(ii) whether the person refused to submit to the test; and

(iii) the test results, if any.

(d) (i) In connection with a hearing the division or its authorized agent:

(A) may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers; or

(B) may issue subpoenas for the attendance of necessary peace officers.

(ii) The division shall pay witness fees and mileage from the Transportation Fund in accordance with the rates established in Section [~~21-5-4~~] 78-46-28.

(e) The division may designate one or more employees to conduct the hearing.

(f) Any decision made after a hearing before any designated employee is as valid as if made by the division.

(g) After the hearing, the division shall order whether the person's license to drive a motor vehicle is suspended or not.

(h) If the person for whom the hearing is held fails to appear before the division as required in the notice, the division shall order whether the person's license to drive a motor vehicle is suspended or not.

(7) (a) A first suspension, whether ordered or not challenged under this Subsection (7), is for a period of 90 days, beginning on the 30th day after the date of the arrest.

(b) A second or subsequent suspension under this subsection is for a period of one year, beginning on the 30th day after the date of arrest.

(8) (a) The division shall assess against a person, in addition to any fee imposed under Subsection 53-3-205(14) for driving under the influence, a fee under Section 53-3-105 to cover administrative costs, which shall be paid before the person's driving privilege is reinstated. This fee shall be cancelled if the person obtains an unappealed division hearing or court decision that the suspension was not proper.

(b) A person whose license has been suspended by the division under this Subsection (8) may file a petition within 30 days after the suspension for a hearing on the matter which, if held, is governed by Section 53-3-224.

Section 16. Section 63-38-3.3, which is renumbered from Section 21-7-2 is renumbered and amended to read:

[~~21-7-2~~]. 63-38-3.3. Payment of fees prerequisite to service -- Exception.

(1) (a) [~~The state~~] State and county officers [~~mentioned in this title~~] required by law to charge

fees may not perform any official service unless the fees prescribed for that service are paid in advance.

(b) When the fee is paid, the officer shall perform the services required.

(c) An officer is liable upon his official bond for every failure or refusal to perform an official duty when the fees are tendered.

(2) Except as provided for payment of filing fees of county and municipal improvement district filings in compliance with Sections 17A-3-207 and 17A-3-307, no fees may be charged:

(a) to the officer's state, or any county or subdivision of the state;

(b) to any public officer acting for the state, county, or subdivision;

(c) in cases of habeas corpus;

(d) in criminal causes before final judgment;

(e) for administering and certifying the oath of office;

(f) for swearing pensioners and their witnesses; or

(g) for filing and recording bonds of public officers.

Section 17. Section 63-55-235 is amended to read:

63-55-235. Repeal dates, Title 35A.

(1) Title 35A, Utah Workforce Services Code, is repealed July 1, 2005.

(2) Section 35A-3-114, the Displaced Homemaker Program, together with the provision for funding that program contained in Subsection [~~21-2-8~~] 17-16-21(2)(b), is repealed July 1, 2007.

Section 18. Section 63-63a-8 is amended to read:

63-63a-8. Children's Legal Defense Account.

(1) There is created a restricted account within the General Fund known as the Children's Legal Defense Account.

(2) The purpose of the Children's Legal Defense Account is to provide for programs that protect and defend the rights, safety, and quality of life of children.

(3) The Legislature shall appropriate money from the account for the administrative and related costs of the following programs:

(a) implementing the Mandatory Educational Course on Children's Needs for Divorcing Parents relating to the effects of divorce on children as provided in Sections 30-3-4, 30-3-7, 30-3-10.3, 30-3-11.3, 30-3-15.3, and 30-3-18, and the Mediation Pilot Program - Child Custody or Visitation as provided in Sections 30-3-15.3 and 30-3-18;

(b) implementing the use of guardians ad litem as provided in Sections 30-3-5.2, 78-3a-318, 78-3a-912, 78-11-6, and 78-7-9; the training of guardian ad litems and volunteers as provided in Section 78-3a-912; and termination of parental rights as provided in Sections 78-3a-118, 78-3a-119, 78-3a-903, and Title 78, Chapter 3a, Part 4, Termination of Parental Rights Act. This account may not be used to supplant funding for the guardian ad litem program in the juvenile court as provided in Section 78-3a-912; and

(c) implementing and administering the Expedited Visitation Enforcement Pilot Program as provided in Section 30-3-38.

(4) The following withheld fees shall be allocated only to the Children's Legal Defense Account and used only for the purposes provided in Subsections (3)(a) through (c):

(a) the additional $10 fee withheld on every marriage license issued in the state of Utah as provided in Section [~~21-2-8~~] 17-16-21; and

(b) a fee of $2 shall be withheld from the existing civil filing fee collected on any complaint, affidavit, or petition in a civil, probate, or adoption matter in every court of record.

(5) The Division of Finance shall allocate the monies described in Subsection (4) from the General Fund to the Children's Legal Defense Account.

(6) Any funds in excess of $200,000 remaining in the restricted account as of June 30 of any fiscal year shall lapse into the General Fund.

Section 19. Section 67-1a-2.5 (Effective 04/30/01), which is renumbered from Section 21-1-2 (Effective 04/30/01) is renumbered and amended to read:

[~~21-1-2 (Effective 04/30/01)~~]. 67-1a-2.5 (Effective 04/30/01). Fees of lieutenant governor.

In addition to the fees prescribed by Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, and Title 16, Chapter 10a, Utah Revised Business Corporation Act, the lieutenant governor shall receive and determine fees pursuant to Section 63-38-3.2 for the following:

(1) for a copy of any law, resolution, record, or other document or paper on file in the lieutenant governor's office, other than documents or papers filed under Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, and Title 16, Chapter 10a, Utah Revised Business Corporation Act;

(2) for affixing certificate and the Great Seal of the state, except on documents filed under Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, and Title 16, Chapter 10a, Utah Revised Business Corporation Act;

(3) for each commission signed by the governor, except that no charge may be made for commissions to public officers serving without compensation;

(4) for each warrant of arrest issued by the governor and attested by the lieutenant governor upon the requisition of any other state or territory;

(5) for recording miscellaneous papers or documents;

(6) for filing any paper or document not otherwise provided for; and

(7) for searching records and archives of the state, except that no member of the Legislature or other state or county officer may be charged for any search relative to matters appertaining to the duties of his office or for a certified copy of any law or resolution relative to his official duties passed by the Legislature.

Section 20. Section 67-1a-2.5 (Superseded 04/30/01), which is renumbered from Section 21-1-2 (Superseded 04/30/01) is renumbered and amended to read:

[~~21-1-2 (Superseded 04/30/01)~~]. 67-1a-2.5 (Superseded 04/30/01). Fees of lieutenant governor.

In addition to the fees prescribed by Title 16, Chapter 10a, Utah Revised Business Corporation Act, and Title 16, Chapter 6, Utah Nonprofit Corporation and Cooperative Association Act, the lieutenant governor shall receive and determine fees pursuant to Section 63-38-3.2 for the following:

(1) for a copy of any law, resolution, record, or other document or paper on file in his office, other than documents or papers filed under Title 16, Chapter 10a, Utah Revised Business Corporation Act, and Title 16, Chapter 6, Utah Nonprofit Corporation and Cooperative Association Act;

(2) for affixing certificate and the Great Seal of the state, except on documents filed under Title 16, Chapter 10a, Utah Revised Business Corporation Act, and Title 16, Chapter 6, Utah Nonprofit Corporation and Cooperative Association Act;

(3) for each commission signed by the governor, except that no charge may be made for commissions to public officers serving without compensation;

(4) for each warrant of arrest issued by the governor and attested by the lieutenant governor upon the requisition of any other state or territory;

(5) for recording miscellaneous papers or documents;

(6) for filing any paper or document not otherwise provided for; and

(7) for searching records and archives of the state, except that no member of the Legislature or other state or county officer may be charged for any search relative to matters appertaining to the duties of his office or for a certified copy of any law or resolution relative to his official duties passed by the Legislature.

Section 21. Section 67-3-1.5, which is renumbered from Section 21-1-3 is renumbered and amended to read:

[~~21-1-3~~]. 67-3-1.5. Fees of state auditor.

The state auditor shall receive the following fees:

For a copy of any paper filed or recorded in his office, 20 cents per folio.

For affixing certificate, with or without seal, $1.

For filing any paper not otherwise provided for, $1.

Section 22. Section 70A-9-403 (Repealed 07/01/01) is amended to read:

70A-9-403 (Repealed 07/01/01). What constitutes filing -- Required statement -- Duration of filing -- Effect of lapsed filing -- Duties of filing officer.

(1) Presentation for filing by the Division of Corporations and Commercial Code, or for recording, indexing, and abstracting by tract by the county recorder of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this chapter.

(2) Except as provided in Subsection (6), a filed financing statement is effective for a period of five years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of the five-year period unless a continuation statement is filed prior to the lapse. If a security interest perfected by filing exists at the time insolvency proceedings are commenced by or against the debtor, the security interest remains perfected until termination of the insolvency proceedings and thereafter for a period of 60 days or until expiration of the five-year period, whichever occurs later. Upon lapse, the security interest becomes unperfected, unless it is perfected without filing. If the security interest becomes unperfected upon lapse, it is considered to have been unperfected as against a person who became a purchaser or lien creditor before lapse.

(3) (a) A continuation statement may be filed by the secured party within six months prior to the expiration of the five-year period specified in Subsection (2). Any such continuation statement must be signed by the secured party, identify the original statement by file number or by entry numbers and book and page numbers and state that the original statement is still effective. A continuation statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with Subsection 70A-9-405(2), including payment of the required fee. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for five years after the last date to which the filing was effective whereupon it lapses in the same manner as provided in Subsection (2) unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement.

(b) Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it immediately if the filing officer has retained a microfilm or other photographic record, or in other cases after one year after the lapse. The

filing officer shall so arrange matters by physical annexation of financing statements to continuation statement or other related filings, or by other means, that if the filing officer physically destroys the financing statements of a period more than five years past, those which have been continued by a continuation statement or which are still effective under Subsection (6) shall be retained.

(4) Except as provided in Subsection (7), a filing officer shall mark each statement with a file number and with the date and hour of filing and shall hold the statement or a microfilm or other photographic copy thereof for public inspection. In addition, the filing officer shall index the statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement.

(5) The fees for filing and indexing and for stamping a copy furnished by the secured party to show the date and place of filing for an original financing statement or for a continuation statement shall be determined by the Division of Corporations and Commercial Code pursuant to Section 63-38-3.2. The secured party may at the secured party's option show a trade name for any person and an extra indexing fee determined by the Division of Corporations and Commercial Code pursuant to Section 63-38-3.2 shall be paid with respect thereto.

(6) If the debtor is a transmitting utility (Subsection 70A-9-401(5)) and a filed financing statement so states, it is effective until a termination statement is filed. A real estate mortgage which is effective as a fixture filing under Subsection 70A-9-402(6) remains effective as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real estate.

(7) When a financing statement covers timber to be cut or covers minerals or the like (including oil and gas) subject to Subsection 70A-9-103(5), or accounts, or is recorded as a fixture filing, the county recorder shall record and index it under the names of the debtor and any owner of record shown on the financing statement in the same fashion as if they were the mortgagors in a mortgage of the real estate described, and under the name of the secured party as if the secured party were the mortgagee thereunder, or where indexing is by description, record and index it in the same fashion as if the financing statement were a mortgage of the real estate described. Original statements, once duly marked and recorded by the county recorder, may be returned to the party making the filing. Except as provided in Subsection 70A-9-404(3), filings made in the office of the county recorder shall be subject to the provisions of Section [~~21-2-8~~] 17-16-21 in lieu of the fees provided in this chapter.

Section 23. Section 70A-9-404 (Repealed 07/01/01) is amended to read:

70A-9-404 (Repealed 07/01/01). Termination statement.

(1) If a financing statement covering consumer goods is filed on or after July 1, 1977, then within one month or within ten days following written demand by the debtor after there is no outstanding secured obligation and no commitment to make advances, incur obligations, or otherwise give value, the secured party must file with each filing officer with whom the financing statement was filed, a termination statement to the effect that he no longer claims a security interest under the financing statement, which shall be identified by file number or by entry number and book and page numbers. In other cases, whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations, or otherwise give value, the secured party must, on written demand by the debtor, send the debtor, for each filing officer with whom the financing statement was filed, a termination statement to the effect that he no longer claims a security interest under the financing statement, which shall be identified by file number or by entry number and book and page numbers. A termination statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record complying with Subsection (2) of Section 70A-9-405, including payment of the required fee. If the affected secured party fails to file such a termination statement as required by this Subsection (1), or to send such a termination statement within ten days after proper demand therefor, he shall be liable to the debtor for $100, and in addition, for any loss caused to the debtor by such failure.

(2) On presentation to the filing officer of such a termination statement, he must duly file the same. If he has received the termination statement in duplicate, he shall return one copy of the termination statement to the secured party stamped to show the time of receipt thereof. If the filing officer has a microfilm or other photographic record of the financing statement, and of any related continuation statement, statement of assignment and statement of release, he may remove the originals from the files at any time after receipt of the termination statement, or if he has no such record, he may remove them from the files at any time after one year after receipt of the termination statement.

(3) No fee shall be charged for filing and indexing a termination statement including sending or delivering the financing statement, except that filings made in the office of the county recorder shall be subject to the provisions of Section [~~21-2-8~~] 17-16-21 in lieu of the no-fee provision in this chapter.

Section 24. Section 70A-9a-525 (Effective 07/01/01) is amended to read:

70A-9a-525 (Effective 07/01/01). Fees.

(1) Except as otherwise provided in Subsection (3), the fee for the Division of Corporations and Commercial Code filing and indexing a record under this part, including an initial financing statement of the kind described in Subsection 70A-9a-502(3), shall:

(a) be determined by the Division of Corporations and Commercial Code;

(b) be reasonable and fair; and

(c) reflect the cost of services provided.

(2) The fee for the Division of Corporations and Commercial Code responding to a request for information from the Division of Corporations and Commercial Code, including for issuing a record showing whether there is on file any financing statement naming a particular debtor shall:

(a) be determined by the Division of Corporations and Commercial Code;

(b) be reasonable and fair; and

(c) reflect the cost of services provided.

(3) (a) This section does not require a fee with respect to a record of a mortgage which is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut under Subsection 70A-9a-502(3). However, the recording and satisfaction fees that otherwise would be applicable to the record of the mortgage apply.

(b) (i) This section does not apply to fees charged by a filing office described in Subsection 70A-9a-501(1)(a).

(ii) A filing office described in Subsection 70A-9a-501(1)(a) shall charge fees in accordance with Section [~~21-2-3~~] 17-21-18.5.

Section 25. Section 77-18-10 is amended to read:

77-18-10. Petition -- Expungement of records of arrest, investigation, and detention -- Eligibility conditions -- No filing fee.

(1) A person who has been arrested with or without a warrant may petition the court in which the proceeding occurred or, if there were no court proceedings, any court in the jurisdiction where the arrest occurred, for an order expunging any and all records of arrest, investigation, and detention which may have been made in the case, subject to the following conditions:

(a) at least 30 days have passed since the arrest for which expungement is sought;

(b) there have been no intervening arrests; and

(c) one of the following occurred:

(i) the person was released without the filing of formal charges;

(ii) proceedings against the person were dismissed;

(iii) the person was discharged without a conviction and no charges were refiled within 30 days;

(iv) the person was acquitted at trial; or

(v) the record of any proceedings against the person has been sealed.

(2) (a) A person seeking expungement under Subsection (1) may petition the court for expungement before the expiration of the 30 days required by Subsection (1)(a) if he believes extraordinary circumstances exist and the court orders the division to proceed with the eligibility process.

(b) A court may, with the receipt of a certificate of eligibility, order expungement if the court finds that the petitioner is eligible for relief under this subsection and in the interest of justice the order should be issued prior to the expiration of the 30-day period required by Subsection (1)(a).

(3) As provided in Subsection [~~21-1-5~~] 78-7-35(1)(i), there is no fee for a petition filed under Subsection (2).

(4) The petitioner shall file a certificate of eligibility issued by the division to be reviewed by the prosecuting attorney and the court prior to issuing an order granting the expungement.

(5) If the court finds that the petitioner is eligible for relief under this section, it shall issue an order granting the expungement.

(6) No filing fees or other administrative charges shall be assessed against a successful petitioner under this section.

(7) A person who has received expungement of an arrest under this section may respond to any inquiry as though the arrest did not occur, unless otherwise provided by law.

Section 26. Section 78-5-135.5, which is renumbered from Section 21-7-19 is renumbered and amended to read:

[~~21-7-19~~]. 78-5-135.5. Justice court judge to collect fees before filing action -- Penalty.

Every justice court judge who files in his office any complaint, or allows a civil action to be commenced in his court, without the fees being paid in advance, except in cases permitted by law, is guilty of a class B misdemeanor.

Section 27. Section 78-6-14 is amended to read:

78-6-14. Civil filing fees.

(1) Except as provided in this section, the fees for a small claims action in justice court shall be the same as provided in Section [~~21-1-5~~] 78-7-35.

(2) Fees collected in small claims actions filed in municipal justice court are remitted to the municipal treasurer. Fees collected in small claims actions filed in a county justice court are remitted to the county treasurer.

(3) (a) Seven dollars and 50 cents shall be withheld from the fee for the small claims affidavit and allocated to the Judges' Retirement Trust Fund. Five dollars shall be withheld from the fee for a small claims counter affidavit and allocated to the Judges' Retirement Trust Fund.

(b) Two dollars withheld from the civil filing fee in a court of record as provided in Subsection 63-63a-8(4)(b) shall not apply to the fees collected for small claims actions in justice court.

(4) The fee in the justice court for filing a notice of appeal for trial de novo in a court of record is $10. The fee covers all services of the justice court on appeal but does not satisfy the trial de novo filing fee in the court of record.

Section 28. Section 78-7-35, which is renumbered from Section 21-1-5 is renumbered and amended to read:

[~~21-1-5~~]. 78-7-35. Civil fees of the courts of record -- Courts complex design.

(1) (a) The fee for filing any civil complaint or petition invoking the jurisdiction of a court of record not governed by another subsection is $120.

(b) The fee for filing a complaint or petition is:

(i) $37 if the claim for damages or amount in interpleader exclusive of court costs, interest, and attorney fees is $2,000 or less;

(ii) $80 if the claim for damages or amount in interpleader exclusive of court costs, interest, and attorney fees is greater than $2,000 and less than $10,000;

(iii) $120 if the claim for damages or amount in interpleader is $10,000 or more; and

(iv) $80 if the petition is filed under Title 30, Chapter 3, Divorce, or Title 30, Chapter 4, Separate Maintenance.

(c) The fee for filing a small claims affidavit is:

(i) $37 if the claim for damages or amount in interpleader exclusive of court costs, interest, and attorney fees is $2,000 or less; and

(ii) $60 if the claim for damages or amount in interpleader exclusive of court costs, interest, and attorney fees is greater than $2,000.

(d) The fee for filing a counter claim, cross claim, complaint in intervention, third party complaint, or other claim for relief against an existing or joined party other than the original complaint or petition is:

(i) $45 if the claim for relief exclusive of court costs, interest, and attorney fees is $2,000 or less;

(ii) $60 if the claim for relief exclusive of court costs, interest, and attorney fees is greater than $2,000 and less than $10,000;

(iii) $90 if the original petition is filed under Subsection (1)(a), the claim for relief is $10,000 or more, or the party seeks relief other than monetary damages; and

(iv) $60 if the original petition is filed under Title 30, Chapter 3, Divorce, or Title 30, Chapter 4, Separate Maintenance.

(e) The fee for filing a small claims counter affidavit is:

(i) $35 if the claim for relief exclusive of court costs, interest, and attorney fees is $2,000 or less; and

(ii) $50 if the claim for relief exclusive of court costs, interest, and attorney fees is greater than $2,000.

(f) The fee for depositing funds under Section 57-1-29 when not associated with an action already before the court is determined under Subsection (1)(b) based on the amount deposited.

(g) The fee for filing a petition is:

(i) $70 for trial de novo of an adjudication of the justice court or of the small claims department; and

(ii) $40 for an appeal of a municipal administrative determination in accordance with Section 10-3-703.7.

(h) The fee for filing a notice of appeal, petition for appeal of an interlocutory order, or petition for writ of certiorari is $190.

(i) (i) Except for a petition filed under Subsection 77-18-10(2), the fee for filing a petition for expungement is $50.

(ii) There is no fee for a petition filed under Subsection 77-18-10(2).

(j) (i) Fifteen dollars of the fees established by Subsections (1)(a) through (i) shall be allocated to the Judges' Retirement Trust Fund, as provided in Title 49, Chapter 6, Judges' Retirement Act.

(ii) Two dollars of the fees established by Subsections (1)(a) through (i) shall be allocated by the state treasurer to be deposited in the restricted account, Children's Legal Defense Account, as provided in Section 63-63a-8.

(iii) One dollar of the fees established under Subsections (1)(a) through (e), (1)(g), and (1)(r) shall be allocated to and deposited with the Dispute Resolution Fund as provided in Section 78-31b-9.

(k) The fee for filing a judgment, order, or decree of a court of another state or of the United States is $25.

(l) The fee for filing probate or child custody documents from another state is $25.

(m) (i) The fee for filing an abstract or transcript of judgment, order, or decree of the Utah State Tax Commission is $30.

(ii) The fee for filing an abstract or transcript of judgment of a court of law of this state or a judgment, order, or decree of an administrative agency, commission, board, council, or hearing officer of this state or of its political subdivisions other than the Utah State Tax Commission, is $40.

(n) The fee for filing a judgment by confession without action under Section 78-22-3 is $25.

(o) The fee for filing an award of arbitration for confirmation, modification, or vacation under Title 78, Chapter 31a, Utah Arbitration Act, that is not part of an action before the court is $25.

(p) The fee for filing a petition or counter-petition to modify a decree of divorce is $30.

(q) The fee for filing any accounting required by law is:

(i) $10 for an estate valued at $50,000 or less;

(ii) $20 for an estate valued at $75,000 or less but more than $50,000;

(iii) $40 for an estate valued at $112,000 or less but more than $75,000;

(iv) $80 for an estate valued at $168,000 or less but more than $112,000; and

(v) $150 for an estate valued at more than $168,000.

(r) The fee for filing a demand for a civil jury is $50.

(s) The fee for filing a notice of deposition in this state concerning an action pending in another state under Utah Rule of Civil Procedure 26 is $25.

(t) The fee for filing documents that require judicial approval but are not part of an action before the court is $25.

(u) The fee for a petition to open a sealed record is $25.

(v) The fee for a writ of replevin, attachment, execution, or garnishment is $20 in addition to any fee for a complaint or petition.

(w) The fee for a petition for authorization for a minor to marry required by Section 30-1-9 is $5.

(x) The fee for a certificate issued under Section 26-2-25 is $2.

(y) The fee for a certified copy of a document is $2 per document plus 50 cents per page.

(z) The fee for an exemplified copy of a document is $4 per document plus 50 cents per page.

(aa) The Judicial Council shall by rule establish a schedule of fees for copies of documents and forms and for the search and retrieval of records under Title 63, Chapter 2, Government Records Access and Management Act. Fees under this subsection shall be credited to the court as a reimbursement of expenditures.

(bb) There is no fee for services or the filing of documents not listed in this section or otherwise provided by law.

(cc) Except as provided in this section, all fees collected under this section are paid to the General Fund. Except as provided in this section, all fees shall be paid at the time the clerk accepts the pleading for filing or performs the requested service.

(dd) The filing fees under this section may not be charged to the state, its agencies, or political subdivisions filing or defending any action. In judgments awarded in favor of the state, its agencies, or political subdivisions, except the Office of Recovery Services, the court shall order the filing fees and collection costs to be paid by the judgment debtor. The sums collected under this subsection shall be applied to the fees after credit to the judgment, order, fine, tax, lien, or other penalty and costs permitted by law.

(2) (a) (i) From March 17, 1994 until June 30, 1998, the administrator of the courts shall transfer all revenues representing the difference between the fees in effect after May 2, 1994, and the fees in effect before February 1, 1994, as dedicated credits to the Division of Facilities Construction and Management Capital Projects Fund.

(ii) (A) Except as provided in Subsection (2)(a)(ii)(B), the Division of Facilities Construction and Management shall use up to $3,750,000 of the revenue deposited in the Capital Projects Fund under this Subsection (2)(a) to design and take other actions necessary to initiate the development of a courts complex in Salt Lake City.

(B) If the Legislature approves funding for construction of a courts complex in Salt Lake City in the 1995 Annual General Session, the Division of Facilities Construction and Management shall use the revenue deposited in the Capital Projects Fund under Subsection (2)(a)(ii) to construct a courts complex in Salt Lake City.

(C) After the courts complex is completed and all bills connected with its construction have been paid, the Division of Facilities Construction and Management shall use any monies remaining in the Capital Projects Fund under Subsection (2)(a)(ii) to fund the Vernal District Court building.

(iii) The Division of Facilities Construction and Management may enter into agreements and make expenditures related to this project before the receipt of revenues provided for under this Subsection (2)(a)(iii).

(iv) The Division of Facilities Construction and Management shall:

(A) make those expenditures from unexpended and unencumbered building funds already appropriated to the Capital Projects Fund; and

(B) reimburse the Capital Projects Fund upon receipt of the revenues provided for under this Subsection (2).

(b) After June 30, 1998, the administrator of the courts shall ensure that all revenues representing the difference between the fees in effect after May 2, 1994, and the fees in effect before February 1, 1994, are transferred to the Division of Finance for deposit in the restricted account.

(c) The Division of Finance shall deposit all revenues received from the court administrator into the restricted account created by this section.

(d) (i) From May 1, 1995 until June 30, 1998, the administrator of the courts shall transfer $7 of the amount of a fine or bail forfeiture paid for a violation of Title 41, Motor Vehicles, in a court of record to the Division of Facilities Construction and Management Capital Projects Fund. The division of money pursuant to Section 78-3-14.5 shall be calculated on the balance of the fine or bail forfeiture paid.

(ii) After June 30, 1998, the administrator of the courts or a municipality shall transfer $7 of the

amount of a fine or bail forfeiture paid for a violation of Title 41, Motor Vehicles, in a court of record or an administrative traffic proceeding in accordance with Section 10-3-703.5 to the Division of Finance for deposit in the restricted account created by this section. The division of money pursuant to Section 78-3-14.5 shall be calculated on the balance of the fine or bail forfeiture paid.

(3) (a) There is created within the General Fund a restricted account known as the State Courts Complex Account.

(b) The Legislature may appropriate monies from the restricted account to the administrator of the courts for the following purposes only:

(i) to repay costs associated with the construction of the court complex that were funded from sources other than revenues provided for under this Subsection (3)(b)(i); and

(ii) to cover operations and maintenance costs on the court complex.

Section 29. Section 78-7-35.1, which is renumbered from Section 21-1-4 is renumbered and amended to read:

[~~21-1-4~~]. 78-7-35.1. Fees for certificate of admission.

The appellate courts shall receive a $50 fee for a certificate of admission as attorney and counselor, $30 of which shall be retained by the state treasurer for the benefit of the State Law Library, to be expended by the Judicial Council.

Section 30. Section 78-7-36, which is renumbered from Section 21-7-3 is renumbered and amended to read:

[~~21-7-3~~]. 78-7-36. Impecunious litigants -- Affidavit.

(1) For purposes of this section:

(a) "Convicted" means a conviction by entry of a plea of guilty or nolo contendere, guilty and mentally ill, no contest, and conviction of any crime or offense.

(b) "Prisoner" means a person who has been convicted of a crime and is incarcerated for that crime or is being held in custody for trial or sentencing.

(2) As provided in this chapter, any person may institute, prosecute, defend, and appeal any cause in any court in this state without prepayment of fees and costs or security, by taking and subscribing, before any officer authorized to administer an oath, an affidavit of impecuniosity demonstrating financial inability to pay fees and costs or give security.

(3) The affidavit shall contain complete information on the party's:

(a) identity and residence;

(b) amount of income, including government financial support, alimony, child support;

(c) assets owned, including real and personal property;

(d) business interests;

(e) accounts receivable;

(f) securities, checking and savings account balances;

(g) debts; and

(h) monthly expenses.

(4) If the party is a prisoner, he shall also disclose the amount of money held in his prisoner trust account at the time the affidavit is executed as provided in Section [~~21-7-4.5~~] 78-7-38.

(5) In addition to the financial disclosures, the affidavit shall state the following:

I, A B, do solemnly swear or affirm that due to my poverty I am unable to bear the expenses of the action or legal proceedings which I am about to commence or the appeal which I am about to take, and that I believe I am entitled to the relief sought by the action, legal proceedings, or appeal.

Section 31. Section 78-7-37, which is renumbered from Section 21-7-4 is renumbered and amended to read:

[~~21-7-4~~]. 78-7-37. Effect of filing affidavit -- Nonprisoner.

(1) Upon the filing of the oath or affirmation with any Utah court by a nonprisoner, the court shall review the affidavit and make an independent determination based on the information provided whether court costs and fees should be waived entirely or in part. Notwithstanding the party's statement of inability to pay court costs, the court shall require a partial or full filing fee where the financial information provided demonstrates an ability to pay a fee.

(2) In instances where fees or costs are completely waived, the court shall immediately file any complaint or papers on appeal and do what is necessary or proper as promptly as if the litigant had fully paid all the regular fees. The constable or sheriff shall immediately serve any summonses, writs, process and subpoenas, and papers necessary or proper in the prosecution or defense of the cause, for the impecunious person as if all the necessary fees and costs had been fully paid.

(3) However, in cases where an impecunious affidavit is filed, the judge shall question the person who filed the affidavit at the time of hearing the cause as to his ability to pay. If the judge opines that the person is reasonably able to pay the costs, the judge shall direct the judgment or decree not be entered in favor of that person until the costs are paid. The order may be cancelled later upon petition if the facts warrant cancellation.

Section 32. Section 78-7-38, which is renumbered from Section 21-7-4.5 is renumbered and amended to read:

[~~21-7-4.5~~]. 78-7-38. Effect of filing affidavit -- Procedure for review and collection.

(1) As used in this section, "prisoner" means a person who has been convicted of a crime and is incarcerated for that crime or is being held in custody for trial or sentencing.

(2) (a) Upon receipt of the oath or affirmation filed with any Utah court by a prisoner, the court shall immediately request the institution or facility where the prisoner is incarcerated to provide an account statement detailing all financial activities in the prisoner's trust account for the previous six months or since the time of incarceration, whichever is shorter.

(b) The incarcerating facility shall:

(i) prepare and produce to the court the prisoner's six-month trust account statement, current trust account balance, and aggregate disposable income; and

(ii) calculate aggregate disposable income by totaling all deposits made in the prisoner's trust account during the six-month period and subtracting all funds automatically deducted or otherwise garnished from the account during the same period.

(3) The court shall:

(a) review both the affidavit of impecuniosity and the financial account statement; and

(b) based upon the review, independently determine whether or not the prisoner is financially capable of paying all the regular fees and costs associated with filing the action.

(4) When the court concludes that the prisoner is unable to pay full fees and costs, the court shall assess an initial partial filing fee equal to 50% of the prisoner's current trust account balance or 10% of the prisoner's six-month aggregate disposable income, whichever is greater.

(5) (a) After payment of the initial partial filing fee, the court shall require the prisoner to make monthly payments of 20% of the preceding month's aggregate disposable income until the regular filing fee associated with the civil action is paid in full.

(b) The agency having custody of the prisoner shall:

(i) garnish the prisoner's account each month; and

(ii) once the collected fees exceed $10, forward payments to the clerk of the court until the filing fees are paid.

(c) Nothing in this section may be construed to prevent the agency having custody of the prisoner from withdrawing funds from the prisoner's account to pay court-ordered restitution.

(6) Collection of the filing fees continues despite dismissal of the action.

(7) The filing fee collected may not exceed the amount of fees permitted by statute for the commencement of a civil action or an appeal of a civil action.

Section 33. Section 78-7-39, which is renumbered from Section 21-7-4.6 is renumbered and amended to read:

[~~21-7-4.6~~]. 78-7-39. Notice of filing fee -- Consequence of nonpayment.

(1) When an affidavit of impecuniosity has been filed and the court assesses an initial filing fee, the court shall immediately notify the litigant in writing of:

(a) the initial filing fee required as a prerequisite to proceeding with the action;

(b) the procedure available to challenge the initial filing fee assessment as provided in Section [~~21-7-4.7~~] 78-7-40; and

(c) the inmate's ongoing obligation to make monthly payments until the entire filing fee is paid.

(2) The court may not authorize service of process or otherwise proceed with the action, except as provided in Section [~~21-7-4.7~~] 78-7-40, until the initial filing fee has been completely paid to the clerk of the court.

Section 34. Section 78-7-40, which is renumbered from Section 21-7-4.7 is renumbered and amended to read:

[~~21-7-4.7~~]. 78-7-40. Filing fee challenge -- Court powers.

(1) Within ten days of receiving court notice requiring an initial filing fee under Section [~~21-7-4.6~~] 78-7-39, the litigant may contest the fee assessment by filing a memorandum and supporting documentation with the court demonstrating inability to pay the fee.

(2) The court shall review the memorandum and supporting documents challenging the fee assessment for facial validity.

(3) The court may reduce the initial filing fee, authorize service of process, or otherwise proceed with the action without prepayment of costs and fees if the memorandum shows the litigant:

(a) has lost his source of income;

(b) has unaccounted nondiscretionary expenses limiting his ability to pay;

(c) will suffer immediate irreparable harm if the action is unnecessarily delayed; or

(d) will otherwise lose the cause of action by unnecessary delays associated with securing funds necessary to satisfy the assessed filing fee.

(4) Nothing in this section shall be construed to relieve the litigant from the ongoing obligation of monthly payments until the filing fee is paid in full.

Section 35. Section 78-7-41, which is renumbered from Section 21-7-5 is renumbered and amended to read:

[~~21-7-5~~]. 78-7-41. Failure to serve papers -- Penalty.

Any justice court judge, clerk, or officer refusing to file or serve the papers is guilty of a class B misdemeanor.

Section 36. Section 78-7-42, which is renumbered from Section 21-7-6 is renumbered and amended to read:

[~~21-7-6~~]. 78-7-42. Liability for fees if successful in litigation.

Nothing herein contained shall prevent a justice court judge, clerk, constable, or sheriff from collecting his regular fees for all services so rendered for such poor person, in the event the poor person is successful in his litigation, and all fees and costs shall be regularly taxed and included in any judgment recovered by the poor person, and the fees and costs shall be paid to a justice court judge, clerk, constable, or sheriff. If the poor person fails in his action or appeal, then the costs of the action or appeal shall be adjudged against him.

Section 37. Section 78-7-43, which is renumbered from Section 21-7-7 is renumbered and amended to read:

[~~21-7-7~~]. 78-7-43. False affidavit -- Penalty.

If it is made to appear to the court by affidavit that the affidavit or affirmation is untrue, or that the action or appeal is frivolous or malicious or without merit, the court may make a rule on the affiant, fixing a day not less than five days from the date of service of such notice, requiring such affiant to appear at a fixed time and place to show cause, if any he has, why he should not give bond and security for the costs of his action or appeal, or pay the legal fees therefor, and, on failure so to do, why his action or appeal should not be dismissed. Should the court be of the opinion that the affidavit or affirmation is untrue, or that said action or appeal is frivolous, malicious or without merit, the court in which such action or appeal is pending may dismiss it.

Section 38. Section 78-7-44, which is renumbered from Section 21-7-20 is renumbered and amended to read:

[~~21-7-20~~]. 78-7-44. Fees for writ of garnishment -- Single or continuing.

(1) Any creditor who serves or causes to be served a writ of garnishment upon the garnishee shall pay to the garnishee:

(a) $10 for a single garnishment; and

(b) $25 for a continuing garnishment.

(2) The creditor shall pay the fee directly to the garnishee.

Section 39. Section 78-28-1 is amended to read:

78-28-1. Online court assistance program -- Purpose of program -- User's fee.

(1) There is established an online court assistance program administered by the Administrative Office of the Courts to provide the public with information about civil procedures and to assist the public in preparing and filing civil pleadings and other papers in:

(a) uncontested divorces;

(b) enforcement of orders in the divorce decree;

(c) landlord and tenant actions; and

(d) other types of proceedings approved by the Online Court Assistance Program Policy Board.

(2) The purpose of the online court assistance program shall be to:

(a) minimize the costs of civil litigation;

(b) improve access to the courts; and

(c) provide for informed use of the courts and the law by pro se litigants.

(3) (a) An additional $20 shall be added to the filing fee established by Section [~~21-1-5~~] 78-7-35 if a person files a complaint, petition, answer, or response prepared through the program. There shall be no fee for using the program or for papers filed subsequent to the initial pleading.

(b) There is created within the General Fund a restricted account known as the Online Court Assistance Account. The fee collected under this Subsection (3) shall be deposited in the restricted account and appropriated by the Legislature to the Administrative Office of the Courts to develop, operate, and maintain the program and to support the use of the program through education of the public.

Section 40. Section 78-31b-9 is amended to read:

78-31b-9. Dispute Resolution Fund -- Appropriation.

There is created within the General Fund a restricted account known as the Dispute Resolution Fund. Fees established in Subsections [~~21-1-5~~] 78-7-35(1)(a) through (e), (1)(g), and (1)(r) shall be allocated to and deposited in the fund. The Legislature shall annually appropriate money from the Dispute Resolution Fund to the Administrative Office of the Courts to implement the purposes of the Alternative Dispute Resolution Act.

Section 41. Section 78-46-1 is amended to read:

78-46-1. Title.

This chapter is known as the "Jury [~~Selection and Service~~] and Witness Act."

Section 42. Section 78-46-24, which is renumbered from Section 21-5-1 is renumbered and amended to read:

[~~21-5-1~~]. 78-46-24. Judicial Council rules governing jury and witness fee payment.

The Judicial Council shall adopt rules governing the method of payment of fees, mileage, and other expenses of jurors and witnesses, authorization for payment, record of payment, and the audit of payment records.

Section 43. Section 78-46-25, which is renumbered from Section 21-5-1.5 is renumbered and amended to read:

[~~21-5-1.5~~]. 78-46-25. State payment for jurors and subpoenaed persons -- Appropriations and costs -- Expenses in justice court.

(1) The state is responsible for payment of all fees and expenses authorized by law for prosecution witnesses, witnesses subpoenaed by indigent defendants, and interpreter costs in criminal actions in the courts of record and actions in the juvenile court. The state is responsible for payment of all fees and expenses authorized by law for jurors in the courts of record. For such payments, the Judicial Council shall receive an annual appropriation contained in a separate line item appropriation.

(2) If expenses exceed the line item appropriation, the administrator of the courts shall submit a claim against the state to the Board of Examiners and request the board to recommend and submit a supplemental appropriation request to the Legislature for the deficit incurred.

(3) In the justice courts, the fees, mileage, and other expenses authorized by law for jurors, prosecution witnesses, witnesses subpoenaed by indigent defendants, and interpreter costs shall be paid by the municipality if the action is prosecuted by the city attorney, and by the county if the action is prosecuted by the county attorney or district attorney.

Section 44. Section 78-46-26, which is renumbered from Section 21-5-2 is renumbered and amended to read:

[~~21-5-2~~]. 78-46-26. Witness and jurors fees in criminal cases -- Daily report of attendance.

Every witness in a criminal case subpoenaed for the state, or for a defendant by order of the court at the expense of the state, and every juror, whether grand or trial, shall, unless temporarily excused, in person report daily to the clerk his attendance at court from the time of his appearance to the date of his discharge, and no per diem shall be allowed for any day upon which attendance is not so reported.

Section 45. Section 78-46-27, which is renumbered from Section 21-5-3 is renumbered and amended to read:

[~~21-5-3~~]. 78-46-27. Statement of service of witness or juror -- Certificate.

Whenever a grand juror, or a witness for the state before the grand jury, is finally discharged, the foreman of the grand jury shall furnish to the clerk of the district court a statement containing information necessary for the clerk to make the juror's or witness's certificate.

Section 46. Section 78-46-28, which is renumbered from Section 21-5-4 is renumbered and amended to read:

[~~21-5-4~~]. 78-46-28. Fees and mileage.

(1) Every juror and witness legally required or in good faith requested to attend a trial court of record or not of record or a grand jury is entitled to:

(a) $18.50 for the first day of attendance and $49 per day for each subsequent day of attendance; and

(b) if traveling more than 50 miles, $1 for each four miles in excess of 50 miles actually and necessarily traveled in going only, regardless of county lines.

(2) Persons in the custody of a penal institution upon conviction of a criminal offense are not entitled to a witness fee.

(3) A witness attending from outside the state in a civil case is allowed mileage at the rate of 25 cents per mile and is taxed for the distance actually and necessarily traveled inside the state in going only.

(4) If the witness is attending from outside the state in a criminal case, the state shall reimburse the witness under Section 77-21-3.

(5) A prosecution witness or a witness subpoenaed by an indigent defendant attending from outside the county but within the state may receive reimbursement for necessary lodging and meal expenses under rule of the Judicial Council.

(6) There is created within the General Fund, a restricted account known as the CASA Volunteer Account. A juror may donate the juror's fee to the CASA Volunteer Account in $18.50 or $49 increments. The Legislature shall annually appropriate money from the CASA Volunteer Account to the Administrative Office of the Courts for the purpose of recruiting, training, and supervising volunteers for the Court Appointed Special Advocate program established pursuant to Section 78-3a-912.

Section 47. Section 78-46-29, which is renumbered from Section 21-5-4.5 is renumbered and amended to read:

[~~21-5-4.5~~]. 78-46-29. Food allowance for jurors -- Sequestration costs.

(1) Jurors may be provided with a reasonable food allowance under the rules of the Judicial Council.

(2) When a jury has been placed in sequestration by order of the court, the necessary expenses for food and lodging shall be provided under the rules of the Judicial Council.

Section 48. Section 78-46-30, which is renumbered from Section 21-5-8 is renumbered and amended to read:

[~~21-5-8~~]. 78-46-30. Witness fees in civil cases -- How paid -- Taxed as costs.

The fees and compensation of witnesses in all civil causes shall be paid by the party who causes the witnesses to attend. A witness is not obliged to attend court in a civil cause when subpoenaed unless his fees for one day's attendance are tendered or paid to him on demand, or his fees for attendance for each day are tendered or paid to him on demand. The fees of witnesses paid in civil

causes may be taxed as costs against the losing party.

Section 49. Section 78-46-31, which is renumbered from Section 21-5-11 is renumbered and amended to read:

[~~21-5-11~~]. 78-46-31. Justice court judge -- Certificate of attendance -- Records and reporting.

(1) Every justice court judge shall give to each person who has served before him as a juror or as a witness in a criminal cause when summoned for the prosecution by the county or city attorney, or for the defense by order of the court, a numbered certificate, in which must be stated:

(a) the name of the juror or witness;

(b) the title of the proceeding;

(c) the number of days in attendance;

(d) the number of miles traveled if the witness has traveled more than 50 miles in going only; and

(e) the amount due.

(2) The certificate shall be presented to the county or city attorney. When certified by him as being correct, it shall be presented to the county or city auditor and when allowed by the county executive or town council, the auditor shall draw his warrant for it on the treasurer.

(3) Every justice court judge shall keep a record of all certificates issued by him. The record shall show all of the facts stated in each certificate. On the first Monday of each month he shall file with the treasurer a detailed statement of all certificates issued.

Section 50. Section 78-46-32, which is renumbered from Section 21-5-14 is renumbered and amended to read:

[~~21-5-14~~]. 78-46-32. When criminal defense witness may be called at expense of state.

A witness for a defendant in a criminal cause may not be subpoenaed at the expense of the state, county, or city, except upon order of the court. The order shall be made only upon affidavit of the defendant, showing:

(1) the defendant is impecunious and unable to pay the per diems of the witness;

(2) the evidence of the witness is material for defendant's defense as he is advised by his counsel, if he has counsel; and

(3) the defendant cannot safely proceed to trial without the witness.

Section 51. Section 78-46-33, which is renumbered from Section 21-5-14.5 is renumbered and amended to read:

[~~21-5-14.5~~]. 78-46-33. Expenses for expert witnesses.

(1) The court may appoint any expert witness agreed upon by the parties or of its own selection. The court shall inform the expert of required duties in writing and a copy shall be filed with the court record.

(2) The appointed expert shall advise the court and the parties of findings and may be called to testify by the court or by any party. The expert witness is subject to cross-examination by each party.

(3) The court shall determine the reasonable compensation of the expert and order payment. The parties may call expert witnesses of their own at their own expense. Upon a showing that a defendant is financially unable to pay the compensation of an expert whose services are necessary for an adequate defense, the compensation shall be paid as if the expert were called on behalf of the prosecution.

(4) Payment by the court for an expert witness in a criminal case is limited to the fee and mileage allowance for witnesses under Section [~~21-5-4~~] 78-46-28 and necessary meals and lodging expenses as provided by rule of the Judicial Council. Compensation of an expert witness beyond the statutory fee and mileage allowance shall be paid by the parties under Subsection (3).

Section 52. Section 78-46-34, which is renumbered from Section 21-5-15 is renumbered and amended to read:

[~~21-5-15~~]. 78-46-34. Officials subpoenaed not entitled to fee or per diem -- Exception.

No officer of the United States, or of the State of Utah, or of any county, incorporated city or town within the State of Utah, shall receive any witness fee or per diem when testifying in a criminal proceeding unless the officer is required to testify at a time other than during his or her normal working hours.

Section 53. Section 78-46-35, which is renumbered from Section 21-5-16 is renumbered and amended to read:

[~~21-5-16~~]. 78-46-35. Only one fee per day allowed.

No witness shall receive fees in more than one criminal cause on the same day.

Section 54. Section 78-46-36, which is renumbered from Section 21-5-17 is renumbered and amended to read:

[~~21-5-17~~]. 78-46-36. Interpreters' fees taxed as costs.

Interpreters and translators, including those skilled in foreign languages and communication with the deaf, shall be allowed such compensation for their services as the court may allow, to be taxed and collected as other costs.

Section 55. Section 78-46-37, which is renumbered from Section 21-5-18 is renumbered and amended to read:

[~~21-5-18~~]. 78-46-37. Jury fee assessments -- Payment.

(1) The court has discretionary authority in any civil or criminal action or proceeding triable by jury

to assess the entire cost of one day's juror fees against either the plaintiff or defendant or their counsel, or to divide the cost and assess them against both plaintiff and defendant or their counsel, or additional parties plaintiff or defendant, if:

(a) a jury demand has been made and is later withdrawn within the 48 hours preceding the commencement of the trial; or

(b) the case is settled or continued within 48 hours of trial without just cause for not having settled or continued the case prior to the 48-hour period.

(2) The party assessed shall make payment to the clerk of the court within a prescribed period. Payment shall be enforced by contempt proceedings.

(3) The court clerk shall transfer the assessment to the state treasury, or the auditor of the city or county incurring the juror expenses.

Section 56. Section 78-46-38, which is renumbered from Section 21-6-5 is renumbered and amended to read:

[~~21-6-5~~]. 78-46-38. Statement of certificates -- Contents -- Payment by state.

At the end of each quarter it shall be the duty of the county treasurer and the county auditor of each county to prepare in duplicate and verify under oath a full and complete itemized statement of all certificates issued by the clerk of the district court since the date of the last statement for mileage and attendance of grand jurors, for mileage and attendance of trial jurors engaged in the trial of criminal causes in the district court, and for mileage and attendance of witnesses summoned by or on behalf of the state in criminal causes in the district court. The statement shall set forth in detail the number of each certificate, the date of same, the name of the person in whose favor issued, the nature of the service rendered, and such other information as may be necessary and required by the state auditor. Within 30 days of the end of the quarter one of these statements shall be transmitted to the state auditor and the other shall be filed in the office of the county clerk. Upon the timely receipt of this statement by the state auditor he shall, unless he finds the same to be incorrect, draw his warrant in favor of the county treasurer upon the state treasurer for the whole amount of jurors' and witnesses' certificates as shown by the statement, and shall transmit the same to the county treasurer. The county treasurer shall hold the funds drawn from the state treasury upon the certificates for mileage and attendance of jurors and witnesses as a separate fund for the redemption of jurors' and witnesses' certificates.

Section 57. Section 78-46-39, which is renumbered from Section 21-7-16 is renumbered and amended to read:

[~~21-7-16~~]. 78-46-39. Witnesses or jurors -- Certifying excessive fees a felony.

Every clerk or judge of any court, county attorney, district attorney, or other officer who shall certify as a fact any matter which he knows to be untrue, whereby any witness or juror shall be allowed a greater sum than he would otherwise be entitled to under the provisions of this title, is guilty of a felony.

Section 58. Section 78-46-40, which is renumbered from Section 21-7-17 is renumbered and amended to read:

[~~21-7-17~~]. 78-46-40. Purchase of certificate forbidden.

No person connected officially with any of the district courts of this state, and no state, district, county or precinct officer, shall purchase or cause to be purchased any certificate issued to any juror or witness under the provisions of this title. Any person who violates the provisions of this section is guilty of a misdemeanor.

Section 59. Section 78-46-41, which is renumbered from Section 21-7-18 is renumbered and amended to read:

[~~21-7-18~~]. 78-46-41. Limit of time for presentation of certificate.

Any holder of a witness's or juror's certificate specified in this title shall be required to present it to the county treasurer or to the county auditor, as the case may be, of the county where such certificate was issued within one year from the date of its issuance. If the same shall not be presented for payment within that time, it shall be invalid and shall not be paid.

Section 60. Section 78-56-108 is amended to read:

78-56-108. Transcripts and copies -- Fees -- Establishment of Court Reporting Technology Account.

(1) The Judicial Council shall by rule provide for a standard page format for transcripts of court hearings.

(2) (a) The fee for a transcript of a court session, or any part of a court session, shall be $3.50 per page, which includes the initial preparation of the transcript and one certified copy. The preparer shall deposit the original transcript with the clerk of the court and provide the person requesting the transcript with the certified copy. The cost of additional copies shall be as provided in Subsection [~~21-1-5~~] 78-7-35(1). The transcript for an appeal shall be prepared within the time period permitted by the rules of Appellate Procedure. The fee for a transcript prepared within three business days of the request shall be 1-1/2 times the base rate. The fee for a transcript prepared within one business day of the request shall be double the base rate.

(b) When a transcript is ordered by the court, the fees shall be paid by the parties to the action in

equal proportion or as ordered by the court. The fee for a transcript in a criminal case in which the defendant is found to be impecunious shall be paid pursuant to Section 77-32-305.

(c) There is established within the General Fund a restricted account known as the Court Reporting Technology Account. The clerk of the court shall transfer to the state treasurer for deposit into this account all fees received under this section. The state court administrator may draw upon this account for the purchase, development, and maintenance of court reporting technologies and for other expenses necessary for maintaining a verbatim record of court sessions.

(3) The fee for the preparation of a transcript of a court hearing by an official court transcriber other than an official court reporter and the fee for the preparation of the transcript by a certified shorthand reporter of a hearing before any referee, master, board, or commission of this state shall be as provided in Subsection (2)(a), and shall be payable to the person preparing the transcript.

Section 61. Repealer.

This act repeals:

Section 21-1-1, Collection in advance by state officers.

Section 21-6-1, Elective state officers' fees.

Section 21-6-2, County officers' fees.

Section 21-6-3, Verification of statement of fees.

Section 21-6-6, Salaries of state officers withheld until fees accounted for.

Section 21-6-7, Salaries of county officers withheld until fees accounted for.

Section 21-7-1, Accounts of all fees to be kept.

Section 21-7-9, Fee book to be kept.

Section 21-7-10, Schedule of fees to be posted.

Section 21-7-11, Cost of publications to be advanced.

Section 21-7-12, Receipts to be given -- Penalty.

Section 21-7-13, Breach of duty respecting fees -- Penalty.

Section 21-7-14, Office declared vacant.

Section 21-7-15, Exacting excessive fees -- Penalty.

CHAPTER 47
H. B. 49
Passed February 8, 2001
Approved February 22, 2001
Effective April 30, 2001

VEHICLE SUSPENSION LIFT LAWS

Sponsor: DeMar Bud Bowman
Thomas V. Hatch
Bradley T. Johnson
Greg J. Curtis
Michael R. Styler
Jack A. Seitz
Gordon E. Snow
Brad King
Bradley A. Winn
Mike Thompson
Craig W. Buttars
Brent D. Parker
John E. Swallow
Bryan D. Holladay
Carl W. Duckworth
Glenn A. Donnelson
Neal B. Hendrickson
David L. Hogue
Gary F. Cox
James R. Gowans
Matt Throckmorton
Brent H. Goodfellow
James A. Ferrin
Roger E. Barrus
David Clark
Paul Ray
Stephen H. Urquhart
Darin G. Peterson
Richard M. Siddoway
Max W. Young

This act modifies the Motor Vehicle Code by amending motor vehicle frame height requirements and related provisions.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
41-6-148.29, as enacted by Chapter 128, Laws of Utah 1987
41-6-148.31, as last amended by Chapter 1, Laws of Utah 1992
41-6-148.32, as last amended by Chapter 10, Laws of Utah 1989
41-6-148.33, as enacted by Chapter 128, Laws of Utah 1987
41-6-150.10, as last amended by Chapter 73, Laws of Utah 2000
53-1-108, as enacted by Chapter 234, Laws of Utah 1993

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

Section 1. Section 41-6-148.29 is amended to read:

41-6-148.29. Vehicles subject to Sections 41-6-148.29 through 41-6-148.33 -- Definitions.

(1) Sections 41-6-148.29 through 41-6-148.33 apply to all motor vehicles with an original manufacturer's gross vehicle weight rating of [~~10,000~~] 15,000 pounds or less operated or parked on a highway within the state.

(2) As used in Sections 41-6-148.29 through 41-6-148.33:

(a) "Commissioner" means the commissioner of the Department of Public Safety.

(b) "Frame" means the main longitudinal structural members of the chassis of the vehicle or, for vehicles with unitized body construction, the lowest longitudinal structural member of the body of the vehicle.

(c) "Frame height" means the vertical distance between the ground and the lowest point on the frame. The distance is measured [~~from the ground to the lowest point on the frame where the front bumper is normally attached,~~] when the vehicle is unladen and on a level surface.

(d) "Gross vehicle weight rating (GVWR)" means the original manufacturer's gross vehicle weight rating, whether or not the vehicle is modified by use of parts not originally installed by the original manufacturer.

(e) "Manufacturer" means any person engaged in manufacturing or assembling new motor vehicles utilizing new parts or components, or a person defined as a manufacturer in current applicable Federal Motor Vehicle Safety Standards (FMVSS).

(f) "Mechanical alteration" or "mechanical lift" means modification or alteration of the axles, chassis, suspension, or body by any means, including tires and wheels, and excluding any load, which affects the frame height of the motor vehicle.

(g) "O.E.M." means original equipment manufacturer.

(h) "Original equipment" means an item of motor vehicle equipment, including tires, which were installed in or on a motor vehicle or available as an option for the particular vehicle from the original manufacturer at the time of its delivery to the first purchaser.

[~~(i) "Original manufacturer's height" means the highest distance, inclusive of the largest tires, and highest suspension available as standard or optional equipment for the particular vehicle from the original manufacturer.~~]

[~~(j) "Reconstructed motor vehicle" means any motor vehicle constructed or assembled principally with used parts or components.~~]

[~~(k) "Wheel base" means the shortest distance between the center of the front axle and the center of the rear axle.~~]

[~~(l)~~] (i) "Wheel track" means the shortest distance between the center of the tire treads on the same axle. On vehicles having dissimilar axle widths, the axle with the widest distance is used for all calculations.

(3) The provisions of Sections 41-6-148.29 through 41-6-148.33 do not apply to the following vehicles:

(a) implements of husbandry;

(b) farm tractors;

(c) road machinery;

(d) road rollers; and

(e) historical vehicles or horseless carriages that have been restored as near to original condition as is reasonably possible.

Section 2. Section 41-6-148.31 is amended to read:

41-6-148.31. Standards applicable to vehicles.

(1) The following standards apply to vehicles under Sections 41-6-148.29 through 41-6-148.33:

[~~(a) Fractions shall be excluded in all measurements and calculations.~~]

[~~(b) Due to slight variances in production tolerances, violations are in excess of one inch beyond the limits set by this section.~~]

[~~(c) (i) Maximum heights are measured from a level surface to the bottom of the frame where the front bumper is attached by the original manufacturer.~~]

[~~(ii) The distance of the original manufacturer's height is measured with the vehicle unladen and resting on a level surface or at any other location determined by the commissioner.~~]

[~~(iii) The appropriate method of measurement among the following shall be used:~~]

[~~(A) from the ground to the lowest edge of the center line of the operator's door;~~]

[~~(B) from the ground to the lowest point where that door would meet the body on vehicles without doors; or~~]

[~~(C) from the ground to the lowest point on the floor panel directly below the operator's position on vehicles designed without doors.~~]

[~~(iv) The commissioner shall periodically provide rules specifying approved maximum altered heights.~~]

[~~(d)~~] (a) All replacement parts and equipment used in a mechanical alteration shall be designed and capable of performing the function for which they are intended and shall be equal to or greater in strength and durability than the original parts provided by the original manufacturer.

[~~(e) The lowest portion of the body floor shall be not more than two inches above the top of the frame.~~]

[~~(f) The~~] (b) Except for original equipment, the use of spacers to increase wheel track width of any vehicle is prohibited.

[~~(g)~~] (c) The use of axle blocks to alter the suspension on the front axle of any vehicle is prohibited.

(d) The stacking of two or more axle blocks of any vehicle is prohibited.

(2) (a) In doubtful or unusual cases, or to meet specific industrial requirements, personnel of the Utah Highway Patrol shall inspect the vehicle to determine the road worthiness and safe condition of the vehicle and whether it complies with Sections 41-6-148.29 through 41-6-148.33.

(b) If the vehicle complies, the Utah Highway Patrol shall issue a permit of approval that shall be carried in the vehicle.

(3) (a) Upon notice to the party to whom the motor vehicle is registered, the Department of Public Safety shall suspend the registration of any motor vehicle equipped, altered, or modified in violation of Sections 41-6-148.29 through 41-6-148.33.

(b) The Motor Vehicle Division shall, under Subsection 41-1a-109(1)(e) or (2), refuse to register any motor vehicle it has reason to believe is equipped, altered, or modified in violation of Sections 41-6-148.29 through 41-6-148.33.

Section 3. Section 41-6-148.32 is amended to read:

41-6-148.32. Prohibitions.

(1) A person may not operate on any highway within the state a motor vehicle that is mechanically altered or changed [~~and weighs~~]:

[~~(a) less than 6,000 pounds unladen, if the vertical distance between the highway surface and the vehicle chassis and suspension components, other than the wheels, is less than one inch above the vertical distance between the highway surface and the lowest portion of the rim of any wheel in contact with the highway;~~]

[~~(b) 6,000 pounds or more unladen, if the lowest part of the body or chassis is closer to the ground than it was when the vehicle was manufactured by the O.E.M., or the distance between the ground and the bottom of the vehicle frame where the front bumper is normally attached is less than that distance was at the time the vehicle was manufactured.~~]

[~~(2) (a) A motor vehicle may not be altered or modified~~]

(a) in any way that may cause the vehicle body or chassis to come in contact with the roadway, expose the fuel tank to damage from collision, or cause the wheels to come in contact with the body under normal operation[~~.~~];

(b) [~~No part of the original braking, steering, or suspension system may be altered, modified, disconnected, or changed~~] in any manner that may impair the safe operation of the vehicle[~~.~~];

(c) so that any part of the vehicle other than tires, rims, and mudguards are less than three inches above the ground;

(d) to a frame height of more than 24 inches for a motor vehicle with a gross vehicle weight rating of less than 4,500 pounds;

(e) to a frame height of more than 26 inches for a motor vehicle with a gross vehicle weight rating of at least 4,500 pounds and less than 7,500 pounds;

(f) to a frame height of more than 28 inches for a motor vehicle with a gross vehicle weight rating of at least 7,500 pounds;

(g) by stacking or attaching vehicle frames (one from on top of or beneath another frame); or

(h) so that the lowest portion of the body floor is raised more than three inches above the top of the frame.

[~~(3) The~~] (2) If the wheel track [~~may be~~] is increased [~~by use of tires and rims for a maximum total increase of six inches~~] beyond the O.E.M. specification, [~~provided~~] the top 50% of the tires [~~are~~] shall be covered by the original fenders, by rubber, or other flexible fender extenders under any loading condition.

[~~(4) Any motor vehicle having a wheel base greater than 100 inches may increase the O.E.M. height by use of a mechanical lift up to four inches. The largest tire size available from the O.E.M. as standard or optional equipment for the particular motor vehicle may also be increased up to four inches. The maximum combined mechanical and tire lift is eight inches above O.E.M. height.~~]

[~~(5) (a) The maximum combined lift for motor vehicles with a wheel base of 100 inches or less shall be calculated by multiplying the O.E.M. wheel base times the O.E.M. wheel track. The product divided by a safety factor of 2,200 equals the maximum mechanical lift allowed.~~]

[~~(b) For example: 92 inches w/b multiplied by 58 inches w/t equals 5,336 divided by 2,200 equals 2 inches maximum mechanical lift. The largest tire size available from the O.E.M. as standard or optional equipment for a particular motor vehicle may be increased, but not to exceed the maximum mechanical lift calculated under this subsection.~~]

[~~(6) (a) Reconstructed motor vehicles are limited to the maximum combined lift allowed for the particular chassis used in accordance with the applicable provisions of this subsection.~~]

[~~(b) For example: a 1985 Ford Bronco having a 105-inch wheel base is allowed a maximum combined lift of eight inches above the O.E.M. height. Accordingly, the lower edge of the door, door edge line, or floor panel, as defined in this part, of any unladen body mounted on the chassis may not exceed 27 inches above the level surface upon which the vehicle rests.~~]

[~~(7) Any vehicle measured to determine compliance with this section shall be on a level surface.~~]

[~~(8) This section does not apply to motor vehicles weighing more than 26,000 pounds gross registered vehicle weight that are subject to state or federal motor carrier laws, rules, or regulations.~~]

(3) A person who violates the provisions of this section is guilty of a class C misdemeanor.

Section 4. Section 41-6-148.33 is amended to read:

41-6-148.33. Bumpers.

(1) Every motor vehicle shall be equipped with a bumper on both front and rear of the vehicle, except those that were not originally designed or manufactured with a bumper or bumpers.

(2) (a) On all motor vehicles under [~~10,000~~] 15,000 GVWR, bumpers shall be:

(i) at least 4.5 inches in vertical height[~~,~~];

(ii) centered on the vehicle's center line[~~,~~]; and

(iii) extend no less than the width of the respective wheel track distance.

(b) Bumpers shall be securely mounted, horizontal load bearing, and attached to the vehicle's frame to effectively transfer impact when engaged.

(3) When any motor vehicle is originally or later equipped with bumpers, the bumpers shall be maintained in operational condition and shall comply with this [~~subsection~~] section.

Section 5. Section 41-6-150.10 is amended to read:

41-6-150.10. Mudguards or flaps at rear wheels of trucks, trailers, truck tractors, or altered motor vehicles -- Exemptions.

(1) The definitions in Section 41-6-148.29 apply to this section.

(2) (a) Except as provided in Subsections (3) and (4), when operated on a highway, [~~a motor vehicle~~] the following vehicles shall be equipped with wheel covers, mudguards, flaps, or splash aprons behind the rearmost wheels to prevent, as far as practicable, the wheels from throwing dirt, water, or other materials on other vehicles:

(i) a vehicle that has been altered:

(A) from the original manufacturer's frame height; or

(B) in any other manner so that the motor vehicle's wheels may throw dirt, water, or other materials on other vehicles;

(ii) any truck with a gross vehicle weight rating of 10,500 pounds or more;

(iii) any truck tractor; and

(iv) any trailer or semitrailer with an unladen weight of 750 pounds or more [~~shall be equipped with wheel covers, mudguards, flaps, or splash aprons behind the rearmost wheels to prevent, as far as practicable, the wheels from throwing dirt, water, or other materials on other vehicles~~].

(b) The wheel covers, mudguards, flaps, or splash aprons shall:

(i) be at least as wide as the tires they are protecting;

(ii) be directly in line with the tires; and

(iii) have a ground clearance of not more than 50% of the diameter of a rear-axle wheel, under any conditions of loading of the motor vehicle.

(3) Wheel covers, mudguards, flaps, or splash aprons are not required if the motor vehicle, trailer, or semitrailer is designed and constructed so that the requirements of Subsection (1) are accomplished by means of fenders, body construction, or other means of enclosure.

(4) Wheel covers, mudguards, flaps, or splash aprons are not required on a vehicle operated or driven during fair weather on well-maintained, hard-surfaced roads if the motor vehicle:

(a) was made in America prior to 1935;

(b) is registered as a vintage vehicle; or

(c) is a replica vehicle as defined under Section 41-6-155.5.

(5) Except as provided in Subsection (4), rear wheels not covered at the top by fenders, bodies, or other parts of the vehicle shall be covered at the top by protective means extending rearward at least to the center line of the rearmost axle.

Section 6. Section 53-1-108 is amended to read:

53-1-108. Commissioner's powers and duties.

(1) In addition to the responsibilities contained in this title, the commissioner shall:

(a) administer and enforce this title and Title 41, Chapter 12a, Financial Responsibility of Motor Vehicle Owners and Operators Act;

(b) appoint deputies, inspectors, examiners, clerical workers, and other employees as required to properly discharge the duties of the department;

(c) make rules:

(i) governing emergency use of signal lights on private vehicles; and

(ii) allowing privately owned vehicles to be designated for part-time emergency use, as provided in Section 41-6-1.5; [~~and~~]

[~~(iii) specifying approved maximum altered heights for vehicles, as required by Section 41-6-148.31;~~]

(d) set standards for safety belt systems, as required by Section 41-6-182;

(e) serve as the chairman of the Disaster Emergency Advisory Council, as required by Section 63-5-4; and

(f) designate vehicles as "authorized emergency vehicles," as required by Section 41-6-1.

(2) The commissioner may:

(a) subject to the approval of the governor, establish division headquarters at various places in the state;

(b) issue to a special agent a certificate of authority to act as a peace officer and revoke that authority for cause, as authorized in Section 56-1-21.5;

(c) create specialized units within the commissioner's office for conducting internal affairs and aircraft operations as necessary to protect the public safety;

(d) cooperate with any recognized agency in the education of the public in safety and crime prevention and participate in public or private partnerships, subject to Subsection (3);

(e) cooperate in applying for and distributing highway safety program funds; and

(f) receive and distribute federal funding to further the objectives of highway safety in compliance with the Federal Assistance Management Program Act.

(3) (a) Money may not be expended under Subsection (2)(d) for public safety education unless it is specifically appropriated by the Legislature for that purpose.

(b) Any recognized agency receiving state money for public safety shall file with the auditor of the state an itemized statement of all its receipts and expenditures.

CHAPTER 48
H. B. 74
Passed February 9, 2001
Approved February 22, 2001
Effective April 30, 2001

UNAUTHORIZED CONTROL OF A MOTOR VEHICLE AMENDMENTS

Sponsor: Gary F. Cox

This act amends Criminal Code and the Motor Vehicle Act provisions regarding the theft of motor vehicles, by providing that wrongful appropriation of or unauthorized control of a motor vehicle is a lesser included offense of theft. The act also removes the references to trailers and semitrailers in the section regarding unauthorized control of a motor vehicle.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
41-1a-1314, as last amended by Chapter 100, Laws of Utah 1997
76-6-404.5, as last amended by Chapter 21, Laws of Utah 1999

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

Section 1. Section 41-1a-1314 is amended to read:

41-1a-1314. Unauthorized control for extended time.

(1) Except as provided in Subsection (3), it is a class A misdemeanor for a person to exercise unauthorized control over a motor vehicle[~~, trailer, or semitrailer,~~] that is not his own, without the consent of the owner or lawful custodian, and with the intent to temporarily deprive the owner or lawful custodian of possession of the motor vehicle[~~, trailer, or semitrailer~~].

(2) The consent of the owner or legal custodian of a motor vehicle[~~, trailer, or semitrailer~~] to its control by the actor is not in any case presumed or implied because of the owner's or legal custodian's consent on a previous occasion to the control of the motor vehicle[~~, trailer, or semitrailer~~] by the same or a different person.

(3) Violation of this section is a third degree felony if:

(a) the person does not return the motor vehicle[~~, trailer, or semitrailer~~] to the owner or lawful custodian within 24 hours after the exercise of unlawful control; or

(b) regardless of the mental state or conduct of the person committing the offense:

(i) the motor vehicle[~~, trailer, or semitrailer~~] is damaged in an amount of $500 or more;

(ii) the motor vehicle[~~, trailer, or semitrailer~~] is used to commit a felony; or

(iii) the motor vehicle[~~, trailer, or semitrailer~~] is damaged in any amount to facilitate entry into it or its operation.

(4) It is not a defense to Subsection (3)(a) that someone other than the person, or an agent of the person, returned the motor vehicle[~~, trailer, or semitrailer~~] within 24 hours.

(5) A violation of this section is a lesser included offense of theft under Section 76-6-404, when the theft is of an operable motor vehicle under Subsection 76-6-412(1)(a)(i).

Section 2. Section 76-6-404.5 is amended to read:

76-6-404.5. Wrongful appropriation -- Penalties.

(1) A person commits wrongful appropriation if he obtains or exercises unauthorized control over the property of another, without the consent of the owner or legal custodian and with intent to temporarily appropriate, possess, or use the property or to temporarily deprive the owner or legal custodian of possession of the property.

(2) The consent of the owner or legal custodian of the property to its control by the actor is not presumed or implied because of the owner's or legal custodian's consent on a previous occasion to the control of the property by any person.

(3) Wrongful appropriation is punishable one degree lower than theft, as provided in Section 76-6-412, so that a violation which would have been:

(a) a second degree felony under Section 76-6-412 if it had been theft is a third degree felony if it is wrongful appropriation;

(b) a third degree felony under Section 76-6-412 if it had been theft is a class A misdemeanor if it is wrongful appropriation;

(c) a class A misdemeanor under Section 76-6-412 if it had been theft is a class B misdemeanor if it is wrongful appropriation; and

(d) a class B misdemeanor under Section 76-6-412 if it had been theft is a class C misdemeanor if it is wrongful appropriation.

(4) Wrongful appropriation is a lesser included offense of the offense of theft under Section 76-6-404.

CHAPTER 49
H. B. 195
Passed February 7, 2001
Approved February 22, 2001
Effective April 30, 2001

DEPARTMENT OF HEALTH-
FEE PROCESS

Sponsor: Kevin S. Garn

This act modifies the Health Code to clarify the oversight the Legislature has regarding fees assessed by the Department of Health for services. The act makes technical changes.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
26-1-6, as enacted by Chapter 126, Laws of Utah 1981

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

Section 1. Section 26-1-6 is amended to read:

26-1-6. Fee schedule adopted by department.

(1) The department may adopt a schedule of fees that may be assessed for services rendered by the department, provided that [~~such~~] the fees [~~shall be~~] are:

(a) reasonable and fair; and [~~shall be~~]

(b) submitted to [~~and approved by~~] the Legislature as part of the department's annual appropriations request. [~~Such fees~~]

(2) When the department submits a fee schedule to the Legislature, the Legislature, in accordance with Section 63-38-3.2 may:

(a) approve the fee;

(b) increase or decrease and approve the fee; or

(c) reject any fee submitted to it.

(3) Fees approved by the Legislature pursuant to this section shall be paid into the state treasury in accordance with Section 63-38-9.

CHAPTER 50
H. B. 200
Passed February 9, 2001
Approved February 22, 2001
Effective April 30, 2001

IGNITION INTERLOCK AMENDMENTS

Sponsor: A. Lamont Tyler

This act modifies the Motor Vehicles Code to exclude DUI offenders whose offense involves drugs other than alcohol from ignition interlock restrictions. This act requires providers to cover the ignition interlock costs of impecunious offenders and clarifies ignition interlock restriction criminal violations.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
41-6-44.7, as last amended by Chapter 334, Laws of Utah 2000

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

Section 1. Section 41-6-44.7 is amended to read:

41-6-44.7. Ignition interlock devices -- Use -- Probationer to pay cost -- Impecuniosity -- Fee.

(1) As used in this section:

(a) "Commissioner" means the commissioner of the Department of Public Safety.

(b) "Ignition interlock system" or "system" means a constant monitoring device or any similar device certified by the commissioner that prevents a motor vehicle from being started without first determining the driver's breath alcohol concentration.

(c) "Probation provider" means the supervisor and monitor of the ignition interlock system required as a condition of probation or as otherwise ordered by the court who contracts with the court in accordance with Subsections 41-6-44(14)(b) and (c).

(2) (a) In addition to any other penalties imposed under Section 41-6-44, and in addition to any requirements imposed as a condition of probation, the court may require that any person who is convicted of violating Section 41-6-44 and who is granted probation may not operate a motor vehicle during the period of probation unless that motor vehicle is equipped with a functioning, certified ignition interlock system installed and calibrated so that the motor vehicle will not start if the operator's blood alcohol concentration exceeds a level ordered by the court.

(b) If a person convicted of violating Section 41-6-44 was under the age of 21 when the violation occurred, the court shall order the installation of the ignition interlock system as a condition of probation.

(c) (i) If a person is convicted of a violation of Section 41-6-44 within six years of a prior conviction of that section, the court shall order the installation of the ignition interlock system, at the person's expense, for all motor vehicles registered to that person and all motor vehicles operated by that person for three years from the date of conviction.

(ii) The division shall post the ignition interlock restriction on the electronic record available to law enforcement.

(d) This section does not apply to a person convicted of a violation of Section 41-6-44 whose violation involves drugs other than alcohol.

(3) Except as provided in Subsection (2)(c), if the court imposes the use of an ignition interlock system as a condition of probation, the court shall:

(a) stipulate on the record the requirement for and the period of the use of an ignition interlock system;

(b) order that an ignition interlock system be installed on each motor vehicle owned or operated by the probationer, at the probationer's expense;

(c) order the probationer to submit his driver license to the Driver License Division in accordance with Subsection (5);

(d) immediately notify the Driver License Division and the person's probation provider of the order; and

(e) require the probationer to provide proof of compliance with the court's order to the probation provider within 30 days of the order.

(4) (a) The probationer shall provide timely proof of installation within 30 days of an order imposing the use of a system or show cause why the order was not complied with to the court or to the probationer's probation provider.

(b) The probation provider shall notify the court of failure to comply under Subsection (4)(a).

(c) For failure to comply under Subsection (4)(a) or upon receiving the notification under Subsection (4)(b), the court shall order the Driver License Division to suspend the probationer's driving privileges for the remaining period during which the compliance was imposed.

(d) Cause for failure to comply means any reason the court finds sufficiently justifiable to excuse the probationer's failure to comply with the court's order.

(5) (a) If use of an ignition interlock system is required under this section, the division may not issue, reinstate, or renew the driver license of that person unless that requirement is coded on the person's driver license.

(b) (i) If the division receives a notice that a person with a valid driver license that does not require a driver license withdrawal is required to use an ignition interlock system, the division shall notify the person that he has ten calendar days to

apply to the division for an ignition interlock system requirement coded on the license.

(ii) The division shall suspend the driver license of the person after the ten-day period until the person applies to the division for an ignition interlock system requirement coded on the license.

(6) (a) Any probationer required to install an ignition interlock system shall have the system monitored by the manufacturer or dealer of the system for proper use and accuracy at least semiannually and more frequently as the court may order.

(b) (i) A report of the monitoring shall be issued by the manufacturer or dealer to the court or the person's probation provider.

(ii) The report shall be issued within 14 days following each monitoring.

(7) (a) If an ignition interlock system is ordered installed, the probationer shall pay the reasonable costs of leasing or buying and installing and maintaining the system.

(b) A probationer may not be excluded from this section for inability to pay the costs, unless:

(i) the probationer files an affidavit of impecuniosity; and

(ii) the court enters a finding that the probationer is impecunious.

(c) In lieu of waiver of the entire amount of the cost, the court may direct the probationer to make partial or installment payments of costs when appropriate.

(d) [~~Subject to appropriation, the department shall lease or purchase the ignition interlock system and reimburse each installer maintaining the system provided to probationers for whom payment of costs has been waived or deferred on the grounds of indigency.~~] The ignition interlock provider shall cover the costs of waivers by the court under this Subsection (7).

[~~(8) (a) An additional fee of $100 shall be paid to the court by each probationer ordered to purchase, install, use, and maintain an ignition interlock system under this section.~~]

[~~(b) The fee shall be deposited with the department as a dedicated credit for the support costs incurred for indigent individuals under Subsection (7)(d).~~]

[~~(c) Failure to pay the fees required under this section shall, unless excused, constitute sufficient basis for a finding by the court at a hearing that the probationer has failed to comply with the terms of probation.~~]

[~~(9)~~] (8) (a) If a probationer is required in the course and scope of employment to operate a motor vehicle owned by the probationer's employer, the probationer may operate that motor vehicle in the course and scope of employment without installation of an ignition interlock system only if the employer has been notified that the employee is restricted and the employee has proof of the notification in his possession while operating the employer's motor vehicle.

(b) (i) To the extent that an employer-owned motor vehicle is made available to a probationer subject to this section for personal use, no exemption under this section shall apply.

(ii) A probationer intending to operate an employer-owned motor vehicle for personal use and who is restricted to the operation of a motor vehicle equipped with an ignition interlock system shall notify the employer and obtain consent in writing from the employer to install a system in the employer-owned motor vehicle.

(c) A motor vehicle owned by a business entity that is all or partly owned or controlled by a probationer subject to this section is not a motor vehicle owned by the employer and does not qualify for an exemption under this Subsection [~~(9)~~] (8).

[~~(10)~~] (9) Upon conviction for violation of this section, the court shall notify the Driver License Division to immediately suspend the probationer's license to operate a motor vehicle for the remainder of the period of probation.

[~~(11)~~] (10) (a) It is a class B misdemeanor for a person to:

(i) circumvent or tamper with the operation of an ignition interlock system;

(ii) knowingly furnish a motor vehicle without an ignition interlock system to someone who is not authorized to drive a motor vehicle unless the motor vehicle is equipped with an ignition interlock system that is in working order;

(iii) rent, lease, or borrow a motor vehicle without an ignition interlock system if a driving restriction is imposed under this section;

(iv) request another person to blow into an ignition interlock system, if the person is required to have a system and the person requests or solicits another to blow into the system to start the motor vehicle in order to circumvent the system;

(v) blow into an ignition interlock system or start a motor vehicle equipped with an ignition interlock system for the purpose of providing an operable motor vehicle to another person required to have a system; [~~and~~]

(vi) advertise for sale, offer for sale, sell, or lease an ignition interlock system unless the system has been certified by the commissioner and the manufacturer of the system has affixed a warning label, as approved by the commissioner on the system, stating that the tampering, circumventing, or other misuse of the system is a class B misdemeanor[~~.~~]; or

(vii) operate a motor vehicle in violation of any ignition interlock restriction.

(b) This Subsection [~~(11)~~] (10) does not apply if the starting of a motor vehicle, or the request to start a motor vehicle, equipped with an ignition interlock system is done for the purpose of safety or

mechanical repair of the system or the motor vehicle and the person subject to the court order does not drive the motor vehicle.

[~~(12)~~] (11) (a) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commissioner shall make rules setting standards for the certification of ignition interlock systems.

(b) The standards shall require that the system:

(i) not impede the safe operation of the motor vehicle;

(ii) have features that make circumventing difficult and that do not interfere with the normal use of the motor vehicle;

(iii) require a deep lung breath sample as a measure of breath alcohol concentration;

(iv) prevent the motor vehicle from being started if the driver's breath alcohol concentration exceeds an ordered level;

(v) work accurately and reliably in an unsupervised environment;

(vi) resist tampering and give evidence if tampering is attempted;

(vii) operate reliably over the range of motor vehicle environments; and

(viii) be manufactured by a party who will provide liability insurance.

(c) The commissioner may adopt in whole or in part, the guidelines, rules, studies, or independent laboratory tests relied upon in certification of ignition interlock systems by other states.

(d) A list of certified systems shall be published by the commissioner and the cost of certification shall be borne by the manufacturers or dealers of ignition interlock systems seeking to sell, offer for sale, or lease the systems.

(e) In accordance with Section 63-38-3.2, the commissioner may establish an annual dollar assessment against the manufacturers of ignition interlock systems distributed in the state for the costs incurred in certifying. The assessment shall be apportioned among the manufacturers on a fair and reasonable basis.

[~~(13)~~] (12) There shall be no liability on the part of, and no cause of action of any nature shall arise against, the state or its employees in connection with the installation, use, operation, maintenance, or supervision of an interlock ignition system as required under this section.

CHAPTER 51
H. B. 202
Passed February 9, 2001
Approved February 22, 2001
Effective April 30, 2001

511 COMMUNICATIONS SYSTEM

Sponsor: Marda Dillree

This act modifies the Transportation Code to provide for the implementation of "511" traveler information services by the Department of Transportation. The act provides for rulemaking and for agreements to share the cost of the service.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:
72-6-119, Utah Code Annotated 1953

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

Section 1. Section 72-6-119 is enacted to read:

72-6-119. "511" Traveler information services -- Lead agency -- Implementation -- Cooperation -- Rulemaking -- Costs.

(1) As used in this section, "511" or "511 service" means three-digit telecommunications dialing to access intelligent transportation system -- traveler information service provided in the state in accordance with the Federal Communications Commission and United States Department of Transportation.

(2) The department is the state's lead agency for implementing 511 service and is the state's point of contact for coordinating 511 service with telecommunications service providers.

(3) The department shall:

(a) implement and administer 511 service in the state;

(b) coordinate with the highway authorities and public transit districts to provide advanced multimodal traveler information through 511 service and other means; and

(c) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, make rules as necessary to implement this section.

(4) (a) In accordance with Title 11, Chapter 13, Interlocal Cooperation Act, the department shall enter into agreements or contracts with highway authorities and public transit districts to share the costs of implementing and administering 511 service in the state.

(b) The department shall enter into other agreements or contracts relating to the 511 service to offset the costs of implementing and administering 511 service in the state.

CHAPTER 52
H. B. 206
Passed February 9, 2001
Approved February 22, 2001
Effective April 30, 2001

COUNTIES ACCUMULATION OF RETAINED EARNINGS

Sponsor: Thomas V. Hatch

This act modifies provisions relating to counties to expand the maximum amount of unappropriated surplus that a county may retain in its General Fund.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
17-36-16, as last amended by Chapter 300, Laws of Utah 1999

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

Section 1. Section 17-36-16 is amended to read:

17-36-16. Retained earnings -- Accumulation -- Restrictions -- Disbursements.

(1) A county may accumulate retained earnings in any enterprise or internal service fund or a fund balance in any other fund; but with respect to the General Fund, its use shall be restricted to the following purposes:

(a) to provide cash to finance expenditures from the beginning of the budget period until general property taxes, sales taxes, or other revenues are collected;

(b) to provide a fund or reserve to meet emergency expenditures; and

(c) to cover unanticipated deficits for future years.

(2) The maximum accumulated unappropriated surplus in the General Fund, as determined prior to adoption of the tentative budget, may not exceed an amount equal to [~~the estimated~~] 50% of the total revenues [~~from property taxes~~] of the General Fund for the current fiscal period, except that in counties with a taxable value of $750,000,000 or more and a population of 100,000 or more, the accumulated surplus shall be limited to 20% of the total revenues of the General Fund for the current fiscal period. Any surplus balance in excess of the above computed maximum shall be included in the estimated revenues of the General Fund budget for the next fiscal period.

(3) Any fund balance exceeding 5% of the total General Fund revenues may be used for budgetary purposes.

(4) (a) A county may appropriate funds from estimated revenue in any budget period to a reserve for capital improvements within any capital improvements fund which has been duly established by ordinance or resolution.

(b) Money in the reserves shall be allowed to accumulate from fiscal period to fiscal period until the accumulated total is sufficient to permit economical expenditure for the specified purposes.

(c) Disbursements from the reserves shall be made only by transfer to a revenue account within a capital improvements fund pursuant to an appropriation for the fund.

(d) Expenditures from the capital improvement budget accounts shall conform to all requirements of this act as it relates to the execution and control of budgets.

CHAPTER 53
H. B. 208
Passed February 9, 2001
Approved February 22, 2001
Effective April 30, 2001

CONFORMING AMENDMENTS TO REPEAL OF HEALTH POLICY COMMISSION

Sponsor: Rebecca D. Lockhart

This act modifies provisions related to the Health Policy Commission which was repealed last year. The act deletes references to the Health Policy Commission in the Health Code and the Insurance Code and makes technical changes.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
26-1-30, as last amended by Chapter 229, Laws of Utah 2000
26-1-30.5, as enacted by Chapter 321, Laws of Utah 1995
26-18-401, as last amended by Chapter 13, Laws of Utah 1998
26-33a-106.5, as enacted by Chapter 201, Laws of Utah 1996
26-40-103, as last amended by Chapter 351, Laws of Utah 2000
26-40-104, as enacted by Chapter 360, Laws of Utah 1998
26-40-109, as enacted by Chapter 360, Laws of Utah 1998
26-40-110, as enacted by Chapter 360, Laws of Utah 1998
31A-30-110, as last amended by Chapters 10 and 265, Laws of Utah 1997
31A-32a-106, as enacted by Chapter 131, Laws of Utah 1999

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

Section 1. Section 26-1-30 is amended to read:

26-1-30. Powers and duties of department.

(1) The department shall:

(a) enter into cooperative agreements with the Department of Environmental Quality to delineate specific responsibilities to assure that assessment and management of risk to human health from the environment are properly administered; and

(b) consult with the Department of Environmental Quality and enter into cooperative agreements, as needed, to ensure efficient use of resources and effective response to potential health and safety threats from the environment, and to prevent gaps in protection from potential risks from the environment to specific individuals or population groups.

(2) In addition to all other powers and duties of the department, it shall have and exercise the following powers and duties:

(a) promote and protect the health and wellness of the people within the state;

(b) establish, maintain, and enforce rules necessary or desirable to carry out the provisions and purposes of this title to promote and protect the public health or to prevent disease and illness;

(c) investigate and control the causes of epidemic, infectious, communicable, and other diseases affecting the public health;

(d) provide for the detection, reporting, prevention, and control of communicable, infectious, acute, chronic, or any other disease or health hazard that the department considers to be dangerous, important, or likely to affect the public health;

(e) collect and report information on causes of injury, sickness, death, and disability and the risk factors that contribute to the causes of injury, sickness, death, and disability within the state;

(f) collect, prepare, publish, and disseminate information to inform the public concerning the health and wellness of the population, specific hazards, and risks that may affect the health and wellness of the population and specific activities which may promote and protect the health and wellness of the population;

(g) establish and operate programs necessary or desirable for the promotion or protection of the public health and the control of disease or which may be necessary to ameliorate the major causes of injury, sickness, death, and disability in the state, except that the programs shall not be established if adequate programs exist in the private sector;

(h) establish, maintain, and enforce isolation and quarantine, and for this purpose only, exercise physical control over property and individuals as the department finds necessary for the protection of the public health;

(i) close theaters, schools, and other public places and forbid gatherings of people when necessary to protect the public health;

(j) abate nuisances when necessary to eliminate sources of filth and infectious and communicable diseases affecting the public health;

(k) make necessary sanitary and health investigations and inspections in cooperation with local health departments as to any matters affecting the public health;

(l) establish laboratory services necessary to support public health programs and medical services in the state;

(m) establish and enforce standards for laboratory services which are provided by any laboratory in the state when the purpose of the services is to protect the public health;

(n) cooperate with the Labor Commission to conduct studies of occupational health hazards and occupational diseases arising in and out of employment in industry, and make recommendations for elimination or reduction of the hazards;

(o) cooperate with the local health departments, the Department of Corrections, the Administrative Office of the Courts, the Division of Youth Corrections, and the Crime Victims Reparations Board to conduct testing for HIV infection of convicted sexual offenders and any victims of a sexual offense;

(p) investigate the cause of maternal and infant mortality;

(q) establish, maintain, and enforce a procedure requiring the blood of adult pedestrians and drivers of motor vehicles killed in highway accidents be examined for the presence and concentration of alcohol;

(r) provide the commissioner of public safety with monthly statistics reflecting the results of the examinations provided for in Subsection (2)(q) and provide safeguards so that information derived from the examinations is not used for a purpose other than the compilation of statistics authorized in this Subsection (2)(r);

(s) establish qualifications for individuals permitted to draw blood pursuant to Section 41-6-44.10, and to issue permits to individuals it finds qualified, which permits may be terminated or revoked by the department;

(t) establish a uniform public health program throughout the state which includes continuous service, employment of qualified employees, and a basic program of disease control, vital and health statistics, sanitation, public health nursing, and other preventive health programs necessary or desirable for the protection of public health;

(u) adopt rules and enforce minimum sanitary standards for the operation and maintenance of:

(i) orphanages;

(ii) boarding homes;

(iii) summer camps for children;

(iv) lodging houses;

(v) hotels;

(vi) restaurants and all other places where food is handled for commercial purposes, sold, or served to the public;

(vii) tourist and trailer camps;

(viii) service stations;

(ix) public conveyances and stations;

(x) public and private schools;

(xi) factories;

(xii) private sanatoria;

(xiii) barber shops;

(xiv) beauty shops;

(xv) physicians' offices;

(xvi) dentists' offices;

(xvii) workshops;

(xviii) industrial, labor, or construction camps;

(xix) recreational resorts and camps;

(xx) swimming pools, public baths, and bathing beaches;

(xxi) state, county, or municipal institutions, including hospitals and other buildings, centers, and places used for public gatherings; and

(xxii) of any other facilities in public buildings and on public grounds;

(v) conduct health planning for the state;

(w) monitor the costs of health care in the state and foster price competition in the health care delivery system;

(x) adopt rules for the licensure of health facilities within the state pursuant to Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act;

(y) serve as the collecting agent, on behalf of the state, for the nursing facility assessment fee imposed under Title 26, Chapter 35, Nursing Facility Assessment Act, and the provider assessment imposed under Chapter 40, Utah Children's Health Insurance Act, and adopt rules for the enforcement and administration of the assessments consistent with Chapters 35 and 40; and

[~~(z) monitor and report to the Health Policy Commission created in Title 63C, Chapter 3, Health Policy Commission, on the development of managed health care plans in rural areas of the state, including the effect of the managed health care plans on costs, access, and availability of providers located in the rural communities of the state; and~~]

[~~(aa)~~] (z) license the provision of child care.

Section 2. Section 26-1-30.5 is amended to read:

26-1-30.5. Duty to establish pilot program for monitoring quality in health care.

(1) The department shall develop a two year demonstration project to promote and monitor quality health care. Implementation and execution of the demonstration project is contingent upon appropriations from the Legislature.

(2) The demonstration project shall include at least the following:

(a) a collaborative, public-private effort to promote clinical quality and cost effectiveness in health care through community wide continuous quality improvement methods; and

(b) a process for evaluating the effectiveness of health care continuous quality improvement efforts in the state.

[~~(3) (a) Before issuing any requests for proposals, as defined in Section 63-56-5, to implement the demonstration project described in this section, the department shall:~~]

[~~(i) submit to the Utah Health Policy Commission a draft of the request for proposal to be issued for the demonstration project; and~~]

[~~(ii) provide an opportunity for the commission to comment on the request for proposal.~~]

[~~(b) Sixty days before issuing any requests for proposals as defined in Section 63-56-5 for acquisition of hardware and software and information technology systems for the collection, storage, and encoding of encounter level data, the department shall submit to the Information Technology Commission a detailed description of the pilot program's plan for information technology acquisition and funding.~~]

Section 3. Section 26-18-401 is amended to read:

26-18-401. Medicaid waiver.

(1) (a) Before July 1, 1995, the division shall submit to the Secretary of the United States Department of Health and Human Services an application for a Medicaid Waiver under 42 U.S.C. Section 1315. The purpose of the waiver is to expand the coverage of the Medicaid program, and to the extent permissible under the waiver, private health insurance plans to low income, otherwise uninsured persons who are in eligibility categories not traditionally served by the Medicaid program.

(b) Prior to submitting the application under Subsection (1)(a), the department shall submit to the Health and Human Services Interim Committee a summary of the application and proposal for implementing the waiver.

(c) Prior to adopting any rules or policies to implement the waiver, the department shall submit to the Health and Human Services Interim Committee the proposed rules and policies.

(2) Implementation and execution of this waiver by the department will be within appropriations from the Legislature.

[~~(3) The Health Policy Commission may make recommendations to the department regarding implementation and execution of the waiver.~~]

[~~(4)~~] (3) The department shall establish by rule the policies governing eligibility, income limitations, cost sharing, participating in private insurance plans, benefit plan, and voluntary employee enrollment by employers who volunteer to participate.

[~~(5)~~] (4) The department shall provide [~~a periodic report to the Health Policy Committee and~~] an annual report to the Health and Human Services Interim Committee on the progress and results of the waiver implementation.

Section 4. Section 26-33a-106.5 is amended to read:

26-33a-106.5. Comparative analyses.

(1) The committee may publish compilations or reports that compare and identify health care providers or data suppliers from the data it collects under this chapter or from any other source.

[~~(2) Until June 30, 1998, the committee shall inform the Health Policy Commission created in Title 63C, Chapter 3, before publishing a compilation or report that compares and identifies health care providers or data suppliers.~~]

[~~(3)~~] (2) The committee shall contract with a private, independent analyst to evaluate the standard comparative reports of the committee that identify, compare, or rank the performance of data suppliers by name. The evaluation shall include a validation of statistical methodologies, limitations, appropriateness of use, and comparisons using standard health services research practice. The analyst must be experienced in analyzing large databases from multiple data suppliers and in evaluating health care issues of cost, quality, and access. The results of the analyst's evaluation must be released to the public before the standard comparative analysis upon which it is based may be published by the committee.

[~~(4)~~] (3) The committee shall adopt by rule a timetable for the collection and analysis of data from multiple types of data suppliers.

Section 5. Section 26-40-103 is amended to read:

26-40-103. Creation and administration of the Utah Children's Health Insurance Program.

(1) There is created the Utah Children's Health Insurance Program to be administered by the department in accordance with the provisions of:

(a) this chapter; and

(b) the State Children's Health Insurance Program, 42 U.S.C. Sec. 1397aa et seq.

(2) The department shall:

(a) prepare and submit the state's children's health insurance plan before May 1, 1998, and any amendments to the federal Department of Health and Human Services in accordance with 42 U.S.C. Sec. 1397ff; and

(b) make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act regarding:

(i) eligibility requirements consistent with Subsection 26-18-3(6);

(ii) program benefits;

(iii) the level of coverage for each program benefit;

(iv) cost-sharing requirements for enrollees, which may not:

(A) exceed the guidelines set forth in 42 U.S.C. Sec. 1397ee; or

(B) impose deductible, copayment, or coinsurance requirements on an enrollee for well-child, well-baby, and immunizations; and

(v) the administration of the program.

(3) Before July 1, 2001, the Governor's Office of Planning and Budget shall study the effectiveness of the department's administration of the program and report any findings to:

(a) the Health and Human Services Interim Committee of the Legislature; and

[~~(b) the Health Policy Commission; and~~]

[~~(c)~~] (b) the department.

Section 6. Section 26-40-104 is amended to read:

26-40-104. Utah Children's Health Insurance Program Advisory Council.

(1) There is created a Utah Children's Health Insurance Program Advisory Council consisting of at least eight and no more than eleven members appointed by the executive director of the department. The term of each appointment shall be three years. The appointments shall be staggered at one-year intervals to ensure continuity of the advisory council.

(2) The advisory council shall meet at least quarterly.

(3) The membership of the advisory council shall include at least one representative from each of the following groups:

(a) child health care providers;

(b) parents and guardians of children enrolled in the program;

(c) ethnic populations other than American Indians;

(d) American Indians;

[~~(e) the Health Policy Commission;~~]

[~~(f)~~] (e) the Utah Association of Health Care Providers;

[~~(g)~~] (f) health and disability insurance providers; and

[~~(h)~~] (g) the general public.

(4) The advisory council shall advise the department on:

(a) benefits design;

(b) eligibility criteria;

(c) outreach;

(d) evaluation; and

(e) special strategies for under-served populations.

(5) (a) (i) Members who are not government employees may not receive compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

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

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

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

Section 7. Section 26-40-109 is amended to read:

26-40-109. Evaluation.

(1) The department shall develop performance measures and annually evaluate the program's performance.

(2) The department shall report annually on its evaluation to the Health and Human Services Interim Committee of the Legislature [~~and the Health Policy Commission~~] before November 1.

Section 8. Section 26-40-110 is amended to read:

26-40-110. Managed care -- Contracting for services.

(1) Services provided to enrollees under the program shall be delivered in a managed care system if services are available within 30 paved road miles of where the enrollee lives or resides. Otherwise, the program may provide services to enrollees through fee for service plans.

(2) Before awarding a contract to a managed care system or fee for service plan to provide services under Subsection (1) or determining that no bid or proposal received in response to such a request is acceptable, the executive director shall report that information to and seek recommendations from the Health [~~Policy Commission~~] Advisory Council created in Section 26-1-7.5.

(3) If after seeking the recommendation of the Health [~~Policy Commission~~] Advisory Council under Subsection (2), the executive director determines that no bid or proposal received in response to such a request is acceptable or if no bid or proposal has been received in response to such a request, the department may contract with the Group Insurance Division within the Utah State Retirement Office to provide services under Subsection (1).

(4) Title 63, Chapter 56, Utah Procurement Code, shall apply to this section.

Section 9. Section 31A-30-110 is amended to read:

31A-30-110. Individual enrollment cap.

(1) The commissioner shall set the individual enrollment cap at .5% on July 1, 1997.

(2) The commissioner shall raise the individual enrollment cap by .5% at the later of the following dates:

(a) six months from the last increase in the individual enrollment cap; or

(b) the date when CCI/TI is greater than .90, where:

(i) "CCI" is the total individual coverage count for all carriers certifying that their uninsurable percentage has reached the individual enrollment cap; and

(ii) "TI" is the total individual coverage count for all carriers.

(3) The commissioner may establish a minimum number of uninsurable individuals that a carrier entering the market who is subject to this chapter must accept under the individual enrollment provisions of this chapter.

(4) Beginning July 1, 1997, an individual carrier may decline to accept individuals applying for individual enrollment under Subsection 31A-30-108(3), other than individuals applying for coverage as set forth in P.L. 104-191, 110 Stat. 1979, Sec. 2741 (a)-(b), if:

(a) the uninsurable percentage for that carrier equals or exceeds the cap established in Subsection (1); and

(b) the covered carrier has certified on forms provided by the commissioner that its uninsurable percentage equals or exceeds the individual enrollment cap.

(5) The department may audit a carrier's records to verify whether the carrier's uninsurable classification meets industry standards for underwriting criteria as established by the commissioner in accordance with Subsection 31A-30-106(1)(k).

[~~(6) (a) On or before July 1, 1997, and each July 1 thereafter, the commissioner:~~]

[~~(i) shall report to the Utah Health Policy Commission on the distribution of risks assumed by various carriers in the state under the individual enrollment provision of this part; and~~]

[~~(ii) may make recommendations to the Utah Health Policy Commission and the Legislature regarding the adjustment of the .5% cap on individual enrollment or some other risk adjustment to maintain equitable distribution of risk among carriers.~~]

[~~(b)~~] (6) (a) If the commissioner determines that individual enrollment is causing a substantial adverse effect on premiums, enrollment, or experience, the commissioner may suspend, limit, or delay further individual enrollment for up to 12 months.

[~~(c)~~] (b) The commissioner shall adopt rules to establish a uniform methodology for calculating and reporting loss ratios for individual policies for determining whether the individual enrollment provisions of Section 31A-30-108 should be waived for an individual carrier experiencing significant and adverse financial impact as a result of complying with those provisions.

[~~(7) (a) On or before November 30, 1995, the commissioner shall report to the Health Policy Commission and the Legislature on:~~]

[~~(i) the impact of the Small Employer Health Insurance Act on availability of small employer insurance in the market;~~]

[~~(ii) the number of carriers who have withdrawn from the market or ceased to issue new policies since the implementation of the Small Employer Health Insurance Act;~~]

[~~(iii) the expected impact of the individual enrollment provisions on the factors described in Subsections (7)(i) and (ii); and~~]

[~~(iv) the claims experience, costs, premiums, participation, and viability of the Comprehensive Health Insurance Pool created in Chapter 29.~~]

[~~(b) The report to the Legislature shall be submitted in writing to each legislator.~~]

Section 10. Section 31A-32a-106 is amended to read:

31A-32a-106. Regulation of account administrators -- Administration of tax deductions.

(1) The department shall regulate account administrators and may adopt rules necessary to administer this chapter.

[~~(2) Before adopting rules to administer this chapter, the department shall report the proposed rules to the Utah Health Policy Commission.~~]

[~~(3)~~] (2) The tax commission may adopt rules necessary to monitor and implement the tax deductions established by this chapter and Section 59-10-114.

CHAPTER 54
H. B. 209
Passed February 7, 2001
Approved February 22, 2001
Effective April 30, 2001

ISSUANCE OF A DRIVERS LICENSE

Sponsor: Brent D. Parker

This act modifies the Public Safety Code by amending certain driver license requirements. The act clarifies the penalty for certain driver license violations.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
53-3-204, as last amended by Chapter 28, Laws of Utah 1999
53-3-216, as last amended by Chapter 216, Laws of Utah 1999

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

Section 1. Section 53-3-204 is amended to read:

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

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

(i) is younger than 16 years of age;

(ii) has not completed a course in driver training approved by the commissioner; [~~and~~] or

(iii) if the person is a minor, [~~does~~] has not [~~complete~~] completed the driving requirement under Section 53-3-211.

(b) Subsection (1)(a) does not apply to a person:

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

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

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

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

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

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

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

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

(i) Section 78-3a-506 by an order of the juvenile court; or

(ii) Section 53-3-231.

(3) The division may grant a class D or M license to a person whose commercial license is disqualified under Part 4 of this chapter if the person is not otherwise sanctioned under this chapter.

Section 2. Section 53-3-216 is amended to read:

53-3-216. Change of address -- Duty of licensee to notify division within ten days -- Change of name -- Proof necessary -- Method of giving notice by division.

(1) If a person, after applying for or receiving a license, moves from the address named in the application or in the license certificate issued to him, the person shall within ten days of moving, notify the division in writing of his new address and the number of any license certificate held by him.

(2) If a person requests to change the surname on the applicant's license, the division shall issue a substitute license with the new name upon receiving an application and fee for a duplicate license and any of the following proofs of the applicant's full legal name:

(a) an original or certified copy of the applicant's marriage certificate;

(b) a certified copy of a court order under Title 42, Chapter 1, Change of Name, showing the name change;

(c) an original or certified copy of a birth certificate issued by a government agency;

(d) a certified copy of a divorce decree or annulment granted the applicant that specifies the name change requested; or

(e) a certified copy of a divorce decree that does not specify the name change requested together with:

(i) an original or certified copy of the applicant's birth certificate;

(ii) the applicant's marriage license;

(iii) a driver license record showing use of a maiden name; or

(iv) other documentation the division finds acceptable.

(3) (a) If the division is authorized or required to give any notice under this chapter or other law regulating the operation of vehicles, the notice shall, unless otherwise prescribed, be given by:

(i) personal delivery to the person to be notified; or

(ii) deposit in the United States mail with postage prepaid, addressed to the person at his address as shown by the records of the division.

(b) The giving of notice by mail is complete upon the expiration of four days after the deposit of the notice.

(c) Proof of the giving of notice in either manner may be made by the certificate of any officer or employee of the division or affidavit of any person older than 18 years of age, naming the person to

whom the notice was given and specifying the time, place, and manner of giving the notice.

(4) The division may use state mailing or United States Postal Service information to:

(a) verify an address on an application or on records of the division; and

(b) correct mailing addresses in the division's records.

(5) A violation of the provisions of Subsection (1) is an infraction.

CHAPTER 55
H. B. 213
Passed February 9, 2001
Approved February 22, 2001
Effective April 30, 2001

FISHING LICENSE EXEMPTION FOR YOUTH IN YOUTH CORRECTIONS

Sponsor: Bradley T. Johnson

This act modifies the Wildlife Code to allow certain youth in custody of the Division of Youth Corrections to fish without a license.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
23-19-14, as last amended by Chapter 128, Laws of Utah 1999

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

Section 1. Section 23-19-14 is amended to read:

23-19-14. Persons residing in certain institutions authorized to fish without license.

(1) The Division of Wildlife Resources shall permit a person to fish without a license if:

(a) (i) the person resides in:

[~~(i)~~] (A) the Utah State Developmental Center in American Fork;

[~~(ii)~~] (B) the state hospital;

[~~(iii)~~] (C) a veteran's hospital;

[~~(iv)~~] (D) a veteran's nursing home;

[~~(v)~~] (E) a mental health center;

[~~(vi)~~] (F) an intermediate care facility for the mentally retarded;

[~~(vii)~~] (G) a group home licensed by the Department of Human Services and operated under contract with the Division of Services for People with Disabilities; [~~or~~]

(H) a group home or other community-based placement licensed by the Department of Human Services and operated under contract with the Division of Youth Corrections;

(I) a private residential facility for at-risk youth licensed by the Department of Human Services; or

[~~(viii)~~] (J) another similar institution approved by the division; or

(ii) the person is a youth who participates in a work camp operated by the Division of Youth Corrections;

(b) the person is properly supervised by a representative of the institution; and

(c) the institution obtains from the division a certificate of registration that specifies:

(i) the date and place where the person will fish; and

(ii) the name of the institution's representative who will supervise the person fishing.

(2) The institution must apply for the certificate of registration at least ten days before the fishing outing.

(3) (a) An institution that receives a certificate of registration authorizing at-risk youth to fish shall provide instruction to the youth on fishing laws and regulations.

(b) The division shall provide educational materials to the institution to assist it in complying with Subsection (3)(a).

CHAPTER 56
H. B. 215
Passed February 7, 2001
Approved February 22, 2001
Effective April 30, 2001

FORGERY AMENDMENTS

Sponsor: Neal B. Hendrickson

This act modifies the Criminal Code regarding the offense of possession of a forged writing or forgery tools with intent to defraud, by removing the provisions for a lesser offense of a class A misdemeanor in specified circumstances, so that the offense is specified as a third degree felony in all circumstances.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
76-6-502, as last amended by Chapter 32, Laws of Utah 1974

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

Section 1. Section 76-6-502 is amended to read:

76-6-502. Possession of forged writing or device for writing -- Penalty.

Any person who, with intent to defraud, knowingly possesses any writing that is a forgery as defined in Section 76-6-501, or who with intent to defraud knowingly possesses any device for making any [~~such~~] writing that is a forgery as defined in Section 76-6-501, is guilty of a [~~felony of the~~] third degree[~~, except where the altering, making, completion, execution, issuance, transfer, publication, or utterance of such writing would constitute a class A misdemeanor, in which event the possession of the writing or device for making such a writing shall constitute a class A misdemeanor~~] felony.

CHAPTER 57
S. B. 47
Passed February 8, 2001
Approved February 27, 2001
Effective April 30, 2001

BALLOT REQUIREMENTS ON LEGISLATIVE AND INITIATIVE PROPOSALS

Sponsor: Millie M. Peterson

This act modifies ballot requirements for regular general elections and municipal general elections. This act establishes the title naming conventions for ballot propositions submitted to the voters and makes technical corrections.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
20A-6-301, as last amended by Chapter 1, Laws of Utah 1995
20A-6-303, as enacted by Chapter 2, Laws of Utah 1994
20A-6-402, as enacted by Chapter 2, Laws of Utah 1994
20A-7-103, as enacted by Chapter 340, Laws of Utah 1995
20A-7-209, as last amended by Chapter 21, Laws of Utah 1999
20A-7-308, as last amended by Chapters 20 and 153, Laws of Utah 1995
20A-7-508, as enacted by Chapter 272, Laws of Utah 1994
20A-7-608, as enacted by Chapter 272, Laws of Utah 1994

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

Section 1. Section 20A-6-301 is amended to read:

20A-6-301. Paper ballots -- Regular general election.

(1) Each election officer shall ensure that:

(a) all ballots furnished for use at the regular general election contain no captions or other endorsements except as provided in this section;

(b) (i) the ballot contains a ballot stub at least one inch wide, placed across the top of the ballot, and divided from the rest of ballot by a perforated line;

(ii) the ballot number and the words "Judge's Initial ____" are printed on the stub; and

(iii) ballot stubs are numbered consecutively;

(c) immediately below the perforated ballot stub, the following endorsements are printed in 18-point bold type:

(i) "Official Ballot for ____ County, Utah";

(ii) the date of the election; and

(iii) a facsimile of the signature of the county clerk and the words "county clerk";

(d) each ticket is placed in a separate column on the ballot in the order determined by the election officer with the party emblem, followed by the party name, at the head of the column;

(e) the party name or title is printed in capital letters not less than 1/4 of an inch high;

(f) a circle 1/2 inch in diameter is printed immediately below the party name or title, and the top of the circle is placed not less than two inches below the perforated line;

(g) unaffiliated candidates and candidates not affiliated with a registered political party are listed in one column, without a party circle, with the following instructions printed at the head of the column: "All candidates not affiliated with a political party are listed below. They are to be considered with all offices and candidates listed to the left. Only one vote is allowed for each office.";

(h) the columns containing the lists of candidates, including the party name and device, are separated by heavy parallel lines;

(i) the offices to be filled are plainly printed immediately above the names of the candidates for those offices;

(j) the names of candidates are printed in capital letters, not less than 1/8 nor more than 1/4 of an inch high in heavy-faced type not smaller than ten-point, between lines or rules 3/8 of an inch apart;

(k) a square with sides measuring not less than 1/4 of an inch in length is printed at the right of the name of each candidate;

(l) for the offices of president and vice president and governor and lieutenant governor, one square with sides measuring not less than 1/4 of an inch in length is printed opposite a double bracket enclosing the right side of the names of the two candidates;

(m) immediately to the right of the unaffiliated ticket on the ballot, the ballot contains a write-in column long enough to contain as many written names of candidates as there are persons to be elected with:

(i) the offices to be filled printed above the blank spaces on the ticket; and

(ii) the words "Write-In Voting Column" printed at the head of the column without a 1/2 inch circle;

(n) when required, the ballot includes a nonpartisan ticket placed immediately to the right of the write-in ticket with the word "NONPARTISAN" in reverse type in an 18-point solid rule running vertically the full length of the nonpartisan ballot copy; and

(o) constitutional amendments or other questions submitted to the vote of the people, are printed on the ballot after the list of candidates.

(2) Each election officer shall ensure that:

(a) each person nominated by any political party or group of petitioners is placed on the ballot:

(i) under the party name and emblem, if any; or

(ii) under the title of the party or group as designated by them in their certificates of nomination or petition, or, if none is designated, then under some suitable title;

(b) the names of all unaffiliated candidates that qualify as required in Title 20A, Chapter 9, Part 5, Candidates not Affiliated with a Party, are placed on the ballot;

(c) the names of the candidates for president and vice president are used on the ballot instead of the names of the presidential electors; and

(d) the ballots contain no other names.

(3) When the ballot contains a nonpartisan section, the election officer shall ensure that:

(a) the designation of the office to be filled in the election and the number of candidates to be elected are printed in type not smaller than eight-point;

(b) the words designating the office are printed flush with the left-hand margin;

(c) the words, "Vote for one" or "Vote for two or more" extend to the extreme right of the column;

(d) the nonpartisan candidates are grouped according to the office for which they are candidates;

(e) the names in each group are placed in alphabetical order with the surnames last, except for candidates for the State Board of Education and local school boards;

(f) the names of candidates for the State Board of Education are placed on the ballot as certified by the lieutenant governor under Section 20A-14-105;

(g) if candidates for membership on a local board of education were selected in a primary election, the name of the candidate who received the most votes in the primary election is listed first on the ballot;

(h) if candidates for membership on a local board of education were not selected in the primary election, the names of the candidates are listed on the ballot in the order determined by a lottery conducted by the county clerk; and

(i) each group is preceded by the designation of the office for which the candidates seek election, and the words, "Vote for one" or "Vote for two or more," according to the number to be elected.

(4) Each election officer shall ensure that:

(a) proposed amendments to the Utah Constitution are listed on the ballot under the heading "Constitutional Amendment Number __" with the number of the constitutional amendment as assigned under Section 20A-7-103 placed in the blank;

(b) propositions submitted to the voters by the Utah Legislature are listed on the ballot under the heading "State Proposition Number __" with the number of the state proposition as assigned under Section 20A-7-103 placed in the blank;

(c) propositions submitted to the voters by a county are listed on the ballot under the heading "County Proposition Number __" with the number of the county proposition as assigned by the county legislative body placed in the blank;

(d) propositions submitted to the voters by a school district are listed on the ballot under the heading "School District Proposition Number __" with the number of the school district proposition as assigned by the county legislative body placed in the blank;

(e) state initiatives that have qualified for the ballot are listed on the ballot under the heading "Citizen's State Initiative Number __" with the number of the state initiative as assigned by Section 20A-7-209 placed in the blank;

(f) county initiatives that have qualified for the ballot are listed on the ballot under the heading "Citizen's County Initiative Number __" with the number of the county initiative as assigned under Section 20A-7-508 placed in the blank;

(g) state referenda that have qualified for the ballot are listed on the ballot under the heading "Citizen's State Referendum Number __" with the number of the state referendum as assigned under Sections 20A-7-209 and 20A-7-308 placed in the blank; and

(h) county referenda that have qualified for the ballot are listed on the ballot under the heading "Citizen's County Referendum Number __" with the number of the county referendum as assigned under Section 20A-7-608 placed in the blank.

Section 2. Section 20A-6-303 is amended to read:

20A-6-303. Machine-counted ballots for regular general elections.

(1) Each election officer shall ensure that:

[~~(1)~~] (a) copy on the ballot labels are arranged in approximately the same order as paper ballots;

[~~(2)~~] (b) the titles of offices and the names of candidates are printed in vertical columns or in a series of separate pages;

[~~(3)~~] (c) if pages are used, the pages placed on the voting device are of sufficient number to include, after the list of candidates:

[~~(a)~~] (i) the names of candidates for judicial offices and any other nonpartisan offices; and

[~~(b)~~] (ii) any ballot propositions submitted to the voters for their approval or rejection;

[~~(4)~~] (d) the ballot labels include a voting square or position where the voter may record a straight party ticket vote for all the candidates of one party by one mark or punch;

[~~(5)~~] (e) the tickets are printed on the ballot label in the order determined by the county clerk;

[~~(6)~~] (f) the office titles are printed above or at the side of the names of candidates so as to indicate

clearly the candidates for each office and the number to be elected;

[~~(7)~~] (g) the party designation of each candidate is printed to the right or below the candidate's name; and

[~~(8) (a)~~] (h) (i) if possible, all candidates for one office are grouped in one column or upon one page;

[~~(b)~~] (ii) if all candidates for one office cannot be listed in one column or grouped upon one page:

[~~(i)~~] (A) the ballot label is clearly marked to indicate that the list of candidates is continued on the following column or page; and

[~~(ii)~~] (B) approximately the same number of names are printed in each column or on each page; and

[~~(9)~~] (i) arrows are used to indicate the place to vote for each candidate and on each measure.

(2) Each election officer shall ensure that:

(a) proposed amendments to the Utah Constitution are listed on the ballot label under the heading "Constitutional Amendment Number __" with the number of the constitutional amendment as assigned under Section 20A-7-103 placed in the blank;

(b) propositions submitted to the voters by the Utah Legislature are listed on the ballot label under the heading "State Proposition Number __" with the number of the state proposition as assigned under Section 20A-7-103 placed in the blank;

(c) propositions submitted to the voters by a county are listed on the ballot label under the heading "County Proposition Number __" with the number of the county proposition as assigned by the county legislative body placed in the blank;

(d) propositions submitted to the voters by a school district are listed on the ballot label under the heading "School District Proposition Number __" with the number of the school district proposition as assigned by the county legislative body placed in the blank;

(e) state initiatives that have qualified for the ballot are listed on the ballot label under the heading "Citizen's State Initiative Number __" with the number of the state initiative as assigned under Section 20A-7-209 placed in the blank;

(f) county initiatives that have qualified for the ballot are listed on the ballot label under the heading "Citizen's County Initiative Number __" with the number of the county initiative as assigned under Section 20A-7-508 placed in the blank;

(g) state referenda that have qualified for the ballot are listed on the ballot label under the heading "Citizen's State Referendum Number __" with the number of the state referendum as assigned under Sections 20A-7-209 and 20A-7-308 placed in the blank; and

(h) county referenda that have qualified for the ballot are listed on the ballot label under the heading "Citizen's County Referendum Number __" with the number of the county referendum as assigned under Section 20A-7-608 placed in the blank.

Section 3. Section 20A-6-402 is amended to read:

20A-6-402. Ballots for regular municipal elections.

(1) Each election officer shall ensure, for paper ballots at municipal general elections, that:

(a) the names of the two candidates who received the highest number of votes for mayor in the municipal primary are placed upon the ballot;

(b) if no municipal primary election was held, the names of the candidates who filed declarations of candidacy for municipal offices are placed upon the ballot;

(c) for other offices:

(i) twice the number of candidates as there are positions to be filled are certified as eligible for election in the municipal general election from those candidates who received the greater number of votes in the primary election; and

(ii) the names of those candidates are placed upon the municipal general election ballot[~~.~~];

(d) propositions submitted to the voters by the municipality are listed on the ballot under the heading "City (or Town) Proposition Number __" with the number of the proposition as assigned by the municipal legislative body placed in the blank;

(e) municipal initiatives that have qualified for the ballot are listed on the ballot under the heading "Citizen's City (or Town) Initiative Number __" with the number of the municipal initiative as assigned by Section 20A-7-508 placed in the blank; and

(f) municipal referenda that have qualified for the ballot are listed on the ballot under the heading "Citizen's City (or Town) Referendum Number __" with the number of the municipal referendum as assigned by Section 20A-7-608 placed in the blank.

(2) Each election officer shall ensure that:

(a) (i) the ballot contains a perforated ballot stub at least one inch wide, placed across the top of the ballot;

(ii) the ballot number and the words "Judge's Initial ____" are printed on the stub; and

(iii) ballot stubs are numbered consecutively;

(b) immediately below the perforated ballot stub, the following endorsements are printed in 18-point bold type:

(i) "Official Ballot for ____ (City or Town), Utah";

(ii) the date of the election; and

(iii) a facsimile of the signature of the election officer and the election officer's title in eight-point type; and

(c) immediately below the election officer's title, two one-point parallel horizontal rules separate endorsements from the rest of the ballot;

(d) immediately below the horizontal rules, an "Instructions to Voters" section is printed in ten-point bold type that states: "To vote for a candidate, place a cross (X) in the square following the name(s) of the person(s) you favor as the candidate(s) for each respective office." followed by two one-point parallel rules;

(e) after the rules, the designation of the office for which the candidates seek election is printed flush with the left-hand margin and the words: "Vote for one" or "Vote for two or more" are printed to extend to the extreme right of the column in ten-point bold type, followed by a hair-line rule;

(f) after the hair-line rule, the names of the candidates are printed in heavy face type between lines or rules 3/8 inch apart, alphabetically according to surnames with surnames last and grouped according to the office that they seek;

(g) a square with sides not less than 1/4 inch long is printed to the right of the names of the candidates;

(h) following the name of the last candidate for each office, the ballot contains a write-in space for each elective office; and

(i) the candidate groups are separated from each other by one light and one heavy line or rule.

(3) When a municipality has chosen to nominate candidates by convention or committee, the election officer shall ensure that the party name is included with the candidate's name on the ballot.

Section 4. Section 20A-7-103 is amended to read:

20A-7-103. Constitutional amendments and other questions -- Procedures for submission to popular vote.

(1) The procedures contained in this section govern when:

(a) the Legislature submits a proposed constitutional amendment or other question to the voters; and

(b) an act of the Legislature is referred to the voters by referendum petition.

(2) The lieutenant governor shall, not later than 60 days before the regular general election, publish the full text of the amendment, question, or statute in at least one newspaper in every county of the state where a newspaper is published.

(3) The legislative general counsel shall:

[~~(a) designate the amendment or question by number and order of presentation on the ballot;~~]

(a) entitle each proposed constitutional amendment "Constitutional Amendment Number __" and give it a number;

(b) entitle each proposed question "State Proposition Number __" and give it a number;

(c) entitle each state referendum that has qualified for the ballot "Citizen's State Referendum Number __" and give it a number;

[~~(b)~~] (d) draft and designate a ballot title that summarizes the subject matter of the amendment or question; and

[~~(c)~~] (e) deliver them to the lieutenant governor.

(4) The lieutenant governor shall certify the number and ballot title of each amendment or question to the county clerk of each county no later than the second Friday after the primary election.

(5) The county clerk of each county shall:

(a) ensure that both the number and title of the amendment, question, or referendum is printed on the sample ballots and official ballots; and

(b) publish them as provided by law.

Section 5. Section 20A-7-209 is amended to read:

20A-7-209. Ballot title -- Duties of lieutenant governor and Office of Legislative Research and General Counsel.

(1) By July 6 before the regular general election, the lieutenant governor shall deliver a copy of all of the proposed laws that have qualified for the ballot to the Office of Legislative Research and General Counsel.

(2) (a) The Office of Legislative Research and General Counsel shall:

(i) entitle each state initiative that has qualified for the ballot "Citizen's State Initiative Number __" and give it a number;

[~~(i)~~] (ii) prepare a ballot title for each initiative; and

[~~(ii)~~] (iii) return each petition and ballot title to the lieutenant governor by July 20.

(b) The ballot title may be distinct from the title of the proposed law attached to the initiative petition, and shall express, in not more than 100 words, the purpose of the measure.

(c) The ballot title and the number of the measure as determined by the Office of Legislative Research and General Counsel shall be printed on the official ballot.

(d) In preparing ballot titles, the Office of Legislative Research and General Counsel shall, to the best of its ability, give a true and impartial statement of the purpose of the measure.

(e) The ballot title may not intentionally be an argument, or likely to create prejudice, for or against the measure.

(3) By July 21, the lieutenant governor shall mail a copy of the ballot title to any sponsor of the petition.

(4) (a) If the ballot title furnished by the Office of Legislative Research and General Counsel is unsatisfactory or does not comply with the

requirements of this section, at least three of the sponsors of the petition may, by July 30, appeal the wording of the ballot title prepared by the Office of Legislative Research and General Counsel to the Supreme Court.

(b) The Supreme Court shall:

(i) examine the ballot title;

(ii) hear arguments; and

(iii) by August 10, certify to the lieutenant governor a ballot title for the measure that fulfills the intent of this section.

(c) By September 1, the lieutenant governor shall certify the title verified to him by the supreme court to the county clerks to be printed on the official ballot.

Section 6. Section 20A-7-308 is amended to read:

20A-7-308. Ballot title -- Duties of lieutenant governor and Office of Legislative Research and General Counsel.

(1) Whenever a referendum petition is declared sufficient for submission to a vote of the people, the lieutenant governor shall deliver a copy of the petition and the proposed law to the Office of Legislative Research and General Counsel.

(2) (a) The Office of Legislative Research and General Counsel shall:

(i) entitle each state referendum that has qualified for the ballot "Citizen's State Referendum Number __" and give it a number;

[~~(i)~~] (ii) prepare a ballot title for the referendum; and

[~~(ii)~~] (iii) return the petition and the ballot title to the lieutenant governor within 15 days after its receipt.

(b) The ballot title may be distinct from the title of the law that is the subject of the petition, and shall express, in not more than 100 words, the purpose of the measure.

(c) The ballot title and the number of the measure as determined by the Office of Legislative Research and General Counsel shall be printed on the official ballot.

(d) In preparing ballot titles, the Office of Legislative Research and General Counsel shall, to the best of its ability, give a true and impartial statement of the purpose of the measure.

(e) The ballot title may not intentionally be an argument, or likely to create prejudice, for or against the measure.

(3) Immediately after the Office of Legislative Research and General Counsel files a copy of the ballot title with the lieutenant governor, the lieutenant governor shall mail a copy of the ballot title to any of the sponsors of the petition.

(4) (a) If the ballot title furnished by the Office of Legislative Research and General Counsel is unsatisfactory or does not comply with the requirements of this section, at least three of the sponsors of the petition may, within 15 days of the date the lieutenant governor mails the ballot title, appeal the wording of the ballot title prepared by the Office of Legislative Research and General Counsel to the supreme court.

(b) The supreme court shall:

(i) examine the ballot title;

(ii) hear arguments; and

(iii) within five days of its decision, certify to the lieutenant governor a ballot title for the measure that fulfills the intent of this section.

(c) The lieutenant governor shall certify the title verified to him by the supreme court to the county clerks to be printed on the official ballot.

Section 7. Section 20A-7-508 is amended to read:

20A-7-508. Ballot title -- Duties of local clerk and local attorney.

(1) Whenever an initiative petition is declared sufficient for submission to a vote of the people, the local clerk shall deliver a copy of the petition and the proposed law to the local attorney.

(2) (a) The local attorney shall:

(i) entitle each county initiative that has qualified for the ballot "Citizen's County Initiative Number __" and give it a number;

(ii) entitle each municipal initiative that has qualified for the ballot "Citizen's City (or Town) Initiative Number __ " and give it a number;

[~~(i)~~] (iii) prepare a ballot title for the initiative; and

[~~(ii)~~] (iv) return the petition and the ballot title to the local clerk within 15 days after its receipt.

(b) The ballot title may be distinct from the title of the proposed law attached to the initiative petition, and shall express, in not exceeding 100 words, the purpose of the measure.

(c) The ballot title and the number of the measure as determined by the local attorney shall be printed on the official ballot.

(d) In preparing ballot titles, the local attorney shall, to the best of his ability, give a true and impartial statement of the purpose of the measure.

(e) The ballot title may not intentionally be an argument, or likely to create prejudice, for or against the measure.

(3) Immediately after the local attorney files a copy of the ballot title with the local clerk, the local clerk shall serve a copy of the ballot title by mail upon any of the sponsors of the petition.

(4) (a) If the ballot title furnished by the local attorney is unsatisfactory or does not comply with the requirements of this section, at least three of the

sponsors of the petition may, by motion, appeal the decision of the local attorney to the Supreme Court.

(b) The Supreme Court shall examine the measures and hear arguments, and, in its decision, shall certify to the local clerk a ballot title for the measure that fulfills the intent of this section.

(c) The local clerk shall print the title verified to him by the Supreme Court on the official ballot.

Section 8. Section 20A-7-608 is amended to read:

20A-7-608. Ballot title -- Duties of local clerk and local attorney.

(1) Whenever a referendum petition is declared sufficient for submission to a vote of the people, the local clerk shall deliver a copy of the petition and the proposed law to the local attorney.

(2) (a) The local attorney shall:

(i) entitle each county referendum that has qualified for the ballot "Citizen's County Referendum Number __" and give it a number;

(ii) entitle each municipal referendum that has qualified for the ballot "Citizen's City (or Town) Referendum Number __ " and give it a number;

[~~(i)~~] (iii) prepare a ballot title for the referendum; and

[~~(ii)~~] (iv) return the petition and the ballot title to the local clerk within 15 days after its receipt.

(b) The ballot title may be distinct from the title of the law that is the subject of the petition, and shall express, in not exceeding 100 words, the purpose of the measure.

(c) The ballot title and the number of the measure as determined by the local attorney shall be printed on the official ballot.

(d) In preparing ballot titles, the local attorney shall, to the best of his ability, give a true and impartial statement of the purpose of the measure.

(e) The ballot title may not intentionally be an argument, or likely to create prejudice, for or against the measure.

(3) Immediately after the local attorney files a copy of the ballot title with the local clerk, the local clerk shall serve a copy of the ballot title by mail upon any of the sponsors of the petition.

(4) (a) If the ballot title furnished by the local attorney is unsatisfactory or does not comply with the requirements of this section, at least three of the sponsors of the petition may, by motion, appeal the decision of the local attorney to the Supreme Court.

(b) The Supreme Court shall examine the measures and hear arguments, and, in its decision, shall certify to the local clerk a ballot title for the measure that fulfills the intent of this section.

(c) The local clerk shall print the title verified to him by the Supreme Court on the official ballot.

CHAPTER 58
S. B. 111
Passed February 8, 2001
Approved February 27, 2001
Effective April 30, 2001

CONFLICT OF INTEREST INVESTIGATIONS INTO ALLEGATION OF CHILD ABUSE OR NEGLECT

Sponsor: D. Chris Buttars

This act modifies the Human Services Code by removing the requirement that allegations of abuse and neglect of children in the custody of the Division of Child and Family Services be investigated only by law enforcement officers. The act authorizes the division to contract with independent child protective services investigators who shall have the same rights and duties to investigate as a child protective investigator employed by the division.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
62A-4a-202.5, as last amended by Chapter 282, Laws of Utah 1998
62A-4a-202.6, as enacted by Chapter 274, Laws of Utah 1998

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

Section 1. Section 62A-4a-202.5 is amended to read:

62A-4a-202.5. Law enforcement investigation of alleged abuse in foster care.

[~~A law enforcement officer, as defined in Section 53-13-103, shall investigate~~] Investigations of any report or allegation of abuse or neglect of a child that allegedly occurs while the child is living in substitute care in the protective custody, temporary custody, or custody of the division shall be conducted by:

(1) a law enforcement officer, as defined in Section 53-13-103; or

(2) a child protective services investigator under Section 62A-4a-202.6.

Section 2. Section 62A-4a-202.6 is amended to read:

62A-4a-202.6. Child protective services investigators within attorney general's office -- Authority.

(1) (a) Pursuant to Section 67-5-16 the attorney general may employ, with the consent of the division, child protective services investigators to investigate reports of abuse or neglect of a child that occur while the child is in the custody of the division.

(b) (i) Under the direction of the Board of Child and Family Services, the division shall, in accordance with Subsection 62A-4a-409(5), contract with an independent child protective service investigator to investigate reports of abuse or neglect of a child that occur while the child is in the custody of the division.

(ii) The executive director of the department shall designate an entity within the department, other than the division, to monitor the contract for the investigators described in Subsection (1)(b)(i).

(2) The investigators described in Subsection (1) may also investigate allegations of abuse or neglect of a child by a department employee or a licensed substitute care provider.

(3) The investigators described in Subsection (1), if not peace officers, shall have the same rights, duties, and authority of a child protective services investigator employed by the division to:

(a) make a thorough investigation upon receiving either an oral or written report of alleged abuse or neglect of a child, with the primary purpose of that investigation being the protection of the child;

(b) make an inquiry into the child's home environment, emotional, or mental health, the nature and extent of the child's injuries, and the child's physical safety;

(c) make a written report of their investigation, including determination regarding whether the alleged abuse or neglect was substantiated, unsubstantiated, or without merit, and forward a copy of that report to the division within the time mandates for investigations established by the division;

(d) immediately consult with school authorities to verify the child's status in accordance with Sections 53A-11-101 through 53A-11-103 when a report is based upon or includes an allegation of educational neglect;

(e) enter upon public or private premises, using appropriate legal processes, to investigate reports of alleged child abuse or neglect; and

(f) take a child into protective custody, and deliver the child to a law enforcement officer, or to the division. Control and jurisdiction over the child shall be determined by the provisions of Title 62A, Chapter 4a, Part 2, Child Welfare Services, Title 78, Chapter 3a, Juvenile Courts, and as otherwise provided by law.

CHAPTER 59
S. B. 122
Passed February 9, 2001
Approved February 27, 2001
Effective April 30, 2001

MOTOR VEHICLE INSURANCE AMENDMENTS

Sponsor: Michael G. Waddoups

This act modifies the Insurance Code by limiting underinsured motorist insurance coverage subrogation and clarifying the conditions for making an uninsured motorist claim.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
31A-22-305, as last amended by Chapter 188, Laws of Utah 2000
31A-22-307, as last amended by Chapter 71, Laws of Utah 1994
31A-22-309, as last amended by Chapter 222, Laws of Utah 2000

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

Section 1. Section 31A-22-305 is amended to read:

31A-22-305. Uninsured and underinsured motorist coverage.

(1) As used in this section, "covered persons" includes:

(a) the named insured;

(b) persons related to the named insured by blood, marriage, adoption, or guardianship, who are residents of the named insured's household, including those who usually make their home in the same household but temporarily live elsewhere;

(c) any person occupying or using a motor vehicle referred to in the policy or owned by a self-insurer; and

(d) any person who is entitled to recover damages against the owner or operator of the uninsured or underinsured motor vehicle because of bodily injury to or death of persons under Subsection (1)(a), (b), or (c).

(2) As used in this section, "uninsured motor vehicle" includes:

(a) (i) a vehicle, the operation, maintenance, or use of which is not covered under a liability policy at the time of an injury-causing occurrence; or

(ii) (A) a vehicle covered with lower liability limits than required by Section 31A-22-304;

(B) the vehicle described in Subsection (2)(a)(ii)(A) is uninsured to the extent of the deficiency;

(b) an unidentified vehicle that left the scene of an accident proximately caused by the vehicle operator;

(c) a vehicle covered by a liability policy, but coverage for an accident is disputed by the liability insurer for more than 60 days or, beginning with the effective date of this act, continues to be disputed for more than 60 days; or

(d) (i) an insured vehicle if, before or after the accident, the liability insurer of the vehicle is declared insolvent by a court of competent jurisdiction;

(ii) the vehicle described in Subsection (2)(d)(i) is uninsured only to the extent that the claim against the insolvent insurer is not paid by a guaranty association or fund.

(3) (a) Uninsured motorist coverage under Subsection 31A-22-302(1)(b) provides coverage for covered persons who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness, disease, or death.

(b) For new policies written on or after January 1, 2001, the limits of uninsured motorist coverage shall be equal to the lesser of the limits of the insured's motor vehicle liability coverage or the maximum uninsured motorist coverage limits available by the insurer under the insured's motor vehicle policy, unless the insured purchases coverage in a lesser amount by signing an acknowledgment form provided by the insurer that:

(i) waives the higher coverage;

(ii) reasonably explains the purpose of uninsured motorist coverage; and

(iii) discloses the additional premiums required to purchase uninsured motorist coverage with limits equal to the lesser of the limits of the insured's motor vehicle liability coverage or the maximum uninsured motorist coverage limits available by the insurer under the insured's motor vehicle policy.

(c) Uninsured motorist coverage may not be sold with limits that are less than the minimum bodily injury limits for motor vehicle liability policies under Section 31A-22-304.

(d) The acknowledgment under Subsection (3)(b) continues for that issuer of the uninsured motorist coverage until the insured, in writing, requests different uninsured motorist coverage from the insurer.

(e) (i) In conjunction with the first two renewal notices sent after January 1, 2001, for policies existing on that date, the insurer shall disclose in the same medium as the premium renewal notice, an explanation of the purpose of uninsured motorist coverage and the costs associated with increasing the coverage in amounts up to and including the maximum amount available by the insurer under the insured's motor vehicle policy.

(ii) The disclosure shall be sent to all insureds that carry uninsured motorist coverage limits in an amount less than the insured's motor vehicle liability policy limits or the maximum uninsured motorist coverage limits available by the insurer under the insured's motor vehicle policy.

(4) (a) (i) Except as provided in Subsection (4)(b), the named insured may reject uninsured motorist coverage by an express writing to the insurer that provides liability coverage under Subsection 31A-22-302(1)(a).

(ii) This rejection shall be on a form provided by the insurer that includes a reasonable explanation of the purpose of uninsured motorist coverage.

(iii) This rejection continues for that issuer of the liability coverage until the insured in writing requests uninsured motorist coverage from that liability insurer.

(b) (i) All persons, including governmental entities, that are engaged in the business of, or that accept payment for, transporting natural persons by motor vehicle, and all school districts that provide transportation services for their students, shall provide coverage for all vehicles used for that purpose, by purchase of a policy of insurance or by self-insurance, uninsured motorist coverage of at least $25,000 per person and $500,000 per accident.

(ii) This coverage is secondary to any other insurance covering an injured covered person.

(c) Uninsured motorist coverage:

(i) is secondary to the benefits provided by Title 34A, Chapter 2, Workers' Compensation Act;

(ii) may not be subrogated by the Workers' Compensation insurance carrier;

(iii) may not be reduced by any benefits provided by Workers' Compensation insurance; and

(iv) may be reduced by health insurance subrogation only after the covered person has been made whole.

(d) As used in this Subsection (4):

(i) "Governmental entity" has the same meaning as under Section 63-30-2.

(ii) "Motor vehicle" has the same meaning as under Section 41-1a-102.

(5) When a covered person alleges that an uninsured motor vehicle under Subsection (2)(b) proximately caused an accident without touching the covered person or the vehicle occupied by the covered person, the covered person must show the existence of the uninsured motor vehicle by clear and convincing evidence consisting of more than the covered person's testimony.

(6) (a) The limit of liability for uninsured motorist coverage for two or more motor vehicles may not be added together, combined, or stacked to determine the limit of insurance coverage available to an injured person for any one accident.

(b) (i) Subsection (6)(a) applies to all persons except a covered person as defined under Subsection (7)(b)(ii).

(ii) A covered person as defined under Subsection (7)(b)(ii) is entitled to the highest limits of uninsured motorist coverage afforded for any one vehicle that the covered person is the named insured or an insured family member.

(iii) This coverage shall be in addition to the coverage on the vehicle the covered person is occupying.

(iv) Neither the primary nor the secondary coverage may be set off against the other.

(c) Coverage on a motor vehicle occupied at the time of an accident shall be primary coverage, and the coverage elected by a person described under Subsections (1)(a) and (b) shall be secondary coverage.

(7) (a) Uninsured motorist coverage under this section applies to bodily injury, sickness, disease, or death of covered persons while occupying or using a motor vehicle only if the motor vehicle is described in the policy under which a claim is made, or if the motor vehicle is a newly acquired or replacement vehicle covered under the terms of the policy. Except as provided in Subsection (6) or (7), a covered person injured in a vehicle described in a policy that includes uninsured motorist benefits may not elect to collect uninsured motorist coverage benefits from any other motor vehicle insurance policy under which he is a covered person.

(b) Each of the following persons may also recover uninsured motorist benefits under any other policy in which they are described as a "covered person" as defined in Subsection (1):

(i) a covered person injured as a pedestrian by an uninsured motor vehicle; and

(ii) a covered person injured while occupying or using a motor vehicle that is not owned by, furnished, or available for the regular use of the covered person, the covered person's resident spouse, or the covered person's resident relative.

(c) A covered person in Subsection (7)(b) is not barred against making subsequent elections if recovery is unavailable under previous elections.

(8) (a) As used in this section, "underinsured motor vehicle" includes a vehicle, the operation, maintenance, or use of which is covered under a liability policy at the time of an injury-causing occurrence, but which has insufficient liability coverage to compensate fully the injured party for all special and general damages.

(b) The term "underinsured motor vehicle" does not include:

(i) a motor vehicle that is covered under the liability coverage of the same policy that also contains the underinsured motorist coverage; or

(ii) an uninsured motor vehicle as defined in Subsection (2).

(9) (a) Underinsured motorist coverage under Subsection 31A-22-302(1)(c) provides coverage for covered persons who are legally entitled to recover damages from owners or operators of underinsured motor vehicles because of bodily injury, sickness, disease, or death.

(b) For new policies written on or after January 1, 2001, the limits of underinsured motorist coverage shall be equal to the lesser of the limits of the insured's motor vehicle liability coverage or the maximum underinsured motorist coverage limits available by the insurer under the insured's motor vehicle policy, unless the insured purchases coverage in a lesser amount by signing an acknowledgment form provided by the insurer that:

(i) waives the higher coverage;

(ii) reasonably explains the purpose of underinsured motorist coverage; and

(iii) discloses the additional premiums required to purchase underinsured motorist coverage with limits equal to the lesser of the limits of the insured's motor vehicle liability coverage or the maximum underinsured motorist coverage limits available by the insurer under the insured's motor vehicle policy.

(c) Underinsured motorist coverage may not be sold with limits that are less than $10,000 for one person in any one accident and at least $20,000 for two or more persons in any one accident.

(d) The acknowledgment under Subsection (9)(b) continues for that issuer of the underinsured motorist coverage until the insured, in writing, requests different underinsured motorist coverage from the insurer.

(e) The named insured's underinsured motorist coverage, as described in Subsection (9)(a), is secondary to the liability coverage of an owner or operator of an underinsured motor vehicle, as described in Subsection (8). Underinsured motorist coverage may not be set off against the liability coverage of the owner or operator of an underinsured motor vehicle, but shall be added to, combined with, or stacked upon the liability coverage of the owner or operator of the underinsured motor vehicle to determine the limit of coverage available to the injured person.

(f) (i) A named insured may reject underinsured motorist coverage by an express writing to the insurer that provides liability coverage under Subsection 31A-22-302(1)(a).

(ii) This written rejection shall be on a form provided by the insurer that includes a reasonable explanation of the purpose of underinsured motorist coverage and when it would be applicable.

(iii) This rejection continues for that issuer of the liability coverage until the insured in writing requests underinsured motorist coverage from that liability insurer.

(g) (i) In conjunction with the first two renewal notices sent after January 1, 2001, for policies existing on that date, the insurer shall disclose in the same medium as the premium renewal notice, an explanation of the purpose of underinsured motorist coverage and the costs associated with increasing the coverage in amounts up to and including the maximum amount available by the insurer under the insured's motor vehicle policy.

(ii) The disclosure shall be sent to all insureds that carry underinsured motorist coverage limits in an amount less than the insured's motor vehicle liability policy limits or the maximum underinsured motorist coverage limits available by the insurer under the insured's motor vehicle policy.

(10) (a) Underinsured motorist coverage under this section applies to bodily injury, sickness, disease, or death of an insured while occupying or using a motor vehicle owned by, furnished, or available for the regular use of the insured, a resident spouse, or resident relative of the insured, only if the motor vehicle is described in the policy under which a claim is made, or if the motor vehicle is a newly acquired or replacement vehicle covered under the terms of the policy. Except as provided in this Subsection (10), a covered person injured in a vehicle described in a policy that includes underinsured motorist benefits may not elect to collect underinsured motorist coverage benefits from any other motor vehicle insurance policy under which he is a named insured.

(b) (i) The limit of liability for underinsured motorist coverage for two or more motor vehicles may not be added together, combined, or stacked to determine the limit of insurance coverage available to an injured person for any one accident.

(ii) Subsection (10)(b)(i) applies to all persons except a covered person as defined under Subsection (10)[~~(c)~~] (d)(i)(B).

(iii) Coverage on a motor vehicle occupied at the time of an accident shall be primary coverage, and the coverage elected by a person described under Subsections (1)(a) and (b) shall be secondary coverage.

(c) Underinsured motorist coverage:

(i) is secondary to the benefits provided by Title 34A, Chapter 2, Workers' Compensation Act;

(ii) may not be subrogated by the Workers' Compensation insurance carrier;

(iii) may not be reduced by any benefits provided by Workers' Compensation insurance; and

(iv) may be reduced by health insurance subrogation only after the covered person has been made whole.

(d) (i) Each of the following persons may also recover underinsured motorist coverage benefits under any other policy in which they are described as a "covered person" as defined under Subsection (1):

(A) a covered person injured as a pedestrian by an underinsured motor vehicle; or

(B) a covered person injured while occupying or using a motor vehicle that is not owned by, furnished, or available for the regular use of the covered person, the covered person's resident spouse, or the covered person's resident relative.

(ii) This coverage shall only be available as a secondary source of coverage.

(iii) A covered person as defined under Subsection (10)[~~(b)~~](d)(i)(B) is entitled to the highest limits of underinsured motorist coverage afforded for any one vehicle that the covered person is the named insured or an insured family member.

(iv) This coverage shall be in addition to the coverage on the vehicle the covered person is occupying.

(v) Neither the primary nor the secondary coverage may be set off against the other.

(e) A covered injured person is not barred against making subsequent elections if recovery is unavailable under previous elections.

(11) A claim may not be brought by a covered person against a motor vehicle underinsured motorist policy more than three years after the date of the last liability policy payment.

(12) (a) Within five business days after notification in a manner specified by the department that all liability insurers have tendered their liability policy limits, the underinsured carrier shall either:

(i) waive any subrogation claim the underinsured carrier may have against the person liable for the injuries caused in the accident; or

(ii) pay the insured an amount equal to the policy limits tendered by the liability carrier.

(b) If neither option is exercised under Subsection (12)(a), the subrogation claim is deemed to be waived by the underinsured carrier.

Section 2. Section 31A-22-307 is amended to read:

31A-22-307. Personal injury protection coverages and benefits.

(1) Personal injury protection coverages and benefits include:

(a) the reasonable value of all expenses for necessary medical, surgical, X-ray, dental, rehabilitation, including prosthetic devices, ambulance, hospital, and nursing services, not to exceed a total of $3,000 per person;

(b) (i) the lesser of $250 per week or 85% of any loss of gross income and loss of earning capacity per person from inability to work, for a maximum of 52 consecutive weeks after the loss, except that this benefit need not be paid for the first three days of disability, unless the disability continues for longer than two consecutive weeks after the date of injury; and

(ii) a special damage allowance not exceeding $20 per day for a maximum of 365 days, for services actually rendered or expenses reasonably incurred for services that, but for the injury, the injured person would have performed for his household, except that this benefit need not be paid for the first three days after the date of injury unless the person's inability to perform these services continues for more than two consecutive weeks;

(c) funeral, burial, or cremation benefits not to exceed a total of $1,500 per person; and

(d) compensation on account of death of a person, payable to his heirs, in the total of $3,000.

(2) (a) To determine the reasonable value of the medical expenses provided for in Subsection (1) and under Subsection 31A-22-309 (1)[~~(e)~~](a)(v), the commissioner shall conduct a relative value study of services and accommodations for the diagnosis, care, recovery, or rehabilitation of an injured person in the most populous county in the state to assign a unit value and determine the 75th percentile charge for each type of service and accommodation. The study shall be updated every other year. In conducting the study, the department may consult or contract with appropriate public and private medical and health agencies or other technical experts. The costs and expenses incurred in conducting, maintaining, and administering the relative value study shall be funded by the tax created under Section 59-9-105. Upon completion of the study, the department shall prepare and publish a relative value study which sets forth the unit value and the 75th percentile charge assigned to each type of service and accommodation.

(b) The reasonable value of any service or accommodation is determined by applying the unit value and the 75th percentile charge assigned to the service or accommodation under the relative value study. If a service or accommodation is not assigned a unit value or the 75th percentile charge under the relative value study, the value of the service or accommodation shall equal the reasonable cost of the same or similar service or accommodation in the most populous county of this state.

(c) This Subsection (2) does not preclude the department from adopting a schedule already established or a schedule prepared by persons outside the department, if it meets the requirements of this subsection.

(d) Every insurer shall report to the Commissioner of Insurance any patterns of overcharging, excessive treatment, or other improper actions by a health provider within 30 days after such insurer has knowledge of such pattern.

(e) In disputed cases, a court on its own motion or on the motion of either party may designate an impartial medical panel of not more than three licensed physicians to examine the claimant and testify on the issue of the reasonable value of the claimant's medical services or expenses.

(3) Medical expenses as provided for in Subsection (1)(a) and in Subsection 31A-22-309 (1)[~~(e)~~](a)(v) include expenses for any nonmedical remedial care and treatment rendered in accordance with a recognized religious method of healing.

(4) The insured may waive for the named insured and the named insured's spouse only the loss of gross income benefits of Subsection (1)(b)(i) if the insured states in writing that:

(a) within 31 days of applying for coverage, neither the insured nor the insured's spouse received any earned income from regular employment; and

(b) for at least 180 days from the date of the writing and during the period of insurance, neither the insured nor the insured's spouse will receive earned income from regular employment.

(5) This section does not prohibit the issuance of policies of insurance providing coverages greater than the minimum coverage required under this chapter nor does it require the segregation of those minimum coverages from other coverages in the same policy.

(6) Deductibles are not permitted with respect to the insurance coverages required under this section.

Section 3. Section 31A-22-309 is amended to read:

31A-22-309. Limitations, exclusions, and conditions to personal injury protection.

(1) (a) A person who has or is required to have direct benefit coverage under a policy which includes personal injury protection may not maintain a cause of action for general damages arising out of personal injuries alleged to have been caused by an automobile accident, except where the person has sustained one or more of the following:

[~~(a)~~] (i) death;

[~~(b)~~] (ii) dismemberment;

[~~(c)~~] (iii) permanent disability or permanent impairment based upon objective findings;

[~~(d)~~] (iv) permanent disfigurement; or

[~~(e)~~] (v) medical expenses to a person in excess of $3,000.

(b) Subsection (1)(a) does not apply to a person making an uninsured motorist claim.

(2) (a) Any insurer issuing personal injury protection coverage under this part may only exclude from this coverage benefits:

(i) for any injury sustained by the insured while occupying another motor vehicle owned by or furnished for the regular use of the insured or a resident family member of the insured and not insured under the policy;

(ii) for any injury sustained by any person while operating the insured motor vehicle without the express or implied consent of the insured or while not in lawful possession of the insured motor vehicle;

(iii) to any injured person, if the person's conduct contributed to his injury:

(A) by intentionally causing injury to himself; or

(B) while committing a felony;

(iv) for any injury sustained by any person arising out of the use of any motor vehicle while located for use as a residence or premises;

(v) for any injury due to war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing; or

(vi) for any injury resulting from the radioactive, toxic, explosive, or other hazardous properties of nuclear materials.

(b) The provisions of this subsection do not limit the exclusions which may be contained in other types of coverage.

(3) The benefits payable to any injured person under Section 31A-22-307 are reduced by:

(a) any benefits which that person receives or is entitled to receive as a result of an accident covered in this code under any workers' compensation or similar statutory plan; and

(b) any amounts which that person receives or is entitled to receive from the United States or any of its agencies because that person is on active duty in the military service.

(4) When a person injured is also an insured party under any other policy, including those policies complying with this part, primary coverage is given by the policy insuring the motor vehicle in use during the accident.

(5) (a) Payment of the benefits provided for in Section 31A-22-307 shall be made on a monthly basis as expenses are incurred.

(b) Benefits for any period are overdue if they are not paid within 30 days after the insurer receives reasonable proof of the fact and amount of expenses incurred during the period. If reasonable proof is not supplied as to the entire claim, the amount supported by reasonable proof is overdue if not paid within 30 days after that proof is received by the insurer. Any part or all of the remainder of the claim that is later supported by reasonable proof is also overdue if not paid within 30 days after the proof is received by the insurer.

(c) If the insurer fails to pay the expenses when due, these expenses shall bear interest at the rate of 1-1/2% per month after the due date.

(d) The person entitled to the benefits may bring an action in contract to recover the expenses plus the applicable interest. If the insurer is required by the action to pay any overdue benefits and interest, the insurer is also required to pay a reasonable attorney's fee to the claimant.

(6) Every policy providing personal injury protection coverage is subject to the following:

(a) that where the insured under the policy is or would be held legally liable for the personal injuries sustained by any person to whom benefits required under personal injury protection have been paid by another insurer, including the Workers' Compensation Fund created under Chapter 33, the insurer of the person who would be held legally

liable shall reimburse the other insurer for the payment, but not in excess of the amount of damages recoverable; and

(b) that the issue of liability for that reimbursement and its amount shall be decided by mandatory, binding arbitration between the insurers.

CHAPTER 60
H. B. 214
Passed February 9, 2001
Approved February 27, 2001
Effective April 30, 2001

CORRIDOR PRESERVATION FUNDING DISTRIBUTION

Sponsor: David L. Hogue

This act modifies the Transportation Code by amending the considerations to be used to prioritize the Corridor Preservation Revolving Loan Fund monies. This act also provides membership guidelines for the Corridor Preservation Advisory Council.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
72-2-117, as last amended by Chapter 34, Laws of Utah 2000

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

Section 1. Section 72-2-117 is amended to read:

72-2-117. Transportation Corridor Preservation Revolving Loan Fund -- Distribution -- Repayment -- Rulemaking.

(1) There is created the Transportation Corridor Preservation Revolving Loan Fund within the Transportation Fund.

(2) The fund shall be funded from the following sources:

(a) motor vehicle rental tax imposed under Section 59-12-1201;

(b) appropriations made to the fund by the Legislature;

(c) contributions from other public and private sources for deposit into the fund;

(d) interest earnings on cash balances;

(e) all monies collected for repayments and interest on fund monies;

(f) all monies collected from rents and sales of real property acquired with fund monies; and

(g) proceeds from revenue bonds or other obligations issued in accordance with Title 63, Chapter 9a, State Building Ownership, and Title 63B, Bonds.

(3) All monies appropriated to the Transportation Corridor Preservation Revolving Loan Fund are nonlapsing.

(4) (a) The commission shall authorize the expenditure of fund monies to allow the department to acquire real property or any interests in real property for state, county, and municipal transportation corridors subject to:

(i) monies available in the fund;

(ii) rules made under Subsection (7); and

(iii) Subsection (9).

(b) Fund monies may be used to pay interest on debts incurred in accordance with this section.

(5) Administrative costs of the Transportation Corridor Preservation Revolving Loan Fund shall be paid from the fund.

(6) The department:

(a) may apply to the commission under this section for monies from the Transportation Corridor Preservation Revolving Loan Fund for a specified transportation corridor project, including for county and municipal projects; and

(b) shall repay the fund monies authorized for the project to the fund as required under Subsection (7).

(7) The commission shall:

(a) administer the Transportation Corridor Preservation Revolving Loan Fund to preserve transportation corridors, promote long-term statewide transportation planning, save on acquisition costs, and promote the best interests of the state in a manner which minimizes impact on prime agricultural land;

(b) prioritize fund monies based on considerations, including:

(i) areas with rapidly expanding population;

(ii) the willingness of local governments to complete studies and impact statements that meet department standards;

(iii) the preservation of corridors by the use of local planning and zoning processes; [~~and~~]

(iv) the availability of other public and private matching funds for a project; and

(v) the cost-effectiveness of the preservation projects; and

(c) make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, establishing:

(i) the procedures for the awarding of fund monies;

(ii) the procedures for the department to apply for transportation corridor preservation monies for projects; and

(iii) repayment conditions of the monies to the fund from the specified project funds[~~; and~~].

[~~(iv) an advisory council to assist with and help coordinate the corridor preservation efforts of the department and local governments and to provide recommendations and priorities concerning corridor preservation and the use of fund monies to the department and to the commission.~~]

(8) (a) The proceeds from the revenue bonds or other obligations issued on revenues of the Transportation Corridor Preservation Revolving Loan Fund shall be used for:

(i) the acquisition of real property in hardship cases; and

(ii) any of the purposes authorized for funds in the Transportation Corridor Preservation Revolving Loan Fund under this section.

(b) The commission shall pledge the necessary part of the revenues of the Transportation Corridor Preservation Revolving Loan Fund to the payment of principal of and interest on the revenue bonds or other obligations.

(9) (a) The department may not apply for monies under this section for a highway authority that does not have an access management policy or ordinance in effect that meets the requirements under Subsection (9)(b).

(b) The access management policy or ordinance shall:

(i) be for the purpose of balancing the need for reasonable access to land uses with the need to preserve the smooth flow of traffic on the highway system in terms of safety, capacity, and speed; and

(ii) include provisions:

(A) limiting the number of conflict points at driveway locations;

(B) separating conflict areas;

(C) reducing the interference of through traffic;

(D) spacing at-grade signalized intersections; and

(E) providing for adequate on-site circulation and storage.

(c) The department shall develop a model access management policy or ordinance that meets the requirements of this Subsection (9) for the benefit of a county or municipality under this section.

(10) (a) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission shall make rules establishing a corridor preservation advisory council.

(b) The corridor preservation advisory council shall:

(i) assist with and help coordinate the corridor preservation efforts of the department and local governments;

(ii) provide recommendations and priorities concerning corridor preservation and the use of fund monies to the department and to the commission; and

(iii) include members designated by each metropolitan planning organization in the state to represent local governments that are involved with corridor preservation through official maps and planning.

CHAPTER 61
H. B. 218
Passed February 9, 2001
Approved February 27, 2001
Effective April 30, 2001

STATE HIGHWAY ACCESS MANAGEMENT

Sponsor: Wayne A. Harper

This act modifies the Transportation Code by amending rulemaking provisions for approach roads and driveways on state highways.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
72-3-109, as last amended by Chapter 347, Laws of Utah 2000

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

Section 1. Section 72-3-109 is amended to read:

72-3-109. Division of responsibility with respect to state highways in cities and towns.

(1) Except as provided in Subsection [~~(2)~~] (3), the jurisdiction and responsibility of the department and the municipalities for state highways within municipalities is as follows:

(a) The department has jurisdiction over and is responsible for the construction and maintenance of:

(i) the portion of the state highway located between the back of the curb on either side of the state highway; or

(ii) if there is no curb, the traveled way, its contiguous shoulders, and appurtenances.

(b) The department may widen or improve state highways within municipalities.

(c) (i) A municipality has jurisdiction over all other portions of the right-of-way and is responsible for construction and maintenance of the right-of-way.

(ii) If a municipality grants permission for the installation of any pole, pipeline, conduit, sewer, ditch, culvert, billboard, advertising sign, or any other structure or object of any kind or character within the portion of the right-of-way under its jurisdiction:

(A) the permission shall contain the condition that any installation will be removed from the right-of-way at the request of the municipality; and

(B) the municipality shall cause any installation to be removed at the request of the department when the department finds the removal necessary:

(I) to eliminate a hazard to traffic safety;

(II) for the construction and maintenance of the state highway; or

(III) to meet the requirements of federal regulations.

(d) If it is necessary that a utility, as defined in Section 72-6-116, be relocated, reimbursement shall be made for the relocation as provided for in Section 72-6-116.

(e) (i) The department shall construct curbs, gutters, and sidewalks on the state highways if necessary for the proper control of traffic, driveway entrances, or drainage.

(ii) If a state highway is widened or altered and existing curbs, gutters, or sidewalks are removed, the department shall replace the curbs, gutters, or sidewalks.

(f) The department may furnish and install street lighting systems for state highways, but their operation and maintenance is the responsibility of the municipality.

(g) If new storm sewer facilities are necessary in the construction and maintenance of the state highways, the cost of the storm sewer facilities shall be borne by the state and the municipality in a proportion mutually agreed upon between the department and the municipality.

[~~(h) (i)~~] (2) (a) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the department [~~may~~] shall make rules governing the location and construction of approach roads and driveways entering the state highway. The rules shall:

(i) include criteria for the design, location, and spacing of approach roads and driveways based on the functional classification of the adjacent highway, including the urban or rural nature of the area;

(ii) be consistent with the "Manual on Uniform Traffic Control Devices" and the model access management policy or ordinance developed by the department under Subsection 72-2-117(9);

(iii) include procedures for:

(A) the application and review of a permit for approach roads and driveways including review of related site plans that have been recommended according to local ordinances; and

(B) approving, modifying, denying, or appealing the modification or denial of a permit for approach roads and driveways within 45 days of receipt of the application; and

(iv) require written justifications for modifying or denying a permit.

[~~(ii)~~] (b) The department may delegate the administration of the rules to the highway authorities of a municipality.

(c) In accordance with this section and Section 72-7-104, an approach road or driveway may not be constructed on a state highway without a permit issued under this section.

[~~(2)~~] (3) The department has jurisdiction and control over the entire right-of-way of interstate

highways within municipalities and is responsible for the construction, maintenance, and regulation of the interstate highways within municipalities.

CHAPTER 62
S. B. 41
Passed February 9, 2001
Approved February 28, 2001
Effective April 30, 2001

UTAH COORDINATE SYSTEM AMENDMENTS

Sponsor: Parley Hellewell

This act modifies the Utah Coordinate System. The act adopts special publications to more precisely define the Utah Coordinate Systems of 1927 and 1983. The act modifies the requirements for any document identifying or using a coordinate system. The act establishes that, in addition to the Utah Coordinate System of 1983, any person, corporation, municipality, county, or state agency establishing a new coordinate network must conform to the current federal coordinate update.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
57-10-6, as repealed and reenacted by Chapter 60, Laws of Utah 1988
57-10-8, as repealed and reenacted by Chapter 60, Laws of Utah 1988
57-10-9, as repealed and reenacted by Chapter 60, Laws of Utah 1988
57-10-11, as enacted by Chapter 60, Laws of Utah 1988

REPEALS:
57-10-10, as enacted by Chapter 60, Laws of Utah 1988

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

Section 1. Section 57-10-6 is amended to read:

57-10-6. Utah Coordinate Systems of 1927 and 1983 defined.

[~~(1)~~] For purposes of more precisely defining the Utah Coordinate [~~System of 1927~~] Systems, the following [~~definition by the United States Coast and Geodetic Survey (not National Ocean Service/National Geodetic Survey) is~~] special publications are adopted:

(1) For the Utah Coordinate System of 1927, the manual entitled "The State Coordinate Systems (A Manual for Surveyors)," Special Publication No. 235, and "Plane Coordinate Projection Tables for Utah," Special Publication No. 277. Both manuals are published by the U.S. Department of Commerce, Coast and Geodetic Survey, and provide, in part, the following:

(a) (i) The "Utah Coordinate System of 1927 North Zone" is a Lambert Conformal Conic Projection of the Clarke Spheroid of 1866 having standard parallels at north latitudes 41 degrees 47 minutes and 40 degrees 43 minutes, along which parallels the scale shall be exact.

(ii) The origin of coordinates is at the intersection of the meridian 111 degrees 30 minutes west of Greenwich and the parallel 40 degrees 20 minutes north latitude.

(iii) This origin is given the coordinates: x=2,000,000 feet and y=0 feet.

(b) (i) The "Utah Coordinate System of 1927 Central Zone" is a Lambert Conformal Conic Projection of the Clarke Spheroid of 1866 having standard parallels at north latitudes 40 degrees 39 minutes and 39 degrees 01 minutes, along which parallels the scale shall be exact.

(ii) The origin of coordinates is at the intersection of the meridian 111 degrees 30 minutes west of Greenwich and the parallel 38 degrees 20 minutes north latitude.

(iii) This origin is given the coordinates: x=2,000,000 feet and y=0 feet.

(c) (i) The "Utah Coordinate System of 1927 South Zone" is a Lambert Conformal Conic Projection of the Clarke Spheroid of 1866 having standard parallels at north latitudes 38 degrees 21 minutes and 37 degrees 13 minutes, along which parallels the scale shall be exact.

(ii) The origin of coordinates is at the intersection of the meridian 111 degrees 30 minutes west of Greenwich and the parallel 36 degrees 40 minutes north latitude.

(iii) This origin is given the coordinates: x=2,000,000 feet and y=0 feet.

(2) For [~~purposes of more precisely defining~~] the Utah Coordinate System of 1983, the manual entitled "State Plan Coordinate System of 1983," NOAA Manual NOS NGS 5. The manual is published by the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, and provides, in part, the following [~~definition by the National Ocean Service/National Geodetic Survey is adopted~~]:

(a) (i) The "Utah Coordinate System of 1983 North Zone" is a Lambert Conformal Conic Projection of the North American Datum of 1983 having standard parallels at north latitudes 41 degrees 47 minutes and 40 degrees 43 minutes, along which parallels the scale shall be exact.

(ii) The origin of coordinates is at the intersection of the meridian 111 degrees 30 minutes west of Greenwich and the parallel 40 degrees 20 minutes north latitude.

(iii) This origin is given the coordinates: x or E=500,000 meters and y or N=1,000,000 meters.

(b) (i) The "Utah Coordinate System of 1983 Central Zone" is a Lambert Conformal Conic Projection of the North American Datum of 1983 having standard parallels at north latitudes 40 degrees 39 minutes and 39 degrees 01 minutes, along which parallels the scale shall be exact.

(ii) The origin of coordinates is at the intersection of the meridian 111 degrees 30 minutes west Greenwich and the parallel 38 degrees 20 minutes north latitude.

(iii) This origin is given the coordinates: x or E=500,000 meters and y or N=2,000,000 meters.

(c) (i) The "Utah Coordinate System of 1983 South Zone" is a Lambert Conformal Conic Projection of the North American Datum of 1983 having standard parallels at north latitudes 38 degrees 21 minutes and 37 degrees 13 minutes, along which parallels the scale shall be exact.

(ii) The origin of coordinates is at the intersection of the meridian 111 degrees 30 minutes west of Greenwich and the parallel 36 degrees 40 minutes north latitude.

(iii) This origin is given the coordinates: x or E=500,000 meters and y or N=3,000,000 meters.

Section 2. Section 57-10-8 is amended to read:

57-10-8. Use of terms on maps and documents.

(1) Any document identifying or using a coordinate system shall, in accordance with Section 57-10-9, clearly and completely identify the system used.

[~~(1)~~] (a) The use of the term "Utah Coordinate System of 1927 (North, Central, South) Zone" on any map, report of survey, or other document [~~is limited to~~] shall be used to reference the system, the coordinates [~~based on the Utah coordinate system~~], and the unit of measure as defined in [~~this chapter~~] Subsection 57-10-6(1).

(b) The use of the term "Utah Coordinate System of 1983 (HARN 1994, or the current federal coordinate update used as the basis of the system being used) (North, Central, South) Zone" shall be used to reference the system, the coordinates, and the unit of measure as defined in Subsection 57-10-6(2).

(2) Anyone using a coordinate system similar to the Utah coordinate system, such as one where a modified elevation datum is used, shall clearly include "modified" in the title of the coordinate system.

(3) Any survey or map based on any such modified coordinate system shall show the title of the coordinate system, including "modified" in the title and show the appropriate combined adjustment factor relating the system to the Utah coordinate system.

Section 3. Section 57-10-9 is amended to read:

57-10-9. Use of coordinate system optional.

The use of the Utah coordinate system by any person, corporation, or governmental agency engaged in land surveying or mapping, or both, is optional.

Section 4. Section 57-10-11 is amended to read:

57-10-11. 1983 system to be used after certain dates.

After [~~May 1, 1988, persons~~] January 1, 2002, any person, corporation, municipality, county, or state agency who is not utilizing an existing county coordinate system and is establishing a new countywide coordinate network [~~utilizing the Utah coordinate system may use only~~] for surveying or mapping, or both, must conform to the Utah Coordinate System of 1983[~~. After January 1, 1997, persons using a Utah coordinate system may use only the Utah Coordinate System of 1983~~], along with the current federal coordinate update.

Section 5. Repealer.

This act repeals:

Section 57-10-10, Feet to meters conversion specified.

CHAPTER 63
S. B. 46
Passed February 14, 2001
Approved February 28, 2001
Effective April 30, 2001

DECEPTION DETECTION EXAMINERS LICENSING ACT AMENDMENTS

Sponsor: John W. Hickman

This act modifies the exemptions from licensure under the Division of Occupational and Professional Licensing Act to include an exemption for peace officers operating a voice stress analyzer within the scope of their employment. The act requires training of the officer and compliance with standards as part of the exemption.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
58-1-307, as last amended by Chapter 168, Laws of Utah 2000

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

Section 1. Section 58-1-307 is amended to read:

58-1-307. Exemptions from licensure.

(1) Except as otherwise provided by statute or rule, the following persons may engage in the practice of their occupation or profession, subject to the stated circumstances and limitations, without being licensed under this title:

(a) a person serving in the armed forces of the United States, the United States Public Health Service, the United States Department of Veterans Affairs, or other federal agencies while engaged in activities regulated under this chapter as a part of employment with that federal agency if the person holds a valid license to practice a regulated occupation or profession issued by any other state or jurisdiction recognized by the division;

(b) a student engaged in activities constituting the practice of a regulated occupation or profession while in training in a recognized school approved by the division to the extent the activities are supervised by qualified faculty, staff, or designee and the activities are a defined part of the training program;

(c) an individual engaged in an internship, residency, preceptorship, postceptorship, fellowship, apprenticeship, or on-the-job training program approved by the division while under the supervision of qualified persons;

(d) an individual residing in another state and licensed to practice a regulated occupation or profession in that state, who is called in for a consultation by an individual licensed in this state, and the services provided are limited to that consultation;

(e) an individual who is invited by a recognized school, association, society, or other body approved by the division to conduct a lecture, clinic, or demonstration of the practice of a regulated occupation or profession if the individual does not establish a place of business or regularly engage in the practice of the regulated occupation or profession in this state;

(f) an individual licensed under the laws of this state, other than under this title, to practice or engage in an occupation or profession, while engaged in the lawful, professional, and competent practice of that occupation or profession;

(g) an individual licensed in a health care profession in another state who performs that profession while attending to the immediate needs of a patient for a reasonable period during which the patient is being transported from outside of this state, into this state, or through this state;

(h) an individual licensed in another state or country who is in this state temporarily to attend to the needs of an athletic team or group, except that the practitioner may only attend to the needs of the athletic team or group, including all individuals who travel with the team or group in any capacity except as a spectator;

(i) an individual licensed and in good standing in another state, who is in this state:

(i) temporarily, under the invitation and control of a sponsoring entity;

(ii) for a reason associated with a special purpose event, based upon needs that may exceed the ability of this state to address through its licensees, as determined by the division; and

(iii) for a limited period of time not to exceed the duration of that event, together with any necessary preparatory and conclusionary periods. The requirements of Section 63A-10-105 do not apply to exemptions authorized by the division pursuant to this Subsection (1)(i); [~~and~~]

(j) an individual who:

(i) is certified as an athletic trainer by the National Athletic Trainers Association Board of Certification or another entity approved by the division;

(ii) is employed or officially associated with an educational institution, a professional sports organization, or a bona fide amateur sports organization; and

(iii) only provides athletic training services:

(A) to athletes of the educational institution or sports organization to which the individual is employed or officially associated;

(B) at an official athletic training, practice, or competition site; and

(C) that are within the scope of the individual's certification; and

(k) a law enforcement officer, as defined under Section 53-13-103, who:

(i) is operating a voice stress analyzer in the course of the officer's full-time employment with a federal, state, or local law enforcement agency;

(ii) has completed the manufacturer's training course and is certified by the manufacturer to operate that voice stress analyzer; and

(iii) is operating the voice stress analyzer in accordance with Section 58-64-601, regarding deception detection instruments.

(2) A practitioner temporarily in this state who is exempted from licensure under Subsection (1) shall comply with each requirement of the licensing jurisdiction from which the practitioner derives authority to practice. Violation of any limitation imposed by this section constitutes grounds for removal of exempt status, denial of license, or other disciplinary proceedings.

(3) An individual who is licensed under a specific chapter of this title to practice or engage in an occupation or profession may engage in the lawful, professional, and competent practice of that occupation or profession without additional licensure under other chapters of this title, except as otherwise provided by this title.

(4) Upon the declaration of a national, state, or local emergency, the division in collaboration with the board may suspend the requirements for permanent or temporary licensure of persons who are licensed in another state. Persons exempt under this subsection shall be exempt from licensure for the duration of the emergency while engaged in the scope of practice for which they are licensed in the other state.

CHAPTER 64
S. B. 56
Passed February 13, 2001
Approved February 28, 2001
Effective April 30, 2001

DRIVING UNDER THE INFLUENCE PENALTY AMENDMENTS

Sponsor: Karen Hale

This act modifies the Motor Vehicles Code by expanding the felony driving while intoxicated violations.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
41-6-44, as last amended by Chapters 333 and 334, Laws of Utah 2000

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

Section 1. Section 41-6-44 is amended to read:

41-6-44. Driving under the influence of alcohol, drugs, or with specified or unsafe blood alcohol concentration -- Measurement of blood or breath alcohol -- Criminal punishment -- Arrest without warrant -- Penalties -- Suspension or revocation of license.

(1) As used in this section:

(a) "educational series" means an educational series obtained at a substance abuse program that is approved by the Board of Substance Abuse in accordance with Section 62A-8-107;

(b) "prior conviction" means any conviction for a violation of:

(i) this section;

(ii) alcohol-related reckless driving under Subsections (9) and (10);

(iii) local ordinances similar to this section or alcohol-related reckless driving adopted in compliance with Section 41-6-43;

(iv) automobile homicide under Section 76-5-207; or

(v) statutes or ordinances in effect in any other state, the United States, or any district, possession, or territory of the United States which would constitute a violation of this section or alcohol-related reckless driving if committed in this state, including punishments administered under 10 U.S.C. Sec. 815;

(c) "screening and assessment" means a substance abuse addiction and dependency screening and assessment obtained at a substance abuse program that is approved by the Board of Substance Abuse in accordance with Section 62A-8-107;

(d) "serious bodily injury" means bodily injury that creates or causes serious permanent disfigurement, protracted loss or impairment of the function of any bodily member or organ, or creates a substantial risk of death;

(e) "substance abuse treatment" means treatment obtained at a substance abuse program that is approved by the Board of Substance Abuse in accordance with Section 62A-8-107;

(f) "substance abuse treatment program" means a state licensed substance abuse program;

(g) a violation of this section includes a violation under a local ordinance similar to this section adopted in compliance with Section 41-6-43; and

(h) the standard of negligence is that of simple negligence, the failure to exercise that degree of care that an ordinarily reasonable and prudent person exercises under like or similar circumstances.

(2) (a) A person may not operate or be in actual physical control of a vehicle within this state if the person:

(i) has sufficient alcohol in his body that a chemical test given within two hours of the alleged operation or physical control shows that the person has a blood or breath alcohol concentration of .08 grams or greater; or

(ii) is under the influence of alcohol, any drug, or the combined influence of alcohol and any drug to a degree that renders the person incapable of safely operating a vehicle.

(b) The fact that a person charged with violating this section is or has been legally entitled to use alcohol or a drug is not a defense against any charge of violating this section.

(c) Alcohol concentration in the blood shall be based upon grams of alcohol per 100 milliliters of blood, and alcohol concentration in the breath shall be based upon grams of alcohol per 210 liters of breath.

(3) (a) A person convicted the first or second time of a violation of Subsection (2) is guilty of a:

(i) class B misdemeanor; or

(ii) class A misdemeanor if the person:

(A) has also inflicted bodily injury upon another as a proximate result of having operated the vehicle in a negligent manner; or

(B) had a passenger under 16 years of age in the vehicle at the time of the offense.

(b) A person convicted of a violation of Subsection (2) is guilty of a third degree felony if the person has also inflicted serious bodily injury upon another as a proximate result of having operated the vehicle in a negligent manner.

(4) (a) As part of any sentence imposed the court shall, upon a first conviction, impose a mandatory jail sentence of not less than 48 consecutive hours.

(b) The court may, as an alternative to all or part of a jail sentence, require the person to:

(i) work in a compensatory-service work program for not less than 24 hours; or

(ii) participate in home confinement through the use of electronic monitoring in accordance with Subsection (13).

(c) In addition to the jail sentence, compensatory-service work program, or home confinement, the court shall:

(i) order the person to participate in a screening and assessment;

(ii) order the person to participate in an educational series if the court does not order substance abuse treatment as described under Subsection (4)(d); and

(iii) impose a fine of not less than $700.

(d) The court may order the person to obtain substance abuse treatment if the substance abuse treatment program determines that substance abuse treatment is appropriate.

(e) The court may order probation for the person in accordance with Subsection (14).

(5) (a) If a person is convicted under Subsection (2) within six years of a prior conviction under this section, the court shall as part of any sentence impose a mandatory jail sentence of not less than 240 consecutive hours.

(b) The court may, as an alternative to all or part of a jail sentence, require the person to:

(i) work in a compensatory-service work program for not less than 240 hours; or

(ii) participate in home confinement through the use of electronic monitoring in accordance with Subsection (13).

(c) In addition to the jail sentence, compensatory-service work program, or home confinement, the court shall:

(i) order the person to participate in a screening and assessment;

(ii) order the person to participate in an educational series if the court does not order substance abuse treatment as described under Subsection (5)(d); and

(iii) impose a fine of not less than $800.

(d) The court may order the person to obtain substance abuse treatment if the substance abuse treatment program determines that substance abuse treatment is appropriate.

(e) The court may order probation for the person in accordance with Subsection (14).

(6) (a) A [~~third or subsequent~~] conviction for a violation of Subsection (2) is a third degree felony if it is committed:

(i) within six years of two or more prior convictions under this section [~~is a third degree felony.~~]; or

(ii) at any time after a conviction of:

(A) automobile homicide under Section 76-5-207 that is committed after July 1, 2001; or

(B) a felony violation under this section that is committed after July 1, 2001.

(b) Under Subsection (3)(b) or (6)(a), if the court suspends the execution of a prison sentence and places the defendant on probation the court shall impose:

(i) a fine of not less than $1,500; and

(ii) a mandatory jail sentence of not less than 1,500 hours.

(c) For Subsection (6)(a) or (b), the court shall impose an order requiring the person to obtain a screening and assessment and substance abuse treatment at a substance abuse treatment program providing intensive care or inpatient treatment and long-term closely supervised follow-through after treatment for not less than 240 hours.

(d) In addition to the penalties required under Subsection (6)(b), the court may require the person to participate in home confinement through the use of electronic monitoring in accordance with Subsection (13).

(7) The mandatory portion of any sentence required under this section may not be suspended and the convicted person is not eligible for parole or probation until any sentence imposed under this section has been served. Probation or parole resulting from a conviction for a violation under this section may not be terminated.

(8) (a) (i) The provisions in Subsections (4), (5), and (6) that require a sentencing court to order a convicted person to: participate in a screening and assessment; and an educational series; obtain, in the discretion of the court, substance abuse treatment; obtain, mandatorily, substance abuse treatment; or do a combination of those things, apply to a conviction for a violation of Section 41-6-44.6 or 41-6-45 under Subsection (9).

(ii) The court shall render the same order regarding screening and assessment, an educational series, or substance abuse treatment in connection with a first, second, or subsequent conviction under Section 41-6-44.6 or 41-6-45 under Subsection (9), as the court would render in connection with applying respectively, the first, second, or subsequent conviction requirements of Subsections (4), (5), and (6).

(b) If a person fails to complete all court ordered screening and assessment, educational series, and substance abuse treatment, or fails to pay all fines and fees, including fees for restitution and treatment costs, the court shall notify the Driver License Division of a failure to comply. Upon receiving the notification, the division shall suspend the person's driving privilege in accordance with Subsections 53-3-221(2) and (3).

(9) (a) (i) When the prosecution agrees to a plea of guilty or no contest to a charge of a violation of Section 41-6-45, of an ordinance enacted under

Section 41-6-43, or of Section 41-6-44.6 in satisfaction of, or as a substitute for, an original charge of a violation of this section, the prosecution shall state for the record a factual basis for the plea, including whether or not there had been consumption of alcohol, drugs, or a combination of both, by the defendant in connection with the violation.

(ii) The statement is an offer of proof of the facts that shows whether there was consumption of alcohol, drugs, or a combination of both, by the defendant, in connection with the violation.

(b) The court shall advise the defendant before accepting the plea offered under this Subsection (9)(b) of the consequences of a violation of Section 41-6-44.6 or of Section 41-6-45.

(c) The court shall notify the Driver License Division of each conviction of Section 41-6-44.6 or 41-6-45 entered under this Subsection (9).

(10) A peace officer may, without a warrant, arrest a person for a violation of this section when the officer has probable cause to believe the violation has occurred, although not in his presence, and if the officer has probable cause to believe that the violation was committed by the person.

(11) (a) The Driver License Division shall:

(i) suspend for 90 days the operator's license of a person convicted for the first time under Subsection (2);

(ii) revoke for one year the license of a person convicted of any subsequent offense under Subsection (2) if the violation is committed within a period of six years from the date of the prior violation; and

(iii) suspend or revoke the license of a person as ordered by the court under Subsection (12).

(b) The Driver License Division shall subtract from any suspension or revocation period the number of days for which a license was previously suspended under Section 53-3-223 or 53-3-231, if the previous suspension was based on the same occurrence upon which the record of conviction is based.

(12) (a) In addition to any other penalties provided in this section, a court may order the operator's license of a person who is convicted of a violation of Subsection (2) to be suspended or revoked for an additional period of 90 days, 180 days, or one year to remove from the highways those persons who have shown they are safety hazards.

(b) If the court suspends or revokes the person's license under this Subsection (12)(b), the court shall prepare and send to the Driver License Division an order to suspend or revoke that person's driving privileges for a specified period of time.

(13) (a) If the court orders a person to participate in home confinement through the use of electronic monitoring, the electronic monitoring shall alert the appropriate corrections, probation monitoring agency, law enforcement units, or contract provider of the defendant's whereabouts.

(b) The electronic monitoring device shall be used under conditions which require:

(i) the person to wear an electronic monitoring device at all times;

(ii) that a device be placed in the home or other specified location of the person, so that the person's compliance with the court's order may be monitored; and

(iii) the person to pay the costs of the electronic monitoring.

(c) The court shall order the appropriate entity described in Subsection (13)(e) to place an electronic monitoring device on the person and install electronic monitoring equipment in the residence of the person or other specified location.

(d) The court may:

(i) require the person's electronic home monitoring device to include a substance abuse testing instrument;

(ii) restrict the amount of alcohol the person may consume during the time the person is subject to home confinement;

(iii) set specific time and location conditions that allow the person to attend school educational classes, or employment and to travel directly between those activities and the person's home; and

(iv) waive all or part of the costs associated with home confinement if the person is determined to be indigent by the court.

(e) The electronic monitoring described in this section may either be administered directly by the appropriate corrections agency, probation monitoring agency, or by contract with a private provider.

(f) The electronic monitoring provider shall cover the costs of waivers by the court under Subsection (13)(c)(iv).

(14) (a) If supervised probation is ordered under Subsection (4)(e) or (5)(e):

(i) the court shall specify the period of the probation;

(ii) the person shall pay all of the costs of the probation; and

(iii) the court may order any other conditions of the probation.

(b) The court shall provide the probation described in this section by contract with a probation monitoring agency or a private probation provider.

(c) The probation provider described in Subsection (14)(b) shall monitor the person's compliance with all conditions of the person's sentence, conditions of probation, and court orders received under this article and shall notify the court of any failure to comply with or complete that sentence or those conditions or orders.

(d) (i) The court may waive all or part of the costs associated with probation if the person is determined to be indigent by the court.

(ii) The probation provider described in Subsection (14)(b) shall cover the costs of waivers by the court under Subsection (14)(d)(i).

(15) If a person is convicted of a violation of Subsection (2) and there is admissible evidence that the person had a blood alcohol level of .16 or higher, then if the court does not order:

(a) treatment as described under Subsection (4)(d), (5)(d), or (6)(b)(iii), then the court shall enter the reasons on the record; and

(b) the following penalties, the court shall enter the reasons on the record:

(i) the installation of an ignition interlock system as a condition of probation for the person in accordance with Section 41-6-44.7; or

(ii) the imposition of home confinement through the use of electronic monitoring in accordance with Subsection (13).

CHAPTER 65
S. B. 86
Passed February 14, 2001
Approved February 28, 2001
Effective April 30, 2001

VOTER INFORMATION PAMPHLET AMENDMENTS

Sponsor: Lyle W. Hillyard

This act modifies the Election Code. The act clarifies the standard of review in writing and judicially reviewing ballot titles for initiative and referenda. The act provides a time frame for rebuttals to arguments presented for or against an initiative. The act clarifies the responsibility for ballot marking procedures. The act makes technical corrections.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
20A-7-209, as last amended by Chapter 21, Laws of Utah 1999
20A-7-308, as last amended by Chapters 20 and 153, Laws of Utah 1995
20A-7-702, as last amended by Chapter 221, Laws of Utah 2000
20A-7-704, as last amended by Chapter 116, Laws of Utah 1999
20A-7-706, as last amended by Chapter 116, Laws of Utah 1999

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

Section 1. Section 20A-7-209 is amended to read:

20A-7-209. Ballot title -- Duties of lieutenant governor and Office of Legislative Research and General Counsel.

(1) By July 6 before the regular general election, the lieutenant governor shall deliver a copy of all of the proposed laws that have qualified for the ballot to the Office of Legislative Research and General Counsel.

(2) (a) The Office of Legislative Research and General Counsel shall:

(i) prepare [~~a~~] an impartial ballot title for each initiative summarizing the contents of the measure; and

(ii) return each petition and ballot title to the lieutenant governor by July 20.

(b) The ballot title may be distinct from the title of the proposed law attached to the initiative petition, and shall [~~express, in~~] be not more than 100 words[~~, the purpose of the measure~~].

(c) The ballot title and the number of the measure as determined by the Office of Legislative Research and General Counsel shall be printed on the official ballot.

[~~(d) In preparing ballot titles, the Office of Legislative Research and General Counsel shall, to the best of its ability, give a true and impartial statement of the purpose of the measure.~~]

[~~(e) The ballot title may not intentionally be an argument, or likely to create prejudice, for or against the measure.~~]

(3) By July 21, the lieutenant governor shall mail a copy of the ballot title to any sponsor of the petition.

(4) (a) [~~If the ballot title furnished by the Office of Legislative Research and General Counsel is unsatisfactory or does not comply with the requirements of this section, at~~] At least three of the sponsors of the petition may, by July 30, [~~appeal~~] challenge the wording of the ballot title prepared by the Office of Legislative Research and General Counsel to the Supreme Court.

(b) (i) There is a presumption that the ballot title prepared by the Office of Legislative Research and General Counsel is an impartial summary of the contents of the initiative.

(ii) The Supreme Court may not revise the wording of the ballot title unless the plaintiffs rebut the presumption by clearly and convincingly establishing that the ballot title is patently false or biased.

[~~(b)~~] (c) The Supreme Court shall:

(i) examine the ballot title;

(ii) hear arguments; and

(iii) by August 10, certify to the lieutenant governor a ballot title for the measure that [~~fulfills~~] meets the [~~intent~~] requirements of this section.

[~~(c)~~] (d) By September 1, the lieutenant governor shall certify the title verified [~~to him~~] by the Supreme Court to the county clerks to be printed on the official ballot.

Section 2. Section 20A-7-308 is amended to read:

20A-7-308. Ballot title -- Duties of lieutenant governor and Office of Legislative Research and General Counsel.

(1) Whenever a referendum petition is declared sufficient for submission to a vote of the people, the lieutenant governor shall deliver a copy of the petition and the proposed law to the Office of Legislative Research and General Counsel.

(2) (a) The Office of Legislative Research and General Counsel shall:

(i) prepare [~~a~~] an impartial ballot title for the referendum summarizing the contents of the measure; and

(ii) return the petition and the ballot title to the lieutenant governor within 15 days after its receipt.

(b) The ballot title may be distinct from the title of the law that is the subject of the petition, and shall [~~express, in~~] be not more than 100 words[~~, the purpose of the measure~~].

(c) The ballot title and the number of the measure as determined by the Office of Legislative Research

and General Counsel shall be printed on the official ballot.

[~~(d) In preparing ballot titles, the Office of Legislative Research and General Counsel shall, to the best of its ability, give a true and impartial statement of the purpose of the measure.~~]

[~~(e) The ballot title may not intentionally be an argument, or likely to create prejudice, for or against the measure.~~]

(3) Immediately after the Office of Legislative Research and General Counsel files a copy of the ballot title with the lieutenant governor, the lieutenant governor shall mail a copy of the ballot title to any of the sponsors of the petition.

(4) (a) [~~If the ballot title furnished by the Office of Legislative Research and General Counsel is unsatisfactory or does not comply with the requirements of this section, at~~] At least three of the sponsors of the petition may, within 15 days of the date the lieutenant governor mails the ballot title, [~~appeal~~] challenge the wording of the ballot title prepared by the Office of Legislative Research and General Counsel to the Supreme Court.

(b) (i) There is a presumption that the ballot title prepared by the Office of Legislative Research and General Counsel is an impartial summary of the contents of the referendum.

(ii) The Supreme Court may not revise the wording of the ballot title unless the plaintiffs rebut the presumption by clearly and convincingly establishing that the ballot title is patently false or biased.

[~~(b)~~] (c) The Supreme Court shall:

(i) examine the ballot title;

(ii) hear arguments; and

(iii) within five days of its decision, certify to the lieutenant governor a ballot title for the measure that [~~fulfills~~] meets the [~~intent~~] requirements of this section.

[~~(c)~~] (d) The lieutenant governor shall certify the title verified [~~to him~~] by the Supreme Court to the county clerks to be printed on the official ballot.

Section 3. Section 20A-7-702 is amended to read:

20A-7-702. Voter information pamphlet -- Form -- Contents -- Distribution.

(1) The lieutenant governor shall ensure that all information submitted for publication in the voter information pamphlet is:

(a) printed and bound in a single pamphlet;

(b) printed in clear readable type, no less than ten-point, except that the text of any measure may be set forth in eight-point type; and

(c) printed on a quality and weight of paper that best serves the voters.

(2) The voter information pamphlet shall contain the following items in this order:

(a) a cover title page;

(b) an introduction to the pamphlet by the lieutenant governor;

(c) a table of contents;

(d) a list of all candidates for constitutional offices;

(e) a list of candidates for each legislative district;

(f) a 100-word statement of qualifications for each candidate for the office of governor, lieutenant governor, attorney general, state auditor, or state treasurer, if submitted by the candidate to the lieutenant governor's office before July 15 at 5 p.m.;

(g) information pertaining to all measures to be submitted to the voters, beginning a new page for each measure and containing, in the following order for each measure:

(i) a copy of the number and ballot title of the measure;

(ii) the final vote cast by the Legislature on the measure if it is a measure submitted by the Legislature or by referendum;

(iii) the impartial analysis of the measure prepared by the Office of Legislative Research and General Counsel;

(iv) the arguments in favor of the measure, the rebuttal to the arguments in favor of the measure, the arguments against the measure, and the rebuttal to the arguments against the measure, with the name and title of the authors at the end of each argument or rebuttal;

(v) for each constitutional amendment, a complete copy of the text of the constitutional amendment, with all new language underlined, and all deleted language placed within brackets; and

(vi) for each initiative qualified for the ballot, a copy of the measure as certified by the lieutenant governor;

(h) a description provided by the Judicial Council of the selection and retention process for judges of courts of record, including, in the following order:

(i) a description of the judicial selection process;

(ii) a description of the judicial performance evaluation process;

(iii) a description of the judicial retention election process;

(iv) a list of the criteria and minimum standards of judicial performance evaluation;

(v) the names of the judges standing for retention election; and

(vi) for each judge:

(A) the counties in which the judge is subject to retention election;

(B) a short biography of professional qualifications and a recent photograph;

(C) for each standard of performance, a statement identifying whether or not the judge met the

standard and, if not, the manner in which the judge failed to meet the standard;

(D) a statement identifying the cumulative number of public orders issued by the Utah Supreme Court under Utah Constitution Article VIII, Section 13 during the judge's current term and the immediately preceding term, and a statement of the basis for each order that the judge has received; and

(E) a statement identifying whether or not the judge was certified by the Judicial Council;

(vii) (A) except as provided in Subsection (2)(h)(vii)(B), for each judge, in graphic format, the favorable response rating for each attorney, jury, and other survey question used by the Judicial Council for certification of judges, displayed in 1% increments and identifying the minimum standards of performance for each question;

(B) notwithstanding Subsection (2)(h)(vii)(A), if the sample size for the survey for a particular judge is too small to provide statistically reliable information in 1% increments, the survey results for that judge shall be reported as being above or below 70% and a statement by the surveyor explaining why the survey is statistically unreliable shall also be included;

(i) an explanation of ballot marking procedures prepared by the [~~Office of Legislative Research and General Counsel~~] lieutenant governor, indicating the ballot marking procedure used by each county and explaining how to mark the ballot for each procedure;

(j) voter registration information, including information on how to obtain an absentee ballot;

(k) a list of all county clerks' offices and phone numbers; and

[~~(l) an index of subjects in alphabetical order; and~~]

[~~(m)~~] (l) on the back cover page, a printed copy of the following statement signed by the lieutenant governor:

"I, _____ (print name), Lieutenant Governor of Utah, certify that the measures contained in this pamphlet will be submitted to the voters of Utah at the election to be held throughout the state on ____ (date of election), and that this pamphlet is complete and correct according to law. SEAL

Witness my hand and the Great Seal of the State, at Salt Lake City, Utah this ____ day of ____ (month), ____ (year)(signed) _____Lieutenant Governor"

(3) The lieutenant governor shall:

(a) ensure that one copy of the voter information pamphlet is placed in one issue of every newspaper of general circulation in the state not more than 40 nor less than 15 days before the day fixed by law for the election;

(b) ensure that a sufficient number of printed voter information pamphlets are available for distribution as required by this section;

(c) provide voter information pamphlets to each county clerk for free distribution upon request and for placement at polling places; and

(d) ensure that the distribution of the voter information pamphlets is completed 15 days before the election.

Section 4. Section 20A-7-704 is amended to read:

20A-7-704. Initiative measures -- Arguments for and against -- Voters' requests for argument -- Ballot arguments.

(1) (a) (i) (A) By August [~~20~~] 10 of the regular general election year, the sponsors of any initiative petition that has been declared sufficient by the lieutenant governor may deliver to the lieutenant governor an argument for the adoption of the measure.

(B) If two or more sponsors wish to submit arguments for the measure, the lieutenant governor shall designate one of them to submit the argument for his side of the measure.

(ii) (A) Any member of the Legislature may request permission to submit an argument against the adoption of the measure.

(B) If two or more legislators wish to submit an argument against the measure, the presiding officers of the Senate and House of Representatives shall jointly designate one of them to submit the argument to the lieutenant governor.

(b) The sponsors and the legislators submitting arguments shall ensure that each argument:

(i) does not exceed 500 words in length; and

(ii) is delivered by August [~~20~~] 10.

(2) (a) (i) If an argument for or against a measure to be submitted to the voters by initiative petition has not been filed within the time required by Subsection (1), any voter may request the lieutenant governor for permission to prepare an argument for the side on which no argument has been prepared.

(ii) If two or more voters request permission to submit arguments on the same side of a measure, the lieutenant governor shall designate one of the voters to write the argument.

(b) Any argument prepared under this subsection shall be submitted to the lieutenant governor by August [~~30~~] 20.

(3) The lieutenant governor may not accept a ballot argument submitted under this section unless it is accompanied by:

(a) the name and address of the person submitting it, if it is submitted by an individual voter; or

(b) the name and address of the organization and the names and addresses of at least two of its

principal officers, if it is submitted on behalf of an organization.

(4) (a) Except as provided in Subsection (4)(c), the authors may not amend or change the arguments after they are submitted to the lieutenant governor.

(b) Except as provided in Subsection (4)(c), the lieutenant governor may not alter the arguments in any way.

(c) The lieutenant governor and the authors of an argument may jointly modify an argument after it is submitted if:

(i) they jointly agree that changes to the argument must be made to correct spelling or grammatical errors; and

(ii) the argument has not yet been submitted for typesetting.

Section 5. Section 20A-7-706 is amended to read:

20A-7-706. Copies of arguments to be sent to opposing authors -- Rebuttal arguments.

(1) When the lieutenant governor has received the arguments for and against a measure to be submitted to the voters, the lieutenant governor shall immediately send copies of the arguments in favor of the measure to the authors of the arguments against and copies of the arguments against to the authors of the arguments in favor.

(2) The authors may prepare and submit rebuttal arguments not exceeding 250 words.

(3) (a) The rebuttal arguments must be filed with the lieutenant governor:

(i) for constitutional amendments and referendum petitions, not later than June 30[.]; and

(ii) for initiatives, not later than August 30.

(b) Except as provided in Subsection (3)(d), the authors may not amend or change the rebuttal arguments after they are submitted to the lieutenant governor.

(c) Except as provided in Subsection (3)(d), the lieutenant governor may not alter the arguments in any way.

(d) The lieutenant governor and the authors of a rebuttal argument may jointly modify a rebuttal argument after it is submitted if:

(i) they jointly agree that changes to the rebuttal argument must be made to correct spelling or grammatical errors; and

(ii) the rebuttal argument has not yet been submitted for typesetting.

(4) The lieutenant governor shall ensure that:

(a) rebuttal arguments are printed in the same manner as the direct arguments; and

(b) each rebuttal argument follows immediately after the direct argument which it seeks to rebut.

CHAPTER 66
S. B. 98
Passed February 9, 2001
Approved February 28, 2001
Effective April 30, 2001

LOCATING TELECOMMUNICATIONS FACILITIES

Sponsor: Ron Allen

This act modifies provisions relating to Counties to expand exceptions to the definition of subdivision for certain unmanned telecommunications and similar facilities.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
17-27-103, as last amended by Chapters 34 and 209, Laws of Utah 2000

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

Section 1. Section 17-27-103 is amended to read:

17-27-103. Definitions -- Notice.

(1) As used in this chapter:

(a) "Billboard" means a freestanding ground sign located on industrial, commercial, or residential property if the sign is designed or intended to direct attention to a business, product, or service that is not sold, offered, or existing on the property where the sign is located.

(b) "Chief executive officer" means the county executive, or if the county has adopted an alternative form of government, the official who exercises the executive powers.

(c) "Conditional use" means a land use that, because of its unique characteristics or potential impact on the county, surrounding neighbors, or adjacent land uses, may not be compatible in some areas or may be compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts.

(d) "Constitutional taking" has the meaning as defined in Section 63-34-13.

(e) "County" means the unincorporated area of the county.

(f) "Elderly person" means a person who is 60 years old or older, who desires or needs to live with other elderly persons in a group setting, but who is capable of living independently.

(g) "Gas corporation" has the same meaning as defined in Section 54-2-1.

(h) (i) "General plan" means a document that a county adopts that sets forth general guidelines for proposed future development of the land within the county, as set forth in Sections 17-27-301 and 17-27-302.

(ii) "General plan" includes what is also commonly referred to as a "master plan."

(i) "Interstate pipeline company" means a person or entity engaged in natural gas transportation subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act, 15 U.S.C. Sec. 717 et seq.

(j) "Intrastate pipeline company" means a person or entity engaged in natural gas transportation that is not subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act, 15 U.S.C. Sec. 717 et seq.

(k) "Legislative body" means the county legislative body, or for a county that has adopted an alternative form of government, the body exercising legislative powers.

(l) "Lot line adjustment" means the relocation of the property boundary line between two adjoining lots with the consent of the owners of record.

(m) "Municipality" means a city or town.

(n) "Nonconforming structure" means a structure that:

(i) legally existed before its current zoning designation; and

(ii) because of subsequent zoning changes, does not conform with the zoning regulation's setback, height restrictions, or other regulations that govern the structure.

(o) "Nonconforming use" means a use of land that:

(i) legally existed before its current zoning designation;

(ii) has been maintained continuously since the time the zoning regulation governing the land changed; and

(iii) because of subsequent zoning changes, does not conform with the zoning regulations that now govern the land.

(p) "Official map" has the same meaning as provided in Section 72-5-401.

(q) "Person" means an individual, corporation, partnership, organization, association, trust, governmental agency, or any other legal entity.

(r) "Plat" means a map or other graphical representation of lands being laid out and prepared in accordance with Section 17-27-804.

(s) "Record of survey map" means a map of a survey of land prepared in accordance with Section 17-23-17.

(t) (i) "Residential facility for elderly persons" means a single-family or multiple-family dwelling unit that meets the requirements of Part 5 and any ordinance adopted under authority of that part.

(ii) "Residential facility for elderly persons" does not include a health care facility as defined by Section 26-21-2.

(u) "Special district" means all entities established under the authority of Title 17A, Special Districts, and any other governmental or quasi-governmental entity that is not a county, municipality, school district, or unit of the state.

(v) "Street" means public rights-of-way, including highways, avenues, boulevards, parkways, roads, lanes, walks, alleys, viaducts, subways, tunnels, bridges, public easements, and other ways.

(w) (i) "Subdivision" means any land that is divided, resubdivided or proposed to be divided into two or more lots, parcels, sites, units, plots, or other division of land for the purpose, whether immediate or future, for offer, sale, lease, or development either on the installment plan or upon any and all other plans, terms, and conditions.

(ii) "Subdivision" includes the division or development of land whether by deed, metes and bounds description, devise and testacy, lease, map, plat, or other recorded instrument.

(iii) "Subdivision" does not include:

(A) a bona fide division or partition of agricultural land for agricultural purposes;

(B) a recorded agreement between owners of adjoining properties adjusting their mutual boundary if:

(I) no new lot is created; and

(II) the adjustment does not result in a violation of applicable zoning ordinances;

(C) a recorded document, executed by the owner of record, revising the legal description of more than one contiguous parcel of property into one legal description encompassing all such parcels of property; or

(D) a bona fide division or partition of land in a county other than a first class county for the purpose of siting, on one or more of the resulting separate parcels[,]:

(I) an unmanned facility appurtenant to a pipeline owned or operated by a gas corporation, interstate pipeline company, or intrastate pipeline company[.]; or

(II) an unmanned telecommunications, microwave, fiber optic, electrical, or other utility service regeneration, transformation, retransmission, or amplification facility.

(iv) The joining of a subdivided parcel of property to another parcel of property that has not been subdivided does not constitute a "subdivision" under this Subsection (1)(w) as to the unsubdivided parcel of property or subject the unsubdivided parcel to the county's subdivision ordinance.

(x) "Unincorporated" means the area outside of the incorporated boundaries of cities and towns.

(2) (a) A county meets the requirements of reasonable notice required by this chapter if it:

(i) posts notice of the hearing or meeting in at least three public places within the jurisdiction and publishes notice of the hearing or meeting in a newspaper of general circulation in the jurisdiction, if one is available; or

(ii) gives actual notice of the hearing or meeting.

(b) A county legislative body may enact an ordinance establishing stricter notice requirements than those required by this Subsection (2).

(c) (i) Proof that one of the two forms of notice authorized by this Subsection (2) was given is prima facie evidence that notice was properly given.

(ii) If notice given under authority of this section is not challenged as provided in Section 17-27-1001 within 30 days from the date of the meeting for which the notice was given, the notice is considered adequate and proper.

CHAPTER 67
S. B. 101
Passed February 14, 2001
Approved February 28, 2001
Effective April 30, 2001

UNLAWFUL USE OF LASER POINTERS

Sponsor: D. Edgar Allen

This act modifies the Criminal Code to create the offense of unlawful use of a laser pointer. The act provides definitions, penalties, and defenses.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:
76-10-2401, Utah Code Annotated 1953
(Codified as 76-10-2501)

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

Section 1. Section 76-10-2401 is enacted to read:
Part 24. Unlawful Use of a Laser Pointer

76-10-2401. (Codified as 76-10-2501) Unlawful use of a laser pointer -- Definitions -- Penalties.

(1) As used in this section:

(a) "Laser light" means light that is amplified by stimulated emission of radiation.

(b) "Laser pointer" means any portable device that emits a visible beam of laser light that may be directed at a person.

(c) "Law enforcement officer" means an officer under Section 53-13-103.

(2) A person is guilty of unlawful use of a laser pointer if the person directs a beam of laser light from a laser pointer at:

(a) a moving motor vehicle or its occupants; or

(b) one whom the person knows or has reason to know is a law enforcement officer.

(3) It is an affirmative defense to a charge under Subsection (2)(b) that:

(a) the law enforcement officer was:

(i) not in uniform;

(ii) not traveling in a vehicle identified as a law enforcement vehicle; and

(iii) not otherwise engaged in an activity that would give the person reason to know him to be a law enforcement officer; and

(b) the law enforcement officer was not otherwise known by the person to be a law enforcement officer.

(4) Violation of Subsection (2)(a) is an infraction. Violation of Subsection (2)(b) is a class C misdemeanor.

(5) If the violation of this section constitutes an offense subject to a greater penalty under another provision of Title 76, Utah Criminal Code, than is provided under this section, this section does not prohibit the prosecution and sentencing for the offense subject to a greater penalty.

CHAPTER 68
S. B. 102
Passed February 14, 2001
Approved February 28, 2001
Effective April 30, 2001

MIDDLE SCHOOLS EXIT REQUIREMENTS

Sponsor: David L. Gladwell

This act modifies provisions related to the State System of Public Education by modifying the exception that would allow students to advance to high school without meeting required competency levels in English, mathematics, science, or social studies.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
53A-13-104, as last amended by Chapter 8, Laws of Utah 1989

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

Section 1. Section 53A-13-104 is amended to read:

53A-13-104. Local school board remediation programs for secondary students.

(1) Local school boards shall implement programs for students in the secondary schools, grades 7-12, to attain the competency levels and graduation requirements established by the State Board of Education.

(2) (a) Local school boards shall establish remediation programs for secondary school students who do not meet competency levels in English, mathematics, science, or social studies.

(b) Participation in the programs is mandatory for those students who fail to meet the competency levels based on classroom performance.

(3) Students who require remediation under this section may not be advanced to the following class in subject sequences until they meet the required competency level for the subject or complete the required remediation program, except that local school boards may allow students requiring remediation who would otherwise be scheduled to enter their first year of high school [~~shall~~] to complete their remediation program during that first year.

(4) (a) Remediation programs provided under this section should not be unnecessarily lengthy or repetitive.

(b) A student need not repeat an entire class if remediation can reasonably be achieved through other means.

(5) Local school boards may charge students a fee to participate in the remediation programs.

CHAPTER 69
S. B. 106
Passed February 13, 2001
Approved February 28, 2001
Effective April 30, 2001

MUNICIPAL BOND SECURED TRANSACTIONS

Sponsor: Lyle W. Hillyard

This act modifies the Utah Municipal Bond Act by establishing a method for creating and perfecting security interests for governmental obligations.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
11-14-23, as last amended by Chapter 280, Laws of Utah 1981

ENACTS:
11-14-28, Utah Code Annotated 1953

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

Section 1. Section 11-14-23 is amended to read:

11-14-23. Exemptions from application of chapter -- Exception.

[~~This~~] (1) Except as provided in Subsection (2), this chapter [~~shall~~] does not apply to bonds issued by the state of Utah nor to bonds or obligations payable solely from special assessments levied on benefited property[~~, except with respect to Section~~].

(2) Sections 11-14-14.5 [~~which shall~~] and 11-14-28 have general application in accordance with [~~its~~] their terms.

Section 2. Section 11-14-28 is enacted to read:

11-14-28. Creation and perfection of government security interests.

(1) As used in this section:

(a) "Bonds" means any bond, note, lease, or other obligation of a governmental unit.

(b) "Governmental unit" has the meaning assigned in Subsection 70A-9a-102(45).

(c) "Pledge" means the creation of a security interest of any kind.

(d) "Property" means any property or interests in property, other than real property.

(e) "Security agreement" means any resolution, ordinance, indenture, document, or other agreement or instrument under which the revenues, fees, rents, charges, taxes, or other property are pledged to secure the bonds.

(2) This section expressly governs the creation, perfection, priority, and enforcement of a security interest created by the state or a governmental unit of the state, notwithstanding anything in Title 70A, Chapter 9a, Uniform Commercial Code - Secured Transactions, to the contrary.

(3) (a) The revenues, fees, rents, charges, taxes, or other property pledged by a governmental unit for the purpose of securing its bonds are immediately subject to the lien of the pledge.

(b) (i) The lien is a perfected lien upon the effective date of the security agreement.

(ii) The physical delivery, filing, or recording of a security agreement or financing statement under the Uniform Commercial Code or otherwise, or any other similar act, is not necessary to perfect the lien.

(c) The lien of any pledge is valid, binding, perfected, and enforceable from the time the pledge is made.

(d) The lien of the pledge has priority:

(i) based on the time of the creation of the pledge unless otherwise provided in the security agreement; and

(ii) as against all parties having claims of any kind in tort, contract, or otherwise against the governmental unit, regardless of whether or not the parties have notice of the lien.

(e) Each pledge and security agreement made for the benefit or security of any of the bonds shall continue to be effective until:

(i) the principal, interest, and premium, if any, on the bonds have been fully paid;

(ii) provision for payment has been made; or

(iii) the lien created by the security agreement has been released by agreement of the parties in interest or as provided by the security agreement that created the lien.

CHAPTER 70
S. B. 145
Passed February 14, 2001
Approved February 28, 2001
Effective April 30, 2001

METROPOLITAN WATER DISTRICT BOARD AMENDMENTS

Sponsor: Carlene M. Walker

This act modifies provisions relating to Special Districts to modify the number and term of members of a metropolitan water district board of trustees and to repeal obsolete language relating to the status of board of trustees members serving at the time of a prior amendment.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
17A-2-819, as last amended by Chapter 254, Laws of Utah 2000

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

Section 1. Section 17A-2-819 is amended to read:

17A-2-819. Trustees -- Representation -- Voting -- Organization and membership -- Other provisions apply.

(1) The board of trustees shall be designated and appointed by the legislative body or bodies, respectively, of a city or cities the area of which is within a metropolitan water district.

(2) If the district is organized to comprise the area of two or more cities, the board of trustees shall consist of at least one representative from each municipality, the area of which shall lie within the metropolitan water district. As a member of the board of trustees, each representative may vote on all questions, orders, resolutions, and ordinances coming before the board, and may cast one vote for each $10,000,000, or major fractional part of that amount, of the taxable value of property taxable for district purposes in the city represented by the representative as shown by the assessment records of the county and evidenced by the certificate of the county auditor. Each city shall have at least one vote. In lieu of one representative any city may at its option designate and appoint several representatives not exceeding one additional representative for each $1,000,000 of taxable value, but the representative shall cast the vote to which the city would otherwise be entitled as a unit and as a majority of [~~such~~] the representatives present [~~shall determine~~] determines. The affirmative vote of members representing more than 50% of the total number of votes of all the members shall be necessary and, except as otherwise provided, shall be sufficient to carry any order, resolution, or ordinance coming before the board of trustees. For the purposes of this section, the term "major fractional part" means a fractional part larger than 1/2.

(3) [~~If a district includes the area of only one municipality, the board of trustees may consist of either five or seven members, as determined by the legislative body of the municipality. Each trustee may cast one vote on all matters coming before the board.~~] The number of members of a board of trustees may not exceed the maximum number allowed under Subsection 17B-2-402(1).

(4) Every member of the board of trustees of a metropolitan water district shall be a registered voter, a property taxpayer, and a resident of the municipality by the legislative body of which the member is appointed. In each municipality, the area of which is in a metropolitan water district, except in districts occupying the area of more than one city, one of the trustees appointed by its legislative body to the board of trustees shall be the commissioner of water supply and waterworks, or other comparable officer, however designated, who is in charge of the municipality's water supply and distribution system, if municipally owned, and who shall be known as the ex officio trustee. Except for the ex officio trustee, all other elected or appointed officers, or the employees of the municipality shall be ineligible for appointment to any district board; and except for the ex officio trustee, any member of the metropolitan water district board of trustees who at a time after appointment to the board becomes elected or appointed to office in, or who becomes an employee of, the municipality in which the member resides shall immediately become disqualified as a trustee and shall forfeit the office, and the legislative body of the municipality shall immediately appoint a successor to serve the unexpired portion of the term of office. The appointment of trustees by the legislative body of a municipality shall be made without regard to partisan political affiliations from among citizens of the highest integrity, attainment, competence, and standing in the community, and it is the intent of this part that each municipality shall adhere so far as possible to a policy of continuing reappointment, at the expiration of their terms of office, of trustees of high character and proven competence.

(5) Except as to an ex officio trustee, the terms of office of members of the board of trustees are as provided in Section 17B-2-403.

[~~(6) Members of the board of trustees of any metropolitan water district who are serving as such on the effective date of this amendment and who are otherwise qualified as provided in Subsection (4), shall immediately be reappointed to office by the legislative body or bodies, respectively, of the city or cities the area of which is included in a metropolitan water district, and for the terms of office provided in Subsection (5).~~]

[~~(7)~~] (6) (a) The provisions of Title 17B, Chapter 2, Part 4, Board of Trustees, apply to each metropolitan water district to the same extent as if the metropolitan water district were a local district under Title 17B, Chapter 2, Local Districts.

(b) (i) If a change in the number of board of trustees members is necessary to comply with the requirements of Subsection 17B-2-402(1), the board of trustees may by majority vote,

notwithstanding Subsection 17B-2-402(3), change the number of board members to the next odd number higher or lower than the number of current board members.

(ii) If a change under Subsection (7)(b)(i) decreases the number of board members, the change may not take effect until the expiration of the term of the member whose term next expires.

(iii) If a change in the number of board members necessitated by Subsection 17B-2-402(1) would cause the district to violate a provision of bonds issued by the district, the number of board members may be modified to the extent necessary to avoid a violation.

(c) (i) If a change in the expiration date of the term of a board of trustees member is necessary to comply with the requirements of Subsection 17B-2-403(1), the term of each board member whose term expires on a day other than the first Monday in January shall be extended to the first Monday in January after the normal expiration date [~~next following the special district election date under Section 17A-1-305~~].

(ii) If a change in the length of the term of a board of trustees member is necessary to comply with the requirements of Subsection 17B-2-403(2), the change may not take effect until the expiration of the term of the member whose term length is to be changed.

CHAPTER 71
H. B. 60
Passed February 13, 2001
Approved February 28, 2001
Effective April 30, 2001

JUSTICE COURT AMENDMENTS

Sponsor: Brent H. Goodfellow

This act modifies the Judicial Code by eliminating the salary cap for Justice Court judges. The act also changes who appoints Justice Court judges in municipalities with the council-manager form of government from the chair of the city council to the city manager.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
78-5-128, as last amended by Chapter 148, Laws of Utah 2000
78-5-134, as last amended by Chapter 313, Laws of Utah 1998

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

Section 1. Section 78-5-128 is amended to read:

78-5-128. Determination of compensation and limits -- Salary survey -- Limits on secondary employment.

(1) (a) Every justice court judge shall be paid a fixed compensation determined by the governing body of the respective municipality or county taking into consideration recommendations of the office of the state court administrator as provided in Subsection (2)[~~, but in no case may the salary for a justice court judge be an amount greater than 72% of the salary of a district court judge~~].

(i) A justice court judge employed by one entity may not receive a salary greater than 85% of the salary of a district court judge.

(ii) A justice court judge employed by more than one entity as a justice court judge, may not receive a total salary for service as a justice court judge greater than the salary of a district court judge.

(b) The compensation shall be comprised of a monthly salary and shall be computed upon the number of hours, days, or other periods of time that the justice court judge is to be available to perform all judicial functions.

(2) (a) The state court administrator with the approval of the Judicial Council shall survey areas of the state relating to the functions and activities of the justice courts, taking into consideration the diverse economic factors of the various localities of the justice courts, and develop recommended monthly salaries. These recommendations shall be furnished to the governing bodies of the municipalities and the counties to assist them in determining salaries.

(b) The state court administrator may make studies concerned with the economic as well as administrative feasibility to encourage the various political subdivisions to utilize the same person or persons to act as justice court judges for their several jurisdictions and to assist political subdivisions desiring to enter into agreements for that purpose.

(3) A justice court judge may not appear as an attorney in any criminal matter in a federal, state, or justice court or appear as an attorney in any justice court or in any juvenile court case involving conduct which would be criminal if committed by an adult.

(4) A justice court judge may not hold any office or employment including contracting for services in any justice agency of state government or any political subdivision of the state including law enforcement, prosecution, criminal defense, corrections, or court employment.

(5) A justice court judge may not hold any office in any political party or organization engaged in any political activity or serve as an elected official in state government or any political subdivision of the state.

(6) A justice court judge may not own or be employed by any business entity which regularly litigates in small claims court.

(7) Any judge who violates this section is subject to removal by the Judicial Conduct Commission under Title 78, Chapter 8, Judicial Conduct Commission and Supreme Court Oversight of Judges.

Section 2. Section 78-5-134 is amended to read:

78-5-134. Justice court judges to be appointed -- Procedure -- Report to Judicial Council -- Retention election -- Vacancy.

(1) As used in this section:

(a) "Appointing authority" means:

(i) the chair of the county commission in counties having the county commission form of county government;

(ii) the county executive in counties having the county executive-council form of government;

(iii) the chair of the city commission, city council, or town council in municipalities having[~~: (A)~~] the traditional management arrangement established by Title 10, Chapter 3, Part 1, Governing Body; [~~and~~]

[~~(B)~~] (iv) the city manager, in the council-manager optional form of government defined in Section 10-3-1209; and

[~~(iv)~~] (v) the mayor, in the council-mayor optional form of government defined in Section 10-3-1209[~~; and~~].

(b) "Local legislative body" means:

(i) the county commission or county council; and

(ii) the city commission, city council, or town council.

(2) Justice court judges shall be appointed by the appointing authority and confirmed by a majority vote of the local legislative body.

(3) (a) After a newly appointed justice court judge has been confirmed, the local legislative body shall report the confirmed judge's name to the Judicial Council.

(b) The Judicial Council shall certify the judge as qualified to hold office upon successful completion of the orientation program and upon the written opinion of the county or municipal attorney that the judge meets the statutory qualifications for office.

(c) A justice court judge may not perform judicial duties until certified by the Judicial Council.

(4) Upon the expiration of a county justice court judge's term of office the judge shall be subject to an unopposed retention election in accordance with the procedures set forth in Section 20A-12-201.

(5) Upon the expiration of a municipal justice court judge's term of office a municipal justice court judge shall be reappointed absent a showing of good cause by the appointing authority.

(a) If an appointing authority asserts good cause to not reappoint a municipal justice court judge, at the request of the judge, the good cause shall be presented at a formal hearing of the local legislative body.

(b) The local legislative body shall determine by majority vote whether good cause exists not to reappoint the municipal justice court judge.

(c) The decision of the local legislative body is not subject to appeal.

(d) In determining whether good cause exists to not reappoint a municipal justice court judge, the appointing authority and local legislative body shall consider:

(i) whether or not the judge has been certified as meeting the evaluation criteria for judicial performance established by the Judicial Council; and

(ii) any other factors considered relevant by the appointing authority.

(6) Before reappointment or retention election, each justice court judge shall be evaluated in accordance with the performance evaluation program established in Subsection 78-3-21(4).

(7) (a) At the conclusion of a term of office or when a vacancy occurs in the position of justice court judge, the appointing authority may contract with a justice court judge in the county or an adjacent county to serve as justice court judge.

(b) The contract shall be for the duration of the justice court judge's term of office.

(8) Vacancies in the office of justice court judge shall be filled as provided in Section 20A-1-506.

CHAPTER 72
H. B. 76
Passed February 13, 2001
Approved February 28, 2001
Effective April 30, 2001

MULTISTATE HIGHWAY TRANSPORTATION AGREEMENT MODIFICATIONS

Sponsor: Don E. Bush

This act modifies the Motor Vehicle Code by amending the Multistate Highway Transportation Agreement. The act repeals the sunset provision of the Multistate Highway Transportation Agreement.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
41-23-2, as enacted by Chapter 179, Laws of Utah 1981
63-55-241, as last amended by Chapter 52, Laws of Utah 2000

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

Section 1. Section 41-23-2 is amended to read:

41-23-2. Text.

The text of this agreement is as follows:

MULTISTATE HIGHWAY TRANSPORTATION AGREEMENT

Pursuant to and in conformity with the laws of their respective jurisdictions, the participating jurisdictions, acting by and through their officials lawfully authorized to execute this agreement, do mutually agree as follows:

ARTICLE I
Findings and Purposes

Section 1. Findings. The participating jurisdictions find that:

(a) The expanding regional economy depends on expanding transportation capacity;

(b) Highway transportation is the major mode for movement of people and goods in the western states;

(c) Uniform application in the West of more adequate vehicle size and weight standards will result in a reduction of pollution, congestion, fuel consumption, and related transportation costs, which are necessary to permit increased productivity;

(d) A number of western states, already having adopted substantially the 1964 Bureau of Public Roads recommended vehicle size and weight standards, still find current federal limits more restrictive; and

[~~(e) The 1974 revision of federal law (23 U.S.C. 127) did not contain any substantial improvements for vehicle size and weight standards in the western states and deprives states of interstate matching money if vehicle weights and widths are increased, even though the interstate system is nearly 92% complete; and~~]

[~~(f)~~] (e) The participating jurisdictions are most capable of developing vehicle size and weight standards most appropriate for their economy and transportation requirements, consistent with and in recognition of principles of highway safety.

Section 2. Purposes. The purposes of this agreement are to:

(a) Adhere to the principle that each participating jurisdiction should have the freedom to develop vehicle size and weight standards that it determines to be most appropriate to its economy and highway system.

(b) Establish a system recommending the operation of vehicles traveling between two or more participating jurisdictions at more adequate size and weight standards.

(c) Promote uniformity among participating jurisdictions in vehicle size and weight standards on the basis of the objectives set forth in this agreement.

(d) Secure uniformity insofar as possible, of administrative procedures in the enforcement of recommended vehicle size and weight standards.

(e) Provide means for the encouragement and utilization of research which will facilitate the achievement of the foregoing purposes, with due regard for the findings set forth in section 1 of this article.

(f) Study and recommend appropriate highway user fees.

(g) Facilitate communication between legislators, state transportation administrators, and commercial industry representatives in addressing the emerging highway transportation issues in participating jurisdictions.

ARTICLE II
Definitions

Section 1. As used in this agreement:

(a) "Cooperating Committee" means a body composed of the designated representatives from the participating jurisdictions.

[~~(a)~~] (b) "Designated representative" means a legislator or other person authorized under Article XII to represent the jurisdiction.

[~~(b)~~] (c) "Jurisdiction" means a state of the United States or the District of Columbia.

[~~(c)~~] (d) "Vehicle" means any vehicle as defined by statute to be subject to size and weight standards which operates in two or more participating jurisdictions.

ARTICLE III
General Provisions

Section 1. Qualifications for Membership. Participation in this agreement is open to jurisdictions which subscribe to the findings, purposes, and objectives of this agreement and will

seek legislation necessary to accomplish these objectives.

Section 2. Cooperation. The participating jurisdictions, working through their designated representatives, shall cooperate and assist each other in achieving the desired goals of this agreement pursuant to appropriate statutory authority.

Section 3. Effect of Headings. Article and section headings contained herein shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of any article or section hereof.

Section 4. Vehicle Laws and Regulations. This agreement shall not authorize the operation of a vehicle in any participating jurisdiction contrary to the laws or regulations thereof.

Section 5. Interpretation. The final decision regarding interpretation of questions at issue relating to this agreement shall be reached by unanimous joint action of the participating jurisdictions, acting through the designated representatives. Results of all such actions shall be placed in writing.

Section 6. Amendment. This agreement may be amended by unanimous joint action of the participating jurisdictions, acting through the officials thereof authorized to enter into this agreement, subject to the requirements of section 4, article III. Any amendment shall be placed in writing and become a part hereof.

Section 7. Restrictions, Conditions or Limitations. Any jurisdiction entering this agreement shall provide each other participating jurisdiction with a list of any restriction, condition or limitation on the general terms of this agreement, if any.

Section 8. Additional Jurisdictions. Additional jurisdictions may become members of this agreement by signing and accepting the terms of the agreement.

ARTICLE IV
Cooperating Committee

Section 1. Each participating jurisdiction shall have two designated representatives. Pursuant to section 2, article III, the designated representatives of the participating jurisdictions shall constitute [~~a committee~~] the Cooperating Committee which shall have the power to:

(a) Collect, correlate, analyze, and evaluate information resulting or derivable from research and testing activities in relation to vehicle size and weight related matters.

(b) Recommend and encourage the undertaking of research and testing in any aspect of vehicle size and weight or related matter when, in their collective judgment, appropriate or sufficient research or testing has not been undertaken.

(c) Recommend changes in law or policy with emphasis on compatibility of laws and uniformity of administrative rules or regulations which would promote effective governmental action or coordination in the field of vehicle size and weight related matters.

(d) Recommend improvements in highway operations, in vehicular safety, and in state administration of highway transportation laws.

(e) Perform functions necessary to facilitate the purposes of this agreement.

Section 2. Each designated representative of a participating jurisdiction shall be entitled to one vote only. No action of the committee shall be [~~binding~~] approved unless a majority of the total number of votes cast by the designated representatives of the participating jurisdictions are in favor [~~thereof~~] of the action.

Section 3. The committee shall meet at least once annually and shall elect, from among its members, a chairman, a vice-chairman, and a secretary.

Section 4. The committee shall submit annually to the legislature of each participating jurisdiction[~~, no later than November 1st,~~] a report setting forth the work of the committee during the preceding year and including recommendations developed by the committee. The committee may submit such additional reports as it deems appropriate or desirable. [~~Copies of all such reports shall be made available to the Transportation Committee of the Western Conference, Council of State Governments, and to the Western Association of State Highway and Transportation Officials.~~]

ARTICLE V
Objectives of the Participating Jurisdictions

Section 1. Objectives. The participating jurisdictions hereby declare that:

(a) It is the objective of the participating jurisdictions to obtain more efficient and more economical transportation by motor vehicles between and among the participating jurisdictions by encouraging the adoption of standards that will, as minimums, allow the operation on all state highways, except those determined through engineering evaluation to be inadequate, with a single-axle weight of 20,000 pounds, a tandem-axle weight of 34,000 pounds, and a gross vehicle or combination weight not in excess of that resulting from application of the formula:

[~~W = 500((LN/N - 1) + 12N + 36)~~**]**

$$W=500\{LN/(N-1) + 12N+36\}$$

where W = maximum weight in pounds carried on any group of two or more consecutive axles computed to nearest 500 pounds.

L = distance in feet between the extremes of any group of two or more consecutive axles.

N = number of axles in group under consideration.

(b) It is the further objective of the participating jurisdictions that [~~in the event~~] the operation of a vehicle or combination of vehicles in interstate commerce according to the provisions of subsection (a) of this section [~~would result in withholding or forfeiture of federal-aid funds pursuant to Section 127, Title 23, U.S. Code, the operation of such vehicle or combination of vehicles at axle and gross~~

~~weights within the limits set forth in subsection (a) of this section will~~] be authorized under special permit authority by each participating jurisdiction [~~which could legally issue such permits prior to July 1, 1956, provided all regulations and procedures related to such issuance in effect as of July 1, 1956, are adhered to.~~] for vehicle combinations in excess of statutory weights of 80,000 pounds or statutory lengths.

[~~(c) The objectives of subsections (a) and (b) of this section relate to vehicles or combinations of vehicles in regular operation, and the authority of any participating jurisdiction to issue special permits for the movement of any vehicle or combinations of vehicles having dimensions and/or weights in excess of the maximum statutory limits in each participating jurisdiction will not be affected.~~]

[~~(d)~~] (c) It is the further objective of the participating jurisdictions to facilitate and expedite the operation of any vehicle or combination of vehicles between and among the participating jurisdictions under the provisions of subsection (a) or (b) of this section, and to that end the participating jurisdictions hereby agree, through their designated representatives, to meet and cooperate in the consideration of vehicle size and weight related matters including, but not limited to, the development of: uniform enforcement procedures; additional vehicle size and weight standards; operational standards; agreements or compacts to facilitate regional application and administration of vehicle size and weight standards; uniform permit procedures; uniform application forms; rules and regulations for the operation of vehicles, including equipment requirements, driver qualifications, and operating practices; and such other matters as may be pertinent.

[~~(e)~~] (d) [~~In recognition of the limited prospects of federal revision of Section 127, Title 23, U.S. Code, and in order to protect participating jurisdictions against any possibility of withholding or forfeiture of federal-aid highway funds, it is the further objective of the participating jurisdictions to~~] The Cooperating Committee may recommend that the participating jurisdictions jointly secure congressional approval of this agreement and, specifically of the vehicle size and weight standards set forth in subsection (a) of this section.

[~~(f) In recognition of desire for a degree of national uniformity of size and weight regulations, it is the further objective to encourage development of broad, uniform size, and weight standards on a national basis, and further that procedures adopted under this agreement be compatible with national standards.~~]

(e) It is the further objective of the participating jurisdictions to:

(1) Establish transportation laws and regulations to meet regional and economic needs and to promote an efficient, safe, and compatible transportation network;

(2) Develop standards that facilitate the most efficient and environmentally sound operation of vehicles on highways, consistent with and in recognition of principles of highway safety; and

(3) Establish programs to increase productivity and reduce congestion, fuel consumption, and related transportation costs and enhance air quality through the uniform application of state vehicle regulations and laws.

ARTICLE VI
Entry Into Force and Withdrawal

Section 1. This agreement shall enter into force when enacted into law by any two or more jurisdictions. Thereafter, this agreement shall become effective as to any other jurisdiction upon its enactment thereof, except as otherwise provided in section 8, article III.

Section 2. Any participating jurisdiction may withdraw from this agreement by cancelling the same but no such withdrawal shall take effect until 30 days after the designated representative of the withdrawing jurisdiction has given notice in writing of the withdrawal to all other participating jurisdictions.

ARTICLE VII
Construction and Severability

Section 1. This agreement shall be liberally construed so as to effectuate the purposes thereof.

Section 2. The provisions of this agreement shall be severable and if any phrase, clause, sentence or provision of this agreement is declared to be contrary to the constitution of any participating jurisdiction or the applicability thereto to any government, agency, person or circumstance is held invalid, the validity of the remainder of this agreement shall not be affected thereby. If this agreement shall be held contrary to the constitution of any jurisdiction participating herein, the agreement shall remain in full force and effect as to the jurisdictions affected as to all severable matters.

ARTICLE VIII
Filing of Documents

Section 1. A copy of this agreement, its amendments, and rules or regulations adopted thereunder and interpretations thereof shall be filed in the highway department in each participating jurisdiction and shall be made available for review by interested parties.

ARTICLE IX
Existing Statutes Not Repealed

Section 1. All existing statutes prescribing weight and size standards and all existing statutes relating to special permits shall continue to be of force and effect until amended or repealed by law.

ARTICLE X
State Government Departments Authorized to Cooperate with Cooperating Committee

Section 1. Within appropriations available therefor, the departments, agencies and officers of the government of this state shall cooperate with and assist the Cooperating Committee within the scope contemplated by article IV, section 1 (a) and

(b) of the agreement. The departments, agencies and officers of the government of this state are authorized generally to cooperate with said Cooperating Committee.

ARTICLE XI
Funding Section

Section 1. Funds for the administration of this agreement, including participation in the Cooperating Committee and the actual expenses of the designated representatives, shall be budgeted or expensed as determined appropriate.

ARTICLE XII
Selection of Designated Representatives

Section 1. The process for selecting the designated representatives to the Cooperating Committee shall be established by law under this section.

Section 2. The persons authorized to represent the state of Utah as the designated representatives to the committee shall be the chairperson of the Senate Transportation Committee and the chairperson of the House Transportation Committee or a legislator or a state agency official that the chairperson assigns.

Section 3. The transportation chairpersons in each house shall also designate one alternative designated representative who shall also be a legislator or state agency official to serve in their absence.

Section 2. Section 63-55-241 is amended to read:

63-55-241. Repeal dates, Title 41.

The following provisions of Title 41 are repealed on the following dates:

[~~(1)~~] Title 41, Chapter 12a, Part VIII, Uninsured Motorist Identification Database Program, is repealed July 1, 2010.

[~~(2) The Multistate Highway Transportation Cooperating Committee, created in Article IV of Section 41-23-2, is repealed July 1, 2002.~~]

CHAPTER 73
H. B. 79
Passed February 14, 2001
Approved February 28, 2001
Effective April 30, 2001

PERSONS WITH A DISABILITY - TECHNICAL REVISIONS

Sponsor: Ty McCartney

This act modifies the Utah Code to make technical corrections to provisions relating to a person with a disability or impairment. The act restates the federal standard for the definition of a person with a disability. The act expands the Rights and Privileges of Blind and Disabled Persons Act by allowing any type of service animal to be used as a guide. The act also makes other technical changes.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
9-4-602, as renumbered and amended by Chapter 241, Laws of Utah 1992
9-4-614, as renumbered and amended by Chapter 241, Laws of Utah 1992
9-4-801, as last amended by Chapters 240 and 243, Laws of Utah 1996
9-4-802, as last amended by Chapter 286, Laws of Utah 2000
9-7-205, as renumbered and amended by Chapter 241, Laws of Utah 1992
10-9-104, as last amended by Chapter 55, Laws of Utah 1996
11-17-1.5, as last amended by Chapter 1, Laws of Utah 1988, Third Special Session
11-17-2, as last amended by Chapter 170, Laws of Utah 1996
17-27-104, as last amended by Chapter 55, Laws of Utah 1996
17-28-2.6, as enacted by Chapter 115, Laws of Utah 1992
17-33-3, as enacted by Chapter 81, Laws of Utah 1981
17-33-5, as last amended by Chapter 182, Laws of Utah 1999
20A-3-105, as last amended by Chapter 22, Laws of Utah 1999
26-10-1, as enacted by Chapter 126, Laws of Utah 1981
26-29-1, as enacted by Chapter 126, Laws of Utah 1981
26-29-2, as enacted by Chapter 126, Laws of Utah 1981
26-29-3, as enacted by Chapter 126, Laws of Utah 1981
26-30-1, as last amended by Chapter 103, Laws of Utah 1988
26-30-2, as last amended by Chapter 38, Laws of Utah 1989
26-30-3, as enacted by Chapter 126, Laws of Utah 1981
31A-22-611, as enacted by Chapter 242, Laws of Utah 1985
34-38-14, as last amended by Chapter 375, Laws of Utah 1997
34-40-104, as last amended by Chapter 375, Laws of Utah 1997
34A-5-102, as last amended by Chapter 161, Laws of Utah 1999
41-1a-408, as last amended by Chapters 27 and 40, Laws of Utah 2000
49-1-103, as last amended by Chapter 288, Laws of Utah 1995
49-5-103, as last amended by Chapter 31, Laws of Utah 1997
53A-1-402, as enacted by Chapter 2, Laws of Utah 1988
53A-9-103, as enacted by Chapter 2, Laws of Utah 1988
53A-11-203, as enacted by Chapter 2, Laws of Utah 1988
53A-17a-106, as renumbered and amended by Chapter 72, Laws of Utah 1991
53A-17a-127, as last amended by Chapter 332, Laws of Utah 1999
53A-20-103, as enacted by Chapter 2, Laws of Utah 1988
53A-25-206, as enacted by Chapter 2, Laws of Utah 1988
55-5-5, as enacted by Chapter 174, Laws of Utah 1971
59-10-108, as last amended by Chapter 183, Laws of Utah 1990
62A-1-111, as last amended by Chapter 106, Laws of Utah 1999
62A-4a-105, as last amended by Chapters 274 and 370, Laws of Utah 1998
63B-5-201, as enacted by Chapter 335, Laws of Utah 1996
75-5-316, as last amended by Chapter 161, Laws of Utah 1997
78-11-23, as enacted by Chapter 167, Laws of Utah 1983

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

Section 1. Section 9-4-602 is amended to read:

9-4-602. Definitions.

As used in this part:

(1) "Area of operation" means:

(a) in the case of an authority of a city, the city, except that the area of operation of an authority of any city does not include any area [~~which~~] that lies within the territorial boundaries of some other city; or

(b) in the case of an authority of a county, all of the county for which it is created except, that a county authority may not undertake any project within the boundaries of any city unless a resolution has been adopted by the governing body of the city (and by any authority which shall have been theretofore established and authorized to exercise its powers in the city) declaring that there is need for the county authority to exercise its powers within that city.

(2) "Blighted area" means any area where dwellings predominate [~~which~~] that, by reason of dilapidation, overcrowding, faulty arrangement or design, lack of ventilation, light, or sanitary

facilities or any combination of these factors, are detrimental to safety, health, and morals.

(3) "Bonds" means any bonds, notes, interim certificates, debentures, or other obligations issued by an authority pursuant to this part.

(4) "City" means any city or town in the state.

(5) "Clerk" means the city clerk or the county clerk, or the officer charged with the duties customarily imposed on [~~such~~] the clerk.

(6) "County" means any county in the state.

(7) "Elderly" means a person who meets the age, disability, or other conditions established by regulation of the authority.

(8) "Federal government" includes the United States of America, the Department of Housing and Urban Development, or any other agency or instrumentality, corporate or otherwise, of the United States.

(9) "Governing body" means, in the case of a city, the council or other body of the city in which is vested legislative authority customarily imposed on the city council, and in the case of a county, the board of county commissioners.

[~~(11)~~] (10) "Housing authority" or "authority" means any public body corporate and politic created by this part.

[~~(12)~~] (11) (a) "Housing project" or "project" means any work or undertaking, on contiguous or noncontiguous sites to:

(i) demolish, clear, or remove buildings from any blighted area;

(ii) provide or assist in providing decent, safe, and sanitary urban or rural dwellings, apartments, or other living accommodations for persons of medium and low income by any suitable methods, including but not limited to rental, sale of individual units in single or multifamily structures under conventional condominium, cooperative sales contract, lease-purchase agreement, loans, or subsidizing of rentals or charges; or

(iii) accomplish a combination of the foregoing.

(b) "Housing project" includes:

(i) buildings, land, equipment, facilities, and other real or personal property for necessary, convenient, or desirable appurtenances;

(ii) streets, sewers, water service, utilities, parks, site preparation and landscaping;

(iii) facilities for administrative, community, health, recreational, welfare, or other purposes;

(iv) the planning of the buildings and other improvements;

(v) the acquisition of property or any interest therein; the demolition of existing structures;

(vi) the construction, reconstruction, rehabilitation, alteration, or repair of the improvements and all other work in connection with them; and

(vii) all other real and personal property and all tangible or intangible assets held or used in connection with the housing project.

[~~(13)~~] (12) "Major disaster" means any flood, drought, fire, hurricane, earthquake, storm, or other catastrophe which in the determination of the governing body is of sufficient severity and magnitude to warrant the use of available resources of the federal, state, and local governments to alleviate the damage, hardship, or suffering caused.

[~~(14)~~] (13) "Mayor" means the mayor of the city or the officer charged with the duties customarily imposed on the mayor or executive head of a city.

[~~(15)~~] (14) "Obligee of an authority" or "obligee" includes any bondholder, agent or trustee for any bondholder, any lessor demising to the authority used in connection with a project, any assignee or assignees of the lessor's interest in whole or in part, and the federal government when it is a party to any contract with the authority.

[~~(16)~~] (15) "Persons of medium and low income" mean persons or families who, as determined by the authority undertaking a project, cannot afford to pay the amounts at which private enterprise, unaided by appropriate assistance, is providing a substantial supply of decent, safe and sanitary housing.

[~~(10) "Handicapped"~~] (16) "Person with a disability" means a person [~~whose functioning is substantially impaired, as determined in accordance with regulations established by the authority~~] with any disability as defined by and covered under the Americans with Disabilities Act of 1990, 42 U.S.C. 12102.

(17) "Public body" means any city, county or municipal corporation, commission, district, authority, agency, subdivision, or other body of any of the foregoing.

(18) "Real property" includes all lands, improvements, and fixtures on them, property of any nature appurtenant to them or used in connection with them, and every estate, interest, and right, legal or equitable, including terms for years.

Section 2. Section 9-4-614 is amended to read:

9-4-614. Preference for elderly and persons with a disability.

(1) For the purpose of increasing the supply of low-rent housing and related facilities for medium and low-income elderly and [~~handicapped persons of~~] medium and low-income persons with a disability, an authority may exercise any of its powers under this part in projects involving dwelling accommodations designed specifically for these persons. [~~In respect to~~]

(2) For dwelling units in any projects suitable to the needs of the elderly or [~~handicapped~~] persons with a disability, special preference may be

extended in admission to those dwelling units to these persons of medium and low income.

Section 3. Section 9-4-801 is amended to read:

9-4-801. Creation.

(1) There is created the Homeless Coordinating Committee.

(2) (a) The committee shall consist of the state planning coordinator, the state superintendent of public instruction, and the executive directors of the Department of Human Services, the Department of Community and Economic Development, the Department of Workforce Services, and the Department of Health, or their designees.

(b) The governor shall appoint the chair from among these members.

(3) The governor may also appoint representatives of local governments, local housing authorities, local law enforcement agencies, and of federal and private agencies and organizations concerned with the homeless, mentally ill, elderly, single-parent families, substance abusers, and [~~the handicapped~~] persons with a disability to be members of the committee.

(4) (a) Except as required by Subsection (4)(b), as terms of current committee members expire, the governor shall appoint each new member or reappointed member to a four-year term.

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

(c) A person appointed under this Subsection (4) may not be appointed to serve more than three consecutive terms.

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

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

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

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

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

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

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

Section 4. Section 9-4-802 is amended to read:

9-4-802. Purposes of Homeless Coordinating Committee -- Uses of Homeless Trust Account.

(1) (a) The Homeless Coordinating Committee shall work to ensure that services provided to the homeless by state agencies, local governments, and private organizations are provided in a cost-effective manner.

(b) Programs funded by the committee shall emphasize emergency housing and self-sufficiency, including placement in meaningful employment or occupational training activities and, where needed, special services to meet the unique needs of the homeless who have families with children, or who are mentally ill, disabled, or suffer from other serious challenges to employment and self-sufficiency.

(c) The committee may also fund treatment programs to ameliorate the effects of substance abuse or a [~~handicap~~] disability.

(2) The committee designated in Subsection 9-4-801(2) [~~is responsible for awarding~~] shall:

(a) award contracts funded by the Homeless Trust Account[~~. The committee shall award contracts~~] with the advice and input of those designated in Subsection 9-4-801(3)[~~, and shall~~];

(b) consider need, diversity of geographic location, coordination with or enhancement of existing services, and the extensive use of volunteers[~~. Priority~~]; and

(c) give priority for funding [~~shall be given~~] to programs that serve the homeless who are mentally ill and who are in families with children.

(3) (a) In any fiscal year, no more than 80% of the funds in the Homeless Trust Account may be allocated to organizations that provide services only in Salt Lake, Davis, Weber, and Utah Counties.

(b) The committee may:

(i) expend up to 3% of its annual appropriation for administrative costs associated with the allocation of funds from the Homeless Trust Account, and up to 2% of its annual appropriation for marketing the Homeless Trust Account and soliciting donations to the Homeless Trust Account[~~. The committee may~~]; and

(ii) pay for the initial costs of the State Tax Commission in implementing Section 59-10-530.5 [~~out of~~] from the Homeless Trust Account.

(4) (a) The committee may not expend, except as provided in Subsection (4)(b), an amount equal to the greater of $50,000 or 20% of the amount donated to the Homeless Trust Account during fiscal year 1988-89.

(b) [~~The~~] If there are decreases in contributions to the fund, the committee may expend funds held in reserve to provide program stability [~~in the event of decreases in contributions to the fund~~], but the committee shall reimburse the amounts of those expenditures to the reserve fund [~~the amount of any such expenditure~~].

(5) The committee shall make an annual report to the Economic Development and Human Resources Appropriations Subcommittee regarding the programs and services funded by contributions to the Homeless Trust Account.

(6) The moneys in the Homeless Trust Account shall be invested by the state treasurer according to the procedures and requirements of Title 51, Chapter 7, State Money Management Act, except that all interest or other earnings derived from the fund moneys shall be deposited in the fund.

Section 5. Section 9-7-205 is amended to read:

9-7-205. Duties of board and director.

(1) The board shall:

(a) promote, develop, and organize a state library and make provisions for its housing;

(b) promote and develop library services throughout the state in cooperation with any and all other state or municipal libraries, schools, or other agencies wherever practical;

(c) promote the establishment of district, regional, or multicounty libraries as conditions within particular areas of the state may require;

(d) supervise the books and materials of the state library and require careful and complete records of the condition and affairs of the state library to be kept;

(e) establish policies for the administration of the division and for the control, distribution, and lending of books and materials to those libraries, institutions, groups, or individuals entitled to them under this chapter;

(f) serve as the agency of the state for the administration of any state or federal funds [~~which~~] that may be appropriated to further library development within the state;

(g) aid and provide general advisory assistance in the development of statewide school library service and encourage contractual and cooperative relations between school and public libraries;

(h) give assistance, advice, and counsel to all tax-supported libraries of any type within the state and to all communities or persons proposing to establish them and conduct courses and institutes on the approved methods of operation, selection of books, or other activities necessary to the proper administration of a library;

(i) furnish or contract for the furnishing of library or information service to state officials, state departments, or any groups that in the opinion of the director warrant the furnishing of those services, particularly through the facilities of traveling libraries to those parts of the state otherwise inadequately supplied by libraries;

(j) where sufficient need exists and if the director considers it advisable, establish and maintain special departments in the state library to provide services for the blind [~~and physically handicapped~~], visually impaired, persons with disabilities, and professional, occupational, and other groups;

(k) administer a depository library program by collecting state publications, and providing a bibliographic information system;

(l) require that information and statistics necessary to the work of the state library be collected, and that findings and reports be published;

(m) make any report concerning the activities of the state library to the governor as he may require; and

(n) develop standards for public libraries.

(2) The director shall, under the policy direction of the board, carry out the responsibilities under Subsection (1).

Section 6. Section 10-9-104 is amended to read:

10-9-104. Stricter requirements.

(1) Except as provided in Subsection (2), municipalities may enact ordinances imposing stricter requirements or higher standards than are required by this chapter.

(2) A municipality may not impose stricter requirements or higher standards than are required by:

(a) Section 10-9-106;

(b) Section 10-9-106.5;

(c) Part 5, Residential Facilities for Elderly [~~Persons~~]; and

(d) Part 6, Residential Facilities for [~~Handicapped~~] Persons with a Disability.

Section 7. Section 11-17-1.5 is amended to read:

11-17-1.5. Purpose of chapter.

(1) The purposes of this chapter are to stimulate the economic growth of the state [~~of Utah~~], to promote employment and achieve greater industrial development in the state [~~of Utah~~], to maintain or enlarge domestic or foreign markets for Utah industrial products, to authorize municipalities and counties in the state to facilitate capital formation, finance, acquire, own, lease, or

sell projects for the purpose of reducing, abating, or preventing pollution and to protect and promote the health, welfare, and safety of the citizens of the state and to improve local health and the general welfare by inducing corporations, persons, or entities engaged in health care services, including hospitals, nursing homes, extended care facilities, facilities for the care of [~~physically and mentally handicapped~~] persons with a physical or mental disability, and administrative and support facilities, to locate, relocate, modernize, or expand in this state and to assist in the formation of investment capital with respect thereto. The Legislature hereby finds and declares that the acquisition or financing, or both, of projects under the Utah Industrial Facilities and Development Act and the issuance of bonds under it constitutes a proper public purpose.

(2) It is declared that the policy of the state [~~of Utah~~] is to encourage the development of free enterprise and entrepreneurship for the purpose of the expansion of employment opportunities and economic development. It is found and declared that there exists in the state [~~of Utah~~] an inadequate amount of locally managed, pooled venture capital in the private sector available to invest in early stage businesses having high growth potential and [~~which~~] that can provide jobs for Utah citizens. It is found that [~~such~~] venture capital is required for healthy economic development of sectors of the economy having high growth and employment potential. It is further found that the public economic development purposes of the state and its counties and municipalities can be fostered by the sale of industrial revenue bonds for the purpose of providing funding for locally managed, pooled new venture and economic development funds in accordance with the provisions of this act. It is found and declared that in order to assure adequate investment of private capital for [~~such~~] these uses, cooperation between private enterprise and state and local government is necessary and in the public interest and that the facilitation of [~~such~~] capital accumulation is the appropriate activity of the counties and municipalities of this state and also of the Utah Division of Business and Economic Development, a division of the Utah Department of Community and Economic Development.

It is found that venture capital funds historically, because of the more intensive nature of their relationship with companies in which they invest, tend to concentrate their investments within a relatively close geographical area to their headquarters location.

It is found and declared that investors in economic development or new venture investment funds require for the overall security of their investments reasonable diversification of investment portfolios and that, in the course of [~~such~~] this diversification, investments are often syndicated or jointly made among several financial institutions or funds. It is expressly found and declared that an economic development or new venture investment fund must from time to time for its optimal profitability and efficiency (which are important for the security and profit of bond purchasers providing funds therefor) cooperate with others who may be located outside the state of Utah or the county or municipality where [~~such~~] the fund is headquartered in the making of investments and that [~~such~~] the fund must be free in the interests of reciprocal relationships with other financial institutions and diversification of risks to invest from time to time in enterprises [~~which~~] that are located outside [~~the state~~] of Utah or [~~such~~] the counties or municipalities. It is specifically found that such activity by a locally managed fund, funded in whole or in part with the proceeds of bonds sold [~~pursuant to~~] under this chapter, is within the public purposes of the state [~~of Utah~~] and any county or municipality offering [~~such~~] the bonds, provided that [~~such~~] the fund locates within the state of Utah or [~~such~~] the county or municipality its headquarters where its actual investment decisions and management functions occur and limits the aggregate amount of its investments in companies located outside [~~the state~~] of Utah to an amount [~~which~~] that in the aggregate does not exceed the aggregate amount of investments made by institutions and funds located outside [~~the state~~] of Utah in Utah companies, [~~which said~~] that the locally managed fund has sponsored or in which it has invested and [~~which~~] that it has brought to the attention of investors outside [~~the state~~] of Utah.

Section 8. Section 11-17-2 is amended to read:

11-17-2. Definitions.

As used in this chapter:

(1) "Bonds" means bonds, notes, or other evidences of indebtedness.

(2) "Finance" or "financing" includes the issuing of bonds by a municipality, county, or state university for the purpose of using a portion, or all or substantially all of the proceeds to pay for or to reimburse the user or its designee for the costs of the acquisition of facilities of a project, or to create funds for the project itself where appropriate, whether these costs are incurred by the municipality, the county, the state university, the user, or a designee of the user. If title to or in these facilities at all times remains in the user, the bonds of the municipality or county shall be secured by a pledge of one or more notes, debentures, bonds, other secured or unsecured debt obligations of the user, or such sinking fund or other arrangement as in the judgment of the governing body is appropriate for the purpose of assuring repayment of the bond obligations to investors in accordance with their terms.

(3) "Governing body" means the board or body [~~in which~~] that the general legislative powers of the municipality or county are vested. In the case of state universities to which this chapter applies, "governing body" means the board or body having the control and supervision of the University of Utah and Utah State University and, with reference to a nonprofit corporation or foundation created by and operating under the auspices of a state university, the board of directors or board of trustees of that corporation or foundation.

(4) "Industrial park" means land, including all necessary rights, appurtenances, easements, and franchises relating to it, acquired and developed by any municipality, county, or state university for the establishment and location of a series of sites for plants and other buildings for industrial, distribution, and wholesale use. There may be included as part of the development of the land for any industrial park under this chapter the acquisition and provision of water, sewerage, drainage, street, road, sidewalk, curb, gutter, street lighting, electrical distribution, railroad, or docking facilities, or any combination of them, but only to the extent that these facilities are incidental to the use of the land as an industrial park.

(5) "Mortgage" means a mortgage, trust deed, or other security device.

(6) "Municipality" means any incorporated city or town in the state, including cities or towns operating under home rule charters.

(7) "Pollution" means any form of environmental pollution including, but not limited to, water pollution, air pollution, pollution caused by solid waste disposal, thermal pollution, radiation contamination, or noise pollution.

(8) "Project" means:

(a) any industrial park, land, interest in land, building, structure, facility, system, fixture, improvement, appurtenance, machinery, equipment, or any combination of them, whether or not in existence or under construction:

(i) [~~which~~] that is suitable for industrial, manufacturing, warehousing, research, business, and professional office building facilities, commercial, shopping services, food, lodging, low income rental housing, recreational, or any other business purposes;

(ii) [~~which~~] that is suitable to provide services to the general public;

(iii) [~~which~~] that is suitable for use by any corporation, person, or entity engaged in health care services, including hospitals, nursing homes, extended care facilities, facilities for the care of [~~physically and mentally handicapped~~] persons with a physical or mental disability, and administrative and support facilities; or

(iv) [~~which~~] that is suitable for use by a state university for the purpose of aiding in the accomplishment of its authorized academic, scientific, engineering, technical, and economic development functions, but "project" does not include any property, real, personal, or mixed, for the purpose of the construction, reconstruction, improvement, or maintenance of a public utility as defined in Section 54-2-1, [~~except aircraft carriers as defined in Title 54,~~] Chapter 2, and except as provided in Subsection (8)(b);

(b) any land, interest in land, building, structure, facility, system, fixture, improvement, appurtenance, machinery, equipment, or any combination of them, used by any individual, partnership, firm, company, corporation, public utility, association, trust, estate, political subdivision, state agency, or any other legal entity, or its legal representative, agent, or assigns, for the reduction, abatement, or prevention of pollution, including, but not limited to, the removal or treatment of any substance in process material, if that material would cause pollution if used without the removal or treatment;

(c) facilities, machinery, or equipment, the manufacturing and financing of which will maintain or enlarge domestic or foreign markets for Utah industrial products; or

(d) any economic development or new venture investment fund to be raised other than from:

(i) municipal or county general fund moneys;

(ii) moneys raised [~~pursuant to~~] under the taxing power of any county or municipality; or

(iii) moneys raised against the general credit of any county or municipality.

(9) "State university" means the University of Utah and Utah State University and includes any nonprofit corporation or foundation created by and operating under their authority.

(10) "User" means the person, whether natural or corporate, who will occupy, operate, maintain, and employ the facilities of, or manage and administer a project after the financing, acquisition, or construction of it, whether as owner, manager, purchaser, lessee, or otherwise.

Section 9. Section 17-27-104 is amended to read:

17-27-104. Stricter requirements.

(1) Except as provided in Subsection (2), counties may enact ordinances imposing stricter requirements or higher standards than are required by this chapter.

(2) A county may not impose stricter requirements or higher standards than are required by:

(a) Section 17-27-105;

(b) Section 17-27-105.5;

(c) Part 5, Residential Facilities for Elderly [~~Persons~~]; and

(d) Part 6, Residential Facilities for [~~Handicapped~~] Persons with a Disability.

Section 10. Section 17-28-2.6 is amended to read:

17-28-2.6. Merit principles.

The County Fire Civil Service System shall be established and administered in a manner that will provide for the effective implementation of the following merit principles:

(1) recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment;

(2) provision of equitable and adequate job classification and compensation systems, including pay and benefits programs;

(3) training of employees as needed to assure high-quality performance;

(4) retention of employees on the basis of the adequacy of their performance and separation of employees whose inadequate performance cannot be corrected;

(5) fair treatment of applicants and employees in all aspects of personal administration without regard to race, color, religion, sex, national origin, political affiliation, age, or [~~handicap~~] disability, and with proper regard for their privacy and constitutional rights as citizens;

(6) provision of information to employees regarding their political rights and prohibited practices under the Hatch Act; and

(7) provision of a formal procedure for processing the appeals and grievances of employees without discrimination, coercion, restraint, or reprisal.

Section 11. Section 17-33-3 is amended to read:

17-33-3. Merit principles.

It is the policy of this state that each county may establish a personnel system administered in a manner that will provide for the effective implementation of the following merit principles:

(1) recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment;

(2) provision of equitable and adequate compensation;

(3) training of employees as needed to assure high-quality performance;

(4) retention of employees on the basis of the adequacy of their performance, and separation of employees whose inadequate performance cannot be corrected;

(5) fair treatment of applicants and employees in all aspects of personnel administration without regard to race, color, religion, sex, national origin, political affiliation, age, or [~~handicap~~] disability, and with proper regard for their privacy and constitutional rights as citizens;

(6) provision of information to employees regarding their political rights and prohibited practices under the Hatch Act; and

(7) provision of a formal procedure for processing the appeals and grievances of employees without discrimination, coercion, restraint, or reprisal.

Section 12. Section 17-33-5 is amended to read:

17-33-5. Office of personnel management -- Director -- Appointment and responsibilities -- Personnel rules.

(1) (a) Each county legislative body shall:

(i) create an office of personnel management, administered by a director of personnel management; and

(ii) ensure that the director is a person with proven experience in personnel management.

(b) (i) Beginning July 1, 1993, the county legislative body shall appoint a director of personnel management to serve a four-year term.

(ii) At the expiration of any four-year term, the county legislative body may reappoint that director to another four-year term or may appoint a new director.

(iii) If the position of director of personnel management becomes vacant for any reason before the four-year term expires, the county legislative body shall appoint a person to complete the unexpired term by following the procedures and requirements of this section.

(c) The career service council shall:

(i) advertise and recruit for the director position in the same manner as for merit positions;

(ii) select three names from a register; and

(iii) submit those names as recommendations to the county legislative body.

(d) The county legislative body shall select a person to serve as director of the office of personnel management from the names submitted to it by the career service council.

(2) The director of personnel management shall:

(a) encourage and exercise leadership in the development of expertise in personnel administration within the several departments, offices, and agencies in the county service and make available the facilities of the office of personnel management to this end;

(b) advise the county legislative and executive bodies on the use of human resources;

(c) develop and implement programs for the improvement of employee effectiveness, such as training, safety, health, counseling, and welfare;

(d) investigate periodically the operation and effect of this law and of the policies made under it and report findings and recommendations to the county legislative body;

(e) establish and maintain records of all employees in the county service, setting forth as to each employee class, title, pay or status, and other relevant data;

(f) make an annual report to the county legislative body regarding the work of the department; and

(g) apply and carry out this law and the policies under it and perform any other lawful acts that are necessary to carry out the provisions of this law.

(3) (a) (i) The director shall issue personnel rules for the county.

(ii) The county legislative body may approve, amend, or reject those rules before they are implemented.

(b) The rules shall provide for:

(i) recruiting efforts to be planned and carried out in a manner that assures open competition, with special emphasis to be placed on recruiting efforts to attract minorities, women, [~~handicapped~~] persons with a disability as defined by and covered under the Americans with Disabilities Act of 1990, 42 U.S.C. 12102, or other groups that are substantially underrepresented in the county work force to help assure they will be among the candidates from whom appointments are made;

(ii) the establishment of job-related minimum requirements wherever practical, [~~which~~] that all successful candidates shall be required to meet in order to be eligible for consideration for appointment or promotion;

(iii) selection procedures that include consideration of the relative merit of each applicant for employment, a job-related method of determining the eligibility or ineligibility of each applicant, and a valid, reliable, and objective system of ranking eligibles according to their qualifications and merit;

(iv) certification procedures that insure equitable consideration of an appropriate number of the most qualified eligibles based on the ranking system;

(v) appointments to positions in the career service by selection from the most qualified eligibles certified on eligible lists established in accordance with Subsections (3)(b)(iii) and (iv);

(vi) noncompetitive appointments in the occasional instance where there is evidence that open or limited competition is not practical, such as for unskilled positions [~~for which there are~~] that have no minimum job requirements;

(vii) limitation of competitions at the discretion of the director for appropriate positions to facilitate employment of qualified applicants with a substantial physical or mental impairment, or other groups protected by Title VII of the Civil Rights Act;

(viii) permanent appointment for entry to the career service [~~which~~] that shall be contingent upon satisfactory performance by the employee during a period of six months, with the probationary period extendable for a period not to exceed six months for good cause, but with the condition that the probationary employee may appeal directly to the council any undue prolongation of the period designed to thwart merit principles;

(ix) temporary, provisional, or other noncareer service appointments, which may not be used as a way of defeating the purpose of the career service and may not exceed 90 days, with the period extendable for a period not to exceed an additional 90 days for good cause;

(x) lists of eligibles normally to be used, if available, for filling temporary positions, and short term emergency appointments to be made without regard to the other provisions of law to provide for maintenance of essential services in an emergency situation where normal procedures are not practical, these emergency appointments not to exceed 90 days, with that period extendable for a period not to exceed an additional 90 days for good cause;

(xi) promotion and career ladder advancement of employees to higher level positions and assurance that all persons promoted are qualified for the position;

(xii) recognition of the equivalency of other merit processes by waiving, at the discretion of the director, the open competitive examination for placement in the career service positions who were originally selected through a competitive examination process in another governmental entity, the individual in those cases, to serve a probationary period;

(xiii) preparation, maintenance, and revision of a position classification plan for all positions in the career service, based upon similarity of duties performed and responsibilities assumed, so that the same qualifications may reasonably be required for, and the same schedule of pay may be equitably applied to, all positions in the same class, the compensation plan, in order to maintain a high quality public work force, to take into account the responsibility and difficulty of the work, the comparative pay and benefits needed to compete in the labor market and to stay in proper alignment with other similar governmental units, and other factors;

(xiv) keeping records of performance on all employees in the career service and requiring consideration of performance records in determining salary increases, any benefits for meritorious service, promotions, the order of layoffs and reinstatements, demotions, discharges, and transfers;

(xv) establishment of a plan governing layoffs resulting from lack of funds or work, abolition of positions, or material changes in duties or organization, and governing reemployment of persons so laid off, taking into account with regard to layoffs and reemployment the relative ability, seniority, and merit of each employee;

(xvi) establishment of a plan for resolving employee grievances and complaints with final and binding decisions;

(xvii) establishment of disciplinary measures such as suspension, demotion in rank or grade, or discharge, [~~such~~] measures to provide for presentation of charges, hearing rights, and appeals for all permanent employees in the career service to the career service council;

(xviii) establishment of a procedure for employee development and improvement of poor performance;

(xix) establishment of hours of work, holidays, and attendance requirements in various classes of positions in the career service;

(xx) establishment and publicizing of fringe benefits such as insurance, retirement, and leave programs; and

(xxi) any other requirements not inconsistent with this law that are proper for its enforcement.

Section 13. Section 20A-3-105 is amended to read:

20A-3-105. Marking and depositing ballots.

(1) (a) If paper ballots are used, the voter, upon receipt of the ballot, shall go to a voting booth and prepare the voter's ballot by marking the appropriate position with a mark opposite the name of each candidate of the voter's choice for each office to be filled.

(b) A mark is not required opposite the name of a write-in candidate.

(c) If a ballot proposition is submitted to a vote of the people, the voter shall mark in the appropriate square with a mark opposite the answer the voter intends to make.

(d) The voter shall fold the ballot before leaving the booth so its contents are concealed and the stub can be removed.

(2) (a) (i) If ballot cards are used, the voter shall insert the ballot card into the voting device and mark the ballot card according to the instructions provided on the device.

(ii) If the voter is issued a ballot card with a long stub without a secrecy envelope, the voter shall record any write-in votes on the long stub.

(iii) If the voter is issued a ballot card with a secrecy envelope, the voter shall record any write-in votes on the secrecy envelope.

(b) After the voter has marked the ballot card, the voter shall either:

(i) place the ballot card inside the secrecy envelope, if one is provided; or

(ii) fold the long stub over the face of the ballot card to maintain the secrecy of the vote if the voter is issued a ballot card with a long stub without a secrecy envelope.

(3) (a) After preparation of the ballot, the voter shall:

(i) leave the voting booth; and

(ii) announce his name to the election judge in charge of the ballot box.

(b) The election judge in charge of the ballot box shall:

(i) clearly and audibly announce the name of the voter and the number on the stub of the voter's ballot;

(ii) if the stub number on the ballot corresponds with the number previously recorded in the official register, and bears the initials of the election judge, remove the stub from the ballot; and

(iii) return the ballot to the voter.

(c) The voter shall, in full view of the election judges, cast his vote by depositing the ballot in the ballot box.

(d) (i) The election judge may not accept a ballot from which the stub has been detached.

(ii) The election judge shall treat a ballot from which the stub has been detached as a spoiled ballot and shall provide the voter with a new ballot and dispose of the spoiled ballot as provided in Section 20A-3-107.

(4) A voter voting a paper ballot in a regular primary election shall, after marking the ballot:

(a) (i) detach the part of the paper ballot containing the names of the candidates of the party he has voted from the remainder of the paper ballot;

(ii) fold that portion of the paper ballot so that its face is concealed; and

(iii) deposit it in the ballot box; and

(b) (i) fold the remainder of the paper ballot, containing the names of the candidates of the parties that the elector did not vote; and

(ii) deposit it in a separate ballot box that is marked and designated as a blank ballot box.

(5) (a) Each voter shall mark and deposit the ballot without delay and leave the voting area after voting.

(b) A voter may not:

(i) occupy a voting booth occupied by another, except as provided in Section 20A-3-108;

(ii) remain within the voting area more than ten minutes; or

(iii) occupy a voting booth for more than five minutes if all booths are in use and other voters are waiting to occupy them.

(6) If the official register shows any voter as having voted, that voter may not reenter the voting area during that election unless that voter is an election official or watcher.

(7) The election judges may not allow more than four voters more than the number of voting booths into the voting area at one time unless those excess voters are:

(a) election officials[~~,~~];

(b) watchers[~~,~~]; or [~~are~~]

(c) assisting [~~handicapped~~] voters with a disability.

Section 14. Section 26-10-1 is amended to read:

26-10-1. Definitions.

As used in this chapter:

(1) "Maternal and child health services" means:

(a) the provision of educational, preventative, diagnostic, and treatment services, including medical care, hospitalization, and other institutional care and aftercare, appliances, and facilitating services directed toward reducing infant mortality and improving the health of mothers and children provided, however, that nothing in this section shall be construed to allow any agency of the state to interfere with the rights of the parent of an unmarried minor in decisions about the providing of health information or services;

(b) the development, strengthening, and improvement of standards and techniques relating to [~~such~~] the services and care;

(c) the training of personnel engaged in the provision, development, strengthening, or improvement of [~~such~~] the services and care; and

(d) necessary administrative services connected with Subsections (1)(a), (b), and (c) [~~of this subsection~~].

(2) "Crippled children's services" means:

(a) the early location of crippled children, provided that any program of prenatal diagnosis for the purpose of detecting the possible disease or [~~handicaps~~] disabilities of an unborn child will not be used for screening, but rather will be utilized only when there are medical or genetic indications [~~which~~] that warrant diagnosis;

(b) the provision for such children of preventive, diagnosis, and treatment services, including medical care, hospitalization, and other institutional care and aftercare, appliances, and facilitating services directed toward the diagnosis of the condition of such children or toward the restoration of [~~such~~] the children to maximum physical and mental health;

(c) the development, strengthening, and improvement of standards and techniques relating to such services and care;

(d) the training of personnel engaged in the provision, development, strengthening, or improvement of such services and care; and

(e) necessary administrative services connected with Subsections (2)(a), (b), and (c) [~~of this subsection~~].

Section 15. Section 26-29-1 is amended to read:

CHAPTER 29. ELIMINATION OF ARCHITECTURAL BARRIERS FOR PERSONS WITH A DISABILITY

26-29-1. Buildings and facilities to which chapter applies -- Standards available to interested parties -- Building board staff to advise, review, and approve plans when possible.

(1) (a) The standards in this chapter [~~shall~~] apply to all buildings and facilities used by the public [~~which~~] that are constructed or remodeled in whole or in part by the use of state funds, or the funds of any political subdivision of the state.

(b) All [~~such~~] of those buildings and facilities constructed in Utah after May 12, 1981, shall conform to the standard prescribed in this chapter except buildings [~~or~~], facilities, or portions [~~thereof~~] of them, not intended for public use, including[~~, but not limited to,~~]:

(i) caretaker dwellings[~~,~~];

(ii) service buildings[~~,~~]; and

(iii) heating plants[~~, constructed in this state after the effective date of this act shall conform to each of the standards prescribed herein~~].

(2) [~~These standards shall be adhered to in those buildings and facilities under construction on the effective date of this act, unless the authority responsible for the construction shall determine that the construction has reached a state where compliance is impractical.~~] This chapter [~~shall apply~~] applies to temporary or emergency construction as well as permanent buildings.

(3) [~~These~~] (a) The standards [~~shall be adhered to in~~] established in this chapter apply to the remodeling or alteration of any existing building or facility within the jurisdictions set forth in this chapter where [~~such~~] the remodeling or alteration will affect an area of the building or facility in which there are architectural barriers for [~~the physically handicapped~~] persons with a physical disability.

(b) If the remodeling involves less than 50% of the space of the building or facility, only the areas being remodeled need comply with the standards.

(c) If remodeling involves 50% or more of the space of the building or facility, the entire building or facility shall be brought into compliance with the standards [~~provided in this act~~].

(4) (a) All individuals and organizations are encouraged to apply the standards prescribed [~~herein~~] in this chapter to all buildings used by the public, but [~~which may be~~] that are financed from other than public funds. [~~To this end the~~]

(b) The State Building Board shall:

(i) make the standards [~~of~~] established by this chapter available to interested individuals and organizations; and [~~shall,~~]

(ii) upon request and to the extent possible, make available the services of the building board staff to advise, review, and approve plans and specifications [~~with respect to meeting~~] in order to comply with the standards of this chapter.

Section 16. Section 26-29-2 is amended to read:

26-29-2. Purpose of chapter.

(1) This chapter is concerned with nonambulatory disabilities, semiambulatory disabilities, sight disabilities, hearing disabilities, disabilities of incoordination, and aging.

(2) It is intended to make all buildings and facilities covered by this chapter accessible to, and

functional for, [~~the physically handicapped~~] persons with a physical disability.

Section 17. Section 26-29-3 is amended to read:

26-29-3. Basis for standards.

The standards of this chapter [~~shall be~~] are the current edition of planning and design criteria to prevent architectural barriers for the aged and [~~the physically handicapped~~] persons with a physical disability, as promulgated by the State Building Board.

Section 18. Section 26-30-1 is amended to read:

26-30-1. Physically disabled persons' rights and privileges.

(1) The blind, visually [~~handicapped~~] impaired, hearing impaired, or otherwise physically disabled person has the same rights and privileges in the use of highways, streets, sidewalks, walkways, public buildings, public facilities, and other public areas as able-bodied persons.

(2) The blind, visually [~~handicapped~~] impaired, hearing impaired, or otherwise physically disabled person has equal rights to accommodations, advantages, and facilities offered by common carriers, including air carriers, railroad carriers, motor buses, motor vehicles, water carriers, and all other modes of public conveyance in this state.

(3) The blind, visually [~~handicapped~~] impaired, hearing impaired, or otherwise physically disabled person has equal rights to accommodations, advantages, and facilities offered by hotels, motels, lodges, and all other places of public accommodation in this state, and to places of amusement or resort to which the public is invited.

(4) (a) The blind, visually [~~handicapped~~] impaired, hearing impaired, or otherwise physically disabled person has equal rights and access to public and private housing accommodations offered for rent, lease, or other compensation in this state.

(b) This chapter does not require a person renting, leasing, or selling private housing or real property to modify [~~his~~] the housing or property in order to accommodate a blind, visually [~~disabled~~] impaired, hearing impaired, or otherwise physically disabled person, or to provide a higher degree of care for that person than for a person who is not physically disabled. [~~However, a~~]

(c) A person renting, leasing, or selling private housing or real property to a person who is blind, visually [~~disabled~~] impaired, hearing impaired, or [~~otherwise physically disabled~~] a person who is otherwise physically disabled, shall comply with the provisions of Section 26-30-2, regarding the right of those persons to be accompanied by a guide or service [~~dog~~] animal specially trained for that purpose.

Section 19. Section 26-30-2 is amended to read:

26-30-2. Right to be accompanied by guide or service animal or animal in training.

(1) (a) The blind, visually [~~handicapped~~] impaired, hearing impaired, or otherwise physically disabled person has the right to be accompanied by a guide or service [~~dog~~] animal, as defined by the Americans with Disabilities Act of 1990, 42 U.S.C. 12102, specially trained for that purpose, in any of the places specified in Section 26-30-1 without additional charge for the guide or service [~~dog~~] animal.

(b) This section does not prohibit an owner or lessor of private housing accommodations from charging a reasonable deposit as security for any damage or wear and tear that might be caused by the [~~dog. However, an~~] service animal.

(c) An owner or lessor of private housing accommodations may not, in any manner, discriminate against a blind, visually [~~handicapped~~] impaired, hearing impaired, or otherwise physically disabled person on the basis of [~~his~~] the person's possession of a guide or service [~~dog~~] animal specially trained for that purpose.

(2) A person, whether or not [~~he~~] the person is blind, visually [~~handicapped~~] impaired, hearing impaired, or otherwise physically disabled, has the right to be accompanied by [~~a pup or dog~~] an animal that is in training to become a guide or service [~~dog~~] animal in any of the places specified in Section 26-30-1 without additional charge for the [~~dog~~] animal.

(3) A blind, visually [~~handicapped~~] impaired, hearing impaired, or otherwise physically disabled person is liable for any loss or damage caused or inflicted to the premises by [~~his~~] the individual's guide or service [~~dog~~] animal.

(4) Persons accompanied by a specially trained guide or service [~~dog~~] animal, or by [~~a pup or dog~~] an animal that is in training to become a guide or service [~~dog~~] animal, may first be required to identify the [~~dog~~] animal by exhibiting the [~~dog's~~] animal's laminated identification card or other form of identification, before these provisions apply.

Section 20. Section 26-30-3 is amended to read:

26-30-3. Policy of state to employ blind and disabled.

It is the policy of this state that [~~the~~] a person who is blind, visually [~~handicapped~~] impaired, and otherwise physically disabled shall be employed in the state service, the service of the political subdivisions of the state, in the public schools, and in all other employment supported in whole or in part by public funds on the same terms and conditions as the able-bodied, unless it is shown that the particular disability prevents the performance of the work involved.

Section 21. Section 31A-22-611 is amended to read:

31A-22-611. Policy extension for children with a disability.

(1) Every disability insurance policy or contract that provides that coverage of a dependent child of a person insured under the policy shall:

(a) terminate upon reaching a limiting age as specified in the policy[~~, shall~~]; and

(b) also provide that the age limitation does not terminate the coverage of a dependent child while the child is and continues to be both:

[~~(a)~~] (i) incapable of self-sustaining employment because of mental retardation or physical [~~handicap~~] disability; and

[~~(b)~~] (ii) chiefly dependent upon the person insured under the policy for support and maintenance.

(2) The insurer may require proof of the incapacity and dependency be furnished by the person insured under the policy within 30 days of the date the child attains the limiting age, and at any time thereafter, except that the insurer may not require proof more often than annually after the two-year period immediately following attainment of the limiting age by the child.

Section 22. Section 34-38-14 is amended to read:

34-38-14. Employee not "disabled."

An employee or prospective employee whose drug or alcohol test results are verified or confirmed as positive in accordance with the provisions of this chapter may not, [~~by virtue~~] because of those results alone, be defined as a person with a[~~n "handicap"~~] "disability" for purposes of Title 34A, Chapter 5, Utah Antidiscrimination Act.

Section 23. Section 34-40-104 is amended to read:

34-40-104. Exemptions.

(1) The minimum wage established in this chapter does not apply to:

(a) any employee who is entitled to a minimum wage as provided in 29 U.S.C. Sec. 201 et seq., the Fair Labor Standards Act of 1938, as amended;

(b) outside sales persons;

(c) an employee who is a member of the employer's immediate family;

(d) companionship service for persons who, because of age or infirmity, are unable to care for themselves;

(e) casual and domestic employees as defined by the commission;

(f) seasonal employees of nonprofit camping programs, religious or recreation programs, and nonprofit educational and charitable organizations registered under Title 13, Chapter 22, Charitable Solicitations Act;

(g) an individual employed by the United States of America;

(h) any prisoner employed through the penal system;

(i) any employee employed in agriculture if the employee:

(i) is principally engaged in the range production of livestock;

(ii) is employed as a harvest laborer and is paid on a piece rate basis in an operation that has been and is generally recognized by custom as having been paid on a piece rate basis in the region of employment;

(iii) was employed in agriculture less than 13 weeks during the preceding calendar year; or

(iv) is a retired or semiretired person performing part-time or incidental work as a condition of the employee's residence on a farm or ranch;

(j) registered apprentices or students employed by the educational institution in which they are enrolled; or

(k) any seasonal hourly employee employed by a seasonal amusement establishment with permanent structures and facilities if the other direct monetary compensation from tips, incentives, commissions, end-of-season bonus, or other forms of pay is sufficient to cause the average hourly rate of total compensation for the season of seasonal hourly employees who continue to work to the end of the operating season to equal the applicable minimum wage if the seasonal amusement establishment:

(i) does not operate for more than seven months in any calendar year; or

(ii) during the preceding calendar year its average receipts for any six months of [~~such~~] that year were not more than 33-1/3% of its average receipts for the other six months of [~~such~~] that year.

(2) (a) [~~Handicapped individuals~~] Persons with a disability whose earnings or productive capacities are impaired by age, physical or mental deficiencies, or injury may be employed at wages that are lower than the minimum wage, provided the wage is related to the employee's productivity.

(b) The commission may establish and regulate the wages paid or wage scales for [~~the handicapped individuals~~] persons with a disability.

(3) The commission may establish or may set a lesser minimum wage for learners not to exceed the first 160 hours of employment.

(4) Employees tipped may be paid not less than 55% of the minimum wage when the balance received from tips, either directly or by pooling of tip receipts, is sufficient to bring the employee to the minimum wage. Employees shall retain all tips except to the extent that they participate in a bona fide tip pooling or sharing arrangement with other tipped employees. The commission may by rule provide for a greater tip allowance, in conjunction with its review of the minimum wage, under Section 34-40-103.

Section 24. Section 34A-5-102 is amended to read:

34A-5-102. Definitions.

As used in this chapter:

(1) "Apprenticeship" means a program for the training of apprentices including a program providing the training of those persons defined as apprentices by Section 35A-6-102.

(2) "Bona fide occupational qualification" means a characteristic applying to an employee:

(a) that is necessary to the operation; or

(b) is the essence of the employee's employer's business.

(3) "Court" means:

(a) the district court in the judicial district of the state in which the asserted unfair employment practice occurred; or

(b) if this court is not in session at that time, a judge of the court described in Subsection (3)(a).

(4) "Director" means the director of the division.

(5) "Disability" means a physical or mental [~~impairment that substantially limits one or more of an individual's major life activities~~] disability as defined and covered by the Americans with Disabilities Act of 1990, 42 U.S.C. 12102.

(6) "Division" means the Division of Antidiscrimination and Labor.

(7) "Employee" means any person applying with or employed by an employer.

(8) (a) "Employer" means:

(i) the state;

(ii) any political subdivision;

(iii) a board, commission, department, institution, school district, trust, or agent of the state or its political subdivisions; or

(iv) a person employing 15 or more employees within the state for each working day in each of 20 calendar weeks or more in the current or preceding calendar year.

(b) "Employer" does not include:

(i) a religious organization or association;

(ii) a religious corporation sole; or

(iii) any corporation or association constituting a wholly owned subsidiary or agency of any religious organization or association or religious corporation sole.

(9) "Employment agency" means any person:

(a) undertaking to procure employees or opportunities to work for any other person; or

(b) holding itself out to be equipped to take an action described in Subsection (9)(a).

(10) "Joint apprenticeship committee" means any association of representatives of a labor organization and an employer providing, coordinating, or controlling an apprentice training program.

(11) "Labor organization" means any organization that exists for the purpose in whole or in part of:

(a) collective bargaining;

(b) dealing with employers concerning grievances, terms or conditions of employment; or

(c) other mutual aid or protection in connection with employment.

(12) "National origin" means the place of birth, domicile, or residence of an individual or of an individual's ancestors.

(13) "On-the-job-training" means any program designed to instruct a person who, while learning the particular job for which the person is receiving instruction:

(a) is also employed at that job; or

(b) may be employed by the employer conducting the program during the course of the program, or when the program is completed.

(14) "Person" means one or more individuals, partnerships, associations, corporations, legal representatives, trusts or trustees, receivers, the state and all political subdivisions and agencies of the state.

(15) "Presiding officer" means the same as that term is defined in Section 63-46b-2.

(16) "Prohibited employment practice" means a practice specified as discriminatory, and therefore unlawful, in Section 34A-5-106.

(17) "Retaliate" means the taking of adverse action by an employer, employment agency, labor organization, apprenticeship program, on-the-job training program, or vocational school against one of its employees, applicants, or members because the employee, applicant, or member:

(a) has opposed any employment practice prohibited under this chapter; or

(b) filed charges, testified, assisted, or participated in any way in any proceeding, investigation, or hearing under this chapter.

(18) "Vocational school" means any school or institution conducting a course of instruction, training, or retraining to prepare individuals to follow an occupation or trade, or to pursue a manual, technical, industrial, business, commercial, office, personal services, or other nonprofessional occupations.

Section 25. Section 41-1a-408 is amended to read:

41-1a-408. Special group plates -- Design -- Application -- Issuance.

(1) As used in this section:

(a) "Boy Scouts of America license plates" means the special group license plates issued under this section to a contributor to the Boy Scouts of America.

(b) "Children's issues license plates" means the special group license plates issued under this section to a contributor to the Guardian Ad Litem Services Account and the Children's Museum of Utah.

(c) "Collegiate license plates" means the special group license plates issued under this section to a contributor to an institution after payment of the appropriate fees.

(d) (i) "Contributor" means a person who has donated or in whose name at least $25 has been donated to:

(A) a scholastic scholarship fund of a single institution;

(B) the Office of Veterans' Affairs in the Department of Community and Economic Development for veterans' programs;

(C) the Division of Wildlife Resources for conservation of wildlife and the enhancement, preservation, protection, access, and management of wildlife habitat;

(D) the Department of Agriculture and Food for the benefit of soil conservation districts;

(E) the Division of Parks and Recreation for the benefit of snowmobile programs;

(F) the Guardian Ad Litem Services Account and the Children's Museum of Utah, with the donation evenly divided between the two; or

(G) the Boy Scouts of America for the benefit of a Utah Boy Scouts of America council as specified by the contributor.

(ii) Except as provided under Subsection (13), the donation must be made in the 12 months prior to registration or renewal of registration.

(e) "Institution" means a state institution of higher education or a private institution of higher education in the state accredited by a regional or national accrediting agency recognized by the United States Department of Education.

(f) "Snowmobile license plates" means the special group license plates issued under this section to a contributor to the Division of Parks and Recreation after payment of the appropriate fees.

(g) "Soil conservation license plates" means the special group license plates issued under this section to a contributor to the Department of Agriculture and Food after payment of the appropriate fees.

(h) "State institution of higher education" has the same meaning as provided in Section 53B-3-102.

(i) "Veterans' license plates" means the special group license plates issued under this section to a contributor to the Office of Veterans' Affairs after payment of the appropriate fees.

(j) "Wildlife license plates" means the special group license plates issued under this section to a contributor to the Division of Wildlife Resources after payment of the appropriate fees.

(2) (a) The design and maximum number of numerals or characters on special group license plates shall be determined by the division in accordance with the criteria in Subsection (2)(b).

(b) Except for Olympic special group license plates, each special group license plate shall display:

(i) the word Utah;

(ii) the name or identifying slogan of the special group;

(iii) a symbol not exceeding two positions in size representing the special group; and

(iv) the combination of letters, numbers, or both uniquely identifying the registered vehicle.

(3) (a) The division shall, after consultation with a representative designated by the special group, specify the word or words comprising the special group name and the symbol to be displayed upon the special group license plates.

(b) Collegiate, veterans', children's issues, snowmobile, soil conservation, Boy Scouts of America, and wildlife license plates may not be redesigned under this section more frequently than every five years.

(c) Veterans' license plates shall display one of the symbols representing the Army, Navy, Air Force, Marines, or Coast Guard.

(4) Subject to Subsections (10) and (12), the division shall only issue special group license plates to a person who is:

(a) a current member of the Legislature;

(b) a current member of the United States Congress;

(c) a survivor of the Japanese attack on Pearl Harbor;

(d) a former prisoner of war;

(e) a recipient of a Purple Heart, as provided in Section 41-1a-409;

(f) a current member of the National Guard;

(g) a person with a disability or the registered owner of a vehicle that an organization uses primarily for the transportation of persons with disabilities that limit or impair the ability to walk;

(h) a contributor to an institution's scholastic scholarship fund;

(i) a contributor to the Division of Wildlife Resources;

(j) a contributor to the Office of Veterans' Affairs;

(k) licensing a special interest vehicle;

(l) licensing a vintage vehicle;

(m) a licensed amateur radio operator;

(n) registering a farm truck;

(o) a currently employed, volunteer, or retired firefighter;

(p) a contributor to the Division of Parks and Recreation;

(q) a contributor to the Department of Agriculture and Food;

(r) a contributor to the Guardian Ad Litem Services Account and the Children's Museum of Utah;

(s) a contributor to the Boy Scouts of America; or

(t) an emergency medical technician.

(5) (a) A vehicle displaying a survivor of the Japanese attack on Pearl Harbor license plate decal, a former prisoner of war license plate decal, or a Purple Heart license plate decal shall be titled in the name of the veteran or the veteran and spouse.

(b) Upon the death of the veteran, the surviving spouse may, upon application to the division, retain the special group license plate decal so long as the surviving spouse remains unmarried.

(c) The division shall require the surviving spouse to make a sworn statement that the surviving spouse is unmarried before renewing the registration under this section.

(6) (a) (i) In accordance with rules made under Subsection (12), the division shall issue a person with a disability special group license plate, temporary removable windshield placard, or a removable windshield placard to:

(A) a qualifying person with a disability; or

(B) an organization that uses a vehicle registered in the applicant's name primarily for the transportation of persons with disabilities that limit or impair the ability to walk.

(ii) The division shall issue a person with a disability special group license plate or a removable windshield placard to a person with a permanent disability.

(iii) The issuance of a person with a disability special group license plate does not preclude the issuance to the same applicant of a removable windshield placard.

(iv) The division shall issue on request one additional placard to a person with a person with a disability special group license plate, temporary removable windshield placard, or a removable windshield placard.

(b) The temporary removable windshield placard or removable windshield placard shall be hung from the front windshield rearview mirror when the vehicle is parked in a parking space reserved for persons with disabilities so that it is visible from the front and rear of the vehicle.

(7) (a) An applicant for original or renewal collegiate license plates must be a contributor to the institution named in the application and present the original contribution verification form or make a contribution to the division at the time of application.

(b) An institution with a special group license plate shall issue to a contributor a verification form designed by the commission containing:

(i) the name of the contributor;

(ii) the institution to which a donation was made;

(iii) the date of the donation; and

(iv) an attestation that the donation was for a scholastic scholarship.

(c) The state auditor may audit each institution to verify that the moneys collected by the institutions from contributors are used for scholastic scholarships.

(d) After an applicant has been issued collegiate license plates or renewal decals, the commission shall charge the institution whose plate was issued, a fee determined in accordance with Section 63-38-3.2 for management and administrative expenses incurred in issuing and renewing the collegiate license plates.

(e) If the contribution is made at the time of application, the contribution shall be:

(i) collected by the division;

(ii) treated as a voluntary contribution for the named institution's scholastic scholarship fund and not as a motor vehicle registration fee; and

(iii) deposited with the named institution, less actual production and administrative costs associated with making and issuing collegiate license plates.

(8) (a) An applicant for original or renewal wildlife license plates must be a contributor to the Division of Wildlife Resources.

(b) This contribution shall be:

(i) collected by the division;

(ii) treated as a voluntary contribution for the funding of wildlife activities and not as a motor vehicle registration fee; and

(iii) deposited into the Wildlife Resources Account created in Section 23-14-13, less actual production and administrative costs associated with making and issuing wildlife license plates.

(9) The division shall issue Olympic special group license plates.

(10) (a) An organization that makes a significant contribution to the state may request the commission to authorize special group license plates for the organization if the organization collects a minimum of 500 applications with the fees required under Section 41-1a-1211.

(b) If the commission approves the request, the division shall design a license plate in accordance with Subsections (2) and (3).

(c) If the commission rejects the request, the organization shall refund all fees to the applicants.

(11) Any person who meets the criteria established under this part for issuance of special group license plates may make application in the same manner provided in Sections 41-1a-410 and 41-1a-411 for personalized special group license plates.

(12) (a) The commission shall make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, to:

(i) establish qualifying criteria for persons to receive, renew, or surrender special group license plates, a temporary removable windshield placard, or a removable windshield placard;

(ii) establish the maximum number of numerals or characters for special group license plates; and

(iii) require all temporary removable windshield placards and removable windshield placards to include:

(A) an identification number;

(B) an expiration date not to exceed six months for a temporary removable windshield placard and two years for a removable windshield placard; and

(C) the seal or other identifying mark of the division.

(b) The qualifying criteria under Subsection (12)(a) for a person with a disability special group license plate, temporary removable windshield placard, or removable windshield placard shall include a requirement that an initial application of a person with a disability be accompanied by the certification of a licensed physician:

(i) that the applicant meets the definition of a person with a disability that limits or impairs the ability to walk as defined in the federal Uniform System for [~~Handicapped~~] Parking for Persons with Disabilities, [~~58 Fed. Reg. 10, 328 (1991)~~] 23 C.F.R. Ch. 11, Subch. B, Pt. 1235.2 (1991); and

(ii) containing the period of time that the physician determines the applicant will have the disability, not to exceed six months in the case of a temporary disability.

(13) (a) The division may issue original veterans' license plates.

(b) An applicant for original veterans' license plates must be at least a one-time contributor to the Office of Veterans' Affairs.

(c) This contribution shall be:

(i) collected by the division;

(ii) treated as a voluntary contribution for the Office of Veterans' Affairs and not as a motor vehicle registration fee; and

(iii) transferred to the Office of Veterans' Affairs at least monthly, less actual production and administrative costs associated with making and issuing veterans' license plates.

(14) (a) The division may issue original snowmobile license plates if the Division of Parks and Recreation provides a one-time contribution of at least $9,000 to the division from restricted revenue in the Off-Highway Vehicle Account in the General Fund to cover startup materials and programming costs.

(b) An applicant for original snowmobile license plates must be a contributor to the Division of Parks and Recreation.

(c) This contribution shall be:

(i) collected by the division;

(ii) treated as a voluntary contribution for the Division of Parks and Recreation for the benefit of snowmobile programs and not as a motor vehicle registration fee; and

(iii) transferred to the Division of Parks and Recreation at least monthly, less actual production and administrative costs associated with making and issuing snowmobile license plates.

(15) (a) (i) The division may issue original soil conservation license plates if soil conservation districts provide a one-time contribution of at least $9,000 to the division to cover startup materials and programming costs.

(ii) The contribution described in Subsection (15)(a)(i) may be from private funds available to soil conservation districts.

(b) An applicant for original soil conservation license plates must be a contributor to the Department of Agriculture and Food.

(c) This contribution shall be:

(i) collected by the division;

(ii) treated as a voluntary contribution for the Department of Agriculture and Food for the benefit of soil conservation districts and not as a motor vehicle registration fee; and

(iii) transferred to the Department of Agriculture and Food at least monthly, less actual production and administrative costs associated with making and issuing soil conservation license plates.

(16) (a) (i) The division may issue original children's issues license plates if the Office of the Guardian Ad Litem Director and the Children's Museum of Utah each provide a one-time contribution of at least $4,500 to the division to cover startup materials and programming costs.

(ii) The contribution described in Subsection (16)(a)(i) from the Office of the Guardian Ad Litem Director shall be from private funds not normally available to the Office of the Guardian Ad Litem Director.

(b) An applicant for original or renewal children's issues license plates must be a contributor to the Guardian Ad Litem Services Account and the Children's Museum of Utah.

(c) This contribution shall be:

(i) collected by the division;

(ii) treated as a voluntary contribution for the Guardian Ad Litem Services Account and the Children's Museum of Utah and not as a motor vehicle registration fee; and

(iii) transferred to the Guardian Ad Litem Services Account and the Children's Museum of Utah at least monthly, less actual production and administrative costs associated with making and issuing children's issues license plates.

(17) A current member of the Legislature may select the Olympic license plate as the legislator's special group license plate. The legislator shall pay the special fees for the Olympic license plate, as provided in Section 41-1a-417 and Subsection 41-1a-1211(12).

(18) (a) Beginning January 1, 2001, the division may issue original Boy Scouts of America license plates if the Boy Scouts of America provides a one-time contribution of at least $9,000 to the division to cover startup materials and programming costs.

(b) An applicant for original or renewal Boy Scouts of America license plates must be a contributor to the Boy Scouts of America.

(c) This contribution shall be:

(i) collected by the division;

(ii) treated as a voluntary contribution for the Boy Scouts of America and not as a motor vehicle registration fee; and

(iii) transferred to the Boy Scouts of America at least monthly, less actual production and administrative costs associated with making and issuing Boy Scouts of America license plates.

Section 26. Section 49-1-103 is amended to read:

49-1-103. Definitions.

As used in this title:

(1) "Accumulated contributions" means the sum of the contributions made by or on behalf of a member and standing to the credit of the member's individual account, including regular interest where allowed by law.

(2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of mortality tables adopted by the board, including regular interest.

(3) "Actuarial interest rate" means the interest rate adopted by the board upon the recommendation of the actuary and upon which the funding of retirement system costs and benefits are computed.

(4) "Administrator" means the executive director of the board.

(5) "Agency" means:

(a) a department, division, agency, office, authority, commission, board, institution, or hospital of the state;

(b) a county, municipality, school district, or special district;

(c) a state college or university; or

(d) any other individual employing unit that participates in a system administered by the board.

(6) "Allowance" means the pension plus the annuity, including any cost of living or other authorized adjustments to the pension and annuity.

(7) "Annuity" means annual payments for life derived from contributions made by the employee.

(8) "Beneficiary" means any person entitled to receive a retirement allowance or other benefit provided by this title.

(9) "Board" or "retirement board" means the Utah State Retirement Board established under this title.

(10) "Contributions" means the contributions by the employer and the member, if any, into a retirement fund.

(11) "Current service" means covered service rendered after the effective date of each system.

(12) "Department" means any department, office, board, commission, instrumentality, or other agency of the state.

(13) "Dependent beneficiary" means a spouse, child, or children under 21 years of age, a [~~physically or mentally handicapped~~] child or children with a physical or mental disability, regardless of age, or a parent, or person, regardless of age or relationship, who is or are financially dependent upon the member. The dependency of a person other than a spouse or child shall be proved by written verified documents acceptable to the board or by a copy of the member's state income tax return for the last reportable year listing the person as a dependent. All documents are subject to review and approval of the administrator.

(14) "Employer" or "employing unit" means any department, educational institution, political subdivision, organization, or agency financed in whole or in part by public funds for which any employee or member performs services subject to this title.

(15) "Inactive member" means a member who has received no compensation for a period longer than four months.

(16) (a) "Member" means any person included in the membership of any retirement system administered by the board.

(b) A person is considered to be a member if he has contributions on deposit with the retirement system or with the terminated system. "Member" also includes leased employees within the meaning of Section 414(n)(2) of the federal Internal Revenue Code. If leased employees constitute less than 20% of the employer's work force that is not highly compensated within the meaning of Section 414(n)(5)(c)(ii) , Internal Revenue Code, "member" does not include leased employees covered by a plan described in Section 414(n)(5) of the federal Internal Revenue Code.

(17) "Office" or "retirement office" means the Utah State Retirement Office.

(18) "Participating employer" or "participating employing unit" means any employer or employing unit participating in the system whose employees are members of the system.

(19) "Payroll" means a register, warrant, or any other document upon which all persons receiving salary payments are listed.

(20) "Pension" means annual payments for life derived from contributions made by employers.

(21) "Political subdivision" means any political subdivision of the state, including cities, towns, counties, and school districts, but only if the subdivision is a juristic entity that is legally separate and distinct from the state and only if its employees are not by virtue of their relationship to the entity, employees of the state or one of its departments.

(a) The term includes special districts or authorities created by the Legislature or by local governments including mosquito abatement districts, sewer or water districts, water associations and companies, libraries, and any entity arising out of a consolidation agreement between political subdivisions.

(b) The term includes the retirement office.

(c) The term does not include a project entity created under Title 11, Chapter 13, Interlocal Cooperation Act.

(22) "Prior service" means service rendered prior to the effective date of each system.

(23) "Refund" means a return of contributions to a terminating member.

(24) "Regular interest" means interest compounded annually at a rate adopted by the board in accordance with this title.

(25) "Retirant" means a retired member who is receiving retirement benefits.

(26) "Retirement" means withdrawal from active service with a retirement allowance granted under this title.

(27) "Service" or "covered service" means service used in the computation of benefits.

Section 27. Section 49-5-103 is amended to read:

49-5-103. Definitions.

As used in this chapter:

(1) (a) "Compensation," "salary," or "wages" means the total amount of payments [~~which~~] that are currently includable in gross income made by an employer to an employee for services rendered to the employer as base income. Base income shall be determined prior to any salary deductions or reductions for any salary deferral or pretax benefit programs authorized by federal law, for the position covered under the retirement system.

(b) "Compensation" includes performance-based bonuses and cost-of-living adjustments.

(c) "Compensation" does not include:

(i) overtime;

(ii) sick pay incentives;

(iii) retirement pay incentives;

(iv) remuneration paid in kind such as a residence, use of equipment, uniforms, or travel allowances;

(v) a lump-sum payment or special payments covering accumulated leave; and

(vi) all contributions made by an employer under this plan or under any other employee benefit plan maintained by an employer for the benefit of a participant.

(d) "Compensation" for purposes of this chapter may not exceed the amount allowed under Internal Revenue Code Section 401(a)(17).

(2) (a) "Disability" means a physical or mental condition [~~which~~] that, in the judgment of the board, is total and presumably permanent, prevents a member from fulfilling the responsibilities of the member's assignment, and prevents the member from performing satisfactorily in some other assignment of the same general class.

(b) The determination of disability is based upon medical and other evidence satisfactory to the board.

(3) "Employer" or "employing unit" means any regularly constituted fire department of a political subdivision for which any employee or member performs services subject to this chapter.

(4) "Final average salary" means the amount computed by averaging the highest three years of annual compensation preceding retirement, but not including overtime or lump-sum or special salary adjustments received instead of uniform or other allowances or expenses or other payments made covering accumulated leave.

(a) Except as provided in Subsection (4)(b), the percentage increase in any one of the years used may not exceed the previous year's salary by more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power of the dollar during the previous year, as measured by the Consumer Price Index prepared by the United States Bureau of Labor Statistics.

(b) In cases where the employing unit provides acceptable documentation to the board the limitation in Subsection (4)(a) may be exceeded if:

(i) the member has transferred from another employing unit; or

(ii) the member has been promoted to a new position.

(5) "Firefighter service" means full-time paid service rendered as an individual or as a member of a group of firefighters regularly assigned to a regularly constituted fire department.

(6) "Full-time service" means 2,080 hours per year.

(7) "Inactive member" means a member who has received no compensation for a period of longer than four months.

(8) "Line-of-duty death or disability" means a death or any physical or mental disability resulting from external force, violence, or disease occasioned by an act of duty as a firefighter and includes for a paid firefighter, after five years of credited service, any death or disability resulting from heart disease, lung disease, or respiratory tract, but if a firefighter ceases to be a contributing member because of personal illness or service-connected disability, neither of which is related to heart or lung disease nor the respiratory tract for a period of six months or more and then again becomes a contributing member, the provision relating to death or disability resulting from heart, lung, or respiratory disease does not apply until the member again becomes a contributing member for a period of not less than two years or unless clear and precise evidence is presented that the heart, lung, or respiratory disease was, in fact, occasioned in the line-of-duty.

(9) (a) "Member" means any person included in the membership of the retirement system.

(b) A person is a member if the person has contributions on deposit with the retirement system.

(c) A person hired on or after July 1, 1971, in a fire department, who is assigned directly to a clerical position, and because of lack of training in fire fighting techniques, is not subject to reassignment into positions of hazardous duty, is not eligible for membership in this system.

(i) The person in a clerical position shall become a contributing member of the appropriate retirement system.

(ii) The required employer contributions shall be paid by the fire department.

(iii) This membership exclusion may not be interpreted to prohibit the assignment of a [~~handicapped~~] disabled or partially disabled firefighter to that position.

(iv) If Subsection (9)(c)(iii) applies, the firefighter retains status as a contributing member of this system and continues to accrue service credits while so employed.

(10) "Regularly constituted fire department" means a fire department [~~which~~] that employs a full-time fire chief and promulgates rules.

(11) (a) "Service" or "covered service" means firefighter service rendered an employer for compensation [~~which is~~] included in computations relating to membership status or benefit rights under this chapter.

(b) A retirement allowance or other benefit may not be granted under this system that is based upon the same service for retirement benefits under some other retirement system administered by the board.

(12) (a) "Volunteer firefighter" means any individual that is not regularly employed as a firefighter, but who is on the rolls of a regularly constituted fire department.

(b) An individual that volunteers assistance but is not a regularly enrolled firefighter is not a volunteer firefighter.

(c) Service as a volunteer firefighter is not creditable towards qualifying for a service retirement allowance.

(13) "Years of service" or "service years" means the number of periods consisting of 12 full months as determined by the board, whether consecutive or not, during which an employee performed services for an employer or received full-time pay while on sick leave, including any time the employee was absent in the service of the United States.

Section 28. Section 53A-1-402 is amended to read:

53A-1-402. Board to establish minimum standards for public schools.

(1) The State Board of Education shall establish rules and minimum standards for the public schools, to include:

(a) the qualification and certification of educators and ancillary personnel who provide direct student services, required school administrative and supervisory services, and evaluation of instructional personnel;

(b) access to programs, attendance, competency levels, graduation requirements, discipline and control, and health and safety requirements;

(c) school accreditation, the academic year, alternative and pilot programs, curriculum and instruction requirements, school libraries, and services to [~~the handicapped~~] persons with a disability as defined by and covered under the Americans with Disabilities Act of 1990, 42 U.S.C. 12102; the Rehabilitation Act of 1973, 29 U.S.C. 705(20)(A); and the Individuals with Disabilities and Education Act, 20 U.S.C. 1401(3); and other special groups;

(d) requirements for school design, general educational specifications, school sites, and building accessibility;

(e) state reimbursed bus routes, bus safety and operational requirements, and other transportation needs; and

(f) school productivity and cost effectiveness measures, the minimum school program, school building aid, school lunch, driver education, federal programs, school budget formats, and financial, statistical, and student accounting requirements.

(2) The board shall determine whether the minimum standards have been met, and that required reports are properly submitted.

(3) The board may apply for, receive, administer, and distribute to eligible applicants funds made

available through programs of the federal government.

Section 29. Section 53A-9-103 is amended to read:

53A-9-103. Authorized components.

Career ladders may include the following components:

(1) A career ladder may have an extended contract year for teachers, providing for additional paid nonteaching days beyond the regular school year for curriculum development, inservice training, preparation, and related activities. School boards may approve individual exceptions to the extended year contract.

(2) It may have, at the option of the local school board, an extended contract year for teachers, providing for additional paid workdays beyond the regular school year for teaching assignments in summer school, remedial, [~~handicapped~~] disabled, specialized, vocational, gifted and talented, and adult education programs.

(3) It may have a fair and consistent procedure for selecting teachers who will be given additional responsibilities. The selection procedure shall incorporate clearly stated job descriptions and qualifications for each level on the career ladder.

(4) (a) It may have a program of differentiated staffing that provides additional compensation and, as appropriate, additional extensions of the contract year, for those who assume additional instruction-related responsibilities such as:

[~~(a)~~] (i) assisting students and beginning teachers;

[~~(b)~~] (ii) curriculum and lesson plan development;

[~~(c)~~] (iii) helping established teachers improve their teaching skills;

[~~(d)~~] (iv) volunteer training;

[~~(e)~~] (v) planning[~~,~~];

(vi) facilities and productivity improvements; and

[~~(f)~~] (vii) educational assignments directed at establishing positive relationships with the community, businesses, and parents.

(b) Administrative and extracurricular activities are not considered additional instruction-related activities under this Subsection (4).

(5) It may have a well defined program of evaluation and guidance for beginning teachers, designed to assist those teachers during provisional years of teaching to acquire and demonstrate the skills required of capable, successful teachers. Continuation in teaching from year to year shall be contingent upon satisfactory teaching performance.

(6) It may have a clear and concise explanation of the evaluation system components, including the respective roles of parents, teachers, administrators, and the school board in the development of the evaluation system. The system shall provide for frequent, comprehensive evaluations of teachers with less than three years' teaching experience, and periodic evaluations of other teachers.

(7) Advancement on the career ladder program is contingent upon effective teaching performance, evidence of which may include formal evaluation and assessment of student progress. Student progress shall play a significant role in teacher evaluation. Other criteria may include formal preparation and successful teaching experience.

(8) It may include an assessment of implementation costs.

(9) It may have a plan for periodic review of the career ladder including the makeup of the reviewing entity, procedures to be followed during review, and the time schedule for the review.

Section 30. Section 53A-11-203 is amended to read:

53A-11-203. Vision screening.

(1) A child under seven years of age entering school for the first time in this state must present the following to the school:

(a) a certificate signed by a licensed physician, optometrist, or other licensed health professional approved by the division, stating that the child has received vision screening to determine the presence of amblyopia or other visual defects. As used in this section, "division" means the Division of Services for the Blind and Visually [~~Handicapped~~] Impaired, State Office of Education; or

(b) a written statement signed by at least one parent or legal guardian of the child that the screening violates the personal beliefs of the parent or legal guardian.

(2) The division shall provide vision screening report forms to persons approved by the division to conduct the screening.

(3) Each school district may conduct free vision screening clinics for children aged 3-1/2 to seven.

(4) The division shall maintain a central register of children, aged 3-1/2 to seven, who fail vision screening and who are referred for follow-up treatment. The register shall include the name of the child, age or birthdate, address, cause for referral, and follow-up results. Each school district shall report referral follow-up results to the division.

(5) The division shall coordinate and supervise the training of persons who serve as vision screeners.

(6) A licensed health professional providing vision care to private patients may not participate as a screener in free vision screening programs provided by school districts.

(7) The Department of Health shall, by rule, set standards and procedures for vision screening required by this chapter, and shall provide the

division with copies of rules, standards, instructions, and test charts necessary for conducting vision screening.

(8) The division shall supervise screening, referral, and follow-up required by this chapter.

Section 31. Section 53A-17a-106 is amended to read:

53A-17a-106. Determination of weighted pupil units.

The number of weighted pupil units in the minimum school program for each year is the total of the units for each school district determined as follows:

(1) The number of units is computed by adding the average daily membership of all pupils of the district attending schools, other than kindergarten and self-contained classes for [~~handicapped~~] children with a disability.

(2) The number of units is computed by adding the average daily membership of all pupils of the district enrolled in kindergarten and multiplying the total by .55.

(a) In those districts that do not elect to hold kindergarten for a full nine-month term, the local school board may approve a shorter term of nine weeks' duration.

(b) Upon board approval, the number of pupils in average daily membership at the short-term kindergarten shall be counted for the purpose of determining the number of units allowed in the same ratio as the number of days the short-term kindergarten is held, not exceeding nine weeks, compared to the total number of days schools are held in that district in the regular school year.

(3) (a) The State Board of Education shall use prior year plus growth to determine average daily membership in distributing monies under the minimum school program where the distribution is based on kindergarten through grade 12 ADMs or weighted pupil units.

(b) Under prior year plus growth, kindergarten through grade 12 average daily membership for the current year is based on the actual kindergarten through grade 12 average daily membership for the previous year plus an estimated percentage growth factor.

(c) The growth factor is the percentage increase in total average daily membership on the first school day of October in the current year as compared to the total average daily membership on the first school day of October of the previous year.

Section 32. Section 53A-17a-127 is amended to read:

53A-17a-127. Eligibility for state-supported transportation -- Approved bus routes -- Additional local tax.

(1) A student eligible for state-supported transportation means:

(a) a student enrolled in kindergarten through grade six who lives at least 1-1/2 miles from school;

(b) a student enrolled in grades seven through 12 who lives at least two miles from school; and

(c) a student enrolled in a special program offered by a school district and approved by the State Board of Education for trainable, motor, multiple-disabled, or other students with severe disabilities who are incapable of walking to school or where it is unsafe for students to walk because of their [~~handicapping~~] disabling condition, without reference to distance from school.

(2) If a school district implements double sessions as an alternative to new building construction, with the approval of the State Board of Education, those affected elementary school students residing less than 1-1/2 miles from school may be transported one way to or from school because of safety factors relating to darkness or other hazardous conditions as determined by the local school board.

(3) (a) The State Office of Education shall distribute transportation monies to school districts based on three factors:

(i) an allowance per mile for approved bus routes;

(ii) an allowance per hour for approved bus routes; and

(iii) an annual allowance for equipment and overhead costs based on approved bus routes and the age of the equipment.

(b) In order for a bus to be considered for the equipment allowance, it must meet federal and state regulations and standards for school buses.

(c) The State Office of Education shall annually review the allowance per mile, the allowance per hour, and the annual equipment and overhead allowance and adjust the allowance to reflect current economic conditions.

(4) (a) Approved bus routes for funding purposes shall be determined on fall data collected by October 1.

(b) Approved route funding shall be determined on the basis of the most efficient and economic routes.

(5) A Transportation Advisory Committee with representation from local school superintendents, business officials, school district transportation supervisors, and the State Office of Education shall serve as a review committee for addressing school transportation needs, including recommended approved bus routes.

(6) (a) A local school board may provide for the transportation of students who are not eligible under Subsection (1), regardless of the distance from school, from:

(i) general funds of the district; and

(ii) a tax rate not to exceed .0003 per dollar of taxable value imposed on the district.

(b) A local school board may use revenue from the tax to pay for transporting participating students to

interscholastic activities, night activities, and educational field trips approved by the board and for the replacement of school buses.

(c) (i) If a local school board levies a tax under Subsection (6)(a)(ii) of at least .0002, the state may contribute an amount not to exceed 85% of the state average cost per mile, contingent upon the Legislature appropriating funds for a state contribution.

(ii) The State Office of Education shall distribute the state contribution according to rules enacted by the State Board of Education.

(d) (i) The amount of state guarantee money to which a school district would otherwise be entitled to under Subsection (6)(c) may not be reduced for the sole reason that the district's levy is reduced as a consequence of changes in the certified tax rate under Section 59-2-924 [~~pursuant~~] due to changes in property valuation.

(ii) Subsection (6)(d)(i) applies for a period of two years following the change in the certified tax rate.

(7) There is appropriated for the fiscal year beginning July 1, 1999, $225,000 to the state board as the state's contribution under Subsection (6)(c)(i).

Section 33. Section 53A-20-103 is amended to read:

53A-20-103. Planning, design, and construction of public school buildings -- Duties of State Board of Education.

The State Board of Education has the following duties:

(1) It shall adopt codes to govern the preparation of plans and specifications for public school buildings. The codes shall include minimum standards for:

(a) construction, heating, ventilation, sanitation, lighting, plumbing, structural safety, protection from fire, panic, and other dangers;

(b) promotion of the safety, health, and comfort of the occupants; and

(c) providing functional adaptability including suitable facilities for [~~handicapped;~~] persons with a disability.

(2) It shall require local school boards to maintain a current inventory of school plant facilities in conformance with rules established by the board.

(3) It shall establish planning procedures for school districts to determine the need for school plant facilities. The procedures shall include definitions of methods, criteria, and other pertinent information necessary to determine the type, size, location, and cost of school plant facilities eligible for state financial participation.

(4) It shall require local school boards to prepare and maintain surveys of school plant capital outlay needs. The surveys shall include immediate and long-range school plant capital outlay needs in accordance with planning procedures established by the state board and space utilization studies, enrollment projections, district and attendance area organization, class size, conditions of present facilities, financial structure of the district, and other necessary information.

(5) It shall prepare a guide for use by school districts in formulating educational specifications for individual building projects.

(6) It shall recommend minimum requirements for contracts and agreements between architects and engineers and local school boards. As a condition of the contract or agreement, the state board shall require the use of independent licensed consulting engineers for engineering design work.

(7) It shall recommend minimum requirements for advertising, bidding, and contractual procedures for school plant construction.

(8) It shall provide school districts with findings regarding school designs, including flexibility of design and modular planning, new methods of construction, and new material.

(9) It shall prepare an annual school plant capital outlay report of all school districts, including tabulations of facilities available, number and size of projects completed and under construction, and additional facilities required.

Section 34. Section 53A-25-206 is amended to read:

53A-25-206. Instruction of adults with visual impairments.

Persons over 21 who are capable of receiving beneficial instruction, but are incapable [~~because of blindness or defective sight~~] of receiving adequate instruction in other public schools because of impaired vision, may, in the discretion of the board of trustees, be admitted to the school.

Section 35. Section 55-5-5 is amended to read:

55-5-5. State policy -- Construction of provisions.

It is the policy of this state to provide maximum opportunities for training blind or visually [~~handicapped~~] impaired persons, helping them to become self-supporting and demonstrating their capabilities. This act shall be construed to carry out this policy.

Section 36. Section 59-10-108 is amended to read:

59-10-108. Credit for cash contributions to sheltered workshops.

(1) For tax years beginning January 1, 1983, and thereafter, in computing the tax due the state [~~of Utah pursuant to~~] under Section 59-10-104 there shall be a tax credit allowed for cash contributions made within the taxable year to nonprofit rehabilitation sheltered workshop facilities for [~~the handicapped~~] persons with a disability operating in Utah [~~which~~] that are certified by the Department of Human Services as a qualifying facility.

(2) The allowable credit is an amount equal to 50% of the aggregate amount of the cash

contributions to the qualifying rehabilitation facilities, but [~~in no case shall~~] the allowed credit may not exceed $200.

(3) The amount of contribution claimed as a tax credit [~~pursuant to~~] under this section may not also be claimed as a charitable deduction in determining net taxable income.

Section 37. Section 62A-1-111 is amended to read:

62A-1-111. Department authority.

The department [~~has authority~~] may, in addition to all other authority and responsibility granted to it by law[~~, to~~]:

(1) adopt rules, not inconsistent with law, as the department may consider necessary or desirable for providing social services to the people of this state;

(2) establish and manage client trust accounts in the department's institutions and community programs, at the request of the client or his legal guardian or representative, or in accordance with federal law;

(3) purchase, as authorized or required by law, services that the department is responsible to provide for legally eligible persons;

(4) conduct adjudicative proceedings for clients and providers in accordance with the procedures of Title 63, Chapter 46b, Administrative Procedures Act;

(5) establish eligibility standards for its programs, not inconsistent with state or federal law or regulations;

(6) take necessary steps, including legal action, to recover money or the monetary value of services provided to a recipient who was not eligible;

(7) set and collect fees for its services;

(8) license agencies, facilities, and programs, except as otherwise allowed, prohibited, or limited by law;

(9) acquire, manage, and dispose of any real or personal property needed or owned by the department, not inconsistent with state law;

(10) receive gifts, grants, devises, and donations; gifts, grants, devises, donations, or the proceeds thereof, may be credited to the program designated by the donor, and may be used for the purposes requested by the donor, as long as the request conforms to state and federal policy; all donated funds shall be considered private, nonlapsing funds and may be invested under guidelines established by the state treasurer;

(11) accept and employ volunteer labor or services; the department is authorized to reimburse volunteers for necessary expenses, when the department considers that reimbursement to be appropriate;

(12) carry out the responsibility assigned in the Workforce Services Plan by the State Council on Workforce Services;

(13) carry out the responsibility assigned by Section 9-4-802 with respect to coordination of services for the homeless;

(14) carry out the responsibility assigned by Section 62A-5a-105 with respect to coordination of services for [~~handicapped~~] students with a disability;

(15) provide training and educational opportunities for its staff;

(16) collect child support payments and any other monies due to the department;

(17) apply the provisions of Title 78, Chapter 45, Uniform Civil Liability for Support Act, to parents whose child lives out of the home in a department licensed or certified setting;

(18) establish policy and procedures in cases where the department is given custody of a minor by the juvenile court pursuant to Section 78-3a-118; any policy and procedures shall include:

(a) designation of interagency teams for each juvenile court district in the state;

(b) delineation of assessment criteria and procedures;

(c) minimum requirements, and timeframes, for the development and implementation of a collaborative service plan for each minor placed in department custody; and

(d) provisions for submittal of the plan and periodic progress reports to the court;

(19) carry out the responsibilities assigned to it by statute; and

(20) examine and audit the expenditures of any public funds provided to local substance abuse authorities, local mental health authorities, local area agencies on aging, and any person, agency, or organization that contracts with or receives funds from those authorities or agencies. Those local authorities, area agencies, and any person or entity that contracts with or receives funds from those authorities or area agencies, shall provide the department with any information the department considers necessary. The department is further authorized to issue directives resulting from any examination or audit to local authorities, area agencies, and persons or entities that contract with or receive funds from those authorities with regard to any public funds. If the department determines that it is necessary to withhold funds from a local mental health authority or local substance abuse authority based on failure to comply with state or federal law, policy, or contract provisions, it may take steps necessary to ensure continuity of services. For purposes of this Subsection (20) "public funds" means the same as that term is defined in Sections 62A-8-101 and 62A-12-101.

Section 38. Section 62A-4a-105 is amended to read:

62A-4a-105. Division responsibilities.

The division shall:

(1) administer services to children and families, including child welfare services, youth services,

domestic violence services, and all other responsibilities that the Legislature or the executive director may assign to the division;

(2) establish standards for all contract providers of out-of-home care for children and families;

(3) cooperate with the federal government in the administration of child welfare, youth services, and domestic violence programs and other human service activities assigned by the department;

(4) provide for the compilation of relevant information, statistics, and reports on child and family service matters in the state;

(5) prepare and submit to the department, the governor, and the Legislature reports of the operation and administration of the division in accordance with the requirements of Sections 62A-4a-117 and 62A-4a-118;

(6) promote and enforce state and federal laws enacted for the protection of abused, neglected, dependent, delinquent, ungovernable, and runaway children, and status offenders, in accordance with the requirements of this chapter, unless administration is expressly vested in another division or department of the state. In carrying out the provisions of this subsection, the division shall cooperate with the juvenile courts, the Division of Youth Corrections, and with all public and private licensed child welfare agencies and institutions to develop and administer a broad range of services and supports. The division shall take the initiative in all matters involving the protection of abused or neglected children if adequate provisions have not been made or are not likely to be made, and shall make expenditures necessary for the care and protection of those children, within the division's budget;

(7) provide substitute care for dependent, abused, neglected, and delinquent children, establish standards for substitute care facilities, and approve those facilities;

(8) provide financial support to persons adopting [~~physically handicapped, mentally handicapped,~~] a child or children with a physical or mental disability, or older, or other hard-to-place children who, immediately prior to adoption, were legal wards of the state. The financial support provided under this Subsection (8) may not exceed the amounts the division would provide for the child as a legal ward of the state;

(9) cooperate with the Division of Employment Development in the Department of Workforce Services in meeting social and economic needs of individuals eligible for public assistance;

(10) conduct court-ordered home evaluations for the district and juvenile courts with regard to child custody issues. The court shall order either or both parties to reimburse the division for the cost of that evaluation, in accordance with the community rate for that service or with the department's fee schedule rate;

(11) provide noncustodial and in-home preventive services, designed to prevent family breakup, family preservation services, and reunification services to families whose children are in substitute care in accordance with the requirements of this chapter and Title 78, Chapter 3a, Juvenile Courts;

(12) provide protective supervision of a family, upon court order, in an effort to eliminate abuse or neglect of a child in that family;

(13) establish programs pursuant to Section 62A-4a-250, and provide services to runaway and ungovernable children and their families;

(14) provide shelter care in accordance with the requirements of this chapter and Title 78, Chapter 3a, Juvenile Courts;

(15) provide social studies and reports for the juvenile court in accordance with Section 78-3a-505;

(16) arrange for and provide training for staff and providers involved in the administration and delivery of services offered by the division in accordance with this chapter;

(17) provide domestic violence services in accordance with the requirements of federal law, and establish standards for all direct or contract providers of domestic violence services. Within appropriations from the Legislature, the division shall provide or contract for a variety of domestic violence services and treatment methods;

(18) ensure regular, periodic publication, including electronic publication, regarding the number of children in the custody of the division who have a permanency goal of adoption, or for whom a final plan of termination of parental rights has been approved, pursuant to Section 78-3a-312, and promote adoption of those children;

(19) provide protective services to victims of domestic violence, as defined in Section 77-36-1, and their children, in accordance with the provisions of this chapter and of Title 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency Proceedings;

(20) have authority to contract with a private, nonprofit organization to recruit and train foster care families and child welfare volunteers in accordance with Section 62A-4a-107.5; and

(21) perform [~~such~~] other duties and functions as required by law.

Section 39. Section 63B-5-201 is amended to read:

63B-5-201. Legislative intent statements.

(1) If the United State Department of Defense has not provided matching funds to construct the National Guard Armory in Orem by December 31, 1997, the Division of Facilities Construction and Management shall transfer any funds received from issuance of a General Obligation Bond for benefit of the Orem Armory to the Provo Armory for capital improvements.

(2) It is the intent of the Legislature that the University of Utah use institutional funds to plan, design, and construct:

(a) the Health Science East parking structure under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by the director;

(b) the Health Science Office Building under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by the director; and

(c) the new Student Housing/Olympic Athletes Village under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by the director.

(3) It is the intent of the Legislature that Utah State University use institutional funds to plan, design, and construct a multipurpose facility under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by the director.

(4) It is the intent of the Legislature that the Utah Geologic Survey use agency internal funding to plan, design, and construct a sample library facility under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by the director.

(5) (a) If legislation introduced in the 1996 General Session to fund the Wasatch State Park Club House does not pass, the State Building Ownership Authority, under authority of Title 63, Chapter 9a, State Building Ownership [~~Authority~~] Act, may issue or execute obligations, or enter into or arrange for a lease purchase agreement in which participation interests may be created, to provide up to $1,500,000 for the remodel and expansion of the clubhouse at Wasatch Mountain State Park for the Division of Parks and Recreation, together with additional amounts necessary to:

(i) pay costs of issuance;

(ii) pay capitalized interest; and

(iii) fund any debt service reserve requirements.

(b) The State Building Ownership Authority shall work cooperatively with the Division of Parks and Recreation to seek out the most cost effective and prudent lease purchase plan available.

(6) (a) The State Building Ownership Authority, under authority of Title 63, Chapter 9a, State Building Ownership [~~Authority~~] Act, may issue or execute obligations, or enter into or arrange for a lease purchase agreement in which participation interests may be created, to provide up to $835,300 for the construction of a liquor store in the Snyderville area, together with additional amounts necessary to:

(i) pay costs of issuance;

(ii) pay capitalized interest; and

(iii) fund any debt service reserve requirements.

(b) The State Building Ownership Authority shall work cooperatively with the Department of Alcoholic Beverage Control to seek out the most cost effective and prudent lease purchase plan available.

(7) (a) The State Building Ownership Authority, under authority of Title 63, Chapter 9a, State Building Ownership [~~Authority~~] Act, may issue or execute obligations, or enter into or arrange for a lease purchase agreement in which participation interests may be created, to provide up to $15,000,000 for the construction of the Huntsman Cancer Institute, together with additional amounts necessary to:

(i) pay costs of issuance;

(ii) pay capitalized interest; and

(iii) fund any debt service reserve requirements.

(b) The State Building Ownership Authority shall work cooperatively with the University of Utah to seek out the most cost effective and prudent lease purchase plan available.

(c) It is the intent of the Legislature that the University of Utah lease land to the State Building Ownership Authority for the construction of the Huntsman Cancer Institute facility.

(8) (a) The State Building Ownership Authority, under authority of Title 63, Chapter 9a, State Building Ownership [~~Authority~~] Act, may issue or execute obligations, or enter into or arrange for a lease purchase agreement in which participation interests may be created, to provide up to $857,600 for the construction of an addition to the Human Services facility in Vernal, Utah together with additional amounts necessary to:

(i) pay costs of issuance;

(ii) pay capitalized interest; and

(iii) fund any debt service reserve requirements.

(b) The State Building Ownership Authority shall work cooperatively with the Department of Human Services to seek out the most cost effective and prudent lease purchase plan available.

(9) (a) The State Building Ownership Authority, under authority of Title 63, Chapter 9a, State Building Ownership [~~Authority~~] Act, may issue or execute obligations, or enter into or arrange for a lease purchase agreement in which participation interests may be created, to provide up to $3,470,200 for the construction of the Student Services Center, at the College of Eastern Utah, together with additional amounts necessary to:

(i) pay costs of issuance;

(ii) pay capitalized interest; and

(iii) fund any debt service reserve requirements.

(b) The State Building Ownership Authority shall work cooperatively with the College of Eastern Utah to seek out the most cost effective and prudent lease purchase plan available.

(10) (a) Notwithstanding anything to the contrary in Title 53B, Chapter 21, Revenue Bonds, which prohibits the issuance of revenue bonds payable from legislative appropriations, the State Board of Regents, on behalf of Dixie College, may issue, sell, and deliver revenue bonds or other evidences of indebtedness of Dixie College to borrow money on the credit of the income and revenues, including legislative appropriations, of Dixie College, to finance the acquisition of the Dixie Center.

(b) (i) The bonds or other evidences of indebtedness authorized by this section shall be issued in accordance with Title 53B, Chapter 21, Revenue Bonds, under terms and conditions and in amounts that the board, by resolution, determines are reasonable and necessary and may not exceed $6,000,000 together with additional amounts necessary to:

(A) pay cost of issuance;

(B) pay capitalized interest; and

(C) fund any debt service reserve requirements.

(ii) To the extent that future legislative appropriations will be required to provide for payment of debt service in full, the board shall ensure that the revenue bonds are issued containing a clause that provides for payment from future legislative appropriations that are legally available for that purpose.

(11) (a) The State Building Ownership Authority, under authority of Title 63, Chapter 9a, State Building Ownership [~~Authority~~] Act, may issue or execute obligations, or enter into or arrange for a lease purchase agreement in which participation interests may be created, to provide up to $10,479,000 for the construction of a facility for the Courts - Davis County Regional Expansion, together with additional amounts necessary to:

(i) pay costs of issuance;

(ii) pay capitalized interest; and

(iii) fund any debt service reserve requirements.

(b) The State Building Ownership Authority shall work cooperatively with the Office of the Court Administrator to seek out the most cost effective and prudent lease purchase plan available.

(12) (a) The State Building Ownership Authority, under authority of Title 63, Chapter 9a, State Building Ownership [~~Authority~~] Act, may issue or execute obligations, or enter into or arrange for a lease purchase agreement in which participation interests may be created, to provide up to $4,200,000 for the purchase and remodel of the Washington County Courthouse, together with additional amounts necessary to:

(i) pay costs of issuance;

(ii) pay capitalized interest; and

(iii) fund any debt service reserve requirements.

(b) The State Building Ownership Authority shall work cooperatively with the Office of the Court Administrator to seek out the most cost effective and prudent lease purchase plan available.

(13) (a) The State Building Ownership Authority, under authority of Title 63, Chapter 9a, State Building Ownership [~~Authority~~] Act, may issue or execute obligations, or enter into or arrange for a lease purchase agreement in which participation interests may be created, to provide up to $14,299,700 for the construction of a facility for the State Library and the Division of Services for the Blind and Visually [~~Handicapped~~] Impaired, together with additional amounts necessary to:

(i) pay costs of issuance;

(ii) pay capitalized interest; and

(iii) fund any debt service reserve requirements.

(b) The State Building Ownership Authority shall work cooperatively with the Office of Education and the Department of Community and Economic Development to seek out the most cost effective and prudent lease purchase plan available.

Section 40. Section 75-5-316 is amended to read:

75-5-316. Expedited guardianship proceedings.

(1) (a) With regard to persons who are residents of the Utah State Developmental Center, the expedited process provided by this section may be applied to obtain a limited guardianship.

(b) For purposes of this section:

(i) "Limited guardianship" means a guardianship solely for the purpose of granting consent for medical care and for participation in approval of the ward's individualized program plan.

(ii) "Ward" means a resident of the Utah State Developmental Center who is the subject of guardianship proceedings under this section.

(2) Any person interested in the incapacitated person's welfare may file a petition for a finding of incapacity and appointment of a guardian. That person may seek the limited guardianship pro se, using the forms described in this section. Any fee for filing a petition for a limited guardianship shall be waived if the guardian is proceeding under this section.

(3) Upon filing a petition for limited guardianship under this section, the court shall set a date for hearing.

(4) The ward has the right to be present at the hearing and to see and hear all evidence relating to his condition.

(5) At that hearing the court shall review the affidavit of the superintendent of the Utah State Developmental Center, described in Subsection (11), and determine whether notice has been given to the appropriate persons described in Subsection (6).

(6) If the proposed guardian is not a parent or relative of the ward, personal notice shall be given to the ward's spouse, parents, and any adult children of the ward. Personal notice shall also be given to [~~such~~] other persons as the court may direct.

(7) The court may, in its discretion, appoint a guardian ad litem to represent the ward in the hearing, and may request independent evaluation by a physician appointed by the court. The physician shall submit his findings to the court in writing.

(8) The court may grant the petition for a limited guardianship and sign the Order of Appointment if the court finds that:

(a) the appropriate parties have been given notice;

(b) the ward is incapacitated, based on the affidavit of the superintendent of the Utah State Developmental Center and any affidavit or testimony of persons entitled to receive notice or requested to present evidence under this section; and

(c) it is necessary and desirable to establish the guardianship.

(9) Venue for these expedited guardianship proceedings shall be the same as that described in Section 75-5-302.

(10) A petition for a limited guardianship shall include the following information:

(a) the interest of the petitioner;

(b) the name, age, residence, and address of the ward;

(c) verification that the ward is a resident of the Utah State Developmental Center;

(d) the name and address of the nearest relative of the ward; and

(e) the reason for appointment of guardianship.

(11) The petitioner shall also provide the court with an affidavit of the superintendent of the Utah State Developmental Center that includes the following information:

(a) that the ward is a resident of the Utah State Developmental Center;

(b) the date [~~on which~~] the ward was originally admitted to the Utah State Developmental Center;

(c) the diagnosis of the ward, including a description of [~~his handicapping~~] the ward's disabling condition, the level of retardation, and any medical or physical conditions;

(d) that the Utah State Developmental Center is certified as an Intermediate Care Facility for the Mentally Retarded under Title XIX of the Social Security Act;

(e) that because of that certification, the Utah State Developmental Center receives financial participation from the United States Government for its operation and maintenance costs; and

(f) that federal regulations under Title XIX require the ward to have a guardian appointed for the sole purpose of giving consent for medical and dental care and of participation in and approval of the ward's individual program plan.

(12) If the court finds that, under the requirements of this section the proposed limited guardian should be appointed, it shall enter an order establishing that limited guardianship in substantially the following form:

The court finds that:

(a) appointment of a limited guardianship for (named ward) is necessary and desirable as a means of providing continuing care and supervision and to ensure his welfare;

(b) the ward is incapacitated;

(c) (named guardian) is appointed as the limited guardian of (named ward); and

(d) the guardianship is a limited guardianship solely for the purpose of:

(i) granting permission for medical and dental care on behalf of the ward; and

(ii) participation in the development and approval of the ward's individual program plan.

(13) Appointment of guardianship under this section places no additional responsibility or liability on the guardian with regard to the ward. The limited guardianship is solely for consent for medical care and approval of the ward's individualized program plan, and shall not be construed to increase or create liability or responsibility for the guardian.

Section 41. Section 78-11-23 is amended to read:

78-11-23. Right to life -- State policy.

The Legislature finds and declares that it is the public policy of this state to encourage all persons to respect the right to life of all other persons, regardless of age, development, condition or dependency, including all [~~handicapped~~] persons with a disability and all unborn persons.

CHAPTER 74
H. B. 88
Passed February 13, 2001
Approved February 28, 2001
Effective January 1, 2002

PRIVATE RECORDS UNDER GOVERNMENT RECORDS ACCESS AND MANAGEMENT ACT

Sponsor: Cindy Beshear

This act modifies the Government Records Access and Management Act (GRAMA). GRAMA currently requires that certain information about a government employee be classified "private." This act authorizes government employees to give written notice of their status as government employees to other governmental entities in order to ensure that those entities classify personal information about government employees as "private." This act corrects cross-references contained in other sections of statute. This act removes any liability for damages that a government entity or government employee may have if they negligently disclose certain private records. This act takes effect January 1, 2002.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
26-1-17.5, as last amended by Chapter 312, Laws of Utah 1994
31A-23-202, as last amended by Chapter 232, Laws of Utah 1997
31A-26-202, as last amended by Chapter 232, Laws of Utah 1997
58-1-301, as last amended by Chapter 232, Laws of Utah 1997
61-1-4, as last amended by Chapters 160 and 232, Laws of Utah 1997
61-2-6, as last amended by Chapter 232, Laws of Utah 1997
63-2-202, as last amended by Chapter 312, Laws of Utah 1994
63-2-206, as last amended by Chapter 229, Laws of Utah 2000
63-2-301, as last amended by Chapter 48, Laws of Utah 1999
63-2-302, as last amended by Chapter 48, Laws of Utah 1999
63-2-803, as last amended by Chapter 280, Laws of Utah 1992
76-10-1311, as enacted by Chapter 179, Laws of Utah 1993

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

Section 1. Section 26-1-17.5 is amended to read:

26-1-17.5. Confidential records.

(1) A record classified as confidential under this title shall remain confidential, and be released according to the provisions of this title, notwithstanding Section 63-2-909.

(2) In addition to those persons granted access to records described in Subsection 63-2-302(1)[~~(b)~~](a)(ii), immunization records may be shared among schools, school districts, and local and state health departments and the state Department of Human Services as necessary to assure compliance with Section 53A-11-301 and to prevent, investigate, and control the causes of epidemic, infectious, communicable, and other diseases affecting the public health.

Section 2. Section 31A-23-202 is amended to read:

31A-23-202. Application for license.

(1) The application for a license as an agent, a broker, or a consultant shall be made to the commissioner on forms and in a manner he prescribes. The application shall provide information about the applicant's identity, social security number, personal history, experience, education, business record, and any other information the commissioner reasonably requires.

(2) An applicant's social security number is a private record under Subsection 63-2-302(1)[~~(g)~~](a)(vii).

Section 3. Section 31A-26-202 is amended to read:

31A-26-202. Application for license.

(1) (a) The application for a license as an independent adjuster or public adjuster shall be made to the commissioner on forms and in a manner he prescribes. The application shall provide information about the identity, social security number, personal history, experience, education, business record, and any other information as the commissioner reasonably requires.

(b) An applicant's social security number is a private record under Subsection 63-2-302(1)[~~(g)~~](a)(vii).

(2) Insurance adjusters' licenses issued under former Title 31 remain in effect until their expiration date, but they are subject to any requirement or limitation generally imposed under this title on similar licenses issued after July 1, 1986. Upon timely payment of the license continuation fee under Section 31A-3-103, the commissioner shall issue to adjusters licensed under the former title new licenses conforming to the provisions of this title and rules adopted under it.

Section 4. Section 58-1-301 is amended to read:

58-1-301. License application -- Licensing procedure.

(1) (a) Each license applicant shall apply to the division in writing upon forms available from the division. Each completed application shall contain documentation of the particular qualifications required of the applicant, shall include the applicant's social security number, shall be verified by the applicant, and shall be accompanied by the appropriate fees.

(b) An applicant's social security number is a private record under Subsection 63-2-302(1)[~~(g)~~](a)(vii).

(2) (a) A license shall be issued to an applicant who submits a complete application if the division determines that the applicant meets the qualifications of licensure.

(b) A written notice of additional proceedings shall be provided to an applicant who submits a complete application, but who has been, is, or will be placed under investigation by the division for conduct directly bearing upon his qualifications for licensure, if the outcome of additional proceedings is required to determine the division's response to the application.

(c) A written notice of denial of licensure shall be provided to an applicant who submits a complete application if the division determines that the applicant does not meet the qualifications of licensure.

(d) A written notice of incomplete application and conditional denial of licensure shall be provided to an applicant who submits an incomplete application. This notice shall advise the applicant that the application is incomplete and that the application is denied, unless the applicant corrects the deficiencies within the time period specified in the notice and otherwise meets all qualifications for licensure.

(3) Before any person is issued a license under this title, all requirements for that license as established under this title and by rule shall be met.

(4) If all requirements are met for the specific license, the division shall issue the license.

Section 5. Section 61-1-4 is amended to read:

61-1-4. Licensing and notice filing procedure.

(1) (a) A broker-dealer, agent, investment adviser, or investment adviser representative must obtain an initial or renewal license by filing with the division or its designee an application together with a consent to service of process under Section 61-1-26.

(b) (i) The application shall contain the applicant's social security number and whatever information the division by rule requires concerning such matters as:

(A) the applicant's form and place of organization;

(B) the applicant's proposed method of doing business;

(C) the qualifications and business history of the applicant; in the case of a broker-dealer or investment adviser, the qualifications and business history of any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser;

(D) any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony; and

(E) the applicant's financial condition and history.

(ii) An applicant's social security number is a private record under Subsection 63-2-302(1)[~~(g)~~](a)(vii).

(c) The division may, by rule or order, require an applicant for an initial license to publish an announcement of the application in one or more specified newspapers published in this state.

(d) Licenses or notice filings of broker-dealers, agents, investment advisers, and investment adviser representatives shall expire on December 31 of each year.

(e) (i) If no denial order is in effect and no proceeding is pending under Section 61-1-6, a license becomes effective at noon of the 30th day after an application is filed.

(ii) The division may by rule or order specify an earlier effective date and may by order defer the effective date until noon of the 30th day after the filing of any amendment.

(iii) Licensing of a broker-dealer automatically constitutes licensing of only one partner, officer, director, or a person occupying a similar status or performing similar functions as a licensed agent of the broker-dealer.

(iv) Licensing of an investment adviser automatically constitutes licensing of only one partner, officer, director, or a person occupying a similar status or performing similar functions.

(2) Except with respect to federal covered advisers whose only clients are those described in Subsection 61-1-3(3)(b) or (c), a federal covered adviser shall file with the division, prior to acting as a federal covered adviser in this state, a notice filing consisting of such documents as have been filed with the Securities and Exchange Commission as the division by rule or order may require.

(3) (a) Any applicant for an initial or renewal license as a broker-dealer or agent shall pay a reasonable filing fee as determined under Section 61-1-18.4.

(b) Any applicant for an initial or renewal license as an investment adviser or investment adviser representative who is subject to licensing under this chapter shall pay a reasonable filing fee as determined under Section 61-1-18.4.

(c) Any person acting as a federal covered adviser in this state shall pay an initial and renewal notice filing fee as determined under Section 61-1-18.4.

(d) If the license or renewal is not granted or the application is withdrawn, the division shall retain the fee.

(4) A licensed broker-dealer or investment adviser may file an application for licensing of a successor for the unexpired portion of the year. There shall be no filing fee.

(5) The division may by rule or order require a minimum capital for licensed broker-dealers, subject to the limitations of Section 15 of the Securities Exchange Act of 1934, and establish minimum financial requirements for investment advisers, subject to the limitations of Section 222 of the Investment Advisers Act of 1940, which may include different requirements for those investment advisers who maintain custody of or have discretionary authority over client funds or securities and those investment advisers who do not.

(6) (a) The division may by rule or order require licensed broker-dealers and investment advisers who have custody of or discretionary authority over client funds or securities to post bonds in amounts as the division may prescribe, subject to the limitations of Section 15 of the Securities Exchange Act of 1934 for broker-dealers and Section 222 of the Investment Advisers Act of 1940 for investment advisers, and may determine their conditions.

(b) Any appropriate deposit of cash or securities may be accepted in lieu of any required bond.

(c) No bond may be required of any licensee whose net capital, or in the case of an investment adviser whose minimum financial requirements, which may be defined by rule, exceeds the amounts required by the division.

(d) Every bond shall provide for suit on the bond by any person who has a cause of action under Section 61-1-22 and, if the division by rule or order requires, by any person who has a cause of action not arising under this chapter.

(e) Every bond shall provide that no suit may be maintained to enforce any liability on the bond unless brought before the expiration of four years after the act or transaction constituting the violation or the expiration of two years after the discovery by the plaintiff of the facts constituting the violation, whichever expires first.

Section 6. Section 61-2-6 is amended to read:

61-2-6. Licensing procedures and requirements.

(1) The Real Estate Commission shall determine the qualifications and requirements of applicants for a principal broker, associate broker, or sales agent license. The division, with the concurrence of the commission, shall require and pass upon proof necessary to determine the honesty, integrity, truthfulness, reputation, and competency of each applicant for an initial license or for renewal of an existing license. The division, with the concurrence of the commission, shall require an applicant for a sales agent license to complete an approved educational program not to exceed 90 hours, and an applicant for an associate broker or principal broker license to complete an approved educational program not to exceed 120 hours. The hours required by this section mean 50 minutes of instruction in each 60 minutes; and the maximum number of program hours available to an individual is ten hours per day. The division, with the concurrence of the commission, shall require the applicant to pass an examination approved by the commission covering the fundamentals of the English language, arithmetic, bookkeeping, real estate principles and practices, the provisions of this chapter, the rules established by the Real Estate Commission, and any other aspect of Utah real estate license law considered appropriate. Three years' full-time experience as a real estate sales agent or its equivalent is required before any applicant may apply for, and secure a principal broker or associate broker license in this state. The commission shall establish by rule the criteria by which it will accept experience or special education in similar fields of business in lieu of the three years' experience.

(2) (a) The division, with the concurrence of the commission, may require an applicant to furnish a sworn statement setting forth evidence satisfactory to the division of the applicant's reputation and competency as set forth by rule.

(b) The division shall require an applicant to provide his social security number, which is a private record under Subsection 63-2-302(1)[~~(g)~~](a)(vii).

(3) A nonresident principal broker may be licensed in this state by conforming to all the provisions of this chapter except that of residency. A nonresident associate broker or sales agent may become licensed in this state by conforming to all the provisions of this chapter except that of residency and by being employed or engaged as an independent contractor by or on behalf of a nonresident or resident principal broker who is licensed in this state.

(4) An applicant who has had a real estate license revoked shall be relicensed as prescribed for an original application, but may not apply for a new license until at least five years after the revocation. In the case of an applicant for a new license as a principal broker or associate broker, the applicant is not entitled to credit for experience gained prior to the revocation of license.

Section 7. Section 63-2-202 is amended to read:

63-2-202. Access to private, controlled, and protected documents.

(1) Upon request, a governmental entity shall disclose a private record to:

(a) the subject of the record;

(b) the parent or legal guardian of an unemancipated minor who is the subject of the record;

(c) the legal guardian of a legally incapacitated individual who is the subject of the record;

(d) any other individual who:

(i) has a power of attorney from the subject of the record;

(ii) submits a notarized release from the subject of the record or his legal representative dated no more than 90 days before the date the request is made; or

(iii) if the record is a medical record described in Subsection 63-2-302(1)[~~(b)~~](a)(ii), is a health care provider, as defined in Subsection 26-33a-102(7), if releasing the record or information in the record is consistent with normal professional practice and medical ethics; or

(e) any person to whom the record must be provided pursuant to court order as provided in Subsection (7) or a legislative subpoena as provided in Title 36, Chapter 14.

(2) (a) Upon request, a governmental entity shall disclose a controlled record to:

(i) a physician, psychologist, certified social worker, insurance provider or agent, or a government public health agency upon submission of a release from the subject of the record that is dated no more than 90 days prior to the date the request is made and a signed acknowledgment of the terms of disclosure of controlled information as provided by Subsection (2)(b); and

(ii) any person to whom the record must be disclosed pursuant to court order as provided in Subsection (7) or a legislative subpoena as provided in Title 36, Chapter 14.

(b) A person who receives a record from a governmental entity in accordance with Subsection (2)(a)(i) may not disclose controlled information from that record to any person, including the subject of the record.

(3) If there is more than one subject of a private or controlled record, the portion of the record that pertains to another subject shall be segregated from the portion that the requester is entitled to inspect.

(4) Upon request, a governmental entity shall disclose a protected record to:

(a) the person who submitted the record;

(b) any other individual who:

(i) has a power of attorney from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification; or

(ii) submits a notarized release from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification or from their legal representatives dated no more than 90 days prior to the date the request is made; or

(c) any person to whom the record must be provided pursuant to a court order as provided in Subsection (7) or a legislative subpoena as provided in Title 36, Chapter 14.

(5) A governmental entity may disclose a private, controlled, or protected record to another governmental entity, political subdivision, another state, the United States, or a foreign government only as provided by Section 63-2-206.

(6) Before releasing a private, controlled, or protected record, the governmental entity shall obtain evidence of the requester's identity.

(7) A governmental entity shall disclose a record pursuant to the terms of a court order signed by a judge from a court of competent jurisdiction, provided that:

(a) the record deals with a matter in controversy over which the court has jurisdiction;

(b) the court has considered the merits of the request for access to the record; and

(c) the court has considered and, where appropriate, limited the requester's use and further disclosure of the record in order to protect privacy interests in the case of private or controlled records, business confidentiality interests in the case of records protected under Subsections 63-2-304(1) and (2), and privacy interests or the public interest in the case of other protected records;

(d) to the extent the record is properly classified private, controlled, or protected, the interests favoring access, considering limitations thereon, outweigh the interests favoring restriction of access; and

(e) where access is restricted by a rule, statute, or regulation referred to in Subsection 63-2-201(3)(b), the court has authority independent of this chapter to order disclosure.

(8) (a) A governmental entity may disclose or authorize disclosure of private or controlled records for research purposes if the governmental entity:

(i) determines that the research purpose cannot reasonably be accomplished without use or disclosure of the information to the researcher in individually identifiable form;

(ii) determines that the proposed research is bona fide, and that the value of the research outweighs the infringement upon personal privacy;

(iii) requires the researcher to assure the integrity, confidentiality, and security of the records and requires the removal or destruction of the individual identifiers associated with the records as soon as the purpose of the research project has been accomplished;

(iv) prohibits the researcher from disclosing the record in individually identifiable form, except as provided in Subsection (8)(b), or from using the record for purposes other than the research approved by the governmental entity; and

(v) secures from the researcher a written statement of his understanding of and agreement to the conditions of this subsection and his understanding that violation of the terms of this subsection may subject him to criminal prosecution under Section 63-2-801.

(b) A researcher may disclose a record in individually identifiable form if the record is disclosed for the purpose of auditing or evaluating the research program and no subsequent use or disclosure of the record in individually identifiable form will be made by the auditor or evaluator except as provided by this section.

(c) A governmental entity may require indemnification as a condition of permitting research under this Subsection (8).

(9) (a) Under Subsections 63-2-201(5)(b) and 63-2-401(6) a governmental entity may disclose records that are private under Section 63-2-302, or protected under Section 63-2-304 to persons other than those specified in this section.

(b) Under Subsection 63-2-403(11)(b) the Records Committee may require the disclosure of records that are private under Section 63-2-302, controlled under Section 63-2-303, or protected under Section 63-2-304 to persons other than those specified in this section.

(c) Under Subsection 63-2-404(8) the court may require the disclosure of records that are private under Section 63-2-302, controlled under Section 63-2-303, or protected under Section 63-2-304 to persons other than those specified in this section.

Section 8. Section 63-2-206 is amended to read:

63-2-206. Sharing records.

(1) A governmental entity may provide a record that is private, controlled, or protected to another governmental entity, a government-managed corporation, a political subdivision, the federal government, or another state if the requesting entity:

(a) serves as a repository or archives for purposes of historical preservation, administrative maintenance, or destruction;

(b) enforces, litigates, or investigates civil, criminal, or administrative law, and the record is necessary to a proceeding or investigation;

(c) is authorized by state statute to conduct an audit and the record is needed for that purpose; or

(d) is one that collects information for presentence, probationary, or parole purposes.

(2) A governmental entity may provide a private or controlled record or record series to another governmental entity, a political subdivision, a government-managed corporation, the federal government, or another state if the requesting entity provides written assurance:

(a) that the record or record series is necessary to the performance of the governmental entity's duties and functions;

(b) that the record or record series will be used for a purpose similar to the purpose for which the information in the record or record series was collected or obtained; and

(c) that the use of the record or record series produces a public benefit that outweighs the individual privacy right that protects the record or record series.

(3) A governmental entity may provide a record or record series that is protected under Subsection 63-2-304(1) or (2) to another governmental entity, a political subdivision, a government-managed corporation, the federal government, or another state if:

(a) the record is necessary to the performance of the requesting entity's duties and functions; or

(b) the record will be used for a purpose similar to the purpose for which the information in the record or record series was collected or obtained.

(4) (a) A governmental entity shall provide a private, controlled, or protected record to another governmental entity, a political subdivision, a government-managed corporation, the federal government, or another state if the requesting entity:

(i) is entitled by law to inspect the record;

(ii) is required to inspect the record as a condition of participating in a state or federal program or for receiving state or federal funds; or

(iii) is an entity described in Subsection [~~63-2-206~~](1)(a), (b), (c), or (d).

(b) Subsection (4)(a)(iii) applies only if the record is a record described in Subsection 63-2-304(4).

(5) Before disclosing a record or record series under this section to another governmental entity, another state, the United States, or a foreign government, the originating governmental entity shall:

(a) inform the recipient of the record's classification and the accompanying restrictions on access; and

(b) if the recipient is not a governmental entity to which this chapter applies, obtain the recipient's written agreement which may be by mechanical or electronic transmission that it will abide by those restrictions on access unless a statute, federal regulation, or interstate agreement otherwise governs the sharing of the record or record series.

(6) A governmental entity may disclose a record to another state, the United States, or a foreign government for the reasons listed in Subsections (1), (2), and (3) without complying with the procedures of Subsection (2) or (5) if disclosure is authorized by executive agreement, treaty, federal statute, compact, federal regulation, or state statute.

(7) A governmental entity receiving a record under this section is subject to the same restrictions on disclosure of the material as the originating entity.

(8) Notwithstanding any other provision of this section, if a more specific court rule or order, state statute, federal statute, or federal regulation prohibits or requires sharing information, that rule, order, statute, or federal regulation controls.

(9) The following records may not be shared under this section:

(a) records held by the Division of Oil, Gas and Mining that pertain to any person and that are gathered under authority of Title 40, Chapter 6, Board and Division of Oil, Gas and Mining; and

(b) records of publicly funded libraries as described in Subsection 63-2-302(1)[~~(c)~~](a)(iii).

(10) Records that may evidence or relate to a violation of law may be disclosed to a government prosecutor, peace officer, or auditor.

Section 9. Section 63-2-301 is amended to read:

63-2-301. Records that must be disclosed.

(1) The following records are public except to the extent they contain information expressly permitted to be treated confidentially under the provisions of Subsections 63-2-201(3)(b) and (6)(a):

(a) laws;

(b) names, gender, gross compensation, job titles, job descriptions, business addresses, business telephone numbers, number of hours worked per pay period, dates of employment, and relevant education, previous employment, and similar job qualifications of the governmental entity's former and present employees and officers excluding:

(i) undercover law enforcement personnel; and

(ii) investigative personnel if disclosure could reasonably be expected to impair the effectiveness of investigations or endanger any individual's safety;

(c) final opinions, including concurring and dissenting opinions, and orders that are made by a governmental entity in an administrative, adjudicative, or judicial proceeding except that if the proceedings were properly closed to the public, the opinion and order may be withheld to the extent that they contain information that is private, controlled, or protected;

(d) final interpretations of statutes or rules by a governmental entity unless classified as protected as provided in Subsections 63-2-304(15), (16), and (17);

(e) information contained in or compiled from a transcript, minutes, or report of the open portions of a meeting of a governmental entity as provided by Title 52, Chapter 4, Open and Public Meetings, including the records of all votes of each member of the governmental entity;

(f) judicial records unless a court orders the records to be restricted under the rules of civil or criminal procedure or unless the records are private under this chapter;

(g) records filed with or maintained by county recorders, clerks, treasurers, surveyors, zoning commissions, the Division of Forestry, Fire and State Lands, the School and Institutional Trust Lands Administration, the Division of Oil, Gas and Mining, the Division of Water Rights, or other governmental entities that give public notice of:

(i) titles or encumbrances to real property;

(ii) restrictions on the use of real property;

(iii) the capacity of persons to take or convey title to real property; or

(iv) tax status for real and personal property;

(h) records of the Department of Commerce that evidence incorporations, mergers, name changes, and uniform commercial code filings;

(i) data on individuals that would otherwise be private under this chapter if the individual who is the subject of the record has given the governmental entity written permission to make the records available to the public;

(j) documentation of the compensation that a governmental entity pays to a contractor or private provider;

(k) summary data; and

(l) voter registration records, including an individual's voting history, except for those parts of the record that are classified as private in Subsection 63-2-302(1)[~~(h)~~](a)(viii).

(2) The following records are normally public, but to the extent that a record is expressly exempt from disclosure, access may be restricted under Subsection 63-2-201(3)(b), Section 63-2-302, 63-2-303, or 63-2-304:

(a) administrative staff manuals, instructions to staff, and statements of policy;

(b) records documenting a contractor's or private provider's compliance with the terms of a contract with a governmental entity;

(c) records documenting the services provided by a contractor or a private provider to the extent the records would be public if prepared by the governmental entity;

(d) contracts entered into by a governmental entity;

(e) any account, voucher, or contract that deals with the receipt or expenditure of funds by a governmental entity;

(f) records relating to government assistance or incentives publicly disclosed, contracted for, or given by a governmental entity, encouraging a person to expand or relocate a business in Utah, except as provided in Subsection 63-2-304(34);

(g) chronological logs and initial contact reports;

(h) correspondence by and with a governmental entity in which the governmental entity determines or states an opinion upon the rights of the state, a political subdivision, the public, or any person;

(i) empirical data contained in drafts if:

(i) the empirical data is not reasonably available to the requester elsewhere in similar form; and

(ii) the governmental entity is given a reasonable opportunity to correct any errors or make nonsubstantive changes before release;

(j) drafts that are circulated to anyone other than:

(i) a governmental entity;

(ii) a political subdivision;

(iii) a federal agency if the governmental entity and the federal agency are jointly responsible for

implementation of a program or project that has been legislatively approved;

(iv) a government-managed corporation; or

(v) a contractor or private provider;

(k) drafts that have never been finalized but were relied upon by the governmental entity in carrying out action or policy;

(l) original data in a computer program if the governmental entity chooses not to disclose the program;

(m) arrest warrants after issuance, except that, for good cause, a court may order restricted access to arrest warrants prior to service;

(n) search warrants after execution and filing of the return, except that a court, for good cause, may order restricted access to search warrants prior to trial;

(o) records that would disclose information relating to formal charges or disciplinary actions against a past or present governmental entity employee if:

(i) the disciplinary action has been completed and all time periods for administrative appeal have expired; and

(ii) the charges on which the disciplinary action was based were sustained;

(p) records maintained by the Division of Forestry, Fire and State Lands, the School and Institutional Trust Lands Administration, or the Division of Oil, Gas and Mining that evidence mineral production on government lands;

(q) final audit reports;

(r) occupational and professional licenses;

(s) business licenses; and

(t) a notice of violation, a notice of agency action under Section 63-46b-3, or similar records used to initiate proceedings for discipline or sanctions against persons regulated by a governmental entity, but not including records that initiate employee discipline.

(3) The list of public records in this section is not exhaustive and should not be used to limit access to records.

Section 10. Section 63-2-302 is amended to read:

63-2-302. Private records.

(1) (a) The following records are private:

[~~(a)~~] (i) records concerning an individual's eligibility for unemployment insurance benefits, social services, welfare benefits, or the determination of benefit levels;

[~~(b)~~] (ii) records containing data on individuals describing medical history, diagnosis, condition, treatment, evaluation, or similar medical data;

[~~(c)~~] (iii) records of publicly funded libraries that when examined alone or with other records identify a patron;

[~~(d)~~] (iv) records received or generated for a Senate or House Ethics Committee concerning any alleged violation of the rules on legislative ethics, prior to the meeting, and after the meeting, if the ethics committee meeting was closed to the public;

[~~(e)~~] (v) records received or generated for a Senate confirmation committee concerning character, professional competence, or physical or mental health of an individual:

[~~(i)~~] (A) if [~~prior to~~] before the meeting, the chair of the committee determines release of the records:

[~~(A)~~] (I) reasonably could be expected to interfere with the investigation undertaken by the committee; or

[~~(B)~~] (II) would create a danger of depriving a person of a right to a fair proceeding or impartial hearing;

[~~(ii)~~] (B) after the meeting, if the meeting was closed to the public;

[~~(f)~~] (vi) records concerning a current or former employee of, or applicant for employment with, a governmental entity that would disclose that individual's home address, home telephone number, social security number, insurance coverage, marital status, or payroll deductions;

[~~(g)~~] (vii) that part of a record indicating a person's social security number if provided under Section 31A-23-202, 31A-26-202, 58-1-301, 61-1-4, or 61-2-6; and

[~~(h)~~] (viii) that part of a voter registration record identifying a voter's driver license or identification card number, Social Security number, or last four digits of the Social Security number.

(b) For records declared private under Subsection (1)(a)(vi), a current or former employee of a government entity may:

(i) give actual written notice of the employee's status as a government employee to each agency of a government entity holding records that would disclose the employee's home address, home telephone number, social security number, insurance coverage, marital status, or payroll deductions; and

(ii) in the notice:

(A) provide evidence of qualifying employment;

(B) request assistance by the agency to identify the records containing information in Subsection (1)(b)(i);

(C) designate each specific record that the applicant desires to be classified as private; and

(D) affirmatively request that the government entity holding those records classify them as private.

(2) The following records are private if properly classified by a governmental entity:

(a) records concerning a current or former employee of, or applicant for employment with a governmental entity, including performance evaluations and personal status information such as race, religion, or disabilities, but not including records that are public under Subsection 63-2-301(1)(b) or 63-2-301(2)(o), or private under Subsection [~~63-2-302~~](1)[~~(b)~~](a)(ii);

(b) records describing an individual's finances, except that the following are public:

(i) records described in Subsection 63-2-301(1);

(ii) information provided to the governmental entity for the purpose of complying with a financial assurance requirement; or

(iii) records that must be disclosed in accordance with another statute;

(c) records of independent state agencies if the disclosure of those records would conflict with the fiduciary obligations of the agency;

(d) other records containing data on individuals the disclosure of which constitutes a clearly unwarranted invasion of personal privacy; and

(e) records provided by the United States or by a government entity outside the state that are given with the requirement that the records be managed as private records, if the providing entity states in writing that the record would not be subject to public disclosure if retained by it.

(3) (a) As used in this Subsection (3), "medical records" means medical reports, records, statements, history, diagnosis, condition, treatment, and evaluation.

(b) Medical records in the possession of the University of Utah Hospital, its clinics, doctors, or affiliated entities are not private records or controlled records under Section 63-2-303 when the records are sought:

(i) in connection with any legal or administrative proceeding in which the patient's physical, mental, or emotional condition is an element of any claim or defense; or

(ii) after a patient's death, in any legal or administrative proceeding in which any party relies upon the condition as an element of the claim or defense.

(c) Medical records are subject to production in a legal or administrative proceeding according to state or federal statutes or rules of procedure and evidence as if the medical records were in the possession of a nongovernmental medical care provider.

Section 11. Section 63-2-803 is amended to read:

63-2-803. No liability for certain decisions of a governmental entity or a political subdivision.

(1) Neither the governmental entity or political subdivision, nor any officer or employee of the governmental entity or political subdivision, is liable for damages resulting from the release of a record where the person or government requesting the record presented evidence of authority to obtain the record even if it is subsequently determined that the requester had no authority.

(2) Neither the governmental entity or political subdivision, nor any officer or employee of the governmental entity or political subdivision, is liable for damages arising from the negligent disclosure of records classified as private under Subsection 63-2-302(1)(a)(vi) unless:

(a) the disclosure was of employment records maintained by the governmental entity; or

(b) the disclosure was of nonemployment records and the current or former government employee had filed the notice required by Subsection 63-2-302(1)(b).

Section 12. Section 76-10-1311 is amended to read:

76-10-1311. Mandatory testing -- Retention of offender medical file -- Civil liability.

(1) A person who has entered a plea of guilty, a plea of no contest, a plea of guilty and mentally ill, or been found guilty for violation of Section 76-10-1302, 76-10-1303, or 76-10-1313 shall be required to submit to a mandatory test to determine if the offender is an HIV positive individual. The mandatory test shall be required and conducted prior to sentencing.

(2) If the mandatory test has not been conducted prior to sentencing, and the convicted offender is already confined in a county jail or state prison, such person shall be tested while in confinement.

(3) The local law enforcement agency shall cause the blood specimen of the offender as defined in Subsection (1) confined in county jail to be taken and tested.

(4) The Department of Corrections shall cause the blood specimen of the offender defined in Subsection (1) confined in any state prison to be taken and tested.

(5) The local law enforcement agency shall collect and retain in the offender's medical file the following data:

(a) the HIV infection test results;

(b) a copy of the written notice as provided in Section 76-10-1312;

(c) photographic identification; and

(d) fingerprint identification.

(6) The local law enforcement agency shall classify the medical file as a private record pursuant to Subsection 63-2-302(1)[~~(b)~~](a)(ii) or a controlled record pursuant to Section 63-2-303.

(7) The person tested shall be responsible for the costs of testing, unless the person is indigent. The costs will then be paid by the local law enforcement agency or the Department of Corrections from the General Fund.

(8) (a) The laboratory performing testing shall report test results to only designated officials in the

Department of Corrections, the Department of Health, and the local law enforcement agency submitting the blood specimen.

(b) Each department or agency shall designate those officials by written policy.

(c) Designated officials may release information identifying an offender under Section 76-10-1302, 76-10-1303, or 76-10-1313 who has tested HIV positive as provided under Subsection 63-2-202(1) and for purposes of prosecution pursuant to Section 76-10-1309.

(9) (a) An employee of the local law enforcement agency, the Department of Corrections, or the Department of Health who discloses the HIV test results under this section is not civilly liable except when disclosure constitutes fraud or malice as provided in Section 63-30-4.

(b) An employee of the local law enforcement agency, the Department of Corrections, or the Department of Health who discloses the HIV test results under this section is not civilly or criminally liable, except when disclosure constitutes a knowing violation of Section 63-2-801.

(10) When the medical file is released as provided in Section 63-2-803, the local law enforcement agency, the Department of Corrections, or the Department of Health or its officers or employees are not liable for damages for release of the medical file.

Section 13. Effective date.

This act takes effect on January 1, 2002.

CHAPTER 75
H. B. 226
Passed February 13, 2001
Approved February 28, 2001
Effective April 30, 2001

PROOF OF HUNTER EDUCATION

Sponsor: Michael R. Styler

This act modifies the Wildlife Code to prohibit a person born after December 31, 1965, from purchasing a hunting license or permit unless the person provides proof of passing a hunter education course.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
23-19-11, as last amended by Chapter 86, Laws of Utah 2000

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

Section 1. Section 23-19-11 is amended to read:

23-19-11. Age restriction -- Proof of hunter education required.

(1) [~~The division may not issue a hunting license or permit to any~~] A person born after December 31, 1965, may not purchase a hunting license or permit unless proof is presented to the division or one of its authorized wildlife license agents that the person has passed a [~~division approved~~] division-approved hunter education course offered by a state, province, or country.

(2) For purposes of this section, "proof" means:

(a) a certificate of completion of a hunter education course;

(b) a preceding year's hunting license or permit issued by a state, province, or country with the applicant's hunter education number noted on the hunting license or permit; or

(c) verification of completion of a hunter education course pursuant to Subsections (3) and (4).

(3) If an applicant for a nonresident hunting license or permit is not able to present a hunting license, permit, or a certificate of completion as provided in Subsections (1) and (2), the division may contact another state, province, or country to verify the completion of a hunter education course so that a nonresident hunting license or permit may be issued.

(4) If an applicant for a resident or nonresident hunting license or permit has completed a hunter education course in Utah but is not able to present a hunting license, permit, or a certificate of completion as provided in Subsections (1) and (2), the division may research the division's hunter education records to verify that the applicant has completed the hunter education course.

(5) (a) If an applicant for a resident or nonresident hunting license has completed a hunter education course and is applying for a hunting permit or license through the division's drawings, Internet site, or other electronic means authorized by the division, the applicant's hunter education number and the name of the state, province, or country that issued the number may constitute proof of completion of a hunter education course under this section.

(b) The division may research the hunter education number to verify that the applicant has completed a division-approved hunter education course.

(6) Upon issuance of the hunting license or permit, the division shall indicate the applicant's hunter education number on the face of the hunting license or permit.

(7) The division may charge a fee for any service provided in Subsection (3) or (4).

CHAPTER 76
H. B. 91
Passed February 15, 2001
Approved March 1, 2001
Effective April 30, 2001

STATE CAPITOL PRESERVATION BOARD AMENDMENTS

Sponsor: Ralph Becker

This act modifies provisions governing the State Capitol Preservation Board. This act modifies the geographic jurisdiction of the board, allows the governor to appoint a vice chair of the board, and modifies certain powers of the board relating to budgets and the creation and membership of board subcommittees.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
63C-9-102, as enacted by Chapter 285, Laws of Utah 1998
63C-9-202, as enacted by Chapter 285, Laws of Utah 1998
63C-9-301, as enacted by Chapter 285, Laws of Utah 1998

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

Section 1. Section 63C-9-102 is amended to read:

63C-9-102. Definitions.

(1) "Board" means the State Capitol Preservation Board created by Section 63C-9-201.

(2) "Capitol hill" means the grounds, monuments, parking [~~lots~~] areas, buildings, and other man-made and natural objects within the area bounded by 300 North Street, Columbus Street, 500 North Street, and East Capitol [~~Street.~~] Boulevard, and includes:

(a) the White Community Memorial Chapel and its grounds and parking areas, and the Council Hall Travel Information Center building and its grounds and parking areas;

(b) the Daughters of the Utah Pioneers building and its grounds and parking areas and other state-owned property included within the area bounded by Columbus Street, North Main Street, and Apricot Avenue;

(c) the state-owned property included within the area bounded by Columbus Street, Wall Street, and 400 North Street; and

(d) the state-owned property included within the area bounded by Columbus Street, West Capitol Street, and 500 North Street.

(3) [~~(a)~~] "Capitol hill facilities" means all of the buildings on capitol hill, and the exterior steps, entrances, streets, parking [~~lots~~] areas, and other paved areas of capitol hill.

[~~(b) "Capitol hill facilities" does not mean the greenhouses located on capitol hill.~~]

(4) "Capitol hill grounds" means the unpaved areas of capitol hill.

(5) "Executive director" means the executive director appointed by the board under Section 63C-9-401.

Section 2. Section 63C-9-202 is amended to read:

63C-9-202. Terms -- Vacancies-- Chair -- Vice chair --Meetings -- Compensation.

(1) (a) The governor, president of the Senate, and speaker of the House shall serve terms coterminous with their term as governor, president, and speaker.

(b) The other members shall serve two-year terms.

(2) Vacancies in the appointed positions shall be filled by the original appointing authority for the unexpired term.

(3) (a) The governor is chair of the board.

(b) The governor shall appoint a member of the board to serve as vice chair with the approval of the board.

(4) The board shall meet at least quarterly and at other times at the call of the governor or [~~if~~] at the request of four members of the board [~~request a meeting~~].

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

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

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

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

(c) Legislative members receive the expenses authorized by legislative rule.

Section 3. Section 63C-9-301 is amended to read:

63C-9-301. Board powers.

(1) The board shall:

(a) except as provided in Subsection (2), exercise complete jurisdiction over capitol hill facilities and capitol hill grounds;

(b) preserve, maintain, and restore capitol hill facilities, capitol hill grounds, and their contents;

(c) consult with the Division of Facilities Construction and Management, the State Library Division, the Division of Archives and Records Service, the Division of State History, the Office of Museum Services, and the Arts Council when necessary;

(d) before October 1 of each year, review and approve the executive director's[:] annual budget request for submittal to the governor and Legislature;

(e) by October 1 of each year, prepare and submit a recommended budget request for the upcoming fiscal year for capitol hill to:

(i) the governor, through the Office of Planning and Budget; and

(ii) the Legislature's appropriations subcommittee responsible for capital facilities, through the Office of Legislative Fiscal Analyst;

(f) review and approve the executive director's:

(i) annual [~~budget and~~] work plan;

(ii) long-range master plan for the capitol hill facilities and capitol hill grounds; and

(iii) furnishings plan for placement and care of objects under the care of the board;

[~~(e)~~] (g) approve all changes to the buildings and their grounds, including:

(i) restoration, remodeling, and rehabilitation projects;

(ii) usual maintenance; and

(iii) any transfers or loans of objects under the board's care;

[~~(f)~~] (h) define and identify all significant aspects of capitol hill facilities and capitol hill grounds, after consultation with the Division of Facilities Construction and Management, State Library Division, the Division of Archives and Records Service, the Division of State History, the Office of Museum Services, and the Arts Council;

[~~(g)~~] (i) inventory, define, and identify all significant contents of the buildings and all state-owned items of historical significance that were at one time in the buildings, after consultation with the Division of Facilities Construction and Management, State Library Division, the Division of Archives and Records Service, the Division of State History, the Office of Museum Services, and the Arts Council;

[~~(h)~~] (j) maintain archives relating to the construction and development of the buildings, the contents of the buildings and their grounds, including documents such as plans, specifications, photographs, purchase orders, and other related documents, the original copies of which shall be maintained by the Division of Archives and Records Service;

[~~(i)~~] (k) comply with federal and state laws related to program and facility accessibility; and

[~~(j)~~] (l) establish procedures for receiving, hearing, and deciding complaints or other issues raised about the capitol hill facilities, capitol hill grounds, or their use.

(2) Notwithstanding Subsection (1)(a), the supervision and control of the legislative area is reserved to the Legislature.

(3) (a) The board shall make rules to govern, administer, and regulate the capitol hill facilities and capitol hill grounds by following the procedures and requirements of Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(b) A person who violates a rule adopted by the board under the authority of this Subsection (3) is guilty of a class C misdemeanor.

(c) The board may not apply this section or rules adopted under the authority of this section in a manner that violates a person's rights under the Utah Constitution or the First Amendment to the United States Constitution, including the right of persons to peaceably assemble.

(d) The board shall send proposed rules under this section to the legislative general counsel and the governor's general counsel for review and comment before the board adopts the rules.

(4) The board is exempt from the requirements of Title 63, Chapter 56, Utah Procurement Code, but shall adopt procurement rules substantially similar to the requirements of that chapter.

(5) (a) The board may:

(i) establish subcommittees made up of board members to assist and support the executive director in accomplishing his duties;

[~~(a)~~] (ii) establish fees for the use of capitol hill facilities and grounds;

[~~(b)~~] (iii) assign and allocate specific duties and responsibilities to any other state agency, if the other agency agrees to perform the duty or accept the responsibility; [~~and~~]

[~~(c)~~] (iv) contract with another state agency to provide services[~~.~~];

(v) delegate by specific motion of the board, any authority granted to it by this section to the executive director; and

(vi) in conjunction with Salt Lake City, expend monies to improve or maintain public property contiguous to East Capitol Boulevard and capitol hill.

(b) If a budget subcommittee is established by the board, the Legislative Fiscal Analyst, or the analyst's designee, and the director of the Office of Planning and Budget, or the director's designee, shall serve as ex officio, nonvoting members of the budget subcommittee.

(c) If the board establishes any subcommittees, the board may, by majority vote, appoint up to two people who are not members of the board to serve, at the will of the board, as nonvoting members of a subcommittee.

(6) (a) The board, and the employees of the board, may not move the office of the governor, lieutenant governor, president of the Senate, speaker of the House of Representatives, or a member of the Legislature from the State Capitol Building unless the removal is approved by:

(i) the governor, in the case of the governor's office;

(ii) the lieutenant governor, in the case of the lieutenant governor's office;

(iii) the president of the Senate, in the case of the president's office or the office of a member of the Senate; or

(iv) the speaker of the House of Representatives, in the case of the speaker's office or the office of a member of the House.

(b) The board and the employees of the board have no control over the furniture, furnishings, and decorative objects in the offices of the governor, lieutenant governor, or the members of the Legislature except as necessary to inventory or conserve items of historical significance owned by the state.

(c) The board and the employees of the board have no control over records and documents produced by or in the custody of a state agency, official, or employee having an office in a building on capitol hill.

(d) Except for items identified by the board as having historical significance, and except as provided in Subsection (6)(b), the board and the employees of the board have no control over moveable furnishings and equipment in the custody of a state agency, official, or employee having an office in a building on capitol hill.

CHAPTER 77
H. B. 194
Passed February 15, 2001
Approved March 1, 2001
Effective April 30, 2001

STATE HIGHWAY DESIGNATION

Sponsor: Bradley T. Johnson

This act modifies the Transportation Code by renaming a section of a state highway route.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:
72-4-205, Utah Code Annotated 1953

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

Section 1. Section 72-4-205 is enacted to read:

72-4-205. Ram Boulevard.

(1) There is established Ram Boulevard comprising a section of Route 118 in Monroe from 1450 West along 100 South to Main Street.

(2) In addition to other official designations, the Department of Transportation shall designate the portions of the highway identified in Subsection (1) as Ram Boulevard.

CHAPTER 78
H. B. 231
Passed February 15, 2001
Approved March 1, 2001
Effective April 30, 2001

ELECTORAL COLLEGE AMENDMENTS

Sponsor: David Clark

This act modifies the election code to require political parties to fill vacancies in the office of presidential elector. The act also eliminates a requirement to invite each presidential elector to appear at the state capitol the day before the electors cast their votes.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
20A-8-401, as last amended by Chapter 49, Laws of Utah 1999
20A-13-301, as enacted by Chapter 1, Laws of Utah 1995
20A-13-302, as enacted by Chapter 1, Laws of Utah 1995
20A-13-303, as enacted by Chapter 1, Laws of Utah 1995

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

Section 1. Section 20A-8-401 is amended to read:

20A-8-401. Registered political parties -- Bylaws.

(1) (a) Each registered state political party shall file a copy of its constitution and bylaws with the lieutenant governor by January 1, 1995.

(b) Each new or unregistered state political party that seeks to become a registered political party under the authority of this chapter shall file a copy of its proposed constitution and bylaws at the time it files its registration information.

(c) Each registered state political party shall file revised copies of its constitution or bylaws with the lieutenant governor within 15 days after the constitution or bylaws are adopted or amended.

(2) Each state political party, each new political party seeking registration, and each unregistered political party seeking registration shall ensure that its constitution or bylaws contain:

(a) provisions establishing party organization, structure, membership, and governance that include:

(i) a description of the position, selection process, qualifications, duties, and terms of each party officer and committees defined by constitution and bylaws;

(ii) a provision requiring a designated party officer to serve as liaison with the lieutenant governor on all matters relating to the political party's relationship with the state;

(iii) a description of the requirements for participation in party processes;

(iv) the dates, times, and quorum of any regularly scheduled party meetings, conventions, or other conclaves; and

(v) a mechanism for making the names of delegates, candidates, and elected party officers available to the public shortly after they are selected;

(b) a procedure for selecting party officers that allows active participation by party members;

(c) a procedure for selecting party candidates at the federal, state, and county levels that allows active participation by party members;

(d) (i) a procedure for selecting electors who are pledged to cast their votes in the electoral college for the party's candidates for president and vice president of the United States; and

(ii) a procedure for filling vacancies in the office of presidential elector because of death, refusal to act, failure to attend, ineligibility, or any other cause;

(e) a provision requiring the governor and lieutenant governor to run as a joint ticket;

(f) a procedure for replacing party candidates who die, become disabled, or are disqualified before a primary or regular general election;

(g) provisions governing the deposit and expenditure of party funds, and governing the accounting for, reporting, and audit of party financial transactions;

(h) provisions governing access to party records;

(i) a procedure for amending the constitution or bylaws that allows active participation by party members or their representatives; and

(j) a process for resolving grievances against the political party.

Section 2. Section 20A-13-301 is amended to read:

20A-13-301. Presidential elections -- Effect of vote.

(1) (a) Each registered political party shall choose persons to act as presidential electors and to fill vacancies in the office of presidential electors for their party's candidates for President and Vice President according to the procedures established in their bylaws.

(b) The person designated as liaison with the lieutenant governor's office shall transmit to the lieutenant governor the names and addresses of the persons selected by the political party as the party's presidential electors.

(2) The highest number of votes cast for a political party's president and vice president candidates elects the presidential electors selected by that political party.

Section 3. Section 20A-13-302 is amended to read:

20A-13-302. Certificate of election.

(1) The lieutenant governor shall[~~: (a)~~] transmit certificates of election to each of the electors selected by the political party whose candidates for president and vice president received the highest number of votes in Utah[~~; and~~].

[~~(b) invite each elector to appear at the office of the lieutenant governor at the state capitol at noon on the day before the day upon which the electors are required by law to meet and vote for president and vice president of the United States.~~]

(2) Presidential electors may not receive compensation for their services.

Section 4. Section 20A-13-303 is amended to read:

20A-13-303. Filling vacancies.

[~~(1) (a)~~] If there is a vacancy in the office of presidential elector because of death, refusal to act, failure to attend, ineligibility, or any other cause, the [~~qualified electors present shall fill the vacancy by ballot and plurality of votes~~] political party represented by the elector who caused the vacancy shall immediately fill the vacancy.

[~~(b) The electors shall immediately issue a certificate of election, signed by those present, or a majority of them, to the person chosen.~~]

[~~(2) If the electors fail to elect a new elector by noon of the day upon which they are required by law to meet and vote for president and vice president of the United States of America, the governor shall appoint a person to fill the vacancy from the political party represented by the elector who caused the vacancy.~~]

CHAPTER 79
S. B. 256
Passed February 28, 2001
Approved March 9, 2001
Effective March 9, 2001

TRANSPORTATION AMENDMENTS

Sponsor: Peter C. Knudson

This act modifies the Transportation Code by allowing the Department of Transportation to acquire rights-of-way for public transportation projects. This act amends definitions and makes conforming amendments. This act provides an immediate effective date.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
72-5-102, as renumbered and amended by Chapter 270, Laws of Utah 1998
72-5-103, as last amended by Chapter 324, Laws of Utah 2000
72-5-109, as renumbered and amended by Chapter 270, Laws of Utah 1998
72-5-110, as renumbered and amended by Chapter 270, Laws of Utah 1998
72-5-115, as renumbered and amended by Chapter 270, Laws of Utah 1998

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

Section 1. Section 72-5-102 is amended to read:

72-5-102. Definitions.

As used in this part, "state [~~highway~~] transportation purposes" includes:

(1) highway and public transportation rights-of-way, including those necessary [~~for state highways~~] within cities and towns;

(2) the construction, reconstruction, relocation, improvement, [~~and~~] maintenance [~~of the~~], and mitigation from the effects of these activities on state highways and other [~~highways, roads, and streets~~] transportation facilities under the control of the department;

(3) limited access facilities, including rights of access, air, light, and view and frontage and service roads to highways;

(4) adequate drainage in connection with any highway, cut, fill, or channel change and the maintenance of any highway, cut, fill, or channel change;

(5) weighing stations, shops, offices, storage buildings and yards, and road maintenance or construction sites;

(6) road material sites, sites for the manufacture of road materials, and access roads to the sites;

(7) the maintenance of an unobstructed view of any portion of a highway to promote the safety of the traveling public;

(8) the placement of traffic signals, directional signs, and other signs, fences, curbs, barriers, and obstructions for the convenience of the traveling public;

(9) the construction and maintenance of storm sewers, sidewalks, and highway illumination;

(10) the construction and maintenance of livestock highways; [~~and~~]

(11) the construction and maintenance of roadside rest areas adjacent to or near any highway[~~.~~]; and

(12) the mitigation of impacts from public transportation projects.

Section 2. Section 72-5-103 is amended to read:

72-5-103. Acquisition of rights-of-way and other real property -- Title to property acquired.

(1) The department may acquire any real property or interests in real property necessary for temporary, present, or reasonable future state [~~highway~~] transportation purposes by gift, agreement, exchange, purchase, condemnation, or otherwise.

(2) (a) (i) Title to real property acquired by the department or the counties, cities, and towns by gift, agreement, exchange, purchase, condemnation, or otherwise for highway rights-of-way or other [~~highway~~] transportation purposes may be in fee simple or any lesser estate or interest.

(ii) Title to real property acquired by the department for a public transit project shall be transferred to the public transit district responsible for the project.

(iii) A public transit district shall cover all costs associated with any condemnation on its behalf.

(b) If the highway is a county road, city street under joint title as provided in Subsection 72-3-104(3), or right-of-way described in Title 72, Chapter 5, Part 3, Rights-of-way Across Federal Lands Act, title to all interests in real property less than fee simple held under this section is held jointly by the state and the county, city, or town holding the interest.

(3) A transfer of land bounded by a highway on a right-of-way for which the public has only an easement passes the title of the person whose estate is transferred to the middle of the highway.

Section 3. Section 72-5-109 is amended to read:

72-5-109. Contributions of property by counties and municipalities.

Counties and municipalities may contribute real or personal property to the department for state [~~highway~~] transportation purposes.

Section 4. Section 72-5-110 is amended to read:

72-5-110. Acquisition of personal property.

The department may acquire by gift, agreement, exchange, purchase, or otherwise machinery, tools, equipment, materials, supplies, or other personal property necessary for the administration, construction, maintenance, and operation of the state highways, and may sell, exchange, or otherwise dispose of the machinery, tools, equipment, materials, supplies, and other personal property when no longer suitable or required for state [~~highway~~] transportation purposes.

Section 5. Section 72-5-115 is amended to read:

72-5-115. Acquisition of property devoted to or held for other public use.

(1) If property devoted to or held for some other public use for which the power of eminent domain might be exercised is to be taken for state [~~highway~~] transportation purposes, the department may, with the consent of the person or agency in charge of the other public use, condemn real property to be exchanged with the person or agency for the real property to be taken for state [~~highway~~] transportation purposes.

(2) This section does not limit the department's authorization to acquire, other than by condemnation, property for exchange purposes.

Section 6. Effective date.

If approved by two-thirds of all the members elected to each house, this act takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 80
H. B. 144
Passed February 27, 2001
Approved March 9, 2001
Effective April 30, 2001

UTAH FOREST PRACTICES ACT

Sponsor: Craig W. Buttars

This act modifies provisions related to the Division of Forestry, Fire and State Lands and enacts the Utah Forest Practices Act. This act requires the registration of operators and notification by operators of intent to conduct forest practices. This act directs the Division of Forestry, Fire and State Lands to promote the implementation of Forest Water Quality Guidelines, and allows the Division of Forestry, Fire and State Lands to provide technical assistance to landowners regarding forest practices.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:
65A-8a-101, Utah Code Annotated 1953
65A-8a-102, Utah Code Annotated 1953
65A-8a-103, Utah Code Annotated 1953
65A-8a-104, Utah Code Annotated 1953
65A-8a-105, Utah Code Annotated 1953
65A-8a-106, Utah Code Annotated 1953

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

Section 1. Section 65A-8a-101 is enacted to read:

CHAPTER 8a. UTAH FOREST PRACTICES ACT

65A-8a-101. Title.

This chapter is known as the "Utah Forest Practices Act."

Section 2. Section 65A-8a-102 is enacted to read:

65A-8a-102. Definitions.

As used in this chapter:

(1) (a) "Forest practice" means, except as provided in Subsection (1)(b):

(i) the harvesting of trees;

(ii) new road construction associated with harvesting or accessing trees;

(iii) site preparation for regeneration of a timber stand;

(iv) reforestation; or

(v) the management of logging slash.

(b) "Forest practice" does not include:

(i) the operation of a nursery or Christmas tree farm;

(ii) the harvest of Christmas trees;

(iii) the harvest of trees for the noncommercial, personal use by the owner of forested land from which the trees are harvested; or

(iv) a harvesting operation encompassing fewer than ten contiguous acres of forested land.

(2) "Forested land" means land, except land owned by the federal government, growing tree species which are, or could be at maturity, capable of furnishing raw material used in the manufacture of lumber or other forest products.

(3) "Forest Water Quality Guidelines" means the field-applicable practice guidelines adopted by the division for use during forestry activities to protect water quality and contained within a nonpoint source management plan.

(4) "Landowner" means a person who holds an ownership interest in forested land.

(5) "Operator" means a person who:

(a) is responsible for conducting forest practices; or

(b) through a contractual agreement with the landowner, is obligated to or entitled to conduct forest practices or to carry out a timber sale.

Section 3. Section 65A-8a-103 is enacted to read:

65A-8a-103. Registration of operators.

(1) An operator intending to conduct forest practices in Utah, except a landowner conducting forest practices on his or her own land, shall register with the division.

(2) The operator shall submit the following information to the division:

(a) the name of the company;

(b) the name of the state where the company is incorporated; and

(c) the name, telephone number, and address of a company officer and an on-the-ground supervisor.

(3) In consultation with industry representatives, the division may establish, by rule, minimum requirements for registration of operators in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(4) The division shall make available to landowners a list of registered operators.

Section 4. Section 65A-8a-104 is enacted to read:

65A-8a-104. Notification of intent to conduct forest practices.

(1) No later than 30 days prior to an operator commencing forest practices, the operator shall notify the division of the operator's intent to conduct forest practices.

(2) The notification shall include:

(a) the name and address of the operator;

(b) the name and address of the landowner;

(c) a legal description of the area in which the forest practices are to be conducted; and

(d) a description of the proposed forest practices to be conducted, including the number of acres with timber to be harvested.

(3) Upon the receipt of notification, the division shall, within ten days, mail to the landowner and the operator:

(a) an acknowledgment of notification;

(b) information on Forest Water Quality Guidelines; and

(c) any other information the division believes would assist the landowner and operator in conducting forest practices.

Section 5. Section 65A-8a-105 is enacted to read:

65A-8a-105. Division to promote implementation of Forest Water Quality Guidelines.

(1) The division shall promote implementation of Forest Water Quality Guidelines before, during, and after the conduct of forest practices on forested land in order to:

(a) preserve water quality and soil stability;

(b) prevent the hazard of fire and insect infestation;

(c) minimize waste of timber resources; and

(d) protect the regenerative and productive capacity of forested land.

(2) The division, in cooperation with Utah State University Extension Services:

(a) shall implement a program to develop demonstration areas, books, brochures, informational material, seminars and workshops, and other aids to display correct application of the Forest Water Quality Guidelines; and

(b) may aid private landowners by providing technical assistance to landowners and operators in implementing Forest Water Quality Guidelines.

Section 6. Section 65A-8a-106 is enacted to read:

65A-8a-106. Division to provide technical assistance.

(1) The division may provide:

(a) advice and technical assistance to landowners and operators by:

(i) developing forest stewardship plans;

(ii) developing harvest or forest management plans; and

(iii) developing programs and activities promoting stewardship of forest and other lands;

(b) information about tax incentives or other financial incentives designed to enhance the productive potential of forested land; or

(c) federal cost-share incentives to eligible nonindustrial, private forest landowners, if available.

(2) The division, in cooperation with Utah State University Extension Services shall:

(a) develop and implement a public education and awareness program to inform citizens about the benefits of long-term stewardship of forest and other lands; and

(b) provide technical assistance to landowners in developing management plans that may be required for financial incentive programs.

CHAPTER 81
H. B. 388
Passed February 27, 2001
Approved March 9, 2001
Effective March 9, 2001

WILDLAND FIRE SUPPRESSION FUND

Sponsor: Bradley T. Johnson

This act modifies provisions related to State Lands by increasing the maximum level of the Wildland Fire Suppression Fund and decreasing the cost to counties to initiate participation in the fund. This act has an immediate effective date.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
65A-8-6.1, as last amended by Chapter 319, Laws of Utah 1997
65A-8-6.2, as last amended by Chapters 10 and 319, Laws of Utah 1997

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

Section 1. Section 65A-8-6.1 is amended to read:

65A-8-6.1. Wildland Fire Suppression Fund created.

(1) There is created an expendable trust fund known as the Wildland Fire Suppression Fund.

(2) The fund shall be administered by the division to pay fire suppression and presuppression costs on eligible lands within unincorporated areas of counties.

(3) The contents of the fund shall include:

(a) payments by counties pursuant to written agreements made under Section 65A-8-6.2;

(b) interest and earnings from the investment of fund monies; and

(c) money appropriated by the Legislature.

(4) Fund monies shall be invested by the state treasurer with the earnings and interest accruing to the fund.

(5) (a) A maximum level of [~~$5,000,000~~] $8,000,000 is established for the fund.

(b) (i) Except as provided in Subsection (5)(b)(ii), if the amount of money in the fund equals or exceeds [~~$5,000,000~~] $8,000,000 on March 31, no assessments may be charged for the following year.

(ii) The waiver of assessments provided in Subsection (5)(b)(i) does not apply to any equity payment required by Section 65A-8-6.2.

Section 2. Section 65A-8-6.2 is amended to read:

65A-8-6.2. Agreements for coverage by the Wildland Fire Suppression Fund -- Eligible lands -- County and state obligations -- Termination -- Revocation.

(1) (a) A county legislative body may annually enter into a written agreement with the state forester to provide for payment of county fire suppression costs in excess of the county's fire suppression budget out of the Wildland Fire Suppression Fund.

(b) Fire suppression costs on forest, range, and watershed lands within the unincorporated area of a county, except federal or state lands, are eligible for coverage by the Wildland Fire Suppression Fund.

(2) An agreement for payment of fire suppression costs from the Wildland Fire Suppression Fund shall provide that the county shall:

(a) pay into the fund an amount equal to:

(i) .01 times the number of acres of privately- or county-owned land in the unincorporated area of the county; and

(ii) .0001 times the taxable value of real property in the unincorporated area of the county; and

(b) budget an amount for fire suppression costs determined to be normal by the state forester in accordance with the formula specified by rule.

(3) (a) [~~After~~] Except as provided in Subsection (3)(d), after the first year of operation of the fund, any county that elects to initiate participation in the fund, or reestablish participation in the fund after participation was terminated, shall be required to make an equity payment, in addition to the assessment provided in Subsection (2)(a).

(b) The equity payment shall represent what the county's equity in the fund would be if the county had made assessments into the fund for each of the previous three years.

(c) The equity payment shall be determined by the state forester in accordance with division rules.

(d) The equity payment requirement is waived for any county that initiates participation in the fund, or reestablishes participation in the fund, during the period beginning on April 1, 2001 and ending on May 31, 2001.

(4) The agreement shall provide that:

(a) the state shall pay into the fund an amount equal to the county's payment, including any equity payment required under Subsection (3); and

(b) if monies in the fund are insufficient to pay for all eligible fire suppression costs, the state shall pay for 1/2 of the county's remaining costs.

(5) The agreement shall provide for revocation of the agreement for failure to pay assessments when due.

(6) Any county that elects to withdraw from participation in the fund, or whose participation in the fund is revoked due to failure to pay its assessments when due, shall forfeit any right to any previously paid assessments by the county.

Section 3. Effective date.

If approved by two-thirds of all the members elected to each house, this act takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 82
S. B. 115
Passed February 27, 2001
Approved March 13, 2001
Effective March 13, 2001

SAFE SCHOOLS AMENDMENTS

Sponsor: Bill Wright

This act modifies provisions related to the State System of Public Education by requiring any student who has been expelled from school for a firearm, explosive, or flammable material violation to meet with the school district superintendent to determine if the expulsion should be modified. This act takes effect upon approval.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
53A-11-904, as last amended by Chapter 336, Laws of Utah 2000

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

Section 1. Section 53A-11-904 is amended to read:

53A-11-904. Grounds for suspension or expulsion from a public school.

(1) A student may be suspended or expelled from a public school for any of the following reasons:

(a) frequent or flagrant willful disobedience, defiance of proper authority, or disruptive behavior, including the use of foul, profane, vulgar, or abusive language;

(b) willful destruction or defacing of school property;

(c) behavior or threatened behavior which poses an immediate and significant threat to the welfare, safety, or morals of other students or school personnel or to the operation of the school;

(d) possession, control, or use of an alcoholic beverage as defined in Section 32A-1-105; or

(e) behavior proscribed under Subsection (2) which threatens harm or does harm to the school or school property, to a person associated with the school, or property associated with any such person, regardless of where it occurs.

(2) (a) A student shall be suspended or expelled from a public school for any of the following reasons:

(i) any serious violation affecting another student or a staff member, or any serious violation occurring in a school building, in or on school property, or in conjunction with any school activity, including the possession, control, or actual or threatened use of a real[~~, look alike, or pretend~~] weapon, explosive, or noxious or flammable material under Section 53A-3-502, the actual or threatened use of a look alike weapon with intent to intimidate another person or to disrupt normal school activities, or the sale, control, or distribution of a drug or controlled substance as defined in Section 58-37-2, an imitation controlled substance defined in Section 58-37b-2, or drug paraphernalia as defined in Section 58-37a-3; or

(ii) the commission of an act involving the use of force or the threatened use of force which if committed by an adult would be a felony or class A misdemeanor.

(b) A [~~secondary school~~] student who commits a violation of Subsection (2)(a) involving a real [~~firearm~~] or look alike weapon, explosive, or flammable material shall be expelled from school for a period of not less than one year [~~.~~] subject to the following:

[~~(c) If an elementary school student commits a violation of Subsection (2)(a) involving a real or look alike firearm, explosive, or flammable material or if a secondary school student commits a violation of Subsection (2)(a) involving a look alike or pretend firearm, explosive, or flammable material, the student shall be expelled from school for a period of not less than one year subject to the following:~~]

(i) within 45 days after the expulsion the student shall appear before the student's local school board superintendent or [~~his~~] the superintendent's designee, accompanied by a parent or legal guardian; and

(ii) the superintendent shall determine:

(A) what conditions must be met by the student and the student's parent for the student to return to school;

(B) if the student should be placed on probation in a regular or alternative school setting consistent with Section 53A-11-907, and what conditions must be met by the student in order to ensure the safety of students and faculty at the school the student is placed in; and

(C) if it would be in the best interest of both the school district and the student to modify the expulsion term to less than a year, conditioned on approval by the local school board and giving highest priority to providing a safe school environment for all students.

(3) A student may be denied admission to a public school on the basis of having been expelled from that or any other school during the preceding 12 months.

(4) A suspension or expulsion under this section is not subject to the age limitations under Subsection 53A-11-102(1).

(5) (a) Each local school board shall prepare an annual report for the State Board of Education on:

(i) each violation committed under this section; and

(ii) each action taken by the school district against a student who committed the violation.

(b) The State Board of Education shall make an annual report by November 30 to the Legislature's Education Interim Committee on the information compiled under Subsection (5)(a).

Section 2. Effective date.

If approved by two-thirds of all the members elected to each house, this act takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 83
H. B. 149
Passed February 27, 2001
Approved March 13, 2001
Effective March 13, 2001

MUNICIPAL CABLE TELEVISION AND PUBLIC TELECOMMUNICATIONS SERVICES ACT

Sponsor: Greg J. Curtis

This act modifies the Utah Municipal Code and the Interlocal Cooperation Act to limit the authority of municipalities to own and operate cable television and public telecommunications facilities and to provide cable television and public telecommunications services to a municipality's inhabitants. This act enacts the Municipal Cable Television and Public Telecommunications Services Act. This act makes related conforming and technical amendments. This act has an immediate effective date.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
10-8-14, as last amended by Chapter 365, Laws of Utah 1999
11-13-4, as enacted by Chapter 14, Laws of Utah 1965

ENACTS:
10-18-101, Utah Code Annotated 1953
10-18-102, Utah Code Annotated 1953
10-18-103, Utah Code Annotated 1953
10-18-104, Utah Code Annotated 1953
10-18-105, Utah Code Annotated 1953
10-18-106, Utah Code Annotated 1953
10-18-201, Utah Code Annotated 1953
10-18-202, Utah Code Annotated 1953
10-18-203, Utah Code Annotated 1953
10-18-204, Utah Code Annotated 1953
10-18-301, Utah Code Annotated 1953
10-18-302, Utah Code Annotated 1953
10-18-303, Utah Code Annotated 1953
10-18-304, Utah Code Annotated 1953
10-18-305, Utah Code Annotated 1953
10-18-306, Utah Code Annotated 1953

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

Section 1. Section 10-8-14 is amended to read:

10-8-14. Water, sewer, gas, electricity, and public transportation -- Service beyond city limits -- Retainage -- Cable television and public telecommunications services.

(1) [~~They~~] A city may:

(a) construct, maintain, and operate waterworks, sewer collection, sewer treatment systems, gas works, electric light works, [~~telephone~~] telecommunications lines, cable television lines, or public transportation systems[~~, or~~];

(b) authorize the construction, maintenance and operation of the [~~same~~] works or systems listed in Subsection (1)(a) by others[~~, or~~];

(c) purchase or lease [~~such~~] the works or systems listed in Subsection (1)(a) from any person or corporation[~~,~~]; and [~~they may~~]

(d) sell and deliver the surplus product or service capacity of any [~~such~~] works or system listed in Subsection (1)(a), not required by the city or [~~its~~] the city's inhabitants, to others beyond the limits of the city, except the sale and delivery of cable television services or public telecommunications services is governed by Subsection (3).

(2) If any payment on a contract with a private person, firm, or corporation to construct waterworks, sewer collection, sewer treatment systems, gas works, electric light works, [~~telephone lines~~] telecommunications lines, cable television lines, or public transportation systems is retained or withheld, it shall be retained or withheld and released as provided in Section 13-8-5.

(3) A city's actions under this section related to works or systems involving public telecommunications services or cable television services are subject to the requirements of Chapter 18, Municipal Cable Television and Public Telecommunications Services Act.

Section 2. Section 10-18-101 is enacted to read:

CHAPTER 18. MUNICIPAL CABLE TELEVISION AND PUBLIC TELECOMMUNICATIONS SERVICES ACT

Part 1. General Provisions

10-18-101. Title -- Policy statement.

(1) This chapter is known as the "Municipal Cable Television and Public Telecommunications Services Act."

(2) The Legislature finds that it is the policy of this state to:

(a) ensure that cable television services and public telecommunications services are provided through fair competition consistent with the federal Telecommunications Act of 1996, Pub. L. 104-104, in order to provide the widest possible diversity of information and news sources to the general public;

(b) advance the exercise of rights under the First Amendment of the Constitution of the United States;

(c) enhance the development and widespread use of technological advances in providing cable television services and public telecommunications services;

(d) encourage improved customer service of cable television services and public telecommunications services at competitive rates;

(e) ensure that cable television services and public telecommunications services are each provided within a consistent, comprehensive, and nondiscriminatory federal, state, and local government framework; and

(f) ensure that when a municipality provides to its inhabitants cable television services, public telecommunications services, or both, and competes with private providers whose activities are regulated by the municipality, the municipality does not discriminate against the competing providers of the same services.

Section 3. Section 10-18-102 is enacted to read:

10-18-102. Definitions.

As used in this chapter:

(1) "Cable television service" means:

(a) the one-way transmission to subscribers of:

(i) video programming; or

(ii) other programming service; and

(b) subscriber interaction, if any, that is required for the selection or use of:

(i) the video programming; or

(ii) other programming service.

(2) "Capital costs" means all costs of providing a service that are capitalized in accordance with generally accepted accounting principles.

(3) "Cross subsidize" means to pay a cost included in the direct costs or indirect costs of providing a service that is not accounted for in the full cost of accounting of providing the service.

(4) "Direct costs" means those expenses of a municipality that:

(a) are directly attributable to providing:

(i) a cable television service; or

(ii) a public telecommunications service; and

(b) would be eliminated if the service described in Subsection (4)(a) were not provided by the municipality.

(5) "Feasibility consultant" means an individual or entity with expertise in the processes and economics of providing:

(a) cable television service; and

(b) public telecommunications service.

(6) (a) "Full-cost accounting" means the accounting of all costs incurred by a municipality in providing:

(i) a cable television service; or

(ii) a public telecommunications service.

(b) The costs included in a full-cost accounting include all:

(i) capital costs;

(ii) direct costs; and

(iii) indirect costs.

(7) (a) "Indirect costs" means any costs:

(i) identified with two or more services or other functions; and

(ii) that are not directly identified with a single service or function.

(b) "Indirect costs" may include cost factors for:

(i) administration;

(ii) accounting;

(iii) personnel;

(iv) purchasing;

(v) legal support; and

(vi) other staff or departmental support.

(8) "Private provider" means a person that:

(a) provides:

(i) cable television services; or

(ii) public telecommunications services; and

(b) is a private entity.

(9) "Public telecommunications service" means the two-way transmission of signs, signals, writing, images, sounds, messages, data, or other information of any nature by wire, radio, lightwaves, or other electromagnetic means offered to the public generally.

(10) "Subscribers" means a person that lawfully receives:

(a) cable television services; or

(b) public telecommunications services.

Section 4. Section 10-18-103 is enacted to read:

10-18-103. Antitrust immunity.

(1) When a municipality is offering or providing a cable television service or public telecommunications service, the immunity from antitrust liability afforded to political subdivisions of the state under Section 76-10-919 does not apply to the municipality providing those services.

(2) A municipality that provides a cable television service or a public telecommunications service is subject to applicable antitrust liabilities under the federal Local Government Antitrust Act of 1984, 15 U.S.C. Secs. 34 to 36.

Section 5. Section 10-18-104 is enacted to read:

10-18-104. Application to existing contracts.

(1) (a) If before the sooner of March 1 or the effective date of the chapter, the legislative body of a municipality authorized the municipality to offer or provide cable television services or public telecommunications services, each authorized service:

(i) is exempt from Part 2; and

(ii) is subject to Part 3.

(b) The exemption described in Subsection (1)(a)(i) may not apply to any cable television

service or public telecommunications service authorized by the legislative body of a municipality on or after the sooner of March 1 or the effective date of this chapter.

(2) This chapter does not:

(a) invalidate any contract entered into by a municipality before the sooner of March 1 or the effective date of this chapter:

(i) for the design, construction, equipping, operation, or maintenance of facilities used or to be used by the municipality, or by a private provider under a contract with the municipality for the purpose of providing:

(A) cable television services; or

(B) public telecommunications services;

(ii) with a private provider for the use of the facilities described in Subsection (2)(a)(i) in connection with the private provider offering:

(A) cable television services; or

(B) public telecommunications services;

(iii) with a subscriber for providing:

(A) a cable television service; or

(B) a public telecommunications service; or

(iv) to obtain or secure financing for the acquisition or operation of the municipality's facilities or equipment used in connection with providing:

(A) a cable television service; or

(B) a public telecommunications service; or

(b) impair any security interest granted by a municipality as collateral for the municipality's obligations under a contract described in Subsection (2)(a).

(3) (a) A municipality meeting the one or more of the following conditions is exempt from this chapter as provided in Subsection (3)(b):

(i) a municipality that adopts or enacts a bond resolution on or before January 1, 2001, to fund facilities or equipment that the municipality uses to provide:

(A) cable television services; or

(B) public telecommunications services; or

(ii) a municipality that has operated for at least three years consecutively before the sooner of March 1 or the effective date of this chapter:

(A) a cable television service; or

(B) a public telecommunications service.

(b) A municipality described in Subsection (3)(a) is exempt from this chapter except for:

(i) Subsection 10-18-303(4);

(ii) Subsection 10-18-303(7);

(iii) Subsection 10-18-303(9);

(iv) Section 10-18-304; and

(v) Section 10-18-305.

(4) For the time period beginning on the effective date of this chapter and ending on December 31, 2001, a municipality that operated a cable television service as of January 1, 2001, is exempt from Subsection 10-18-301(1)(d).

Section 6. Section 10-18-105 is enacted to read:

10-18-105. Scope of chapter.

(1) Nothing in this chapter authorizes any county or other political subdivision of this state to:

(a) provide:

(i) a cable television service; or

(ii) a public telecommunications service; or

(b) purchase, lease, construct, maintain, or operate a facility for the purpose of providing:

(i) a cable television service; or

(ii) a public telecommunications service.

(2) Nothing in this chapter applies to a municipality purchasing, leasing, constructing, or equipping facilities:

(a) that are designed to provide services within the municipality; and

(b) that the municipality:

(i) uses for internal municipal government purposes; or

(ii) by written contract, leases, sells capacity in, or grants other similar rights to a private provider to use the facilities in connection with a private provider offering:

(A) cable television services; or

(B) public telecommunications services.

Section 7. Section 10-18-106 is enacted to read:

10-18-106. Severability.

If any provision of this chapter or the application of any provision of this chapter is found invalid, the remainder of this chapter shall be given effect without the invalid provision or application.

Section 8. Section 10-18-201 is enacted to read:

Part 2. Conditions for Providing Services

10-18-201. Limitations on providing a cable television and public telecommunications services.

(1) Except as provided in this chapter, a municipality may not:

(a) provide to one or more subscribers:

(i) a cable television service; or

(ii) a public telecommunications service; or

(b) for the purpose of providing a cable television service or a public telecommunications service to

one or more subscribers, purchase, lease, construct, maintain, or operate any facility.

(2) For purposes of this chapter, a municipality provides a cable television service or public telecommunications service if the municipality provides the service:

(a) directly or indirectly, including through an authority or instrumentality:

(i) acting on behalf of the municipality; or

(ii) for the benefit of the municipality;

(b) by itself;

(c) through:

(i) a partnership; or

(ii) joint venture; or

(d) by contract, resale, or otherwise.

Section 9. Section 10-18-202 is enacted to read:

10-18-202. Required steps before a municipality may provide cable television or public telecommunications services.

Before a municipality may engage or offer to engage in an activity described in Subsection 10-18-201(1), the legislative body of the municipality shall:

(1) hold a preliminary public hearing;

(2) if the legislative body elects to proceed after holding the preliminary public hearing required by Subsection (1), approve the hiring of a feasibility consultant to conduct a feasibility study in accordance with Section 10-18-203;

(3) determine whether under the feasibility study conducted under Section 10-18-203, the average annual revenues under Subsection 10-18-203(2)(f) exceed the average annual costs under Subsection 10-18-203(2)(e) by at least the amount necessary to meet the bond obligations of any bonds issued to fund the proposed cable television services or public telecommunications services:

(a) based on the feasibility study's analysis:

(i) for the first year of the study; and

(ii) the five-year projection; and

(b) separately stated with respect to:

(i) the proposed cable television services; or

(ii) the proposed public telecommunications services;

(4) if the conditions of Subsection (3) are met, hold the public hearings required by Section 10-18-203; and

(5) after holding the public hearings required by Section 10-18-203, if the legislative body of the municipality elects to proceed, adopt by resolution the feasibility study.

Section 10. Section 10-18-203 is enacted to read:

10-18-203. Feasibility study on providing cable television or public telecommunications services -- Public hearings.

(1) If a feasibility consultant is hired under Section 10-18-202, the legislative body of the municipality shall require the feasibility consultant to:

(a) complete the feasibility study in accordance with this section;

(b) submit to the legislative body by no later than 180 days from the date the feasibility consultant is hired to conduct the feasibility study:

(i) the full written results of the feasibility study; and

(ii) a summary of the results that is no longer than one page in length; and

(c) attend the public hearings described in Subsection (4) to:

(i) present the feasibility study results; and

(ii) respond to questions from the public.

(2) The feasibility study described in Subsection (1) shall at a minimum consider:

(a) (i) if the municipality is proposing to provide cable television services to subscribers, whether the municipality providing cable television services in the manner proposed by the municipality will hinder or advance competition for cable television services in the municipality;

(ii) if the municipality is proposing to provide public telecommunications services to subscribers, whether the municipality providing public telecommunications services in the manner proposed by the municipality will hinder or advance competition for public telecommunications services in the municipality;

(b) whether but for the municipality any person would provide the proposed:

(i) cable television services; or

(ii) public telecommunications services;

(c) the fiscal impact on the municipality of:

(i) the capital investment in facilities that will be used to provide the proposed:

(A) cable television services; or

(B) public telecommunications services; and

(ii) the expenditure of funds for labor, financing, and administering the proposed:

(A) cable television services; or

(B) public telecommunications services;

(d) the projected growth in demand in the municipality for the proposed:

(i) cable television services; or

(ii) public telecommunications services;

(e) the projections at the time of the feasability study and for the next five years, of a full-cost accounting for a municipality to purchase, lease, construct, maintain, or operate the facilities necessary to provide the proposed:

(i) cable television services; or

(ii) public telecommunications services; and

(f) the projections at the time of the feasability study and for the next five years of the revenues to be generated from the proposed:

(i) cable television services; or

(ii) public telecommunications services.

(3) For purposes of the financial projections required under Subsections (2)(e) and (f), the feasibility consultant shall assume that the municipality will price the proposed cable television services or public telecommunications services consistent with Subsection 10-18-303(5).

(4) If the results of the feasibility study satisfy the revenue requirement of Subsection 10-18-202(3), the legislative body, at the next regular meeting after the legislative body receives the results of the feasibility study, shall schedule at least two public hearings to be held:

(a) within 60 days of the meeting at which the public hearings are scheduled;

(b) at least seven days apart; and

(c) for the purpose of allowing:

(i) the feasibility consultant to present the results of the feasibility study; and

(ii) the public to:

(A) become informed about the feasibility study results; and

(B) ask questions of the feasibility consultant about the results of the feasibility study.

(5) (a) Except as provided in Subsection (5)(c), the municipality shall publish notice of the public hearings required under Subsection (4) at least once a week for three consecutive weeks in a newspaper of general circulation in the municipality.

(b) The last publication of notice required under Subsection (5)(a) shall be at least three days before the first public hearing required under Subsection (4).

(c) (i) If there is no newspaper of general circulation in the municipality, for each 1,000 residents, the municipality shall post at least one notice of the hearings in a conspicuous place within the municipality that is likely to give notice of the hearings to the greatest number of residents of the municipality.

(ii) The municipality shall post the notices at least seven days before the first public hearing required under Subsection (4) is held.

Section 11. Section 10-18-204 is enacted to read:

10-18-204. Vote permissible -- Referendum.

(1) (a) A legislative body by a majority vote may call an election on whether or not the municipality shall provide the proposed:

(i) cable television services; or

(ii) public telecommunications services.

(b) If under Subsection (1)(a) the legislative body calls an election, the election shall be held:

(i) (A) at the next municipal general election; or

(B) as provided in Subsection 20A-1-203(1), at a local special election the purpose of which is authorized by this section; and

(ii) in accordance with Title 20A, Election Code, except as provided in this section.

(c) The notice of the election shall include with any other information required by law:

(i) a summary of the cable television services or public telecommunications services that the legislative body of the municipality proposes to provide to subscribers residing within the boundaries of the municipality;

(ii) the feasibility study summary under Section 10-18-203;

(iii) a statement that a full copy of the feasibility study is available for inspection and copying; and

(iv) the location in the municipality where the feasibility study may be inspected or copied.

(d) The ballot at the election shall pose the question substantially as follows: Shall the [name of the municipality] provide [cable television service or public telecommunications service] to the inhabitants of the [municipality].

(e) The ballot proposition may not take effect until submitted to the electors and approved by the majority of those voting on the ballot.

(2) In accordance with Title 20A, Chapter 7, Issues Submitted to the Voters, a municipality legislative body's action to have the municipality provide cable television services or public telecommunications services is subject to local referenda.

Section 12. Section 10-18-301 is enacted to read:

Part 3. Operational Requirements and Limitations

10-18-301. Enterprise funds for cable television or public telecommunications services.

(1) A municipality that provides a cable television service or a public telecommunications service under this chapter:

(a) shall establish an enterprise fund to account for the municipality's operations of a cable television service or public telecommunications service;

(b) for accounting purposes only, may account for its cable television services and its public telecommunications services in a single enterprise fund under Chapter 6, Uniform Fiscal Procedures Act for Utah Cities;

(c) shall, consistent with the requirements of Section 10-6-135, adopt separate operating and capital budgets for the municipality's:

(i) cable television services; and

(ii) public telecommunications services;

(d) may not transfer any appropriation or other balance in any enterprise fund established by the municipality under this section to another enterprise fund; and

(e) may not transfer any appropriation or other balance in any other enterprise fund established by the municipality under Chapter 6, Uniform Fiscal Procedures Act for Utah Cities, to any enterprise fund established by the municipality under this section.

(2) The restrictions on transfers described in Subsections (1)(d) and (e) do not apply to transfers made by a municipality between other enterprise funds established by the municipality.

Section 13. Section 10-18-302 is enacted to read:

10-18-302. Bonding authority.

(1) The legislative body of a municipality may by resolution determine to issue one or more bonds to finance the capital costs for facilities necessary to provide to subscribers:

(a) a cable television service; or

(b) a public telecommunications service.

(2) The resolution described in Subsection (1) shall:

(a) describe the purpose for which the indebtedness is to be created; and

(b) specify the dollar amount of the one or more bonds proposed to be issued.

(3) (a) A bond issued under this section shall be secured and paid for solely from the revenues generated by the municipality from providing:

(i) cable television services with respect to bonds issued to finance facilities for the municipality's cable television services; and

(ii) public telecommunications services with respect to bonds issued to finance facilities for the municipality's public telecommunications services.

(b) A municipality may not pay the origination, financing, or other carrying costs associated with the one or more bonds issued under this section from the general funds or other enterprise funds of the municipality.

Section 14. Section 10-18-303 is enacted to read:

10-18-303. General operating limitations.

A municipality that provides a cable television service or a public telecommunications service under this chapter is subject to the operating limitations of this section.

(1) A municipality that provides a cable television service shall comply with:

(a) the Cable Communications Policy Act of 1984, 47 U.S.C. 521, et seq.; and

(b) the regulations issued by the Federal Communications Commission under the Cable Communications Policy Act of 1984, 47 U.S.C. 521, et seq.

(2) A municipality that provides a public telecommunications service shall comply with:

(a) the Telecommunications Act of 1996, Pub. L. 104-104;

(b) the regulations issued by the Federal Communications Commission under the Telecommunications Act of 1996, Pub. L. 104-104;

(c) Section 54-8b-2.2 relating to:

(i) the interconnection of essential facilities; and

(ii) the purchase and sale of essential services; and

(d) the rules made by the Public Service Commission of Utah under Section 54-8b-2.2.

(3) A municipality may not cross subsidize its cable television services or its public telecommunications services with:

(a) tax dollars;

(b) income from other municipal or utility services;

(c) below-market rate loans from the municipality; or

(d) any other means.

(4) (a) A municipality may not make or grant any undue or unreasonable preference or advantage to itself or to any private provider of:

(i) cable television services; or

(ii) public telecommunications services.

(b) A municipality shall apply without discrimination as to itself and to any private provider the municipality's ordinances, rules, and policies, including those relating to:

(i) obligation to serve;

(ii) access to public rights of way;

(iii) permitting;

(iv) performance bonding;

(v) reporting; and

(vi) quality of service.

(c) Subsections (4)(a) and (b) do not supersede the exception for a rural telephone company in Section 251 of the Telecommunications Act of 1996, Pub. L. 104-104.

(5) In calculating the rates charged by a municipality for a cable television service or a public telecommunications service, the municipality:

(a) shall include within its rates an amount equal to all taxes, fees, and other assessments that would be applicable to a similarly situated private provider of the same services, including:

(i) federal, state, and local taxes;

(ii) franchise fees;

(iii) permit fees;

(iv) pole attachment fees; and

(v) fees similar to those described in Subsections (5)(a)(i) through (iv); and

(b) may not price any cable television service or public telecommunications service at a level that is less than the sum of:

(i) the actual direct costs of providing the service;

(ii) the actual indirect costs of providing the service; and

(iii) the amount determined under Subsection (5)(a).

(6) (a) A municipality that provides cable television services or public telecommunications services shall establish and maintain a comprehensive price list of all cable television services or public telecommunications services offered by the municipality.

(b) The price list required by Subsection (6)(a) shall:

(i) include all terms and conditions relating to the municipality providing each cable television service or public telecommunications service offered by the municipality;

(ii) be published in a newspaper having general circulation in the municipality; and

(iii) be available for inspection:

(A) at a designated office of the municipality; and

(B) during normal business hours.

(c) At least five days before the date a change to a municipality's price list becomes effective, the municipality shall:

(i) notify the following of the change:

(A) all subscribers to the services for which the price list is being changed; and

(B) any other persons requesting notification of any changes to the municipality's price list; and

(ii) publish notice in a newspaper of general circulation in the municipality.

(d) If there is no newspaper of general circulation in the municipality, the municipality shall publish the notice required by this Subsection (6) in a newspaper of general circulation that is nearest the municipality.

(e) A municipality may not offer a cable television service or a public telecommunications service except in accordance with the prices, terms, and conditions set forth in the municipality's price list.

(7) A municipality may not offer to provide or provide cable television services or public telecommunications services to a subscriber that does not reside within the geographic boundaries of the municipality.

(8) (a) A municipality shall keep accurate books and records of the municipality's:

(i) cable television services; and

(ii) public telecommunications services.

(b) The books and records required to be kept under Subsection (8)(a) are subject to legislative audit to verify the municipality's compliance with the requirements of this chapter including:

(i) pricing;

(ii) recordkeeping; and

(iii) antidiscrimination.

(9) A municipality may not receive distributions from the Universal Public Telecommunications Service Support Fund established in Section 54-8b-15.

Section 15. Section 10-18-304 is enacted to read:

10-18-304. Eminent domain.

A municipality may not exercise its power of eminent domain to condemn plant and equipment of a private provider for the purpose of providing to a subscriber:

(1) a cable television service; or

(2) a public telecommunications service.

Section 16. Section 10-18-305 is enacted to read:

10-18-305. Quality of service standards.

(1) A municipality that provides a cable television service or a public telecommunications service shall adopt an ordinance governing the quality of service the municipality shall provide to its subscribers.

(2) The ordinance required by Subsection (1) shall:

(a) be competitively neutral; and

(b) contain standards that are substantially similar to the standards imposed on private providers operating within the geographic boundaries of the municipality under:

(i) the Cable Communications Policy Act of 1984, 47 U.S.C. 521, et seq.;

(ii) the Telecommunications Act of 1996, Pub. L. 104-104;

(iii) Title 54, Public Utilities;

(iv) regulations issued by the Federal Communications Commission under the statutes listed in Subsections (2)(b)(i) and (ii); and

(v) rules made by the Public Service Commission of Utah under Title 54, Public Utilities.

Section 17. Section 10-18-306 is enacted to read:

10-18-306. Enforcement and appeal.

(1) Before a person that is or is likely to have a substantial interest affected by a municipality's violation of this chapter may file an action in district court for violation of this chapter, that person shall file a written complaint with the municipality in accordance with this section.

(2) (a) A municipality that provides a cable television service or a public telecommunications service shall enact an ordinance establishing a procedure for the filing and resolution of complaints relating to the municipality providing:

(i) a cable television service; or

(ii) a public telecommunications service.

(b) The procedure required by Subsection (2)(a) shall:

(i) permit any person described in Subsection (1) to file a complaint including:

(A) an individual subscriber; or

(B) a private provider that competes with the municipality in the geographic boundaries of the municipality;

(ii) establish an expedited process that requires within 45 days after the date the complaint is filed:

(A) that a hearing be held, unless the parties to the proceeding waive the requirement of a hearing; and

(B) the issuance of a final decision; and

(iii) provide that failure to render a decision within the time allotted shall be treated as an adverse decision for purposes of appeal.

(3) Appeal of an adverse decision from the municipality may be taken to the district court for a de novo proceeding.

Section 18. Section 11-13-4 is amended to read:

11-13-4. Joint exercise of powers, privileges, or authority by public agencies authorized -- Relationship to the Municipal Cable Television and Public Telecommunications Services Act.

(1) Any power or powers, privileges or authority exercised or capable of exercise by a public agency of this state may be exercised and enjoyed jointly with any other public agency of this state having the power or powers, privileges or authority, and jointly with any public agency of any other state or of the United States permit such joint exercise or enjoyment. Any agency of the state government when acting jointly with any public agency may exercise and enjoy all of the powers, privileges, and authority conferred by this [~~act~~] chapter upon a public agency.

(2) This chapter may not enlarge or expand the authority of a public agency not authorized to offer and provide cable television services and public telecommunications services under Title 10, Chapter 18, Municipal Cable Television and Public Telecommunications Services Act, to offer or provide cable television services and public telecommunications services.

Section 19. Effective date.

If approved by two-thirds of all the members elected to each house, this act takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 84
S. B. 7
Passed February 22, 2001
Approved March 15, 2001
Effective April 30, 2001

STATE TEXTBOOK COMMISSION AMENDMENTS

Sponsor: David H. Steele
Howard A. Stephenson
Karen Hale
Ron Allen

This act modifies provisions related to the State Textbook Commission by changing its name to the State Instructional Materials Commission. The act expands the scope of materials reviewed by the commission to include workbooks, computer software, laserdiscs or videodiscs, and multiple forms of communications media. The act provides that instructional materials identified as inappropriate by the State Board of Education may not be used in the public schools. The act makes technical changes by replacing "textbooks" with "instructional materials" throughout Chapter 14 of Title 53A. The act extends the existence of the commission through July 1, 2011, under the Legislative Oversight and Sunset Act.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
53A-14-101, as enacted by Chapter 2, Laws of Utah 1988
53A-14-102, as enacted by Chapter 2, Laws of Utah 1988
53A-14-103, as enacted by Chapter 2, Laws of Utah 1988
53A-14-104, as last amended by Chapter 86, Laws of Utah 2000
53A-14-105, as enacted by Chapter 2, Laws of Utah 1988
53A-14-106, as enacted by Chapter 2, Laws of Utah 1988
63-55-253, as last amended by Chapter 59, Laws of Utah 2000

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

Section 1. Section 53A-14-101 is amended to read:

53A-14-101. Creation of commission -- Powers -- Payment of expenses.

(1) The State Board of Education shall appoint a State [~~Textbook~~] Instructional Materials Commission[~~, which consists~~] consisting of:

(a) the state superintendent of public instruction[~~,~~] or the superintendent's designee;

(b) a school district superintendent[~~,~~];

(c) a secondary school principal[~~,~~];

(d) an elementary school principal[~~,~~];

(e) a secondary school teacher[~~,~~];

(f) an elementary school teacher[~~,~~];

(g) five persons not employed in public education[~~,~~]; and

(h) a dean of a school of education of a state college or university.

(2) The commission shall recommend [~~textbooks~~] instructional materials for [~~adoption~~] approval by the board.

(3) As used in this chapter, "instructional materials" means textbooks or materials used as, or in place, of textbooks and which may be used within the state curriculum framework for courses of study by students in public schools to include:

(a) textbooks;

(b) workbooks;

(c) computer software;

(d) laserdiscs or videodiscs; and

(e) multiple forms of communications media.

[~~(3)~~] (4) Members shall serve without compensation, but their actual and necessary expenses incurred in the performance of their official duties shall be paid out of money appropriated to the board.

Section 2. Section 53A-14-102 is amended to read:

53A-14-102. Commission's recommendation of instructional materials -- Approval by the state board.

(1) [~~Each year~~] (a) Semi-annually after reviewing the recommendations of the commission, the board shall [~~adopt textbooks~~] approve instructional materials for [~~mandatory~~] use in the public schools under rules adopted by the board.

(b) The board shall make a rule in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, providing for a process to:

(i) allow three school districts or more to use or substitute in courses within the state curriculum framework instructional materials not recommended by the commission; and

(ii) appeal any recommendation of the commission to the board.

(2) The standard [~~adoption~~] approval period [~~is four~~] shall be five years[~~, but the length of the period of adoption of a textbook may be adjusted by the board~~].

(3) An unsatisfactory textbook may be removed from the list of [~~adopted~~] approved textbooks at any time within the period applicable to that book.

[~~(4) Textbooks of outstanding merit may be added to the list at any time.~~]

[~~(5) The board shall stagger adoption schedules so that approximately 1/4 of all textbooks are reviewed each year.~~]

Section 3. Section 53A-14-103 is amended to read:

53A-14-103. Meetings -- Notice.

(1) The commission shall meet at the call of the state superintendent of public instruction or the superintendent's designee.

[~~(2) Meetings called to consider proposals to furnish textbooks shall take place at least three months prior to the expiration of a contract.~~]

[~~(3)~~] (2) Notice of a meeting [~~is~~] shall be given as required under Section 52-4-6.

Section 4. Section 53A-14-104 is amended to read:

53A-14-104. Sealed proposals for instructional materials contracts -- Sample copies -- Price of instructional materials.

(1) As used in this section, the word "sealed" does not preclude acceptance of electronically sealed and submitted bids or proposals in addition to bids or proposals manually sealed and submitted.

(2) A person seeking a contract to furnish [~~textbooks~~] instructional materials for use in the public schools shall submit a sealed proposal to the commission.

(3) Each proposal must:

(a) be accompanied by sample copies of the [~~textbooks proposed to be furnished~~] instructional materials to be reviewed; and

(b) include the wholesale price at which the publisher agrees to furnish [~~each textbook~~] the instructional materials to districts and schools during the [~~adoption~~] approval period.

Section 5. Section 53A-14-105 is amended to read:

53A-14-105. Awarding instructional materials contracts.

(1) The board shall award contracts for furnishing [~~textbooks~~] instructional materials.

(2) If a satisfactory proposal to furnish [~~textbooks~~] instructional materials is not received, a new request for proposals may be issued.

[~~(3) Adoption of a textbook in use is continued until a satisfactory proposal is accepted by the board.~~]

Section 6. Section 53A-14-106 is amended to read:

53A-14-106. Illegal acts -- Misdemeanor.

It is a misdemeanor for a member of the commission or the board to receive money or other remuneration as an inducement for the recommendation or introduction of [~~textbooks or other school supplies~~] instructional materials into the schools.

Section 7. Section 63-55-253 is amended to read:

63-55-253. Repeal dates, Titles 53A, 53B.

The following provisions of Title 53A are repealed on the following dates:

(1) Title 53A, Chapter 1a, Part 2, Strategic Planning for Public and Higher Education Committee is repealed July 1, 2002.

(2) The State [~~Textbook~~] Instructional Materials Commission, created in Section 53A-14-101, is repealed July 1, [~~2001~~] 2011.

(3) Title 53A, Chapter 20a, Public Education Revenue Bond Act, is repealed July 1, 2007.

CHAPTER 85
S. B. 11
Passed February 1, 2001
Approved March 15, 2001
Effective April 30, 2001

ELECTRONIC GOVERNMENT SERVICES AMENDMENTS - DRIVERS LICENSE

Sponsor: David H. Steele

This act modifies the Motor Vehicle Code and the Public Safety Code. The act makes technical changes to facilitate the provision of government services electronically.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
41-6-17, as last amended by Chapter 270, Laws of Utah 1998
41-6-31, as last amended by Chapter 174, Laws of Utah 1996
41-6-35, as last amended by Chapter 335, Laws of Utah 2000
41-6-35.5, as last amended by Chapter 51, Laws of Utah 1997
41-6-37, as last amended by Chapter 234, Laws of Utah 1993
41-6-39, as last amended by Chapter 138, Laws of Utah 1987
41-6-40, as last amended by Chapter 335, Laws of Utah 2000
41-6-42, as last amended by Chapter 138, Laws of Utah 1987
41-6-100.15, as enacted by Chapter 63, Laws of Utah 1997
41-6-116.10, as last amended by Chapter 1, Laws of Utah 1992
41-12a-303, as enacted by Chapter 242, Laws of Utah 1985
41-12a-508, as enacted by Chapter 242, Laws of Utah 1985
53-3-104, as last amended by Chapters 239 and 255, Laws of Utah 2000
53-3-105, as last amended by Chapters 216 and 248, Laws of Utah 1999
53-3-109, as enacted by Chapter 255, Laws of Utah 2000
53-3-205, as last amended by Chapters 36 and 216, Laws of Utah 1999
53-3-210, as last amended by Chapters 21 and 28, Laws of Utah 1999
53-3-216, as last amended by Chapter 216, Laws of Utah 1999
53-3-218, as last amended by Chapter 323, Laws of Utah 2000
53-3-221, as last amended by Chapter 216, Laws of Utah 1999
53-3-223, as last amended by Chapter 334, Laws of Utah 2000
53-3-231, as last amended by Chapter 334, Laws of Utah 2000
53-3-303, as last amended by Chapters 242 and 243, Laws of Utah 1996
53-3-303.5, as last amended by Chapter 74, Laws of Utah 1999
53-3-408, as renumbered and amended by Chapter 234, Laws of Utah 1993
53-3-413, as renumbered and amended by Chapter 234, Laws of Utah 1993
53-3-418, as last amended by Chapter 334, Laws of Utah 2000
53-3-607, as renumbered and amended by Chapter 234, Laws of Utah 1993
53-3-807, as last amended by Chapter 38, Laws of Utah 1994

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

Section 1. Section 41-6-17 is amended to read:

41-6-17. Regulatory powers of local authorities -- Traffic-control device affecting state highway -- Necessity of erecting traffic-control devices.

(1) The provisions of this chapter do not prevent local authorities, with respect to highways under their jurisdiction and within the reasonable exercise of police power, from:

(a) regulating or prohibiting stopping, standing, or parking;

(b) regulating traffic by means of peace officers or official traffic-control devices;

(c) regulating or prohibiting processions or assemblages on the highways;

(d) designating particular highways or roadways for use by traffic moving in one direction under Section 41-6-60;

(e) establishing speed limits for vehicles in public parks, which supersede Section 41-6-48 regarding speed limits;

(f) designating any highway as a through highway or designating any intersection or junction of roadways as a stop or yield intersection or junction;

(g) restricting the use of highways under Section 72-7-408;

(h) regulating the operation of bicycles and requiring the registration and inspection of them, including requiring a registration fee;

(i) regulating or prohibiting the turning of vehicles or specified types of vehicles;

(j) altering or establishing speed limits under Section 41-6-48;

(k) requiring written accident reports under Section 41-6-42;

(l) designating no-passing zones under Section 41-6-59;

(m) prohibiting or regulating the use of controlled-access roadways by any class or kind of traffic under Section 41-6-65;

(n) prohibiting or regulating the use of heavily traveled streets by any class or kind of traffic found to be incompatible with the normal and safe movement of traffic;

(o) establishing minimum speed limits under Subsection 41-6-49(3);

(p) designating and regulating traffic on play streets;

(q) prohibiting pedestrians from crossing a highway in a business district or any designated highway except in a crosswalk under Section 41-6-77;

(r) restricting pedestrian crossings at unmarked crosswalks under Section 41-6-82.10;

(s) regulating persons propelling push carts;

(t) regulating persons upon skates, coasters, sleds, skateboards, and other toy vehicles;

(u) adopting and enforcing temporary or experimental ordinances as necessary to cover emergencies or special conditions;

(v) prohibiting drivers of ambulances from exceeding maximum speed limits; or

(w) adopting other traffic ordinances as specifically authorized by this chapter.

(2) A local authority may not erect or maintain any official traffic-control device at any location which requires the traffic on any state highway to stop before entering or crossing any intersecting highway unless approval in writing has first been obtained from the Department of Transportation.

(3) An ordinance enacted under Subsection (1)(d), (e), (f), (g), (i), (j), (l), (m), (n), (p), or (r) is not effective until official traffic-control devices giving notice of the local traffic ordinances are erected upon or at the entrances to the highway or part of it affected as is appropriate.

Section 2. Section 41-6-31 is amended to read:

41-6-31. Accident involving injury, death, or property damage -- Duties of operator, occupant, and owner.

(1) The operator of a vehicle involved in an accident resulting in injury to or death of any person or damage to any vehicle or other property, if the vehicle or other property is operated, occupied, or attended by any person or if the owner of the vehicle or property is present, shall:

(a) give to the persons involved his name, address, and the registration number of the vehicle he is operating;

(b) upon request and if available, exhibit his operator's license to:

(i) any investigating peace officer present;

(ii) the person struck;

(iii) the operator, occupant of, or person attending the vehicle or other property damaged in the accident; and

(iv) the owner of property damaged in the accident, if present; and

(c) render to any person injured in the collision reasonable assistance, including the transporting, or the making of arrangements for the transporting, of the person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that treatment is necessary or if the transporting is requested by the injured person.

(2) The operator of a vehicle involved in an accident resulting in injury to or death of any person or property damage to an apparent extent of $1,000 or more shall immediately and by the quickest means of communication available give notice of the accident to the nearest office of a law enforcement agency.

(3) If the operator of a vehicle is physically incapable of giving an immediate notice of an accident as required in Subsections (1) and (2) and there is another occupant in the vehicle at the time of the accident capable of giving an immediate notice, the occupant shall give or cause to be given the notice required of the operator under this section.

(4) If the operator is physically incapable of making a [~~written~~] report in a manner specified by the division of an accident when required under Section 41-6-35 and he is not the owner of the vehicle, then the owner of the vehicle involved in the accident shall within 15 days after becoming aware of the accident make the report required of the operator under this section.

Section 3. Section 41-6-35 is amended to read:

41-6-35. Accident reports -- Duty of operator and investigative officer to forward or render.

(1) The department may require any operator of a vehicle involved in an accident resulting in injury to or death of any person or total property damage to the apparent extent of $1,000 or more to file within ten days after the request:

(a) a [~~written~~] report in a manner specified by the department of the accident to the department; and

(b) a supplemental report when the original report is insufficient in the opinion of the department.

(2) The department may require witnesses of accidents to render reports to the department.

(3) [~~A written~~] An accident report is not required under this section from any person who is physically incapable of making a report, during his period of incapacity.

(4) (a) Every peace officer who in the regular course of duty investigates a motor vehicle accident described under Subsection (1) shall file the original or an electronic copy of the report of the accident with the department within ten days after completing the investigation.

(b) The accident report shall be made either at the time of and at the scene of the accident or later by interviewing participants or witnesses.

(5) The [~~written~~] accident reports required to be filed with the department under this section and the information in them are protected and confidential and may be disclosed only as provided in Section 41-6-40.

Section 4. Section 41-6-35.5 is amended to read:

41-6-35.5. Vehicle accidents -- Investigation and report of operator security -- Agency action if no security -- Surrender of plates -- Penalties.

(1) Upon request of a peace officer investigating an accident involving a motor vehicle, the operator of the vehicle shall provide evidence of the owner's or operator's security required under Section 41-12a-301.

(2) The peace officer shall record on a form approved by the department:

(a) the information provided by the operator;

(b) whether the operator provided insufficient or no information;

(c) if the officer finds reasonable cause to believe that any information given is not correct; and

(d) whether other information available to the peace officer indicates that owner's or operator's security is in effect.

(3) The peace officer shall deposit all completed forms with his agency, which shall forward the forms to the department no later than ten days after receipt.

(4) The department shall within ten days of receipt of the forms from the agency take action as follows:

(a) If the operator provided no information under Subsection (1) and other information available to the peace officer does not indicate that owner's or operator's security is in effect, the department shall take direct action under Subsection 53-3-221(12).

(b) (i) If the peace officer noted or the department determines that there is reasonable cause to believe that the information given under Subsection (1) is not correct, the department shall contact directly the insurance company or other provider of security as described in Subsection (7) and request verification of the accuracy of the information submitted as of the date of the traffic offense for which the citation was issued.

(ii) The department may require the verification under Subsection (4)(b)(i) to be in [~~writing~~] a form specified by the department.

(iii) The insurance company or other provider of security shall return the verification to the department within 30 days of receipt of the request.

(iv) If the department does not receive verification within 35 days after [~~mailing~~] sending the request, or within the 35 days receives notice that the information was not correct, the department shall take action under Subsection 53-3-221(12).

(5) (a) The owner of a vehicle with unexpired license plates for which security is not provided as required under this chapter, shall return the plates for the vehicle to the Motor Vehicle Division unless specifically permitted by statute to retain them.

(b) If the owner fails to return the plates as required, they shall be confiscated under Section 53-3-226.

(6) The department may make rules for the enforcement of this section.

(7) In this section, "evidence of owner's or operator's security" includes any one of the following:

(a) a copy of the operator's valid:

(i) insurance policy;

(ii) binder notice;

(iii) renewal notice; or

(iv) card issued by an insurance company as evidence of insurance;

(b) a certificate of insurance issued under Section 41-12a-402;

(c) a certified copy of a surety bond issued under Section 41-12a-405;

(d) a certificate of the state treasurer issued under Section 41-12a-406;

(e) a certificate of self-funded coverage issued under Section 41-12a-407; or

(f) information that the vehicle or driver is insured from the Uninsured Motorist Identification Database Program created under Title 41, Chapter 12a, Part 8.

(8) A person is guilty of a class B misdemeanor, and shall be fined not less than $100, who:

(a) when requested to provide security information under Subsection (1), or Section 41-12a-303.2, provides false information;

(b) falsely represents to the department that security required under this chapter is in effect; or

(c) sells a vehicle to avoid the penalties of this section as applicable either to himself or a third party.

Section 5. Section 41-6-37 is amended to read:

41-6-37. Accident reports -- Forms -- Contents -- Penalties for failure to make report.

(1) (a) The department shall prepare and upon request supply to law enforcement agencies, justices of the peace, sheriffs, garages, and other appropriate agencies or individuals, forms for accident reports as required in this article, suitable for the persons required to make the reports and the purposes to be served.

(b) The [~~written~~] accident reports to be made by persons involved in accidents as requested by investigating officers shall require sufficiently detailed information to disclose the cause, conditions then existing, and the persons and vehicles involved in the traffic accident.

(2) Every accident report requested under Section 41-6-35 shall be made in [~~writing and on~~

~~the appropriate form approved~~] a manner specified by the department. It shall contain all of the information required that is available.

(3) (a) The department shall suspend the license or permit to operate a vehicle and any nonresident operating privileges of any person failing to report an accident as requested under Section 41-6-35 until the report has been filed.

(b) The department may extend the suspension, not to exceed 30 days.

(c) Any person convicted of failing to make a report under Section 41-6-35 is punishable under Section 41-6-12.

Section 6. Section 41-6-39 is amended to read:

41-6-39. Garage keeper to report damaged vehicle without damage sticker.

(1) The person in charge of any garage or repair shop who receives a vehicle which shows evidence of having been involved in an accident for which [~~a written~~] an accident report may be requested under Section 41-6-35, or having been struck by any bullet, shall report the vehicle to the nearest office of an authorized law enforcement agency within 24 hours after the vehicle is received by the garage or repair shop, giving the vehicle identification number, registration number, and the name and address of the owner or operator of the vehicle.

(2) If a damaged vehicle sticker describing the damage is affixed to the vehicle, a report under this section is not required.

Section 7. Section 41-6-40 is amended to read:

41-6-40. Accident reports -- When confidential -- Insurance policy information -- Use as evidence -- Penalty for false information.

(1) As used in this section, "agent" means a person's:

(a) attorney;

(b) insurer; or

(c) any other individual or entity with [~~written~~] signed permission from the person to receive the person's [~~written~~] accident report.

(2) Except as provided in Subsection (3), all [~~written~~] accident reports required in this article to be filed with the department:

(a) are without prejudice to the reporting individual;

(b) are protected and for the confidential use of the department or other state, local, or federal agencies having use for the records for official governmental statistical, investigative, and accident prevention purposes; and

(c) may be disclosed only in a statistical form that protects the privacy of any person involved in the accident.

(3) (a) The department shall disclose [~~a written~~] an accident report and its accompanying data to:

(i) a person involved in the accident, excluding a witness to the accident;

(ii) a person suffering loss or injury in the accident;

(iii) an agent, parent, or legal guardian of a person described in Subsections (3)(a)(i) and (ii);

(iv) a member of the press or broadcast news media;

(v) a state, local, or federal agency that uses the records for official governmental, investigative, or accident prevention purposes;

(vi) law enforcement personnel when acting in their official governmental capacity; and

(vii) a licensed private investigator.

(b) In accordance with Subsection (3)(a), the department shall disclose whether any person or vehicle involved in an accident reported under this section was covered by a vehicle insurance policy, and the name of the insurer.

(c) Information provided to a member of the press or broadcast news media under Subsection (3)(a)(iv) may only include:

(i) the name, age, sex, and city of residence of each person involved in the accident;

(ii) the make and model year of each vehicle involved in the accident;

(iii) whether or not each person involved in the accident was covered by a vehicle insurance policy;

(iv) the location of the accident; and

(v) a description of the accident that excludes personal identifying information not listed in Subsection (3)(c)(i).

(4) (a) Except as provided in Subsection (4)(b), [~~written~~] accident reports filed under this section may not be used as evidence in any civil or criminal trial arising out of an accident.

(b) Upon demand of any party to the trial or upon demand of any court, the department shall furnish a certificate showing that a specified accident report has or has not been made to the department in compliance with law. If the report has been made, the certificate furnished by the department shall show the date, time, and location of the accident, the names and addresses of the drivers, the owners of the vehicles involved, and the investigating officers. The reports may be used as evidence when necessary to prosecute charges filed in connection with a violation of Subsection (5).

(5) A person who gives information in [~~oral or written~~] reports as required in this chapter knowing or having reason to believe that the information is false is guilty of a class A misdemeanor.

Section 8. Section 41-6-42 is amended to read:

41-6-42. Local powers to require report.

A local authority may by ordinance require that the operator of a vehicle involved in any accident, or the owner of the vehicle, also file with the designated municipal department a [~~written~~] report of the accident or a copy of any report required under this article to be filed with the department on accidents occurring within its jurisdiction. All reports are for the confidential use of the municipal department and are subject to Section 41-6-40.

Section 9. Section 41-6-100.15 is amended to read:

41-6-100.15. Passing a school bus complaint procedure.

(1) An operator of a school bus who observes a violation of Subsection 41-6-100.10(2) or (3), may prepare a [~~written~~] report, in a manner specified by the school district, to the school district transportation coordinator no more than two working days after the alleged violation occurred. The [~~written~~] report shall contain:

(a) the date, time, and location of the violation;

(b) the license plate number and state and description of the offending vehicle;

(c) as much as practical, a description of the operator of the offending vehicle;

(d) a description of the incident involving the violation;

(e) information on how to contact the school bus operator who witnessed the offense; and

(f) the signature of the operator of the school bus who witnessed the offense attesting to the accuracy of the report.

(2) (a) Upon receipt of a [~~written~~] report in accordance with Subsection (1), the school district transportation coordinator shall promptly [~~mail~~] send a notification letter to the last-known registered owner of the vehicle.

(b) The notification letter shall include:

(i) the applicable information on the school bus operator's report stating that the vehicle was observed passing a school bus displaying alternating flashing red lights in violation of state law;

(ii) a complete explanation of the applicable provisions of Section 41-6-100.10; and

(iii) an explanation that the notification letter is not a peace officer citation but is an effort to call attention to the seriousness of the incident.

(c) The school district transportation coordinator may file the [~~written~~] report with the local law enforcement agency that has jurisdiction for the alleged violation.

(3) A law enforcement agency that receives a [~~written~~] report in accordance with Subsection (2) may have a peace officer initiate an investigation of the reported violation.

Section 10. Section 41-6-116.10 is amended to read:

41-6-116.10. Abandoned vehicles -- Removal by peace officer -- Report -- Procedure if not reclaimed.

(1) A person may not abandon a vehicle upon any highway.

(2) A person may not abandon a vehicle upon any public or private property without the express or implied consent of the owner or person in lawful possession or control of the property.

(3) (a) A peace officer who has reasonable grounds to believe that a vehicle has been abandoned may remove the vehicle or cause it to be removed, at the expense of the owner, to the nearest state impound yard or if none, to a garage or other place of safety.

(b) The peace officer shall immediately send a [~~written~~] report of the removal to the Motor Vehicle Division. The report shall include a description of the vehicle, the date, time and place of removal, the grounds for removal, and the name of the garage or place where the vehicle is stored.

(c) Upon receipt of a report, the Motor Vehicle Division shall attempt to notify the registered owner of the vehicle or any lien holder giving the grounds for removal and the name of the garage or place where the vehicle is stored.

(d) If the vehicle is not registered in this state, the Motor Vehicle Division shall make a reasonable effort to notify the registered owner or any lien holder of the removal and the name of the garage or place where the vehicle is stored.

(e) The Motor Vehicle Division shall forward a copy of the notice to the owner or person in charge of the garage or place where the vehicle is stored.

(4) For the purposes of this section, a vehicle is presumed to be abandoned if it is left unattended:

(a) on a highway for a period in excess of 24 hours; or

(b) on any public or private property for a period in excess of seven days without express or implied consent of the owner or person in lawful possession or control of the property.

(5) If the motor number, manufacturer's number or identification mark of the abandoned vehicle has been defaced, altered or obliterated, the vehicle may not be released or sold until the original motor number, manufacturer's number or identification mark has been replaced, or until a new number assigned by the Motor Vehicle Division has been stamped on the vehicle.

(6) If the abandoned vehicle is not reclaimed by the registered owner or any lien holder within 30 days after actual notice or reasonable attempt to give notice to the registered owner or any lien holder, the provisions of Sections 41-1a-1009 and 41-1a-1102 shall apply, and the abandoned vehicle may be sold as provided in Section 41-1a-1301.

Section 11. Section 41-12a-303 is amended to read:

41-12a-303. Condition to obtaining registration, license plates, or safety inspection.

The owner of a motor vehicle required to maintain owner's security under Section 41-12a-301 may be required to swear or affirm, [~~in writing,~~] in a manner specified by the State Tax Commission, or present other reasonable evidence that he has owner's security in effect at the time of registering, obtaining license plates for, or a safety inspection of the motor vehicle.

Section 12. Section 41-12a-508 is amended to read:

41-12a-508. Form and amount of postaccident security.

(1) The post-accident security required under Subsection 41-12a-501(1) shall be in the form of cash, cashier's check, a national or Utah bank's clean and irrevocable letter of credit, or the assignment of a bank's certificate of deposit. The department may not require a deposit in excess of the minimum single limit under Subsection 31A-22-304(2). The person depositing security shall specify in [~~writing~~] a manner specified by the department the persons on whose behalf the deposit is made and may, at any time while the deposit is in the custody of the department or state treasurer, in [~~writing~~] a manner specified by the department amend the specification of the persons on whose behalf the deposit is made. However, a single deposit of security is applicable only on behalf of persons required to furnish security because of the same accident.

(2) Subject to Subsection (1), the department may alter the amount of post-accident security required if, in its judgment, the amount previously ordered is excessive or inadequate. If the security originally ordered is determined to be excessive, the excess deposited over the reduced amount ordered shall be returned to the depositor or his personal representative as soon as possible, notwithstanding the provisions of Section 41-12a-509. If the security originally ordered is determined to be inadequate, the depositor may be required to increase the deposit within 20 days or be subject to the penalties under Subsection 41-12a-501(3).

Section 13. Section 53-3-104 is amended to read:

53-3-104. Division duties.

The division shall:

(1) make rules:

(a) for examining applicants for a license, as necessary for the safety and welfare of the traveling public;

(b) regarding the restrictions to be imposed on a person driving a motor vehicle with a temporary learner permit; and

(c) for exemptions from licensing requirements as authorized in this chapter;

(2) examine each applicant according to the class of license applied for;

(3) license motor vehicle drivers;

(4) file every application for a license received by it and shall maintain indices containing:

(a) all applications denied and the reason each was denied;

(b) all applications granted; and

(c) the name of every licensee whose license has been suspended, disqualified, or revoked by the division and the reasons for the action;

(5) suspend, revoke, disqualify, cancel, or deny any license issued in accordance with this chapter;

(6) file all accident reports and abstracts of court records of convictions received by it under state law;

(7) maintain a record of each licensee showing his convictions and the traffic accidents in which he has been involved where a conviction has resulted;

(8) consider the record of a licensee upon an application for renewal of a license and at other appropriate times;

(9) search the license files, compile, and furnish a report on the driving record of any person licensed in the state in accordance with Section 53-3-109;

(10) develop and implement a record system as required by Section 41-6-48.5;

(11) in accordance with Section 53A-13-208, establish:

(a) procedures and standards to certify teachers of driver education classes to administer [~~written~~] knowledge and [~~driving~~] skills tests;

(b) minimal standards for the tests; and

(c) procedures to enable school districts to administer or process any tests for students to receive a class D operator's license;

(12) in accordance with Section 53-3-510, establish:

(a) procedures and standards to certify licensed instructors of commercial driver training school courses to administer the skills test;

(b) minimal standards for the test; and

(c) procedures to enable licensed commercial driver training schools to administer or process skills tests for students to receive a class D operator's license; and

(13) provide administrative support to the Driver License Medical Advisory Board created in Section 53-3-303.

Section 14. Section 53-3-105 is amended to read:

53-3-105. Fees for licenses, renewals, extensions, reinstatements, rescheduling, and identification cards.

The following fees apply under this chapter:

(1) An original class D license application under Section 53-3-205 is $20.

(2) An original class M license application under Section 53-3-205 is $22.50.

(3) An original provisional license application for a class D license under Section 53-3-205 is $25.

(4) An original provisional license application for a class M license under Section 53-3-205 is $27.50.

(5) An original application for a motorcycle endorsement under Section 53-3-205 is $7.50.

(6) An original application for a taxicab endorsement under Section 53-3-205 is $5.

(7) A renewal of a class D license under Section 53-3-214 is $20 unless Subsection (13) applies.

(8) A renewal of a class M license under Section 53-3-214 is $22.50.

(9) A renewal of a provisional license application for a class D license under Section 53-3-214 is $20.

(10) A renewal of a provisional license application for a class M license under Section 53-3-214 is $22.50.

(11) A renewal of a motorcycle endorsement under Section 53-3-214 is $7.50.

(12) A renewal of a taxicab endorsement under Section 53-3-214 is $5.

(13) A renewal of a class D license for a person 65 and older under Section 53-3-214 is $8.

(14) An extension of a class D license under Section 53-3-214 is $15 unless Subsection (20) applies.

(15) An extension of a class M license under Section 53-3-214 is $17.50.

(16) An extension of a provisional license application for a class D license under Section 53-3-214 is $15.

(17) An extension of a provisional license application for a class M license under Section 53-3-214 is $17.50.

(18) An extension of a motorcycle endorsement under Section 53-3-214 is $7.50.

(19) An extension of a taxicab endorsement under Section 53-3-214 is $5.

(20) An extension of a class D license for a person 65 and older under Section 53-3-214 is $6.

(21) An original or renewal application for a commercial class A, B, or C license or an original or renewal of a provisional commercial class A or B license under Part 4 of this chapter is:

(a) $35 for the [~~written~~] knowledge test; and

(b) $55 for the skills test.

(22) Each original CDL endorsement for passengers, hazardous material, double or triple trailers, or tankers is $5.

(23) An original CDL endorsement for a school bus under Part 4 of this chapter is $5.

(24) A renewal of a CDL endorsement under Part 4 of this chapter is $5.

(25) A retake of a CDL [~~written~~] knowledge or a CDL skills test provided for in Section 53-3-205 is $15.

(26) A retake of a CDL endorsement test provided for in Section 53-3-205 is $5.

(27) A duplicate class A, B, C, D, or M license certificate under Section 53-3-215 is $13.

(28) (a) A license reinstatement application under Section 53-3-205 is $25.

(b) A license reinstatement application under Section 53-3-205 for an alcohol, drug, or combination of alcohol and any drug-related offense is $25 in addition to the fee under Subsection (28)(a).

(29) An administrative fee for license reinstatement after an alcohol, drug, or combination of alcohol and any drug-related offense under Section 41-6-44.10, 53-3-223, or 53-3-231 or an alcohol, drug, or combination of alcohol and any drug-related offense under Part 4 of this chapter is $150. This administrative fee is in addition to the fees under Subsection (28).

(30) (a) An administrative fee for providing the driving record of a driver under Section 53-3-104 or 53-3-420 is $4.

(b) The division may not charge for a report furnished under Section 53-3-104 to a municipal, county, state, or federal agency.

(31) A rescheduling fee under Section 53-3-205 or 53-3-407 is $25.

(32) An identification card application under Section 53-3-808 is $8.

Section 15. Section 53-3-109 is amended to read:

53-3-109. Records -- Access -- Fees -- Rulemaking.

(1) (a) Except as provided in this section, all records of the division shall be classified and disclosed in accordance with Title 63, Chapter 2, Government Records Access and Management Act.

(b) The division may only disclose personal identifying information:

(i) when the division determines it is in the interest of the public safety to disclose the information; and

(ii) in accordance with the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. Chapter 123.

(2) A person who receives personal identifying information shall be advised by the division that the person may not:

(a) disclose the personal identifying information from that record to any other person; or

(b) use the personal identifying information from that record for advertising or solicitation purposes.

(3) The division may:

(a) collect fees in accordance with Section 53-3-105 for searching and compiling its files or furnishing a report on the driving record of a person; and

(b) prepare under the seal of the division and deliver upon request, a certified copy of any record of the division, and charge a fee under Section 63-38-3.2 for each document authenticated.

(4) Each certified copy of a driving record furnished in accordance with this section is admissible in any court proceeding in the same manner as the original.

(5) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the division may make rules to designate:

(a) what information shall be included in a report on the driving record of a person[.];

(b) the form of a report or copy of the report which may include electronic format;

(c) the form of a certified copy, as required under Section 53-3-216, which may include electronic format;

(d) the form of a signature required under this chapter which may include electronic format; and

(e) the form of written request to the division required under this chapter which may include electronic format.

Section 16. Section 53-3-205 is amended to read:

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

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

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

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

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

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

(b) a learner permit if needed after the [~~written~~] knowledge test is passed; and

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

(3) An application and fee for an original class M license entitle the applicant to:

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

(b) a learner permit if needed after the [~~written~~] knowledge test is passed; and

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

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

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

(b) a motorcycle learner permit if needed after the motorcycle [~~written~~] knowledge test is passed; and

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

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

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

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

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

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

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

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

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

(8) (a) An original license expires on the birth date of the applicant in the fifth year following the year the license certificate was issued.

(b) A renewal or an extension to a license expires on the birth date of the licensee in the fifth year following the expiration date of the license certificate renewed or extended.

(c) A duplicate license expires on the same date as the last license certificate issued.

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

(e) A license and any endorsement to the license held by a person ordered to active duty and stationed outside Utah in any of the armed forces of the United States, which expires during the time period the person is stationed outside of the state, is valid until 90 days after the person has been discharged or has left the service, unless the license is suspended, disqualified, denied, or has been cancelled or revoked by the division, or the licensee updates the information or photograph on the license certificate.

(9) (a) In addition to the information required by Title 63, Chapter 46b, Administrative Procedures Act, for requests for agency action, each application shall:

(i) state the full legal name, birth date, sex, Social Security number or temporary identification number (ITIN) issued by the Internal Revenue Service for a person who does not qualify for a Social Security number, and residence address of the applicant;

(ii) briefly describe the applicant;

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

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

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

(vi) be signed which may include electronic signatures as defined in Section 46-4-102.

(b) An applicant's Social Security number or temporary identification number (ITIN) shall be maintained on the computerized records of the division.

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

(a) current license certificate;

(b) birth certificate;

(c) Selective Service registration; or

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

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

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

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

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

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

(15) A person who applies for an original license or renewal of a license agrees that the person's license is subject to any suspension or revocation authorized under this title or Title 41, Motor Vehicles.

Section 17. Section 53-3-210 is amended to read:

53-3-210. Temporary learner permit -- Instruction permit -- Commercial driver instruction permit -- Practice permit.

(1) (a) The division upon receiving an application for a class D or M license from a person 16 years of age or older may issue a temporary learner permit after the person has successfully passed all parts of the examination not involving actually driving a motor vehicle.

(b) The temporary learner permit allows the applicant, while having the permit in the applicant's immediate possession, to drive a motor vehicle upon the highways for six months from the date of the application in conformance with the restrictions indicated on the permit.

(2) (a) The division, upon receiving an application, may issue an instruction permit effective for one year to an applicant who is enrolled in a driver education program that includes practice driving, if the program is approved by the State Board of Education, even though the applicant has not reached the legal age to be eligible for a license.

(b) The instruction permit entitles the applicant, while having the permit in his immediate possession, to drive a motor vehicle, only if an approved instructor is occupying a seat beside the applicant or in accordance with the requirements of Subsections (4) and 53A-13-208(4).

(3) The division may issue a commercial driver instruction permit under Title 53, Chapter 3, Part 4, Uniform Commercial Driver License Act.

(4) (a) The division shall issue a practice permit to an applicant who:

(i) is at least 15 years and nine months of age;

(ii) has been issued an instruction permit under this section;

(iii) is enrolled in or has successfully completed a driver education course in a:

(A) commercial driver training school licensed under Title 53, Chapter 3, Part 5, Commercial Driver Training Schools Act; or

(B) driver education program approved by the division;

(iv) has passed the [~~written~~] knowledge test required by the division;

(v) has passed the physical and mental fitness tests; and

(vi) has submitted the nonrefundable fee for a class D license.

(b) The division shall supply the practice permit form. The form shall include the following information:

(i) the person's full name, date of birth, sex, home address, height, weight, and eye color;

(ii) the name of the school providing the driver education course;

(iii) the dates of issuance and expiration of the permit;

(iv) the statutory citation authorizing the permit; and

(v) the conditions and restrictions contained in this section for operating a class D motor vehicle.

(c) The practice permit is valid for up to six months from the date of issuance. The practice permit allows the person, while having the permit in the applicant's immediate possession, to operate a class D motor vehicle when the person's parent, legal guardian, or adult spouse, who must be a licensed driver, is occupying a seat next to the person.

(d) If an applicant has been issued a practice permit by the division, the applicant may obtain an original or provisional class D license from the division upon passing the skills test administered by the division and reaching 16 years of age.

Section 18. Section 53-3-216 is amended to read:

53-3-216. Change of address -- Duty of licensee to notify division within ten days -- Change of name -- Proof necessary -- Method of giving notice by division.

(1) If a person, after applying for or receiving a license, moves from the address named in the application or in the license certificate issued to him, the person shall within ten days of moving, notify the division in [~~writing~~] a manner specified by the division of his new address and the number of any license certificate held by him.

(2) If a person requests to change the surname on the applicant's license, the division shall issue a substitute license with the new name upon receiving an application and fee for a duplicate license and any of the following proofs of the applicant's full legal name:

(a) an original or certified copy of the applicant's marriage certificate;

(b) a certified copy of a court order under Title 42, Chapter 1, Change of Name, showing the name change;

(c) an original or certified copy of a birth certificate issued by a government agency;

(d) a certified copy of a divorce decree or annulment granted the applicant that specifies the name change requested; or

(e) a certified copy of a divorce decree that does not specify the name change requested together with:

(i) an original or certified copy of the applicant's birth certificate;

(ii) the applicant's marriage license;

(iii) a driver license record showing use of a maiden name; or

(iv) other documentation the division finds acceptable.

(3) (a) If the division is authorized or required to give any notice under this chapter or other law regulating the operation of vehicles, the notice shall, unless otherwise prescribed, be given by:

(i) personal delivery to the person to be notified; or

(ii) deposit in the United States mail with postage prepaid, addressed to the person at his address as shown by the records of the division.

(b) The giving of notice by mail is complete upon the expiration of four days after the deposit of the notice.

(c) Proof of the giving of notice in either manner may be made by the certificate of any officer or employee of the division or affidavit of any person older than 18 years of age, naming the person to whom the notice was given and specifying the time, place, and manner of giving the notice.

(4) The division may use state mailing or United States Postal Service information to:

(a) verify an address on an application or on records of the division; and

(b) correct mailing addresses in the division's records.

Section 19. Section 53-3-218 is amended to read:

53-3-218. Court to report convictions and may recommend suspension of license -- Severity of speeding violation defined.

(1) As used in this section:

(a) "conviction" means conviction by the court of first impression or final administrative determination in an administrative traffic proceeding; and

(b) "court" includes an administrative traffic proceeding in accordance with Section 10-3-703.5.

(2) A court having jurisdiction over offenses committed under this chapter or any other law of this state, or under any municipal ordinance regulating driving motor vehicles on highways, shall forward to the division within ten days, an abstract of the court record of the conviction or plea held in abeyance of any person in the court for a reportable traffic violation of any laws or ordinances, and may recommend the suspension of the license of the person convicted.

(3) The abstract shall be made [~~upon a form approved and furnished~~] in the form prescribed by the division and shall include:

(a) the name and address of the party charged;

(b) the number of his license certificate, if any;

(c) the registration number of the motor vehicle involved;

(d) whether the motor vehicle was a commercial motor vehicle;

(e) whether the motor vehicle carried hazardous materials;

(f) the nature of the offense;

(g) the date of the hearing;

(h) the plea;

(i) the judgment or whether bail was forfeited; and

(j) the severity of the violation, which shall be graded by the court as "minimum," "intermediate," or "maximum" as established in accordance with Subsection 53-3-221(4).

(4) When a convicted person secures a judgment of acquittal or reversal in any appellate court after conviction in the court of first impression, the division shall reinstate his license immediately upon receipt of a certified copy of the judgment of acquittal or reversal.

Section 20. Section 53-3-221 is amended to read:

53-3-221. Offenses which may result in denial, suspension, disqualification, or revocation of license without hearing -- Additional grounds for suspension -- Point system for traffic violations -- Notice and hearing -- Reporting of traffic violation procedures.

(1) By following the emergency procedures in Title 63, Chapter 46b, Administrative Procedures Act, the division may immediately deny, suspend, disqualify, or revoke the license of any person without hearing and without receiving a record of the person's conviction of crime when the division has been notified or has reason to believe the person:

(a) has committed any offenses for which mandatory suspension or revocation of a license is required upon conviction under Section 53-3-220;

(b) has, by reckless or unlawful driving of a motor vehicle, caused or contributed to an accident resulting in death or injury to any other person, or serious property damage;

(c) is incompetent to drive a motor vehicle or is afflicted with mental or physical infirmities or disabilities rendering it unsafe for the person to drive a motor vehicle upon the highways;

(d) has committed a serious violation of the motor vehicle laws of this state;

(e) has permitted an unlawful use of the license as defined in Section 53-3-229; or

(f) has been convicted of serious offenses against traffic laws governing the movement of motor vehicles with a frequency that indicates a disrespect for traffic laws and a disregard for the safety of other persons on the highways.

(2) (a) The division may suspend the license of a person under Subsection (1) when the person has failed to comply with the terms stated on a traffic citation issued in this state, except this Subsection (2) does not apply to highway weight limit violations or violations of law governing the transportation of hazardous materials.

(b) This Subsection (2) applies to parking and standing violations only if a court has issued a warrant for the arrest of a person for failure to post bail, appear, or otherwise satisfy the terms of the citation.

(c) (i) This Subsection (2) may not be exercised unless notice of the pending suspension of the driving privilege has been [~~mailed~~] sent at least ten days previously to the person at the address provided to the division.

(ii) After clearance by the division, a report authorized by Section 53-3-104 may not contain any evidence of a suspension that occurred as a result of failure to comply with the terms stated on a traffic citation.

(3) (a) The division may suspend the license of a person under Subsection (1) when the division has been notified by a court that the person has an outstanding unpaid fine, an outstanding incomplete restitution requirement, or an outstanding warrant levied by order of a court.

(b) The suspension remains in effect until the division is notified by the court that the order has been satisfied.

(c) After clearance by the division, a report authorized by Section 53-3-104 may not contain any evidence of the suspension.

(4) The division shall make rules establishing a point system as provided for in this Subsection (4).

(a) (i) The division shall assign a number of points to each type of moving traffic violation as a measure of its seriousness.

(ii) The points shall be based upon actual relationships between types of traffic violations and motor vehicle traffic accidents.

(b) Every person convicted of a traffic violation shall have assessed against his driving record the number of points that the division has assigned to the type of violation of which the person has been convicted, except that the number of points assessed shall be decreased by 10% if on the abstract of the court record of the conviction the court has graded the severity of violation as minimum, and shall be increased by 10% if on the abstract the court has graded the severity of violation as maximum.

(c) (i) A separate procedure for assessing points for speeding offenses shall be established by the division based upon the severity of the offense.

(ii) The severity of a speeding violation shall be graded as:

(A) "minimum" for exceeding the posted speed limit by up to ten miles per hour;

(B) "intermediate" for exceeding the posted speed limit by from 11 to 20 miles per hour; and

(C) "maximum" for exceeding the posted speed limit by 21 or more miles per hour.

(iii) Consideration shall be made for assessment of no points on minimum speeding violations, except for speeding violations in school zones.

(d) (i) Points assessed against a person's driving record shall be deleted for violations occurring before a time limit set by the division.

(ii) The time limit may not exceed three years.

(iii) The division may also delete points to reward violation-free driving for periods of time set by the division.

(e) (i) By publication in two newspapers having general circulation throughout the state, the division shall give notice of the number of points it has assigned to each type of traffic violation, the time limit set by the division for the deletion of points, and the point level at which the division will generally take action to deny or suspend under this section.

(ii) The division may not change any of the information provided above regarding points without first giving new notice in the same manner.

(5) (a) (i) Upon denying or suspending the license of a person under this section, the division shall immediately notify the licensee in [~~writing~~] a manner specified by the division and afford him an opportunity for a hearing in the county where the licensee resides.

(ii) The hearing shall be documented, and the division or its authorized agent may administer oaths, may issue subpoenas for the attendance of witnesses and the production of relevant books and papers, and may require a reexamination of the licensee.

(iii) One or more members of the division may conduct the hearing, and any decision made after a hearing before any number of the members of the division is as valid as if made after a hearing before the full membership of the division.

(iv) After the hearing the division shall either rescind its order of denial or suspension, extend the denial or suspension of the license, or revoke the license.

(b) The denial or suspension of the license remains in effect pending qualifications determined by the division regarding a person:

(i) whose license has been denied or suspended following reexamination;

(ii) who is incompetent to drive a motor vehicle;

(iii) who is afflicted with mental or physical infirmities that might make him dangerous on the highways; or

(iv) who may not have the necessary knowledge or skill to drive a motor vehicle safely.

(6) (a) The division may suspend or revoke the license of any resident of this state upon receiving notice of the conviction of that person in another state of an offense committed there that, if committed in this state, would be grounds for the suspension or revocation of a license.

(b) The division may, upon receiving a record of the conviction in this state of a nonresident driver of a motor vehicle of any offense under the motor vehicle laws of this state, forward a certified copy of the record to the motor vehicle administrator in the state where the person convicted is a resident.

(7) (a) The division may suspend or revoke the license of any nonresident to drive a motor vehicle in this state for any cause for which the license of a resident driver may be suspended or revoked.

(b) Any nonresident who drives a motor vehicle upon a highway when his license has been suspended or revoked by the division is guilty of a class C misdemeanor.

(8) (a) The division may not deny or suspend the license of any person for a period of more than one year except:

(i) for failure to comply with the terms of a traffic citation under Subsection (2);

(ii) upon receipt of a second or subsequent order suspending juvenile driving privileges under Section 53-3-219;

(iii) when extending a denial or suspension upon receiving certain records or reports under Subsection 53-3-220(2); and

(iv) for failure to give and maintain owner's or operator's security under Section 41-12a-411.

(b) The division may suspend the license of a person under Subsection (2) until he shows satisfactory evidence of compliance with the terms of the traffic citation.

(9) (a) By following the emergency procedures in Title 63, Chapter 46b, Administrative Procedures

Act, the division may immediately suspend the license of any person without hearing and without receiving a record of his conviction for a crime when the division has reason to believe that the person's license was granted by the division through error or fraud or that the necessary consent for the license has been withdrawn or is terminated.

(b) The procedure upon suspension is the same as under Subsection (5), except that after the hearing the division shall either rescind its order of suspension or cancel the license.

(10) (a) The division, having good cause to believe that a licensed driver is incompetent or otherwise not qualified to be licensed, may upon [~~written~~] notice in a manner specified by the division of at least five days to the licensee require him to submit to an examination.

(b) Upon the conclusion of the examination the division may suspend or revoke the person's license, permit him to retain the license, or grant a license subject to a restriction imposed in accordance with Section 53-3-208.

(c) Refusal or neglect of the licensee to submit to an examination is grounds for suspension or revocation of his license.

(11) A report authorized by Section 53-3-104 may not contain any evidence of a conviction for speeding on an interstate system in this state if the conviction was for a speed of ten miles per hour or less, above the posted speed limit and did not result in an accident, unless authorized in [~~writing~~] a manner specified by the division by the individual whose report is being requested.

(12) (a) By following the emergency procedures in Title 63, Chapter 46b, Administrative Procedures Act, the division may immediately suspend the license of a person if it has reason to believe that the person is the owner of a motor vehicle for which security is required under Title 41, Chapter 12a, Motor Vehicle Financial Responsibility, and has driven the motor vehicle or permitted it to be driven within this state without the security being in effect.

(b) Section 41-12a-411 regarding the requirement of proof of owner's or operator's security applies to persons whose driving privileges are suspended under this Subsection (12).

(c) If the division exercises the right of immediate suspension granted under this Subsection (12), the notice and hearing provisions of Subsection (5) apply.

(d) A person whose license suspension has been sustained or whose license has been revoked by the division under this subsection may file a request for agency action requesting a hearing.

(13) Any suspension or revocation of a person's license under this section also disqualifies any license issued to that person under Part 4 of this chapter.

Section 21. Section 53-3-223 is amended to read:

53-3-223. Chemical test for driving under the influence -- Temporary license -- Hearing and decision -- Suspension and fee -- Judicial review.

(1) (a) If a peace officer has reasonable grounds to believe that a person may be violating or has violated Section 41-6-44, prohibiting the operation of a vehicle with a certain blood or breath alcohol concentration and driving under the influence of any drug, alcohol, or combination of a drug and alcohol or while having any measurable controlled substance or metabolite of a controlled substance in the person's body in violation of Section 41-6-44.6, the peace officer may, in connection with arresting the person, request that the person submit to a chemical test or tests to be administered in compliance with the standards under Section 41-6-44.10.

(b) In this section, a reference to Section 41-6-44 includes any similar local ordinance adopted in compliance with Subsection 41-6-43(1).

(2) The peace officer shall advise a person prior to the person's submission to a chemical test that a test result indicating a violation of Section 41-6-44 or 41-6-44.6 shall, and the existence of a blood alcohol content sufficient to render the person incapable of safely driving a motor vehicle may, result in suspension or revocation of the person's license to drive a motor vehicle.

(3) If the person submits to a chemical test and the test results indicate a blood or breath alcohol content in violation of Section 41-6-44 or 41-6-44.6, or if the officer makes a determination, based on reasonable grounds, that the person is otherwise in violation of Section 41-6-44, the officer directing administration of the test or making the determination shall serve on the person, on behalf of the division, immediate notice of the division's intention to suspend the person's license to drive a motor vehicle.

(4) (a) When the officer serves immediate notice on behalf of the division he shall:

(i) take the Utah license certificate or permit, if any, of the driver;

(ii) issue a temporary license certificate effective for only 29 days; and

(iii) supply to the driver, on a form to be approved by the division, basic information regarding how to obtain a prompt hearing before the division.

(b) A citation issued by the officer may, if approved as to form by the division, serve also as the temporary license certificate.

(5) As a matter of procedure, the peace officer serving the notice shall send to the division within ten calendar days after the date of arrest and service of the notice:

(a) the person's license certificate;

(b) a copy of the citation issued for the offense;

(c) a signed report on a form approved by the division indicating the chemical test results, if any; and

(d) any other basis for the officer's determination that the person has violated Section 41-6-44 or 41-6-44.6.

(6) (a) Upon [~~written~~] request in a manner specified by the division, the division shall grant to the person an opportunity to be heard within 29 days after the date of arrest. The request to be heard shall be made within ten calendar days of the date of the arrest.

(b) A hearing, if held, shall be before the division in the county in which the arrest occurred, unless the division and the person agree that the hearing may be held in some other county.

(c) The hearing shall be documented and shall cover the issues of:

(i) whether a peace officer had reasonable grounds to believe the person was driving a motor vehicle in violation of Section 41-6-44 or 41-6-44.6;

(ii) whether the person refused to submit to the test; and

(iii) the test results, if any.

(d) (i) In connection with a hearing the division or its authorized agent:

(A) may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers; or

(B) may issue subpoenas for the attendance of necessary peace officers.

(ii) The division shall pay witness fees and mileage from the Transportation Fund in accordance with the rates established in Section 21-5-4.

(e) The division may designate one or more employees to conduct the hearing.

(f) Any decision made after a hearing before any designated employee is as valid as if made by the division.

(g) After the hearing, the division shall order whether the person's license to drive a motor vehicle is suspended or not.

(h) If the person for whom the hearing is held fails to appear before the division as required in the notice, the division shall order whether the person's license to drive a motor vehicle is suspended or not.

(7) (a) A first suspension, whether ordered or not challenged under this Subsection (7), is for a period of 90 days, beginning on the 30th day after the date of the arrest.

(b) A second or subsequent suspension under this subsection is for a period of one year, beginning on the 30th day after the date of arrest.

(8) (a) The division shall assess against a person, in addition to any fee imposed under Subsection 53-3-205(14) for driving under the influence, a fee under Section 53-3-105 to cover administrative costs, which shall be paid before the person's driving privilege is reinstated. This fee shall be cancelled if the person obtains an unappealed division hearing or court decision that the suspension was not proper.

(b) A person whose license has been suspended by the division under this subsection may file a petition within 30 days after the suspension for a hearing on the matter which, if held, is governed by Section 53-3-224.

Section 22. Section 53-3-231 is amended to read:

53-3-231. Person under 21 may not operate vehicle with detectable alcohol in body -- Chemical test procedures -- Temporary license -- Hearing and decision -- Suspension of license or operating privilege -- Fees -- Judicial review -- Referral to local substance abuse authority or program.

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

(i) "Local substance abuse authority" has the same meaning as provided in Section 62A-8-101.

(ii) "Substance abuse program" means any substance abuse program licensed by the Department of Human Services or the Department of Health and approved by the local substance abuse authority.

(b) Calculations of blood, breath, or urine alcohol concentration under this section shall be made in accordance with the procedures in Subsection 41-6-44(2).

(2) (a) A person younger than 21 years of age may not operate or be in actual physical control of a vehicle with any measurable blood, breath, or urine alcohol concentration in his body as shown by a chemical test.

(b) (i) A person with a valid operator license who violates Subsection (2)(a), in addition to any other applicable penalties arising out of the incident, shall have his operator license denied or suspended as provided in Subsection (2)(b)(ii).

(ii) (A) For a first offense under Subsection (2)(a), the Driver License Division of the Department of Public Safety shall deny the person's operator license if ordered or not challenged under this section for a period of 90 days beginning on the 30th day after the date of the arrest under Section 32A-12-209.

(B) For a second or subsequent offense under Subsection (2)(a), within three years of a prior denial or suspension, the Driver License Division shall suspend the person's operator license for a period of one year beginning on the 30th day after the date of arrest.

(c) (i) A person who has not been issued an operator license who violates Subsection (2)(a), in addition to any other penalties arising out of the incident, shall be punished as provided in Subsection (2)(c)(ii).

(ii) For one year or until he is 17, whichever is longer, a person may not operate a vehicle and the Driver License Division may not issue the person an operator license or learner's permit.

(3) (a) When a peace officer has reasonable grounds to believe that a person may be violating or has violated Subsection (2), the peace officer may, in connection with arresting the person for a violation of Section 32A-12-209, request that the person submit to a chemical test or tests to be administered in compliance with the standards under Section 41-6-44.10.

(b) The peace officer shall advise a person prior to the person's submission to a chemical test that a test result indicating a violation of Subsection (2)(a) will result in denial or suspension of the person's license to operate a motor vehicle or a refusal to issue a license.

(c) If the person submits to a chemical test and the test results indicate a blood, breath, or urine alcohol content in violation of Subsection (2)(a), or if the officer makes a determination, based on reasonable grounds, that the person is otherwise in violation of Subsection (2)(a), the officer directing administration of the test or making the determination shall serve on the person, on behalf of the Driver License Division, immediate notice of the Driver License Division's intention to deny or suspend the person's license to operate a vehicle or refusal to issue a license under Subsection (2).

(4) When the officer serves immediate notice on behalf of the Driver License Division, he shall:

(a) take the Utah license certificate or permit, if any, of the operator;

(b) issue a temporary license certificate effective for only 29 days if the driver had a valid operator's license; and

(c) supply to the operator, [~~on a form to be approved by the Driver License Division~~] in a manner specified by the division, basic information regarding how to obtain a prompt hearing before the Driver License Division.

(5) A citation issued by the officer may, if approved as to form by the Driver License Division, serve also as the temporary license certificate under Subsection (4)(b).

(6) As a matter of procedure, the peace officer serving the notice shall send to the Driver License Division within ten calendar days after the date of arrest and service of the notice:

(a) the person's driver license certificate, if any;

(b) a copy of the citation issued for the offense;

(c) a signed report [~~on a form approved~~] in a manner specified by the Driver License Division indicating the chemical test results, if any; and

(d) any other basis for the officer's determination that the person has violated Subsection (2).

(7) (a) (i) Upon [~~written~~] request in a manner specified by the division, the Driver License Division shall grant to the person an opportunity to be heard within 29 days after the date of arrest under Section 32A-12-209.

(ii) The request shall be made within ten calendar days of the date of the arrest.

(b) A hearing, if held, shall be before the Driver License Division in the county in which the arrest occurred, unless the Driver License Division and the person agree that the hearing may be held in some other county.

(c) The hearing shall be documented and shall cover the issues of:

(i) whether a peace officer had reasonable grounds to believe the person was operating a motor vehicle in violation of Subsection (2)(a);

(ii) whether the person refused to submit to the test; and

(iii) the test results, if any.

(d) In connection with a hearing the Driver License Division or its authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and records as defined in Section 46-4-102.

(e) One or more members of the Driver License Division may conduct the hearing.

(f) Any decision made after a hearing before any number of the members of the Driver License Division is as valid as if made after a hearing before the full membership of the Driver License Division.

(g) After the hearing, the Driver License Division shall order whether the person:

(i) with a valid license to operate a motor vehicle will have his license denied or not or suspended or not; or

(ii) without a valid operator license will be refused a license under Subsection (2)(c).

(h) If the person for whom the hearing is held fails to appear before the Driver License Division as required in the notice, the division shall order whether the person shall have his license denied, suspended, or not denied or suspended, or whether an operator license will be refused or not refused.

(8) (a) Following denial or suspension the Driver License Division shall assess against a person, in addition to any fee imposed under Subsection 53-3-205(14), a fee under Section 53-3-105, which shall be paid before the person's driving privilege is reinstated, to cover administrative costs. This fee shall be canceled if the person obtains an unappealed Driver License Division hearing or court decision that the suspension was not proper.

(b) A person whose operator license has been denied, suspended, or postponed by the Driver License Division under this section may file a petition within 30 days after the suspension for a hearing on the matter which, if held, is governed by Section 53-3-224.

(9) After reinstatement of an operator license for a first offense under this section, a report

authorized under Section 53-3-104 may not contain evidence of the denial or suspension of the person's operator license under this section if he has not been convicted of any other offense for which the denial or suspension may be extended.

(10) (a) In addition to the penalties in Subsection (2), a person who violates Subsection (2)(a) shall:

(i) obtain an assessment and recommendation for appropriate action from a substance abuse program, but any associated costs shall be the person's responsibility; or

(ii) be referred by the Driver License Division to the local substance abuse authority for an assessment and recommendation for appropriate action.

(b) (i) Reinstatement of the person's operator license or the right to obtain an operator license is contingent upon successful completion of the action recommended by the local substance abuse authority or the substance abuse program.

(ii) The local substance abuse authority's or the substance abuse program's recommended action shall be determined by an assessment of the person's alcohol abuse and may include:

(A) a targeted education and prevention program;

(B) an early intervention program; or

(C) a substance abuse treatment program.

(iii) Successful completion of the recommended action shall be determined by standards established by the Division of Substance Abuse.

(c) At the conclusion of the penalty period imposed under Subsection (2), the local substance abuse authority or the substance abuse program shall notify the Driver License Division of the person's status regarding completion of the recommended action.

(d) The local substance abuse authorities and the substance abuse programs shall cooperate with the Driver License Division in:

(i) conducting the assessments;

(ii) making appropriate recommendations for action; and

(iii) notifying the Driver License Division about the person's status regarding completion of the recommended action.

(e) (i) The local substance abuse authority is responsible for the cost of the assessment of the person's alcohol abuse, if the assessment is conducted by the local substance abuse authority.

(ii) The local substance abuse authority or a substance abuse program selected by a person is responsible for:

(A) conducting an assessment of the person's alcohol abuse; and

(B) for making a referral to an appropriate program on the basis of the findings of the assessment.

(iii) (A) The person who violated Subsection (2)(a) is responsible for all costs and fees associated with the recommended program to which the person selected or is referred.

(B) The costs and fees under Subsection (10)(e)(iii)(A) shall be based on a sliding scale consistent with the local substance abuse authority's policies and practices regarding fees for services or determined by the substance abuse program.

Section 23. Section 53-3-303 is amended to read:

53-3-303. Driver License Medical Advisory Board -- Membership -- Guidelines for licensing impaired persons -- Recommendations to division.

(1) There is created within the division the Driver License Medical Advisory Board.

(2) (a) The board is comprised of three regular members appointed by the Commissioner of Public Safety to four-year terms.

(b) The board shall be assisted by expert panel members nominated by the board as necessary and as approved by the Commissioner of Public Safety.

(c) Notwithstanding the requirements of Subsection (2)(a), the executive director shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.

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

(e) The expert panel members shall recommend medical standards in the areas of the panel members' special competence for determining the physical, mental, and emotional capabilities of applicants for licenses and licensees.

(3) In reviewing individual cases, a panel acting with the authority of the board consists of at least two members, of which at least one is a regular board member.

(4) The director of the division or his designee serves as secretary to the board and its panels.

(5) Members of the board and expert panel members nominated by them shall be health care professionals.

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

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

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

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

(7) The board shall meet from time to time when called by the director of the division.

(8) (a) The board shall recommend [~~written~~] guidelines and standards for determining the physical, mental, and emotional capabilities of applicants for licenses and for licensees.

(b) The guidelines and standards are applicable to all Utah licensees and for all individuals who hold learner permits and are participating in driving activities in all forms of driver education.

(c) The guidelines and standards shall be published by the division.

(9) If the division has reason to believe that an applicant or licensee is an impaired person, it may:

(a) act upon the matter based upon the published guidelines and standards; or

(b) convene a panel to consider the matter and submit [~~written~~] findings and a recommendation; the division shall consider the recommendation along with other evidence in determining whether a license should be suspended, revoked, denied, disqualified, canceled, or restricted.

(10) (a) If the division has acted under Subsection (9) to suspend, revoke, deny, disqualify, cancel, or restrict the driving privilege without the convening of a panel, the affected applicant or licensee may within ten days of receiving notice of the action request in [~~writing~~] a manner prescribed by the division a review of the division's action by a panel.

(b) The panel shall review the matters and make written findings and conclusions.

(c) The division shall affirm or modify its previous action.

(11) (a) Actions of the division are subject to judicial review as provided in this part.

(b) The guidelines, standards, findings, conclusions, and recommendations of the board or of a panel are admissible as evidence in any judicial review.

(12) Members of the board and its panels incur no liability for recommendations, findings, conclusions, or for other acts performed in good faith and incidental to membership on the board or a panel.

(13) The division shall provide forms for the use of health care professionals in depicting the medical history of any physical, mental, or emotional impairment affecting the applicant's or licensee's ability to drive a motor vehicle.

(14) (a) (i) Individuals who apply for or hold a license and have, or develop, or suspect that they have developed a physical, mental, or emotional impairment that may affect driving safety are responsible for reporting this to the division or its agent.

(ii) If there is uncertainty, the individual is expected to seek competent medical evaluation and advice as to the significance of the impairment as it relates to driving safety, and to refrain from driving until a clarification is made.

(b) Health care professionals who care for patients with physical, mental, or emotional impairments that may affect their driving safety, whether defined by published guidelines and standards or not, are responsible for making available to their patients without reservation their recommendations and appropriate information related to driving safety and responsibilities.

(c) A health care professional or other person who becomes aware of a physical, mental, or emotional impairment that appears to present an imminent threat to driving safety and reports this information to the division in good faith has immunity from any damages claimed as a result of making the report.

Section 24. Section 53-3-303.5 is amended to read:

53-3-303.5. Driver License Medical Advisory Board.

(1) The Driver License Medical Advisory Board shall:

(a) advise the director of the division; and

(b) establish and recommend [~~written~~] in a manner specified by the board functional ability profile guidelines and standards for determining the physical, mental, and emotional capabilities of applicants for specific types of licenses, appropriate to various driving abilities.

(2) (a) The Driver License Medical Advisory Board shall establish fitness standards, including provisions for a waiver of specified federal driver's physical qualifications, for intrastate commercial driver licenses under Title 53, Chapter 3, Part 4, Uniform Commercial Driver License Act.

(b) The standards under this Subsection (2) may only be implemented if the United States Department of Transportation (USDOT) will not impose any sanctions, including funding sanctions, against the state [~~of Utah~~].

(3) In case of uncertainty of interpretation of these guidelines and standards, or in special circumstances, applicants may request a review of any division decision by a panel of board members. All of the actions of the director and board are subject to judicial review.

(4) (a) If the applicant for an intrastate commercial driver license under Subsection (2) applies for the license under a waiver program, the

applicant shall bear any costs directly associated with the cost of administration of the waiver program, with respect to the applicant's application, in addition to any fees required under Section 53-3-105.

(b) The division shall establish any additional fee necessary to administer the license under this Subsection (4) in accordance with Section 63-38-3.2.

Section 25. Section 53-3-408 is amended to read:

53-3-408. Qualifications for commercial driver instruction permit.

(1) A CDIP may be issued to a person who:

(a) holds a valid license;

(b) has at least one year of driving experience; and

(c) has passed the vision and [~~written~~] knowledge test for the class of license for which he is applying.

(2) A CDIP may be:

(a) issued only for a period not to exceed six months; and

(b) renewed or issued again only once within a two-year period.

(3) The holder of a CDIP may drive a commercial motor vehicle on a highway only when accompanied by a person who:

(a) holds a CDL valid for the type of commercial motor vehicle driven; and

(b) occupies a seat beside the individual for the purpose of giving the driver instruction regarding the driving of the commercial motor vehicle.

(4) A CDL or CDIP may not be issued to a person:

(a) subject to disqualification from driving a commercial motor vehicle; or

(b) whose license is suspended, revoked, or canceled in any state.

(5) A CDL or CDIP may not be issued to a person until the person has surrendered all license certificates he holds to the division for cancellation.

Section 26. Section 53-3-413 is amended to read:

53-3-413. Issuance of CDL by division -- Driving record -- Expiration date -- Renewal -- Hazardous materials provision.

(1) Before the division may grant a CDL, the division shall obtain the driving record information regarding the applicant through the CDLIS, the NDR, and from each state where the applicant has been licensed.

(2) Within ten days after issuing a CDL, the division shall notify the CDLIS and provide all information required to ensure identification of the CDL holder.

(3) The expiration date for a CDL:

(a) issued before May 1, 1992, is the birth date of the holder in the fourth year following the year of issuance of the CDL; and

(b) issued after April 30, 1992, is the birth date of the holder in the fifth year following the year of issuance of the CDL.

(4) (a) The applicant for a renewal of a CDL shall complete the application form required by Section 53-3-410 and provide updated information and required certification.

(b) To retain a hazardous materials endorsement upon CDL renewal, the applicant must take and pass the [~~written~~] knowledge test for hazardous materials endorsement in addition to any other testing required by the division.

Section 27. Section 53-3-418 is amended to read:

53-3-418. Prohibited alcohol level for drivers -- Procedures, including hearing.

(1) A person who holds or is required to hold a CDL may not drive a commercial motor vehicle in this state if the person:

(a) has a blood, breath, or urine alcohol concentration of .04 grams or greater as shown by a chemical test given within two hours after the alleged driving of the commercial motor vehicle; or

(b) is under the influence of alcohol, any drug, or the combined influence of alcohol and any drug to any degree that renders the person incapable of safely driving a commercial motor vehicle.

(2) A person who holds or is required to hold a CDL and who drives a commercial motor vehicle in this state is considered to have given his consent to a test or tests of his blood, breath, or urine to determine the concentration of alcohol or the presence of other drugs in his physical system.

(3) If a peace officer or port-of-entry agent has reasonable cause to believe that a person may be violating this section, the peace officer or port-of-entry agent may request the person to submit to a chemical test to be administered in compliance with Section 41-6-44.3.

(4) When a peace officer or port-of-entry agent requests a person to submit to a test under this section, he shall advise the person that test results indicating .04 grams or greater alcohol concentration or refusal to submit to any test requested will result in the person's disqualification under Section 53-3-414 from driving a commercial motor vehicle.

(5) If test results under this section indicate .04 grams or greater of alcohol concentration or the person refuses to submit to any test requested under this section, the peace officer or port-of-entry agent shall on behalf of the division serve the person with immediate notice of the division's intention to disqualify the person's privilege to drive a commercial motor vehicle.

(6) When the peace officer or port-of-entry agent serves notice under Subsection (5) he shall:

(a) take any Utah license certificate or permit held by the driver;

(b) issue to the driver a temporary license certificate effective for 29 days;

(c) provide the driver, [~~on a form approved~~] in a manner specified by the division, basic information regarding how to obtain a prompt hearing before the division; and

(d) issue a 24-hour out-of-service order.

(7) A notice of disqualification issued under Subsection (6) may serve also as the temporary license certificate under that subsection, if the form is approved by the division.

(8) As a matter of procedure, the peace officer or port-of-entry agent serving the notice of disqualification shall, within ten calendar days after the date of service, send to the division the person's license certificate, a copy of the served notice, and a report signed by the peace officer or port-of-entry agent that indicates the results of any chemical test administered or that the person refused a test.

(9) (a) The person has the right to a hearing regarding the disqualification.

(b) The request for the hearing shall be submitted to the division in [~~writing~~] a manner specified by the division and shall be made within ten calendar days of the date the notice was issued. If requested, the hearing shall be conducted within 29 days after the notice was issued.

(10) (a) A hearing held under this section shall be held before the division and in the county where the notice was issued, unless the division agrees to hold the hearing in another county.

(b) The hearing shall be documented and shall determine:

(i) whether the peace officer or port-of-entry agent had reasonable grounds to believe the person had been driving a motor vehicle in violation of this section;

(ii) whether the person refused to submit to any requested test; and

(iii) any test results obtained.

(c) In connection with a hearing the division or its authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and documents.

(d) One or more members of the division may conduct the hearing.

(e) A decision made after a hearing before any number of members of the division is as valid as if the hearing were held before the full membership of the division.

(f) After a hearing under this section the division shall indicate by order if the person's CDL is disqualified.

(g) If the person for whom the hearing is held fails to appear before the division as required in the notice, the division shall indicate by order if the person's CDL is disqualified.

(11) If the division disqualifies a person under this section, the person may petition for a hearing under Section 53-3-224. The petition shall be filed within 30 days after the division issues the disqualification.

(12) (a) A person who violates this section shall be punished in accordance with Section 53-3-414.

(b) In accordance with Section 53-3-414, the first disqualification under this section shall be for one year, and a second disqualification shall be for life.

(13) (a) In addition to the fees imposed under Section 53-3-205 for reinstatement of a CDL, a fee under Section 53-3-105 to cover administrative costs shall be paid before the driving privilege is reinstated.

(b) The fees under Sections 53-3-105 and 53-3-205 shall be canceled if an unappealed hearing at the division or court level determines the disqualification was not proper.

Section 28. Section 53-3-607 is amended to read:

53-3-607. Court and agency reporting of actions to department.

Any court or other agency of this state, or a subdivision of the state that has jurisdiction to take any action suspending, revoking, or otherwise limiting a license to drive, shall report any action suspending, revoking, or limiting a license to drive and the adjudication upon which it is based, to the department within ten days, [~~on forms approved and furnished~~] in a manner specified by the department.

Section 29. Section 53-3-807 is amended to read:

53-3-807. Expiration -- Address and name change -- Extension for disabled.

(1) The identification card expires on the birth date of the applicant in the fifth year following the issuance of the identification card, except as provided under Subsections (2) and (7).

(2) (a) An identification card issued to a minor expires on his 21st birthday if that date occurs before the expiration date of the identification card under Subsection (1).

(b) A minor's identification card shall be renewed as an adult card on the minor's 21st birthday and expires five years after the identification card is renewed.

(3) If a person has applied for and received an identification card and subsequently moves from the address shown on the application or on the card, the person shall within ten days notify the division in [~~writing~~] a manner specified by the division of his new address.

(4) If a person has applied for and received an identification card and subsequently changes his

name under Title 42, Chapter 1, Change of Name, he:

(a) shall surrender the card to the division; and

(b) may apply for a new card in his new name by:

(i) furnishing proper documentation to the division as provided in Section 53-3-804; and

(ii) paying the fee required under Section 53-3-105.

(5) A person older than 21 years of age with a disability, as defined under the Americans with Disabilities Act of 1990, Pub. L. 101-336, may extend the expiration date on an identification card for five years if the person with a disability or an agent of the person with a disability:

(a) requests that the division send the application form to obtain the extension or requests an application form in person at the division's offices;

(b) completes the application;

(c) certifies that the extension is for a person 21 years of age or older with a disability; and

(d) returns the application to the division together with the identification card fee required under Section 53-3-105.

(6) (a) An identification card may only be extended once.

(b) After an extension an application for an identification card must be applied for in person at the division's offices.

(7) An identification card issued to a person 65 years of age or older does not expire, but continues in effect until the death of that person.

CHAPTER 86
S. B. 16
Passed February 23, 2001
Approved March 15, 2001
Effective April 30, 2001

TEACHER QUALITY AMENDMENTS

Sponsor: David H. Steele
Howard A. Stephenson
Dan R. Eastman
Ron Allen
Karen Hale

This act modifies provisions related to the State Systems of Public and Higher Education to address issues of teacher quality in recognition of its relationship to student success. The act provides for a comprehensive policy on teacher quality to include components on recruitment, preservice, licensure, induction, professional development, and evaluation. The act requires an annual report to the Legislature on the state of teacher quality in the state, to include reliable data on the state's supply of and demand for teachers.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
53A-1-501, as last amended by Chapter 28, Laws of Utah 1997
53A-1-702, as last amended by Chapter 4, Laws of Utah 1998
53A-1-704, as last amended by Chapter 33, Laws of Utah 1995
53A-1-705, as last amended by Chapter 33, Laws of Utah 1995
53A-1a-104, as last amended by Chapter 59, Laws of Utah 2000
53A-1a-107, as last amended by Chapters 105 and 109, Laws of Utah 1996
53A-1a-403, as last amended by Chapter 224, Laws of Utah 2000
53A-3-402.9, as enacted by Chapter 254, Laws of Utah 1997
53A-3-402.10, as enacted by Chapter 338, Laws of Utah 1999
53A-6-102, as repealed and reenacted by Chapter 108, Laws of Utah 1999
53A-6-104, as last amended by Chapter 331, Laws of Utah 2000
53A-8-104, as last amended by Chapter 324, Laws of Utah 1999
53A-9-103, as enacted by Chapter 2, Laws of Utah 1988
53A-10-101, as enacted by Chapter 2, Laws of Utah 1988
53A-10-108, as last amended by Chapter 78, Laws of Utah 1990
53A-10-111, as last amended by Chapter 78, Laws of Utah 1990
53B-10-101, as last amended by Chapter 48, Laws of Utah 1991
53B-10-102, as enacted by Chapter 167, Laws of Utah 1987
53B-10-103, as enacted by Chapter 167, Laws of Utah 1987

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

Section 1. Section 53A-1-501 is amended to read:

53A-1-501. Membership -- Duties -- Advisory decisions -- Annual report.

(1) (a) There is established within the state's educational system a joint liaison committee.

(b) The committee consists of the following:

(i) three State Board of Education members appointed by the board;

(ii) three State Board of Regents members appointed by the regents;

(iii) four members representing business and industry appointed by the governor from nomination lists submitted by the president of the Senate and the speaker of the House of Representatives;

(iv) the state superintendent of public instruction; and

(v) the state commissioner of higher education.

(c) A majority of the committee is a quorum for the transaction of business.

(d) (i) The four members representing business and industry shall serve without compensation.

(ii) The governor shall appoint each of these four members to serve two-year terms and may reappoint them to serve consecutive terms consistent with Subsection (1)(b)(iii).

(e) (i) The committee shall appoint a staff person to assist the committee and establish the person's duties and compensation.

(ii) The staff person shall be officed at the State Office of Education and the costs associated with this position handled within the existing budgets of the State Board of Education and the State Board of Regents on an equal basis.

(2) The committee shall meet on a regular basis, at least bimonthly, and has the following duties:

(a) to review and recommend the resolution of educational policy issues of mutual concern to both boards, including such issues as the coordination of teacher education programs, concurrent enrollment, advanced placement, the transition of students from high school to postsecondary institutions, a tracking system that would allow the sharing of performance levels achieved by graduates from both systems, the funding of public and higher education, and the transition of students from school to work;

(b) to coordinate and facilitate the appropriate governance and administration of applied technology education programs within the state's educational system;

(c) to assist in the effective correlation and articulation of educational programs under the jurisdiction of the boards;

(d) to promote the implementation of policies, strategies, and practices designed to achieve enhanced educational effectiveness and productivity at all levels of instruction, consistent with Subsections 53A-1a-104(7) and 53A-6-102(2)(a) and (b) and the maintenance of educational quality; and

(e) to review any proposed change in one system that impacts the other and develop a process for communicating the proposed change to the other system for its input prior to implementing the change.

(3) (a) Decisions of the committee are advisory and are not binding on either the State Board of Education or the State Board of Regents unless the decisions are ratified by both boards.

(b) Any proposal for a change in governance or administrative procedures for state or regional applied technology education programs that affects both public and higher education shall be considered and approved by the committee prior to being considered for ratification by either board.

(4) Nothing in this part impairs or limits the authority of either board to take action within the scope of its jurisdiction as established by the constitution or other statutory provisions.

(5) (a) The committee shall make an annual report on its activities to the Education Interim Committee and the [~~Task Force on~~] Strategic Planning for Public and Higher Education Committee prior to each General Session of the Legislature.

(b) The report shall include a detailed accounting on issues related to:

(i) the committee's applied technology education duties under this part and recommendations received from the advisory committee and any ad hoc task force established under Section 53A-1-502 as well as the committee's response to applied technology action plans proposed by the [~~Task Force on~~] Strategic Planning for Public and Higher Education Committee; and

(ii) the committee's review of and recommendations on teacher recruitment, preservice, licensure, induction, professional development, and [~~inservice~~] evaluation issues.

(6) The joint liaison committee may establish ad hoc task forces to assist it in carrying out its duties under this section.

Section 2. Section 53A-1-702 is amended to read:

53A-1-702. Appropriations -- Allocations -- Contributions from school districts, the business community, and technology vendors.

(1) (a) The Legislature shall provide annual appropriations to help fund the technology programs authorized in this part.

(b) The appropriations are nonlapsing.

(2) The appropriations are allocated as follows:

(a) the State Board of Education shall receive the amount appropriated under Section 53A-17a-131.1 for allocation to the state's school districts and distribute it in two parts:

(i) the board shall distribute the first part, 25% of the appropriation received under Subsection (2)(a), equally among the state's school districts; and

(ii) the board shall distribute the second part, 75% of the appropriation, based on the ratio of a district's average daily membership to the state total average daily membership;

(b) the State Board of Regents shall receive the amount appropriated to the state colleges of education as a line item in the general appropriations act and distribute it based on each state college's student teacher training enrollment FTE's as compared to the total student teacher training enrollment FTE's for all state colleges of education.

(3) (a) Neither the State Board of Education nor the State Board of Regents may establish rules that restrict school districts or colleges of education in their purchases of educational technology under this part or use any of the money appropriated for this part for administrative or overhead costs.

(b) The monies shall flow through the respective state boards directly to the school districts and colleges, subject to any qualifications established under this part.

(c) These monies are to supplement and not supplant other state appropriations to school districts and the colleges of education.

(4) (a) School districts may spend as much of the monies received under Subsection (2) as they consider necessary and appropriate for [~~inservice training for~~] professional development purposes required to implement and maintain the technology programs authorized under this part and consistent with Subsections 53A-1a-104(7) and 53A-6-102(2)(a) and (b) .

(b) Subsection (4)(a) does not restrict school districts from spending or using additional resources obtained under Subsections (5), (6), and (7) for [~~inservice training~~] professional development purposes.

(5) School districts and colleges shall match state appropriations for the technology programs on a one to three basis, that is one dollar in local resources for every three state dollars, either through local funding efforts or through in-kind services, which may include providing an infrastructure, planning services, training services, maintenance, or the use of technical assistance specialists.

(6) (a) School districts, individual public schools, and public institutions of higher education shall solicit contributions from and enter into partnerships with private business to obtain additional resources for the technology programs authorized under this part.

(b) The Technology Initiative Project Office established under this part within the State Office of Education shall solicit contributions for district technology programs from federal sources.

(c) The additional resources obtained under this section shall remain with the respective district, school, or institution as part of its technology program.

(d) Contributions made at the state level by private business or federal sources shall flow to selected districts, schools, or colleges of education based on specific technology projects as approved and selected by the Technology Initiative Project Office.

(7) Vendors who participate in the technology program shall make contributions to the program in terms of vendor discounts, [~~inservice training~~] professional development opportunities, and continuing support services under standards established by the Technology Initiative Project Office.

(8) As used in this part, "school district" includes the School for the Deaf and the School for the Blind.

Section 3. Section 53A-1-704 is amended to read:

53A-1-704. Duties and responsibilities of the project office.

(1) The Technology Initiative Project Office shall:

(a) review, approve, and update school district and college of education plans and reports related to the technology programs authorized and funded under this part, incorporating broad, objective, functional requirements and guidelines within the approval process;

(b) review and provide criteria on an ongoing basis for technology products to be used in the programs, which criteria shall give consideration to at least any one or all of the following:

(i) technology that emphasizes instruction;

(ii) technology discounts, which may include installation and maintenance of a technology product;

(iii) a sound [~~inservice~~] professional development component for educators consistent with Subsections 53A-1a-104(7) and 53A-6-102(2)(a) and (b);

(iv) upgrading of options in the original technology, at the same discount rate as given in the original purchase or lower for at least five years after the purchase of the original technology;

(v) technology of proven worth;

(vi) available technology evaluations;

(vii) submission of technology for evaluation by a committee of instructional software users;

(viii) cost effectiveness of the technology being offered;

(ix) identification of discontinued technology;

(x) compatibility of the technology with other technology products, using industry-wide standards; and

(xi) identification of the closest multiple sites and contact persons where the technology is being used and can be observed;

(c) coordinate raising of funds from federal and private sources to supplement the appropriation authorized under this part for technology programs in the public schools and colleges of education;

(d) verify that an appropriate evaluation of each plan is included in the plan itself; and

(e) establish a technical review committee in the project office, consisting of volunteers who have educational technology expertise and are not affiliated with any vendors participating in the technology programs.

(2) (a) The State Board of Education in consultation with the joint liaison committee established under Section 53A-1-501 shall appoint a director for the project office.

(b) The director serves at the pleasure of the state board.

(c) The director shall coordinate all educational technology initiative activities with the Utah Education Network steering committee pursuant to Section 53B-17-104.

Section 4. Section 53A-1-705 is amended to read:

53A-1-705. Educational technology plans -- Components -- Review and approval -- Reports.

(1) (a) Each school district shall prepare and submit a plan to the project office for review and approval of the district's proposed use of its technology allocation.

(b) The approval is of the plan and not of specific products or technology.

(c) Each district shall review and update its plan on an annual basis.

(2) The plan shall include the following components:

(a) the technology purchases to be made and proposed installation, maintenance, and replacement costs;

(b) specific, focused educational goals and measurable academic objectives to be accomplished in the district with the program, giving consideration to the respective size and needs of both student and teacher populations;

(c) valid instructional strategies, including [~~inservice training~~] professional development opportunities for teachers consistent with Subsections 53A-1a-104(7) and 53A-6-102(2)(a) and (b);

(d) procedures to optimize the cooperation of all levels of education in the program, particularly in the planning process, including principals and teachers;

(e) methods to evaluate the program; and

(f) details of how the new technology will integrate with existing technology in the district.

(3) (a) Each college of education shall prepare and submit a plan to the project office for review and approval of the proposed use of its appropriation.

(b) The plan shall focus on training teachers and prospective teachers to use the technology which school districts may acquire under this part consistent with Subsections 53A-1a-104(7) and 53A-6-102(2)(a) and (b).

(c) Each college shall review and update its plan on an annual basis.

(4) A school district or college of education may not spend any of the monies appropriated under this part until the plans for its technology program have been reviewed and approved by the project office on an annual basis.

(5) (a) Each school district and college of education shall prepare and submit a yearly report to the project office on the actual use of its allocation under this part.

(b) The reports shall include information on how the technology is being used to reach the performance goals established under Subsections (2)(b) and (4) and the progress on attaining the goals.

(c) The district or college of education shall submit the report by December 31 of each year and send a copy of the report to the governor and the Legislature.

(d) (i) The project office shall annually review and approve the plans submitted by school districts and colleges of education under this section.

(ii) The project office shall review each component of the plans as required under this section and recommend approval or revision.

(e) The project office shall make regular reports to the Education Interim Committee of the Legislature on the status of the programs authorized under this part.

Section 5. Section 53A-1a-104 is amended to read:

53A-1a-104. Characteristics of public education system.

The Legislature shall assist in maintaining a public education system that has the following characteristics:

(1) assumes that all students have the ability to learn and that each student departing the system will be prepared to achieve success in productive employment, further education, or both;

(2) provides a personalized education plan or personalized education occupation plan for each student, which involves the student, the student's parent or guardian, and school personnel in establishing the plan;

(3) provides students with the knowledge and skills to take responsibility for their decisions and to make appropriate choices;

(4) provides opportunities for students to exhibit the capacity to learn, think, reason, and work effectively, individually and in groups;

(5) offers a world-class curriculum that enables students to successfully compete in a global society, and to succeed as citizens of a constitutional republic;

(6) incorporates an information retrieval system that provides students, parents, and educators with reliable, useful, and timely data on the progress of each student;

(7) attracts, prepares, inducts, and retains excellent teachers for every classroom in large part through collaborative efforts among the State Board of Education, the State Board of Regents, and school districts, provides effective ongoing professional development opportunities for teachers to improve their teaching skills, and provides recognition, rewards, and compensation for their excellence;

(8) empowers each school district and public school to create its own vision and plan to achieve results consistent with the objectives outlined in this chapter;

(9) uses technology to improve teaching and learning processes and for the delivery of educational services;

(10) promotes ongoing research and development projects at the district and the school level that are directed at improving or enhancing public education;

(11) offers a public school choice program, which gives students and their parents options to best meet the student's personalized education needs; and

(12) emphasizes the involvement of educators, parents, business partnerships, and the community at large in the educational process by allowing them to be involved in establishing and implementing educational goals and participating in decision-making at the school site.

Section 6. Section 53A-1a-107 is amended to read:

53A-1a-107. State Board of Education assistance to districts and schools.

(1) In order to assist school districts and individual schools in acquiring and maintaining the characteristics set forth in Section 53A-1a-104, the State Board of Education shall:

(a) provide the framework for an education system, including core competencies and their assessment, in which school districts and public schools permit students to advance by demonstrating competency in subject matter and mastery of skills;

(b) assist school districts in establishing policies for the effective implementation of student

education plans and student education/occupation plans required under Subsection 53A-1a-106(2)(b);

(c) develop and disseminate a state model curriculum, structured to incorporate the concepts of quality versus quantity, depth versus breadth, subject integration and application, applied thinking skills, character development, and a global prospective, which districts and schools may use to assist teachers in helping students acquire the competencies and skills required to advance through the public education system, and periodically review and, if appropriate, revise the curriculum;

(d) conduct a statewide public awareness program on competency-based educational systems;

(e) compile and publish, for the state as a whole, a set of educational performance indicators describing trends in student performance;

(f) promote a public education climate of high expectations and academic excellence;

(g) disseminate successful site-based decision-making models to districts and schools and provide [~~inservice~~] teacher professional development opportunities and evaluation programs for site-based plans consistent with Subsections 53A-1a-104(7) and 53A-6-102(2)(a) and (b);

(h) provide a mechanism for widespread dissemination of information about strategic planning for public education, including involvement of business and industry in the education process, in order to ensure the understanding and support of all the individuals and groups concerned with the mission of public education as outlined in Section 53A-1a-103;

(i) provide for a research and development clearing house at the state level to receive and share with school districts and public schools information on effective and innovative practices and programs in education;

(j) help school districts develop and implement guidelines, strategies, and [~~inservice~~] professional development programs for administrators and teachers consistent with Subsections 53A-1a-104(7) and 53A-6-102(2)(a) and (b) focused on improving interaction with parents and promoting greater parental involvement in the public schools; and

(k) in concert with the State Board of Regents and the state's colleges of education review and revise teacher [~~certification~~] licensing requirements to be consistent with teacher preparation for participation in personalized education programs within the public schools.

(2) (a) The board shall make an annual report to the Legislature on its activities under this section.

(b) The reporting process shall involve participation from school districts and schools in helping to evaluate how well the board has assisted the schools and school districts.

Section 7. Section 53A-1a-403 is amended to read:

53A-1a-403. Selection of schools -- Funding -- Incentive awards.

(1) The State Board of Education and local school boards, in collaboration with the governor's office, shall develop and implement application procedures and a process for the selection of up to 60 schools each year over a three-year period for participation in the Schools for the 21st Century Program authorized under this part.

(2) Selected schools shall participate in the program and be eligible for funding for three consecutive years.

(3) (a) The Legislature shall provide an annual appropriation to fund the program.

(b) The board, through the State Office of Education, shall administer and distribute the appropriation in the following manner:

(i) each school selected as a first-year participant shall receive a base amount of either $5,000 or $10,000 depending on the size of the school;

(ii) each first-year school shall also receive an additional per student allocation of up to $27, based upon the number of students as of October 1 in the program as related to the amount of appropriation available for distribution after the base amount has been calculated for all the schools participating on a first-year basis under Subsection (3)(b)(i);

(iii) each school in its second year shall receive $9 per student and be eligible to receive an incentive award based upon its achievement of second-year goals; and

(iv) each school in its third year shall be eligible to receive major incentive awards based upon achievement of third-year goals.

(c) (i) The board shall determine the amount of incentive award money given to schools under Subsections (3)(b)(iii) and (iv) on the basis of goal attainment and student enrollment, with a minimum threshold of 50% attainment of goals for second-year schools and a minimum threshold of 60% attainment for third-year schools in order to receive a portion of the award money.

(ii) It is estimated that the incentive award money generated for successful second-year schools would be up to $500 per licensed professional staff member at each participating school and increase to up to $2,000 per licensed professional staff member for each successful third-year school.

(d) (i) First-year schools shall use their allocations for program development, implementation, and evaluation, technical assistance, and teacher professional development, consistent with Subsections 53A-1a-104(7) and 53A-6-102(2)(a) and (b), including the establishment of performance goals and identification of a system of measurement and evaluation.

(ii) (A) Second-year schools shall use their per student allocations for continuing program operation, modification, and evaluation.

(B) If participating schools meet the threshold established in Subsection (3)(c)(i), based upon documentation of the school's progress provided to the board by the school, the appropriate share of incentive award money shall be distributed each year at the school level as determined by the school directors.

(C) The distribution may include giving award shares to the school as a whole or to individual programs at the school or to professional staff members or any combination of these options.

(iii) Third-year schools shall receive all appropriate incentive moneys under the program based on year-end evaluation of goal attainment and shall distribute it on the same basis as second-year schools distribute incentive award money under Subsections (3)(d)(ii)(B) and (C).

Section 8. Section 53A-3-402.9 is amended to read:

53A-3-402.9. Assessment of emerging and early reading skills -- Resources provided by school districts.

(1) The Legislature recognizes that well-developed reading skills help:

(a) children to succeed in school, develop self esteem, and build positive relationships with others;

(b) young adults to become independent learners; and

(c) adults to become and remain productive members of a rapidly changing technology-based society.

(2) (a) Therefore, as part of a kindergarten student's first student education plan, the student's parent or guardian, the student, and kindergarten personnel at the student's school shall participate in an assessment of the student's reading and numeric skills.

(b) The assessment shall take place no later than during the first two weeks of the school year.

(c) The State Office of Education, in cooperation with the state's school districts, shall develop the assessment instrument and any additional materials needed to implement and supplement the assessment program.

(3) The kindergarten student's teacher shall use the assessment in planning and developing an instructional program to meet the student's identified needs.

(4) Based on the assessment under Subsection (2), the school shall provide the student's parent or guardian with appropriate resource materials to assist them at home in the student's literacy development.

(5) The State Office of Education shall collect, review, and provide to school districts the assessment data generated under Subsection (2) in order to:

(a) provide information to develop a personalized instructional program based on student needs;

(b) improve teacher [~~inservice~~] professional development and preservice programs and strategies that are consistent with Subsections 53A-1a-104(7) and 53A-6-102(2)(a) and (b) and related to teaching reading and numeric skills; and

(c) evaluate the effectiveness of reading readiness for students entering the first grade.

(6) In conjunction with the assessment program established under this section, school districts shall annually evaluate the need to use part of their Title 1 funds for preschool literacy programs.

Section 9. Section 53A-3-402.10 is amended to read:

53A-3-402.10. Reading Skills Development Center -- Purpose.

(1) The Legislature recognizes the critical importance of identifying, assessing, and assisting students with reading difficulties at an early age in order for them to have successful and productive school and life experiences.

(2) In order to help accomplish this, there is established a Reading Skills Development Center, hereafter referred to as the "center," at the University of Utah to:

(a) assist school districts in detecting reading difficulties in students in the early grades; and

(b) provide instructional intervention to enable the students to overcome their reading difficulties.

(3) (a) The center shall assist school districts by providing expertise in the assessment of reading difficulties and designing effective instructional interventions to overcome those difficulties.

(b) The assessment and intervention programs shall focus primarily on grades one through three in order to correct any detected difficulties by the end of the third grade, but assessment and instructional intervention services shall be available to public education students of all ages.

(c) School districts may use the assessment and intervention programs on site at the center, at the student's school, or by using interactive technology.

(4) (a) [~~The~~] Consistent with Subsections 53A-1a-104(7) and 53A-6-102(2)(a) and (b), the center shall provide school districts with a professional development program for reading endorsements that can be added to active elementary certificates.

(b) Each school district may allow its teachers to participate in the program through:

(i) programs taught on-site at local schools;

(ii) distance education with videotaped classes and on-site facilitators; and

(iii) interactive delivery by computers and video.

(c) Each school district may use this professional teacher development program in an effort to place at least one reading specialist in each of its elementary schools.

(5) The center shall provide school district administrators, school administrators, and school teachers with the most current research-based knowledge about reading and reading instruction through nationally and internationally recognized reading researchers and instructional specialists.

Section 10. Section 53A-6-102 is amended to read:

53A-6-102. Legislative findings on teacher quality -- Declaration of education as a profession -- Annual report.

(1) (a) The Legislature acknowledges that education is perhaps the most important function of state and local governments, recognizing that the future success of our state and nation depend in large part upon the existence of a responsible and educated citizenry.

(b) The Legislature further acknowledges that the primary responsibility for the education of children within the state resides with their parents or guardians and that the role of state and local governments is to support and assist parents in fulfilling that responsibility.

(2) (a) The Legislature finds that:

(i) quality teaching is the basic building block of successful schools and, outside of home and family circumstances, the essential component of student achievement;

(ii) the high quality of teachers is absolutely essential to enhance student achievement and to assure educational excellence in each classroom in the state's public schools; and

(iii) the implementation of a comprehensive continuum of data-driven strategies regarding recruitment, preservice, licensure, induction, professional development, and evaluation is essential if the state and its citizens expect every classroom to be staffed by a skilled, caring, and effective teacher.

(b) In providing for the safe and effective performance of the function of educating Utah's children, the Legislature further finds it to be of critical importance that education, including instruction, administrative, and supervisory services, be recognized as a profession, and that those who are licensed or seek to become licensed and to serve as educators:

[~~(a)~~] (i) meet high standards both as to qualifications and fitness for service as educators through quality recruitment and preservice programs before assuming their responsibilities in the schools;

[~~(b)~~] (ii) maintain those standards in the performance of their duties while holding licenses, in large part through participating in induction and ongoing professional development programs focused on instructional improvement; [~~and~~]

(iii) receive fair, systematic evaluations of their performance at school for the purpose of enhancing the quality of public education and student achievement; and

[~~(c)~~] (iv) have access to a process for fair examination and review of allegations made against them and for the administration of appropriate sanctions against those found, in accordance with due process, to have failed to conduct themselves in a manner commensurate with their authority and responsibility to provide appropriate professional services to the children of the state.

(3) The State Board of Education and the State Board of Regents shall make an annual report to the Legislature through the Education Interim Committee on the status of teacher quality in the state based on the continuum referred to in Subsection (2)(a)(iii), to include adequate and reliable data on the state's supply of and demand for teachers.

Section 11. Section 53A-6-104 is amended to read:

53A-6-104. Board licensure.

(1) (a) The board may issue licenses for educators.

(b) (i) A person employed in a position that requires licensure by the board shall hold the appropriate license.

(ii) The board shall issue a letter of authorization permitting a person to be employed as a classroom teacher if requested by a local school board which has determined that:

(A) the person has outstanding professional qualifications or extensive job experience in the public or private sector in such areas as mathematics, science, business, information technology, and applied technology; and

(B) employment of the person would permit the school district to better meet the educational goals of students.

(2) (a) The board may by rule rank, endorse, or otherwise classify licenses and establish the criteria for obtaining and retaining licenses.

(b) [~~The~~] Consistent with Subsections 53A-1a-104(7) and 53A-6-102(2)(a) and (b), the board shall make rules requiring participation in professional development activities in order for educators to retain their licenses.

(3) Unless suspended or revoked by the board, or surrendered by the educator, a license is valid for the following period:

(a) a letter of authorization is valid for one year, or a shorter period as specified by the board, subject to renewal by the board for a total of not more than four years of full-time equivalent employment;

(b) a level 1 license is valid for three years, subject to renewal by the board for a total of not more than six years;

(c) a level 2 license is valid for five years, subject to renewal by the board; and

(d) a level 3 license is valid for seven years, subject to renewal by the board.

Section 12. Section 53A-8-104 is amended to read:

53A-8-104. Dismissal procedures.

(1) The district shall provide employees with a written statement of causes under which a career employee's contract may not be renewed or continued beyond the then-current school year, under which a contract of each class of personnel may not be renewed or continued beyond the then-current school year, and under which a contract can be otherwise terminated during the contract term, and the orderly dismissal procedures which are used by the district in cases of contract termination, discontinuance, or nonrenewal.

(2) (a) If the district intends to terminate a contract during its term or discontinue a career employee's contract beyond the then current school year for reasons of unsatisfactory performance, the unsatisfactory performance must be documented in at least two evaluations conducted at any time within the preceding three years in accordance with district policies or practices.

(b) The district shall notify a career employee, at least 30 days prior to issuing notice of intent not to renew or continue the employee's contract beyond the then-current school year, that continued employment is in question and the reasons for the anticipated nonrenewal or discontinuance.

(c) The board shall give the career employee an opportunity to correct the problem in accordance with the district evaluation policies.

(d) The board may grant the career employee assistance to correct the deficiencies, including informal conferences and the services of school personnel within the district consistent with Subsections 53A-1a-104(7) and 53A-6-102(2)(a) and (b).

(3) (a) If the career employee does not correct the problem as determined in accordance with the evaluation and personnel policies of the district and the district intends to not renew or discontinue the contract of employment of a career employee at the end of the then-current school year, it shall give notice of that intention to the employee.

(b) The district shall issue the notice at least 30 days before the end of the career employee's contract term.

(4) A district shall notify a provisional employee at least 60 days before the end of the provisional employee's contract if the employee will not be offered a contract for a subsequent term of employment.

(5) In the absence of a notice, an employee is considered employed for the next contract term with a salary based upon the salary schedule applicable to the class of employee into which the individual falls.

(6) If the district intends to not renew or discontinue the contract of a career employee or to terminate a career or provisional employee's contract during the contract term:

(a) the district shall give written notice of the intent to the employee;

(b) the notice shall be served by personal delivery or by certified mail addressed to the individual's last-known address as shown on the records of the district;

(c) except as provided under Subsection (3)(b), the district shall give notice at least 15 days prior to the proposed date of termination;

(d) the notice shall state the date of termination and the detailed reasons for termination; and

(e) the notice shall advise the individual that he has a right to a fair hearing; and

(f) the notice shall state that failure of the employee to request a hearing in accordance with procedures set forth in the notice constitutes a waiver of that right and that the district may then proceed with termination without further notice.

(7) The procedure under which a contract is terminated during its term may include a provision under which the active service of the employee is suspended pending a hearing if it appears that the continued employment of the individual may be harmful to students or to the district.

(8) (a) Suspension pending a hearing may be without pay if an authorized representative of the district determines, after providing the employee with an opportunity for an informal conference to discuss the allegations, that it is more likely than not that the allegations against the employee are true and will result in termination.

(b) If termination is not subsequently ordered, the employee shall receive back pay for the period of suspension without pay.

(9) The procedure shall provide for a written notice of suspension or final termination including findings of fact upon which the action is based if the suspension or termination is for cause.

Section 13. Section 53A-9-103 is amended to read:

53A-9-103. Authorized components.

Career ladders may include the following components:

(1) (a) [~~A career ladder may have an~~] An extended contract year for teachers, providing for additional paid nonteaching days beyond the regular school year for curriculum development[~~, inservice training, preparation, and related~~] and other professional development activities.

(b) School boards may approve individual exceptions to the extended year contract.

(2) [~~It may have, at~~] At the option of the local school board, an extended contract year for teachers, providing for additional paid workdays beyond the regular school year for teaching assignments in summer school, remedial,

handicapped, specialized, [~~vocational~~] applied technology, gifted and talented, and adult education programs.

(3) [~~It may have a~~] A fair and consistent procedure:

(a) for selecting teachers who will be given additional responsibilities[~~. The selection procedure shall incorporate~~]; and

(b) which incorporates clearly stated job descriptions and qualifications for each level on the career ladder.

(4) [~~It may have a~~] A program of differentiated staffing that provides additional compensation and, as appropriate, additional extensions of the contract year, for those who assume additional instruction-related responsibilities such as:

(a) assisting students and mentoring beginning teachers;

(b) curriculum and lesson plan development;

(c) helping established teachers improve their teaching skills;

(d) volunteer training;

(e) planning, facilities and productivity improvements; and

(f) educational assignments directed at establishing positive relationships with the community, businesses, and parents.

Administrative and extracurricular activities are not considered additional instruction-related activities under this Subsection (4).

(5) (a) [~~It may have a~~] A well defined program of evaluation and [~~guidance~~] mentoring for beginning teachers, consistent with Subsections 53A-1a-104(7) and 53A-6-102(2)(a) and (b), designed to assist those teachers during provisional years of teaching to acquire and demonstrate the skills required of capable, successful teachers.

(b) Continuation in teaching from year to year shall be contingent upon satisfactory teaching performance.

(6) [~~It may have a~~] A clear and concise explanation of the evaluation system components, including the respective roles of parents, teachers, administrators, and the school board in the development of the evaluation system[~~. The system shall provide~~] and provisions for frequent, comprehensive evaluations of teachers with less than three years' teaching experience[~~,~~] and periodic evaluations of other teachers consistent with Subsections 53A-1a-104(7) and 53A-6-102(2)(a) and (b).

(7) (a) [~~Advancement~~] A program of advancement on the career ladder [~~program is~~] contingent upon effective teaching performance, evidence of which may include formal evaluation and assessment of student progress.

(b) Student progress shall play a significant role in teacher evaluation.

(c) Other criteria may include formal preparation and successful teaching experience.

(8) [~~It may include an~~] An assessment of implementation costs.

(9) [~~It may have a~~] A plan for periodic review of the career ladder, including the makeup of the reviewing entity, procedures to be followed during review, and the time schedule for the review.

Section 14. Section 53A-10-101 is amended to read:

53A-10-101. Legislative findings.

(1) The Legislature recognizes that the quality of public education can be improved and enhanced by providing for systematic, fair, and competent evaluation of public educators and remediation of those whose performance is inadequate. [~~The~~]

(2) In accordance with Subsections 53A-1a-104(7) and 53A-6-102(2)(a) and (b), the desired purposes of evaluation are to allow the educator and the school district to promote the professional growth of the teacher, to identify and encourage [~~teacher behaviors~~] teaching strategies which contribute to student progress, to identify teachers according to their abilities, and to improve the education system.

Section 15. Section 53A-10-108 is amended to read:

53A-10-108. Mentor for provisional educator.

(1) [~~The~~] In accordance with Subsections 53A-1a-104(7) and 53A-6-102(2)(a) and (b), the principal or immediate supervisor of a provisional educator shall assign a [~~consulting educator~~] mentor to the provisional educator.

(2) [~~If~~] Where possible, the [~~consulting educator~~] mentor shall be a career educator who performs substantially the same duties as the provisional educator and has at least three years of educational experience.

(3) The [~~consulting educator~~] mentor shall assist the provisional educator to become [~~informed about~~] effective and competent in the teaching profession and school system, but may not serve as an evaluator of the provisional [~~teacher~~] educator.

Section 16. Section 53A-10-111 is amended to read:

53A-10-111. Additional compensation for services.

The district may compensate a person employed as a [~~consulting educator~~] mentor under Section 53A-10-108 or participant in the evaluation for those services, in addition to the person's regular salary, if additional time is required in the evaluation process.

Section 17. Section 53B-10-101 is amended to read:

53B-10-101. Terrill H. Bell Teaching Incentive Loans program -- Eligible students -- Cancellation of incentive loans

-- Repayment by recipient who fails to meet requirements -- Duration of incentive loans.

(1) (a) A [~~Utah Career Teaching Scholarship~~] Terrill H. Bell Teaching Incentive Loans program is established to recruit and train superior candidates for teaching in Utah's public school system as a component of the teacher quality continuum referred to in Subsections 53A-1a-104(7) and 53A-6-102(2)(a).

(b) Under the program, [~~scholarships~~] the incentive loans may be used in any of Utah's state-operated institutions of higher education or at a private institution of higher education in Utah that offers a state-approved teacher education program.

(2) (a) [~~Scholarships are awarded~~] The State Board of Education or the State Board of Regents shall award the incentive loans to students who declare an intent to complete the prescribed course of instruction required for a teaching [~~certificate~~] license and to teach in the public schools of this state.

(b) The [~~scholarship~~] incentive loan may be canceled at any time by the institution of attendance if:

(i) the student fails to make reasonable progress towards completion of [~~certification~~] licensing requirements; or

(ii) it appears to be a reasonable certainty that the student does not intend to teach in Utah.

(b) The State Board of Regents [~~and the State Board of Education~~] may grant leaves of absence to [~~scholarship~~] incentive loan holders.

(3) The State Board of Regents [~~and State Board of Education~~] may require [~~a scholarship~~] an incentive loan recipient who fails to complete the requirements for [~~certification~~] licensing without good cause to repay all tuition and fees provided by the [~~scholarship~~] loan, together with appropriate interest.

(4) (a) The State Board of [~~Education~~] Regents may require [~~a scholarship~~] an incentive loan recipient who does not [~~teach~~] work in the state's public school system or a private school within the state within two years after graduation to repay all tuition and fees provided by the [~~scholarship~~] loan, together with appropriate interest, unless waived for good cause.

(b) (i) A recipient who does not teach for a term equal to the number of years of the [~~scholarship~~] incentive loan within a reasonable period of time after graduation shall repay a graduated portion of the tuition and fees based upon the uncompleted term.

(ii) One year of teaching is credit for one year's tuition and fees.

(c) All repayments made under this Subsection (4) are for use in the [~~Utah Career Teaching Scholarship~~] Terrill H. Bell Teaching Incentive Loans program.

(5) (a) Each [~~scholarship~~] incentive loan is valid for up to four years of full-time equivalent enrollment, or until requirements for [~~certification~~] licensing or advanced licensing have been met[~~, whichever is shorter~~].

(b) (i) [~~Scholarships~~] Incentive loans apply to both tuition and fees in amounts and are subject to conditions approved by the State Board of Regents [~~and State Board of Education~~], based upon criteria developed to insure that all recipients of [~~scholarships~~] the loans will pursue [~~a teaching~~] an education career in Utah's public [~~school~~] education system or a private school within the state.

(ii) [~~A scholarship~~] An incentive loan for tuition and fees at a private institution may not exceed the average scholarship amounts granted for tuition and fees at public institutions of higher education within the state.

(c) [~~Scholarships are~~] Incentive loans shall be awarded in accordance with prioritized critical areas of need for teaching expertise within the [~~state~~] state's public [~~school~~] education system as determined by the State Board of Education.

Section 18. Section 53B-10-102 is amended to read:

53B-10-102. Number of incentive loans -- Criteria for awarding -- Additional awards.

(1) (a) A total of 365 [~~Utah Career Teaching Scholarships are~~] Terrill H. Bell Teaching Incentive Loans shall be maintained each year in accordance with criteria and procedures established by the State Board of Education and State Board of Regents.

(b) The number of incentive loans to be awarded shall be reviewed annually based on the need to prepare individuals to teach as determined by the supply of and demand for teachers in the state's public education system.

(2) These [~~scholarships are~~] incentive loans shall be awarded in the following categories [~~and numbers~~]:

(a) [~~up to 200 scholarships~~] incentive loans for persons who were originally awarded their [~~scholarships~~] loans as high school juniors and seniors selected through statewide competition; and

(b) [~~up to 165 scholarships~~] incentive loans for persons who have successfully completed not less than the equivalent of [~~three quarters~~] two semesters of formal higher education study.

[~~(2)~~] (3) (a) Additional awards may be given each year to a limited number of scholarship holders to include the following:

[~~(a)~~] (i) 20 state-funded premier scholarships, which provide an additional $3,000 per year for winners of a widely publicized statewide competition[~~. State funds support 20 premier~~

~~scholarships each year~~], but the number may be increased through private donations; and

[~~(b)~~] (ii) 100 supplementary stipends paying [~~$500~~] $750 per [~~quarter~~] semester, available each year for students granted scholarships under Subsection (1)(b) who declare an intent to [~~certify~~] be licensed in areas of critical teacher shortage as determined by the State Board of Education.

(b) Subsection (1)(b) applies to the awards made under Subsection (3)(a).

Section 19. Section 53B-10-103 is amended to read:

53B-10-103. Incentive loan appropriation -- Administration of incentive loan fund.

(1) The Legislature shall annually appropriate to the [~~Utah Career Teaching Scholarship Fund~~] Terrill H. Bell Teaching Incentive Loans Fund, as a budget line item for the State Board of Regents, sufficient funds to support the scholarships established in Section 53B-10-102.

(2) The [~~Utah Career Teaching Scholarship Fund is administered by the State Board of Regents~~] State Board of Regents shall administer the Terrill H. Bell Teaching Incentive Loans Fund in accordance with criteria, policies, and procedures established by the board and the State Board of Education.

CHAPTER 87
S. B. 19
Passed February 19, 2001
Approved March 15, 2001
Effective April 30, 2001

ICE CREAM AND MILK DISPENSER REQUIREMENTS

Sponsor: Gene Davis

This act modifies provisions related to agriculture. This act amends the Utah Dairy Act to provide a license application process for the distribution of dairy products and to allow ice cream cabinets and milk coolers to be loaned or sold to a retailer if certain conditions are met.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
4-3-8, as last amended by Chapter 130, Laws of Utah 1985
4-3-11, as last amended by Chapter 157, Laws of Utah 1990

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

Section 1. Section 4-3-8 is amended to read:

4-3-8. Licenses and permits -- Application -- Fee -- Expiration -- Renewal.

(1) Application for a license to operate a plant or to manufacture butter or cheese, pasteurize milk, test milk for payment, [~~or~~] haul milk in bulk, or for the wholesale distribution of dairy products, shall be made to the department upon forms prescribed and furnished by it. Upon receipt of a proper application, compliance with all applicable regulations, and payment of a license fee determined by the department pursuant to Subsection 4-2-2(2), the commissioner, if satisfied that the public convenience and necessity and the industry will be served, shall issue an appropriate license to the applicant subject to suspension or revocation for cause. Each license issued under this section expires at midnight on December 31 of each year. A license to operate a plant or to manufacture butter or cheese, pasteurize milk, test milk for payment, [~~or to~~] haul milk in bulk, or for the wholesale distribution of dairy products, is renewable for a period of one year upon the payment of an annual license renewal fee determined by the department pursuant to Subsection 4-2-2(2) on or before December 31 of each year.

(2) Application for a permit or certificate to produce milk shall be made to the department on forms prescribed and furnished by it. Upon receipt of a proper application and compliance with all applicable regulations, the commissioner shall issue a permit entitling the applicant to engage in the business of producer, subject to suspension or revocation for cause. No fee may be charged by the department for issuance of a permit or certificate.

Section 2. Section 4-3-11 is amended to read:

4-3-11. Processors, manufacturers, or distributors -- Unlawful to give money, equipment, or fixtures to retailer or consumer -- Exceptions -- Shelf space for dairy products.

(1) As used in this section:

(a) "liquid dairy product" means a milk container which contains a pint of milk or less; and

(b) ""novelty ice cream" means a package or container of ice cream which contains eight fluid ounces or less.

[~~(1) No~~] (2) Except as provided in Subsections (3) and (4), no processor, manufacturer, distributor, or his affiliates, subsidiaries, associates, agents or stockholders shall furnish, service, repair, give, lease, sell, or loan to a retailer or consumer any:

(a) money;

(b) equipment;

(c) fixtures, including ice cream cabinets or bulk milk dispensers;

(d) supplies, excluding expendable supplies commonly provided in connection with the sale of dairy products to a consumer; or

(e) other things having a real or substantial value.

(3) (a) Ice cream cabinets may be loaned or sold to a retailer if the ice cream cabinet:

(i) is portable;

(ii) has a storage capacity not exceeding 12 cubic feet; and

(iii) is used solely for retail display sales of novelty ice cream.

(b) Milk coolers may be loaned or sold to a retailer if the milk cooler:

(i) is portable;

(ii) has a storage capacity not exceeding 12 cubic feet; and

(iii) is used solely for retail display sales of liquid dairy products.

[~~(2)~~] (4) The leasing or renting of cabinets, dispensers, or coolers for dairy products for civic affairs, demonstrations, or exhibits is prohibited unless it is for a period of ten days or less in any one period of three consecutive months.

[~~(3)~~] (5) (a) [~~No~~] Except as provided in Subsections (5)(b) and (5)(c), no retailer shall lease, sell, or loan[~~,~~] shelf or refrigerator space for dairy products to a processor, manufacturer, or distributor or receive anything of value from a processor, manufacturer, or distributor in exchange for shelf or refrigerator space for dairy products [~~to a processor, manufacturer, or distributor~~].

(b) Subsection (5)(a) [~~shall~~] does not apply to a dairy by-product that is:

(i) a short-term special; or

(ii) a new product being introduced on a trial basis for a period not to exceed 45 days.

(c) A processor, manufacturer, or distributor may loan or sell an ice cream cabinet or milk cooler to a retailer for the display of the processor's, manufacturer's, or distributor's products, if the ice cream cabinet or milk cooler meets the requirements of Subsection (3).

CHAPTER 88
S. B. 20
Passed January 31, 2001
Approved March 15, 2001
Effective April 30, 2001

REPORTING REQUIREMENTS FOR SCIENCE CENTER AUTHORITY

Sponsor: Parley Hellewell

This act modifies the Community and Economic Development Code to amend the reporting requirements of the Science Center Authority and to make technical changes.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
9-3-410, as last amended by Chapter 13, Laws of Utah 1998

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

Section 1. Section 9-3-410 is amended to read:

9-3-410. Relation to certain acts.

(1) The authority is exempt from:

(a) Title 51, Chapter 5, Funds Consolidation Act;

(b) Title 63, Chapter 38, Budgetary Procedures Act;

(c) Title 63, Chapter 56, Utah Procurement Code;

(d) Title 63A, Chapter 1, Utah Administrative Services Code; and

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

(2) The authority shall be subject to audit by:

(a) the state auditor pursuant to Title 67, Chapter 3, Auditor; and [~~by~~]

(b) the legislative auditor general pursuant to Section 36-12-15.

(3) The authority shall annually report to the [~~Business, Labor, and Economic Development Interim~~] Legislative Quasi-Governmental Entities Committee concerning the authority's implementation of this part.

CHAPTER 89
S. B. 21
Passed February 5, 2001
Approved March 15, 2001
Effective April 30, 2001

INFORMATION TECHNOLOGY COMMISSION AMENDMENTS

Sponsor: David H. Steele

This act modifies the Information Technology Act. The act clarifies that the provisions relating to certain terms of members refer to the members representing the public.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
63D-1-203, as renumbered and amended by Chapter 73 and last amended by Chapter 276, Laws of Utah 1997

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

Section 1. Section 63D-1-203 is amended to read:

63D-1-203. Terms of members -- Vacancies -- Term limitation.

(1) (a) Except as required by Subsections (1)(b) and (2), as terms of current public commission members expire, the speaker of the House and the president of the Senate shall appoint each new member or reappointed member to a four-year term.

(b) Notwithstanding the requirements of Subsection (1)(a), the speaker of the House and the president of the Senate shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of commission members are staggered so that approximately half of the commission is appointed every two years.

(c) Terms shall expire on June 30 every two years.

(2) (a) The chairs, with the approval of the commission, may remove a public commission member and appoint another to fill the vacancy if the commission member, other than a legislator:

(i) has more than two consecutive unexcused absences from commission meetings in a 12-month period;

(ii) fails or refuses to fulfill the responsibilities and duties of a commission member; or

(iii) no longer represents the interest for which the member was originally appointed.

(b) If a member no longer serves in the Legislature, a vacancy is created.

(c) [~~When~~] Except as set forth in Subsection (2)(a), when a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term in the same manner as the original appointment.

(3) A public member may not serve more than two consecutive terms.

CHAPTER 90
S. B. 23
Passed February 27, 2001
Approved March 15, 2001
Effective April 30, 2001

SPECIAL DISTRICT AND LOCAL DISTRICT AMENDMENTS

Sponsor: David L. Gladwell

This act modifies provisions relating to Special Districts and Limited Purpose Local Government Entities to rewrite and standardize annexation and dissolution provisions for specified special districts and for local districts. This act allows for the process to annex an area outside the boundaries of a specified special district or a local district to be initiated by petition or by resolution of a county or municipal legislative body. The act allows, in some circumstances, a county or municipality to terminate the annexation process if the county or municipality will provide the service proposed to be provided by the special or local district. The act requires, with some exceptions, the special or local district to hold a public hearing and provide notice of the hearing and provides for a protest and election, under certain circumstances. The act provides for a streamlined annexation process for a district providing service on a wholesale level and for a district providing transportation service. The act provides a procedure for districts to adjust a common boundary. The act provides a procedure for dissolving a district if certain conditions are present. The act provides for notice and a public hearing for a dissolution. The act repeals inconsistent and obsolete provisions and makes technical changes. This act provides a coordination clause.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
17A-2-101, as last amended by Chapter 177, Laws of Utah 2000
17A-2-301, as last amended by Chapters 361 and 368, Laws of Utah 1998
17A-2-317, as last amended by Chapter 227, Laws of Utah 1993
17A-2-403, as last amended by Chapter 368, Laws of Utah 1998
17A-2-405, as last amended by Chapter 21, Laws of Utah 1997
17A-2-411, as last amended by Chapter 254, Laws of Utah 2000
17A-2-413, as last amended by Chapter 227, Laws of Utah 1993
17A-2-422, as last amended by Chapter 1, Laws of Utah 2000
17A-2-530, as last amended by Chapter 254, Laws of Utah 2000
17A-2-622, as last amended by Chapter 254, Laws of Utah 2000
17A-2-706, as last amended by Chapter 254, Laws of Utah 2000
17A-2-714, as last amended by Chapter 254, Laws of Utah 2000
17A-2-715, as last amended by Chapter 254, Laws of Utah 2000
17A-2-730, as renumbered and amended by Chapter 186, Laws of Utah 1990
17A-2-738, as renumbered and amended by Chapter 186, Laws of Utah 1990
17A-2-741, as last amended by Chapter 254, Laws of Utah 2000
17A-2-749, as last amended by Chapter 254, Laws of Utah 2000
17A-2-751, as last amended by Chapter 254, Laws of Utah 2000
17A-2-752, as last amended by Chapter 254, Laws of Utah 2000
17A-2-754, as last amended by Chapter 254, Laws of Utah 2000
17A-2-758, as last amended by Chapter 254, Laws of Utah 2000
17A-2-759, as last amended by Chapter 254, Laws of Utah 2000
17A-2-801, as last amended by Chapter 254, Laws of Utah 2000
17A-2-803, as last amended by Chapter 368, Laws of Utah 1998
17A-2-842, as last amended by Chapter 254, Laws of Utah 2000
17A-2-1048, as last amended by Chapter 254, Laws of Utah 2000
17A-2-1049, as last amended by Chapter 254, Laws of Utah 2000
17A-2-1420, as last amended by Chapter 254, Laws of Utah 2000
17A-2-1821, as enacted by Chapter 216, Laws of Utah 1995
17B-2-101, as enacted by Chapter 368, Laws of Utah 1998
17B-2-201, as last amended by Chapter 1, Laws of Utah 2000
17B-2-217, as last amended by Chapter 177, Laws of Utah 2000
73-2-1, as last amended by Chapter 3, Laws of Utah 1991

ENACTS:
17A-2-101.3, Utah Code Annotated 1953
17B-2-102, Utah Code Annotated 1953
17B-2-501, Utah Code Annotated 1953
17B-2-502, Utah Code Annotated 1953
17B-2-503, Utah Code Annotated 1953
17B-2-504, Utah Code Annotated 1953
17B-2-505, Utah Code Annotated 1953
17B-2-506, Utah Code Annotated 1953
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17B-2-702, Utah Code Annotated 1953
17B-2-703, Utah Code Annotated 1953
17B-2-704, Utah Code Annotated 1953
17B-2-705, Utah Code Annotated 1953
17B-2-706, Utah Code Annotated 1953
17B-2-707, Utah Code Annotated 1953
17B-2-708, Utah Code Annotated 1953

RENUMBERS AND AMENDS:
17A-3-244, (Renumbered from 17A-2-326, as renumbered and amended by Chapter 186, Laws of Utah 1990)

REPEALS:
17A-2-202, as last amended by Chapter 368, Laws of Utah 1998
17A-2-203, as last amended by Chapter 227, Laws of Utah 1993
17A-2-204, as last amended by Chapter 146, Laws of Utah 1994
17A-2-205, as last amended by Chapter 227, Laws of Utah 1993
17A-2-206, as last amended by Chapter 227, Laws of Utah 1993
17A-2-207, as renumbered and amended by Chapter 186, Laws of Utah 1990
17A-2-213, as last amended by Chapter 322, Laws of Utah 1997
17A-2-214, as last amended by Chapter 322, Laws of Utah 1997
17A-2-303, as last amended by Chapters 112 and 146, Laws of Utah 1994
17A-2-304, as last amended by Chapter 146, Laws of Utah 1994
17A-2-331, as last amended by Chapter 1, Laws of Utah 2000
17A-2-332, as last amended by Chapter 227, Laws of Utah 1993
17A-2-333, as last amended by Chapter 322, Laws of Utah 1997
17A-2-339, as enacted by Chapter 129, Laws of Utah 1997
17A-2-404, as last amended by Chapter 227, Laws of Utah 1993
17A-2-406, as last amended by Chapter 227, Laws of Utah 1993
17A-2-407, as renumbered and amended by Chapter 186, Laws of Utah 1990
17A-2-408, as last amended by Chapter 227, Laws of Utah 1993
17A-2-409, as last amended by Chapter 227, Laws of Utah 1993
17A-2-410, as last amended by Chapter 227, Laws of Utah 1993
17A-2-417, as last amended by Chapters 21 and 322, Laws of Utah 1997
17A-2-420, as last amended by Chapter 227, Laws of Utah 1993
17A-2-430, as last amended by Chapter 273, Laws of Utah 1991
17A-2-529, as last amended by Chapter 254, Laws of Utah 2000
17A-2-546, as last amended by Chapter 254, Laws of Utah 2000
17A-2-561, as last amended by Chapter 254, Laws of Utah 2000
17A-2-562, as last amended by Chapter 30, Laws of Utah 1992
17A-2-563, as last amended by Chapter 254, Laws of Utah 2000
17A-2-564, as renumbered and amended by Chapter 186, Laws of Utah 1990
17A-2-565, as renumbered and amended by Chapter 186, Laws of Utah 1990
17A-2-566, as last amended by Chapter 254, Laws of Utah 2000
17A-2-567, as renumbered and amended by Chapter 186, Laws of Utah 1990
17A-2-602, as last amended by Chapter 146, Laws of Utah 1994
17A-2-603, as last amended by Chapter 146, Laws of Utah 1994
17A-2-604, as last amended by Chapter 146, Laws of Utah 1994
17A-2-605, as last amended by Chapter 1, Laws of Utah 2000
17A-2-606, as last amended by Chapter 227, Laws of Utah 1993
17A-2-608, as last amended by Chapters 12 and 146, Laws of Utah 1994
17A-2-614, as last amended by Chapter 254, Laws of Utah 2000
17A-2-624, as renumbered and amended by Chapter 186, Laws of Utah 1990
17A-2-702, as last amended by Chapter 368, Laws of Utah 1998
17A-2-703, as last amended by Chapter 254, Laws of Utah 2000
17A-2-704, as last amended by Chapter 254, Laws of Utah 2000
17A-2-705, as last amended by Chapter 254, Laws of Utah 2000
17A-2-731, as last amended by Chapter 254, Laws of Utah 2000
17A-2-732, as last amended by Chapter 254, Laws of Utah 2000
17A-2-733, as last amended by Chapter 254, Laws of Utah 2000
17A-2-734, as renumbered and amended by Chapter 186, Laws of Utah 1990
17A-2-735, as renumbered and amended by Chapter 186, Laws of Utah 1990
17A-2-736, as renumbered and amended by Chapter 186, Laws of Utah 1990
17A-2-737, as renumbered and amended by Chapter 186, Laws of Utah 1990
17A-2-745, as last amended by Chapter 254, Laws of Utah 2000
17A-2-746, as last amended by Chapter 254, Laws of Utah 2000
17A-2-747, as last amended by Chapter 254, Laws of Utah 2000
17A-2-748, as last amended by Chapter 254, Laws of Utah 2000
17A-2-811, as renumbered and amended by Chapter 186, Laws of Utah 1990
17A-2-812, as last amended by Chapter 1, Laws of Utah 2000
17A-2-813, as renumbered and amended by Chapter 186, Laws of Utah 1990
17A-2-814, as renumbered and amended by Chapter 186, Laws of Utah 1990
17A-2-815, as renumbered and amended by Chapter 186, Laws of Utah 1990
17A-2-841, as last amended by Chapter 254, Laws

of Utah 2000
17A-2-912, as last amended by Chapter 322, Laws of Utah 1997
17A-2-913, as renumbered and amended by Chapter 186, Laws of Utah 1990
17A-2-1404, as last amended by Chapters 13 and 368, Laws of Utah 1998
17A-2-1405, as renumbered and amended by Chapter 186, Laws of Utah 1990
17A-2-1406, as last amended by Chapter 227, Laws of Utah 1993
17A-2-1407, as last amended by Chapter 254, Laws of Utah 2000
17A-2-1408, as renumbered and amended by Chapter 186, Laws of Utah 1990
17A-2-1437, as last amended by Chapters 1 and 254, Laws of Utah 2000
17A-2-1815, as enacted by Chapter 216, Laws of Utah 1995
17A-2-1816, as enacted by Chapter 216, Laws of Utah 1995
17A-2-1817, as enacted by Chapter 216, Laws of Utah 1995
17A-2-1818, as enacted by Chapter 216, Laws of Utah 1995
17A-2-1819, as enacted by Chapter 216, Laws of Utah 1995
17A-2-1820, as enacted by Chapter 216, Laws of Utah 1995

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

Section 1. Section 17A-2-101 is amended to read:

17A-2-101. Creation procedures for certain independent special districts.

(1) [~~(a) Beginning March 23, 1998, the~~] The creation of a special district under Part 2, Cemetery Maintenance Districts, Part 3, County Improvement Districts for Water, Sewerage, Flood Control, Electric and Gas, Part 4, County Service Area Act, Part 7, Irrigation Districts, Part 8, Metropolitan Water District Act, Part 9, Mosquito Abatement Districts, [~~and~~] Part 10, Utah Public Transit District Act, and Part 14, Water Conservancy Act, shall be governed by Title 17B, Chapter 2, Part 2, Creation of Local Districts, in the same manner as if a local district under Title 17B, Chapter 2, Local Districts, were proposed to be created.

[~~(b) Beginning September 15, 1998, the creation of a special district under Part 14, Water Conservancy Districts, shall be governed by Title 17B, Chapter 2, Part 2, Creation of Local Districts, in the same manner as if a local district under Title 17B, Chapter 2, Local Districts, were proposed to be created.~~]

(2) Subsection 17B-2-217(1) does not prohibit the creation of one of the types of independent special districts listed in Subsection (1) under the creation provisions of Title 17B, Chapter 2, Part 2, Creation of Local Districts.

(3) The provisions of Title 17B, Chapter 2, Part 2, Creation of Local Districts, do not apply to an independent special district under this chapter created before March 23, 1998.

(4) (a) For each type of independent special district listed in Subsection (1), the provisions of the part under this chapter that applies to that district govern with respect to the appointment or election of the governing body of that type of independent special district after its creation under Title 17B, Chapter 2, Part 2, Creation of Local Districts.

(b) If application of the provisions of Title 17B, Chapter 2, Part 2, Creation of Local Districts, results in the creation of an independent special district before the governing body of that district, under the applicable provisions of this chapter, takes office, the responsible body, as defined in Subsection 17B-2-201(1)[~~(f)~~], shall be the governing body of the district until the governing body takes office under the applicable provisions of this chapter.

(5) Notwithstanding Section 17B-2-202, an independent special district listed in Subsection (1) may be created to provide only the services that are authorized under the part of this chapter applicable to that type of district.

Section 2. Section 17A-2-101.3 is enacted to read:

17A-2-101.3. Annexation and dissolution provisions for certain independent special districts.

(1) Except as provided in Subsection (2), for each type of independent special district listed in Subsection 17A-2-101(1) and for a drainage district under Part 5, Drainage Districts, a fire protection district under Part 6, Fire Protection Districts, and a regional service area under Part 18, Regional Service Area Act, on or after June 1, 2001:

(a) annexation of additional territory to the district or adjustment of boundaries shared by two or more of those types of independent special districts shall be governed by Title 17B, Chapter 2, Part 5, Annexation, to the same extent as if the independent special district were a local district under Title 17B, Chapter 2, Local Districts; and

(b) dissolution of a district shall be governed by Title 17B, Chapter 2, Part 7, Dissolution, to the same extent as if the independent special district were a local district under Title 17B, Chapter 2, Local Districts.

(2) An annexation, boundary adjustment, or dissolution proceeding begun before and still pending on June 1, 2001 for a type of independent special district referred to in Subsection (1) is not subject to Subsection (1)(a) or (b) but continues after that date to be governed by the statutory provisions in effect immediately before that date.

Section 3. Section 17A-2-301 is amended to read:

17A-2-301. Improvement district authority -- Area of a district -- County legislative body may act as board of certain districts.

(1) (a) An improvement district [~~may be established under this part and~~] may acquire through construction, purchase, gift, or condemnation, or any combination of these methods, and may operate all or any part of:

(i) a system for the supply, treatment, and distribution of water;

(ii) a system for the collection, treatment, and disposition of sewage;

(iii) a system for the collection, retention, and disposition of storm and flood waters;

(iv) a system for the generation, distribution, and sale of electricity; and

(v) a system for the transmission of natural or manufactured gas if the system is:

(A) connected to a gas plant, as defined in Section 54-2-1, of a gas corporation, as defined in Section 54-2-1, regulated under Section 54-4-1; and

(B) to be used to facilitate gas utility service within the district if the gas utility service is not available within the district prior to the acquisition or construction of the system.

(b) The new gas utility service under Subsection (1)(a)(v)(B) shall be provided by a gas corporation regulated under Section 54-4-1 and not by the district.

(2) (a) (i) Subject to Subsection (2)[~~(c)~~](a)(ii), the area of a district under this part may include all or part of any county or counties, including all or any part of any incorporated municipalities, other incorporated areas, and unincorporated areas, as the needs of the inhabitants of the proposed districts may appear.

(ii) Notwithstanding Subsection (2)(a)(i), the addition of any territory to a district under this part shall, on and after June 1, 2001 and as provided in Subsection 17A-2-101.3(1)(a), be governed by Title 17B, Chapter 2, Part 5, Annexation.

(b) The boundaries of a district authorized under this part do not need to be contiguous.

[~~(c) (i) Notwithstanding Subsection (2)(a), an improvement district created under this part after May 4, 1998, for the supply, treatment, or distribution of water may not include part of a municipality unless:~~]

[~~(A) the municipality's governing body adopts an ordinance or resolution consenting to the inclusion; and~~]

[~~(B) the owners of over 50% of all parcels of real property, located in the area proposed to be included and that will have at least one water connection to the improvement district, request in writing that the improvement district and not the municipality provide the services proposed to be provided by the improvement district.~~]

[~~(ii) For purposes of Subsection (2)(c)(i)(B), the provisions of Subsections 17A-2-340(2)(c)(i), (ii), (iii), and (iv) apply.~~]

(3) If an improvement district authorized under this part was created solely for the purpose of acquiring a system for the collection, retention, or disposition of storm and flood waters, the county legislative body that created the district may, in its discretion and despite anything to the contrary in Section 17A-2-305, act as the board of trustees of the district for so long as it considers desirable.

[~~(4) All provisions of this part that establish, govern, or state the requirements and procedure for the creation of an improvement district:~~]

[~~(a) are superseded by the provisions of Title 17B, Chapter 2, Part 2, Creation of Local Districts, with respect to the creation of an improvement district; and~~]

[~~(b) remain valid to the extent they establish, govern, or state the requirements or procedure for annexation to an existing improvement district.~~]

Section 4. Section 17A-2-317 is amended to read:

17A-2-317. Ratification of districts created under prior laws -- Issuance of authorized bonds -- Amendatory proceedings.

Whenever any district has been heretofore created or purported to be created under authority of Chapter 25, Laws of Utah 1947, Chapter 24, Laws of Utah 1949, or the act hereby amended and where proceedings have been adopted by the governing body of such district for the purpose of authorizing the bonds of such district, whether or not such bonds are payable from operating revenues or from taxes or both, and whether or not such bonds have been heretofore delivered, all proceedings had in connection with the creation of such district, the organization of the governing body thereof, and all proceedings had in connection with the authorization of such bonds, and, when duly delivered and paid for as required by such proceedings, the bonds themselves are hereby validated, ratified and declared to be binding and effective in accordance with their terms notwithstanding any failure to comply with any one or more pertinent statutory provisions and notwithstanding whether such proceedings have been continuously in effect from the date of their adoption to the date of the passage of this part.

As to each district coming within the purview of this section which has heretofore authorized bonds which have not yet been issued, the governing body of such district is hereby authorized and empowered to do all things necessary to the issuance of such bonds and to the performance and carrying out of the contracts of such district, and such things may be done and such bonds when issued shall benefit from the curative provisions of this section whether or not changes in the details of the bonds and in the proceedings authorizing the issuance thereof have been made since the original adoption thereof or may hereafter be made and without regard to the nature of such changes.

Where any district has been originally initiated or created under authority of either [~~Chapter 2, Part 3~~] this part or Chapter 3, Part 2, County Improvement District Act, the governing authority of such district may proceed to issue bonds and operate facilities under the authority of the law under which it was created or may, if in so doing provision is made for the payment in full of all expenses and obligations heretofore incurred by such district for legal,

engineering, fiscal agent's and other proper services, make such changes and amendments in the proceedings for the authorization of such bonds as may be necessary to effect the authorization and issuance of such bonds under the provisions of this part as amended, and to that end, may increase or decrease the amount of bonds so authorized, may make such bonds payable in whole or in part from the operating revenues of the district or from taxes or both as herein provided, and may make any other changes in such proceedings it may deem to the best interests of the district. If any such change has the effect of pledging or allocating to the payment of any such bond taxes to be levied by such district, such amendatory proceedings shall become effective only when there shall have been given [~~the~~] notice [~~contemplated by Section 17A-2-304 hereof~~] of a public hearing by publishing notice once a week for three successive weeks in a newspaper of general circulation in each county that contains some or all of the district, and when the hearing [~~required by such section shall have~~] has been held and appeals taken therefrom, if any, terminated. For the purpose of this section, the county legislative body under districts initiated or created under said Chapter 3, Part 2, County Improvement District Act, shall at its option, if it elects hereafter to proceed hereunder, exercise all duties and functions provided by this part to be exercised by the board of trustees of any district created hereunder or may cause an election to be held for the election of trustees in accordance with the provisions of this part.

Section 5. Section 17A-2-403 is amended to read:

17A-2-403. Authorized services -- Notice to and coordination with utility.

(1) (a) [~~Whenever an unincorporated area in a county requires one or more of the following extended services which are not provided on a countywide basis~~] A county service area may provide: extended police protection; fire protection; culinary or irrigation water retail service; water conservation; local park, recreation or parkway facilities and services; cemeteries; public libraries; sewers, sewage and storm water treatment and disposal; flood control; garbage and refuse collection; street lighting; airports; planning and zoning; local streets and roads; curb, gutter and sidewalk construction and maintenance; mosquito abatement; health department services; hospital service; or the underground installation of an electric utility line or the conversion to underground of an existing electric utility line[~~, such services may be supplied by a county service area~~].

(b) If [~~the provision of said services shall require~~] providing service requires the issuance of bonds or the creation of long-term obligations [~~said services~~], the service may be supplied by means available [~~at law~~] as [~~herein~~] provided in this part.

[~~(b)~~] (2) Each county service area that supplies the service of the underground installation of an electric utility line or the conversion to underground of an existing electric utility line shall, in installing or converting the line, provide advance notice to and coordinate with the utility that owns the line.

[~~(2) All provisions of this part that establish, govern, or state the requirements and procedure for the creation of a county service area:~~]

[~~(a) are superseded by the provisions of Title 17B, Chapter 2, Part 2, Creation of Local Districts, with respect to the creation of a county service area; and~~]

[~~(b) remain valid to the extent they establish, govern, or state the requirements or procedure for annexation to an existing county service area.~~]

Section 6. Section 17A-2-405 is amended to read:

17A-2-405. Area in county service area -- Overlapping of areas.

(1) (a) [~~A~~] The boundaries of a county service area may [~~consist of~~] include:

(i) all or part of any unincorporated area of one county; and

(ii) territory located within a municipality[~~, as provided in Sections 17A-2-417 and 17A-2-418~~].

(b) Notwithstanding Subsection (1)(a), the addition of any territory to a county service area under this part shall, on and after June 1, 2001 and as provided in Subsection 17A-2-101.3(1)(a), be governed by Title 17B, Chapter 2, Part 5, Annexation.

[~~(b)~~] (2) County service areas may overlap if the service area which overlaps is entirely within the boundaries of the service area which it overlaps.

[~~(c) (i)~~] (3) (a) Except as provided in Subsection [~~(1)(c)(ii)~~] (3)(b), not more than two service areas may occupy the same area in the county.

[~~(ii)~~] (b) Notwithstanding Subsection [~~(1)(c)(i)~~] (3)(a), three service areas may occupy the same area in the county if one of the overlapping service areas is countywide.

[~~(d)~~] (4) No overlapping service areas may perform the same services.

[~~(e)~~] (5) All parts of a county service area need not be contiguous.

[~~(2) (a) Proceedings for the establishment of a county service area may be commenced at any time and shall be instituted by the county legislative body if:~~]

[~~(i) a majority of the county legislative body vote in support of a resolution made by a member of that legislative body, describing the boundaries of the territory proposed to be included in the area and specifying the type or types of extended county services already provided or to be provided;~~]

[~~(ii) a petition is filed with the county clerk, requesting the institution of such proceedings signed by not less than 25% of the taxpayers owning real property which is located in the territory proposed to be included within the area; or~~]

[~~(iii) a petition is filed with the county clerk, requesting the institution of such proceedings~~

~~signed by not less than 25% of the qualified voters residing in the territory proposed to be included within the area.~~]

[~~(b) The petition under Subsection (2)(a)(ii) or (iii) may consist of any number of separate instruments.~~]

[~~(3) The resolution or the petitions described in Subsection (2) and all separate instruments related to them shall describe the boundaries of the proposed area with definiteness and certainty.~~]

Section 7. Section 17A-2-411 is amended to read:

17A-2-411. Board of trustees -- Selection procedures -- Surety bonds -- Other provisions applicable.

(1) Each service area authorized under this part shall be governed by a board of trustees.

(2) (a) Upon the creation of a county service area, the county legislative body may adopt an ordinance declaring that the county legislative body of the county shall act as the trustees of the service area.

(b) Upon passage of the ordinance, the county legislative body of the county shall act as trustees of the service area with all the powers, authority, and responsibility vested in the trustees under this part.

(c) (i) The county legislative body, when acting as trustees, may use any existing county offices, officers, or employees for the purposes of the service area.

(ii) The county legislative body shall charge costs of those services to the service area and require them to be paid to the county treasurer for the general fund of the county.

(3) At any time after the creation of a board of trustees as provided in Subsection (1), if no elected board has been established as provided in this section, the county legislative body of the county in which the service area is located may:

(a) by ordinance, delegate its powers to an appointed or elected board of trustees as provided in Chapter 1, Part 3, Special District Board Selection Procedures; and

(b) provide for the appointment or election of the board by following the procedures and requirements of Chapter 1, Part 3, Special District Board Selection Procedures.

(4) At any time after the creation of a board of trustees as provided in Subsections (2) and (3), the county legislative body shall hold an election for trustees by following the procedures and requirements of Chapter 1, Part 3, Special District Board Selection Procedures, if:

(a) the county legislative body receives a petition requesting that an election for trustees be held that is:

(i) signed by at least 10% of persons eligible to vote in an election in a service area authorized under this part; and

(ii) filed with the county legislative body at least 30 days before the date set for a bond election or 90 days before the date set for any municipal election; or

(b) territory located within a municipality is annexed into the county service area under [~~Section 17A-2-417~~] Title 17B, Chapter 2, Part 5, Annexation.

(5) (a) If there is no elected board of trustees at the time of the first bond election, trustees shall be elected in conjunction with that bond election.

(b) Candidates for election to the board of trustees shall be taxpayers and qualified voters in the service area.

(c) At any time within 30 days after the county legislative body has called a bond election, but not less than 15 days before the day of election, any person who is qualified to vote in the service area may file a signed statement with the county clerk announcing the person's candidacy to be one of the first elected trustees of the service area.

(d) The board of trustees shall provide a ballot separate from the bond ballot that contains the names of the candidates and blanks in which the voters may write in additional names.

(e) A voter at the election may vote for the number of trustee positions to be filled.

(f) The persons receiving the highest number of votes at the election are members of the board of trustees.

(6) (a) Each member of the board of trustees may vote on all questions, orders, resolutions, and ordinances coming before the board.

(b) Notwithstanding Section 17B-2-404, if the county legislative body acts as the board of trustees, no compensation may be paid to them as trustees.

(c) Each trustee who is also a member of the county legislative body shall take the oath of office and shall give the bond that is required by law for members of the county legislative body.

(7) All qualified voters in the service area may vote in elections to select trustees and in elections to approve the issuance of bonds.

(8) Following the election or appointment of the first trustees, each elected trustee shall be elected according to the procedures and requirements of Chapter 1, Part 3, Special District Board Selection Procedures.

(9) Each vacancy of an elected trustee in office shall be filled according to the procedures and requirements of Chapter 1, Part 3, Special District Board Selection Procedures.

(10) (a) The provisions of Title 17B, Chapter 2, Part 4, Board of Trustees, apply to each county service area to the same extent as if the county

service area were a local district under Title 17B, Chapter 2, Local Districts.

(b) (i) If a change in the number of board of trustees members is necessary to comply with the requirements of Subsection 17B-2-402(1), the board of trustees may by majority vote, notwithstanding Subsection 17B-2-402(3), change the number of board members to the next odd number higher or lower than the number of current board members.

(ii) If a change under Subsection (10)(b)(i) decreases the number of board members, the change may not take effect until the expiration of the term of the member whose term next expires.

(iii) If a change in the number of board members necessitated by Subsection 17B-2-402(1) would cause the district to violate a provision of bonds issued by the district, the number of board members may be modified to the extent necessary to avoid a violation.

(c) (i) If a change in the expiration date of the term of a board of trustees member is necessary to comply with the requirements of Subsection 17B-2-403(1), the term of each board member whose term expires on a day other than the first Monday in January shall be extended to the first Monday in January after the normal expiration date next following the special district election date under Section 17A-1-305.

(ii) If a change in the length of the term of a board of trustees member is necessary to comply with the requirements of Subsection 17B-2-403(2), the change may not take effect until the expiration of the term of the member whose term length is to be changed.

Section 8. Section 17A-2-413 is amended to read:

17A-2-413. Adding a new service within county service area.

[~~(1) (a) After a~~] A county service area [~~is established, the board~~] may [~~extend the types of services~~] begin to provide within the boundaries of the county service area a service that it had not previously provided [~~by the area~~] by using the procedures set forth in [~~this part~~] Title 17B, Chapter 2, Part 2, Creation of Local Districts, for the creation of [~~the~~] a county service area as though a new county service area were being created to provide that service.

[~~(b) If the board extends the services provided, it shall make the appropriate changes in the wording of the required instruments.~~]

[~~(2) If a county service area is abandoned as provided in this part, the county legislative body may:~~]

[~~(a) discontinue any services for which the county service area was created; or~~]

[~~(b) dissolve the county service area if the area has no bonds or other indebtedness outstanding.~~]

Section 9. Section 17A-2-422 is amended to read:

17A-2-422. Proposal to incur indebtedness -- Resolution -- Notice -- Hearing -- Calling of bond election -- Written protests.

(1) (a) A proposal to incur indebtedness which would cause the total county debt to exceed the county taxes for the current year or which would not be payable within one year, as the case may be, may be originated by a majority vote of the board of trustees or by petition of not less than 100 property owners or 10% of all the property owners, whichever is less, who own property within the county service area or by petition of not less than 10% of all the qualified voters residing in the county service area.

(b) The proposal shall specify the particular purpose for which the indebtedness is to be created, the amount in money of bonds which it is proposed to issue and the name and number of the county service area.

(2) After the proposal has been made, the board of trustees, as expeditiously as possible, shall adopt a resolution fixing a time and place at which the proposal shall be heard, which time shall be not less than 30 nor more than 60 days after the date of adoption of the resolution.

(3) (a) The board of trustees shall immediately issue a notice of the time and place of hearing, which notice shall state that all persons who own property in the service area when the debt is payable solely from within the county service area or all persons residing in the county when the debt is countywide may appear at the hearing and contend for or protest against the incurrence of the debt and the holding of a bond election.

(b) If the service area has issued bonds, the notice shall include a statement of the amount of outstanding bonds of the service area and shall indicate whether the bonds are general obligations of the county or are payable solely from within the county service area.

(4) (a) The board of trustees shall cause the notice to be published once a week during four consecutive weeks in a newspaper of general circulation in the county, the first publication to be not more than 60 days nor less than 28 days prior to the date of the hearing.

(b) It is not necessary that the notice be published on the same day of the week in each of four calendar weeks, but not less than 20 days shall intervene between the first publication and the last publication.

(5) At the time and place set for the hearing of the petition, or upon a subsequent date fixed at the original hearing the board of trustees shall proceed to hear the proposal and all matters in respect to a bond election.

(6) If, upon the hearing of the proposal, the board of trustees finds that due notice has been given and that the services under discussion would be for the benefit of all taxable property or the real property owners situated in the service area, then the board

shall make and cause to be entered of record upon its minutes an order so finding, and shall proceed to call the bond election and, if a majority of those voting, vote in the affirmative, to issue the bonds in the manner provided.

(7) The board may reduce the amount in money of the bonds named in the petition.

(8) (a) If written protests are filed prior to the date fixed for the original hearing, signed by property owners owning taxable property in the service area with a taxable value in excess of 40% of the taxable value of all the taxable property within the service area, according to the last assessment roll for county taxes completed prior to the holding of the election or by 40% of all the qualified voters residing in the county service area or by 40% of all the qualified voters residing in the county, the board does not have authority to proceed with the calling of the election, and no new petition for a bond election in the service area may be entertained for a period of 12 months from that time.

(b) If written protests are filed and the board of trustees determines that the protests so filed represent less than the 40% required, a resolution or finding in writing of the board calling the election shall so recite and the recital shall be conclusive.

[~~(9) The provisions of this section and of Section 17A-2-407 with regard to publication of notice in a newspaper may be carried out concurrently.~~]

Section 10. Section 17A-2-530 is amended to read:

17A-2-530. Viewing of annexed land by board of trustees -- Assessment for taxation -- Board of equalization -- Hearing -- Notice -- Lien for taxes.

(1) The board of trustees shall, as soon as practicable after [~~the recording of the order of~~] an annexation of land to the district under Title 17B, Chapter 2, Part 5, Annexation:

(a) view each tract of land so annexed to the district;

(b) carefully consider all the damages and benefits that each particular tract of land shall receive from the annexation to the drainage district and from the construction and maintenance of such drainage system; and

(c) assess each tract of land in accordance with the benefits to be received by it, making proper allowance for damage, if [~~there be~~] any.

(2) After the assessment under Subsection (1) is made, [~~the secretary of~~] the board of trustees shall transmit the assessment to the county legislative body.

(3) (a) The county legislative body shall:

(i) at its next regular meeting fix a time and place where it shall sit as a board of equalization and equalize and determine the benefits and taxes to be assessed against the land; and

(ii) except as provided in Subsection (3)(b), publish a notice of the board of equalization hearing at least once each week for two consecutive weeks in a newspaper having general circulation in the county or counties where the drainage district is situated.

(b) If the annexation resulted from a petition signed by all the owners of real property within the annexed area whose addresses were included in the petition, the county legislative body may, in lieu of the notice under Subsection (3)(a)(ii), give notice of the board of equalization hearing by mailing a copy of the notice to each owner of real property at the address stated in the petition.

(c) (i) The first publication of the notice required under Subsection (3)(a)(ii) shall not be less than 15 days or more than 30 days prior to the date of the hearing.

(ii) If the residence or post office address of an owner of the lands so annexed is known, the county clerk shall cause a copy of the notice and a copy of the proposed benefits to be sent by United States mail to the landowner at least 15 days prior to the time fixed for the hearing.

(d) The notice shall state generally the purpose of the hearing and the time and place where the county legislative body shall meet as a board of equalization to hear and determine any complaint against the assessments.

(4) (a) The county legislative body, at the time and place stated in the notice, shall sit as a board of equalization and shall make and determine the benefits to be assessed against each tract of annexed land.

(b) The assessment of benefits shall be added to and made a part of the benefit assessment roll of the drainage district, and thereafter:

(i) all such lands, easements, or interests in land shall be assessed in accordance with the assessment roll; and

(ii) such assessment roll of benefits and taxes or user fees or charges shall be the basis of a lien upon the parcels of land or interest in land as thus equalized for all district purposes and indebtedness.

Section 11. Section 17A-2-622 is amended to read:

17A-2-622. Petition for bond election -- Petition requirements -- Notice and hearing -- Election regarding issuance of bonds.

(1) After a fire protection district has been created, a petition may be presented to the fire protection district board of trustees requesting the board to order an election to determine whether the bonds of the district shall be issued to the amount and for the purpose or purposes stated in the petition. [~~Such petition shall comply in all respects to the requirements of Section 17A-2-602 hereof, except shall be made to the fire protection district board of trustees. After the filing of the petition, the board of trustees' procedure in respect to~~

~~publication of notice, contents of notice, hearing and determination of petition, continuance, objections, determination of amount of bonds shall comply, as nearly as practicable, with Sections 17A-2-603 and 17A-2-604.~~]

(2) (a) Each petition under Subsection (1) shall be signed by 25% or more of the holders of title of real property, or documentary evidence of title, within the boundaries of the district whose names appear as such upon the last county assessment roll.

(b) If the petition is signed by all of the holders of title or documentary evidence of title within the boundaries of the district, a hearing on the petition and election shall be dispensed with.

(3) (a) The board of trustees shall set a time and place for hearing upon the petition, which shall be not less than four nor more than six weeks from the date of the filing.

(b) The board of trustees shall publish a notice of the time of the hearing once each week for three successive weeks, previous to the time of the hearing, in a newspaper published within the county, or if there is no newspaper so published, then by posting the notice in at least three public places in the district for a period of 15 days.

(c) Each notice under Subsection (3)(b) shall state that any taxpayer within the district may appear on the date fixed for the hearing and offer objection to the issuance of bonds of such district.

(4) (a) At the time and place fixed for the hearing on the petition or at any adjournment or adjournments of the hearing, which shall not extend the time for determining the petition for more than 30 days in all from the original date of hearing, the board of trustees shall hear the petition and all competent and relevant evidence, oral or written, in support of or in objection to the petition.

(b) The board of trustees shall, after a full hearing, determine whether an election should be held on the question of issuing the bonds.

[~~(2)~~] (5) Adoption of [~~the~~] a resolution calling the election, determination of voters' qualifications, notice and conduct of the election, and the canvass of election results shall be accomplished in the manner prescribed in Title 11, Chapter 14, Utah Municipal Bond Act. The fire protection district board of trustees, for purposes of the election, may treat the entire district as a single precinct or divide the district into several precincts and it may fix such polling places as they consider appropriate.

Section 12. Section 17A-2-706 is amended to read:

17A-2-706. Regular election of district for electing board members -- Election provisions -- Official bond -- Fiscal agents.

(1) [~~The~~] Except as provided in Subsection (2), the regular election of the district, for the purpose of electing a board of trustees, shall be held according to the procedures and requirements of Title 17A, Chapter 1, Part 3, Special District Board Selection Procedures.

(2) (a) Each ballot used in an election under Subsection (1) shall contain the names of the persons to be voted for as members of the board of trustees.

(b) Each landowner may vote for three trustees, one for each division.

(c) Each elector is entitled to cast one vote for each acre-foot of water or fraction of acre-foot allotted to the land owned by the elector.

(d) The board of trustees shall:

(i) meet on the first Monday next succeeding the election under Subsection (1) and canvass the returns of the election;

(ii) declare the persons receiving the highest number of votes for the several offices to be duly elected to the office; and

(iii) file the returns with the county clerk.

[~~(2)~~] (3) (a) If any district organized under this part is appointed fiscal agent of the United States or is authorized by the United States to collect money for and on behalf of the United States in connection with any federal project, each trustee shall execute an additional official bond in whatever sum that the Secretary of the Interior requires, conditioned upon the faithful discharge of the duties of the trustee's office.

(b) The district shall execute an additional bond for the faithful discharge by the district of its duties as fiscal or other agent of the United States under that appointment or authorization.

(c) Those additional official bonds shall be filed in the office of the county clerk.

(d) The United States or any person injured by the failure of a trustee or of the district to fully, promptly, and completely perform their respective duties may sue upon those official bonds.

Section 13. Section 17A-2-714 is amended to read:

17A-2-714. Judicial notice -- Presumptions as to organization.

[~~Judicial~~] For a district created before March 23, 1998, judicial notice shall be taken in all actions, suits, and judicial proceedings in any court of this state of the organization and existence of any irrigation district of this state, [~~now or hereafter organized,~~] from and after the filing in the office of the county clerk of the order of the county legislative body [~~mentioned in Section 17A-2-705~~] creating the district and a certified copy of the order shall be prima facie evidence in all actions, suits and proceedings in any court of this state of the regularity and legal sufficiency of all acts, matters, and proceedings [~~therein recited and set forth~~] relating to the creation of the district; and any such irrigation district, in regard to which any such order has been heretofore or may hereafter be [~~entered~~] issued, and which has exercised or shall exercise the rights and powers of such a district, and shall have

had or shall have in office a board of trustees exercising the duties of their office, the legality or regularity of the formation or organization whereof shall not have been questioned by proceedings in quo warranto instituted in the district court of the county in which such district or the greater portion thereof is situated within one year from the date of such filing, shall be conclusively considered to be a legally and regularly organized, established and existing irrigation district within the meaning of this part, and its due and lawful formation and organization shall not thereafter be questioned in any action, suit or proceeding whether brought under the provisions of this part or otherwise.

Section 14. Section 17A-2-715 is amended to read:

17A-2-715. Issuance of bonds -- Special election -- Contract with the United States -- Additional bonding -- Validation of previous issues.

For the purpose of constructing or purchasing or acquiring necessary reservoir sites, reservoirs, water, water filings, water rights, canals, ditches and works, stock of irrigation, canal, or reservoir companies, and other necessary property and rights, for the assumption of any indebtedness to the United States, for the purpose of paying interest upon the bonds herein authorized during the period of construction and for not more than four years thereafter, and otherwise carrying out the provisions of this part, the board of trustees of any such district shall as soon after such district has been organized as may be practicable, estimate and determine the amount of money necessary to be raised for such purposes, and shall forthwith call a special election, at which election shall be submitted to the landowners of such district, possessing the qualifications prescribed by this part, the question of whether or not the bonds of the district shall be issued in the amount so determined. Notice of such election shall be given by posting notice in one public place in each election precinct in the district for at least 20 days, and also by publication in the manner prescribed in [~~Section 17A-2-702~~] Subsection 17A-2-751(2). Such notice shall specify the time of holding the election, the amount and purpose of bonds proposed to be issued, and the election must be held and the result thereof determined and declared in all respects as nearly as possible in conformity with the provisions of this part governing the election of officers; provided, that no informalities in conducting such election shall invalidate the same, if the elections have been otherwise fairly conducted. At such election, the ballots shall contain the words "Bonds -- Yes," or "Bonds -- No," or words equivalent thereto. If a two-thirds majority of the votes cast at such election are "Bonds --Yes," the board of trustees shall cause the bonds to be executed and payable in series as follows, to wit:

Not later than at the expiration of 11 years, and annually, after the date of first payment of principal amount, a certain percentage, not less than 3%, of the whole amount and number of the bonds; at the expiration of the final period for which the bonds have been issued, which period shall in no event exceed 40 years, a percentage sufficient to pay off the remainder of the bonds; that the several enumerated percentages be of the entire amount of the bond issue; that each bond must be payable at the given time for its entire amount, and not for percentage. That the bonds shall bear interest at the rate of not to exceed 6% per annum, payable semiannually on the 1st day of June and December of each year.

The principal and interest shall be payable at the office of the county treasurer of the county in which the organization of the district was effected as aforesaid, and at such other places as the board of trustees may designate in such bonds. The bonds shall be each of the denomination of not less than $100, nor more than $1,000, shall be negotiable in form, executed in the name of the district and signed by the chair and secretary and the seal of the district shall be affixed thereto. Bonds deposited with the United States may call for the payment of such interest not exceeding 6% per annum, may be of such denomination, and may call for the repayment of the principal at such times as may be agreed upon between the board and the United States, and where contract is made and bonds are not deposited with the United States, the contract may likewise call for the repayment of the principal at such time as may be agreed upon. The bonds shall be numbered consecutively as executed and bear the date of authorization. Coupons for the interest shall be attached to each bond bearing the printed or lithographed facsimile of the signature of the chair and the secretary. The bonds shall express on their face that they are issued by the authority of this part, stating its title and date of approval. The secretary shall keep a record of the bonds sold, their number, date of sale, the price received, the name of the purchaser and may keep a transfer register; provided, any such district may provide for the issuance of bonds that will mature in any number of years less than 40, and arrange for the payment thereof, in series as above provided; provided, further, that when the money obtained from any previous issue of bonds has become exhausted by expenditures, herein authorized therefor, and it becomes necessary to raise additional money for such purposes, additional bonds may be issued after submitting the question at a special election to the qualified voters of the district, and otherwise complying with the provisions of this section in respect to an original issue of such bonds; provided, also that the lien for taxes, for the payment of interest and principal for any bond issue, or for any indebtedness under any contract with the United States for or with which bonds have not been deposited, shall be a prior lien to that of any subsequent bond issue.

All bonds heretofore executed by any irrigation district wherein the proceedings for the organization of such district and authorizing the issuance of such bonds have been approved and confirmed by the district court of the judicial district within which such irrigation district is located, are hereby confirmed and validated.

Section 15. Section 17A-2-730 is amended to read:

17A-2-730. Exclusion of lands from district.

[~~Lands~~] (1) Land may be [~~included in or~~] excluded from [~~any~~] an irrigation district[~~, now or hereafter organized under the provisions of~~] as provided in this part[~~, in the manner herein prescribed; but any such inclusion or~~].

(2) An exclusion of [~~lands shall~~] land may not impair or affect the district organization or its rights in or to property, or any of its rights or privileges [~~of whatsoever kind or nature~~], nor [~~shall~~] may it affect, impair, or discharge any contract, obligation, lien, or charge for or upon which it was or might become liable or chargeable had [~~such inclusion or~~] the exclusion [~~of lands~~] not [~~been made; provided that in case~~] occurred.

(3) If a contract has been made between the district and the United States as provided in this part, no [~~lands shall~~] land may be [~~included in or~~] excluded from the district until the United States [~~shall assent thereto~~] consents in writing to the exclusion and [~~such assent be~~] the consent is filed with the board of [~~directors~~] trustees.

Section 16. Section 17A-2-738 is amended to read:

17A-2-738. Redivision of districts.

At least 30 days before the next general election of [~~such~~] a district[~~, after the inclusion~~] under this part following an annexation of lands under Title 17B, Chapter 2, Part 5, Annexation, that occurs on or after June 1, 2001, or following an exclusion of land under this part, the board of [~~directors thereof~~] trustees shall make an order redividing [~~such~~] the district into three divisions as nearly equal in size as [~~may be~~] practicable[~~, which~~]. The divisions shall be numbered first, second, and third, and one [~~director~~] trustee shall [~~thereafter~~] be elected from each division.

Section 17. Section 17A-2-741 is amended to read:

17A-2-741. Notice of petition -- Objections.

The secretary of the board of trustees shall cause a notice of the filing of such petition to be published as in [~~Section 17A-2-702~~] Subsection 17A-2-751(2) provided; or if no newspaper be published as therein provided, then by posting such notice for the same time in at least three public places in the district, and in case of the posting of those notices, one of the notices shall be so posted on the lands proposed to be excluded. The notice shall state the filing of such petition, the names of the petitioners, description of the lands mentioned in the petition, and the prayer of the petitioners; and it shall notify all persons interested to appear at the office of the board at a time named in the notice, and show cause in writing, if any they have, why the petition should not be granted. The time to be specified in the notice at which they shall be required to show cause shall be the regular meeting of the board next after the expiration of the time for the publication of the notice. The petitioner or petitioners shall advance to the secretary sufficient money to pay the estimated cost of all proceedings under such petition before the secretary shall give such notice.

Section 18. Section 17A-2-749 is amended to read:

17A-2-749. Special proceedings for judicial examination.

The board of trustees of an irrigation district [~~organized under the provisions of this part~~] may commence special proceedings, in and by which all proceedings had in the organization of the district or in and by which its acts and the acts of the district in authorizing the issue and sale of the bonds of the district or providing for the authorization of contract with the United States and the validity of such contract, whether the bonds or any of them have or have not been sold or disposed of, or such contract or proposed contract shall or shall not have been actually signed by the United States or the district, may be judicially examined, approved and confirmed.

Section 19. Section 17A-2-751 is amended to read:

17A-2-751. Notice -- Contest -- Time for hearing.

(1) The court shall fix the time for the hearing of the petition and shall order the clerk of the court to give and publish notice of the filing of the petition. [~~The notice shall be given and published as in Section 17A-2-702.~~]

(2) (a) The notice required under this section shall be published once a week for three consecutive weeks in a newspaper of general circulation in the county or, if the district is located in more than one county, in the counties in which the district is located, with the last publication being at least one week before the date set for the hearing.

(b) The notice shall state the time and place fixed for the hearing of the petition and the prayer of the petitioners, and that any person interested in the organization of the district, or in the proceedings for the issue or sale of the bonds, or in the making of contract with the United States, may, on or before the day fixed for the hearing of the petition, [~~demur to or~~] answer the petition.

(c) The petition may be referred to and described in the notice as the petition of the board of trustees of _____ irrigation district (giving its name) praying that the proceedings for the issue and sale of the bonds of the district, or that the proceedings for the contract with the United States, or the proceedings had for the organization of the district and the validity thereof, be examined, approved and confirmed by the court.

Section 20. Section 17A-2-752 is amended to read:

17A-2-752. Parties -- Appearances -- Practice and procedure.

Any person interested in the district, or in the issue or sale of the bonds, or in the making of contract with the United States, may [~~demur to or~~]

answer the petition. The provisions of the Code of Civil Procedure respecting the [~~demurrer and~~] answer to a verified complaint shall be applicable to [~~a demurrer and~~] an answer to the petition. The person so [~~demurring or~~] answering the petition shall be the defendant to the special proceedings, and the board of trustees shall be the plaintiff. Every material statement of the petition not specifically controverted by the answer shall, for the purpose of the special proceedings, be taken as true, and each person failing to answer the petition shall be considered to admit as true all the material statements of the petition. The rules of pleading and practice relating to appeals and writs of error provided by the Rules of Civil Procedure which are not inconsistent with the provisions of this part are applicable to the special proceedings herein provided for.

Section 21. Section 17A-2-754 is amended to read:

17A-2-754. Transfer of water rights -- Notice to landowners.

The board of trustees of any irrigation district, with the consent of the bondholders and other creditors, may sell, transfer, and convey the water rights and all or any other property belonging to the district to any irrigation company; provided, however, that no such sale, transfer, or conveyance shall be made until notice of the intention of the board to make the same shall have been published, as in [~~Section 17A-2-702~~] Subsection 17A-2-751(2), and mailed to each landowner in the district at his last known address at least 30 days prior to the expiration of the time fixed for protest, and provided further that no such sale, transfer, or conveyance shall be made if within 30 days from the last publication of such notice the owners of 1/3 of the acre-feet of water allotted in the district file with the board their written protest against such sale, transfer, or conveyance.

Section 22. Section 17A-2-758 is amended to read:

17A-2-758. Local improvement districts.

In the event the board shall find the proposed local improvement feasible, it shall approve the petition, fix a time and place for the hearing thereof, and shall publish notice thereof, as in [~~Section 17A-2-702~~] Subsection 17A-2-751(2), stating that the certain lands, describing them, are proposed to be organized as a local improvement district and stating generally the nature of the proposed improvements; that warrants for such local improvement are proposed to be issued as the warrants of the irrigation district; and that the lands within the local improvement district are to be assessed for such improvement. At the time and place of hearing named in the notice all persons interested may appear before the board and show cause for or against the formation of the proposed improvement district and the issuance of warrants as aforesaid. Upon the hearing the board shall determine whether or not the proposed local improvement district shall be established. Any landowner whose lands can be served or will be benefitted by the proposed improvement may make application to the board at the time of hearing to include such lands, and the board of trustees in such case may, at their discretion, include such lands within such district. The board of trustees may exclude any land specified in the notice from the district, provided that in the judgment of the board the inclusion thereof will not be practicable.

Section 23. Section 17A-2-759 is amended to read:

17A-2-759. Establishment -- Limit as to costs -- Authorization -- Construction warrants -- Orders.

If the board determines in favor of the improvement it shall enter an order establishing the improvement district and shall list and plat lands included therein, and shall adopt plans for the proposed improvement, estimate the cost, and determine the number of equal annual installments, in which the cost of the improvement shall be paid; provided, however, that no local improvement, the cost of which will exceed $10,000 and be less than $25,000, may be undertaken unless such improvement is first authorized and ratified, in writing, by a majority of the landowners within the local improvement district; nor may any improvement the cost of which will exceed $25,000 be undertaken unless first authorized and ratified, in writing, by a two-thirds majority of the landowners within the local improvement district, and not then if protests, in writing, signed by landowners of the irrigation district having a majority of the votes according to the number of votes cast at the last election, be submitted within 30 days after completion of publication of notice of the proposed improvement, published as in [~~Section 17A-2-702~~] Subsection 17A-2-751(2). The cost of such improvement shall be paid by the issuance of the warrants of the district, from time to time, therefor, either directly for the payment of the labor and material or for the securing of the funds for such purposes. The warrants shall bear interest at a rate of not to exceed 7% per annum, payable semiannually, and shall state upon their face that they are issued as warrants of the irrigation district for the benefit of the local improvement district within the irrigation district, that all lands within the local improvement district shall be primarily liable to assessment for the principal and interest of the warrants, and that such warrants are also a general obligation of the district. No warrant may be issued in denomination exceeding $500 and no warrant shall be sold for less than par. A copy of the order establishing any local improvement district, together with list and plat of lands included, certified by the chair and secretary, shall be filed in the office of the clerk of the county in which the lands are located and recorded in [~~accordance with the provisions of Section 17A-2-705 relating to the filing and recording of the order declaring the organization of the irrigation district~~] the office of the recorder of the same county.

Section 24. Section 17A-2-801 is amended to read:

17A-2-801. Title.

This act shall be known as the "Metropolitan Water District Act." [~~and shall apply to the incorporation, organization, government, maintenance and operation of the water districts herein provided for and described, and to the board of trustees herein referred to.~~]

Section 25. Section 17A-2-803 is amended to read:

17A-2-803. Purpose of metropolitan water district.

[~~(1) Metropolitan~~] A metropolitan water [~~districts~~] district may [~~be organized hereunder for the purpose of acquiring, appropriating, developing, storing, selling, leasing and distributing~~] acquire, appropriate, develop, store, sell, lease, and distribute water for, and [~~devoting~~] devote water to, municipal and domestic purposes, irrigation, power, milling, manufacturing, mining, metallurgical and any and all other beneficial uses[~~, and such district may be formed of the territory included within the corporate boundaries of any one or more municipalities, which need not be contiguous, and may be organized and incorporated and thereafter governed, maintained and operated as herein provided, and when so incorporated shall have and exercise such powers as are herein expressly granted, together with such powers as are reasonably implied herefrom and necessary and proper to carry out the objects and purposes of such incorporated districts. Each such district when so incorporated shall be a separate and independent political corporate entity~~].

[~~(2) All provisions of this part that establish, govern, or state the requirements and procedure for the creation of a metropolitan water district:~~]

[~~(a) are superseded by the provisions of Title 17B, Chapter 2, Part 2, Creation of Local Districts, with respect to the creation of a metropolitan water district; and~~]

[~~(b) remain valid to the extent they establish, govern, or state the requirements or procedure for annexation to an existing metropolitan water district.~~]

Section 26. Section 17A-2-842 is amended to read:

17A-2-842. Withdrawal from metropolitan water district.

[~~Any~~] (1) A municipality whose corporate area has become or is a part of [~~any~~] a metropolitan water district may withdraw [~~therefrom in the following manner:~~] from the district as provided in this section.

(2) The [~~governing~~] legislative body of any such municipality may submit to the [~~electors thereof~~] voters of the municipality at any general or special election the proposition of withdrawing from [~~any~~] a metropolitan water district [~~incorporated thereunder~~]. [~~Notice of such election shall be given in the manner provided in Subsection 17A-2-841(3)(e). Such~~]

(3) The municipal legislative body shall give notice of the election by:

(a) posting the notice at least ten days and in three public places in the municipality; or

(b) publishing the notice once in a newspaper of general circulation in the municipality at least ten days before the date fixed for the election.

(4) (a) Each election under this section shall be conducted and the returns [~~thereof~~] canvassed in the manner provided by law for the conduct of municipal elections in the [~~city~~] municipality. [~~In the event that the~~]

(b) If a majority of the electors voting [~~thereon~~] on the withdrawal question vote in favor of [~~such~~] withdrawal, the result [~~thereof~~] shall be certified by the [~~governing~~] legislative body of [~~such~~] the municipality to the board of trustees of the district. [~~A certificate of the proceedings hereunder shall be made by the~~]

(5) (a) The secretary of the district shall prepare and [~~filed~~] file with the lieutenant governor[~~, and upon~~] a certificate of the withdrawal proceedings.

(b) Upon the filing of [~~such~~] a certificate under Subsection (5)(a), the area of the municipality [~~so~~] withdrawing shall be excluded from the metropolitan water district[~~,~~] and shall no longer be a part [~~thereof; provided, however, that the property~~] of the district.

(6) Property within the municipality [~~as it exists~~] that is within the withdrawn area at the time of [~~such~~] the exclusion shall continue taxable for the purpose of paying the bonded and other indebtedness outstanding or contracted for, at the time of such exclusion and until such bonded or other indebtedness has been satisfied.

Section 27. Section 17A-2-1048 is amended to read:

17A-2-1048. Board of trustees representation for newly annexed area.

[~~Additional municipalities and county areas may be included within or become part of a district by either of the following methods:~~]

[~~(1) If any area is annexed to or consolidated with any municipality which is a part of a district organized under these provisions, the annexed or consolidated area shall by virtue of its annexation or consolidation become part of the district and be taxable in accordance with the provisions of this part to pay the indebtedness of the district outstanding at the time of annexation or consolidation.~~]

[~~(2) The governing body of any municipality or of any county may apply to and obtain from the comptroller of the district a financial statement showing the financial condition of the district, its assets and liabilities, taxable value of taxable property according to the last assessment, and the names of the municipalities and a description of other areas included in the district. After consideration of the statement, the governing body of the municipality or county may apply to the board of trustees of the district for consent to annex the~~

~~municipality or described county area. The board of trustees after reasonable notice and public hearing may grant or deny the application and in granting it may fix the terms and conditions upon which the area may be annexed. The action of the board of trustees evidenced by order made on motion shall be promptly transmitted to the governing body or bodies of the entities applying for annexation, which shall promptly submit the proposition of annexation to the qualified electors of the area. Notice of election shall be given by posting or publication. When notice is given by posting, notice shall be posted for at least ten days in three public places in each area to be annexed. When notice is given by publication, notice shall be published at least once ten days before the date fixed for election in a newspaper of general circulation in the municipality and county area. Publication may be made in one newspaper having general circulation in each of the areas sought to be annexed. Notice shall contain the substance of the terms and conditions fixed by the board of trustees. Elections shall be conducted and returns canvassed by the governing bodies of the areas seeking annexation. If the annexation proposition receives the affirmative vote of a majority of the electors, the governing body of the municipality or county shall certify the election results to the board of trustees of the district and a certificate of proceedings shall be made by the secretary of the district and filed with the lieutenant governor. Upon filing the certificate in the office of the lieutenant governor, the municipality or county area shall become an integral part of the district and the taxable property in the municipality or area subject to taxation for the purposes of the district, including the payment of bonds and other obligations of the district at the time authorized or outstanding.~~]

[~~(3) No action to contest the validity of annexation proceedings may be commenced more than three months after the certificate of proceedings is filed with the lieutenant governor.~~]

[~~(4)~~] Upon the completion of an annexation under Title 17B, Chapter 2, Part 5, Annexation, the annexed area shall have a representative on the board of trustees on the same basis as it would have had if it had been included in the district as originally organized.

Section 28. Section 17A-2-1049 is amended to read:

17A-2-1049. Withdrawal from public transit district.

(1) Any municipality or unincorporated county area may withdraw from the district as provided in [~~the following manner:~~] this section.

(2) (a) The [~~governing~~] legislative body of [~~such~~] a municipality seeking withdrawal, or, for an unincorporated area seeking withdrawal, the county, may submit to the electors at a special election a proposition for withdrawal from the district.

(b) Notice of election shall be given [~~in the manner provided in Section 17A-2-1048.~~] by:

(i) posting notice for at least ten days in three public places in each area to be withdrawn; or

(ii) publishing notice in a newspaper of general circulation in each municipality and unincorporated county area seeking withdrawal at least once ten days before the date of the election.

(3) Elections shall be conducted and returns canvassed in the manner provided by law for the conduct of municipal elections.

(4) (a) If a majority of the electors voting [~~thereon~~] on the withdrawal question vote in favor of withdrawal, the result [~~thereof~~] shall be certified by the [~~governing~~] legislative body of the municipality or, for an unincorporated area, the county, to the board of trustees of the district and filed with the lieutenant governor.

(b) Withdrawal shall become effective upon filing the certificate with the lieutenant governor.

(5) Taxable property within the withdrawn area at the time of exclusion shall continue taxable for purposes of paying any bonded indebtedness or judgments against the district incurred prior to the date of withdrawal.

Section 29. Section 17A-2-1420 is amended to read:

17A-2-1420. Organization of subdistricts -- Authority -- Bonds -- Board of trustees -- Powers -- Validation of proceedings -- Separability clause.

(1) Subdistricts may be organized upon the petition of owners of real property, within or partly within and partly without the district, which petition shall be in substantially the same form and shall fulfill the same requirements concerning the subdistricts as the petition outlined in [~~Section 17A-2-1404~~] Subsection 17B-2-203(1) is required to fulfill concerning the organization of the main district. The petition shall also contain a statement of the initial quantity of water which the subdistrict proposes to acquire from the district for perpetual use[~~, and the court shall, prior to the entry of its decree organizing a subdistrict, require that the~~]. The petitioners shall attach to the petition written evidence of the consent of the board of trustees of the district to furnish each subdistrict the perpetual use of water for the purpose specified. [~~Petitions for the organization of subdistricts shall be filed with the clerk of the court and shall be accompanied by a bond as provided for in Section 17A-2-1405.~~] The procedure for the organization of subdistricts shall be the same as for the organization of districts[~~, except that the provisions of Section 17A-2-1404 respecting the minimum taxable value of land and improvements within districts does not apply to subdistricts~~]. A subdistrict shall be a separate entity within the district, may contract with the district for the furnishing of water and for other purposes, and in addition to any other authority granted under this part, may issue its bonds pursuant to and in conformity with the provisions of this part for the following purposes: (a) acquiring or constructing all or part of an irrigation water system to be operated by the subdistrict for the purpose of providing irrigation water for

agricultural and residential land within the boundaries of the subdistrict, including as a part of the subdistrict, the purchase or acquisition of stock in canal companies, water companies, and water users' associations and the acquisition or purchase of water rights and sources of water supply; and (b) constructing water pipelines and storage works, purchase of water and water rights, operation of waterworks systems for the purpose of providing municipal water within the boundaries of the subdistrict and for this purpose the subdistrict board has the same powers, rights, and privileges granted to a district board referred to in Sections 17A-2-1413, 17A-2-1421, 17A-2-1422, and 17A-2-1424, to carry out its separate purposes under the provisions of this part. The subdistrict board may contract with the district for the furnishing of water for the purposes as stated in the initial petition as well as other purposes. Within 30 days after entering the decree incorporating a subdistrict, the county legislative body of the county shall appoint a board of trustees of the subdistrict not exceeding seven persons who are owners of real property in the subdistrict and who are not trustees of the district. Vacancies in subdistricts shall be filled by the county legislative body of the county. The board of trustees of a subdistrict has all of the powers, rights, and privileges granted to a district board, including specifically, but not limited to, the right of the subdistrict board to levy and collect taxes and assessments referred to in Sections 17A-2-1423 through 17A-2-1430, to carry out its separate purposes, including the payment of principal and interest on bonds payable in whole or in part from the proceeds of assessments and taxes levied under this part issued by the subdistrict under this part. These taxes and assessments may be levied and collected by a subdistrict, notwithstanding the fact that taxes and assessments are being levied and collected by the district in which the subdistrict may lie, to carry out the district purposes; but the taxes levied and collected pursuant to Section 17A-2-1423 may not exceed .0002 per dollar of taxable value of taxable property within the subdistrict to pay the expenses of its organization and administration and may not exceed .0002 per dollar of taxable value of taxable property for all purposes.

(2) Each subdistrict created under this section may exercise all powers granted to subdistricts under this part, it being expressly found and determined that all taxable property lying in each subdistrict will be benefitted by the acquisition or construction of the improvements acquired or constructed by the district to an amount not less than the aggregate of the taxes and assessments levied against the property to pay for the cost of acquisition or construction. Wherever proceedings are adopted under authority of this part purporting to create any subdistrict, all proceedings in connection with the creation of each subdistrict are validated, ratified, and confirmed, notwithstanding any failure to comply with any one or more pertinent statutory provisions; and each subdistrict is declared to be a validly created and existing subdistrict under authority of law.

(3) If any provision of this part, or the application of any provision to any person or circumstance, is held invalid, the remainder of this part is not affected.

Section 30. Section 17A-2-1821 is amended to read:

17A-2-1821. Annexation areas to be included in election districts.

[~~(1) The board of trustees shall annex the area by enacting a resolution that:~~]

[~~(a) declares the area to be annexed;~~]

[~~(b) determines and establishes the boundaries of the area that is annexed, which may not exceed the territory that had been proposed to be annexed; and~~]

[~~(c) sets forth in detail whether the services are to be paid for by a property tax, service charge, or a combination of both.~~]

[~~(2) If an election has been held as provided in Section 17A-2-1820, and a majority of the qualified electors voting on the proposed annexation vote in favor of the annexation, the board of trustees shall adopt the resolution required under Subsection (1).~~]

[~~(3) The resolution may contain any changes that the board of trustees considers necessary, including the reduction of the boundaries of the annexation area.~~]

[~~(4) (a) The board of trustees shall file a certified copy of the annexation resolution with:~~]

[~~(i) the recorder of the county where the regional service area is located; and~~]

[~~(ii) the State Tax Commission, along with evidence that the information has been recorded by the county recorder.~~]

[~~(b) Upon the filing with the county recorder, the annexation shall be complete and the area described in the annexation resolution shall be part of the regional service area.~~]

[~~(5) (a) Any aggrieved property owner or person qualified to vote, who has filed a signed written protest within 90 days after the end of the hearing, may appeal the decision of the board of trustees to annex the area to the district court.~~]

[~~(b) In the appeal, the district court shall affirm the annexation unless the protesting property owner or qualified elector can establish by clear and convincing evidence:~~]

[~~(i) that the board of trustees failed substantially to follow the procedural requirements for annexation under this part; or~~]

[~~(ii) that written protests were timely filed as required by Section 17A-2-1819.~~]

[~~(c) If an appeal is not filed within 30 days after the effective date of the resolution annexing the area, the annexation shall be final and conclusive.~~]

[~~(6) (a) If the annexation is based upon a referendum election as provided in Section 17A-2-1820, any person qualified to vote who voted~~

~~against the annexation in the referendum election may appeal the annexation to the district court.~~]

[~~(b) In the appeal, the district court shall affirm the annexation unless the registered voter challenging the annexation can establish by clear and convincing evidence:~~]

[~~(i) that there was an irregularity in the election that affected the outcome of the vote; or~~]

[~~(ii) that a majority of the qualified persons casting ballots in the referendum election voted against annexation.~~]

[~~(c) If an appeal is not filed within 30 days after the effective date of the resolution annexing the area pursuant to a referendum election, the annexation shall be final and conclusive.~~]

[~~(7) (a) Upon a signed petition by the property owner or person qualified to vote made within the time for filing protests as provided in Section 17A-2-1819, the board of trustees shall exclude land from the area to be annexed if:~~]

[~~(i) the land is contiguous to other land not included in the regional service area; and~~]

[~~(ii) the board of trustees finds that the land, the real property owner, or the residents of the land will not benefit from any of the services provided or proposed to be provided by the regional service area.~~]

[~~(b) The land may be included within the boundaries of the regional service area at the request of the owner.~~]

[~~(8)~~] If the regional service area has been divided into election districts, all [~~annexed~~] areas annexed to the regional service area under Title 17B, Chapter 2, Part 5, Annexation, shall be included in a trustee election district.

[~~(9) Voter registration records of the county shall be conclusive evidence of residency in the annexation area.~~]

Section 31. Section 17A-3-244, which is renumbered from Section 17A-2-326 is renumbered and amended to read:

[~~17A-2-326~~]. 17A-3-244. Dissolution of districts -- Payment of claims.

Any special improvement district created under [~~the authority of Chapter 2, Part 3 or Chapter 3, Part 2,~~] this part may be dissolved by order of the district court of the county in which it was created, upon a hearing had upon a petition to the court signed by the governing body of the district. Said petition shall recite the reasons for the dissolution, that a resolution has been adopted to dissolve the district, that all claims and demands against the district have been paid or that provision has been made for the payment thereof.

The court shall fix a day for the hearing thereon, not less than 30 or more than 60 days after the petition is filed, and shall order that the clerk publish a notice of the said petition and hearing in a newspaper of general circulation once a week for four successive weeks prior to such hearing. Such notice shall specify the district to be dissolved, the date, time and place of said hearing, and shall provide that all persons who have any objections to the dissolution of said district shall file such objections in the office of said clerk of said court at or prior to the date of said hearing, and all persons who have any claim against said district must present the same duly itemized and verified by the affidavit of the claimant at or prior to the time of said hearing or be forever barred from thereafter asserting said claims, and said notice shall be signed by the clerk of said court. No district shall be ordered dissolved until said claims shall have been paid or until provision has been made for the payment thereof, either by the levying and collecting of assessments or by other means approved by the court.

Section 32. Section 17B-2-101 is amended to read:

17B-2-101. Definitions.

As used in this chapter[~~, "local~~]:

(1) "Local district" means a local government entity, created according to the provisions of Part 2, Creation of Local Districts, that is not a general purpose government entity but is a separate legal and corporate entity and a political subdivision of the state, authorized to provide limited services in a defined geographic area, as provided in Part 2, Creation of Local Districts.

(2) "Municipal" means of or relating to a municipality.

(3) "Municipality" means a city or town.

(4) "Political subdivision" means a county, city, town, local district under this chapter, independent special district under Title 17A, Chapter 2, Independent Special Districts, an entity created by interlocal cooperation agreement under Title 11, Chapter 13, Interlocal Cooperation Act, or any other governmental entity designated in statute as a political subdivision of the state.

(5) "Private," with respect to real property, means not owned by the United States or any agency of the federal government, the state, a county, a municipality, a school district, an independent special district under Title 17A, Chapter 2, Independent Special Districts, a local district, or any other political subdivision of the state.

(6) "Unincorporated" means not included within a municipality.

Section 33. Section 17B-2-102 is enacted to read:

17B-2-102. Property owner provisions.

(1) For purposes of this chapter:

(a) the owner of real property shall be the fee title owner according to the records of the county recorder on the date of the filing of the request or petition; and

(b) the value of private real property shall be determined according to the last assessment before

the filing of the request or petition, as determined by:

(i) the county under Title 59, Chapter 2, Part 3, County Assessment, for property subject to assessment by the county;

(ii) the State Tax Commission under Title 59, Chapter 2, Part 2, Assessment of Property, for property subject to assessment by the State Tax Commission; or

(iii) the county, for all other property.

(2) For purposes of each provision of this chapter that requires the owners of private real property covering a percentage of the total private land area within the proposed local district to sign a request, petition, or protest:

(a) a parcel of real property may not be included in the calculation of the required percentage unless the request or petition is signed by:

(i) except as provided in Subsection (2)(a)(ii), owners representing a majority ownership interest in that parcel; or

(ii) if the parcel is owned by joint tenants or tenants by the entirety, 50% of the number of owners of that parcel;

(b) the signature of a person signing a request or petition in a representative capacity on behalf of an owner is invalid unless:

(i) the person's representative capacity and the name of the owner the person represents are indicated on the request or petition with the person's signature; and

(ii) the person provides documentation accompanying the request or petition that reasonably substantiates the person's representative capacity; and

(c) subject to Subsection (2)(b), a duly appointed personal representative may sign a request or petition on behalf of a deceased owner.

Section 34. Section 17B-2-201 is amended to read:

17B-2-201. Definitions.

[~~(1)~~] As used in this part:

[~~(a)~~] (1) "Applicable area" means:

[~~(i)~~] (a) for a county, the unincorporated area of the county that is included within the proposed local district; or

[~~(ii)~~] (b) for a municipality, the area of the municipality that is included within the proposed local district.

[~~(b) "Municipal" means of or relating to a municipality.~~]

[~~(c) "Municipality" means a city or town.~~]

[~~(d)~~] (2) "Petition" means a petition under Subsection 17B-2-203(1)(a) or (b).

[~~(e) "Political subdivision" means a county, city, town, local district under this chapter, independent special district under Title 17A, Chapter 2, Independent Special Districts, or an entity created by interlocal cooperation agreement under Title 11, Chapter 13, Interlocal Cooperation Act.~~]

[~~(f) "Private," with respect to real property, means not owned by the United States or any agency of the federal government, the state, a county, a municipality, a school district, an independent special district under Title 17A, Chapter 2, Independent Special Districts, a local district, or any other political subdivision of the state.~~]

[~~(g)~~] (3) "Property owner petition" means a petition under Subsection 17B-2-203(1)(a).

[~~(h)~~] (4) "Property owner request" means a request under Section 17B-2-204 that is signed by owners of real property as provided in Subsection 17B-2-204(2)(b)(i).

[~~(i)~~] (5) "Registered [~~owner~~] voter request" means a request under Section 17B-2-204 that is signed by registered voters as provided in Subsection 17B-2-204(2)(b)(ii).

[~~(j)~~] (6) "Registered voter petition" means a petition under Subsection 17B-2-203(1)(b).

[~~(k)~~] (7) "Request" means a request as described in Section 17B-2-204.

[~~(l)~~] (8) "Responsible body" means the legislative body of:

[~~(i)~~] (a) the municipality in which the proposed local district is located, if the petition proposes the creation of a local district located entirely within a single municipality;

[~~(ii)~~] (b) the county in which the proposed local district is located, if the petition proposes the creation of a local district located entirely within a single county and all or part of the proposed local district is located within:

[~~(A)~~] (i) the unincorporated part of the county; or

[~~(B)~~] (ii) more than one municipality within the county; or

[~~(iii)~~] (c) if the petition proposes the creation of a local district located within more than one county, the county whose boundaries include more of the area of the proposed local district than is included within the boundaries of any other county.

[~~(m)~~] (9) "Responsible clerk" means the clerk of the county or the clerk or recorder of the municipality whose legislative body is the responsible body.

[~~(n) "Unincorporated" means not included within a municipality.~~]

[~~(2) For purposes of this part:~~]

[~~(a) the owner of real property shall be the record title owner according to the records of the county recorder on the date of the filing of the request or petition; and~~]

[~~(b) the value of private real property shall be determined according to the last assessment before~~

~~the filing of the request or petition, as determined by:~~]

[~~(i) the county under Title 59, Chapter 2, Part 3, County Assessment, for property subject to assessment by the county;~~]

[~~(ii) the State Tax Commission under Title 59, Chapter 2, Part 2, Assessment of Property, for property subject to assessment by the State Tax Commission; or~~]

[~~(iii) the county, for all other property.~~]

[~~(3) For purposes of each provision of this part that requires the owners of private real property covering a percentage of the total private land area within the proposed local district to sign a request, petition, or protest:~~]

[~~(a) a parcel of real property may not be included in the calculation of the required percentage unless the request or petition is signed by:~~]

[~~(i) except as provided in Subsection (3)(a)(ii), owners representing a majority ownership interest in that parcel; or~~]

[~~(ii) if the parcel is owned by joint tenants or tenants by the entirety, 50% of the number of owners of that parcel;~~]

[~~(b) the signature of a person signing a request or petition in a representative capacity on behalf of an owner is invalid unless:~~]

[~~(i) the person's representative capacity and the name of the owner the person represents are indicated on the request or petition with the person's signature; and~~]

[~~(ii) the person provides documentation accompanying the request or petition that reasonably substantiates the person's representative capacity; and~~]

[~~(c) subject to Subsection (3)(b), a duly appointed personal representative may sign a request or petition on behalf of a deceased owner.~~]

Section 35. Section 17B-2-217 is amended to read:

17B-2-217. Limitation on initiating process to create local district.

(1) Notwithstanding any other provision of this part, the process to create a local district under this part may not be initiated before [~~June 1, 2001~~] May 6, 2002.

(2) Subsection (1) does not prohibit the creation of one of the types of independent special districts listed in Subsection 17A-2-101(1) under the provisions of this part.

Section 36. Section 17B-2-501 is enacted to read:

Part 5. Annexation

17B-2-501. Definitions.

For purposes of this part:

(1) "Applicable area" means:

(a) for a county, the unincorporated area of the county that is included within the area proposed for annexation; or

(b) for a municipality, the area of the municipality that is included within the area proposed for annexation.

(2) "Retail" means, with respect to a service provided by a municipality, local district, or independent special district, that the service is provided directly to the ultimate user.

(3) "Wholesale" means, with respect to a service provided by a local district or independent special district, that the service is not provided directly to the ultimate user but is provided to a retail provider.

Section 37. Section 17B-2-502 is enacted to read:

17B-2-502. Annexation of area outside local district.

(1) An area outside the boundaries of a local district may be annexed to the local district, as provided in this part, in order to provide to the area a service that the local district provides.

(2) The area proposed to be annexed:

(a) may consist of one or more noncontiguous areas; and

(b) need not be adjacent to the boundaries of the proposed annexing local district.

Section 38. Section 17B-2-503 is enacted to read:

17B-2-503. Initiation of annexation process -- Petition and resolution.

(1) Except as provided in Sections 17B-2-515 and 17B-2-516, the process to annex an area to a local district may be initiated by:

(a) (i) for a district whose board of trustees is elected by electors based on the acre-feet of water allotted to the land owned by the elector and subject to Subsection (2), a petition signed by the owners of all of the acre-feet of water allotted to the land proposed for annexation; or

(ii) for all other districts:

(A) a petition signed by the owners of private real property that:

(I) is located within the area proposed to be annexed;

(II) covers at least 10% of the total private land area within the entire area proposed to be annexed and within each applicable area; and

(III) is equal in assessed value to at least 10% of the assessed value of all private real property within the entire area proposed to be annexed and within each applicable area; or

(B) a petition signed by registered voters residing within the entire area proposed to be annexed and within each applicable area equal in number to at least 10% of the number of votes cast within the

entire area proposed to be annexed and within each applicable area, respectively, for the office of governor at the last regular general election before the filing of the petition;

(b) a resolution adopted by the legislative body of each county whose unincorporated area includes and each municipality whose boundaries include any of the area proposed to be annexed; or

(c) a resolution adopted by the board of trustees of the proposed annexing local district if, for at least 12 consecutive months immediately preceding adoption of the resolution, the local district has provided:

(i) retail service to the area; or

(ii) a wholesale service to a provider of the same service that has provided that service on a retail basis to the area.

(2) If an association representing all acre-feet of water allotted to the land that is proposed to be annexed to a local district signs a petition under Subsection (1)(a)(i), pursuant to a proper exercise of authority as provided in the bylaws or other rules governing the association, the petition shall be considered to have been signed by the owners of all of the acre-feet of water allotted to the land proposed for annexation, even though less than all of the owners within the association consented to the association signing the petition.

(3) Each petition and resolution under Subsection (1) shall:

(a) describe the area proposed to be annexed; and

(b) be accompanied by a map of the boundaries of the area proposed to be annexed.

(4) The legislative body of each county and municipality that adopts a resolution under Subsection (1)(b) shall, within five days after adopting the resolution, mail or deliver a copy of the resolution to the board of trustees of the proposed annexing local district.

Section 39. Section 17B-2-504 is enacted to read:

17B-2-504. Petition requirements.

(1) Each petition under Subsection 17B-2-503(1)(a) shall:

(a) indicate the typed or printed name and current residence address of each person signing the petition;

(b) separately group signatures by county and municipality, so that all signatures of the owners of real property located within or of registered voters residing within each county whose unincorporated area includes and each municipality whose boundaries include part of the area proposed for annexation are grouped separately;

(c) if it is a petition under Subsection 17B-2-503(1)(a)(i) or (ii)(A), indicate the address of the property as to which the owner is signing the petition;

(d) designate up to three signers of the petition as sponsors, one of whom shall be designated the contact sponsor, with the mailing address and telephone number of each;

(e) be filed with the board of trustees of the proposed annexing local district; and

(f) for a petition under Subsection 17B-2-503(a)(i), state the proposed method of supplying water to the area proposed to be annexed.

(2) By submitting a written withdrawal or reinstatement with the board of trustees of the proposed annexing local district, a signer of a petition may withdraw, or once withdrawn, reinstate the signer's signature at any time:

(a) before the public hearing under Section 17B-2-509 is held; or

(b) if a hearing is not held because of Subsection 17B-2-513(1) or because no hearing is requested under Subsection 17B-2-513(2)(a)(ii)(B), until 20 days after the local district provides notice under Subsection 17B-2-513(2)(a)(i).

Section 40. Section 17B-2-505 is enacted to read:

17B-2-505. Petition certification.

(1) Within 30 days after the filing of a petition under Subsection 17B-2-503(1)(a)(i) or (ii), the board of trustees of the proposed annexing local district shall:

(a) with the assistance of officers of the county in which the area proposed to be annexed is located from whom the board requests assistance, determine whether the petition meets the requirements of Subsection 17B-2-503(1)(a)(i) or (ii), as the case may be, Subsection 17B-2-503(3), and Subsection 17B-2-504(1); and

(b) (i) if the board determines that the petition complies with the requirements, certify the petition and mail or deliver written notification of the certification to the contact sponsor; or

(ii) if the board determines that the petition fails to comply with any of the requirements, reject the petition and mail or deliver written notification of the rejection and the reasons for the rejection to the contact sponsor.

(2) (a) If the board rejects a petition under Subsection (1)(b)(ii), the petition may be amended to correct the deficiencies for which it was rejected and then refiled.

(b) A valid signature on a petition that was rejected under Subsection (1)(b)(ii) may be used toward fulfilling the applicable signature requirement of the petition as amended under Subsection (2)(a).

(3) The board shall process an amended petition filed under Subsection (2)(a) in the same manner as an original petition under Subsection (1).

Section 41. Section 17B-2-506 is enacted to read:

17B-2-506. Notice to county and municipality -- Exception.

(1) Except as provided in Subsection (2), within ten days after certifying a petition under Subsection 17B-2-505(1)(b) the board of trustees of the proposed annexing local district shall mail or deliver a written notice of the proposed annexation, with a copy of the certification and a copy of the petition, to the legislative body of each:

(a) county in whose unincorporated area any part of the area proposed for annexation is located; and

(b) municipality in which any part of the area proposed for annexation is located.

(2) The board is not required to send a notice under Subsection (1) to:

(a) a county or municipality that does not provide the service proposed to be provided by the local district; or

(b) a county or municipality whose legislative body has adopted an ordinance or resolution waiving the notice requirement as to:

(i) the proposed annexing local district; or

(ii) the service that the proposed annexing local district provides.

(3) For purposes of this section, an area proposed to be annexed to a municipality in a petition under Section 10-2-403 filed before and still pending at the time of the filing of a petition under Subsection 17B-2-503(1)(a) shall be considered to be part of that municipality.

Section 42. Section 17B-2-507 is enacted to read:

17B-2-507. Notice of intent to consider providing service -- Public hearing requirements.

(1) (a) If the legislative body of a county or municipality whose applicable area is proposed to be annexed to a local district in a petition under Subsection 17B-2-503(1)(a) intends to consider having the county or municipality, respectively, provide to the applicable area the service that the proposed annexing local district provides, the legislative body shall, within 30 days after receiving the notice under Subsection 17B-2-506(1), mail or deliver a written notice to the board of trustees of the proposed annexing local district indicating that intent.

(b) (i) A notice of intent under Subsection (1)(a) suspends the local district's annexation proceeding as to the applicable area of the county or municipality that submits the notice of intent until the county or municipality:

(A) adopts a resolution under Subsection 17B-2-508(1) declining to provide the service proposed to be provided by the proposed annexing local district; or

(B) is considered under Subsection 17B-2-508(2) or (3) to have declined to provide the service.

(ii) The suspension of an annexation proceeding under Subsection (1)(b)(i) as to an applicable area does not prevent the local district from continuing to pursue the annexation proceeding with respect to other applicable areas for which no notice of intent was submitted.

(c) If a legislative body does not mail or deliver a notice of intent within the time required under Subsection (1)(a), the legislative body shall be considered to have declined to provide the service.

(2) Each legislative body that mails or delivers a notice under Subsection (1)(a) shall hold a public hearing or a set of public hearings, sufficient in number and location to ensure that no substantial group of residents of the area proposed for annexation need travel an unreasonable distance to attend a public hearing.

(3) Each public hearing under Subsection (2) shall be held:

(a) no later than 45 days after the legislative body sends notice under Subsection (1);

(b) except as provided in Subsections (6) and (7), within the applicable area; and

(c) for the purpose of allowing public input on:

(i) whether the service is needed in the area proposed for annexation;

(ii) whether the service should be provided by the county or municipality or the proposed annexing local district; and

(iii) all other matters relating to the issue of providing the service or the proposed annexation.

(4) A quorum of the legislative body of each county or municipal legislative body holding a public hearing under this section shall be present throughout each hearing held by that county or municipal legislative body.

(5) Each hearing under this section shall be held on a weekday evening other than a holiday beginning no earlier than 6:00 p.m.

(6) Two or more county or municipal legislative bodies may jointly hold a hearing or set of hearings required under this section if all the requirements of this section, other than the requirements of Subsection (3)(b), are met as to each hearing.

(7) Notwithstanding Subsection (3)(b), a county or municipal legislative body may hold a public hearing or set of public hearings outside the applicable area if:

(a) there is no reasonable place to hold a public hearing within the applicable area; and

(b) the public hearing or set of public hearings is held as close to the applicable area as reasonably possible.

(8) Before holding a public hearing or set of public hearings under this section, the legislative body of each county or municipality that receives a request

for service shall provide notice of the hearing or set of hearings as provided in Section 17B-2-211.

Section 43. Section 17B-2-508 is enacted to read:

17B-2-508. Resolution indicating whether the requested service will be provided.

(1) Within 30 days after the last hearing required under Section 17B-2-507 is held, the legislative body of each county and municipality that sent a notice of intent under Subsection 17B-2-507(1) shall adopt a resolution indicating whether the county or municipality will provide to the area proposed for annexation within its boundaries the service proposed to be provided by the proposed annexing local district.

(2) If the county or municipal legislative body fails to adopt a resolution within the time provided under Subsection (1), the county or municipality shall be considered to have declined to provide the service.

(3) If a county or municipal legislative body adopts a resolution under Subsection (1) indicating that the county or municipality will provide the service but the county or municipality does not, within 120 days after the adoption of that resolution, take substantial measures to provide the service, the county or municipality shall be considered to have declined to provide the service.

(4) Each county or municipality whose legislative body adopts a resolution under Subsection (1) indicating that the county or municipality will provide the service shall diligently proceed to take all measures necessary to provide the service.

(5) If a county or municipal legislative body adopts a resolution under Subsection (1) indicating that the county or municipality will provide the service and the county or municipality takes substantial measures within the time provided in Subsection (3) to provide the service, the local district's annexation proceeding as to the applicable area of that county or municipality is terminated and that applicable area is considered deleted from the area proposed to be annexed in a petition under Subsection 17B-2-503(1)(a).

Section 44. Section 17B-2-509 is enacted to read:

17B-2-509. Public hearing on proposed annexation.

(1) Except as provided in Sections 17B-2-513 and 17B-2-515, the board of trustees of each local district that certifies a petition that was filed under Subsection 17B-2-503(1)(a)(ii)(A) or (B), receives a resolution adopted under Subsection 17B-2-503(1)(b), or adopts a resolution under Subsection 17B-2-503(1)(c) shall hold a public hearing on the proposed annexation and provide notice of the hearing as provided in Section 17B-2-510.

(2) Each public hearing under Subsection (1) shall be held:

(a) within 45 days after:

(i) if no notice to a county or municipal legislative body is required under Section 17B-2-506, petition certification under Section 17B-2-505; or

(ii) if notice is required under Section 17B-2-506, but no notice of intent is submitted by the deadline:

(A) expiration of the deadline under Subsection 17B-2-507(1) to submit a notice of intent; or

(B) termination of a suspension of the annexation proceeding under Subsection 17B-2-507(1)(b);

(b) (i) for a local district located entirely within a single county:

(A) within or as close as practicable to the area proposed to be annexed; or

(B) at the local district office; or

(ii) for a local district located in more than one county:

(A) (I) within the county in which the area proposed to be annexed is located; and

(II) within or as close as practicable to the area proposed to be annexed; or

(B) if the local district office is reasonably accessible to all residents within the area proposed to be annexed, at the local district office;

(c) on a weekday evening other than a holiday beginning no earlier than 6:00 p.m.; and

(d) for the purpose of allowing:

(i) the public to ask questions and obtain further information about the proposed annexation and issues raised by it; and

(ii) any interested person to address the board regarding the proposed annexation.

(3) A quorum of the board of trustees of the proposed annexing local district shall be present throughout each public hearing held under this section.

(4) (a) After holding a public hearing under this section or, if no hearing is held because of application of Subsection 17B-2-513(2)(a)(ii), after expiration of the time under Subsection 17B-2-513(2)(a)(ii)(B) for requesting a hearing, the board of trustees may by resolution deny the annexation and terminate the annexation procedure if:

(i) for a proposed annexation initiated by a petition under Subsection 17B-2-503(1)(a)(i) or (ii), the board determines that:

(A) it is not feasible for the local district to provide service to the area proposed to be annexed; or

(B) annexing the area proposed to be annexed would be inequitable to the owners of real property or residents already within the local district; or

(ii) for a proposed annexation initiated by resolution under Subsection 17B-2-503(1)(b) or (c), the board determines not to pursue annexation.

(b) In each resolution adopted under Subsection (4)(a), the board shall set forth its reasons for denying the annexation.

Section 45. Section 17B-2-510 is enacted to read:

17B-2-510. Notice of public hearing.

(1) Before holding a public hearing required under Section 17B-2-509, the board of trustees of each proposed annexing local district shall:

(a) mail notice of the public hearing and the proposed annexation to:

(i) if the local district is funded predominantly by revenues from a property tax, each owner of private real property located within the area proposed to be annexed, as shown upon the county assessment roll last equalized as of the previous December 31; or

(ii) if the local district is not funded predominantly by revenues from a property tax, each registered voter residing within the area proposed to be annexed, as determined by the voter registration list maintained by the county clerk as of a date selected by the board of trustees that is at least 20 but not more than 60 days before the public hearing; and

(b) post notice of the public hearing and the proposed annexation in at least four conspicuous places within the area proposed to be annexed, no less than ten and no more than 30 days before the public hearing.

(2) Each notice required under Subsection (1) shall:

(a) describe the area proposed to be annexed;

(b) identify the proposed annexing local district;

(c) state the date, time, and location of the public hearing;

(d) provide a local district telephone number where additional information about the proposed annexation may be obtained; and

(e) except for a proposed annexation under a petition that meets the requirements of Subsection 17B-2-513(1), explain that property owners and registered voters within the area proposed to be annexed may protest the annexation by filing a written protest with the local district board of trustees within 30 days after the public hearing.

Section 46. Section 17B-2-511 is enacted to read:

17B-2-511. Modifications to area proposed for annexation -- Limitations.

(1) (a) Subject to Subsections (2), (3), (4), and (5), a board of trustees may, within 30 days after the pubic hearing under Section 17B-2-509, or, if no public hearing is held, within 30 days after the board provides notice under Subsection 17B-2-513(2)(a)(i), modify the area proposed for annexation to include land not previously included in that area or to exclude land from that area if the modification enhances the feasibility of the proposed annexation.

(b) A modification under Subsection (1)(a) may consist of the exclusion of all the land within an applicable area if:

(i) the entire area proposed to be annexed consists of more than that applicable area;

(ii) sufficient protests under Section 17B-2-512 are filed with respect to that applicable area that an election would have been required under Subsection 17B-2-512(3) if that applicable area were the entire area proposed to be annexed; and

(iii) the other requirements of Subsection (1)(a) are met.

(2) A board of trustees may not add property under Subsection (1) to the area proposed for annexation without the consent of the owner of that property.

(3) Except as provided in Subsection (1)(b), a modification under Subsection (1) may not avoid the requirement for an election under Subsection 17B-2-512(3) if, before the modification, the election was required because of protests filed under Section 17B-2-512.

(4) If the annexation is proposed by a petition under Subsection 17B-2-503(1)(a)(ii)(A) or (B), a modification may not be made unless the requirements of Subsection 17B-2-503(1)(a)(ii)(A) or (B) are met after the modification as to the area proposed to be annexed.

(5) If the petition meets the requirements of Subsection 17B-2-513(1) before a modification under this section but fails to meet those requirements after modification:

(a) the local district board shall give notice as provided in Section 17B-2-510 and hold a public hearing as provided in Section 17B-2-509 on the proposed annexation; and

(b) the petition shall be considered in all respects as one that does not meet the requirements of Subsection 17B-2-513(1).

Section 47. Section 17B-2-512 is enacted to read:

17B-2-512. Protests -- Election.

(1) (a) Except as provided in Section 17B-2-513 and except for an annexation under Section 17B-2-515, an owner of private real property located within or a registered voter residing within an area proposed to be annexed may protest an annexation by filing a written protest with the board of trustees of the proposed annexing local district.

(b) A protest of a boundary adjustment is not governed by this section but is governed by Section 17B-2-516.

(2) Each protest under Subsection (1)(a) shall be filed within 30 days after the date of the public hearing under Section 17B-2-509.

(3) (a) Except as provided in Subsection (4), the local district shall hold an election on the proposed annexation if timely protests are filed by:

(i) the owners of private real property that:

(A) is located within the area proposed to be annexed;

(B) covers at least 10% of the total private land area within the entire area proposed to be annexed and within each applicable area; and

(C) is equal in assessed value to at least 10% of the assessed value of all private real property within the entire area proposed to be annexed and within each applicable area; or

(ii) registered voters residing within the entire area proposed to be annexed and within each applicable area equal in number to at least 10% of the number of votes cast within the entire area proposed for annexation and within each applicable area, respectively, for the office of governor at the last regular general election before the filing of the petition.

(b) Except as otherwise provided in this part, each election under Subsection (3)(a) shall be governed by Title 20A, Election Code.

(c) If a majority of registered voters residing within the area proposed to be annexed and voting on the proposal vote:

(i) in favor of annexation, the board of trustees shall, subject to Subsections 17B-2-514(1)(b), (2), and (3), complete the annexation by adopting a resolution annexing the area; or

(ii) against annexation, the annexation process is terminated, the board may not adopt a resolution annexing the area, and the area proposed to be annexed may not for two years be the subject of an effort under this part to annex to the same local district.

(4) If sufficient protests are filed under this section to require an election, a board of trustees may, notwithstanding Subsection (3), adopt a resolution rejecting the annexation and terminating the annexation process without holding an election.

Section 48. Section 17B-2-513 is enacted to read:

17B-2-513. Hearing, notice, and protest provisions do not apply for certain petitions.

(1) Section 17B-2-512 does not apply, and, except as provided in Subsection (2)(a), Sections 17B-2-509 and 17B-2-510 do not apply:

(a) if the process to annex an area to a local district was initiated by:

(i) a petition under Subsection 17B-2-503(1)(a)(i);

(ii) a petition under Subsection 17B-2-503(1)(a)(ii)(A) that was signed by the owners of private real property that:

(A) is located within the area proposed to be annexed;

(B) covers at least 75% of the total private land area within the entire area proposed to be annexed and within each applicable area; and

(C) is equal in assessed value to at least 75% of the assessed value of all private real property within the entire area proposed to be annexed and within each applicable area; or

(iii) a petition under Subsection 17B-2-503(1)(a)(ii)(B) that was signed by registered voters residing within the entire area proposed to be annexed and within each applicable area equal in number to at least 75% of the number of votes cast within the entire area proposed to be annexed and within each applicable area, respectively, for the office of governor at the last regular general election before the filing of the petition;

(b) to an annexation under Section 17B-2-515; or

(c) to a boundary adjustment under Section 17B-2-516.

(2) (a) If a petition that meets the requirements of Subsection (1)(a) is certified under Section 17B-2-505, the local district board:

(i) shall provide notice of the proposed annexation as provided in Subsection (2)(b); and

(ii) (A) may, in the board's discretion, hold a public hearing as provided in Section 17B-2-509 after giving notice of the public hearing as provided in Subsection (2)(b); and

(B) shall, after giving notice of the public hearing as provided in Subsection (2)(b), hold a public hearing as provided in Section 17B-2-509 if a written request to do so is submitted, within 20 days after the local district provides notice under Subsection (2)(a)(i), to the local district board by an owner of property that is located within or a registered voter residing within the area proposed to be annexed who did not sign the annexation petition.

(b) The notice required under Subsections (2)(a)(i)and (ii) shall:

(i) be given:

(A) (I) for a notice under Subsection (2)(a)(i), within 30 days after petition certification; or

(II) for a notice of a public hearing under Subsection (2)(a)(ii), at least ten but not more than 30 days before the public hearing; and

(B) by:

(I) posting written notice at the local district's principal office and in one or more other locations within or proximate to the area proposed to be annexed as are reasonable under the circumstances, considering the number of parcels included in that area, the size of the area, the population of the area, and the contiguousness of the area; and

(II) providing written notice to at least one newspaper of general circulation, if there is one,

within the area proposed to be annexed or to a local media correspondent; and

(ii) contain a brief explanation of the proposed annexation and include the name of the local district, the service provided by the local district, a description or map of the area proposed to be annexed, a local district telephone number where additional information about the proposed annexation may be obtained, and, for a notice under Subsection (2)(a)(i), an explanation of the right of a property owner or registered voter to request a public hearing as provided in Subsection (2)(a)(ii)(B).

(c) A notice under Subsection (2)(a)(i) may be combined with the notice that is required for a public hearing under Subsection (2)(a)(ii)(A).

Section 49. Section 17B-2-514 is enacted to read:

17B-2-514. Resolution approving an annexation -- Notice of annexation -- When annexation complete.

(1) (a) Subject to Subsection (1)(b), the local district board shall adopt a resolution annexing the area proposed to be annexed or rejecting the proposed annexation within 30 days after:

(i) expiration of the protest period under Subsection 17B-2-512(2), if sufficient protests to require an election are not filed;

(ii) for a petition that meets the requirements of Subsection 17B-2-513(1):

(A) a public hearing under Section 17B-2-509 is held, if the board chooses or is required to hold a public hearing under Subsection 17B-2-513(2)(a)(ii); or

(B) expiration of the time for submitting a request for public hearing under Subsection 17B-2-513(2)(a)(ii)(B), if no request is submitted and the board chooses not to hold a public hearing.

(b) If the local district has entered into an agreement with the United States that requires the consent of the United States for an annexation of territory to the district, an annexation under this part may not occur until the written consent of the United States is obtained and filed with the board of trustees.

(2) Within ten days after adoption of an annexation resolution under Subsection (1), Subsection 17B-2-512(3)(c)(i), or Section 17B-2-515, or a boundary adjustment resolution under Subsection 17B-2-516(4), the board shall:

(a) file a written notice of annexation with the State Tax Commission, the lieutenant governor, and the assessor and recorder of the county in which the annexed area is located, accompanied by an accurate map or legal description of the boundaries of the area being annexed, adequate for purposes of the county assessor and recorder; and

(b) prepare and execute a certificate acknowledging that the notices required under Subsection (2)(a) have been filed, and maintain the certificate with the district records.

(3) The annexation shall be complete on the date indicated in the certificate required under Subsection (2)(b) as the date on which the board filed the notices required under Subsection (2)(a).

Section 50. Section 17B-2-515 is enacted to read:

17B-2-515. Annexation of wholesale district through expansion of retail provider.

(1) (a) A local district that provides a wholesale service may adopt a resolution annexing an area outside the local district's boundaries if:

(i) the area is annexed by or otherwise added to a municipality, an independent special district, or another local district that:

(A) acquires the wholesale service from the local district and provides it as a retail service;

(B) is, before the annexation or other addition, located at least partly within the local district; and

(C) after the annexation or other addition will provide to the annexed or added area the same retail service that the local district provides as a wholesale service to the municipality, independent special district, or other local district; and

(ii) except as provided in Subsection (2), no part of the area is within the boundaries of an independent special district under Title 17A, Chapter 2, Independent Special Districts, or another local district that provides the same wholesale service as the proposed annexing local district.

(b) For purposes of this section:

(i) a local district providing transportation service shall be considered to be providing a wholesale service; and

(ii) a municipality included within the boundaries of the local district providing transportation service shall be considered to be acquiring that wholesale service from the local district and providing it as a retail service and to be providing that retail service after the annexation or other addition to the annexed or added area, even though the municipality does not in fact provide that service.

(2) Notwithstanding Subsection (1)(a)(ii), an area outside the boundaries of a local district providing a wholesale service and located partly or entirely within the boundaries of an independent special district or another local district that provides the same wholesale service may be annexed to the local district if:

(a) the conditions under Subsection (1)(a)(i) are present; and

(b) the proposed annexing local district and the independent special district or other local district follow the same procedure as is required for a boundary adjustment under Section 17B-2-516, including both district boards adopting a resolution approving the annexation of the area to the

proposed annexing local district and the withdrawal of that area from the other district.

(3) Upon the adoption of an annexation resolution under this section, the board of the annexing local district shall comply with the requirements of Subsection 17B-2-514(2).

(4) Subsection 17B-2-514(3) applies to an annexation under this section.

Section 51. Section 17B-2-516 is enacted to read:

17B-2-516. Boundary adjustment -- Notice and hearing -- Protest -- Resolution adjusting boundaries -- Notice of the adjustment.

(1) As used in this section, "affected area" means the area located within the boundaries of one local district that will be removed from that local district and be included within the boundaries of another local district because of the boundary adjustment.

(2) The boards of trustees of two or more local districts having a common boundary and providing the same service on the same wholesale or retail basis may adjust their common boundary as provided in this section.

(3) (a) The board of trustees of each local district intending to adjust a boundary that is common with another local district shall:

(i) adopt a resolution indicating the board's intent to adjust a common boundary;

(ii) hold a public hearing on the proposed boundary adjustment no less than 60 days after the adoption of the resolution under Subsection (3)(a)(i); and

(iii) (A) (I) publish notice once a week for two successive weeks in a newspaper of general circulation within the local district; or

(II) if there is no newspaper of general circulation within the local district, post notice in at least four conspicuous places within the local district; or

(B) mail a notice to each owner of property located within the affected area and to each registered voter residing within the affected area.

(b) The notice required under Subsection (3)(a)(iii) shall:

(i) state that the board of trustees of the local district has adopted a resolution indicating the board's intent to adjust a boundary that the local district has in common with another local district that provides the same service as the local district;

(ii) describe the affected area;

(iii) state the date, time, and location of the public hearing required under Subsection (3)(a)(ii);

(iv) provide a local district telephone number where additional information about the proposed boundary adjustment may be obtained;

(v) explain the financial and service impacts of the boundary adjustment on property owners or residents within the affected area; and

(vi) state in conspicuous and plain terms that the board of trustees may adjust the boundaries unless, at or before the public hearing under Subsection (3)(a)(ii), written protests to the adjustment are filed with the board by:

(A) the owners of private real property that:

(I) is located within the affected area;

(II) covers at least 50% of the total private land area within the affected area; and

(III) is equal in assessed value to at least 50% of the assessed value of all private real property within the affected area; or

(B) registered voters residing within the affected area equal in number to at least 50% of the votes cast in the affected area for the office of governor at the last regular general election before the filing of the protests.

(c) The first publication of the notice required under Subsection (3)(a)(iii)(A) shall be within 14 days after the board's adoption of a resolution under Subsection (3)(a)(i).

(d) The boards of trustees of the local districts whose boundaries are being adjusted may jointly:

(i) publish, post, or mail the notice required under Subsection (3)(a)(iii); and

(ii) hold the public hearing required under Subsection (3)(a)(ii).

(4) After the public hearing required under Subsection (3)(a)(ii), the board of trustees may adopt a resolution adjusting the common boundary unless, at or before the public hearing, written protests to the boundary adjustment have been filed with the board by:

(a) the owners of private real property that:

(i) is located within the affected area;

(ii) covers at least 50% of the total private land area within the affected area; and

(iii) is equal in assessed value to at least 50% of the assessed value of all private real property within the affected area; or

(b) registered voters residing within the affected area equal in number to at least 50% of the votes cast in the affected area for the office of governor at the last regular general election before the filing of the protests.

(5) A resolution adopted under Subsection (4) does not take effect until the board of each local district whose boundaries are being adjusted has adopted a resolution under Subsection (4).

(6) Within ten days after the resolutions take effect under Subsection (5), the board of the local district whose boundaries are being adjusted to include the affected area shall comply with the requirements of Subsection 17B-2-514(2).

(7) Subsection 17B-2-514(3) applies to a boundary adjustment under this section to the same extent as if the boundary adjustment were an annexation.

Section 52. Section 17B-2-517 is enacted to read:

17B-2-517. Annexed area subject to fees, charges, and taxes.

When an annexation under Section 17B-2-514 or 17B-2-515 or a boundary adjustment under Section 17B-2-516 is complete, the annexed area or the area affected by the boundary adjustment shall be subject to user fees or charges imposed by and property, sales, and other taxes levied by or for the benefit of the local district.

Part 6. Reserved

Section 53. Section 17B-2-701 is enacted to read:

Part 7. Dissolution

17B-2-701. Definitions.

For purposes of this part:

(1) "Active" means, with respect to a local district, that the district is not inactive.

(2) "Administrative body" means:

(a) if the local district proposed to be dissolved has a duly constituted board of trustees in sufficient numbers to form a quorum, the board of trustees; or

(b) except as provided in Subsection (2)(a):

(i) for a local district located entirely within a single municipality, the legislative body of that municipality;

(ii) for a local district located in multiple municipalities within the same county or at least partly within the unincorporated area of a county, the legislative body of that county; or

(iii) for a local district located within multiple counties, the legislative body of the county whose boundaries include more of the local district than is included within the boundaries of any other county.

(3) "Clerk" means:

(a) the board of trustees if the board is also the administrative body under Subsection (2)(a);

(b) the clerk or recorder of the municipality whose legislative body is the administrative body under Subsection (2)(b)(i); or

(c) the clerk of the county whose legislative body is the administrative body under Subsection (2)(b)(ii) or (iii).

(4) "Inactive" means, with respect to a local district, that during the preceding three years the district has not:

(a) provided any service or otherwise operated;

(b) received property taxes or user or other fees; and

(c) expended any funds.

Section 54. Section 17B-2-702 is enacted to read:

17B-2-702. Dissolution of local district.

A local district may be dissolved as provided in this part.

Section 55. Section 17B-2-703 is enacted to read:

17B-2-703. Initiation of dissolution process.

The process to dissolve a local district may be initiated by:

(1) for an inactive local district:

(a) (i) for a local district whose board of trustees is elected by electors based on the acre-feet of water allotted to the land owned by the elector, a petition signed by the owners of 25% of the acre-feet of water allotted to the land within the local district; or

(ii) for all other districts:

(A) a petition signed by the owners of private real property that:

(I) is located within the local district proposed to be dissolved;

(II) covers at least 25% of the private land area within the local district; and

(III) is equal in assessed value to at least 25% of the assessed value of all private real property within the local district; or

(B) a petition signed by registered voters residing within the local district proposed to be dissolved equal in number to at least 25% of the number of votes cast in the district for the office of governor at the last regular general election before the filing of the petition; or

(b) a resolution adopted by the administrative body; and

(2) for an active local district, a petition signed by:

(a) for a local district whose board of trustees is elected by electors based on the acre-feet of water allotted to the land owned by the elector, a petition signed by the owners of 100% of the acre-feet of water allotted to the land within the local district; or

(b) for all other districts, the owners of 100% of the private real property located within or 100% of registered voters residing within the local district proposed to be dissolved.

Section 56. Section 17B-2-704 is enacted to read:

17B-2-704. Petition requirements.

(1) Each petition under Subsection 17B-2-703(1)(a) or (2) shall:

(a) indicate the typed or printed name and current residence address of each owner of acre-feet of water, property owner, or registered voter signing the petition;

(b) if it is a petition signed by the owners of acre-feet of water or property owners, indicate the address of the property as to which the owner is signing;

(c) designate up to three signers of the petition as sponsors, one of whom shall be designated the contact sponsor, with the mailing address and telephone number of each; and

(d) be filed with the clerk.

(2) A signer of a petition to dissolve a local district may withdraw, or, once withdrawn, reinstate the signer's signature at any time until 30 days after the public hearing under Section 17B-2-706.

Section 57. Section 17B-2-705 is enacted to read:

17B-2-705. Petition certification.

(1) Within 30 days after the filing of a petition under Subsection 17B-2-703(1)(a) or (2), the clerk shall:

(a) with the assistance of officers of the county in which the local district is located from whom the clerk requests assistance, determine whether the petition meets the requirements of Section 17B-2-703 and Subsection 17B-2-704(1); and

(b) (i) if the clerk determines that the petition complies with the requirements, certify the petition and mail or deliver written notification of the certification to the contact sponsor; or

(ii) if the clerk determines that the petition fails to comply with any of the requirements, reject the petition and mail or deliver written notification of the rejection and the reasons for the rejection to the contact sponsor.

(2) (a) If the clerk rejects a petition under Subsection (1)(b)(ii), the petition may be amended to correct the deficiencies for which it was rejected and then refiled.

(b) A valid signature on a petition that was rejected under Subsection (1)(b)(ii) may be used toward fulfilling the applicable signature requirement of the petition as amended under Subsection (2)(a).

(3) The clerk shall process an amended petition filed under Subsection (2)(a) in the same manner as an original petition under Subsection (1).

Section 58. Section 17B-2-706 is enacted to read:

17B-2-706. Public hearing.

(1) For each petition certified under Section 17B-2-705 and each resolution adopted under Subsection 17B-2-703(1)(b), the administrative body shall hold a public hearing on the proposed dissolution.

(2) Each public hearing under Subsection (1) shall be held:

(a) no later than 45 days after certification of the petition under Section 17B-2-705 or adoption of a resolution under Subsection 17B-2-703(1)(b), as the case may be;

(b) within the local district proposed to be dissolved;

(c) on a weekday evening other than a holiday beginning no earlier than 6:00 p.m.; and

(d) for the purpose of allowing:

(i) the public to ask questions and obtain further information about the proposed dissolution and issues raised by it; and

(ii) any interested person to address the administrative body concerning the proposed dissolution.

(3) A quorum of the administrative body shall be present throughout each public hearing under this section.

Section 59. Section 17B-2-707 is enacted to read:

17B-2-707. Notice of public hearing and of dissolution.

(1) Before holding a public hearing required under Section 17B-2-706, the administrative body shall:

(a) (i) publish notice of the public hearing and of the proposed dissolution in a newspaper of general circulation within the local district proposed to be dissolved; and

(ii) post notice of the public hearing and of the proposed dissolution in at least four conspicuous places within the local district proposed to be dissolved, no less than five and no more than 30 days before the public hearing; or

(b) mail a notice to each owner of property located within the local district and to each registered voter residing within the local district.

(2) Each notice required under Subsection (1) shall:

(a) identify the local district proposed to be dissolved and the service it was created to provide; and

(b) state the date, time, and location of the public hearing.

Section 60. Section 17B-2-708 is enacted to read:

17B-2-708. Dissolution resolution -- Limitations on dissolution -- Distribution of remaining assets -- Notice of dissolution.

(1) After the public hearing required under Section 17B-2-706 and subject to Subsection (2), the administrative body may adopt a resolution dissolving the local district.

(2) A resolution under Subsection (1) may not be adopted unless:

(a) any outstanding debt of the local district is:

(i) satisfied and discharged in connection with the dissolution; or

(ii) assumed by another governmental entity with the consent of all the holders of that debt and all the holders of other debts of the local district;

(b) for a local district that has provided service during the preceding three years or undertaken planning or other activity preparatory to providing service:

(i) another entity has committed to provide the same service to the area being served or proposed to be served by the local district; and

(ii) all who are to receive the service have consented to the service being provided by the other entity; and

(c) all outstanding contracts to which the local district is a party are resolved through mutual termination or the assignment of the district's rights, duties, privileges, and responsibilities to another entity with the consent of the other parties to the contract.

(3) (a) (i) Any assets of the local district remaining after paying all debts and other obligations of the local district shall be used to pay costs associated with the dissolution process under this part.

(ii) Any costs of the dissolution process remaining after exhausting the remaining assets of the local district under Subsection (3)(a)(i) shall be paid by the administrative body.

(b) Any assets of the local district remaining after application of Subsection (3)(a) shall be distributed:

(i) proportionately to the owners of real property within the dissolved local district if there is a readily identifiable connection between a financial burden borne by the real property owners in the district and the remaining assets; or

(ii) except as provided in Subsection (3)(b)(i), to each county, city, or town in which the dissolved local district was located before dissolution in the same proportion that the land area of the local district located within the unincorporated area of the county or within the city or town bears to the total local district land area.

(4) Within ten days after adopting a resolution dissolving the local district, the administrative body shall cause a notice of the dissolution, with a copy of the dissolution resolution, to be mailed or delivered to the State Tax Commission, the state auditor, and the assessor and recorder of each county in which any part of the dissolved district was located immediately before dissolution.

Section 61. Section 73-2-1 is amended to read:

73-2-1. State engineer -- Term -- Powers and duties -- Qualification for duties.

(1) There shall be a state engineer.

(2) The state engineer shall:

(a) be appointed by the governor with the consent of the Senate;

(b) hold [~~his~~] office for the term of four years and until [~~his~~] a successor is appointed; and

(c) have five years experience as a practical engineer or the theoretical knowledge, practical experience, and skill necessary for the position.

(3) (a) The state engineer shall be responsible for the general administrative supervision of the waters of the state and the measurement, appropriation, apportionment, and distribution of those waters.

(b) The state engineer shall have the power to:

(i) make and publish rules necessary to carry out the duties of his office;

(ii) secure the equitable apportionment and distribution of the water according to the respective rights of appropriators; and

(iii) bring suit in courts of competent jurisdiction to:

(A) enjoin the unlawful appropriation, diversion, and use of surface and underground water;

(B) prevent waste, loss, or pollution of those waters; and

(C) enable him to carry out the duties of his office.

(c) The state engineer shall:

(i) upon request from the board of trustees of an irrigation district under Title 17A, Chapter 2, Part 7, Irrigation Districts, or a local district under Title 17B, Chapter 2, Local Districts, that operates an irrigation water system, cause a water survey to be made of all lands proposed to be annexed to the district in order to determine and allot the maximum amount of water that could be beneficially used on the land, with a separate survey and allotment being made for each 40-acre or smaller tract in separate ownership; and

(ii) upon completion of the survey and allotment under Subsection (3)(c)(i), file with the district board a return of the survey and report of the allotment.

(4) (a) The state engineer may establish water districts and define their boundaries.

(b) The water districts shall be formed in a manner that:

(i) secures the best protection to the water claimants; and

(ii) is the most economical for the state to supervise.

Section 62. Repealer.

This act repeals:

Section 17A-2-202, Creation and organization of district.

Section 17A-2-203, Procedure -- Petition -- Contents and sufficiency of petition.

Section 17A-2-204, Hearing and determination -- Notice -- Boundaries.

Section 17A-2-205, Election to determine organization of district -- Notice -- Eligibility of voters.

Section 17A-2-206, Conduct of election -- Precincts -- Judges.

Section 17A-2-207, Canvass of returns.

Section 17A-2-213, Annexation of adjoining territory -- Procedure -- Necessity for approval of board.

Section 17A-2-214, Annexation of additional territory within adjoining county -- Requirements.

Section 17A-2-303, Procedure for creation of district.

Section 17A-2-304, Notice of hearing and intent -- Protests -- Resolution establishing district -- Writ of review.

Section 17A-2-331, Annexation of areas.

Section 17A-2-332, Methods of annexation -- Resolution -- Proposed area including part of another county.

Section 17A-2-333, Notice of intention to annex -- Resolution -- Writ of review.

Section 17A-2-339, Adjustment of common boundaries -- Notice and hearing -- Protest -- Property taxes after the boundary adjustment.

Section 17A-2-404, Establishment of service area.

Section 17A-2-406, Resolution of county.

Section 17A-2-407, Publication and mailing of resolution.

Section 17A-2-408, Hearing -- Protests -- Report of officers -- Record.

Section 17A-2-409, Abandonment of proposed service area -- Procedures.

Section 17A-2-410, Ordinance to establish area -- Appeals -- Exclusion of lands from area -- Inclusion of unspecified services prohibited.

Section 17A-2-417, Annexation of other areas.

Section 17A-2-420, Existing districts may dissolve.

Section 17A-2-430, Reorganization of existing county service areas -- Procedure.

Section 17A-2-529, Procedure for annexation -- Petition -- Appeals by persons aggrieved -- Recordation and filing of order.

Section 17A-2-546, Organization of districts in cities or towns.

Section 17A-2-561, Petition for dissolution -- Notice -- Hearings -- Objections -- Liquidation of indebtedness.

Section 17A-2-562, Disposal of district property.

Section 17A-2-563, Statement of assessment levied, collected and uncollected, and of indebtedness filed with clerk.

Section 17A-2-564, Court to determine obligations and expense of dissolution -- Claims not presented, barred.

Section 17A-2-565, Allocating and apportioning indebtedness against land.

Section 17A-2-566, Payment discharges lien, excepting liens for prior assessments.

Section 17A-2-567, Sale of lands upon failure to pay amounts allocated -- Procedure.

Section 17A-2-602, Proposal of district by petition -- Petition -- Form, contents, and requisites of petition.

Section 17A-2-603, Hearing for establishment of district.

Section 17A-2-604, Procedure at hearing upon petition.

Section 17A-2-605, Organization of proposed district -- Adoption of ordinance -- Election -- Qualification of voters.

Section 17A-2-606, Conduct of election -- Challenges -- Judges of election.

Section 17A-2-608, Canvass of votes -- Order of the county legislative body.

Section 17A-2-614, Annexation of contiguous territory -- Procedure -- Petition -- Special election.

Section 17A-2-624, Winding up and dissolution of district.

Section 17A-2-702, Petition for irrigation district -- Duty of the county legislative

body and state engineer -- Creation provisions superseded -- Exception.

Section 17A-2-703, Land and water allotments -- Revision and alteration -- Proceedings to list lands -- Writ of mandamus -- Hearing and determination on writ -- Calling election --Conduct of election.

Section 17A-2-704, Notice of election -- Trustees.

Section 17A-2-705, Canvass of returns -- Organization of district.

Section 17A-2-731, Petition for inclusion.

Section 17A-2-732, Notice of application -- Procedure -- Time -- Costs.

Section 17A-2-733, Hearing on petition.

Section 17A-2-734, Conditions precedent to granting.

Section 17A-2-735, Action on petition.

Section 17A-2-736, Copies of orders and plat recorded -- Additions liable.

Section 17A-2-737, Minutes admissible in evidence.

Section 17A-2-745, Division of districts -- Representation.

Section 17A-2-746, Dissolution of district -- Election -- Procedure.

Section 17A-2-747, Returns and canvass of election.

Section 17A-2-748, Irrigation district's failure to function -- Dissolution -- Increase of assessment -- Lien and tax sale.

Section 17A-2-811, Publication of call.

Section 17A-2-812, Ballot.

Section 17A-2-813, Counting ballots and canvassing returns.

Section 17A-2-814, Consolidated elections.

Section 17A-2-815, Certificate to lieutenant governor -- Valuation of cities approving.

Section 17A-2-841, Annexation to district -- Validity of proceedings.

Section 17A-2-912, Annexation of area into district -- Conditions -- Procedures -- Petition -- Resolution -- Protests.

Section 17A-2-913, Dissolution -- Election -- Apportionment of property.

Section 17A-2-1404, Establishment of district -- Petition -- Effect of defects.

Section 17A-2-1405, Bond to be filed with petition.

Section 17A-2-1406, Hearing -- Jurisdiction of district court -- Court not to be disqualified.

Section 17A-2-1407, Protest petition -- Objections -- Hearing -- Decree establishing district -- Meetings -- Dismissal of petition or proceedings -- Finality and conclusiveness of order --Appeal.

Section 17A-2-1408, Findings and decree to be filed -- Fees.

Section 17A-2-1437, Change of boundaries -- Petitions for and against inclusion within district -- Hearing -- Petition protesting inclusion -- Hearing -- Appeal -- Annexation --Hearings -- Objections -- Order of inclusion -- Findings and decrees -- Appeal.

Section 17A-2-1815, Dissolution of regional service areas.

Section 17A-2-1816, Annexation proceedings.

Section 17A-2-1817, Publication.

Section 17A-2-1818, Hearing -- Protests -- Report of officers -- Record.

Section 17A-2-1819, Abandonment of proposed annexation -- Procedures.

Section 17A-2-1820, Referendum election procedures.

Section 63. Coordination clause.

If this bill and H.B. 155, Annexation Amendments, both pass, it is the intent of the Legislature that the Office of Legislative Research and General Counsel, in preparing the Utah Code database for publication, include in the database a rewritten Subsection 17B-2-506(3) that shall read as follows:

"(3) For purposes of this section, an area proposed to be annexed to a municipality in a petition under Section 10-2-403 filed before and still pending at the time of the filing of a petition under Subsection 17B-2-503(1)(a) and an area included within a municipality's annexation policy plan under Section 10-2-401.5 shall be considered to be part of that municipality.".

CHAPTER 91
S. B. 25
Passed February 22, 2001
Approved March 15, 2001
Effective July 1, 2001

UTAH PROFESSIONAL ATHLETIC COMMISSION ACT

Sponsor: Pete Suazo

This act modifies the Utah Professional Boxing Regulation Act by repealing the current act and replacing it with the Utah Professional Athletic Commission Act. The act removes the regulation of boxing and unarmed combat from the Division of Occupational and Professional Licensing and creates an independent Utah Professional Athletic Commission within the Department of Commerce. The act provides for the licensure of promoters, managers, seconds, contestants, judges, and referees. The act grants rulemaking authority to the Utah Professional Athletic Commission to govern unarmed combat. The act prohibits ultimate fighting. The act defines unlawful and unprofessional conduct and provides for penalties. The act authorizes the hiring of a director of the Utah Professional Athletic Commission. The act levies fees on ticket proceeds and broadcast revenues from contests. The act provides for funding of amateur boxing within the state. This act provides an effective date.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:
13-33-101, Utah Code Annotated 1953
13-33-102, Utah Code Annotated 1953
13-33-201, Utah Code Annotated 1953
13-33-202, Utah Code Annotated 1953
13-33-203, Utah Code Annotated 1953
13-33-204, Utah Code Annotated 1953
13-33-205, Utah Code Annotated 1953
13-33-301, Utah Code Annotated 1953
13-33-302, Utah Code Annotated 1953
13-33-303, Utah Code Annotated 1953
13-33-304, Utah Code Annotated 1953
13-33-305, Utah Code Annotated 1953
13-33-401, Utah Code Annotated 1953
13-33-402, Utah Code Annotated 1953
13-33-403, Utah Code Annotated 1953
13-33-404, Utah Code Annotated 1953
13-33-405, Utah Code Annotated 1953
13-33-501, Utah Code Annotated 1953
13-33-502, Utah Code Annotated 1953
13-33-503, Utah Code Annotated 1953
13-33-504, Utah Code Annotated 1953
13-33-505, Utah Code Annotated 1953
13-33-506, Utah Code Annotated 1953

REPEALS:
58-66-101, as enacted by Chapter 11, Laws of Utah 1995
58-66-102, as last amended by Chapter 77, Laws of Utah 2000
58-66-201, as enacted by Chapter 11, Laws of Utah 1995
58-66-301, as enacted by Chapter 11, Laws of Utah 1995
58-66-302, as last amended by Chapter 77, Laws of Utah 2000
58-66-303, as enacted by Chapter 11, Laws of Utah 1995
58-66-401, as enacted by Chapter 11, Laws of Utah 1995
58-66-501, as enacted by Chapter 11, Laws of Utah 1995
58-66-502, as enacted by Chapter 11, Laws of Utah 1995
58-66-503, as enacted by Chapter 83, Laws of Utah 1997
58-66-601, as enacted by Chapter 11, Laws of Utah 1995
58-66-602, as enacted by Chapter 11, Laws of Utah 1995
58-66-603, as enacted by Chapter 11, Laws of Utah 1995
58-66-604, as last amended by Chapter 77, Laws of Utah 2000
58-66-605, as enacted by Chapter 11, Laws of Utah 1995
58-66-606, as enacted by Chapter 11, Laws of Utah 1995
58-66-607, as enacted by Chapter 11, Laws of Utah 1995
58-66-608, as enacted by Chapter 11, Laws of Utah 1995

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

Section 1. Section 13-33-101 is enacted to read:

CHAPTER 33. UTAH PROFESSIONAL ATHLETIC COMMISSION ACT

Part 1. General Provisions

13-33-101. Title.

This chapter is known as the "Utah Professional Athletic Commission Act."

Section 2. Section 13-33-102 is enacted to read:

13-33-102. Definitions.

As used in this chapter:

(1) "Bodily injury" means as defined in Section 76-1-601.

(2) "Commission" means the Utah Professional Athletic Commission created in this chapter.

(3) "Contest" means a live match, performance, or exhibition involving persons engaged in unarmed combat.

(4) "Contestant" means an individual who participates in a contest for a cash purse in any amount or for a noncash purse with more than nominal value as defined by rule.

(5) "Department" means the Department of Commerce.

(6) "Director" means the director of the Utah Professional Athletic Commission.

(7) "Executive director" means the executive director of the Department of Commerce.

(8) "Exhibition" means an engagement in which the participants show or display their skills without necessarily striving to win.

(9) "Judge" means an individual qualified by training or experience to:

(a) rate the performance of contestants;

(b) score a contest; and

(c) determine with other judges whether there is a winner of the contest or whether the contestants performed equally resulting in a draw.

(10) "Manager" means an individual who represents a contestant for the purposes of obtaining matches, negotiating terms and conditions of the contract under which the contestant will engage in a contest, or arranging for a second for the contestant at a contest.

(11) "Promoter" means a person who engages in producing or staging contests and promotions.

(12) "Promotion" means a single contest or a combination of contests that occur during the same time at the same location and that is produced or staged by a promoter.

(13) (a) "Purse" means any money, prize, remuneration, or any other valuable consideration a contestant receives or may receive for participation in a contest.

(b) "Purse" does not mean a trophy, medal, or similar object of nominal value as defined by rule that is received for participation in a contest.

(14) "Referee" means an individual qualified by training or experience to act as the official attending a contest at the point of contact between contestants for the purpose of:

(a) enforcing the rules relating to the contest;

(b) stopping the contest in the event the health, safety, and welfare of a contestant or any other person in attendance at the contest is in jeopardy; and

(c) to act as a judge if so designated by the commission.

(15) "Second" means an individual who attends a contestant at the site of the contest before, during, and after the contest in accordance with contest rules.

(16) "Serious bodily injury" is as defined in Section 76-1-601.

(17) "Total gross receipts" means the amount of the face value of all tickets sold to a particular contest plus any sums received as consideration for holding the contest at a particular location.

(18) "Ultimate fighting match" means a live match in which:

(a) an admission fee is charged;

(b) match rules permit contestants to use a combination of boxing, kicking, wrestling, hitting, punching, or other combative, contact techniques; and

(c) match rules do not:

(i) incorporate a formalized system of combative techniques against which a contestant's performance is judged to determine the prevailing contestant;

(ii) divide a match into two or more equal and specified time periods for a match total of no more than 50 minutes; or

(iii) prohibit contestants from:

(A) using anything that is not part of the human body, except for boxing gloves, to intentionally inflict serious bodily injury upon an opponent through direct contact or the expulsion of a projectile;

(B) striking a person who demonstrates an inability to protect himself from the advances of an opponent;

(C) biting; or

(D) direct, intentional, and forceful strikes to the eyes, groin area, adam's apple area of the neck, and temple area of the head.

(19) "Unarmed combat" means boxing, wrestling, or any form of competition in which a blow is usually struck which may reasonably be expected to inflict bodily injury.

(20) "Unlawful conduct" means organizing, promoting, or participating in a contest which involves:

(a) contestants that are not licensed under this chapter; or

(b) persons other than contestants, unless the contest is conducted in accordance with the standards and regulations of USA Boxing, Inc.

(21) "Unprofessional conduct" means:

(a) entering into a contract for a contest in bad faith;

(b) participating in any sham or fake contest;

(c) participating in a contest pursuant to a collusive understanding or agreement in which the contestant competes in or terminates the contest in a manner that is not based upon honest competition or the honest exhibition of the skill of the contestant;

(d) engaging in an act or conduct that is detrimental to a contest, including any foul or unsportsmanlike conduct in connection with a contest;

(e) failing to comply with any limitation, restriction, or condition placed on a license; or

(f) as further defined by rule by the commission.

Section 3. Section 13-33-201 is enacted to read:

Part 2. Commission

13-33-201. Commission -- Creation -- Appointments -- Terms -- Expenses -- Quorum.

(1) There is created within the Department of Commerce the Utah Professional Athletic Commission consisting of five members.

(2) (a) The commission members shall be appointed by the executive director.

(b) The commission members may not be licensees under this chapter.

(c) The names of all persons appointed to the commission shall be submitted to the governor for confirmation or rejection.

(3) (a) Except as required by Subsection (3)(b), as terms of current members expire, the executive director shall appoint each new member or reappointed member to a four-year term.

(b) Notwithstanding the requirements of Subsection (3)(a), the executive director shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of members are staggered so that approximately half of the commission is appointed every two years.

(c) A member may not serve more than two consecutive terms, and a member who ceases to serve on the commission may not serve again on the commission until after the expiration of a two-year period beginning from that cessation of service.

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

(ii) After filling that term, the replacement member may be appointed for only one additional full term.

(e) If a commission member fails or refuses to fulfill the responsibilities and duties of a commission member, including the attendance at commission meetings, the executive director, with the approval of the commission, may remove the commission member and replace the member in accordance with this section.

(4) A majority of the commission members constitutes a quorum. A quorum is sufficient authority for the commission to act.

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

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

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

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

(6) The commission shall annually designate one of its members to serve as chair for a one-year period.

Section 4. Section 13-33-202 is enacted to read:

13-33-202. Commission duties.

The commission shall:

(1) purchase and use a seal;

(2) adopt rules for the administration of this chapter in accordance with Title 63, Chapter 46a, Administrative Rulemaking Act;

(3) prepare all forms of contracts between sponsors, licensees, promoters, and contestants; and

(4) hold hearings relating to matters under its jurisdiction, including violations of this chapter or rules promulgated under this chapter.

Section 5. Section 13-33-203 is enacted to read:

13-33-203. Director of commission.

(1) The commission shall employ a director to conduct the business of the commission, who must not be a member of the commission.

(2) The director serves at the pleasure of the commission.

Section 6. Section 13-33-204 is enacted to read:

13-33-204. Inspectors.

(1) The commission may appoint one or more official representatives to be designated as inspectors which shall serve at the pleasure of the commission.

(2) Each inspector must receive from the commission a card authorizing that inspector to act as an inspector for the commission.

(3) An inspector may not promote or sponsor any contest.

(4) Each inspector is entitled to receive a fee approved by the commission for the performance of duties under this chapter.

Section 7. Section 13-33-205 is enacted to read:

13-33-205. Affiliation with other commissions.

The commission shall have the authority to affiliate with any other state or national boxing commission or athletic authority.

Section 8. Section 13-33-301 is enacted to read:

Part 3. Licensing

13-33-301. Licensing.

(1) A license is required for a person to act as or to represent that the person is a:

(a) promoter;

(b) manager;

(c) contestant;

(d) second;

(e) referee; or

(f) judge.

(2) The commission shall issue to a person who qualifies under this chapter a license in the classifications of:

(a) promoter;

(b) manager;

(c) contestant;

(d) second;

(e) referee; or

(f) judge.

(3) All moneys collected pursuant to this section and Sections 13-33-304, 13-33-403, and 13-33-504 shall be deposited in the Commerce Service Fund.

(4) Each applicant for licensure as a promoter shall:

(a) submit an application in a form prescribed by the commission;

(b) pay the fee determined by the department under Section 63-38-3.2;

(c) provide to the commission evidence of financial responsibility which shall include financial statements and other information that the commission may reasonably require to determine that the applicant or licensee is able to competently perform as and meet the obligations of a promoter in this state;

(d) produce information, documentation, and assurances as may be required to establish by a preponderance of the evidence the applicant's reputation for good character, honesty, integrity, and responsibility, which shall include information, documentation, and assurances that the applicant:

(i) has not and at the time of application is not associating or consorting with a person engaging in illegal activity to the extent that the association or consorting represents a threat to the conduct of contests in the public's interest within the state, or a threat to the health, safety, and welfare of the applicant or a licensed contestant;

(ii) has not been convicted of a crime in any jurisdiction which the commission determines by the nature of the crime and circumstances surrounding the crime should disqualify the applicant from licensure in the public interest;

(iii) is not associating or consorting with a person who has been convicted of a felony in any jurisdiction to the extent that the association or consorting represents a threat to the conduct of contests in the public's interest within the state, or a threat to the health, safety, and welfare of the applicant or a licensed contestant;

(iv) is not associating or consorting with a person engaging in illegal gambling or similar pursuits to the extent that the association or consorting represents a threat to the conduct of contests in the public's interest within the state, or a threat to the health, safety, and welfare of the applicant or a licensed contestant;

(v) is not engaging in illegal gambling with respect to sporting events or gambling with respect to the promotions the applicant is promoting;

(vi) has not been found in an administrative, criminal, or civil proceeding to have engaged in or attempted to engage in any fraud or misrepresentation in connection with a contest or any other sporting event;

(vii) has not been found in an administrative, criminal, or civil proceeding to have violated or attempted to violate any law with respect to a contest in any jurisdiction or any law, rule, or order relating to the regulation of contests in this state or any other jurisdiction;

(e) acknowledge in writing to the commission receipt, understanding, and intent to comply with this chapter and the rules made under this chapter; and

(f) if requested by the commission or the director, meet with the commission or the director to examine the applicant's qualifications for licensure.

(5) Each applicant for licensure as a contestant shall:

(a) be not less than 18 years of age at the time the application is submitted to the commission;

(b) submit an application in a form prescribed by the commission;

(c) pay the fee established by the department under Section 63-38-3.2;

(d) provide a certificate of physical examination, dated not more than 60 days prior to the date of application for license, in a form provided by the commission, completed by a licensed physician and surgeon certifying that the applicant is free from any physical or mental condition that indicates the applicant should not engage in activity as a contestant;

(e) provide the commission with an accurate history of all matches that the applicant has engaged in since becoming a contestant, including information on whether the applicant won or lost each contest, and the matches in which there was a knockout or technical knockout;

(f) produce information, documentation, and assurances as may be required to establish by a preponderance of the evidence the applicant's reputation for good character, honesty, integrity, and responsibility, which shall include information, documentation, and assurances that the applicant:

(i) has not and at the time of application is not associating or consorting with a person engaging in illegal activity to the extent that the association or consorting represents a threat to the conduct of contests in the public's interest within the state, or a threat to the health, safety, and welfare of the applicant or a licensed contestant;

(ii) has not been convicted of a crime in any jurisdiction which the commission determines by the nature of the crime and circumstances surrounding that crime should disqualify the applicant from licensure in the public interest;

(iii) is not associating or consorting with any person who has been convicted of a felony in any jurisdiction to the degree that the commission finds that the association or consorting represents a threat to the conduct of contests in the public's interest within the state, or a threat to the health, safety, and welfare of the applicant or a licensed contestant;

(iv) is not associating or consorting with a person engaging in illegal gambling or similar pursuits or a person gambling with respect to the promotion for which the applicant is receiving a license to the extent that the association or consorting represents a threat to the conduct of contests in the public's interest within the state, or a threat to the health, safety, and welfare of the applicant or a licensed contestant;

(v) is not engaging in illegal gambling with respect to sporting events or gambling with respect to a contest in which the applicant will participate;

(vi) has not been found in an administrative, criminal, or civil proceeding to have engaged in or attempted to have engaged in any fraud or misrepresentation in connection with a contest or any other sporting event;

(vii) has not been found in an administrative, criminal, or civil proceeding to have violated or attempted to violate any law with respect to contests in any jurisdiction or any law, rule, or order relating to the regulation of contests in this state or any other jurisdiction;

(g) acknowledge in writing to the commission receipt, understanding, and intent to comply with this chapter and the rules made under this chapter; and

(h) if requested by the commission or the director, meet with the commission or the director to examine the applicant's qualifications for licensure.

(6) Each applicant for licensure as a manager or second shall:

(a) submit an application in a form prescribed by the commission;

(b) pay a fee determined by the department under Section 63-38-3.2;

(c) produce information, documentation, and assurances as may be required to establish by a preponderance of the evidence the applicant's reputation for good character, honesty, integrity, and responsibility, which shall include information, documentation, and assurances that the applicant:

(i) has not and at the time of application is not associating or consorting with a person engaging in illegal activity to the extent that the association or consorting represents a threat to the conduct of contests in the public's interest within the state, or a threat to the health, safety, and welfare of the applicant or a licensed contestant;

(ii) has not been convicted of a crime in any jurisdiction which the commission determines by the nature of the crime and circumstances surrounding that crime should disqualify the applicant from licensure in the public interest;

(iii) is not associating or consorting with any person who has been convicted of a felony in any jurisdiction to the degree that the commission finds that the association or consorting represents a threat to the conduct of contests in the public's interest within the state, or a threat to the health, safety, and welfare of the applicant or a licensed contestant;

(iv) is not associating or consorting with a person engaging in illegal gambling or similar pursuits or a person gambling with respect to the promotion for which the applicant is receiving a license to the extent that the association or consorting represents a threat to the conduct of contests in the public's interest within the state, or a threat to the health, safety, and welfare of the applicant or a licensed contestant;

(v) is not engaging in illegal gambling with respect to sporting events or gambling with respect to a contest in which the applicant is participating;

(vi) has not been found in an administrative, criminal, or civil proceeding to have engaged in or attempted to have engaged in any fraud or misrepresentation in connection with a contest or any other sporting event;

(vii) has not been found in an administrative, criminal, or civil proceeding to have violated or attempted to violate any law with respect to a contest in any jurisdiction or any law, rule, or order relating to the regulation of contests in this state or any other jurisdiction;

(d) acknowledge in writing to the commission receipt, understanding, and intent to comply with this chapter and the rules made under this chapter; and

(e) if requested by the commission or director, meet with the commission or the director to examine the applicant's qualifications for licensure.

(7) Each applicant for licensure as a referee or judge shall:

(a) submit an application in a form prescribed by the commission;

(b) pay a fee determined by the department under Section 63-38-3.2;

(c) produce information, documentation, and assurances as may be required to establish by a

preponderance of the evidence the applicant's reputation for good character, honesty, integrity, and responsibility, which shall include information, documentation, and assurances that the applicant:

(i) has not and at the time of application is not associating or consorting with a person engaging in illegal activity to the extent that the association or consorting represents a threat to the conduct of contests in the public's interest within the state, or a threat to the health, safety, and welfare of the applicant or a licensed contestant;

(ii) has not been convicted of a crime in any jurisdiction which the commission determines by the nature of the crime and circumstances surrounding the crime should disqualify the applicant from licensure in the public interest;

(iii) is not associating or consorting with any person who has been convicted of a felony in any jurisdiction to the extent that the association or consorting represents a threat to the conduct of contests in the public's interest within the state, or a threat to the health, safety, and welfare of the applicant or a licensed contestant;

(iv) is not associating or consorting with a person engaging in illegal gambling or similar pursuits or a person gambling with respect to the promotion for which the applicant is receiving a license to the extent that the association or consorting represents a threat to the conduct of contests in the public's interest within the state, or a threat to the health, safety, and welfare of the applicant or a licensed contestant;

(v) is not engaging in illegal gambling with respect to sporting events or gambling with respect to a contest in which the applicant is participating;

(vi) has not been found in an administrative, criminal, or civil proceeding to have engaged in or attempted to have engaged in any fraud or misrepresentation in connection with a contest or any other sporting event;

(vii) has not been found in an administrative, criminal, or civil proceeding to have violated or attempted to violate any law with respect to contests in any jurisdiction or any law, rule, or order relating to the regulation of contests in this state or any other jurisdiction;

(d) acknowledge in writing to the commission receipt, understanding, and intent to comply with this chapter and the rules made under this chapter;

(e) provide evidence satisfactory to the commission that the applicant is qualified by training and experience to competently act as a referee or judge in a contest; and

(f) if requested by the commission or the director, meet with the commission or the director to examine the applicant's qualifications for licensure.

Section 9. Section 13-33-302 is enacted to read:

13-33-302. Term of license -- Expiration -- Renewal.

(1) (a) The commission shall issue each license under this chapter in accordance with a two-year renewal cycle established by rule.

(b) The commission may by rule extend or shorten a renewal period by as much as one year to stagger the renewal cycles it administers.

(2) At the time of renewal, the licensee shall show satisfactory evidence of compliance with renewal requirements established by rule by the commission.

(3) Each license automatically expires on the expiration date shown on the license unless the licensee renews it in accordance with the rules established by the commission.

Section 10. Section 13-33-303 is enacted to read:

13-33-303. Grounds for denial of license -- Disciplinary proceedings -- Reinstatement.

(1) The commission shall refuse to issue a license to an applicant and shall refuse to renew or shall revoke, suspend, restrict, place on probation, or otherwise act upon the license of a licensee who does not meet the qualifications for licensure under this chapter.

(2) The commission may refuse to issue a license to an applicant and may refuse to renew or may revoke, suspend, restrict, place on probation, issue a public or private reprimand to, or otherwise act upon the license of any licensee in any of the following cases:

(a) the applicant or licensee has engaged in unlawful or unprofessional conduct, as defined by statute or rule under this chapter;

(b) the applicant or licensee has been determined to be mentally incompetent for any reason by a court of competent jurisdiction; or

(c) the applicant or licensee is unable to practice the occupation or profession with reasonable skill and safety because of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material, or as a result of any other mental or physical condition, when the licensee's condition demonstrates a threat or potential threat to the public health, safety, or welfare.

(3) Any licensee whose license under this chapter has been suspended, revoked, or restricted may apply for reinstatement of the license at reasonable intervals and upon compliance with any conditions imposed upon the licensee by statute, rule, or terms of the license suspension, revocation, or restriction.

(4) The commission may issue cease and desist orders:

(a) to a licensee or applicant who may be disciplined under Subsection (1) or (2); and

(b) to any person who otherwise violates this chapter or any rules adopted under this title.

(5) (a) The commission may not take disciplinary action against any person for unlawful or

unprofessional conduct under this title, unless the commission initiates an adjudicative proceeding regarding the conduct within four years after the conduct is reported to the commission, except under Subsection (5)(b).

(b) The commission may not take disciplinary action against any person for unlawful or unprofessional conduct more than ten years after the occurrence of the conduct, unless the proceeding is in response to a civil or criminal judgment or settlement and the proceeding is initiated within one year following the judgment or settlement.

(6) Notwithstanding the provisions of Title 63, Chapter 46b, Administrative Procedures Act, the commission shall have the authority to immediately suspend the license of a contestant at such time and for such period that the commission believes is necessary to protect the health, safety, and welfare of the contestant, other contestants, or the public. The commission shall establish by rule appropriate procedures to invoke the suspension and to provide a suspended contestant a right to a hearing before the commission with respect to the suspension within a reasonable time after the suspension.

Section 11. Section 13-33-304 is enacted to read:

13-33-304. Additional fees for license of promoter.

(1) In addition to the payment of any other fees and money due under this chapter, every promoter shall pay a license fee of:

(a) 4% of the total gross receipts from admission fees to each live contest or exhibition, exclusive of any other state or federal tax or tax imposed by any political subdivision of this state; and

(b) 4% of the total gross receipts from the sale, lease, or other exploitation of broadcasting, television, and motion picture rights for each contest or exhibition.

(2) The fees due under Subsection (1) shall be calculated without any deductions for commissions, brokerage fees, distribution fees, advertising, contestants' purses, or any other expenses or charges.

(3) The commission shall adopt rules:

(a) requiring that the number and face value of all complimentary tickets be reported; and

(b) governing the treatment of complimentary tickets for the purposes of computing gross receipts from admission fees under Subsection (1)(a).

Section 12. Section 13-33-305 is enacted to read:

13-33-305. Transition of licenses.

(1) A license that was issued by the Division of Occupational and Professional Licensing under Title 58, Chapter 66, Utah Professional Boxing Regulation Act, prior to July 1, 2001, shall:

(a) be considered a valid license under this chapter until the expiration date indicated on the license;

(b) be subject to the provisions of this chapter, including provisions relating to disciplinary action against the license; and

(c) not be renewed under Title 58, Occupations and Professions.

(2) Upon the expiration of a license described in Subsection (1), a person desiring to continue licensure in the profession shall meet the same requirements as those required for new licensure under Section 13-33-301.

Section 13. Section 13-33-401 is enacted to read:

Part 4. Control of Contests

13-33-401. Jurisdiction of commission.

(1) The commission has and is vested with the sole direction, management, control, and jurisdiction over all contests or exhibitions of unarmed combat to be conducted, held, or given within this state, and no contest or exhibition may be conducted, held, or given within this state except in accordance with the provisions of this chapter.

(2) Any contest involving a form of Oriental unarmed self-defense must be conducted pursuant to rules for that form which are approved by the commission before the contest is conducted, held, or given.

Section 14. Section 13-33-402 is enacted to read:

13-33-402. Ultimate fighting prohibited.

(1) Ultimate fighting matches are prohibited.

(2) Any person who publicizes, promotes, conducts, or engages in an ultimate fighting match is:

(a) guilty of a class A misdemeanor as provided in Section 76-9-705; and

(b) subject to license revocation under this chapter.

Section 15. Section 13-33-403 is enacted to read:

13-33-403. Permit to hold contest or promotion -- Bond required.

(1) An application to hold a contest or multiple contests as part of a single promotion shall be made by a licensed promoter to the commission on forms provided by the commission.

(2) The application shall be accompanied by a contest fee determined by the department under Section 63-38-3.2.

(3) Before a permit to hold a contest or promotion is granted, the applicant shall post a surety bond with the commission in an amount and form determined by the commission, providing for forfeiture and subsequent disbursement of the proceeds from the bond if the applicant fails to comply with the requirements of this chapter or

rules made under this chapter relating to the promotion or conduct of the contest or promotion.

(4) The commission may approve or deny approval to hold a contest or promotion permitted under this chapter. Approval shall be granted upon a determination by the commission that:

(a) the promoter of the contest or promotion is properly licensed;

(b) a bond meeting the requirements of Subsection (3) has been posted by the promoter of the contest or promotion; and

(c) the contest or promotion will be held in accordance with this chapter and rules made under this chapter.

Section 16. Section 13-33-404 is enacted to read:

13-33-404. Rules for the conduct of contests.

(1) The commission shall adopt rules in accordance with the provisions of Title 63, Chapter 46a, Utah Administrative Rulemaking Act, for the conduct of contests in the state.

(2) The rules shall include authority for stopping contests, impounding purses with respect to contests when there is a question with respect to the contest, contestants, or any other licensee associated with the contest, and reasonable and necessary provisions to ensure that all obligations of a promoter with respect to any promotion or contest are paid in accordance with agreements made by the promoter.

Section 17. Section 13-33-405 is enacted to read:

13-33-405. HIV and drug tests.

The commission shall adopt rules in accordance with the provisions of Title 63, Chapter 46a, Utah Administrative Rulemaking Act, for HIV and drug testing of contestants which include:

(1) provisions under which contestants shall produce evidence based upon competent laboratory examination that they are HIV negative as a condition of participating as a contestant in any contest; and

(2) provisions under which contestants shall be subject to random drug testing before or after participation in a contest, and sanctions, including barring participation in a contest or withholding a percentage of any purse, that shall be placed against a contestant testing positive for alcohol or any other drug that in the opinion of the commission is inconsistent with the safe and competent participation of that contestant in a contest.

Section 18. Section 13-33-501 is enacted to read:

Part 5. Miscellaneous Provisions

13-33-501. Additional fee for funding of amateur boxing.

(1) In addition to the payment of any other fees or taxes required by this chapter, a promoter shall pay to the commission a fee of $1 for each ticket sold for admission to a live contest or exhibition which is held in this state.

(2) The money collected pursuant to Subsection (1) shall be deposited in the General Fund as dedicated credits to be used by the commission to award grants to organizations which promote amateur boxing in this state.

(3) The commission shall adopt rules governing the manner in which:

(a) the fees required by Subsection (1) must be paid;

(b) applications for grants may be submitted to the commission; and

(c) the standards to be used to award grants to organizations which promote amateur boxing in this state.

(4) Any funding available for the purposes of this section shall be nonlapsing.

Section 19. Section 13-33-502 is enacted to read:

13-33-502. Reports to commission.

(1) Every promoter shall, within 10 days after the completion of any contest or exhibition for which an admission fee is charged, furnish to the commission a verified written report showing:

(a) the number of tickets sold or issued for the contest or exhibition;

(b) the amount of the:

(i) gross receipts from admission fees without any deductions for commissions, brokerage fees, distribution fees, advertising, contestants' purses, or any other expenses or charges; and

(ii) gross receipts derived from the sale, lease, or other exploitation of broadcasting, motion picture, and television rights of such contest or exhibition without any deductions for commissions, brokerage fees, distribution fees, advertising, contestants' purses, or any other expenses or charges; and

(c) any other matters prescribed by rule.

(2) The promoter shall, at the same time as submitting the report required by Subsection (1), pay to the commission the fees required by Sections 13-33-304 and 13-33-501.

Section 20. Section 13-33-503 is enacted to read:

13-33-503. Contracts.

Before a contest is held, a copy of the signed contract or agreement between the promoter of the contest and each contestant shall be filed with the commission. Approval of the contract's terms and conditions shall be obtained from the commission as a condition precedent to the contest.

Section 21. Section 13-33-504 is enacted to read:

13-33-504. Withholding of purse.

(1) The commission, the director, or any other agent authorized by the commission may order a promoter to withhold any part of a purse or other money belonging or payable to any contestant, manager, or second if, in the judgment of the commission, director or other agent:

(a) the contestant is not competing honestly or to the best of his skill and ability or the contestant otherwise violates any rules adopted by the commission or any of the provisions of this chapter; or

(b) the manager or second violates any rules adopted by the commission or any of the provisions of this chapter.

(2) This section does not apply to any contestant in a wrestling exhibition who appears not to be competing honestly or to the best of his skill and ability.

(3) Upon the withholding of any part of a purse or other money pursuant to this section, the commission shall immediately schedule a hearing on the matter, provide adequate notice to all interested parties, and dispose of the matter as promptly as possible.

(4) If it is determined that a contestant, manager, or second is not entitled to any part of his share of the purse or other money, the promoter shall pay the money over to the commission.

Section 22. Section 13-33-505 is enacted to read:

13-33-505. Penalty for unlawful conduct.

A person who engages in unlawful conduct, as defined in Section 13-33-102, is guilty of a class A misdemeanor.

Section 23. Section 13-33-506 is enacted to read:

13-33-506. Exemptions.

The provisions of this chapter do not apply to:

(1) any amateur contests or exhibitions of unarmed combat or any combination thereof conducted by or participated in exclusively by any school, college, or university or by any association or organization of a school, college, or university, when each participant in the contests or exhibitions is a bona fide student in the school, college, or university; or

(2) exhibitions of Oriental unarmed self-defense in which no dangerous blow is intended to be struck.

Section 24. Repealer.

This act repeals:

Section 58-66-101, Title.

Section 58-66-102, Definitions.

Section 58-66-201, Commission.

Section 58-66-301, Licensing.

Section 58-66-302, Term of license -- Expiration -- Renewal.

Section 58-66-303, Exemptions from licensure.

Section 58-66-401, Grounds for denial of license -- Disciplinary proceedings.

Section 58-66-501, Unlawful conduct.

Section 58-66-502, Unprofessional conduct.

Section 58-66-503, Ultimate fighting prohibited.

Section 58-66-601, Authority.

Section 58-66-602, Approval to hold contest.

Section 58-66-603, Contracts.

Section 58-66-604, Rules.

Section 58-66-605, HIV testing -- Testing of body fluids of professional contestants -- Sanctions for tests positive for alcohol or drugs.

Section 58-66-606, Supervision of contests -- Payment of staff.

Section 58-66-607, Disposition of monies withheld from purse of professional contestant.

Section 58-66-608, Report of gross receipts -- 5% state event tax on gross receipts.

Section 25. Effective date.

This act takes effect on July 1, 2001.

CHAPTER 92
S. B. 26
Passed February 16, 2001
Approved March 15, 2001
Effective April 30, 2001

MASTER ROAD AMENDMENTS

Sponsor: Peter C. Knudson

This act modifies the Transportation Code by amending certain state highway routes.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
72-4-110, as renumbered and amended by Chapter 270, Laws of Utah 1998
72-4-113, as renumbered and amended by Chapter 270, Laws of Utah 1998
72-4-115, as renumbered and amended by Chapter 270, Laws of Utah 1998
72-4-120, as renumbered and amended by Chapter 270, Laws of Utah 1998
72-4-123, as renumbered and amended by Chapter 270, Laws of Utah 1998
72-4-136, as renumbered and amended by Chapter 270, Laws of Utah 1998
72-4-137, as renumbered and amended by Chapter 270, Laws of Utah 1998

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

Section 1. Section 72-4-110 is amended to read:

72-4-110. State highways -- SR-41 to SR-46, SR-48, SR-50.

State highways include:

(1) SR-41. From Route 15 south of Nephi northerly through Nephi to Route 15 north of Nephi.

(2) SR-42. From the Utah-Idaho state line near Strevell, Idaho, easterly to Route 30 at Curlew Junction.

(3) SR-43. From the Utah-Wyoming state line about 6-1/2 miles west of Manila easterly through Manila to the Utah-Wyoming state line about three miles east of Manila.

(4) SR-44. From Route 191 at Greendale Junction northwesterly to Route 43 in Manila.

(5) SR-45. From the Evacuation Wash Area south of Bonanza northwesterly through Bonanza to Route 40 southeast of Vernal, near Naples.

(6) SR-46. From Route 191 at LaSal Junction easterly to the Utah-Colorado state line.

(7) SR-48. From [~~a point 1.8 miles west of the post office~~] the Kennecott gate in Copperton [~~easterly~~] northeasterly to [~~North Holden Street~~] 7800 South then easterly on 7800 South to Route 68 in [~~Midvale~~] West Jordan; then [~~north on North Holden Street and 700 West Street to 7200 South Street; then east to~~] beginning again at Route 68 easterly on 7000 South and 7200 South to Route 89.

(8) SR-50. From Route 6 in Delta southeasterly to Holden, then northerly to Route 15 and beginning again at Route 15 near Scipio; then easterly to Main Street in Scipio; then south on Main Street to Center Street in Scipio; then southeasterly to a junction with Route 89 in Salina.

Section 2. Section 72-4-113 is amended to read:

72-4-113. State highways -- SR-71 to SR-80.

State highways include:

(1) SR-71. From Route [~~68~~] 154 in Riverton easterly to Seventh East Street in Draper; then northerly on Seventh East and Ninth East Streets to Route 186 at Seventh East Street and Fourth South Street in Salt Lake City.

(2) SR-72. From Route 24 in Loa northerly to a junction with Route 70 and Route 10 near Fremont Junction.

(3) SR-73. From Route 36 northeast of St. John Station southeasterly on Five Mile Pass; then northeasterly to Route 89 in Lehi.

(4) SR-74. From Route 89 in American Fork northerly to Alpine.

(5) SR-75. From Route 15 northwest of Springville easterly to Route 89 near Ironton.

(6) SR-76. From Route 70 easterly to old Fremont Junction on Route 72.

(7) SR-77. From Route 147 north of Benjamin north through Barney Corner; then easterly to Route 89 in Springville.

(8) SR-78. From Route 15 at the Mills Junction Interchange northerly to west of Levan; then east to Route 28 in Levan.

(9) SR-79. From Route 126 easterly on Thirty-first Street in Ogden to the lane separation, then on eastbound lane only to Route 89; then easterly on Thirtieth Street to Route 203; beginning again at Thirtieth Street and Route 89 then westerly on the westbound lane only to merge with eastbound lanes.

(10) SR-80. From the Utah-Nevada state line in Wendover to the Utah-Wyoming state line west of Evanston, Wyoming, on Interstate 80.

Section 3. Section 72-4-115 is amended to read:

72-4-115. State highways -- SR-91 to SR-97, SR-99, SR-100.

State highways include:

(1) SR-91. From Route 15 south of Brigham City; then easterly through Brigham Canyon and Logan to the Utah-Idaho state line near Franklin, Idaho.

(2) SR-92. From Route 15 near Point of the Mountain east through American Fork Canyon to Route 189 in Provo Canyon.

(3) SR-93. From the on- and off-ramps on the west side of Route 15, east along the south city limits of Woods Cross to Route 89.

(4) SR-94. From Route 70 northeasterly to Thompson.

(5) SR-95. From Route 24 east of Hanksville southerly crossing near the confluence of the Dirty Devil and Colorado Rivers to a point 4.3 miles south of Blanding on Route 191.

(6) SR-96. From Clear Creek northerly through Scofield to Route 6 near Colton.

(7) SR-97. From Route 108 east on 5600 South Street in Roy to the Hill Air Force Base Northwest gate.

(8) SR-98. From Route 37 at Hooper east to Route 108.

(9) SR-99. From Route 15 south of Fillmore northerly through Fillmore to Route 15.

(10) SR-100. From Route 99 in Fillmore westerly then northerly to Route 50 west of Holden.

Section 4. Section 72-4-120 is amended to read:

72-4-120. State highways -- SR-141 to SR-151.

State highways include:

(1) SR-141. From Route 6 in Genola to Route 147 west of Payson.

(2) SR-142. From Route 23 near Newton to Clarkston; then easterly through Trenton to Route 91 in Richmond.

(3) SR-143. From Route 15 west of Parowan easterly through Parowan, then southerly to the Panguitch Lake Road, then easterly and northerly coincident with the Panguitch Lake Road to Route 89 in Panguitch.

(4) SR-144. From Route 92 in American Fork Canyon northerly to Tibble Fork Reservoir.

(5) SR-145. From Route 15 east on Main Street in American Fork to Route 89.

(6) SR-146. From Route 89 at Pleasant Grove northerly to Route 92 near the mouth of American Fork Canyon.

(7) SR-147. From Route [~~6 at Payson westerly to~~] 141, McBeth Corner; then northerly four miles; then east approximately three miles to Benjamin; then north approximately one mile; then easterly crossing Route 89 one mile; then north to Mapleton; then west to Route 89.

(8) SR-148. From Route 14 north to Cedar Breaks National Monument south boundary.

(9) SR-149. From Route 40 at Jensen northerly to Dinosaur National Monument boundary.

(10) SR-150. From Route 32 in Kamas easterly to Mirror Lake and northerly to Utah-Wyoming state line.

(11) SR-151. From Route [~~68~~] 154 east on 10400 South Street to 1300 West Street; then southeasterly to 10600 South Street; then east on 10600 South Street to Route 15.

Section 5. Section 72-4-123 is amended to read:

72-4-123. State highways -- SR-171 to SR-174, SR-178, SR-180.

State highways include:

(1) SR-171. From Route 111 at Eighty-fourth West Street and Thirty-fifth South Street easterly on Thirty-fifth South Street and Thirty-third South Street to Route 215 at the east-side belt route.

(2) SR-172. From 6200 South north on 5600 West to Route 80.

(3) SR-173. From Route 111 southeast of Magna easterly through Kearns and Murray to Route 89 at 5300 South Street in Murray.

(4) SR-174. From Intermountain Power Plant maingate southeasterly to Route 6 south of Lynndyl.

(5) SR-178. From the southbound on and off ramps of Route 15 east on 800 South in Payson to Route 198.

[~~(5)~~] (6) SR-180. From Route 15 southeast of American Fork northerly on Fifth East Street to Route 89 in American Fork.

Section 6. Section 72-4-136 is amended to read:

72-4-136. State highways -- SR-301 to SR-304, SR-306, SR-308 to SR-310.

State highways include:

(1) SR-301. From the boat ramp at Steinaker State Park northeasterly to Route [44] 191 near the north end of Steinaker Reservoir.

(2) SR-302. From Route 32 near the south end of Rockport Reservoir northwesterly to a point near the north boundary of Rockport State Park.

(3) SR-303. From the Goblin Valley Overlook northerly to the Goblin Valley State Park north boundary.

(4) SR-304. From the parking lot at the beach area in Hyrum State Park northwesterly to a junction with Center Street and Fifth South Street in Hyrum City.

(5) SR-306. From the parking area north to Route 66 near the north end of East Canyon Lake State Park.

(6) SR-308. From a local road at the south boundary of Kodachrome Basin State Park northerly to where pavement ends and one way traffic begins.

(7) SR-309. From a local road northerly to the parking area at Millsite Lake State Park.

(8) SR-310. From the parking area at Minersville Lake State Park east to Route 21.

Section 7. Section 72-4-137 is amended to read:

72-4-137. State highways -- SR-311 to SR-320, SR-666.

State highways include:

(1) SR-311. From Route 40 northerly to the boat ramp at Starvation Lake State Park.

(2) SR-312. From the parking area at the south marina of Willard Bay State Park east to a local road.

(3) SR-313. From the camping area at Dead Horse Point northerly to Route 191 near Seven Mile Canyon.

(4) SR-314. From Route 189 northwesterly to the boat ramp at Deer Creek Lake State Recreation area.

(5) SR-315. From the parking area at the marina of Willard Bay North State Recreation Area northerly to 750 North in Willard, then east to Route 89.

(6) SR-316. From the Great Goosenecks of the San Juan State Park northeasterly to Route 261.

(7) SR-317. Roads and parking areas at the Calvin L. Rampton Complex.

(8) SR-318. From Route 9 northerly to Quail Creek State Park pay gate.

(9) SR-319. From the southbound on and off ramps of Route 40, Mayflower Interchange southeasterly to the [~~end of constructed road; then via proposed road to a point where the boat ramp at the~~] Jordanelle State Park [~~will begin~~] fee station.

(10) SR-320. Department of Public Safety Emergency Vehicle Operation Range at Camp Williams.

(11) SR-666. From Route 191 at Monticello east to the Utah-Colorado state line.

CHAPTER 93
S. B. 28
Passed February 15, 2001
Approved March 15, 2001
Effective July 1, 200
(Exception clause in Section 5)

UTAH PERFORMANCE ASSESSMENT FOR STUDENTS AMENDMENTS

Sponsor: Howard A. Stephenson
L. Steven Poulton
Karen Hale
Ron Allen
Dan R. Eastman
David H. Steele

This act modifies provisions related to the State System of Public Education to address issues related to the Utah Performance Assessment System for Students (U-PASS). The act expands the categories for disaggregating student performance data to include limited English proficiency. The act requires each local school board to provide its staff with a professional development program to effectively implement and maintain U-PASS at the school and classroom levels. The act requires additional data to be reported on the annual school performance report on issues related to reading proficiency, student absenteeism, staff qualifications, average daily attendance, and disaggregated enrollment totals. The act also requires electronic reporting of additional data related to test scores and trends, grade averages, volunteerism, student discipline, and fee waivers. This act takes effect July 1, 2001, except that the school performance report modifications take effect July 1, 2002.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
53A-1-603, as last amended by Chapter 219, Laws of Utah 2000
53A-1-605, as last amended by Chapter 219, Laws of Utah 2000
53A-1-606, as last amended by Chapter 219, Laws of Utah 2000
53A-3-602.5 (Effective 07/01/02), as enacted by Chapter 219, Laws of Utah 2000

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

Section 1. Section 53A-1-603 is amended to read:

53A-1-603. Duties of State Board of Education.

(1) The State Board of Education shall:

(a) require each school district to implement the Utah Performance Assessment System for Students, hereafter referred to as U-PASS;

(b) require the state superintendent of public instruction to submit and recommend criterion-referenced and norm-referenced achievement tests, a tenth grade basic skills competency test, and a direct writing assessment for grades 6 and 9 to the board for approval and adoption and distribution to each school district by the state superintendent;

(c) develop an assessment method to uniformly measure statewide performance, school district performance, and school performance of students in grades 1 through 12 in mastering basic skills courses; and

(d) provide for the state to participate in the National Assessment of Educational Progress state-by-state comparison testing program.

(2) Under U-PASS, the state office shall annually require that each district administer:

(a) a statewide norm-referenced test to all students in grades 3, 5, 8, and 11;

(b) statewide criterion-referenced tests in all grade levels and courses in basic skill areas of the core curriculum;

(c) a direct writing assessment to all students in grades 6 and 9, with the first assessment to be administered during the 2001-02 school year; and

(d) a tenth grade basic skills competency test as detailed in Section 53A-1-611, with the first test to be administered during the 2002-03 school year.

(3) The board shall adopt rules for the conduct and administration of U-PASS to include the following:

(a) the computation of student performance based on information that is disaggregated with respect to race, ethnicity, gender, limited English proficiency, and [~~socioeconomic status~~] those students who qualify for free or reduced price school lunch;

(b) security features to maintain the integrity of the system, which could include statewide uniform testing dates, multiple test forms, and test administration protocols;

(c) the exemption of student test scores, by exemption category, such as limited English proficiency, mobility, and students with disabilities, with the percent or number of student test scores exempted being publically reported at a district level;

(d) compiling of criterion-referenced and direct writing test scores and test score averages at the classroom level to allow for:

(i) an annual review of those scores by parents of students and professional and other appropriate staff at the classroom level at the earliest point in time and consistent with the timeline of the phase-in referred to in Sections 53A-1-602 and [~~53A-1-603~~] this section, but no later than by the end of the school year beginning with the 2003-04 school year;

(ii) the assessment of year-to-year student progress in specific classes, courses, and subjects; [~~and~~]

(iii) a teacher to review, prior to the beginning of a new school year for the 2003-04 school year and for each school year thereafter, test scores from the previous school year of students who have been assigned to the teacher's class for the new school year; and

(iv) allowing a school district to have its tests administered and scored electronically to accelerate the review of test scores and their usefulness to parents and educators under Subsections (3)(d)(i), (ii), and (iii), without violating the integrity of U-PASS; and

(e) providing that:

(i) scores on the tests and assessments required under [~~Subsections~~] Subsection (2)[~~(a) and~~] (b) shall be considered in determining a student's academic grade for the appropriate course and whether a student shall advance to the next grade level; and

(ii) the student's score on the tenth grade basic skills competency test shall be recorded on the student's transcript of credits.

(4) The board shall make an annual report to the Legislature's Education Interim Committee on the timelines required under Subsections (3)(d)(i) and (iii) that begin with the 2003-04 school year to include recommendations for any necessary modifications to the timelines.

Section 2. Section 53A-1-605 is amended to read:

53A-1-605. Analysis of results -- Submission of annual budget -- Staff professional development.

(1) The State Board of Education, through the state superintendent of public instruction, shall develop a plan to analyze the results of the U-PASS scores for all grade levels and courses required under Section 53A-1-603 and the student behavior indicators referred to in Subsection 53A-1-602(4)(e).

(2) The plan shall include components designed to:

(a) assist school districts and individual schools to use the results of the analysis in planning, evaluating, and enhancing programs within the district; and

(b) for the 2003-04 school year and for each year thereafter, identify schools not achieving state-established acceptable levels of student performance in order to assist those schools in raising their student performance levels.

(3) The plan shall include provisions for statistical reporting of data as follows:

(a) norm-referenced tests results shall be reported at the state, district, school, and grade levels, and shall include actual levels of performance on tests; and

(b) criterion-referenced tests results shall be reported at state, district, school, and grade or course levels, and shall include actual levels of performance on tests.

(4) (a) The State Board of Education shall submit to the Legislature, annually, a budget to implement and maintain U-PASS.

(b) As part of the budget recommendation, the state board shall include:

(i) evaluation of U-PASS and proposed modifications if appropriate; [~~and~~]

(ii) anticipated costs for staff professional development programs required to effectively implement U-PASS at the school and classroom levels; and

[~~(ii)~~] (iii) resources required to assist schools identified under Subsection (2)(b) in raising their performance levels.

(5) Each local school board shall provide for:

(a) district evaluation of the U-PASS test results and use of the evaluations in setting goals and establishing programs for the district and each school within the district[.]; and

(b) a professional development program that:

(i) is funded in whole or in part from monies received under Subsection (4)(b)(ii); and

(ii) provides teachers, principals, and other professional staff employed by the school district with the training required to successfully establish and maintain U-PASS.

Section 3. Section 53A-1-606 is amended to read:

53A-1-606. Mastery of reading skills.

(1) (a) The Utah Performance Assessment System for Students in grades 1 through [~~6~~] 10 shall be used to determine whether the planned instruction has resulted in the student's mastery of reading skills.

(b) As used in Subsection (1)(a), planned instruction shall include instructional practices of:

(i) early and explicit teaching of phonetic decoding skills;

(ii) continuous and frequent exposure to a wide range of quality literature;

(iii) writing to foster and reinforce word recognition, language structure, and experience; and

(iv) regular and adequate time to read a wide variety of materials across the curriculum.

(c) (i) If, through U-PASS, the school finds the student seriously deficient in one or more of these basic skills, it shall provide remedial assistance to help the student overcome the deficiency and attain reading proficiency appropriate to the student's age and ability.

(ii) The remediation program shall include a plan to bring the student up to the appropriate reading level and an opportunity for parents to receive

materials and guidance so that they will be able to assist in the remediation process and support their students' progress toward literacy.

(d) U-PASS shall incorporate assessment mechanisms developed by the State Board of Education, through the state superintendent of public instruction, as well as commercially produced testing material selected by the board under Subsection 53A-1-603(1).

(2) The local board may also administer other tests.

Section 4. Section 53A-3-602.5 (Effective 07/01/02) is amended to read:

53A-3-602.5 (Effective 07/01/02). School performance report -- Components -- Annual filing.

(1) The State Board of Education in collaboration with the state's 40 school districts shall develop a school performance report to inform the state's residents of the quality of schools and the educational achievement of students in the state's public education system.

(2) The report shall be written and include the following statistical data for each school in each school district, as applicable, and shall also aggregate the data at the district and state level:

(a) except as provided in Subsection (2)(a)(ii), test scores [~~and trends~~] over the previous [~~four years~~] year on:

(i) norm-referenced achievement tests;

(ii) criterion-referenced tests beginning with the 2001-02 school year, to include the scores aggregated for all students by grade level or course for the previous two years and an indication of whether there was a sufficient magnitude of gain in the scores between the two years;

(iii) writing assessments required under Subsection 53A-1-603(2)(c); and

(iv) tenth grade basic skills competency tests required under Subsection 53A-1-603(2)(d);

(b) college entrance examinations, including the number and percentage of each graduating class taking the examinations for the previous four years;

(c) advanced placement and concurrent enrollment data, including:

(i) the number of students taking advanced placement and concurrent enrollment courses;

(ii) the number and percent of students taking a specific advanced placement course who take advanced placement tests to receive college credit for the course;

(iii) of those students taking the test referred to in Subsection (2)(c)(ii), the number and percent who pass the test; and

(iv) of those students taking a concurrent enrollment course, the number and percent of those who receive college credit for the course;

(d) the number and percent of students [~~in elementary schools~~] through grade ten reading at or above grade level;

(e) the number and percent of students [~~classified as "chronic absentees", as defined by State Board of Education rule~~] who were absent from school ten days or more during the school year;

(f) achievement gaps that reflect the differences in achievement of various student groups as defined by State Board of Education rule;

(g) the number and percent of "student dropouts" within the district as defined by State Board of Education rule;

(h) course-taking patterns and trends in secondary schools;

(i) student mobility;

(j) staff qualifications, to include years of professional service and the number and percent of staff who have a degree or endorsement in their assigned teaching area and the number and percent of staff who have a graduate degree;

(k) the number and [~~percentage~~] percent of parents who participate in SEP, SEOP, and parent-teacher conferences;

(l) the number and [~~percentage~~] percent of students who participate in extracurricular activities, to include a statement on the amount of class time missed by students and faculty for those activities which require them to miss normal class time during the school day and the total number of individuals involved in missing normal class time; [~~and~~]

(m) average class size by grade level and subject[~~.~~];

(n) average daily attendance as defined by State Board of Education rule, including every period in secondary schools; and

(o) enrollment totals disaggregated with respect to race, ethnicity, gender, limited English proficiency, and those students who qualify for free or reduced price school lunch.

[~~(3) During the year 2000 interim, the State Board of Education shall work with the Task Force on Learning Standards and Accountability in Public Education, the Legislative Education Interim Committee, and the Strategic Planning for Public and Higher Education Committee to determine if additional statistical data should be collected and reported under Subsection (2), to include the following:~~]

(3) The State Board of Education, in collaboration with the state's school districts, shall provide for the collection and electronic reporting of the following data for each school in each school district:

(a) test scores and trends over the previous four years on the tests referred to in Subsection (2)(a);

[~~(a)~~] (b) the average grade given in each math, science, and English [~~class~~] course in grades 9 through 12 for which criteria-referenced tests are required under Subsection 53A-1-603(2)(b);

[~~(b)~~] (c) the number of volunteers and volunteer hours;

[~~(c)~~] (d) incidents of student discipline as defined by State Board of Education rule[~~;~~], including suspensions, expulsions, and court referrals; and

(e) the number and percent of students receiving fee waivers and the total dollar amount of fees waived.

[~~(d) parent surveys;~~]

[~~(e) student surveys;~~]

[~~(f) enrollment totals and trends;~~]

[~~(g) average daily attendance, including every period in secondary schools;~~]

[~~(h) suspensions;~~]

[~~(i) the number and percent of students who qualify for free and reduced price school lunch;~~]

[~~(j) for secondary schools, grade distributions and average student GPA by school and teacher;~~]

[~~(k) total reading hours at home;~~]

[~~(l) keyboarding skills;~~]

[~~(m) physical fitness;~~]

[~~(n) portfolios;~~]

[~~(o) safe school violations; and~~]

[~~(p) court referrals.~~]

(4) (a) The State Board of Education shall adopt common definitions and data collection procedures for local school boards to use in collecting and forwarding the data required under [~~Subsection~~] Subsections (2) and (3) to the state superintendent of public instruction.

(b) The state board, through the state superintendent of public instruction, shall adopt standard reporting forms and provide a common template for collecting and reporting the data, which shall be used by all school districts.

(c) The state superintendent shall use the automated decision support system proposed for authorization by the Legislature in the 2000 General Session in Subsection 53A-1-301(2)(e) to collect and report the data required under [~~Subsection~~] Subsections (2) and (3), contingent upon approval of the proposal and its required appropriation.

(5) (a) For the school year ending June 30, 2003, and for each year thereafter, the state board, through the state superintendent of public instruction, shall issue its report annually by October 1 to include the required data from the previous school year or years as indicated in [~~Subsection~~] Subsections (2) and (3).

(b) The state board shall determine the nature and extent of longitudinal data to be reported under Subsections (2)[~~(a),~~](b), (c), and (d) and (3)(a) during the first three years of the reporting program, with the baseline reporting year beginning July 1, 2002 and ending June 30, 2003.

(6) (a) Each local school board shall receive a written or an electronic copy of the report from the state superintendent of public instruction containing the data for that school district in a clear summary format and have it distributed, on a one per household basis, to the residence of students enrolled in the school district before November 30th of each year.

(b) Each local school board and the state board shall have a complete report of the statewide data available for copying or in an electronic format at their respective offices.

Section 5. Effective date.

This act takes effect July 1, 2001, except that Section 53A-3-602.5 takes effect July 1, 2002.

CHAPTER 94
S. B. 30
Passed February 1, 2001
Approved March 15, 2001
Effective April 30, 2001

FILING EMPLOYEE TAX INFORMATION ELECTRONICALLY

Sponsor: David H. Steele

This act modifies the Individual Income Tax Act to require employers who file Form W-2 with the Internal Revenue Service in an electronic format to also file Form W-2 in an electronic format with the State Tax Commission.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
59-10-406, as last amended by Chapter 287, Laws of Utah 1990

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

Section 1. Section 59-10-406 is amended to read:

59-10-406. Collection and payment of tax.

(1) (a) Each employer shall, on or before the last day of April, July, October, and January, pay to the commission the amount required to be deducted and withheld from wages paid to any employee during the preceding calendar quarter under this part.

(b) The commission may change the time or period for making reports and payments if:

(i) in its opinion, the tax is in jeopardy; or

(ii) a different time or period will facilitate the collection and payment of the tax by the employer.

(2) Each employer shall file a return, in a form the commission prescribes, with each payment of the amount deducted and withheld under this part showing:

(a) the total amount of wages paid to his employees;

(b) the amount of federal income tax deducted and withheld;

(c) the amount of tax under this part deducted and withheld; and

(d) any other information the commission may require.

(3) (a) Each employer shall file an annual return, in a form the commission prescribes, summarizing:

(i) the total compensation paid;

(ii) the federal income tax deducted and withheld; and

(iii) the state tax deducted and withheld for each employee during the calendar year.

(b) This return shall be filed with the commission on or before February 28 of the year following that for which the report is made.

(4) (a) Each employer shall also, in accordance with rules prescribed by the commission, provide each employee from whom state income tax has been withheld with a statement of the amounts of total compensation paid and the amounts deducted and withheld for that employee during the preceding calendar year in accordance with this part.

(b) The statement shall be made available to each entitled employee on or before January 31 of the year following that for which the report is made.

(5) (a) The employer is liable to the commission for the payment of the tax required to be deducted and withheld under this part. The employee is not thereafter liable for the amount of any such payment, nor is the employer liable to any person or to any employee for the amount of any such payment.

(b) For the purpose of making penal provisions of this title applicable, any amount deducted or required to be deducted and remitted to the commission under this part is considered the tax of the employer and with respect to such amounts he is considered the taxpayer.

(6) Each employer who deducts and withholds any amount under this part shall hold the amount in trust for the state of Utah for the payment of it to the commission in the manner and at the time provided for in this part. So long as any delinquency continues, the state of Utah shall have a lien to secure the payment of any amounts withheld, and not remitted as provided under this section, upon all of the assets of the employer and all property owned or used by the employer in the conduct of his business, including stock-in-trade, business fixtures, and equipment. This lien shall be prior to any lien of any kind, including existing liens for taxes.

(7) As a condition precedent to doing business in Utah, the commission may require an employer to post with it a corporate bond in an amount reasonably calculated to ensure the payment to the state of taxes deducted and withheld from wages, but not to exceed $5,000.

(8) To the extent consistent with this section, the commission may use all the provisions of this chapter relating to records, penalties, interest, deficiencies, redetermination of deficiencies, overpayments, refunds, assessments, and venue to enforce this section.

(9) For all tax years beginning on or after January 1, 2001, an employer that is required to file a federal Form W-2 in an electronic format with the Federal Department of the Treasury Internal Revenue Service shall file each Form W-2 that is required to be filed with the commission in an electronic format approved by the commission.

CHAPTER 95
S. B. 31
Passed February 22, 2001
Approved March 15, 2001
Effective April 30, 2001

AREA HEALTH EDUCATION CENTER AMENDMENTS

Sponsor: Peter C. Knudson

This act modifies the Health Code to remove the Department of Health from the responsibility of establishing area health education centers. The act establishes five regional centers and makes technical changes. The act appropriates $300,000 from the General Fund for fiscal year 2001-02 to the University of Utah Health Science Center to expand the Area Health Education Center Program.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
26-9-3, as enacted by Chapter 321, Laws of Utah 1995

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

Section 1. Section 26-9-3 is amended to read:

26-9-3. Rural health development initiatives.

(1) (a) The University of Utah Health Science Center [~~and the department~~] shall use any appropriations it receives for developing area health education centers to establish and maintain an area health education center program in accordance with this section.

(b) Implementation and execution of the area health education center program is contingent upon appropriations from the Legislature.

(2) (a) The area health education [~~centers~~] center program shall consist of a central program office[~~, and one or more area health education centers established throughout the state. The purpose of the program is to establish and operate a statewide, decentralized, regional health professions and training program, with special emphasis on addressing rural education and training needs~~] at the University of Utah Health Science Center. The program office shall establish and operate a statewide, decentralized, regional program with emphasis on addressing rural health professions workforce education and training needs.

(b) The area health education center program shall have five regional centers serving the following geographic areas:

(i) the northern center serving Box Elder, Cache, Rich, Weber, and Morgan counties;

(ii) the crossroads center serving Salt Lake, Wasatch, Summit, Tooele, Utah, and Davis counties;

(iii) the central center serving Juab, Millard, Piute, Sanpete, Sevier, and Wayne counties;

(iv) the eastern center serving Carbon, Daggett, Duchesne, Emery, Grand, San Juan, and Uintah counties; and

(v) the southwest center serving Beaver, Garfield, Iron, Kane, and Washington counties.

[~~(3) The University of Utah Health Sciences Center is responsible for the development and maintenance of the area health education centers program. The department shall provide assistance to the University of Utah Health Sciences Center for the development and maintenance of the area health education centers program.~~]

[~~(4)~~] (3) The area health education [~~centers~~] center program shall attempt to acquire funding from state, local, federal, and private sources.

[~~(5)~~] (4) Each area health education center shall provide community-based health professions education programming for [~~a defined~~] the geographic area described in Subsection (2)(b) of this section.

Section 2. Appropriation.

(1) There is appropriated from the General Fund for fiscal year 2001-02 only, $300,000 to the University of Utah Health Science Center.

(2) It is the intent of the Legislature that this appropriation shall be used for the Area Health Education Center program established in Section 26-9-3.

CHAPTER 96
S. B. 39
Passed February 19, 2001
Approved March 15, 2001
Effective April 30, 2001

ALLOWABLE USE OF COUNTY AND CITY RESOURCES

Sponsor: D. Chris Buttars

This act modifies county and city provisions relating to a county or city's use of its resources for nonprofit entities. The act authorizes counties and cities to use resources for private, nonprofit entities. The act also makes technical changes.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
10-8-2, as last amended by Chapter 134, Laws of Utah 1993
17-50-303, as renumbered and amended by Chapter 133, Laws of Utah 2000

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

Section 1. Section 10-8-2 is amended to read:

10-8-2. Appropriations -- Acquisition and disposal of property -- Corporate purpose.

(1) A [~~board of commissioners or~~] city [~~council~~] legislative body may:

(a) appropriate money for corporate purposes only;

(b) provide for payment of debts and expenses of the corporation;

(c) purchase, receive, hold, sell, lease, convey, and dispose of real and personal property for the benefit of the city, whether the property is within or without the city's corporate boundaries; [~~and~~]

(d) improve, protect, and do any other thing in relation to this property that an individual could do[~~.~~]; and

(e) after first holding a public hearing, authorize city services or other nonmonetary property or assistance to be given to or waive fees required to be paid by a nonprofit entity, whether or not the city receives consideration in return.

(2) It is considered a corporate purpose to appropriate money for any purpose that, in the judgment of the [~~board of commissioners or~~] city [~~council~~] legislative body, provides for the safety, health, prosperity, moral well-being, peace, order, comfort, or convenience of the inhabitants of the city.

Section 2. Section 17-50-303 is amended to read:

17-50-303. County may not give or lend credit -- County may borrow in anticipation of revenues -- Assistance to nonprofit entities.

(1) A county may not give or lend its credit to or in aid of any person or corporation, or, except as provided in Subsection (3), appropriate money in aid of any private enterprise.

(2) (a) A county may borrow money in anticipation of the collection of taxes and other county revenues in the manner and subject to the conditions of Title 11, Chapter 14, Utah Municipal Bond Act.

[~~(3)~~] (b) A county may incur indebtedness under Subsection (2)(a) for any purpose for which funds of the county may be expended.

(3) After first holding a public hearing, a county may provide services or give other nonmonetary property or assistance to or waive fees required to be paid by a nonprofit entity, whether or not the county receives consideration in return.

CHAPTER 97
S. B. 44
Passed February 7, 2001
Approved March 15, 2001
Effective April 30, 2001

FEES PAYABLE TO THE COMMISSIONER OF FINANCIAL INSTITUTIONS

Sponsor: Terry R. Spencer

This act modifies the Financial Institutions Code to modify the fee paid by certain financial institutions and to make technical changes.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
7-1-401, as last amended by Chapter 260, Laws of Utah 2000

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

Section 1. Section 7-1-401 is amended to read:

7-1-401. Fees payable to commissioner.

(1) [~~Each depository institution under the jurisdiction of the department, except~~] Except for an out-of-state depository institution with a branch in Utah, a depository institution under the jurisdiction of the department shall pay an annual fee:

(a) computed [~~upon the basis of aggregate~~] by averaging the total assets[~~, as~~] of the depository institution shown [~~upon the year-end report~~] on each quarterly report of condition for the depository institution for the calendar year immediately proceeding the date the annual fee is due under Section 7-1-402; and

(b) at the following rates:

[~~(a)~~] (i) on the first $5,000,000 of these assets, the greater of:

(A) 65 cents per $1,000; or

(B) $500[~~, whichever is greater~~];

[~~(b)~~] (ii) on the next $10,000,000 of these assets, 35 cents per $1,000;

[~~(c)~~] (iii) on the next $35,000,000 of these assets, 15 cents per $1,000;

[~~(d)~~] (iv) on the next $50,000,000 of these assets, 12 cents per $1,000;

[~~(e)~~] (v) on the next $200,000,000 of these assets, 10 cents per $1,000;

[~~(f)~~] (vi) on the next $300,000,000 of these assets, 6 cents per $1,000; and

[~~(g)~~] (vii) on all amounts over $600,000,000 of these assets, [4] 2 cents per $1,000.

(2) A financial institution with a trust department shall pay a fee determined in accordance with Subsection (7) for each examination of the trust department by state examiners.

(3) [~~A~~] Notwithstanding Subsection (1), a credit union in its first year of operation shall pay a basic fee of $25 instead of the fee required under Subsection (1).

(4) A trust company that is not a depository institution or a subsidiary of a depository institution holding company shall pay:

(a) an annual fee of $500; and

(b) an additional fee determined in accordance with Subsection (7) for each examination by state examiners.

(5) [~~All other persons and institutions~~] Any person or institution under the jurisdiction of the department that [~~do~~] does not pay a fee under Subsections (1) through (4) shall pay:

(a) an annual fee of $100; and

(b) an additional fee determined in accordance with Subsection (7) for each examination by state examiners.

(6) [~~An applicant~~] A person filing an application or request under Section 7-1-503, 7-1-702, 7-1-703, 7-1-704, 7-1-713, 7-5-3, or 7-18a-202 shall pay:

(a) a filing fee of $500; and

(b) all reasonable expenses incurred in processing the application.

(7) (a) Per diem assessments for [~~examinations~~] an examination shall be calculated at the rate of $40 per hour:

(i) for each examiner; and

(ii) per hour worked.

(b) For an examination of [~~branches~~] a branch or [~~offices~~] office of a financial [~~institutions~~] institution located outside of this state, in addition to the per diem assessment under this Subsection (7), the institution shall pay all reasonable travel, lodging, and other expenses incurred by each examiner while conducting the examination.

(8) [~~A~~] In addition to a fee under Subsection (5), a person registering under Section 7-23-103 shall pay an original registration fee of $300.

CHAPTER 98
S. B. 48
Passed February 16, 2001
Approved March 15, 2001
Effective July 1, 2001

PASSENGER LIMITATIONS FOR YOUNG DRIVERS

Sponsor: Karen Hale

This act modifies the Motor Vehicle Code to provide passenger limitations for certain young drivers. This act provides secondary enforcement of violations. This act takes effect July 1, 2001.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:
41-8-3, Utah Code Annotated 1953

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

Section 1. Section 41-8-3 is enacted to read:

41-8-3. Operation of vehicle by persons under 16 and six months -- Passenger limitations -- Exceptions -- Penalties.

(1) In addition to the provisions of Title 53, Chapter 3, Uniform Driver License Act, a person, whether resident or nonresident of this state, may not operate a motor vehicle upon any highway of this state with any passenger who is not an immediate family member of the driver until the earlier of:

(a) six months from the date the person's driver license was issued; or

(b) the person reaches 18 years of age.

(2) It is an affirmative defense to a charge under Subsection (1) that the person is operating a motor vehicle:

(a) accompanied by a licensed driver at least 21 years of age who is occupying a seat next to the driver;

(b) on assignment of a farmer or rancher and the driver is engaged in an agricultural operation;

(c) with the written consent of the driver's parent or guardian to and from the driver's school, own school-sponsored activity, or religion-sponsored activity and the driver's residence; or

(d) in an emergency.

(3) In addition to any penalties imposed under Title 53, Chapter 3, Uniform Driver License Act, a violation of this section is a class C misdemeanor.

(4) Enforcement of this section by state or local law enforcement officers shall be only as a secondary action when an operator of a motor vehicle has been detained for a suspected violation of Title 41, other than this section, or for another offense.

Section 2. Effective date.

This act takes effect on July 1, 2001.

CHAPTER 99
S. B. 57
Passed February 27, 2001
Approved March 15, 2001
Effective March 15, 2001

INSTRUCTION IN MANDARIN CHINESE IN PUBLIC SCHOOLS

Sponsor: Howard A. Stephenson

This act modifies provisions related to the State System of Public Education by allowing the State Board of Education and the State Board of Regents to develop and implement a concurrent enrollment course on Mandarin Chinese to be taught over EDNET. The act takes effect upon approval.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:
53A-15-101.5, Utah Code Annotated 1953

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

Section 1. Section 53A-15-101.5 is enacted to read:

53A-15-101.5. Concurrent enrollment instruction in Mandarin Chinese.

(1) (a) As used in this section, "category IV languages" means those languages designated the most difficult to learn by the Defense Language Institute as provided in training to members of the United States Military.

(b) The Legislature recognizes:

(i) the importance of students acquiring skills in foreign languages in order for them to successfully compete in a global society; and

(ii) that the acquisition of category IV languages, such as Mandarin Chinese, Arabic, Korean, and Japanese, by students in the state's public schools requires extended sequences of study to acquire useful proficiency in listening, speaking, reading, and writing.

(2) (a) As a component of the concurrent enrollment program authorized under Section 53A-15-101, the State Board of Education and the State Board of Regents, in consultation with the Utah Education Network, may develop and implement a concurrent enrollment course of study in the category IV language of Mandarin Chinese.

(b) The course shall be taught over EDNET, the state's two-way interactive system for video and audio, to high school juniors and seniors in the state's public education system.

(3) (a) The concurrent enrollment course in Mandarin Chinese authorized in Subsection (2) may use paraprofessionals in the classroom who:

(i) are fluent in Mandarin Chinese; and

(ii) can provide reinforcement and tutoring to students on days and at times when they are not receiving instruction over EDNET under Subsection (2)(b).

(b) The State Board of Education, through the State Superintendent of Public Instruction, and professors who teach Chinese in the state system of higher education shall jointly ensure that the paraprofessionals are fluent in Mandarin Chinese.

(4) The State Board of Education and the State Board of Regents shall make joint rules on the concurrent enrollment course authorized under this section in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, to include:

(a) notification to school districts on the times and places of the course offerings; and

(b) instructional materials for the course.

(5) Students who successfully complete the concurrent enrollment course offered under this section shall receive tuition reimbursement for a sequential Mandarin Chinese course they successfully complete at an institution within the state system of higher education under rules made by the State Board of Regents in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(6) The State Board of Education and the State Board of Regents shall jointly track and monitor the Mandarin Chinese language program and may expand the program to include other category IV languages, subject to student demand for the courses and available resources.

Section 2. Effective date.

If approved by two-thirds of all the members elected to each house, this act takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 100
S. B. 59
Passed February 21, 2001
Approved March 15, 2001
Effective April 30, 2001

LICENSING OF GENETIC COUNSELORS

Sponsor: Paula F. Julander

This act modifies the Occupations and Professions Code by enacting the Genetic Counselors Licensing Act. The act defines the practice of genetic counseling and requires a license to practice genetic counseling within the state. The act creates the Genetic Counselors Licensing Board. The act sets forth the requirements for licensure. The act provides for exemptions from licensure. The act defines unlawful and unprofessional conduct and provides for discipline against licensees.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:
58-75-101, Utah Code Annotated 1953
58-75-102, Utah Code Annotated 1953
58-75-201, Utah Code Annotated 1953
58-75-301, Utah Code Annotated 1953
58-75-302, Utah Code Annotated 1953
58-75-303, Utah Code Annotated 1953
58-75-304, Utah Code Annotated 1953
58-75-401, Utah Code Annotated 1953
58-75-501, Utah Code Annotated 1953
58-75-502, Utah Code Annotated 1953

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

Section 1. Section 58-75-101 is enacted to read:

CHAPTER 75. GENETIC COUNSELORS LICENSING ACT

Part 1. General Provisions

58-75-101. Title.

This chapter is known as the "Genetic Counselors Licensing Act."

Section 2. Section 58-75-102 is enacted to read:

58-75-102. Definitions.

In addition to the definitions in Section 58-1-102, as used in this chapter:

(1) "Board" means the Genetic Counselors Licensing Board created in Section 58-75-201.

(2) "Genetic counselor" means a person licensed under this chapter to engage in the practice of genetic counseling.

(3) "Practice of genetic counseling" means the communication process which deals with the human problems associated with the occurrence, or the risk of occurrence, of a genetic disorder in a family, including the provision of services to help an individual or family:

(a) comprehend the medical facts, including the diagnosis, probable cause of the disorder, and the available management;

(b) appreciate the way heredity contributes to the disorder and the risk of occurrence in specified relatives;

(c) understand the alternatives for dealing with the risk of occurrence;

(d) choose the course of action which seems appropriate to them in view of their risk, their family goals, and their ethical and religious standards, and to act in accordance with that decision; and

(e) make the best possible psychosocial adjustment to the disorder in an affected family member or to the risk of occurrence of that disorder.

(4) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-75-501.

(5) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-75-502 and as may be further defined by rule by the division in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

Section 3. Section 58-75-201 is enacted to read:

Part 2. General Provisions

58-75-201. Board.

(1) There is created the Genetic Counselors Licensing Board consisting of four persons licensed in accordance with this chapter and one member of the general public.

(2) The board shall be appointed and serve in accordance with Section 58-1-201.

(3) The duties and responsibilities of the board shall be in accordance with Sections 58-1-202 and 58-1-203. In addition, the board may designate one of its members on a permanent or rotating basis to:

(a) assist the division in reviewing complaints concerning the unlawful or unprofessional conduct of a licensee; and

(b) advise the division in its investigation of these complaints.

(4) A board member who has, under Subsection (3), reviewed a complaint or advised in its investigation may be disqualified from participating with the board when the board serves as a presiding officer of an administrative proceeding concerning the complaint.

Section 4. Section 58-75-301 is enacted to read:

Part 3. Licensing

58-75-301. Licensure required -- Issuance of licenses -- Effect on insurers.

(1) Beginning January 1, 2002, and except as provided in Sections 58-1-307 and 58-75-304, a license is required to engage in the practice of genetic counseling.

(2) The division shall issue to any person who qualifies under this chapter a license to practice genetic counseling.

(3) Nothing in this chapter shall be construed to require payment from insurers for genetic counseling services.

Section 5. Section 58-75-302 is enacted to read:

58-75-302. Qualifications for licensure -- Temporary license.

(1) Except as provided in Subsection (2), each applicant for licensure as a genetic counselor under this chapter shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63-38-3.2;

(c) be of good moral character;

(d) provide satisfactory documentation of having earned:

(i) a Master's degree from a genetic counseling training program that is accredited by the American Board of Genetic Counseling; or

(ii) a Doctoral degree from a medical genetics training program that is accredited by the American Board of Medical Genetics; and

(e) meet the examination requirement for certification as:

(i) a genetic counselor by the American Board of Genetic Counseling or the American Board of Medical Genetics; or

(ii) a medical geneticist by the American Board of Medical Genetics.

(2) The division may issue a temporary license, in accordance with Section 58-1-303 and any other conditions established by rule, to an applicant who meets all of the requirements for licensure except the examination requirement of Subsection (1)(e).

Section 6. Section 58-75-303 is enacted to read:

58-75-303. Term of license -- Expiration -- Renewal.

(1) The division shall issue each license under this chapter in accordance with a two-year renewal cycle established by rule. The division may by rule extend or shorten a renewal cycle by as much as one year to stagger the renewal cycles it administers.

(2) Each licensee shall, at the time of applying for renewal, demonstrate compliance with continuing education requirements established by rule by the division in collaboration with the board.

(3) Each license automatically expires on the expiration date shown on the license unless the licensee renews it in accordance with Section 58-1-308.

Section 7. Section 58-75-304 is enacted to read:

58-75-304. Exemptions from licensure.

In addition to the exemptions from licensure set forth in Section 58-1-307, the following persons may engage in the practice of genetic counseling subject to the stated circumstances and limitations without being licensed under this chapter:

(1) an individual licensed as a physician and surgeon or osteopathic physician and surgeon under Chapter 67, Utah Medical Practice Act, and Chapter 68, Utah Osteopathic Medical Practice Act; and

(2) a commissioned physician or surgeon serving in the armed forces of the United States or other federal agency.

Section 8. Section 58-75-401 is enacted to read:

Part 4. License Denial and Discipline

58-75-401. Grounds for denial of license -- Disciplinary proceedings.

Grounds for refusing to issue a license to an applicant, for refusing to renew the license of a licensee, for revoking, suspending, restricting, or placing on probation the license of a licensee, for issuing a public or private reprimand to a licensee, and for issuing a cease and desist order shall be in accordance with Section 58-1-401.

Section 9. Section 58-75-501 is enacted to read:

Part 5. Unlawful and Unprofessional Conduct

58-75-501. Unlawful conduct.

"Unlawful conduct" includes, in addition to the definition in Section 58-1-501, using the title "genetic counselor" or any other title or designation tending to indicate that the person is a genetic counselor unless that person has a current license as a genetic counselor issued under this chapter.

Section 10. Section 58-75-502 is enacted to read:

58-75-502. Unprofessional conduct.

"Unprofessional conduct" includes, in addition to the definition in Section 58-1-501 and as may be further defined by rule:

(1) engaging in any act or practice in a professional capacity which the licensee is not competent to perform through training or experience;

(2) failing to refer a client to other competent professionals when the licensee is unable or unwilling to adequately support or serve the client;

(3) failing to maintain the confidentiality of any information received from a client, unless released by the client or otherwise authorized or required by law; and

(4) exploiting a client for personal advantage, profit, or interest.

CHAPTER 101
S. B. 64
Passed February 16, 2001
Approved March 15, 2001
Effective April 30, 2001

ADOPTION LAW AMENDMENTS

Sponsor: Terry R. Spencer

This act modifies the Termination of Parental Rights Act and the Adoption Act. The act modifies those who are authorized to take consents or relinquishments. The act amends the Adoption Act to require a father to file an executed voluntary declaration of paternity with the state registrar of vital statistics as required by the Voluntary Declaration of Paternity Act. The act clarifies that a notice of the commencement of paternity proceedings is considered filed when the notice is entered in the registry of notices from unmarried biological fathers. The act designates background check requirements for prospective adoptive parents who are not residents of Utah. The act provides that licensed experts in family relations of the state where prospective adoptive parents reside may conduct preplacement evaluations. The act expands the jurisdiction of Utah courts to allow a family to finalize an adoption in the Utah district court where a child was born. The act makes technical changes. This act contains a coordination clause.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
78-3a-414, as last amended by Chapter 161, Laws of Utah 2000
78-30-3.5, as last amended by Chapter 21, Laws of Utah 1999
78-30-4.14, as enacted by Chapter 168, Laws of Utah 1995
78-30-7, as last amended by Chapter 10, Laws of Utah 1997

ENACTS:
78-30-3.6, Utah Code Annotated 1953

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

Section 1. Section 78-3a-414 is amended to read:

78-3a-414. Voluntary relinquishment -- Irrevocable.

(1) Voluntary relinquishment or consent for termination of parental rights shall be signed or confirmed under oath either:

(a) before a judge of any court that has jurisdiction over proceedings for termination of parental rights in this state or any other state, or a public officer appointed by that court for the purpose of taking consents or relinquishments[.]; or

(b) except as provided in Subsection (2), any person authorized to take consents or relinquishments under Subsections 78-30-4.18(1) and (2).

(2) Only the juvenile court is authorized to take consents or relinquishments from a parent who has any child who is in the custody of a state agency or who has a child who is otherwise under the jurisdiction of the juvenile court.

[~~(2)~~] (3) The court [~~or~~], appointed officer, or other authorized person shall certify to the best of that person's information and belief that the person executing the consent or relinquishment has read and understands the consent or relinquishment and has signed it freely and voluntarily.

[~~(3)~~] (4) A voluntary relinquishment or consent for termination of parental rights is effective when it is signed and may not be revoked.

[~~(4)~~] (5) The requirements and processes described in Sections 78-3a-402 through 78-3a-410 do not apply to a voluntary relinquishment or consent for termination of parental rights. The court need only find that the relinquishment or termination is in the child's best interest.

[~~(5)~~] (6) There is a presumption that voluntary relinquishment or consent for termination of parental rights is not in the child's best interest where it appears to the court that the primary purpose is to avoid a financial support obligation. The presumption may be rebutted, however, if the court finds the relinquishment or consent to termination of parental rights will facilitate the establishment of stability and permanency for the child.

[~~(6)~~] (7) Upon granting a voluntary relinquishment the court may make orders relating to the child's care and welfare that the court considers to be in the child's best interest.

Section 2. Section 78-30-3.5 is amended to read:

78-30-3.5. Preplacement and postplacement adoptive evaluations -- Exceptions.

(1) (a) Except as otherwise provided in this section, a child may not be placed in an adoptive home until a preplacement adoptive evaluation, assessing the prospective adoptive parent and the prospective adoptive home, has been conducted in accordance with the requirements of this section.

(b) The court may, at any time, authorize temporary placement of a child in a potential adoptive home pending completion of a preplacement adoptive evaluation described in this section.

(c) Subsection (1)(a) does not apply if a birth parent has legal custody of the child to be adopted and the prospective adoptive parent is related to that child as a step-parent, sibling by half or whole blood or by adoption, grandparent, aunt, uncle, or first cousin, unless the evaluation is otherwise requested by the court. The prospective adoptive parent described in this Subsection (1)(c) shall, however, obtain the information described in Subsections (2)(a) and (b), and file that

documentation with the court prior to finalization of the adoption.

(d) The requirements of Subsection (1)(a) are satisfied by a previous preplacement adoptive evaluation conducted within three years prior to placement of the child, or an annual updated adoptive evaluation conducted after that three-year period or within one year after finalization of a previous adoption.

(2) The preplacement adoptive evaluation shall include:

(a) criminal history record information regarding each prospective adoptive parent and any other adult living in the prospective home, received from the Criminal Investigations and Technical Services Division of the Department of Public Safety, in accordance with Section 53-10-108, no earlier than 18 months immediately preceding placement of the child;

(b) a report from the Department of Human Services containing all information regarding reports and investigation of child abuse, neglect, and dependency, with respect to each prospective adoptive parent and any other adult living in the prospective home, obtained no earlier than 18 months immediately preceding placement of the child, pursuant to waivers executed by those parties; and

(c) an evaluation conducted by an expert in family relations approved by the court or a certified social worker, clinical social worker, marriage and family therapist, psychologist, professional counselor, or other court-determined expert in family relations, who is licensed to practice under the laws of this state or under the laws of the state where the prospective adoptive parent or other person living in the prospective adoptive home resides. The evaluation shall be in a form approved by the Department of Human Services. Neither the Department of Human Services nor any of its divisions may proscribe who qualifies as an expert in family relations or who may conduct evaluations pursuant to this Subsection (2).

(3) A copy of the preplacement adoptive evaluation shall be filed with the court.

(4) (a) Except as provided in Subsections (4)(b) and (c), a postplacement evaluation shall be conducted and submitted to the court prior to the final hearing in an adoption proceeding. The postplacement evaluation shall include:

(i) verification of the allegations of fact contained in the petition for adoption;

(ii) an evaluation of the progress of the child's placement in the adoptive home; and

(iii) a recommendation regarding whether the adoption is in the best interest of the child.

(b) The exemptions from and requirements for evaluations, described in Subsections (1)(c), (2)(c), and (3), also apply to postplacement adoptive evaluations.

(c) Upon the request of the petitioner, the court may waive the postplacement adoptive evaluation, unless it determines that it is in the best interest of the child to require the postplacement evaluation.

(5) If the person or agency conducting the evaluation disapproves the adoptive placement, either in the preplacement or postplacement adoptive evaluation, the court may dismiss the petition. However, upon request of a prospective adoptive parent, the court shall order that an additional preplacement or postplacement adoptive evaluation be conducted, and hold a hearing on the suitability of the adoption, including testimony of interested parties.

(6) Prior to finalization of a petition for adoption the court shall review and consider the information and recommendations contained in the preplacement and postplacement adoptive studies required by this section.

Section 3. Section 78-30-3.6 is enacted to read:

78-30-3.6. Prospective parent not a resident -- Preplacement requirements.

(1) When an adoption petition is to be finalized in this state with regard to any prospective adoptive parent who is not a resident of this state at the time a child is placed in that person's home, the potential adoptive parent shall:

(a) comply with the provisions of Section 78-30-3.5; and

(b) submit fingerprints for a Federal Bureau of Investigation national criminal history record check.

(2) The fingerprints referenced in Subsection (1)(b) shall be submitted to the Federal Bureau of Investigation either:

(a) through the Criminal Investigations and Technical Services Division of the Department of Public Safety in accordance with the provisions of Section 62A-2-120; or

(b) if the prospective adoptive parent is pursuing the adoption with a private attorney, the request shall be submitted to the Federal Bureau of Investigation as a personal records check, in accordance with procedures established by the Criminal Investigations and Technical Services Division of the Department of Public Safety.

Section 4. Section 78-30-4.14 is amended to read:

78-30-4.14. Necessary consent to adoption or relinquishment for adoption.

(1) Either relinquishment for adoption to a licensed child-placing agency or consent to adoption is required from:

(a) the adoptee, if he is more than 12 years of age, unless he does not have the mental capacity to consent;

(b) both parents or the surviving parent of an adoptee who was conceived or born within a marriage, unless the adoptee is 18 years of age or older;

(c) the mother of an adoptee born outside of marriage;

(d) any biological parent who has been adjudicated to be the child's biological father by a court of competent jurisdiction prior to the mother's execution of consent or her relinquishment to an agency for adoption;

(e) any biological parent who has executed and filed a voluntary declaration of paternity with the state registrar of vital statistics within the Department of Health in accordance with Title 78, Chapter 45e, prior to the mother's execution of consent or her relinquishment to an agency for adoption, which voluntary declaration of paternity is considered filed when entered into a database that can be accessed by the Department of Health;

(f) an unmarried biological father of an adoptee, as defined in Section 78-30-4.11, only if the requirements and conditions of Subsection (2)(a) or (b) have been proven; and

(g) the licensed child-placing agency to whom an adoptee has been relinquished and that is placing the child for adoption.

(2) In accordance with Subsection (1), the consent of an unmarried biological father is necessary only if the father has strictly complied with the requirements of this section.

(a) (i) With regard to a child who is placed with adoptive parents more than six months after birth, an unmarried biological father shall have developed a substantial relationship with the child, taken some measure of responsibility for the child and the child's future, and demonstrated a full commitment to the responsibilities of parenthood by financial support of the child, of a fair and reasonable sum and in accordance with the father's ability, when not prevented from doing so by the person or authorized agency having lawful custody of the child, and either:

(A) visiting the child at least monthly when physically and financially able to do so, and when not prevented from doing so by the person or authorized agency having lawful custody of the child; or

(B) regular communication with the child or with the person or agency having the care or custody of the child, when physically and financially unable to visit the child, and when not prevented from doing so by the person or authorized agency having lawful custody of the child.

(ii) The subjective intent of an unmarried biological father, whether expressed or otherwise, unsupported by evidence of acts specified in this subsection shall not preclude a determination that the father failed to meet the requirements of [~~this~~] Subsection (2)(a)(i).

(iii) An unmarried biological father who openly lived with the child for a period of six months within the one-year period after the birth of the child and immediately preceding placement of the child with adoptive parents, and openly held himself out to be the father of the child during that period, shall be deemed to have developed a substantial relationship with the child and to have otherwise met the requirements of [~~this~~] Subsection (2)(a)(i).

(b) With regard to a child who is under six months of age at the time he is placed with adoptive parents, an unmarried biological father shall have manifested a full commitment to his parental responsibilities by performing all of the acts described in this subsection prior to the time the mother executes her consent for adoption or relinquishes the child to a licensed child-placing agency. The father shall:

(i) initiate proceedings to establish paternity under Title 78, Chapter 45a, Uniform Act on Paternity, and file with that court a sworn affidavit stating that he is fully able and willing to have full custody of the child, setting forth his plans for care of the child, and agreeing to a court order of child support and the payment of expenses incurred in connection with the mother's pregnancy and the child's birth;

(ii) file notice of the commencement of paternity proceedings with the state registrar of vital statistics within the Department of Health, in a confidential registry established by the department for that purpose, which notice is considered filed when the notice is entered in the registry of notices from unmarried biological fathers; and

(iii) if he had actual knowledge of the pregnancy, paid a fair and reasonable amount of the expenses incurred in connection with the mother's pregnancy and the child's birth, in accordance with his means, and when not prevented from doing so by the person or authorized agency having lawful custody of the child.

(3) An unmarried biological father whose consent is required under Subsection (1) or (2) may nevertheless lose his right to consent if the court determines, in accordance with the requirements and procedures of Title 78, Chapter 3a, Part 4, Termination of Parental Rights Act, that his rights should be terminated, based on the petition of any interested party.

(4) If there is no showing that an unmarried biological father has consented to or waived his rights regarding a proposed adoption, the petitioner shall file with the court a certificate from the state registrar of vital statistics within the Department of Health, stating that a diligent search has been made of the registry of notices from unmarried biological fathers described in Subsection (2)(b)(ii), and that no filing has been found pertaining to the father of the child in question, or if a filing is found, stating the name of the putative father and the time and date of filing. That certificate shall be filed with the court prior to entrance of a final decree of adoption.

(5) An unmarried biological father who does not fully and strictly comply with each of the conditions provided in this section, is deemed to have waived and surrendered any right in relation to the child, including the right to notice of any judicial proceeding in connection with the adoption of the

child, and his consent to the adoption of the child is not required.

Section 5. Section 78-30-7 is amended to read:

78-30-7. Jurisdiction of district and juvenile court -- Time for filing.

(1) Adoption proceedings shall be commenced by filing a petition with the clerk of the district court either:

(a) in the district where the person adopting resides[~~,~~]; or

(b) with the juvenile court as provided in Section 78-3a-105.

(2) If a child is conceived in Utah, adoption proceedings may be commenced by filing a petition with the clerk of a court in the district court where the child was born.

(3) All orders, decrees, agreements, and notices in the proceedings shall be filed with the clerk of [~~that~~] the court where the adoption proceedings were commenced under Subsection (1) or (2).

[~~(2)~~] (4) A petition for adoption shall be filed within 30 days of the date the adoptee is placed in the home of the petitioners for the purpose of adoption, unless the time for filing has been extended by the court, or unless the adoption is arranged by a licensed child-placing agency in which case the agency may extend the filing time.

Section 6. Coordination clause.

If this bill and H.B. 269 both pass, it is the intent of the Legislature that in preparing the Utah Code database for publication, the Office of Legislative Research and General Counsel shall revise Section 78-30-7 to read:

"(1) Adoption proceedings shall be commenced by filing a petition with the clerk of the district court either:

(a) in the district where the person adopting resides[~~,~~]; or

(b) with the juvenile court as provided in [~~Section 78-3a-105~~] Subsection 78-3a-104(1)(o).

(2) If a child is conceived in Utah, adoption proceedings may be commenced by filing a petition with the clerk of a court in the district court where the child was born.

(3) All orders, decrees, agreements, and notices in the proceedings shall be filed with the clerk of [~~that~~] the court where the adoption proceedings were commenced under Subsection (1) or (2).

[~~(2)~~] (4) A petition for adoption shall be filed within 30 days of the date the adoptee is placed in the home of the petitioners for the purpose of adoption, unless the time for filing has been extended by the court, or unless the adoption is arranged by a licensed child-placing agency in which case the agency may extend the filing time."

CHAPTER 102
S. B. 68
Passed February 26, 2001
Approved March 15, 2001
Effective April 30, 2001

PLACEMENT OF CERTAIN RESIDENTIAL FACILITIES FOR PERSONS WITH A DISABILITY

Sponsor: Ed P. Mayne

This act modifies provisions relating to Counties and the Utah Municipal Code to modify the allowable restrictions that county and municipal ordinances may contain relating to residential facilities for persons with a disability. The act allows county and municipal ordinances, if consistent with federal and state law, to require supervision and security for residential substance abuse facilities located within a certain distance of a school. The act also provides a coordination clause and makes technical changes.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
10-9-605, as last amended by Chapters 21 and 140, Laws of Utah 1999
17-27-605, as last amended by Chapters 21 and 140, Laws of Utah 1999

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

Section 1. Section 10-9-605 is amended to read:

10-9-605. Residences for persons with a disability.

(1) As used in this section:

(a) "Disability" is defined in Section 57-21-2.

(b) "Residential facility for persons with a disability" means a residence:

(i) in which more than one person with a disability resides; and

(ii) (A) is licensed or certified by the Department of Human Services under Title 62A, Chapter 2, Licensure of Programs and Facilities; or

(B) is licensed or certified by the Department of Health under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

(2) Each municipality shall adopt an ordinance for residential facilities for persons with a disability. The ordinance:

(a) shall:

(i) comply with Title 57, Chapter 21, Utah Fair Housing Act, and the federal Fair Housing Amendments Act of 1988, 42 U.S.C. Sec. 3601 et seq.; and

[~~(b)~~] (ii) [~~may require, if consistent with Subsection (2)(a), residential facilities~~] provide that a residential facility for persons with a disability [~~to be reasonably dispersed throughout the municipality~~] is a permitted use in any zoning area where residential dwellings are allowed; and

[~~(c)~~] (b) [~~shall provide that a residential facility~~] may require residential facilities for persons with a disability:

[~~(i) is a permitted use in any zoning area where residential dwellings are allowed; and~~]

(i) if consistent with the statutory provisions referred to in Subsection (2)(a)(i):

(A) to be reasonably dispersed throughout the municipality; and

(B) for residential facilities for persons with a disability that are substance abuse facilities and are located within 500 feet of a school, to provide, in accordance with rules established by the Department of Human Services under Title 62A, Chapter 2, Licensure of Programs and Facilities:

(I) 24-hour supervision for residents; and

(II) other 24-hour security measures; and

(ii) [~~may only be required~~] to obtain permits that verify compliance with the building, safety, and health regulations that are applicable to similar structures.

(3) The responsibility to license programs or entities that operate facilities for persons with a disability, as well as to require and monitor the provision of adequate services to persons residing in those facilities, shall rest with:

(a) for programs or entities licensed or certified by the Department of Human Services, the Department of Human Services as provided in Title 62A, Chapter 5, Services to People with Disabilities; and

(b) for programs or entities licensed or certified by the Department of Health, the Department of Health under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

Section 2. Section 17-27-605 is amended to read:

17-27-605. Residences for persons with a disability.

(1) As used in this section:

(a) "Disability" is defined in Section 57-21-2.

(b) "Residential facility for persons with a disability" means a residence:

(i) in which more than one person with a disability resides; and

(ii) (A) is licensed or certified by the Department of Human Services under Title 62A, Chapter 2, Licensure of Programs and Facilities; or

(B) is licensed or certified by the Department of Health under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

(2) Each county shall adopt an ordinance for residential facilities for persons with a disability. The ordinance:

(a) shall:

(i) comply with Title 57, Chapter 21, Utah Fair Housing Act, and the federal Fair Housing Amendments Act of 1988, 42 U.S.C. Sec. 3601 et seq.; and

[~~(b)~~] (ii) [~~may require, if consistent with Subsection (2)(a), residential facilities~~] provide that a residential facility for persons with a disability [~~to be reasonably dispersed throughout the county~~] is a permitted use in any zoning area where residential dwellings are allowed; and

[~~(c)~~] (b) [~~shall provide that a residential facility~~] may require residential facilities for persons with a disability:

[~~(i) is a permitted use in any zoning area where residential dwellings are allowed; and~~]

(i) if consistent with the statutory provisions referred to in Subsection (2)(a)(i):

(A) to be reasonably dispersed throughout the county; and

(B) for residential facilities for persons with a disability that are substance abuse facilities and are located within 500 feet of a school, to provide, in accordance with rules established by the Department of Human Services under Title 62A, Chapter 2, Licensure of Programs and Facilities:

(I) 24-hour supervision for residents; and

(II) other 24-hour security measures; and

(ii) [~~may only be required~~] to obtain permits that verify compliance with the building, safety, and health regulations that are applicable to similar structures.

(3) The responsibility to license programs or entities that operate facilities for persons with a disability, as well as to require and monitor the provision of adequate services to persons residing in those facilities, shall rest with:

(a) for programs or entities licensed or certified by the Department of Human Services, the Department of Human Services as provided in Title 62A, Chapter 5, Services to People with Disabilities; and

(b) for programs or entities licensed or certified by the Department of Health, the Department of Health under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

Section 3. Coordination clause.

If this bill and 1st Substitute H.B. 90, Residential Facilities For Persons With A Disability, both pass, it is the intent of the Legislature that the Office of Legislative Research and General Counsel, in preparing the Utah Code database for publication, shall:

(1) Revise Subsection 10-9-605(2) to read as follows:

"(2) Each municipality shall adopt an ordinance for residential facilities for persons with a disability. The ordinance:

(a) shall:

(i) comply with Title 57, Chapter 21, Utah Fair Housing Act, and the federal Fair Housing Amendments Act of 1988, 42 U.S.C. Sec. 3601 et seq.; and

[~~(b)~~] (ii) [~~may require, if consistent with Subsection (2)(a), residential facilities~~] to the extent required by federal law, provide that a residential facility for persons with a disability [~~to be reasonably dispersed throughout the municipality~~] is a permitted use in any zoning area where residential dwellings are allowed; and

[~~(c)~~] (b) [~~shall provide that a residential facility~~] may require residential facilities for persons with a disability:

[~~(i) is a permitted use in any zoning area where residential dwellings are allowed; and~~]

(i) if consistent with the statutory provisions referred to in Subsection (2)(a)(i):

(A) to be reasonably dispersed throughout the municipality; and

(B) for residential facilities for persons with a disability that are substance abuse facilities and are located within 500 feet of a school, to provide, in accordance with rules established by the Department of Human Services under Title 62A, Chapter 2, Licensure of Programs and Facilities:

(I) 24-hour supervision for residents; and

(II) other 24-hour security measures; and

(ii) [~~may only be required~~] to obtain permits that verify compliance with the same building, safety, and health regulations [~~that~~] as are applicable in the same zoning area to similar [~~structures~~] uses that are not residential facilities for persons with a disability."

(2) Revise Subsection 17-27-605(2) to read as follows:

"(2) Each county shall adopt an ordinance for residential facilities for persons with a disability. The ordinance:

(a) shall:

(i) comply with Title 57, Chapter 21, Utah Fair Housing Act, and the federal Fair Housing Amendments Act of 1988, 42 U.S.C. Sec. 3601 et seq.; and

[~~(b)~~] (ii) [~~may require, if consistent with Subsection (2)(a), residential facilities~~] to the extent required by federal law, provide that a residential facility for persons with a disability [~~to be reasonably dispersed throughout the county~~] is a permitted use in any zoning area where residential dwellings are allowed; and

[~~(c)~~] (b) [~~shall provide that a residential facility~~] may require residential facilities for persons with a disability:

[~~(i) is a permitted use in any zoning area where residential dwellings are allowed; and~~]

(i) if consistent with the statutory provisions referred to in Subsection (2)(a)(i):

(A) to be reasonably dispersed throughout the county; and

(B) for residential facilities for persons with a disability that are substance abuse facilities and are located within 500 feet of a school, to provide, in accordance with rules established by the Department of Human Services under Title 62A, Chapter 2, Licensure of Programs and Facilities:

(I) 24-hour supervision for residents; and

(II) other 24-hour security measures; and

(ii) [~~may only be required~~] to obtain permits that verify compliance with the same building, safety, and health regulations [~~that~~] as are applicable in the same zoning area to similar [~~structures~~] uses that are not residential facilities for persons with a disability."

CHAPTER 103
S. B. 70
Passed February 28, 2001
Approved March 15, 2001
Effective June 1, 2001

REDEVELOPMENT AGENCY TAX INCREMENT FROM SCHOOL DISTRICTS

Sponsor: Howard A. Stephenson
Michael G. Waddoups

This act modifies Special Districts provisions relating to redevelopment agencies to require school district representatives on the taxing agency committee to report their votes in support of tax increment. This act requires county assessors to report on the value of property within a project area to the taxing agency committee. This act also provides an effective date and contains a coordination clause.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
17A-2-1247.5, as last amended by Chapters 178, 348 and 349, Laws of Utah 2000

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

Section 1. Section 17A-2-1247.5 is amended to read:

17A-2-1247.5. Tax increment financing -- Project area budget approval -- Payment of additional tax increment.

(1) This section applies to projects for which a preliminary plan has been adopted on or after July 1, 1993.

(2) (a) (i) A taxing agency committee shall be created for each redevelopment, education housing development, or economic development project. The committee membership shall be selected as follows:

(A) unless a school district board votes not to appoint representatives under Subsection (2)(a)(ii)(A), two representatives appointed by the school district in the project area;

(B) two representatives appointed by resolution of the county commission or county council for the county in which the project area is located;

(C) two representatives appointed by resolution of the city or town's legislative body in which the project area is located if the project is located within a city or town;

(D) unless a school district board votes not to appoint representatives under Subsection (2)(a)(ii)(A), a representative approved by the State School Board; and

(E) one representative who shall represent all of the remaining governing bodies of the other local taxing agencies that levy taxes upon the property within the proposed project area. The representative shall be selected by resolution of each of the governing bodies of those taxing agencies within 30 days after the notice provided in Subsection 17A-2-1256(3).

(ii) (A) A school district that levies a tax on property located within a project area may choose not to appoint representatives to the taxing agency committee under Subsection (2)(a)(i)(A) if:

(I) the project area is established under an education housing development project; and

(II) the project area budget of the project area under Subsection (2)(a)(ii)(A)(I) is adopted on or after May 1, 2000.

(B) If a school district board votes not to appoint representatives to the taxing agency committee under Subsection (2)(a)(ii)(A), the State School Board may not appoint a representative to the taxing agency committee.

(b) (i) If the project is located within a city or town, a quorum of a taxing agency committee consists of:

(A) if a school district board votes not to appoint representatives to the taxing agency committee under Subsection (2)(a)(ii)(A), three members; or

(B) in all other cases, five members.

(ii) If the project is not located within a city or town, a quorum consists of:

(A) if a school district board votes not to appoint representatives to the taxing agency committee under Subsection (2)(a)(ii)(A), two members; or

(B) in all other cases, four members.

(c) A taxing agency committee formed in accordance with this section has the authority to:

(i) (A) represent all taxing entities in a project area, except a school district whose board has voted under Subsection (2)(a)(ii)(A) not to appoint representatives to the taxing agency committee; and

(B) cast votes that will be binding on the governing boards of all taxing entities in a project area that the taxing agency committee represents under Subsection (2)(c)(i)(A);

(ii) negotiate with the agency concerning the redevelopment plan;

(iii) approve or disapprove project area budgets under Subsection (3); and

(iv) approve an exception to the limits on the value and size of project areas imposed by Section 17A-2-1210, or the time and amount of tax increment financing under this section.

(d) Each time a school district representative or a State School Board representative votes as a member of a taxing agency committee to allow an agency to be paid tax increment or to increase the amount or length of time that an agency may be paid tax increment, that representative shall, within 45 days after the vote, provide to the representative's respective school board an explanation in writing of the representative's vote and the reasons for the vote.

(e) (i) The assessor of each county in which the agency is located shall provide a written report to

the taxing agency committee stating, with respect to property within each project area:

(A) the taxable value for the base year, reflecting any adjustments under Sections 17A-2-1250.5, 17A-2-1251, 17A-2-1252, and 17A-2-1253; and

(B) the assessed value.

(ii) With respect to the information required under Subsection (2)(e)(i), the county assessor shall provide:

(A) actual amounts for each year from the adoption of the project area plan to the time of the report; and

(B) estimated amounts for each year beginning the year after the time of the report and ending the time that the agency expects no longer to be paid tax increment from property within the project area.

(iii) The assessor of the county in which the agency is located shall provide a report under this Subsection (3)(e):

(A) at least annually; and

(B) upon request of the taxing agency committee, before a taxing agency committee meeting at which the committee will consider whether to allow the agency to be paid tax increment or to increase the amount or length of time that the agency may be paid tax increment.

(3) (a) (i) An agency may not collect any tax increment for a project area until after the agency obtains the majority consent of a quorum of the taxing agency committee for the project area budget if:

(A) the project area budget was adopted from July 1, 1993 to June 30, 1998 or after May 1, 2000; or

(B) the project area budget:

(I) was adopted from July 1, 1998 to May 1, 2000; and

(II) does not allocate 20% of the tax increment for housing as provided in Subsection 17A-2-1264(2)(a).

(ii) For a project area budget adopted from July 1, 1998 to May 1, 2000 that allocates 20% of the tax increment for housing as provided in Subsection 17A-2-1264(2)(a), an agency may not collect tax increment from all or part of a project area until after:

(A) the Olene Walker Housing Trust Fund Board, established under Title 9, Chapter 4, Part 7, Olene Walker Housing Trust Fund, has certified the project area budget as complying with the requirements of Section 17A-2-1264; and

(B) the agency's governing body has approved and adopted the project area budget by a two-thirds vote.

(iii) (A) (I) Except as provided in Subsection (3)(a)(iii)(A)(II), each project area budget adopted after May 1, 2000 that provides for more than $100,000 of annual tax increment to be collected by the agency shall allocate at least 20% of tax increment for housing as provided in Subsection 17A-2-1264(3)(a).

(II) The 20% requirement of Subsection (3)(a)(iii)(A)(I) may be waived in whole or in part by the mutual consent of the Olene Walker Housing Trust Fund Board, established under Title 9, Chapter 4, Part 7, Olene Walker Housing Trust Fund, and the taxing agency committee upon their determination that 20% of tax increment is more than is needed to address the community's need for affordable housing, as defined in Section 17A-2-1264.

(B) Before the taxing agency committee may give its consent to a project area budget adopted after May 1, 2000 that is required under Subsection (3)(a)(iii) to allocate tax increment for housing, the agency shall comply with Subsection 17A-2-1264(2)(b).

(b) With the majority consent of a quorum of the taxing agency committee, an agency may amend a project area budget that was adopted under Subsection (3)(a).

(c) (i) Within 30 days after the approval and adoption of a project area budget, each agency shall file a copy of the budget with the county auditor, the State Tax Commission, the state auditor, and each property taxing entity affected by the agency's collection of tax increment under the project area budget.

(ii) Each agency whose project area budget allocates tax increment for housing as provided in Subsection 17A-2-1264(3)(a) shall file a copy of the budget with the Olene Walker Housing Trust Fund established under Title 9, Chapter 4, Part 7, Olene Walker Housing Trust Fund.

(d) (i) Beginning on January 1, 1997, before a project area budget or amendment to a project area budget is approved, the agency shall advertise and hold one public hearing on the proposed change in the project area budget.

(ii) The public hearing under Subsection (3)(d)(i) shall be conducted according to the procedures and requirements of Subsection 17A-2-1222(2), except that if the amended budget allocates a greater proportion of tax increment to a project area than was allocated to the project area under the previous budget, the advertisement shall state the percentage allocated under the previous budget and the percentage allocated under the amended budget.

(e) If an amendment under Subsection (3)(b) is not approved, the agency shall continue to operate under the previously approved, unamended project area budget.

(4) (a) Except as provided in Subsections (6) and (8), an agency may collect tax increment from all or a part of a project area. The tax increment shall be paid to the agency in the same manner and at the same time as payments of taxes to other taxing agencies to pay the principal of and interest on loans, moneys advanced to, or indebtedness, whether funded, refunded, assumed, or otherwise,

to finance or refinance, in whole or in part, the redevelopment, education housing development, or economic development project and the housing projects and programs under Sections 17A-2-1263 and 17A-2-1264.

(b) (i) An agency may elect to be paid:

(A) if 20% of the project area budget is not allocated for housing as provided in Subsection 17A-2-1264(2)(a):

(I) 100% of annual tax increment for 12 years; or

(II) 75% of annual tax increment for 20 years; or

(B) if 20% of the project area budget is allocated for housing as provided in Subsection 17A-2-1264(2)(a):

(I) 100% of annual tax increment for 15 years; or

(II) 75% of annual tax increment for 24 years.

(ii) Tax increment paid to an agency under this Subsection (4)(b) shall be paid for the applicable length of time beginning the first tax year the agency accepts tax increment from a project area.

(c) An agency may receive a greater percentage of tax increment or receive tax increment for a longer period of time than that specified in Subsection (4)(b) if the agency obtains the majority consent of the taxing agency committee.

(5) (a) The redevelopment plan shall provide that the portion of the taxes, if any, due to an increase in the tax rate by a taxing agency after the date the project area budget is approved by the taxing agency committee may not be allocated to and when collected paid into a special fund of the redevelopment agency according to the provisions of Subsection (4) unless the taxing agency committee approves the inclusion of the increase in the tax rate at the time the project area budget is approved. If approval of the inclusion of the increase in the tax rate is not obtained, the portion of the taxes attributable to the increase in the rate shall be distributed by the county to the taxing agency imposing the tax rate increase in the same manner as other property taxes.

(b) The amount of the tax rate to be used in determining tax increment shall be increased or decreased by the amount of an increase or decrease as a result of:

(i) a statute enacted by the Legislature, a judicial decision, or an order from the State Tax Commission to a county to adjust or factor its assessment rate under Subsection 59-2-704(2);

(ii) a change in exemption provided in Utah Constitution Article XIII, Section 2, or Section 59-2-103;

(iii) an increase or decrease in the percentage of fair market value, as defined under Section 59-2-102; or

(iv) a decrease in the certified tax rate under Subsection 59-2-924(2)(c) or (2)(d)(i).

(c) (i) Notwithstanding the increase or decrease resulting from Subsection (5)(b), the amount of money allocated to, and when collected paid to the agency each year for payment of bonds or other indebtedness may not be less than would have been allocated to and when collected paid to the agency each year if there had been no increase or decrease under Subsection (5)(b).

(ii) For a decrease resulting from Subsection (5)(b)(iv), the taxable value for the base year under Subsection 17A-2-1202(2) or 17A-2-1247(2)(a), as the case may be, shall be reduced for any year to the extent necessary, including below zero, to provide an agency with approximately the same amount of money the agency would have received without a reduction in the county's certified tax rate if:

(A) in that year there is a decrease in the certified tax rate under Subsection 59-2-924(2)(c) or (2)(d)(i);

(B) the amount of the decrease is more than 20% of the county's certified tax rate of the previous year; and

(C) the decrease results in a reduction of the amount to be paid to the agency under Section 17A-2-1247 or 17A-2-1247.5.

(6) (a) For redevelopment plans first adopted before May 4, 1993, beginning January 1, 1994, all of the taxes levied and collected upon the taxable property in the redevelopment project under Section 59-2-906.1 which are not pledged to support bond indebtedness and other contractual obligations are exempt from the provisions of Subsection (4).

(b) For redevelopment plans first adopted after May 3, 1993, beginning January 1, 1994, all of the taxes levied and collected upon the taxable property in the redevelopment project under Section 59-2-906.1 are exempt from the provisions of Subsection (4).

(7) (a) In addition to the amounts and periods that an agency may elect to be paid tax increment under Subsection (4)(b), an agency may elect to be paid 100% of annual tax increment for an additional period, as provided in Subsection (7)(b), beyond those periods provided under Subsection (4)(b), without the approval of the taxing agency committee, if the tax increment funding for the additional period is used:

(i) for an agency in a city in which is located all or a portion of an interchange on I-15 or that would directly benefit from an interchange on I-15, to pay some or all of the cost of the installation, construction, or reconstruction of:

(A) an interchange on I-15; or

(B) frontage and other roads connecting to the interchange, as determined by the Department of Transportation created under Section 72-1-201 and the Transportation Commission created under Section 72-1-301; or

(ii) for an agency in a city of the first class, to pay some or all of the cost of the land for and installation and construction of a recreational facility, as

defined in Subsection 59-12-702(3), or a cultural facility, including parking and infrastructure improvements related to the recreational or cultural facility.

(b) The additional period for which an agency may be paid 100% of annual tax increment under Subsection (7)(a) is an additional:

(i) 13 years, for an agency that initially elected to be paid under Subsection (4)(b)(i)(A)(I);

(ii) five years, for an agency that initially elected to be paid under Subsection (4)(b)(i)(A)(II);

(iii) ten years, for an agency that initially elected to be paid under Subsection (4)(b)(i)(B)(I); and

(iv) one year, for an agency that initially elected to be paid under Subsection (4)(b)(i)(B)(II).

(c) This Subsection (7) applies only to an agency established by a city in which:

(i) for an agency in a city in which is located all or a portion of an interchange on I-15 or that would directly benefit from an interchange on I-15, the installation, construction, or reconstruction of an interchange on I-15 or frontage or other roads connecting to the interchange has begun on or before June 30, 2002; and

(ii) for an agency in a city of the first class, the installation or construction of a recreational facility, as defined in Subsection 59-12-702(3), or a cultural facility has begun on or before June 30, 2002.

(d) Notwithstanding any other provision of this Subsection (7), a school district may not receive less tax increment because of application of the other provisions of this Subsection (7) than it would have received without those provisions.

(8) If a school district board votes not to appoint representatives to the taxing agency committee under Subsection (2)(a)(ii)(A), all of the taxes levied and collected upon taxable property in the redevelopment project by the school district are exempt from Subsection (4) and the agency may not collect tax increment from taxes levied by the school district in the project area.

Section 2. Effective date.

This act takes effect on June 1, 2001.

Section 3. Coordination clause.

If this bill and 1st Substitute H.B. 7, Recodification and Amendments of Redevelopment Agencies Statutes, both pass, it is the intent of the Legislature that the Office of Legislative Research and General Counsel, in preparing the Utah Code database for publication, add the following as Subsections (7) and (8) in Section 17B-4-1002 as enacted in 1st Substitute H.B. 7:

"(7) Each time a school district representative or a representative of the State Board of Education votes as a member of a taxing entity committee to allow an agency to be paid tax increment or to increase the amount or length of time that an agency may be paid tax increment, that representative shall, within 45 days after the vote, provide to the representative's respective school board an explanation in writing of the representative's vote and the reasons for the vote.

(8) (a) The assessor of each county in which the agency is located shall provide a written report to the taxing entity committee stating, with respect to property within each project area:

(i) the base taxable value, as adjusted by any adjustments under Section 17B-4-1006; and

(ii) the assessed value.

(b) With respect to the information required under Subsection (8)(a), the agency shall provide:

(i) actual amounts for each year from the adoption of the project area plan to the time of the report; and

(ii) estimated amounts for each year beginning the year after the time of the report and ending the time that the agency expects no longer to be paid tax increment from property within the project area.

(c) The assessor of the county in which the agency is located shall provide a report under this Subsection (8):

(i) at least annually; and

(ii) upon request of the taxing entity committee, before a taxing entity committee meeting at which the committee will consider whether to allow the agency to be paid tax increment or to increase the amount or length of time that the agency may be paid tax increment."

CHAPTER 104
S. B. 74
Passed February 27, 2001
Approved March 15, 2001
Effective July 1, 2001
(Exception clause in Sections 17 and 18)

SALES AND USE TAX - UNIFORM SALES AND USE TAX ADMINISTRATION ACT AND SALES AND USE TAX REVISIONS

Sponsor: Lyle W. Hillyard

This act authorizes certain delegates to enter into multistate discussions regarding a Streamlined Sales and Use Tax Agreement, including particularly whether the state should enter into the Streamlined Sales and Use Tax Agreement with one or more other states. The act provides definitions, prescribes reporting requirements for the delegates, and provides requirements for the Streamlined Sales and Use Tax Agreement. The act authorizes the Utah State Tax Commission to enter into the Streamlined Sales and Use Tax Agreement under certain circumstances. This act clarifies the relationship between the Streamlined Sales and Use Tax Agreement and state law, clarifies the relationship between the states that are entering into or considering whether to enter into the Streamlined Sales and Use Tax Agreement, and clarifies the binding and beneficial effect of the Streamlined Sales and Use Tax Agreement. The act clarifies statutes pertaining to the collection of sales and use taxes by remote vendors, including particularly the application of penalties to remote vendors, the distribution to counties, cities, and towns of sales and use taxes collected by remote vendors, and the amount of revenues to be deposited into the Remote Sales Restricted Account. The act clarifies the application of certain local option sales and use taxes and sales tax refunds, and makes technical changes. This act provides an immediate effective date for the uncodified sections of this act, and provides a July 1, 2001 effective date for the codified sections of the act. The uncodified sections of this act are repealed June 30, 2003.

AMENDS:
59-1-401 (Effective 07/01/01), as last amended by Chapter 253, Laws of Utah 2000
59-12-103 (Effective 07/01/01), as last amended by Chapters 147, 253 and 325, Laws of Utah 2000
59-12-103.2 (Effective 07/01/01), as enacted by Chapter 253, Laws of Utah 2000
59-12-107 (Effective 07/01/01), as last amended by Chapters 86 and 253, Laws of Utah 2000
59-12-802 (Effective 07/01/01), as last amended by Chapter 253, Laws of Utah 2000
59-12-804 (Effective 07/01/01), as last amended by Chapter 253, Laws of Utah 2000
59-12-902 (Effective 07/01/01), as last amended by Chapters 253 and 325, Laws of Utah 2000

This act enacts uncodified material.

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

Section 1. Section 59-1-401 (Effective 07/01/01) is amended to read:

59-1-401 (Effective 07/01/01). Penalties.

(1) (a) The penalty for failure to file a tax return within the time prescribed by law including extensions is the greater of $20 or 10% of the unpaid tax due on the return.

(b) Subsection (1) does not apply to amended returns.

(2) The penalty for failure to pay tax due shall be the greater of $20 or 10% of the unpaid tax for:

(a) failure to pay any tax, as reported on a timely filed return;

(b) failure to pay any tax within 90 days of the due date of the return, if there was a late filed return subject to the penalty provided under Subsection (1)(a);

(c) failure to pay any tax within 30 days of the date of mailing any notice of deficiency of tax unless a petition for redetermination or a request for agency action is filed within 30 days of the date of mailing the notice of deficiency;

(d) failure to pay any tax within 30 days after the date the commission's order constituting final agency action resulting from a timely filed petition for redetermination or request for agency action is issued or is considered to have been [~~issued~~] denied under Subsection 63-46b-13(3)(b); and

(e) failure to pay any tax within 30 days after the date of a final judicial decision resulting from a timely filed petition for judicial review.

(3) (a) Beginning January 1, 1995, in the case of any underpayment of estimated tax or quarterly installments required by Sections 59-5-107, 59-5-207, 59-7-504, and 59-9-104, there shall be added a penalty in an amount determined by applying the interest rate provided under Section 59-1-402 plus four percentage points to the amount of the underpayment for the period of the underpayment.

(b) (i) For purposes of Subsection (3)(a), the amount of the underpayment shall be the excess of the required installment over the amount, if any, of the installment paid on or before the due date for the installment.

(ii) The period of the underpayment shall run from the due date for the installment to whichever of the following dates is the earlier:

(A) the original due date of the tax return, without extensions, for the taxable year; or

(B) with respect to any portion of the underpayment, the date on which that portion is paid.

(iii) For purposes of this Subsection (3), a payment of estimated tax shall be credited against

unpaid required installments in the order in which the installments are required to be paid.

(4) (a) In case of an extension of time to file an individual income tax or corporate franchise tax return, if the lesser of 90% of the total tax reported on the tax return or 100% of the prior year's tax is not paid by the due date of the return, not including extensions, a 2% per month penalty shall apply on the unpaid tax during the period of extension.

(b) If a return is not filed within the extension time period as provided in Section 59-7-505 or 59-10-516, penalties as provided in Subsection (1) and Subsection (2)(b) shall be added in lieu of the penalty assessed under this Subsection (4) as if no extension of time for filing a return had been granted.

(5) (a) Additional penalties for underpayments of tax are as provided in Subsections (5)(a)(i) through (iv).

(i) Except as provided in Subsection (5)(c), if any underpayment of tax is due to negligence, the penalty is 10% of the underpayment.

(ii) Except as provided in Subsection (5)(d), if any underpayment of tax is due to intentional disregard of law or rule, the penalty is 15% of the underpayment.

(iii) For intent to evade the tax, the penalty is the greater of $500 per period or 50% of the tax due.

(iv) If the underpayment is due to fraud with intent to evade the tax, the penalty is the greater of $500 per period or 100% of the underpayment.

(b) If the commission determines that a person is liable for a penalty imposed under Subsection (5)(a)(ii), (iii), or (iv), the commission shall notify the taxpayer of the proposed penalty.

(i) The notice of proposed penalty shall:

(A) set forth the basis of the assessment; and

(B) be mailed by registered mail, postage prepaid, to the person's last-known address.

(ii) Upon receipt of the notice of proposed penalty, the person against whom the penalty is proposed may:

(A) pay the amount of the proposed penalty at the place and time stated in the notice; or

(B) proceed in accordance with the review procedures of Subsection (5)(b)(iii).

(iii) Any person against whom a penalty has been proposed in accordance with this Subsection (5) may contest the proposed penalty by filing a petition for an adjudicative proceeding with the commission.

(iv) If the commission determines that a person is liable for a penalty under this Subsection (5), the commission shall assess the penalty and give notice and demand for payment. The notice and demand for payment shall be mailed by registered mail, postage prepaid, to the person's last-known address.

(c) Notwithstanding Subsection (5)(a)(i), a vendor that voluntarily collects a tax under Subsection 59-12-107(1)(b) is not subject to the penalty under Subsection (5)(a)(i) if on or after July 1, 2001:

(i) a court of competent jurisdiction issues a final unappealable judgment or order determining that:

(A) the vendor meets one or more of the criteria described in Subsection 59-12-107(1)(a); and

(B) the commission or a county, city, or town may require the vendor to collect a tax under Subsection 59-12-103(2)(a) or (b); or

(ii) the commission issues a final unappealable administrative order determining that:

(A) the vendor meets one or more of the criteria described in Subsection 59-12-107(1)(a); and

(B) the commission or a county, city, or town may require the vendor to collect a tax under Subsection 59-12-103(2)(a) or (b).

(d) Notwithstanding Subsection (5)(a)(ii), a vendor that voluntarily collects a tax under Subsection 59-12-107(1)(b) is not subject to the penalty under Subsection (5)(a)(ii) if:

(i) (A) a court of competent jurisdiction issues a final unappealable judgment or order determining that:

(I) the vendor meets one or more of the criteria described in Subsection 59-12-107(1)(a); and

(II) the commission or a county, city, or town may require the vendor to collect a tax under Subsection 59-12-103(2)(a) or (b); or

(B) the commission issues a final unappealable administrative order determining that:

(I) the vendor meets one or more of the criteria described in Subsection 59-12-107(1)(a); and

(II) the commission or a county, city, or town may require the vendor to collect a tax under Subsection 59-12-103(2)(a) or (b); and

(ii) the vendor's intentional disregard of law or rule is warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.

(6) The penalty for failure to file an information return or a complete supporting schedule is $50 for each return or schedule up to a maximum of $1,000.

(7) If any taxpayer, in furtherance of a frivolous position, has a prima facie intent to delay or impede administration of the tax law and files a purported return that fails to contain information from which the correctness of reported tax liability can be determined or that clearly indicates that the tax liability shown must be substantially incorrect, the penalty is $500.

(8) For monthly payment of sales and use taxes under Section 59-12-108, in addition to any other

penalties for late payment, a vendor may not retain a percentage of sales and use taxes collected as otherwise allowable under Section 59-12-108.

(9) As provided in Section 76-8-1101, the following are criminal penalties:

(a) Any person who is required by this title or any laws the commission administers or regulates to register with or obtain a license or permit from the commission, or who operates without having registered or secured a license or permit, or who operates when the registration, license, or permit is expired or not current, is guilty of a class B misdemeanor, except that, notwithstanding Section 76-3-301, the fine is not less than $500 nor more than $1,000.

(b) Any person who, with intent to evade any tax or requirement of this title or any lawful requirement of the commission, fails to make, render, sign, or verify any return or to supply any information within the time required under this title, or who makes, renders, signs, or verifies any false or fraudulent return or statement, or who supplies any false or fraudulent information, is guilty of a third degree felony, except that, notwithstanding Section 76-3-301, the fine is not less than $1,000 nor more than $5,000.

(c) Any person who willfully attempts to evade or defeat any tax or the payment thereof is, in addition to other penalties provided by law, guilty of a second degree felony, except that, notwithstanding Section 76-3-301, the fine is not less than $1,500 nor more than $25,000.

(d) The statute of limitations for prosecution for a violation of this section is six years from the date the tax should have been remitted.

(10) Upon making a record of its actions, and upon reasonable cause shown, the commission may waive, reduce, or compromise any of the penalties or interest imposed under this part.

Section 2. Section 59-12-103 (Effective 07/01/01) is amended to read:

59-12-103 (Effective 07/01/01). Sales and use tax base -- Rate -- Use of sales and use tax revenues.

(1) A tax is imposed on the purchaser as provided in this part for amounts paid or charged for the following transactions:

(a) retail sales of tangible personal property made within the state;

(b) amounts paid to common carriers or to telephone or telegraph corporations, whether the corporations are municipally or privately owned, for:

(i) all transportation;

(ii) intrastate telephone service; or

(iii) telegraph service;

(c) sales of the following for commercial use:

(i) gas;

(ii) electricity;

(iii) heat;

(iv) coal;

(v) fuel oil; or

(vi) other fuels;

(d) sales of the following for residential use:

(i) gas;

(ii) electricity;

(iii) heat;

(iv) coal;

(v) fuel oil; or

(vi) other fuels;

(e) sales of meals;

(f) amounts paid or charged as admission or user fees for theaters, movies, operas, museums, planetariums, shows of any type or nature, exhibitions, concerts, carnivals, amusement parks, amusement rides, circuses, menageries, fairs, races, contests, sporting events, dances, boxing matches, wrestling matches, closed circuit television broadcasts, billiard parlors, pool parlors, bowling lanes, golf, miniature golf, golf driving ranges, batting cages, skating rinks, ski lifts, ski runs, ski trails, snowmobile trails, tennis courts, swimming pools, water slides, river runs, jeep tours, boat tours, scenic cruises, horseback rides, sports activities, or any other amusement, entertainment, recreation, exhibition, cultural, or athletic activity;

(g) amounts paid or charged for services:

(i) for repairs or renovations of tangible personal property; or

(ii) to install tangible personal property in connection with other tangible personal property;

(h) except as provided in Subsection 59-12-104(7), amounts paid or charged for cleaning or washing of tangible personal property;

(i) amounts paid or charged for tourist home, hotel, motel, or trailer court accommodations and services for less than 30 consecutive days;

(j) amounts paid or charged for laundry or dry cleaning services;

(k) amounts paid or charged for leases or rentals of tangible personal property if:

(i) the tangible personal property's situs is in this state;

(ii) the lessee took possession of the tangible personal property in this state; or

(iii) within this state the tangible personal property is:

(A) stored;

(B) used; or

(C) otherwise consumed;

(l) amounts paid or charged for tangible personal property if within this state the tangible personal property is:

(i) stored;

(ii) used; or

(iii) consumed; and

(m) amounts paid or charged for prepaid telephone calling cards.

(2) (a) Except as provided in Subsections (2)(b) and (c), beginning on July 1, 2001, a state tax and a local tax is imposed on a transaction described in Subsection (1) equal to the sum of:

(i) a state tax imposed on the transaction at a rate of 4.75%; and

(ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the transaction under this chapter other than this part.

(b) Notwithstanding Subsection (2)(a), beginning on July 1, 2001, a state tax and a local tax is imposed on a transaction described in Subsection (1)(d) equal to the sum of:

(i) a state tax imposed on the transaction at a rate of 2%; and

(ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the transaction under this chapter other than this part.

(c) Notwithstanding Subsections (2)(a) and (b), beginning on July 1, 2001, if a vendor collects a tax under Subsection 59-12-107(1)(b) on a transaction described in Subsection (1), a state tax and a local tax is imposed on the transaction equal to the sum of:

(i) a state tax imposed on the transaction at a rate of:

(A) 4.75% for a transaction other than a transaction described in Subsection (1)(d); or

(B) 2% for a transaction described in Subsection (1)(d); and

(ii) except as provided in Subsection (2)(d), a local tax imposed on the transaction at a rate equal to the sum of the following tax rates:

(A) (I) the lowest tax rate imposed by a county, city, or town under Section 59-12-204, but only if all of the counties, cities, and towns in the state impose the tax under Section 59-12-204; or

[~~(B)~~] (II) the lowest tax rate imposed by a county, city, or town under Section 59-12-205, but only if all of the counties, cities, and towns in the state impose the tax under Section 59-12-205; and

[~~(C)~~] (B) the tax rate authorized by Section 59-12-1102, but only if all of the counties in the state impose the tax under Section 59-12-1102.

(d) Tax rates authorized under the following do not apply to Subsection (2)(c)(ii):

(i) Subsection (2)(a)(i);

(ii) Subsection (2)(b)(i);

(iii) Subsection (2)(c)(i);

(iv) Section 59-12-301;

(v) Section 59-12-352;

(vi) Section 59-12-353;

(vii) Section 59-12-401;

(viii) Section 59-12-402;

(ix) Section 59-12-501;

(x) Section 59-12-502;

(xi) Section 59-12-603;

(xii) Section 59-12-703;

(xiii) Section 59-12-802;

(xiv) Section 59-12-804;

(xv) Section 59-12-1001;

(xvi) Section 59-12-1201; or

(xvii) Section 59-12-1302.

(3) (a) Except as provided in Subsections (4) through (9), the state taxes described in Subsections (2)(a)(i), (2)(b)(i), and (2)(c)(i) shall be deposited into the General Fund.

(b) The local taxes described in Subsections (2)(a)(ii) and (2)(b)(ii) shall be distributed to a county, city, or town as provided in this chapter.

(c) (i) Notwithstanding any provision of this chapter, each county, city, or town in the state shall receive the county's, city's, or town's proportionate share of the revenues generated by the local tax described in Subsection (2)(c)(ii) as provided in Subsection (3)(c)(ii).

(ii) The commission shall determine a county's, city's, or town's proportionate share of the revenues under Subsection (3)(c)(i) by:

(A) [~~dividing the population of the county, city, or town by~~] calculating an amount equal to:

(I) the population of the county, city, or town; divided by

(II) the total population of the state; and

(B) multiplying the [~~percentage~~] amount determined under Subsection (3)(c)(ii)(A) by the total amount of revenues generated by the local tax under Subsection (2)(c)(ii) for all counties, cities, and towns.

(iii) (A) Except as provided in Subsection (3)(c)(iii)(B), population figures for purposes of this section shall be derived from the most recent official census or census estimate of the United States Census Bureau.

(B) Notwithstanding Subsection (3)(c)(iii)(A), if a needed population estimate is not available from the United States Census Bureau, population figures shall be derived from the estimate from the Utah Population Estimates Committee created by executive order of the governor.

(C) For purposes of this section, the population of a county may only include the population of the unincorporated areas of the county.

(4) (a)Notwithstanding Subsection (3)(a), there shall be deposited in an Olympics special revenue fund or funds as determined by the Division of Finance under Section 51-5-4, for the use of the Utah Sports Authority created under Title 63A, Chapter 7, Utah Sports Authority Act:

(i) from January 1, 1990, through December 31, 1999, the amount of sales and use tax generated by a 1/64% tax rate on the taxable transactions under Subsection (1);

(ii) from January 1, 1990, through June 30, 1999, the amount of revenue generated by a 1/64% tax rate under Section 59-12-204 or Section 59-12-205 on the taxable transactions under Subsection (1); and

(iii) interest earned on the amounts under Subsections (4)(a)(i) and (ii).

(b) These funds shall be used:

(i) by the Utah Sports Authority as follows:

(A) to the extent funds are available, to transfer directly to a debt service fund or to otherwise reimburse to the state any amount expended on debt service or any other cost of any bonds issued by the state to construct any public sports facility as defined in Section 63A-7-103;

(B) to pay for the actual and necessary operating, administrative, legal, and other expenses of the Utah Sports Authority, but not including protocol expenses for seeking and obtaining the right to host the Winter Olympic Games;

(C) as otherwise appropriated by the Legislature; and

(D) unless the Legislature appropriates additional funds from the Olympics Special Revenue Fund to the Utah Sports Authority, the Utah Sports Authority may not expend, loan, or pledge in the aggregate more than:

(I) $59,000,000 of sales and use tax deposited into the Olympics Special Revenue Fund under Subsection (4)(a);

(II) the interest earned on the amount described in Subsection (4)(b)(i)(D)(I); and

(III) the revenues deposited into the Olympics Special Revenue Fund that are not sales and use taxes deposited under Subsection (4)(a) or interest on the sales and use taxes;

(ii) to pay salary, benefits, or administrative costs associated with the State Olympic Officer under Subsection 63A-10-103(3), except that the salary, benefits, or administrative costs may not be paid from the sales and use tax revenues generated by municipalities or counties and deposited under Subsection (4)(a)(ii).

(c) A payment of salary, benefits, or administrative costs under Subsection 63A-10-103(3) is not considered an expenditure of the Utah Sports Authority.

(d) If the Legislature appropriates additional funds under Subsection (4)(b)(i)(D), the authority may not expend, loan, pledge, or enter into any agreement to expend, loan, or pledge the appropriated funds unless the authority:

(i) contracts in writing for the full reimbursement of the monies to the Olympics Special Revenue Fund by a public sports entity or other person benefitting from the expenditure; and

(ii) obtains a security interest that secures payment or performance of the obligation to reimburse.

(e) A contract or agreement entered into in violation of Subsection (4)(d) is void.

(5) (a) Notwithstanding Subsection (3)(a), beginning on July 1, 2001, the amount of sales and use tax generated annually by a 1/16% tax rate on the taxable transactions under Subsection (1) shall be used as provided in Subsections (5)(b) through (g).

(b) (i) Beginning on July 1, 2001, $2,300,000 each year shall be transferred as dedicated credits to the Department of Natural Resources to:

(A) implement the measures described in Subsections 63-34-14(4)(a) through (d) to protect sensitive plant and animal species; or

(B) award grants, up to the amount authorized by the Legislature in an appropriations act, to political subdivisions of the state to implement the measures described in Subsections 63-34-14(4)(a) through (d) to protect sensitive plant and animal species.

(ii) Money transferred to the Department of Natural Resources under Subsection (5)(b)(i) may not be used to assist the United States Fish and Wildlife Service or any other person to list or attempt to have listed a species as threatened or endangered under the Endangered Species Act of 1973, 16 U.S.C. Sec. 1531 et seq.

(iii) At the end of each fiscal year:

(A) 50% of any unexpended dedicated credits shall lapse to the Water Resources Conservation and Development Fund created in Section 73-10-24;

(B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan Program subaccount created in Section 73-10c-5; and

(C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan Program subaccount created in Section 73-10c-5.

(c) Five hundred thousand dollars each year shall be deposited in the Agriculture Resource Development Fund created in Section 4-18-6.

(d) (i) One hundred thousand dollars each year shall be transferred as dedicated credits to the Division of Water Rights to cover the costs incurred in hiring legal and technical staff for the adjudication of water rights.

(ii) At the end of each fiscal year:

(A) 50% of any unexpended dedicated credits shall lapse to the Water Resources Conservation and Development Fund created in Section 73-10-24;

(B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan Program subaccount created in Section 73-10c-5; and

(C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan Program subaccount created in Section 73-10c-5.

(e) Fifty percent of the remaining amount generated by the 1/16% tax rate shall be deposited in the Water Resources Conservation and Development Fund created in Section 73-10-24 for use by the Division of Water Resources. In addition to the uses allowed of the fund under Section 73-10-24, the fund may also be used to:

(i) provide a portion of the local cost share, not to exceed in any fiscal year 50% of the funds made available to the Division of Water Resources under this section, of potential project features of the Central Utah Project;

(ii) conduct hydrologic and geotechnical investigations by the Department of Natural Resources in a cooperative effort with other state, federal, or local entities, for the purpose of quantifying surface and ground water resources and describing the hydrologic systems of an area in sufficient detail so as to enable local and state resource managers to plan for and accommodate growth in water use without jeopardizing the resource;

(iii) fund state required dam safety improvements; and

(iv) protect the state's interest in interstate water compact allocations, including the hiring of technical and legal staff.

(f) Twenty-five percent of the remaining amount generated by the 1/16% tax rate shall be deposited in the Utah Wastewater Loan Program subaccount created in Section 73-10c-5 for use by the Water Quality Board to fund wastewater projects as defined in Section 73-10b-2.

(g) Twenty-five percent of the remaining amount generated by the 1/16% tax rate shall be deposited in the Drinking Water Loan Program subaccount created in Section 73-10c-5 for use by the Division of Drinking Water to:

(i) provide for the installation and repair of collection, treatment, storage, and distribution facilities for any public water system, as defined in Section 19-4-102;

(ii) develop underground sources of water, including springs and wells; and

(iii) develop surface water sources.

(6) (a) Notwithstanding Subsection (3)(a), beginning on July 1, 2001, the amount of sales and use tax generated annually by a 1/16% tax rate on the taxable transactions under Subsection (1) shall be used as provided in Subsections (6)(b) through (d).

(b) (i) Five hundred thousand dollars each year shall be deposited in the Transportation Corridor Preservation Revolving Loan Fund created in Section 72-2-117.

(ii) At least 50% of the money deposited in the Transportation Corridor Preservation Revolving Loan Fund under Subsection (6)(b)(i) shall be used to fund loan applications made by the Department of Transportation at the request of local governments.

(c) From July 1, 1997, through June 30, 2006, $500,000 each year shall be transferred as nonlapsing dedicated credits to the Department of Transportation for the State Park Access Highways Improvement Program created in Section 72-3-207.

(d) The remaining amount generated by the 1/16% tax rate shall be deposited in the class B and class C roads account to be expended as provided in Title 72, Chapter 2, Transportation Finances Act, for the use of class B and C roads.

(7) (a) Notwithstanding Subsection (3)(a), beginning on January 1, 2000, the Division of Finance shall deposit into the Centennial Highway Fund created in Section 72-2-118 a portion of the state sales and use tax under Subsection (2) equal to the revenues generated by a 1/64% tax rate on the taxable transactions under Subsection (1).

(b) Except for sales and use taxes deposited under Subsection (8), beginning on July 1, 1999, the revenues generated by the 1/64% tax rate:

(i) retained under Subsection 59-12-204(7)(a) shall be retained by the counties, cities, or towns as provided in Section 59-12-204; and

(ii) retained under Subsection 59-12-205(4)(a) shall be distributed to each county, city, and town as provided in Section 59-12-205.

(8) Notwithstanding Subsection (3)(a), beginning on July 1, 1999, the commission shall deposit into the Airport to University of Utah Light Rail Restricted Account created in Section 17A-2-1064 the portion of the sales and use tax under Sections 59-12-204 and 59-12-205 that is:

(a) generated by a city or town that will have constructed within its boundaries the Airport to University of Utah Light Rail described in the Transportation Equity Act for the 21st Century, Pub. L. No. 105-178, Sec. 3030(c)(2)(B)(i)(II), 112 Stat. 107; and

(b) equal to the revenues generated by a 1/64% tax rate on the taxable items and services under Subsection (1).

(9) (a) Notwithstanding Subsection (3)(a), for fiscal years beginning on or after fiscal year 2002-03, the commission shall on or before September 30 of each year deposit the difference described in Subsection (9)(b) into the Remote Sales Restricted Account created in Section 59-12-103.2 if that difference is greater than $0.

(b) The difference described in Subsection (9)(a) is equal to the difference between:

(i) the total amount of revenues under Subsection (2)(c)(i) the commission received from vendors collecting a tax under Subsection 59-12-107(1)(b) for the [~~previous~~] fiscal year immediately preceding the September 30 described in Subsection (9)(a); and

(ii) the total amount of revenues under Subsection (2)(c)(i) the commission estimates that the commission received from vendors [~~collecting a tax under~~] described in Subsection 59-12-107(1)(b) for fiscal year 2000-01.

(10) (a) For purposes of amounts paid or charged as admission or user fees relating to the Olympic Winter Games of 2002, the amounts are considered to be paid or charged on the day on which the Salt Lake Organizing Committee for the Olympic Winter Games of 2002 or a person designated by the Salt Lake Organizing Committee for the Olympic Winter Games of 2002 sends a purchaser confirmation of the purchase of an admission or user fee described in Subsection (1)(f).

(b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission shall make rules defining what constitutes sending a purchaser confirmation under Subsection (10)(a).

Section 3. Section 59-12-103.2 (Effective 07/01/01) is amended to read:

59-12-103.2 (Effective 07/01/01). Remote Sales Restricted Account -- Creation.

(1) There is created within the General Fund a restricted account known as the "Remote Sales Restricted Account."

(2) The account shall be funded from the portion of the sales and use tax deposited by the commission as provided in Subsection 59-12-103[~~(8)~~](9).

Section 4. Section 59-12-107 (Effective 07/01/01) is amended to read:

59-12-107 (Effective 07/01/01). Collection, remittance, and payment of tax by vendors or other persons -- Returns -- Direct payment by purchaser of vehicle -- Other liability for collection -- Credits -- Deposit and sale of security -- Penalties.

(1) (a) Each vendor shall pay or collect and remit the sales and use taxes imposed by this chapter if within this state the vendor:

(i) has or utilizes:

(A) an office;

(B) a distribution house;

(C) a sales house;

(D) a warehouse;

(E) a service enterprise; or

(F) a place of business similar to Subsections (1)(a)(i)(A) through (E);

(ii) maintains a stock of goods;

(iii) regularly solicits orders, regardless of whether or not the orders are accepted in the state, unless the vendor's only activity in the state is:

(A) advertising; or

(B) solicitation by:

(I) direct mail;

(II) electronic mail;

(III) the Internet;

(IV) telephone; or

(V) a means similar to Subsections (1)(a)(iii)(A) or (B);

(iv) regularly engages in the delivery of property in the state other than by:

(A) common carrier; or

(B) United States mail; or

(v) regularly engages in an activity directly related to the leasing or servicing of property located within the state.

(b) If a vendor does not meet one or more of the criteria provided for in Subsection (1)(a), the vendor:

(i) except as provided in Subsection (1)(b)(ii), may voluntarily:

(A) collect a tax as provided in Subsection 59-12-103(2)(c) on a transaction described in Subsection 59-12-103(1); and

(B) remit the tax to the commission as provided in this part; or

(ii) notwithstanding Subsection (1)(b)(i), shall collect a tax as provided in Subsection 59-12-103(2)(c) on a transaction described in Subsection 59-12-103(1) if Section 59-12-103.1 requires the vendor to collect the tax.

(c) A person shall pay a use tax imposed by this chapter on a transaction described in Subsection 59-12-103(1) if:

(i) the vendor did not collect a use tax imposed by this chapter on the transaction; and

(ii) the person:

(A) stores the tangible personal property in the state;

(B) uses the tangible personal property in the state; or

(C) consumes the tangible personal property in the state.

(d) Notwithstanding the provisions of Subsection (1)(a), the ownership of property that is located at the premises of a printer's facility with which the retailer has contracted for printing and that consists of the final printed product, property that becomes a part of the final printed product, or copy from which the printed product is produced, shall not result in the retailer being considered to have or

maintain an office, distribution house, sales house, warehouse, service enterprise, or other place of business, or to maintain a stock of goods, within this state.

(2) (a) Each vendor shall collect the sales or use tax from the purchaser.

(b) A vendor may not collect as tax an amount, without regard to fractional parts of one cent, in excess of the tax computed at the rates prescribed by this chapter.

(c) (i) Each vendor shall:

(A) give the purchaser a receipt for the use tax collected; or

(B) bill the use tax as a separate item and declare the name of this state and the vendor's use tax license number on the invoice for the sale.

(ii) The receipt or invoice is prima facie evidence that the vendor has collected the use tax and relieves the purchaser of the liability for reporting the use tax to the commission as a consumer.

(d) A vendor is not required to maintain a separate account for the tax collected, but is considered to be a person charged with receipt, safekeeping, and transfer of public moneys.

(e) Taxes collected by a vendor pursuant to this chapter shall be held in trust for the benefit of the state and for payment to the commission in the manner and at the time provided for in this chapter.

(f) If any vendor, during any reporting period, collects as a tax an amount in excess of the lawful state and local percentage of total taxable sales allowed under this part and Part 2, Local Sales and Use Tax Act, the vendor shall remit to the commission the full amount of the tax imposed under this part and Part 2, Local Sales and Use Tax Act, plus any excess.

(g) If the accounting methods regularly employed by the vendor in the transaction of the vendor's business are such that reports of sales made during a calendar month or quarterly period will impose unnecessary hardships, the commission may accept reports at intervals that will, in its opinion, better suit the convenience of the taxpayer or vendor and will not jeopardize collection of the tax.

(3) (a) Except as provided in Subsection (4) and in Section 59-12-108, the sales or use tax imposed by this chapter is due and payable to the commission quarterly on or before the last day of the month next succeeding each calendar quarterly period.

(b) (i) Each vendor shall, on or before the last day of the month next succeeding each calendar quarterly period, file with the commission a return for the preceding quarterly period.

(ii) The vendor shall remit with the return under Subsection (3)(b)(i) the amount of the tax required under this chapter to be collected or paid for the period covered by the return.

(c) Each return shall contain information and be in a form the commission prescribes by rule.

(d) The sales tax as computed in the return shall be based upon the total nonexempt sales made during the period, including both cash and charge sales.

(e) The use tax as computed in the return shall be based upon the total amount of sales or purchases for storage, use, or other consumption in this state made during the period, including both by cash and by charge.

(f) The commission may by rule extend the time for making returns and paying the taxes. No extension may be for more than 90 days.

(g) The commission may require returns and payment of the tax to be made for other than quarterly periods if it considers it necessary in order to ensure the payment of the tax imposed by this chapter.

(4) On each vehicle sale made by other than a regular licensed vehicle dealer, the purchaser shall pay the sales or use tax directly to the commission if the vehicle is subject to titling or registration under the laws of this state. The commission shall collect the tax when the vehicle is titled or registered.

(5) If any sale of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), is made by a wholesaler to a retailer, the wholesaler is not responsible for the collection or payment of the tax imposed on the sale if the retailer represents that the personal property is purchased by the retailer for resale and the personal property thereafter is not resold. Instead, the retailer is solely liable for the tax.

(6) If any sale of property or service subject to the tax is made to a person prepaying sales or use tax in accordance with Title 63, Chapter 51, Resource Development, or to a contractor or subcontractor of that person, the person to whom such payment or consideration is payable is not responsible for the collection or payment of the sales or use tax if the person prepaying the sales or use tax represents that the amount prepaid as sales or use tax has not been fully credited against sales or use tax due and payable under the rules promulgated by the commission. Instead, the person prepaying the sales or use tax is solely liable for the tax.

(7) Credit is allowed for prepaid taxes and for taxes paid on that portion of an account determined to be worthless and actually charged off for income tax purposes or on the portion of the purchase price remaining unpaid at the time of a repossession made under the terms of a conditional sales contract.

(8) (a) The commission may require any person subject to the tax imposed under this chapter to deposit with it security as the commission determines, if the commission considers it necessary to ensure compliance with this chapter.

(b) The commission may sell the security at public sale if it becomes necessary to do so in order to recover any tax, interest, or penalty due.

(c) (i) The commission shall serve notice of the sale upon the person who deposited the securities.

(ii) Notice under Subsection (8)(c)(i) sent to the last-known address as it appears in the records of the commission is sufficient for the purposes of this requirement.

(d) The commission shall return to the person who deposited the security any amount of the sale proceeds that exceed the amounts due under this chapter.

(9) (a) A vendor may not, with intent to evade any tax, fail to timely remit the full amount of tax required by this chapter.

(b) A violation of this section is punishable as provided in Section 59-1-401.

(c) Each person who fails to pay any tax to the state or any amount of tax required to be paid to the state, except amounts determined to be due by the commission under Sections 59-12-110 and 59-12-111, within the time required by this chapter, or who fails to file any return as required by this chapter, shall pay, in addition to the tax, penalties and interest as provided in Section 59-12-110.

(d) For purposes of prosecution under this section, each quarterly tax period in which a vendor, with intent to evade any tax, collects a tax and fails to timely remit the full amount of the tax required to be remitted, constitutes a separate offense.

Section 5. Section 59-12-802 (Effective 07/01/01) is amended to read:

59-12-802 (Effective 07/01/01). Imposition of rural county health care facilities tax -- Base -- Rate.

(1) (a) A county legislative body may impose a sales and use tax of up to 1%:

(i) except as provided in Subsection (1)(b), on the transactions described in Subsection 59-12-103(1); and

(ii) to fund rural county health care facilities in that county.

(b) Notwithstanding Subsection (1)(a)(i), a county legislative body may not impose a tax under this section on:

(i) the sales and uses described in Section 59-12-104 to the extent the sales and uses are exempt from taxation under Section 59-12-104; and

(ii) any amounts paid or charged by a vendor that collects a tax under Subsection 59-12-107(1)(b).

(2) (a) Before imposing [~~or increasing~~] a tax under Subsection (1)(a), a county legislative body shall obtain approval to impose [~~or increase~~] the tax from a majority of the:

(i) members of the county's legislative body; and

(ii) county's registered voters voting on the imposition of the tax.

(b) The county legislative body shall conduct the election according to the procedures and requirements of Title 11, Chapter 14, Utah Municipal Bond Act.

(3) The monies generated by a tax imposed under Subsection (1) may only be used for the financing of:

(a) ongoing operating expenses of a rural county health care facility;

(b) the acquisition of land for a rural county health care facility; or

(c) the design, construction, equipping, or furnishing of a rural county health care facility.

(4) Taxes imposed under this section shall be:

(a) levied at the same time and collected in the same manner as provided in Part 2, Local Sales and Use Tax Act, except that the collection and distribution of the tax revenue is not subject to Subsection 59-12-205(2); and

(b) levied for a period of ten years and may be reauthorized at the end of the ten-year period by the county legislative body as provided in Subsection (1).

(5) The commission may retain an amount not to exceed 1-1/2% of the tax collected under this section for the cost of administering this tax.

Section 6. Section 59-12-804 (Effective 07/01/01) is amended to read:

59-12-804 (Effective 07/01/01). Imposition of rural city hospital tax -- Base -- Rate.

(1) (a) A city legislative body may impose a sales and use tax of up to 1%:

(i) except as provided in Subsection (1)(b), on the transactions described in Subsection 59-12-103(1); and

(ii) to fund rural city hospitals in that city.

(b) Notwithstanding Subsection (1)(a)(i), a city legislative body may not impose a tax under this section on:

(i) the sales and uses described in Section 59-12-104 to the extent the sales and uses are exempt from taxation under Section 59-12-104; and

(ii) any amounts paid or charged by a vendor that collects a tax under Subsection 59-12-107(1)(b).

(2) (a) Before imposing [~~or increasing~~] a tax under Subsection (1)(a), a city legislative body shall obtain approval to impose the tax from a majority of the:

(i) members of the city legislative body; and

(ii) city's registered voters voting on the imposition of the tax.

(b) The city legislative body shall conduct the election according to the procedures and requirements of Title 11, Chapter 14, Utah Municipal Bond Act.

(3) The monies generated by a tax imposed under Subsection (1) may only be used for the financing of:

(a) ongoing operating expenses of a rural city hospital;

(b) the acquisition of land for a rural city hospital; or

(c) the design, construction, equipping, or furnishing of a rural city hospital.

(4) Taxes imposed under this section shall be:

(a) levied at the same time and collected in the same manner as provided in Part 2, Local Sales and Use Tax Act, except that the collection and distribution of the tax revenue is not subject to Subsection 59-12-205; and

(b) levied for a period of ten years and may be reauthorized at the end of the ten-year period by the city legislative body as provided in Subsection (1).

(5) The commission may retain an amount not to exceed 1-1/2% of the tax collected under this section for the cost of administering the tax.

Section 7. Section 59-12-902 (Effective 07/01/01) is amended to read:

59-12-902 (Effective 07/01/01). Sales tax refund for qualified emergency food agencies -- Administration -- Rulemaking authority.

(1) Beginning on January 1, 1998, a qualified emergency food agency may claim a sales tax refund as provided in this section on the pounds of food donated to the qualified emergency food agency.

(2) (a) Subject to the adjustments provided for in Subsection (2)(b), a qualified emergency food agency may claim a refund in an amount equal to the pounds of food donated to the qualified emergency food agency multiplied by:

(i) $1.70; and

(ii) the sum of:

(A) 4.75%; and

(B) except as provided in Subsection (2)(c), the sum of the tax rates provided for in Subsection (2)(b).

(b) Tax rates authorized under the following apply to Subsection (2)(a)(ii)(B):

(i) (A) the lowest tax rate imposed by a county, city, or town under Section 59-12-204, but only if all of the counties, cities, and towns in the state impose the tax under Section 59-12-204; or

[~~(ii)~~] (B) the lowest tax rate imposed by a county, city, or town under Section 59-12-205, but only if all of the counties, cities, and towns in the state impose the tax under Section 59-12-205;

[~~(iii)~~] (ii) the tax rate authorized by Section 59-12-501 or Section 59-12-1001, but only if all of the counties, cities, and towns in the state impose the tax:

(A) under Section 59-12-501; or

(B) under Section 59-12-1001;

[~~(iv)~~] (iii) the tax rate authorized by Section 59-12-502, but only if all of the counties, cities, and towns in the state impose the tax under Section 59-12-502;

[~~(v)~~] (iv) the tax rate authorized by Section 59-12-703, but only if all of the counties in the state impose the tax under Section 59-12-703; and

[~~(vi)~~] (v) the tax rate authorized by Section 59-12-1102, but only if all of the counties in the state impose the tax under Section 59-12-1102.

(c) Tax rates authorized under the following do not apply to Subsection (2)(a)(ii)(B):

(i) Subsection 59-12-103(2)(a)(i);

(ii) Subsection 59-12-103(2)(b)(i);

(iii) Subsection 59-12-103(2)(c)(i);

(iv) Section 59-12-301;

(v) Section 59-12-352;

(vi) Section 59-12-353;

(vii) Section 59-12-401;

(viii) Section 59-12-402;

(ix) Section 59-12-603;

(x) Section 59-12-802;

(xi) Section 59-12-804;

(xii) Section 59-12-1201; or

(xiii) Section 59-12-1302.

(d) Beginning on January 1, 1999, the commission shall annually adjust on or before the second Monday of February the $1.70 provided in Subsection (2)(a)(i) by a percentage equal to the percentage difference between the food at home category of the Consumer Price Index for:

(i) the preceding calendar year; and

(ii) calendar year 1997.

(3) To claim a sales tax refund under this section, a qualified emergency food agency shall file an application with the commission.

(4) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may make rules providing procedures for implementing the sales tax refund under this section, including:

(a) procedures for an organization to apply for recognition as a qualified emergency food agency;

(b) standards for determining and verifying the amount of the sales tax refund; and

(c) procedures for a qualified emergency food agency to apply for a sales tax refund, including the frequency with which a qualified emergency food agency may apply for a sales tax refund.

(5) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the Division

of Community Development may establish rules providing for the certification of emergency food agencies to claim a refund under this part.

Section 8. Title.

The uncodified sections of this act are known as the "Uniform Sales and Use Tax Administration Act."

Section 9. Definitions.

As used in the uncodified sections of this act:

(1) "Agreement" means the Streamlined Sales and Use Tax Agreement.

(2) "Certified automated system" means software certified jointly by the states that are members of the Agreement to:

(a) calculate the tax imposed by each taxing jurisdiction:

(i) on a transaction; and

(ii) in the states that are members of the Agreement;

(b) determine the amount of tax to remit to the appropriate state; and

(c) maintain a record of the transaction.

(3) "Certified service provider" means an agent certified:

(a) jointly by the states that are members of the Agreement; and

(b) to perform all of a seller's sales tax functions.

(4) "Person" means:

(a) an individual;

(b) a trust;

(c) an estate;

(d) a fiduciary;

(e) a partnership;

(f) a limited liability company;

(g) a limited liability partnership;

(h) a corporation; or

(i) any other legal entity similar to Subsections (4)(a) through (h).

(5) "Sales and use tax" means a tax imposed under Title 59, Chapter 12, Sales and Use Tax Act.

(6) "Seller" means a person making a sale, lease, or rental of:

(a) personal property; or

(b) a service.

(7) "State" means:

(a) a state of the United States; or

(b) the District of Columbia.

Section 10. Participation in multistate discussions.

(1) As provided in this section, delegates shall enter into multistate discussions to address the following issues:

(a) to consider whether the state should enter into the Agreement described in Section 13 with one or more other states to:

(i) simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce;

(ii) establish standards for certification of a:

(A) certified service provider; and

(B) certified automated system; and

(iii) establish performance standards for multistate sellers; and

(b) (i) to consider whether to review the Agreement described in Section 13; or

(ii) to consider whether to amend the Agreement described in Section 13.

(2) For purposes of Subsection (1), delegates shall be appointed as follows:

(a) one delegate shall be a member of the House of Representatives appointed by the speaker of the House of Representatives;

(b) one delegate shall be a member of the Senate appointed by the president of the Senate; and

(c) two delegates shall be appointed by the governor, at least one of whom shall be from the Utah State Tax Commission.

(3) The delegates described in Subsection (2) shall:

(a) report to the Utah Tax Review Commission as requested by the Utah Tax Review Commission;

(b) make recommendations to the Utah Tax Review Commission regarding:

(i) the issues the delegates are required to consider in accordance with Subsection (1); and

(ii) any other issue the Utah Tax Review Commission requests the delegates to consider.

(4) If the Utah Tax Review Commission determines that the state should enter into the Agreement described in Section 13 with one or more other states, the Utah Tax Review Commission shall request that legislation be prepared:

(a) amending Title 59, Chapter 12, Sales and Use Tax Act, or other statutes to bring the state into substantial compliance with:

(i) the Agreement described in Section 13; and

(ii) any amendments made to the Agreement described in Section 13 as a result of multistate discussions required by this section; and

(b) for consideration by the:

(i) Revenue and Taxation Interim Committee on or before the November 2002 interim meeting; and

(ii) Legislature on or before the 2003 General Session.

Section 11. Authority to enter into Agreement.

If on or before the 2003 General Session the Legislature passes legislation to bring the state into substantial compliance with the Agreement described in Section 13, the Legislature may:

(1) authorize and direct the Utah State Tax Commission to:

(a) enter into the Agreement with one or more states to:

(i) simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce;

(ii) establish standards for certification of a:

(A) certified service provider; and

(B) certified automated system; and

(iii) act jointly with other states that are members of the Agreement to establish performance standards for multistate sellers; and

(b) take other actions reasonably required to implement the provisions of this Uniform Sales and Use Tax Administration Act including:

(i) adopting administrative rules; and

(ii) in furtherance of the Agreement, jointly procuring goods and services with other states that are members of the Agreement; and

(2) authorize the Utah State Tax Commission or a designee of the Utah State Tax Commission to represent the state before the other states that are members of the Agreement.

Section 12. Relationship to state law.

(1) A provision of the Agreement described in Section 13 in whole or in part may not invalidate or amend any provision of the law of this state.

(2) Adoption of the Agreement described in Section 13 by this state does not amend or modify any law of this state.

(3) Implementation of any condition of the Agreement described in Section 13 in this state shall be by action of this state regardless of whether the condition is adopted:

(a) before membership of this state in the Agreement;

(b) at the time of membership of this state in the Agreement; or

(c) after membership of this state in the Agreement.

Section 13. Agreement requirements.

The Legislature may not authorize and direct the Utah State Tax Commission to enter into the Agreement unless the Agreement requires each state to abide by the following requirements:

(1) the Agreement shall set restrictions to achieve over time more uniform state tax rates by:

(a) limiting the number of state rates;

(b) limiting the application of maximums on the amount of state tax that is due on a transaction; and

(c) limiting the application of thresholds on the application of state tax.

(2) the Agreement shall establish uniform standards for the following:

(a) the sourcing of transactions to taxing jurisdictions;

(b) the administration of exempt sales;

(c) the allowance a seller may take for bad debts; and

(d) sales and use tax returns and remittances;

(3) the Agreement shall require states to develop and adopt uniform definitions:

(a) of sales and use tax terms; and

(b) that enable each state to preserve the state's ability to make policy choices consistent with the uniform definitions;

(4) the Agreement shall provide a central, electronic registration system that allows a seller to register to collect and remit sales and use taxes for all states that are members of the Agreement;

(5) the Agreement shall provide that the following may not be used as a factor in determining whether the seller has nexus with a state for any tax:

(a) registration with the central registration system; or

(b) the collection of sales and use taxes in the states that are members of the Agreement;

(6) the Agreement shall provide for a reduction of the burdens of complying with local sales and use taxes by:

(a) restricting variances between the state and local tax bases;

(b) requiring states to administer any sales and use taxes imposed by local jurisdictions within the state so that a seller collecting and remitting the sales and use taxes will not have to:

(i) register with local taxing jurisdictions;

(ii) file returns with local taxing jurisdictions;

(iii) remit funds to local taxing jurisdictions; or

(iv) be subject to independent audits from local taxing jurisdictions;

(c) restricting the frequency of changes in local sales and use tax rates;

(d) setting effective dates for the application of local jurisdictional boundary changes to local sales and use taxes; and

(e) providing notice of changes in:

(i) local sales and use tax rates; and

(ii) the boundaries of local taxing jurisdictions;

(7) the Agreement shall outline any monetary allowances that are to be provided by the states to sellers or certified service providers;

(8) the Agreement shall require each state entering into the Agreement to:

(a) certify compliance with the terms of the Agreement prior to entering into the Agreement; and

(b) maintain compliance with all of the provisions of the Agreement:

(i) during the time period that the state is a member of the Agreement; and

(ii) under the laws of the state entering into the Agreement;

(9) the Agreement shall require each state to adopt a uniform policy for certified service providers that:

(a) protects the privacy of consumers; and

(b) maintains the confidentiality of tax information;

(10) the Agreement shall provide for the appointment of an advisory council consisting of:

(a) private sector representatives to consult with in the administration of the Agreement; and

(b) nonmember state representatives to consult with in the administration of the Agreement; and

(11) the Agreement shall adopt provisions regarding seller and third party liability consistent with Section 16.

Section 14. Cooperating sovereigns.

(1) The Agreement described in Section 13 is an accord among individual cooperating sovereigns in furtherance of their governmental functions.

(2) The Agreement described in Section 13 provides a mechanism among the states that are members of the Agreement to establish and maintain a cooperative, simplified system for the application and administration of sales and use taxes under laws adopted by each state that is a member of the Agreement.

Section 15. Limited binding and beneficial effect.

(1) (a) If the Legislature authorizes and directs the Utah State Tax Commission to enter into the Agreement described in Section 13, the Agreement binds and inures only to the benefit of this state and other states that are members of the Agreement.

(b) No person, other than a state that is a member of the Agreement, is an intended beneficiary of the Agreement.

(c) Any benefit to a person other than a state is established by the law of this state and the laws of other states that are members of the Agreement and not by the terms of the Agreement.

(2) (a) Consistent with Subsection (1), a person may not have any cause of action or defense:

(i) under the Agreement; or

(ii) by virtue of this state's approval of the Agreement.

(b) A person may not challenge, in any action brought under any provision of law, an action or inaction:

(i) by:

(A) a department;

(B) an agency;

(C) a commission;

(D) an instrumentality of the state other than Subsections (2)(b)(i)(A) through (C); or

(E) a political subdivision of the state; and

(ii) on the ground that the action or inaction is inconsistent with the Agreement.

(c) A law of this state, or the application of a law of this state, may not be declared invalid as to any person or circumstance on the ground that the law or application is inconsistent with the Agreement.

Section 16. Seller and third party liability.

(1) In accordance with Section 13, the Legislature may not authorize and direct the Utah State Tax Commission to enter into the Agreement unless the Agreement requires each state to abide by the requirements of Subsections (2) through (5).

(2) (a) A certified service provider is the agent of a seller, with whom the certified service provider has contracted, for the collection and remittance of sales and use taxes.

(b) Except as provided in this section, the certified service provider that is the seller's agent is liable for sales and use tax due:

(i) each state that is a member of the Agreement; and

(ii) on all sales or use transactions the certified service provider processes for the seller.

(3) (a) A seller that contracts with a certified service provider is not liable to the state for sales or use tax due on transactions processed by the certified service provider unless the seller:

(i) misrepresented the type of items the seller sells; or

(ii) committed fraud.

(b) In the absence of probable cause to believe that the seller has committed fraud or made a material misrepresentation, the seller is not subject

to audit on the transactions processed by the certified service provider.

(c) A seller is subject to audit for transactions not processed by the certified service provider.

(d) The states that are members of the Agreement acting jointly may:

(i) perform a system check of the seller; and

(ii) review the seller's procedures to determine:

(A) if the certified service provider's system is functioning properly; and

(B) the extent to which the seller's transactions are being processed by the certified service provider.

(4) (a) A person that provides a certified automated system is:

(i) responsible for the proper functioning of that system; and

(ii) liable to the state for underpayments of sales and use tax attributable to errors in the functioning of the certified automated system.

(b) A seller that uses a certified automated system remains responsible and is liable to the state for reporting and remitting sales and use tax.

(5) A seller that has a proprietary system for determining the amount of sales and use tax due on transactions and has signed an agreement with the Utah State Tax Commission establishing a performance standard for that proprietary system is liable for the failure of the proprietary system to meet the performance standard.

Section 17. Effective date.

(1) If approved by two-thirds of all the members elected to each house, the uncodified sections of this act take effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

(2) Sections 59-1-401, 59-12-103, 59-12-103.2, 59-12-107, 59-12-802, 59-12-804, and 59-12-902 take effect on July 1, 2001.

Section 18. Repeal date.

The uncodified sections of this act are repealed on June 30, 2003.

CHAPTER 105
S. B. 75
Passed February 27, 2001
Approved March 15, 2001
Effective April 30, 2001

PUBLIC EDUCATION CURRICULUM AMENDMENTS

Sponsor: Bill Wright

This act modifies provisions related to the State System of Public Education by providing that the State Board of Education shall approve instructional materials for use in health, physiology, hygiene, and prevention of communicable disease curricula that local school boards may choose to adopt. The act provides local schools with an option of using other instructional materials for the curricula consistent with state law and board rules emphasizing abstinence before marriage and fidelity after marriage.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
53A-13-101, as last amended by Chapter 10, Laws of Utah 1996, Second Special Session

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

Section 1. Section 53A-13-101 is amended to read:

53A-13-101. Instruction in health -- Parental consent requirements -- Character habits -- Conduct and speech of school employees and volunteers -- Political and religious doctrine prohibited.

(1) (a) The State Board of Education shall establish curriculum requirements under Section 53A-1-402, that include instruction in:

(i) community and personal health;

(ii) physiology;

(iii) personal hygiene; and

(iv) prevention of communicable disease.

(b) (i) That instruction shall stress:

(A) the importance of abstinence from all sexual activity before marriage and fidelity after marriage as methods for preventing certain communicable diseases[.]; and

(B) personal skills that encourage individual choice of abstinence and fidelity.

(ii) (A) At no time may instruction be provided, including responses to spontaneous questions raised by students, regarding any means or methods that facilitate or encourage the violation of any state or federal criminal law by a minor or an adult.

(B) Subsection (1)(b)(ii)(A) does not preclude an instructor from responding to a spontaneous question as long as the response is consistent with the provisions of this section.

(c) (i) The board shall approve instructional materials for use in the curricula required under Subsection (1)(a) upon recommendation of the State Textbook Commission or its successor.

(ii) A local school board may choose to adopt:

(A) the instructional materials approved under Subsection (1)(c)(i); or

(B) other instructional materials as provided in state board rule.

(iii) The state board rule made under Subsection (1)(c)(ii)(B) shall include, at a minimum:

(A) that the materials adopted by a local school board under Subsection (1)(c)(ii)(B) shall be based upon recommendations of the school district's Curriculum Materials Review Committee that comply with state law and state board rules emphasizing abstinence before marriage and fidelity after marriage, and prohibiting instruction in:

(I) the intricacies of intercourse, sexual stimulation, or erotic behavior;

(II) the advocacy of homosexuality;

(III) the advocacy or encouragement of the use of contraceptive methods or devices; or

(IV) the advocacy of sexual activity outside of marriage;

(B) that the adoption of instructional materials shall take place in an open and regular meeting of the local school board for which prior notice is given to parents and guardians of students attending schools in the district and an opportunity for them to express their views and opinions on the materials at the meeting;

(C) provision for an appeal and review process of the local school board's decision; and

(D) provision for a report by the local school board to the State Board of Education of the action taken and the materials adopted by the local school board under Subsections (1)(c)(ii)(B) and (1)(c)(iii).

(2) (a) Instruction in the courses described in Subsection (1) shall be consistent and systematic in grades eight through 12.

(b) At the request of the board, the Department of Health shall cooperate with the board in developing programs to provide instruction in those areas.

(3) (a) The board shall adopt rules that:

(i) provide that the parental consent requirements of Sections 76-7-322 and 76-7-323 are complied with; and

(ii) require a student's parent or legal guardian to be notified in advance and have an opportunity to review the information for which parental consent is required under Sections 76-7-322 and 76-7-323.

(b) The board shall also provide procedures for disciplinary action for violation of Section 76-7-322 or 76-7-323.

(4) Honesty, temperance, morality, courtesy, obedience to law, respect for and an understanding of the Declaration of Independence and the Constitutions of the United States and the state of Utah, Utah history including territorial and preterritorial development to the present, the essentials and benefits of the free enterprise system, respect for parents and home, and the dignity and necessity of honest labor and other skills, habits, and qualities of character which will promote an upright and desirable citizenry and better prepare students for a richer, happier life shall be taught in connection with regular school work.

(5) (a) In keeping with the requirements of Subsection (4), and because school employees and volunteers serve as examples to their students, school employees or volunteers acting in their official capacities may not support or encourage criminal conduct by students, teachers, or volunteers.

(b) To ensure the effective performance of school personnel, the limitations described in Subsection (5)(a) also apply to school employees or volunteers acting outside of their official capacities if:

(i) they knew or should have known that their action could result in a material and substantial interference or disruption in the normal activities of the school; and

(ii) that action does result in a material and substantial interference or disruption in the normal activities of the school.

(c) Neither the State Office of Education nor local school districts may provide training of school employees or volunteers that supports or encourages criminal conduct.

(d) The State Board of Education shall adopt rules implementing this section.

(e) Nothing in this section limits the ability or authority of the State Board of Education and local school boards to enact and enforce rules or take actions that are otherwise lawful, regarding educators', employees', or volunteers' qualifications or behavior evidencing unfitness for duty.

(6) Except as provided in Section 53A-13-101.1, political, atheistic, sectarian, religious, or denominational doctrine may not be taught in the public schools.

(7) (a) Local school boards and their employees shall cooperate and share responsibility in carrying out the purposes of this chapter.

(b) Each school district shall provide appropriate inservice training for its teachers, counselors, and school administrators to enable them to understand, protect, and properly instruct students in the values and character traits referred to in this section and Sections 53A-13-101.1, 53A-13-101.2, 53A-13-101.3, 53A-13-301, and 53A-13-302 and distribute appropriate written materials on the values, character traits, and conduct to each individual receiving the inservice training.

(c) The written materials shall also be made available to classified employees, students, and parents and guardians of students.

(d) In order to assist school districts in providing the inservice training required under Subsection (7)(b), the State Board of Education shall as appropriate, contract with a qualified individual or entity possessing expertise in the areas referred to in Subsection (7)(b) to develop and disseminate model teacher inservice programs which districts may use to train the individuals referred to in Subsection (7)(b) to effectively teach the values and qualities of character referenced in that subsection.

(e) In accordance with the provisions of Subsection (5)(c), inservice training may not support or encourage criminal conduct.

(8) If any one or more provision, subsection, sentence, clause, phrase, or word of this section, or the application thereof to any person or circumstance, is found to be unconstitutional, the balance of this section shall be given effect without the invalid provision, subsection, sentence, clause, phrase, or word.

CHAPTER 106
S. B. 76
Passed February 21, 2001
Approved March 15, 2001
Effective April 30, 2001

PROPERTY TAX APPEAL AMENDMENTS

Sponsor: Curtis S. Bramble

This act modifies the Property Tax Act to extend the time period for appealing the valuation or equalization of real property assessed by a county and for a county board of equalization to make a decision on an appeal. This act requires the State Tax Commission to make rules providing circumstances under which a county is required to accept an application to appeal that is filed after the due date for filing appeals. The act makes technical changes.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
59-2-1004, as last amended by Chapter 217, Laws of Utah 1996

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

Section 1. Section 59-2-1004 is amended to read:

59-2-1004. Appeal to county board of equalization -- Real property -- Time period for appeal -- Decision of board -- Extensions approved by commission -- Appeal to commission.

(1) (a) A taxpayer dissatisfied with the valuation or the equalization of the taxpayer's real property may make an application to appeal by:

(i) filing [~~an~~] the application with the county board of equalization [~~no later than 30 days after the day on which the county auditor mails the notice under Subsection 59-2-919(4)~~] within the time period described in Subsection (2); or

(ii) [~~applying~~] making an application by telephone or other electronic means within [~~30 days after the day on which the county auditor mails the notice under Subsection 59-2-919(4)~~] the time period described in Subsection (2) if the county legislative body passes a resolution under Subsection (5) authorizing applications to be made by telephone or other electronic means.

(b) The contents of the application shall be prescribed by rule of the county board of equalization.

(2) (a) Except as provided in Subsection (2)(b), for purposes of Subsection (1), a taxpayer shall make an application to appeal the valuation or the equalization of the taxpayer's real property on or before the later of:

(i) September 15 of the current calendar year; or

(ii) the last day of a 45-day period beginning on the day on which the county auditor mails the notice under Subsection 59-2-919(4).

(b) Notwithstanding Subsection (2)(a), in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission shall make rules providing for circumstances under which the county board of equalization is required to accept an application to appeal that is filed after the time period prescribed in Subsection (2)(a).

[~~(2)~~] (3) The owner shall include in the application under Subsection (1)(a)(i) the owner's estimate of the fair market value of the property and any evidence which may indicate that the assessed valuation of the owner's property is improperly equalized with the assessed valuation of comparable properties.

[~~(3)~~] (4) (a) The county board of equalization shall meet and hold public hearings as prescribed in Section 59-2-1001.

(b) The county board of equalization shall [~~render~~] make a decision on each appeal [~~no later than October 1. Any extension beyond October 1 shall first be approved by the~~] filed in accordance with this section within a 60-day period after the day on which the application is made.

(c) The commission may approve the extension of a time period provided for in Subsection (4)(b) for a county board of equalization to make a decision on an appeal.

[~~(b)~~] (d) The decision of the board shall contain a determination of the valuation of the property based on fair market value, and a conclusion that the fair market value is properly equalized with the assessed value of comparable properties.

[~~(c)~~] (e) If no evidence is presented before the county board of equalization, it will be presumed that the equalization issue has been met.

[~~(d)~~] (f) (i) If the fair market value of the property that is the subject of the appeal deviates plus or minus 5% from the assessed value of comparable properties, the valuation of the appealed property shall be adjusted to reflect a value equalized with the assessed value of comparable properties.

(ii) The equalized value established under Subsection (4)(f)(i) shall be the assessed value for property tax purposes until the county assessor is able to evaluate and equalize the assessed value of all comparable properties to bring them all into conformity with full fair market value.

[~~(4)~~] (5) If any taxpayer is dissatisfied with the decision of the county board of equalization, the taxpayer may file an appeal with the commission as prescribed in Section 59-2-1006.

[~~(5)~~] (6) A county legislative body may pass a resolution authorizing taxpayers owing taxes on property assessed by that county to file property tax appeals applications under this section by telephone or other electronic means.

CHAPTER 107
S. B. 81
Passed February 28, 2001
Approved March 15, 2001
Effective March 15, 2001

PROVISIONS RELATING TO HIGH-LEVEL NUCLEAR WASTE

Sponsor: Terry R. Spencer

This act modifies the Environmental Quality Code, the County Land Use Development and Management Act, the Labor Code regarding drug and alcohol testing, and the Water and Irrigation Code regarding determination of water rights. The act prohibits the placement of high-level nuclear waste or greater than class C radioactive waste within the exterior borders of the state, and prohibits governmental entities or businesses from providing services to facilitate the placement of the waste in the state. However, should the federal government authorize such placement, the act requires mandatory planning by the site county, including a public hearing. The act provides that an entity may not apply for a state license for the transportation, transfer, or storage of high-level nuclear waste or greater than class C radioactive waste until a final court ruling is given regarding the state provisions. The act also prohibits a county from providing municipal-type services to a site under consideration for a facility, entering into contracts to provide the services, or creating political subdivisions to provide the services until a license is authorized. The act provides that persons or organizations acting in violation of these provisions are subject to penalties. The act requires the Department of Environmental Quality to determine the amount of unfunded potential liability regarding a release of the waste from a facility. Should a facility gain a license, the act imposes on any organization providing municipal-type services a transaction fee of 75% of the value of a contract. This fee is to be applied to the unfunded potential liability and is to be deposited in a restricted account created by this act. In addition, the license applicant is required to deposit in this account not less than 75% of the determined unfunded potential liability within 30 days of issuance of the license for the facility. The licensee is also required to pay an annual fee of the amount of workers' compensation to be paid for employees in the state, multiplied by the number of casks of nuclear waste brought into the state. This fee is also to be deposited in the account. The fee does not exempt the licensee from payments for workers' compensation. The act also requires the licensee to test employees for drugs and alcohol, to protect the safety of the public. The act also provides for the state engineer to file an action in court to determine water rights for any area within the state's exterior boundaries regarding which any entity is actively seeking a license for a nuclear waste facility. This act takes effect upon approval. This act provides a coordination clause to specify the effective date.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
17-27-102, as last amended by Chapter 93, Laws of Utah 1992
17-27-301, as last amended by Chapter 34, Laws of Utah 2000
17-27-303, as last amended by Chapter 23, Laws of Utah 1992
17-34-1, as repealed and reenacted by Chapter 199, Laws of Utah 2000
17-34-3, as last amended by Chapter 199, Laws of Utah 2000
19-3-301, as last amended by Chapter 348, Laws of Utah 1998
19-3-302, as enacted by Chapter 348, Laws of Utah 1998
19-3-303, as enacted by Chapter 348, Laws of Utah 1998
19-3-308, as enacted by Chapter 348, Laws of Utah 1998
19-3-309, as enacted by Chapter 348, Laws of Utah 1998
19-3-312, as enacted by Chapter 348, Laws of Utah 1998
34-38-3, as enacted by Chapter 234, Laws of Utah 1987
73-4-1, Utah Code Annotated 1953

ENACTS:
17-27-308, Utah Code Annotated 1953
17-34-6, Utah Code Annotated 1953
19-3-319, Utah Code Annotated 1953

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

Section 1. Section 17-27-102 is amended to read:

17-27-102. Purpose.

(1) To accomplish the purpose of this chapter, and in order to provide for the health, safety, and welfare, and promote the prosperity, improve the morals, peace and good order, comfort, convenience, and aesthetics of the county and its present and future inhabitants and businesses, to protect the tax base, secure economy in governmental expenditures, foster the state's agricultural and other industries, protect both urban and nonurban development, and to protect property values, counties may enact all ordinances, resolutions, and rules that they consider necessary for the use and development of land within the county, including ordinances, resolutions, and rules governing uses, density, open spaces, structures, buildings, energy-efficiency, light and air, air quality, transportation and public or alternative transportation, infrastructure, public facilities, vegetation, and trees and landscaping, unless those

ordinances, resolutions, or rules are expressly prohibited by law.

(2) A county shall comply with the mandatory provisions of this part before any agreement or contract to provide goods, services, or municipal-type services to any storage facility or transfer facility for high-level nuclear waste, or greater than class C radioactive waste, may be executed or implemented.

Section 2. Section 17-27-301 is amended to read:

17-27-301. General plan.

(1) In order to accomplish the purposes set forth in this chapter, each county shall prepare and adopt a comprehensive general plan for:

(a) the present and future needs of the county; and

(b) the growth and development of the land within the county or any part of the county, including uses of land for urbanization, trade, industry, residential, agricultural, wildlife habitat, and other purposes.

(2) The plan may provide for:

(a) health, general welfare, safety, energy conservation, transportation, prosperity, civic activities, aesthetics, and recreational, educational, and cultural opportunities;

(b) the reduction of the waste of physical, financial, or human resources that result from either excessive congestion or excessive scattering of population;

(c) the efficient and economical use, conservation, and production of the supply of:

(i) food and water; and

(ii) drainage, sanitary, and other facilities and resources;

(d) the use of energy conservation and solar and renewable energy resources;

(e) the protection of urban development;

(f) the protection and promotion of air quality; and

(g) an official map, pursuant to Title 72, Chapter 5, Part 4, Transportation Corridor Preservation.

(3) (a) The plan shall include specific provisions related to any areas within, or partially within, the exterior boundaries of the county, or contiguous to the boundaries of a county, which are proposed for the siting of a storage facility or transfer facility for the placement of high-level nuclear waste or greater than class C radioactive nuclear waste, as these wastes are defined in Section 19-3-303. The provisions shall address the effects of the proposed site upon the health and general welfare of citizens of the state, and shall provide:

(i) the information identified in Section 19-3-305;

(ii) information supported by credible studies that demonstrates that the provisions of Subsection 19-3-307(2) have been satisfied; and

(iii) specific measures to mitigate the effects of high-level nuclear waste and greater than class C radioactive waste and guarantee the health and safety of the citizens of the state.

(b) A county may, in lieu of complying with Subsection (3)(a), adopt an ordinance indicating that all proposals for the siting of a storage facility or transfer facility for the placement of high-level nuclear waste or greater than class C radioactive waste wholly or partially within the county are rejected.

(c) A county may adopt the ordinance listed in Subsection (3)(b) at any time.

(d) The county shall send a certified copy of the ordinance under Subsection (3)(b) to the executive director of the Department of Environmental Quality by certified mail within 30 days of enactment.

(e) If a county repeals an ordinance adopted pursuant to Subsection (3)(b) the county shall:

(i) comply with Subsection (3)(a) as soon as reasonably possible; and

(ii) send a certified copy of the repeal to the executive director of the Department of Environmental Quality by certified mail within 30 days after the repeal.

[~~(3)~~] (4) The plan may define the county's local customs, local culture, and the components necessary for the county's economic stability.

[~~(4)~~] (5) The county may determine the comprehensiveness, extent, and format of the general plan.

Section 3. Section 17-27-303 is amended to read:

17-27-303. Plan adoption.

(1) (a) After completing a proposed general plan for all or part of the area within the county, the planning commission shall schedule and hold a public hearing on the proposed plan.

(b) The planning commission shall provide reasonable notice of the public hearing at least 14 days before the date of the hearing.

(c) After the public hearing, the planning commission may make changes to the proposed general plan.

(2) The planning commission shall then forward the proposed general plan to the legislative body.

(3) (a) The legislative body shall hold a public hearing on the proposed general plan recommended to it by the planning commission.

(b) The legislative body shall provide reasonable notice of the public hearing at least 14 days before the date of the hearing.

(4) (a) (i) In addition to the requirements of Subsections (1), (2), and (3), the legislative body

shall hold a public hearing in Salt Lake City on provisions of the proposed county plan regarding Subsection 17-27-301(3). The hearing procedure shall comply with this Subsection (4).

(ii) The hearing format shall allow adequate time for public comment at the actual public hearing, and shall also allow for public comment in writing to be submitted to the legislative body for not fewer than 90 days after the date of the public hearing.

(b) (i) The legislative body shall give notice of the hearing in accordance with this Subsection (4) when the proposed plan provisions required by Subsection 17-27-301(3) are complete.

(ii) Direct notice of the hearing shall be given, in writing, to the governor, members of the state Legislature, executive director of the Department of Environmental Quality, the state planning coordinator under Section 63-28-1, the Resource Development Coordinating Committee pursuant to Section 63-28a-2, and any other citizens or entities who specifically request notice in writing.

(iii) Public notice shall be given by publication in at least one major Utah newspaper having broad general circulation in the state, and also in at least one Utah newspaper having a general circulation focused mainly on the county where the proposed high-level nuclear waste or greater than class C radioactive waste site is to be located.

(iv) The notice in these newspapers shall be published not fewer than 180 days prior to the date of the hearing to be held under this Subsection (4), to allow reasonable time for interested parties and the state to evaluate the information regarding the provisions of Subsection 17-27-301(3).

[~~(4)~~] (5) (a) After [~~the~~] a public hearing under this section, the legislative body may make any modifications to the proposed general plan that it considers appropriate.

(b) The legislative body shall respond in writing and in a substantive manner to all those providing comments as a result of the hearing required by Subsection (4).

[~~(5)~~] (6) The legislative body may:

(a) adopt the proposed general plan without amendment;

(b) amend the proposed general plan and adopt or reject it as amended; or

(c) reject the proposed general plan.

[~~(6)~~] (7) (a) The general plan is an advisory guide for land use decisions, except for the provision required by Subsection 17-27-301(3), which the legislative body shall adopt.

(b) The legislative body may adopt an ordinance mandating compliance with the general plan, and shall adopt an ordinance requiring compliance with all provisions of Subsection 17-27-301(3).

Section 4. Section 17-27-308 is enacted to read:

17-27-308. State to indemnify county regarding refusal to site nuclear waste -- Terms and conditions.

If a county is challenged in a court of law regarding its decision to deny siting of a storage or transfer facility for the placement of high-level nuclear waste or greater than class C radioactive waste or its refusal to provide municipal-type services regarding the operation of the storage or transfer facility, the state shall indemnify, defend, and hold the county harmless from any claims or damages, including court costs and attorney fees that are assessed as a result of the county's action, if:

(1) the county has complied with the provisions of Subsection 17-27-301(3)(b) by adopting an ordinance rejecting all proposals for the siting of a storage or transfer facility for the placement of high-level nuclear waste or greater than class C radioactive waste wholly or partially within the boundaries of the county;

(2) the county has complied with Subsection 17-34-1(3) regarding refusal to provide municipal-type services; and

(3) the court challenge against the county addresses the county's actions in compliance with Subsection 17-27-301(3)(b) or Subsection 17-34-1(3).

Section 5. Section 17-34-1 is amended to read:

17-34-1. Counties may provide municipal services -- First class counties required to provide paramedic services.

(1) For purposes of this chapter,[~~"municipal-type~~] except as otherwise provided in Subsection (3):

(a) "Greater than class C radioactive waste" has the same meaning as in Section 19-3-303.

(b) "High-level nuclear waste" has the same meaning as in Section 19-3-303.

(c) "Municipal-type services" means:

[~~(a)~~] (i) fire protection service;

[~~(b)~~] (ii) waste and garbage collection and disposal;

[~~(c)~~] (iii) planning and zoning;

[~~(d)~~] (iv) street lighting;

[~~(e)~~] (v) in a county of the first class, advanced life support and paramedic services; and

[~~(f)~~] (vi) all other services and functions that are required by law to be budgeted, appropriated, and accounted for from a municipal services fund or a municipal capital projects fund as defined under Chapter 36, Uniform Fiscal Procedures Act for Counties.

(d) "Placement" has the same meaning as in Section 19-3-303.

(e) "Storage facility" has the same meaning as in Section 19-3-303.

(f) "Transfer facility" has the same meaning as in Section 19-3-303.

(2) A county may:

(a) provide municipal-type services to areas of the county outside the limits of cities and towns without providing the same services to cities or towns;

(b) fund those services by:

(i) levying a tax on taxable property in the county outside the limits of cities and towns; or

(ii) charging a service charge or fee to persons benefitting from the municipal-type services.

(3) A county may not:

(a) provide, contract to provide, or agree in any manner to provide municipal-type services, as these services are defined in Section 19-3-303, to any area under consideration for a storage facility or transfer facility for the placement of high-level nuclear waste, or greater than class C radioactive waste; or

(b) seek to fund services for these facilities by:

(i) levying a tax; or

(ii) charging a service charge or fee to persons benefitting from the municipal-type services.

[~~(3)~~] (4) Each county of the first class shall provide advanced life support and paramedic services to the area of the county outside the limits of cities and towns.

Section 6. Section 17-34-3 is amended to read:

17-34-3. Taxes or service charges.

(1) (a) If a county furnishes the municipal-type services and functions described in Section 17-34-1 to areas of the county outside the limits of incorporated cities or towns, the entire cost of the services or functions so furnished shall be defrayed from funds that the county has derived from either:

(i) taxes which the county may lawfully levy or impose outside the limits of incorporated towns or cities;

(ii) service charges or fees the county may impose upon the persons benefited in any way by the services or functions; or

(iii) a combination of these sources.

(b) As the taxes or service charges or fees are levied and collected, they shall be placed in a special revenue fund of the county and shall be disbursed only for the rendering of the services or functions established in Section 17-34-1 within the unincorporated areas of the county.

(2) For the purpose of levying taxes, service charges, or fees provided in this section, the county legislative body may establish a district or districts in the unincorporated areas of the county.

(3) Nothing contained in this chapter may be construed to authorize counties to impose or levy taxes not otherwise allowed by law.

(4) (a) A county required under Subsection 17-34-1[~~(3)~~](4) to provide advanced life support and paramedic services to the unincorporated area of the county and that previously paid for those services through a countywide levy may increase its levy under Subsection (1)(a)(i) to generate in the unincorporated area of the county the same amount of revenue as the county loses from that area due to the required decrease in the countywide certified tax rate under Subsection 59-2-924(2)(h)(i).

(b) An increase in tax rate under Subsection (4)(a) is exempt from the notice and hearing requirements of Sections 59-2-918 and 59-2-919.

Section 7. Section 17-34-6 is enacted to read:

17-34-6. State to indemnify county regarding refusal to site nuclear waste -- Terms and conditions.

If a county is challenged in a court of law regarding its decision to deny siting of a storage or transfer facility for the placement of high-level nuclear waste or greater than class C radioactive waste or its refusal to provide municipal-type services regarding the operation of the storage or transfer facility, the state shall indemnify, defend, and hold the county harmless from any claims or damages, including court costs and attorney fees that are assessed as a result of the county's action, if:

(1) the county has complied with the provisions of Subsection 17-27-301(3)(b) by adopting an ordinance rejecting all proposals for the siting of a storage or transfer facility for the placement of high-level nuclear waste or greater than class C radioactive waste wholly or partially within the boundaries of the county;

(2) the county has complied with Subsection 17-34-1(3) regarding refusal to provide municipal-type services; and

(3) the court challenge against the county addresses the county's actions in compliance with Subsection 17-27-301(3)(b) or Subsection 17-34-1(3).

Section 8. Section 19-3-301 is amended to read:

19-3-301. Restrictions on nuclear waste placement in state.

(1) The [~~state may not approve the~~] placement, including transfer, storage, decay in storage, treatment, or disposal, [~~in~~] within the exterior boundaries of Utah of high-level nuclear waste or greater than class C radioactive waste [~~unless~~] is prohibited.

(2) Notwithstanding Subsection (1) the governor, after consultation with the county executive and county legislative body of the affected county and with concurrence of the Legislature, may specifically [~~approves~~] approve the placement as provided in this part[~~.~~], but only if:

(a) (i) the federal Nuclear Regulatory Commission issues a license, pursuant to the Nuclear Waste Policy Act, 42 U.S.C.A. 10101 et seq., or the Atomic Energy Act, 42 U.S.C.A. 2011 et seq., for the placement within the exterior boundaries of Utah of high-level nuclear waste or greater than class C radioactive waste; and

(ii) the authority of the federal Nuclear Regulatory Commission to grant a license under Subsection (2)(a)(i) is clearly upheld by a final judgment of a court of competent jurisdiction; or

(b) an agency of the federal government is transporting the waste, and all state and federal requirements to proceed with the transportation have been met.

(3) The requirement for the approval of a final court of competent jurisdiction shall be met in all of the following categories, in order for a state license proceeding regarding waste to begin:

(a) transfer or transportation, by rail, truck, or other mechanisms;

(b) storage, including any temporary storage at a site away from the generating reactor;

(c) decay in storage;

(d) treatment; and

(e) disposal.

(4) (a) Upon satisfaction of the requirements of Subsection (2)(a), for each category listed in Subsection (3), or satisfaction of the requirements under Subsection (2)(b), the governor, with the concurrence of the attorney general, shall certify in writing to the executive director of the Department of Environmental Quality that all of the requirements have been met, and that any necessary state licensing processes may begin.

(b) Separate certification under this Subsection (4) shall be given for each category in Subsection (3).

(5) (a) The department shall make, by rule, a determination of the dollar amount of the health and economic costs expected to result from a reasonably foreseeable accidental release of waste involving a transfer facility or storage facility, or during transportation of waste, within the exterior boundaries of the state. The department may initiate rulemaking under this Subsection (5)(a) on or after the effective date of this act.

(b) (i) The department shall also determine the dollar amount currently available to cover the costs as determined in Subsection (5)(a):

(A) under nuclear industry self-insurance;

(B) under federal insurance requirements; and

(C) in federal monies.

(ii) The department may not include any calculations of federal monies that may be appropriated in the future in determining the amount under Subsection (5)(b)(i).

(c) The department shall use the information compiled under Subsections (5)(a) and (b) to determine the amount of unfunded potential liability in the event of a release of waste from a storage or transfer facility, or a release during the transportation of waste.

(6) (a) State agencies may not, for the purpose of providing any goods, services, or municipal-type services to a storage facility or transfer facility, or to any organization engaged in the transportation of waste, enter into any contracts or any other agreements prior to:

(i) the satisfaction of the conditions in Subsection (4); and

(ii) the executive director of the department having certified that the requirements of Sections 19-3-304 through 19-3-308 have been met for the purposes of a license application proceeding for a storage facility or transfer facility.

(b) Political subdivisions of the state may not enter into any contracts or any other agreements for the purpose of providing any goods, services, or municipal-type services to a storage facility or transfer facility, or to any organization engaged in the transportation of waste.

(c) This Subsection (6) does not prohibit a state agency from exercising the regulatory authority granted to it by law.

(7) (a) Notwithstanding any other provision of law, any political subdivision may not be formed pursuant to the laws of Utah for the purpose of providing any goods, services, or municipal-type services to a storage facility or transfer facility prior to the satisfaction of the conditions in Subsection (4). These political subdivisions include:

(i) a cooperative;

(ii) a special district authorized by Title 17A, Special Districts;

(iii) a limited purpose local governmental entities authorized by Title 17, Counties;

(iv) any joint power agreement authorized by Title 11, Cities, Counties, and Local Taxing Units; and

(v) the formation of a municipality, or any authority of a municipality authorized by Title 10, Utah Municipal Code.

(b) (i) Subsection (7)(a) shall be strictly interpreted. Any political subdivision authorized and formed under the laws of the state on or after the effective date of this act which subsequently contracts to, or in any manner agrees to provide, or does provide goods, services, or municipal-type services to a storage facility or transfer facility is formed in violation of Subsection (7)(a).

(ii) If the conditions of Subsection (7)(b)(i) apply, the persons who formed the political subdivision are considered to have knowingly violated a provision of this part, and the penalties of Section 19-3-312 apply.

(8) (a) An organization may not be formed for the purpose of providing any goods, services, or

municipal-type services to a storage facility or transfer facility prior to:

(i) the satisfaction of the conditions in Subsection (4); and

(ii) the executive director of the department having certified that the requirements of Sections 19-3-304 through 19-3-308 have been met.

(b) A foreign organization may not be registered to do business in the state for the purpose of providing any goods, services, or municipal-type services to a storage facility or transfer facility prior to:

(i) the satisfaction of the conditions in Subsection (4); and

(ii) the executive director of the department having certified that the requirements of Sections 19-3-304 through 19-3-308 have been met.

(c) The prohibitions of Subsections (8)(a) and (b) shall be strictly applied, and:

(i) the formation of a new organization or registration of a foreign organization within the state, any of whose purposes are to provide goods, services, or municipal-type services to a storage facility or transfer facility may not be licensed or registered in the state, and the local or foreign organization is void and does not have authority to operate within the state;

(ii) any organization which is formed or registered on or after the effective date of this act, and which subsequently contracts to, or in any manner agrees to provide, or does provide goods, services, or municipal-type services to a storage facility or transfer facility has been formed or registered in violation of Subsection (8)(a) or (b) respectively; and

(iii) if the conditions of Subsection (8)(c)(ii) apply, the persons who formed the organization or the principals of the foreign organization, are considered to have knowingly violated a provision of this part, and are subject to the penalties in Section 19-3-312.

(9) (a) (i) Any contract or agreement to provide any goods, services, or municipal-type services to any organization engaging in, or attempting to engage in the placement of high-level nuclear waste or greater than class C radioactive waste at a storage facility or transfer facility within the state are declared to be against the greater public interest, health, and welfare of the state, by promoting an activity which has the great potential to cause extreme public harm.

(ii) These contracts or agreements under Subsection (9)(a)(i), whether formal or informal, are declared to be void from inception, agreement, or execution as against public policy.

(b) (i) Any contract or other agreement to provide goods, services, or municipal-type services to storage or transfer facilities may not be executed within the state.

(ii) Any contract or other agreement, existing or executed on or after the effective date of this act, is considered void from the time of agreement or execution.

(10) (a) All contracts and agreements under Subsection (10)(b) are assessed an annual transaction fee of 75% of the gross value of the contract to the party providing the goods, services, or municipal-type services to the storage facility or transfer facility or transportation entity. The fee shall be assessed per calendar year, and is payable on a prorated basis on or before the last day of each month in accordance with rules established under Subsection (10)(d), and as follows:

(i) 25% of the gross value of the contract to the department; and

(ii) 50% of the gross value of the contract to the Department of Community and Economic Development, to be used by the Utah Division of Indian Affairs as provided in Subsection (11).

(b) Contracts and agreements subject to the fee under Subsection (10)(a) are those contracts and agreements to provide goods, services, or municipal-type services to a storage or transfer facility, or to any organization engaged in the transportation of high-level nuclear waste or greater than class C radioactive waste to a transfer facility or storage facility, and which:

(i) are in existence on the effective date of this act; or

(ii) become effective notwithstanding Subsection (9)(a).

(c) Any governmental agency which regulates the charges to consumers for services provided by utilities or other organizations shall require the regulated utility or organization to include the fees under Subsection (10)(a) in the rates charged to the purchaser of the goods, services, or municipal-type services affected by Subsection (10)(b).

(d) (i) The department, in consultation with the State Tax Commission, shall establish rules for the valuation of the contracts and assessment and collection of the fees, and other rules as necessary to determine the amount of and collection of the fee under Subsection (10)(a). The department may initiate rulemaking under this Subsection (d)(i) on or after the effective date of this act.

(ii) Persons and organizations holding contracts affected by Subsection (10)(b) shall make a good faith estimate of the fee under Subsection (10)(a) for calender year 2001, and remit that amount to the department on or before July 31, 2001.

(11) (a) The portion of the fees imposed under Subsection (10) which is to be paid to the Department of Community and Economic Development for use by the Utah Division of Indian Affairs shall be used for establishment of a statewide community and economic development program for the tribes of Native American people within the exterior boundaries of the state who have by tribal procedure established a position rejecting

siting of any nuclear waste facility on their reservation lands.

(b) The program under Subsection (11)(a) shall include:

(i) educational services and facilities;

(ii) health care services and facilities;

(iii) programs of economic development;

(iv) utilities;

(v) sewer;

(vi) street lighting;

(vii) roads and other infrastructure; and

(viii) oversight and staff support for the program.

(12) It is the intent of the Legislature that this part does not prohibit or interfere with a person's exercise of the rights under the First Amendment to the Constitution of the United States or under Utah Constitution Article I, Sec. 15, by an organization attempting to site a storage facility or transfer facility within the borders of the state for the placement of high-level nuclear waste or greater than class C radioactive waste.

Section 9. Section 19-3-302 is amended to read:

19-3-302. Legislative intent.

(1) (a) The state of Utah enacts this part to prevent the placement of any high-level nuclear waste or greater than class C radioactive waste in Utah. The state also recognizes that high-level nuclear waste or greater than class C radioactive waste may be placed within the exterior boundaries of the state, pursuant to a license from the federal government, or by the federal government itself, in violation of this state law.

(b) Due to this possibility, the state also enacts provisions in this part to regulate transportation, transfer, storage, decay in storage, treatment, and disposal of any high-level nuclear waste and greater than class C radioactive waste in Utah, thereby asserting and protecting the state's interests in environmental and economic resources consistent with 42 U.S.C.A. 2011 et seq., Atomic Energy Act and 42 U.S.C.A. 10101 et seq., Nuclear Waste Policy Act, should the federal government decide to authorize any entity to operate, or operate itself, in violation of this state law.

(2) Neither the Atomic Energy Act nor the Nuclear Waste Policy Act provides for siting a large privately owned high-level nuclear waste transfer, storage, decay in storage, or treatment facility away from the vicinity of the reactors. The Atomic Energy Act and the Nuclear Waste Policy Act specifically define authorized storage and disposal programs and activities. The state of Utah in enacting this part is not preempted by federal law, since any proposed facilities that would be sited in Utah are not contemplated or authorized by federal law and, in any circumstance, this part is not contrary to or inconsistent with federal law or Congressional intent.

(3) The state of Utah has environmental and economic interests which do not involve nuclear safety regulation, and which must be considered and complied with in siting a high-level nuclear waste or greater than class C radioactive waste transfer, storage, decay in storage, treatment, or disposal facility and in transporting these wastes in the state.

(4) An additional primary purpose of this part is to ensure protection of the state from nonradiological hazards associated with any waste transportation, transfer, storage, decay in storage, treatment, or disposal.

(5) The state recognizes the sovereign rights of Indian tribes within the state of Utah. However, any proposed transfer, storage, decay in storage, treatment, or disposal facility located on a reservation which directly affects and impacts state interests by creating off-reservation effects such as potential or actual degradation of soils and groundwater, potential or actual contamination of surface water, pollution of the ambient air, emergency planning costs, impacts on development, agriculture, and ranching, and increased transportation activity, is subject to state jurisdiction.

(6) There is no tradition of regulation by the Indian tribes in Utah of high-level nuclear waste or higher than class C radioactive waste. The state does have a long history of regulation of radioactive sources and natural resources and in the transfer, storage, treatment, and transportation of materials and wastes throughout the state. The state finds that its interests are even greater when nonmembers of an Indian tribe propose to locate a facility on tribal trust lands primarily to avoid state regulation and state authorities under federal law.

(7) (a) This part is not intended to modify existing state requirements for obtaining environmental approvals, permits, and licenses, including surface and groundwater permits and air quality permits, when the permits are necessary under state and federal law to construct and operate a high-level nuclear waste or greater than class C radioactive waste transfer, storage, decay in storage, treatment, or disposal facility.

(b) Any source of air pollution proposed to be located within the state, including sources located within the boundaries of an Indian reservation, which will potentially or actually have a direct and significant impact on ambient air within the state, is required to obtain an approval order and permit from the state under Section 19-2-108.

(c) Any facility which will potentially or actually have a significant impact on the state's surface or groundwater resources is required to obtain a permit under Section 19-5-107 even if located within the boundaries of an Indian reservation.

(8) The state finds that the transportation, transfer, storage, decay in storage, treatment, and disposal of high-level nuclear waste and greater than class C radioactive waste within the state is an ultra-hazardous activity which carries with it the risk that any release of waste may result in enormous economic and human injury.

Section 10. Section 19-3-303 is amended to read:

19-3-303. Definitions.

As used in this part:

(1) "Final judgment" means a final ruling or judgment, including any supporting opinion, that determines the rights of the parties and concerning which all appellate remedies have been exhausted or the time for appeal has expired.

(2) "Goods" means any materials or supplies, whether raw, processed, or manufactured.

[~~(1)~~] (3) "Greater than class C radioactive waste" means low-level radioactive waste that has higher concentrations of specific radionuclides than allowed for class C waste.

(4) "Gross value of the contract" means the totality of the consideration received for any goods, services, or municipal-type services delivered or rendered in the state without any deduction for expense paid or accrued with respect to it.

[~~(2)~~] (5) "High-level nuclear waste" has the same meaning as in Section 19-3-102.

(6) "Municipal-type services" includes, but is not limited to:

(a) fire protection service;

(b) waste and garbage collection and disposal;

(c) planning and zoning;

(d) street lighting;

(e) life support and paramedic services;

(f) water;

(g) sewer;

(h) electricity;

(i) natural gas or other fuel; or

(j) law enforcement.

(7) "Organization" means a corporation, limited liability company, partnership, limited liability partnership, joint venture, consortium, association, trust, or other entity formed to undertake an enterprise, whether or not for profit.

(8) "Placement" means transportation, transfer, storage, decay in storage, treatment, or disposal.

(9) "Political subdivision" means any county, city, town, school district, public transit district, redevelopment agency, special improvement or taxing district, or other governmental subdivision or public corporation.

[~~(3)~~] (10) "Rule" means a rule made by the department under Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(11) "Service" or "services" means any work or governmental program which provides a benefit.

[~~(4)~~] (12) "Storage facility" means any facility which stores, holds, or otherwise provides for the emplacement of waste regardless of the intent to recover that waste for subsequent use, processing, or disposal.

[~~(5)~~] (13) "Transfer facility" means any facility which transfers waste from and between transportation modes, vehicles, cars, or other units, and includes rail terminals and intermodal transfer points.

[~~(6)~~] (14) "Waste" or "wastes" means high-level nuclear waste and greater than class C radioactive waste.

Section 11. Section 19-3-308 is amended to read:

19-3-308. Application fee and annual fees.(1) (a) Any application for a waste transfer, storage, decay in storage, treatment, or disposal facility shall be accompanied by an initial fee of $5,000,000.

(b) The applicant shall subsequently pay an additional fee to cover the costs to the state associated with review of the application, including costs to the state and the state's contractors for permitting, technical, administrative, legal, safety, and emergency response reviews, planning, training, infrastructure, and other impact analyses, studies, and services required to evaluate a proposed facility.

(2) For the purpose of funding the state oversight and inspection of any waste transfer, storage, decay in storage, treatment, or disposal facility, and to establish state infrastructure, including, but not limited to providing for state Department of Environmental Quality, state Department of Transportation, state Department of Public Safety, and other state agencies' technical, administrative, legal, infrastructure, maintenance, training, safety, socio-economic, law enforcement, and emergency resources necessary to respond to these facilities, the owner or operator shall pay to the state a fee as established by department rule under Section 63-38-3.2, to be assessed:

(a) per ton of storage cask and high level nuclear waste per year for storage, decay in storage, treatment, or disposal of high level nuclear waste;

(b) per ton of transportation cask and high level nuclear waste for each transfer of high level nuclear waste;

(c) per ton of storage cask and greater than class C radioactive waste for the storage, decay in storage, treatment, or disposal of greater than class C radioactive waste; and

(d) per ton of transportation cask and greater than class C radioactive waste for each transfer of greater than class C radioactive waste.

(3) Funds collected under Subsection (2) shall be placed in the [~~Nuclear Waste Facility Oversight Restricted~~] Nuclear Accident and Hazard Compensation Account, created in [~~Section~~] Subsection 19-3-309(3).

(4) The owner or operator of the facility shall pay the fees imposed under this section to the

department on or before the 15th day of the month following the month in which the fee accrued.

(5) Annual fees due under this part accrue on July 1 of each year and shall be paid to the department by July 15 of that year.

Section 12. Section 19-3-309 is amended to read:

19-3-309. Restricted accounts.

(1) There is created within the General Fund a restricted account known as the "Nuclear Waste Facility Oversight Account[~~.~~]" and referred to in this section as the "oversight account".

(2) (a) The oversight account shall be funded from the fees imposed and collected under [~~this part~~] Subsections 19-3-308(1)(a) and(b).

(b) The department shall deposit in the oversight account all fees collected under [~~this part in the account~~] Subsections 19-3-308(1)(a) and(b).

(c) The Legislature may appropriate the funds in this oversight account to departments of state government as necessary for those departments to carry out their duties to implement this part.

(d) The [~~account shall earn interest, which shall be deposited in the account~~] department shall account separately for monies paid into the oversight account for each separate application made pursuant to Section 19-3-304.

(3) (a) There is created within the General Fund a restricted account known as the "Nuclear Accident and Hazard Compensation Account," to be referred to as the "compensation account" within this part.

(b) The compensation account shall be funded from the fees assessed and collected under this part, except for Subsections 19-3-308(1)(a) and (b).

(c) The department shall deposit in the compensation account all fees collected under this part, except for those fees under Subsections 19-3-308(1)(a) and (b).

(d) The compensation account shall earn interest, which shall be deposited in the account.

(e) The Legislature may appropriate the funds in the compensation account to the departments of state government as necessary for those departments to comply with the requirements of this part.

(4) On the date when a state license is issued in accordance with Subsection 19-3-301(4)(a), the Division of Finance shall transfer all fees remaining in the oversight account attributable to that license into the compensation account.

Section 13. Section 19-3-312 is amended to read:

19-3-312. Enforcement -- Penalties.

(1) When the department or the governor has probable cause to believe a person is violating or is about to violate any provision of this part, the department or the governor shall direct the state attorney general to apply to the appropriate court for an order enjoining the person from engaging in or continuing to engage in the activity.

(2) In addition to being subject to injunctive relief, any person who violates any provision of this part is subject to a civil penalty of up to $10,000 per day for each violation.

(3) Any person who knowingly violates a provision of this part is guilty of a class A misdemeanor and subject to a fine of up to $10,000 per day.

(4) Any person or organization acting to facilitate a violation of any provision of this part regarding the regulation of greater than class C radioactive waste or high-level nuclear waste is subject to a civil penalty of up to $10,000 per day for each violation, in addition to being subject to injunctive relief.

(5) Any person or organization who knowingly acts to facilitate a violation of this part regarding the regulation of high-level nuclear waste or greater than class C radioactive waste is guilty of a class A misdemeanor and is subject to a fine of up to $10,000 per day.

(6) (a) This section does not impose a civil or criminal penalty on any Utah-based nonprofit trade association due to the membership in the organization of a member that is engaging in, or attempting to engage in, the placement of high-level nuclear waste or greater than class C radioactive waste at a storage facility or transfer facility within the state.

(b) Subsection (6)(a) does not apply to a nonprofit trade association if that association takes any affirmative action to promote or assist any individual or organization in efforts to conduct any activity prohibited by this part.

(c) A member of any Utah-based nonprofit trade association is not exempt from any civil or criminal liability or penalty due to membership in the association.

Section 14. Section 19-3-319 is enacted to read:

19-3-319. State response to nuclear release and hazards.

(1) The state finds that the placement of high-level nuclear waste inside the exterior boundaries of the state is an ultra-hazardous activity which may result in catastrophic economic and environmental damage and irreparable human injury in the event of a release of waste, and which may result in serious long-term health effects to workers at any transfer or storage facility, or to workers involved in the transportation of the waste.

(2) (a) The state finds that procedures for providing funding for the costs incurred by any release of waste, or for the compensation for the costs of long-term health effects are not adequately addressed by existing law.

(b) Due to these concerns, the state has established a restricted account under Subsection 19-3-309(3), known as the Nuclear Accident and

Hazard Compensation Account, and referred to in this section as the compensation account. One of the purposes of this account is to partially or wholly compensate workers for these potential costs, as funds are available and appropriated for these purposes.

(3) (a) The department shall require the applicant, and parent and subsidiary organizations of the applicant, to pay to the department not less than 75% of the unfunded potential liability, as determined under Subsection 19-3-301(5), in the form of cash or cash equivalents. The payment shall be made within 30 days after the date of the issuance of a license under this part.

(b) The department shall credit the amount due under Subsection 19-3-306(10) against the amount due under this Subsection (3).

(c) If the payments due under this Subsection (3) are not made within 30 days, as required, the executive director of the department shall cancel the license.

(4) (a) The department shall also require an annual fee from the holder of any license issued under this part. This annual fee payment shall be calculated as:

(i) the aggregate amount of the annual payments required by Title 34A, Chapter 2, Workers' Compensation Act, of the licensee and of all parties contracted to provide goods, services, or municipal-type services to the licensee, regarding their employees who are working within the state at any time during the calendar year; and

(ii) multiplied by the number of storage casks of waste present at any time and for any period of time within the exterior borders of the state during the year for which the fee is assessed.

(b) (i) The licensee shall pay the fee under Subsection (4)(a) to the department. The department shall deposit the fee in the compensation account created in Subsection 19-3-309(3).

(ii) The fee shall be paid to the department on or before March 31 of each calendar year.

(5) The department shall use the fees paid under Subsection (4) to provide medical or death benefits, or both, as is appropriate to the situation, to the following persons for death or any long term health conditions of an employee proximately caused by the presence of the high-level nuclear waste or greater than class C radioactive waste within the state, or a release of this waste within the state that affects an employee's physical health:

(a) any employee of the holder of any license issued under this part, or employees of any parties contracting to provide goods, services, transportation, or municipal-type services to the licensee, if the employee is within the state at any time during the calendar year as part of his employment; or

(b) that employee's family or beneficiaries.

(6) Payment of the fee under Subsection (4) does not exempt the licensee from compliance with any other provision of law, including Title 34A, Chapter 2, regarding workers' compensation.

(7) (a) An agreement between an employer and an employee, the employee's family, or beneficiaries requiring the employee to waive benefits under this section, requiring the employee to seek third party coverage, or requiring an employee contribution is void.

(b) Any employer attempting to secure any agreement prohibited under Subsection (7)(a) is subject to the penalties of Section 19-3-312.

(8) (a) The department, in consultation with the Division of Industrial Accidents within the Labor Commission, shall by rule establish procedures regarding application for benefits, standards for eligibility, estimates of annual payments, and payments.

(b) Payments under this section are in addition to any other payments or benefits allowed by state or federal law, notwithstanding provisions in Title 34A, Chapter 2, regarding workers' compensation.

(c) Payments or obligations to pay under this section may not exceed funds appropriated for these purposes by the Legislature.

(9) (a) Any fee or payment imposed under this section does not apply to any Utah-based nonprofit trade association due to the membership in the organization of a member that is engaging in, or attempting to engage in, the placement of high-level nuclear waste or greater than class C radioactive waste at a storage facility or transfer facility within the state.

(b) Subsection (9)(a) does not apply to a nonprofit trade association if that association takes any affirmative action to promote or assist any individual or organization in efforts to conduct any activity prohibited by this part.

(c) A member of any Utah-based nonprofit trade association is not exempt from any fee or payment under this section due to membership in the association.

Section 15. Section 34-38-3 is amended to read:

34-38-3. Testing for drugs or alcohol.

(1) It is not unlawful for an employer to test employees or prospective employees for the presence of drugs or alcohol, in accordance with the provisions of this chapter, as a condition of hiring or continued employment. However, employers and management in general [~~must~~] shall submit to the testing themselves on a periodic basis.

(2) (a) Any organization which is operating a storage facility or transfer facility or which is engaged in the transportation of high-level nuclear waste or greater than class C radioactive waste within the exterior boundaries of the state shall establish a mandatory drug testing program regarding drugs and alcohol for prospective and existing employees as a condition of hiring any

employee or the continued employment of any employee. As a part of the program, employers and management in general shall submit to the testing themselves on a periodic basis. The program shall implement testing standards and procedures established under Subsection (2)(b).

(b) The executive director of the Department of Environmental Quality, in consultation with the Labor Commission under Section 34A-1-103, shall by rule establish standards for timing of testing and dosage for impairment for the drug and alcohol testing program under this Subsection (2). The standards shall address the protection of the safety, health, and welfare of the public.

Section 16. Section 73-4-1 is amended to read:

73-4-1. By engineer on petition of users.

(1) Upon a verified petition to the state engineer, signed by five or more or a majority of water users upon any stream or water source, requesting the investigation of the relative rights of the various claimants to the waters of such stream or water source, it shall be the duty of the state engineer, if upon such investigation he finds the facts and conditions are such as to justify a determination of said rights, to file in the district court an action to determine the various rights. In any suit involving water rights the court may order an investigation and survey by the state engineer of all the water rights on the source or system involved.

(2) (a) As used in this section, "executive director" means the executive director of the Department of Environmental Quality.

(b) The executive director, with the concurrence of the governor, may request that the state engineer file in the district court an action to determine the various water rights in the stream, water source, or basin for an area within the exterior boundaries of the state for which any person or organization or the federal government is actively pursuing or processing a license application for a storage facility or transfer facility for high-level nuclear waste or greater than class C radioactive waste.

(c) Upon receipt of a request made under Subsection (2)(b), the state engineer shall file the action in the district court.

(d) If a general adjudication has been filed in the state district court regarding the area requested pursuant to Subsection (2)(b), the state engineer and the state attorney general shall join the United States as a party to the action.

Section 17. Effective date.

If approved by two-thirds of all the members elected to each house, this act takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

Section 18. Coordination clause.

It is the intent of the Legislature that in preparing the Utah Code database for publication, the Office of Legislative Research and General Counsel is directed to replace the language, "the effective date of this act," in Section 19-3-301 with the actual effective date of this act.

CHAPTER 108
S. B. 83
Passed February 22, 2001
Approved March 15, 2001
Effective April 30, 2001

SMALL EMPLOYER PURCHASING ALLIANCE AMENDMENTS

Sponsor: Leonard M. Blackham

This act modifies the Insurance Code by amending provisions related to small employer purchasing alliances for health insurance. The act permits an alliance to limit reimbursement to providers on the panel of contracting insurers under specific circumstances.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
31A-34-110, as enacted by Chapter 143, Laws of Utah 1996

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

Section 1. Section 31A-34-110 is amended to read:

31A-34-110. Contracts with member employers and contracted insurers.

(1) Contracts between an alliance and members shall provide that the alliance is the contract holder of the health benefit plan policy on behalf of members and enrollees.

(2) Contracts between an alliance and a contracted insurer shall specify how premiums will be transferred, what penalties and grace periods will be, and how examination costs will be allocated to contracted insurers.

(3) Subject only to Sections 31A-8-105.5 and 31A-8-501, and until July 1, 2004, health benefit plans offered exclusively in an alliance under this chapter may limit reimbursement to providers on the panel of a contracted insurer if the commissioner finds that the aggregate of alliance contracts available to its members provide a broad and substantial choice of providers, encompassing the vast majority of doctors and hospitals in the state.

CHAPTER 109
S. B. 84
Passed February 27, 2001
Approved March 15, 2001
Effective April 30, 2001

STATE OLYMPIC AMENDMENTS

Sponsor: Beverly Ann Evans

This act modifies the Utah Sports Authority Act and the State Olympic Coordination Act. The act repeals the Utah Sports Advisory Committee and modifies the responsibilities of the Olympic Coordination Committee. The act modifies reporting requirements of the State Olympic Officer and expands the number of staff the officer may appoint with the governor's approval. The act clarifies the scope of duties of the State Olympic Public Safety Command. The act repeals obsolete language and makes technical changes.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
53-12-102, as enacted by Chapter 343, Laws of Utah 1998
53-12-202, as enacted by Chapter 343, Laws of Utah 1998
53-12-301, as enacted by Chapter 343, Laws of Utah 1998
53-12-302, as enacted by Chapter 343, Laws of Utah 1998
53-12-303, as enacted by Chapter 343, Laws of Utah 1998
63A-7-103, as last amended by Chapter 186, Laws of Utah 1996
63A-7-104, as last amended by Chapters 202 and 216, Laws of Utah 1998
63A-7-106, as last amended by Chapter 294, Laws of Utah 1999
63A-10-103, as last amended by Chapter 202, Laws of Utah 1998
63A-10-109, as enacted by Chapter 294, Laws of Utah 1999

REPEALS:
63A-7-111, as last amended by Chapter 294, Laws of Utah 1999
63A-7-112, as last amended by Chapter 294, Laws of Utah 1999

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

Section 1. Section 53-12-102 is amended to read:

53-12-102. Definitions.

As used in this chapter:

(1) "Command" means the State Olympic Public Safety Command created in Section 53-12-201.

(2) "Emergency" means a situation requiring immediate state government assistance to save lives or to protect property, public health, welfare, and safety because of a disaster, as that term is defined in Section 53-2-102.

(3) (a) "Law enforcement and public safety services" means those services that:

(i) the department is required to provide or may provide by law; and

(ii) other law enforcement and public safety agencies are required to provide or may provide by law.

(b) "Law enforcement and public safety services" includes programs and services to:

(i) reduce or prevent crime;

(ii) reduce death and injuries on highways;

(iii) prepare for and respond to an emergency;

(iv) provide forensic, communications, and records support services;

(v) provide for crowd and traffic safety;

(vi) provide for or assist in criminal investigation; and

(vii) improve criminal justice processes.

(4) "Local law enforcement agency" means any political subdivision of the state or an agency of a political subdivision that exists primarily to prevent and detect crime and enforce criminal laws, statutes, and ordinances.

(5) "Local public safety agency" means a political subdivision of the state or an agency of a political subdivision of the state that exists to provide:

(a) fire service; and

(b) emergency medical services.

(6) "Olympic law enforcement commander" means the commander appointed under Section 53-12-301.

(7) "Olympics" means the Olympic Winter Games of 2002 to be hosted by Salt Lake City.

(8) "Organizing committee" means the Salt Lake Organizing Committee for the Olympic Winter Games of 2002.

(9) "Paralympics" means the Paralympic Winter Games of 2002 to be hosted by Salt Lake City.

[~~(9)~~] (10) "State agency" means any department, division, commission, council, board, bureau, committee, institution, government corporation, or other establishment or official of this state, except the Legislature, and for purposes of this chapter includes:

(a) a state institution of higher education; and

(b) the Utah Sports Authority created in Section 63A-7-104.

[~~(10)~~] (11) "State law enforcement agency" means any entity administered by the state that exists primarily to prevent and detect crime and enforce criminal laws, statutes, and ordinances, and for the purposes of this chapter includes a state institution of higher education.

[~~(11)~~] (12) "State public safety agency" means an entity administered by the state that exists to provide:

(a) fire service; and

(b) emergency medical services.

[~~(12)~~] (13) "State Olympic Officer" means the State Olympic Officer appointed under Section 63A-10-103.

Section 2. Section 53-12-202 is amended to read:

53-12-202. Duties and powers of the command -- Contracting for law enforcement or public safety services.

(1) (a) The command shall:

(i) in consultation with state and local public safety agencies, establish a written plan for law enforcement and public safety services related to the Olympics and Paralympics, including the coordination of personnel and resources of state and local law enforcement or public safety agencies;

(ii) develop any policies necessary to inform and direct the Olympic law enforcement commander in the implementation of the plan; and

(iii) allow latitude and flexibility in the plan to promote the effective, efficient, and cooperative implementation of the plan and the preservation of public safety.

(b) The command may contract with the organizing committee and federal agencies for the provision of law enforcement and public safety services.

(2) Unless authorized by the command, a state or local law enforcement or public safety agency other than the command may not enter into a contractual agreement providing for law enforcement and public safety services related to the Olympics or Paralympics with:

(a) the organizing committee; or

(b) an agency of the federal government.

(3) The command shall comply with Title 63A, Chapter 10, State Olympic Coordination Act, in entering into any contract, financial arrangement, or agreement under this chapter.

(4) (a) The commander shall:

(i) notify the State Olympic Officer of all meetings of the command; and

(ii) permit the State Olympic Officer to attend and participate in all meetings of the command.

(b) Notwithstanding Subsection (4)(a), the State Olympic Officer may not:

(i) vote on matters before the command;

(ii) be a member of the command; or

(iii) be considered a law enforcement officer for purposes of this chapter.

Section 3. Section 53-12-301 is amended to read:

53-12-301. Olympic law enforcement commander.

(1) The commissioner shall serve as the Olympic law enforcement commander.

(2) The Olympic law enforcement commander shall:

(a) oversee law enforcement and public safety agency activities in providing law enforcement and public safety services during the Olympics and Paralympics; and

(b) execute and direct the execution of the plan established by the command under Section 53-12-202, including the coordination of the following personnel:

(i) peace officers, as listed in Section 53-13-102;

(ii) members of the Utah National Guard; and

(iii) all other security and public safety personnel.

(3) (a) If the action is in conflict with or not contemplated by the written plan of the command but the conditions of Subsection (3)(b) are met, the commander may under the authority of the command:

(i) implement a procedure;

(ii) direct or reassign a resource or personnel; or

(iii) carry out any other action.

(b) The commander may take an action described in Subsection (3)(a) if:

(i) the action is taken in consultation with the vice-commander; and

(ii) the action is immediately necessary to protect the health, safety, and welfare of the public.

(4) The Olympic law enforcement commander may not receive compensation in addition to the compensation the commander receives as the commissioner.

Section 4. Section 53-12-302 is amended to read:

53-12-302. Cooperation of state and local government agencies.

(1) The command or Olympic law enforcement commander may request assistance from agencies other than state law enforcement or public safety agencies for law enforcement and public safety services for the Olympics and Paralympics if the command or Olympic law enforcement commander:

(a) enters into a written contract for the assistance; and

(b) complies with the requirements of Title 63A, Chapter 10, State Olympic Coordination Act.

(2) Assistance that may be requested under this section includes:

(a) personnel;

(b) equipment;

(c) information; or

(d) other assistance.

(3) A request by the command or Olympic law enforcement commander for assistance from a local law enforcement or public safety agency is subject to the requirements of this section.

Section 5. Section 53-12-303 is amended to read:

53-12-303. Emergency law enforcement services.

If the governor determines that an emergency exists that requires state government emergency assistance as part of the law enforcement services provided for the Olympics or Paralympics, the governor may:

(1) take any action permitted during a declared state of emergency under Section 63-5a-3; or

(2) waive the requirements of Section 53-12-302.

Section 6. Section 63A-7-103 is amended to read:

63A-7-103. Definitions.

As used in this chapter:

(1) "Acquire" or "acquisition" means, with respect to any right, title, or interest in or to any property, to gain or obtain the right, title, or interest by purchase, lease, construction, gift, appropriation, or otherwise.

[~~(2) "Advisory committee" means the Utah Sports Advisory Committee created by Section 63A-7-111.~~]

[~~(3) "Advisory committee member" means a member of the advisory committee.~~]

[~~(4)~~] (2) "Authority" means the Utah Sports Authority created by this chapter.

[~~(5)~~] (3) "Authority board" or "board" means the Utah Sports Authority Board created in accordance with Section 63A-7-104.

(4) "Coordination committee" means the Olympic Coordination Committee created pursuant to Section 63A-10-109.

[~~(6)~~] (5) "Member" means a member of the authority board.

[~~(7)~~] (6) (a) "Public sports entity" means any public or private agency, corporation, organization, association, person, or other entity that borrows or otherwise uses or seeks to borrow or otherwise use state money to solicit, attract, organize, schedule, conduct, book, provide, operate, or create any public sports event, and any Olympic bid committee or any Olympic organizing committee.

(b) "Public sports entity" does not include:

(i) the authority or any county, city, or town, or the summer games residing in Cedar City; or

(ii) a regional service area or county service area which owns or operates, directly or indirectly, any facility that is constructed or renovated with Utah Sports Authority funds.

[~~(8)~~] (7) (a) "Public sports event" means any organized athletic competition, organized athletic training, recreational activity, sports or recreation related educational activity, sports-related entertainment activity, or other sports-related activity that:

(i) is conducted in any public sports facility; or

(ii) uses any state funding in any amount.

(b) "Public sports event" does not include games of Utah professional franchise teams, collegiate athletics, or high school athletics.

[~~(9)~~] (8) "Public sports facility" means any state-funded ski jump, bobsled run, luge run, speed skating rink, or any other winter sports facility constructed in whole or in part with state funds and for the purpose of hosting or seeking the right to host the Olympic Winter Games, including all real and personal property, structures, driveways, roads, approaches, parking facilities, mechanical equipment, utilities, improvements, and all appurtenances and facilities either on, above, or under the ground that are constructed in whole or in part with public money and are used in connection with the facility, and suitable for use in connection with athletic training, education, housing, or competition. The fact that a facility is also suitable for other uses in addition to those specified does not exclude the facility from the scope of this definition.

Section 7. Section 63A-7-104 is amended to read:

63A-7-104. Utah Sports Authority -- State controls -- Board -- Membership -- Meetings -- Removal -- Per diem and expenses.

(1) (a) There is created within the department the Utah Sports Authority.

(b) The authority is subject to all laws, rules, policies, and other conditions and limitations that govern agencies of state government, including:

(i) the procurement procedures contained in Title 63, Chapter 56, Utah Procurement Code;

(ii) Title 63A, Chapter 10, State Olympic Coordination Act;

(iii) the personnel procedures contained in Title 67, Chapter 19, Utah State Personnel Management Act; and

(iv) the laws, rules, policies, and other conditions or limitations from oversight departments, divisions, agencies, or offices such as the Division of Finance, the Division of Facilities Construction and Management, the state treasurer, the state auditor, and the attorney general.

(c) (i) Notwithstanding any other provisions of this chapter, the Division of Finance shall provide or contract for all accounting related to public sports facilities, including budgeting, financial reporting, and internal controls of both state and nonstate funds of the authority.

(ii) All nonstate funds may be accounted for and controlled outside of the state accounting system.

(d) (i) After May 4, 1998, any contract, agreement, or financial arrangement entered into by the authority shall be reviewed by the State Olympic Officer and approved by the governor if the contract, agreement, or financial arrangement involves:

(A) the transfer or conveyance of real or personal property or any interest in real or personal property held by the authority on behalf of the state;

(B) the lease or use of a public sports facility by any person other than the authority;

(C) construction at a public sports facility; or

(D) the management of a public sports facility.

(ii) A contract, agreement, or financial arrangement entered into after May 4, 1998, that is not reviewed and approved in accordance with this Subsection (1)(d) is voidable at the option of the governor.

(iii) The State Olympic Officer may establish a policy that exempts a contract, agreement, or financial arrangement from the requirements of this Subsection (1)(d) if:

(A) the size of a project, the scope of the activities, or the amount of money or state resources involved is of minimal or insignificant nature; and

(B) the exemption is in the public interest.

(iv) The requirements of this Subsection (1)(d) are in addition to any other requirements imposed on the authority by law, including approval by the Legislature of any conveyance under Subsection 63A-7-105(20).

(2) The policy of the authority shall be determined by the authority board rather than the executive director.

(3) There is created a Utah Sports Authority Board that shall consist of 19 members as follows:

(a) 18 individuals appointed by the governor, with the advice and consent of the Senate, as follows:

(i) five individuals from a list of ten nominees provided by the Utah League of Cities and Towns, with not more than one being a resident of any given county;

(ii) two individuals from a list of four nominees provided by the Utah Association of Counties;

(iii) three individuals from a list of six nominees provided by the mayor of Salt Lake City;

(iv) four individuals from the state at large; and

(v) four individuals:

(A) who prior to or at the time of appointment are athletes; and

(B) that the governor determines fairly represent the interests of athletes that will be served by state programs or facilities overseen by the authority; and

(b) the executive director of the Department of Community and Economic Development.

(4) The authority board membership shall include representatives of private business and industry. Examples of industries that may be represented on the board include the banking, accounting, legal, financial services, and amateur sports industries.

(5) (a) In making appointments to the authority board, the governor shall consider geographical representation.

(b) A member of the authority board may not hold an elective public office.

(c) Each board member shall be a resident of the state as defined in Section 20A-2-105.

(d) No more than ten board members may have the same political party affiliation and the political party affiliation of each board member and any change in that affiliation shall be disclosed to the board.

(e) A member of the authority board, any of its employees, or any employees of the department or the Department of Community and Economic Development may not be on the board of, be employed by, contract with, or in any way be affiliated with any private entity that is using or seeking to use state funds to solicit, attract, organize, schedule, conduct, book, provide, operate, or create any public sports event, or that uses or seeks to use any public sports facility, unless any affiliation with the private entity is fully disclosed to the authority board and the advisory committee in an open and public meeting.

(6) (a) Except as required by Subsection (6)(b), each board member shall serve a four-year term beginning January 1, 1990.

(b) Notwithstanding the requirements of Subsection (6)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of authority members are staggered so that approximately half of the authority is appointed every two years.

(7) The governor shall appoint one of the members appointed to a four-year term as the chair of the authority board. The members shall elect from among their number a vice chair and other officers they may determine. The chair shall serve at the pleasure of the governor.

(8) (a) The authority board shall meet at least quarterly unless otherwise determined by a majority of the members and at other times at the discretion of the chair.

(b) A majority of the authority board is a quorum for conducting authority business. A majority vote of those present is required for any action to be taken by the authority.

(c) The authority board shall invite the members of the [~~advisory~~] coordination committee and other

agencies and individuals listed in Subsection (8)(e) to all of its meetings. The authority shall allow members of the [~~advisory~~] coordination committee and other agencies and individuals listed in Subsection (8)(e) to attend, participate in discussions, and review all materials presented in all meetings of the authority.

(d) The authority shall include at least two members of the [~~advisory~~] coordination committee on each subcommittee the authority board may create.

(e) The authority board shall provide meeting notices, agendas, and minutes of meetings:

(i) to members of the [~~advisory~~] coordination committee;

(ii) the governor;

(iii) the attorney general;

(iv) the Division of Finance;

(v) the Department of Administrative Services;

(vi) the Division of Facilities Construction and Management;

(vii) the state auditor;

(viii) the legislative auditor general;

(ix) the Office of Legislative Research and General Counsel;

(x) the Office of the Legislative Fiscal Analyst; and

(xi) the State Olympic Officer.

(9) (a) Any member may be removed from office with cause by the governor or for cause by an affirmative vote of eight members.

(b) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term in the same manner as the original appointment, subject to the consent of the Senate.

(c) A member shall continue to hold office until the member's successor has been appointed and qualified.

(d) Any member is eligible for reappointment, but may not serve more than four full consecutive terms.

(10) The authority shall exist as long as it has obligations outstanding and until its existence is terminated by law. Upon the termination of the existence of the authority, all its rights and properties shall pass to and be vested in the state.

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

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

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

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

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

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

Section 8. Section 63A-7-106 is amended to read:

63A-7-106. Financial plan -- Approval by governor and mayor -- Requirements for review -- State Olympic Officer access to and report on financial information -- Governor's responsibilities.

(1) Any public sports entity that hosts, organizes, conducts, or operates the Olympic Winter Games shall:

(a) no later than 45 days after the last day of each calendar quarter, submit a budget for hosting the games, including any substantive or material changes to the budget since it was last submitted, to the governor and the mayor of Salt Lake City for review and approval;

(b) submit to the State Olympic Officer:

(i) financial information requested by the State Olympic Officer that is substantially similar to monthly and quarterly reports that are prepared by the public sports entity for a financial institution providing the public sports entity with one or more revolving or other lines of credit;

(ii) by no later than December 31, 2000, written identification of contracts and payment amounts, which the public sports entity intends to use to fully fund its obligations described in Subsection (2)(e); and

(iii) any other financial records requested by the State Olympic Officer;

(c) annually provide to the State Olympic Officer in a form that meets generally accepted accounting principles, except as noted in the audit opinion, the public sports entity's balance sheet, income statement, cash flow statement, and the entity's current operating performance as compared to its budget; and

(d) provide the State Olympic Officer reasonable access during normal business hours to the financial ledgers of the public sports entity.

(2) The budget submitted by a public sports entity pursuant to Subsection (1)(a) shall contain any information requested by the governor, and the mayor of Salt Lake City, as well as documentation that the budget and accompanying information:

(a) includes reliable revenue projections that are estimated to adequately cover anticipated expenditures under the budget;

(b) includes projected cash flow estimates;

(c) includes reasonably prudent budget contingencies;

(d) maintains, supports, and protects the state's security interest in revenues of the Salt Lake Organizing Committee for the Olympic Winter Games of 2002, in accordance with joint resolutions adopted by the Legislature; and

(e) provides for payment of all obligations of the Salt Lake Organizing Committee for the Olympic Winter Games of 2002 that are due to:

(i) the state, including:

(A) repayment to the Utah Sports Authority of the actual total funds expended or incurred by the Utah Sports Authority through April 15, 1999, from the Olympics Special Revenue Fund, not to exceed $59,000,000, in accordance with joint resolutions adopted by the Legislature;

(B) payment to the state of an amount equal to the bond obligations owed with respect to the State Building Ownership Authority bond, in accordance with the requirements of S.J.R.14 passed by the Legislature in the 1998 General Session; and

(C) payment for services or property in accordance with Section 63A-10-107;

(ii) the Utah Athletic Foundation, including the payment of $40,000,000 in accordance with joint resolutions adopted by the Legislature; and

(iii) the University of Utah, for use of the university's stadium for opening and closing ceremonies in accordance with the requirements of the Ceremonies Agreement dated July 28, 1997.

(3) (a) Beginning the first of fiscal year 1999-2000, the governor shall, no less often than semi-annually, provide a written review and determination regarding his decision whether to approve the budget described in Subsection (1)(a). Based on information available at the time of the governor's review, the governor shall determine whether the budget and accompanying information includes the requirements described in Subsection (2).

(b) The governor shall provide a copy of his written semi-annual review and also, if approved, his written approval to the:

[~~(i) president of the Senate;~~]

[~~(ii) speaker of the House of Representatives; and~~]

[~~(iii) Olympic Coordination Committee, created pursuant to Section 63A-10-109.~~]

(i) Legislative Management Committee; and

(ii) coordination committee.

(c) The governor's written review and approval, as described in this Subsection (3), does not constitute a guarantee or certification by the governor regarding the public sports entity's budget.

(4) (a) No later than 15 days following the submission of the budget pursuant to Subsection (1)(a), the State Olympic Officer shall report in writing to the [~~Olympic Coordination Committee~~] coordination committee. That report shall include a summary of:

(i) the quarterly budget provided by a public sports entity, as required by Subsection (1)(a); and

(ii) the documentation described in Subsection (2).

(b) The State Olympic Officer's report required by this Subsection (4) does not constitute a guarantee or certification by the State Olympic Officer regarding the public sports entity's budget.

(5) The review and determination of approval of the budget by the mayor of Salt Lake City, as required by Subsection (1)(a), shall be in accordance with policy guidelines established by the Salt Lake City Council.

(6) The State Olympic Officer may request from the public sports entity access to any other financial records not disclosed under Subsection (1)(a). The public sports entity shall provide the coordinator access to the records if the board of trustees of the public sports entity approves the request.

[~~(7) The State Olympic Officer shall:~~]

[~~(a) distribute the information provided pursuant to Subsection (1) (b) to:~~]

[~~(i) the Division of Finance;~~]

[~~(ii) the state auditor;~~]

[~~(iii) the legislative auditor general;~~]

[~~(iv) the Office of Legislative Research and General Counsel; and~~]

[~~(v) the Office of the Legislative Fiscal Analyst;~~]

[~~(b) review the information provided pursuant to Subsections (1) and (2); and~~]

[~~(c) report annually to the Sports Advisory Committee and Executive Appropriations Committee concerning the financial plan for hosting the games required under Subsection (1)(a), including reporting on the source, timing, reliability of projections, financial soundness, security position, and contractual status of projected revenues and projected expenditures.~~]

[~~(8)~~] (7) At the request of a public sports entity, information obtained by the State Olympic Officer

from the public sports entity shall be a protected record under Title 63, Chapter 2, Government Records Access Management Act, if:

(a) the record is designated as protected by the public sports entity; and

(b) the information is not public information under this chapter or other state or federal laws.

Section 9. Section 63A-10-103 is amended to read:

63A-10-103. State Olympic Officer -- Creation.

(1) There is created the position of State Olympic Officer.

(2) Beginning July 1, 1997:

(a) The State Olympic Officer shall be an individual appointed by the governor with the advice and consent of the Senate.

(b) The officer serves at the pleasure of the governor.

(c) The officer shall be experienced in administration, financial, and legal transactions, and coordination of complex organizations.

(d) The officer shall receive compensation as provided by Title 67, Chapter 22, State Officer Compensation.

(e) The officer may appoint [~~one~~] additional staff [~~member~~] members with the approval of the governor.

(f) The Office of Planning and Budget shall provide staff support and physical facilities to the coordinator.

(g) Except as provided in Subsection(3), beginning July 1, 1997, the salary, benefits, and administrative costs associated with the officer and [~~an individual~~] individuals appointed by the officer under Subsection (2)(e) shall be paid from the Olympics special revenue fund or funds established under Section 59-12-103.

(3) (a) If there is inadequate monies in the Olympics special revenue fund or funds to pay the salary, benefits, and administrative costs described in Subsection (2)(g), the salary, benefits, and administrative cost may be paid from the General Fund.

(b) If monies are paid from the General Fund under Subsection (3)(a), the monies shall be reimbursed to the General Fund from the Olympics special revenue fund or funds at such time the Olympics special revenue fund or funds has adequate monies to reimburse the General Fund.

(c) Notwithstanding Subsections (2)(e), (3)(a), and (3)(b), the salary, benefits, or administrative costs associated with the officer may not be paid from the sales and tax revenues generated by municipalities or counties and deposited under Subsection 59-12-103(4)(a)(ii).

Section 10. Section 63A-10-109 is amended to read:

63A-10-109. Olympic Coordination Committee -- Creation -- Membership -- Quorum -- Compensation -- Staff -- Committee duties.

(1) There is created the Olympic Coordination Committee consisting of the following 12 members:

(a) five members of the Senate, appointed by the president of the Senate, not more than three of whom may be of the same political party; and

(b) seven members of the House of Representatives, appointed by the speaker of the House of Representatives, not more than four of whom may be of the same political party.

(2) The president of the Senate and the speaker of the House of Representatives shall each appoint a legislator to serve as cochairs of the Olympic Coordination Committee.

(3) The committee shall determine committee quorum and voting requirements in accordance with legislative rules.

(4) Salaries and expenses of the members of the committee shall be paid in accordance with Section 36-2-2 and Legislative Joint Rule 15.03.

(5) The Office of Legislative Research and General Counsel shall provide staff support to the committee and shall consult with the Office of Legislative Fiscal Analyst on fiscal issues studied by the committee.

(6) The committee may review and make recommendations [~~to the Legislature and the governor~~] on any issue that relates to the:

(a) [~~the~~] state's involvement in hosting the Olympics;

(b) coordination of state and local governments in hosting the Olympics;

(c) interests of athletes served by Olympic-related state programs or facilities;

[~~(b) the~~] (d) state's role as a creditor and a secured party in relationship to the Olympics and the Organizing Committee;

[~~(c) the~~] (e) Olympics;

[~~(d) the~~] (f) Organizing Committee; or

[~~(e) the~~] (g) impact of the Olympics on the state after the Olympic games have concluded.

(7) The committee may report any recommendations, including any proposed legislation, to the Legislative Management Committee.

Section 11. Repealer.

This act repeals:

Section 63A-7-111, Utah Sports Advisory Committee.

Section 63A-7-112, Committee authority.

CHAPTER 110
S. B. 85
Passed February 28, 2001
Approved March 15, 2001
Effective March 15, 2001

PUBLIC SAFETY
RETIREMENT EXCEPTION

Sponsor: Beverly Ann Evans

This act modifies the Utah State Retirement Act to allow an elected sheriff to retire within the Public Safety Retirement System and to continue in the office with a retirement exclusion. This act has an immediate effective date.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
49-4-205, as last amended by Chapter 224, Laws of Utah 1991

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

Section 1. Section 49-4-205 is amended to read:

49-4-205. Exclusion of certain employees from coverage -- Exception.

(1) (a) A public employee serving as the commissioner of public safety, or as the elected or appointed sheriff or chief of police of a public safety organization, is excluded from coverage under this system if that public employee files a formal written request seeking exclusion from coverage[~~, but~~].

(b) Except as provided in Subsection (1)(c), the public employee [~~cannot~~] may not continue employment in the same covered employer unit and receive payment from the retirement office at the same time.

(c) An elected sheriff who is eligible to retire under Section 49-4-401 may:

(i) retire from the system and receive a retirement payment;

(ii) continue in the elected office; and

(iii) file for the exclusion under Subsection (1)(a).

(2) Any member of the system or any newly hired employee who is eligible for coverage and who is drawing a military pension may, by application to the retirement administrator, be exempted from participating in the system.

Section 2. Effective date.

If approved by two-thirds of all the members elected to each house, this act takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 111
S. B. 87
Passed February 19, 2001
Approved March 15, 2001
Effective April 30, 2001

ANTIQUE FIREARMS AMENDMENTS

Sponsor: Michael G. Waddoups

This act modifies provisions relating to firearms. The act defines certain terms. The act changes the definition of a firearm to exclude antique firearms and curio or relic firearms.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
76-10-501, as last amended by Chapter 303, Laws of Utah 2000

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

Section 1. Section 76-10-501 is amended to read:

76-10-501. Definitions.

As used in this part:

(1) (a) "Antique firearm" means any firearm:

(i) (A) with a matchlock, flintlock, percussion cap, or similar type of ignition system; and

(B) that was manufactured in or before 1898; or

(ii) that is a replica of any firearm described in this Subsection (1)(a), if the replica:

(A) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition; or

(B) uses rimfire or centerfire fixed ammunition which is:

(I) no longer manufactured in the United States; and

(II) is not readily available in ordinary channels of commercial trade; or

(iii) (A) that is a muzzle loading rifle, shotgun, or pistol; and

(B) is designed to use black powder, or a black powder substitute, and cannot use fixed ammunition.

(b) "Antique firearm" does not include:

(i) any weapon that incorporates a firearm frame or receiver;

(ii) any firearm that is converted into a muzzle loading weapon; or

(iii) any muzzle loading weapon that can be readily converted to fire fixed ammunition by replacing the:

(A) barrel;

(B) bolt;

(C) breechblock; or

(D) any combination of Subsection (1)(b)(iii)(A), (B), or (C).

[~~(1)~~] (2) (a) "Concealed dangerous weapon" means a dangerous weapon that is covered, hidden, or secreted in a manner that the public would not be aware of its presence and is readily accessible for immediate use.

(b) A dangerous weapon shall not be considered a concealed dangerous weapon if it is a firearm which is unloaded and is securely encased.

[~~(2)~~] (3) "Criminal history background check" means a criminal background check conducted by a licensed firearms dealer on every purchaser of a handgun through the division or the local law enforcement agency where the firearms dealer conducts business.

(4) "Curio or relic firearm" means any firearm that:

(a) is of special interest to a collector because of a quality that is not associated with firearms intended for:

(i) sporting use;

(ii) use as an offensive weapon; or

(iii) use as a defensive weapon;

(b) (i) was manufactured at least 50 years prior to the current date; and

(ii) is not a replica of a firearm described in Subsection (4)(b)(i);

(c) is certified by the curator of a municipal, state, or federal museum that exhibits firearms to be a curio or relic of museum interest;

(d) derives a substantial part of its monetary value:

(i) from the fact that the firearm is:

(A) novel;

(B) rare; or

(C) bizarre; or

(ii) because of the firearm's association with an historical:

(A) figure;

(B) period; or

(C) event; and

(e) has been designated as a curio or relic firearm by the director of the United States Treasury Department Bureau of Alcohol, Tobacco, and Firearms under 27 C.F.R. Sec. 178.11.

[~~(3)~~] (5) (a) "Dangerous weapon" means any item that in the manner of its use or intended use is capable of causing death or serious bodily injury. The following factors shall be used in determining whether a knife, or any other item, object, or thing not commonly known as a dangerous weapon is a dangerous weapon:

(i) the character of the instrument, object, or thing;

(ii) the character of the wound produced, if any;

(iii) the manner in which the instrument, object, or thing was used; and

(iv) the other lawful purposes for which the instrument, object, or thing may be used.

(b) "Dangerous weapon" does not include any explosive, chemical, or incendiary device as defined by Section 76-10-306.

[~~(4)~~] (6) "Dealer" means every person who is licensed under crimes and criminal procedure, 18 U.S.C. 923 and engaged in the business of selling, leasing, or otherwise transferring a handgun, whether the person is a retail or wholesale dealer, pawnbroker, or otherwise.

[~~(5)~~] (7) "Division" means the Criminal Investigations and Technical Services Division of the Department of Public Safety, created in Section 53-10-103.

[~~(6)~~] (8) "Enter" means intrusion of the entire body.

[~~(7)~~] (9) (a) "Firearm" means a pistol, revolver, shotgun, sawed-off shotgun, rifle or sawed-off rifle, or any device that could be used as a dangerous weapon from which is expelled a projectile by action of an explosive.

(b) As used in Sections 76-10-526 and 76-10-527, "firearm" does not include an antique firearm.

[~~(8)~~] (10) "Firearms transaction record form" means a form created by the division to be completed by a person purchasing, selling, or transferring a handgun from a dealer in the state.

[~~(9)~~] (11) "Fully automatic weapon" means any firearm which fires, is designed to fire, or can be readily restored to fire, automatically more than one shot without manual reloading by a single function of the trigger.

[~~(10)~~] (12) (a) "Handgun" means a pistol, revolver, or other firearm of any description, loaded or unloaded, from which any shot, bullet, or other missile can be discharged, the length of which, not including any revolving, detachable, or magazine breech, does not exceed 12 inches.

(b) As used in Sections 76-10-520, 76-10-521, and 76-10-522, "handgun" and "pistol or revolver" do not include an antique firearm.

[~~(11)~~] (13) "House of worship" means a church, temple, synagogue, mosque, or other building set apart primarily for the purpose of worship in which religious services are held and the main body of which is kept for that use and not put to any other use inconsistent with its primary purpose.

[~~(12)~~] (14) "Prohibited area" means any place where it is unlawful to discharge a firearm.

[~~(13)~~] (15) "Readily accessible for immediate use" means that a firearm or other dangerous weapon is carried on the person or within such close proximity and in such a manner that it can be retrieved and used as readily as if carried on the person.

[~~(14)~~] (16) "Residence" means an improvement to real property used or occupied as a primary or secondary residence.

[~~(15)~~] (17) "Sawed-off shotgun" or "sawed-off rifle" means a shotgun having a barrel or barrels of fewer than 18 inches in length, or in the case of a rifle, having a barrel or barrels of fewer than 16 inches in length, or any dangerous weapon made from a rifle or shotgun by alteration, modification, or otherwise, if the weapon as modified has an overall length of fewer than 26 inches.

[~~(16)~~] (18) "Securely encased" means not readily accessible for immediate use, such as held in a gun rack, or in a closed case or container, whether or not locked, or in a trunk or other storage area of a motor vehicle, not including a glove box or console box.

[~~(17)~~] (19) "State entity" means each department, commission, board, council, agency, institution, officer, corporation, fund, division, office, committee, authority, laboratory, library, unit, bureau, panel, or other administrative unit of the state.

[~~(18)~~] (20) "Violent felony" means the same as defined in Section 76-3-203.5.

CHAPTER 112
S. B. 88
Passed February 15, 2001
Approved March 15, 2001
Effective April 30, 2001

THEFT OF RENTAL MOTOR VEHICLE

Sponsor: Bill Wright

This act modifies the Criminal Code by establishing the specific offense of theft of a rental vehicle. The act states that failure to return the vehicle within 72 hours after the date the vehicle is due to be returned is the criminal offense of theft.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:
76-6-410.5, Utah Code Annotated 1953

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

Section 1. Section 76-6-410.5 is enacted to read:

76-6-410.5. Theft of a rental vehicle.

(1) As used in this section:

(a) "Motor vehicle" means a self-propelled vehicle that is intended primarily for use and operation on the highways.

(b) "Rental agreement" means any written agreement stating the terms and conditions governing the use of a motor vehicle provided by a rental company.

(c) "Rental company" means any person or organization in the business of providing motor vehicles to the public.

(d) "Renter" means any person or organization obtaining the use of a motor vehicle from a rental company under the terms of a rental agreement.

(2) A renter is guilty of theft of a rental vehicle if, without notice to and permission of the rental company, the renter knowingly fails without good cause to return the vehicle within 72 hours after the time established for the return in the rental agreement.

(3) If the motor vehicle is not rented on a periodic tenancy basis, the rental company shall include the following information, legibly written, as part of the terms of the rental agreement:

(a) the date and time the motor vehicle is required to be returned; and

(b) the maximum penalties under state law if the motor vehicle is not returned within 72 hours from the date and time stated in compliance with Subsection (3)(a).

CHAPTER 113
S. B. 89
Passed February 15, 2001
Approved March 15, 2001
Effective April 30, 2001

STATE PARKS ACCESS ROADS AMENDMENTS

Sponsor: Peter C. Knudson

This act modifies the Transportation Code to extend the state park access highway for Hyrum State Park.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
72-3-204, as renumbered and amended by Chapter 270, Laws of Utah 1998

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

Section 1. Section 72-3-204 is amended to read:

72-3-204. State park access highways -- Hyrum State Park to Painted Rocks.

State park access highways include:

(1) HYRUM STATE PARK. Access to Hyrum State Park is at the pay gate in Cache County at 405 West 300 South in Hyrum and proceeds northerly on 400 West to State Highway 101. No access road is defined.

(2) IRON MISSION STATE PARK. Access to Iron Mission State Park is at the parking area and museum in Iron County at milepoint 3.3 on State Highway 130 at 585 North Main St. in Cedar City. No access road is defined.

(3) JORDAN RIVER STATE PARK. Access to Jordan River State Park is at the park entrance in Salt Lake County at milepoint 61.3 on State Highway 68 at 1084 North Redwood Road in Salt Lake City. No access road is defined.

(4) JORDANELLE STATE PARK (HAILSTONE MARINA). Access to the Jordanelle State Park Hailstone Marina begins in Wasatch County at State Highway 40 and proceeds southeasterly on State Highway 319 a distance of 1.4 miles to the marina parking area at the park and is under the jurisdiction of UDOT.

(5) JORDANELLE STATE PARK (ROCK CLIFF NATURE CENTER). Access to the Jordanelle State Park Rock Cliff Nature Center begins in Wasatch County at State Highway 32 and proceeds northwesterly on a county road a distance of 0.6 miles to the parking area at the park and is under the jurisdiction of the county.

(6) JORDANELLE STATE PARK (ROCK CREEK). Access to Jordanelle State Park Rock Creek begins in Wasatch County at State Highway 189 and proceeds southerly on a county road a distance of 0.1 miles to the parking area at the park and is under the jurisdiction of the county.

(7) KODACHROME BASIN STATE PARK. Access to the Kodachrome Basin State Park begins in Kane County at State Highway 12 and proceeds southeasterly on a county road 10.1 miles to the parking area at Kodachrome Lodge and is under the jurisdiction of Kane County.

(8) LOST CREEK STATE PARK. Access to the Lost Creek State Park begins in Morgan County at Interstate Highway 84 and proceeds northeasterly on a county road a distance of 12.8 miles to the parking/boat launch area at the park and is under the jurisdiction of Morgan County.

(9) MILLSITE STATE PARK. Access to the Millsite State Park begins in Emery County at State Highway 10 and proceeds northwesterly on a county road (L122) a distance of 4.6 miles to the parking area at the park and is under the jurisdiction of Emery County.

(10) MINERSVILLE STATE PARK. Access to the Minersville State Park begins in Beaver County at State Highway 21 and proceeds northwesterly on State Highway 310 a distance of 0.3 miles to the visitor center/contact station at the park and is under the jurisdiction of UDOT.

(11) NEWSPAPER ROCK STATE PARK. Access to the Newspaper Rock State Park begins in San Juan County at State Highway 191 and proceeds southwesterly on State Highway 211 a distance of 12.4 miles to the parking area at the park and is under the jurisdiction of UDOT.

(12) OTTER CREEK STATE PARK. Access to the Otter Creek State Park is at the pay gate/contact station in Piute County at milepoint 6.4 on State Highway 22. No access road is defined.

(13) PAINTED ROCKS (YUBA EAST SHORE). Access to the Painted Rocks Yuba East Shore begins in Sanpete County at State Highway 28 and proceeds westerly on a county road a distance of 2.0 miles to the parking/boat launch area at the park and is under the jurisdiction of Sanpete County.

CHAPTER 114
S. B. 95
Passed February 7, 2001
Approved March 15, 2001
Effective April 30, 2001

WORKERS' COMPENSATION ADVISORY COUNCIL AMENDMENTS

Sponsor: Ed P. Mayne

This act modifies the Labor Code to permit a designee of the insurance commissioner to serve on the Workers' Compensation Advisory Council instead of the insurance commissioner and to make technical changes.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
34A-2-107, as last amended by Chapter 222, Laws of Utah 2000

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

Section 1. Section 34A-2-107 is amended to read:

34A-2-107. Appointment of workers' compensation advisory council -- Composition -- Terms of members -- Duties -- Compensation.

(1) The commissioner shall appoint a workers' compensation advisory council composed of:

(a) the following voting members:

(i) five employer representatives; and

(ii) five employee representatives; and

(b) the following nonvoting members:

(i) a representative of the Workers' Compensation Fund;

(ii) a representative of a private insurance carrier;

(iii) a representative of health care providers;

(iv) the Utah insurance commissioner or the insurance commissioner's designee; and

(v) the commissioner or the commissioner's designee.

(2) Employers and employees shall consider nominating members of groups who historically may have been excluded from the council, such as women, minorities, and individuals with disabilities.

(3) (a) Except as required by Subsection (3)(b), as terms of current council members expire, the commissioner shall appoint each new member or reappointed member to a two-year term beginning July 1 and ending June 30.

(b) Notwithstanding the requirements of Subsection (3)(a), the commissioner shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of council members are staggered so that approximately half of the council is appointed every two years.

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

(b) The commissioner shall terminate the [~~terms~~] term of any council member who ceases to be representative as designated by the member's original appointment.

(5) The council shall confer at least quarterly for the purpose of advising the commission, the division, and the Legislature on:

(a) the Utah workers' compensation and occupational disease laws[~~,~~];

(b) the administration of [~~them,~~] the laws described in Subsection (5)(a); and [~~related~~]

(c) rules related to the laws described in Subsection (5)(a).

(6) [~~The~~] Regarding workers' compensation, rehabilitation, and reemployment of employees who are disabled because of an industrial injury or occupational disease the council shall:

(a) offer advice on issues requested by:

(i) the commission[~~,~~];

(ii) the division[~~,~~]; and

(iii) the Legislature; and [~~also~~]

(b) make recommendations to:

(i) the commission; and

(ii) the division [~~regarding workers' compensation, rehabilitation, and reemployment of employees who are disabled because of an industrial injury or occupational disease~~].

(7) The commissioner or the commissioner's designee shall serve as the chair of the council and call the necessary meetings.

(8) The commission shall provide staff support to the council.

(9) (a) (i) Members who are not government employees may not receive compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

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

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

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

CHAPTER 115
S. B. 97
Passed February 21, 2001
Approved March 15, 2001
Effective April 30, 2001

SPECIAL NEEDS ADOPTION SERVICES

Sponsor: Lyle W. Hillyard

This act modifies the Human Services Code to provide a description of the types of special needs adoption services available to adoptive parents and the eligibility for those services. The act amends the description of duties for the Division of Child and Family Services regarding financial support for adoptions. The act makes technical changes to adoption assistance agreements under interstate compacts. This act includes a coordination clause.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
62A-4a-105, as last amended by Chapters 274 and 370, Laws of Utah 1998

ENACTS:
62A-4a-801, Utah Code Annotated 1953
62A-4a-802, Utah Code Annotated 1953
62A-4a-803, Utah Code Annotated 1953
62A-4a-804, Utah Code Annotated 1953
62A-4a-805, Utah Code Annotated 1953
62A-4a-806, Utah Code Annotated 1953

RENUMBERS AND AMENDS:
62A-4a-807, (Renumbered from 62A-4a-108, as last amended by Chapter 251, Laws of Utah 1999)

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

Section 1. Section 62A-4a-105 is amended to read:

62A-4a-105. Division responsibilities.

The division shall:

(1) administer services to children and families, including child welfare services, youth services, domestic violence services, and all other responsibilities that the Legislature or the executive director may assign to the division;

(2) establish standards for all contract providers of out-of-home care for children and families;

(3) cooperate with the federal government in the administration of child welfare, youth services, and domestic violence programs and other human service activities assigned by the department;

(4) provide for the compilation of relevant information, statistics, and reports on child and family service matters in the state;

(5) prepare and submit to the department, the governor, and the Legislature reports of the operation and administration of the division in accordance with the requirements of Sections 62A-4a-117 and 62A-4a-118;

(6) promote and enforce state and federal laws enacted for the protection of abused, neglected, dependent, delinquent, ungovernable, and runaway children, and status offenders, in accordance with the requirements of this chapter, unless administration is expressly vested in another division or department of the state. In carrying out the provisions of this subsection, the division shall cooperate with the juvenile courts, the Division of Youth Corrections, and with all public and private licensed child welfare agencies and institutions to develop and administer a broad range of services and supports. The division shall take the initiative in all matters involving the protection of abused or neglected children if adequate provisions have not been made or are not likely to be made, and shall make expenditures necessary for the care and protection of those children, within the division's budget;

(7) provide substitute care for dependent, abused, neglected, and delinquent children, establish standards for substitute care facilities, and approve those facilities;

(8) provide [~~financial support~~] adoption assistance to persons adopting [~~physically handicapped, mentally handicapped, older, or other hard-to-place~~] children [~~who, immediately prior to adoption, were legal wards of the state~~] with special needs under Part 8 of this chapter. The financial support provided under this subsection may not exceed the amounts the division would provide for the child as a legal ward of the state;

(9) cooperate with the Division of Employment Development in the Department of Workforce Services in meeting social and economic needs of individuals eligible for public assistance;

(10) conduct court-ordered home evaluations for the district and juvenile courts with regard to child custody issues. The court shall order either or both parties to reimburse the division for the cost of that evaluation, in accordance with the community rate for that service or with the department's fee schedule rate;

(11) provide noncustodial and in-home preventive services, designed to prevent family breakup, family preservation services, and reunification services to families whose children are in substitute care in accordance with the requirements of this chapter and Title 78, Chapter 3a, Juvenile [~~Courts~~] Court Act of 1996;

(12) provide protective supervision of a family, upon court order, in an effort to eliminate abuse or neglect of a child in that family;

(13) establish programs pursuant to Section 62A-4a-250, and provide services to runaway and ungovernable children and their families;

(14) provide shelter care in accordance with the requirements of this chapter and Title 78, Chapter 3a, Juvenile [~~Courts~~] Court Act of 1996;

(15) provide social studies and reports for the juvenile court in accordance with Section 78-3a-505;

(16) arrange for and provide training for staff and providers involved in the administration and delivery of services offered by the division in accordance with this chapter;

(17) provide domestic violence services in accordance with the requirements of federal law, and establish standards for all direct or contract providers of domestic violence services. Within appropriations from the Legislature, the division shall provide or contract for a variety of domestic violence services and treatment methods;

(18) ensure regular, periodic publication, including electronic publication, regarding the number of children in the custody of the division who have a permanency goal of adoption, or for whom a final plan of termination of parental rights has been approved, pursuant to Section 78-3a-312, and promote adoption of those children;

(19) provide protective services to victims of domestic violence, as defined in Section 77-36-1, and their children, in accordance with the provisions of this chapter and of Title 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency Proceedings;

(20) have authority to contract with a private, nonprofit organization to recruit and train foster care families and child welfare volunteers in accordance with Section 62A-4a-107.5; and

(21) perform such other duties and functions as required by law.

Section 2. Section 62A-4a-801 is enacted to read:

Part 8. Adoption Assistance

62A-4a-801. (Codified as 62A-4a-901) Legislative purpose.

The purpose of this part is to provide adoption assistance to eligible adoptive families to establish and maintain a permanent adoptive placement for a child who has a special need and who qualifies under state and federal law.

Section 3. Section 62A-4a-802 is enacted to read:

62A-4a-802. (Codified as 62A-4a-902) Definitions.

(1) (a) "Adoption assistance" means direct financial subsidies and support to adoptive parents of a child with special needs or whose need or condition has created a barrier that would prevent a successful adoption.

(b) "Adoption assistance" may include state medical assistance, reimbursement of nonrecurring adoption expenses, or monthly subsidies.

(2) "Child who has a special need" means a child who cannot or should not be returned to the home of his biological parents and who meets at least one of the following conditions:

(a) the child is five years of age or older;

(b) the child is under the age of 18 with a physical, emotional, or mental disability; or

(c) the child is a member of a sibling group placed together for adoption.

(3) "Monthly subsidy" means financial support to assist with the costs of adopting and caring for a child who has a special need.

(4) "Nonrecurring adoption expenses" means reasonably necessary adoption fees, court costs, attorney's fees, and other expenses which are directly related to the legal adoption of a child who has a special need.

(5) "State medical assistance" means the Medicaid program and medical assistance as defined in Subsections 26-18-2(4) and (5), not limited to a prepaid health care delivery system as defined in Section 26-18-3.7.

(6) "Supplemental adoption assistance" means financial support for extraordinary, infrequent, or uncommon documented needs not otherwise covered by a monthly subsidy, state medical assistance, or other public benefits for which a child who has a special need is eligible.

Section 4. Section 62A-4a-803 is enacted to read:

62A-4a-803. (Codified as 62A-4a-903) Eligibility.

(1) The Board of Child and Family Services shall establish by rule, eligibility criteria for the receipt of adoption assistance and supplemental adoption assistance.

(2) Eligibility determination shall be based upon:

(a) the needs of the child;

(b) the resources available to the child; and

(c) the federal requirements of Section 473, Social Security Act.

Section 5. Section 62A-4a-804 is enacted to read:

62A-4a-804. (Codified as 62A-4a-904) Adoption assistance.

(1) Pursuant to federal requirements of Section 673 et seq. of the Social Security Act, the Division of Child and Family Services:

(a) shall provide for:

(i) payment of nonrecurring adoption expenses for an eligible child who has a special need; and

(ii) state medical assistance when required by federal law; and

(b) may provide for monthly subsidies for an eligible child who has a special need.

(2) Payment of nonrecurring adoption expenses may not exceed $2,000 and shall be limited to costs incurred prior to finalization of an adoption.

(3) The level of monthly subsidy under Subsection (1)(b) shall be based on:

(a) the child's present and long-term treatment and care needs; and

(b) the family's ability to meet the needs of the child.

(4) (a) The level of monthly subsidy may increase or decrease when the child's level of need or the family's ability to meet the child's need changes.

(b) Either the family or the division may initiate changes to the monthly subsidy.

(5) Financial support provided under Subsection (1)(b) may not exceed the maximum foster care payment or residential room and board payment that would be paid at the time the subsidy amount is initiated or revised.

Section 6. Section 62A-4a-805 is enacted to read:

62A-4a-805. (Codified as 62A-4a-905) Supplemental adoption assistance.

(1) The division may, based upon annual legislative appropriations for adoption assistance and board policy, provide supplemental adoption assistance for children who have a special need. Supplemental adoption assistance shall be provided only after all other resources for which a child is eligible have been exhausted.

(2) (a) The department shall, by rule, establish in each region at least one advisory committee to review and make recommendations to the division on individual requests for supplemental adoption assistance. The committee shall be comprised of the following members:

(i) an adoption expert;

(ii) an adoptive parent;

(iii) a division representative;

(iv) a foster parent; and

(v) an adoption caseworker.

(b) The board policy required in Subsection (1) shall include a provision which establishes a threshold amount for requests for supplemental adoption assistance that require review by the committee established in this Subsection (2).

Section 7. Section 62A-4a-806 is enacted to read:

62A-4a-806. (Codified as 62A-4a-906) Termination or modification of adoption assistance.

(1) Adoption assistance may not be terminated or modified unless the division has given adoptive parents notice and opportunity for a hearing as required in Title 63, Chapter 46b, Administrative Procedures Act.

(2) Adoption assistance shall be terminated if any of the following occur:

(a) the adoptive parents request termination;

(b) the child reaches 18 years of age, unless approval has been given by the division to continue beyond the age of 18 due to mental or physical disability, but in no case shall assistance continue after a child reaches 21 years of age;

(c) the child dies;

(d) the adoptive parents die;

(e) the adoptive parent's legal responsibility for the child ceases;

(f) the state determines that the child is no longer receiving support from the adoptive parents;

(g) the child marries; or

(h) the child enters military service.

Section 8. Section 62A-4a-807, which is renumbered from Section 62A-4a-108 is renumbered and amended to read:

[~~62A-4a-108~~]. 62A-4a-807. (Codified as 62A-4a-907) Interstate compact adoption assistance agreements.

(1) As used in this section:

(a) "Adoption assistance" means financial support to adoptive parents provided under the Adoption Assistance and Child Welfare Act of 1980, Title IV (e) of the Social Security Act, and Title XIX of the Social Security Act.

(b) "Adoption assistance agreement" means a written agreement between the division and adoptive parents, or between any other state and adoptive parents, providing for adoption assistance.

(2) The division may develop and negotiate interstate compacts for the provision of medical identification and assistance to adoptive parents who receive adoption assistance. An interstate compact shall include:

(a) a provision for joinder by all states;

(b) a provision for withdrawal from the compact upon written notice to the parties, with a period of one year between the date of the notice and the effective date of withdrawal;

(c) a requirement that each instance of adoption assistance to which the compact applies be covered by a written adoption assistance agreement between the adoptive parents and the agency of the state which initially agrees to provide adoption assistance, and that any agreement is expressly for the benefit of the adopted child and is enforceable by the adoptive parents, and by the state agency providing adoption assistance;

(d) a provision that a child who is the subject of an adoption assistance agreement with another party state, and who subsequently becomes a resident of this state, shall receive medical identification and assistance in this state under the Adoption Assistance and Child Welfare Act of 1980, Title IV (e) of the Social Security Act, and Title XIX of the Social Security Act, based on his adoption assistance agreement;

(e) a provision that a child who is the subject of an adoption assistance agreement with the division, and who subsequently becomes a resident of another party state, shall receive medical identification and assistance from that state under the Adoption and Child Welfare Act of 1980, Title IV (e) of the Social Security Act, and Title XIX of the Social Security Act, based on his adoption assistance agreement; and

(f) a requirement that the protections of the compact continue for the duration of the adoption assistance and apply to all children and their adoptive parents who receive adoption assistance from a party state other than the state in which they reside.

(3) (a) The division shall provide services to a child who is the subject of an adoption assistance agreement executed by the division, and who is a resident of another state, if those services are not provided by the child's residence state under an interstate compact.

(b) The division may reimburse the adoptive parents upon receipt of evidence of their payment for services for which the child is eligible, which were not paid by the residence state, and are not covered by insurance or other third party medical contract. The services provided under this subsection are those for which there is no federal contribution, or which, if federally aided, are not provided by the residence state.

[~~(4) No later than October 1, 1999, the division shall report to the Legislative Health and Human Services Interim Committee on the funding of services to families that have adopted a child who was previously in the custody of the state. That report shall:~~]

[~~(a) describe services, including financial assistance, that have been provided with state monies;~~]

[~~(b) identify mechanisms for ensuring that adequate funding is available for services to the child and the adoptive family until the child reaches 18 years of age;~~]

[~~(c) include a review of methods used by other states to ensure funding of on-going support of adopted children and their adoptive families;~~]

[~~(d) identify any known instances where the division has been unable to provide reasonable levels of service because of a lack of state funds; and~~]

[~~(e) include other recommendations by the division.~~]

Section 9. Coordination clause.

If this bill and H.B. 79, Persons With a Disability Technical Revisions, both pass, it is the intent of the Legislature that the amendments in Subsection 62A-4a-105(8) in this bill supercede the amendments to Subsection 62A-4a-105(8) in H.B. 79.

CHAPTER 116
S. B. 100
Passed February 23, 2001
Approved March 15, 2001
Effective April 30, 2001

INSURANCE LAW AMENDMENTS

Sponsor: L. Steven Poulton

This act modifies the Insurance Code and related provisions by addressing issues related to the insurance business in general, health insurance, life insurance, and property insurance. The act standardizes definition of terms and makes other technical changes. The act changes terminology from "disability insurance" to "accident and health insurance." The act defines the scope and applicability of certain provisions included in this act. The act imposes certain requirements on health organizations that are imposed on insurers. The act addresses the conditions governing the issuance and renewal of certificates of authority, including allowing the commissioner to enter into interstate compacts. The act addresses the form of and information required in statements filed with the department including permitting the department to accept documents complying with National Association of Insurance Commissioners requirements instead of statutory requirements. The act addresses the requirements of minimum capital and permanent surplus as well as the amount of the deposit each authorized organization shall maintain with the commissioner. The act addresses issues related to formation, cancellation, and required provisions of insurance contracts. The act redefines the qualified assets that may be used in determining the financial condition of an insurer. The act changes the requirements for title insurance reserves. The act requires that all documents and agreements that constitute a life insurance policy shall be defined and attached to the policy. The act creates notification requirements for termination of a group or blanket life insurance policy. The act modifies the responsibilities of the Health Benefit Plan Committee. The act expands the commissioner's rulemaking responsibilities for Medicare supplemental policies. The act requires a policy summary or illustration to be delivered with a life insurance policy. The act requires, in certain circumstances, monthly reports on an accident and health rider or supplemental benefit. The act addresses maternity benefits required in a conversion policy. The act changes the requirements and restrictions on long-term care insurance policies. The act modifies the licensing, continuing education, and examination requirements for agents, brokers, consultants, third party administrators, and independent or public adjusters. The act also addresses the termination of licenses for agents, brokers, consultants, third party administrators, and independent or public adjusters. The act expands the list of activities that qualify as unfair marketing practices. The act addresses the handling of escrow funds by title insurance agents. The act requires title insurance agents to make disclosures to loan applicants purchasing title insurance. The act addresses sharing commissions for referrals of potential customers. The act addresses continuance of coverage by health maintenance organizations. The act provides a coordination clause.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
7-9-5, as last amended by Chapter 329, Laws of Utah 1999
26-19-2, as last amended by Chapters 39 and 145, Laws of Utah 1998
26-40-104, as enacted by Chapter 360, Laws of Utah 1998
31A-1-103, as last amended by Chapter 4, Laws of Utah 1993
31A-1-301, as last amended by Chapters 130 and 131, Laws of Utah 1999
31A-2-214, as last amended by Chapter 12, Laws of Utah 1987, First Special Session
31A-4-103, as enacted by Chapter 242, Laws of Utah 1985
31A-4-113, as last amended by Chapter 258, Laws of Utah 1992
31A-5-211, as last amended by Chapter 9, Laws of Utah 1996, Second Special Session
31A-5-418, as last amended by Chapter 9, Laws of Utah 1996, Second Special Session
31A-5-703, as enacted by Chapter 9, Laws of Utah 1996, Second Special Session
31A-6a-102, as enacted by Chapter 203, Laws of Utah 1992
31A-6a-110, as enacted by Chapter 203, Laws of Utah 1992
31A-8-101, as last amended by Chapter 261, Laws of Utah 1989
31A-8-103 (Effective 04/30/01), as last amended by Chapter 300, Laws of Utah 2000
31A-8-209, as enacted by Chapter 204, Laws of Utah 1986
31A-8-211, as last amended by Chapter 30, Laws of Utah 1992
31A-8-213, as enacted by Chapter 204, Laws of Utah 1986
31A-8-402, as last amended by Chapter 327, Laws of Utah 1990
31A-8-407, as enacted by Chapter 261, Laws of Utah 1989
31A-8-408, as last amended by Chapter 344, Laws of Utah 1995
31A-9-212 (Effective 04/30/01), as last amended by Chapter 300, Laws of Utah 2000
31A-11-102, as last amended by Chapter 10, Laws of Utah 1988, Second Special Session
31A-14-201, as last amended by Chapter 204, Laws of Utah 1986

31A-14-212, as enacted by Chapter 242, Laws of Utah 1985
31A-15-103, as last amended by Chapter 55, Laws of Utah 1999
31A-15-106, as last amended by Chapter 204, Laws of Utah 1986
31A-17-201, as last amended by Chapter 131, Laws of Utah 1999
31A-17-401, as last amended by Chapter 9, Laws of Utah 1996, Second Special Session
31A-17-402, as last amended by Chapter 305, Laws of Utah 1993
31A-17-408, as enacted by Chapter 242, Laws of Utah 1985
31A-17-504, as enacted by Chapter 305, Laws of Utah 1993
31A-17-505, as enacted by Chapter 305, Laws of Utah 1993
31A-17-507, as enacted by Chapter 305, Laws of Utah 1993
31A-17-508, as enacted by Chapter 305, Laws of Utah 1993
31A-17-509, as enacted by Chapter 305, Laws of Utah 1993
31A-17-513, as enacted by Chapter 305, Laws of Utah 1993
31A-17-601, as enacted by Chapter 9, Laws of Utah 1996, Second Special Session
31A-17-602, as last amended by Chapter 185, Laws of Utah 1997
31A-17-603, as enacted by Chapter 9, Laws of Utah 1996, Second Special Session
31A-17-604, as enacted by Chapter 9, Laws of Utah 1996, Second Special Session
31A-17-605, as enacted by Chapter 9, Laws of Utah 1996, Second Special Session
31A-17-606, as enacted by Chapter 9, Laws of Utah 1996, Second Special Session
31A-17-607, as enacted by Chapter 9, Laws of Utah 1996, Second Special Session
31A-17-608, as enacted by Chapter 9, Laws of Utah 1996, Second Special Session
31A-17-609, as last amended by Chapter 131, Laws of Utah 1999
31A-17-610, as enacted by Chapter 9, Laws of Utah 1996, Second Special Session
31A-17-613, as enacted by Chapter 9, Laws of Utah 1996, Second Special Session
31A-18-105, as last amended by Chapter 9, Laws of Utah 1996, Second Special Session
31A-19a-101, as renumbered and amended by Chapter 130, Laws of Utah 1999
31A-21-103, as last amended by Chapter 204, Laws of Utah 1986
31A-21-104, as last amended by Chapter 190, Laws of Utah 1996
31A-21-201, as last amended by Chapter 114, Laws of Utah 2000
31A-21-301, as last amended by Chapter 230, Laws of Utah 1992
31A-21-303, as last amended by Chapter 203, Laws of Utah 1999
31A-21-307, as last amended by Chapter 68, Laws of Utah 1989
31A-21-401, as enacted by Chapter 204, Laws of Utah 1986
31A-21-402, as enacted by Chapter 204, Laws of Utah 1986
31A-21-403, as enacted by Chapter 204, Laws of Utah 1986
31A-21-404, as enacted by Chapter 204, Laws of Utah 1986
31A-21-501, as last amended by Chapter 302, Laws of Utah 1999
31A-21-502, as enacted by Chapter 132, Laws of Utah 1997
31A-21-503, as enacted by Chapter 132, Laws of Utah 1997
31A-21-505, as enacted by Chapter 132, Laws of Utah 1997
31A-22-307, as last amended by Chapter 71, Laws of Utah 1994
31A-22-403, as enacted by Chapter 242, Laws of Utah 1985
31A-22-404, as last amended by Chapter 114, Laws of Utah 2000
31A-22-415, as last amended by Chapter 39, Laws of Utah 1998
31A-22-423, as last amended by Chapter 329, Laws of Utah 1998
31A-22-510, as last amended by Chapter 91, Laws of Utah 1987
31A-22-517, as enacted by Chapter 242, Laws of Utah 1985
31A-22-518, as enacted by Chapter 242, Laws of Utah 1985
31A-22-520, as enacted by Chapter 242, Laws of Utah 1985
31A-22-600, as enacted by Chapter 242, Laws of Utah 1985
31A-22-601, as enacted by Chapter 242, Laws of Utah 1985
31A-22-602, as enacted by Chapter 242, Laws of Utah 1985
31A-22-603, as enacted by Chapter 242, Laws of Utah 1985
31A-22-604, as last amended by Chapter 1, Laws of Utah 2000
31A-22-605, as last amended by Chapter 224, Laws of Utah 1992
31A-22-606, as last amended by Chapter 316, Laws of Utah 1994
31A-22-607, as enacted by Chapter 242, Laws of Utah 1985
31A-22-608, as last amended by Chapter 91, Laws of Utah 1987
31A-22-609, as enacted by Chapter 242, Laws of Utah 1985
31A-22-610, as last amended by Chapter 206, Laws of Utah 1996
31A-22-610.2, as enacted by Chapter 114, Laws of Utah 2000
31A-22-610.5, as last amended by Chapters 102 and 137, Laws of Utah 1995
31A-22-611, as enacted by Chapter 242, Laws of Utah 1985
31A-22-612, as last amended by Chapter 204, Laws of Utah 1986
31A-22-613, as last amended by Chapter 160, Laws of Utah 2000
31A-22-613.5, as last amended by Chapter 114, Laws of Utah 2000
31A-22-614, as enacted by Chapter 242, Laws of Utah 1985

31A-22-617, as last amended by Chapter 267, Laws of Utah 2000
31A-22-619, as last amended by Chapter 316, Laws of Utah 1994
31A-22-620, as last amended by Chapter 185, Laws of Utah 1997
31A-22-623, as enacted by Chapter 6, Laws of Utah 1998
31A-22-624, as enacted by Chapter 357, Laws of Utah 1998
31A-22-626, as enacted by Chapter 248, Laws of Utah 2000
31A-22-630, as enacted by Chapter 114, Laws of Utah 2000
31A-22-701, as last amended by Chapter 143, Laws of Utah 1996
31A-22-702, as enacted by Chapter 242, Laws of Utah 1985
31A-22-703, as last amended by Chapter 329, Laws of Utah 1998
31A-22-704, as last amended by Chapter 321, Laws of Utah 1995
31A-22-705, as last amended by Chapter 261, Laws of Utah 1989
31A-22-715, as last amended by Chapter 12, Laws of Utah 1994
31A-22-716, as enacted by Chapter 327, Laws of Utah 1990
31A-22-717, as enacted by Chapter 253, Laws of Utah 1991
31A-22-720, as enacted by Chapter 114, Laws of Utah 2000
31A-22-801, as enacted by Chapter 242, Laws of Utah 1985
31A-22-802, as enacted by Chapter 242, Laws of Utah 1985
31A-22-803, as enacted by Chapter 242, Laws of Utah 1985
31A-22-804, as enacted by Chapter 242, Laws of Utah 1985
31A-22-805, as enacted by Chapter 242, Laws of Utah 1985
31A-22-806, as last amended by Chapter 204, Laws of Utah 1986
31A-22-807, as last amended by Chapter 230, Laws of Utah 1992
31A-22-808, as enacted by Chapter 242, Laws of Utah 1985
31A-22-809, as enacted by Chapter 242, Laws of Utah 1985
31A-22-1002, as last amended by Chapter 375, Laws of Utah 1997
31A-22-1101, as enacted by Chapter 242, Laws of Utah 1985
31A-22-1401, as enacted by Chapter 243, Laws of Utah 1991
31A-22-1402, as enacted by Chapter 243, Laws of Utah 1991
31A-22-1407, as last amended by Chapter 344, Laws of Utah 1995
31A-22-1409, as enacted by Chapter 243, Laws of Utah 1991
31A-22-1412, as enacted by Chapter 344, Laws of Utah 1995
31A-23-101, as enacted by Chapter 242, Laws of Utah 1985
31A-23-102, as last amended by Chapter 1, Laws of Utah 2000
31A-23-201, as last amended by Chapter 344, Laws of Utah 1995
31A-23-202, as last amended by Chapter 232, Laws of Utah 1997
31A-23-203, as last amended by Chapter 131, Laws of Utah 1999
31A-23-204, as last amended by Chapter 131, Laws of Utah 1999
31A-23-206, as last amended by Chapter 131, Laws of Utah 1999
31A-23-207, as last amended by Chapter 316, Laws of Utah 1994
31A-23-209, as last amended by Chapter 204, Laws of Utah 1986
31A-23-211.7, as enacted by Chapter 131, Laws of Utah 1999
31A-23-212, as last amended by Chapter 131, Laws of Utah 1999
31A-23-216, as last amended by Chapter 232, Laws of Utah 1997
31A-23-218, as enacted by Chapter 242, Laws of Utah 1985
31A-23-302, as last amended by Chapter 344, Laws of Utah 1995
31A-23-303, as last amended by Chapter 204, Laws of Utah 1986
31A-23-307, as last amended by Chapter 185, Laws of Utah 1997
31A-23-310, as last amended by Chapter 344, Laws of Utah 1995
31A-23-312, as last amended by Chapter 230, Laws of Utah 1992
31A-23-404, as last amended by Chapter 293, Laws of Utah 1998
31A-23-503, as last amended by Chapter 1, Laws of Utah 2000
31A-23-601, as last amended by Chapter 1, Laws of Utah 2000
31A-23-702, as enacted by Chapter 258, Laws of Utah 1992
31A-23-705, as enacted by Chapter 258, Laws of Utah 1992
31A-25-102, as enacted by Chapter 242, Laws of Utah 1985
31A-25-202, as enacted by Chapter 242, Laws of Utah 1985
31A-25-203, as enacted by Chapter 242, Laws of Utah 1985
31A-25-205, as last amended by Chapters 1 and 114, Laws of Utah 2000
31A-25-206, as enacted by Chapter 242, Laws of Utah 1985
31A-25-207, as enacted by Chapter 242, Laws of Utah 1985
31A-25-208, as enacted by Chapter 242, Laws of Utah 1985
31A-26-101, as last amended by Chapter 30, Laws of Utah 1992
31A-26-202, as last amended by Chapter 232, Laws of Utah 1997
31A-26-203, as last amended by Chapter 9, Laws of Utah 1996, Second Special Session
31A-26-204, as last amended by Chapter 131, Laws of Utah 1999
31A-26-206, as last amended by Chapter 131, Laws of Utah 1999

31A-26-207, as last amended by Chapter 204, Laws of Utah 1986
31A-26-208, as last amended by Chapter 204, Laws of Utah 1986
31A-26-209, as last amended by Chapter 204, Laws of Utah 1986
31A-26-213, as last amended by Chapter 232, Laws of Utah 1997
31A-26-302, as enacted by Chapter 242, Laws of Utah 1985
31A-28-102, as last amended by Chapter 316, Laws of Utah 1994
31A-28-103, as last amended by Chapter 316, Laws of Utah 1994
31A-28-106, as repealed and reenacted by Chapter 211, Laws of Utah 1991
31A-28-108, as last amended by Chapter 344, Laws of Utah 1995
31A-28-109, as repealed and reenacted by Chapter 211, Laws of Utah 1991
31A-28-202, as last amended by Chapter 97, Laws of Utah 1988
31A-29-103, as enacted by Chapter 232, Laws of Utah 1990
31A-29-117, as last amended by Chapter 114, Laws of Utah 2000
31A-30-103, as last amended by Chapter 265, Laws of Utah 1997
31A-30-104, as last amended by Chapter 131, Laws of Utah 1999
31A-30-106, as last amended by Chapter 267, Laws of Utah 2000
31A-30-106.5, as enacted by Chapter 321, Laws of Utah 1995
31A-30-107, as last amended by Chapters 114 and 315, Laws of Utah 2000
31A-32a-102, as enacted by Chapter 131, Laws of Utah 1999
31A-33-103.5, as last amended by Chapter 107, Laws of Utah 1998
31A-33-113, as last amended by Chapter 375, Laws of Utah 1997
34A-2-103, as last amended by Chapters 55 and 199, Laws of Utah 1999
58-67-501, as last amended by Chapter 227, Laws of Utah 1997
58-68-501, as last amended by Chapter 227, Laws of Utah 1997
59-10-114, as last amended by Chapter 257, Laws of Utah 2000
62A-11-326.1, as last amended by Chapter 145, Laws of Utah 1998
62A-11-326.2, as last amended by Chapter 145, Laws of Utah 1998
63-25a-413, as renumbered and amended by Chapter 242, Laws of Utah 1996
63-55-231, as last amended by Chapters 52 and 267, Laws of Utah 2000
67-22-1, as last amended by Chapter 117, Laws of Utah 2000
67-22-2, as last amended by Chapter 117, Laws of Utah 2000
78-14-4.5, as last amended by Chapters 30 and 240, Laws of Utah 1992
78-45-7.5, as last amended by Chapter 161, Laws of Utah 2000

ENACTS:

31A-2-217, Utah Code Annotated 1953
31A-22-424, Utah Code Annotated 1953
31A-22-522, Utah Code Annotated 1953
31A-22-631, Utah Code Annotated 1953
31A-22-632, Utah Code Annotated 1953
31A-22-1413, Utah Code Annotated 1953
31A-22-1414, Utah Code Annotated 1953
31A-23-201.5, Utah Code Annotated 1953
31A-23-317, Utah Code Annotated 1953
31A-26-215, Utah Code Annotated 1953

REPEALS AND REENACTS:

31A-27-311.5, as enacted by Chapter 170, Laws of Utah 1990

REPEALS:

31A-8-210, as last amended by Chapter 9, Laws of Utah 1996, Second Special Session
31A-8-212, as last amended by Chapter 327, Laws of Utah 1990

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

Section 1. Section 7-9-5 is amended to read:

7-9-5. Powers of credit unions.

In addition to the powers specified elsewhere in this chapter, a credit union may:

(1) make contracts;

(2) sue and be sued;

(3) acquire, lease, or hold fixed assets, including real property, furniture, fixtures, and equipment as the directors consider necessary or incidental to the operation and business of the credit union, but the value of the real property may not exceed 7% of credit union assets, unless approved by the commissioner;

(4) pledge, hypothecate, sell, or otherwise dispose of real or personal property, either in whole or in part, necessary or incidental to its operation;

(5) incur and pay necessary and incidental operating expenses;

(6) require an entrance or membership fee;

(7) receive the funds of its members in payment for:

(a) shares;

(b) share certificates;

(c) deposits;

(d) deposit certificates;

(e) share drafts;

(f) NOW accounts; and

(g) other instruments;

(8) allow withdrawal of shares and deposits, as requested by a member orally to a third party with prior authorization in writing, including, but not limited to, drafts drawn on the credit union for payment to the member or any third party, in accordance with the procedures established by the board of directors, including, but not limited to, drafts, third-party instruments, and other transaction instruments, as provided in the bylaws;

(9) charge fees for its services;

(10) extend credit to its members, at rates established in accordance with the bylaws or by the board of directors;

(11) extend credit secured by real estate;

(12) make loan participation arrangements with other credit unions, credit union organizations, or financial organizations in accordance with written policies of the board of directors, if the credit union that originates a loan for which participation arrangements are made retains an interest of at least 10% of the loan;

(13) sell and pledge eligible obligations in accordance with written policies of the board of directors;

(14) engage in activities and programs of the federal government or this state or any agency or political subdivision of the state, when approved by the board of directors and not inconsistent with this chapter;

(15) act as fiscal agent for and receive payments on shares and deposits from the federal government, this state, or its agencies or political subdivisions not inconsistent with the laws of this state;

(16) borrow money and issue evidence of indebtedness for a loan or loans for temporary purposes in the usual course of its operations;

(17) discount and sell notes and obligations;

(18) sell all or any portion of its assets to another credit union or purchase all or any portion of the assets of another credit union;

(19) invest funds as provided in this title and in its bylaws;

(20) maintain deposits in insured depository institutions as provided in this title and in its bylaws;

(21) (a) hold membership in corporate credit unions organized under this chapter or under other state or federal statutes; and

(b) hold membership or equity interest in associations and organizations of credit unions, including credit union service organizations;

(22) declare and pay dividends on shares, contract for and pay interest on deposits, and pay refunds of interest on loans as provided in this title and in its bylaws;

(23) collect, receive, and disburse funds in connection with the sale of negotiable or nonnegotiable instruments and for other purposes that provide benefits or convenience to its members, as provided in this title and in its bylaws;

(24) make donations for the members' welfare or for civic, charitable, scientific, or educational purposes as authorized by the board of directors or provided in its bylaws;

(25) act as trustee of funds permitted by federal law to be deposited in a credit union as a deferred compensation or tax deferred device, including, but not limited to, individual retirement accounts as defined by Section 408, Internal Revenue Code;

(26) purchase reasonable [~~disability~~] accident and health insurance, including accidental death benefits, for directors and committee members through insurance companies licensed in this state as provided in its bylaws;

(27) provide reasonable protection through insurance or other means to protect board members, committee members, and employees from liability arising out of consumer legislation such as, but not limited to, truth-in-lending and equal credit laws and as provided in its bylaws;

(28) reimburse directors and committee members for reasonable and necessary expenses incurred in the performance of their duties;

(29) participate in systems which allow the transfer, withdrawal, or deposit of funds of credit unions or credit union members by automated or electronic means and hold membership in entities established to promote and effectuate these systems, if:

(a) the participation is not inconsistent with the law and rules of the department; and

(b) any credit union participating in any system notifies the department as provided by law;

(30) issue credit cards and debit cards to allow members to obtain access to their shares, deposits, and extensions of credit;

(31) provide any act necessary to obtain and maintain membership in the credit union;

(32) exercise incidental powers necessary to carry out the purpose for which a credit union is organized;

(33) undertake other activities relating to its purpose as its bylaws may provide;

(34) engage in other activities, exercise other powers, and enjoy other rights, privileges, benefits, and immunities authorized by rules of the commissioner;

(35) act as trustee, custodian, or administrator for Keogh plans, individual retirement accounts, credit union employee pension plans, and other employee benefit programs; and

(36) advertise to the general public the products and services offered by the credit union if the advertisement prominently discloses that to use the products or services of the credit union a person is required to:

(a) be eligible for membership in the credit union; and

(b) become a member of the credit union.

Section 2. Section 26-19-2 is amended to read:

26-19-2. Definitions.

As used in this chapter:

(1) "Employee welfare benefit plan" means a medical insurance plan developed by an employer under 29 U.S.C. Section 1001, et seq., the Employee Retirement Income Security Act of 1974 as amended.

(2) "Estate" means, regarding a deceased recipient, all real and personal property or other assets included within a decedent's estate as defined in Section 75-1-201 and a decedent's augmented estate as defined in Section 75-2-203.

(3) "Insurer" includes:

(a) a group health plan as defined in Subsection 607(1) of the federal Employee Retirement Income Security Act of 1974;

(b) a health maintenance organization; and

(c) any entity offering a health service benefit plan.

(4) "Medical assistance" means:

(a) all funds expended for the benefit of a recipient under Title 26, Chapter 18, Medical Assistance Act, or under Titles XVIII and XIX, federal Social Security Act; and

(b) any other services provided for the benefit of a recipient by a prepaid health care delivery system under contract with the department.

(5) "Provider" means a person or entity who provides services to a recipient.

(6) "Recipient" means:

(a) a person who has applied for or received medical assistance from the state;

(b) the guardian, conservator, or other personal representative of a person under Subsection (6)(a) if the person is a minor or an incapacitated person; or

(c) the estate and survivors of a person under Subsection (6)(a) if the person is deceased.

(7) "State plan" means the state Medicaid program as enacted in accordance with Title XIX, federal Social Security Act.

(8) "Third party" includes:

(a) an individual, institution, corporation, public or private agency, trust, estate, insurance carrier, employee welfare benefit plan, health maintenance organization, health service organization, preferred provider organization, governmental program such as Medicare, CHAMPUS, and workers' compensation, which may be obligated to pay all or part of the medical costs of injury, disease, or disability of a recipient, unless any of these are excluded by department rule; and

(b) a spouse or a parent who:

(i) may be obligated to pay all or part of the medical costs of a recipient under law or by court or administrative order; or

(ii) has been ordered to maintain health, dental, or [~~disability~~] accident and health insurance to cover medical expenses of a spouse or dependent child by court or administrative order.

Section 3. Section 26-40-104 is amended to read:

26-40-104. Advisory Council.

(1) There is created a Utah Children's Health Insurance Program Advisory Council consisting of at least eight and no more than eleven members appointed by the executive director of the department. The term of each appointment shall be three years. The appointments shall be staggered at one-year intervals to ensure continuity of the advisory council.

(2) The advisory council shall meet at least quarterly.

(3) The membership of the advisory council shall include at least one representative from each of the following groups:

(a) child health care providers;

(b) parents and guardians of children enrolled in the program;

(c) ethnic populations other than American Indians;

(d) American Indians;

(e) the Health Policy Commission;

(f) the Utah Association of Health Care Providers;

(g) health and [~~disability~~] accident and health insurance providers; and

(h) the general public.

(4) The advisory council shall advise the department on:

(a) benefits design;

(b) eligibility criteria;

(c) outreach;

(d) evaluation; and

(e) special strategies for under-served populations.

(5) (a) (i) Members who are not government employees may not receive compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

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

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

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

Section 4. Section 31A-1-103 is amended to read:

31A-1-103. Scope and applicability of title.

(1) This title does not apply to:

(a) retainer contracts made by attorneys-at-law with individual clients with fees based on estimates of the nature and amount of services to be provided to the specific client, and similar contracts made with a group of clients involved in the same or closely related legal matters;

(b) arrangements for providing benefits that do not exceed a limited amount of consultations, advice on simple legal matters, either alone or in combination with referral services, or the promise of fee discounts for handling other legal matters;

(c) limited legal assistance on an informal basis involving neither an express contractual obligation nor reasonable expectations, in the context of an employment, membership, educational, or similar relationship; or

(d) legal assistance by employee organizations to their members in matters relating to employment.

(2) (a) This title restricts otherwise legitimate business activity.

(b) What this title does not prohibit is permitted unless contrary to other provisions of Utah law.

(3) Except as otherwise expressly provided, this title does not apply to:

(a) those activities of an insurer where state jurisdiction is preempted by Section 514 of the federal Employee Retirement Income Security Act of 1974, as amended;

(b) ocean marine insurance;

(c) death and [~~disability~~] accident and health benefits provided by an organization where the principal purpose is to achieve charitable, educational, social, or religious objectives rather than to provide death and [~~disability~~] accident and health benefits, if the organization does not incur a legal obligation to pay a specified amount and does not create reasonable expectations of receiving a specified amount on the part of an insured person;

(d) other business specified in rules adopted by the commissioner on a finding that the transaction of such business in this state does not require regulation for the protection of the interests of the residents of this state or on a finding that it would be impracticable to require compliance with this title;

(e) (i) transactions independently procured through negotiations under Section 31A-15-104;

(ii) however, the transactions described in Subsection (3)(e)(i) are subject to taxation under Section 31A-3-301;

(f) self-insurance;

(g) reinsurance;

(h) subject to Subsection (4), employee and labor union group or blanket insurance covering risks in this state if:

(i) the policyholder exists primarily for purposes other than to procure insurance;

(ii) the policyholder is not a resident of this state or a domestic corporation or does not have its principal office in this state;

(iii) no more than 25% of the certificate holders or insureds are residents of this state;

(iv) on request of the commissioner, the insurer files with the department a copy of the policy and a copy of each form or certificate; and

(v) the insurer agrees to pay premium taxes on the Utah portion of its business, as if it were authorized to do business in this state, and if the insurer provides the commissioner with the security the commissioner considers necessary for the payment of premium taxes under Title 59, Chapter 9, Taxation of Admitted Insurers; or

(i) to the extent provided in Subsection (5):

(A) a manufacturer's [~~warranties issued in the ordinary course of sale;~~] warranty; and

[~~(j) manufacturer's warranties or service contracts paid for with separate or additional consideration; or~~]

[~~(k) service contracts paid for with separate or additional consideration, issued in the ordinary course of sale, that are for the repair or maintenance of goods, other than motor vehicles, having a purchase price of $3,000 or less~~]

(B) a manufacturer's service contract.

(4) (a) After a hearing, the commissioner may order an insurer of certain group or blanket contracts to transfer the Utah portion of the business otherwise exempted under Subsection (3)(h) to an authorized insurer if the contracts have been written by an unauthorized insurer.

(b) If the commissioner finds that the conditions required for the exemption of a group or blanket insurer are not satisfied or that adequate protection to residents of this state is not provided, [~~he~~] the commissioner may require:

(i) the insurer to be authorized to do business in this state; or [~~require~~]

(ii) that any of the insurer's transactions be subject to this title.

(5) (a) As used in Subsection (3)(i) and this Subsection (5):

(i) "manufacturer's service contract" means a service contract:

(A) made available by a manufacturer of a product:

(I) on one specific product; or

(II) on products that are components of a system; and

(B) under which the manufacturer is liable for services to be provided under the service contract including, if the manufacturer's service contract designates, providing parts and labor;

(ii) "manufacturer's warranty" means the guaranty of the manufacturer of a product:

(A) (I) on one specific product; or

(II) on products that are components of a system; and

(B) under which the manufacturer is liable for services to be provided under the warranty, including, if the manufacturer's warranty designates, providing parts and labor; and

(iii) "service contract" is as defined in Section 31A-6a-101.

(b) A manufacturer's warranty may be designated as:

(i) a warranty;

(ii) a guaranty; or

(iii) a term similar to a term described in Subsection (5)(b)(i) or (ii).

(c) This title does not apply to:

(i) a manufacturer's warranty;

(ii) a manufacturer's service contract paid for with consideration that is in addition to the consideration paid for the product itself; and

(iii) a service contract that is not a manufacturer's warranty or manufacturer's service contract if:

(A) the service contract is paid for with consideration that is in addition to the consideration paid for the product itself; and

(B) the service contract is for the repair or maintenance of goods;

(C) the cost of the product is equal to an amount determined in accordance with Subsection (5)(e); and

(D) the product is not a motor vehicle.

(d) This title does not apply to a manufacturer's warranty or service contract paid for with consideration that is in addition to the consideration paid for for the product itself regardless of whether the manufacturer's warranty or service contract is sold:

(i) at the time of the purchase of the product; or

(ii) at a time other than the time of the purchase of the product.

(e) (i) For fiscal year 2001-02, the amount described in Subsection (5)(c)(iii)(C) shall be equal to $3,700 or less.

(ii) For each fiscal year after fiscal year 2001-02, the commissioner shall annually determine whether the amount described in Subsection (5)(c)(iii)(C) should be adjusted in accordance with changes in the Consumer Price Index published by the United States Bureau of Labor Statistics selected by the commissioner by rule, between:

(A) the Consumer Price Index for the February immediately preceding the adjustment; and

(B) the Consumer Price Index for February 2001.

(iii) If under Subsection (5)(e)(ii) the commissioner determines that an adjustment should be made, the commissioner shall make the adjustment by rule.

Section 5. Section 31A-1-301 is amended to read:

31A-1-301. Definitions.

As used in this title, unless otherwise specified:

(1) (a) "Accident and health insurance" means insurance to provide protection against economic losses resulting from:

(i) a medical condition including:

(A) medical care expenses; or

(B) the risk of disability;

(ii) accident; or

(iii) sickness.

(b) "Accident and health insurance":

(i) includes a contract with disability contingencies including:

(A) an income replacement contract;

(B) a health care contract;

(C) an expense reimbursement contract;

(D) a credit accident and health contract;

(E) a continuing care contract; and

(F) long-term care contracts; and

(ii) may provide:

(A) hospital coverage;

(B) surgical coverage;

(C) medical coverage; or

(D) loss of income coverage.

(c) "Accident and health insurance" does not include workers' compensation insurance.

[~~(1)~~] (2) "Administrator" is defined in Subsection [~~(90)~~] (111).

[~~(2)~~] (3) "Adult" means a natural person who has attained the age of at least 18 years.

[~~(3)~~] (4) "Affiliate" means any person who controls, is controlled by, or is under common control with, another person. A corporation is an affiliate of another corporation, regardless of ownership, if substantially the same group of natural persons manages the corporations.

[~~(4)~~] (5) "Alien insurer" means an insurer domiciled outside the United States.

(6) "Amendment" means an endorsement to an insurance policy or certificate.

[~~(5)~~] (7) "Annuity" means an agreement to make periodical payments for a period certain or over the lifetime of one or more natural persons if the making or continuance of all or some of the series of the payments, or the amount of the payment, is dependent upon the continuance of human life.

(8) "Application" means a document:

(a) completed by an applicant to provide information about the risk to be insured; and

(b) that contains information that is used by the insurer to:

(i) evaluate risk; and

(ii) decide whether to:

(A) insure the risk under:

(I) the coverages as originally offered; or

(II) a modification of the coverage as originally offered; or

(B) decline to insure the risk.

[~~(6)~~] (9) "Articles" or "articles of incorporation" means the original articles, special laws, charters, amendments, restated articles, articles of merger or consolidation, trust instruments, and other constitutive documents for trusts and other entities that are not corporations, and amendments to any of these.

[~~(7)~~] (10) "Bail bond insurance" means a guarantee that a person will attend court when required, or will obey the orders or judgment of the court, as a condition to the release of that person from confinement.

[~~(8)~~] (11) "Binder" is defined in Section 31A-21-102.

[~~(9)~~] (12) "Board," "board of trustees," or "board of directors" means the group of persons with responsibility over, or management of, a corporation, however designated.

[~~(10)~~] (13) "Business of insurance" is defined in Subsection [~~(53)~~] (64).

[~~(11)~~] (14) "Business plan" means the information required to be supplied to the commissioner under Subsections 31A-5-204(2)(i) and (j), including the information required when these subsections are applicable by reference under:

(a) Section 31A-7-201;

(b) Section 31A-8-205; or

(c) Subsection 31A-9-205(2).

[~~(12)~~] (15) "Bylaws" means the rules adopted for the regulation or management of a corporation's affairs, however designated and includes comparable rules for trusts and other entities that are not corporations.

[~~(13)~~] (16) "Casualty insurance" means liability insurance as defined in Subsection [~~(59)~~] (70).

[~~(14)~~] (17) "Certificate" means [~~the~~] evidence of insurance given to:

(a) an insured under a group insurance policy; or

(b) a third party.

[~~(15)~~] (18) "Certificate of authority" is included within the term "license."

[~~(16)~~] (19) "Claim," unless the context otherwise requires, means a request or demand on an insurer for payment of benefits according to the terms of an insurance policy.

[~~(17)~~] (20) "Claims-made coverage" means an insurance contract or provision limiting coverage under a policy insuring against legal liability to claims that are first made against the insured while the policy is in force.

[~~(18)~~] (21) (a) "Commissioner" or "commissioner of insurance" means Utah's insurance commissioner.

(b) When appropriate, the terms listed in Subsection [~~(18)~~] (21)(a) apply to the equivalent supervisory official of another jurisdiction.

(22) (a) "Continuing care insurance" means insurance that:

(i) provides board and lodging;

(ii) provides one or more of the following services:

(A) personal services;

(B) nursing services;

(C) medical services; or

(D) other health-related services; and

(iii) provides the coverage described in Subsection (22)(a)(i) under an agreement effective:

(A) for the life of the insured; or

(B) for a period in excess of one year.

(b) Insurance is continuing care insurance regardless of whether or not the board and lodging are provided at the same location as the services described in Subsection (22)(a)(ii).

[~~(19)~~] (23) (a) "Control," "controlling," "controlled," or "under common control" means the direct or indirect possession of the power to direct or cause the direction of the management and policies of a person. This control may be:

(i) by contract;

(ii) by common management;

(iii) through the ownership of voting securities; or

(iv) by a means other than those described in Subsections [~~(19)~~] (23)(a)(i) through (iii).

(b) There is no presumption that an individual holding an official position with another person controls that person solely by reason of the position.

(c) A person having a contract or arrangement giving control is considered to have control despite the illegality or invalidity of the contract or arrangement.

(d) There is a rebuttable presumption of control in a person who directly or indirectly owns, controls, holds with the power to vote, or holds proxies to vote 10% or more of the voting securities of another person.

[~~(20)~~] (24) (a) "Corporation" means insurance corporation, except when referring to:

(i) a corporation doing business as an insurance broker, consultant, or adjuster under:

(A) Chapter 23, Insurance Marketing – Licensing Agents, Brokers, Consultants, and Reinsurance Intermediaries; and

(B) Chapter 26, Insurance Adjusters; or

(ii) a noninsurer that is part of a holding company system under Chapter 16, Insurance Holding Companies.

(b) "Stock corporation" means stock insurance corporation.

(c) "Mutual" or "mutual corporation" means a mutual insurance corporation.

[~~(21)~~] (25) "Credit [~~disability~~] accident and health insurance" means insurance on a debtor to provide indemnity for payments coming due on a specific loan or other credit transaction while the debtor is disabled.

[~~(22)~~] (26) "Credit insurance" means surety insurance under which mortgagees and other creditors are indemnified against losses caused by the default of debtors.

[~~(23)~~] (27) "Credit life insurance" means insurance on the life of a debtor in connection with a loan or other credit transaction.

[~~(24)~~] (28) "Creditor" means a person, including an insured, having any claim, whether:

(a) matured;

(b) unmatured;

(c) liquidated;

(d) unliquidated;

(e) secured;

(f) unsecured;

(g) absolute;

(h) fixed; or

(i) contingent.

[~~(25)~~] (29) (a) "Customer service representative" means a person that provides insurance services and insurance product information:

(i) for its agent, broker, or consultant employer; and

(ii) to its employer's customer, client, or organization.

(b) A customer service representative may only operate within the scope of authority of its agent, broker, or consultant employer.

(30) "Deadline" means the final date or time:

(a) imposed by:

(i) statute;

(ii) rule; or

(iii) order; and

(b) by which a required filing or payment must be received by the department.

[~~(26)~~] (31) "Deemer clause" means a provision under this title under which upon the occurrence of a condition precedent, the commissioner is deemed to have taken a specific action. If the statute so provides, the condition precedent may be the commissioner's failure to take a specific action.

[~~(27)~~] (32) "Degree of relationship" means the number of steps between two persons determined by counting the generations separating one person from a common ancestor and then counting the generations to the other person.

[~~(28)~~] (33) "Department" means the Insurance Department.

[~~(29)~~] (34) "Director" means a member of the board of directors of a corporation.

[~~(30) "Disability insurance" means insurance written to:~~]

[~~(a) indemnify for losses and expenses resulting from accident or sickness;~~]

[~~(b) provide payments to replace income lost from accident or sickness; and~~]

[~~(c) pay for services resulting directly from accident or sickness, including medical, surgical, hospital, and other ancillary expenses.~~]

(35) "Disability" means a physiological or psychological condition that partially or totally limits an individual's ability to:

(a) perform the duties of:

(i) that individual's occupation; or

(ii) any occupation for which the individual is reasonably suited by education, training, or experience; or

(b) perform two or more of the following basic activities of daily living:

(i) eating;

(ii) toileting;

(iii) transferring;

(iv) bathing; or

(v) dressing.

[~~(31)~~] (36) "Domestic insurer" means an insurer organized under the laws of this state.

[~~(32)~~] (37) "Domiciliary state" means the state in which an insurer:

(a) is incorporated;

(b) is organized; or

(c) in the case of an alien insurer, enters into the United States.

[~~(33)~~] (38) "Employee benefits" means one or more benefits or services provided employees or their dependents.

[~~(34)~~] (39) (a) "Employee welfare fund" means a fund:

(i) established or maintained, whether directly or through trustees, by:

(A) one or more employers;

(B) one or more labor organizations; or

(C) a combination of employers and labor organizations; and

(ii) that provides employee benefits paid or contracted to be paid, other than income from investments of the fund, by or on behalf of an employer doing business in this state or for the benefit of any person employed in this state.

(b) "Employee welfare fund" includes a plan funded or subsidized by user fees or tax revenues.

(40) "Endorsement" means a written agreement attached to a policy or certificate to modify one or more of the provisions of the policy or certificate.

[~~(35)~~] (41) "Excludes" is not exhaustive and does not mean that other things are not also excluded. The items listed are representative examples for use in interpretation of this title.

(42) "Expense reimbursement insurance" means insurance:

(a) written to provide payments for expenses relating to hospital confinements resulting from illness or injury; and

(b) written:

(i) as a daily limit for a specific number of days in a hospital; and

(ii) to have a one or two day waiting period following a hospitalization.

[~~(36)~~] (43) "Fidelity insurance" means insurance guaranteeing the fidelity of persons holding positions of public or private trust.

(44) (a) "Filed" means that a filing is:

(i) submitted to the department in accordance with any applicable statute, rule, or filing order;

(ii) received by the department within the time period provided in the applicable statute, rule, or filing order; and

(iii) accompanied with the applicable one or more filing fees required by:

(A) Section 31A-3-103; or

(B) rule.

(b) "Filed" does not include a filing that is rejected by the department because it is not submitted in accordance with Subsection (44)(a).

(45) "Filing," when used as a noun, means an item required to be filed with the department including:

(a) a policy;

(b) a rate;

(c) a form;

(d) a document;

(e) a plan;

(f) a manual;

(g) an application;

(h) a report;

(i) a certificate;

(j) an endorsement;

(k) an actuarial certification;

(l) a licensee annual statement;

(m) a licensee renewal application; or

(n) an advertisement.

[~~(37)~~] (46) "First party insurance" means an insurance policy or contract in which the insurer agrees to pay claims submitted to it by the insured for the insured's losses.

[~~(38)~~] (47) "Foreign insurer" means an insurer domiciled outside of this state, including an alien insurer.

[~~(39)~~] (48) (a) "Form" means a policy, certificate, or application prepared for general use.

(b) "Form" does not include a document specially prepared for use in an individual case.

[~~(40)~~] (49) "Franchise insurance" means individual insurance policies provided through a mass marketing arrangement involving a defined class of persons related in some way other than through the purchase of insurance.

(50) "Health care" means any of the following intended for use in the diagnosis, treatment, mitigation, or prevention of a human ailment or impairment:

(a) professional services;

(b) personal services;

(c) facilities;

(d) equipment;

(e) devices;

(f) supplies; or

(g) medicine.

[~~(41)~~] (51) (a) "Health care insurance" or "health insurance" means [~~disability~~] insurance providing [~~benefits solely of medical, surgical, hospital, or other ancillary services or payment of medical, surgical, hospital, or other ancillary expenses incurred.~~]:

(i) health care benefits; or

(ii) payment of incurred health care expenses.

(b) "Health care insurance" or "health insurance" does not include [~~disability~~] accident and health insurance providing benefits for:

(i) replacement of income;

(ii) short-term accident;

(iii) fixed indemnity;

(iv) credit [~~disability~~] accident and health;

(v) supplements to liability;

(vi) workers' compensation;

(vii) automobile medical payment;

(viii) no-fault automobile;

(ix) equivalent self-insurance; or

(x) any type of [~~disability~~] accident and health insurance coverage that is a part of or attached to another type of policy.

(52) "Income replacement insurance" or "disability income insurance" means insurance written to provide payments to replace income lost from accident or sickness.

[~~(42)~~] (53) "Indemnity" means the payment of an amount to offset all or part of an insured loss.

[~~(43)~~] (54) "Independent adjuster" means an insurance adjuster required to be licensed under Section 31A-26-201 who engages in insurance adjusting as a representative of insurers.

[~~(44)~~] (55) "Independently procured insurance" means insurance procured under Section 31A-15-104.

[~~(45)~~] (56) "Individual" means a natural person.

[~~(46)~~] (57) "Inland marine insurance" includes insurance covering:

(a) property in transit on or over land;

(b) property in transit over water by means other than boat or ship;

(c) bailee liability;

(d) fixed transportation property such as bridges, electric transmission systems, radio and television transmission towers and tunnels; and

(e) personal and commercial property floaters.

[~~(47)~~] (58) "Insolvency" means that:

(a) an insurer is unable to pay its debts or meet its obligations as they mature;

(b) an insurer's total adjusted capital is less than the insurer's mandatory control level RBC under Subsection 31A-17-601[~~(7)~~](8)(c); or

(c) an insurer is determined to be hazardous under this title.

[~~(48)~~] (59) (a) "Insurance" means:

(i) an arrangement, contract, or plan for the transfer of a risk or risks from one or more persons to one or more other persons; or

(ii) an arrangement, contract, or plan for the distribution of a risk or risks among a group of persons that includes the person seeking to distribute that person's risk.

(b) "Insurance" includes:

(i) risk distributing arrangements providing for compensation or replacement for damages or loss through the provision of services or benefits in kind;

(ii) contracts of guaranty or suretyship entered into by the guarantor or surety as a business and not as merely incidental to a business transaction; and

(iii) plans in which the risk does not rest upon the person who makes the arrangements, but with a class of persons who have agreed to share it.

[~~(49)~~] (60) "Insurance adjuster" means a person who directs the investigation, negotiation, or settlement of a claim under an insurance policy other than life insurance or an annuity, on behalf of an insurer, policyholder, or a claimant under an insurance policy.

[~~(50)~~] (61) "Interinsurance exchange" is defined in Subsection [~~(81)~~] (100).

[~~(51)~~] (62) Except as provided in Subsection [~~31A-23-102(2)~~] 31A-23-201.5(1), "insurance agent" or "agent" means a person who represents insurers in soliciting, negotiating, or placing insurance.

[~~(52)~~] (63) Except as provided in Subsection [~~31A-23-102(2)~~] 31A-23-201.5(1), "insurance broker" or "broker" means a person who:

(a) acts in procuring insurance on behalf of an applicant for insurance or an insured; and

(b) does not act on behalf of the insurer except by collecting premiums or performing other ministerial acts.

[~~(53)~~] (64) "Insurance business" or "business of insurance" includes:

(a) providing health care insurance, as defined in Subsection [~~(41)~~] (51), by organizations that are or should be licensed under this title;

(b) providing benefits to employees in the event of contingencies not within the control of the employees, in which the employees are entitled to the benefits as a right, which benefits may be provided either:

(i) by single employers or by multiple employer groups; or

(ii) through trusts, associations, or other entities;

(c) providing annuities, including those issued in return for gifts, except those provided by persons specified in Subsections 31A-22-1305(2) and (3);

(d) providing the characteristic services of motor clubs as outlined in Subsection [~~(65)~~] (77);

(e) providing other persons with insurance as defined in Subsection [~~(48)~~] (59);

(f) making as insurer, guarantor, or surety, or proposing to make as insurer, guarantor, or surety, any contract or policy of title insurance;

(g) transacting or proposing to transact any phase of title insurance, including solicitation, negotiation preliminary to execution, execution of a contract of title insurance, insuring, and transacting matters subsequent to the execution of the contract and arising out of it, including reinsurance; and

(h) doing, or proposing to do, any business in substance equivalent to Subsections [~~(53)~~] (64)(a) through (g) in a manner designed to evade the provisions of this title.

[~~(54)~~] (65) Except as provided in Subsection [~~31A-23-102(2)~~] 31A-23-201.5(1), "insurance consultant" or "consultant" means a person who:

(a) advises other persons about insurance needs and coverages;

(b) is compensated by the person advised on a basis not directly related to the insurance placed; and

(c) is not compensated directly or indirectly by an insurer, agent, or broker for advice given.

[~~(55)~~] (66) "Insurance holding company system" means a group of two or more affiliated persons, at least one of whom is an insurer.

[~~(56)~~] (67) (a) "Insured" means a person to whom or for whose benefit an insurer makes a promise in an insurance policy and includes:

(i) policyholders;

(ii) subscribers;

(iii) members; and

(iv) beneficiaries.

(b) The definition in Subsection [~~(56)~~] (67)(a) applies only to this title and does not define the meaning of this word as used in insurance policies or certificates.

[~~(57)~~] (68) (a) (i) "Insurer" means any person doing an insurance business as a principal including:

(A) fraternal benefit societies;

(B) issuers of gift annuities other than those specified in Subsections 31A-22-1305(2) and (3);

(C) motor clubs;

(D) employee welfare plans; and

(E) any person purporting or intending to do an insurance business as a principal on that person's own account.

(ii) "Insurer" does not include a governmental entity, as defined in Section 63-30-2, to the extent it is engaged in the activities described in Section 31A-12-107.

(b) "Admitted insurer" is defined in Subsection [~~(94)~~] (115)(b).

(c) "Alien insurer" is defined in Subsection [~~(4)~~] (5).

(d) "Authorized insurer" is defined in Subsection [~~(94)~~] (115)(b).

(e) "Domestic insurer" is defined in Subsection [~~(31)~~] (36).

(f) "Foreign insurer" is defined in Subsection [~~(38)~~] (47).

(g) "Nonadmitted insurer" is defined in Subsection [~~(94)~~] (115)(a).

(h) "Unauthorized insurer" is defined in Subsection [~~(94)~~] (115)(a).

[~~(58)~~] (69) (a) Except as provided in Section 31A-1-103, "legal expense insurance" means insurance written to indemnify or pay for specified legal expenses.

(b) "Legal expense insurance" includes arrangements that create reasonable expectations of enforceable rights, but it does not include the provision of, or reimbursement for, legal services incidental to other insurance coverages.

[~~(59)~~] (70) (a) "Liability insurance" means insurance against liability:

(i) for death, injury, or disability of any human being, or for damage to property, exclusive of the coverages under:

(A) Subsection [~~(62)~~] (74) for medical malpractice insurance;

(B) Subsection [~~(77)~~] (92) for professional liability insurance; and

(C) Subsection [~~(97)~~] (118) for workers' compensation insurance;

(ii) for medical, hospital, surgical, and funeral benefits to persons other than the insured who are injured, irrespective of legal liability of the insured, when issued with or supplemental to insurance against legal liability for the death, injury, or disability of human beings, exclusive of the coverages under:

(A) Subsection [~~(62)~~] (74) for medical malpractice insurance;

(B) Subsection [~~(77)~~] (92) for professional liability insurance; and

(C) Subsection [~~(97)~~] (118) for workers' compensation insurance;

(iii) for loss or damage to property resulting from accidents to or explosions of boilers, pipes, pressure containers, machinery, or apparatus;

(iv) for loss or damage to any property caused by the breakage or leakage of sprinklers, water pipes and containers, or by water entering through leaks or openings in buildings; or

(v) for other loss or damage properly the subject of insurance not within any other kind or kinds of insurance as defined in this chapter, if such insurance is not contrary to law or public policy.

(b) "Liability insurance" includes:

(i) vehicle liability insurance as defined in Subsection [~~(95)~~] (116);

(ii) residential dwelling liability insurance as defined in Subsection [~~(83)~~] (102); and

(iii) making inspection of, and issuing certificates of inspection upon, elevators, boilers, machinery, and apparatus of any kind when done in connection with insurance on them.

[~~(60)~~] (71) "License" means the authorization issued by the insurance commissioner under this title to engage in some activity that is part of or related to the insurance business. It includes certificates of authority issued to insurers.

[~~(61)~~] (72) (a) "Life insurance" means insurance on human lives and insurances pertaining to or connected with human life.

(b) The business of life insurance includes:

(i) granting death benefits;

[~~(i)~~] (ii) granting annuity benefits;

[~~(ii)~~] (iii) granting endowment benefits;

[~~(iii)~~] (iv) granting additional benefits in the event of death by accident [~~or accidental means~~];

[~~(iv)~~] (v) granting additional benefits to safeguard the policy against lapse in the event of [~~the total and permanent~~] disability [~~of the insured~~]; and

[~~(v)~~] (vi) providing optional methods of settlement of proceeds.

(73) (a) "Long-term care insurance" means an insurance policy or rider advertised, marketed, offered, or designated to provide coverage:

(i) in a setting other than an acute care unit of a hospital;

(ii) for not less than 12 consecutive months for each covered person on the basis of:

(A) expenses incurred;

(B) indemnity;

(C) prepayment; or

(D) another method;

(iii) for one or more necessary or medically necessary services that are:

(A) diagnostic;

(B) preventative;

(C) therapeutic;

(D) rehabilitative;

(E) maintenance; or

(F) personal care; and

(iv) that may be issued by:

(A) an insurer;

(B) a fraternal benefit society;

(C) (I) a nonprofit health hospital; and

(II) a medical service corporation;

(D) a prepaid health plan;

(E) a health maintenance organization; or

(F) an entity similar to the entities described in Subsections (73)(a)(iv)(A) through (E) to the extent that the entity is otherwise authorized to issue life or health care insurance.

(b) "Long-term care insurance" includes:

(i) any of the following that provide directly or supplement long-term care insurance:

(A) a group or individual annuity or rider; or

(B) a life insurance policy or rider;

(ii) a policy or rider that provides for payment of benefits based on:

(A) cognitive impairment; or

(B) functional capacity; or

(iii) a qualified long-term care insurance contract.

(c) "Long-term care insurance" does not include:

(i) a policy that is offered primarily to provide basic Medicare supplement coverage;

(ii) basic hospital expense coverage;

(iii) basic medical/surgical expense coverage;

(iv) hospital confinement indemnity coverage;

(v) major medical expense coverage;

(vi) income replacement or related asset-protection coverage;

(vii) accident only coverage;

(viii) coverage for a specified:

(A) disease; or

(B) accident;

(ix) limited benefit health coverage; or

(x) a life insurance policy that accelerates the death benefit to provide the option of a lump sum payment:

(A) if neither the benefits nor eligibility is conditioned on the receipt of long-term care; and

(B) the coverage is for one or more the following qualifying events:

(I) terminal illness;

(II) medical conditions requiring extraordinary medical intervention; or

(III) permanent institutional confinement.

[~~(62)~~] (74) "Medical malpractice insurance" means insurance against legal liability incident to the practice and provision of medical services other than the practice and provision of dental services.

[~~(63)~~] (75) "Member" means a person having membership rights in an insurance corporation.

[~~(64)~~] (76) "Minimum capital" or "minimum required capital" means the capital that must be

constantly maintained by a stock insurance corporation as required by statute.

[~~(65)~~] (77) "Motor club" means a person:

(a) licensed under:

(i) Chapter 5, Domestic Stock and Mutual Insurance Corporations;

(ii) Chapter 11, Motor Clubs; or

(iii) Chapter 14, Foreign Insurers; and

(b) that promises for an advance consideration to provide for a stated period of time:

(i) legal services under Subsection 31A-11-102(1)(b);

(ii) bail services under Subsection 31A-11-102(1)(c); or

(iii) trip reimbursement, towing services, emergency road services, stolen automobile services, a combination of these services, or any other services given in Subsections 31A-11-102(1)(b) through (f).

[~~(66)~~] (78) "Mutual" means mutual insurance corporation.

[~~(67)~~] (79) "Nonparticipating" means a plan of insurance under which the insured is not entitled to receive dividends representing shares of the surplus of the insurer.

[~~(68)~~] (80) "Ocean marine insurance" means insurance against loss of or damage to:

(a) ships or hulls of ships;

(b) goods, freight, cargoes, merchandise, effects, disbursements, profits, moneys, securities, choses in action, evidences of debt, valuable papers, bottomry, respondentia interests, or other cargoes in or awaiting transit over the oceans or inland waterways;

(c) earnings such as freight, passage money, commissions, or profits derived from transporting goods or people upon or across the oceans or inland waterways; or

(d) a vessel owner or operator as a result of liability to employees, passengers, bailors, owners of other vessels, owners of fixed objects, customs or other authorities, or other persons in connection with maritime activity.

[~~(69)~~] (81) "Order" means an order of the commissioner.

(82) "Outline of coverage" means a summary that explains an accident and health insurance policy.

[~~(70)~~] (83) "Participating" means a plan of insurance under which the insured is entitled to receive dividends representing shares of the surplus of the insurer.

[~~(71)~~] (84) "Person" includes an individual, partnership, corporation, incorporated or unincorporated association, joint stock company, trust, reciprocal, syndicate, or any similar entity or combination of entities acting in concert.

[~~(72)~~] (85) (a) (i) "Policy" means any document, including attached endorsements and riders, purporting to be an enforceable contract, which memorializes in writing some or all of the terms of an insurance contract.

(ii) "Policy" includes a service contract issued by:

(A) a motor club under Chapter 11, Motor Clubs; [~~and~~]

(B) a service contract provided under Chapter 6a, Service Contracts; and

[~~(B)~~] (C) a corporation licensed under:

(I) Chapter 7, Nonprofit Health Service Insurance Corporations; or

(II) Chapter 8, Health Maintenance Organizations and Limited Health Plans.

(iii) "Policy" does not include:

(A) a certificate under a group insurance contract; or

(B) a document that does not purport to have legal effect.

(b) "Group insurance policy" means a policy covering a group of persons that is issued to a policyholder on behalf of the group, for the benefit of group members who are selected under procedures defined in the policy or in agreements which are collateral to the policy. This type of policy may include members of the policyholder's family or dependents.

(c) "Blanket insurance policy" means a group policy covering classes of persons without individual underwriting, where the persons insured are determined by definition of the class with or without designating the persons covered.

[~~(73)~~] (86) "Policyholder" means the person who controls a policy, binder, or oral contract by ownership, premium payment, or otherwise.

(87) "Policy illustration" means a presentation or depiction that includes nonguaranteed elements of a policy of life insurance over a period of years.

(88) "Policy summary" means a synopsis describing the elements of a life insurance policy.

[~~(74)~~] (89) (a) "Premium" means the monetary consideration for an insurance policy, and includes assessments, membership fees, required contributions, or monetary consideration, however designated.

(b) Consideration paid to third party administrators for their services is not "premium," though amounts paid by third party administrators to insurers for insurance on the risks administered by the third party administrators are "premium."

[~~(75)~~] (90) "Principal officers" of a corporation means the officers designated under Subsection 31A-5-203(3).

[~~(76)~~] (91) "Proceedings" includes actions and special statutory proceedings.

[~~(77)~~] (92) "Professional liability insurance" means insurance against legal liability incident to the practice of a profession and provision of any professional services.

[~~(78)~~] (93) "Property insurance" means insurance against loss or damage to real or personal property of every kind and any interest in that property, from all hazards or causes, and against loss consequential upon the loss or damage including vehicle comprehensive and vehicle physical damage coverages, but excluding inland marine insurance and ocean marine insurance as defined under Subsections [~~(46)~~] (57) and [~~(68)~~] (80).

[~~(79)~~] (94) (a) "Public agency insurance mutual" means any entity formed by joint venture or interlocal cooperation agreement by two or more political subdivisions or public agencies of the state for the purpose of providing insurance coverage for the political subdivisions or public agencies.

(b) Any public agency insurance mutual created under this title and Title 11, Chapter 13, Interlocal Cooperation Act, is considered to be a governmental entity and political subdivision of the state with all of the rights, privileges, and immunities of a governmental entity or political subdivision of the state.

(95) "Qualified long-term care insurance contract" or "federally tax qualified long-term care insurance contract" means:

(a) an individual or group insurance contract that meets the requirements of Section 7702B(b), Internal Revenue Code; or

(b) the portion of a life insurance contract that provides long-term care insurance:

(i) (A) by rider; or

(B) as a part of the contract; and

(ii) that satisfies the requirements of Section 7702B(b) and (e), Internal Revenue Code.

(96) (a) "Rate" means:

(i) the cost of a given unit of insurance; or

(ii) for property-casualty insurance, that cost of insurance per exposure unit either expressed as:

(A) a single number; or

(B) a pure premium rate, adjusted before any application of individual risk variations based on loss or expense considerations to account for the treatment of:

(I) expenses;

(II) profit; and

(III) individual insurer variation in loss experience.

(b) "Rate" does not include a minimum premium.

[~~(80)~~] (97) (a) Except as provided in Subsection [~~(80)~~] (97)(b), "rate service organization" means any person who assists insurers in rate making or filing by:

(i) collecting, compiling, and furnishing loss or expense statistics;

(ii) recommending, making, or filing rates or supplementary rate information; or

(iii) advising about rate questions, except as an attorney giving legal advice.

(b) "Rate service organization" does not mean:

(i) an employee of an insurer;

(ii) a single insurer or group of insurers under common control;

(iii) a joint underwriting group; or

(iv) a natural person serving as an actuarial or legal consultant.

(98) "Rating manual" means any of the following used to determine initial and renewal policy premiums:

(a) a manual of rates;

(b) classifications;

(c) rate-related underwriting rules; and

(d) rating formulas that describe steps, policies, and procedures for determining initial and renewal policy premiums.

(99) "Received by the department" means:

(a) except as provided in Subsection (99)(b), the date delivered to and stamped received by the department, whether delivered:

(i) in person;

(ii) by a delivery service; or

(iii) electronically; and

(b) if an item with a department imposed deadline is delivered to the department by a delivery service, the delivery service's postmark date or pick-up date unless otherwise stated in:

(i) statute;

(ii) rule; or

(iii) a specific filing order.

[~~(81)~~] (100) "Reciprocal" or "interinsurance exchange" means any unincorporated association of persons:

(a) operating through an attorney-in-fact common to all of them; and

(b) exchanging insurance contracts with one another that provide insurance coverage on each other.

[~~(82)~~] (101) "Reinsurance" means an insurance transaction where an insurer, for consideration, transfers any portion of the risk it has assumed to another insurer. In referring to reinsurance transactions, this title sometimes refers to:

(a) the insurer transferring the risk as the "ceding insurer"; and

(b) the insurer assuming the risk as the:

(i) "assuming insurer"; or

(ii) "assuming reinsurer."

[~~(83)~~] (102) "Residential dwelling liability insurance" means insurance against liability resulting from or incident to the ownership, maintenance, or use of a residential dwelling that is a detached single family residence or multifamily residence up to four units.

[~~(84)~~] (103) "Retrocession" means reinsurance with another insurer of a liability assumed under a reinsurance contract. A reinsurer "retrocedes" when it reinsures with another insurer part of a liability assumed under a reinsurance contract.

(104) "Rider" means an endorsement to:

(a) an insurance policy; or

(b) an insurance certificate.

[~~(85)~~] (105) (a) "Security" means any:

(i) note;

(ii) stock;

(iii) bond;

(iv) debenture;

(v) evidence of indebtedness;

(vi) certificate of interest or participation in any profit-sharing agreement;

(vii) collateral-trust certificate;

(viii) preorganization certificate or subscription;

(ix) transferable share;

(x) investment contract;

(xi) voting trust certificate;

(xii) certificate of deposit for a security;

(xiii) certificate of interest of participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease;

(xiv) commodity contract or commodity option;

(xv) any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the items listed in Subsections [~~(85)~~] (105)(a)(i) through (xiv); or

(xvi) any other interest or instrument commonly known as a security.

(b) "Security" does not include:

(i) any insurance or endowment policy or annuity contract under which an insurance company promises to pay money in a specific lump sum or periodically for life or some other specified period; or

(ii) a burial certificate or burial contract.

[~~(86)~~] (106) "Self-insurance" means any arrangement under which a person provides for spreading its own risks by a systematic plan.

(a) Except as provided in this Subsection [~~(86)~~] (106), self-insurance does not include an arrangement under which a number of persons spread their risks among themselves.

(b) Self-insurance does include an arrangement by which a governmental entity, as defined in Section 63-30-2, undertakes to indemnify its employees for liability arising out of the employees' employment.

(c) Self-insurance does include an arrangement by which a person with a managed program of self-insurance and risk management undertakes to indemnify its affiliates, subsidiaries, directors, officers, or employees for liability or risk which is related to the relationship or employment.

(d) Self-insurance does not include any arrangement with independent contractors.

(107) "Short-term care insurance" means any insurance policy or rider advertised, marketed, offered, or designed to provide coverage that is similar to long-term care insurance but that provides coverage for less than 12 consecutive months for each covered person.

[~~(87)~~] (108) (a) "Subsidiary" of a person means an affiliate controlled by that person either directly or indirectly through one or more affiliates or intermediaries.

(b) "Wholly owned subsidiary" of a person is a subsidiary of which all of the voting shares are owned by that person either alone or with its affiliates, except for the minimum number of shares the law of the subsidiary's domicile requires to be owned by directors or others.

[~~(88)~~] (109) Subject to Subsection [~~(48)~~] (59)(b), "surety insurance" includes:

(a) a guarantee against loss or damage resulting from failure of principals to pay or perform their obligations to a creditor or other obligee;

(b) bail bond insurance; and

(c) fidelity insurance.

[~~(89)~~] (110) (a) "Surplus" means the excess of assets over the sum of paid-in capital and liabilities.

(b) (i) "Permanent surplus" means the surplus of a mutual insurer that has been designated by the insurer as permanent.

(ii) Sections 31A-5-211, 31A-7-201, 31A-8-209, 31A-9-209, and 31A-14-209 require that mutuals doing business in this state maintain specified minimum levels of permanent surplus.

(iii) Except for assessable mutuals, the minimum permanent surplus requirement is essentially the same as the minimum required capital requirement that applies to stock insurers.

(c) "Excess surplus" means:

(i) for life or [~~disability insurers, as defined in Subsection 31A-17-601(3),~~] accident and health insurers, health organizations, and property and casualty insurers[~~,~~] as defined in [~~Subsection~~] Section 31A-17-601[~~(4)~~], the lesser of:

(A) that amount of an insurer's or health organization's total adjusted capital, as defined in Subsection [~~(92)~~] (113), that exceeds the product of:

(I) 2.5; and

(II) the sum of the insurer's or health organization's minimum capital or permanent surplus required under Section 31A-5-211, 31A-9-209, or 31A-14-205; or

(B) that amount of an insurer's or health organization's total adjusted capital, as defined in Subsection [~~(92)~~] (113), that exceeds the product of:

(I) 3.0; and

(II) the authorized control level RBC as defined in Subsection 31A-17-601[~~(7)~~](8)(a); and

(ii) for monoline mortgage guaranty insurers, financial guaranty insurers, and title insurers, that amount of an insurer's paid-in-capital and surplus that exceeds the product of:

(A) 1.5; and

(B) the insurer's total adjusted capital required by Subsection 31A-17-609(1).

[~~(90)~~] (111) "Third party administrator" or "administrator" means any person who collects charges or premiums from, or who, for consideration, adjusts or settles claims of residents of the state in connection with insurance coverage, annuities, or service insurance coverage, except:

(a) a union on behalf of its members;

(b) a person [~~exempt as a trust under Section 514 of~~] administering any:

(i) pension plan subject to the federal Employee Retirement Income Security Act of 1974;

(ii) governmental plan as defined in Section 414(d), Internal Revenue Code; or

(iii) nonelecting church plan as described in Section 410(d), Internal Revenue Code;

(c) an employer on behalf of the employer's employees or the employees of one or more of the subsidiary or affiliated corporations of the employer;

(d) an insurer licensed under Chapter 5, 7, 8, 9, or 14, but only [~~with respect to insurance issued by the insurer~~] for a line of insurance for which the insurer holds a license in this state; or

(e) a person licensed or exempt from licensing under Chapter 23 or 26 whose activities are limited to those authorized under the license the person holds or for which the person is exempt.

[~~(91)~~] (112) "Title insurance" means the insuring, guaranteeing, or indemnifying of owners of real or personal property or the holders of liens or encumbrances on that property, or others interested in the property against loss or damage suffered by reason of liens or encumbrances upon, defects in, or the unmarketability of the title to the property, or invalidity or unenforceability of any liens or encumbrances on the property.

[~~(92)~~] (113) "Total adjusted capital" means the sum of an insurer's or health organization's statutory capital and surplus as determined in accordance with:

(a) the statutory accounting applicable to the annual financial statements required to be filed under Section 31A-4-113; and

(b) any other items provided by the RBC instructions, as RBC instructions is defined in [~~Subsection~~] Section 31A-17-601[~~(6)~~].

[~~(93)~~] (114) (a) "Trustee" means "director" when referring to the board of directors of a corporation.

(b) "Trustee," when used in reference to an employee welfare fund, means an individual, firm, association, organization, joint stock company, or corporation, whether acting individually or jointly and whether designated by that name or any other, that is charged with or has the overall management of an employee welfare fund.

[~~(94)~~] (115) (a) "Unauthorized insurer," "unadmitted insurer," or "nonadmitted insurer" means an insurer:

(i) not holding a valid certificate of authority to do an insurance business in this state; or

(ii) transacting business not authorized by a valid certificate.

(b) "Admitted insurer" or "authorized insurer" means an insurer:

(i) holding a valid certificate of authority to do an insurance business in this state; and

(ii) transacting business as authorized by a valid certificate.

[~~(95)~~] (116) "Vehicle liability insurance" means insurance against liability resulting from or incident to ownership, maintenance, or use of any land vehicle or aircraft, exclusive of vehicle comprehensive and vehicle physical damage coverages under Subsection [~~(78)~~] (93).

[~~(96)~~] (117) "Voting security" means a security with voting rights, and includes any security convertible into a security with a voting right associated with it.

[~~(97)~~] (118) "Workers' compensation insurance" means:

(a) insurance for indemnification of employers against liability for compensation based on:

(i) compensable accidental injuries; and

(ii) occupational disease disability;

(b) employer's liability insurance incidental to workers compensation insurance and written in connection with it; and

(c) insurance assuring to the persons entitled to workers compensation benefits the compensation provided by law.

Section 6. Section 31A-2-214 is amended to read:

31A-2-214. Market assistance programs -- Joint underwriting associations.

(1) (a) If the commissioner finds that in any part of this state a line of insurance is not generally available in the marketplace or that it is priced in such a manner as to severely limit its availability, and that the public interest requires it, [~~he~~] the commissioner may by rule implement a market assistance program whereby all licensed insurers and agents may pool their information as to the available markets.

(b) Insurers doing business in this state may, at their own instance or at the request of the commissioner, prepare and submit to the commissioner, for [~~his~~] the commissioner's approval and adoption, voluntary plans providing any line of insurance coverage for all or any part of this state in which this insurance is not generally available in the voluntary market or is priced in such a manner as to severely limit its availability and in which the public interest requires the availability of this coverage.

(2) (a) If the commissioner finds after notice and hearing that a market assistance program formed under Subsection (1)(a) or (b) has not met the needs it was intended to address, [~~he~~] the commissioner may by rule form a joint underwriting association to make available the insurance to applicants who are in good faith entitled to but unable to procure this insurance through ordinary methods.

(b) The commissioner shall allow any market assistance program formed under Subsection (1)(a) or (b) a minimum of 30 days operation before [~~he~~] the commissioner forms a joint underwriting association. The commissioner may not adopt a rule forming a joint underwriting association unless [~~he~~] the commissioner finds as a result of the hearing that:

(i) a certain coverage is not available or that the price for that coverage is no longer commensurate with the risk in this state; and

(ii) the coverage is:

(A) vital to the economic health of this state[~~, is~~];

(B) vital to the quality of life in this state[~~, is~~];

(C) vital in maintaining competition in insurance in this state[~~,~~]; or

(D) the number of people affected is significant enough to justify its creation.

[~~(b)~~] (c) The commissioner may not adopt a rule forming a joint underwriting association under Subsection (2)(a) on the basis that applicants for particular lines of insurance are unable to pay a premium that is commensurate with the risk involved or that the number of applicants or people affected is too small to justify its creation.

[~~(c)~~] (d) Each joint underwriting association formed under Subsection (2)(a) shall require participation by all insurers licensed and engaged in writing that line of insurance or any component of that line of insurance within this state.

[~~(d)~~] (e) Each association formed under Subsection (2)(a) shall:

(i) give consideration to:

(A) the need for adequate and readily accessible coverage;

(B) alternative methods of improving the market affected;

(C) the preference of the insurers and agents;

(D) the inherent limitations of the insurance mechanism;

(E) the need for reasonable underwriting standards; and

(F) the requirement of reasonable loss prevention measures;

(ii) establish procedures that will create minimum interference with the voluntary market;

(iii) allocate the burden imposed by the association equitably and efficiently among the insurers doing business in this state;

(iv) establish procedures for applicants and participants to have grievances reviewed by an impartial body;

(v) provide for the method of classifying risks and making and filing applicable rates; and

(vi) specify:

(A) the basis of participation of insurers and agents in the association;

(B) the conditions under which risks must be accepted; and

(C) the commission rates to be paid for insurance business placed with the association.

[~~(e)~~] (f) Any deficit in an association in any year shall be recouped by rate increases for the association, applicable prospectively. Any surplus in excess of the loss reserves of the association in any year shall be distributed either by rate decreases or by distribution to the members of the association on a pro-rata basis.

(3) Notwithstanding [~~the provisions of~~] Subsection (2), the commissioner may not create a joint underwriting association under [~~that subsection~~] Subsection (2) for:

(a) life insurance[~~,~~];

(b) annuities[~~, disability~~];

(c) accident and health insurance[~~,~~];

(d) ocean marine insurance[~~,~~];

(e) medical malpractice insurance[~~,~~];

(f) earthquake insurance[~~,~~];

(g) workers' compensation insurance[~~,~~];

(h) public agency insurance mutuals[~~,~~]; or

(i) private passenger automobile liability insurance.

(4) Every insurer and agent participating in a joint underwriting association adopted by the commissioner under Subsection (2) shall provide the services prescribed by the association to any person seeking coverage of the kind available in the plan, including full information about the requirements and procedures for obtaining coverage with the association.

(5) If the commissioner finds that the lack of cooperating insurers or agents in an area makes the functioning of the association difficult, [~~he~~] the commissioner may order the association to:

(a) establish branch service offices[~~,~~];

(b) make special contracts for provision of the service[~~,~~]; or

(c) take other appropriate steps to ensure that service is available.

(6) The association may issue policies for a period of one year. If, at the end of any one year period, the commissioner determines that the market conditions justify the continued existence of the association, [~~he~~] the commissioner may reauthorize its existence. In reauthorizing the association, the commissioner shall follow the procedure set forth in Subsection (2).

Section 7. Section 31A-2-217 is enacted to read:

31A-2-217. Coordination with other states.

(1) (a) Subject to Subsection (1)(b), the commissioner, by rule, may adopt one or more agreements with another governmental regulatory agency, within and outside of this state, or with the National Association of Insurance Commissioners to address:

(i) licensing of insurance companies;

(ii) licensing of agents;

(iii) regulation of premium rates and policy forms; and

(iv) regulation of insurer insolvency and insurance receiverships.

(b) An agreement described in Subsection (1)(a), may authorize the commissioner to modify a requirement of this title if the commissioner determines that the requirements under the agreement provide protections similar to or greater than the requirements under this title.

(2) (a) The commissioner may negotiate an interstate compact that addresses issuing certificates of authority, if the commissioner determines that:

(i) each state participating in the compact has requirements for issuing certificates of authority that provide protections similar to or greater than the requirements of this title; or

(ii) the interstate compact contains requirements for issuing certificates of authority that provide protections similar to or greater than the requirements of this title.

(b) If an interstate compact described in Subsection (2)(a) is adopted by the Legislature, the commissioner may issue certificates of authority to insurers in accordance with the terms of the interstate compact.

(3) If any provision of this title conflicts with a provision of the annual statement instructions or the National Association of Insurance Commissioners Accounting Practices and Procedures Manual, the commissioner may, by rule, resolve the conflict in favor of the annual statement instructions or the National Association of Insurance Commissioners Accounting Practices and Procedures Manual.

(4) The commissioner may, by rule, accept the information prescribed by the National Association of Insurance Commissioners instead of the documents required to be filed with an application for a certificate of authority under:

(a) Section 31A-4-103, 31A-5-204, 31A-8-205, or 31A-14-201; or

(b) rules made by the commissioner.

(5) Before November 30, 2001, the commissioner shall report to the Business, Labor, and Economic Development Interim Committee regarding the status of:

(a) any agreements entered into under Subsection (1);

(b) any interstate compact entered into under Subsection (2); and

(c) any rule made under Subsections (3) and (4).

(6) This section shall be repealed in accordance with Section 63-55-231.

Section 8. Section 31A-4-103 is amended to read:

31A-4-103. Certificate of authority.

(1) Each certificate of authority issued by the commissioner shall specify:

(a) the name of the insurer[~~,~~];

(b) the kinds of insurance it is authorized to transact in Utah[~~,~~]; and

(c) any other information the commissioner requires.

(2) A certificate of authority issued under this chapter remains in force until, under Subsection (3), the certificate of authority is:

(a) revoked;

(b) suspended; or

(c) limited.

(3) (a) After an adjudicative proceeding under Title 63, Chapter 46b, Administrative Procedures Act, the commissioner may revoke, suspend, or

limit in whole or in part the certificate of authority of any insurer if:

(i) the insurer is found to have:

(A) failed to pay when due any fee due under Section 31A-3-103;

(B) violated or failed to comply with:

(I) this title;

(II) a rule made under Subsection 31A-2-201(3); or

(III) an order issued under Subsection 31A-2-201(4); or

(ii) the insurer's methods and practices in the conduct of business endanger the legitimate interests of customers and the public.

(b) An order suspending or limiting a certificate of authority issued under this chapter shall specify:

(i) the period of the suspension or limitation, which in no event may be in excess of 12 months;

(ii) the conditions and limitations imposed on the insurer during the suspension or limitation; and

(iii) the conditions and procedures for reinstatement from suspension or limitation.

(4) Subject to the requirements of this section and in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commissioner shall by rule prescribe procedures to renew or reinstate a certificate of authority.

(5) An insurer under this chapter whose certificate of authority is suspended or revoked, but that continues to act as an authorized insurer, is subject to the penalties for acting as an insurer without a certificate of authority.

(6) Any insurer holding a certificate of authority in this state shall immediately report to the commissioner a suspension or revocation of that insurer's certificate of authority in any:

(a) state;

(b) the District of Columbia; or

(c) a territory of the United States.

(7) (a) An order revoking a certificate of authority under Subsection (3) may specify a time within which the former authorized insurer may not apply for a new certificate of authority, except that the time may not exceed five years from the date the certificate of authority is revoked.

(b) If no time is specified in an order revoking a certificate of authority under Subsection (3), the former authorized insurer may not apply for a new certificate of authority for five years from the date the certificate of authority is revoked without express approval by the commissioner.

(8) (a) Subject to Subsection (8)(b), the insurer shall pay all fees under Section 31A-3-103 that would have been payable if the certificate of authority had not been suspended or revoked, unless the commissioner, in accordance with rule, waives the payment of the fees by no later than the day of:

(i) a suspension under Subsection (3) of an insurer's certificate of authority ends; or

(ii) a new certificate of authority is issued to an insurer whose certificate of authority is revoked under Subsection (3).

(b) If a new certificate of authority is issued more than three years after the revocation of a similar certificate of authority, this Subsection (8) applies only to the fees that would have accrued during the three years immediately following the revocation.

Section 9. Section 31A-4-113 is amended to read:

31A-4-113. Annual statements.

(1) (a) Each authorized insurer shall annually, on or before March 1, file with the commissioner a true statement of its financial condition, transactions, and affairs as of December 31 of the preceding year. [~~This~~]

(b) The statement required by Subsection (1)(a) shall be:

(i) verified by the oaths of at least two of the insurer's principal officers[.]; and

(ii) in the general form and provide the information as prescribed by the commissioner by rule.

(c) The commissioner may, for good cause shown, extend the date for filing the statement[~~. The~~] required by Subsection (1)(a), except that the deadline for filing fee payment may not be extended.

[~~(2) The statement shall be in the general form and provide the information as prescribed by rule of the commissioner. In the absence of a statute providing otherwise, the statement shall be prepared in accordance with the annual statement instructions and the Accounting Practices and Procedures Manual which is published by the National Association of Insurance Commissioners.~~]

[~~(3)~~] (2) The annual statement of an alien insurer shall:

(a) relate only to its transactions and affairs in the United States unless the commissioner requires otherwise[~~. The statement shall~~]; and

(b) be verified by:

(i) the insurer's United States manager; or [~~by its~~]

(ii) the insurer's authorized officers.

Section 10. Section 31A-5-211 is amended to read:

31A-5-211. Minimum capital or permanent surplus requirements.

(1) (a) Except as provided in Subsections (4) and (5), insurers being organized or operating under this chapter shall maintain minimum capital or

permanent surplus for a mutual, in amounts specified in Subsection (2).

(b) The certificate of authority issued under Section 31A-5-212 does not permit an insurer to transact types of insurance for which the insurer does not have the required minimum capital or permanent surplus for a mutual, in at least the amounts specified under Subsection (2).

(c) The types of insurance under this section are defined in Section 31A-1-301. Minimum capital and permanent surplus requirements under this section are based upon all types of insurance transacted by the insurer in any and all areas which it operates, whether or not only a portion of those types of insurance is or is to be transacted in this state.

(2) The minimum capital, or permanent surplus for a nonassessable mutual, is as follows for the indicated types of insurance:

(a) life, annuity, [~~disability~~] accident and health, or any combination of these $400,000

(b) subject to an aggregate maximum of $1,000,000 for more than one of the following types of coverages:

(i) property insurance 200,000

(ii) surety insurance 300,000

(iii) bail bonds insurance only 100,000

(iv) marine and transportation insurance 200,000

(v) vehicle liability insurance, residential dwelling liability insurance, or both 400,000

(vi) liability insurance 600,000

(vii) workers' compensation insurance 300,000

(c) title insurance 200,000

(d) professional liability insurance, excluding medical malpractice 700,000

(e) professional liability, including medical malpractice 1,000,000

(f) all types of insurance, except life, annuity, or title 2,000,000

(3) Prior to beginning operations, an insurer licensed under this chapter shall have total adjusted capital in excess of the company action level RBC as defined in Subsection 31A-17-601[~~(7)~~](8)(b).

(4) (a) Subject to Subsections (4)(b) and (4)(c), an insurer holding a valid certificate of authority to transact insurance in this state prior to July 1, 1986, continues to be authorized to transact the same kinds of insurance as permitted by that certificate of authority, if the insurer maintains not less than the amount of minimum capital or permanent surplus required for that authority under the laws of this state in force immediately prior to July 1, 1986.

(b) If, after July 1, 1986, an insurer ever has minimum capital or permanent surplus that meets or exceeds the requirements of Subsections (2) and (3), then Subsection (4)(a) is inapplicable to that insurer and it shall comply with Subsections (2) and (3).

(c) Any insurer satisfying the minimum capital or permanent surplus requirement through application of Subsection (4)(a) shall comply with Subsections (2) and (3) by July 1, 1990.

(d) Beginning July 1, 1987, former county mutuals shall comply with the capital and surplus requirements of this section.

(5) (a) An assessable mutual may be organized under this chapter, but it may not issue life insurance or annuities. An assessable mutual need not have a permanent surplus if the assessment liability of its policyholders is unlimited and all insurance policies clearly state that. If assessments are limited to a specified amount or a specified multiple of annual advance premiums, the minimum permanent surplus is the amount that would be required under Subsections (2) and (3) if the corporation were not assessable, reduced by an amount that reasonably reflects the value of the policyholders' assessment liability in satisfying the financial needs of the corporation. The liability of members in an assessable mutual is joint and several up to the limits provided by the articles of incorporation or this title.

(b) (i) Except as provided in Subsections (5)(c) and (d), no certificate of authority may be issued to an assessable mutual until it has at least 400 bona fide applications for insurance from not less than 400 separate applicants, on separate risks located in this state, in each of the classes of business upon which assessments may be separately levied. A full year's premium shall be paid with each application and the aggregate premium is at least $50,000 for each class.

(ii) If at any time while the corporation is an assessable mutual, the business plan is amended to include an additional class of business on which assessments may be separately levied, identical requirements of Subsection (5)(b)(i) are applicable to each additional class.

(c) Five or more employers may join in the formation of an assessable mutual to write only workers' compensation insurance if, instead of the requirements of Subsection (5)(b), policies are simultaneously put into effect that cover at least 1,500 employees, with no single employer having more than 1/5 of the employees insured by the assessable mutual. A full year's premium shall be paid by each employer, aggregating at least $200,000.

(d) The number and amount of required initial applications and premium payments may be reduced by substituting surplus for the applications or premium payments. The commissioner shall determine the reduction in required initial applications and premium payments that is

appropriate for a given amount of surplus. The insurer shall continue to be assessable until conversion under Subsection 31A-5-508(1) to a nonassessable mutual.

(6) The capital or permanent surplus requirements of Subsection (2) apply to persons seeking certificates of authority under this chapter to write reinsurance. This subsection may not be construed as requiring reinsurers to obtain a certificate of authority. However, Section 31A-17-404 imposes alternate safety prerequisites to reserve credit being granted for reinsurance ceded to a reinsurer without a certificate of authority.

Section 11. Section 31A-5-418 is amended to read:

31A-5-418. Dividends and other distributions.

(1) Subject to the requirements of Section 16-10a-842 and Subsection 31A-16-106(2), a stock corporation may make distributions under Section 16-10a-640 if all the following conditions are satisfied:

(a) A dividend may not be paid that would reduce the insurer's total adjusted capital below the insurer's company action level RBC as defined in Subsection 31A-17-601[~~(7)~~](8)(b).

(b) Except as to excess surplus, or unless the commissioner issues an order allowing otherwise, a dividend may not be paid that exceeds the insurer's net gain from operations or net income for the period ending December 31 of the preceding year.

(2) Title 67, Chapter 4a, Unclaimed Property Act, applies to unclaimed dividends and distributions in insurance corporations.

Section 12. Section 31A-5-703 is amended to read:

31A-5-703. Nonrenewals, cancellations, or revisions of ceded reinsurance agreements.

(1) (a) A nonrenewal, cancellation, or revision of ceded reinsurance agreements is not subject to the reporting requirements of Section 31A-5-701 if:

(i) the nonrenewal, cancellation, or revision is not material; or

(ii) with respect to a property and casualty business, the insurer's total ceded written premium [~~represents~~], on an annualized basis, is less than 10% of its total written premium for direct and assumed business; or

(iii) with respect to a life, annuity, and [~~disability~~] accident and health business, the total reserve credit taken for business ceded [~~represents~~], on an annualized basis, is less than 10% of the statutory reserve requirement prior to a cession.

(b) For purposes of this part, a material nonrenewal, cancellation, or revision is one that affects:

(i) with respect to a property and casualty business:

(A) more than 50% of the insurer's total ceded written premium; or

(B) more than 50% of the insurer's total ceded indemnity and loss adjustment reserves;

(ii) with respect to a life, annuity, and [~~disability~~] accident and health business, more than 50% of the total reserve credit taken for business ceded, on an annualized basis, as indicated in the insurer's most recent annual statement; or

(iii) with respect to either property and casualty or life, annuity, or [~~disability~~] accident and health business[~~, is either of the following events~~]:

(A) an authorized reinsurer representing more than 10% of a total cession is replaced by one or more unauthorized reinsurers; or

(B) previously established collateral requirements have been reduced or waived as respects one or more unauthorized reinsurers representing collectively more than 10% of a total cession.

(2) (a) The following information is required to be disclosed in any report filed pursuant to Section 31A-5-701 of a material nonrenewal, cancellation, or revision of a ceded reinsurance agreement:

(i) the effective date of the nonrenewal, cancellation, or revision;

(ii) the description of the transaction with an identification of the initiator of the transaction;

(iii) the purpose of, or reason for the transaction; and

(iv) if applicable, the identity of the replacement reinsurers.

(b) (i) Insurers are required to report all material nonrenewals, cancellations, or revisions of ceded reinsurance agreements on a nonconsolidated basis unless the insurer:

(A) is part of a consolidated group of insurers that uses a pooling arrangement or 100% reinsurance agreement that affects the solvency and integrity of the insurer's reserves; and

(B) ceded substantially all of its direct and assumed business to the pool.

(ii) An insurer is considered to have ceded substantially all of its direct and assumed business to a pool if:

(A) the insurer has less than $1,000,000 total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement; and

(B) the net income of the business not subject to the pooling arrangement represents less than 5% of the insurer's capital and surplus.

Section 13. Section 31A-6a-102 is amended to read:

31A-6a-102. Scope and purposes.

(1) The purposes of this chapter are to:

(a) create a legal framework within which service contracts may be sold in this state;

(b) encourage innovation in the marketing and development of more economical and effective ways of providing services under service contracts, while placing the risk of innovation on the service contract providers rather than on consumers; and

(c) permit and encourage fair and effective competition among different systems of providing and paying for these services.

(2) Service contracts may not be issued, sold, or offered for sale in this state unless the provider has complied with this chapter. [~~Subsections 31A-1-103(3)(i), (j), and (k) limit the application of this chapter to certain persons engaged in a limited manner in providing extended warranties or service contracts.~~]

(3) This chapter applies only to a service contract not otherwise exempted from this title by Section 31A-1-103.

Section 14. Section 31A-6a-110 is amended to read:

31A-6a-110. Rulemaking.

(1) Pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commissioner may make rules necessary to assist in the enforcement of this chapter.

(2) The commissioner may by rule or order, after a hearing, exempt certain service contract providers or service contract providers for a specific class of service contracts that are not otherwise exempt under [~~Subsections~~] Subsection 31A-1-103(3)[~~(i), (j), or (k),~~] from any provision of this title. The commissioner may order substitute requirements on a finding that a particular provision of this title is not necessary for the protection of the public or that the substitute requirement is reasonably certain to provide equivalent protection to the public.

Section 15. Section 31A-8-101 is amended to read:

31A-8-101. Definitions.

For purposes of this chapter:

(1) "Basic health care services" means:

(a) emergency care[~~,~~];

(b) inpatient hospital and physician care[~~,~~];

(c) outpatient medical services[~~,~~]; and

(d) out-of-area coverage.

(2) "Director of health" means the executive director of the Department of Health or his authorized representative.

(3) "Enrollee" means [~~any~~] an individual:

(a) who has entered into a contract with [~~a health maintenance~~] an organization for health care; or

(b) in whose behalf [~~such~~] an arrangement for health care has been made.

(4) "Health care" [~~means professional or personal services, facilities, equipment, devices, supplies, or medicine, intended for use in the diagnosis, treatment, mitigation, or prevention of any human ailment or impairment~~] is as defined in Section 31A-1-301.

(5) "Health maintenance organization" means any person[~~,~~]:

(a) other than:

(i) an insurer licensed under Chapter 7; or

(ii) an individual who contracts to render professional or personal services that [~~he~~] the individual directly performs [~~himself, which:~~]; and

(b) that:

[~~(a)~~] (i) furnishes at a minimum, either directly or through arrangements with others, basic health care services to an enrollee in return for prepaid periodic payments agreed to in amount prior to the time during which the health care may be furnished; and

[~~(b)~~] (ii) is obligated to the enrollee to arrange for or to directly provide available and accessible health care.

(6) (a) "Limited health plan" means, except as limited under Subsection (6)(b), any person who furnishes, either directly or through arrangements with others, [~~the~~] services:

(i) of:

(A) dentists[~~,~~];

(B) optometrists[~~,~~];

(C) physical therapists[~~,~~];

(D) podiatrists[~~,~~];

(E) psychologists[~~,~~];

(F) physicians[~~,~~];

(G) chiropractic physicians[~~,~~];

(H) naturopathic physicians[~~,~~];

(I) osteopathic physicians[~~,~~];

(J) social workers[~~,~~];

(K) family counselors[~~,~~];

(L) other health care providers[~~,~~]; or

(M) reasonable combinations of [~~these,~~] the services described in this Subsection (1)(a)(i);

(ii) to an enrollee;

(iii) in return for prepaid periodic payments agreed to in amount prior to the time during which the services may be furnished[~~,~~]; and [~~who is~~]

(iv) for which the person is obligated to the enrollee to arrange for or directly provide available and accessible the services described in this Subsection (6)(a).

(b) "Limited health plan" does not include:

(i) a health maintenance organization;

(ii) an insurer licensed under Chapter 7; or

(iii) an individual who contracts to render professional or personal services that he performs himself.

(7) (a) "Nonprofit organization" or "nonprofit corporation" means an organization no part of the income of which is distributable to its members, trustees, or officers, or a nonprofit cooperative association, except in a manner allowed under Section 31A-8-406.

(b) "Nonprofit health maintenance organization" and "nonprofit limited health plan" are used when referring specifically to one of the types of organizations with "nonprofit" status.

(8) "Organization" means health maintenance organization and limited health plan, unless used in the context of:

(a) "organization permit," in which case see Sections 31A-8-204 and 31A-8-206[~~,~~]; or [~~unless used in the context of~~]

(b) "organization expenses," in which case see Section 31A-8-208.

(9) "Participating provider" means a provider as defined in Subsection (10) who, under [~~an express or implied~~] a contract with the health maintenance organization, has agreed to provide health care services to enrollees with an expectation of receiving payment, directly or indirectly, from the health maintenance organization, other than copayment.

(10) "Provider" means any person who furnishes health care directly to the enrollee and who is licensed or otherwise authorized to furnish this care in this state.

(11) "Uncovered expenditures" means the costs of health care services that are covered by an organization for which an enrollee is liable in the event of the organization's insolvency.

(12) "Unusual or infrequently used health services" means those health services which are projected to involve fewer than 10% of the organization's enrollees' encounters with providers, measured on an annual basis over the organization's entire enrollment.

Section 16. Section 31A-8-103 (Effective 04/30/01) is amended to read:

31A-8-103 (Effective 04/30/01). Applicability to other provisions of law.

(1) (a) Except for exemptions specifically granted under this title, [~~organizations are~~] an organization is subject to regulation under all of the provisions of this title.

(b) Notwithstanding any provision of this title, [~~organizations~~] an organization licensed under this chapter [~~are~~] is:

(i) wholly exempt from [~~the provisions of~~] Chapters 7, 9, 10, 11, 12, 13, 19, and 28[~~. In addition, organizations are~~] and not subject to:

[~~(a)~~] (A) Chapter 3, except for Part I;

[~~(b)~~] (B) Section 31A-4-107;

[~~(c)~~] (C) Chapter 5, except for provisions specifically made applicable by this chapter;

[~~(d)~~] (D) Chapter 14, except for provisions specifically made applicable by this chapter;

[~~(e) Chapters~~] (E) Chapter 17 [~~and 18~~], except:

(I) Part VI; or

(II) as made applicable by the commissioner by rule consistent with this chapter; [~~and~~]

(F) Chapter 18, except as made applicable by the commissioner by rule consistent with this chapter; and

[~~(f)~~] (G) Chapter 22, except for Parts VI, VII, and XII.

(2) The commissioner may by rule waive other specific provisions of this title that [~~he~~] the commissioner considers inapplicable to health maintenance organizations or limited health plans, upon a finding that [~~such a~~] the waiver will not endanger the interests of:

(a) enrollees[~~,~~];

(b) investors[~~,~~]; or

(c) the public.

(3) Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, and Title 16, Chapter 10a, Utah Revised Business Corporation Act, do not apply to [~~organizations~~] an organization except as specifically made applicable by:

(a) this chapter;

(b) a provision referenced under this chapter; or

(c) a rule adopted by the commissioner to deal with corporate law issues of health maintenance organizations that are not settled under this chapter.

(4) (a) Whenever in this chapter [~~a section, subsection, or paragraph of~~], Chapter 5, or Chapter 14 is made applicable to [~~organizations~~] an organization, the application is:

(i) of those provisions that apply to a mutual [~~corporations~~] corporation if the organization is nonprofit; and

(ii) of those that apply to a stock [~~corporations~~] corporation if the organization is for profit. [~~Whenever a provision under~~]

(b) When Chapter 5 or 14 is made applicable to [~~organizations~~] an organization under this chapter, "mutual" means nonprofit organization.

(5) Solicitation of enrollees by an organization is not a violation of any provision of law relating to solicitation or advertising by health professionals if

that solicitation is made in accordance with [~~the provisions of~~]:

(a) this chapter; and

(b) Chapter 23.

(6) Nothing in this title prohibits any health maintenance organization from meeting the requirements of any federal law that enables the health maintenance organization to:

(a) receive federal funds; or [~~to~~]

(b) obtain or maintain federal qualification status.

(7) Except as provided in Section 31A-8-501, [~~organizations are~~] an organization is exempt from statutes in this title or department rules that restrict or limit [~~their~~] its freedom of choice in contracting with or selecting health care providers, including Section 31A-22-618.

(8) [~~Organizations are exempt from~~] the assessment or payment of premium taxes imposed by Sections 59-9-101 through 59-9-104.

Section 17. Section 31A-8-209 is amended to read:

31A-8-209. Minimum capital or minimum permanent surplus.

(1) [~~Health~~] A health maintenance [~~organizations~~] organization being organized or operating under this chapter shall have and maintain a minimum capital or minimum permanent surplus of $100,000.

[~~(2) Limited health plans being organized or operating under this chapter shall have and maintain a minimum capital or permanent surplus in an amount determined under Subsection 31A-8-210 (9).~~]

[~~(3) For purposes of measuring compliance with Section 31A-8-210, to the extent an organization has capital or permanent surplus in excess of its required minimum capital, or in excess of its required minimum permanent surplus, the excess shall be counted as surplus.~~]

(2) (a) The minimum required capital or minimum permanent surplus for a limited health plan:

(i) is at least $10,000; and

(ii) may not exceed $100,000.

(b) The initial minimum required capital or minimum permanent surplus for a limited health plan required by Subsection (2)(a) shall be set by the commissioner, after:

(i) a hearing; and

(ii) consideration of:

(A) the services to be provided by the limited health plan;

(B) the size and geographical distribution of the population the limited health plan anticipates serving;

(C) the nature of the limited health plan's arrangements with providers; and

(D) the arrangements, agreements, and relationships in place or reasonably anticipated with respect to:

(I) insolvency insurance;

(II) reinsurance;

(III) lenders subordinating to the interests of enrollees and trade creditors;

(IV) personal and corporate financial guarantees;

(V) provider withholds and assessments;

(VI) surety bonds;

(VII) hold harmless agreements in provider contracts; and

(VIII) other arrangements, agreements, and relationships impacting the security of enrollees.

(c) Upon a material change in the scope or nature of a limited health plan's operations, the commissioner may, after a hearing, alter the limited health plan's minimum required capital or minimum permanent surplus.

(3) Before beginning operations, a health maintenance organization licensed under this chapter shall have total adjusted capital in excess of the company action level RBC as defined in Subsection 31A-17-601(8)(b).

(4) Each health maintenance organization authorized to do business in this state shall maintain assets in an amount equal to the total of the health maintenance organization's:

(a) liabilities;

(b) minimum capital or minimum permanent surplus required by Subsection (1) or (2); and

(c) the company action level RBC as defined in Subsection 31A-17-601(8)(b).

(5) As a prerequisite to receiving an original certificate of authority to do business in this state, a health maintenance organization shall have initial surplus at least $400,000 in excess of the capital and surplus required by Subsection (4).

[~~(4)~~] (6) The commissioner may allow the minimum capital or permanent surplus account of an organization to be designated by some other name.

(7) A pattern of persistent deviation from the accounting and investment standards under this section may be grounds for the commissioner to find that the one or more persons with authority to make the organization's accounting or investment decisions are incompetent for purposes of Subsection 31A-5-410(3).

Section 18. Section 31A-8-211 is amended to read:

31A-8-211. Deposit.

(1) Except as provided in Subsection (2), each health maintenance organization authorized in this

state shall maintain a deposit with the commissioner under Section 31A-2-206 in an amount equal to the sum of:

(a) the health maintenance organization's minimum capital or minimum permanent surplus [~~plus~~] requirement of Subsection 31A-8-209(1) or (2); and

(b) 50% of [~~compulsory surplus.~~] the greater of:

(i) $900,000;

(ii) 2% of the annual premium revenues as reported on the most recent annual financial statement filed with the commissioner; or

(iii) an amount equal to the sum of three months uncovered health care expenditures as reported on the most recent financial statement filed with the commissioner.

(2) [~~A~~] (a) After a hearing the commissioner may exempt a health maintenance organization from the deposit requirement of Subsection (1) if:

(i) the commissioner determines that the enrollees' interests are adequately protected;

(ii) the health maintenance organization [~~which~~] has been continuously authorized to do business in this state for at least five years[~~,~~]; and [~~which~~]

(iii) the health maintenance organization has $5,000,000 surplus [~~over and above~~] in excess of its [~~compulsory surplus in an amount specified in Subsection (3), may, after a hearing, be exempted from the deposit requirement of Subsection (1) if the commissioner determines that the enrollees' interests are adequately protected~~] company action level RBC as defined in Subsection 31A-17-601(8)(b).

(b) The commissioner may rescind [~~such~~] an exemption given under Subsection (2)(a).

[~~(3) No health maintenance organization may be exempted under Subsection (2) from the deposit requirement unless:~~]

[~~(a) disregarding assets described in Subsection 31A-8-210 (8)(a), the health maintenance organization has $1,000,000 of surplus in excess of the amount required to satisfy its compulsory surplus requirement; or~~]

[~~(b) the health maintenance organization has $5,000,000 surplus in excess of the amount required to satisfy its compulsory surplus requirement.~~]

(3) (a) Each limited health plan authorized in this state shall maintain a deposit with the commissioner under Section 31A-2-206 in an amount equal to the minimum capital or permanent surplus plus 50% of the greater of:

(i) .5 times minimum required capital; or

(ii) (A) during the first year of operation, 10% of the limited health plan's projected uncovered expenditures for the first year of operation;

(B) during the second year of operation, 12% of the limited health plan's projected uncovered expenditures for the second year of operation;

(C) during the third year of operation, 14% of the limited health plan's projected uncovered expenditures for the third year of operation;

(D) during the fourth year of operation, 18% of the limited health plan's projected expenditures during the fourth year of operation; or

(E) during the fifth year of operation, and during all subsequent years, 20% of the limited health plan's projected uncovered expenditures for the previous 12 months.

(b) Projections of future uncovered expenditures shall be established in a manner that is approved by the commissioner.

Section 19. Section 31A-8-213 is amended to read:

31A-8-213. Certificate of authority.

(1) [~~The~~] An organization may apply for a certificate of authority at any time prior to the expiration of its organization permit. The application shall include:

(a) a detailed statement by a principal officer about any material changes that have taken place or are likely to take place in the facts on which the issuance of the organization permit was based[~~,~~]; and

(b) if any material changes are proposed in the business plan, the information about the changes that would be required if an organization permit were then being applied for.

(2) The commissioner shall issue a certificate of authority, if [~~he~~] the commissioner finds that:

(a) the [~~organization satisfies~~] organization's capital and surplus complies with the requirements of [~~Sections~~] Section 31A-8-209 [~~and 31A-8-210~~] as to the operations proposed under the new certificate of authority;

(b) there is no basis for revoking the organization permit under Section 31A-8-207;

(c) the deposit required by Section 31A-8-211 has been made;

(d) the organization satisfies the requirements of Section 31A-8-104; and

[~~(e) the organization satisfies the surplus requirement of Subsection 31A-8-210 (4) or (5), whichever applies; and~~]

[~~(f)~~] (e) all other applicable requirements of the law have been met.

(3) The certificate of authority shall specify any limits imposed by the commissioner upon the organization's business or methods of operation, including the general types of health care services the organization is authorized to provide.

(4) Upon the issuance of the certificate of authority:

(a) the board shall authorize and direct the issuance of certificates for shares, bonds, or notes subscribed to under the organization permit, and of insurance policies upon qualifying applications obtained under the organization permit; and

(b) the commissioner shall authorize the release to the organization of all funds held in escrow under Section 31A-5-208, as adopted by Section 31A-8-206.

(5) (a) An organization may at any time apply to the commissioner for a new or amended certificate of authority altering the limits on its business or methods of operation. The application shall contain or be accompanied by that information reasonably required by the commissioner under Subsections 31A-5-204(2) and 31A-8-205(2). The commissioner shall issue the new certificate as requested if [~~he~~] the commissioner finds that the organization continues to satisfy the requirements specified under Subsection (2).

(b) If the commissioner issues a summary order under Section 31A-27-201 against an organization, [~~he~~] the commissioner may also revoke the organization's certificate and issue a new one with any limitation he considers necessary.

Section 20. Section 31A-8-402 is amended to read:

31A-8-402. Contract cancellation or nonrenewal.

(1) An enrollee may not be cancelled or nonrenewed except for:

[~~(a) failure to pay the charge for the enrollment or coverage;~~]

[~~(b)~~] (a) violation of reasonable, published policies of the organization;

[~~(c)~~] (b) unreasonable refusal to comply with care or treatment prescribed by the health care personnel of the organization; or

[~~(d) such other reasons as the commissioner may specify by rule.~~]

(c) nonpayment of a premium or contribution;

(d) a fraudulent act or an intentional misrepresentation of a material fact under the terms of the coverage committed by the plan sponsor or covered individual under the plan;

(e) a violation of participation or contribution rules;

(f) termination of the plan where the issuer is ceasing to offer coverage in the market according to:

(i) regulations required under the Health Insurance Portability and Accountability Act of 1996 42 U.S.C. 1301, et seq.; and

(ii) Subsections 31A-2-201(3), 31A-4-115(8), and 31A-30-106(1)(k); or

(g) the enrollee moving to outside of the service area.

(2) Every organization authorized under this chapter shall provide its enrollees an opportunity, at least once each year, to:

(a) enroll again with the organization; or

(b) choose another source through which they may secure health care services or benefits.

(3) This section does not prohibit reasonable underwriting classifications for the purpose of establishing rates nor does it prohibit experience rating.

(4) (a) The requirement in [~~Part VII of~~] Chapter 22, Part VII, Group Accident and Health Insurance, that a conversion policy be available for certain persons who are no longer entitled to group coverage does not require an organization to provide a conversion policy to a person residing outside of the organization's service area.

(b) The commissioner may, by rule or order, define the scope of an organization's service area.

Section 21. Section 31A-8-407 is amended to read:

31A-8-407. Written contracts -- Limited liability of enrollee.

(1) (a) Every contract between [~~a health maintenance~~] an organization and a participating provider of health care services shall be in writing and shall set forth that [~~in the event the health maintenance~~] if the organization:

(i) fails to pay for health care services as set forth in the contract, the enrollee [~~shall~~] may not be liable to the provider for any sums owed by the [~~health maintenance~~] organization[~~.~~]; and

(ii) the organization becomes insolvent, the rehabilitator or liquidator may require the participating provider of health care services to:

(A) continue to provide health care services under the contract between the participating provider and the organization until the later of:

(I) 90 days from the date of the filing of a petition for rehabilitation or the petition for liquidation; or

(II) the date the term of the contract ends; and

(B) subject to Subsection (1)(c), reduce the fees the participating provider is otherwise entitled to receive from the organization under the contract between the participating provider and the organization during the time period described in Subsection (1)(a)(ii)(A).

(b) If the conditions of Subsection (1)(c) are met, the participating provider shall:

(i) accept the reduced payment as payment in full; and

(ii) relinquish the right to collect additional amounts from the insolvent organization's enrollee.

(c) Notwithstanding Subsection (1)(a)(ii)(B):

(i) the rehabilitator or liquidator may not reduce a fee to less than 75% of the regular fee set forth in the participating provider contract; and

(ii) the enrollee shall continue to pay the same copayments, deductibles, and other payments for services received from the participating provider that the enrollee was required to pay before the filing of:

(A) the petition for reorganization; or

(B) the petition for liquidation.

(2) [~~In the event that the participating provider contract has not been reduced to writing as required by Subsection (1) or that the contract fails to contain the required prohibition, the~~] A participating provider [~~shall~~] may not collect or attempt to collect from the enrollee sums owed by the [~~health maintenance~~] organization or the amount of the regular fee reduction authorized under Subsection (1)(a)(ii) if the participating provider contract:

(a) is not in writing as required in Subsection (1); or

(b) fails to contain the language required by Subsection (1).

(3) (a) [~~No participating provider, or agent, trustee, or assignee thereof~~] A person listed in Subsection (3)(b) may not bill or maintain any action at law against an enrollee to collect:

(i) sums owed by the [~~health maintenance~~] organization[~~.~~]; or

(ii) the amount of the regular fee reduction authorized under Subsection (1)(a)(ii).

(b) Subsection (3)(a) applies to:

(i) a participating provider;

(ii) an agent;

(iii) a trustee; or

(iv) an assignee of a person described in Subsections (3)(b)(i) through (iii).

Section 22. Section 31A-8-408 is amended to read:

31A-8-408. Organizations offering point of service products.

Effective July 1, 1991, a health maintenance [~~organizations~~] organization offering products that permit members the option of obtaining covered services from a noncontracted provider, which is a point of service or [~~POS~~] point of sale product, shall comply with the [~~following~~] requirements[~~:~~] of Subsections (1) through (7).

(1) The cost of an encounter with a noncontracted provider is considered an uncovered expenditure as defined in Section 31A-8-101 [~~for purposes of Section 31A-8-210~~].

(2) Any organization offering to sell point of service products shall report the number of encounters with contracted and noncontracted providers to the commissioner on a monthly basis. The commissioner shall define the form, content, and due date of the report and shall require audited reports of the information on a yearly basis.

(3) An organization may not offer point of service products unless it has secured contracts with participating providers located within the organization's service area for each covered service other than those unusual or infrequently used health services that are not available from the organization's health care providers.

(4) An organization may not enroll members who do not work or reside in the service area as defined by rule, except this Subsection (4) does not apply to dependents of enrollees.

(5) Any organization [~~which~~] that exceeds the 10% limit of unusual or infrequently used health services as defined in Section 31A-8-101 is subject to a forfeiture of up to $50 per encounter.

(6) [~~Organizations~~] An organization shall disclose to employees and members the existence of the 10% limit at or prior to enrollment.

(7) The commissioner shall hold hearings and adopt rules providing any additional limitations or requirements necessary to secure the public interest in conformity with this section.

Section 23. Section 31A-9-212 (Effective 04/30/01) is amended to read:

31A-9-212 (Effective 04/30/01). Separate accounts and subsidiaries.

(1) Except as provided in Subsections (2) and (3), Sections 31A-5-217 and 31A-5-218 apply to separate accounts and subsidiaries of fraternals. If a fraternal issues contracts on a variable basis, Subsections 31A-22-902(2) and (6) and 31A-9-209(2) do not apply, except that Subsection 31A-9-209(2) applies to any benefits contained in the variable contracts which are fixed or guaranteed dollar amounts.

(2) If a fraternal engages in any insurance business other than life, [~~disability~~] accident and health, annuities, property, or liability insurance, it shall do so through a subsidiary under Section 31A-5-218.

(3) (a) A local lodge may incorporate under Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, or the corresponding law of the state where it is located, to carry out the noninsurance activities of the local lodge.

(b) Corporations may be formed under Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, to implement Subsection 31A-9-602(2).

Section 24. Section 31A-11-102 is amended to read:

31A-11-102. Activities of motor clubs.

(1) Motor clubs authorized under this chapter may provide or arrange for the following services:

(a) service as agent or broker in obtaining insurance coverage from authorized insurers, subject to Chapter 23;

(b) provision of, or payment for, legal services and costs in the defense of traffic offenses or other legal problems connected with the ownership or use of a motor vehicle, provided the maximum amount

payable for any one incident is not more than 100 times the [~~the~~] annual charge for the motor club contract;

(c) guaranteed arrest bond certificates and cash bond guarantees as specified under Section 31A-11-112;

(d) payment of specified expenses resulting from an automobile accident, other than expenses for personal injury or for damage to an automobile, provided the maximum amount payable for any one accident is not more than 100 times the annual charge for the motor club contract;

(e) towing and emergency road services and theft services; and

(f) any services relating to travel not involving the transfer and distribution of risk.

(2) Unless they are also insurers under Chapter 5 or 14, motor clubs may not provide any liability or physical damage insurance or insurance of life or [~~disability~~] accident and health, whether or not related to motor vehicles.

(3) If a motor club is a separate division of a corporation, the activities of the other divisions of the corporation are not limited by this section, if the motor club division complies with Subsection 31A-11-106(3).

Section 25. Section 31A-14-201 is amended to read:

31A-14-201. Application.

[~~Any~~] (1) (a) An incorporated person, other than a foreign health maintenance organization[~~, including the United States branch of an alien insurer~~], authorized as an insurer in another jurisdiction in the United States may apply under this section for a certificate of authority as an insurer in this state. [~~This insurer~~]

(b) An alien insurer that is incorporated may apply under this section for a certificate of authority as an insurer in this state.

(2) An applicant for a certificate of authority under this section shall:

(a) use the forms prescribed by the commissioner[~~. The applicant shall~~]; and

(b) provide the information and documents the commissioner requests, including the following[~~, unless the commissioner excludes any of them because they will not be helpful in making the decision of whether to issue a certificate of authority~~]:

[~~(1)~~] (i) a copy of the applicant's articles and bylaws;

[~~(2)~~] (ii) financial statements for the most recent complete fiscal year, with an explanation of the bases of all valuations and computations, in the detail reasonably required by the commissioner;

[~~(3)~~] (iii) a summary, as detailed as the commissioner reasonably requires, of the applicant's financial history for:

(A) the preceding ten years[~~,~~]; or [~~for~~]

(B) the entire period of the applicant's existence if less than ten years;

[~~(4)~~] (iv) [~~the names of the~~] for each of the applicant's current or proposed directors and principal officers [~~and their addresses and occupations~~]:

(A) the name of the director or principal officer;

(B) the address of the director or principal officer; and

(C) the occupation for the preceding ten years of the director or principal officer;

[~~(5)~~] (v) for an alien insurer[~~,~~]:

(A) the name of its United States manager, the manager's addresses and occupations for the preceding ten years; and

(B) if the manager is a corporation, the names, addresses, and occupations of its directors and principal officers, and its most recent detailed financial statements;

[~~(6)~~] (vi) a schedule listing:

[~~(a)~~] (A) all jurisdictions in which applicant has done or has been authorized to conduct an insurance business during the preceding ten years;

[~~(b)~~] (B) all jurisdictions in which the applicant has applied for authorization to conduct an insurance business during the preceding ten years, and the dates and results of those applications;

[~~(c)~~] (C) all jurisdictions from which the applicant has withdrawn from conducting an insurance business during the preceding ten years, and the reasons for its withdrawals; and

[~~(d)~~] (D) the name of and the circumstances surrounding any officer, director, or controlling shareholder of the corporation ever being subject to a:

[~~(i)~~] (I) felony indictment or conviction; or

[~~(ii)~~] (II) civil, criminal, or administrative action alleging fraud;

[~~(7)~~] (vii) a summary description of the applicant's present business operations, including the coverages written and the states and countries in which it does business;

[~~(8)~~] (viii) a list of any statements, reports, or other documents that have, within the last five years, been generally transmitted or distributed to or among the insurer's creditors, shareholders, members, subscribers, or policyholders;

[~~(9)~~] (ix) if the applicant has been in the insurance business for less than ten years, a summary of the past and a projection of the anticipated operating results at the end of each year of the first ten years of operation, based, where known, on actual data and otherwise on reasonable assumptions of loss experience, premium and other income, operating expenses, and acquisition costs;

[~~(10)~~] (x) a statement that organizational and promotional expenses have been paid, and that

organizational procedures required by the insurer's domiciliary authority are complete;

[~~(11)~~] (xi) a statement from the domiciliary regulatory authority and the state of entry into the United States, if any, that so far as known, the applicant is sound and there are no legitimate objections to its proposed operations in this state;

[~~(12)~~] (xii) the plan for conducting an insurance business in this state, including:

[~~(a)~~] (A) the geographical area where business is to be conducted;

[~~(b)~~] (B) the types of insurance to be written;

[~~(c)~~] (C) the proposed general marketing methods;

[~~(d)~~] (D) the proposed method for establishing premium rates; and

[~~(e)~~] (E) copies of the policy and application forms to be used in this state;

[~~(13)~~] (xiii) any other information the commissioner reasonably requires;

[~~(14)~~] (xiv) authorization to the commissioner to make inquiry of any person about the applicant, its manager under a management contract, its attorney in fact, its general agents, and any of the officers, directors, or shareholders of any of them designated by the commissioner; and

[~~(15)~~] (xv) written agreement by the applicant and any other designated persons that in the absence of actual malice, no communication made in response to any inquiry under Subsection [~~(14)~~] (2)(xiv) will subject the person making it to an action for damages for defamation brought by the applicant, the designated person, or a legal representative of either.

(3) No action for damages for defamation lies even in the absence of this agreement.

(4) Notwithstanding Subsection (2), the commissioner may exempt an applicant for a certificate of authority from providing the information described in Subsection (2) if the commissioner finds that the information will not be helpful in making the decision of whether to issue a certificate of authority.

Section 26. Section 31A-14-212 is amended to read:

31A-14-212. Changes in business plan.

(1) Within two years after the initial issuance of a certificate of authority to a foreign insurer by its domiciliary jurisdiction, the insurer may not substantially deviate from its business plan under Subsection 31A-14-201 [~~(12)~~] (2)(xii) unless notice of the proposed action is filed with the commissioner 30 days in advance of the proposed effective date.

(2) If the commissioner believes that the change proposed under Subsection (1) would be contrary to Utah law or to the interests of insureds, creditors, or the public, he may prohibit the application of the change to Utah. In his prohibitory order he shall explain why he has prohibited the change.

(3) If the commissioner finds after a hearing that the application of the proposed change outside Utah would endanger the interests of insureds, creditors, or the public in Utah, the commissioner may revoke the insurer's certificate of authority unless the insurer agrees not to make the change.

Section 27. Section 31A-15-103 is amended to read:

31A-15-103. Surplus lines insurance -- Unauthorized insurers.

(1) Notwithstanding Section 31A-15-102, a foreign insurer that has not obtained a certificate of authority to do business in this state under Section 31A-14-202 may negotiate for and make insurance contracts with persons in this state and on risks located in this state, subject to the limitations and requirements of this section.

(2) For contracts made under this section, the insurer may, in this state, inspect the risks to be insured, collect premiums and adjust losses, and do all other acts reasonably incidental to the contract, through employees or through independent contractors.

(3) (a) Subsections (1) and (2) do not permit any person to solicit business in this state on behalf of an insurer that has no certificate of authority.

(b) Any insurance placed with a nonadmitted insurer shall be placed with a surplus lines broker licensed under Chapter 23.

(c) The commissioner may by rule prescribe how a surplus lines broker may:

(i) pay or permit the payment, commission, or other remuneration on insurance placed by the surplus lines broker under authority of the surplus lines broker's license to one holding a license to act as an insurance agent; and

(ii) advertise the availability of the surplus lines broker's services in procuring, on behalf of persons seeking insurance, contracts with nonadmitted insurers.

(4) For contracts made under this section, nonadmitted insurers are subject to Sections 31A-23-302 and 31A-26-303 and the rules adopted under those sections.

(5) A nonadmitted insurer may not issue workers' compensation insurance coverage to employers located in this state, except for stop loss coverages issued to employers securing workers' compensation under Subsection 34A-2-201(3).

(6) (a) The commissioner may by rule prohibit making contracts under Subsection (1) for a specified class of insurance if authorized insurers provide an established market for the class in this state that is adequate and reasonably competitive.

(b) The commissioner may by rule place restrictions and limitations on and create special procedures for making contracts under Subsection (1) for a specified class of insurance if there have

been abuses of placements in the class or if the policyholders in the class, because of limited financial resources, business experience, or knowledge, cannot protect their own interests adequately.

(c) The commissioner may prohibit an individual insurer from making any contract under Subsection (1) and all insurance agents and brokers from dealing with the insurer if:

(i) the insurer has willfully violated this section, Section 31A-4-102, 31A-23-302, or 31A-26-303, or any rule adopted under any of these sections;

(ii) the insurer has failed to pay the fees and taxes specified under Section 31A-3-301; or

(iii) the commissioner has reason to believe that the insurer is in an unsound condition or is operated in a fraudulent, dishonest, or incompetent manner or in violation of the law of its domicile.

(d) (i) The commissioner may issue lists of unauthorized foreign insurers whose solidity the commissioner doubts, or whose practices the commissioner considers objectionable.

(ii) The commissioner shall issue lists of unauthorized foreign insurers the commissioner considers to be reliable and solid. [~~The~~]

(iii) In addition to the lists described in Subsections (7)(d)(i) and (ii), the commissioner may [~~also~~] issue other relevant evaluations of unauthorized insurers. [~~No~~]

(iv) An action [~~lies~~] may not lie against the commissioner or any employee of the department for any written or oral communication made in, or in connection with the issuance of, [~~these~~] the lists or evaluations described in this Subsection (6)(d).

(e) A foreign unauthorized insurer shall be listed on the commissioner's "reliable" list only if the unauthorized insurer:

(i) has delivered a request to the commissioner to be on the list;

(ii) has established satisfactory evidence of good reputation and financial integrity;

(iii) has delivered to the commissioner a copy of its current annual statement certified by the insurer and continues each subsequent year to file its annual statements with the commissioner within 60 days of its filing with the insurance regulatory authority where it is domiciled; [~~and~~]

(iv) (A) is in substantial compliance with the solvency standards in Chapter 17, Part VI, Risk-Based Capital, or maintains capital and surplus of at least [~~$5,000,000~~] $15,000,000, whichever is greater, and maintains in the United States an irrevocable trust fund in either a national bank or a member of the Federal Reserve System, or maintains a deposit meeting the statutory deposit requirements for insurers in the state where it is made, which trust fund or deposit:

(I) shall be in an amount not less than [~~$1,500,000~~] $2,500,000 for the protection of all of the insurer's policyholders in the United States;

(II) may consist of cash, securities, or investments of substantially the same character and quality as those which are "qualified assets" under Section 31A-17-201; and

(III) may include as part of the trust arrangement a letter of credit that qualifies as acceptable security under Subsection 31A-17-404(3)(c)(iii); or

(B) in the case of any "Lloyd's" or other similar incorporated or unincorporated group of alien individual insurers, maintains a trust fund that:

(I) shall be in an amount not less than $50,000,000 as security to its full amount for all policyholders and creditors in the United States of each member of the group;

(II) may consist of cash, securities, or investments of substantially the same character and quality as those which are "qualified assets" under Section 31A-17-201; and

(III) may include as part of this trust arrangement a letter of credit that qualifies as acceptable security under Subsection 31A-17-404(3)(c)(iii)[~~.~~]; and

(v) for an alien insurer not domiciled in the United States or a territory of the United States, is listed on the Quarterly Listing of Alien Insurers maintained by the National Association of Insurance Commissioners International Insurers Department.

(7) A surplus lines broker may not, either knowingly or without reasonable investigation of the financial condition and general reputation of the insurer, place insurance under this section with financially unsound insurers or with insurers engaging in unfair practices, or with otherwise substandard insurers, unless the broker gives the applicant notice in writing of the known deficiencies of the insurer or the limitations on his investigation, and explains the need to place the business with that insurer. A copy of this notice shall be kept in the office of the broker for at least five years. To be financially sound, an insurer shall satisfy standards that are comparable to those applied under the laws of this state to authorized insurers. Insurers on the "doubtful or objectionable" list under Subsection (6)(d) and insurers not on the commissioner's "reliable" list under Subsection (6)[~~(d)~~](e) are presumed substandard.

(8) A policy issued under this section shall include a description of the subject of the insurance and indicate the coverage, conditions, and term of the insurance, the premium charged and premium taxes to be collected from the policyholder, and the name and address of the policyholder and insurer. If the direct risk is assumed by more than one insurer, the policy shall state the names and addresses of all insurers and the portion of the entire direct risk each has assumed. All policies issued under the authority of this section shall have attached or affixed to the policy the following

statement: "The insurer issuing this policy does not hold a certificate of authority to do business in this state and thus is not fully subject to regulation by the Utah insurance commissioner. This policy receives no protection from any of the guaranty associations created under Title 31A, Chapter 28."

(9) Upon placing a new or renewal coverage under this section, the broker shall promptly deliver to the policyholder or his agent evidence of the insurance consisting either of the policy as issued by the insurer or, if the policy is not then available, a certificate, cover note, or other confirmation of insurance complying with Subsection (8).

(10) If the commissioner finds it necessary to protect the interests of insureds and the public in this state, the commissioner may by rule subject policies issued under this section to as much of the regulation provided by this title as is required for comparable policies written by authorized foreign insurers.

(11) (a) Each surplus lines transaction in this state shall be examined to determine whether it complies with:

(i) the surplus lines tax levied under Chapter 3;

(ii) the solicitation limitations of Subsection (3);

(iii) the requirement of Subsection (3) that placement be through a surplus lines broker;

(iv) placement limitations imposed under Subsections (6)(a), (b), and (c); and

(v) the policy form requirements of Subsections (8) and (10).

(b) The examination described in Subsection (11)(a) shall take place as soon as practicable after the transaction. The surplus lines broker shall submit to the examiner information necessary to conduct the examination within a period specified by rule.

(c) The examination described in Subsection (11)(a) may be conducted by the commissioner or by an advisory organization created under Section 31A-15-111 and authorized by the commissioner to conduct these examinations. The commissioner is not required to authorize any additional advisory organizations to conduct examinations under this Subsection (11)(c). The commissioner's authorization of one or more advisory organizations to act as examiners under this subsection shall be by rule. In addition, the authorization shall be evidenced by a contract, on a form provided by the commissioner, between the authorized advisory organization and the department.

(d) The person conducting the examination described in Subsection (11)(a) shall collect a stamping fee of an amount not to exceed 1% of the policy premium payable in connection with the transaction. Stamping fees collected by the commissioner shall be deposited in the General Fund. The commissioner shall establish this fee by rule. Stamping fees collected by an advisory organization are the property of the advisory organization to be used in paying the expenses of the advisory organization. Liability for paying the stamping fee is as required under Subsection 31A-3-303(1) for taxes imposed under Section 31A-3-301. The commissioner shall adopt a rule dealing with the payment of stamping fees. If stamping fees are not paid when due, the commissioner or advisory organization may impose a penalty of 25% of the fee due, plus 1-1/2% per month from the time of default until full payment of the fee. Fees relative to policies covering risks located partially in this state shall be allocated in the same manner as under Subsection 31A-3-303(4).

(e) The commissioner, representatives of the department, advisory organizations, representatives and members of advisory organizations, authorized insurers, and surplus lines insurers are not liable for damages on account of statements, comments, or recommendations made in good faith in connection with their duties under this Subsection (11)(e) or under Section 31A-15-111.

(f) Examinations conducted under this Subsection (11) and the documents and materials related to the examinations are confidential.

Section 28. Section 31A-15-106 is amended to read:

31A-15-106. Servicing of contracts made out of state.

(1) A foreign insurer that does not have a certificate of authority to do business in this state under Section 31A-14-202 may, in this state, collect premiums and adjust losses and do all other acts reasonably incidental to contracts made outside this state without violating this chapter. Any premiums collected under this section are subject to Section 31A-3-301.

(2) Subsection (1) does not permit a renewal, extension, increase, or other substantial change in the terms of any contract under Subsection (1) unless:

(a) it is permitted under Section 31A-15-103;

(b) the contract is for life or [~~disability~~] accident and health insurance or annuities; or

(c) a rule adopted by the commissioner permits this action when the interests of the policyholder and the public appear to be sufficiently protected.

Section 29. Section 31A-17-201 is amended to read:

31A-17-201. Qualified assets.

(1) Except as provided under Subsections (3) and (4), only the qualified assets listed in Subsection (2) may be used in determining the financial condition of an insurer, except to the extent an insurer has shown to the commissioner that the insurer has excess surplus, as defined in Section 31A-1-301.

(2) For purposes of Subsection (1), "qualified assets" means:

[~~(a) investments, securities, properties, and loans acquired or held in accordance with Sections~~

~~31A-18-105 and 31A-18-106, and the income due and accrued on these;~~]

[~~(b) the net amount of uncollected and deferred premiums for a life insurer that carries the full annual mean tabular reserve liability;~~]

[~~(c) premiums in the course of collection, other than for life insurance, not more than 90 days past due, less commissions payable on the premiums, with the 90-day limitation being inapplicable to premiums payable directly or indirectly by the United States government or any of its instrumentalities;~~]

[~~(d) installment premiums, other than life insurance premiums, in accordance with:~~]

[~~(i) the rules adopted by the commissioner; or~~]

[~~(ii) in the absence of rules adopted by the commissioner, practices formulated or adopted by the National Association of Insurance Commissioners;~~]

[~~(e) notes and similar written obligations that are:~~]

[~~(i) not past due;~~]

[~~(ii) taken for premiums other than life insurance premiums;~~]

[~~(iii) on policies permitted to be issued on that basis; and~~]

[~~(iv) to the extent of the unearned premium reserves carried on the policies;~~]

[~~(f) amounts recoverable or receivable from reinsurers under a reinsurance contract that qualifies for reserve credit under Section 31A-17-404;~~]

[~~(g) electronic and mechanical machines constituting a data processing and accounting system, the cost of which is depreciated in full over a period of five years or less;~~]

[~~(h) tangible components of the health care delivery systems of insurers licensed under Chapter 7, with the cost of these assets having a finite useful life being depreciated in full over periods provided by rule;~~]

[~~(i) cash or currency; and~~]

(a) assets as determined to be admitted in the Accounting Practices and Procedures Manual, published by the National Association of Insurance Commissioners; and

[~~(j)~~] (b) other assets authorized by rule.

(3) (a) Subject to Subsection (5) and even if they could not otherwise be counted under this chapter, assets acquired in the bona fide enforcement of creditors' rights may be counted for the purposes of Subsection (1) and Sections 31A-18-105 and 31A-18-106:

(i) for five years after their acquisition if they are real property; and

(ii) for one year if they are not real property.

(b) (i) The commissioner may allow reasonable extensions of the periods described in Subsection (3)(a), if disposal of the assets within the periods given is not possible without substantial loss.

(ii) Extensions under Subsection (3)(b)(i) may not, as to any particular asset, exceed a total of five years.

(4) Subject to Subsection (5), and even though under this chapter the assets could not otherwise be counted, assets acquired in connection with mergers, consolidations, or bulk reinsurance, or as a dividend or distribution of assets, may be counted for the same purposes, in the same manner, and for the same periods as assets acquired under Subsection (3).

(5) Assets described under Subsection (3) or (4) may not be counted for the purposes of Subsection (1), except to the extent they are counted as assets in determining insurer solvency under the laws of the state of domicile of the creditor or acquired insurer.

Section 30. Section 31A-17-401 is amended to read:

31A-17-401. Valuation of assets.

(1) The commissioner shall value the assets of insurers in accordance with then current insurance business practices, but not in a manner inconsistent with the provisions of this title. In valuing assets, the commissioner shall consider any method then current, formulated, or approved by the National Association of Insurance Commissioners.

(2) Assets that are not qualified assets under Subsection 31A-17-201(2) are considered to have no value in evaluating an insurer's compliance with Chapter 17, Part 6, Risk-Based Capital. Those assets may be used in evaluating the insurer's financial condition only to the extent the insurer has excess surplus.

(3) (a) Insurance subsidiaries are valued on the books of a parent insurer as follows:

(i) Except as provided under Subsections (3)(a)(iii) [~~through (vi)~~] and (iv), common stock of the subsidiary is valued on the basis of the parent insurer's percentage of ownership of the common stock multiplied by the total of the subsidiary's capital and surplus, less amounts needed to liquidate all claims to the capital and surplus which are senior to common stock. Subsection 31A-18-106(1)(k) provides applicable limitations on investments in subsidiaries.

(ii) The value of securities other than common stock issued by a subsidiary is the lesser of the present value of the future income to be derived under the securities or the amount the parent insurer would receive as a result of the securities if the subsidiary were liquidated and all creditors of the subsidiary and holders of the subsidiary's securities with senior priority were paid in full. The present value of future income derived from securities is determined by rule adopted by the commissioner. A parent insurer may attribute value to a security of its subsidiary only if the parent

insurer is being paid dividends or interest on the security, and only if the parent insurer can reasonably anticipate that dividends or interest will continue to be paid on the security.

(iii) Except as provided under [~~Subsections (3)(a)(iv) through (vi)~~] Subsection (3)(iv), any portion of the subsidiary's value permitted under Subsection (3)(a) that is represented by assets other than assets listed under Section 31A-17-201, may only be classified as excess surplus of the parent insurer, and then only to the extent the parent insurer has established that it has excess surplus under Section 31A-17-202.

(iv) For the purposes of Subsection (3)(a)(iii), assets of a newly acquired subsidiary that are the equivalent of qualified assets in the subsidiary's domiciliary state, are, for the first five years after the subsidiary's acquisition, considered to be qualified assets under Section 31A-17-201. This assumption stands even if the assets are not otherwise qualified assets under Section 31A-17-201.

[~~(v) Under a plan of merger approved by the commissioner, a newly-acquired insurance subsidiary may be valued initially at its cost to the parent insurer, or a greater or lesser value established by the commissioner. The amount in excess of the parent insurer's proportionate share of the subsidiary's capital and surplus shall be written off for regulatory purposes over a period specified by the commissioner in the commissioner's order approving the plan of merger. This period may not exceed five years. Once they are established by the commissioner, any amounts not yet written off may be counted as assets for the purposes specified under Chapter 17, Part 6, Risk-Based Capital.~~]

[~~(vi) Subject to Subsection 31A-18-106(1)(k), an insurance subsidiary that is acquired by another insurer, but not under an approved plan of merger, may be valued initially at the lesser of its cost to the parent insurer, or the parent insurer's proportionate share of the subsidiary's capital and surplus plus 10% of the parent insurer's capital and surplus. The amount in excess of the parent insurer's proportionate share of the subsidiary's capital and surplus shall be written off for regulatory purposes over a period specified by the commissioner in an order approving the acquisition. This period may not exceed ten years.~~]

[~~(vii) For subsidiaries valued under Subsection (3)(a)(v) or (3)(a)(vi), until the excess of the subsidiary's cost over the parent insurer's proportionate share of the subsidiary's capital and surplus is completely amortized, the commissioner shall semiannually review the actual performance of the subsidiary to determine whether the amortization schedule provided by the commissioner's order is reasonable, based on the subsidiary's actual performance. The commissioner may adjust the amortization schedule based on the findings of this semiannual review.~~]

(b) A subsidiary formed or acquired to hold or manage investments that the parent insurance company might hold or manage directly, shall be valued as if the assets of the subsidiary were owned directly by the insurer in a percentage equal to the insurer's percentage of ownership of the subsidiary. The subsidiary investment limitation of Subsection 31A-18-106(1)(k) does not apply to these subsidiaries.

(c) Subsidiaries other than those described in Subsections (3)(a) and (b) shall be valued in accordance with Subsection (1). The subsidiary investment limitation under Subsection 31A-18-106(1)(k) applies to these subsidiaries in the same manner as to subsidiaries described in Subsection (3)(a).

(d) In determining an insurer's financial condition, no value is given to:

(i) any interest held by the insurer in its own stock, including debts due the insurer that are secured by the insurer's own stock; or

(ii) any proportionate interest in the insurer's own stock, including debts that are secured by the insurer's own stock, which is held by any corporation, partnership, business unit, firm, or person owned in whole or in part by the insurer.

(4) The commissioner shall adopt rules to implement the provisions of this section.

Section 31. Section 31A-17-402 is amended to read:

31A-17-402. Valuation of liabilities.

The commissioner shall adopt rules specifying the liabilities required to be reported by insurers in financial statements submitted under Section 31A-2-202 and the methods of valuing them. For life insurance, those methods shall be consistent with Part 5 of this chapter, Standard Valuation Law. Title insurance reserves are provided for under Section 31A-17-408. In determining the financial condition of an insurer, liabilities include:

(l) the estimated amount necessary to pay all its unpaid losses and claims incurred on or prior to the date of statement, whether reported or unreported, together with the expense of adjustment or settlement of the loss or claim;

(2) for life, [~~disability~~] accident and health insurance, and annuity contracts:

(a) the reserves on life insurance policies and annuity contracts in force, valued according to appropriate tables of mortality and the applicable rates of interest;

(b) the reserves for [~~disability~~] accident and health benefits, for both active and disabled lives;

(c) the reserves for accidental death benefits; and

(d) any additional reserves which may be required by the commissioner by rule, or if no rule is applicable, then in a manner consistent with the practice formulated or approved by the National Association of Insurance Commissioners with respect to those types of insurance;

(3) for insurance other than life, [~~disability~~] accident and health, and title insurance, the amount of reserves equal to the unearned portions of the gross premiums charged on policies in force, computed on a daily or monthly pro rata basis or other basis approved by the commissioner; provided that after adopting any one of the methods for computing those reserves, an insurer may not change methods without the commissioner's written consent;

(4) for ocean marine and other transportation insurance, reserves equal to 50% of the amount of premiums upon risks covering not more than one trip or passage not terminated, and computed upon a pro rata basis or, with the commissioner's consent, in accordance with methods provided under Subsection (3); and

(5) its other liabilities, including taxes, expenses, and other obligations due or accrued at the date of statement.

Section 32. Section 31A-17-408 is amended to read:

31A-17-408. Title insurance reserves.

(1) In addition to an adequate reserve for outstanding losses, a title insurance company shall either:

(a) maintain and segregate an unearned premium reserve fund of not less than 10 cents for each $1,000 face amount of retained liability under each title insurance contract or policy on a single insurance risk issued[~~, except that during each of the 20 years following the year in which the title insurance policy or contract was issued, the reserve applicable to the contract may be reduced by 5% of the original amount of the reserve~~]; or

(b) have the commissioner review and approve a contract of reinsurance applicable to the title insurance company's policies, which contract adequately covers the exposure or risk which the unearned premium reserve would serve.

(2) The fund shall be maintained for the protection of policyholders and is not subject to the claims of stockholders or creditors other than policyholders.

Section 33. Section 31A-17-504 is amended to read:

31A-17-504. Computation of minimum standard.

Except as otherwise provided in Sections 31A-17-505, 31A-17-506, and 31A-17-513, the minimum standard for the valuation of all life insurance policies and annuity and pure endowment contracts issued prior to January 1, 1994, shall be that provided by the laws in effect immediately prior to that date. Except as otherwise provided in Sections 31A-17-505, 31A-17-506, and 31A-17-513, the minimum standard for the valuation of all such policies and contracts issued on or after January 1, 1994, shall be the commissioner's reserve valuation methods defined in Sections 31A-17-507, 31A-17-508, 31A-17-511, and 31A-17-513, 3.5% interest, or in the case of life insurance policies and contracts, other than annuity and pure endowment contracts, issued on or after June 1, 1973, 4% interest for such policies issued prior to April 2, 1980, 5.5% interest for single premium life insurance policies, and 4.5% interest for all other such policies issued on and after April 2, 1980, and the following tables:

(1) For all ordinary policies of life insurance issued on the standard basis, excluding any [~~disability~~] accident and health and accidental death benefits in such policies: the National Association of Insurance Commissioners 1941 Standard Ordinary Mortality Table for such policies issued prior to the operative date of Subsection 31A-22-408(6)(a) (that is, the Standard Nonforfeiture Law for Life Insurance), the National Association of Insurance Commissioners 1958 Standard Ordinary Mortality Table for such policies issued on or after the operative date of Subsection 31A-22-408(6)(a) and prior to the operative date of Subsection 31A-22-408(6)(d), provided that for any category of such policies issued on female risks, all modified net premiums and present values referred to in this section may be calculated according to an age not more than six years younger than the actual age of the insured; and for such policies issued on or after the operative date of Subsection 31A-22-408(6)(d):

(a) the National Association of Insurance Commissioners 1980 Standard Ordinary Mortality Table;

(b) at the election of the company for any one or more specified plans of life insurance, the National Association of Insurance Commissioners 1980 Standard Ordinary Mortality Table with Ten-Year Select Mortality Factors; or

(c) any ordinary mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by rule promulgated by the commissioner for use in determining the minimum standard of valuation for such policies.

(2) For all industrial life insurance policies issued on the standard basis, excluding any [~~disability~~] accident and health and accidental death benefits in such policies: the 1941 Standard Industrial Mortality Table for such policies issued prior to the operative date of Subsection 31A-22-408(6)(c), and for such policies issued on or after such operative date, the National Association of Insurance Commissioners 1961 Standard Industrial Mortality Table or any industrial mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by rule promulgated by the commissioner for use in determining the minimum standard of valuation for such policies.

(3) For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies:

(a) the 1937 Standard Annuity Mortality Table[~~, or~~];

(b) at the option of the company, the Annuity Mortality Table for 1949, Ultimate[~~,~~]; or

(c) any modification of either of these tables approved by the commissioner.

(4) For group annuity and pure endowment contracts, excluding any [~~disability~~] accident and health and accidental death benefits in such policies:

(a) the Group Annuity Mortality Table for 1951, any modification of such table approved by the commissioner[~~,~~]; or

(b) at the option of the company, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts.

(5) For total and permanent disability benefits in or supplementary to ordinary policies or contracts: for policies or contracts issued on or after January 1, 1966, the tables of Period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 Disability Study of the Society of Actuaries, with due regard to the type of benefit or any tables of disablement rates and termination rates adopted after 1980 by the National Association of Insurance Commissioners, that are approved by rule promulgated by the commissioner for use in determining the minimum standard of valuation for such policies; for policies or contracts issued on or after January 1, 1961, and prior to January 1, 1966, either such tables or, at the option of the company, the Class (3) Disability Table (1926); and for policies issued prior to January 1, 1961, the Class (3) Disability Table (1926). Any such table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(6) For accidental death benefits in or supplementary to policies issued on or after January 1, 1966, the 1959 Accidental Death Benefits Table or any accidental death benefits table adopted after 1980 by the National Association of Insurance Commissioners, that is approved by rule promulgated by the commissioner for use in determining the minimum standard of valuation for such policies, for policies issued on or after January 1, 1961, and prior to January 1, 1966, either such table or, at the option of the company, the Inter-Company Double Indemnity Mortality Table; and for policies issued prior to January 1, 1961, the Inter-Company Double Indemnity Mortality Table. Either table shall be combined with a mortality table for calculating the reserves for life insurance policies.

(7) For group life insurance, life insurance issued on the substandard basis and other special benefits: such tables as may be approved by the commissioner.

Section 34. Section 31A-17-505 is amended to read:

31A-17-505. Computation of minimum standard for annuities.

(1) Except as provided in Section 31A-17-506, the minimum standard for the valuation of all individual annuity and pure endowment contracts issued on or after the operative date of this section, as defined in Subsection (2), and for all annuities and pure endowments purchased on or after such operative date under group annuity and pure endowment contracts, shall be the commissioner's reserve valuation methods defined in Sections 31A-17-507 and 31A-17-508 and the following tables and interest rates:

(a) For individual annuity and pure endowment contracts issued prior to April 2, 1980, excluding any [~~disability~~] accident and health and accidental death benefits in such contracts: the 1971 Individual Annuity Mortality Table, or any modification of this table approved by the commissioner, and 6% interest for single premium immediate annuity contracts, and 4% interest for all other individual annuity and pure endowment contracts.

(b) For individual single premium immediate annuity contracts issued on or after April 2, 1980, excluding any [~~disability~~] accident and health and accidental death benefits in such contracts: the 1971 Individual Annuity Mortality Table or any individual annuity mortality table, adopted after 1980 by the National Association of Insurance Commissioners that is approved by rule promulgated by the commissioner for use in determining the minimum standard of valuation for such contracts, or any modification of these tables approved by the commissioner, and 7.5% interest.

(c) For individual annuity and pure endowment contracts issued on or after April 2, 1980, other than single premium immediate annuity contracts, excluding any [~~disability~~] accident and health and accidental death benefits in such contracts: the 1971 Individual Annuity Mortality Table or any individual annuity mortality table adopted after 1980 by the National Association of Insurance Commissioners, that is approved by rule promulgated by the commissioner for use in determining the minimum standard of valuation for such contracts, or any modification of these tables approved by the commissioner, and 5.5% interest for single premium deferred annuity and pure endowment contracts and 4.5% interest for all other such individual annuity and pure endowment contracts.

(d) For all annuities and pure endowments purchased prior to April 2, 1980, under group annuity and pure endowment contracts, excluding any [~~disability~~] accident and health and accidental death benefits purchased under such contracts: the 1971 Group Annuity Mortality Table or any modification of this table approved by the commissioner, and 6.5% interest.

(e) For all annuities and pure endowments purchased on or after April 2, 1980, under group annuity and pure endowment contracts, excluding any [~~disability~~] accident and health and accidental death benefits purchased under such contracts: the 1971 Group Annuity Mortality Table, or any group annuity mortality table adopted after 1980 by the National Association of Insurance Commissioners, that is approved by rule and promulgated by the commissioner for use in determining the minimum

standard of valuation for such annuities and pure endowments, or any modification of these tables approved by the commissioner, and 7.5% interest.

(2) After June 1, 1973, any company may file with the commissioner a written notice of its election to comply with the provisions of this section after a specified date before January 1, 1979, which shall be the operative date of this section for such company, provided, if a company makes no such election, the operative date of this section for such company shall be January 1, 1979.

Section 35. Section 31A-17-507 is amended to read:

31A-17-507. Reserve valuation method -- Life insurance and endowment benefits.

(1) Except as otherwise provided in Sections 31A-17-508, 31A-17-511, and 31A-17-513, reserves according to the commissioner's reserve valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits provided for by such policies, over the then present value of any future modified net premiums therefor. The modified net premiums for any such policy shall be such uniform percentage of the respective contract premiums for such benefits that the present value, at the date of issue of the policy, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the policy and the excess of Subsection (1)(a) over Subsection (1)(b), as follows:

(a) A net level annual premium equal to the present value, at the date of issue, of such benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per annum payable on the first and each subsequent anniversary of such policy on which a premium falls due; provided, however, that such net level annual premium shall not exceed the net level annual premium on the 19 year premium whole life plan for insurance of the same amount at an age one year higher than the age at issue of such policy.

(b) A net one year term premium for such benefits provided for in the first policy year.

(2) Provided that for any life insurance policy issued on or after January 1, 1997, for which the contract premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than such excess premium, the reserve according to the commissioner's reserve valuation method as of any policy anniversary occurring on or before the assumed ending date defined herein as the first policy anniversary on which the sum of any endowment benefit and any cash surrender value then available is greater than such excess premium shall, except as otherwise provided in Section 31A-17-511, be the greater of the reserve as of such policy anniversary calculated as described in Subsection (1) and the reserve as of such policy anniversary calculated as described in that subsection, but with:

(a) the value defined in Subsection (1)(a) being reduced by 15% of the amount of such excess first year premium[~~,~~];

(b) all present values of benefits and premiums being determined without reference to premiums or benefits provided for by the policy after the assumed ending date[~~,~~];

(c) the policy being assumed to mature on such date as an endowment[~~,~~]; and

(d) the cash surrender value provided on such date being considered as an endowment benefit. In making the above comparison the mortality and interest bases stated in Sections 31A-17-504 and 31A-17-506 shall be used.

(3) Reserves according to the commissioner's reserve valuation method for:

(a) life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums;

(b) group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer, including a partnership or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under [~~26 U.S.C. Sec. 408, as amended~~] Section 408, Internal Revenue Code;

(c) [~~disability~~] accident and health and accidental death benefits in all policies and contracts; and

(d) all other benefits, except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment contracts, shall be calculated by a method consistent with the principles of Subsections (1) and (2).

Section 36. Section 31A-17-508 is amended to read:

31A-17-508. Reserve valuation method -- Annuity and pure endowment benefits.

(1) This section shall apply to all annuity and pure endowment contracts other than group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer, including a partnership or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under [~~26 U.S.C. Sec. 408, as amended~~] Section 408, Internal Revenue Code.

(2) Reserves according to the commissioner's annuity reserve method for benefits under annuity or pure endowment contracts, excluding any [~~disability~~] accident and health and accidental

death benefits in such contracts, shall be the greatest of the respective excesses of the present values, at the date of valuation, of the future guaranteed benefits, including guaranteed nonforfeiture benefits, provided for by such contracts at the end of each respective contract year, over the present value, at the date of valuation, of any future valuation considerations derived from future gross considerations, required by the terms of such contract, that become payable prior to the end of such respective contract year. The future guaranteed benefits shall be determined by using the mortality table, if any, and the interest rate, or rates, specified in such contracts for determining guaranteed benefits. The valuation considerations are the portions of the respective gross considerations applied under the terms of such contracts to determine nonforfeiture values.

Section 37. Section 31A-17-509 is amended to read:

31A-17-509. Minimum reserves.

(1) In no event shall a company's aggregate reserves for all life insurance policies, excluding [~~disability~~] accident and health and accidental death benefits, issued on or after January 1, 1994, be less than the aggregate reserves calculated in accordance with the methods set forth in Sections 31A-17-507, 31A-17-508, 31A-17-511, and 31A-17-512 and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for such policies.

(2) In no event shall the aggregate reserves for all policies, contracts, and benefits be less than the aggregate reserves determined by the qualified actuary to be necessary to render the opinion required by Section 31A-17-503.

Section 38. Section 31A-17-513 is amended to read:

31A-17-513. Minimum standards for accident and health plans.

The commissioner shall promulgate a rule containing the minimum standards applicable to the valuation of [~~disability~~] accident and health plans.

Section 39. Section 31A-17-601 is amended to read:

31A-17-601. Definitions.

As used in this part:

(1) "Adjusted RBC report" means an RBC report that has been adjusted by the commissioner in accordance with Subsection 31A-17-602[~~(4)~~] (5).

(2) "Corrective order" means an order issued by the commissioner specifying corrective action that the commissioner determines is required.

(3) "Health organization" means:

(a) an entity that is authorized under Chapter 7 or 8; and

(b) that is:

(i) a health maintenance organization;

(ii) a limited health service organization;

(iii) a dental or vision plan;

(iv) a hospital, medical, and dental indemnity or service corporation; or

(v) other managed care organization.

[~~(3)~~] (4) "Life or [~~disability~~] accident and health insurer" means:

(a) an insurance company licensed to write life insurance, disability insurance, or both; or

(b) a licensed property casualty insurer writing only disability insurance.

[~~(4)~~] (5) "Property and casualty insurer" means any insurance company licensed to write lines of insurance other than life but does not include a monoline mortgage guaranty insurer, financial guaranty insurer, or title insurer.

[~~(5)~~] (6) "RBC" means risk-based capital.

[~~(6)~~] (7) "RBC instructions" means the RBC report including risk-based capital instructions adopted by the department by rule.

[~~(7)~~] (8) "RBC level" means an insurer's or health organization's authorized control level RBC, company action level RBC, mandatory control level RBC, or regulatory action level RBC.

(a) "Authorized control level RBC" means the number determined under the risk-based capital formula in accordance with the RBC instructions;

(b) "Company action level RBC" means the product of 2.0 and its authorized control level RBC;

(c) "Mandatory control level RBC" means the product of .70 and the authorized control level RBC; and

(d) "Regulatory action level RBC" means the product of 1.5 and its authorized control level RBC.

[~~(8)~~] (9) (a) "RBC plan" means a comprehensive financial plan containing the elements specified in Subsection 31A-17-603(2). [~~If~~]

(b) Notwithstanding Subsection (9)(a), the plan is a "revised RBC plan" if:

(i) the commissioner rejects the RBC plan[~~,~~]; and [~~it~~]

(ii) the plan is revised by the insurer or health organization, with or without the commissioner's recommendation[~~, the plan shall be called the "Revised RBC Plan."~~].

[~~(9)~~] (10) "RBC report" means the report required in Section 31A-17-602.

Section 40. Section 31A-17-602 is amended to read:

31A-17-602. RBC reports -- RBC of life and accident and health insurers -- RBC of property and casualty insurers.

(1) Every domestic life or [~~disability~~] accident and health insurer [~~and~~], every domestic property and

casualty insurer, and every domestic health organization shall:

(a) on or before March 1, prepare and submit to the commissioner a report of its RBC levels as of the end of the calendar year just ended, in a form and containing the information as is required by the RBC instructions; [~~and~~]

(b) file its RBC report with the insurance commissioner in any state in which the insurer or health organization is authorized to do business, if the insurance commissioner of that state notifies the insurer or health organization of its request in writing, in which case the insurer or health organization may file its RBC report not later than the later of:

(i) 15 days from the receipt of notice to file its RBC report with that state; or

(ii) March 1[~~.~~]; and

(c) file the documents described in Subsections (1)(a) and (b) with the National Association of Insurance Commissioners in accordance with RBC instructions.

(2) A life and [~~disability~~] accident and health insurer's RBC shall be determined in accordance with the formula set forth in the RBC instructions. The formula shall take into account and may adjust for the covariance between:

(a) the risk with respect to the insurer's assets;

(b) the risk of adverse insurance experience with respect to the insurer's liabilities and obligations;

(c) the interest rate risk with respect to the insurer's business; and

(d) all other business risks and other relevant risks as set forth in the RBC instructions.

(3) A property and casualty insurer's RBC shall be determined in accordance with the formula set forth in the RBC instructions. The formula shall take the following into account and may adjust for the covariance between:

(a) asset risk;

(b) credit risk;

(c) underwriting risk; and

(d) all other business risks and the other relevant risks as set forth in the RBC instructions.

(4) A health organization's RBC shall be determined in accordance with the formula set forth in the RBC instructions. The formula shall take the following into account and may adjust for the covariance between:

(a) asset risk;

(b) credit risk;

(c) underwriting risk; and

(d) all other business risks and such other relevant risks as are set forth in the RBC instructions.

[~~(4)~~] (5) (a) If a domestic insurer files an RBC report that the commissioner determines is inaccurate, the commissioner shall adjust the RBC report to correct the inaccuracy and shall notify the insurer of the adjustment.

(b) The notice under Subsection [~~(4)~~] (5)(a) shall contain a statement of the reason for the adjustment.

(6) The commissioner may make rules to assist in applying the provisions of this part to health organizations.

Section 41. Section 31A-17-603 is amended to read:

31A-17-603. Company action level event.

(1) "Company action level event" means any of the following events:

(a) the filing of an RBC report by an insurer or health organization that indicates that:

(i) the insurer's or health organization's total adjusted capital is greater than or equal to its regulatory action level RBC but less than its company action level RBC; or

(ii) if a life or [~~disability~~] accident and health insurer, the insurer has:

(A) total adjusted capital that is greater than or equal to its company action level RBC but less than the product of its authorized control level RBC and 2.5; and

(B) a negative trend, determined in accordance with the "trend test calculation" included in the RBC instructions;

(b) the notification by the commissioner to the insurer or health organization of an adjusted RBC report that indicates an event in Subsection (1)(a), provided the insurer or health organization does not challenge the adjusted RBC report under Section 31A-17-607; or

(c) if, pursuant to Section 31A-17-607, an insurer or health organization challenges an adjusted RBC report that indicates the event in Subsection (1)(a), the notification by the commissioner to the insurer or health organization that after a hearing the commissioner rejects the insurer's or health organization's challenge.

(2) (a) In the event of a company action level event, the insurer or health organization shall prepare and submit to the commissioner an RBC plan that shall:

(i) identify the conditions that contribute to the company action level event;

(ii) contain proposals of corrective actions that the insurer or health organization intends to take and that are expected to result in the elimination of the company action level event;

(iii) provide projections of the insurer's or health organization's financial results in the current year and at least the four succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of:

(A) statutory operating income[~~,~~];

(B) net income[~~,~~];

(C) capital[~~, and~~];

(D) surplus; and

(E) RBC levels;

(iv) identify the key assumptions impacting the insurer's or health organization's projections and the sensitivity of the projections to the assumptions; and

(v) identify the quality of, and problems associated with, the insurer's or health organization's business, including its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business and use of reinsurance, if any, in each case.

(b) For purposes of Subsection (2)(a)(iii), the projections for both new and renewal business may include separate projections for each major line of business and separately identify each significant income, expense, and benefit component.

(3) The RBC plan shall be submitted:

(a) within 45 days of the company action level event; or

(b) if the insurer or health organization challenges an adjusted RBC report pursuant to Section 31A-17-607, within 45 days after notification to the insurer or health organization that after a hearing the commissioner rejects the insurer's or health organization's challenge.

(4) (a) Within 60 days after the submission by an insurer or health organization of an RBC plan to the commissioner, the commissioner shall notify the insurer or health organization whether the RBC plan:

(i) shall be implemented; or

(ii) is unsatisfactory.

(b) If the commissioner determines the RBC plan is unsatisfactory, the notification to the insurer or health organization shall set forth the reasons for the determination, and may propose revisions that will render the RBC plan satisfactory. Upon notification from the commissioner, the insurer or health organization shall:

(i) prepare a revised RBC plan that incorporates any revision proposed by the commissioner; and

(ii) submit the revised RBC plan to the commissioner:

(A) within 45 days after the notification from the commissioner; or

(B) if the insurer challenges the notification from the commissioner under Section 31A-17-607, within 45 days after a notification to the insurer or health organization that after a hearing the commissioner rejects the insurer's or health organization's challenge.

(5) In the event of a notification by the commissioner to an insurer or health organization that the insurer's or health organization's RBC plan or revised RBC plan is unsatisfactory, the commissioner may specify in the notification that the notification constitutes a regulatory action level event subject to the insurer's or health organization's right to a hearing under Section 31A-17-607.

(6) Every domestic insurer or health organization that files an RBC plan or revised RBC plan with the commissioner shall file a copy of the RBC plan or revised RBC plan with the insurance commissioner in any state in which the insurer or health organization is authorized to do business if:

(a) the state has an RBC provision substantially similar to Subsection 31A-17-608(1); and

(b) the insurance commissioner of that state notifies the insurer or health organization of its request for the filing in writing, in which case the insurer or health organization shall file a copy of the RBC plan or revised RBC plan in that state no later than the later of:

(i) 15 days after the receipt of notice to file a copy of its RBC plan or revised RBC plan with that state; or

(ii) the date on which the RBC plan or revised RBC plan is filed under Subsections (3) and (4).

Section 42. Section 31A-17-604 is amended to read:

31A-17-604. Regulatory action level event.

(1) "Regulatory action level event" means with respect to any insurer or health organization, any of the following events:

(a) the filing of an RBC report by the insurer or health organization that indicates that the insurer's or health organization's total adjusted capital is greater than or equal to its authorized control level RBC but less than its regulatory action level RBC;

(b) the notification by the commissioner to an insurer or health organization of an adjusted RBC report that indicates the event in Subsection (1)(a), provided the insurer or health organization does not challenge the adjusted RBC report under Section 31A-17-607;

(c) if, pursuant to Section 31A-17-607, the insurer or health organization challenges an adjusted RBC report that indicates the event in Subsection (1)(a), the notification by the commissioner to the insurer or health organization that after a hearing the commissioner rejects the insurer's or health organization's challenge;

(d) the failure of the insurer or health organization to file an RBC report by March 1, unless the insurer or health organization has:

(i) provided an explanation for the failure that is satisfactory to the commissioner; and

(ii) cured the failure within ten days after March 1;

(e) the failure of the insurer or health organization to submit an RBC plan to the commissioner within the time period set forth in Subsection 31A-17-603(3);

(f) notification by the commissioner to the insurer or health organization that:

(i) the RBC plan or revised RBC plan submitted by the insurer or health organization is unsatisfactory; and

(ii) the notification constitutes a regulatory action level event with respect to the insurer or health organization, provided the insurer has not challenged the determination under Section 31A-17-607;

(g) if, pursuant to Section 31A-17-607, the insurer or health organization challenges a determination by the commissioner under Subsection (1)(f), the notification by the commissioner to the insurer or health organization that after a hearing the commissioner rejects the challenge; or

(h) notification by the commissioner to the insurer or health organization that the insurer or health organization has failed to adhere to its RBC plan or revised RBC plan, but only if:

(i) the failure has a substantial adverse effect on the ability of the insurer or health organization to eliminate the company action level event in accordance with its RBC plan or revised RBC plan; and

(ii) the commissioner has so stated in the notification, provided the insurer or health organization has not challenged the determination under Section 31A-17-607; or

(iii) if, pursuant to Section 31A-17-607, the insurer or health organization challenges a determination by the commissioner under Subsection (1)(h), the notification by the commissioner to the insurer or health organization that after a hearing the commissioner rejects the challenge.

(2) In the event of a regulatory action level event the commissioner shall:

(a) require the insurer or health organization to prepare and submit an RBC plan or, if applicable, a revised RBC plan;

(b) perform any examination or analysis the commissioner considers necessary of the assets, liabilities, and operations of the insurer or health organization, including a review of its RBC plan or revised RBC plan; and

(c) subsequent to the examination or analysis, issue a corrective order specifying the corrective action the commissioner determines is required.

(3) In determining a corrective action, the commissioner may take into account such factors the commissioner considers relevant with respect to the insurer or health organization based upon the commissioner's examination or analysis of the assets, liabilities, and operations of the insurer or health organization, including the results of any sensitivity tests undertaken pursuant to the RBC instructions. The RBC plan or revised RBC plan shall be submitted:

(a) within 45 days after the occurrence of the regulatory action level event;

(b) if the insurer or health organization challenges an adjusted RBC report pursuant to Section 31A-17-607 and the commissioner determines the challenge is not frivolous, within 45 days after the notification to the insurer or health organization that after a hearing the commissioner rejects the insurer's or health organization's challenge; or

(c) if the insurer or health organization challenges a revised RBC plan pursuant to Section 31A-17-607 and the commissioner determines the challenge is not frivolous, within 45 days after the notification to the insurer or health organization that after a hearing the commissioner rejects the insurer's or health organization's challenge.

Section 43. Section 31A-17-605 is amended to read:

31A-17-605. Authorized control level event.

(1) "Authorized control level event" means any of the following events:

(a) the filing of an RBC report by the insurer or health organization that indicates that the insurer's or health organization's total adjusted capital is greater than or equal to its mandatory control level RBC but less than its authorized control level RBC;

(b) the notification by the commissioner to the insurer or health organization of an adjusted RBC report that indicates the event in Subsection (1)(a), provided the insurer or health organization does not challenge the adjusted RBC report under Section 31A-17-607;

(c) if, pursuant to Section 31A-17-607, the insurer or health organization challenges an adjusted RBC report that indicates the event in Subsection (1)(a), notification by the commissioner to the insurer or health organization that after a hearing the commissioner rejects the insurer's or health organization's challenge;

(d) the failure of the insurer or health organization to respond, in a manner satisfactory to the commissioner, to a corrective order, provided the insurer or health organization has not challenged the corrective order under Section 31A-17-607; or

(e) if the insurer or health organization has challenged a corrective order under Section 31A-17-607 and the commissioner after a hearing rejects the challenge or modifies the corrective order, the failure of the insurer or health organization to respond, in a manner satisfactory to the commissioner, to the corrective order subsequent to rejection or modification by the commissioner.

(2) (a) In the event of an authorized control level event with respect to an insurer or health organization, the commissioner shall:

(i) take any action required under Section 31A-17-604 regarding an insurer or health organization with respect to which a regulatory action level event has occurred; or

(ii) take any action as is necessary to cause the insurer or health organization to be placed under regulatory control under Section 31A-27-201 if the commissioner considers it to be in the best interests of:

(A) the policyholders [~~and~~] or members;

(B) creditors of the insurer or health organization; and

(C) the public.

(b) In the event the commissioner takes an action described in Subsection (2)(a), the authorized control level event is sufficient grounds for the commissioner to take action under Section 31A-27-201, and the commissioner shall have the rights, powers, and duties with respect to the insurer or health organization set forth in Section 31A-27-201.

(c) If the commissioner takes an action under Subsection (2)(a) pursuant to an adjusted RBC report, the insurer or health organization is entitled to the protections afforded to [~~insurers~~] an insurer or health organization under Section 31A-27-203 pertaining to summary proceedings.

Section 44. Section 31A-17-606 is amended to read:

31A-17-606. Mandatory control level event.

(1) "Mandatory control level event" means any of the following events:

(a) the filing of an RBC report that indicates that the insurer's or health organization's total adjusted capital is less than its mandatory control level RBC;

(b) notification by the commissioner to the insurer or health organization of an adjusted RBC report that indicates the event in Subsection (1)(a), provided the insurer or health organization does not challenge the adjusted RBC report under Section 31A-17-607; or

(c) if, pursuant to Section 31A-17-607, the insurer or health organization challenges an adjusted RBC report that indicates the event in Subsection (1)(a), notification by the commissioner to the insurer or health organization that after a hearing the commissioner rejects the insurer's or health organization's challenge.

(2) (a) [~~(i)~~] In the event of a mandatory control level event with respect to [~~a life~~] an insurer or health organization, the commissioner shall take any actions necessary to place the insurer under regulatory control under Section 31A-27-201.

[~~(ii)~~] (b) The mandatory control level event is sufficient grounds for the commissioner to take action under Section 31A-27-201, and the commissioner shall have the rights, powers, and duties with respect to the insurer or health organization as are set forth in Section 31A-27-201.

[~~(iii)~~] (c) If the commissioner takes an action pursuant to an adjusted RBC report, the insurer or health organization is entitled to the protections of Section 31A-27-203 pertaining to summary proceedings.

[~~(iv)~~] (d) Notwithstanding the other provisions of Subsection (2), the commissioner may forego action for up to 90 days after the mandatory control level event if the commissioner finds there is a reasonable expectation that the mandatory control level event may be eliminated within the 90-day period.

[~~(b) (i) In the event of a mandatory control level with respect to a property and casualty insurer, the commissioner shall take any action necessary to place the insurer under regulatory control under Section 31A-27-201.~~]

[~~(ii) The mandatory control level event is sufficient grounds for the commissioner to take action under Section 31A-27-201 and the commissioner shall have the rights, powers, and duties with respect to the insurer set forth in Section 31A-27-201.~~]

[~~(iii) If the commissioner takes actions pursuant to an adjusted RBC report, the insurer shall be entitled to the protections of Section 31A-27-203 pertaining to summary proceedings.~~]

[~~(iv) Notwithstanding any other provision of this section, the commissioner may forego action for up to 90 days after the mandatory control level event if the commissioner finds there is a reasonable expectation that the mandatory control level event may be eliminated within the 90-day period.~~]

Section 45. Section 31A-17-607 is amended to read:

31A-17-607. Hearings.

(1) (a) Following receipt of a notice described in Subsection (2), the insurer or health organization shall have the right to a confidential departmental hearing at which the insurer or health organization may challenge any determination or action by the commissioner.

(b) The insurer or health organization shall notify the commissioner of its request for a hearing within five days after the notification by the commissioner under Subsections 31A-17-604(1), (2), and (3).

(c) Upon receipt of the insurer's or health organization's request for a hearing, the commissioner shall set a date for the hearing, which date shall be no less than ten nor more than 30 days after the date of the insurer's or health organization's request.

(2) An insurer or health organization has the right to a hearing under Subsection (1) after:

(a) notification to an insurer or health organization by the commissioner of an adjusted RBC report;

(b) notification to an insurer or health organization by the commissioner that:

(i) the insurer's or health organization's RBC plan or revised RBC plan is unsatisfactory; and

(ii) the notification constitutes a regulatory action level event with respect to the insurer or health organization;

(c) notification to any insurer or health organization by the commissioner that the insurer or health organization has failed to adhere to its RBC plan or revised RBC plan and that the failure has substantial adverse effect on the ability of the insurer or health organization to eliminate the company action level event with respect to the insurer or health organization in accordance with its RBC plan or revised RBC plan; or

(d) notification to an insurer or health organization by the commissioner of a corrective order with respect to the insurer or health organization.

Section 46. Section 31A-17-608 is amended to read:

31A-17-608. Confidentiality -- Prohibition on announcements -- Prohibition on use in ratemaking.

(1) (a) The commissioner shall keep confidential to the extent that information in a report or plan is not required to be included in a publicly available annual statement schedule, any detail in an RBC report or RBC plan including the results or report of any examination or analysis of an insurer or health organization performed pursuant to this part, that is filed by a domestic or foreign insurer or health organization with the commissioner or any corrective order issued by the commissioner pursuant to examination or analysis.

(b) Information kept confidential under Subsection (1)(a) may not be made public or be subject to subpoena, other than by the commissioner and then only for the purpose of enforcement actions taken by the commissioner pursuant to this part or any other provision of the insurance laws of this state.

(2) (a) Except as otherwise required under this part, any insurer or health organization, agent, broker, or other person engaged in any manner in the insurance business may not publish, disseminate, circulate or place before the public, or cause, directly or indirectly, the publishing, disseminating, circulating or placing before the public including, in a newspaper, magazine, other publication, a notice, circular, pamphlet, letter, or poster, or over any radio or television station, an advertisement, announcement, or statement containing an assertion, representation, or statement with regard to the RBC levels of any insurer or health organization, or of any component derived in the calculation.

(b) If any materially false statement with respect to the comparison regarding an insurer's or health organization's total adjusted capital to its RBC levels, or an inappropriate comparison of any other amount to the insurer's or health organization's RBC levels is published in any written publication and the insurer or health organization is able to demonstrate to the commissioner with substantial proof the falsity of the statement or the inappropriateness, the insurer or health organization may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement or inappropriate comparison.

(3) The commissioner may not use an RBC instruction, report, plan, or revised plan:

(a) for ratemaking;

(b) as evidence in any rate proceeding; or

(c) to calculate or derive any element of an appropriate premium level or rate of return for any line of insurance or coverage that an insurer or health organization or any affiliate is authorized to write or cover.

Section 47. Section 31A-17-609 is amended to read:

31A-17-609. Alternate adjusted capital.

(1) Except as provided in Section 31A-17-602, [~~insurers~~] an insurer or health organization licensed under Chapters 5, 7, 8, 9, and 14 shall maintain total adjusted capital as defined in Section 31A-1-301 in an amount equal to the greater of:

(a) 175% of the minimum required capital, or of the minimum permanent surplus in the case of nonassessable mutuals, required by Section 31A-5-211, 31A-7-201, 31A-8-209, 31A-9-209, or 31A-14-205; or

(b) the net total of:

(i) 10% of net insurance premiums earned during the year; plus

(ii) 5% of the admitted value of common stocks and real estate; plus

(iii) 2% of the admitted value of all other invested assets, exclusive of cash deposits, short-term investments, policy loans, and premium notes; less

(iv) the amount of any asset valuation reserve being maintained by the insurer or health organization, but not to exceed the sum of Subsections (1)(b)(ii) and (iii).

(2) As used in Subsection (1)(b), "premiums earned" means premiums and other consideration earned for insurance in the 12-month period ending on the date the calculation is made.

(3) The commissioner may consider an insurer or health organization to be financially hazardous under Subsection 31A-27-307(3), if the insurer or health organization does not have qualified assets in an aggregate value exceeding the sum of the insurer's or health organization's liabilities and the total adjusted capital required by Subsection (1).

(4) The commissioner shall consider an insurer or health organization to be financially hazardous under Subsection 31A-27-307(3) if the insurer or health organization does not have qualified assets in an aggregate value exceeding the sum of the

insurer's or health organization's liabilities and 70% of the total adjusted capital required by Subsection (1).

Section 48. Section 31A-17-610 is amended to read:

31A-17-610. Foreign insurers.

(1) (a) Any foreign insurer or health organization shall, upon the written request of the commissioner, submit to the commissioner an RBC report as of the end of the most recent calendar year by the later of:

(i) the date an RBC report would be required to be filed by a domestic insurer or health organization under this part; or

(ii) 15 days after the request is received by the foreign insurer or health organization.

(b) Any foreign insurer or health organization shall, at the written request of the commissioner, promptly submit to the commissioner a copy of any RBC plan that is filed with the insurance commissioner of any other state.

(2) (a) The commissioner may require a foreign insurer or health organization to file an RBC plan with the commissioner if:

(i) there is a company action level event, regulatory action level event, or authorized control level event with respect to the foreign insurer or health organization as determined under:

(A) the RBC statute applicable in the state of domicile of the insurer or health organization; or[~~,~~]

(B) if no RBC statute is in force in that state, under [~~the provisions of~~] this part; and

(ii) the insurance commissioner of the state of domicile of the foreign insurer or health organization fails to require the foreign insurer or health organization to file an RBC plan in the manner specified under:

(A) that state's RBC statute; or[~~,~~]

(B) if no RBC statute is in force in that state, under Section 31A-17-603.

(b) If the commissioner requires a foreign insurer or health organization to file an RBC plan, the failure of the foreign insurer or health organization to file the RBC plan with the commissioner is grounds to order the insurer or health organization to cease and desist from writing new insurance business in this state.

(3) The commissioner may make application to the Third District Court for Salt Lake County permitted under Section 31A-27-401 with respect to the liquidation of property of a foreign [~~insurers~~] insurer or health organization found in this state if:

(a) a mandatory control level event occurs with respect to any foreign insurer or health organization; and

(b) no domiciliary receiver has been appointed with respect to the foreign insurer or health organization under the rehabilitation and liquidation statute applicable in the state of domicile of the foreign insurer or health organization.

Section 49. Section 31A-17-613 is amended to read:

31A-17-613. Effective date of notice.

A notice by the commissioner to an insurer or health organization that may result in regulatory action under this chapter is effective the sooner of:

(1) the date the insurer or health organization receives the notice; or

(2) three days after mailing the notice.

Section 50. Section 31A-18-105 is amended to read:

31A-18-105. Permitted classes of investments.

The following classes of investment may be counted for the purposes specified under Chapter 17, Part 6, Risk-Based Capital:

(1) bonds or other evidences of indebtedness of:

(a) (i) governmental units in the United States or Canada[~~, or~~];

(ii) instrumentalities of [~~those~~] the governmental units[~~,~~] described in Subsection (1)(a)(i); or [~~of~~]

(iii) private corporations domiciled in the United States[~~,~~]; and

(b) including demand deposits and certificates of deposits in solvent banks and savings and loan institutions;

(2) equipment trust obligations or certificates [~~which~~] that are adequately secured instruments evidencing an interest in transportation equipment [~~which~~] that is located wholly or in part within the United States, with a right to receive determined portions of the rental, or to purchase other fixed obligatory payments for the use or purchase of the transportation equipment;

(3) loans secured by:

(a) mortgages[~~,~~];

(b) trust deeds[~~,~~]; or

(c) other statutorily authorized types of security interests in real estate located in the United States;

(4) loans secured by pledged securities or evidences of debt eligible for investment under this section;

(5) preferred stocks of United States corporations;

(6) common stocks of United States corporations;

(7) real estate which is used as the home office or branch office of the insurer;

(8) real estate in the United States which produces substantial income;

(9) loans upon the security of the insurer's own policies in amounts that are adequately secured by

the policies and that do not exceed the surrender value of the policies;

(10) financial futures contracts used for hedging and not for speculation, as approved under rules adopted by the commissioner;

(11) investments in foreign securities of the classes permitted under this section as required for compliance with Section 31A-18-103;

(12) investments permitted under Subsection 31A-18-102(2); and

(13) other investments as the commissioner authorizes by rule.

Section 51. Section 31A-19a-101 is amended to read:

31A-19a-101. Title -- Scope and purposes.

(1) This chapter is known as the "Utah Rate Regulation Act."

(2) (a) (i) Except as provided in Subsection (2)(a)(ii), this chapter applies to all kinds and lines of direct insurance written on risks or operations in this state by an insurer authorized to do business in this state.

(ii) This chapter does not apply to:

(A) life insurance other than credit life insurance;

(B) variable and fixed annuities;

(C) health and [~~disability~~] accident and health insurance other than credit [~~disability~~] accident and health insurance; and

(D) reinsurance.

(b) This chapter applies to all insurers authorized to do any line of business, except those specified in Subsection (2)(a)(ii).

(3) It is the purpose of this chapter to:

(a) protect policyholders and the public against the adverse effects of excessive, inadequate, or unfairly discriminatory rates;

(b) encourage independent action by and reasonable price competition among insurers so that rates are responsive to competitive market conditions;

(c) provide formal regulatory controls for use if independent action and price competition fail;

(d) provide regulatory procedures for the maintenance of appropriate data reporting systems;

(e) authorize cooperative action among insurers in the rate-making process, and regulate that cooperation to prevent practices that bring about a monopoly or lessen or destroy competition;

(f) encourage the most efficient and economic marketing practices; and

(g) regulate the business of insurance in a manner that, under the McCarran-Ferguson Act, 15 U.S.C. Secs. 1011 through 1015, will preclude application of federal antitrust laws.

(4) Rate filings made prior to July 1, 1986, under former Title 31, Chapter 18, are continued. Rate filings made after July 1, 1986, are subject to the requirements of this chapter.

Section 52. Section 31A-21-103 is amended to read:

31A-21-103. Capacity to contract.

Any person 16 years of age or older who is otherwise competent to contract under Utah law, and who is not subject to any legal disability, may contract for insurance. If there is a conservator appointed under Title 75, the conservator, rather than the person whose property is subject to the conservatorship, may contract for insurance to protect the property under conservatorship. In the case of a conservatorship over the person or property of a person under 16 years of age, the conservator may invest funds of the estate in life or [~~disability~~] accident and health insurance or annuity contracts, but only with the approval of the court having jurisdiction over the conservatorship.

Section 53. Section 31A-21-104 is amended to read:

31A-21-104. Insurable interest and consent.

(1) (a) An insurer may not knowingly provide insurance to a person who does not have or expect to have an insurable interest in the subject of the insurance.

(b) A person may not knowingly procure, directly, by assignment, or otherwise, an interest in the proceeds of an insurance policy unless he has or expects to have an insurable interest in the subject of the insurance.

(c) Except as provided in Subsections (6), (7), and (8), any insurance provided in violation of this subsection is subject to Subsection (5).

(2) As used in this chapter:

(a) "Insurable interest" in a person means, for persons closely related by blood or by law, a substantial interest engendered by love and affection, or in the case of other persons, a lawful and substantial interest in having the life, health, and bodily safety of the person insured continue. Policyholders in group insurance contracts need no insurable interest if certificate holders or persons other than group policyholders who are specified by the certificate holders are the recipients of the proceeds of the policies. Each person has an unlimited insurable interest in his own life and health. A shareholder or partner has an insurable interest in the life of other shareholders or partners for purposes of insurance contracts that are an integral part of a legitimate buy-sell agreement respecting shares or a partnership interest in the business.

(b) "Insurable interest" in property or liability means any lawful and substantial economic interest in the nonoccurrence of the event insured against.

(c) "Viatical settlement" means a written contract entered into by a person who is the policyholder of a life insurance policy insuring the life of a terminally ill person, under which the insured assigns, transfers ownership, irrevocably designates a specific person or otherwise alienates all control and right in the insurance policy to another person, when the proceeds of the contract is paid to the policyholder of the insurance policy or the policyholder's designee prior to the death of the subject.

(3) Except as provided in Subsection (4), an insurer may not knowingly issue an individual life or [~~disability~~] accident and health insurance policy to a person other than the one whose life or health is at risk unless that person, who is 18 years of age or older and not under guardianship under Title 75, Chapter 5, Protection of Persons Under Disability and Their Property, has given written consent to the issuance of the policy. The person shall express consent either by signing an application for the insurance with knowledge of the nature of the document, or in any other reasonable way. Any insurance provided in violation of this subsection is subject to Subsection (5).

(4) (a) A life or [~~disability~~] accident and health insurance policy may be taken out without consent in the following cases:

(i) A person may obtain insurance on a dependent who does not have legal capacity.

(ii) A creditor may, at the creditor's expense, obtain insurance on the debtor in an amount reasonably related to the amount of the debt.

(iii) A person may obtain life and [~~disability~~] accident and health insurance on immediate family members living with or dependent on the person.

(iv) A person may obtain [~~a disability~~] an accident and health insurance policy on others that would merely indemnify the policyholder against expenses he would be legally or morally obligated to pay.

(v) The commissioner may adopt rules permitting issuance of insurance for a limited term on the life or health of a person serving outside the continental United States who is in the public service of the United States, if the policyholder is related within the second degree by blood or by marriage to the person whose life or health is insured.

(b) Consent may be given by another in the following cases:

(i) A parent, a person having legal custody of a minor, or a guardian of the person under Title 75, Chapter 5, Protection of Persons Under Disability and Their Property, may consent to the issuance of a policy on a dependent child or on a person under guardianship under Title 75, Chapter 5, Protection of Persons Under Disability and Their Property.

(ii) A grandparent may consent to the issuance of life or [~~disability~~] accident and health insurance on a grandchild.

(iii) A court of general jurisdiction may give consent to the issuance of a life or [~~disability~~] accident and health insurance policy on an ex parte application showing facts the court considers sufficient to justify the issuance of that insurance.

(5) An insurance policy is not invalid because the policyholder lacks insurable interest or because consent has not been given, but a court with appropriate jurisdiction may order the proceeds to be paid to some person who is equitably entitled to them, other than the one to whom the policy is designated to be payable, or it may create a constructive trust in the proceeds or a part of them on behalf of such a person, subject to all the valid terms and conditions of the policy other than those relating to insurable interest or consent.

(6) This section does not prevent any organization described under 26 U.S.C. Sec. 501(c)(3), (e), or (f), as amended, and the regulations made under this section, and which is regulated under Title 13, Chapter 22, Charitable Solicitations Act, from soliciting and procuring, by assignment or designation as beneficiary, a gift or assignment of an interest in life insurance on the life of the donor or assignor or from enforcing payment of proceeds from that interest.

(7) This section does not prevent:

(a) any policyholder of life insurance, whether or not the policyholder is also the subject of the insurance, from entering into a viatical settlement;

(b) any person from soliciting a person to enter into a viatical settlement; or

(c) a person from enforcing payment of proceeds from the interest obtained under a viatical settlement.

(8) Notwithstanding Subsection (1), an insurer authorized under this title to issue a workers' compensation policy may issue a workers' compensation policy to a sole proprietorship, corporation, or partnership that elects not to include any owner, corporate officer, or partner as an employee under the policy even if at the time the policy is issued the sole proprietorship, corporation, or partnership has no employees.

Section 54. Section 31A-21-201 is amended to read:

31A-21-201. Filing and approval of forms.

(1) (a) A form subject to Subsection 31A-21-101(1), except as exempted under Subsections 31A-21-101(2) through (6), may not be used, sold, or offered for sale unless it has been filed with the commissioner.

(b) A form is considered filed with the commissioner when the commissioner receives:

(i) the form;

(ii) the applicable filing fee as prescribed under Section 31A-3-103; and

(iii) the applicable transmittal forms as required by the commissioner.

(2) In filing a form for use in this state the insurer is responsible for assuring that the form is in compliance with this title and rules adopted by the commissioner.

(3) (a) The commissioner may [~~disapprove~~] prohibit the use of a form at any time upon a finding that:

(i) it is:

(A) inequitable;

(B) unfairly discriminatory;

(C) misleading;

(D) deceptive;

(E) obscure;

(F) unfair;

(G) encourages misrepresentation; or

(H) not in the public interest;

(ii) it provides benefits or contains other provisions that endanger the solidity of the insurer;

(iii) in the case of the basic policy and the application for a basic policy, it fails to conspicuously, as defined by rule, provide:

(A) the exact name of the insurer [~~and~~];

(B) its state of domicile; and

(C) for life insurance and annuity policies only, the address of its administrative office.

(iv) it violates a statute or a rule adopted by the commissioner; or

(v) it is otherwise contrary to law.

(b) Subsection (3)(a)(iii) does not apply to riders and endorsements to a basic policy.

(c) (i) Whenever the commissioner [~~disapproves~~] prohibits the use of a form under Subsection (3)(a), the commissioner may order that, on or before a date not less than 15 days after the order, the use of the form be discontinued.

(ii) Once a form has been [~~disapproved~~] prohibited, it may not be used unless appropriate changes are filed with and [~~approved~~] reviewed by the commissioner.

(iii) Whenever the commissioner [~~disapproves~~] prohibits the use of a form under Subsection (3)(a), the commissioner may require the insurer to disclose contract deficiencies to existing policyholders.

(d) The commissioner's [~~disapproval~~] prohibition under this Subsection (3) shall:

(i) be in writing [~~and constitutes~~];

(ii) constitute an order[~~. The order shall~~]; and

(iii) state the reasons for [~~disapproval~~] the prohibition.

(4) (a) If, after a hearing, the commissioner determines that it is in the public interest, the commissioner may require by rule or order that certain forms be subject to the commissioner's approval prior to their use.

(b) The rule or order described in Subsection (4)(a) shall prescribe the filing procedures for the forms if different than stated in this section.

(c) The types of forms that may be addressed under Subsection (4)(a) include:

(i) forms for a particular class of insurance;

(ii) forms for a specific line of insurance;

(iii) a specific type of form; or

(iv) forms for a specific market segment.

Section 55. Section 31A-21-301 is amended to read:

31A-21-301. Clauses required to be in a prominent position.

(1) The following portions of insurance policies shall appear conspicuously in the policy:

(a) [~~the name and state of domicile of the insurer~~] as required by Subsection 31A-21-201 (3)(a)(iii)[~~,~~]:

(i) the exact name of the insurer;

(ii) the state of domicile of the insurer; and

(iii) for life insurance and annuity policies only, the address of the administrative office of the insurer;

(b) information that two or more insurers under Subsection (1)(a) undertake only several liability, as required by Section 31A-21-306;

(c) if a policy is assessable, a statement of that;

(d) a statement that benefits are variable, as required by Subsection 31A-22-411(1); however, the methods of calculation need not be in a prominent position;

(e) the right to return a life or [~~disability~~] accident and health insurance policy under Sections 31A-22-423 and 31A-22-606; and

(f) the beginning and ending dates of insurance protection.

(2) Each clause listed in Subsection (1) shall be displayed conspicuously and separately from any other clause.

Section 56. Section 31A-21-303 is amended to read:

31A-21-303. Termination of insurance policies by insurers.

(1) (a) Except as otherwise provided in this section, in other statutes, or by rule under Subsection (1)(c), this section applies to all policies of insurance other than life and [~~disability~~] accident and health insurance and annuities, if the policies of insurance are issued on forms that are subject to filing and approval under Subsection 31A-21-201(1).

(b) A policy may provide terms more favorable to insureds than this section requires.

(c) The commissioner may by rule totally or partially exempt from this section classes of insurance policies in which the insureds do not need protection against arbitrary or unannounced termination.

(d) The rights provided by this section are in addition to and do not prejudice any other rights the insureds may have at common law or under other statutes.

(2) (a) As used in this Subsection (2), "grounds" means:

(i) material misrepresentation;

(ii) substantial change in the risk assumed, unless the insurer should reasonably have foreseen the change or contemplated the risk when entering into the contract;

(iii) substantial breaches of contractual duties, conditions, or warranties;

(iv) attainment of the age specified as the terminal age for coverage, in which case the insurer may cancel by notice under Subsection (2)(c), accompanied by a tender of proportional return of premium; or

(v) in the case of automobile insurance, revocation or suspension of the driver's license of the named insured or any other person who customarily drives the car.

(b) (i) Except as provided in Subsection (2)(e) or unless the conditions of Subsection (2)(b)(ii) are met, an insurance policy may not be canceled by the insurer before the earlier of:

(A) the expiration of the agreed term; or

(B) one year from the effective date of the policy or renewal.

(ii) Notwithstanding Subsection (2)(b)(i), an insurance policy may be canceled by the insurer for:

(A) nonpayment of a premium when due; or

(B) on grounds defined in Subsection (2)(a).

(c) (i) The cancellation provided by Subsection (2)(b), except cancellation for nonpayment of premium, is effective no sooner than 30 days after the delivery or first-class mailing of a written notice to the policyholder.

(ii) Cancellation for nonpayment of premium is effective no sooner than ten days after delivery or first class mailing of a written notice to the policyholder.

(d) (i) Notice of cancellation for nonpayment of premium shall include a statement of the reason for cancellation.

(ii) Subsection (6) applies to the notice required for grounds of cancellation other than nonpayment of premium.

(e) (i) Subsections (2)(a) through (d) do not apply to any insurance contract that has not been previously renewed if the contract has been in effect less than 60 days when the written notice of cancellation is mailed or delivered.

(ii) A cancellation under this Subsection (2)(e) may not be effective until at least ten days after the delivery to the insured of a written notice of cancellation.

(iii) If the notice required by this Subsection (2)(e) is sent by first-class mail, postage prepaid, to the insured at the insured's last-known address, delivery is considered accomplished after the passing, since the mailing date, of the mailing time specified in the Utah Rules of Civil Procedure.

(iv) A policy cancellation subject to this Subsection (2)(e) is not subject to the procedures described in Subsection (6).

(3) A policy may be issued for a term longer than one year or for an indefinite term if the policy includes a clause providing for cancellation by the insurer by giving notice as provided in Subsection (4)(b)(i) 30 days prior to any anniversary date.

(4) (a) Subject to Subsections (2), (3), and (4)(b), a policyholder has a right to have the policy renewed:

(i) on the terms then being applied by the insurer to similar risks; and

(ii) (A) for an additional period of time equivalent to the expiring term if the agreed term is one year or less; or

(B) for one year if the agreed term is longer than one year.

(b) Except as provided in Subsection (4)(c), the right to renewal under Subsection (4)(a) is extinguished if:

(i) at least 30 days prior to the policy expiration or anniversary date a notice of intention not to renew the policy beyond the agreed expiration or anniversary date is delivered or sent by first-class mail by the insurer to the policyholder at the policyholder's last-known address;

(ii) not more than 45 nor less than 14 days prior to the due date of the renewal premium, the insurer delivers or sends by first-class mail a notice to the policyholder at the policyholder's last-known address, clearly stating:

(A) the renewal premium;

(B) how it may be paid; and

(C) that failure to pay the renewal premium by the due date extinguishes the policyholder's right to renewal;

(iii) the policyholder has:

(A) accepted replacement coverage; or

(B) requested or agreed to nonrenewal; or

(iv) the policy is expressly designated as nonrenewable.

(c) Unless the conditions of Subsection (4)(b)(iii) or (iv) apply, an insurer may not fail to renew an

insurance policy as a result of a telephone call or other inquiry that:

(i) references a policy coverage; and

(ii) does not result in a claim being filed or paid.

(5) (a) (i) Subject to Subsection (5)(b), if the insurer offers or purports to renew the policy, but on less favorable terms or at higher rates, the new terms or rates take effect on the renewal date if the insurer delivered or sent by first-class mail to the policyholder notice of the new terms or rates at least 30 days prior to the expiration date of the prior policy.

(ii) If the insurer did not give the prior notification described in Subsection (5)(a)(i) to the policyholder the new terms or rates do not take effect until 30 days after the notice is delivered or sent by first-class mail, in which case the policyholder may elect to cancel the renewal policy at any time during the 30-day period.

(iii) Return premiums or additional premium charges shall be calculated proportionately on the basis that the old rates apply.

(b) Subsection (5)(a) does not apply if the only change in terms that is adverse to the policyholder is:

(i) a rate increase generally applicable to the class of business to which the policy belongs;

(ii) a rate increase resulting from a classification change based on the altered nature or extent of the risk insured against; or

(iii) a policy form change made to make the form consistent with Utah law.

(6) (a) If a notice of cancellation or nonrenewal under Subsection (2)(c) does not state with reasonable precision the facts on which the insurer's decision is based, the insurer shall send by first-class mail or deliver that information within ten working days after receipt of a written request by the policyholder.

(b) A notice under Subsection (2)(c) is not effective unless it contains information about the policyholder's right to make the request.

(7) If a risk-sharing plan under Section 31A-2-214 exists for the kind of coverage provided by the insurance being cancelled or nonrenewed, a notice of cancellation or nonrenewal required under Subsection (2)(c) or (4)(b)(i) may not be effective unless it contains instructions to the policyholder for applying for insurance through the available risk-sharing plan.

(8) There is no liability on the part of, and no cause of action against, any insurer, its authorized representatives, agents, employees, or any other person furnishing to the insurer information relating to the reasons for cancellation or nonrenewal or for any statement made or information given by them in complying or enabling the insurer to comply with this section unless actual malice is proved by clear and convincing evidence.

(9) This section does not alter any common law right of contract rescission for material misrepresentation.

Section 57. Section 31A-21-307 is amended to read:

31A-21-307. Other insurance.

(1) When two or more policies promise to indemnify an insured against the same loss without intending cumulative coverage, no "other insurance" provisions of the policies may reduce the aggregate protection of the insured below the lesser of the actual insured loss suffered by the insured and the maximum indemnification promised by any policy without regard to any "other insurance" provision.

(2) Subject to Subsection (1), the policies may by their terms define the extent to which each insurance is primary and each is excess, but if the "other insurance" terms of the policies are inconsistent, there is joint and several liability to the insured on any coverage which overlaps and which has inconsistent terms. Subsequent settlement among the insurers does not alter any rights of the insured. The commissioner may adopt rules consistent with this section concerning "other insurance."

(3) This section does not apply to [~~disability~~] accident and health insurance policies. Refer to Section 31A-22-619 for the coordination of [~~disability~~] accident and health benefits.

Section 58. Section 31A-21-401 is amended to read:

31A-21-401. Scope and construction of part.

This part applies to all mass marketed life or [~~disability~~] accident and health insurance, notwithstanding Subsection 31A-1-103(3)[~~(h)~~]. This part may not be construed to limit the application of other provisions of this title to insurers effecting mass marketed life or [~~disability~~] accident and health insurance policies on persons in this state.

Section 59. Section 31A-21-402 is amended to read:

31A-21-402. Definitions.

As used in this part:

(1) "Direct response solicitation" means any offer by an insurer to persons in this state, either directly or through a third party, to effect life or [~~disability~~] accident and health insurance coverage which enables the individual to apply or enroll for the insurance on the basis of the offer. Direct response solicitation does not include solicitations for insurance through an employee benefit plan exempt from state regulation under preemptive federal law, nor does it include solicitations through the individual's creditor with respect to credit life or credit [~~disability~~] accident and health insurance.

(2) "Mass marketed life or [~~disability~~] accident and health insurance" means the insurance under any individual, franchise, group, or blanket policy of life or [~~disability~~] accident and health insurance

which is offered by means of direct response solicitation through a sponsoring organization or through the mails or other mass communications media and under which the person insured pays all or substantially all of the cost of his insurance.

Section 60. Section 31A-21-403 is amended to read:

31A-21-403. Orders terminating effectiveness of policies.

Upon the commissioner's order, no mass marketed life or [~~disability~~] accident and health insurance issued by an insurer may continue to be effected on persons in this state. The commissioner may issue an order under this section only if he finds, after a hearing, that the total charges for the insurance to the persons insured are unreasonable in relation to the benefits provided. The commissioner's findings under this section must be in writing. Orders under this section may direct the insurer to cease effecting the insurance until the total charges for the insurance are found by the commissioner to be reasonable in relation to the benefits provided.

Section 61. Section 31A-21-404 is amended to read:

31A-21-404. Out-of-state insurers.

Any insurer extending mass marketed life or [~~disability~~] accident and health insurance under a group or blanket policy issued outside of this state to residents of this state shall, with respect to the mass marketed life or [~~disability~~] accident and health insurance policy:

(1) comply with Sections 31A-23-302 and 31A-23-303 and Part III of Chapter 26; and

(2) upon the commissioner's request, deliver to the commissioner a copy of any mass marketed life or [~~disability~~] accident and health insurance policy, certificates issued under these policies, and advertising material used in this state in connection with the policy.

Section 62. Section 31A-21-501 is amended to read:

31A-21-501. Definitions.

For purposes of this part:

(1) "Applicant" means:

(a) in the case of an individual life or [~~disability~~] accident and health policy, the person who seeks to contract for insurance benefits; or

(b) in the case of a group life or [~~disability~~] accident and health policy, the proposed certificate holder.

(2) "Cohabitant" means an emancipated individual pursuant to Section 15-2-1 or an individual who is 16 years of age or older who:

(a) is or was a spouse of the other party;

(b) is or was living as if a spouse of the other party;

(c) is related by blood or marriage to the other party;

(d) has one or more children in common with the other party; or

(e) resides or has resided in the same residence as the other party.

(3) "Child abuse" means the commission or attempt to commit against a child a criminal offense described in:

(a) Title 76, Chapter 5, Part 1, Assault and Related Offenses;

(b) Title 76, Chapter 5, Part 4, Sexual Offenses;

(c) Subsections 76-9-702(1) through (4), Lewdness- Sexual battery; or

(d) Section 76-9-702.5, Lewdness Involving a Child.

(4) "Domestic violence" means any criminal offense involving violence or physical harm or threat of violence or physical harm, or any attempt, conspiracy, or solicitation to commit a criminal offense involving violence or physical harm, when committed by one cohabitant against another and includes commission or attempt to commit, any of the following offenses by one cohabitant against another:

(a) aggravated assault, as described in Section 76-5-103;

(b) assault, as described in Section 76-5-102;

(c) criminal homicide, as described in Section 76-5-201;

(d) harassment, as described in Section 76-5-106;

(e) telephone harassment, as described in Section 76-9-201;

(f) kidnaping, child kidnaping, or aggravated kidnaping, as described in Sections 76-5-301, 76-5-301.1, and 76-5-302;

(g) mayhem, as described in Section 76-5-105;

(h) sexual offenses, as described in Title 76, Chapter 5, Part 4, and Title 76, Chapter 5a;

(i) stalking, as described in Section 76-5-106.5;

(j) unlawful detention, as described in Section 76-5-304;

(k) violation of a protective order or ex parte protective order, as described in Section 76-5-108;

(l) any offense against property described in Title 76, Chapter 6, Part 1, 2, or 3;

(m) possession of a deadly weapon with intent to assault, as described in Section 76-10-507; or

(n) discharge of a firearm from a vehicle, near a highway, or in the direction of any person, building, or vehicle, as described in Section 76-10-508.

(5) "Subject of domestic abuse" means an individual who is, has been, may currently be, or

may have been subject to domestic violence or child abuse.

Section 63. Section 31A-21-502 is amended to read:

31A-21-502. Scope of part.

This part applies to only life and [~~disability~~] accident and health insurance.

Section 64. Section 31A-21-503 is amended to read:

31A-21-503. Discrimination based on domestic violence or child abuse prohibited.

(1) Except as provided in Subsection (2), an insurer of life or [~~disability~~] accident and health insurance may not consider whether an insured or applicant is the subject of domestic abuse as a factor to:

(a) refuse to insure the applicant;

(b) refuse to continue to insure the insured;

(c) refuse to renew or reissue a policy to insure the insured or applicant;

(d) limit the amount, extent, or kind of coverage available to the insured or applicant;

(e) charge a different rate for coverage to the insured or applicant;

(f) exclude or limit benefits or coverage under an insurance policy or contract for losses incurred;

(g) deny a claim; or

(h) terminate coverage or fail to provide conversion privileges in violation of Sections 31A-22-612 and 31A-22-710 under a group [~~disability~~] accident and health policy for the insured because the coverage was issued in the name of the perpetrator of the domestic violence or abuse.

(2) (a) Notwithstanding Subsection (1), an insurer may underwrite based on the physical or mental condition of an insured or applicant if the underwriting is based on a determination that there is a correlation between the medical or mental condition and a material increase in insurance risk.

(b) For purposes of Subsection (2)(a), the fact that an insured or applicant is a subject of domestic abuse is not a mental or physical condition.

(c) The determination required by Subsection (2)(a) shall be made in conformance with sound actuarial principles.

(d) Within 30 days after receiving an oral or written request from an insured or applicant, an insurer shall disclose in writing:

(i) the basis of an action permitted under Subsection (2)(a); and

(ii) if the policy has been issued or modified, the extent the action taken will impact the amount, extent, or kind of coverage or benefits available to the insured.

Section 65. Section 31A-21-505 is amended to read:

31A-21-505. Limit on liability.

An insurer that issues a life or [~~disability~~] accident and health insurance policy to an individual who is the subject of domestic abuse is not liable civilly or criminally for the death of or any injuries to the insured as a result of domestic violence or child abuse beyond the obligations of the insurer under:

(1) the insurance policy; or

(2) this title.

Section 66. Section 31A-22-307 is amended to read:

31A-22-307. Personal injury protection coverages and benefits.

(1) Personal injury protection coverages and benefits include:

(a) the reasonable value of all expenses for necessary medical, surgical, X-ray, dental, rehabilitation, including prosthetic devices, ambulance, hospital, and nursing services, not to exceed a total of $3,000 per person;

(b) (i) the lesser of $250 per week or 85% of any loss of gross income and loss of earning capacity per person from inability to work, for a maximum of 52 consecutive weeks after the loss, except that this benefit need not be paid for the first three days of disability, unless the disability continues for longer than two consecutive weeks after the date of injury; and

(ii) a special damage allowance not exceeding $20 per day for a maximum of 365 days, for services actually rendered or expenses reasonably incurred for services that, but for the injury, the injured person would have performed for his household, except that this benefit need not be paid for the first three days after the date of injury unless the person's inability to perform these services continues for more than two consecutive weeks;

(c) funeral, burial, or cremation benefits not to exceed a total of $1,500 per person; and

(d) compensation on account of death of a person, payable to his heirs, in the total of $3,000.

(2) (a) To determine the reasonable value of the medical expenses provided for in Subsection (1) and under Subsection 31A-22-309 (1)(e), the commissioner shall conduct a relative value study of services and accommodations for the diagnosis, care, recovery, or rehabilitation of an injured person in the most populous county in the state to assign a unit value and determine the 75th percentile charge for each type of service and accommodation. The study shall be updated every other year. In conducting the study, the department may consult or contract with appropriate public and private medical and health agencies or other technical experts. The costs and expenses incurred in conducting, maintaining, and administering the relative value study shall be funded by the tax created under Section 59-9-105.

Upon completion of the study, the department shall prepare and publish a relative value study which sets forth the unit value and the 75th percentile charge assigned to each type of service and accommodation.

(b) The reasonable value of any service or accommodation is determined by applying the unit value and the 75th percentile charge assigned to the service or accommodation under the relative value study. If a service or accommodation is not assigned a unit value or the 75th percentile charge under the relative value study, the value of the service or accommodation shall equal the reasonable cost of the same or similar service or accommodation in the most populous county of this state.

(c) This Subsection (2) does not preclude the department from adopting a schedule already established or a schedule prepared by persons outside the department, if it meets the requirements of this Subsection (2).

(d) Every insurer shall report to the Commissioner of Insurance any patterns of overcharging, excessive treatment, or other improper actions by a health provider within 30 days after such insurer has knowledge of such pattern.

(e) (i) In disputed cases, a court on its own motion or on the motion of either party may designate an impartial medical panel of not more than three licensed physicians to examine the claimant and testify on the issue of the reasonable value of the claimant's medical services or expenses.

(ii) An impartial medical panel designated under Subsection (2)(e)(i) shall consist of a majority of health care professionals within the same license classification and specialty as the provider of the claimant's medical services or expenses.

(3) Medical expenses as provided for in Subsection (1)(a) and in Subsection 31A-22-309 (1)(e) include expenses for any nonmedical remedial care and treatment rendered in accordance with a recognized religious method of healing.

(4) The insured may waive for the named insured and the named insured's spouse only the loss of gross income benefits of Subsection (1)(b)(i) if the insured states in writing that:

(a) within 31 days of applying for coverage, neither the insured nor the insured's spouse received any earned income from regular employment; and

(b) for at least 180 days from the date of the writing and during the period of insurance, neither the insured nor the insured's spouse will receive earned income from regular employment.

(5) This section does not prohibit the issuance of policies of insurance providing coverages greater than the minimum coverage required under this chapter nor does it require the segregation of those minimum coverages from other coverages in the same policy.

(6) Deductibles are not permitted with respect to the insurance coverages required under this section.

Section 67. Section 31A-22-403 is amended to read:

31A-22-403. Incontestability.

(1) This section does not apply to group policies.

(2) Each life insurance policy is, and shall state that, after it has been in force during the lifetime of the insured for a period of two years from its date of issue, it is incontestable except for the following:

(a) The policy may be contested for nonpayment of premiums.

(b) The policy may be contested as to:

(i) provisions relating to [~~disability~~] accident and health benefits allowed under Section 31A-22-609[~~,~~]; and [~~as to~~]

(ii) additional benefits in the event of death by accident [~~or accidental means~~].

(c) If the policy allows the insured, after the policy's issuance and for an additional premium, to obtain a death benefit which is larger than when the policy was originally issued, then the payment of the additional increment of benefit is contestable until two years after the incremental increase of benefits, but the only ground of contest that may arise is in connection with the incremental increase.

(3) A reinstated life insurance policy or annuity contract may be contested for two years following reinstatement on the same basis as at original issuance, but only as to matters arising in connection with the reinstatement. Any grounds for contest available at original issuance continue to be available for contest until the policy has been in force for a total of two years during the lifetime of the insured.

(4) The limitations on incontestability under this section preclude only a contest of the validity of the policy, and do not preclude the good faith assertion at any time of defenses based upon provisions in the policy which exclude or qualify coverage, whether or not those qualifications or exclusions are specifically excepted in the policy's incontestability clause. Provisions on which the contestable period would normally run may not be reformulated as coverage exclusions or restrictions to take advantage of this Subsection (4).

Section 68. Section 31A-22-404 is amended to read:

31A-22-404. Suicide.

(1) (a) Suicide is not a defense to a claim under a life insurance policy that has been in force as to a policyholder or certificate holder for two years from the date [~~the coverage is effective~~] of issuance of the policy, whether:

(i) the suicide was voluntary or involuntary; or

(ii) the insured was sane or insane.

(b) If a suicide occurs within the two-year period described in Subsection (1)(a), the insurer shall pay to the beneficiary an amount not less than the premium paid for the life insurance policy.

(2) (a) If after a life insurance policy is in effect the policy allows the insured to obtain a death benefit that is larger than when the policy was originally effective for an additional premium, the payment of the additional increment of benefit may be limited in the event of a suicide within a two-year period beginning on the date the increment increase takes effect.

(b) If a suicide occurs within the two-year period described in Subsection (2)(a), the insurer shall pay to the beneficiary an amount not less than the additional premium paid for the additional increment of benefit.

(3) This section does not apply to:

(a) policies insuring against death by accident only; or

(b) the accident or double indemnity provisions of an insurance policy.

Section 69. Section 31A-22-415 is amended to read:

31A-22-415. Simultaneous death.

Section 75-2-702 applies to all policies of life and [~~disability~~] accident and health insurance.

Section 70. Section 31A-22-423 is amended to read:

31A-22-423. Policy and annuity examination period.

(1) (a) Except as provided under Subsection (2), all life insurance policies and annuities shall contain a notice prominently printed on or attached to the cover or front page stating that the policyholder has the right to return the policy for any reason on or before:

(i) ten days after delivery; or

(ii) in case of a replacement policy, 20 days after the replacement policy is delivered.

(b) For purposes of this section, "return" means a written statement on the policy or an accompanying writing that the policy is being returned for termination of coverage that is delivered to or mailed first class to the insurer or its agent.

(c) A policy returned under this section is void from the date of [~~return~~] issuance.

(d) A policyholder returning a policy is entitled to a refund of any premium paid[~~, except that the insurer may retain an amount not exceeding that determined by rule adopted by the commissioner~~].

(2) This section does not apply to:

(a) group policies; and

(b) other classes of life insurance policies that the commissioner specifies by rule after finding that a right to return those policies would be impracticable or unnecessary to protect the policyholder's interests.

Section 71. Section 31A-22-424 is enacted to read:

31A-22-424. Documents constituting entire life insurance policy.

(1) A life insurance policy shall contain a provision that defines the documents and agreements that constitute the entire contract between the parties.

(2) Except as permitted by Section 31A-21-106, all documents and agreements defined under Subsection (1) shall be attached to the policy.

Section 72. Section 31A-22-510 is amended to read:

31A-22-510. Requirements for group life insurance delivered in another jurisdiction.

(1) [~~No~~] A Utah resident may not be enrolled in a policy of group life insurance delivered in another jurisdiction in violation of Subsection (2) or (3), notwithstanding any contrary provision in Subsection 31A-1-103(3) [~~(h)~~].

(2) Unless specifically authorized by the commissioner under Section 31A-22-509, coverage under a group life insurance policy delivered in another jurisdiction may not be initially provided to any person unless the policy conforms substantially to one of the types of groups specified under Sections 31A-22-502 through 31A-22-508.

(3) [~~No coverage~~] Coverage may not be initially provided to any person in Utah under a group life policy issued in another jurisdiction by an insurer not authorized to engage in life insurance business in Utah unless the policyholder conforms substantially to the type of group specified under Section 31A-22-502, 31A-22-503, or 31A-22-504.

Section 73. Section 31A-22-517 is amended to read:

31A-22-517. Conversion on termination of eligibility.

(1) If any portion of the insurance on a person covered under the policy ceases because of termination of employment or of membership in the classes eligible for coverage, the person is entitled to be issued by the insurer, without evidence of insurability, an individual policy of life insurance without [~~disability~~] accident and health or other supplementary benefits, if an application for the individual policy is made and the first premium paid to the insurer within 31 days after the termination.

(2) The individual policy shall, at the option of the person entitled, be on any form then customarily issued by the insurer at the age and for the amount applied for, except that the group policy may exclude the option to elect term insurance.

(3) The individual policy shall be for an amount not in excess of the life insurance which ceases because of the termination, less the amount of any

life insurance for which the person is eligible because of the termination and within 30 days after it. Any amount of insurance which matures on or before the termination, as an endowment payable to the person insured, whether in one sum, in installments, or in the form of an annuity, is not included in the amount which is considered to cease because of the termination.

(4) The premium on the individual policy shall be at the insurer's customary rate at the time of termination, which is applicable to the form and amount of the individual policy, to the class of risk to which the person belonged when terminated from the group policy, and to the age attained on the effective date of the individual policy.

(5) Subject to the conditions of this section, the conversion privilege is available:

(a) to a surviving dependent, if any, at the death of the employee or member, with respect to the survivor's coverage under the group policy which terminates by reason of the death; and

(b) to the dependent of the employee or member upon termination of coverage of the dependent, while the employee or member remains insured, because the dependent ceases to be a qualified dependent under the group policy.

Section 74. Section 31A-22-518 is amended to read:

31A-22-518. Conversion on termination of policy.

[~~If~~] (1) Subject to Subsection (2), if the group policy terminates or is amended to terminate the insurance of any class of covered persons, every insured person whose insurance terminates, including the insured dependent of a covered person who has been insured for at least five years prior to the termination date, is entitled to have the insurer issue to [~~him~~] the person an individual policy of life insurance, subject to the conditions and limitations in Section 31A-22-517[~~, except that the~~].

(2) The group policy [~~may~~] described in Subsection (1) shall provide [~~either~~] that[~~: (1) The~~] the amount of the individual policy may not [~~exceed~~] be less than the smaller of:

(a) the amount of the person's life insurance protection ceasing because of the termination or amendment of the group policy, less the amount of any life insurance for which [~~he~~] the person is eligible under any group policy issued or reinstated by the same or another insurer within 30 days after the termination[~~. (2) The amount of the individual policy may not exceed~~]; or

(b) $10,000.

Section 75. Section 31A-22-520 is amended to read:

31A-22-520. Continuation of coverage during total disability.

(1) An insured person in a group life insurance policy may continue coverage during the total disability of the insured person or dependent by timely payment to the policyholder of that portion, if any, of the premium that would have been required on behalf of the insured person in the absence of total disability.

(2) The continuation shall be on a premium paying basis until the earlier of:

(a) six months from the date of total disability;

(b) approval by the insurer of continuation of the coverage under any disability provision the group insurance policy may contain; or

(c) the discontinuance of the group insurance policy.

(3) If the group policy has a waiting period for [~~a disability~~] an accident and health benefit, the continuation extends to the end of the waiting period, even if the group policy is otherwise discontinued.

Section 76. Section 31A-22-522 is enacted to read:

31A-22-522. Required provision for notice of termination.

(1) A policy for group or blanket life insurance coverage issued or renewed after July 1, 2001, shall include a provision that obligates the policyholder to notify each employee or group member:

(a) in writing;

(b) 30 days before the date the coverage is terminated; and

(c) (i) that the group or blanket life insurance coverage is being terminated; and

(ii) the rights the employee or group member has to continue coverage upon termination.

(2) For a policy for group or blanket life insurance coverage described in Subsection (1), an insurer shall:

(a) include a statement of a policyholder's obligations under Subsection (1) in the insurer's monthly notice to the policyholder of premium payments due; and

(b) provide a sample notice to the policyholder at least once a year.

Section 77. Section 31A-22-600 is amended to read:

31A-22-600. Scope of Part VI.

(1) [~~This~~] Except where a provision's application is otherwise specifically limited, this part applies to all [~~disability~~]:

(a) accident and health insurance contracts, including credit [~~disability,~~] accident and health;

(b) franchise[~~, and~~];

(c) group contracts[~~, except where a provision's application is otherwise specifically limited.~~]; and

(d) a life insurance and annuity policy, but only if:

(i) it includes supplemental benefits and riders including accelerated benefits; and

(ii) receipt of benefits in contingent on morbidity requirements.

(2) Nothing in this part applies to or affects:

(a) workers' compensation insurance;

(b) reinsurance; or

[~~(c) annuities or life insurance, or their supplemental contracts which contain only those provisions relating to disability insurance which provide additional benefits in case of dismemberment or loss of sight by accident, safeguard the contract against lapse, or give a special surrender value or special benefit or an annuity if the insured or annuitant becomes totally and permanently disabled, as defined by the contract or supplemental contract; (d) disability~~]

(c) accident and health insurance when it is part of or supplemental to liability, steam boiler, elevator, automobile, or other insurance covering loss of or damage to property, provided the loss, damage, or expense arises out of a hazard directly related to the other insurance.

(3) Except as provided in Subsection (1), this part does not apply to or affect a life insurance or annuity policy including a life insurance policy:

(a) with a rider or supplemental benefit that accelerates the death benefit contingent upon a mortality risk specifically for one or more of the qualifying events of:

(i) terminal illness;

(ii) medical conditions requiring extraordinary medical intervention; or

(iii) permanent institutional confinement; and

(b) that provides the option of a lump-sum payment for those benefits.

Section 78. Section 31A-22-601 is amended to read:

31A-22-601. Applicability of life insurance provisions.

Sections 31A-22-412 through 31A-22-417 apply to death benefits in [~~disability~~] accident and health insurance policies.

Section 79. Section 31A-22-602 is amended to read:

31A-22-602. Premium rates.

(1) This section does not apply to group [~~disability~~] accident and health insurance.

(2) The benefits in [~~a disability~~] an accident and health insurance policy shall be reasonable in relation to the premiums charged.

(3) The commissioner shall disapprove [~~a disability~~] an accident and health insurance policy form if it does not satisfy Subsection (2).

Section 80. Section 31A-22-603 is amended to read:

31A-22-603. Persons insured under an individual accident and health policy.

A policy of individual [~~disability~~] accident and health insurance may insure only one person, except that originally or by subsequent amendment, upon the application of an adult policyholder, a policy may insure any two or more eligible members of the policyholder's family, including husband, wife, dependent children, and any other person dependent upon the policyholder.

Section 81. Section 31A-22-604 is amended to read:

31A-22-604. Reimbursement by insurers of Medicaid benefits.

(1) As used in this section, "Medicaid" means the program under Title XIX of the federal Social Security Act.

(2) Any [~~disability~~] accident and health insurer, including a group [~~disability~~] accident and health insurance plan, as defined in Section 607(1), Federal Employee Retirement Income Security Act of 1974, or health maintenance organization as defined in Section 31A-8-101, is prohibited from considering the availability or eligibility for medical assistance in this or any other state under Medicaid, when considering eligibility for coverage or making payments under its plan for eligible enrollees, subscribers, policyholders, or certificate holders.

(3) To the extent that payment for covered expenses has been made under the state Medicaid program for health care items or services furnished to an individual in any case when a third party has a legal liability to make payments, the state is considered to have acquired the rights of the individual to payment by any other party for those health care items or services.

(4) Title 26, Chapter 19, Medical Benefits Recovery Act, applies to reimbursement of insurers of Medicaid benefits.

Section 82. Section 31A-22-605 is amended to read:

31A-22-605. Accident and health insurance standards.

(1) The purposes of this section include:

(a) reasonable standardization and simplification of terms and coverages of individual and franchise [~~disability~~] accident and health insurance policies, including [~~disability~~] accident and health insurance contracts of insurers licensed under Chapters 7 and 8, to facilitate public understanding and comparison in purchasing;

(b) elimination of provisions contained in individual and franchise [~~disability~~] accident and health insurance contracts [~~which~~] that may be misleading or confusing in connection with either the purchase of those types of coverages or the settlement of claims; and

(c) full disclosure in the sale of individual and franchise [~~disability~~] accident and health insurance contracts.

(2) As used in this section:

(a) "Direct response insurance policy" means an individual insurance policy solicited and sold without the policyholder having direct contact with a natural person intermediary.

(b) "Medicare" is defined in Subsection 31A-22-620(1)(e).

(c) "Medicare supplement policy" is defined in Subsection 31A-22-620(1)(f).

(3) This section applies to all individual and franchise [~~disability~~] accident and health policies.

(4) The commissioner shall adopt rules relating to the following matters:

(a) standards for the manner and content of policy provisions, and disclosures to be made in connection with the sale of policies covered by this section, dealing with at least the following matters:

(i) terms of renewability;

(ii) initial and subsequent conditions of eligibility;

(iii) nonduplication of coverage provisions;

(iv) coverage of dependents;

(v) preexisting conditions;

(vi) termination of insurance;

(vii) probationary periods;

(viii) limitations;

(ix) exceptions;

(x) reductions;

(xi) elimination periods;

(xii) requirements for replacement;

(xiii) recurrent conditions;

(xiv) coverage of persons eligible for Medicare; and

(xv) definition of terms;

(b) minimum standards for benefits under each of the following categories of coverage in policies covered in this section:

(i) basic hospital expense coverage;

(ii) basic medical-surgical expense coverage;

(iii) hospital confinement indemnity coverage;

(iv) major medical expense coverage;

(v) [~~disability~~] income [~~protection~~] replacement coverage;

(vi) accident only coverage;

(vii) specified disease or specified accident coverage;

(viii) limited benefit health coverage; and

(ix) nursing home and long-term care coverage;

(c) the content and format of the outline of coverage, in addition to that required under Subsection (6); [~~and~~]

(d) the method of identification of policies and contracts based upon coverages provided[~~.~~]; and

(e) rating practices.

(5) Nothing in Subsection (4)(b) precludes the issuance of policies that combine categories of coverage in that subsection provided that any combination of categories meets the standards of a component category of coverage.

(6) The commissioner may adopt rules relating to the following matters:

(a) establishing disclosure requirements for insurance policies covered in this section, designed to adequately inform the prospective insured of the need for and extent of the coverage offered, and requiring that this disclosure be furnished to the prospective insured with the application form, unless it is a direct response insurance policy;

(b) (i) prescribing caption or notice requirements designed to inform prospective insureds that particular insurance coverages are not Medicare Supplement coverages;

(ii) the requirements of Subsection (6)(b)(i) apply to all [~~disability~~] insurance policies and certificates sold to persons eligible for Medicare; and

(c) requiring the disclosures or information brochures to be furnished to the prospective insured on direct response insurance policies, upon his request or, in any event, no later than the time of the policy delivery.

(7) A policy covered by this section may be issued only if it meets the minimum standards established by the commissioner under Subsection (4), an outline of coverage accompanies the policy or is delivered to the applicant at the time of the application, and, except with respect to direct response insurance policies, an acknowledged receipt is provided to the insurer. The outline of coverage shall include:

(a) a statement identifying the applicable categories of coverage provided by the policy as prescribed under Subsection (4);

(b) a description of the principal benefits and coverage;

(c) a statement of the exceptions, reductions, and limitations contained in the policy;

(d) a statement of the renewal provisions, including any reservation by the insurer of a right to change premiums;

(e) a statement that the outline is a summary of the policy issued or applied for and that the policy should be consulted to determine governing contractual provisions; and

(f) any other contents the commissioner prescribes.

(8) If a policy is issued on a basis other than that applied for, the outline of coverage shall accompany

the policy when it is delivered and it shall clearly state that it is not the policy for which application was made.

(9) (a) Notwithstanding Subsection 31A-22-609(2), and except as provided under Subsection (9)(b), an insurer that elects to use an application form without questions concerning the insured's health history or medical treatment history, shall provide coverage under the policy for any loss which occurs more than 12 months after the effective date of the policy due to a preexisting condition which is not specifically excluded from coverage.

(b) (i) An insurer that issues a specified disease policy, regardless of whether the basis of issuance is a detailed application form, a simplified application form, or an enrollment form, may not deny a claim for loss due to a preexisting condition which occurs more than six months after the effective date of coverage.

(ii) A specified disease policy may not define a preexisting condition more restrictively than a condition which first manifested itself within six months prior to the effective date of coverage or which was diagnosed by a physician at any time prior to the effective date of coverage.

(iii) A specified disease policy may not include wording that provides a defense based upon a preexisting condition except as allowed under this Subsection (9).

(10) Notwithstanding Subsection 31A-22-606(1), limited accident and health policies or certificates issued to persons eligible for Medicare shall contain a notice prominently printed on or attached to the cover or front page which states that the policyholder or certificate holder has the right to return the policy for any reason within 30 days after its delivery and to have the premium refunded.

Section 83. Section 31A-22-606 is amended to read:

31A-22-606. Policy examination period.

(1) (a) Except as provided in Subsection (2), all [~~disability~~] accident and health policies shall contain a notice prominently printed on or attached to the cover or front page stating that the policyholder has the right to return the policy for any reason within ten days after its delivery.

(b) "Return" means delivery to the insurer or its agent or mailing of the policy to either, properly addressed and stamped for first class handling, with a written statement on the policy or an accompanying communication that it is being returned for termination of coverage. A policy returned under Subsection (1) is void from the beginning and a policyholder returning his policy is entitled to a refund of any premium paid.

(2) This section does not apply to:

(a) group policies;

(b) policies issued to persons entitled to a 30-day examination period under Subsection 31A-22-605(10);

(c) single premium nonrenewable policies issued for terms not longer than 60 days;

(d) policies covering accidents only or accidental bodily injury only; and

(e) other classes of policies which the commissioner by rule specifies after a finding that a right to return those policies would be impracticable or unnecessary to protect the policyholder's interests.

Section 84. Section 31A-22-607 is amended to read:

31A-22-607. Grace period.

(1) Every individual or franchise [~~disability~~] accident and health insurance policy shall contain clauses providing for a grace period of at least seven days for weekly premium policies, ten days for monthly premium policies and 30 days for all other policies, for each premium after the first. During the grace period, the policy continues in force.

(2) Every group or blanket [~~disability~~] accident and health policy shall provide for a grace period of at least 30 days, unless the policyholder gives written notice of discontinuance prior to the date of discontinuance, in accordance with the policy terms. In group or blanket policies, the policy may provide for payment of a pro rata premium for the period the policy is in effect during the grace period under this [~~subsection~~] Subsection (2).

(3) If the insurer has not guaranteed the insured a right to renew [~~a disability~~] an accident and health policy, any grace period beyond the expiration or anniversary date may, if provided in the policy, be cut off by compliance with the notice provision under Subsection 31A-21-303(4)(b).

Section 85. Section 31A-22-608 is amended to read:

31A-22-608. Reinstatement of individual or franchise accident and health insurance policies.

(1) Every individual or franchise [~~disability~~] accident and health insurance policy shall contain a provision which reads as follows:

"REINSTATEMENT: If any renewal premium is not paid within the time granted the insured for payment, a subsequent acceptance of premium by the insurer or by any agent duly authorized by the insurer to accept the premium, without also requiring an application for reinstatement, shall reinstate the policy. However, if the insurer or agent requires an application for reinstatement and issues a conditional receipt for the premium tendered, the policy shall be reinstated upon approval of this application from the insurer or, lacking this approval, upon the 45th day following the date of the conditional receipt, unless the insurer has previously notified the insured in writing of its disapproval of the application. The reinstated policy shall cover only loss resulting from

such accidental injury as may be sustained after the date of reinstatement and loss due to such sickness as may begin more than ten days after that date. In all other respects the insured and insurer have the same rights under the reinstated policy as they had under the policy immediately before the due date of the defaulted premium, subject to any provisions endorsed on or attached to this policy in connection with the reinstatement. Any premium accepted in connection with a reinstatement shall be applied to a period for which premium has not been previously paid, but not to any period more than 60 days prior to the date of reinstatement."

(2) The last sentence of the provision set forth in Subsection (1) may be omitted from any policy [~~which~~] that the insured has the right to continue in force subject to its terms by the timely payment of premiums until at least age 50, or in the case of a policy issued after age 44, for at least five years from its date of issue.

Section 86. Section 31A-22-609 is amended to read:

31A-22-609. Incontestability for accident and health insurance.

(1) [~~No~~] (a) A statement made by an applicant in the application for individual or franchise [~~disability~~] accident and health insurance coverage [~~and no~~] or statement made relating to the person's insurability by a person insured under a group policy, except fraudulent misrepresentation, [~~is~~] may not be a basis for avoidance of the policy or denial of a claim for loss incurred or disability commencing after the coverage has been in effect for two years.

(b) The insurer has the burden of proving fraud by clear and convincing evidence.

(c) The policy may provide for incontestability even for fraudulent misstatements.

(2) Except as otherwise provided under Subsection 31A-22-605(9), [~~no~~] a claim for loss incurred or disability commencing after two years from the date of issue of the policy may not be reduced or denied on the ground that a disease or physical condition existed prior to the effective date of coverage, unless the condition was excluded from coverage by name or specific description in a provision [~~which~~] that was in effect on the date of loss.

Section 87. Section 31A-22-610 is amended to read:

31A-22-610. Dependent coverage from moment of birth or adoption.

(1) As used in this section:

(a) "Child" means, in connection with any adoption, or placement for adoption of the child, an individual who is younger than 18 years of age as of the date of the adoption or placement for adoption.

(b) "Placement for adoption" means the assumption and retention by a person of a legal obligation for total or partial support of a child in anticipation of the adoption of the child.

(2) (a) If any [~~disability~~] accident and health insurance policy provides coverage for any members of the policyholder's or certificate holder's family, the policy shall also provide that any health insurance benefits applicable to dependents of the insured are applicable on the same basis to a newly born child from the moment of birth, and to an adopted child:

(i) beginning from the moment of birth if placement for adoption occurs within 30 days of the child's birth; or

(ii) beginning from the date of placement if placement for adoption occurs 30 days or more after the child's birth.

(b) This coverage is not subject to any preexisting conditions, and includes any injury or sickness, including the necessary care and treatment of medically diagnosed congenital defects and birth abnormalities or prematurity.

(c) If the payment of a specific premium is required to provide coverage for a child of the policyholder or certificate holder, the policy may require that the insurer be notified of the birth or placement for the purpose of adoption, and that the required premium be paid within 30 days after the date of birth or placement for the purpose of adoption, in order to have the coverage extend beyond that 30-day period.

(3) The coverage required by Subsection (2) as to children placed for the purpose of adoption with a policyholder or certificate holder continues in the same manner as it would with respect to a child of the policyholder or certificate holder unless the placement is disrupted prior to legal adoption and the child is removed from placement. The coverage requirement ends if the child is removed from placement prior to being legally adopted.

(4) The provisions of this section apply to employee welfare benefit plans as defined in Section 26-19-2.

Section 88. Section 31A-22-610.2 is amended to read:

31A-22-610.2. Maternity stay minimum limits.

(1) (a) If an insured has coverage for maternity benefits, the policy may not be limited to a less than a 48-hour benefit for both mother and newborn with a normal vaginal delivery.

(b) If an insured has coverage for maternity benefits, the policy may not be limited to a less than 96-hour benefit for both mother and newborn with a caesarean section delivery.

(2) Subsection (1) applies to [~~a disability~~] an accident and health insurer who offers maternity coverage.

Section 89. Section 31A-22-610.5 is amended to read:

31A-22-610.5. Dependent coverage.

(1) As used in this section, "child" has the same meaning as defined in Section 78-45-2.

(2) (a) Any individual or group health insurance policy or health maintenance organization contract that provides coverage for a policyholder's or certificate holder's dependent shall not terminate coverage of an unmarried dependent by reason of the dependent's age before the dependent's 26th birthday and shall, upon application, provide coverage for all unmarried dependents up to age 26.

(b) The cost of coverage for unmarried dependents 19 to 26 years of age shall be included in the premium on the same basis as other dependent coverage.

(c) This section does not prohibit the employer from requiring the employee to pay all or part of the cost of coverage for unmarried dependents.

(3) An individual or group health insurance policy or health maintenance organization contract shall reinstate dependent coverage, and for purposes of all exclusions and limitations, shall treat the dependent as if the coverage had been in force since it was terminated; if:

(a) the dependent has not reached the age of 26 by July 1, 1995;

(b) the dependent had coverage prior to July 1, 1994;

(c) prior to July 1, 1994, the dependent's coverage was terminated solely due to the age of the dependent; and

(d) the policy has not been terminated since the dependent's coverage was terminated.

(4) (a) When a parent is required by a court or administrative order to provide health insurance coverage for a child, [~~a disability~~] an accident and health insurer may not deny enrollment of a child under the [~~disability~~] accident and health insurance plan of the child's parent on the grounds the child:

(i) was born out of wedlock and is entitled to coverage under Subsection (6);

(ii) was born out of wedlock and the custodial parent seeks enrollment for the child under the custodial parent's policy;

(iii) is not claimed as a dependent on the parent's federal tax return; or

(iv) does not reside with the parent or in the insurer's service area.

(b) [~~A disability~~] An accident and health insurer providing enrollment under Subsection (4)(a)(iv) is subject to the requirements of Subsection (5).

(5) A health maintenance organization or a preferred provider organization may use alternative delivery systems or indemnity insurers to provide coverage under Subsection (4)(a)(iv) outside its service area. [~~The provisions of~~] Section 31A-8-408 [~~do~~] does not apply to this Subsection (5).

(6) When a child has [~~disability~~] accident and health coverage through an insurer of a noncustodial parent the insurer shall:

(a) provide information to the custodial parent as necessary for the child to obtain benefits through that coverage, but the insurer or employer, or the agents or employees of either of them, are not civilly or criminally liable for providing information in compliance with this Subsection (6)(a), whether the information is provided pursuant to a verbal or written request;

(b) permit the custodial parent or the service provider, with the custodial parent's approval, to submit claims for covered services without the approval of the noncustodial parent; and

(c) make payments on claims submitted in accordance with Subsection (6)(b) directly to the custodial parent, the provider, or the state Medicaid agency.

(7) When a parent is required by a court or administrative order to provide health coverage for a child, and the parent is eligible for family health coverage, the insurer shall:

(a) permit the parent to enroll, under the family coverage, a child who is otherwise eligible for the coverage without regard to an enrollment season restrictions;

(b) if the parent is enrolled but fails to make application to obtain coverage for the child, enroll the child under family coverage upon application of the child's other parent, the state agency administering the Medicaid program, or the state agency administering 42 U.S.C. 651 through 669, the child support enforcement program; and

(c) not disenroll or eliminate coverage of the child unless the insurer is provided satisfactory written evidence that:

(i) the court or administrative order is no longer in effect; or

(ii) the child is or will be enrolled in comparable [~~disability~~] accident and health coverage through another insurer which will take effect not later than the effective date of disenrollment.

(8) An insurer may not impose requirements on a state agency [~~which~~] that has been assigned the rights of an individual eligible for medical assistance under Medicaid and covered for [~~disability~~] accident and health benefits from the insurer that are different from requirements applicable to an agent or assignee of any other individual so covered.

(9) Insurers may not reduce their coverage of pediatric vaccines below the benefit level in effect on May 1, 1993.

(10) When a parent is required by a court or administrative order to provide health coverage, which is available through an employer doing business in this state, the employer shall:

(a) permit the parent to enroll under family coverage any child who is otherwise eligible for

coverage without regard to any enrollment season restrictions;

(b) if the parent is enrolled but fails to make application to obtain coverage of the child, enroll the child under family coverage upon application by the child's other parent, by the state agency administering the Medicaid program, or the state agency administering 42 U.S.C. 651 through 669, the child support enforcement program;

(c) not disenroll or eliminate coverage of the child unless the employer is provided satisfactory written evidence that:

(i) the court order is no longer in effect;

(ii) the child is or will be enrolled in comparable coverage which will take effect no later than the effective date of disenrollment; or

(iii) the employer has eliminated family health coverage for all of its employees; and

(d) withhold from the employee's compensation the employee's share, if any, of premiums for health coverage and to pay this amount to the insurer.

(11) An order issued under Section 62A-11-326.1 may be considered a "qualified medical support order" for the purpose of enrolling a dependent child in a group [~~disability~~] accident and health insurance plan as defined in Section 609(a), Federal Employee Retirement Income Security Act of 1974.

(12) This section does not affect any insurer's ability to require as a precondition of any child being covered under any policy of insurance that:

(a) the parent continues to be eligible for coverage;

(b) the child shall be identified to the insurer; and

(c) the premium shall be paid when due.

(13) The provisions of this section apply to employee welfare benefit plans as defined in Section 26-19-2.

Section 90. Section 31A-22-611 is amended to read:

31A-22-611. Policy extension for handicapped children.

(1) Every [~~disability~~] accident and health insurance policy or contract that provides that coverage of a dependent child of a person insured under the policy shall terminate upon reaching a limiting age as specified in the policy, shall also provide that the age limitation does not terminate the coverage of a dependent child while the child is and continues to be both:

(a) incapable of self-sustaining employment because of mental retardation or physical handicap; and

(b) chiefly dependent upon the person insured under the policy for support and maintenance.

(2) The insurer may require proof of the incapacity and dependency be furnished by the person insured under the policy within 30 days of the date the child attains the limiting age, and at any time thereafter, except that the insurer may not require proof more often than annually after the two-year period immediately following attainment of the limiting age by the child.

Section 91. Section 31A-22-612 is amended to read:

31A-22-612. Conversion privileges for insured former spouse.

(1) [~~No disability~~] An accident and health insurance policy, which in addition to covering the insured also provides coverage to the spouse of the insured, may not contain a provision for termination of coverage of a spouse covered under the policy, except by entry of a valid decree of divorce or annulment between the parties.

(2) Every policy which contains this type of provision shall provide that upon the entry of the divorce decree the spouse is entitled to have issued an individual policy of [~~disability~~] accident and health insurance without evidence of insurability, upon application to the company and payment of the appropriate premium. The policy shall provide the coverage being issued which is most nearly similar to the terminated coverage. Probationary or waiting periods in the policy are considered satisfied to the extent the coverage was in force under the prior policy.

(3) When the insurer receives actual notice that the coverage of a spouse is to be terminated because of a divorce or annulment, the insurer shall promptly provide the spouse written notification of the right to obtain individual coverage as provided in Subsection (2), the premium amounts required, and the manner, place, and time in which premiums may be paid. The premium is determined in accordance with the insurer's table of premium rates applicable to the age and class of risk of the persons to be covered and to the type and amount of coverage provided. If the spouse applies and tenders the first monthly premium to the insurer within 30 days after receiving the notice provided by this subsection, the spouse shall receive individual coverage that commences immediately upon termination of coverage under the insured's policy.

(4) This section does not apply to [~~disability~~] accident and health insurance policies offered on a group blanket basis.

Section 92. Section 31A-22-613 is amended to read:

31A-22-613. Permitted provisions for accident and health insurance policies.

The following provisions may be contained in [~~a disability~~] an accident and health insurance policy, but if they are in that policy, they shall conform to at least the [~~following~~] minimum requirements for the policyholder [~~:~~] in this section.

(1) Any provision respecting change of occupation may provide only for a lower maximum benefit payment and for reduction of loss payments proportionate to the change in appropriate premium rates, if the change is to a higher rated

occupation, and this provision shall provide for retroactive reduction of premium rates from the date of change of occupation or the last policy anniversary date, whichever is the more recent, if the change is to a lower rated occupation.

(2) Section 31A-22-405 applies to misstatement of age in [~~disability~~] accident and health policies, with the appropriate modifications of terminology.

(3) Any policy which contains a provision establishing, as an age limit or otherwise, a date after which the coverage provided by the policy is not effective, and if that date falls within a period for which a premium is accepted by the insurer or if the insurer accepts a premium after that date, the coverage provided by the policy continues in force, subject to any right of cancellation, until the end of the period for which the premium was accepted. This Subsection (3) does not apply if the acceptance of premium would not have occurred but for a misstatement of age by the insured.

(4) Any provision dealing with preexisting conditions shall be consistent with Subsections 31A-22-605(9)(a) and 31A-22-609(2), and any applicable rule adopted by the commissioner.

(5) (a) If an insured is otherwise eligible for maternity benefits, a policy may not contain language which requires an insured to obtain any additional preauthorization or preapproval for customary and reasonable maternity care expenses or for the delivery of the child after an initial preauthorization or preapproval has been obtained from the insurer for prenatal care. A requirement for notice of admission for delivery is not a requirement for preauthorization or preapproval, however, the maternity benefit may not be denied or diminished for failure to provide admission notice. The policy may not require the provision of admission notice by only the insured patient.

(b) This Subsection (5) does not prohibit an insurer from:

(i) requiring a referral before maternity care can be obtained;

(ii) specifying a group of providers or a particular location from which an insured is required to obtain maternity care; or

(iii) limiting reimbursement for maternity expenses and benefits in accordance with the terms and conditions of the insurance contract so long as such terms do not conflict with Subsection (5)(a).

(6) An insurer may only represent that a policy:

(a) offers a vision benefit if the policy:

(i) charges a premium for the benefit; and

(ii) provides reimbursement for materials or services provided under the policy; and

(b) covers laser vision correction, whether photorefractive keratectomy, laser assisted in-situ keratomelusis, or related procedure, if the policy:

(i) charges a premium for the benefit; and

(ii) the procedure is at least a partially covered benefit.

Section 93. Section 31A-22-613.5 is amended to read:

31A-22-613.5. Price and value comparisons of health insurance.

(1) This section applies generally to all health insurance policies and health maintenance organization contracts.

(2) (a) Immediately after the effective date of this section, the commissioner shall appoint a Health Benefit Plan Committee.

(b) The committee shall be composed of representatives of carriers, employers, employees, health care providers, consumers, and producers.

(c) A member of the committee shall be appointed to a four-year term.

(d) Notwithstanding the requirements of Subsection (2)(c), the commissioner shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the committee is appointed every two years.

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

(4) (a) Members shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

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

(5) [~~(a)~~] The committee shall[~~: (i)~~] serve as an advisory committee to the commissioner[~~; and~~].

[~~(ii) recommend for two or more designated health care plans to be marketed in the state:~~]

[~~(A) services to be covered;~~]

[~~(B) copays;~~]

[~~(C) deductibles;~~]

[~~(D) levels of coinsurance;~~]

[~~(E) annual out-of-pocket maximums;~~]

[~~(F) exclusions; and~~]

[~~(G) limitations.~~]

[~~(b) The plans recommended by the committee may include reasonable benefit differentials applicable to participating and nonparticipating providers.~~]

[~~(c) The plans recommended by the committee may not prohibit the use of the following cost management techniques by an insurer:~~]

[~~(i) preauthorization of health care services;~~]

[~~(ii) concurrent review of health care services;~~]

[~~(iii) case management of health care services;~~]

[~~(iv) retrospective review of medical appropriateness;~~]

[~~(v) selective contracting with hospitals, physicians, and other health care providers to the extent permitted by law; and~~]

[~~(vi) other reasonable techniques intended to manage health care costs.~~]

[~~(d) The committee shall submit the plans to the commissioner within 180 days after the appointment of the committee in accordance with this section.~~]

[~~(e) The commissioner shall adopt two or more health benefit plans within 60 days after the committee submits recommendations.~~]

[~~(f) (i) If the committee fails to submit recommendations to the commissioner within 180 days after appointment, the commissioner shall, within 90 days, develop two or more designated health benefit plans.~~]

[~~(ii) The commissioner shall, after notice and hearing, adopt two or more designated health benefit plans.~~]

[~~(iii) The commissioner shall provide incentives for personal management of health care expenses by adopting:~~]

[~~(A) one plan that applies deductibles in the amount of $1,500; and~~]

[~~(B) another plan that applies deductibles in the amount of $2,500.~~]

[~~(iv) The plans described in Subsection (5)(f)(iii) may include:~~]

[~~(A) illustrations and explanations showing the premium savings generated by the high deductibles being applied to a medical savings account for the insured that can be used to pay:~~]

[~~(I) medical expenses up to the plan deductible;~~]

[~~(II) any other medical expenses not covered by the insurance; or~~]

[~~(III) both the medical expenses described in Subsections (5)(f)(iv)(A)(I) and (II); and~~]

[~~(B) an explanation that any funds in the savings account belong to the insured.~~]

[~~(g) The commissioner may reconvene a Health Benefit Plan Committee in accordance with Subsections (2) and (5) to recommend revisions to the designated benefit plans adopted by the commissioner.~~]

[~~(6) (a) Within 180 days after the adoption of the designated benefit plans by the commissioner, or any changes in the designated plans, an insurer offering health insurance policies for sale in this state shall, at the request of a potential buyer, offer the current designated plans at a premium based on factors such as that buyer's previous claims experience, group size, demographic characteristics, and health status.~~]

[~~(b) This section does not prohibit an insurer from refusing to insure, under any plan, a person or group. However, if the insurer offers any policy or contract to that person or group, the insurer shall offer the designated plans.~~]

[~~(7) The designated benefit plans, described in Subsection (5) are intended to facilitate price and value comparisons by consumers. The designated benefit plans are not minimum standards for health insurance policies. An insurer offering the designated benefit plans may offer policies that provide more or less coverage than the designated benefit plans.~~]

[~~(8)~~] (6) (a) The commissioner shall convene or reconvene a Health Benefit Plan Committee for the purpose of developing a Basic Health Care Plan to be offered under the open enrollment provisions of Chapter 30.

(b) The commissioner shall adopt a Basic Health Care Plan within 60 days after the committee submits recommendations, or if the committee fails to submit recommendations to the commissioner within 180 days after appointment, the commissioner shall, within 90 days, adopt a Basic Health Care Plan.

(c) (i) Before adoption of a plan under Subsection [~~(8)~~](6)(b), the commissioner shall submit the proposed Basic Health Care Plan to the Health and Human Services Interim Committee for review and recommendations.

(ii) After the commissioner adopts the Basic Health Care Plan, the Health and Human Services Interim Committee:

(A) shall provide legislative oversight of the Basic Health Care Plan; and

(B) may recommend legislation to modify the Basic Health Care Plan adopted by the commissioner.

(d) The committee's recommendations for the Basic Health Care Plan shall be advisory to the commissioner.

[~~(9)~~] (7) (a) The commissioner shall promote informed consumer behavior and responsible health insurance and health plans by requiring an insurer issuing health insurance policies or health maintenance organization contracts to provide to all enrollees, prior to enrollment in the health benefit plan or health insurance policy, written disclosure of:

(i) restrictions or limitations on prescription drugs and biologics including the use of a formulary and generic substitution; and

(ii) coverage limits under the plan.

(b) In addition to the requirements of Subsections [~~(9)~~] (7)(a) and (d), an insurer described in Subsection [~~(9)~~] (7)(a) shall submit the written disclosure required by this Subsection [~~(9)~~] (7) to the commissioner:

(i) [~~annually~~] upon commencement of operations in the state; and

(ii) anytime the insurer amends any of the following described in Subsection [~~(9)~~] (7)(a):

(A) treatment policies;

(B) practice standards;

(C) restrictions; or

(D) coverage limits of the insurer's health benefit plan or health insurance policy.

(c) The commissioner may adopt rules to implement the disclosure requirements of this Subsection [~~(9)~~] (7), taking into account:

(i) business confidentiality of the insurer;

(ii) definitions of terms; and

(iii) the method of disclosure to enrollees.

(d) If under Subsection [~~(9)~~] (7)(a)(i) a formulary is used, the insurer shall make available to prospective enrollees and maintain evidence of the fact of the disclosure of:

(i) the drugs included;

(ii) the patented drugs not included; and

(iii) any conditions that exist as a precedent to coverage.

[~~(10) (a) The commissioner shall annually publish a table comparing the rates charged by insurers for the designated health plans and other health insurance plans in this state.~~]

[~~(b) The comparison required by Subsection (10)(a) shall list:~~]

[~~(i) the top 20 insurers writing the greatest volume by premium dollar per calendar year; and~~]

[~~(ii) others requesting inclusion in the comparison.~~]

[~~(c) In conjunction with the rate comparison described in this Subsection (10), the commissioner shall publish for each of the listed health insurers a table comparing the complaints filed and the combined loss and expense ratio as described in Subsections 31A-2-208.5(2) and (3).~~]

Section 94. Section 31A-22-614 is amended to read:

31A-22-614. Claims under accident and health policies.

(1) Section 31A-21-312 applies generally to claims under [~~disability~~] accident and health policies.

(2) (a) Subject to Subsection (1), [~~no disability~~] an accident and health insurance policy may not contain a claim notice requirement less favorable to the insured than one which requires written notice of the claim within 20 days after the occurrence or commencement of any loss covered by the policy. The policy shall specify to whom claim notices may be given.

(b) If a loss of time benefit under a policy may be paid for a period of at least two years, an insurer may require periodic notices that the insured continues to be disabled, unless the insured is legally incapacitated. The insured's delay in giving that notice does not impair the insured's or beneficiary's right to any indemnity which would otherwise have accrued during the six months preceding the date on which that notice is actually given.

(3) [~~No disability~~] An accident and health insurance policy may not contain a time limit on proof of loss which is more restrictive to the insured than a provision requiring written proof of loss, delivered to the insurer, within the following time:

(a) for a claim where periodic payments are contingent upon continuing loss, within 90 days after the termination of the period for which the insurer is liable;

(b) for any other claim, within 90 days after the date of the loss.

(4) (a) (i) Section 31A-26-301 applies generally to the payment of claims.

(ii) Indemnity for loss of life is paid in accordance with the beneficiary designation effective at the time of payment. If no valid beneficiary designation exists, the indemnity is paid to the insured's estate. Any other accrued indemnities unpaid at the insured's death are paid to the insured's estate.

(b) Reasonable facility of payment clauses, specified by the commissioner by rule or in approving the policy form, are permitted. Payment made in good faith and in accordance with those clauses discharges the insurer's obligation to pay those claims.

(c) All or a portion of any indemnities provided under [~~a disability~~] an accident and health policy on account of hospital, nursing, medical, or surgical services may, at the insurer's option, be paid directly to the hospital or person rendering the services.

Section 95. Section 31A-22-617 is amended to read:

31A-22-617. Preferred provider contract provisions.

Health insurance policies may provide for insureds to receive services or reimbursement under the policies in accordance with preferred health care provider contracts as follows:

(1) Subject to restrictions under this section, any insurer or third party administrator may enter into contracts with health care providers as defined in Section 78-14-3 under which the health care providers agree to supply services, at prices specified in the contracts, to persons insured by an insurer. [~~The~~]

(a) A health care provider contract may require the health care provider to accept the specified payment as payment in full, relinquishing the right to collect additional amounts from the insured person.

(b) The insurance contract may reward the insured for selection of preferred health care providers by:

(i) reducing premium rates[,];

(ii) reducing deductibles[,];

(iii) coinsurance[, ~~or~~];

(iv) other copayments[,]; or

(v) in any other reasonable manner.

(c) If the insurer is a managed care organization, as defined in Subsection 31A-27-311.5(1)(f):

(i) the insurance contract and the health care provider contract shall provide that in the event the managed care organization becomes insolvent, the rehabilitator or liquidator may:

(A) require the health care provider to continue to provide health care services under the contract until the later of:

(I) 90 days from the date of the filing of a petition for rehabilitation or the petition for liquidation; or

(II) the date the term of the contract ends; and

(B) subject to Subsection (1)(c)(v), reduce the fees the provider is otherwise entitled to receive from the managed care organization during the time period described in Subsection (1)(c)(i)(A);

(ii) the provider is required to:

(A) accept the reduced payment under Subsection (1)(c)(i)(B) as payment in full; and

(B) relinquish the right to collect additional amounts from the insolvent managed care organization's enrollee, as defined in Section 31A-27-311.5(1)(b);

(iii) if the contract between the health care provider and the managed care organization has not been reduced to writing, or the contract fails to contain the language required by Subsection (1)(c)(i), the provider may not collect or attempt to collect from the enrollee:

(A) sums owed by the insolvent managed care organization; or

(B) the amount of the regular fee reduction authorized under Subsection (1)(c)(i)(B);

(iv) the following may not bill or maintain any action at law against an enrollee to collect sums owed by the insolvent managed care organization or the amount of the regular fee reduction authorized under Subsection (1)(c)(i)(B):

(A) a provider;

(B) an agent;

(C) a trustee; or

(D) an assignee of a person described in Subsections (1)(c)(iv)(A) through (C); and

(v) notwithstanding Subsection (1)(c)(i):

(A) a rehabilitator or liquidator may not reduce a fee by less than 75% of the provider's regular fee set forth in the contract; and

(B) the enrollee shall continue to pay the copayments, deductibles, and other payments for services received from the provider that the enrollee was required to pay before the filing of:

(I) a petition for rehabilitation; or

(II) a petition for liquidation.

(2) (a) Subject to Subsections (2)(b) through (2)(f), an insurer using preferred health care provider contracts shall pay for the services of health care providers not under the contract, unless the illnesses or injuries treated by the health care provider are not within the scope of the insurance contract. As used in this section, "class of health care providers" means all health care providers licensed or licensed and certified by the state within the same professional, trade, occupational, or facility licensure or licensure and certification category established pursuant to Titles 26 and 58.

(b) When the insured receives services from a health care provider not under contract, the insurer shall reimburse the insured for at least 75% of the average amount paid by the insurer for comparable services of preferred health care providers who are members of the same class of health care providers. The commissioner may adopt a rule dealing with the determination of what constitutes 75% of the average amount paid by the insurer for comparable services of preferred health care providers who are members of the same class of health care providers.

(c) When reimbursing for services of health care providers not under contract, the insurer may make direct payment to the insured.

(d) Notwithstanding Subsection (2)(b), an insurer using preferred health care provider contracts may impose a deductible on coverage of health care providers not under contract.

(e) When selecting health care providers with whom to contract under Subsection (1), an insurer may not unfairly discriminate between classes of health care providers, but may discriminate within a class of health care providers, subject to Subsection (7).

(f) For purposes of this section, unfair discrimination between classes of health care providers shall include:

(i) refusal to contract with class members in reasonable proportion to the number of insureds covered by the insurer and the expected demand for services from class members; and

(ii) refusal to cover procedures for one class of providers that are:

(A) commonly utilized by members of the class of health care providers for the treatment of illnesses, injuries, or conditions;

(B) otherwise covered by the insurer; and

(C) within the scope of practice of the class of health care providers.

(3) Before the insured consents to the insurance contract, the insurer shall fully disclose to the insured that it has entered into preferred health care provider contracts. The insurer shall provide sufficient detail on the preferred health care provider contracts to permit the insured to agree to the terms of the insurance contract. The insurer shall provide at least the following information:

(a) a list of the health care providers under contract and if requested their business locations and specialties;

(b) a description of the insured benefits, including any deductibles, coinsurance, or other copayments;

(c) a description of the quality assurance program required under Subsection (4); and

(d) a description of the grievance procedures required under Subsection (5).

(4) (a) An insurer using preferred health care provider contracts shall maintain a quality assurance program for assuring that the care provided by the health care providers under contract meets prevailing standards in the state.

(b) The commissioner in consultation with the executive director of the Department of Health may designate qualified persons to perform an audit of the quality assurance program. The auditors shall have full access to all records of the organization and its health care providers, including medical records of individual patients.

(c) The information contained in the medical records of individual patients shall remain confidential. All information, interviews, reports, statements, memoranda, or other data furnished for purposes of the audit and any findings or conclusions of the auditors are privileged. The information is not subject to discovery, use, or receipt in evidence in any legal proceeding except hearings before the commissioner concerning alleged violations of this section.

(5) An insurer using preferred health care provider contracts shall provide a reasonable procedure for resolving complaints and grievances initiated by the insureds and health care providers.

(6) An insurer may not contract with a health care provider for treatment of illness or injury unless the health care provider is licensed to perform that treatment.

(7) (a) [~~No~~] A health care provider or insurer may not discriminate against a preferred health care provider for agreeing to a contract under Subsection (1).

(b) Any health care provider licensed to treat any illness or injury within the scope of the health care provider's practice, who is willing and able to meet the terms and conditions established by the insurer for designation as a preferred health care provider, shall be able to apply for and receive the designation as a preferred health care provider. Contract terms and conditions may include reasonable limitations on the number of designated preferred health care providers based upon substantial objective and economic grounds, or expected use of particular services based upon prior provider-patient profiles.

(8) Upon the written request of a provider excluded from a provider contract, the commissioner may hold a hearing to determine if the insurer's exclusion of the provider is based on the criteria set forth in Subsection (7)(b).

(9) Insurers are subject to the provisions of Sections 31A-22-613.5, 31A-22-614.5, and 31A-22-618.

(10) Nothing in this section is to be construed as to require an insurer to offer a certain benefit or service as part of a health benefit plan.

(11) This section does not apply to catastrophic mental health coverage provided in accordance with Section 31A-22-625.

Section 96. Section 31A-22-619 is amended to read:

31A-22-619. Coordination of benefits.

(1) The commissioner shall adopt rules concerning the coordination of benefits between [~~disability~~] accident and health insurance policies.

(2) Rules adopted by the commissioner under Subsection (1):

(a) may not prohibit coordination of benefits with individual [~~disability~~] accident and health insurance policies; and

(b) shall apply equally to all [~~disability~~] accident and health insurance policies without regard to whether the policies are group or individual policies.

Section 97. Section 31A-22-620 is amended to read:

31A-22-620. Medicare Supplement Insurance Minimum Standards Act.

(1) As used in this section:

(a) "Applicant" means:

(i) in the case of an individual Medicare supplement policy, the person who seeks to contract for insurance benefits; and

(ii) in the case of a group Medicare supplement policy, the proposed certificate holder.

(b) "Certificate" means any certificate delivered or issued for delivery in this state under a group Medicare supplement policy.

(c) "Certificate form" means the form on which the certificate is delivered or issued for delivery by the issuer.

(d) "Issuer" includes insurance companies, fraternal benefit societies, health care service plans, health maintenance organizations, and any other entity delivering, or issuing for delivery in this state, Medicare supplement policies or certificates.

(e) "Medicare" means the "Health Insurance for the Aged Act," Title XVIII of the Social Security Amendments of 1965, as then constituted or later amended.

(f) "Medicare Supplement Policy" means a group or individual policy of disability insurance, other than a policy issued pursuant to a contract under Section 1876 of the federal Social Security Act, 42 U.S.C. Section 1395 et seq., or an issued policy under a demonstration project specified in 41 U.S.C. Section 1395ss(g)(1), that is advertised, marketed, or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical, or surgical expenses of persons eligible for Medicare.

(g) "Policy Form" means the form on which the policy is delivered or issued for delivery by the issuer.

(2) (a) Except as otherwise specifically provided, this section applies to:

(i) all Medicare supplement policies delivered or issued for delivery in this state on or after the effective date of this section;

(ii) all certificates issued under group Medicare supplement policies, that have been delivered or issued for delivery in this state on or after the effective date of this section; and

(iii) policies or certificates that were in force prior to the effective date of this section, with respect to requirements for benefits, claims payment, and policy reporting practice under Subsection (3)(d), and loss ratios under Subsection (4).

(b) This section does not apply to a policy of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or a combination of employers and labor unions, for employees or former employees or a combination of employees and former employees, or for members or former members of the labor organizations, or a combination of members and former members of labor organizations.

(c) This section does not prohibit, nor does it apply to insurance policies or health care benefit plans, including group conversion policies, provided to Medicare eligible persons that are not marketed or held out to be Medicare supplement policies or benefit plans.

(3) (a) A Medicare supplement policy or certificate in force in the state may not contain benefits that duplicate benefits provided by Medicare.

(b) Notwithstanding any other provision of law of this state, a Medicare supplement policy or certificate may not exclude or limit benefits for loss incurred more than six months from the effective date of coverage because it involved a preexisting condition. The policy or certificate may not define a preexisting condition more restrictively than: "A condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage."

(c) The commissioner shall adopt rules to establish specific standards for policy provisions of Medicare supplement policies and certificates. The standards adopted shall be in addition to and in accordance with applicable laws of this state. A requirement of this title relating to minimum required policy benefits, other than the minimum standards contained in this section, may not apply to Medicare supplement policies and certificates. The standards may include:

(i) terms of renewability;

(ii) initial and subsequent conditions of eligibility;

(iii) nonduplication of coverage;

(iv) probationary periods;

(v) benefit limitations, exceptions, and reductions;

(vi) elimination periods;

(vii) requirements for replacement;

(viii) recurrent conditions; and

(ix) definitions of terms.

(d) The commissioner shall adopt rules establishing minimum standards for benefits, claims payment, marketing practices, compensation arrangements, and reporting practices for Medicare supplement policies and certificates.

(e) The commissioner may adopt such rules as are necessary to conform Medicare supplement policies and certificates to the requirements of federal law and regulations promulgated thereunder, including:

(i) requiring refunds or credits if the policies do not meet loss ratio requirements;

(ii) establishing a uniform methodology for calculating and reporting loss ratios;

(iii) assuring public access to policies, premiums, and loss ratio information of issuers of Medicare supplement insurance;

(iv) establishing a process for approving or disapproving policy forms and certificate forms and proposed premium increases;

(v) establishing a policy for holding public hearings prior to approval of premium increases; and

(vi) establishing standards for Medicare select policies and certificates.

(f) The commissioner may adopt rules that prohibit policy provisions not otherwise specifically authorized by statute that, in the opinion of the commissioner, are unjust, unfair, or unfairly discriminatory to any person insured or proposed to be insured under a Medicare supplement policy or certificate.

(4) Medicare supplement policies shall return to policyholders benefits that are reasonable in relation to the premium charged. The commissioner shall make rules to establish minimum standards for loss ratios of Medicare

supplement policies on the basis of incurred claims experience, or incurred health care expenses where coverage is provided by a health maintenance organization on a service basis rather than on a reimbursement basis, and earned premiums in accordance with accepted actuarial principles and practices.

(5) (a) To provide for full and fair disclosure in the sale of Medicare supplement policies, a Medicare supplement policy or certificate may not be delivered in this state unless an outline of coverage is delivered to the applicant at the time application is made.

(b) The commissioner shall prescribe the format and content of the outline of coverage required by Subsection (5)(a).

(c) For purposes of this section, "format" means style arrangements and overall appearance, including such items as the size, color, and prominence of type and arrangement of text and captions. The outline of coverage shall include:

(i) a description of the principal benefits and coverage provided in the policy;

(ii) a statement of the renewal provisions, including any reservation by the issuer of a right to change premiums; and disclosure of the existence of any automatic renewal premium increases based on the policyholder's age; and

(iii) a statement that the outline of coverage is a summary of the policy issued or applied for and that the policy should be consulted to determine governing contractual provisions.

(d) The commissioner may make rules for captions or notice if the commissioner finds that the rules are:

(i) in the public interest; and

(ii) designed to inform prospective insureds that particular insurance coverages are not Medicare supplement coverages, for all accident and health insurance policies sold to persons eligible for Medicare, other than:

(A) a medicare supplement policy; or

(B) a disability income policy.

[~~(d)~~] (e) The commissioner may prescribe by rule a standard form and the contents of an informational brochure for persons eligible for Medicare, that is intended to improve the buyer's ability to select the most appropriate coverage and improve the buyer's understanding of Medicare. Except in the case of direct response insurance policies, the commissioner may require by rule that the informational brochure be provided concurrently with delivery of the outline of coverage to any prospective insureds eligible for Medicare. With respect to direct response insurance policies, the commissioner may require by rule that the prescribed brochure be provided upon request to any prospective insureds eligible for Medicare, but in no event later than the time of policy delivery.

[~~(e)~~] (f) The commissioner may adopt reasonable rules to govern the full and fair disclosure of the information in connection with the replacement of [~~disability~~] accident and health policies, subscriber contracts, or certificates by persons eligible for Medicare.

(6) Notwithstanding Subsection (1), Medicare supplement policies and certificates shall have a notice prominently printed on the first page of the policy or certificate, or attached to the front page, stating in substance that the applicant has the right to return the policy or certificate within 30 days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the applicant is not satisfied for any reason. Any refund made pursuant to this section shall be paid directly to the applicant by the issuer in a timely manner.

(7) Every issuer of Medicare supplement insurance policies or certificates in this state shall provide a copy of any Medicare supplement advertisement intended for use in this state, whether through written or broadcast medium, to the commissioner for review.

Section 98. Section 31A-22-623 is amended to read:

31A-22-623. Coverage of inborn metabolic errors.

(1) As used in this section:

(a) "Dietary products" means medical food or a low protein modified food product that:

(i) is specifically formulated to treat inborn errors of amino acid or urea cycle metabolism;

(ii) is not a natural food that is naturally low in protein; and

(iii) is used under the direction of a physician.

(b) "Inborn errors of amino acid or urea cycle metabolism" means a disease caused by an inherited abnormality of body chemistry which is treatable by the dietary restriction of one or more amino acid.

(2) The commissioner shall establish, by rule, minimum standards of coverage for dietary products used for the treatment of inborn errors of amino acid or urea cycle metabolism at levels consistent with the major medical benefit provided under [~~a disability~~] an accident and health insurance policy.

Section 99. Section 31A-22-624 is amended to read:

31A-22-624. Primary care physician.

[~~A disability~~] An accident and health insurance policy that requires an insured to select a primary care physician to receive optimum coverage:

(1) shall permit an insured to select a participating provider who is an obstetrician/gynecologist and is qualified and willing to provide primary care services, as defined by the health care plan, as the insured's provider from whom primary care services are received;

(2) shall clearly state in literature explaining the policy the option available to female insureds under Subsection (1); and

(3) may not impose a higher premium, higher copayment requirement, or any other additional expense on an insured by virtue of the insured selecting a primary care physician in accordance with Subsection (1).

Section 100. Section 31A-22-626 is amended to read:

31A-22-626. Coverage of diabetes.

(1) As used in this section, "diabetes" includes individuals with:

(a) complete insulin deficiency or type 1 diabetes;

(b) insulin resistant with partial insulin deficiency or type 2 diabetes; and

(c) elevated blood glucose levels induced by pregnancy or gestational diabetes.

(2) The commissioner shall establish, by rule, minimum standards of coverage for diabetes for [~~disability~~] accident and health insurance policies that provide a health insurance benefit before July 1, 2000.

(3) In making rules under Subsection (2), the commissioner shall require rules:

(a) with durational limits, amount limits, deductibles, and coinsurance for the treatment of diabetes equitable or identical to coverage provided for the treatment of other illnesses or diseases; and

(b) that provide coverage for:

(i) diabetes self-management training and patient management, including medical nutrition therapy as defined by rule, provided by an accredited or certified program and referred by an attending physician within the plan and consistent with the health plan provisions for self-management education:

(A) recognized by the federal Health Care Financing [~~Agency~~] Administration; or

(B) certified by the Department of Health; and

(ii) the following equipment, supplies, and appliances to treat diabetes when medically necessary:

(A) blood glucose monitors, including those for the legally blind;

(B) test strips for blood glucose monitors;

(C) visual reading urine and ketone strips;

(D) lancets and lancet devices;

(E) insulin;

(F) injection aides, including those adaptable to meet the needs of the legally blind, and infusion delivery systems;

(G) syringes;

(H) prescriptive oral agents for controlling blood glucose levels; and

(I) glucagon kits.

(4) (a) Before October 1, 2003, the commissioner shall report to the Health and Human Services Interim Committee on the effects of Section 31A-22-626. The report shall be based on three years of data and shall include, to the extent possible:

(i) a review of the rules established under Subsection (3);

(ii) the change in availability of coverage resulting from this section;

(iii) the extent to which persons have been benefitted by the provisions of this section; and

(iv) the impact of this section on premiums.

(b) The Legislature shall consider the results of the report under Subsection (4)(a) when determining whether to reauthorize the provisions of this section.

Section 101. Section 31A-22-630 is amended to read:

31A-22-630. Mastectomy coverage.

(1) If an insured has coverage that provides medical and surgical benefits with respect to a mastectomy, it shall provide coverage, with consultation of the attending physician and the patient, for:

(a) reconstruction of the breast on which the mastectomy has been performed;

(b) surgery and reconstruction of the breast on which the mastectomy was not performed to produce symmetrical appearance; and

(c) prostheses and physical complications with regards to all stages of mastectomy, including lymphedemas.

(2) (a) This section does not prevent [~~a disability~~] an accident and health insurer from imposing cost-sharing measures for health benefits relating to this coverage, if cost-sharing measures are not greater than those imposed on any other medical condition.

(b) For purposes of this Subsection (2), cost-sharing measures include imposing a deductible or coinsurance requirement.

(3) Written notice of the availability of the coverage described in Subsection (1) shall be delivered to the participant:

(a) upon enrollment; and

(b) annually after the enrollment.

Section 102. Section 31A-22-631 is enacted to read:

31A-22-631. Policy summary or illustration.

(1) (a) Except as provided in Subsection (1)(b), at the time a life insurance policy is delivered, a policy

summary or illustration shall be delivered for the life insurance policy if:

(i) the life insurance policy includes riders or supplemental benefits, including accelerated benefits; and

(ii) receipt of benefits under the life insurance policy is contingent upon morbidity requirements.

(b) In the case of a direct response solicitation, the insurer shall deliver the policy summary or illustration at the sooner of:

(i) the applicant's request; or

(ii) at the time of policy delivery regardless of whether the applicant requests a policy summary or illustration.

(2) In addition to complying with all applicable requirements, the policy summary or illustration shall include:

(a) a clear and prominent disclosure of how the rider or supplemental benefit interacts with other components of the policy, including deductions from death benefits and policy values;

(b) an illustration for each covered person of:

(i) the amount of benefits;

(ii) the length of benefits; and

(iii) the guaranteed lifetime benefits, if any;

(c) a disclosure of the maximum premiums for the rider or supplemental benefit;

(d) any exclusions, reductions, or limitations on the benefits of the rider or supplemental benefit; and

(e) if applicable to the policy type:

(i) a disclosure of the effects of exercising other rights under the policy; and

(ii) guaranteed maximum lifetime benefits.

Section 103. Section 31A-22-632 is enacted to read:

31A-22-632. Report to policy holder.

(1) An insurer shall provide the policyholder a monthly report if an accident and health rider or supplemental benefit is:

(a) funded through a life insurance vehicle by acceleration of the death benefit; and

(b) in benefit payment status.

(2) The report required by Subsection (1) shall include:

(a) any rider or supplemental benefits paid out during the month;

(b) an explanation of any changes in the policy due to rider or supplemental benefits being paid out such as:

(i) death benefits; or

(ii) cash values; and

(c) the amount of the rider or supplemental benefits existing or remaining.

Section 104. Section 31A-22-701 is amended to read:

Part VII. Group Accident and Health Insurance

31A-22-701. Groups eligible for group or blanket insurance.

(1) A group or blanket [~~disability~~] accident and health insurance policy may be issued to:

(a) any group to which a group life insurance policy may be issued under Sections 31A-22-502 through 31A-22-507;

(b) a policy issued pursuant to a conversion privilege under Part VII; or

(c) a group specifically authorized by the commissioner upon a finding that:

(i) authorization is not contrary to the public interest;

(ii) the proposed group is actuarially sound;

(iii) formation of the proposed group may result in economies of scale in administrative, marketing, and brokerage costs; and

(iv) the health insurance policy, certificate, or other indicia of coverage that will be offered to the proposed group is substantially equivalent to policies that are otherwise available to similar groups.

(2) Blanket policies may also be issued to:

(a) any common carrier or any operator, owner, or lessee of a means of transportation, as policyholder, covering persons who may become passengers as defined by reference to their travel status;

(b) an employer, as policyholder, covering any group of employees, dependents, or guests, as defined by reference to specified hazards incident to any activities of the policyholder;

(c) an institution of learning, including a school district, school jurisdictional units, or the head, principal, or governing board of any of those units, as policyholder, covering students, teachers, or employees;

(d) any religious, charitable, recreational, educational, or civic organization, or branch of those organizations, as policyholder, covering any group of members or participants as defined by reference to specified hazards incident to the activities sponsored or supervised by the policyholder;

(e) a sports team, camp, or sponsor of the team or camp, as policyholder, covering members, campers, employees, officials, or supervisors;

(f) any volunteer fire department, first aid, civil defense, or other similar volunteer organization, as policyholder, covering any group of members or participants as defined by reference to specified

hazards incident to activities sponsored, supervised, or participated in by the policyholder;

(g) a newspaper or other publisher, as policyholder, covering its carriers;

(h) an association, including a labor union, which has a constitution and bylaws and which has been organized in good faith for purposes other than that of obtaining insurance, as policyholder, covering any group of members or participants as defined by reference to specified hazards incident to the activities or operations sponsored or supervised by the policyholder;

(i) a health insurance purchasing association organized and controlled solely by participating employers as defined in Section 31A-34-103; and

(j) any other class of risks which, in the judgment of the commissioner, may be properly eligible for blanket [~~disability~~] accident and health insurance.

(3) The judgment of the commissioner may be exercised on the basis of:

(a) individual risks [~~or~~];

(b) class of risks; or

(c) both Subsections (3)(a) and (b).

Section 105. Section 31A-22-702 is amended to read:

31A-22-702. Adjustment of premium rate and application of dividends or rate reductions.

Any group [~~disability~~] accident and health insurance policy may provide for the adjustment of the rate of premium based upon the experience under the contract. If a policy dividend is declared or a reduction in rate is made or continued for the first or any subsequent year of insurance under any policy of group [~~disability~~] accident and health insurance, the excess, if any, of the aggregate dividends or rate reductions under the policy and all other group insurance policies of the policyholder over the aggregate expenditure for insurance under those policies made from funds contributed by the policyholder, including expenditures made in connection with the administration of the policies, shall be applied by the policyholder for the sole benefit of insured employees or members unless the insured employee or member explicitly elects otherwise.

Section 106. Section 31A-22-703 is amended to read:

31A-22-703. Conversion rights on termination of group accident and health insurance coverage.

(1) Except as provided in Subsections (2) through (5), all policies of [~~disability~~] accident and health insurance offered on a group basis under this title or Title 49, Chapter 8, Group Insurance Program Act, shall provide that a person whose insurance under the group policy has been terminated for any reason, and who has been continuously insured under the group policy or its predecessor for at least six months immediately prior to termination, is entitled to choose [~~either~~] a converted individual [~~or group~~] policy of [~~disability~~] accident and health insurance from the insurer which conforms to Section 31A-22-708 or an extension of benefits under the group policy as provided in Section 31A-22-714.

(2) Subsection (1) does not apply if the policy:

(a) provides catastrophic, aggregate stop loss, or specific stop loss benefits;

(b) provides benefits for specific diseases or for accidental injuries only, or for dental service; or

(c) is [~~a disability~~] an income replacement policy.

(3) An employee or group member does not have conversion rights under Subsection (1) if:

(a) termination of the group coverage occurred because of failure of the group member to pay any required individual contribution;

(b) the individual group member acquires other group coverage covering all preexisting conditions including maternity, if the coverage existed under the replaced group coverage; or

(c) the person [~~who would be covered is or could be covered by Medicare~~] has:

(i) performed an act or practice that constitutes fraud; or

(ii) made an intentional misrepresentation of material fact under the terms of the coverage.

(4) Notwithstanding Subsections (1), (2), and (3), an employee or group member does not have conversion rights under Subsection (1) if the individual or group member qualifies to continue coverage under his existing group policy in accordance with the terms of his policy.

(5) (a) Notwithstanding Subsection 31A-22-613(1), an insurer may reduce benefits under a converted [~~disability~~] policy covering any person to the extent the benefits provided or available to that person under one or more of the sources listed under Subsection (5)(b), together with the benefits provided by the converted policy, would result in [~~overinsurance according to the insurer's standards. The insurer's standards shall bear a reasonable relationship to actual health care costs in the area in which the insured lives at the time of conversion and shall be filed with the commissioner prior to their use in denying~~] coverage that would result in payment of more than 100% of the amount of the claim.

(b) The benefits sources referred to under Subsection (5)(a) include:

(i) benefits under another insurance policy; and

(ii) benefits under any arrangement of coverage for individuals in a group, whether on an insured or an uninsured basis[~~; and~~].

[~~(iii) benefits provided for or available to that person, in accordance with the requirements of any state or federal law.~~]

(6) (a) The conversion policy shall provide maternity benefits equal to the lesser of the maternity benefits of the group policy or the conversion policy until termination of pregnancy that exists on the date of conversion if:

(i) one of the following is pregnant on the date of the conversion:

(A) the insured;

(B) a spouse of the insured; or

(C) a dependent of the insured; and

(ii) the accident and health policy had maternity benefits.

(b) The requirements of this Subsection (6) do not apply to a pregnancy that occurs after the date of conversion.

Section 107. Section 31A-22-704 is amended to read:

31A-22-704. Conversion rules and procedures.

(1) Written application for the converted policy shall be made and the first premium paid to the insurer no later than 60 days after termination of the group [~~disability~~] accident and health insurance.

(2) The converted policy shall be issued without evidence of insurability.

(3) (a) The initial premium for the converted policy for the first 12 months and subsequent renewal premiums shall be determined in accordance with premium rates applicable to age, class of risk of the person, and the type and amount of insurance provided[~~.~~]; and

(b) the initial premium for the first 12 months may not be raised based on pregnancy of a covered insured.

(4) Conditions pertaining to health are not an acceptable basis for classification under this section.

(5) The premium for converted [~~disability~~] policies shall be payable monthly or quarterly as required by the insurer for the policy form and plan selected, unless another mode of premium payment is mutually agreed upon.

(6) The converted policy becomes effective at the time the insurance under the group policy terminates.

(7) The converted policy covers the employee or member and the dependents who were covered by the group policy on the date of termination of insurance. At the option of the insurer, a separate converted policy may be issued to cover any dependent.

Section 108. Section 31A-22-705 is amended to read:

31A-22-705. Provisions in conversion policies.

(1) A converted policy may include a provision under which the insurer may request from the person covered, information in advance of any premium due date as to whether there is other coverage as specified under Subsection 31A-22-703(4).

(2) The converted policy may provide that the insurer may refuse to renew the policy or the coverage of any person insured:

[~~(a) if the insured could be covered by Medicare;~~]

[~~(b) the converted policy creates an unreasonable over-insurance position;~~]

[~~(c)~~] (a) for fraud or [~~material~~] intentional misrepresentation of a material fact in applying for any benefits under the converted policy; or

[~~(d)~~] (b) for any other reason approved by the commissioner by rule or order.

(3) [~~No~~] An insurer may not be required to issue a converted policy which provides benefits in excess of those provided under the group policy from which conversion is made.

(4) [~~No~~] A converted policy may not exclude a preexisting condition not excluded under the group policy.

(5) During the first policy year, the converted policy may provide that the benefits payable under the converted policy, together with the benefits paid for the individual under the group policy, do not exceed those that would have been payable had the individual's insurance under the group policy remained in force and effect.

Section 109. Section 31A-22-715 is amended to read:

31A-22-715. Optional rider for alcohol and drug dependency treatment.

Each group [~~disability~~] accident and health insurance policy shall contain an optional rider allowing certificate holders to obtain coverage for alcohol or drug dependency treatment in programs licensed by the Department of Human Services, under Title 62A, Chapter 2, inpatient hospitals accredited by the joint commission on the accreditation of hospitals, or facilities licensed by the Department of Health.

Section 110. Section 31A-22-716 is amended to read:

31A-22-716. Required provision for notice of termination.

(1) Every policy for group or blanket [~~disability~~] accident and health coverage issued or renewed after July 1, 1990, shall include a provision that obligates the policyholder to give 30 days prior written notice of termination to each employee or group member and to notify each employee or group member of his rights to continue coverage upon termination.

(2) An insurer's monthly notice to the policyholder of premium payments due shall include a statement of the policyholder's obligations as set forth in Subsection (1). Insurers shall provide

a sample notice to the policyholder at least once a year.

Section 111. Section 31A-22-717 is amended to read:

31A-22-717. Provisions pertaining to service members and their families affected by Operation Desert Shield and Operation Desert Storm.

For any group or blanket [~~disability~~] accident and health coverage, an insurer:

(1) may not refuse to reinstate an insured or his family whose coverage lapsed due to the insured's participation in Operation Desert Shield or Operation Desert Storm provided application is made within 180 days of release from active duty;

(2) shall reinstate an insured in full upon payment of the first premium without the requirement of a waiting period or exclusion for preexisting conditions or any other underwriting requirements that were covered previously; and

(3) may not increase the insured's premium in excess of what it would have been increased in the normal course of time had the insured not participated in Operation Desert Shield or Operation Desert Storm.

Section 112. Section 31A-22-720 is amended to read:

31A-22-720. Mental health parity.

(1) (a) A group [~~disability~~] accident and health plan offered by an insurer shall comply with Subsection (1)(b) if the group disability plan:

(i) applies an aggregate lifetime limit to plan payments for medical or surgical services covered by the group [~~disability~~] accident and health plan; and

(ii) provides a mental health benefit.

(b) A group [~~disability~~] accident and health plan described in Subsection (1)(a) shall:

(i) include in the aggregate lifetime limit for medical or surgical services covered by the group [~~disability~~] accident and health plan the payments made under the plan for mental health services; or

(ii) establish a separate aggregate lifetime limit to plan payments for mental health services covered by the group [~~disability~~] accident and health plan, but only if the dollar amount of the aggregate lifetime limit for mental health services covered by that plan is equal to or greater than the dollar amount of the aggregate lifetime limit for medical or surgical services covered by that plan.

(2) (a) A group [~~disability~~] accident and health plan offered by an insurer shall comply with Subsection (2)(b) if the group [~~disability~~] accident and health plan:

(i) applies an annual limit to plan payments for medical or surgical services covered by the group [~~disability~~] accident and health plan; and

(ii) provides a mental health benefit.

(b) A group [~~disability~~] accident and health plan described in Subsection (2)(a) shall:

(i) include in the annual limit for medical or surgical services covered by the group [~~disability~~] accident and health plan the payments made under the plan for mental health services; or

(ii) establish a separate annual limit to plan payments for mental health services covered by the group [~~disability~~] accident and health plan, but only if the dollar amount of the annual limit for mental health services covered by that plan is equal to or greater than the dollar amount of the annual limit for medical or surgical services covered by that plan.

(3) This section does not prohibit a group [~~disability~~] accident and health plan offered by an insurer from:

(a) using other forms of cost containment not prohibited under Subsection (1); or

(b) applying requirements that make distinctions between acute care and chronic care.

(4) This section does not apply to:

(a) benefits for:

(i) substance abuse; or

(ii) chemical dependency; or

(b) [~~disability~~] accident and health benefits or plans paid under Title XVII or XIX of the Social Security Act.

(5) (a) This section does not apply to plans maintained by employers that employ less than 50 employees.

(b) For purposes of determining whether an employer is exempt under Subsection (5)(a):

(i) if the employer was not in existence throughout the preceding calendar year, the number of employees of the employer is determined based on the average number of employees that the employer is reasonably expected to employ on business days in the calendar year for which the determination is made; and

(ii) as used in this Subsection (5), "employer" includes a predecessor of the employer.

Section 113. Section 31A-22-801 is amended to read:

31A-22-801. Scope of part.

(1) Except as provided under Subsection (2), all life insurance and [~~disability~~] accident and health insurance in connection with loans or other credit transactions are subject to this part.

(2) (a) Insurance in connection with a loan or other credit transaction of more than ten years duration is not subject to this part, but is subject to other provisions of this title.

(b) Isolated transactions on the part of an insurer [~~which~~] that are not related to an agreement or plan for insuring debtors of the creditor are not subject to this part.

Section 114. Section 31A-22-802 is amended to read:

31A-22-802. Definitions.

As used in Part VIII:

(1) "Credit [~~disability~~] accident and health insurance" means [~~disability~~] insurance on a debtor to provide indemnity for payments coming due on a specific loan or other credit transaction while the debtor is disabled.

(2) "Credit life insurance" means life insurance on the life of a debtor in connection with a specific loan or credit transaction.

(3) "Credit transaction" means any transaction under which the payment for money loaned or for goods, services, or properties sold or leased is to be made on future dates.

(4) "Creditor" means the lender of money or the vendor or lessor of goods, services, or property, for which payment is arranged through a credit transaction, or any successor to the right, title, or interest of any lender or vendor.

(5) "Debtor" means a borrower of money or a purchaser, including a lessee under a lease intended as security, of goods, services, or property, for which payment is arranged through a credit transaction.

(6) "Indebtedness" means the total amount payable by a debtor to a creditor in connection with a credit transaction, including principal finance charges and interest.

(7) "Net indebtedness" means the total amount required to liquidate the indebtedness, exclusive of any unearned interest, any insurance on the monthly outstanding balance coverage, or any finance charge.

(8) "Net written premiums" means gross written premiums minus refunds on termination.

Section 115. Section 31A-22-803 is amended to read:

31A-22-803. Forms of insurance permitted.

Credit life insurance and credit [~~disability~~] accident and health insurance may be issued only in the following forms:

(1) individual policies of term life insurance issued to debtors;

(2) individual policies of term [~~disability~~] accident and health insurance issued to debtors, or [~~disability~~] accident and health benefit provisions in individual policies of credit life insurance;

(3) group policies of term life insurance issued to creditors, providing insurance upon the lives of debtors;

(4) group policies of term [~~disability~~] accident and health insurance issued to creditors insuring debtors, or [~~disability~~] accident and health benefit provisions in group credit life insurance policies.

Section 116. Section 31A-22-804 is amended to read:

31A-22-804. Limitations on amounts of insurance.

(1) Except as provided under Subsection (2), the initial amount of credit life insurance on the life of any one debtor may not exceed the total amount repayable under the contract of indebtedness. Where an indebtedness is repayable in substantially equal periodic installments, the amount of insurance may not exceed the scheduled or actual amount of unpaid indebtedness, whichever is greater.

(2) Subsection (1) does not apply to:

(a) insurance on agricultural credit transaction commitments not exceeding the commitment period, which may be written for the amount of the commitment on a nondecreasing or level term plan;

(b) insurance on educational credit transaction commitments, which may be written to include the portion of the commitment that has not been advanced by the creditor;

(c) insurance on preauthorized lines of credit not exceeding the commitment period which may be written for the preauthorized amount on a nondecreasing or level term plan, whether secured or unsecured[~~.~~]; and

(d) insurance on any other class of lawful credit transaction or commitment, which in the commissioner's opinion does not require the application of the restrictions under Subsection (1), in which case the commissioner may authorize by rule a class exception to Subsection (1).

(3) The total amount of indemnity payable by credit [~~disability~~] accident and health insurance in the event of disability, as defined in the policy, may not exceed the aggregate of the periodic scheduled unpaid installments of the indebtedness. The amount of each periodic indemnity payment may not exceed the total amount repayable under the contract of indebtedness divided by the number of periodic installments.

Section 117. Section 31A-22-805 is amended to read:

31A-22-805. Beginning date of insurance.

(1) Except as provided under Subsection (2), any credit life insurance or credit [~~disability~~] accident and health insurance, subject to acceptance by the insurer, commences on the date when the debtor becomes obligated to the creditor.

(2) (a) Where a group policy provides coverage for existing obligations, the insurance on a debtor with respect to that indebtedness commences on the effective date of the policy.

(b) Where evidence of insurability is required and the evidence is furnished more than 30 days after the debtor becomes obligated to the creditor, the insurance may commence when the insurance company determines the evidence of insurability to be satisfactory. In this event, the insurer shall

make an appropriate refund or adjustment of any charge to the debtor for insurance.

(3) The insurance may not extend more than 15 days beyond the scheduled maturity date of the indebtedness, unless it does so at no additional cost to the debtor.

(4) If the indebtedness is discharged due to renewal or refinancing prior to the scheduled maturity date, the insurance in force shall terminate before any new insurance may be issued in connection with the renewed or refinanced indebtedness. In all cases of termination prior to scheduled maturity, a refund shall be paid or credited as provided in Section 31A-22-808.

Section 118. Section 31A-22-806 is amended to read:

31A-22-806. Provisions of policies and certificates.

(1) All credit life insurance and credit [~~disability~~] accident and health insurance shall be evidenced by an individual policy, or, in the case of group insurance, by a certificate of insurance delivered to the debtor.

(2) Each of these types of policies or certificates shall, in addition to satisfying the requirements of Chapter 21, set forth:

(a) the name and home office address of the insurer;

(b) the identity, by name or otherwise, of the persons insured;

(c) the rate, premium, or amount of payment by the debtor, if any, given separately for credit life insurance and credit [~~disability~~] accident and health insurance;

(d) a description of the amount, term, and coverage, including any exceptions, limitations, and restrictions;

(e) that the benefits shall be paid to the creditor to reduce or extinguish the unpaid indebtedness; and

(f) that whenever the amount of insurance exceeds the unpaid indebtedness, that excess is payable to a beneficiary, other than the creditor, named by the debtor or to the debtor's estate.

(3) Except as provided in Subsection (4), the policy or certificate shall be delivered to the debtor within 30 days after the date when the indebtedness is incurred.

(4) (a) If the policy or certificate is not delivered to the debtor within 30 days after the date the indebtedness is incurred, a copy of the application for the policy or a notice of proposed insurance shall be delivered to the debtor.

(b) The application or the notice shall be signed by the debtor and shall set forth:

(i) the name and home office address of the insurer;

(ii) the name of the debtor;

(iii) the premium or amount of payment by the debtor, if any, separately for credit life insurance and credit [~~disability~~] accident and health insurance; and

(iv) the amount, term, and a brief description of the coverage provided.

(c) The copy of the application for or notice of proposed insurance, shall also refer exclusively to insurance coverage, and shall be separate from the loan, sale, or other credit statement of account or instrument, unless the information required by this Subsection (4)(c) is prominently set forth therein.

(d) Upon acceptance of the insurance by the insurer and within 60 days after the later of the date on which the indebtedness is incurred or the date on which the credit life or credit [~~disability~~] accident and health policy was purchased, the insurer shall deliver the individual policy or group certificate of insurance to the debtor.

(e) The application or notice shall state that upon acceptance by the insurer, the insurance is effective as provided in Section 31A-22-805.

(5) If the named insurer does not accept the risk, the debtor shall receive a policy or certificate of insurance setting forth the name and home office address of the substituted insurer and the amount of the premium to be charged. If the premium is less than that set forth in the notice of proposed insurance, an appropriate refund shall be made.

(6) If a creditor makes available to the debtors more than one plan of credit life or credit [~~disability~~] accident and health insurance, all debtors must be informed of the plans applicable to the specific type of loan transaction for which the debtor is applying.

Section 119. Section 31A-22-807 is amended to read:

31A-22-807. Filing and approval of forms -- Loss ratio standards.

(1) All forms of policies, certificates of insurance, statements of insurance, endorsements, and riders intended for use in Utah are subject to Section 31A-21-201.

(2) In addition to the grounds for disapproval under Subsection 31A-21-201(3), it is a ground for disapproval that the benefits provided in the form are not reasonable in relation to the premium charge.

(3) In ascertaining whether the benefits are reasonable in relation to the premium charged, the commissioner shall consider the mortality cost of the life insurance and the morbidity cost of the [~~disability~~] accident and health insurance, and the reserves set up for the payment of claims unreported or in the process of settlement. The benefits are considered reasonable in relation to the premium charged if the premium rate charged develops or may reasonably be expected to develop a loss ratio of not less than 50% for credit life insurance and not less than 55% for credit [~~disability~~] accident and health insurance given the above costs.

(4) Benefits are considered reasonable in relation to premium charged if the ratio of claims incurred to

premium earned during the most recent four-year period at the rates in use produces a loss ratio that is equal to or exceeds the minimum loss ratio standard specified in Subsection (3).

(5) If the minimum loss ratio test produces a loss ratio that exceeds Subsection (4)'s minimum loss ratio standard by five percentage points or more, the insurer may file for approval and use rates that are higher than prima facie rates, if it can be expected that the use of those higher rates will continue to produce a loss ratio for the accounts to which they are applied that will satisfy the minimum loss ratio test.

(6) If the minimum loss ratio test produces a loss ratio that is lower than Subsection (4)'s minimum loss standard by five percentage points or more, the commissioner may require that the insurer file adjusted rates that can be expected to produce a loss ratio that will satisfy the minimum loss ratio test, or to submit reasons acceptable to the commissioner why the insurer should not be required to file these adjusted rates.

Section 120. Section 31A-22-808 is amended to read:

31A-22-808. Premiums and refunds.

(1) Each policy, certificate, or statement of insurance shall provide that in the event of termination of the insurance prior to the scheduled maturity date of the indebtedness, any refund of an amount paid by the debtor for insurance shall be paid or credited promptly to the person entitled to it. The formula used in computing the refund shall be filed with and approved by the commissioner under Chapter 21, Part II. No refund is required if it would be less than $5.

(2) If a creditor requires a debtor to make any payment for credit life or credit [~~disability~~] accident and health insurance and an individual policy, certificate, or statement of insurance is not issued, the creditor shall immediately give written notice to the debtor and credit the account.

(3) The amount charged the debtor for credit life or [~~disability~~] accident and health insurance may not exceed the premiums charged by the insurer as computed at the time the charge to the debtor is determined.

Section 121. Section 31A-22-809 is amended to read:

31A-22-809. Right of debtor to choose insurer.

When credit life insurance or credit [~~disability~~] accident and health insurance is required as security for any indebtedness, the creditor shall inform the debtor of the debtor's option to furnish the required insurance through existing policies of insurance owned or controlled by the debtor or to procure and furnish the required coverage through any insurer authorized to transact life or [~~disability~~] accident and health insurance in Utah.

Section 122. Section 31A-22-1002 is amended to read:

31A-22-1002. Duration of coverage.

(1) Any insurer assuming a workers' compensation risk shall carry it until the policy is canceled, either:

(a) by agreement between the Division of Industrial Accidents in the Labor Commission, the insurer, and the employer; or

(b) after:

(i) [~~30 days~~] notice by the insurer to the employer as provided in Section 31A-21-303; and

(ii) notice to the Division of Industrial Accidents in the Labor Commission as provided in Section 34A-2-205.

(2) Subsection (1) does not affect the requirements of Section 31A-22-1001.

Section 123. Section 31A-22-1101 is amended to read:

31A-22-1101. Combination of lines.

(1) Legal expense insurance may be transacted alone or together with life insurance, [~~disability~~] accident and health insurance, or casualty insurance.

(2) [~~No~~] An insurer may not transact liability insurance and also issue legal expense insurance policies providing coverage for the expense of enforcing claims against third persons, unless the requirements of Subsection (3) are met and the commissioner is satisfied that the interests of policyholders of legal expense insurance policies are not endangered by potential conflicts of interest within the insurer.

(3) Adequate precautions shall be taken to make sure that the handling of an insured's claim for legal assistance in enforcing a claim against a third person is not affected by the insurer's actual or potential obligation as a liability insurer to pay the claim for the third person. These precautions may include:

(a) a provision in the policy that claims against third persons shall be handled exclusively by attorneys selected by the insureds themselves rather than by the insurer, that no information about the case other than the name of the defendant and the nature of the claim may be made available to the insurer, and that the insurer may not interfere with the handling of the case; or

(b) organizational separation between the legal expense and the liability insurance departments with respect to management, accounting, record keeping, and claims handling, with appropriate rules and procedures, satisfactory to the commissioner, to prevent the exchange of information between the two departments about details of cases.

Section 124. Section 31A-22-1401 is amended to read:

31A-22-1401. Application.

(1) The requirements of this part apply to individual policies and to group policies and certificates marketed in this state on or after July 1, [~~1991~~] 2001, other than employee and labor union group policies and certificates.

(2) Entities subject to this part shall comply with other applicable insurance laws and rules unless they are in conflict with this part.

(3) The laws, regulations, and rules designed and intended to apply to Medicare supplement insurance policies may not be applied to long-term care insurance.

(4) Any policy or rider advertised, marketed, or offered as long-term care or nursing home insurance shall comply with the provisions of this part.

Section 125. Section 31A-22-1402 is amended to read:

31A-22-1402. Definitions.

Unless the context requires otherwise, the following definitions apply in this part:

(1) "Applicant" means:

(a) in the case of an individual long-term care insurance policy, the person who seeks to contract for benefits; and

(b) in the case of a group long-term care insurance policy, the proposed certificate holder.

[~~(2) (a) "Long-term care insurance" means any insurance policy or rider advertised, marketed, offered, or designed to provide coverage:~~]

[~~(i) for not less than 12 consecutive months for each covered person on an expense incurred, indemnity, prepaid, or other basis;~~]

[~~(ii) for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care service, provided in a setting other than an acute care unit of a hospital.~~]

[~~(b) The term includes group and individual annuities and life insurance policies or riders which provide directly or supplement long-term care insurance. The term also includes a policy or rider which provides for payment of benefits based upon cognitive impairment or the loss of functional capacity.~~]

[~~(c) Long-term care insurance does not include any insurance policy which is offered primarily to provide basic Medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income or related asset-protection coverage, accident only coverage, specified disease or specified accident coverage, or limited benefit health coverage.~~]

(2) Notwithstanding Section 31A-1-301,"certificate" means a certificate issued under a group long-term care insurance policy if the group long-term care insurance policy is delivered or issued for delivery in this state.

(3) Notwithstanding Section 31A-1-301, "policy" means a policy, contract subscriber agreement, rider, or endorsement, if the policy, contract subscriber agreement, rider, or endorsement is delivered or issued:

(a) in this state; and

(b) by:

(i) an insurer;

(ii) a fraternal benefit society;

(iii) a nonprofit health, hospital, or medical service corporation;

(iv) a prepaid health plan;

(v) a health maintenance organization; or

(vi) an entity similar to an entity described in Subsections (3)(b)(i) through (v).

Section 126. Section 31A-22-1407 is amended to read:

31A-22-1407. Restricted conditional terms.

(1) A long-term care insurance policy may not contain a provision that conditions eligibility:

(a) [~~conditions eligibility~~] for any benefits on a prior hospitalization requirement; [~~or~~]

(b) [~~conditions eligibility~~] for benefits provided in an institutional care setting on the receipt of a higher level of institutional care[~~.~~]; or

(c) for any benefits on a prior institutionalization requirement except for eligibility for:

(i) waiver of premium;

(ii) post confinement;

(iii) post-acute care; or

(iv) recuperative benefits.

(2) A long-term care insurance policy containing [~~any limitations or conditions for eligibility other than those prohibited in Subsection (1)~~] post confinement, post-acute care, or recuperative benefits shall clearly label the limitations or conditions, including any required number of days of confinement in a separate paragraph of the policy or certificate that is entitled "Limitations or Conditions on Eligibility for Benefits."

[~~(3) A long-term care insurance policy containing a benefit advertised, marketed, or offered as a home health care benefit may not condition receipt of benefits on a prior institutionalization.~~]

[~~(4) A long-term care insurance policy or rider that provides benefits only following institutionalization may not condition the benefits upon admission to a facility for the same or related conditions within a period of less than 30 days after discharge from the institution.~~]

(3) A long-term care insurance policy or rider that conditions eligibility of noninstitutional benefits on the prior receipt of institutional care

may not require a prior institutional stay of more than 30 days.

Section 127. Section 31A-22-1409 is amended to read:

31A-22-1409. Statements of coverage.

(1) An outline of coverage shall be delivered to a prospective applicant for long-term care insurance at the time of initial solicitation through means which prominently direct the attention of the applicant to the document and its purpose.

(2) The commissioner may prescribe a standard format of an outline of coverage, including style, arrangement, and overall appearance, and the content.

(3) In the case of agent solicitations an agent must deliver the outline of coverage prior to the presentation of any application or enrollment form.

(4) In the case of direct response solicitations, the outline of coverage must be presented in conjunction with any application or enrollment form.

(5) An outline of coverage under this section shall include:

(a) a description of the principal benefits and coverage provided in the policy;

(b) a statement of the principal exclusions, reductions, and limitations contained in the policy;

(c) a statement of the terms under which the policy or certificate, or both, may be continued in force or discontinued, including any reservation in the policy of a right to change premium;

(d) a specific description of continuation or conversion provisions of group coverage;

(e) a statement that the outline of coverage is not a contract of insurance but a summary only and that the policy or group master policy contains governing contractual provisions;

(f) a description of the terms under which the policy or certificate may be returned and premium refunded; [~~and~~]

(g) a brief description of the relationship of cost of care and benefits[~~.~~]; and

(h) a statement that discloses to the policyholder or certificate holder whether the policy is intended to be a federally tax-qualified, long-term care insurance contract under Section 7702B(b), Internal Revenue Code.

(6) A certificate issued pursuant to a group long-term care insurance policy, which policy is delivered or issued for delivery in this state, shall include:

(a) a description of the principal benefits and coverage provided in the policy;

(b) a statement of the principal exclusions, reductions, and limitations contained in the policy; [~~and~~]

(c) a statement that the group master policy determines governing contractual provisions[~~.~~]; and

(d) a statement that any long-term care inflation protection option required by rule is not available under the policy.

(7) If an application for a long-term care contract or certificate is approved, the issuer shall deliver the contract or certificate of insurance to the applicant no later than 30 days after the date of approval.

[~~(7)~~] (8) At the time of policy delivery, a policy summary shall be delivered for an individual life insurance policy which provides long-term care benefits within the policy or by rider. In the case of direct response solicitations, the insurer shall deliver the policy summary upon the applicant's request. However, the insurer shall deliver the summary to the applicant no later than at the time of policy delivery regardless of request. In addition to complying with all applicable requirements, the summary shall also include:

(a) an explanation of how the long-term care benefit interacts with other components of the policy, including deductions from death benefits;

(b) an illustration for each covered person of the amount of benefits, the length of benefit, and the guaranteed lifetime benefits if any;

(c) any exclusions, reductions, and limitations on benefits of long-term care; and

(d) if applicable to the policy type, the summary shall also include:

(i) a disclosure of the effects of exercising other rights under the policy;

(ii) a disclosure of guarantees related to long-term care costs of insurance charges; and

(iii) current and projected maximum lifetime benefits.

(9) The provisions of the policy summary required under Subsection (8) may be incorporated into:

(a) a basic illustration; or

(b) the life insurance policy summary required to be delivered in accordance with rule.

Section 128. Section 31A-22-1412 is amended to read:

31A-22-1412. Nonforfeiture benefits.

(1) (a) A long-term care insurance policy or certificate may not be delivered or issued for delivery in this state unless the [~~issuer of the policy or certificate offers nonforfeiture benefits to the defaulting or surrendering policyholder or certificate holder~~] policyholder or certificate holder has been offered the option of purchasing a policy or certificate including a nonforfeiture benefit.

(b) The offer of a nonforfeiture benefit under Subsection (1)(a) may be in the form of a rider that is attached to the policy.

(c) If the policyholder or certificate holder declines the nonforfeiture benefit offered under this

Subsection (1), the insurer shall provide a contingent benefit upon lapse of the policy or certificate that is available for a specified period of time following a substantial increase in premium rates.

(d) (i) Except as provided in Subsection (1)(d)(ii), if a group long-term care insurance policy is issued, the offer required in this Subsection (1) shall be made to the group policyholder.

(ii) If the policy is issued to a group authorized under Section 31A-22-509, the offer required under this Subsection (1) shall be made to each proposed certificate holder.

(2) The commissioner shall make rules:

(a) specifying the types of nonforfeiture benefits [~~and~~] to be offered as part of a long-term care insurance policy or certificate;

(b) specifying the standards for [~~the~~] nonforfeiture benefits [~~to be included in the policies and certificates.~~]; and

(c) regarding contingent benefits upon lapse, including a determination of:

(i) the specified period of time during which a contingent benefit upon lapse will be available as provided in Subsection (1); and

(ii) the substantial premium rate increase that triggers a contingent benefit upon lapse as provided in Subsection (1).

Section 129. Section 31A-22-1413 is enacted to read:

31A-22-1413. Claim information.

If a claim under a long-term care insurance contract is denied, within 60 days of the date a written request by the policyholder or a representative of a policyholder is filed with the insurer, the insurer shall:

(1) provide a written explanation of the reason for the denial; and

(2) make available all information directly related to the denial.

Section 130. Section 31A-22-1414 is enacted to read:

31A-22-1414. Marketing.

A policy or rider shall comply with this part if it is advertised, marketed, or offered as:

(1) long-term care insurance; or

(2) nursing home insurance.

Section 131. Section 31A-23-101 is amended to read:

31A-23-101. Purposes.

The purposes of this chapter include:

(1) promoting the professional competence of insurance agents, brokers, and consultants;

(2) providing maximum freedom of marketing methods for insurance, consistent with the interests of the Utah public;

(3) preserving and encouraging competition at the consumer level; [~~and~~]

(4) regulating insurance marketing practices in conformity with the general purposes of [~~the Insurance Code.~~] this title; and

(5) governing the qualifications and procedures for the licensing of insurance producers.

Section 132. Section 31A-23-102 is amended to read:

31A-23-102. Definitions.

As used in this chapter:

[~~(1) Except as provided in Subsection (2):~~]

[~~(a) "Escrow" is a license category that allows a person to conduct escrows, settlements, or closings on behalf of a title insurance agency or a title insurer.~~]

[~~(b) "Limited license" means a license that is issued for a specific product of insurance and limits an individual or agency to transact only for those products.~~]

[~~(c) "Search" is a license category that allows a person to issue title insurance commitments or policies on behalf of a title insurer.~~]

[~~(d) "Title marketing representative" means a person who:~~]

[~~(i) represents a title insurer in soliciting, requesting, or negotiating the placing of:~~]

[~~(A) title insurance; or~~]

[~~(B) escrow, settlement, or closing services; and~~]

[~~(ii) does not have a search or escrow license.~~]

[~~(2) The following persons are not acting as agents, brokers, title marketing representatives, or consultants when acting in the following capacities:~~]

[~~(a) any regular salaried officer, employee, or other representative of an insurer or licensee under this chapter who devotes substantially all of the officer's, employee's, or representative's working time to activities other than those described in Subsection (1) and Subsections 31A-1-301(51), (52), and (54) including the clerical employees of persons required to be licensed under this chapter;~~]

[~~(b) a regular salaried officer or employee of a person seeking to purchase insurance, who receives no compensation that is directly dependent upon the amount of insurance coverage purchased;~~]

[~~(c) a person who gives incidental advice in the normal course of a business or professional activity, other than insurance consulting, if neither that person nor that person's employer receives direct or indirect compensation on account of any insurance transaction that results from that advice;~~]

[~~(d) a person who, without special compensation, performs incidental services for another at the~~

~~other's request, without providing advice or technical or professional services of a kind normally provided by an agent, broker, or consultant;~~]

[~~(c) a holder of a group insurance policy, or any other person involved in mass marketing, but only:~~]

[~~(i) with respect to administrative activities in connection with that type of policy, including the collection of premiums; and~~]

[~~(ii) if the person receives no compensation for the activities described in Subsection (2)(c)(i) beyond reasonable expenses including a fair payment for the use of capital; and~~]

[~~(f) a person who gives advice or assistance without direct or indirect compensation or any expectation of direct or indirect compensation.~~]

[~~(3)~~] (1) "Actuary" means a person who is a member in good standing of the American Academy of Actuaries.

[~~(4)~~] (2) "Agency" means a person other than an individual, and includes a sole proprietorship by which a natural person does business under an assumed name.

[~~(5)~~] (3) "Broker" means an insurance broker or any other person, firm, association, or corporation that for any compensation, commission, or other thing of value acts or aids in any manner in soliciting, negotiating, or procuring the making of any insurance contract on behalf of an insured other than itself.

[~~(6)~~] (4) "Bail bond agent" means [~~any~~] an individual:

(a) appointed by an authorized bail bond surety insurer or appointed by a licensed bail bond surety company to execute or countersign undertakings of bail in connection with judicial proceedings; and

(b) who receives or is promised money or other things of value for this service.

[~~(7)~~] (5) "Captive insurer" means:

(a) an insurance company owned by another organization whose exclusive purpose is to insure risks of the parent organization and affiliated companies; or

(b) in the case of groups and associations, an insurance organization owned by the insureds whose exclusive purpose is to insure risks of member organizations, group members, and their affiliates.

[~~(8)~~] (6) "Controlled insurer" means a licensed insurer that is either directly or indirectly controlled by a broker.

[~~(9)~~] (7) "Controlling broker" means a broker who either directly or indirectly controls an insurer.

[~~(10)~~] (8) "Controlling person" means any person, firm, association, or corporation that directly or indirectly has the power to direct or cause to be directed, the management, control, or activities of a reinsurance intermediary.

(9) "Escrow" means a license category that allows a person to conduct escrows, settlements, or closings on behalf of:

(a) a title insurance agency; or

(b) a title insurer.

(10) "Home state" means any state or territory of the United States or the District of Columbia in which an insurance producer:

(a) maintains the insurance producer's principal:

(i) place of residence; or

(ii) place of business; and

(b) is licensed to act as an insurance producer.

(11) "Insurer" is as defined in Section 31A-1-301, except the following persons or similar persons are not insurers for purposes of Part 6, Broker Controlled Insurers:

(a) all risk retention groups as defined in:

(i) the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499;

(ii) the Risk Retention Act, 15 U.S.C. Sec. 3901 et seq.; and

(iii) [~~Title 31A,~~] Chapter 15, Part II, Risk Retention Groups Act;

(b) all residual market pools and joint underwriting authorities or associations; and

(c) all captive insurers.

(12) "License" is defined in Section 31A-1-301.

(13) "Limited license" means a license that:

(a) is issued for a specific product of insurance; and

(b) limits an individual or agency to transact only for that product or insurance.

(14) "Limited line insurance" includes:

(a) bail bond;

(b) credit life;

(c) credit disability;

(d) credit property;

(e) credit unemployment;

(f) involuntary unemployment;

(g) legal expense;

(h) mortgage life;

(i) mortgage guaranty;

(j) mortgage disability;

(k) motor club;

(l) rental car-related;

(m) travel insurance; and

(n) any other form of limited insurance or insurance offered in connection with an extension of credit that:

(i) is limited to partially or wholly extinguishing that credit obligation; and

(ii) the commissioner determines should be designated a form of limited line insurance.

[~~(12)~~] (15) (a) "Managing general agent" means any person, firm, association, or corporation that:

(i) manages all or part of the insurance business of an insurer, including the management of a separate division, department, or underwriting office;

(ii) acts as an agent for the insurer whether it is known as a managing general agent, manager, or other similar term;

(iii) with or without the authority, either separately or together with affiliates, directly or indirectly produces and underwrites an amount of gross direct written premium equal to, or more than 5% of, the policyholder surplus as reported in the last annual statement of the insurer in any one quarter or year; and

(iv) [~~either~~] (A) adjusts or pays claims in excess of an amount determined by the commissioner[~~,~~]; or [~~that~~]

(B) negotiates reinsurance on behalf of the insurer.

(b) Notwithstanding Subsection [~~(12)~~] (15)(a), the following persons may not be considered as managing general agent for the purposes of this chapter:

(i) an employee of the insurer;

(ii) a [~~U.S.~~] United States manager of the United States branch of an alien insurer;

(iii) an underwriting manager that, pursuant to contract:

(A) manages all the insurance operations of the insurer;

(B) is under common control with the insurer;

(C) is subject to [~~Title 31A,~~] Chapter 16, Insurance Holding Companies; and

(D) is not compensated based on the volume of premiums written; and

(iv) the attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or inter-insurance exchange under powers of attorney.

(16) "Negotiate" means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract if the person engaged in that act:

(a) sells insurance; or

(b) obtains insurance from insurers for purchasers.

[~~(13)~~] (17) "Producer" [~~is~~] means a person [~~who arranges for insurance coverages between insureds and insurers~~] required to be licensed under the laws of this state to sell, solicit, or negotiate insurance.

[~~(14)~~] (18) "Qualified [~~U.S.~~] United States financial institution" means an institution that:

(a) is organized or, in the case of a [~~U.S.~~] United States office of a foreign banking organization licensed, under the laws of the United States or any state;

(b) is regulated, supervised, and examined by [~~U.S.~~] United States federal or state authorities having regulatory authority over banks and trust companies; and

(c) [~~has been determined by either the commissioner, or the Securities Valuation Office of the National Association of Insurance Commissioners, to meet~~] meets the standards of financial condition and standing that are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner[~~.~~] as determined by:

(i) the commissioner; or

(ii) the Securities Valuation Office of the National Association of Insurance Commissioners.

[~~(15)~~] (19) "Reinsurance intermediary" means a reinsurance intermediary-broker or a reinsurance intermediary-manager as these terms are defined in Subsections [~~(16)~~] (20) and [~~(17)~~] (21).

[~~(16)~~] (20) "Reinsurance intermediary-broker" means a person other than an officer or employee of the ceding insurer, firm, association, or corporation who solicits, negotiates, or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of the insurer.

[~~(17)~~] (21) (a) "Reinsurance intermediary-manager" means a person, firm, association, or corporation who:

(i) has authority to bind or who manages all or part of the assumed reinsurance business of a reinsurer, including the management of a separate division, department, or underwriting office; and

(ii) acts as an agent for the reinsurer whether the person, firm, association, or corporation is known as a reinsurance intermediary-manager, manager, or other similar term.

(b) Notwithstanding Subsection [~~(17)~~] (21)(a), the following persons may not be considered reinsurance intermediary-managers for the purpose of this chapter with respect to the reinsurer:

(i) an employee of the reinsurer;

(ii) a [~~U.S.~~] United States manager of the United States branch of an alien reinsurer;

(iii) an underwriting manager that, pursuant to contract:

(A) manages all the reinsurance operations of the reinsurer;

(B) is under common control with the reinsurer;

(C) is subject to [~~Title 31A,~~] Chapter 16, Insurance Holding Companies; and

(D) is not compensated based on the volume of premiums written; and

(iv) the manager of a group, association, pool, or organization of insurers that:

(A) engage in joint underwriting or joint reinsurance; and

(B) are subject to examination by the insurance commissioner of the state in which the manager's principal business office is located.

[~~(18)~~] (22) "Reinsurer" means any person, firm, association, or corporation duly licensed in this state as an insurer with the authority to assume reinsurance.

(23) "Search" means a license category that allows a person to issue title insurance commitments or policies on behalf of a title insurer.

(24) "Sell" means to exchange a contract of insurance:

(a) by any means;

(b) for money or its equivalent; and

(c) on behalf of an insurance company.

(25) "Solicit" means:

(a) attempting to sell insurance; or

(b) asking or urging a person to apply:

(i) for a particular kind of insurance; and

(ii) from a particular insurance company.

[~~(19)~~] (26) "Surplus lines broker" means a person licensed under Subsection 31A-23-204(5) to place insurance with unauthorized insurers in accordance with Section 31A-15-103.

(27) "Terminate" means:

(a) the cancellation of the relationship between:

(i) an insurance producer; and

(ii) a particular insurer; or

(b) the termination of the producer's authority to transact insurance on behalf of a particular insurance company.

(28) "Title marketing representative" means a person who:

(a) represents a title insurer in soliciting, requesting, or negotiating the placing of:

(i) title insurance; or

(ii) escrow, settlement, or closing services; and

(b) does not have a search or escrow license.

[~~(20)~~] (29) "Underwrite" means the authority to accept or reject risk on behalf of the insurer.

(30) "Uniform application" means the version of the National Association of Insurance Commissioner's uniform application for resident and nonresident producer licensing at the time the application is filed.

(31) "Uniform business entity application" means the version of the National Association of Insurance Commissioner's uniform business entity application for resident and nonresident business entities at the time the application is filed.

Section 133. Section 31A-23-201 is amended to read:

31A-23-201. Requirement of license.

(1) (a) Unless exempted from the licensing requirement under [~~Subsection (2) or~~] Section 31A-23-201.5 or 31A-23-214, a person may not perform, offer to perform, or advertise any service as an agent, broker, or consultant in Utah, without a valid license under Section 31A-23-203.

(b) A person may not utilize the services of another as an agent, broker, or consultant if [~~he~~] that person knows or should know that the other does not have a license as required by law.

[~~(2) The commissioner may by rule exempt certain classes of persons from the license requirement of Subsection (1) if either of these circumstances exist:~~]

[~~(a) the functions they perform do not require special competence, trustworthiness, or the regulatory surveillance made possible by licensing; or~~]

[~~(b) other existing safeguards make regulation unnecessary.~~]

(2) This part may not be construed to require an insurer to obtain an insurance producer license.

(3) [~~No~~] An insurance contract is not invalid as a result of a violation of this section.

Section 134. Section 31A-23-201.5 is enacted to read:

31A-23-201.5. Exceptions to licensing.

(1) The commissioner may not require a license as an insurance producer of:

(a) an officer, director, or employee of an insurer or of an insurance producer if:

(i) the officer, director, or employee does not receive any commission on a policy written or sold to insure risks residing, located, or to be performed in this state; and

(ii) (A) the officer's, director's, or employee's activities are:

(I) executive, administrative, managerial, clerical, or a combination of these activities; and

(II) only indirectly related to the sale, solicitation, or negotiation of insurance;

(B) the officer's, director's, or employee's function relates to:

(I) underwriting;

(II) loss control;

(III) inspection; or

(IV) the processing, adjusting, investigating or settling of a claim on a contract of insurance; or

(C) (I) the officer, director, or employee is acting in the capacity of a special agent or agency supervisor assisting an insurance producer;

(II) the officer's, director's, or employee's activities are limited to providing technical advice and assistance to a licensed insurance producer; and

(III) the officer's, director's, or employee's activities do not include the sale, solicitation, or negotiation of insurance;

(b) a person who:

(i) is paid no commission for the services described in Subsection (1)(b)(ii); and

(ii) secures and furnishes information for the purpose of:

(A) group life insurance;

(B) group property and casualty insurance;

(C) group annuities;

(D) group or blanket accident and health insurance;

(E) enrolling individuals under plans;

(F) issuing certificates under plans; or

(G) otherwise assisting in administering plans;

(c) a person who:

(i) is paid no commission for the services described in Subsection (1)(c)(ii); and

(ii) performs administrative services related to mass marketed property and casualty insurance;

(d) (i) any of the following if the conditions of Subsection (1)(d)(ii) are met:

(A) an employer or association; or

(B) an officer, director, employee, or trustee of an employee trust plan;

(ii) a person listed in Subsection (1)(d)(i):

(A) to the extent that the employer, officer, employee, director, or trustee is engaged in the administration or operation of a program of employee benefits for:

(I) the employer's or association's own employees; or

(II) the employees of a subsidiary or affiliate of an employer or association;

(B) the program involves the use of insurance issued by an insurer; and

(C) the employer, association, officer, director, employee, or trustee is not in any manner compensated, directly or indirectly, by the company issuing the contract;

(e) an employee of an insurer or organization employed by an insurer who:

(i) is engaging in:

(A) the inspection, rating, or classification of risks; or

(B) the supervision of the training of insurance producers; and

(ii) is not individually engaged in the sale, solicitation, or negotiation of insurance;

(f) a person whose activities in this state are limited to advertising:

(i) without the intent to solicit insurance in this state;

(ii) through communications in mass media including:

(A) a printed publication; or

(B) a form of electronic mass media;

(iii) that is distributed to residents outside of the state; and

(iv) if the person does not sell, solicit, or negotiate insurance that would insure risks residing, located, or to be performed in this state;

(g) a person who:

(i) is not a resident of this state;

(ii) sells, solicits, or negotiates a contract of insurance:

(A) for commercial property and casualty risks to an insured with risks located in more than one state insured under that contract; and

(B) insures risks located in a state in which the person is licensed as provided in Subsection (1)(g)(iii); and

(iii) is licensed as an insurance producer to sell, solicit, or negotiate that insurance in the state where the insured maintains its principal place of business;

(h) if the employee does not sell, solicit, or receive a commission for a contract of insurance, a salaried full-time employee who counsels or advises the employee's employer relating to the insurance interests of:

(i) the employer; or

(ii) a subsidiary or business affiliate of the employer.

(2) The commissioner may by rule exempt a class of persons from the license requirement of Subsection 31A-23-201(1) if:

(a) the functions performed by the class of persons does not require:

(i) special competence;

(ii) special trustworthiness; or

(iii) regulatory surveillance made possible by licensing; or

(b) other existing safeguards make regulation unnecessary.

Section 135. Section 31A-23-202 is amended to read:

31A-23-202. Application for license.

(1) [~~The~~] (a) Subject to Subsection (2) the application for a resident license as an agent, a broker, or a consultant shall be:

(i) made to the commissioner on forms and in a manner [~~he~~] the commissioner prescribes[~~. The~~]; and

(ii) accompanied by an applicable fee that is not refunded if the application is denied; and

(b) the application for a nonresident license as an agent, a broker, or a consultant shall be:

(i) made on the uniform application; and

(ii) accompanied by an applicable fee that is not refunded if the application is denied.

(2) An application described in Subsection (1) shall provide:

(a) information about the applicant's identity[~~,~~];

(b) the applicant's:

(i) social security number[~~,~~]; or

(ii) federal employer identification number;

(c) the applicant's personal history, experience, education, and business record[~~, and~~];

(d) if the applicant is a natural person, whether the applicant is 18 years of age or older;

(e) whether the applicant has committed an act that is a ground for denial, suspension, or revocation as set forth in Section 31A-23-216; and

(f) any other information the commissioner reasonably requires.

(3) The commissioner may require any documents reasonably necessary to verify the information contained in an application.

[~~(2)~~] (4) [~~An applicant's social security number is a~~] The following are private [~~record~~] records under Subsection 63-2-302(1)(g)[~~.~~] an applicant's:

(a) social security number; or

(b) federal employer identification number.

Section 136. Section 31A-23-203 is amended to read:

31A-23-203. General requirements for license issuance and renewal.

(1) The commissioner shall issue or renew a license to act as an agent, broker, or consultant to any person who, as to the license classification applied for under Section 31A-23-204:

(a) has satisfied the character requirements under Section 31A-23-205;

(b) has satisfied any applicable continuing education requirements under Section 31A-23-206;

(c) has satisfied any applicable examination requirements under Section 31A-23-207;

(d) has satisfied any applicable training period requirements under Section 31A-23-208;

(e) if a nonresident:

(i) has complied with Section 31A-23-209; and

(ii) holds an active similar license in that person's state of residence;

(f) as to applicants for licenses to act as title insurance agents, has satisfied the requirements of Section 31A-23-211; and

(g) has paid the applicable fees under Section 31A-3-103.

(2) (a) This Subsection (2) applies to the following persons:

(i) an applicant for a pending producer's license; or

(ii) a licensed producer.

(b) A person described in Subsection (2)(a) shall report to the commissioner:

(i) any administrative action taken against the person:

(A) in another jurisdiction; or

(B) by another regulatory agency in this state; and

(ii) any criminal prosecution taken against the person in any jurisdiction.

(c) The report required by Subsection (2)(b) shall:

(i) be filed:

(A) at the time the person files the application for a producer's license; or

(B) within 30 days of the initiation of an action or prosecution described in Subsection (2)(b); and

(ii) include a copy of the complaint or other relevant legal documents related to the action or prosecution described in Subsection (2)(b).

[~~(2)~~] (3) (a) The department may request:

(i) criminal background information maintained pursuant to Title 53, Chapter 10, Part 2, from the Bureau of Criminal Identification; and

(ii) complete Federal Bureau of Investigation criminal background checks through the national criminal history system.

(b) Information obtained by the department from the review of criminal history records received under Subsection [~~(2)~~] (3)(a) shall be used by the department for the purposes of:

(i) determining if a person satisfies the character requirements under Section 31A-23-205 for issuance or renewal of a license;

(ii) determining if a person has failed to maintain the character requirements under Section 31A-23-205; and

(iii) preventing persons who violate the federal Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. Secs. 1033 and 1034, from engaging in the business of insurance in the state.

(c) If the department requests the criminal background information, the department shall:

(i) pay to the Department of Public Safety the costs incurred by the Department of Public Safety in providing the department criminal background information under Subsection [~~(2)~~] (3)(a)(i);

(ii) pay to the Federal Bureau of Investigation the costs incurred by the Federal Bureau of Investigation in providing the department criminal background information under Subsection[~~(2)~~] (3)(a)(ii); and

(iii) charge the person applying for a license or for renewal of a license a fee equal to the aggregate of Subsections [~~(2)~~] (3)(c)(i) and (ii).

Section 137. Section 31A-23-204 is amended to read:

31A-23-204. License classifications.

[~~Licenses~~] A resident or nonresident license issued under this chapter shall be issued under the classifications described under Subsections (1) through (6). These classifications are intended to describe the matters to be considered under any education, examination, and training required of license applicants under Sections 31A-23-206 through 31A-23-208.

(1) [~~Agent~~] An agent and broker license [~~classifications include~~] classification includes:

(a) life insurance, including nonvariable [~~annuities~~] contracts;

(b) variable [~~annuities~~] contracts;

(c) [~~disability~~] accident and health insurance, including contracts issued to policyholders under Chapter 7 or 8;

(d) property/liability insurance, which includes:

(i) property insurance;

(ii) liability insurance;

(iii) surety and other bonds; and

(iv) policies containing any combination of these coverages;

(e) title insurance under one of the following categories:

(i) search, including authority to act as a title marketing representative;

(ii) escrow, including authority to act as a title marketing representative;

(iii) search and escrow, including authority to act as a title marketing representative; and

(iv) title marketing representative only; and

(f) workers' compensation insurance.

(2) [~~Limited~~] A limited license [~~product~~] classification includes:

(a) credit life and credit [~~disability~~] accident and health insurance;

(b) travel insurance;

(c) motor club insurance;

(d) car rental related insurance;

(e) credit involuntary unemployment insurance [~~and~~];

(f) credit property insurance;

[~~(f)~~] (g) bail bond agent; and

[~~(g)~~] (h) customer service representative.

(3) [~~Consultant~~] A consultant license classification includes:

(a) life insurance, including nonvariable [~~annuities~~] contracts;

(b) variable [~~annuities~~] contracts;

(c) [~~disability~~] accident and health insurance, including contracts issued to policyholders under Chapter 7 or 8;

(d) property/liability insurance, which includes:

(i) property insurance;

(ii) liability insurance;

(iii) surety and other bonds; and

(iv) policies containing any combination of these coverages; and

(e) workers' compensation insurance.

(4) A holder of licenses under Subsections (1)(a) and (1)(c) has all qualifications necessary to act as a holder of a license under Subsection (2)(a).

(5) (a) Upon satisfying the additional applicable requirements, a holder of a brokers license may obtain a license to act as a surplus lines broker.

(b) A license to act as a surplus lines broker gives the holder the authority to arrange insurance contracts with unauthorized insurers under Section 31A-15-103, but only as to the types of insurance under Subsection (1) for which the broker holds a brokers license.

(6) The commissioner may by rule recognize other agent, broker, limited license, or consultant license classifications as to kinds of insurance not listed under Subsections (1), (2), and (3).

Section 138. Section 31A-23-206 is amended to read:

31A-23-206. Continuing education requirements -- Regulatory authority.

(1) The commissioner shall by rule prescribe the continuing education requirements for each class of agent's license under Subsection 31A-23-204(1),

except that the commissioner may not impose a continuing education requirement on a holder of a license under:

(a) Subsection 31A-23-204(2); or

(b) a license classification other than under Subsection 31A-23-204(2) that is recognized by the commissioner by rule as provided in Subsection 31A-23-204(6).

(2) (a) The commissioner may not state a continuing education requirement in terms of formal education.

(b) The commissioner may state a continuing education requirement in terms of classroom hours, or their equivalent, of insurance-related instruction received.

(c) Insurance-related formal education may be a substitute, in whole or in part, for classroom hours, or their equivalent, required under Subsection (2)(b).

(3) (a) The commissioner shall impose continuing education requirements in accordance with a two-year licensing period in which the licensee meets the requirements of this Subsection (3).

(b) Except as provided in Subsection (3)(c), for a two-year licensing period described in Subsection (3)(a) the commissioner shall require that the licensee for each line of authority held by the licensee:

(i) receive six hours of continuing education; or

(ii) pass a line of authority continuing education examination.

(c) Notwithstanding Subsection (3)(b):

(i) the commissioner may not require continuing education for more than four lines of authority held by the licensee;

(ii) the commissioner shall require:

(A) a minimum of:

(I) 12 hours of continuing education;

(II) passage of two line of authority continuing education examinations; or

(III) a combination of Subsections (3)(c)(ii)(A)(I) and (II);

(B) that the minimum continuing education requirement of Subsection (3)(c)(ii)(A) include:

(I) at least six hours or one line of authority continuing education examination for each line of authority held by the licensee not to exceed four lines of authority held by the licensee; and

(II) three hours of ethics training, which may be taken in place of three hours of the hours required for a line of authority.

(d) (i) If a licensee completes the licensee's continuing education requirement without taking a line of authority continuing education examination, the licensee shall complete at least 1/2 of the required hours through classroom hours of insurance-related instruction.

(ii) The hours not completed through classroom hours in accordance with Subsection (3)(d)(i) may be obtained through:

(A) home study;

(B) video tape;

(C) experience credit; or

(D) other method provided by rule.

(e) (i) A licensee may obtain continuing education hours at any time during the two-year licensing period.

(ii) The licensee may not take a line of authority continuing education examination more than 90 calendar days before the date on which the licensee's license is renewed.

(f) The commissioner shall make rules for the content and procedures for line of authority continuing education examinations.

(g) (i) Beginning May 3, 1999, a licensee is exempt from continuing education requirements under this section if:

(A) as of April 1, 1990, the licensee has completed 20 years of licensure in good standing;

(B) the licensee requests an exemption from the department; and

(C) the department approves the exemption.

(ii) If the department approves the exemption under Subsection (3)(g)(i), the licensee is not required to apply again for the exemption.

(h) A licensee with a variable [~~annuity~~] contract line of authority is exempt from the requirement for continuing education for that line of authority so long as the:

(i) National Association of Securities Dealers requires continuing education for licensees having a securities license; and

(ii) licensee complies with the National Association of Securities Dealers' continuing education requirements for securities licensees.

(i) The commissioner shall, by rule:

(i) publish a list of insurance professional designations whose continuing education requirements can be used to meet the requirements for continuing education under Subsection (3)(c); and

(ii) authorize professional agent associations to:

(A) offer qualified programs for all classes of licenses on a geographically accessible basis; and

(B) collect reasonable fees for funding and administration of the continuing education program, subject to the review and approval of the commissioner.

(j) (i) The fees permitted under Subsection (3)(i)(ii) that are charged to fund and administer the

program shall reasonably relate to the costs of administering the program.

(ii) Nothing in this section prohibits a provider of continuing education programs or courses from charging fees for attendance at courses offered for continuing education credit.

(iii) The fees permitted under Subsection (3)(i)(ii) that are charged for attendance at a professional agent association program may be less for an association member, based on the member's affiliation expense, but shall preserve the right of a nonmember to attend without affiliation.

(4) The commissioner shall designate courses, including those presented by insurers, which satisfy the requirements of this section.

(5) The requirements of this section apply only to applicants who are natural persons.

[~~(6) The commissioner may waive the requirements of this section as to any person who has been an active insurance agent or broker in another state for two years immediately prior to applying for a license in this state, but only if the applicant's state of residence has imposed upon the applicant education requirements which are substantially as rigorous as those of this state.~~]

(6) A nonresident producer is considered to have satisfied this state's continuing education requirements if:

(a) the nonresident producer satisfies the nonresident producer's home state's continuing education requirements for a licensed insurance producer; and

(b) on the same basis as under this Subsection (6) the nonresident producer's home state considers satisfaction of Utah's continuing education requirements for a producer as satisfying the continuing education requirements of the home state.

Section 139. Section 31A-23-207 is amended to read:

31A-23-207. Examination requirements.

(1) (a) The commissioner may require applicants for any particular class of license under Section 31A-23-204 to pass an examination as a requirement for a license, except that [~~no~~] an examination may not be required of applicants for:

(i) licenses under Subsection 31A-23-204(2); or

(ii) other license classifications recognized by the commissioner by rule as provided in Subsection 31A-23-204(6).

(b) The examination described in Subsection (1)(a):

(i) shall reasonably relate to the specific classes for which it is prescribed[~~. The examination~~]; and

(ii) may be administered by the commissioner or as otherwise specified by rule.

(2) The commissioner [~~may~~] shall waive the requirement of an examination for a nonresident applicant who [~~has held a similar license in his home state for the two years immediately preceding application in this state, but only if the applicant's state of residence has imposed upon the applicant examination requirements which are substantially as rigorous as those of this state.~~]:

(a) applies for an insurance producer license in this state;

(b) has been licensed for the same line of authority in another state; and

(c) (i) is licensed in the state described in Subsection (2)(b) at the time the applicant applies for an insurance producer license in this state; or

(ii) if the application is received within 90 days of the cancellation of the applicant's previous license:

(A) the prior state certifies that at the time of cancellation, the applicant was in good standing in that state; or

(B) the state's producer database records maintained by the National Association of Insurance Commissioners or the National Association of Insurance Commissioner's affiliates or subsidiaries, indicates that the producer is or was licensed in good standing for the line of authority requested.

(3) (a) To become a resident licensee in accordance with Sections 31A-23-202 and 31A-23-203, a person licensed as an insurance producer in another state who moves to this state shall make application within 90 days of establishing legal residence in this state.

(b) A person who becomes a resident licensee under Subsection (3)(a) may not be required to meet prelicensing education or examination requirements to obtain any line of authority previously held in the prior state unless:

(i) the prior state would require a prior resident of this state to meet the prior state's prelicensing education or examination requirements to become a resident licensee; or

(ii) the commissioner imposes the requirements by rule.

[~~(3)~~] (4) This section's requirement may only be applied to applicants who are natural persons.

Section 140. Section 31A-23-209 is amended to read:

31A-23-209. Nonresident jurisdictional agreement.

(1) (a) [~~Nonresident applicants for licenses under this chapter shall~~] If a nonresident license applicant has a valid license from the nonresident license applicant's home state and the conditions of Subsection (1)(b) are met, the commissioner shall:

(i) waive any license requirement for a license under this chapter; and

(ii) issue the nonresident license applicant a nonresident producer license.

(b) Subsection (1)(a) applies if:

(i) the nonresident license applicant:

(A) is licensed as a resident in the nonresident license applicant's home state at the time the nonresident license applicant applies for a nonresident producer license;

(B) has submitted the proper request for licensure;

(C) has submitted to the commissioner:

(I) the application for licensure that the nonresident license applicant submitted to the applicant's home state; or

(II) a completed uniform application; and

(D) has paid the applicable fees under Section 31A-3-103;

(ii) the nonresident license applicant's license in the applicant's home state is in good standing; and

(iii) the nonresident license applicant's home state awards nonresident producer licenses to residents of this state on the same basis as this state awards licenses to residents of that home state.

(2) A nonresident applicant shall execute, in a form acceptable to the commissioner, an agreement to be subject to the jurisdiction of the Utah commissioner and courts on any matter related to the applicant's insurance activities in this state, on the basis of:

(a) service of process under Sections 31A-2-309 and 31A-2-310; or [~~other~~]

(b) service authorized:

(i) in the Utah Rules of Civil Procedure; or

(ii) under Section 78-27-25.

(3) The commissioner may verify the producer's licensing status through the producer database maintained by:

(a) the National Association of Insurance Commissioners; or

(b) an affiliate or subsidiary of the National Association of Insurance Commissioners.

(4) The commissioner may not assess a greater fee for an insurance license or related service to a person not residing in this state solely on the fact that the person does not reside in this state.

Section 141. Section 31A-23-211.7 is amended to read:

31A-23-211.7. Special requirements for variable annuity line of authority.

(1) Before applying for a variable [~~annuity~~] contracts line of authority, an agent, broker, or consultant shall be licensed under Section 61-1-3 as a:

(a) broker-dealer; or

(b) agent.

(2) An agent's, broker's, or consultant's variable [~~annuity~~] contracts line of authority is revoked on the day on which an agent's, broker's, or consultant's license under Section 61-1-3 is no longer valid.

Section 142. Section 31A-23-212 is amended to read:

31A-23-212. Form and contents of license.

(1) Licenses issued under this chapter shall be in the form the commissioner prescribes and shall set forth:

(a) the name, address, and telephone number of the licensee;

(b) the license classifications under Section 31A-23-204;

(c) the date of license issuance; and

(d) any other information the commissioner considers necessary.

(2) An insurance producer doing business under any other name than the producer's legal name shall notify the commissioner prior to using the assumed name in this state.

[~~(2)~~] (3) (a) An agency shall be licensed as an agency if the agency acts as:

(i) an agent;

(ii) a broker;

(iii) a surplus lines broker;

(iv) a managing general agent; or

(v) a consultant.

(b) The agency license [~~required~~] issued under [~~Subsections (2)~~] Subsection (3)(a) shall set forth the names of all natural persons licensed under this chapter who are authorized to act in those capacities for the agency in this state.

[~~(3)~~] (4) (a) So far as is practicable, the commissioner shall issue a single license to each agent, broker, or consultant for a single fee.

(b) For purposes of the fee described in Subsection (4)(a), the less expensive license is included within the most expensive license.

Section 143. Section 31A-23-216 is amended to read:

31A-23-216. Termination of license.

(1) A license issued under this chapter remains in force until:

(a) revoked, suspended, or limited under Subsection (2);

(b) lapsed under Subsection (3);

(c) surrendered to and accepted by the commissioner; or

(d) the licensee dies or is adjudicated incompetent as defined under Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons or Part 4,

Protection of Property of Persons Under Disability and Minors.

[~~(2) (a) After an adjudicative proceeding under Title 63, Chapter 46b, Administrative Procedures Act, the commissioner may revoke, suspend, or limit in whole or in part the license of any agent, broker, surplus lines broker, or consultant who is found:~~]

[~~(i) to be unqualified;~~]

[~~(ii) to have violated an insurance statute, valid rule under Subsection 31A-2-201(3), or a valid order under Subsection 31A-2-201(4); or~~]

[~~(iii) if the licensee's methods and practices in the conduct of business endanger the legitimate interests of customers and the public.~~]

[~~(b) Every order suspending a license issued under this chapter shall specify the period for which the suspension is effective, but in no event may the period exceed 12 months.~~]

(2) (a) If the commissioner makes a finding under Subsection (2)(b), after an adjudicative proceeding under Title 63, Chapter 46b, Administrative Procedures Act, the commissioner may:

(i) revoke a license of an agent, broker, surplus lines broker, or consultant;

(ii) suspend for a specified period of 12 months or less a license of an agent, broker, surplus lines broker, or consultant; or

(iii) limit in whole or in part the license of any agent, broker, surplus lines broker, or consultant.

(b) The commissioner may take an action described in Subsection (2)(a) if the commissioner finds that the licensee:

(i) is unqualified for a license under Section 31A-23-203;

(ii) has violated:

(A) an insurance statute;

(B) a rule that is valid under Subsection 31A-2-201(3); or

(C) an order that is valid under Subsection 31A-2-201(4);

(iii) is insolvent or the subject of receivership, conservatorship, rehabilitation, or other delinquency proceedings in any state;

(iv) fails to pay any final judgment rendered against the person in this state within 60 days after the day the judgment became final;

(v) fails to meet the same good faith obligations in claims settlement that is required of admitted insurers;

(vi) is affiliated with and under the same general management or interlocking directorate or ownership as another insurance producer that transacts business in this state without a license;

(vii) refuses to be examined or to produce its accounts, records, and files for examination;

(viii) has an officer who refuses to:

(A) give information with respect to the administrator's affairs; or

(B) perform any other legal obligation as to an examination;

(ix) provided information in the license application that is:

(A) incorrect;

(B) misleading;

(C) incomplete; or

(D) materially untrue;

(x) has violated any insurance law, valid rule, or valid order of another state's insurance department;

(xi) has obtained or attempted to obtain a license through misrepresentation or fraud;

(xii) has improperly withheld, misappropriated, or converted any monies or properties received in the course of doing insurance business;

(xiii) has intentionally misrepresented the terms of an actual or proposed:

(A) insurance contract; or

(B) application for insurance;

(xiv) has been convicted of a felony;

(xv) has admitted or been found to have committed any insurance unfair trade practice or fraud;

(xvi) in the conduct of business in this state or elsewhere has:

(A) used fraudulent, coercive, or dishonest practices; or

(B) demonstrated incompetence, untrustworthiness, or financial irresponsibility;

(xvii) has had an insurance license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory;

(xviii) has forged another's name to:

(A) an application for insurance; or

(B) any document related to an insurance transaction;

(xix) has improperly used notes or any other reference material to complete an examination for an insurance license;

(xx) has knowingly accepted insurance business from an individual who is not licensed;

(xxi) has failed to comply with an administrative or court order imposing a child support obligation;

(xxii) has failed to:

(A) pay state income tax; or

(B) comply with any administrative or court order directing payment of state income tax;

(xxiii) has violated or permitted others to violate the federal Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. Secs. 1033 and 1034; or

(xxiv) has engaged in methods and practices in the conduct of business that endanger the legitimate interests of customers and the public.

(3) (a) Any license issued under this chapter shall lapse if the licensee fails to pay when due a fee under Section 31A-3-103.

(b) A licensee whose license lapses due to military service or some other extenuating circumstances such as long-term medical disability may request:

(i) reinstatement of the license; and

(ii) waiver of any of the following imposed for failure to comply with renewal procedures:

(A) an examination requirement;

(B) a fine; or

(C) other sanction imposed for failure to comply with renewal procedures.

(c) The commissioner shall by rule prescribe the license renewal and reinstatement procedures, in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(4) A licensee under this chapter whose license is suspended, revoked, or lapsed, but who continues to act as a licensee, is subject to the penalties for acting as a licensee without a license.

(5) Any person licensed in this state shall immediately report to the commissioner:

(a) a suspension or revocation of that person's license in any other state, District of Columbia, or territory of the United States;

(b) the imposition of a disciplinary sanction imposed on that person by any other state, District of Columbia, or territory of the United States; and

(c) a judgment or injunction entered against that person on the basis of conduct involving fraud, deceit, misrepresentation, or violation of an insurance law or rule.

(6) An order revoking a license under Subsection (2) may specify a time, not to exceed five years, within which the former licensee may not apply for a new license. If no time is specified, the former licensee may not apply for a new license for five years without express approval by the commissioner.

(7) Any person whose license is suspended or revoked under Subsection (2) shall, when the suspension ends or a new license is issued, pay all fees that would have been payable if the license had not been suspended or revoked, unless the commissioner by order waives the payment of the interim fees. If a new license is issued more than three years after the revocation of a similar license, this subsection applies only to the fees that would have accrued during the three years immediately following the revocation.

(8) The division shall promptly withhold, suspend, restrict, or reinstate the use of a license issued under this part if so ordered by a court.

Section 144. Section 31A-23-218 is amended to read:

31A-23-218. Temporary insurance producer license -- Trustee for terminated licensee's business.

(1) (a) [~~Upon the request of the spouse, guardian, conservator, or personal representative of a deceased or disabled agent or broker, or upon the request of a person whose license has been terminated under Section 31A-23-216, the commissioner may appoint a trustee to provide continuing service to the insureds who procured insurance through the deceased, disabled, or unlicensed person.~~] The commissioner may issue a temporary insurance producer license:

(i) to a person listed in Subsection (1)(b):

(A) if the commissioner considers that the temporary license is necessary:

(I) for the servicing of an insurance business in the public interest; and

(II) to provide continued service to the insureds who procured insurance in a circumstance described in Subsection (1)(b);

(B) for a period not to exceed 180 days; and

(C) without requiring an examination; or

(ii) in any other circumstance:

(A) if the commissioner considers the public interest will best be served by issuing the temporary license;

(B) for a period not to exceed 180 days; and

(C) without requiring an examination.

(b) The commissioner may issue a temporary insurance producer license in accordance with Subsection (1)(a) to:

(i) the surviving spouse or court-appointed personal representative of a licensed insurance producer who dies or becomes mentally or physically disabled to allow adequate time for:

(A) the sale of the insurance business owned by the producer;

(B) recovery or return of the producer to the business; or

(C) the training and licensing of new personnel to operate the producer's business;

(ii) to a member or employee of a business entity licensed as an insurance producer upon the death or disability of an individual designated in:

(A) the business entity application; or

(B) the license; or

(iii) the designee of a licensed insurance producer entering active service in the armed forces of the United States of America.

(2) If a person's license is terminated under Section 31A-23-216, the commissioner may appoint a trustee to provide in the public interest continuing service to the insureds who procured insurance through the person whose license is terminated:

(a) at the request of the person whose license is terminated; or

(b) upon the commissioner's own initiative.

(3) This section does not apply if the deceased or disabled agent or broker [~~owned or owns no~~] does not or did not own any ownership interest in the accounts and associated expiration lists [~~which~~] that were previously serviced by the agent or broker. [~~Any~~]

(4) (a) A person issued a temporary license under Subsection (1) receives the license and shall perform the duties under the license subject to the commissioner's authority to:

(i) require a temporary licensee to have a suitable sponsor who:

(A) is a licensed producer; and

(B) assumes responsibility for all acts of the temporary licensee; or

(ii) impose other requirements that are:

(A) designed to protect the insureds and the public; and

(B) similar to the condition described in Subsection (4)(a)(i).

(b) A trustee appointed under [~~this section~~] Subsection (2) shall [~~receive his appointment~~] be appointed and perform [~~his~~] the trustee's duties subject to the [~~following~~] terms and conditions[~~:~~] described in Subsections (4)(b)(i) through (vi).

[~~(i) Trustees~~] (i) (A) A trustee appointed under [~~this section~~] Subsection (2) shall be licensed under this chapter to perform the services required by the trustor's clients.

(B) When possible, the commissioner shall appoint a trustee who is no longer actively engaged on [~~his~~] the trustee's own behalf in business as an agent or broker.

(C) The commissioner shall only select [~~persons~~] a person to act as trustee who [~~are~~] is trustworthy and competent to perform the necessary services.

[~~(2)~~] (ii) (A) If the deceased, disabled, or unlicensed person for whom the trustee is acting was an agent, the insurers through which the former agent's business was written shall cooperate with the trustee in allowing [~~him~~] the trustee to service the policies written through the insurer.

(B) The trustee shall abide by the terms of the agency agreement between the former agent and the issuing insurer, except that terms in those agreements terminating the agreement upon the death, disability, or license termination of the former agent do not bar the trustee from continuing to act under the agreement.

[~~(3)~~] (iii) (A) The commissioner shall set the trustee's compensation, which:

(I) may be stated in terms of a percentage of commissions[~~, but which is required to~~]; and

(II) shall be equitable.

(B) The compensation shall be paid exclusively from:

(I) the commissions generated by the former agent or broker's insurance accounts serviced by the trustee; and [~~from~~]

(II) other funds the former agent or broker or [~~his~~] the agent's or broker's successor in interest agree to pay.

(C) The trustee has no special priority to commissions over the former agent or broker's creditors.

[~~(4) Neither the~~] (iv) (A) The commissioner [~~nor~~] or the state [~~of Utah~~] may not be held liable for errors or omissions of:

(I) the former agent or broker; or

(II) the trustee.

(B) The trustee may not be held liable for errors and omissions [~~which~~] that were caused in any material way by the negligence of the former agent or broker.

(C) The trustee may be held liable for errors and omissions which arise solely from the trustee's negligence.

(D) The trustee's compensation level shall be sufficient to allow the trustee to purchase errors and omissions coverage, if that coverage is not provided the trustee by:

(I) the former agent or broker; or [~~his~~]

(II) the agent's or broker's successor in interest.

[~~(5)~~] (v) (A) It is a breach of the trustee's fiduciary duty to capture the accounts of trustor's clients, either directly or indirectly.

(B) The trustee may not purchase the accounts or expiration lists of the former agent or broker, unless the commissioner expressly ratifies the terms of the sale.

(C) The commissioner may adopt rules [~~which~~] that:

(I) further define the trustee's fiduciary duties; and

(II) explain how the trustee is to carry out [~~his~~] the trustee's responsibilities.

[~~(6)~~] (vi) (A) The trust may be terminated by:

(I) the commissioner; or [~~by~~]

(II) the person that requested the trust be established.

(B) The trust is terminated by written notice being delivered to:

(I) the trustee; and

(II) the commissioner.

(5) (a) The commissioner may by order:

(i) limit the authority of any temporary licensee or trustee in any way the commissioner considers necessary to protect insureds and the public; and

(ii) revoke a temporary license or trustee's appointment if the commissioner finds that the insureds or the public are endangered.

(b) A temporary license or trustee's appointment may not continue after the owner or personal representative disposes of the business.

Section 145. Section 31A-23-302 is amended to read:

31A-23-302. Unfair marketing practices.

(1) (a) (i) [~~A person who is or should be licensed under this title, an employee or agent of that licensee or person who should be licensed, a person whose primary interest is as a competitor of a person licensed under this title, and a person on behalf of any of these persons~~] Any of the following may not make or cause to be made any communication that contains false or misleading information, relating to an insurance contract, any insurer, or other licensee under this title, including information that is false or misleading because it is incomplete[~~,~~]:

(A) a person who is or should be licensed under this title;

(B) an employee or agent of a person described in Subsection (1)(a)(i)(A);

(C) a person whose primary interest is as a competitor of a person licensed under this title; and

(D) a person on behalf of any of the persons listed in this Subsection (1)(a)(i).

(ii) As used in this Subsection (1), "false or misleading information" includes:

(A) assuring the nonobligatory payment of future dividends or refunds of unused premiums in any specific or approximate amounts, but reporting fully and accurately past experience is not false or misleading information; and

(B) with intent to deceive a person examining it, filing a report, making a false entry in a record, or wilfully refraining from making a proper entry in a record.

(iii) An insurer or other licensee under this title may not:

(A) use any business name, slogan, emblem, or related device that is misleading or likely to cause the insurer or other licensee to be mistaken for another insurer or other licensee already in business[~~,~~]; or

(B) use any advertisement or other insurance promotional material that would cause a reasonable person to mistakenly believe that a state or federal government agency:

(I) is responsible for the insurance sales activities of the person;

(II) stands behind the credit of the person;

(III) guarantees any returns on insurance products of or sold by the person; or

(IV) is a source of payment of any insurance obligation of or sold by the person.

(iv) A person who is not an insurer may not assume or use any name that deceptively implies or suggests that it is an insurer.

(v) A person other than persons licensed as health maintenance organizations under Chapter 8 may not use the term "Health Maintenance Organization" or "HMO" in referring to itself.

(b) If an insurance agent or third party administrator distributes cards or documents, exhibits a sign, or publishes an advertisement that violates Subsection (1) (a), with reference to a particular insurer that the agent represents, or for whom the third party administrator processes claims, and if the cards, documents, signs, or advertisements are supplied or approved by that insurer, the agent's or the third party administrator's violation creates a rebuttable presumption that the violation was also committed by the insurer.

(2) (a) (i) An [~~insurer~~or] insurer or licensee under this chapter, or an officer or employee of either may not induce any person to enter into or continue an insurance contract or to terminate an existing insurance contract by offering benefits not specified in the policy to be issued or continued, including premium or commission rebates.

(ii) An insurer may not make or knowingly allow any agreement of insurance that is not clearly expressed in the policy to be issued or renewed.

(iii) Subsection (2)(a) does not preclude:

(A) insurers from reducing premiums because of expense savings;

(B) the usual kinds of social courtesies not related to particular transactions; or

(C) an insurer from receiving premiums under an installment payment plan.

(b) An agent, broker, or insurer may not absorb the tax under Section 31A-3-301.

(c) (i) A title insurer or agent or any officer or employee of either may not pay, allow, give, or offer to pay, allow, or give, directly or indirectly, as an inducement to obtaining any title insurance business, any rebate, reduction, or abatement of any rate or charge made incident to the issuance of the insurance, any special favor or advantage not

generally available to others, or any money or other consideration or material inducement.

(ii) "Charge made incident to the issuance of the insurance" includes escrow, settlement, and closing charges, and any other services that are prescribed by the commissioner.

(iii) An insured or any other person connected, directly or indirectly, with the transaction, including a mortgage lender, real estate broker, builder, attorney, or any officer, employee, or agent of any of them, may not knowingly receive or accept, directly or indirectly, any benefit referred to in Subsection (2)(c)(i).

(3) (a) An insurer may not unfairly discriminate among policyholders by charging different premiums or by offering different terms of coverage, except on the basis of classifications related to the nature and the degree of the risk covered or the expenses involved.

(b) Rates are not unfairly discriminatory if they are averaged broadly among persons insured under a group, blanket, or franchise policy, and the terms of those policies are not unfairly discriminatory merely because they are more favorable than in similar individual policies.

(4) A person who is or should be licensed under this title, an employee or agent of that licensee or person who should be licensed, a person whose primary interest is as a competitor of a person licensed under this title, and one acting on behalf of any of these persons, may not commit or enter into any agreement to participate in any act of boycott, coercion, or intimidation that tends to produce an unreasonable restraint of the business of insurance or a monopoly in that business.

(5) (a) A person may not restrict in the choice of an insurer or insurance agent or broker, another person who is required to pay for insurance as a condition for the conclusion of a contract or other transaction or for the exercise of any right under a contract. The person requiring the coverage may, however, reserve the right to disapprove the insurer or the coverage selected on reasonable grounds.

(b) The form of corporate organization of an insurer authorized to do business in this state is not a reasonable ground for disapproval, and the commissioner may by rule specify additional grounds that are not reasonable. This Subsection (5) does not bar an insurer from declining an application for insurance.

(6) A person may not make any charge other than insurance premiums and premium financing charges for the protection of property or of a security interest in property, as a condition for obtaining, renewing, or continuing the financing of a purchase of the property or the lending of money on the security of an interest in the property.

(7) (a) An agent may not refuse or fail to return promptly all indicia of agency to the principal on demand.

(b) A licensee whose license is suspended, limited, or revoked under Section 31A-2-308, 31A-23-216, or 31A-23-217 may not refuse or fail to return the license to the commissioner on demand.

(8) A person may not engage in any other unfair method of competition or any other unfair or deceptive act or practice in the business of insurance, as defined by the commissioner by rule, after a finding that they are misleading, deceptive, unfairly discriminatory, provide an unfair inducement, or unreasonably restrain competition.

Section 146. Section 31A-23-303 is amended to read:

31A-23-303. Inherent unsuitability.

[~~In the event~~] (1) If the commissioner finds after a hearing that a certain type of [~~disability~~] accident and health insurance, life insurance, or annuity product is inherently unsuitable for persons of certain ages or in certain conditions of health, the commissioner shall [~~promulgate~~] make a rule declaring [~~this disability~~] the accident and health insurance, life insurance, or annuity product as inherently unsuitable for persons of certain ages or in certain conditions of health. [~~No disability~~]

(2) An accident and health insurance, life insurance, or annuity product that is subject to the rule may not be sold to a person for whom the product has been determined as inherently unsuitable unless that person purchasing the product signs a receipt acknowledging having received a statement [~~which~~] that expresses that the product has been determined by the commissioner to be inherently unsuitable for persons of certain ages or in certain conditions of health.

(3) Unless the insurer or its agent establishes that its sale of coverage [~~which~~] is inconsistent with the rule made under Subsection (1) is due to excusable neglect, the purchaser may treat the sale as voidable, if acted upon by the insured within a two-year period from the date of sale.

Section 147. Section 31A-23-307 is amended to read:

31A-23-307. Title insurance agents' business.

A title insurance agent may engage in the escrow, settlement, or closing business, or any combination of such businesses, and operate as escrow, settlement, or closing agent provided that all the following exist:

(1) The title insurance agent is properly licensed under this chapter.

(2) (a) (i) All funds deposited with the agent in connection with any escrow, settlement, or closing are deposited in a federally insured financial institution in separate trust accounts, with the funds being the property of the persons entitled to them under the provisions of the escrow, settlement, or closing.

(ii) The funds shall be segregated escrow by escrow, settlement by settlement, or closing by closing in the records of the agent. [~~These funds~~]

(iii) Earnings on funds held in escrow may be paid out of the escrow account to any person in accordance with the provisions of the escrow agreement if the agreement does not otherwise provide for payment of the earnings or any portion of the earnings on the escrow funds.

(iv) Funds held in escrow:

(A) are not subject to any debts of the agent; and

(B) may only be used to fulfill the terms of the individual escrow, settlement, or closing under which the funds were accepted. [~~None of the funds~~]

(v) Funds held in escrow may not be used until all conditions of the escrow, settlement, or closing have been met.

[~~(b) Any interest received on funds deposited with the agent in connection with any escrow, settlement, or closing shall be paid over to the depositing party to the escrow, settlement, or closing and may not be transferred to the account of the agent.~~]

(b) Assets or property other than escrow funds received by an agent in accordance with an escrow agreement shall be maintained in a manner that will:

(i) reasonably preserve and protect the asset or property from loss, theft, or damages; and

(ii) otherwise comply with all general duties and responsibilities of a fiduciary or bailee.

(c) [~~No~~] A check may not be drawn, executed or dated, or funds otherwise disbursed unless the segregated escrow account from which funds are to be disbursed contains a sufficient credit balance consisting of collected or cleared funds at the time the check is drawn, executed or dated, or funds are otherwise disbursed.

(d) As used in this Subsection (2), funds are considered to be "collected or cleared," and may be disbursed as follows:

(i) cash may be disbursed on the same day it is deposited;

(ii) wire transfers may be disbursed on the same day they are deposited;

(iii) cashier's checks, certified checks, teller's checks, U.S. Postal Service money orders, and checks drawn on a Federal Reserve Bank or Federal Home Loan Bank may be disbursed on the day following the date of deposit; and

(iv) other checks or deposits may be disbursed within the time limits provided under the Expedited Funds Availability Act, 12 U.S.C. Section 4001 et seq., as amended, and related regulations of the Federal Reserve System or upon written notification from the financial institution to which the funds have been deposited, that final settlement has occurred on the deposited item.

(3) The title insurance agent shall maintain records of all receipts and disbursements of escrow, settlement, and closing funds.

(4) The title insurance agent shall comply with any rules adopted by the commissioner governing escrows, settlements, or closings.

Section 148. Section 31A-23-310 is amended to read:

31A-23-310. Trust obligation for funds collected.

(1) Every agent or broker is a trustee for all funds received or collected as an agent or broker for forwarding to insurers or to insureds. Except for amounts necessary to pay bank charges, and except for funds paid by insureds and belonging in part to the agent or broker as fees or commissions, an agent or broker may not commingle trust funds with the agent or broker's own funds or with funds held in any other capacity. Except as provided under Subsection (4), every agent or broker owes to insureds and insurers the fiduciary duties of a trustee with respect to money to be forwarded to insurers or insureds through the agent or broker. Unless the funds are sent to the appropriate payee by the close of the next business day after their receipt, the licensee shall deposit them in an account authorized under Subsection (2). Funds so deposited shall remain in an account authorized under Subsection (2) until sent to the appropriate payee.

(2) Funds required to be deposited under Subsection (1) shall be deposited:

(a) in a federally insured trust account with a financial institution located in this state; or

(b) in some other account, approved by the commissioner by rule or order, providing safety comparable to federally insured trust accounts.

(3) It is not a violation of Subsection (2)(a) if the amounts in the accounts exceed the amount of the federal insurance on the accounts.

(4) A trust account into which funds are deposited may be interest bearing. [~~Except as provided under Subsection 31A-23-307(2)(b), the~~] The interest accrued on the account may be paid to the agent or broker, so long as the agent or broker otherwise complies with this section and with the contract with the insurer.

(5) A financial institution or other organization holding trust funds under this section may not offset or impound trust account funds against debts and obligations incurred by the agent or broker.

(6) Any licensee who, not being lawfully entitled thereto, diverts or appropriates any portion of the funds held under Subsection (1) to the licensee's own use, is guilty of theft under Title 76, Chapter 6, Part 4. Section 76-6-412 applies in determining the classification of the offense. Sanctions under Section 31A-2-308 also apply.

Section 149. Section 31A-23-312 is amended to read:

31A-23-312. Place of business and residence address -- Records.

(1) (a) All licensees under this chapter shall register with the commissioner the address and

telephone numbers of their principal place of business.

(b) If the licensee is an individual, [~~he~~] in addition to complying with Subsection (1)(a) the individual shall [~~also~~] provide [~~his~~] to the commissioner the individual's residence address and telephone number. [~~Licensees~~]

(c) A licensee shall notify the commissioner, in writing, within 30 days of any change of address or telephone number.

(2) (a) Except as provided under Subsection (3), every licensee under this chapter shall keep at the principal place of business address registered under Subsection (1), [~~a record~~] separate and distinct books and records of all transactions consummated under the Utah license. [~~The record~~]

(b) The books and records described in Subsection (2)(a) shall:

(i) be in an organized form;

(ii) be available to the commissioner for inspection upon reasonable notice; and [~~shall~~]

(iii) include all of the following:

[~~(a)~~] (A) if the licensee is an agent or broker:

[~~(i)~~] (I) a record of each insurance contract procured by or issued through the licensee, with the names of insurers and insureds, the amount of premium and commissions or other compensation, and the subject of the insurance;

[~~(ii)~~] (II) the names of any other agents or brokers from whom business is accepted, and of persons to whom commissions or allowances of any kind are promised or paid; and

(III) a record of all consumer complaints forwarded to the licensee by an insurance regulator;

[~~(b)~~] (B) if the licensee is a consultant, a record of each agreement outlining the work performed and the fee for the work; and

[~~(c)~~] (C) any additional information which:

(I) is customary for a similar business[~~,~~]; or [~~which~~]

(II) may reasonably be required by the commissioner by rule.

(3) Subsection (2) is satisfied if the books and records specified in [~~that~~] Subsection (2) can be obtained immediately from a central storage place or elsewhere by on-line computer terminals located at the registered address.

(4) An agent who represents only a single insurer satisfies Subsection (2) if the insurer maintains the books and records pursuant to Subsection (2) at a place satisfying Subsections (1) and (5).

(5) (a) The books and records maintained [~~as to a transaction~~] under Subsection (2) or Section 31A-23-313 shall be available for the inspection of the commissioner during all business hours for a period of time after the date of the transaction as specified by the commissioner by rule, but in no case for less than three years.

(b) Discarding books and records after the applicable record retention period has expired does not place the licensee in violation of a later-adopted longer record retention period.

Section 150. Section 31A-23-317 is enacted to read:

31A-23-317. Financial services insurance activities regulation.

(1) It is the intent of the Legislature that the regulation of insurance activities of any person in this state be based on functional regulation principles established in the Gramm-Leach-Bliley Act of 1999, Pub. L. No. 106-102.

(2) The insurance activities of any person in this state shall be functionally regulated by the commissioner subject to Sections 104, 301-308, 501-507, and 509 of the Gramm-Leach-Bliley Act of 1999, Pub. L. No. 106-102.

(3) Under Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commissioner may adopt rules consistent with Section 104(d) of the Gramm-Leach-Bliley Act of 1999, Pub. L. No. 106-102, and the functional regulation of insurance activities of any person otherwise subject to the jurisdiction of the commissioner in this state described in Subsection (2).

(4) The commissioner shall consult and coordinate with the commissioner of the Department of Financial Institutions and the director of the Division of Securities for the purpose of assuring, to the extent possible, that the rules prescribed by the department are consistent and comparable with federal regulations governing the insurance, banking, and securities industries.

Section 151. Section 31A-23-404 is amended to read:

31A-23-404. Sharing commissions.

(1) (a) Except as provided in Subsection 31A-15-103(3), a licensee under this chapter or an insurer may only pay consideration or reimburse out-of-pocket expenses to a person if the licensee knows that the person is licensed under this chapter to act as an agent or broker in Utah as to the particular type of insurance.

(b) A person may only accept commission compensation or other compensation as an agent, broker, or consultant that is directly or indirectly the result of any insurance transaction if that person is licensed under this chapter to act as an agent or broker as to the particular type of insurance.

(2) (a) Except as provided in Section 31A-23-301, a consultant may not pay or receive any commission or other compensation that is directly or indirectly the result of any insurance transaction.

(b) A consultant may share a consultant fee or other compensation received for consulting services performed within Utah only with another consultant licensed under this chapter, and only to

the extent that the other consultant contributed to the services performed.

(3) This section does not prohibit the payment of renewal commissions to former licensees under this chapter, former Title 31, Chapter 17, or their successors in interest under a deferred compensation or agency sales agreement.

(4) This section does not prohibit compensation paid to or received by an individual for referral of a potential customer that seeks to purchase or obtain an opinion or advice on an insurance product if:

(a) the person is not licensed to sell insurance;

(b) the person sells or provides opinions or advice on the product; and

(c) the compensation does not depend on whether the referral results in a purchase or sale.

[~~(4)~~] (5) In selling any policy of title insurance, no sharing of commissions under Subsection (1) may occur if it will result in an unlawful rebate, or in compensation in connection with controlled business, or in payment of a forwarding fee or finder's fee. A person may share compensation for the issuance of a title insurance policy only to the extent that he contributed to the search and examination of the title or other services connected with it.

[~~(5)~~] (6) This section does not apply to bail bond agents or bail enforcement agents as defined in Section 31A-35-102.

Section 152. Section 31A-23-503 is amended to read:

31A-23-503. Duties of insurers.

(1) The insurer shall have on file an independent financial examination, in a form acceptable to the commissioner, of each managing general agent with which it has done business.

(2) If a managing general agent establishes loss reserves, the insurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the managing general agent. This is in addition to any other required loss reserve certification.

(3) The insurer shall at least semiannually conduct an on-site review of the underwriting and claims processing operations of the managing general agent.

(4) Binding authority for all reinsurance contracts or participation in insurance or reinsurance syndicates shall rest with an officer of the insurer, who may not be affiliated with the managing general agent.

(5) Within 30 days after entering into or terminating a contract with a managing general agent, the insurer shall provide written notification of the appointment or termination to the commissioner. A notice of appointment of a managing general agent shall include:

(a) a statement of duties that the applicant is expected to perform on behalf of the insurer;

(b) the lines of insurance for which the applicant is to be authorized to act; and

(c) any other information the commissioner may request.

(6) An insurer shall review its books and records each quarter to determine if any producer, as defined by Subsection 31A-23-102[~~(13)~~](17), has become a managing general agent as defined in Subsection 31A-23-102[~~(12)~~](15). If the insurer determines that a producer has become a managing general agent, the insurer shall promptly notify the producer and the commissioner of the determination. The insurer and producer shall fully comply with the provisions of this chapter within 30 days.

(7) An insurer may not appoint officers, directors, employees, subproducers, or controlling shareholders of its managing general agents to its board of directors. This Subsection (7) does not apply to relationships governed by Title 31A, Chapter 16, Insurance Holding Companies, or Chapter 23, Part 6, Broker Controlled Insurers, if it applies.

Section 153. Section 31A-23-601 is amended to read:

31A-23-601. Applicability.

This part applies to licensed insurers, as defined in Subsection 31A-23-102(11), which are either domiciled in this state or domiciled in a state that does not have a substantially similar law. All provisions of Title 31A, Chapter 16, Insurance Holding Companies, to the extent they are not superseded by this part, continue to apply to all parties within holding company systems subject to this part.

Section 154. Section 31A-23-702 is amended to read:

31A-23-702. Required contract provisions -- Reinsurance intermediary-broker.

Transactions between a reinsurance intermediary-broker and the insurer it represents in that capacity may only be entered into pursuant to a written authorization, which specifies the responsibilities of each party. The authorization shall, at a minimum, provide that the reinsurance intermediary-broker:

(1) may have his authority terminated by the insurer at any time;

(2) will render accounts to the insurer accurately detailing all material transactions, including information necessary to support all commissions, charges and other fees received by, or owing to the reinsurance intermediary-broker, and that he will remit all funds due to the insurer within 30 days of receipt;

(3) shall hold, in a fiduciary capacity, all funds collected for the insurer's account in a bank, which is a qualified [~~U.S.~~] United States financial institution;

(4) will comply with Section 31A-23-703;

(5) will comply with the written standards established by the insurer for the cession or retrocession of all risks; and

(6) will disclose to the insurer any relationship with any reinsurer to which business will be ceded or retroceded.

Section 155. Section 31A-23-705 is amended to read:

31A-23-705. Required contract provisions -- Reinsurance intermediary-manager.

Transactions between a reinsurance intermediary-manager and the reinsurer it represents in that capacity may only be entered into pursuant to a written contract, which specifies the responsibilities of each party, and which shall be approved by the reinsurer's board of directors. At least 30 days before the reinsurer assumes or cedes business through the producer, a true copy of the approved contract shall be filed with the commissioner for approval. The contract shall, at a minimum, provide or require the following:

(1) The reinsurer may terminate the contract for cause upon written notice to the reinsurance intermediary-manager. The reinsurer may immediately suspend the authority of the reinsurance intermediary-manager to assume or cede business during the pendency of any dispute regarding the cause for termination.

(2) The reinsurance intermediary-manager will render accounts to the reinsurer accurately detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by, or owing to the reinsurance intermediary-manager, and he shall remit all funds due under the contract to the reinsurer at least monthly.

(3) All funds collected for the reinsurer's account will be held by the reinsurance intermediary-manager in a fiduciary capacity in a bank which is a qualified [~~U.S.~~] United States financial institution. The reinsurance intermediary-manager may retain no more than three months estimated claims payments and allocated loss adjustment expenses. The reinsurance intermediary-manager shall maintain a separate bank account for each reinsurer that it represents.

(4) For at least ten years after expiration of each contract of reinsurance transacted by the reinsurance intermediary-manager, he shall keep a complete record for each transactions showing:

(a) the type of contract, limits, underwriting restrictions, classes of risks, and territory;

(b) period of coverage, including effective and expiration dates, cancellation provisions and notice required of cancellation, and disposition of outstanding reserves on covered risks;

(c) reporting and settlement requirements of balances;

(d) rates used to compute the reinsurance premium;

(e) names and addresses of reinsurers;

(f) rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance intermediary-manager;

(g) related correspondence and memoranda;

(h) proof of placement;

(i) details regarding retrocessions handled by the reinsurance intermediary-manager, as permitted by Subsection 31A-23-707 (4), including the identity of retrocessionaires and percentage of each contract assumed or ceded;

(j) financial records, including premium and loss accounts; and

(k) when the reinsurance intermediary-manager places a reinsurance contract on behalf of a ceding insurer:

(i) directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or

(ii) if placed through a representative of the assuming reinsurer, other than an employee, written evidence that the reinsurer has delegated binding authority to the representative.

(5) The reinsurer will have access and the right to copy all accounts and records maintained by the reinsurance intermediary-manager which are related to its business, in a form usable by the reinsurer.

(6) The contract cannot be assigned in whole or in part by the reinsurance intermediary-manager.

(7) The reinsurance intermediary-manager will comply with the written underwriting and rating standards established by the insurer for the acceptance, rejection, or cession of all risks.

(8) The contract shall set forth the rates, terms, and purposes of commissions, charges, and other fees which the reinsurance intermediary-manager may levy against the reinsurer.

(9) If the contract permits the reinsurance intermediary-manager to settle claims on behalf of the reinsurer:

(a) All claims will be reported to the reinsurer in a timely manner.

(b) A copy of the claim file will be sent to the reinsurer at its request or as soon as it becomes known that the claim:

(i) has the potential to exceed the lesser of an amount determined by the commissioner or the limit set by the reinsurer;

(ii) involves a coverage dispute;

(iii) may exceed the reinsurance intermediary-manager claims settlement authority;

(iv) is open for more than six months; or

(v) is closed by payment of the lesser of an amount set by the commissioner or an amount set by the reinsurer.

(c) All claim files will be the joint property of the reinsurer and reinsurance intermediary-manager. However, upon an order of liquidation of the reinsurer the files shall become the sole property of the reinsurer or its estate. The reinsurance intermediary-manager shall have reasonable access to and the right to copy the files on a timely basis.

(d) Any settlement authority granted to the reinsurance intermediary-manager may be terminated for cause upon the reinsurer's written notice to the reinsurance intermediary-manager, or upon the termination of the contract. The reinsurer may suspend the settlement authority during the pendency of the dispute regarding the cause of termination.

(10) If the contract provides for a sharing of interim profits by the reinsurance intermediary-manager, that the contract shall provide interim profits will not be paid until one year after the end of each underwriting period for property business and five years after the end of each underwriting period for casualty business, or a later time period set by the commissioner for specified lines of insurance, and not until the adequacy of reserves on remaining claims has been verified pursuant to Subsection 31A-23-707 (3).

(11) The reinsurance intermediary-manager will annually provide the reinsurer with a statement of its financial condition prepared by an independent certified public accountant.

(12) The reinsurer shall at least semi-annually conduct an on-site review of the underwriting and claims processing operations of the reinsurance intermediary-manager.

(13) The reinsurance intermediary-manager will disclose to the reinsurer any relationship it has with any insurer prior to ceding or assuming any business with the insurer pursuant to this contract.

(14) Within the scope of its actual or apparent authority the acts of the reinsurance intermediary-manager shall be considered to be the acts of the reinsurer on whose behalf it is acting.

Section 156. Section 31A-25-102 is amended to read:

31A-25-102. Scope and purposes.

(1) This chapter applies to all third party administrators.

(2) The purposes of this chapter include:

(a) encouraging disclosure of contracts between insurers and third party administrators, both to potential insureds and to the commissioner;

(b) promoting the financial responsibility of [~~insurance~~] third party administrators;

(c) subjecting persons administering insurance in Utah to the jurisdiction of the Utah commissioner and courts; [~~and~~]

(d) regulating [~~insurance~~] third party administrators' practices in conformity with the general purposes of [~~the Insurance Code.~~] this title; and

(e) governing the qualifications and procedures for the licensing of third party administrators.

Section 157. Section 31A-25-202 is amended to read:

31A-25-202. Application for license.

(1) (a) An application for a license as a third party administrator shall be:

(i) made to the commissioner on forms and in a manner [~~he~~] the commissioner prescribes[~~,~~]; and [~~be~~]

(ii) accompanied by the applicable fee, which is not refundable if the application is denied.

(b) The application for a license as a third party administrator shall:

(i) state the applicant's:

(A) social security number; or

(B) federal employer identification number;

(ii) provide information about:

(A) the applicant's identity[~~,~~];

(B) the applicant's personal history, experience, education, and business record[~~,~~];

(C) if the applicant is a natural person, whether the applicant is 18 years of age or older; and

(D) whether the applicant has committed an act that is a ground for denial, suspension, or revocation as set forth in Section 31A-25-208; and

(iii) any other information as the commissioner reasonably requires.

(2) The commissioner may require documents reasonably necessary to verify the information contained in the application.

(3) The following are private records under Subsection 63-2-302(1)(g):

(a) an applicant's social security number; and

(b) an applicant's federal employer identification number.

Section 158. Section 31A-25-203 is amended to read:

31A-25-203. General requirements for license issuance.

(1) The commissioner shall issue a license to act as a third party administrator to any person who has:

(a) satisfied the character requirements under Section 31A-25-204;

(b) satisfied the financial responsibility requirement under Section 31A-25-205;

(c) if a nonresident, complied with Section 31A-25-206; and

(d) paid the applicable fees under Section 31A-3-103.

(2) The license of each third party administrator licensed under former Title 31, Chapter 15a, is continued under this chapter.

(3) (a) This Subsection (3) applies to the following persons:

(i) an applicant for a third party administrator's license; or

(ii) a licensed third party administrator.

(b) A person described in Subsection (3)(a) shall report to the commissioner:

(i) any administrative action taken against the person:

(A) in another jurisdiction; or

(B) by another regulatory agency in this state; and

(ii) any criminal prosecution taken against the person in any jurisdiction.

(c) The report required by Subsection (3)(b) shall:

(i) be filed:

(A) at the time the person applies for a third party administrator's license; or

(B) within 30 days of the initiation of an action or prosecution described in Subsection (3)(b); and

(ii) include a copy of the complaint or other relevant legal documents related to the action or prosecution described in Subsection (3)(b).

(4) (a) The department may request concerning a person applying for a third party administrator's license:

(i) criminal background information maintained pursuant to Title 53, Chapter 10, Part 2, from the Bureau of Criminal Identification; and

(ii) complete Federal Bureau of Investigation criminal background checks through the national criminal history system.

(b) Information obtained by the department from the review of criminal history records received under Subsection (4)(a) shall be used by the department for the purposes of:

(i) determining if a person satisfies the character requirements under Section 31A-25-204 for issuance or renewal of a license;

(ii) determining if a person has failed to maintain the character requirements under Section 31A-25-204; and

(iii) preventing persons who violate the federal Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. Secs. 1033 and 1034, from engaging in the business of insurance in the state.

(c) If the department requests the criminal background information, the department shall:

(i) pay to the Department of Public Safety the costs incurred by the Department of Public Safety in providing the department criminal background information under Subsection (4)(a)(i);

(ii) pay to the Federal Bureau of Investigation the costs incurred by the Federal Bureau of Investigation in providing the department criminal background information under Subsection (4)(a)(ii); and

(iii) charge the person applying for a license or for renewal of a license a fee equal to the aggregate of Subsections (4)(c)(i) and (ii).

Section 159. Section 31A-25-205 is amended to read:

31A-25-205. Financial responsibility.

(1) Every person licensed under this chapter shall, while licensed and for one year after that date, maintain an insurance policy or surety bond, issued by an authorized insurer, in an amount specified under Subsection (2), on a policy or contract form which is acceptable under Subsection (3).

(2) (a) Insurance policies or surety bonds satisfying the requirement of Subsection (1) shall be in a face amount equal to at least 10% of the total funds handled by the administrator. However, no policy or bond under this [~~subsection~~] Subsection (2)(a) may be in a face amount of less than $5,000 nor more than $500,000.

(b) In fixing the policy or bond face amount under Subsection (2)(a), the total funds handled is:

(i) the greater of:

(A) the premiums received during the previous calendar year; or

(B) claims paid through the administrator during the previous calendar year[~~,~~]; or[~~,~~]

(ii) if no funds were handled during the preceding year, the total funds reasonably anticipated to be handled by the administrator during the current calendar year.

(c) This section does not prohibit any person dealing with the administrator from requiring, by contract, insurance coverage in amounts greater than required under this section.

(3) Insurance policies or surety bonds issued to satisfy Subsection (1) shall be on forms approved by the commissioner. The policies or bonds shall require the insurer to pay, up to the policy or bond face amount, any judgment obtained by participants in or beneficiaries of plans administered by the insured licensee which arise from the negligence or culpable acts of the licensee or any employee or agent of the licensee in connection with the activities described under Subsection 31A-1-301[~~(90)~~](111). The commissioner may require that policies or bonds issued to satisfy the requirements of this section

require the insurer to give the commissioner 20 day prior notice of policy cancellation.

(4) The commissioner shall establish annual reporting requirements and forms to monitor compliance with this section.

(5) This section may not be construed as limiting any cause of action an insured would otherwise have against the insurer.

Section 160. Section 31A-25-206 is amended to read:

31A-25-206. Nonresident jurisdictional agreement.

(1) (a) [~~Nonresident applicants for licenses under this chapter~~] If a nonresident license applicant has a valid license from the nonresident license applicant's home state and the conditions of Subsection (1)(b) are met, the commissioner shall:

(i) waive any license requirement for a license under this chapter; and

(ii) issue the nonresident license applicant a nonresident third party administrator license.

(b) Subsection (1)(a) applies if:

(i) the nonresident license applicant:

(A) is licensed as a resident in the nonresident license applicant's home state at the time the nonresident license applicant applies for a nonresident third party administrator license;

(B) has submitted the proper request for licensure;

(C) has submitted to the commissioner:

(I) the application for licensure that the nonresident license applicant submitted to the applicant's home state; or

(II) a completed uniform application; and

(D) has paid the applicable fees under Section 31A-3-103;

(ii) the nonresident license applicant's license in the applicant's home state is in good standing; and

(iii) the nonresident license applicant's home state awards nonresident third party administrator licenses to residents of this state on the same basis as this state awards licenses to residents of that home state.

(2) A nonresident applicant shall execute in a form acceptable to the commissioner an agreement to be subject to the jurisdiction of the Utah commissioner and courts on any matter related to [~~his~~] the applicant's insurance activities in Utah, on the basis of:

(a) service of process under Sections 31A-2-309 and 31A-2-310; or

(b) other service authorized in the Utah Rules of Civil Procedure.

(3) The commissioner may verify the third party administrator's licensing status through the database maintained by:

(a) the National Association of Insurance Commissioners; or

(b) an affiliate or subsidiary of the National Association of Insurance Commissioners.

(4) The commissioner may not assess a greater fee for an insurance license or related service to a person not residing in this state based solely on the fact that the person does not reside in this state.

Section 161. Section 31A-25-207 is amended to read:

31A-25-207. Form and contents of license.

(1) Licenses issued under this chapter shall be in the form the commissioner prescribes and shall set forth:

[~~(1)~~] (a) the name, address, and telephone number of the licensee;

[~~(2)~~] (b) the date of license issuance; and

[~~(3)~~] (c) any other information the commissioner considers advisable.

(2) A third party administrator doing business under any other name than the administrator's legal name shall notify the commissioner prior to using the assumed name in this state.

(3) (a) An organization shall be licensed as an agency if the organization acts as a third party administrator.

(b) An agency license issued under Subsection (3)(a) shall set forth the names of all natural persons licensed under this chapter who are authorized to act in those capacities for the organization in this state.

Section 162. Section 31A-25-208 is amended to read:

31A-25-208. Termination of license.

(1) A license issued under this chapter remains in force until:

(a) revoked, suspended, or limited under Subsection (2);

(b) lapsed under Subsection (3);

(c) surrendered to and accepted by the commissioner; or

(d) the licensee dies or is adjudicated incompetent as defined under Title 75, Chapter 5, Part 3 or 4.

(2) After [~~a hearing~~] an adjudicative proceeding under Title 63, Chapter 46b, Administrative Procedures Act, the commissioner may revoke, suspend for a specified period of [~~less than~~] 12 months or less, or limit in whole or in part the license of any administrator, found to:

(a) be unqualified for a license under Section 31A-25-203;

(b) have violated an insurance statute, valid rule under Subsection 31A-2-201(3), or a valid order under Subsection 31A-2-201(4);

(c) be insolvent, or the subject of receivership, conservatorship, rehabilitation, or other delinquency proceedings in any state;

(d) have failed to pay any final judgment rendered against it in this state within 60 days after the judgment became final;

(e) have failed to meet the same good faith obligations in claims settlement as that required of admitted insurers;

(f) be affiliated with and under the same general management or interlocking directorate or ownership as another administrator which transacts business in this state without a license; [~~or~~]

(g) have refused to be examined or to produce its accounts, records, and files for examination, or have officers who have refused to give information with respect to the administrator's affairs or to perform any other legal obligation as to an examination; [~~or~~]

(h) have provided incorrect, misleading, incomplete, or materially untrue information in the license application;

(i) have violated an insurance law, valid rule, or valid order of another state's insurance department;

(j) have obtained or attempted to obtain a license through misrepresentation or fraud;

(k) have improperly withheld, misappropriated, or converted any monies or properties received in the course of doing insurance business;

(l) have intentionally misrepresented the terms of an actual or proposed insurance contract or application for insurance;

(m) have been convicted of a felony;

(n) have admitted or been found to have committed any insurance unfair trade practice or fraud;

(o) have used fraudulent, coercive, or dishonest practices in this state or elsewhere;

(p) have demonstrated incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere;

(q) have had an insurance license or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory;

(r) have forged another's name to:

(i) an application for insurance; or

(ii) a document related to an insurance transaction;

(s) have improperly used notes or any other reference material to complete an examination for an insurance license;

(t) have knowingly accepted insurance business from an individual who is not licensed;

(u) have failed to comply with an administrative or court order imposing a child support obligation;

(v) have failed to:

(i) pay state income tax; or

(ii) comply with any administrative or court order directing payment of state income tax;

(w) have violated or permitted others to violate the federal Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. Secs. 1033 and 1034; or

[~~(h)~~] (x) have engaged in methods and practices in the conduct of business [~~which~~] that endanger the legitimate interests of customers and the public.

(3) (a) Any license issued under this chapter lapses if the licensee fails to:

(i) pay the fee due under Section 31A-3-103[~~,~~]; or [~~if the licensee fails to~~]

(ii) produce, when due, evidence of compliance with the financial responsibility requirement under Section 31A-25-205. [~~A~~]

(b) Subject to Subsection (3)(c) a license [~~which~~] that has lapsed under this Subsection (3) may be reinstated if the licensee[~~, within 90 days after license lapse,~~] cures the deficiency or deficiencies [~~which~~] that brought about the license lapse within 90 days after the date the license lapsed.

(c) The licensee shall pay twice the applicable license renewal fee if the cause of the license lapse was failure to pay the usual renewal fee.

(4) Notwithstanding Subsection (3), a licensee whose license lapses due to military service or some other extenuating circumstance such as a long-term medical disability may request:

(a) reinstatement; and

(b) a waiver of any of the following imposed for failure to comply with renewal procedures:

(i) an examination requirement;

(ii) a fine; or

(iii) other sanction.

(5) The commissioner shall by rule prescribe the license renewal and reinstatement procedures, in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

[~~(4)~~] (6) A licensee under this chapter whose license is suspended, revoked, or lapsed, but who continues to act as a licensee, is subject to the penalties for acting as an administrator without a license.

[~~(5)~~] (7) An order revoking a license under Subsection (2) may specify a time, not to exceed five years, within which the former licensee may not apply for a new license. If no time is specified, the former licensee may not apply for five years without the express approval of the commissioner.

[~~(6)~~] (8) Any person whose license is suspended or revoked under Subsection (2) shall, when the

suspension ends or a new license is issued, pay all the fees that would have been payable if the license had not been suspended or revoked, unless the commissioner by order waives the payment of the interim fees. If a new license is issued more than three years after the revocation of a similar license, this subsection applies only to the fees that would have accrued during the three years immediately following the revocation.

(9) If ordered by a court, the commissioner shall promptly withhold, suspend, restrict, or reinstate the use of a license issued under this part.

Section 163. Section 31A-26-101 is amended to read:

31A-26-101. Purposes.

The purposes of this chapter are:

(1) to promote the professional competence of those engaged in claims adjusting;

(2) to encourage fair and rapid settlement of claims;

(3) to protect claimants under insurance policies from unfair claims adjustment practices; [~~and~~]

(4) to prevent compensation arrangements for insurance adjusters that endanger the fairness of claim settlements[~~.~~]; and

(5) to govern the qualifications and procedures for the licensing of insurance adjustors.

Section 164. Section 31A-26-202 is amended to read:

31A-26-202. Application for license.

(1) (a) The application for a license as an independent adjuster or public adjuster shall be:

(i) made to the commissioner on forms and in a manner [~~he~~] the commissioner prescribes[~~.~~]; and

(ii) accompanied by the applicable fee, which is not refunded if the application is denied.

(b) The application shall provide:

(i) information about the identity[~~,~~];

(ii) the applicant's:

(A) social security number[~~,~~]; or

(B) federal employer identification number;

(iii) the applicant's personal history, experience, education, and business record[~~, and~~];

(iv) if the applicant is a natural person, whether the applicant is 18 years of age or older;

(v) whether the applicant has committed an act that is a ground for denial, suspension, or revocation as set forth in Section 31A-25-208; and

(vi) any other information as the commissioner reasonably requires.

(2) The commissioner may require documents reasonably necessary to verify the information contained in the application.

[~~(b)~~] (3) [~~An applicant's social security number is a~~] The following are private [~~record~~] records under Subsection 63-2-302(1)(g)[~~.~~]:

[~~(2) Insurance adjusters' licenses issued under former Title 31 remain in effect until their expiration date, but they are subject to any requirement or limitation generally imposed under this title on similar licenses issued after July 1, 1986. Upon timely payment of the license continuation fee under Section 31A-3-103, the commissioner shall issue to adjusters licensed under the former title new licenses conforming to the provisions of this title and rules adopted under it.~~]

(a) the applicant's social security number; and

(b) the applicant's federal employer identification number.

Section 165. Section 31A-26-203 is amended to read:

31A-26-203. Adjuster's license required.

(1) The commissioner shall issue a license to act as an independent adjuster or public adjuster to any person who, as to the license classification applied for under Section 31A-26-204, has:

[~~(1)~~] (a) satisfied the character requirements under Section 31A-26-205;

[~~(2)~~] (b) satisfied the applicable continuing education requirements under Section 31A-26-206;

[~~(3)~~] (c) satisfied the applicable examination requirements under Section 31A-26-207;

[~~(4)~~] (d) if a nonresident, complied with Section 31A-26-208; and

[~~(5)~~] (e) paid the applicable fees under Section 31A-3-103.

(2) (a) This Subsection (2) applies to the following persons:

(i) an applicant for:

(A) an independent adjuster's license; or

(B) a public adjuster's license;

(ii) a licensed independent adjuster; or

(iii) a licensed public adjuster.

(b) A person described in Subsection (2)(a) shall report to the commissioner:

(i) any administrative action taken against the person:

(A) in another jurisdiction; or

(B) by another regulatory agency in this state; and

(ii) any criminal prosecution taken against the person in any jurisdiction.

(c) The report required by Subsection (2)(b) shall:

(i) be filed:

(A) at the time the person applies for a third party administrator's license; or

(B) within 30 days of the initiation of an action or prosecution described in Subsection (2)(b); and

(ii) include a copy of the complaint or other relevant legal documents related to the action or prosecution described in Subsection (2)(b).

(3) (a) The department may request concerning a person applying for an independent or public adjuster's license:

(i) criminal background information maintained pursuant to Title 53, Chapter 10, Part 2, from the Bureau of Criminal Identification; and

(ii) complete Federal Bureau of Investigation criminal background checks through the national criminal history system.

(b) Information obtained by the department from the review of criminal history records received under Subsection (3)(a) shall be used by the department for the purposes of:

(i) determining if a person satisfies the character requirements under Section 31A-26-205 for issuance or renewal of a license;

(ii) determining if a person has failed to maintain the character requirements under Section 31A-25-204; and

(iii) preventing persons who violate the federal Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. Secs. 1033 and 1034, from engaging in the business of insurance in the state.

(c) If the department requests the criminal background information, the department shall:

(i) pay to the Department of Public Safety the costs incurred by the Department of Public Safety in providing the department criminal background information under Subsection (3)(a)(i);

(ii) pay to the Federal Bureau of Investigation the costs incurred by the Federal Bureau of Investigation in providing the department criminal background information under Subsection (3)(a)(ii); and

(iii) charge the person applying for a license or for renewal of a license a fee equal to the aggregate of Subsections (3)(c)(i) and (ii).

Section 166. Section 31A-26-204 is amended to read:

31A-26-204. License classifications.

[~~Licenses~~] A resident or nonresident license issued under this chapter shall be issued under the classifications described under Subsections (1), (2), and (3). These classifications are intended to describe the matters to be considered under any prerequisite education and examination required of license applicants under Sections 31A-26-206 and 31A-26-207.

(1) Independent adjuster license classifications include:

(a) [~~disability~~] accident and health insurance, including related service insurance under Chapter 7 or 8;

(b) property and liability insurance, which includes:

(i) property insurance;

(ii) liability insurance;

(iii) surety bonds; and

(iv) policies containing combinations or variations of these coverages;

(c) service insurance;

(d) title insurance;

(e) credit insurance; and

(f) workers' compensation insurance.

(2) Public adjuster license classifications include:

(a) [~~disability~~] accident and health insurance, including related service insurance under Chapter 7 or 8;

(b) property and liability insurance, which includes:

(i) property insurance;

(ii) liability insurance;

(iii) surety bonds; and

(iv) policies containing combinations or variations of these coverages;

(c) service insurance;

(d) title insurance;

(e) credit insurance; and

(f) workers' compensation insurance.

(3) The commissioner may by rule recognize other independent adjuster or public adjuster license classifications as to other kinds of insurance not listed under Subsection (1). The commissioner may also by rule create license classifications which grant only part of the authority arising under another license class.

Section 167. Section 31A-26-206 is amended to read:

31A-26-206. Continuing education requirements.

(1) The commissioner shall by rule prescribe continuing education requirements for each class of license under Section 31A-26-204.

(2) (a) The commissioner shall impose continuing education requirements in accordance with a two-year licensing period in which the licensee meets the requirements of this Subsection (2).

(b) Except as provided in Subsection (2)(c), for a two-year licensing period described in Subsection (2)(a) the commissioner shall require that the licensee for each line of authority held by the licensee:

(i) receive six hours of continuing education; or

(ii) pass a line of authority continuing education examination.

(c) Notwithstanding Subsection (2)(b):

(i) the commissioner may not require continuing education for more than four lines of authority held by the licensee;

(ii) the commissioner shall require:

(A) a minimum of:

(I) 12 hours of continuing education;

(II) passage of two line of authority continuing education examinations; or

(III) a combination of Subsection (2)(c)(ii)(A)(I) and (II);

(B) that the minimum continuing education requirement of Subsection (2)(c)(ii)(A) include:

(I) at least six hours or one line of authority continuing education examination for each line of authority held by the licensee not to exceed four lines of authority held by the licensee; and

(II) three hours of ethics training, which may be taken in place of three hours of the hours required for a line of authority.

(d) (i) If a licensee completes the licensee's continuing education requirement without taking a line of authority continuing education examination, the licensee shall complete at least 1/2 of the required hours through classroom hours of insurance-related instruction.

(ii) The hours not completed through classroom hours in accordance with Subsection (2)(d)(i) may be obtained through:

(A) home study;

(B) video tape;

(C) experience credit; or

(D) other method provided by rule.

(e) (i) A licensee may obtain continuing education hours at any time during the two-year licensing period.

(ii) The licensee may not take a line of authority continuing education examination more than 90 calendar days before the date on which the licensee's license is renewed.

(f) The commissioner shall make rules for the content and procedures for line of authority continuing education examinations.

(g) (i) Beginning May 3, 1999, a licensee is exempt from the continuing education requirements of this section if:

(A) as of April 1, 1990, the licensee has completed 20 years of licensure in good standing;

(B) the licensee requests an exemption from the department; and

(C) the department approves the exemption.

(ii) If the department approves the exemption under Subsection (2)(g)(i), the licensee is not required to apply again for the exemption.

(h) A licensee with a variable annuity line of authority is exempt from the requirement for continuing education for that line of authority so long as:

(i) the National Association of Securities Dealers requires continuing education for licensees having a securities license; and

(ii) the licensee complies with the National Association of Securities Dealers' continuing education requirements for securities licensees.

(i) The commissioner shall by rule:

(i) publish a list of insurance professional designations whose continuing education requirements can be used to meet the requirements for continuing education under Subsection (2)(c); and

(ii) authorize professional adjuster associations to:

(A) offer qualified programs for all classes of licenses on a geographically accessible basis; and

(B) collect reasonable fees for funding and administration of the continuing education programs, subject to the review and approval of the commissioner.

(j) (i) The fees permitted under Subsection (2)(i) that are charged to fund and administer a program shall reasonably relate to the costs of administering the program.

(ii) Nothing in this section shall prohibit a provider of continuing education programs or courses from charging fees for attendance at courses offered for continuing education credit.

(iii) The fees permitted under Subsection (2)(i)(ii) that are charged for attendance at an association program may be less for an association member, based on the member's affiliation expense, but shall preserve the right of a nonmember to attend without affiliation.

(3) The requirements of this section apply only to licensees who are natural persons.

(4) The requirements of this section do not apply to members of the Utah State Bar.

(5) The commissioner shall designate courses that satisfy the requirements of this section, including those presented by insurers.

(6) A nonresident adjuster is considered to have satisfied this state's continuing education requirements if:

(a) the nonresident adjuster satisfies the nonresident producer's home state's continuing education requirements for a licensed insurance adjuster; and

(b) on the same basis the nonresident adjuster's home state considers satisfaction of Utah's continuing education requirements for a producer

as satisfying the continuing education requirements of the home state.

Section 168. Section 31A-26-207 is amended to read:

31A-26-207. Examination requirements.

(1) The commissioner may require applicants for any particular class of license under Section 31A-26-204 to pass an examination as a requirement to receiving a license. The examination shall reasonably relate to the specific license class for which it is prescribed. The examinations may be administered by the commissioner or as specified by rule.

(2) The commissioner [~~may~~] shall waive the requirement of an examination for a nonresident applicant who [~~has held a similar license in his home state for the two years immediately preceding application in this state, but only if the applicant's state of residence has imposed upon the applicant examination requirements which are substantially as rigorous as those of this state.~~]:

(a) applies for an insurance adjuster license in this state;

(b) has been licensed for the same line of authority in another state; and

(c) (i) is licensed in the state described in Subsection (2)(b) at the time the applicant applies for an insurance producer license in this state; or

(ii) if the application is received within 90 days of the cancellation of the applicant's previous license:

(A) the prior state certifies that at the time of cancellation, the applicant was in good standing in that state; or

(B) the state's producer database records maintained by the National Association of Insurance Commissioners or the National Association of Insurance Commissioner's affiliates or subsidiaries, indicates that the producer is or was licensed in good standing for the line of authority requested.

(3) (a) To become a resident licensee in accordance with Sections 31A-26-202 and 31A-26-203, a person licensed as an insurance producer in another state who moves to this state shall make application within 90 days of establishing legal residence in this state.

(b) A person who becomes a resident licensee under Subsection (3)(a) may not be required to meet prelicensing education or examination requirements to obtain any line of authority previously held in the prior state unless:

(i) the prior state would require a prior resident of this state to meet the prior state's prelicensing education or examination requirements to become a resident licensee; or

(ii) the commissioner imposes the requirements by rule.

[~~(3)~~] (4) The requirements of this section only apply to applicants who are natural persons.

[~~(4)~~] (5) The requirements of this section do not apply to members of the Utah State Bar.

Section 169. Section 31A-26-208 is amended to read:

31A-26-208. Nonresident jurisdictional agreement.

(1) (a) [~~Nonresident applicants for licenses under this chapter~~] If a nonresident license applicant has a valid license from the nonresident license applicant's home state and the conditions of Subsection (1)(b) are met, the commissioner shall:

(i) waive any license requirement for a license under this chapter; and

(ii) issue the nonresident license applicant a nonresident adjuster's license.

(b) Subsection (1)(a) applies if:

(i) the nonresident license applicant:

(A) is licensed as a resident in the nonresident license applicant's home state at the time the nonresident license applicant applies for a nonresident adjuster license;

(B) has submitted the proper request for licensure;

(C) has submitted to the commissioner:

(I) the application for licensure that the nonresident license applicant submitted to the applicant's home state; or

(II) a completed uniform application; and

(D) has paid the applicable fees under Section 31A-3-103;

(ii) the nonresident license applicant's license in the applicant's home state is in good standing; and

(iii) the nonresident license applicant's home state awards nonresident adjuster licenses to residents of this state on the same basis as this state awards licenses to residents of that home state.

(2) A nonresident applicant shall execute in a form acceptable to the commissioner an agreement to be subject to the jurisdiction of the commissioner and courts of this state on any matter related to [~~his~~] the adjuster's insurance activities in this state, on the basis of:

(a) service of process under Sections 31A-2-309 and 31A-2-310; or

(b) other service authorized under the Utah Rules of Civil Procedure or Section 78-27-25.

(3) The commissioner may verify the third party administrator's licensing status through the database maintained by:

(a) the National Association of Insurance Commissioners; or

(b) an affiliate or subsidiary of the National Association of Insurance Commissioners.

(4) The commissioner may not assess a greater fee for an insurance license or related service to a person not residing in this state based solely on the fact that the person does not reside in this state.

Section 170. Section 31A-26-209 is amended to read:

31A-26-209. Form and contents of license.

(1) Licenses issued under this chapter shall be in the form the commissioner prescribes and shall set forth:

(a) the name, address, and telephone number of the licensee;

(b) the license classifications under Section 31A-26-204;

(c) the date of license issuance; and

(d) any other information the commissioner considers advisable.

(2) An adjuster doing business under any other name than the adjuster's legal name shall notify the commissioner prior to using the assumed name in this state.

[~~(2)~~] (3) (a) An organization [~~acting~~] shall be licensed as an agency if the organization acts as:

(i) an independent adjuster [~~shall be licensed under this chapter as an organization.~~]; or

(ii) a public adjuster.

(b) The [~~organization~~] agency license issued under Subsection (3)(a) shall set forth the names of all natural persons licensed under this chapter who are authorized to act in those capacities for the organization in this state.

(3) (a) So far as is practicable, the commissioner shall issue a single license to each licensed adjuster for a single fee.

(b) For fee purposes, the less expensive license is [~~subsumed~~] included within the most expensive license.

Section 171. Section 31A-26-213 is amended to read:

31A-26-213. Termination of license.

(1) A license issued under this chapter remains in force until:

(a) revoked, suspended, or limited under Subsection (2);

(b) lapsed under Subsection (3);

(c) surrendered to and accepted by the commissioner; or

(d) the licensee dies or is adjudicated incompetent as defined under Title 75, Chapter 5, Part 3 or 4.

[~~(2) After a hearing, the commissioner may revoke, suspend, or limit in whole or in part the license of any person licensed under this chapter whom the commissioner finds is unqualified for his license or who has violated an insurance statute, valid rule under Subsection 31A-2-201(3), or a valid order under Subsection 31A-2-201(4), or if the licensee's methods and practices in the conduct of business endanger the legitimate interests of customers and the public. Every order suspending a license issued under this chapter shall specify the period for which the suspension is to be effective, but in no event may the period exceed 12 months.~~]

(2) After an adjudicative proceeding under Title 63, Chapter 46b, Administrative Procedures Act, the commissioner may revoke, suspend for a specified period of 12 months or less, or limit in whole or in part the license of any adjuster, found to:

(a) be unqualified for a license under Section 31A-26-203;

(b) have violated:

(i) an insurance statute;

(ii) a valid rule under Subsection 31A-2-201(3); or

(iii) a valid order under Subsection 31A-2-201(4);

(c) be insolvent, or the subject of receivership, conservatorship, rehabilitation, or other delinquency proceedings in any state;

(d) fail to pay any final judgment rendered against it in this state within 60 days after the judgment became final;

(e) fail to meet the same good faith obligations in claims settlement as that required of admitted insurers;

(f) be affiliated with and under the same general management or interlocking directorate or ownership as another adjuster which transacts business in this state without a license;

(g) refuse to be examined or to produce its accounts, records, and files for examination;

(h) have an officer who:

(i) refuses to give information with respect to the administrator's affairs; or

(ii) to perform any other legal obligation as to an examination;

(i) have provided incorrect, misleading, incomplete, or materially untrue information in the license application;

(j) have violated any insurance law, valid rule, or valid order of another state's insurance department;

(k) have obtained or attempted to obtain a license through misrepresentation or fraud;

(l) have improperly withheld, misappropriated, or converted any monies or properties received in the course of doing insurance business;

(m) have intentionally misrepresented the terms of an actual or proposed insurance contract or application for insurance;

(n) have been convicted of a felony;

(o) have admitted or been found to have committed any insurance unfair trade practice or fraud;

(p) have used fraudulent, coercive, or dishonest practices in the conduct of business in this state or elsewhere;

(q) have demonstrated incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere;

(r) have had an insurance license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory;

(s) have forged another's name to:

(i) an application for insurance; or

(ii) any document related to an insurance transaction;

(t) have improperly used notes or any other reference material to complete an examination for an insurance license;

(u) have knowingly accepted insurance business from an individual who is not licensed;

(v) have failed to comply with an administrative or court order imposing a child support obligation;

(w) have failed to:

(i) pay state income tax; or

(ii) comply with any administrative or court order directing payment of state income tax;

(x) have violated or permitted others to violate the federal Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. Secs. 1033 and 1034; or

(y) have engaged in methods and practices in the conduct of business which endanger the legitimate interests of customers and the public.

(3) (a) Any license issued under this chapter lapses if the licensee fails to pay when due any fee under Section 31A-3-103.

(b) A licensee whose license lapses due to military service or some other extenuating circumstance such as a long-term medical disability may request:

(i) reinstatement; and

(ii) a waiver of any of the following imposed for failure to comply with renewal procedures:

(A) an examination requirement;

(B) a fine; or

(C) other sanction.

(c) The commissioner shall by rule prescribe the license renewal and reinstatement procedures, in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(4) A licensee under this chapter whose license is suspended, revoked, or lapsed, but who continues to act as a licensee, is subject to the penalties for conducting an insurance business without a license.

(5) An order revoking a license under Subsection (2) may specify a time not to exceed five years within which the former licensee may not apply for a new license. If no time is specified, the former licensee may not apply for a new license for five years without the express approval of the commissioner.

(6) Any person whose license is suspended or revoked under Subsection (2) shall, when the suspension ends or a new license is issued, pay all fees that would have been payable if the license had not been suspended or revoked, unless the commissioner by order waives the payment of the interim fees. If a new license is issued more than three years after the revocation of a similar license, this subsection applies only to the fees that would have accrued during the three years immediately following the revocation.

(7) The division shall promptly withhold, suspend, restrict, or reinstate the use of a license issued under this part if so ordered by a court.

Section 172. Section 31A-26-215 is enacted to read:

31A-26-215. Temporary license -- Appointment of trustee for terminated licensee's business.

(1) (a) The commissioner may issue a temporary insurance adjuster license:

(i) to a person listed in Subsection (1)(b):

(A) if the commissioner considers that the temporary license is necessary:

(I) for the servicing of an insurance business in the public interest; and

(II) to provide continued service to the insureds who are being serviced in a circumstance described in Subsection (1)(b);

(B) for a period not to exceed 180 days; and

(C) without requiring an examination; or

(ii) in any other circumstance:

(A) if the commissioner considers the public interest will best be served by issuing the temporary license;

(B) for a period not to exceed 180 days; and

(C) without requiring an examination.

(b) The commissioner may issue a temporary insurance producer license in accordance with Subsection (1)(a) to:

(i) the surviving spouse or court-appointed personal representative of a licensed insurance adjuster who dies or becomes mentally or physically disabled to allow adequate time for:

(A) the sale of the insurance business owned by the adjuster;

(B) recovery or return of the adjuster to the business; or

(C) the training and licensing of new personnel to operate the adjuster's business;

(ii) to a member or employee of a business entity licensed as an insurance adjuster upon the death or disability of an individual designated in:

(A) the business entity application; or

(B) the license; or

(iii) the designee of a licensed insurance adjuster entering active service in the armed forces of the United States of America.

(2) If a person's license is terminated under Section 31A-26-213, the commissioner may appoint a trustee to provide in the public interest continuing service to the insureds who procured insurance through the person whose license is terminated:

(a) at the request of the person whose license is terminated; or

(b) upon the commissioner's own initiative.

(3) This section does not apply if the deceased or disabled adjuster has not owned or does not own an ownership interest in the accounts and associated expiration lists that were previously serviced by the adjuster.

(4) (a) A person issued a temporary license under Subsection (1) receives the license and shall perform the duties under the license subject to the commissioner's authority to:

(i) require a temporary licensee to have a suitable sponsor who:

(A) is a licensed producer; and

(B) assumes responsibility for all acts of the temporary licensee; or

(ii) impose other requirements that are:

(A) designed to protect the insureds and the public; and

(B) similar to the condition described in Subsection (4)(a)(i).

(b) A trustee appointed under Subsection (2) shall receive the trustee's appointment and perform the trustee's duties subject to the conditions listed in Subsections (4)(b)(i) through (xv).

(i) A trustee appointed under this section shall be licensed under this chapter to perform the services required by the trustor's clients.

(ii) When possible, the commissioner shall appoint a trustee who is no longer actively engaged on the trustee's own behalf in business as an adjuster.

(iii) The commissioner shall only select a person to act as trustee who is trustworthy and competent to perform the necessary services.

(iv) If the deceased, disabled, or unlicensed person for whom the trustee is acting is an associated adjuster, the insurers through or with which the former adjuster's business was associated shall cooperate with the trustee in allowing the trustee to service the claims associated with or through the insurer.

(v) The trustee shall abide by the terms of any agreement between the former adjuster and the associated insurer, except that terms in those agreements terminating the agreement upon the death, disability, or license termination of the former agent do not bar the trustee from continuing to act under the agreement.

(vi) The commissioner shall set the trustee's compensation which:

(A) may be stated in terms of a percentage of commissions;

(B) shall be equitable; and

(C) paid exclusively from:

(I) the commissions generated by the former adjuster's accounts serviced by the trustee; and

(II) other funds the former adjuster or the former adjuster's successor in interest agree to pay.

(vii) The trustee has no special priority to commissions over the former adjuster's creditors.

(viii) The following may not be held liable for errors or omissions of the former adjuster or the trustee:

(A) the commissioner; or

(B) the state.

(ix) The trustee may not be held liable for errors and omissions that were caused in any material way by the negligence of the former adjuster.

(x) The trustee may be held liable for errors and omissions that arise solely from the trustee's negligence.

(xi) The trustee's compensation level shall be sufficient to allow the trustee to purchase errors and omissions coverage, if that coverage is not provided to the trustee by:

(A) the former adjuster; or

(B) the former adjuster's successor in interest.

(xii) It is a breach of the trustee's fiduciary duty to capture the accounts of trustor's clients, either directly or indirectly.

(xiii) The trustee may not purchase the accounts or expiration lists of the former adjuster, unless the commissioner expressly ratifies the terms of the sale.

(xiv) The commissioner may adopt rules that:

(A) further define the trustee's fiduciary duties; and

(B) explain how the trustee is to carry out the trustee's responsibilities.

(xv) The trust may be terminated by:

(A) the commissioner; or

(B) the person that requested the trust be established.

(c) A person described in Subsection (4)(b)(vi)(B) shall terminate the trust by sending written notice to:

(i) the trustee; and

(ii) the commissioner.

(5) (a) The commissioner may by order limit the authority of any temporary licensee or trustee in any way considered necessary to protect:

(i) persons being serviced; and

(ii) the public.

(b) The commissioner may by order revoke a temporary license or trustee's appointment if the interest of persons being serviced or the public are endangered.

(c) A temporary license or trustee's appointment may not continue after the owner or personal representative disposes of the business.

Section 173. Section 31A-26-302 is amended to read:

31A-26-302. Settlement of claims in credit life and accident and health insurance.

(1) The creditor shall promptly report all claims to the insurer or its designated claim representative. The insurer shall maintain adequate claims files. All claims shall be settled as soon as possible in accordance with the terms of the insurance contract.

(2) The insurer shall pay all claims either by draft drawn upon the insurer or by check of the insurer to the order of the claimant to whom payment of the claim is due pursuant to the policy provisions, or upon direction of that claimant to another.

(3) [~~No~~] A person other than the insurer or its designated claim representative may not settle or adjust claims. The creditor may not be designated as a claims representative.

Section 174. Section 31A-27-311.5 is repealed and reenacted to read:

31A-27-311.5. Continuance of coverage -- Health maintenance organizations.

(1) As used in this section:

(a) "basic health care services" is as defined in Section 31A-8-101;

(b) "enrollee" is as defined in Section 31A-8-101;

(c) "health care" is as defined in Section 31A-1-301;

(d) "health maintenance organization" is as defined in Section 31A-8-101;

(e) "limited health plan" is as defined in Section 31A-8-101;

(f) (i) "managed care organization" means any entity licensed by, or holding a certificate of authority from, the department to furnish health care services or health insurance;

(ii) "managed care organization" includes:

(A) a limited health plan;

(B) a health maintenance organization;

(C) a preferred provider organization;

(D) a fraternal benefit society; or

(E) any entity similar to an entity described in Subsections (1)(f)(ii)(A) through (D);

(iii) "managed care organization" does not include:

(A) an insurer or other person that is eligible for membership in a guaranty association under Chapter 28;

(B) a mandatory state pooling plan;

(C) a mutual assessment company or any entity that operates on an assessment basis; or

(D) any entity similar to an entity described in Subsections (1)(f)(iii)(A) through (C);

(g) "participating provider" means a provider who, under a contract with a managed care organization authorized under Section 31A-8-407, has agreed to provide health care services to enrollees with an expectation of receiving payment, directly or indirectly, from the managed care organization, other than copayment;

(h) "participating provider contract" means the agreement between a participating provider and a managed care organization authorized under Section 31A-8-407;

(i) "preferred provider" means a provider who agrees to provide health care services under an agreement authorized under Subsection 31A-22-617(1);

(j) "preferred provider contract" means the written agreement between a preferred provider and a managed care organization authorized under Subsection 31A-22-617(1);

(k) "preferred provider organization" means any person, other than an insurer licensed under Chapter 7 or an individual who contracts to render professional or personal services that the individual performs himself, that:

(i) furnishes at a minimum, through preferred providers, basic health care services to an enrollee in return for prepaid periodic payments in an amount agreed to prior to the time during which the health care may be furnished;

(ii) is obligated to the enrollee to arrange for the services described in Subsection (1)(k)(i); and

(iii) permits the enrollee to obtain health care services from providers who are not preferred providers;

(l) "provider" is as defined in Section 31A-8-101; and

(m) "uncovered expenditure" means the costs of health care services that are covered by an organization for which an enrollee is liable in the event of the managed care organization's insolvency.

(2) The rehabilitator or liquidator may take one or more of the actions described in Subsections (2)(a) through (f) to assure continuation of health care coverage for enrollees of an insolvent managed care organization.

(a) (i) Subject to Subsection (2)(a)(ii), a rehabilitator or liquidator may require a participating provider and preferred provider of health care services to continue to provide the health care services the provider is required to provide under the respective participating provider contract or preferred provider contract until the later of:

(A) 90 days from the date of the filing of a petition for rehabilitation or the petition for liquidation; or

(B) the date the term of the contract ends.

(ii) A requirement by the rehabilitator or liquidator under Subsection (2)(a)(i) that a participating provider or preferred provider continue to provide health care services under a provider's participating provider contract or preferred providers contract expires when health care coverage for all enrollees of the insolvent managed care organization is obtained from another managed care organization or insurer.

(b) (i) Subject to Subsection (2)(b)(ii), a rehabilitator or liquidator may reduce the fees a participating provider or preferred provider is otherwise entitled to receive from the managed care organization under its participating provider contract or preferred provider contract during the time period in Subsection (2)(a)(i).

(ii) Notwithstanding Subsection (2)(b)(i) a rehabilitator or liquidator may not reduce a fee to less than 75% of the regular fee set forth in the respective participating provider contract or preferred provider contract.

(iii) An enrollee shall continue to pay the same copayments, deductibles, and other payments for services received from the participating provider or preferred provider that the enrollee was required to pay before the date of filing of:

(A) the petition for rehabilitation; or

(B) the petition for liquidation.

(c) (i) A participating provider or preferred provider shall:

(A) accept the amounts specified in Subsection (2)(b) as payment in full; and

(B) relinquish the right to collect additional amounts from the insolvent managed care organization's enrollee.

(ii) Subsection (2)(b) and Subsections (2)(c)(i)(A) and (B) shall apply to the fees paid to a provider who agrees to provide health care services to an enrollee but is not a preferred or participating provider.

(d) If the managed care organization is a health maintenance organization, Subsections (2)(d)(i) through (v) apply.

(i) Subject to Subsections (2)(d)(ii) and (iv), upon notification from and subject to the direction of the rehabilitator or liquidator of a health maintenance organization licensed under Chapter 8, a solvent health maintenance organization licensed under Chapter 8 and operating within a portion of the insolvent health maintenance organization's service area shall extend to the enrollees all rights, privileges, and obligations of being an enrollee in the accepting health maintenance organization, except that the accepting health maintenance organization shall give credit to an enrollee for any waiting period already satisfied under the provisions of the enrollee's contract with the insolvent health maintenance organization.

(ii) A health maintenance organization accepting an enrollee of an insolvent health maintenance organization under Subsection (2)(d)(i) shall charge the enrollee the premiums applicable to the existing business of the accepting health maintenance organization.

(iii) A health maintenance organization's obligation to accept an enrollee under Subsection (2)(d)(i) is limited in number to its pro rata share of all health maintenance organization enrollees in this state, as determined after excluding the enrollees of the insolvent insurer.

(iv) The rehabilitator or liquidator of an insolvent health maintenance organization shall take those measures that are possible to ensure that no health maintenance organization is required to accept more than its pro rata share of the adverse risk represented by the enrollees of the insolvent health maintenance organization. As long as the methodology used by the rehabilitator or liquidator to assign an enrollee is one which can be expected to produce a reasonably equitable distribution of adverse risk, that methodology and its results are acceptable under this Subsection (2)(d)(iv).

(v) (A) Notwithstanding Section 31A-27-311, the rehabilitator or liquidator may require all solvent health maintenance organizations to pay for the covered claims incurred by the enrollees of the insolvent health maintenance organization.

(B) As determined by the rehabilitator or liquidator, payments required under this Subsection (2)(d)(v) may:

(I) begin as of the filing of the petition for reorganization or the petition for liquidation; and

(II) continue for a maximum period through the time all enrollees are assigned pursuant to this section.

(C) If the rehabilitator or liquidator makes an assessment under this Subsection (2)(d)(v), the rehabilitator or liquidator shall assess each solvent health maintenance organization its pro rata share of the total assessment based upon its premiums from the previous calendar year.

(e) A rehabilitator or liquidator may transfer, through sale, or otherwise, the group and individual health care obligations of the insolvent managed care organization to other managed care organizations or other insurers, if those other managed care organizations and other insurers are licensed or have a certificate of authority to provide the same health care services in this state that the insolvent managed care organization has.

(i) The rehabilitator or liquidator may combine group and individual health care obligations of the insolvent managed care organization in any manner the rehabilitator or liquidator considers best to provide for continuous health care coverage for the maximum number of enrollees of the insolvent managed care organization.

(ii) If the terms of a proposed transfer of the same combination of group and individual policy obligations to more than one other managed care organization or insurer are otherwise equal, the rehabilitator or liquidator shall give preference to the transfer of the group and individual policy obligations of an insolvent managed care organization as follows:

(A) from one category of managed care organization to another managed care organization of the same category, as follows:

(I) from a limited health plan to a limited health plan;

(II) from a health maintenance organization to a health maintenance organization;

(III) from a preferred provider organization to a preferred provider organization;

(IV) from a fraternal benefit society to a fraternal benefit society; and

(V) from any entity similar to any of the above to a category that is similar;

(B) from one category of managed care organization to another managed care organization, regardless of the category of the transferee managed care organization; and

(C) from a managed care organization to a nonmanaged care provider of health care coverage, including insurers.

(f) A rehabilitator or liquidator may use the insolvent managed care organization's required capital or permanent surplus, and compulsory surplus, to continue to provide coverage for the insolvent managed care organization's enrollees, including paying uncovered expenditures.

Section 175. Section 31A-28-102 is amended to read:

31A-28-102. Purpose.

(1) The purpose of this part is to protect, subject to certain limitations, the persons specified in Subsection 31A-28-103(1) against failure in the performance of contractual obligations, under the life and [~~disability~~] accident and health insurance policies and annuity contracts specified in Subsection 31A-28-103(2), because of the impairment or insolvency of the member insurer that issued the policies or contracts.

(2) To provide the protection described in Subsection (1), the Utah Life and Disability Insurance Guaranty Association, which currently exists, is continued in order to pay benefits and to continue coverages as limited in this part, and members of the association are subject to assessment to provide funds to carry out the purpose of this part.

Section 176. Section 31A-28-103 is amended to read:

31A-28-103. Coverage and limitations.

(1) This part provides coverage for the policies and contracts specified in Subsection (2) to persons who are:

(a) beneficiaries, assignees, or payees of the persons covered under Subsection (1)(b), regardless of where they reside, except for nonresident certificate holders under group policies or contracts;

(b) owners of or certificate holders under such policies or contracts; or, in the case of unallocated annuity contracts, to the persons who are the contract holders, and who are:

(i) residents of Utah; or

(ii) not residents of Utah, but only under the following conditions:

(A) the insurers which issued the policies or contracts are domiciled in this state;

(B) the insurers never held a license or certificate of authority in the states in which the persons reside;

(C) the states have associations similar to the association created by this chapter; and

(D) the persons are not eligible for coverage by the associations described in Subsection (1)(b)(ii)(C).

(2) (a) Except as otherwise limited by this part, this part provides coverage to the persons specified in Subsection (1) for direct, nongroup life, [~~disability~~] accident and health, annuity and supplemental policies or contracts, for certificates under direct group policies and contracts, and for unallocated annuity contracts issued by member insurers. Annuity contracts and certificates under group annuity contracts include guaranteed investment contracts, deposit administration contracts, unallocated funding agreements, structured settlement agreements, lottery contracts, and any immediate or deferred annuity contracts.

(b) This part does not provide coverage for:

(i) any portion of a policy or contract not guaranteed by the insurer, or under which the risk is borne by the policy or contract holder;

(ii) any policy or contract of reinsurance, unless assumption certificates have been issued;

(iii) any portion of a policy or contract to the extent that the rate of interest on which it is based:

(A) averaged over the period of four years prior to the date on which the association becomes obligated with respect to the policy or contract, exceeds a rate of interest determined by subtracting two percentage points from Moody's Corporate Bond Yield Average averaged for that same four-year period or for the corresponding lesser period if the

policy or contract was issued less than four years before the association became obligated; and

(B) on or after the date on which the association becomes obligated with respect to the policy or contract, exceeds the rate of interest determined by subtracting three percentage points from Moody's Corporate Bond Yield Average as most recently available;

(iv) any plan or program of an employer, association, or similar entity to provide life, [~~disability~~] accident and health, or annuity benefits to its employees or members to the extent that the plan or program is self-funded or uninsured, including benefits payable by an employer, association, or similar entity under:

(A) a multiple employer welfare arrangement as defined in Section 514 of the Employee Retirement Income Security Act of 1974, as amended;

(B) a minimum premium group insurance plan;

(C) a stop-loss group insurance plan; or

(D) an administrative services only contract;

(v) any portion of a policy or contract to the extent that it provides dividends or experience rating credits, or provides that any fees or allowances be paid to any person, including the policy or contract holder, in connection with the service to or administration of the policy or contract;

(vi) any policy or contract issued in this state by a member insurer at a time when it was not licensed or did not have a certificate of authority to issue the policy or contract in this state;

(vii) any unallocated annuity contract issued to an employee benefit plan protected under the federal Pension Benefit Guaranty Corporation; and

(viii) any portion of any unallocated annuity contract which is not issued to or in connection with a specific employee, union, or association of natural persons benefit plan or a government lottery.

(c) The benefits for which the association may become liable shall in no event exceed the lesser of:

(i) the contractual obligations for which the insurer is liable or would have been liable if it were not an impaired or insolvent insurer; or

(ii) (A) with respect to any one life, regardless of the number of policies or contracts:

(I) $300,000 in life insurance death benefits, but not more than $100,000 in net cash surrender and net cash withdrawal values for life insurance;

(II) $100,000 in [~~disability~~] accident and health insurance benefits, including any net cash surrender and net cash withdrawal values;

(III) $100,000 in the present value of annuity benefits, including net cash surrender and net cash withdrawal values;

(B) with respect to each individual participating in a governmental retirement plan established under Section 401(k), 403(b), or 457 of the Internal Revenue Code covered by an unallocated annuity contract or the beneficiaries of each such individual if deceased, in the aggregate, $100,000 in present value of annuity benefits, including net cash surrender and net cash withdrawal values;

(C) however, in no event shall the association be liable to expend more than $300,000 in the aggregate with respect to any one individual under Subsections (2)(c)(ii)(A) and (ii)(B);

(iii) with respect to any one contract holder covered by any unallocated annuity contract not included in Subsection (2)(c)(ii)(B), $5,000,000 in benefits, irrespective of the number of contracts held by that contract holder.

Section 177. Section 31A-28-106 is amended to read:

31A-28-106. Continuation of the association.

(1) There is continued under this chapter the nonprofit legal entity known as the Utah Life and Disability Insurance Guaranty Association created under former provisions of this title. All member insurers shall be and remain members of the association as a condition of their authority to transact business in this state. The association shall perform its functions under the plan of operation established and approved under Section 31A-28-110 and shall exercise its powers through a board of directors under the provisions of Section 31A-28-107. For purposes of administration and assessment the association shall maintain two accounts:

(a) the life and annuity account, which includes the following subaccounts:

(i) Life Insurance Account;

(ii) Annuity Account; and

(iii) Unallocated Annuity Account, which includes contracts qualified under Sections 401(k), 403(b), or 457 of the Internal Revenue Code; and

(b) the [~~disability~~] accident and health insurance account.

(2) The association shall come under the immediate supervision of the commissioner and shall be subject to the applicable provisions of the insurance laws of this state. Meetings or records of the association may be opened to the public upon majority vote of the board of directors of the association.

Section 178. Section 31A-28-108 is amended to read:

31A-28-108. Powers and duties of the association.

(1) If a member insurer is an impaired domestic insurer, the association in its discretion and subject to any conditions imposed by the association that do not impair the contractual obligations of the impaired insurer that are approved by the commissioner, and also by the impaired insurer, except in cases of court-ordered conservation or rehabilitation, may:

(a) guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, any or all of the policies or contracts of the impaired insurer;

(b) provide the necessary monies, pledges, notes, guarantees or other means to effectuate Subsection (1)(a) and assure payment of the contractual obligations of the impaired insurer pending action under Subsection (1)(a); or

(c) loan money to the impaired insurer.

(2) (a) If a member insurer is an impaired insurer, whether domestic, foreign, or alien, and the insurer is not paying claims timely, the association shall in its discretion and subject to the preconditions specified in Subsection (2)(b), either:

(i) take any of the actions specified in Subsection (1), subject to the conditions specified in Subsection (1); or

(ii) provide substitute benefits in lieu of the contractual obligations of the impaired insurer solely for [~~disability~~] accident and health claims, periodic annuity benefit payments, death benefits, supplemental benefits, and cash withdrawals for policy or contract owners who petition for such benefits under claims of emergency or hardship in accordance with the standards proposed by the association and approved by the commissioner.

(b) The association is subject to the requirements of Subsection (2)(a) only if:

(i) the laws of the impaired insurer's state of domicile provide that until all payments of, or an account of, the impaired insurer's contractual obligations by all guaranty associations, along with all expenses of the obligation and interest on all such payments and expenses, have been repaid to the guaranty associations or a plan of repayment by the impaired insurer has been approved by the guaranty associations:

(A) the delinquency proceeding shall not be dismissed;

(B) neither the impaired insurer nor its assets shall be returned to the control of its shareholders or private management;

(C) it shall not be permitted to solicit or accept new business or have any suspended or revoked license restored; and

(ii) (A) if the impaired insurer is a domestic insurer, it has been placed under an order of rehabilitation by a court of competent jurisdiction in this state; or

(B) if the impaired insurer is a foreign or alien insurer:

(I) it has been prohibited from soliciting or accepting new business in this state;

(II) its certificate of authority has been suspended or revoked in this state; and

(III) a petition for rehabilitation or liquidation has been filed in a court of competent jurisdiction in its state of domicile by the commissioner of the state.

(3) If a member insurer is an insolvent insurer, the association in its discretion shall either:

(a) (i) guaranty, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the policies or contracts of the insolvent insurer; or

(ii) assure payment of the contractual obligations of the insolvent insurer; and

(iii) provide such monies, pledges, guarantees, or other means as are reasonably necessary to discharge such duties; or

(b) with respect only to [~~disability~~] accident and health insurance policies, provide benefits and coverages in accordance with Subsection (4).

(4) When proceeding under Subsections (2)(a)(ii) or (3)(b), with respect only to [~~disability~~] accident and health insurance policies, the association shall:

(a) assure payment of benefits for premiums identical to the premiums and benefits, except for terms of conversion and renewability, that would have been payable under the policies of the insolvent insurer, for claims incurred:

(i) with respect to group policies, not later than the earlier of the next renewal date under the policies or contracts or 45 days, but in no event less than 30 days, after the date on which the association becomes obligated with respect to the policies;

(ii) with respect to individual policies, not later than the earlier of the next renewal date, if any, under the policies or one year, but in no event less than 30 days, from the date on which the association becomes obligated with respect to the policies;

(b) make diligent efforts to provide 30 days' notice of the termination of the benefits provided to all known insureds, or group policyholders with respect to group policies;

(c) make available substitute coverage on an individual basis, in accordance with the provisions of Subsection (4)(d), to each known insured or owner under an individual policy, and to each individual formerly insured under a group policy who is not eligible for replacement group coverage, if the insured had a right under law or the terminated policy to convert coverage to individual coverage or to continue an individual policy in force until a specified age or for a specified time during which the insurer had no right unilaterally to make changes in any provision of the policy or had a right only to make changes in premium by class.

(d) (i) In providing the substitute coverage required under Subsection (4)(c), the association may offer either to reissue the terminated coverage or to issue an alternative policy.

(ii) Alternate or reissued policies shall be offered without requiring evidence of insurability, and shall not provide for any waiting period or exclusion that would not have applied under the terminated policy.

(iii) The association may reinsure any alternative or reissued policy.

(e) (i) Alternative policies adopted by the association shall be subject to the approval of the commissioner. The association may adopt alternative policies of various types for future issuance without regard to any particular impairment or insolvency.

(ii) Alternative policies shall contain at least the minimum statutory provisions required in this state and provide benefits that are not unreasonable in relation to the premium charged. The association shall set the premium in accordance with its table of adopted rates. The premium shall reflect the amount of insurance to be provided and the age and class of risk of each insured. For alternative policies issued to insureds under individual policies of the impaired or insolvent insurer, age shall be determined in accordance with the original policy provisions and class of risk shall be the class of risk under the original policy. For alternative policies issued to individuals insured under a group policy, age and class of risk shall be determined by the association in accordance with the alternative policy provisions and risk classification standards approved by the commissioner. However, the premium may not reflect any changes in the health of the insured after the original policy was last underwritten.

(iii) Any alternative policy issued by the association shall provide coverage of a type similar to that of the policy issued by the impaired or insolvent insurer, as determined by the association.

(f) If the association elects to reissue terminated coverage at a premium rate different from that charged under the terminated policy, the premium shall be set by the association in accordance with the amount of insurance provided and the age and class of risk, subject to the approval of the commissioner or by a court of competent jurisdiction.

(g) The association's obligations with respect to coverage under any policy of the impaired or insolvent insurer or under any reissued or alternative policy shall cease on the date the coverage or policy is replaced by another similar policy by the policyholder, the insured, or the association.

(h) With respect to claims unpaid as of the date of insolvency and claims incurred during the period defined in Subsection (4)(a), a provider of health care services, by accepting a payment from the association upon a claim of the provider against an insured whose health care insurer is an insolvent member insurer, agrees to forgive the insured of 20% of the debt which otherwise would be paid by the insurer had it not been insolvent, subject to a maximum of $4,000 being required to be forgiven by any one provider as to each claimant. The obligations of solvent insurers to pay all or part of the covered claim are not diminished by the forgiveness provided for in this section.

(5) When proceeding under Subsection (2)(a)(ii) or (3) with respect to any policy or contract carrying guaranteed minimum interest rates, the association shall assure the payment or crediting of a rate of interest consistent with Subsection 31A-28-103(2)(b)(iii).

(6) Nonpayment of premiums within 31 days after the date required under the terms of any guaranteed, assumed, alternative, or reissued policy or contract or substitute coverage shall terminate the association's obligations under the policy or coverage under this chapter with respect to the policy or coverage, except with respect to any claims incurred or any net cash surrender value which may be due in accordance with the provisions of this chapter.

(7) Premiums due for coverage after entry of an order of liquidation of an insolvent insurer shall belong to and be payable at the direction of the association, and the association shall be liable for unearned premiums due to policy or contract owners of the insurer after the entry of the order.

(8) The protection provided by this chapter does not apply if any guaranty protection is provided to residents of this state by laws of the domiciliary state or jurisdiction of the impaired or insolvent insurer other than this state.

(9) In carrying out its duties under this subsection and Subsections (2) and (3), and subject to approval by the court, the association may:

(a) impose permanent policy or contract liens in connection with any guarantee, assumption, or reinsurance agreement, if the association finds that the amounts which can be assessed under this chapter are less than the amounts needed to assure full and prompt performance of the association's duties under this chapter, or that the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of the permanent policy or contract liens to be in the public interest;

(b) impose temporary moratoriums or liens on payments of cash values and policy loans, or any other right to withdraw funds held in conjunction with policies or contracts, in addition to any contractual provisions for deferral of cash or policy loan value.

(10) If the association fails to act within a reasonable period of time as provided in Subsections (2)(a)(ii), (3), and (4), the commissioner shall have the powers and duties of the association under this chapter with respect to impaired or insolvent insurers.

(11) The association may render assistance and advice to the commissioner, upon his request, concerning rehabilitation, payment of claims, continuance of coverage, or the performance of other contractual obligations of any impaired or insolvent insurer.

(12) The association has standing to appear before any court in this state with jurisdiction over an impaired or insolvent insurer concerning which the association is or may become obligated under

this chapter. Standing extends to all matters germane to the powers and duties of the association, including proposals for reinsuring, modifying, or guaranteeing the policies or contracts of the impaired or insolvent insurer and the determination of the policies or contracts and contractual obligations. The association also has the right to appear or intervene before a court in another state with jurisdiction over an impaired or insolvent insurer for which the association is or may become obligated or with jurisdiction over a third party against whom the association may have rights through subrogation of the insurer's policyholders.

(13) (a) Any person receiving benefits under this chapter shall be considered to have assigned the rights under, and any causes of action relating to the covered policy or contract to the association to the extent of the benefits received because of this chapter, whether the benefits are payments of, or on account of, contractual obligations, continuation of coverage, or provision of substitute or alternative coverages. The association may require an assignment to it of these rights and causes of action by any payee, policy or contract owner, beneficiary, insured, or annuitant as a condition precedent to the receipt of any right or benefits conferred by this chapter upon that person.

(b) The subrogation rights obtained by the association under this subsection become third class claims under Section 31A-27-335.

(c) In addition to Subsections (13)(a) and (b), the association has all common law rights of subrogation and any other equitable or legal remedy which would have been available to the impaired or insolvent insurer or holder of a policy or contract with respect to the policy or contract.

(14) The association may:

(a) enter into contracts which are necessary or proper to carry out the provisions and purposes of this chapter;

(b) sue or be sued, including taking any legal actions necessary or proper to recover any unpaid assessments under Section 31A-28-109 and to settle claims or potential claims against it;

(c) borrow money to effect the purposes of this chapter, and any notes or other evidence or indebtedness of the association not in default shall be legal investments for domestic insurers and may be carried as admitted assets;

(d) employ or retain necessary staff members to handle the financial transactions of the association, and to perform other functions as become necessary or proper under this chapter;

(e) take necessary legal action to avoid payment of improper claims;

(f) exercise, for the purposes of this chapter and to the extent approved by the commissioner, the powers of a domestic life or health insurer, but in no case may the association issue insurance policies or annuity contracts other than those issued to perform its obligation under this chapter; or

(g) act as a special deputy liquidator if appointed by the commissioner.

(15) The association may join an organization of one or more other state associations of similar purposes to further the purposes and administer the powers and duties of the association.

Section 179. Section 31A-28-109 is amended to read:

31A-28-109. Assessments.

(1) For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers, separately for each account, at the time and for the amounts that the board finds necessary. Assessments are due not less than 30 days after prior written notice to the member insurers. Class B assessments, described in Subsection (2)(b), shall accrue interest at 10% per annum on and after the due date.

(2) There are two classes of assessment:

(a) Class A assessments shall be made for the purpose of meeting administrative and legal costs and other expenses and examinations conducted under the authority of Subsection 31A-28-112(5). Class A assessments may be made whether or not related to a particular impaired or insolvent insurer.

(b) Class B assessments shall be made to the extent necessary to carry out the powers and duties of the association under Section 31A-28-108 with regard to an impaired or an insolvent insurer.

(3) (a) The amount of any Class A assessment shall be determined by the board and may be made on a pro rata or non-pro rata basis. If the assessment is pro rata, the board may credit the assessment against future Class B assessments. A non-pro rata assessment may not exceed $150 per member insurer in any one calendar year.

(b) The amount of any Class B assessment shall be allocated for assessment purposes among the accounts pursuant to an allocation formula which may be based on the premiums or reserves of the impaired or insolvent insurer or based on any other standard determined by the board in its sole discretion to be fair and reasonable under the circumstances.

(c) (i) Class B assessments against member insurers for each account and subaccount shall be in the proportion that the premiums received on business in this state by each assessed member insurer bears to the premiums received on business in this state for the same calendar years by all assessed member insurers.

(ii) "Premiums received" is based on policies or contracts covered by each account for the three most recent calendar years for which information is available, which precede the year in which the insurer became impaired or insolvent.

(d) Assessments for funds to meet the requirements of the association with respect to an

impaired or insolvent insurer may not be made until necessary to implement the purposes of this chapter. Classification of assessments under Subsection (3)(b) and computation of assessments under this Subsection (3) shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible.

(4) The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. In the event an assessment against a member insurer is abated or deferred in whole or in part, the amount by which the assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section.

(5) (a) The total of all assessments upon a member insurer for the life and annuity account, and for each subaccount, may not in any one calendar year exceed 2% and the [~~disability~~] accident and health account may not in any one calendar year exceed 2% of the insurer's yearly average premiums received in this state on the policies and contracts covered by the account during the three calendar years preceding the year in which the insurer became an impaired or insolvent insurer. If the maximum assessment, together with the other assets of the association in any account, does not provide in any one year in either account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds shall be assessed as soon as permitted by this chapter.

(b) The board may provide in the plan of operation a method of allocating funds among claims, whether relating to one or more impaired or insolvent insurers, when the maximum assessment will be insufficient to cover anticipated claims.

(c) If a 1% assessment for any subaccount of the life and annuity account in any one year does not provide an amount sufficient to carry out the responsibilities of the association, the board shall assess all subaccounts of the life and annuity account for the necessary additional amount pursuant to Subsection (3)(b), subject to the maximum stated in Subsection (5)(a).

(6) The board may, by an equitable method established in the plan of operation, refund to member insurers in proportion to the contribution of each insurer to that account the amount by which the assets of the account exceed the amount the board finds is necessary to carry out during the coming year the obligations of the association with regard to that account, including assets accruing from assignment, subrogation, net realized gains, and income from investments. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the association and for future losses.

(7) It shall be proper for any member insurer, in determining its premium rates and policyowner dividends as to any kind of insurance within the scope of this chapter, to consider the amount reasonably necessary to meet its assessment obligations under this chapter.

(8) The association shall issue to each insurer paying an assessment under this chapter, other than a Class A assessment, a certificate of contribution, in a form approved by the commissioner, for the amount of the assessment so paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the insurer in its financial statement as an asset in such form and for such amount, if any, and period of time as the commissioner may approve.

Section 180. Section 31A-28-202 is amended to read:

31A-28-202. Scope.

This part applies to protect resident policyowners and insureds under all types of direct insurance, except:

(1) life[~~,~~];

(2) title[~~,~~];

(3) surety[~~, disability,~~];

(4) accident and health;

(5) credit, [~~(~~]including mortgage guarantee[~~),~~];

(6) ocean marine insurance[~~,~~];

(7) insurance of warranties or service contracts[~~,~~];

(8) financial guarantee[~~,~~]; and

(9) all insurance coverages guaranteed by the United States Government.

Section 181. Section 31A-29-103 is amended to read:

31A-29-103. Definitions.

As used in this chapter:

(1) "Board" means the board of directors of the pool created in Section 31A-29-104.

(2) "Health care facility" means any entity providing health care services which is licensed under Title 26, Chapter 21.

(3) "Health care provider" has the same meaning as provided in Section 78-14-3.

(4) "Health care services" means any service or product used in furnishing to any individual medical care or hospitalization, or incidental to furnishing medical care or hospitalization, and any other service or product furnished for the purpose of preventing, alleviating, curing, or healing human illness or injury.

(5) (a) "Health insurance" means any:

(i) hospital and medical expense-incurred policy;

(ii) nonprofit health care service plan contract; and

(iii) health maintenance organization subscriber contract.

(b) "Health insurance" does not include any insurance arising out of the Workers' Compensation Act or similar law, automobile medical payment insurance, or insurance under which benefits are payable with or without regard to fault and which is required by law to be contained in any liability insurance policy[~~;~~].

(6) "Health maintenance organization" has the same meaning as provided in Section 31A-8-101.

(7) "Health plan" means any arrangement by which a person, including a dependent or spouse, covered or making application to be covered under the pool has access to hospital and medical benefits or reimbursement including group or individual insurance or subscriber contract; coverage through a health maintenance organization, preferred provider prepayment, group practice, or individual practice plan; coverage under an uninsured arrangement of group or group-type contracts including employer self-insured, cost-plus, or other benefits methodologies not involving insurance; coverage under a group type contract which is not available to the general public and can be obtained only because of connection with a particular organization or group; and coverage by medicare or other governmental benefit. The term includes coverage through health insurance.

(8) "Insured" means an individual resident of this state who is eligible to receive benefits from any insurer, health maintenance organization, or other health plan.

(9) "Insurer" means an insurance company authorized to transact [~~disability~~] accident and health insurance business in this state, health maintenance organization, and a self-insurer not subject to federal preemption.

(10) "Medicaid" means coverage under Title XIX of the Social Security Act, 42 U.S.C. Sec. 1396 et seq., as amended.

(11) "Medicare" means coverage under both Part A and B of Title XVIII of the Social Security Act, 42 U.S.C. 1395 et seq., as amended.

(12) "Plan of operation" means the plan developed by the board in accordance with Section 31A-29-105 and includes the articles, bylaws, and operating rules adopted by the board under Section 31A-29-106.

(13) "Pool" means the Utah Comprehensive Health Insurance Pool created in Section 31A-29-104.

(14) "Pool Fund" means the Comprehensive Health Insurance Pool Enterprise Fund created in Section 31A-29-120.

(15) "Pool policy" means an insurance policy issued under this chapter.

(16) "Third-party administrator" has the same meaning as provided in Section 31A-1-301.

Section 182. Section 31A-29-117 is amended to read:

31A-29-117. Premium rates.

(1) (a) Premium charges for coverage under the pool may not be unreasonable in relation to:

(i) the benefits provided;

(ii) the risk experience; and

(iii) the reasonable expenses provided in the coverage.

(b) Separate schedules of premium rates based on age and other appropriate demographic characteristics may apply for individual risks.

(2) A small employer carrier shall annually inform the commissioner by April 1 of the carrier's:

(a) small employer index premium rates as of March 1 of the current and preceding year[~~.~~]; and

(b) average percentage change in the index premium rate as of March 1, of the current and preceding year.

(3) (a) Premium rates in effect as of January 1, 1997, shall be adjusted on July 1, 1997, and each following July 1 may be adjusted by the board.

(b) In adjusting premium rates, the board shall:

(i) consider the average increase in small employer index rates for the five largest small employer carriers submitted under Subsection (2); and

(ii) be subject to Subsection (1).

(4) The board may establish a premium scale based on income. The highest rate may not exceed the expected claims and expenses for the individual.

(5) If a person is an eligible individual as defined in the Health Insurance Portability and Accountability Act, P.L. 104-191, 110 Stat. 1979, Sec. 2741(b), the maximum premium rate for that person may not exceed the amount permitted under P.L. 104-191, 110 Stat. 1986, Sec. 2744(c)(2)(B).

(6) All rates and rate schedules shall be submitted by the board to the commissioner for approval.

Section 183. Section 31A-30-103 is amended to read:

31A-30-103. Definitions.

As used in this part:

(1) "Actuarial certification" means a written statement by a member of the American Academy of Actuaries or other individual approved by the commissioner that a covered carrier is in compliance with the provisions of Section 31A-30-106, based upon the examination of the covered carrier, including review of the appropriate records and of the actuarial assumptions and methods utilized by the covered carrier in establishing premium rates for applicable health benefit plans.

(2) "Affiliate" or "affiliated" means any entity or person who directly or indirectly through one or

more intermediaries, controls or is controlled by, or is under common control with, a specified entity or person.

(3) "Base premium rate" means, for each class of business as to a rating period, the lowest premium rate charged or that could have been charged under a rating system for that class of business by the covered carrier to covered insureds with similar case characteristics for health benefit plans with the same or similar coverage.

(4) "Basic coverage" means the coverage provided in the Basic Health Care Plan established by the Health Benefit Plan Committee under Subsection 31A-22-613.5[~~(8)~~] (6).

(5) "Carrier" means any person or entity that provides health insurance in this state including an insurance company, a prepaid hospital or medical care plan, a health maintenance organization, a multiple employer welfare arrangement, and any other person or entity providing a health insurance plan under this title.

(6) "Case characteristics" means demographic or other objective characteristics of a covered insured that are considered by the carrier in determining premium rates for the covered insured. However, duration of coverage since the policy was issued, claim experience, and health status, are not case characteristics for the purposes of this chapter.

(7) "Class of business" means all or a separate grouping of covered insureds established under Section 31A-30-105.

(8) "Conversion policy" means a policy providing coverage under the conversion provisions required in Title 31A, Chapter 22, Part VII, Group [~~Disability~~] Accident and Health Insurance.

(9) "Covered carrier" means any individual carrier or small employer carrier subject to this act.

(10) "Covered individual" means any individual who is covered under a health benefit plan subject to this act.

(11) "Covered insureds" means small employers and individuals who are issued a health benefit plan that is subject to this act.

(12) "Dependent" means individuals to the extent they are defined to be a dependent by:

(a) the health benefit plan covering the covered individual; and

(b) the provisions of Chapter 22, Part VI, Disability Insurance.

(13) (a) "Eligible employee" means:

(i) an employee who works on a full-time basis and has a normal work week of 30 or more hours, and includes a sole proprietor, and a partner of a partnership, if the sole proprietor or partner is included as an employee under a health benefit plan of a small employer; or

(ii) an independent contractor if the independent contractor is included under a health benefit plan of a small employer.

(b) "Eligible employee" does not include:

(i) an employee who works on a part-time, temporary, or substitute basis; or

(ii) the spouse or dependents of the employer.

(14) "Established geographic service area" means a geographical area approved by the commissioner within which the carrier is authorized to provide coverage.

(15) "Health benefit plan" means any certificate under a group health insurance policy, or any health insurance policy, except that health benefit plan does not include coverage only for:

(a) accident;

(b) dental;

(c) vision;

(d) Medicare supplement;

(e) long-term care; or

(f) the following when offered and marketed as supplemental health insurance and not as a substitute for hospital or medical expense insurance or major medical expense insurance:

(i) specified disease;

(ii) hospital confinement indemnity; or

(iii) limited benefit plan.

(16) "Index rate" means, for each class of business as to a rating period for covered insureds with similar case characteristics, the arithmetic average of the applicable base premium rate and the corresponding highest premium rate.

(17) "Individual carrier" means a carrier that offers health benefit plans covering insureds in this state under individual policies.

(18) "Individual conversion policy" means a conversion policy issued by a health benefit plan as defined in Subsection (15) to:

(a) an individual; or

(b) an individual with a family.

[~~(18)~~] (19) "Individual coverage count" means the number of natural persons covered under a carrier's health benefit plans that are individual policies.

[~~(19)~~] (20) "Individual enrollment cap" means the percentage set by the commissioner in accordance with Section 31A-30-110.

[~~(20)~~] (21) "New business premium rate" means, for each class of business as to a rating period, the lowest premium rate charged or offered, or that could have been charged or offered, by the carrier to covered insureds with similar case characteristics for newly issued health benefit plans with the same or similar coverage.

[~~(21)~~] (22) "Premium" means all monies paid by covered insureds and covered individuals as a

condition of receiving coverage from a covered carrier, including any fees or other contributions associated with the health benefit plan.

[~~(22)~~] (23) "Rating period" means the calendar period for which premium rates established by a covered carrier are assumed to be in effect, as determined by the carrier. However, a covered carrier may not have more than one rating period in any calendar month, and no more than 12 rating periods in any calendar year.

[~~(23)~~] (24) "Resident" means an individual who has resided in this state for at least 12 consecutive months immediately preceding the date of application.

[~~(24)~~] (25) "Small employer" means any person, firm, corporation, partnership, or association actively engaged in business that, on at least 50% of its working days during the preceding calendar quarter, employed at least two and no more than 50 eligible employees, the majority of whom were employed within this state. In determining the number of eligible employees, companies that are affiliated or that are eligible to file a combined tax return for purposes of state taxation are considered one employer.

[~~(25)~~] (26) "Small employer carrier" means a carrier that offers health benefit plans covering eligible employees of one or more small employers in this state.

[~~(26)~~] (27) "Uninsurable" means an individual who:

(a) is eligible for the Comprehensive Health Insurance Pool coverage under the underwriting criteria established in Subsection 31A-29-111(4); or

(b) (i) is issued a certificate for coverage under Subsection 31A-30-108(3); and

(ii) has a condition of health that does not meet consistently applied underwriting criteria as established by the commissioner in accordance with Subsections 31A-30-106(1)(k) and (l) for which coverage the applicant is applying.

[~~(27)~~] (28) "Uninsurable percentage" for a given calendar year equals UC/CI where, for purposes of this formula:

(a) "UC" means the number of uninsurable individuals who were issued an individual policy on or after July 1, 1997; and

(b) "CI" means the carrier's individual coverage count as of December 31 of the preceding year.

Section 184. Section 31A-30-104 is amended to read:

31A-30-104. Applicability and scope.

(1) This chapter applies to any:

(a) health benefit plan that provides coverage to:

(i) individuals;

(ii) small employer groups; or

(iii) both Subsections (1)(a)(i) and (ii); or

(b) individual conversion policy for purposes of [~~Section~~] Sections 31A-30-106.5 and 31A-30-107.

(2) (a) Except as provided in Subsection (2)(b), for the purposes of this chapter, carriers that are affiliated companies or that are eligible to file a consolidated tax return shall be treated as one carrier and any restrictions or limitations imposed by this chapter shall apply as if all health benefit plans delivered or issued for delivery to covered insureds in this state by the affiliated carriers were issued by one carrier.

(b) An affiliated carrier that is a health maintenance organization having a certificate of authority under this title may be considered to be a separate carrier for the purposes of this chapter.

(c) Unless otherwise authorized by the commissioner, a covered carrier may not enter into one or more ceding arrangements with respect to health benefit plans delivered or issued for delivery to covered insureds in this state if such arrangements would result in less than 50% of the insurance obligation or risk for such health benefit plans being retained by the ceding carrier.

(d) The provisions of Section 31A-22-1201 apply if a covered carrier cedes or assumes all of the insurance obligation or risk with respect to one or more health benefit plans delivered or issued for delivery to covered insureds in this state.

(3) (a) A Taft Hartley trust created in accordance with Section 302(c)(5) of the Federal Labor Management Relations Act, or a carrier with the written authorization of such a trust, may make a written request to the commissioner for a waiver from the application of any of the provisions of Subsection 31A-30-106(1) with respect to a health benefit plan provided to the trust.

(b) The commissioner may grant such a waiver if the commissioner finds that application with respect to the trust would:

(i) have a substantial adverse effect on the participants and beneficiaries of the trust; and

(ii) require significant modifications to one or more collective bargaining arrangements under which the trust is established or maintained.

(c) A waiver granted under this Subsection (3) may not apply to an individual if the person participates in such a trust as an associate member of any employee organization.

(4) A carrier who offers individual and small employer health benefit plans may use the small employer index rates to establish the rate limitations for individual policies, even if some individual policies are rated below the small employer base rate.

(5) Sections 31A-30-106, 31A-30-106.5, 31A-30-106.7, 31A-30-107, 31A-30-108, and 31A-30-111 apply to:

(a) any insurer engaging in the business of insurance related to the risk of a small employer for

medical, surgical, hospital, or ancillary health care expenses of its employees provided as an employee benefit; and

(b) any contract of an insurer, other than a workers' compensation policy, related to the risk of a small employer for medical, surgical, hospital, or ancillary health care expenses of its employees provided as an employee benefit.

(6) The commissioner may make rules requiring that the marketing practices be consistent with this chapter for:

(a) an insurer and its agent;

(b) an insurance broker; and

(c) an insurance consultant.

Section 185. Section 31A-30-106 is amended to read:

31A-30-106. Premiums -- Rating restrictions -- Disclosure.

(1) Premium rates for health benefit plans under this chapter are subject to the following provisions:

(a) The index rate for a rating period for any class of business shall not exceed the index rate for any other class of business by more than 20%.

(b) For a class of business, the premium rates charged during a rating period to covered insureds with similar case characteristics for the same or similar coverage, or the rates that could be charged to such employers under the rating system for that class of business, may not vary from the index rate by more than 30% of the index rate, except as provided in Section 31A-22-625.

(c) The percentage increase in the premium rate charged to a covered insured for a new rating period, adjusted pro rata for rating periods less than a year, may not exceed the sum of the following:

(i) the percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period. In the case of a health benefit plan into which the covered carrier is no longer enrolling new covered insureds, the covered carrier shall use the percentage change in the base premium rate, provided that such change does not exceed, on a percentage basis, the change in the new business premium rate for the most similar health benefit plan into which the covered carrier is actively enrolling new covered insureds;

(ii) any adjustment, not to exceed 15% annually and adjusted pro rata for rating periods of less than one year, due to the claim experience, health status, or duration of coverage of the covered individuals as determined from the covered carrier's rate manual for the class of business, except as provided in Section 31A-22-625; and

(iii) any adjustment due to change in coverage or change in the case characteristics of the covered insured as determined from the covered carrier's rate manual for the class of business.

(d) Adjustments in rates for claims experience, health status, and duration from issue may not be charged to individual employees or dependents. Any such adjustment shall be applied uniformly to the rates charged for all employees and dependents of the small employer.

(e) A covered carrier may utilize industry as a case characteristic in establishing premium rates, provided that the highest rate factor associated with any industry classification does not exceed the lowest rate factor associated with any industry classification by more than 15%.

(f) In the case of health benefit plans issued prior to July 1, 1994, a premium rate for a rating period, adjusted pro rata for rating period of less than a year, may exceed the ranges under Subsections (1)(a) and (b) until July 1, 1996. In that case, the percentage increase in the premium rate charged to a covered insured for a new rating period may not exceed the sum of the following:

(i) the percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period. In the case where a covered carrier is not issuing any new policies the covered carrier shall use the percentage change in the base premium rate, provided that such change does not exceed, on a percentage basis, the change in the new business premium rate for the most similar health benefit plan into which the covered carrier is actively enrolling new covered insureds; and

(ii) any adjustment due to change in coverage or change in the case characteristics of the covered insured as determined from the carrier's rate manual for the class of business.

(g) The commissioner may grant a one-year extension of the July 1, 1996, deadline specified in Subsection (1)(f) if the commissioner determines that an extension is needed to avoid significant disruption of the health insurance market subject to this chapter or to insure the financial stability of carriers in the market.

(h) (i) Covered carriers shall apply rating factors, including case characteristics, consistently with respect to all covered insureds in a class of business. Rating factors shall produce premiums for identical groups which differ only by the amounts attributable to plan design and do not reflect differences due to the nature of the groups assumed to select particular health benefit plans.

(ii) A covered carrier shall treat all health benefit plans issued or renewed in the same calendar month as having the same rating period.

(i) For the purposes of this subsection, a health benefit plan that utilizes a restricted network provision shall not be considered similar coverage to a health benefit plan that does not utilize such a network, provided that utilization of the restricted network provision results in substantial difference in claims costs.

(j) The covered carrier shall not, without prior approval of the commissioner, use case characteristics other than age, gender, industry,

geographic area, family composition, and group size.

(k) The commissioner may establish regulations in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, to implement the provisions of this chapter and to assure that rating practices used by covered carriers are consistent with the purposes of this chapter, including regulations that:

(i) assure that differences in rates charged for health benefit plans by covered carriers are reasonable and reflect objective differences in plan design (not including differences due to the nature of the groups assumed to select particular health benefit plans);

(ii) prescribe the manner in which case characteristics may be used by covered carriers;

(iii) require insurers, as a condition of transacting business with regard to health care insurance [~~disability~~] policies after January 1, 1995, to reissue a health care insurance [~~disability~~] policy to any policyholder whose health care insurance [~~disability~~] policy has, after January 1, 1994, been terminated by the insurer for reasons other than those listed in Subsections 31A-30-107(1)(a) through (1)(e) or not renewed by the insurer after January 1, 1994. The commissioner may prescribe terms for the reissue of coverage that the commissioner determines are reasonable and necessary to provide continuity of coverage to insured individuals;

(iv) implement the individual enrollment cap under Section 31A-30-110, including specifying the contents for certification, auditing standards, underwriting criteria for uninsurable classification, and limitations on high risk enrollees under Section 31A-30-111; and

(v) establish the individual enrollment cap under Subsection 31A-30-110(1).

(l) Before implementing regulations for underwriting criteria for uninsurable classification, the commissioner shall contract with an independent consulting organization to develop industry-wide underwriting criteria for uninsurability based on an individual's expected claims under open enrollment coverage exceeding 200% of that expected for a standard insurable individual with the same case characteristics.

(m) The commissioner shall revise rules issued for Sections 31A-22-602 and 31A-22-605 regarding individual [~~disability~~] accident and health policy rates to allow rating in accordance with this section.

(2) A covered carrier shall not transfer a covered insured involuntarily into or out of a class of business. A covered carrier shall not offer to transfer a covered insured into or out of a class of business unless such offer is made to transfer all covered insureds in the class of business without regard to case characteristics, claim experience, health status, or duration of coverage since issue.

(3) Upon offering for sale any health benefit plan to a small employer, or individual, the covered carrier shall, as part of its solicitation and sales materials, disclose or make available all of the following:

(a) the extent to which premium rates for a specified covered insured are established or adjusted in part based on the actual or expected variation in claims costs or actual or expected variation in health status of covered individuals;

(b) provisions concerning the covered carrier's right to change premium rates and the factors other than claim experience which affect changes in premium rates;

(c) provisions relating to renewability of policies and contracts; and

(d) provisions relating to any preexisting condition provision.

(4) (a) Each covered carrier shall maintain at its principal place of business a complete and detailed description of its rating practices and renewal underwriting practices, including information and documentation that demonstrate that its rating methods and practices are based upon commonly accepted actuarial assumptions and are in accordance with sound actuarial principles.

(b) Each covered carrier shall file with the commissioner, on or before March 15 of each year, in a form, manner, and containing such information as prescribed by the commissioner, an actuarial certification certifying that the covered carrier is in compliance with this chapter and that the rating methods of the covered carrier are actuarially sound. A copy of that certification shall be retained by the covered carrier at its principal place of business.

(c) A covered carrier shall make the information and documentation described in this subsection available to the commissioner upon request.

(d) Records submitted to the commissioner under the provisions of this section shall be maintained by the commissioner as protected records under Title 63, Chapter 2, Government Records Access and Management Act.

Section 186. Section 31A-30-106.5 is amended to read:

31A-30-106.5. Conversion policy -- Premiums -- Rating restrictions.

(1) All provisions of Section 31A-30-106, except Subsection 31A-30-106(1)(b), apply to conversion policies.

(2) Conversion policy premium rates may not exceed by more than 35% the index rate for individuals with similar case characteristics for any class of business in which the policy form has been approved.

(3) An insurer may not consider pregnancy of a covered insured in determining its conversion policy premium rates.

Section 187. Section 31A-30-107 is amended to read:

31A-30-107. Renewal -- Limitations -- Exclusions.

(1) A health benefit plan subject to this chapter is renewable with respect to all covered individuals at the option of the covered insured except in any of the following cases:

(a) nonpayment of the required premiums;

(b) fraud or misrepresentation of:

(i) the employer; or

(ii) with respect to coverage of individual insureds, the insureds or their representatives;

(c) noncompliance with the covered carrier's minimum participation requirements;

(d) noncompliance with the covered carrier's employer contribution requirements;

(e) repeated misuse of a provider network provision; or

(f) an election by the covered carrier to nonrenew all of its health benefit plans issued to covered insureds in this state, in which case the covered carrier shall:

(i) provide advanced notice of its decision under this Subsection (1) to the commissioner in each state in which it is licensed; [~~and~~]

(ii) provide notice of the decision not to renew coverage to all affected covered insureds and to the commissioner in each state in which an affected insured individual is known to reside[.]; and

(iii) provide a plan of orderly withdrawal as required by Section 31A-4-115.

(2) Notice under Subsection (1) shall be provided:

(a) to affected covered insureds at least 180 days prior to nonrenewal of any health benefit plans by the covered carrier; and

(b) to the commissioner at least three working days prior to the notice to the affected covered insureds.

(3) A covered carrier that elects not to renew a health benefit plan under Subsection (1)(f) is prohibited from writing new business subject to this chapter in this state for a period of five years from the date of notice to the commissioner.

(4) When a covered carrier is doing business subject to this chapter in one service area of this state, Subsections (1) through (3) apply only to the covered carrier's operations in that service area.

(5) Health benefit plans covering covered insureds shall comply with Subsections (5)(a) and (b).

(a) (i) A health benefit plan may not deny, exclude, or limit benefits for a covered individual for losses incurred more than 12 months, or 18 months in the case of a late enrollee, as defined in P.L. 104-191, 110 Stat. 1940, Sec. 101, following the effective date of the individual's coverage due to a preexisting condition.

(ii) A health benefit plan may not define a preexisting condition more restrictively than:

(A) a condition for which medical advice, diagnosis, care, or treatment was recommended or received during the six months immediately preceding the earlier of:

(I) the enrollment date; or

(II) the effective date of coverage; or

(B) for an individual insurance policy, a pregnancy existing on the effective date of coverage.

(iii) An individual insurer shall offer a health benefit plan in compliance with Subsections (5)(a)(i) and (ii), and may, when the insurer and the insured mutually agree in writing to a condition-specific exclusion rider, offer to issue an individual policy that excludes a specific physical condition consistent with Subsections (5)(a)(iv) and (v).

(iv) The commissioner shall establish, in rule, a list of nonlife threatening [~~and nondegenerative~~] physical conditions that may be the subject of a condition-specific exclusion rider.

(v) A condition-specific exclusion rider shall be limited to the excluded condition and may not extend to any secondary medical condition that may or may not be directly related to the excluded condition.

(b) (i) A covered carrier shall waive any time period applicable to a preexisting condition exclusion or limitation period with respect to particular services in a health benefit plan for the period of time the individual was previously covered by public or private health insurance or by any other health benefit arrangement that provided benefits with respect to such services, provided that:

(A) the previous coverage was continuous to a date not more than 63 full days prior to the effective date of the new coverage; and

(B) the insured provides notification of previous coverage to the covered carrier within 36 months of the coverage effective date if the insurer has previously requested such notification.

(ii) The period of continuous coverage under Subsection (5)(b)(i)(A) may not include any waiting period for the effective date of the new coverage applied by the employer or the carrier. This Subsection (5)(b)(ii) does not preclude application of any waiting period applicable to all new enrollees under the plan.

(iii) Credit for previous coverage as provided under Subsection (5)(b)(i)(A) need not be given for any condition which was previously excluded under a condition-specific exclusion rider. A new preexisting waiting period may be applied to any condition that was excluded by a rider under the terms of previous individual coverage.

Section 188. Section 31A-32a-102 is amended to read:

31A-32a-102. Definitions.

As used in this chapter:

(1) "Account administrator" means any of the following:

(a) a depository institution as defined in Section 7-1-103;

(b) a trust company as defined in Section 7-1-103;

(c) an insurance company authorized to do business in this state under this title;

(d) a third party administrator licensed under Section 31A-25-203; and

(e) an employer if the employer has a self-insured health plan under ERISA.

(2) "Account holder" means the resident individual who establishes a medical care savings account or for whose benefit a medical care savings account is established.

(3) "Deductible" means the total deductible for an employee and all the dependents of that employee for a calendar year.

(4) "Dependent" means the same as "dependent" under Section 31A-30-103.

(5) "Eligible medical expense" means an expense paid by the taxpayer for:

(a) medical care described in Section 213(d), Internal Revenue Code;

(b) the purchase of a health coverage policy, certificate, or contract, including a qualified higher deductible health plan; or

(c) premiums on long-term care insurance policies as defined in Section [~~31A-22-1402~~] 31A-1-301.

(6) "Employee" means the individual for whose benefit or for the benefit of whose dependents a medical care savings account is established. Employee includes a self-employed individual.

(7) "ERISA" means the Employee Retirement Income Security Act of 1974, Public Law 93-406, 88 Stat. 829.

(8) "Higher deductible" means a deductible of not less than $1,000.

(9) "Medical care savings account" or "account" means a trust account established at a depository institution in this state pursuant to a medical care savings account program to pay the eligible medical expenses of:

(a) an employee or account holder; and

(b) the dependents of the employee or account holder.

(10) "Medical care savings account program" or "program" means one of the following programs:

(a) a program established by an employer in which the employer:

(i) purchases a qualified higher deductible health plan for the benefit of an employee and the employee's dependents; and

(ii) contributes on behalf of an employee into a medical care savings account; or

(b) a program established by an account holder in which the account holder:

(i) purchases a qualified higher deductible health plan for the benefit of the account holder and the account holder's dependents; and

(ii) contributes an amount to the medical care savings account.

(11) "Qualified higher deductible health plan" means a health coverage policy, certificate, or contract that:

(a) provides for payments for covered benefits that exceed the higher deductible; and

(b) is purchased by:

(i) an employer for the benefit of an employee for whom the employer makes deposits into a medical care savings account; or

(ii) an account holder.

Section 189. Section 31A-33-103.5 is amended to read:

31A-33-103.5. Powers of Fund -- Limitations.

(1) The fund may form or acquire subsidiaries or enter into a joint enterprise:

(a) in accordance with Section 31A-33-107; and

(b) except as limited by this section and applicable insurance rules and statutes.

(2) Subject to applicable insurance rules and statutes, the fund may only offer:

(a) workers' compensation insurance in Utah;

(b) workers' compensation insurance in a state other than Utah to the extent necessary to:

(i) accomplish its purpose under Subsection 31A-33-102(1)(b); and

(ii) provide workers' compensation or occupational disease insurance coverage to Utah employers and their employees engaged in interstate commerce; and

(c) workers' compensation products and services in Utah or other states.

(3) Subject to applicable insurance rules and statutes, a subsidiary of the fund may:

(a) offer workers' compensation insurance coverage only:

(i) in a state other than Utah; and

(ii) (A) to insure the following against liability for compensation based on job-related accidental injuries and occupational diseases[~~;~~]:

(I) an employer, as defined in Section 34A-2-103, that has a majority of its employees, as defined in Section 34A-2-104, hired or regularly employed in Utah;

(II) an employer, as defined in Section 34A-2-103, whose principal administrative office is located in Utah; or

(III) a subsidiary or affiliate of an employer described in Subsection (3)(a)(ii)(A)(I) or (II); or

(B) for a state fund organization that is not an admitted insurer in the other state:

(I) on a fee for service basis; and

(II) without bearing any insurance risk; and

(b) offer workers' compensation products and services in Utah and other states.

(4) The fund shall write workers' compensation insurance in accordance with Section 31A-22-1001.

(5) (a) The fund may enter into a joint enterprise that offers workers' compensation insurance and other coverage only in the state, provided:

(i) the joint enterprise offers only property or liability insurance in addition to workers' compensation insurance;

(ii) the fund may not bear any insurance risk associated with the insurance coverage other than risk associated with workers' compensation insurance; and

(iii) the offer of other insurance shall be part of an insurance program that includes workers' compensation insurance coverage that is provided by the fund.

(b) The fund or a subsidiary of the fund may not offer, or enter into a joint enterprise that offers, or otherwise participate in the offering of accident and health [~~or disability~~] insurance.

Section 190. Section 31A-33-113 is amended to read:

31A-33-113. Cancellation of policies.

The Workers' Compensation Fund may cancel a policy [~~prior to the conclusion of the policy period only:~~] as provided in Section 31A-22-1002.

[~~(1) (a) by agreeing to the cancellation with the policyholder; and~~]

[~~(b) sending notice of the cancellation to the Labor Commission;~~]

[~~(2) for nonpayment of premium, after 30 days' notice to:~~]

[~~(a) the Labor Commission; and~~]

[~~(b) the policyholder; or~~]

[~~(3) for failure on the part of the policyholder to comply with the contractual provisions of the policy, after 30 days' notice to:~~]

[~~(a) the Labor Commission; and~~]

[~~(b) the policyholder.~~]

Section 191. Section 34A-2-103 is amended to read:

34A-2-103. Employers enumerated and defined -- Regularly employed -- Statutory employers.

(1) (a) The state, and each county, city, town, and school district in the state are considered employers under this chapter and Chapter 3, Utah Occupational Disease Act.

(b) For the purposes of the exclusive remedy in this chapter and Chapter 3, Utah Occupational Disease Act prescribed in Sections 34A-2-105 and 34A-3-102, the state is considered to be a single employer and includes any office, department, agency, authority, commission, board, institution, hospital, college, university, or other instrumentality of the state.

(2) Except as provided in Subsection (4), each person, including each public utility and each independent contractor, who regularly employs one or more workers or operatives in the same business, or in or about the same establishment, under any contract of hire, express or implied, oral or written, is considered an employer under this chapter and Chapter 3, Utah Occupational Disease Act. As used in this Subsection (2):

(a) "Independent contractor" means any person engaged in the performance of any work for another who, while so engaged, is:

(i) independent of the employer in all that pertains to the execution of the work;

(ii) not subject to the routine rule or control of the employer;

(iii) engaged only in the performance of a definite job or piece of work; and

(iv) subordinate to the employer only in effecting a result in accordance with the employer's design.

(b) "Regularly" includes all employments in the usual course of the trade, business, profession, or occupation of the employer, whether continuous throughout the year or for only a portion of the year.

(3) (a) The client company in an employee leasing arrangement under Title 58, Chapter 59, Professional Employer Organization Licensing Act, is considered the employer of leased employees and shall secure workers' compensation benefits for them by complying with Subsection 34A-2-201(1) or (2) and commission rules.

(b) Insurance carriers may underwrite workers' compensation secured in accordance with Subsection (3)(a) showing the leasing company as the named insured and each client company as an additional insured by means of individual endorsements.

(c) Endorsements shall be filed with the division as directed by commission rule.

(d) The division shall promptly inform the Division of Occupation and Professional Licensing

within the Department of Commerce if the division has reason to believe that an employee leasing company is not in compliance with Subsection 34A-2-201(1) or (2) and commission rules.

(4) A domestic employer who does not employ one employee or more than one employee at least 40 hours per week is not considered an employer under this chapter and Chapter 3, Utah Occupational Disease Act.

(5) (a) As used in this Subsection (5):

(i) (A) "agricultural employer" means a person who employs agricultural labor as defined in Subsections 35A-4-206(1) and (2) and does not include employment as provided in Subsection 35A-4-206(3); and

(B) notwithstanding Subsection (5)(a)(i)(A), only for purposes of determining who is a member of the employer's immediate family under Subsection (5)(a)(ii), if the agricultural employer is a corporation, partnership, or other business entity, "agricultural employer" means an officer, director, or partner of the business entity;

(ii) "employer's immediate family" means:

(A) an agricultural employer's:

(I) spouse;

(II) grandparent;

(III) parent;

(IV) sibling;

(V) child;

(VI) grandchild;

(VII) nephew; or

(VIII) niece;

(B) a spouse of any person provided in Subsection [~~(4)~~] (5)(a)(ii)(A)(II) through (VIII); or

(C) an individual who is similar to those listed in Subsections [~~(4)~~] (5)(a)(ii)(A) or (B) as defined by rules of the commission; and

(iii) "non-immediate family" means a person who is not a member of the employer's immediate family.

(b) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an agricultural employer is not considered an employer of a member of the employer's immediate family.

(c) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an agricultural employer is not considered an employer of a non-immediate family employee if:

(i) for the previous calendar year the agricultural employer's total annual payroll for all non-immediate family employees was less than $8,000; or

(ii) (A) for the previous calendar year the agricultural employer's total annual payroll for all non-immediate family employees was equal to or greater than $8,000 but less than $50,000; and

(B) the agricultural employer maintains insurance that covers job-related injuries of the employer's non-immediate family employees in at least the following amounts:

(I) $300,000 liability insurance, as defined in Section 31A-1-301; and

(II) $5,000 for [~~medical, hospital, and surgical~~] health care benefits similar to benefits under health care insurance as [~~described~~] defined in [~~Subsection~~] Section 31A-1-301[~~(50)(a)(ii)~~].

(d) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an agricultural employer is considered an employer of a non-immediate family employee if:

(i) for the previous calendar year the agricultural employer's total annual payroll for all non-immediate family employees is equal to or greater than $50,000; or

(ii) (A) for the previous year the agricultural employer's total payroll for non-immediate family employees was equal to or exceeds $8,000 but is less than $50,000; and

(B) the agricultural employer fails to maintain the insurance required under Subsection (5)(c)(ii).

(6) An employer of agricultural laborers or domestic servants who is not considered an employer under this chapter and Chapter 3, Utah Occupational Disease Act, may come under this chapter and Chapter 3, Utah Occupational Disease Act, by complying with:

(a) this chapter and Chapter 3, Utah Occupational Disease Act; and

(b) the rules of the commission.

(7) (a) If any person who is an employer procures any work to be done wholly or in part for the employer by a contractor over whose work the employer retains supervision or control, and this work is a part or process in the trade or business of the employer, the contractor, all persons employed by the contractor, all subcontractors under the contractor, and all persons employed by any of these subcontractors, are considered employees of the original employer for the purposes of this chapter and Chapter 3, Utah Occupational Disease Act.

(b) Any person who is engaged in constructing, improving, repairing, or remodelling a residence that the person owns or is in the process of acquiring as the person's personal residence may not be considered an employee or employer solely by operation of Subsection (7)(a).

(c) A partner in a partnership or an owner of a sole proprietorship may not be considered an employee under Subsection (7)(a) if the employer who procures work to be done by the partnership or sole proprietorship obtains and relies on either:

(i) a valid certification of the partnership's or sole proprietorship's compliance with Section 34A-2-201 indicating that the partnership or sole proprietorship secured the payment of workers' compensation benefits pursuant to Section 34A-2-201; or

(ii) if a partnership or sole proprietorship with no employees other than a partner of the partnership or owner of the sole proprietorship, a workers' compensation policy issued by an insurer pursuant to Subsection 31A-21-104(8) stating that:

(A) the partnership or sole proprietorship is customarily engaged in an independently established trade, occupation, profession, or business; and

(B) the partner or owner personally waives the partner's or owner's entitlement to the benefits of this chapter and Chapter 3, Utah Occupational Disease Act, in the operation of the partnership or sole proprietorship.

(d) A director or officer of a corporation may not be considered an employee under Subsection (7)(a) if the director or officer is excluded from coverage under Subsection 34A-2-104(4).

(e) A contractor or subcontractor is not an employee of the employer under Subsection (7)(a), if the employer who procures work to be done by the contractor or subcontractor obtains and relies on either:

(i) a valid certification of the contractor's or subcontractor's compliance with Section 34A-2-201; or

(ii) if a partnership, corporation, or sole proprietorship with no employees other than a partner of the partnership, officer of the corporation, or owner of the sole proprietorship, a workers' compensation policy issued by an insurer pursuant to Subsection 31A-21-104(8) stating that:

(A) the partnership, corporation, or sole proprietorship is customarily engaged in an independently established trade, occupation, profession, or business; and

(B) the partner, corporate officer, or owner personally waives the partner's, corporate officer's, or owner's entitlement to the benefits of this chapter and Chapter 3, Utah Occupational Disease Act, in the operation of the partnership's, corporation's, or sole proprietorship's enterprise under a contract of hire for services.

Section 192. Section 58-67-501 is amended to read:

58-67-501. Unlawful conduct.

(1) "Unlawful conduct" includes, in addition to the definition in Section 58-1-501:

(a) buying, selling, or fraudulently obtaining, any medical diploma, license, certificate, or registration;

(b) aiding or abetting the buying, selling, or fraudulently obtaining of any medical diploma, license, certificate, or registration;

(c) substantially interfering with a licensee's lawful and competent practice of medicine in accordance with this chapter by:

(i) any person or entity that manages, owns, operates, or conducts a business having a direct or indirect financial interest in the licensee's professional practice; or

(ii) anyone other than another physician licensed under this title, who is engaged in direct clinical care or consultation with the licensee in accordance with the standards and ethics of the profession of medicine; or

(d) entering into a contract that limits a licensee's ability to advise the licensee's patients fully about treatment options or other issues that affect the health care of the licensee's patients.

(2) "Unlawful conduct" does not include:

(a) establishing, administering, or enforcing the provisions of a policy of [~~disability~~] accident and health insurance by an insurer doing business in this state in accordance with Title 31A, Insurance Code;

(b) adopting, implementing, or enforcing utilization management standards related to payment for a licensee's services, provided that:

(i) utilization management standards adopted, implemented, and enforced by the payer have been approved by a physician or by a committee that contains one or more physicians; and

(ii) the utilization management standards does not preclude a licensee from exercising independent professional judgment on behalf of the licensee's patients in a manner that is independent of payment considerations;

(c) developing and implementing clinical practice standards that are intended to reduce morbidity and mortality or developing and implementing other medical or surgical practice standards related to the standardization of effective health care practices, provided that:

(i) the practice standards and recommendations have been approved by a physician or by a committee that contains one or more physicians; and

(ii) the practice standards do not preclude a licensee from exercising independent professional judgment on behalf of the licensee's patients in a manner that is independent of payment considerations;

(d) requesting or recommending that a patient obtain a second opinion from a licensee;

(e) conducting peer review, quality evaluation, quality improvement, risk management, or similar activities designed to identify and address practice deficiencies with health care providers, health care facilities, or the delivery of health care;

(f) providing employment supervision or adopting employment requirements that do not interfere with the licensee's ability to exercise independent professional judgment on behalf of the licensee's patients, provided that employment requirements that may not be considered to interfere with an employed licensee's exercise of independent professional judgment include:

(i) an employment requirement that restricts the licensee's access to patients with whom the licensee's employer does not have a contractual relationship, either directly or through contracts with one or more third-party payers; or

(ii) providing compensation incentives that are not related to the treatment of any particular patient;

(g) providing benefit coverage information, giving advice, or expressing opinions to a patient or to a family member of a patient to assist the patient or family member in making a decision about health care that has been recommended by a licensee; or

(h) any otherwise lawful conduct that does not substantially interfere with the licensee's ability to exercise independent professional judgment on behalf of the licensee's patients and that does not constitute the practice of medicine as defined in this chapter.

Section 193. Section 58-68-501 is amended to read:

58-68-501. Unlawful conduct.

(1) "Unlawful conduct" includes, in addition to the definition in Section 58-1-501:

(a) buying, selling, or fraudulently obtaining any osteopathic medical diploma, license, certificate, or registration; and

(b) aiding or abetting the buying, selling, or fraudulently obtaining of any osteopathic medical diploma, license, certificate, or registration;

(c) substantially interfering with a licensee's lawful and competent practice of medicine in accordance with this chapter by:

(i) any person or entity that manages, owns, operates, or conducts a business having a direct or indirect financial interest in the licensee's professional practice; or

(ii) anyone other than another physician licensed under this title, who is engaged in direct clinical care or consultation with the licensee in accordance with the standards and ethics of the profession of medicine; or

(d) entering into a contract that limits a licensee's ability to advise the licensee's patients fully about treatment options or other issues that affect the health care of the licensee's patients.

(2) "Unlawful conduct" does not include:

(a) establishing, administering, or enforcing the provisions of a policy of [~~disability~~] accident and health insurance by an insurer doing business in this state in accordance with Title 31A, Insurance Code;

(b) adopting, implementing, or enforcing utilization management standards related to payment for a licensee's services, provided that:

(i) utilization management standards adopted, implemented, and enforced by the payer have been approved by a physician or by a committee that contains one or more physicians; and

(ii) the utilization management standards does not preclude a licensee from exercising independent professional judgment on behalf of the licensee's patients in a manner that is independent of payment considerations;

(c) developing and implementing clinical practice standards that are intended to reduce morbidity and mortality or developing and implementing other medical or surgical practice standards related to the standardization of effective health care practices, provided that:

(i) the practice standards and recommendations have been approved by a physician or by a committee that contains one or more physicians; and

(ii) the practice standards do not preclude a licensee from exercising independent professional judgment on behalf of the licensee's patients in a manner that is independent of payment considerations;

(d) requesting or recommending that a patient obtain a second opinion from a licensee;

(e) conducting peer review, quality evaluation, quality improvement, risk management, or similar activities designed to identify and address practice deficiencies with health care providers, health care facilities, or the delivery of health care;

(f) providing employment supervision or adopting employment requirements that do not interfere with the licensee's ability to exercise independent professional judgment on behalf of the licensee's patients, provided that employment requirements that may not be considered to interfere with an employed licensee's exercise of independent professional judgment include:

(i) an employment requirement that restricts the licensee's access to patients with whom the licensee's employer does not have a contractual relationship, either directly or through contracts with one or more third-party payers; or

(ii) providing compensation incentives that are not related to the treatment of any particular patient;

(g) providing benefit coverage information, giving advice, or expressing opinions to a patient or to a family member of a patient to assist the patient or family member in making a decision about health care that has been recommended by a licensee; or

(h) any otherwise lawful conduct that does not substantially interfere with the licensee's ability to exercise independent professional judgment on behalf of the licensee's patients and that does not constitute the practice of medicine as defined in this chapter.

Section 194. Section 59-10-114 is amended to read:

59-10-114. Additions to and subtractions from federal taxable income of an individual.

(1) There shall be added to federal taxable income of a resident or nonresident individual:

(a) the amount of any income tax imposed by this or any predecessor Utah individual income tax law and the amount of any income tax imposed by the laws of another state, the District of Columbia, or a possession of the United States, to the extent deducted from federal adjusted gross income, as defined by Section 62, Internal Revenue Code, in determining federal taxable income;

(b) a lump sum distribution allowable as a deduction under Section 402(d)(3), Internal Revenue Code, to the extent deductible under Section 62(a)(8), Internal Revenue Code, in determining federal adjusted gross income;

(c) 25% of the personal exemptions, as defined and calculated in the Internal Revenue Code;

(d) a withdrawal from a medical care savings account and any penalty imposed in the taxable year if:

(i) the taxpayer did not deduct or include the amounts on his federal tax return pursuant to Section 220, Internal Revenue Code; and

(ii) the withdrawal is subject to Subsections 31A-32a-105(1) and (2); and

(e) the amount refunded to a participant under Title 53B, Chapter 8a, Higher Education Savings Incentive Program, in the year in which the amount is refunded.

(2) There shall be subtracted from federal taxable income of a resident or nonresident individual:

(a) the interest or dividends on obligations or securities of the United States and its possessions or of any authority, commission, or instrumentality of the United States, to the extent includable in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States, but the amount subtracted under this subsection shall be reduced by any interest on indebtedness incurred or continued to purchase or carry the obligations or securities described in this subsection, and by any expenses incurred in the production of interest or dividend income described in this subsection to the extent that such expenses, including amortizable bond premiums, are deductible in determining federal taxable income;

(b) 1/2 of the net amount of any income tax paid or payable to the United States after all allowable credits, as reported on the United States individual income tax return of the taxpayer for the same taxable year;

(c) the amount of adoption expenses which, for purposes of this subsection, means any actual medical and hospital expenses of the mother of the adopted child which are incident to the child's birth and any welfare agency, child placement service, legal, and other fees or costs relating to the adoption;

(d) amounts received by taxpayers under age 65 as retirement income which, for purposes of this section, means pensions and annuities, paid from an annuity contract purchased by an employer under a plan which meets the requirements of Section 404(a)(2), Internal Revenue Code, or purchased by an employee under a plan which meets the requirements of Section 408, Internal Revenue Code, or paid by the United States, a state, or political subdivision thereof, or the District of Columbia, to the employee involved or the surviving spouse;

(e) for each taxpayer age 65 or over before the close of the taxable year, a $7,500 personal retirement exemption;

(f) 75% of the amount of the personal exemption, as defined and calculated in the Internal Revenue Code, for each dependent child with a disability and adult with a disability who is claimed as a dependent on a taxpayer's return;

(g) any amount included in federal taxable income that was received pursuant to any federal law enacted in 1988 to provide reparation payments, as damages for human suffering, to United States citizens and resident aliens of Japanese ancestry who were interned during World War II;

(h) subject to the limitations of Subsection (3)(e), amounts a taxpayer pays during the taxable year for health care insurance, as defined in Title 31A, Chapter 1, General Provisions:

(i) for:

(A) the taxpayer;

(B) the taxpayer's spouse; and

(C) the taxpayer's dependents; and

(ii) to the extent the taxpayer does not deduct the amounts under Section 125, 162, or 213, Internal Revenue Code, in determining federal taxable income for the taxable year;

(i) except as otherwise provided in this subsection, the amount of a contribution made in the tax year on behalf of the taxpayer to a medical care savings account and interest earned on a contribution to a medical care savings account established pursuant to Title 31A, Chapter 32a, Medical Care Savings Account Act, to the extent the contribution is accepted by the account administrator as provided in the Medical Care Savings Account Act, and if the taxpayer did not deduct or include amounts on his federal tax return pursuant to Section 220, Internal Revenue Code. A contribution deductible under this subsection may not exceed either of the following:

(i) the maximum contribution allowed under the Medical Care Savings Account Act for the tax year multiplied by two for taxpayers who file a joint return, if neither spouse is covered by health care insurance as defined in Section 31A-1-301 or self-funded plan that covers the other spouse, and each spouse has a medical care savings account; or

(ii) the maximum contribution allowed under the Medical Care Savings Account Act for the tax year for taxpayers:

(A) who do not file a joint return; or

(B) who file a joint return, but do not qualify under Subsection (2)(i)(i); and

(j) the amount included in federal taxable income that was derived from money paid by the taxpayer to the program fund under Title 53B, Chapter 8a, Higher Education Savings Incentive Program, not to exceed amounts determined under Subsection 53B-8a-106(1)(d) and investment income earned on participation agreements under Subsection 53B-8a-106(1) when used for higher education costs of the beneficiary;

(k) for tax years beginning on or after January 1, 2000, any amounts paid for premiums on long-term care insurance policies as defined in Section [~~31A-22-1402~~] 31A-1-301 to the extent the amounts paid for long-term care insurance were not deducted under Section 213, Internal Revenue Code, in determining federal taxable income; and

(l) for taxable years beginning on or after January 1, 2000, if the conditions of Subsection (4)(a) are met, the amount of income derived by a Ute tribal member:

(i) during a time period that the Ute tribal member resides on homesteaded land diminished from the Uintah and Ouray Reservation; and

(ii) from a source within the Uintah and Ouray Reservation.

(3) (a) For purposes of Subsection (2)(d), the amount of retirement income subtracted for taxpayers under 65 shall be the lesser of the amount included in federal taxable income, or $4,800, except that:

(i) for married taxpayers filing joint returns, for each $1 of adjusted gross income earned over $32,000, the amount of the retirement income exemption that may be subtracted shall be reduced by 50 cents;

(ii) for married taxpayers filing separate returns, for each $1 of adjusted gross income earned over $16,000, the amount of the retirement income exemption that may be subtracted shall be reduced by 50 cents; and

(iii) for individual taxpayers, for each $1 of adjusted gross income earned over $25,000, the amount of the retirement income exemption that may be subtracted shall be reduced by 50 cents.

(b) For purposes of Subsection (2)(e), the amount of the personal retirement exemption shall be further reduced according to the following schedule:

(i) for married taxpayers filing joint returns, for each $1 of adjusted gross income earned over $32,000, the amount of the personal retirement exemption shall be reduced by 50 cents;

(ii) for married taxpayers filing separate returns, for each $1 of adjusted gross income earned over $16,000, the amount of the personal retirement exemption shall be reduced by 50 cents; and

(iii) for individual taxpayers, for each $1 of adjusted gross income earned over $25,000, the amount of the personal retirement exemption shall be reduced by 50 cents.

(c) For purposes of Subsections (3)(a) and (b), adjusted gross income shall be calculated by adding to federal adjusted gross income any interest income not otherwise included in federal adjusted gross income.

(d) For purposes of determining ownership of items of retirement income common law doctrine will be applied in all cases even though some items may have originated from service or investments in a community property state. Amounts received by the spouse of a living retiree because of the retiree's having been employed in a community property state are not deductible as retirement income of such spouse.

(e) For purposes of Subsection (2)(h), a subtraction for an amount paid for health care insurance as defined in Title 31A, Chapter 1, General Provisions, is not allowed:

(i) for an amount that is reimbursed or funded in whole or in part by the federal government, the state, or an agency or instrumentality of the federal government or the state; and

(ii) for a taxpayer who is eligible to participate in a health plan maintained and funded in whole or in part by the taxpayer's employer or the taxpayer's spouse's employer.

(4) (a) A subtraction for an amount described in Subsection (2)(l) is allowed only if:

(i) the taxpayer is a Ute tribal member; and

(ii) the governor and the Ute tribe execute and maintain an agreement meeting the requirements of this Subsection (4).

(b) The agreement described in Subsection (4)(a):

(i) may not:

(A) authorize the state to impose a tax in addition to a tax imposed under this chapter;

(B) provide a subtraction under this section greater than or different from the subtraction described in Subsection (2)(l); or

(C) affect the power of the state to establish rates of taxation; and

(ii) shall:

(A) provide for the implementation of the subtraction described in Subsection (2)(l);

(B) be in writing;

(C) be signed by:

(I) the governor; and

(II) the chair of the Business Committee of the Ute tribe;

(D) be conditioned on obtaining any approval required by federal law; and

(E) state the effective date of the agreement.

(c) (i) The governor shall report to the commission by no later than February 1 of each year regarding whether or not an agreement meeting the requirements of this Subsection (4) is in effect.

(ii) If an agreement meeting the requirements of this Subsection (4) is terminated, the subtraction permitted under Subsection (2)(l) is not allowed for taxable years beginning on or after the January 1 following the termination of the agreement.

(d) For purposes of Subsection (2)(l) and in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may make rules:

(i) for determining whether income is derived from a source within the Uintah and Ouray Reservation; and

(ii) that are substantially similar to how federal adjusted gross income derived from Utah sources is determined under Section 59-10-117.

Section 195. Section 62A-11-326.1 is amended to read:

62A-11-326.1. Enrollment of child in accident and health insurance plan -- Order -- Notice.

(1) The office may issue a notice to existing and future employers or unions to enroll a dependent child in [~~a disability~~] an accident and health insurance plan that is available through [~~his~~] the dependent child's parent or legal guardian's employer or union, when the following conditions are satisfied:

(a) the parent or legal guardian is already required to obtain insurance coverage for the child by a prior court or administrative order; and

(b) the parent or legal guardian has failed to provide written proof to the office that:

(i) the child has been enrolled in [~~a disability~~] an accident and health insurance plan in accordance with the court or administrative order; or

(ii) the coverage required by the order was not available at group rates through the employer or union 30 or more days prior to the date of the mailing of the notice to enroll.

(2) The office shall provide concurrent notice to the parent or legal guardian in accordance with Section 62A-11-304.4 of:

(a) the notice to enroll sent to the employer or union; and

(b) the opportunity to contest the enrollment due to a mistake of fact by filing a written request for an adjudicative proceeding with the office within 15 days of the notice being sent.

(3) A notice to enroll shall result in the enrollment of the child in the parent's [~~disability~~] accident and health insurance plan, unless the parent successfully contests the notice based on a mistake of fact.

(4) A notice to enroll issued under this section may be considered a "qualified medical support order" for the purposes of enrolling a dependent child in a group [~~disability~~] accident and health insurance plan as defined in Section 609(a), Federal Employee Retirement Income Security Act of 1974.

Section 196. Section 62A-11-326.2 is amended to read:

62A-11-326.2. Compliance with order -- Enrollment of dependent child for insurance.

(1) An employer or union shall comply with a notice to enroll issued by the office under Section 62A-11-326.1 by enrolling the dependent child that is the subject of the notice in the:

(a) [~~disability~~] accident and health insurance plan in which the parent or legal guardian is enrolled, if the plan satisfies the prior court or administrative order; or

(b) least expensive plan, assuming equivalent benefits, offered by the employer or union that complies with the prior court or administrative order which provides coverage [~~which~~] that is reasonably accessible to the dependent child.

(2) The employer, union, or insurer may not refuse to enroll a dependent child pursuant to a notice to enroll because a parent or legal guardian has not signed an enrollment application.

(3) Upon enrollment of the dependent child, the employer shall deduct the appropriate premiums from the parent or legal guardian's wages and remit them directly to the insurer.

(4) The insurer shall provide proof of insurance to the office upon request.

(5) The signature of the custodial parent of the insured dependent is a valid authorization to the insurer for purposes of processing any insurance reimbursement claim.

Section 197. Section 63-25a-413 is amended to read:

63-25a-413. Collateral sources.

(1) Collateral source shall include any source of benefits or advantages for economic loss otherwise reparable under this chapter which the victim or claimant has received, or which is readily available to the victim from:

(a) the offender;

(b) the insurance of the offender;

(c) the United States government or any of its agencies, a state or any of its political subdivisions, or an instrumentality of two or more states, except in the case on nonobligatory state-funded programs;

(d) social security, Medicare, and Medicaid;

(e) state-required temporary nonoccupational income replacement insurance or disability income insurance;

(f) workers' compensation;

(g) wage continuation programs of any employer;

(h) proceeds of a contract of insurance payable to the victim for the loss he sustained because of the criminally injurious conduct;

(i) a contract providing prepaid hospital and other health care services or benefits for disability; or

(j) veteran's benefits, including veteran's hospitalization benefits.

(2) (a) An order of restitution shall not be considered readily available as a collateral source.

(b) Receipt of an award of reparations under this chapter shall be considered an assignment of the victim's rights to restitution from the offender.

(3) The victim shall not discharge a claim against a person or entity without the state's written permission and shall fully cooperate with the state in pursuing its right of reimbursement, including providing the state with any evidence in his possession.

(4) The state's right of reimbursement applies regardless of whether the victim has been fully compensated for his losses.

(5) Notwithstanding the collateral source provisions in [~~Subsections~~] Subsection (1) and Subsection 63-25a-412(1)(a) [~~and 63-25a-413(1)~~], a victim of a sexual offense who requests testing of himself may be reimbursed for the costs of the HIV test only as provided in Subsection 76-5-503(4).

Section 198. Section 63-55-231 is amended to read:

63-55-231. Repeal dates, Title 31A.

(1) Section 31A-2-208.5, Comparison tables, is repealed July 1, 2005.

(2) Section 31A-2-217, Coordination with other states, is repealed July 1, 2003.

[~~(2)~~] (3) Section 31A-22-315, Motor Vehicle Insurance Reporting, is repealed July 1, 2010.

[~~(3)~~] (4) Section 31A-22-625, Catastrophic Coverage of Mental Health Conditions, is repealed July 1, 2011.

[~~(4)~~] (5) Title 31A, Chapter 31, Insurance Fraud Act, is repealed July 1, 2007.

Section 199. Section 67-22-1 is amended to read:

67-22-1. Compensation -- Constitutional offices.

(1) The Legislature fixes salaries for the constitutional offices as follows:

(a) Governor	$96,700
(b) Lieutenant Governor	$75,200
(c) Attorney General	$81,300
(d) State Auditor	$77,600
(e) State Treasurer	$75,200

(2) The Legislature fixes benefits for the constitutional offices as follows:

(a) Governor:

(i) a vehicle for official and personal use;

(ii) housing;

(iii) household and security staff;

(iv) household expenses;

(v) retirement benefits as provided in Title 49;

(vi) health insurance;

(vii) dental insurance;

(viii) basic life insurance;

(ix) workers' compensation;

(x) required employer contribution to Social Security;

(xi) long-term disability income insurance; and

(xii) the same additional state paid life insurance available to other noncareer service employees.

(b) Lieutenant governor, attorney general, state auditor, and state treasurer:

(i) a vehicle for official and personal use;

(ii) the option of participating in a state retirement system established by Title 49, Chapter 2, Public Employees' Retirement Act, or Chapter 3, Public Employees' Noncontributory Retirement Act, or in a deferred compensation plan administered by the State Retirement Office, in accordance with the Internal Revenue Code and its accompanying rules and regulations;

(iii) health insurance;

(iv) dental insurance;

(v) basic life insurance;

(vi) workers' compensation;

(vii) required employer contribution to social security;

(viii) long-term disability income insurance; and

(ix) the same additional state paid life insurance available to other noncareer service employees.

(c) Each constitutional office shall pay the cost of the additional state-paid life insurance for its constitutional officer from its existing budget.

Section 200. Section 67-22-2 is amended to read:

67-22-2. Compensation -- Other state officers.

(1) The governor shall establish salaries for the following state officers within the following salary ranges fixed by the Legislature:

State Officer	Salary Range
Director, Health Policy Commission	$57,900 - $78,400
Commissioner of Agriculture and Food	$62,100 - $84,100

Commissioner of Insurance	$62,100 – $84,100
Commissioner of the Labor Commission	$62,100 – $84,100
Director, Alcoholic Beverage Control Commission	$62,100 – $84,100
Commissioner, Department of Financial Institutions	$62,100 – $84,100
Members, Board of Pardons and Parole	$62,100 – $84,100
Executive Director, Department of Commerce	$62,100 – $84,100
Executive Director, Commission on Criminal and Juvenile Justice	$62,100 – $84,100
Adjutant General	$62,100 – $84,100
Chair, Tax Commission	$67,200 – $90,700
Commissioners, Tax Commission	$67,200 – $90,700
Executive Director, Department of Community and Economic Development	$67,200 – $90,700
Executive Director, Tax Commission	$67,200 – $90,700
Chair, Public Service Commission	$67,200 – $90,700
Commissioner, Public Service Commission	$67,200 – $90,700
Executive Director, Department of Corrections	$73,100 – $98,700
Commissioner, Department of Public Safety	$73,100 – $98,700
Executive Director, Department of Natural Resources	$73,100 – $98,700
Director, Office of Planning and Budget	$73,100 – $98,700
Executive Director, Department of Administrative Services	$73,100 – $98,700
Executive Director, Department of Human Resource Management	$73,100 – $98,700
Executive Director, Department of Enviromental Quality	$73,100 – $98,700
State Olympic Officer	$79,600 – $107,500
Executive Director, Department of Workforce Services	$79,600 – $107,500
Executive Director, Department of Health	$79,600 – $107,500
Executive Director, Department of Human Services	$79,600 – $107,500
Executive Director, Department of Transportation	$79,600 – $107,500
Chief Information Officer	$79,600 – $107,500

(2) (a) The Legislature fixes benefits for the state offices outlined in Subsection (1) as follows:

(i) the option of participating in a state retirement system established by Title 49, Utah State Retirement Act, or in a deferred compensation plan administered by the State Retirement Office in accordance with the Internal Revenue Code and its accompanying rules and regulations;

(ii) health insurance;

(iii) dental insurance;

(iv) basic life insurance;

(v) unemployment compensation;

(vi) workers' compensation;

(vii) required employer contribution to Social Security;

(viii) long-term disability income insurance;

(ix) the same additional state-paid life insurance available to other noncareer service employees;

(x) the same severance pay available to other noncareer service employees;

(xi) the same sick leave, converted sick leave, educational allowances, and holidays granted to Schedule B state employees, and the same annual leave granted to Schedule B state employees with more than ten years of state service;

(xii) the option to convert accumulated sick leave to cash or insurance benefits as provided by law or rule upon resignation or retirement according to the same criteria and procedures applied to Schedule B state employees;

(xiii) the option to purchase additional life insurance at group insurance rates according to the same criteria and procedures applied to Schedule B state employees; and

(xiv) professional memberships if being a member of the professional organization is a requirement of the position.

(b) Each department shall pay the cost of additional state-paid life insurance for its executive director from its existing budget.

(3) The Legislature fixes the following additional benefits:

(a) for the executive director of the State Tax Commission a vehicle for official and personal use;

(b) for the executive director of the Department of Transportation a vehicle for official and personal use;

(c) for the executive director of the Department of Natural Resources a vehicle for commute and official use;

(d) for the Commissioner of Public Safety:

(i) an accidental death insurance policy if POST certified; and

(ii) a public safety vehicle for official and personal use;

(e) for the executive director of the Department of Corrections:

(i) an accidental death insurance policy if POST certified; and

(ii) a public safety vehicle for official and personal use;

(f) for the Adjutant General a vehicle for official and personal use; and

(g) for each member of the Board of Pardons and Parole a vehicle for commute and official use.

(4) (a) The governor has the discretion to establish a specific salary for each office listed in Subsection (1), and, within that discretion, may provide salary increases within the range fixed by the Legislature.

(b) The governor shall apply the same overtime regulations applicable to other FLSA exempt positions.

(c) The governor may develop standards and criteria for reviewing the performance of the state officers listed in Subsection (1).

(5) Salaries for other Schedule A employees, as defined in Section 67-19-15, which are not provided for in this chapter, or in Title 67, Chapter 8, Utah Executive and Judicial Salary Act, shall be established as provided in Section 67-19-15.

Section 201. Section 78-14-4.5 is amended to read:

78-14-4.5. Amount of award reduced by amounts of collateral sources available to plaintiff -- No reduction where subrogation right exists -- Collateral sources defined -- Procedure to preserve subrogation rights -- Evidence admissible -- Exceptions.

(1) In all malpractice actions against health care providers as defined in Section 78-14-3 in which damages are awarded to compensate the plaintiff for losses sustained, the court shall reduce the amount of such award by the total of all amounts paid to the plaintiff from all collateral sources which are available to him; however, there shall be no reduction for collateral sources for which a subrogation right exists as provided in this section nor shall there be a reduction for any collateral payment not included in the award of damages. Upon a finding of liability and an awarding of damages by the trier of fact, the court shall receive evidence concerning the total amounts of collateral sources which have been paid to or for the benefit of the plaintiff or are otherwise available to him. The court shall also take testimony of any amount which has been paid, contributed, or forfeited by, or on behalf of the plaintiff or members of his immediate family to secure his right to any collateral source benefit which he is receiving as a result of his injury, and shall offset any reduction in the award by such amounts. No evidence shall be received and no reduction made with respect to future collateral source benefits except as specified in Subsection (4).

(2) For purposes of this section "collateral source" means payments made to or for the benefit of the plaintiff for:

(a) medical expenses and disability payments payable under the United States Social Security Act, any federal, state, or local income disability act, or any other public program, except the federal programs which are required by law to seek subrogation;

(b) any health, sickness, or income [~~disability~~] replacement insurance, automobile accident insurance that provides health benefits or income [~~disability~~] replacement coverage, and any other similar insurance benefits, except life insurance benefits available to the plaintiff, whether purchased by the plaintiff or provided by others;

(c) any contract or agreement of any person, group, organization, partnership, or corporation to provide, pay for, or reimburse the costs of hospital, medical, dental, or other health care services, except benefits received as gifts, contributions, or assistance made gratuitously; and

(d) any contractual or voluntary wage continuation plan provided by employers or any other system intended to provide wages during a period of disability.

(3) To preserve subrogation rights for amounts paid or received prior to settlement or judgment, a provider of collateral sources shall serve at least 30 days before settlement or trial of the action a written notice upon each health care provider against whom the malpractice action has been asserted. The written notice shall state the name and address of the provider of collateral sources, the amount of collateral sources paid, the names and addresses of all persons who received payment, and the items and purposes for which payment has been made.

(4) Evidence is admissible of government programs that provide payments or benefits available in the future to or for the benefit of the plaintiff to the extent available irrespective of the recipient's ability to pay. Evidence of the likelihood or unlikelihood that such programs, payments, or benefits will be available in the future is also admissible. The trier of fact may consider such evidence in determining the amount of damages awarded to a plaintiff for future expenses.

(5) [~~No~~] A provider of collateral sources is not entitled to recover the amounts of such benefits from a health care provider, the plaintiff, or any other person or entity as reimbursement for collateral source payments made prior to settlement or judgment, including any payments made under Title 26, Chapter 19, Medical Benefits

Recovery Act, except to the extent that subrogation rights to amounts paid prior to settlement or judgment are preserved as provided in this section. All policies of insurance providing benefits affected by this section are construed in accordance with this section.

Section 202. Section 78-45-7.5 is amended to read:

78-45-7.5. Determination of gross income -- Imputed income.

(1) As used in the guidelines, "gross income" includes:

(a) prospective income from any source, including nonearned sources, except under Subsection (3); and

(b) income from salaries, wages, commissions, royalties, bonuses, rents, gifts from anyone, prizes, dividends, severance pay, pensions, interest, trust income, alimony from previous marriages, annuities, capital gains, social security benefits, workers' compensation benefits, unemployment compensation, income replacement disability insurance benefits, and payments from "nonmeans-tested" government programs.

(2) Income from earned income sources is limited to the equivalent of one full-time 40-hour job. However, if and only if during the time prior to the original support order, the parent normally and consistently worked more than 40 hours at his job, the court may consider this extra time as a pattern in calculating the parent's ability to provide child support.

(3) Specifically excluded from gross income are:

(a) cash assistance provided under Title 35A, Chapter 3, Part 3, Family Employment Program;

(b) benefits received under a housing subsidy program, the Job Training Partnership Act, Supplemental Security Income, Social Security Disability Insurance, Medicaid, Food Stamps, or General Assistance; and

(c) other similar means-tested welfare benefits received by a parent.

(4) (a) Gross income from self-employment or operation of a business shall be calculated by subtracting necessary expenses required for self-employment or business operation from gross receipts. The income and expenses from self-employment or operation of a business shall be reviewed to determine an appropriate level of gross income available to the parent to satisfy a child support award. Only those expenses necessary to allow the business to operate at a reasonable level may be deducted from gross receipts.

(b) Gross income determined under this subsection may differ from the amount of business income determined for tax purposes.

(5) (a) When possible, gross income should first be computed on an annual basis and then recalculated to determine the average gross monthly income.

(b) Each parent shall provide verification of current income. Each parent shall provide year-to-date pay stubs or employer statements and complete copies of tax returns from at least the most recent year unless the court finds the verification is not reasonably available. Verification of income from records maintained by the Department of Workforce Services may be substituted for pay stubs, employer statements, and income tax returns.

(c) Historical and current earnings shall be used to determine whether an underemployment or overemployment situation exists.

(6) Gross income includes income imputed to the parent under Subsection (7).

(7) (a) Income may not be imputed to a parent unless the parent stipulates to the amount imputed, the party defaults, or, in contested cases, a hearing is held and a finding made that the parent is voluntarily unemployed or underemployed.

(b) If income is imputed to a parent, the income shall be based upon employment potential and probable earnings as derived from work history, occupation qualifications, and prevailing earnings for persons of similar backgrounds in the community, or the median earning for persons in the same occupation in the same geographical area as found in the statistics maintained by the Bureau of Labor Statistics.

(c) If a parent has no recent work history or their occupation is unknown, income shall be imputed at least at the federal minimum wage for a 40-hour work week. To impute a greater income, the judge in a judicial proceeding or the presiding officer in an administrative proceeding shall enter specific findings of fact as to the evidentiary basis for the imputation.

(d) Income may not be imputed if any of the following conditions exist:

(i) the reasonable costs of child care for the parents' minor children approach or equal the amount of income the custodial parent can earn;

(ii) a parent is physically or mentally disabled to the extent he cannot earn minimum wage;

(iii) a parent is engaged in career or occupational training to establish basic job skills; or

(iv) unusual emotional or physical needs of a child require the custodial parent's presence in the home.

(8) (a) Gross income may not include the earnings of a minor child who is the subject of a child support award nor benefits to a minor child in the child's own right such as Supplemental Security Income.

(b) Social Security benefits received by a child due to the earnings of a parent shall be credited as child support to the parent upon whose earning record it is based, by crediting the amount against the potential obligation of that parent. Other unearned income of a child may be considered as income to a parent depending upon the circumstances of each case.

Section 203. Repealer.

This act repeals:

Section 31A-8-210, Solvency standards.

Section 31A-8-212, Solvency standards transition.

Section 204. Coordination clause.

If this bill and H.B. 109, Amendments to the Insurance Law, both pass, it is the intent of the Legislature that the Office of Legislative Research and General Counsel in preparing the Utah Code database for publication, shall:

(1) in Subsection 31A-28-102(2), change "Utah Life and Disability Insurance Guaranty Association" to "Utah Life and Health Insurance Guaranty Association";

(2) in Subsection 31A-28-103(3)(b)(iii), change "disability" to "accident and health";

(3) in Subsection 31A-28-103(3)(b)(iii)(A) and (B), change "basic hospital and medical or major medical" to "health insurance";

(4) in Subsection 31A-28-105(1), change "Utah Life and Disability Insurance Guaranty Association" to "Utah Life and Health Insurance Guaranty Association";

(5) in Subsection 31A-28-105(23)(b), change "disability" to "accident and health";

(6) in Subsection 31A-28-106(1)(a), change "Utah Life and Disability Insurance Guaranty Association" to "Utah Life and Health Insurance Guaranty Association";

(7) in Subsection 31A-28-108(4)(a)(iii), change "disability" to "accident and health"; and

(8) in Subsection 31A-28-109(3)(c)(ii), change "disability" to "accident and health".

CHAPTER 117
S. B. 109
Passed February 21, 2001
Approved March 15, 2001
Effective July 1, 2001

UTAH ANATOMICAL GIFT ACT AMENDMENTS

Sponsor: Karen Hale

This act modifies the Uniform Anatomical Gift Act and the Uniform Driver License Act. This act modifies the Uniform Anatomical Gift Act to comply with federal law. The act requires a hospital to notify an organ procurement organization of the imminent or actual death of a patient. This act requires emergency personnel to notify the organ procurement organization of a death at the scene of a motor vehicle accident and prohibits a funeral establishment from embalming a body until after designated persons are informed of anatomical gift options and the family consents to embalming. The act requires a hospital to collaborate with the organ procurement organization or designate trained individuals to ensure that specified persons are informed about anatomical gift options. This act permits required information to be entered on the Utah Anatomical Consent Form or hospital death form. This act authorizes the Driver License Division to release to an organ procurement organization the names and addresses of persons who indicate on their licenses that they intend to make an anatomical gift. This act sets forth the manner of collecting and releasing anatomical gift information and sets limits on its use. This act amends definitions, makes technical changes, and provides an effective date.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
26-28-2, as last amended by Chapter 21, Laws of Utah 1999
26-28-6, as last amended by Chapter 343, Laws of Utah 1995
53-3-205, as last amended by Chapters 36 and 216, Laws of Utah 1999
53-3-207, as last amended by Chapter 216, Laws of Utah 1999
53-3-804, as last amended by Chapter 36, Laws of Utah 1999
53-3-805, as renumbered and amended by Chapters 24 and 234, Laws of Utah 1993

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

Section 1. Section 26-28-2 is amended to read:

26-28-2. Definitions.

As used in this chapter:

(1) "Anatomical gift" means the giving of permission for a person authorized in this chapter to remove parts of the human body as limited in the document of gift after death of the human body and use them for the purposes listed in Subsection 26-28-3(1).

(2) "Decedent" means a deceased individual and includes a stillborn infant or fetus.

(3) "Document of gift" means a card, a will, or other writing used to make an anatomical gift in compliance with this chapter.

(4) "Donor" means an individual who, prior to his death, executes a document of gift concerning all or part of his own body.

(5) "Evidence of a document of gift" means a statement attached to or imprinted on any license to operate a motor vehicle or any other writing expressing a desire to make an anatomical gift or giving evidence of the existence of a document of gift.

(6) "Hospital" means a general acute hospital and specialty hospital facility licensed in accordance with Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act, or by the United States government.

(7) "Organ procurement organization" means an organization recognized by the United States Department of Health and Human Services as meeting the requirements of 42 U.S.C. Section 273.

[~~(7)~~] (8) "Part" means an organ, tissue, eye, bone, blood vessel, blood, fluid, or other portion of a human body.

[~~(8)~~] (9) "Physician" means a person licensed to practice medicine under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, or under Title 58, Chapter 67, Utah Medical Practice Act, or a person similarly licensed in any state.

[~~(9)~~] (10) "Procurement entity" means:

(a) an organ procurement organization [~~recognized by the United States Department of Health and Human Services as meeting the requirements of 42 U.S.C. Section 273~~]; or

(b) a hospital, medical school, physician, eye bank, or tissue bank.

[~~(10)~~] (11) "Technician" means a person certified by the American Association of Tissue Banks as a certified tissue bank specialist.

Section 2. Section 26-28-6 is amended to read:

26-28-6. Routine inquiry and required request -- Search and notification.

(1) At or near the time of a patient's death, the administrator of the hospital where the patient is being treated or a representative designated by the administrator shall:

(a) notify the appropriate organ procurement organization of the imminent or actual death of the patient; and

[~~(a) discuss with the~~] (b) ensure, in collaboration with the organ procurement organization, that

readily available persons listed as having priority in Section 26-28-4 are informed of the option to make or refuse to make an anatomical gift in accordance with Section 26-28-4, with reasonable discretion and sensitivity appropriate to the circumstances of the family[;].

[~~(b)~~] (c) enter the required information on a Utah Anatomical Consent Form or hospital death form as adopted by the department, which may include the patient's name and demographic information, medical suitability of the patient, the response of the person to whom the request was made and the person's relationship to the patient, and if the patient does not meet the medical criteria, the reasons he did not meet the criteria; and

[~~(c)~~] (d) obtain the signature of the one having the highest priority of the readily available persons listed as having priority in Section 26-28-4, signifying whether he consented or declined to consent to the making of an anatomical gift on behalf of the patient.

(e) For purposes of Subsection (1)(b), the individual designated by the hospital to initiate the request to the family must be an organ procurement representative or an individual who has completed a course offered or approved by the organ procurement organization and designed in conjunction with the tissue and eye bank community in the methodology for approaching potential donor families.

(2) (a) A law enforcement officer, fireman, emergency medical services provider, or other emergency rescuer who finds an individual who is deceased or near death, and a hospital, upon the admission of an individual at or near death, shall:

[~~(a)~~] (i) make a reasonable search for a document of gift or other information identifying whether the individual has made or refused to make an anatomical gift; and

[~~(b)~~] (ii) if he finds a document of gift, evidence of a document of gift, or evidence of refusal, notify the hospital to which the individual is taken and deliver the evidence to the hospital.

(b) When a law enforcement officer, fireman, emergency medical services provider, or other emergency rescuer finds an individual who is deceased at the scene of a motor vehicle accident, and when the deceased individual is transported from the scene of the accident to a funeral establishment licensed under Title 58, Chapter 9, Funeral Services Licensing Act:

(i) the law enforcement officer, firemen, emergency medical services provider, or other emergency rescuer shall as soon as reasonably possible, notify the appropriate organ procurement organization of:

(A) the identity of the deceased individual, if known; and

(B) the name and location of the funeral establishment which received custody of and transported the deceased individual; and

(ii) the funeral establishment receiving custody of the deceased individual under this Subsection (2) may not embalm the body of the deceased individual until:

(A) the funeral establishment receives notice from the organ procurement organization that the readily available persons listed as having priority in Section 26-28-4 have been informed by the individual described in Subsection (1)(e) of the option to make or refuse to make an anatomical gift in accordance with Section 26-28-4, with reasonable discretion and sensitivity appropriate to the circumstances of the family;

(B) in accordance with federal law, prior approval for embalming has been obtained from a family member or other authorized person; and

(C) the period of time in which embalming is prohibited under Subsection (2)(b)(ii) may not exceed 24 hours after death.

(3) A hospital shall notify [~~an~~] the appropriate organ procurement [~~entity~~] organization that a part is available if[~~: (a) at or near the time of death of a patient, a hospital knows that the patient or a person authorized in accordance with Section 26-28-4, executed a document of gift; or (b)~~] a person known to be a donor, and at or near death, is in transit to the hospital.

(4) The hospital and funeral establishment shall cooperate in the release and removal of the anatomical gift.

(5) A person who fails to discharge the duties imposed by this section is not subject to civil or criminal liability but is subject to appropriate administrative sanctions against the professional certification or license and against the facility's license.

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

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

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

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

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

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

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

(b) a learner permit if needed after the written test is passed; and

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

(3) An application and fee for an original class M license entitle the applicant to:

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

(b) a learner permit if needed after the written test is passed; and

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

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

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

(b) a motorcycle learner permit if needed after the motorcycle written test is passed; and

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

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

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

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

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

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

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

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

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

(8) (a) An original license expires on the birth date of the applicant in the fifth year following the year the license certificate was issued.

(b) A renewal or an extension to a license expires on the birth date of the licensee in the fifth year following the expiration date of the license certificate renewed or extended.

(c) A duplicate license expires on the same date as the last license certificate issued.

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

(e) A license and any endorsement to the license held by a person ordered to active duty and stationed outside Utah in any of the armed forces of the United States, which expires during the time period the person is stationed outside of the state, is valid until 90 days after the person has been discharged or has left the service, unless the license is suspended, disqualified, denied, or has been cancelled or revoked by the division, or the licensee updates the information or photograph on the license certificate.

(9) (a) In addition to the information required by Title 63, Chapter 46b, Administrative Procedures Act, for requests for agency action, each application shall:

(i) state the full legal name, birth date, sex, Social Security number or temporary identification number (ITIN) issued by the Internal Revenue Service for a person who does not qualify for a Social Security number, and residence address of the applicant;

(ii) briefly describe the applicant;

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

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

(v) state whether the applicant intends to make an anatomical gift under Title 26, Chapter 28, Uniform Anatomical Gift Act, in compliance with Subsection (16);

[~~(v)~~] (vi) provide all other information the division requires; and

[~~(vi)~~] (vii) be signed.

(b) An applicant's Social Security number or temporary identification number (ITIN) shall be maintained on the computerized records of the division.

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

(a) current license certificate;

(b) birth certificate;

(c) Selective Service registration; or

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

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

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

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

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

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

(15) A person who applies for an original license or renewal of a license agrees that the person's license is subject to any suspension or revocation authorized under this title or Title 41, Motor Vehicles.

(16) (a) The indication of intent under Subsection (9)(a)(v) shall be authenticated by the licensee in accordance with division rule.

(b) (i) Notwithstanding Title 63, Chapter 2, Government Records Access and Management Act, the division may, upon request, release to an organ procurement organization, as defined in Section 26-28-2, the names and addresses of all persons who under Subsection (9)(a)(v) indicate that they intend to make an anatomical gift.

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

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

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

(17) The division and its employees are not liable, as a result of false or inaccurate information provided under Subsection (9)(a)(v), for direct or indirect:

(a) loss;

(b) detriment; or

(c) injury.

Section 4. Section 53-3-207 is amended to read:

53-3-207. License certificates issued to drivers by class of motor vehicle -- Contents -- Release of anatomical gift information -- Temporary licenses -- Minors' licenses and permits -- Violation.

(1) (a) The division shall issue to every person privileged to drive a motor vehicle, a license certificate indicating the type or class of motor vehicle the licensee may drive.

(b) A person may not drive a class of motor vehicle unless licensed in that class.

(2) (a) Every license certificate shall bear:

(i) the distinguishing number assigned to the licensee by the division;

(ii) the name, birth date, and residence address of the licensee;

(iii) a brief description of the licensee for the purpose of identification;

(iv) any restrictions imposed on the license under Section 53-3-208;

(v) a photograph of the licensee; [~~and~~]

(vi) a photograph or other facsimile of the licensee's signature[~~.~~]; and

(vii) an indication whether the licensee intends to make an anatomical gift under Title 26, Chapter 28, Uniform Anatomical Gift Act, unless the license is extended under Subsection 53-3-214(3).

(b) A new license certificate issued by the division may bear the social security number of the licensee only at the request of the licensee.

(c) (i) The license certificate shall be of an impervious material, resistant to wear, damage, and alteration.

(ii) The size, form, and color of the license certificate shall be as prescribed by the commissioner.

(iii) The commissioner may also prescribe the issuance of a special type of limited license certificate under Subsection 53-3-220(4) and may authorize the issuance of a renewed or duplicate license certificate without a picture if the applicant is not then living in the state.

[~~(3) (a) (i) When a license is granted or renewed, the division shall, upon request of the licensee, provide a method of identification on the license certificate, which indicates the licensee's intent to make an anatomical gift under Title 26, Chapter 28, Uniform Anatomical Gift Act.~~]

[~~(ii) The statement shall be signed in the presence of at least one witness, who shall sign the statement in the presence of the licensee.~~]

[~~(b) The division or any of its employees are not liable for any loss, detriment, or injury, directly or indirectly, which results from false or inaccurate information regarding the anatomical gift notification.~~]

[~~(4)~~] (3) (a) (i) The division upon determining after an examination that an applicant is mentally and physically qualified to be granted a license may issue to an applicant a receipt for the fee.

(ii) The receipt serves as a temporary license certificate allowing him to drive a motor vehicle while the division is completing its investigation to determine whether he is entitled to be licensed.

(b) The receipt shall be in his immediate possession while driving a motor vehicle, and it is invalid when the applicant's license certificate has been issued or when, for good cause, the privilege has been refused.

(c) The division shall indicate on the receipt a date after which it is not valid as a license certificate.

[~~(5)~~] (4) The division shall distinguish learner permits, temporary permits, and license certificates issued to any person younger than 21 years of age by use of the plainly printed word "minor" or "under 21" or the use of a special color not used for other license certificates.

[~~(6)~~] (5) The division shall issue temporary license certificates of the same nature, except as to duration, as the license certificates that they temporarily replace, as are necessary to implement applicable provisions of Section 53-3-223.

[~~(7)~~] (6) A person who violates Subsection (1)(b) is guilty of a class C misdemeanor.

Section 5. Section 53-3-804 is amended to read:

53-3-804. Application for identification card -- Required information -- Release of anatomical gift information.

(1) To apply for an identification card, the applicant shall appear in person at any license examining station.

(2) The applicant shall provide the following information to the division:

(a) true and full legal name and address;

(b) date of birth as set forth in a certified copy of the applicant's birth certificate, or other satisfactory evidence of birth, which shall be attached to the application;

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

(d) place of birth;

(e) height and weight;

(f) color of eyes and hair;

(g) signature;

(h) photograph; and

(i) [~~organ donor indication, if desired~~] an indication whether the applicant intends to make an anatomical gift under Title 26, Chapter 28, Uniform Anatomical Gift Act.

Section 6. Section 53-3-805 is amended to read:

53-3-805. Identification card -- Contents -- Specifications.

(1) The division shall issue an identification card that:

(a) provides all the information contained in the application, other than the applicant's:

(i) Social Security number, except as provided in Subsection (3); and

(ii) place of birth;

(b) contains a photograph of the applicant; and

(c) contains a facsimile of the applicant's signature.

(2) (a) The card shall be of an impervious material, resistant to wear, damage, and alteration.

(b) The size, form, and color of the card is prescribed by the commissioner.

(3) At the applicant's request, the card may include any of the following:

(a) a statement that the applicant has a special medical problem or allergies to certain drugs, for the purpose of medical treatment; and

(b) the applicant's Social Security number.

[~~(4) The card may also indicate the applicant's intent to make an anatomical gift, under the same procedure as provided for an operator license under Section 53-3-207.~~]

(4) (a) The indication of intent under Subsection 53-3-804(2)(i) shall be authenticated by the applicant in accordance with division rule.

(b) (i) Notwithstanding Title 63, Chapter 2, Government Records Access and Management Act, the division may, upon request, release to an organ procurement organization, as defined in Section 26-28-2, the names and addresses of all persons who under Subsection 53-3-804(2)(i) indicate that they intend to make an anatomical gift.

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

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

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

(5) The division and its employees are not liable, as a result of false or inaccurate information provided under Subsection 53-3-804(2)(i), for direct or indirect:

(a) loss;

(b) detriment; or

(c) injury.

Section 7. Effective date.

This act takes effect on July 1, 2001.

CHAPTER 118
S. B. 110
Passed February 15, 2001
Approved March 15, 2001
Effective January 14, 2002
(Exception clause in Section 4)

CRIMINAL PROCEDURE AMENDMENTS

Sponsor: Lyle W. Hillyard

This act modifies the Code of Criminal Procedure and the Judicial Code to allow for expanded authority for certain magistrates for a limited time period during the Winter Olympics in 2002. It also provides for the disposition of fines and fees collected during that time. This act takes effect on January 14, 2002 and certain amendments are repealed or reinstated on March 16, 2002.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
77-7-19, as last amended by Chapter 198, Laws of Utah 1996
78-7-17.5, as last amended by Chapter 212, Laws of Utah 1997

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

Section 1. Section 77-7-19 is amended to read:

77-7-19. Appearance required by citation -- Arrest for failure to appear -- Transfer of cases -- Motor vehicle violations -- Disposition of fines and costs.

(1) Persons receiving misdemeanor citations shall appear before the magistrate designated in the citation on or before the time and date specified in the citation unless the uniform bail schedule adopted by the Judicial Council or Subsection 77-7-21(1) permits forfeiture of bail for the offense charged.

(2) A citation may not require a person to appear [~~sooner than five days or~~] later than 14 days following its issuance.

(3) A person who receives a citation and who fails to comply with Section 77-7-21 on or before the time and date and at the court specified is subject to arrest. The magistrate may issue a warrant of arrest.

(4) Except where otherwise provided by law, a citation or information issued for violations of Title 41, Motor Vehicles, shall state that the person receiving the citation or information shall appear before the magistrate who has jurisdiction over the offense charged.

(5) Any justice court judge may, upon the motion of either the defense attorney or prosecuting attorney, based on a lack of territorial jurisdiction or the disqualification of the judge, transfer cases to a justice court with territorial jurisdiction or the district court within the county.

(6) (a) Clerks and other administrative personnel serving the courts shall ensure that all citations for violation of Title 41, Motor Vehicles, are filed in a court with jurisdiction and venue and shall refuse to receive citations that should be filed in another court.

(b) Fines, fees, costs, and forfeitures imposed or collected for violations of Title 41, Motor Vehicles, which are filed contrary to this section shall be paid to the entitled municipality or county by the state, county, or municipal treasurer who has received the fines, fees, costs, or forfeitures from the court which collected them.

(c) The accounting and remitting of sums due shall be at the close of the fiscal year of the municipality or county which has received fines, fees, costs, or forfeitures as a result of any improperly filed citations.

Section 2. Section 78-7-17.5 is amended to read:

78-7-17.5. Authority of magistrate.

(1) Except as otherwise provided by law, a magistrate as defined in Section 77-1-3 shall have the authority to:

(a) commit a person to incarceration prior to trial;

(b) set or deny bail under Section 77-20-1 and release upon the payment of bail and satisfaction of any other conditions of release;

(c) issue to any place in the state summonses and warrants of search and arrest and authorize administrative traffic checkpoints under Section 77-23-104;

(d) conduct an initial appearance in a felony;

(e) conduct arraignments;

(f) conduct a preliminary examination to determine probable cause;

(g) appoint attorneys and order recoupment of attorney fees;

(h) order the preparation of presentence investigations and reports;

(i) issue temporary orders as provided by rule of the Judicial Council; and

(j) perform any other act or function authorized by statute.

(2) A judge of the justice court may exercise the authority of a magistrate specified in Subsection (1) with the following limitations:

(a) a judge of the justice court may conduct an initial appearance, preliminary examination, or arraignment in a felony case as provided by rule of the Judicial Council; [~~and~~]

(b) a judge of the justice court may not set bail in a capital or first degree felony nor deny bail in any case; and

(c) a judge of the justice court may authorize administrative traffic checkpoints under Section

77-23-104 and issue search warrants only within the judicial district.

(3) From January 14, 2002 until February 28, 2002, the chief justice may designate any magistrate to hear final disposition of any misdemeanors filed in the judicial district in which that magistrate sits as a judge. These specially designated magistrates may hear misdemeanors on behalf of any justice court, district court, or juvenile court within that judicial district. During this period of special designation, a magistrate that hears a case on behalf of a court other than the court in which that magistrate usually sits shall order any fines, fees, or forfeitures collected on behalf of another court to be transferred to that court within three days, along with any records pertaining to the matter.

Section 3. Effective date.

This act takes effect on January 14, 2002.

Section 4. Repeal and reinstatement of certain provisions.

It is the intent of the Legislature that on March 16, 2002:

(1) the deleted language in Subsection 77-7-19(2) "sooner than five days or" be reinstated; and

(2) Subsection 78-7-17.5(3) is repealed.

CHAPTER 119
S. B. 113
Passed February 8, 2001
Approved March 15, 2001
Effective April 30, 2001
(Retrospective operation to January 1, 2001)

UINTAH BASIN REVITALIZATION FUND AMENDMENTS

Sponsor: Beverly Ann Evans

This act modifies the Oil and Gas Severance Tax to include in the diversion of severance taxes to the Uintah Basin Revitalization Fund wells located on lands recently conveyed to the Ute Tribe by the federal government. This act has retrospective operation to January 1, 2001.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
59-5-116, as last amended by Chapter 414, Laws of Utah 1998

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

Section 1. Section 59-5-116 is amended to read:

59-5-116. Disposition of certain taxes collected on Ute Indian land.

(1) Except as provided in Subsection (2), [~~commencing July 1, 1996,~~] there shall be deposited into the Uintah Basin Revitalization Fund established in Section 9-10-102:

(a) for taxes imposed under this part beginning on July 1, 1996, 33% of the taxes [~~imposed and~~] collected [~~under Section 59-5-102 from all wells existing on or before June 30, 1995, producing from~~] on oil [~~and~~], gas, or other hydrocarbon substances produced from a well:

(i) for which production began on or before June 30, 1995; and

(ii) attributable to interests:

[~~(i)~~] (A) held in trust by the United States for the Tribe and its members; [~~and~~] or

[~~(ii) until~~] (B) for taxes imposed under this part beginning on July 1, 1996, and ending on December 31, 2004, on lands identified in Pub. L. No. 440, 62 Stat. 72 (1948); [~~and~~]

(b) for taxes imposed under this part beginning on July 1, 1996, 80% of taxes [~~imposed and~~] collected [~~under Section 59-5-102 from new wells beginning production on or after July 1, 1995, producing from~~] on oil [~~and~~], gas, or other hydrocarbon substances produced from a well:

(i) for which production began on or after July 1, 1995; and

(ii) attributable to interests:

[~~(i)~~] (A) held in trust by the United States for the Tribe and its members; [~~and~~] or

[~~(ii) until~~] (B) for taxes imposed under this part beginning on July 1, 1996, and ending on December 31, 2004, on lands identified in Pub. L. No. 440, 62 Stat. 72 (1948); and

(c) for taxes imposed under this part beginning on January 1, 2001, and ending on December 31, 2006, 80% of taxes collected on oil, gas, or other hydrocarbon substances produced from a well:

(i) for which production began on or after January 1, 2001; and

(ii) attributable to interests on lands conveyed to the tribe under the Ute-Moab Land Restoration Act, Pub. L. No. 106-398, Sec. 3303.

(2) (a) The maximum amount deposited in the Uintah Basin Revitalization Fund may not exceed $2,000,000 in [~~a given~~] any state fiscal year.

(b) Any amounts in excess of the maximum described in Subsection (2)(a) shall be deposited into the General Fund.

Section 2. Retrospective operation.

This act has retrospective operation to January 1, 2001.

CHAPTER 120
S. B. 119
Passed February 21, 2001
Approved March 15, 2001
Effective April 30, 2001

CHILD WELFARE
RECORDS AMENDMENTS

Sponsor: Lyle W. Hillyard

This act modifies records provisions pertaining to the Division of Child and Family Services. The first section puts all appeals from informal administrative hearings for substantiation of abuse within the jurisdiction of the juvenile court. The second section makes changes that clarify who has access to division records during a proceeding. The last section is modified to give the division access to juvenile court records for investigations and hearings conducted by Child Protective Services.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
63-46b-15, as last amended by Chapter 164, Laws of Utah 1999
78-3a-206, as last amended by Chapters 90 and 303, Laws of Utah 2000
78-3a-314, as last amended by Chapter 274, Laws of Utah 1998

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

Section 1. Section 63-46b-15 is amended to read:

63-46b-15. Judicial review -- Informal adjudicative proceedings.

(1) (a) The district courts have jurisdiction to review by trial de novo all final agency actions resulting from informal adjudicative proceedings, except that the juvenile courts have jurisdiction over all state agency actions relating to:

(i) the removal or placement of children in state custody;

(ii) the support of children under Subsection (1)(a)(i) as determined administratively under Section 78-3a-906; and

(iii) substantiated findings of abuse or neglect [~~pursuant to Section 62A-4a-116.5~~] made by the Division of Child and Family Services, after an evidentiary hearing.

(b) Venue for judicial review of informal adjudicative proceedings shall be as provided in the statute governing the agency or, in the absence of such a venue provision, in the county where the petitioner resides or maintains his principal place of business.

(2) (a) The petition for judicial review of informal adjudicative proceedings shall be a complaint governed by the Utah Rules of Civil Procedure and shall include:

(i) the name and mailing address of the party seeking judicial review;

(ii) the name and mailing address of the respondent agency;

(iii) the title and date of the final agency action to be reviewed, together with a duplicate copy, summary, or brief description of the agency action;

(iv) identification of the persons who were parties in the informal adjudicative proceedings that led to the agency action;

(v) a copy of the written agency order from the informal proceeding;

(vi) facts demonstrating that the party seeking judicial review is entitled to obtain judicial review;

(vii) a request for relief, specifying the type and extent of relief requested; and

(viii) a statement of the reasons why the petitioner is entitled to relief.

(b) All additional pleadings and proceedings in the district court are governed by the Utah Rules of Civil Procedure.

(3) (a) The district court, without a jury, shall determine all questions of fact and law and any constitutional issue presented in the pleadings.

(b) The Utah Rules of Evidence apply in judicial proceedings under this section.

Section 2. Section 78-3a-206 is amended to read:

78-3a-206. Court records -- Inspection.

(1) The court and the probation department shall keep records as required by the board and the presiding judge.

(2) Court records shall be open to inspection by:

(a) the parents or guardian, other parties in the case, the attorneys, and agencies to which custody of a minor has been transferred;

(b) for information relating to adult offenders alleged to have committed a sexual offense, a felony or class A misdemeanor drug offense, or an offense against the person under Title 76, Chapter 5, Offenses Against the Person, the State Office of Education for the purpose of evaluating whether an individual should be permitted to obtain or retain a license as an educator or serve as an employee or volunteer in a school, with the understanding that the office must provide the individual with an opportunity to respond to any information gathered from its inspection of the records before it makes a decision concerning licensure or employment; [~~and~~]

(c) the Division of Criminal Investigations and Technical Services, established in Section 53-10-103, for the purpose of a criminal history background check for the purchase of a firearm and establishing good character for issuance of a concealed firearm permit as provided in Section 53-5-704[~~.~~]; and

(d) the Division of Child and Family Services for the purpose of Child Protective Services

Investigations in accordance with Sections 62A-4a-403 and 62A-4a-409 and administrative hearings in accordance with Section 62A-4a-116.5.

(3) With the consent of the judge, court records may be inspected by the minor, by persons having a legitimate interest in the proceedings, and by persons conducting pertinent research studies.

(4) If a petition is filed charging a minor 14 years of age or older with an offense that would be a felony if committed by an adult, the court shall make available to any person upon request the petition, any adjudication or disposition orders, and the delinquency history summary of the minor charged unless the records are closed by the court upon findings on the record for good cause.

(5) Probation officers' records and reports of social and clinical studies are not open to inspection, except by consent of the court, given under rules adopted by the board.

(6) (a) Any juvenile delinquency adjudication or disposition orders and the delinquency history summary of any person charged as an adult with a felony offense shall be made available to any person upon request.

(b) This provision does not apply to records that have been destroyed or expunged in accordance with court rules.

(c) The court may charge a reasonable fee to cover the costs associated with retrieving a requested record that has been archived.

Section 3. Section 78-3a-314 is amended to read:

78-3a-314. All proceedings -- Persons entitled to be present.

(1) A child who is the subject of a juvenile court hearing, any person entitled to notice pursuant to Section 78-3a-306 or 78-3a-309, preadoptive parents, and any relative providing care for the child, are entitled to notice, to be present at each hearing held under this part, including administrative and citizen reviews, and are entitled to an opportunity to be heard.

(2) Because the child's foster parents have the right to notice, pursuant to Section 78-3a-309, they have the right to be present at each and every hearing held under this part including administrative and citizen reviews, and are entitled to an opportunity to be heard.

(3) A child shall be represented at each hearing by the guardian ad litem appointed to his case by the court. The child has a right to be present at each hearing, subject to the discretion of the guardian ad litem or the court regarding any possible detriment to the child.

(4) (a) The parent or guardian of a child who is the subject of a petition under this part has the right to be represented by counsel, and to present evidence, at each hearing.

(b) When it appears to the court that a parent or guardian of the child desires counsel but is financially unable to afford and cannot for that reason employ counsel, and the child has been placed in out-of-home care, or the petitioner is recommending that the child be placed in out-of-home care, the court shall appoint counsel.

(5) In every abuse, neglect, or dependency proceeding under this chapter, the court shall order that the child be represented by a guardian ad litem, in accordance with Section 78-3a-912. The guardian ad litem shall represent the best interest of the child, in accordance with the requirements of that section, at the shelter hearing and at all subsequent court and administrative proceedings, including any proceeding for termination of parental rights in accordance with Part 4, Termination of Parental Rights Act.

(6) Notwithstanding any other provision of law, counsel for all parties to the action shall be given access to all records, maintained by the division or any other state or local public agency, that are relevant to the abuse, neglect, or dependency proceeding under this chapter. If the natural parent of a child is representing himself, he shall have access to those records. The above disclosures are not required in the following circumstances:

(a) The division or other state or local public agency did not originally create the record being requested. In those circumstances, the person making the request under this section shall be informed of the following:

(i) the existence of all records in the possession of the division or any other state or local public agency;

(ii) the name and address of the person or agency that originally created the record; and

(iii) that he must seek access to the record from the person or agency that originally created the record.

(b) Disclosure of the record would jeopardize the life or physical safety of a child who has been a victim of child abuse or neglect, or any person who provided substitute care for the child.

(c) Disclosure of the record would jeopardize the anonymity of the person or persons making the initial report of abuse or neglect or any others involved in the subsequent investigation.

(d) Disclosure of the record would jeopardize the life or physical safety of a person who has been a victim of domestic violence.

(7) (a) The appropriate foster care citizen review board shall be given access to all records, maintained by the division or any other state or local public agency, that are relevant to an abuse, neglect, or dependency proceeding under this chapter.

(b) Representatives of the appropriate foster care citizen review board are entitled to be present at each hearing held under this part, but notice is not required to be provided.

CHAPTER 121
S. B. 126
Passed February 22, 2001
Approved March 15, 2001
Effective April 30, 2001

PAYMENT OF INSURANCE CLAIMS

Sponsor: John L. Valentine

This act modifies the Insurance Code. The act changes the application of the section on timely payment of insurance claims from claimants in privity of contract with the insured to a person named as an insured or a covered person.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
31A-26-301, as enacted by Chapter 242, Laws of Utah 1985

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

Section 1. Section 31A-26-301 is amended to read:

31A-26-301. Timely payment of claims.

(1) Unless otherwise provided by law, an insurer shall timely pay every valid insurance claim made by an insured. By rule the commissioner may prescribe the kinds of notice and proof of loss that will establish validity, the manner in which an insurer may make a bona fide denial of a claim, the periods of time within which payment is required to be made to be timely, and the reasonable interest rates to be charged upon late claim payments.

(2) Notwithstanding Subsection (1), the payment of a claim is not overdue during any period in which the insurer is unable to pay the claim because there is no recipient legally able to give a valid release for the payment, or in which the insurer is unable to determine who is entitled to receive the payment, provided that the insurer has promptly notified the claimant of the inability and has offered in good faith to pay the claim promptly when the inability is removed.

(3) This section applies only to claims for first party benefits made by [~~claimants in direct privity of contract with the insurer.~~]:

(a) a person who is named or defined as an insured under the terms of an insurance policy; or

(b) a person who is described as a covered person under the terms of a health care insurance policy as defined in Section 31A-1-301.

CHAPTER 122
S. B. 128
Passed February 22, 2001
Approved March 15, 2001
Effective April 30, 2001

JUSTICE COURT APPEALS REVISION

Sponsor: Terry R. Spencer

This act modifies provisions providing for appeals from justice court convictions. The act clarifies the circumstances under which a person or the prosecutor may appeal and provides for trial de novo in the district court.

This act affects sections of Utah Code Annotated 1953 as follows:

REPEALS AND REENACTS:
78-5-120, as last amended by Chapter 215, Laws of Utah 1997

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

Section 1. Section 78-5-120 is repealed and reenacted to read:

78-5-120. Appeals from justice court -- Trial or hearing de novo in district court.

(1) In a criminal case, a defendant is entitled to a trial de novo in the district court only if the defendant files a notice of appeal within 30 days of:

(a) sentencing after a bench or jury trial, or a plea of guilty in the justice court resulting in a finding or verdict of guilt; or

(b) a plea of guilty in the justice court that is held in abeyance.

(2) If an appeal under Subsection (1)(b) is of a plea entered pursuant to negotiation with the prosecutor, and the defendant did not reserve the right to appeal as part of the plea negotiation, the negotiation is voided by the appeal.

(3) A defendant convicted and sentenced in justice court is entitled to a hearing de novo in the district court on the following matters, if he files a notice of appeal within 30 days of:

(a) an order revoking probation;

(b) an order entering a judgment of guilt pursuant to the person's failure to fulfil the terms of a plea in abeyance agreement;

(c) a sentence entered pursuant to Subsection (3)(b); or

(d) an order denying a motion to withdraw a plea.

(4) The prosecutor is entitled to a hearing de novo in the district court on:

(a) a final judgment of dismissal;

(b) an order arresting judgment;

(c) an order terminating the prosecution because of a finding of double jeopardy or denial of a speedy trial;

(d) a judgment holding invalid any part of a statute or ordinance;

(e) a pretrial order excluding evidence, when the prosecutor certifies that exclusion of that evidence prevents continued prosecution; or

(f) an order granting a motion to withdraw a plea of guilty or no contest.

(5) Upon entering a decision in a hearing de novo, the district court shall remand the case to the justice court unless:

(a) the decision results in immediate dismissal of the case;

(b) with agreement of the parties, the district court consents to retain jurisdiction; or

(c) the defendant enters a plea of guilty in the district court.

(6) The district court shall retain jurisdiction over the case on trial de novo.

(7) The decision of the district court is final and may not be appealed unless the district court rules on the constitutionality of a statute or ordinance.

CHAPTER 123
S. B. 130
Passed February 16, 2001
Approved March 15, 2001
Effective April 30, 2001

R.S. 2477 AMENDMENTS

Sponsor: John W. Hickman

This act modifies the Transportation Code by providing restrictions on and notice requirements for certain agreements that may be entered into regarding R.S. 2477 rights-of-way.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:
72-5-307, Utah Code Annotated 1953

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

Section 1. Section 72-5-307 is enacted to read:

72-5-307. Agreement affecting R.S. 2477 right-of-way.

(1) Before a political subdivision of the state enters into an agreement with the federal government affecting the rights, status, or scope of an R.S. 2477 right-of-way, the political subdivision shall give written notice of its intent to enter the agreement, together with a copy of the proposed final agreement, to the governing body of every county of the state through which the right-of-way extends.

(2) After receiving notice of the proposed agreement, the governing body of a county shall, within 60 days, give written notice to the political subdivision that:

(a) the county does not object to the proposed agreement; or

(b) the county objects to the proposed agreement.

(3) If the governing body of a county through which an R.S. 2477 right-of-way extends objects to a proposed agreement in accordance with Subsection (2), the political subdivision proposing to enter into the agreement may only enter into the agreement if it obtains declaratory relief from the district court. The relief shall be granted if the political subdivision shows by a preponderance of evidence that the proposed agreement does not materially affect the objecting county's interests.

(4) If the governing body of a county through which an R.S. 2477 right-of-way extends fails to object within 60 days after receiving notice, in accordance with Subsection (2), the county is considered not to have an objection.

(5) If a political subdivision fails to provide notice of a proposed agreement to a county as required by Subsection (1), the political subdivision is considered without authority to enter into the agreement, and the agreement is void.

(6) In accordance with the joint title provisions in Subsection 72-5-302(2), an agreement between a political subdivision of the state and the federal government may not affect the interests of the state regarding an R.S. 2477 right-of-way, unless the state is also a party to the agreement.

(7) This section does not affect an agreement made solely for the purpose of:

(a) maintenance, as defined under Section 72-5-301; or

(b) preserving safe travel of an R.S. 2477 right-of-way.

CHAPTER 124
S. B. 132
Passed February 22, 2001
Approved March 15, 2001
Effective April 30, 2001

VETERINARY PRACTICE ACT AMENDMENTS

Sponsor: Bill Wright

This act modifies the Veterinary Practice Act, the Chiropractic Physician Practice Act, the Massage Therapy Practice Act, and the Physical Therapist Practice Act. This act provides a limited exemption from licensing under the Veterinary Practice Act and expands the scope of practice for chiropractic physicians, physical therapists, and massage therapists who provide certain treatments for animals, and who meet specified training requirements.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
58-24a-102, as last amended by Chapter 222, Laws of Utah 1994
58-28-8, as last amended by Chapters 4 and 297, Laws of Utah 1993
58-47b-102, as last amended by Chapter 309, Laws of Utah 2000
58-73-102, as last amended by Chapter 284, Laws of Utah 1998

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

Section 1. Section 58-24a-102 is amended to read:

58-24a-102. Definitions.

In addition to the definitions in Section 58-1-102, as used in this chapter:

(1) "Board" means the Physical Therapy Licensing Board.

(2) "General supervision" means the supervising physical therapist is available for immediate voice communication with the person being supervised.

(3) "Immediate supervision" means the supervising physical therapist is:

(a) present in the area where the person supervised is performing services; and

(b) immediately available to assist the person being supervised in the services being performed.

(4) "Physical therapist aide" means an individual performing activities related to physical therapy under the immediate supervision of a physical therapist.

(5) "Physical therapist assistant" means an individual who has successfully completed an accredited physical therapy assistant program and who performs activities related to physical therapy under the general supervision of a physical therapist.

(6) "Physical therapy" or "physiotherapy" means the:

(a) treatment of a human being to assess, prevent, correct, alleviate, and limit physical disability, movement dysfunction, bodily malfunction, and pain resulting from disorders, congenital and aging conditions, injury, and disease; [~~and~~]

(b) development of a physical therapy plan and the implementation of and modification of the treatment plan[~~.~~]; and

(c) the practice described in this Subsection (6) on an animal to the extent permitted by:

(i) Subsection 58-28-8(12);

(ii) the provisions of this chapter; and

(iii) division rule.

(7) "Unlawful conduct" as defined in Section 58-1-501 includes using in connection with his name or business activities the words "physical therapist," "physiotherapist," "licensed physical therapist," "registered physical therapist," or the letters "P.T.," "L.P.T.," "R.P.T.," or any other words, letters, abbreviations, or insignia indicating or implying directly or indirectly that the person is authorized to practice physical therapy, when the person is not licensed under this chapter.

(8) "Unprofessional conduct" as defined in Section 58-1-501 and as may be further defined by rule includes failing to provide immediate supervision of a physical therapist assistant or aide whose activities are the licensee's responsibility under Section 58-24a-112.

Section 2. Section 58-28-8 is amended to read:

58-28-8. Exemptions from chapter.

In addition to the exemptions from licensure in Section 58-1-307 this chapter does not apply to:

(1) any person who practices veterinary medicine, surgery, or dentistry upon any animal owned by him, and the employee of that person when the practice is upon an animal owned by his employer, and incidental to his employment, except that this exemption does not apply to any person, or his employee, when the ownership of an animal was acquired for the purpose of circumventing this chapter;

(2) any person who as a student at a veterinary college approved by the board engages in the practice of veterinary medicine, surgery, and dentistry as part of his academic training and under the supervision and control of a licensed veterinarian, if that practice is during the last two years of the college course of instruction and does not exceed an 18-month duration;

(3) a veterinarian who is an officer or employee of the government of the United States, or the state, or its political subdivisions, and technicians under his supervision, while engaged in the practice of veterinary medicine, surgery, or dentistry for that government;

(4) any person while engaged in the vaccination of poultry, pullorum testing, typhoid testing of poultry, and related poultry disease control activity;

(5) any person who is engaged in bona fide and legitimate medical, dental, pharmaceutical, or other scientific research, if that practice of veterinary medicine, surgery, or dentistry is directly related to, and a necessary part of, that research;

(6) veterinarians licensed under the laws of another state rendering professional services in association with licensed veterinarians of this state for a period not to exceed 90 days;

(7) registered pharmacists of this state engaged in the sale of veterinary supplies, instruments, and medicines, if the sale is at his regular place of business;

(8) except as otherwise provided in Subsection 58-28-2 (6) (d), any person in this state engaged in the sale of veterinary supplies, instruments, and medicines, except prescription drugs which must be sold in compliance with state and federal regulations, if the supplies, instruments, and medicines are sold in original packages bearing adequate identification and directions for application and administration and the sale is made in the regular course of, and at the regular place of business;

(9) any person rendering emergency first aid to animals in those areas where a licensed veterinarian is not available, and if suspicious reportable diseases are reported immediately to the state veterinarian;

(10) any person performing or teaching nonsurgical bovine artificial insemination; [~~and~~]

(11) any person affiliated with an institution of higher education who teaches nonsurgical bovine embryo transfer or any technician trained by or approved by an institution of higher education who performs nonsurgical bovine embryo transfer, but only if any prescription drug used in the procedure is prescribed and administered under the direction of a veterinarian licensed to practice in Utah[~~.~~]; and

(l2) (a) upon written referral by a licensed veterinarian, the practice of animal chiropractic by a chiropractic physician licensed under Chapter 73, Chiropractic Physician Practice Act, who has completed an animal chiropractic course approved by the American Veterinary Chiropractic Association or the division;

(b) upon written referral by a licensed veterinarian, the practice of animal physical therapy by a physical therapist licensed under Chapter 24a, Physical Therapist Practice Act, who has completed at least 100 hours of animal physical therapy training, including quadruped anatomy and hands-on training, approved by the division; and

(c) the practice of animal massage therapy by a massage therapist licensed under Chapter 47b, Massage Therapy Practice Act, who has completed at least 60 hours of animal massage therapy training, including quadruped anatomy and hands-on training, approved by the division.

Section 3. Section 58-47b-102 is amended to read:

58-47b-102. Definitions.

In addition to the definitions in Section 58-1-102, as used in this chapter:

(1) "Board" means the Utah Board of Massage Therapy created in Section 58-47b-201.

(2) "Breast" means the female mammary gland and does not include the muscles, connective tissue, or other soft tissue of the upper chest.

(3) "Homeostasis" means maintaining, stabilizing, or returning to equilibrium the muscular system.

(4) "Massage apprentice" means an individual licensed under this chapter as a massage apprentice to work under the direct supervision of a licensed massage therapist.

(5) "Massage therapist" means an individual licensed under this chapter as a massage therapist.

(6) "Practice of massage therapy" means:

(a) the examination, assessment, and evaluation of the soft tissue structures of the body for the purpose of devising a treatment plan to promote homeostasis;

(b) the systematic manual or mechanical manipulation of the soft tissue of the body for the therapeutic purpose of:

(i) promoting the health and well-being of a client;

(ii) enhancing the circulation of the blood and lymph;

(iii) relaxing and lengthening muscles;

(iv) relieving pain;

(v) restoring metabolic balance; and

(vi) achieving homeostasis;

(c) the use of the hands or a mechanical or electrical apparatus in connection with this Subsection (6);

(d) the use of rehabilitative procedures involving the soft tissue of the body;

(e) range of motion or movements without spinal adjustment as set forth in Section 58-73-102;

(f) oil rubs, heat lamps, salt glows, hot and cold packs, or tub, shower, steam, and cabinet baths;

(g) manual traction and stretching exercise;

(h) correction of muscular distortion by treatment of the soft tissues of the body;

(i) counseling, education, and other advisory services to reduce the incidence and severity of

physical disability, movement dysfunction, and pain; [~~and~~]

(j) similar or related activities and modality techniques[~~.~~]; and

(k) the practice described in this Subsection (6) on an animal to the extent permitted by:

(i) Subsection 58-28-8(12);

(ii) the provisions of this chapter; and

(iii) division rule.

(7) "Soft tissue" means the muscles and related connective tissue.

(8) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-47b-501.

(9) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-47b-502 and as may be further defined by division rule.

Section 4. Section 58-73-102 is amended to read:

58-73-102. Definitions.

(1) "Adjustment of the articulation of the spinal column" means performance by a chiropractic physician by the use of passive movements directed toward the goal of restoring joints to their proper physiological relationship of motion and related function, releasing adhesions, or stimulating joint receptors using one or more of the following techniques:

(a) impulse adjusting or the use of sudden, high velocity, short amplitude thrust of a nature that the patient cannot prevent the motion, commencing where the motion encounters the elastic barrier of resistance and ends at the limit of anatomical integrity;

(b) instrument adjusting, utilizing instruments specifically designed to deliver sudden, high velocity, short amplitude thrust;

(c) light force adjusting utilizing sustained joint traction or applied directional pressure, or both, which may be combined with passive motion to restore joint mobility; and

(d) long distance lever adjusting utilizing forces delivered at some distance from the dysfunctional site and aimed at transmission through connected structures to accomplish joint mobility.

(2) "Board" means the Chiropractic Physician Licensing Board created in Section 58-73-201.

(3) "Chiropractic assistant" means a person who performs activities related to the practice of chiropractic under the supervision of a licensed chiropractic physician in accordance with division rule established in collaboration with the board.

(4) "Chiropractic physician" means a person who has been licensed under this chapter to practice chiropractic.

(5) "Diagnosis of the articulation of the spinal column" means to examine the articulations of the spinal column of another human to determine the source, nature, kind, or extent of a disease, vertebral sublixation, or other physical condition, and to make a determination of the source, nature, kind, or extent of a disease or other physical condition.

(6) "Elastic barrier" means the point at which the patient cannot move a joint by his own means and through which movement is obtained or caused by a practitioner's skillful treatment using the practitioner's hands in a manipulation of a joint by thrust of sudden, high velocity, short amplitude so the patient cannot prevent the motion.

(7) "Incisive surgery" means any procedure having the power or quality of cutting of a patient for the purpose of treating disease, injury, or deformity, and includes the use of laser.

(8) (a) "Manipulate the articulation of the spinal column" means use by a practitioner of a skillful treatment using the practitioner's hands in a manipulation of a joint by thrust of sudden, high velocity, short amplitude so the patient cannot prevent the motion. Movement of the joint is by force beyond its active limit of motion.

(b) This manipulation commences where mobilization ends and specifically begins when the elastic barrier of resistance is encountered and ends at the limit of anatomical integrity.

(c) Manipulation as described in this definition is directed to the goal of restoring joints to their proper physiological relationship of motion and related function, releasing adhesions, or stimulating joint receptors.

(9) "Practice of chiropractic" means a practice of a branch of the healing arts:

(a) the purpose of which is to restore or maintain human health, in which patient care or first aid, hygienic, nutritional, or rehabilitative procedures are administered;

(b) which places emphasis upon specific vertebral adjustment, manipulation, and treatment of the articulation and adjacent tissues of the spinal column, musculoskeletal structure of the body, and nervous system;

(c) that involves examining, diagnosing, treating, correcting, or prescribing treatment for any human disease, ailment, injury, infirmity, deformity, pain, or other condition, or the attempt to do so, in accordance with Section 58-73-601; [~~and~~]

(d) that involves diagnosing, prescribing treatment, or making a determination of treatment necessity for another person's condition by means of:

(i) a physical examination of the person; or

(ii) a determination based upon or derived from information supplied directly or indirectly by a third person[~~.~~]; and

(e) the practice described in this Subsection (9) on an animal to the extent permitted by:

(i) Subsection 58-28-8(12);

(ii) the provisions of this chapter; and

(iii) division rule.

(10) "Therapeutically position the articulation of the spinal column" means to adjust or manipulate the articulation of the spinal column.

CHAPTER 125
S. B. 135
Passed February 16, 2001
Approved March 15, 2001
Effective April 30, 2001

PROVIDING FOR SELECTIVE SERVICE REGISTRATION

Sponsor: L. Steven Poulton

This act modifies the Driver Licensing Act by requiring that specific information from the application for a driver license or identification card be forwarded to the Selective Service System for registration as required by federal law. The act also specifies that refusal will result in the denial of the license or card.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
53-3-804, as last amended by Chapter 36, Laws of Utah 1999

ENACTS:
53-3-234, Utah Code Annotated 1953

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

Section 1. Section 53-3-234 is enacted to read:

53-3-234. Driver license application -- Selective Service Registration -- Statement.

(1) The following information for each male United States citizen or immigrant under the age of 26 shall be electronically transmitted by the division to the Selective Service System:

(a) name;

(b) address;

(c) Social Security number; and

(d) date of birth.

(2) Each application for any type of license to operate a motor vehicle in this state shall contain the following statement which must be acknowledged by the applicant:

"By submitting this application, I am consenting to registration with the Selective Service System, if required by federal law."

(3) Refusal to consent to the release of information to the Selective Service System shall result in the denial of the license.

Section 2. Section 53-3-804 is amended to read:

53-3-804. Application for identification card -- Required information.

(1) To apply for an identification card, the applicant shall appear in person at any license examining station.

(2) The applicant shall provide the following information to the division:

(a) true and full legal name and address;

(b) date of birth as set forth in a certified copy of the applicant's birth certificate, or other satisfactory evidence of birth, which shall be attached to the application;

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

(d) place of birth;

(e) height and weight;

(f) color of eyes and hair;

(g) signature;

(h) photograph; and

(i) organ donor indication, if desired.

(3) The requirements of Section 53-3-234 shall also apply to this section for each person, age 16 and older, applying for an identification card. Refusal to consent to the release of information shall result in the denial of the identification card.

CHAPTER 126
S. B. 136
Passed February 21, 2001
Approved March 15, 2001
Effective April 30, 2001

PARENTING PLAN FOR DIVORCING PARENTS

Sponsor: Lyle W. Hillyard

This act modifies the joint custody provisions to require that a parenting plan be provided by parents requesting joint custody of minor children. The act defines a parenting plan, provides objectives, and prescribes requirements for filing a parenting plan. It also requires the designation of a dispute resolution process for any breakdown of the agreement.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
30-3-10.2, as last amended by Chapter 174, Laws of Utah 1997
30-3-10.3, as last amended by Chapter 167, Laws of Utah 1994

ENACTS:
30-3-10.7, Utah Code Annotated 1953
30-3-10.8, Utah Code Annotated 1953
30-3-10.9, Utah Code Annotated 1953

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

Section 1. Section 30-3-10.2 is amended to read:

30-3-10.2. Joint legal custody order -- Factors for court determination -- Public assistance.

(1) The court may order joint legal custody or joint physical custody or both if the parents have filed a parenting plan in accordance with Section 30-3-10.8 and it determines that joint legal custody or joint physical custody or both is in the best interest of the child [~~and:~~].

[~~(a) both parents agree to an order of joint legal custody; or~~]

[~~(b) both parents appear capable of implementing joint legal custody.~~]

(2) In determining whether the best interest of a child will be served by ordering joint legal custody, the court shall consider the following factors:

(a) whether the physical, psychological, and emotional needs and development of the child will benefit from joint legal custody;

(b) the ability of the parents to give first priority to the welfare of the child and reach shared decisions in the child's best interest;

(c) whether each parent is capable of encouraging and accepting a positive relationship between the child and the other parent;

(d) whether both parents participated in raising the child before the divorce;

(e) the geographical proximity of the homes of the parents;

(f) the preference of the child if the child is of sufficient age and capacity to reason so as to form an intelligent preference as to joint legal custody;

(g) the maturity of the parents and their willingness and ability to protect the child from conflict that may arise between the parents; and

(h) any other factors the court finds relevant.

(3) The determination of the best interest of the child shall be by a preponderance of the evidence.

(4) The court shall inform both parties that:

(a) an order for joint legal custody may preclude eligibility for cash assistance provided under Title 35A, Chapter 3, Employment Support Act; and

(b) if cash assistance is required for the support of children of the parties at any time subsequent to an order of joint legal custody, the order may be terminated under Section 30-3-10.4.

(5) The court may order that where possible the parties attempt to settle future disputes by a dispute resolution method before seeking enforcement or modification of the terms and conditions of the order of joint legal custody or joint physical custody through litigation, except in emergency situations requiring ex parte orders to protect the child.

Section 2. Section 30-3-10.3 is amended to read:

30-3-10.3. Terms of joint legal custody order.

(1) Unless the court orders otherwise, before a final order of joint legal custody is entered both parties shall attend the mandatory course for divorcing parents, as provided in Section 30-3-11.3, and present a certificate of completion from the course to the court.

(2) An order of joint legal custody shall provide terms the court determines appropriate, which may include specifying:

(a) either the county of residence of the child, until altered by further order of the court, or the custodian who has the sole legal right to determine the residence of the child;

(b) that the parents shall exchange information concerning the health, education, and welfare of the child, and where possible, confer before making decisions concerning any of these areas;

(c) the rights and duties of each parent regarding the child's present and future physical care, support, and education;

(d) provisions to minimize disruption of the child's attendance at school and other activities, his daily routine, and his association with friends; and

(e) as necessary, the remaining parental rights, privileges, duties, and powers to be exercised by the parents solely, concurrently, or jointly.

(3) The court shall, where possible, include in the order the terms [~~agreed to between the parties~~] of

the parenting plan provided in accordance with Section 30-3-10.8.

(4) Any parental rights not specifically addressed by the court order may be exercised by the parent having physical custody of the child the majority of the time.

(5) (a) The appointment of joint legal custodians does not impair or limit the authority of the court to order support of the child, including payments by one custodian to the other.

(b) An order of joint legal custody, in itself, is not grounds for modifying a support order.

(c) The agreement [~~may~~] shall contain a dispute resolution procedure the parties agree to use before seeking enforcement or modification of the terms and conditions of the order of joint legal custody through litigation, except in emergency situations requiring ex parte orders to protect the child.

Section 3. Section 30-3-10.7 is enacted to read:

30-3-10.7. Parenting plan -- Definitions.

(1) "Parenting plan" means a plan for parenting a child, including allocation of parenting functions, which is incorporated in any final decree or decree of modification in an action for dissolution of marriage, annulment, legal separation, or paternity.

(2) "Parenting functions" means those aspects of the parent-child relationship in which the parent makes decisions and performs functions necessary for the care and growth of the child. Parenting functions include:

(a) maintaining a loving, stable, consistent, and nurturing relationship with the child;

(b) attending to the daily needs of the child, such as feeding, clothing, physical care, grooming, supervision, health care, day care, and engaging in other activities which are appropriate to the developmental level of the child and that are within the social and economic circumstances of the particular family;

(c) attending to adequate education for the child, including remedial or other education essential to the best interest of the child;

(d) assisting the child in developing and maintaining appropriate interpersonal relationships;

(e) exercising appropriate judgment regarding the child's welfare, consistent with the child's developmental level and family social and economic circumstances; and

(f) providing for the financial support of the child.

Section 4. Section 30-3-10.8 is enacted to read:

30-3-10.8. Parenting plan -- Filing -- Modifications.

(1) In any proceeding under this chapter, including actions for paternity, any party requesting joint custody, joint legal or physical custody, or any other type of shared parenting arrangement, shall file and serve a proposed parenting plan at the time of the filing of their original petition or at the time of filing their answer or counterclaim.

(2) In proceedings for a modification of custody provisions or modification of a parenting plan, a proposed parenting plan shall be filed and served with the petition to modify, or the answer or counterclaim to the petition to modify.

(3) A party who files a proposed parenting plan in compliance with this section may move the court for an order of default to adopt the plan if the other party fails to file a proposed parenting plan as required by this section.

(4) Either party may file and serve an amended proposed parenting plan according to the rules for amending pleadings.

(5) The parent submitting a proposed parenting plan shall attach a verified statement that the plan is proposed by that parent in good faith.

(6) Both parents may submit a parenting plan which has been agreed upon. A verified statement, signed by both parents, shall be attached.

(7) If the parents file inconsistent parenting plans, the court may appoint a guardian ad litem to represent the best interests of the child, who may, if necessary, file a separate parenting plan reflecting the best interests of the child.

Section 5. Section 30-3-10.9 is enacted to read:

30-3-10.9. Parenting plan -- Objectives -- Required provisions -- Dispute resolution.

(1) The objectives of a parenting plan are to:

(a) provide for the child's physical care;

(b) maintain the child's emotional stability;

(c) provide for the child's changing needs as the child grows and matures in a way that minimizes the need for future modifications to the parenting plan;

(d) set forth the authority and responsibilities of each parent with respect to the child consistent with the definitions outlined in this chapter;

(e) minimize the child's exposure to harmful parental conflict;

(f) encourage the parents, where appropriate, to meet the responsibilities to their minor children through agreements in the parenting plan rather than relying on judicial intervention; and

(g) protect the best interests of the child.

(2) The parenting plan shall contain provisions for resolution of future disputes between the parents, allocation of decision-making authority, and residential provisions for the child. It may

contain other provisions comparable to those in Sections 30-3-5 and 30-3-10.3 regarding the welfare of the child.

(3) A process for resolving disputes shall be provided unless precluded or limited by statute. A dispute resolution process may include:

(a) counseling;

(b) mediation or arbitration by a specified individual or agency; or

(c) court action.

(4) In the dispute resolution process:

(a) preference shall be given to the provisions in the parenting plan;

(b) parents shall use the designated process to resolve disputes relating to implementation of the plan, except those related to financial support, unless an emergency exists;

(c) a written record shall be prepared of any agreement reached in counseling or mediation and provided to each party;

(d) if arbitration becomes necessary, a written record shall be prepared and a copy of the arbitration award shall be provided to each party;

(e) if the court finds that a parent has used or frustrated the dispute resolution process without good reason, the court may award attorney's fees and financial sanctions to the prevailing parent;

(f) the district court shall have the right of review from the dispute resolution process; and

(g) the provisions of this Subsection (4) shall be set forth in any final decree or order.

(5) The parenting plan shall allocate decision-making authority to one or both parties regarding the children's education, health care, and religious upbringing. The parties may incorporate an agreement related to the care and growth of the children in these specified areas or in other areas into their plan, consistent with the criteria outlined in Subsections 30-3-10.7(2) and 30-3-10.9(1). Regardless of the allocation of decision-making in the parenting plan, either parent may make emergency decisions affecting the health or safety of the child.

(6) Each parent may make decisions regarding the day-to-day care and control of the child while the child is residing with that parent.

(7) When mutual decision-making is designated but cannot be achieved, the parties shall make a good faith effort to resolve the issue through the dispute resolution process.

(8) The plan shall include a residential schedule which designates in which parent's home each minor child shall reside on given days of the year, including provisions for holidays, birthdays of family members, vacations, and other special occasions.

(9) If a parent fails to comply with a provision of the parenting plan or a child support order, the other parent's obligations under the parenting plan or the child support order are not affected. Failure to comply with a provision of the parenting plan or a child support order may result in a finding of contempt of court.

CHAPTER 127
S. B. 139
Passed February 22, 2001
Approved March 15, 2001
Effective April 30, 2001

NONPROFIT CORPORATION ACT AMENDMENTS

Sponsor: Lyle W. Hillyard

This act modifies the Utah Revised Nonprofit Corporation Act. The act makes various technical changes. The act amends provisions relating to ballots. The act amends provisions relating to voting on directors. The act amends provisions relating to the removal of directors. The act amends provisions relating to conflict of interest transactions. The act adds a severability clause.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
16-6a-102 (Effective 04/30/01), as enacted by Chapter 300, Laws of Utah 2000
16-6a-202 (Effective 04/30/01), as enacted by Chapter 300, Laws of Utah 2000
16-6a-302 (Effective 04/30/01), as enacted by Chapter 300, Laws of Utah 2000
16-6a-707 (Effective 04/30/01), as enacted by Chapter 300, Laws of Utah 2000
16-6a-709 (Effective 04/30/01), as enacted by Chapter 300, Laws of Utah 2000
16-6a-717 (Effective 04/30/01), as enacted by Chapter 300, Laws of Utah 2000
16-6a-805 (Effective 04/30/01), as enacted by Chapter 300, Laws of Utah 2000
16-6a-808 (Effective 04/30/01), as enacted by Chapter 300, Laws of Utah 2000
16-6a-809 (Effective 04/30/01), as enacted by Chapter 300, Laws of Utah 2000
16-6a-817 (Effective 04/30/01), as enacted by Chapter 300, Laws of Utah 2000
16-6a-825 (Effective 04/30/01), as enacted by Chapter 300, Laws of Utah 2000
16-6a-826 (Effective 04/30/01), as enacted by Chapter 300, Laws of Utah 2000
16-6a-1405 (Effective 04/30/01), as enacted by Chapter 300, Laws of Utah 2000
16-6a-1607 (Effective 04/30/01), as enacted by Chapter 300, Laws of Utah 2000

ENACTS:
16-6a-1705, Utah Code Annotated 1953

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

Section 1. Section 16-6a-102 (Effective 04/30/01) is amended to read:

16-6a-102 (Effective 04/30/01). Definitions.

As used in this chapter:

(1) (a) "Address" means a location where mail can be delivered by the United States Postal Service.

(b) "Address" includes:

(i) a post office box number;

(ii) a rural free delivery route number; and

(iii) a street name and number.

(2) "Affiliate" means a person that directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, the person specified.

(3) "Assumed corporate name" means the name assumed for use in this state:

(a) by a:

(i) foreign corporation pursuant to Section 16-10a-1506; or

(ii) a foreign nonprofit corporation pursuant to Section 16-6a-1506; and

(b) because the corporate name of the foreign corporation described in Subsection (3)(a) is not available for use in this state.

(4) "Articles of incorporation" include:

(a) amended articles of incorporation;

(b) restated articles of incorporation;

(c) articles of merger; and

(d) a document of a similar import to the documents described in Subsection (4)(a) or (b).

(5) (a) Except as provided in Subsection (5)(b), "board of directors" means the body authorized to manage the affairs of the domestic or foreign nonprofit corporation.

(b) Notwithstanding Subsection (5)(a), a person may not be considered the board of directors because of powers delegated to that person pursuant to Subsection 16-6a-801(2).

(6) (a) "Bylaws" means the one or more codes of rules, other than the articles of incorporation, adopted pursuant to this chapter for the regulation or management of the affairs of the domestic or foreign nonprofit corporation irrespective of the name or names by which the codes of rules are designated.

(b) "Bylaws" includes:

(i) amended bylaws; and

(ii) restated bylaws.

(7) (a) "Cash" or "money" means:

(i) legal tender;

(ii) a negotiable instrument; or

(iii) other cash equivalent readily convertible into legal tender.

(b) "Cash" and "money" are used interchangeably in this chapter.

(8) (a) "Class" refers to a group of memberships that have the same rights with respect to voting, dissolution, redemption, transfer, or other characteristics.

(b) For purposes of Subsection (8)(a), rights are considered the same if they are determined by a

formula applied uniformly to a group of memberships.

(9) (a) "Conspicuous" means so written that a reasonable person against whom the writing is to operate should have noticed it.

(b) "Conspicuous" includes printing or typing in:

(i) italics;

(ii) boldface;

(iii) contrasting color;

(iv) capitals; or

(v) underlining.

(10) "Control" or a "controlling interest" means the direct or indirect possession of the power to direct or cause the direction of the management and policies of an entity by:

(a) the ownership of voting shares;

(b) contract; or

(c) means other than those specified in Subsection (10)(a) or (b).

(11) "Cooperative nonprofit corporation" or "cooperative" means a nonprofit corporation organized or existing under this chapter subject to Section 16-6a-207.

(12) "Corporate name" means:

(a) the name of a domestic corporation as stated in the domestic corporation's articles of incorporation;

(b) the name of a domestic nonprofit corporation as stated in the domestic nonprofit corporation's articles of incorporation;

(c) the name of a foreign corporation as stated in the foreign corporation's:

(i) articles of incorporation; or

(ii) document of similar import to articles of incorporation; or

(d) the name of a foreign nonprofit corporation as stated in the foreign nonprofit corporation's:

(i) articles of incorporation; or

(ii) document of similar import to articles of incorporation.

(13) "Corporation" or "domestic corporation" means a corporation for profit, which is not a foreign corporation, incorporated under or subject to Chapter 10a, Utah Revised Business Corporation Act.

(14) "Delegate" means any person elected or appointed to vote in a representative assembly:

(a) for the election of a director; or

(b) on matters other than the election of a director.

(15) "Deliver" includes delivery by mail and any other means of transmission authorized by Section 16-6a-103, except that delivery to the division means actual receipt by the division.

(16) "Director" means a member of the board of directors.

(17) (a) "Distribution" means the payment of a dividend or any part of the income or profit of a nonprofit corporation to the nonprofit corporation's:

(i) members;

(ii) directors; or

(iii) officers.

(b) "Distribution" does not include fair-value payments for:

(i) goods sold; or

(ii) services received.

(18) "Division" means the Division of Corporations and Commercial Code.

(19) "Effective date," when referring to a document filed by the division, means the time and date determined in accordance with Section 16-6a-108.

(20) "Effective date of notice" means the date notice is effective as provided in Section 16-6a-103.

(21) (a) "Employee" includes an officer but not a director of a nonprofit corporation.

(b) Notwithstanding Subsection (21)(a), a director may accept duties that make that director an employee of a nonprofit corporation.

(22) "Executive director" means the executive director of the Department of Commerce.

(23) "Entity" includes:

(a) a domestic or foreign corporation;

(b) a domestic or foreign nonprofit corporation;

(c) a limited liability company;

(d) a profit or nonprofit unincorporated association;

(e) a business trust;

(f) an estate;

(g) a partnership;

(h) a trust;

(i) two or more persons having a joint or common economic interest;

(j) a state;

(k) the United States; or

(l) a foreign government.

(24) "Foreign corporation" means a corporation for profit incorporated under a law other than the laws of this state.

(25) "Foreign nonprofit corporation" means an entity:

(a) incorporated under a law other than the laws of this state; and

(b) that would be a nonprofit corporation if formed under the laws of this state.

(26) "Governmental subdivision" means:

(a) a county;

(b) a city;

(c) a town; or

(d) any other type of governmental subdivision authorized by the laws of this state.

(27) "Individual" means:

(a) a natural person;

(b) the estate of an incompetent individual; or

(c) the estate of a deceased individual.

(28) "Internal Revenue Code" means the federal "Internal Revenue Code of 1986," as amended from time to time, or to corresponding provisions of subsequent internal revenue laws of the United States of America.

(29) (a) "Mail," "mailed," or "mailing" means deposit, deposited, or depositing in the United States mail, properly addressed, first-class postage prepaid.

(b) "Mail," "mailed," or "mailing" includes registered or certified mail for which the proper fee has been paid.

(30) (a) "Member" means one or more persons identified as a member of a domestic or foreign nonprofit corporation in the articles of incorporation or bylaws of the nonprofit corporation pursuant to a procedure set forth:

(i) in the articles of incorporation;

(ii) in the bylaws; or

(iii) by a resolution of the board of directors.

(b) "Member" includes "voting member."

(31) "Membership" refers to the rights and obligations of a member or members.

(32) "Nonprofit corporation" or "domestic nonprofit corporation" means an entity, which is not a foreign nonprofit corporation, incorporated under or subject to the provisions of this chapter.

(33) "Notice" is as provided in Section 16-6a-103.

[~~(41)~~] (34) "[~~Related party~~] Party related to a director" means:

(a) the spouse of the director;

(b) a child of the director;

(c) a grandchild of the director;

(d) a sibling of the director;

(e) a parent of the director;

(f) the spouse of an individual described in Subsections [~~(41)~~] (34)(b) through (e);

(g) an individual having the same home as the director;

(h) a trust or estate of which the director or any other individual specified in this Subsection [~~(41)~~] (34) is a substantial beneficiary; or

(i) any of the following of which the director is a fiduciary:

(i) a trust;

(ii) an estate;

(iii) an incompetent;

(iv) a conservatee; or

(v) a minor.

[~~(34)~~] (35) "Person" means an:

(a) individual; or

(b) entity.

[~~(35)~~] (36) "Principal office" means:

(a) the office, in or out of this state, designated by a domestic or foreign nonprofit corporation as its principal office in the most recent document on file with the division providing that information, including:

(i) an annual report;

(ii) an application for a certificate of authority; or

(iii) a notice of change of principal office; or

(b) if no principal office can be determined, a domestic or foreign nonprofit corporation's registered office.

[~~(36)~~] (37) "Proceeding" includes:

(a) a civil suit;

(b) arbitration;

(c) mediation;

(d) a criminal action;

(e) an administrative action; or

(f) an investigatory action.

[~~(37)~~] (38) "Receive," when used in reference to receipt of a writing or other document by a domestic or foreign nonprofit corporation, means the writing or other document is actually received:

(a) by the domestic or foreign nonprofit corporation at:

(i) its registered office in this state; or

(ii) its principal office;

(b) by the secretary of the domestic or foreign nonprofit corporation, wherever the secretary is found; or

(c) by any other person authorized by the bylaws or the board of directors to receive the writing or other document, wherever that person is found.

[~~(38)~~] (39) (a) "Record date" means the date established under Part 6 or 7 on which a nonprofit corporation determines the identity of its members.

(b) The determination described in Subsection [~~(38)~~] (39)(a) shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

[~~(39)~~] (40) "Registered agent" means the registered agent of:

(a) a domestic nonprofit corporation required to be maintained pursuant to Subsection 16-6a-501(1)(b); or

(b) a foreign nonprofit corporation required to be maintained pursuant to Subsection 16-6a-1508(1)(b).

[~~(40)~~] (41) "Registered office" means the office within this state designated by a domestic or foreign nonprofit corporation as its registered office in the most recent document on file with the division providing that information, including:

(a) articles of incorporation;

(b) an application for a certificate of authority; or

(c) a notice of change of registered office.

(42) "Secretary" means the corporate officer to whom the bylaws or the board of directors has delegated responsibility under Subsection 16-6a-818(3) for:

(a) the preparation and maintenance of:

(i) minutes of the meetings of:

(A) the board of directors; or

(B) the members; and

(ii) the other records and information required to be kept by the nonprofit corporation pursuant to Section 16-6a-1601; and

(b) authenticating records of the nonprofit corporation.

(43) "State," when referring to a part of the United States, includes:

(a) a state;

(b) a commonwealth;

(c) the District of Columbia;

(d) an agency or governmental and political subdivision of a state, commonwealth, or District of Columbia;

(e) territory or insular possession of the United States; or

(f) an agency or governmental and political subdivision of a territory or insular possession of the United States.

(44) "Street address" means:

(a) (i) street name and number;

(ii) city or town; and

(iii) United States post office zip code designation; or

(b) if, by reason of rural location or otherwise, a street name, number, city, or town does not exist, an appropriate description other than that described in Subsection (44)(a) fixing as nearly as possible the actual physical location but only if the information includes:

(i) the rural free delivery route;

(ii) the county; and

(iii) the United States post office zip code designation.

(45) "United States" includes any district, authority, office, bureau, commission, department, and any other agency of the United States of America.

(46) "Vote" includes authorization by:

(a) written ballot; and

(b) written consent.

(47) (a) "Voting group" means all the members of one or more classes of members or directors that, under this chapter, the articles of incorporation, or the bylaws, are entitled to vote and be counted together collectively on a matter.

(b) All members or directors entitled by this chapter, the articles of incorporation, or the bylaws to vote generally on a matter are for that purpose a single voting group.

(48) (a) "Voting member" means [~~one or more persons who are~~] a person entitled to vote for all matters required or permitted under this chapter to be submitted to a vote of the members, except as otherwise provided in the articles of incorporation or bylaws.

(b) A person is not a voting member solely because of:

(i) a right the person has as a delegate;

(ii) a right the person has to designate a director; or

(iii) a right the person has as a director.

Section 2. Section 16-6a-202 (Effective 04/30/01) is amended to read:

16-6a-202 (Effective 04/30/01). Articles of incorporation.

(1) The articles of incorporation shall set forth:

(a) one or more purposes for which the nonprofit corporation is organized;

(b) a corporate name for the nonprofit corporation that satisfies the requirements of Section 16-6a-401;

(c) the street address of the nonprofit corporation's initial registered office;

(d) the name and signature of its initial registered agent at the office listed in Subsection (1)(c), which registered agent shall meet the requirements of Section 16-6a-501;

(e) the name and address of each incorporator;

(f) whether or not the nonprofit corporation will have voting members;

(g) if the nonprofit corporation is to issue shares of stock evidencing membership in the nonprofit corporation or interests in water or other property rights:

(i) the aggregate number of shares that the nonprofit corporation has authority to issue; and

(ii) if the shares are to be divided into classes:

(A) the number of shares of each class;

(B) the designation of each class; and

(C) a statement of the preferences, limitations, and relative rights of the shares of each class; and

(h) provisions not inconsistent with law regarding the distribution of assets on dissolution.

(2) The articles of incorporation may but need not set forth:

(a) the names and addresses of the [~~one or more~~] individuals who are to serve as the initial directors;

(b) provisions not inconsistent with law regarding:

(i) managing the business and regulating the affairs of the nonprofit corporation;

(ii) defining, limiting, and regulating the powers of:

(A) the nonprofit corporation;

(B) the board of directors of the nonprofit corporation; and

(C) the members of the nonprofit corporation or any class of members;

(iii) whether cumulative voting will be permitted; and

(iv) the characteristics, qualifications, rights, limitations, and obligations attaching to each or any class of members; and

(c) any provision that under this chapter is permitted to be in the articles of incorporation or required or permitted to be set forth in the bylaws, including elective provisions that in accordance with this chapter shall be included in the articles of incorporation to be effective.

(3) (a) It is sufficient under Subsection (1)(a) to state, either alone or with other purposes, that the purpose of the corporation is to engage in any lawful act for which a nonprofit corporation may be organized under this chapter.

(b) If the articles of incorporation include the statement described in Subsection (3)(a), all lawful acts and activities shall be within the purposes of the nonprofit corporation, except for express limitations, if any.

(4) The articles of incorporation need not set forth any corporate power enumerated in this chapter.

(5) The articles of incorporation shall:

(a) be signed by each incorporator; and

(b) meet the filing requirements of Section 16-6a-105.

(6) The appointment of the registered agent shall be signed by the registered agent on:

(a) the articles of incorporation; or

(b) an acknowledgment attached to the articles of incorporation.

(7) (a) If this chapter conditions any matter upon the presence of a provision in the bylaws, the condition is satisfied if the provision is present either in:

(i) the articles of incorporation; or

(ii) the bylaws.

(b) If this chapter conditions any matter upon the absence of a provision in the bylaws, the condition is satisfied only if the provision is absent from both:

(i) the articles of incorporation; and

(ii) the bylaws.

Section 3. Section 16-6a-302 (Effective 04/30/01) is amended to read:

16-6a-302 (Effective 04/30/01). General powers.

Unless its articles of incorporation provide otherwise, and except as restricted by the Utah Constitution, every nonprofit corporation has:

(1) perpetual duration and succession in its corporate name; and

(2) the same powers as an individual to do all things necessary or convenient to carry out its permitted activities and affairs, including without limitation the power to:

(a) sue and be sued, complain and defend in its corporate name;

(b) (i) have a corporate seal, that may be altered at will; and

(ii) use the corporate seal, or a facsimile of the corporate seal, by impressing or affixing it or in any other manner reproducing it;

(c) make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for managing and regulating the affairs of the nonprofit corporation;

(d) purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;

(e) sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property and assets;

(f) purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and with shares or other interests in, or obligations of, any other entity;

(g) make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations and secure any of its obligations by mortgage or pledge of any of its property, assets, franchises, or income;

(h) lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment, except that a nonprofit corporation may not lend money to or guarantee the obligation of a director or officer of the nonprofit corporation;

(i) be an agent, associate, fiduciary, manager, member, partner, promoter, or trustee of, or to hold any similar position with, any entity;

(j) conduct its business, locate offices, and exercise the powers granted by this chapter within or without this state;

(k) (i) elect directors and appoint officers, employees, and agents of the nonprofit corporation;

(ii) define the duties of the directors, officers, employees, and agents; and

(iii) fix the compensation of the directors, officers, employees, and agents;

(l) pay compensation in a reasonable amount to its directors, officers, or members for services rendered, including:

(i) payment of advances for expenses reasonably expected to be incurred; and

(ii) expenses relating to relocation of directors, officers, or employees [~~of a nonprofit corporation~~];

(m) pay pensions and establish pension plans, pension trusts, profit sharing plans, share bonus plans, share option plans, and benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents;

(n) make contributions to or for any person for:

(i) the public welfare;

(ii) charitable, religious, scientific, or educational purposes; or

(iii) for other purposes that further the corporate interest;

(o) pursue any lawful activity that will aid governmental policy;

(p) make payments or do any other act, not inconsistent with law, that furthers the business and affairs of the nonprofit corporation;

(q) establish rules governing the conduct of the business and affairs of the nonprofit corporation in the event of an emergency;

(r) impose dues, assessments, admission fees, and transfer fees upon its members;

(s) (i) establish conditions for admission of members;

(ii) admit members; and

(iii) issue or transfer membership;

(t) carry on a business;

(u) indemnify current or former directors, officers, employees, fiduciaries, or agents as provided in this chapter;

(v) limit the liability of its directors as provided in Subsection 16-6a-823(1);

(w) cease its corporate activities and dissolve; and

(x) issue certificates or stock evidencing:

(i) membership in the nonprofit corporation; or

(ii) interests in water or other property rights.

Section 4. Section 16-6a-707 (Effective 04/30/01) is amended to read:

16-6a-707 (Effective 04/30/01). Action without meeting.

(1) Unless otherwise provided in the articles of incorporation and Subsection (5), and subject to the limitations of Subsection 16-6a-1704(3), any action that may be taken at any annual or special meeting of members may be taken without a meeting and without prior notice, if one or more consents in writing, setting forth the action taken, are signed by the members having not less than the minimum voting power that would be necessary to authorize or take the action at a meeting at which all members entitled to vote on the action were present and voted.

(2) (a) Unless the written consents of all members entitled to vote have been obtained, notice of any member approval without a meeting shall be given at least ten days before the consummation of the transaction, action, or event authorized by the member action to:

(i) those members entitled to vote who have not consented in writing; and

(ii) those members:

(A) not entitled to vote; and

(B) to whom this chapter requires that notice of the proposed action be given.

(b) The notice required pursuant to Subsection (2)(a) shall contain or be accompanied by the same material that under this chapter would have been required to be sent in a notice of meeting at which the proposed action would have been submitted to the members for action.

(3) Any member giving a written consent, or the member's proxyholder or a personal representative of the member or their respective proxyholder, may revoke the consent by a signed writing:

(a) describing the action;

(b) stating that the member's prior consent is revoked; and

(c) that is received by the nonprofit corporation prior to the effectiveness of the action.

(4) (a) A member action taken pursuant to this section is not effective unless all written consents on which the nonprofit corporation relies for the taking of an action pursuant to Subsection (1) are:

(i) received by the nonprofit corporation within a 60-day period; and

(ii) not revoked pursuant to Subsection (3).

(b) Action taken by the members pursuant to this section is effective:

(i) as of the date the last written consent necessary to effect the action is received by the nonprofit corporation; or

(ii) if all of the written consents necessary to effect the action specify a later date as the effective date of the action, the later date specified in the consents.

(c) If the nonprofit corporation has received written consents in accordance with Subsection (1) signed by all members entitled to vote with respect to the action, the effective date of the member action may be any date that is specified in all the written consents as the effective date of the member action.

(d) Unless otherwise provided by the bylaws, a written consent under this Subsection (4) may be received by the nonprofit corporation by electronically transmitted facsimile or other form of communication providing the corporation with a complete copy of the written consent, including a copy of the signature to the written consent.

(5) Notwithstanding Subsection (1), directors may not be elected by written consent except by unanimous written consent of all [~~shares~~] members entitled to vote for the election of directors.

(6) If not otherwise determined under Section 16-6a-703 or 16-6a-706, the record date for determining the members entitled to take action without a meeting or entitled to be given notice under Subsection (2) of action taken without a meeting is the date the first member delivers to the nonprofit corporation a writing upon which the action is taken pursuant to Subsection (1).

(7) Action taken under this section has the same effect as action taken at a meeting of members and may be so described in any document.

Section 5. Section 16-6a-709 (Effective 04/30/01) is amended to read:

16-6a-709 (Effective 04/30/01). Action by written ballot.

(1) Unless otherwise provided by the bylaws, any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting if the nonprofit corporation delivers a written ballot to every member entitled to vote on the matter.

(2) A written ballot described in Subsection (1) shall:

(a) set forth each proposed action; and

(b) provide an opportunity to vote for or against each proposed action.

(3) Approval by written ballot pursuant to this section shall be valid only when:

(a) the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action; and

(b) the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

(4) All solicitations for votes by written ballot shall:

(a) indicate the number of responses needed to meet the quorum requirements;

(b) state the percentage of approvals necessary to approve each matter other than election of directors;

(c) specify the time by which a ballot must be received by the nonprofit corporation in order to be counted; and

(d) be accompanied by written information sufficient to permit each person casting the ballot to reach an informed decision on the matter.

(5) Unless otherwise provided by the bylaws, a written ballot may not be revoked.

(6) Action taken under this section has the same effect as action taken at a meeting of members and may be described as such in any document.

(7) Unless otherwise provided by the bylaws, a written ballot delivered to every member entitled to vote on the matter or matters therein, as described in this section, may also be used in connection with any annual, regular, or special meeting of members, thereby allowing members the choice of either voting in person or by written ballot delivered by a member to the nonprofit corporation in lieu of attendance at such meeting. Any written ballot shall comply with the requirements of Subsection (2) and shall be counted equally with the votes of members in attendance at any meeting for every purpose, including satisfaction of a quorum requirement.

Section 6. Section 16-6a-717 (Effective 04/30/01) is amended to read:

16-6a-717 (Effective 04/30/01). Voting for directors -- Cumulative voting.

(1) If the bylaws provide for cumulative voting for directors by the voting members, voting members may cumulatively vote, by:

(a) multiplying the number of votes the voting members are entitled to cast by the number of directors for whom they are entitled to vote; and

(b) (i) casting the product for a single candidate; or

(ii) distributing the product among two or more candidates.

(2) Cumulative voting is not authorized at a particular meeting unless:

(a) the meeting notice or statement accompanying the notice states that cumulative voting will take place; or

(b) (i) a voting member gives notice during the meeting and before the vote is taken of the voting member's intent to cumulate votes; and

(ii) if one voting member gives this notice, all other voting members participating in the election are entitled to cumulate their votes without giving further notice.

(3) (a) [~~In~~] Unless otherwise provided in the bylaws, in an election of multiple directors, that number of candidates equaling the number of directors to be elected, having the highest number of votes cast in favor of their election, are elected to the board of directors.

(b) [~~When~~] Unless otherwise provided in the bylaws, when only one director is being voted upon, the [~~affirmative vote of a majority of the members constituting a quorum at the meeting at which the election occurs shall be required for election~~] candidate having the highest number of votes cast in his or her favor is elected to the board of directors.

Section 7. Section 16-6a-805 (Effective 04/30/01) is amended to read:

16-6a-805 (Effective 04/30/01). Terms of directors generally.

(1) (a) The bylaws may specify the terms of directors.

(b) In the absence of any term specified in the bylaws, the term of each director shall be one year.

(c) Unless otherwise provided in the bylaws, directors may be elected for successive terms.

(2) Unless otherwise provided in the bylaws, the terms of the initial directors of a nonprofit corporation expire at the first meeting at which directors are elected or appointed.

(3) A decrease in the number of directors or in the term of office does not shorten an incumbent director's term.

(4) Unless otherwise provided in the bylaws, the term of a director filling a vacancy expires at the end of the unexpired term that the director is filling, except that if a director is elected to fill a vacancy created by reason of an increase in the number of directors, the term of the director shall expire on the later of:

(a) the next meeting at which directors are elected; or

(b) the term, if any, designated for the director at the time of the creation of the position being filled.

(5) [~~Despite~~] Unless otherwise provided in the bylaws, despite the expiration of a director's term, a director continues to serve until:

(a) the director's successor is elected, appointed, or designated and qualifies; or

(b) there is a decrease in the number of directors.

(6) A director whose term has expired may deliver to the division for filing a statement to that effect pursuant to Section 16-6a-1608.

Section 8. Section 16-6a-808 (Effective 04/30/01) is amended to read:

16-6a-808 (Effective 04/30/01). Removal of directors.

(1) Directors elected by voting members or directors may be removed as provided in Subsections (1)(a) through (g).

(a) The voting members may remove one or more directors elected by them with or without cause unless the bylaws provide that directors may be removed only for cause.

(b) If a director is elected by a voting group, only that voting group may participate in the vote to remove that director.

(c) A director may be removed only if the number of votes cast to remove the director would be sufficient to elect the director at a meeting to elect directors.

(d) A director elected by voting members may be removed by the voting members only:

(i) at a meeting called for the purpose of removing that director; and

(ii) if the meeting notice states that the purpose, or one of the purposes, of the meeting is removal of the director.

(e) An entire board of directors may be removed under Subsections (1)(a) through (d).

(f) (i) Except as provided in Subsection (1)(f)(ii), a director elected by the board of directors may be removed with or without cause by the vote of a majority of the directors then in office or such greater number as is set forth in the bylaws.

(ii) A director elected by the board of directors to fill the vacancy of a director elected by the voting members may be removed without cause by the voting members but not the board of directors.

(g) Notwithstanding Subsections (1)(a) through (f), if provided in the bylaws, any director no longer qualified to serve, under standards set forth in the bylaws, may be removed by a vote of a majority of the directors then in office or such greater number as set forth in the bylaws.

[~~(g)~~] (h) A director who is removed pursuant to this section may deliver to the division for filing a statement to that effect pursuant to Section 16-6a-1608.

(2) Unless otherwise provided in the bylaws:

(a) an appointed director may be removed without cause by the person appointing the director;

(b) the person described in Subsection (2)(a) shall remove the director by giving written notice of the removal to:

(i) the director; and

(ii) the nonprofit corporation; and

(c) unless the written notice described in Subsection (2)(b) specifies a future effective date, a

removal is effective when the notice is received by both:

(i) the director to be removed; and

(ii) the nonprofit corporation.

(3) A designated director, as provided in Subsection 16-6a-804(5), may be removed by an amendment to the bylaws deleting or changing the designation.

(4) Removal of a director under this section shall not be affected by Subsection 16-6a-805(5).

Section 9. Section 16-6a-809 (Effective 04/30/01) is amended to read:

16-6a-809 (Effective 04/30/01). Removal of directors by judicial proceeding.

(1) (a) The applicable court may remove a director in a proceeding commenced either by the nonprofit corporation or by voting members holding at least 10% of the votes entitled to be cast in the election of the director's successor if the court finds that:

(i) the director engaged in:

(A) fraudulent or dishonest conduct; or

(B) gross abuse of authority or discretion with respect to the nonprofit corporation; or

(ii) (A) a final judgment has been entered finding that the director has violated a duty set forth in [~~Part 4~~] Section 16-6a-822; and

(B) removal is in the best interests of the nonprofit corporation.

(b) For purposes of this Subsection (1), the applicable court is the:

(i) district court of the county in this state where a nonprofit corporation's principal office is located; or

(ii) if the nonprofit corporation has no principal office in this state:

(A) the district court of the county in which its registered office is located; or

(B) if the nonprofit corporation has no registered office, the district court for Salt Lake County.

(2) The court that removes a director may bar the director for a period prescribed by the court from:

(a) reelection;

(b) reappointment; or

(c) designation.

(3) If voting members commence a proceeding under Subsection (1), the voting members shall make the nonprofit corporation a party defendant.

(4) A director who is removed pursuant to this section may deliver to the division for filing a statement to that effect pursuant to Section 16-6a-1608.

Section 10. Section 16-6a-817 (Effective 04/30/01) is amended to read:

16-6a-817 (Effective 04/30/01). Committees of the board.

(1) Unless otherwise provided in the bylaws and subject to the provisions of Section 16-6a-906, the board of directors may:

(a) create one or more committees of the board; and

(b) appoint [~~one~~] two or more directors to serve on the committees created under Subsection (1)(a).

(2) Unless otherwise provided in the bylaws, the creation of a committee of the board and appointment of directors to it shall be approved by the greater of:

(a) a majority of all the directors in office when the action is taken; or

(b) the number of directors required by the bylaws to take action under Section 16-6a-816.

(3) Unless otherwise provided in the bylaws, a committee of the board and the members of the committee are subject to Sections 16-6a-812 through 16-6a-816, which govern:

(a) meetings;

(b) action without meeting;

(c) notice;

(d) waiver of notice; and

(e) quorum and voting requirements.

(4) To the extent specified in the bylaws or by the board of directors, and subject to Subsection (6)(b), each committee of the board shall have the authority of the board of directors under Section 16-6a-801.

(5) The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in Section 16-6a-822.

(6) (a) Subject to Subsection (6)(b), nothing in this part shall prohibit or restrict a nonprofit corporation from establishing in its bylaws or by action of the board of directors or otherwise one or more committees, advisory boards, auxiliaries, or other bodies of any kind:

(i) having the members and rules of procedure as the bylaws or board of directors may provide;

(ii) established to provide the advice, service, and assistance to the nonprofit corporation as may be specified in the bylaws or by the board of directors; and

(iii) established to carry out the duties and responsibilities for the nonprofit corporation, as may be specified in the bylaws or by the board of directors.

(b) Notwithstanding Subsection (6)(a), if any committee or other body established under Subsection (6)(a) has one or more members who are entitled to vote on committee matters and who are

not then also directors, the committee or other body may not exercise any power or authority reserved to the board of directors, in this chapter or in the bylaws.

Section 11. Section 16-6a-825 (Effective 04/30/01) is amended to read:

16-6a-825 (Effective 04/30/01). Conflicting interest transaction.

(1) As used in this section, "conflicting interest transaction" means a contract, transaction, or other financial relationship between a nonprofit corporation and:

(a) a director of the nonprofit corporation;

(b) a party related to a director; or

(c) an entity in which a director of the nonprofit corporation:

(i) is a director or officer; or

(ii) has a financial interest.

(2) Except as otherwise provided in this section, upon the finding of a conflicting interest transaction, in an action properly brought before it, a court may:

(a) rule that the conflicting interest transaction is void or voidable;

(b) enjoin or set aside the conflict of interest transaction; or

(c) determine that the conflicting interest transaction gives rise to an award of damages or other sanctions.

(3) (a) A loan may not be made by a corporation to its directors or officers.

(b) A director or officer who assents to or participates in the making of a loan in violation of Subsection (3)(a) shall be liable to the corporation for the amount of the loan until the repayment of the loan.

(4) (a) If the conditions of Subsection (4)(b) are met, a conflicting interest transaction may not be void or voidable or be enjoined, set aside, or give rise to an award of damages or other sanctions in a proceeding by a member or by or in the right of the nonprofit corporation, solely because:

(i) the conflicting interest transaction involves:

(A) a director of the nonprofit corporation;

(B) a party related to a director; or

(C) an entity in which a director of the nonprofit corporation is a director or officer or has a financial interest;

(ii) the director is present at or participates in the meeting of the nonprofit corporation's board of directors or of the committee of the board of directors that authorizes, approves, or ratifies the conflicting interest transaction; or

(iii) the director's vote is counted for the purpose described in Subsection (4)(a)(ii).

(b) Subsection (4)(a) applies if:

(i) (A) the material facts as to the director's relationship or interest and as to the conflicting interest transaction are disclosed or are known to the board of directors or the committee; and

(B) the board of directors or committee in good faith authorizes, approves, or ratifies the conflicting interest transaction by the affirmative vote of a majority of the disinterested directors, even though the disinterested directors are less than a quorum;

(ii) (A) the material facts as to the director's relationship or interest and as to the conflicting interest transaction are disclosed or are known to the members entitled to vote on the conflicting interest transaction; and

(B) the conflicting interest transaction is specifically authorized, approved, or ratified in good faith by a vote of the members entitled to vote thereon; [~~or~~]

(iii) the conflicting interest transaction is consistent with a provision in the articles of incorporation or bylaws which:

(A) commits the nonprofit corporation to support one or more other nonprofit corporations, charitable trusts, or charitable entities; or

(B) authorizes one or more directors to exercise discretion in making gifts or contributions to one or more other nonprofit corporations, charitable trusts, or charitable entities; or

[~~(iii)~~] (iv) the conflicting interest transaction is fair as to the nonprofit corporation.

(5) Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or of a committee that authorizes, approves, or ratifies the conflicting interest transaction.

Section 12. Section 16-6a-826 (Effective 04/30/01) is amended to read:

16-6a-826 (Effective 04/30/01). Common members, directors, or officers.

(1) Two or more nonprofit corporations may have members, directors, or officers that are common to each nonprofit corporation.

(2) The fact of common members, directors, or officers in [~~one~~] two or more nonprofit corporations may not, by itself, create an inference that the nonprofit corporations individually or collectively:

(a) are agents or alter egos of one another; or

(b) have been formed or availed of, for an improper purpose.

(3) The doctrine of "piercing the corporate veil" may not be applied to one or more nonprofit corporations solely because of the fact of common members, directors, or officers.

Section 13. Section 16-6a-1405 (Effective 04/30/01) is amended to read:

16-6a-1405 (Effective 04/30/01). Effect of dissolution.

(1) A dissolved nonprofit corporation continues its corporate existence but may not carry on any activities except as is appropriate to wind up and liquidate its affairs, including:

(a) collecting its assets;

(b) returning, transferring, or conveying assets held by the nonprofit corporation upon a condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution, in accordance with the condition;

(c) transferring, subject to any contractual or legal requirements, its assets as provided in or authorized by its articles of incorporation or bylaws;

(d) discharging or making provision for discharging its liabilities; and

(e) doing every other act necessary to wind up and liquidate its assets and affairs.

(2) (a) [~~Unless otherwise provided in the articles of incorporation or bylaws, upon~~] Upon dissolution of a nonprofit corporation described under Section 501(c)(3), Internal Revenue Code, and exempt from tax under Section 501(a), Internal Revenue Code, or the corresponding section of any future federal tax code, the assets of the nonprofit corporation shall be distributed:

(i) for one or more exempt purposes under Section 501(c)(3), Internal Revenue Code;

(ii) to the federal government for a public purpose; or

(iii) to a state or local government, for a public purpose.

(b) Any assets not disposed of under Subsection (2)(a) shall be disposed of by the district court for the county in which the principal office of the nonprofit corporation is then located, exclusively as determined by the court:

(i) for one or more exempt purposes under Section 501(c)(3), Internal Revenue Code; or

(ii) to organizations that are organized and operated exclusively for exempt or public purposes.

(c) The conversion to a corporation under Section 16-6a-1008 of a nonprofit corporation described under Section 501(c)(3), Internal Revenue Code, and exempt from tax Section 501(a), Internal Revenue Code, or the corresponding section of any future federal tax code, shall be considered to be a dissolution of that nonprofit corporation for purposes of this Subsection (2).

(3) Dissolution of a nonprofit corporation does not:

(a) transfer title to the nonprofit corporation's property;

(b) subject its directors or officers to standards of conduct different from those prescribed in this chapter;

(c) change quorum or voting requirements for its board of directors or members;

(d) change provisions for selection, resignation, or removal of its directors or officers, or both;

(e) change provisions for amending its bylaws or its articles of incorporation;

(f) prevent commencement of a proceeding by or against the nonprofit corporation in its corporate name; or

(g) abate or suspend a proceeding pending by or against the nonprofit corporation on the effective date of dissolution.

Section 14. Section 16-6a-1607 (Effective 04/30/01) is amended to read:

16-6a-1607 (Effective 04/30/01). Annual report for division.

(1) Each domestic nonprofit corporation, and each foreign nonprofit corporation authorized to conduct affairs in this state, shall deliver to the division for filing an annual report on a form provided by the division that sets forth:

(a) (i) the corporate name of the domestic or foreign nonprofit corporation; and

(ii) any assumed corporate name of the foreign nonprofit corporation;

(b) the state or country under whose law it is incorporated;

(c) the street address of its registered office in this state;

(d) the name of its registered agent at the office listed in Subsection (1)(c);

(e) the street address of its principal office; and

(f) the names and addresses of its directors and principal officers.

(2) The division shall deliver a copy of the prescribed form of annual report to each domestic nonprofit corporation and each foreign nonprofit corporation authorized to conduct affairs in this state.

(3) Information in the annual report shall be current as of the date the annual report is executed on behalf of the nonprofit corporation.

(4) (a) The annual report of a domestic or foreign nonprofit corporation shall be delivered annually to the division no later than [~~the end of the second calendar month following the calendar month in which the report form is mailed by the division~~] 60 days past the date the report was mailed by the division.

(b) Proof to the satisfaction of the division that the nonprofit corporation has mailed an annual report form is considered in compliance with this Subsection (4).

(5) (a) If an annual report contains the information required by this section, the division shall file it.

(b) If an annual report does not contain the information required by this section, the division shall promptly notify the reporting domestic or foreign nonprofit corporation in writing and return the annual report to it for correction.

(c) If an annual report that is rejected under Subsection (5)(b) was otherwise timely filed and is corrected to contain the information required by this section and delivered to the division within 30 days after the effective date of the notice of rejection, the annual report is considered to be timely filed.

(6) The fact that an individual's name is signed on an annual report form is prima facie evidence for division purposes that the individual is authorized to certify the report on behalf of the nonprofit corporation.

(7) The annual report form provided by the division may be designed to provide a simplified certification by the nonprofit corporation if no changes have been made in the required information from the last preceding report filed.

(8) A domestic or foreign nonprofit corporation may, but may not be required to, deliver to the division for filing an amendment to its annual report reflecting any change in the information contained in its annual report as last amended.

Section 15. Section 16-6a-1705 is enacted to read:

16-6a-1705. Severability clause.

If any provision of this act, or the application of any provision to any person or circumstance, is held invalid, the remainder of this act is given effect without the invalid provision or application.

CHAPTER 128
S. B. 141
Passed February 16, 2001
Approved March 15, 2001
Effective April 30, 2001

TELEPHONE HARASSMENT AMENDMENTS

Sponsor: Terry R. Spencer

This act modifies the Criminal Code by deleting language regarding the offense of telephone harassment that has been found unconstitutional by the Utah Supreme Court.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
76-9-201, as last amended by Chapter 28, Laws of Utah 1996

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

Section 1. Section 76-9-201 is amended to read:

76-9-201. Telephone harassment.

(1) A person is guilty of telephone harassment and subject to prosecution in the jurisdiction where the telephone call originated or was received if with intent to annoy, alarm [~~another~~], intimidate, offend, abuse, threaten, harass, or frighten [~~any person~~] another at the called number [~~or recklessly creating a risk thereof~~], the person:

[~~(a) makes a telephone call, whether or not a conversation ensues;~~]

[~~(b)~~] (a) makes repeated telephone calls, whether or not a conversation ensues, or after having been told not to call back, causes the telephone of another to ring repeatedly or continuously;

[~~(c)~~] (b) makes a telephone call and insults, taunts, or challenges the recipient of the telephone call or any person at the called number in a manner likely to provoke a violent or disorderly response; or

[~~(d) makes a telephone call and uses any lewd or profane language or suggests any lewd or lascivious act; or~~]

[~~(e)~~] (c) makes a telephone call and threatens to inflict injury, physical harm, or damage to any person or the property of any person.

(2) Telephone harassment is a class B misdemeanor.

CHAPTER 129
S. B. 146
Passed February 22, 2001
Approved March 15, 2001
Effective April 30, 2001

PERFORMING UNLAWFUL MARRIAGES

Sponsor: Ron Allen

This act modifies provisions pertaining to marriage. The act provides specific penalties for performing marriages without authority or a valid license. It also provides a penalty for a parent or guardian who allows a minor child to be married in violation of the law.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
30-1-5, Utah Code Annotated 1953
30-1-13, as last amended by Chapter 144, Laws of Utah 1992
30-1-14, Utah Code Annotated 1953
30-1-15, Utah Code Annotated 1953

ENACTS:
30-1-9.1, Utah Code Annotated 1953

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

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

30-1-5. Marriage solemnization -- Before unauthorized person -- Validity.

[~~No~~] (1) A marriage solemnized before [~~any~~] a person professing to have authority [~~therefor~~] to perform marriages shall not be [~~invalid~~] invalidated for [~~want~~] lack of [~~such~~] authority, if consummated in the belief of the parties or either of them that he had [~~such~~] authority and that they have been lawfully married.

(2) This section may not be construed to validate a marriage that is prohibited or void under Section 30-1-2.

Section 2. Section 30-1-9.1 is enacted to read:

30-1-9.1. Parental consent to prohibited marriage of minor -- Penalty.

A parent or guardian who knowingly consents or allows a minor child to enter into a marriage prohibited by law is guilty of a third degree felony.

Section 3. Section 30-1-13 is amended to read:

30-1-13. Solemnization without license -- Penalty.

If any person knowingly solemnizes a marriage without a license, and if either party is under 16 years of age, without a written authorization from a juvenile court, he is guilty of a [~~class B misdemeanor, and a penalty of imprisonment shall be not less than one month~~] third degree felony.

Section 4. Section 30-1-14 is amended to read:

30-1-14. Acting without authority -- Impersonation -- Forgery -- Penalty.

[~~If any person not authorized solemnizes a marriage under pretense of having authority, or falsely personates the father, mother or guardian in obtaining a license, or forges the name of the father, mother or guardian to~~] A person is guilty of a third degree felony if he:

(1) knowingly solemnizes a marriage in violation of either Section 30-1-6, 30-1-7, or 30-1-9.1;

(2) impersonates a parent or guardian of a minor to obtain a license for the minor to marry; or

(3) forges the name of a parent or guardian of a minor on any writing purporting to give consent to [~~such marriage, he shall be punished by imprisonment in the state prison not exceeding three years~~] a marriage of a minor.

Section 5. Section 30-1-15 is amended to read:

30-1-15. Solemnization of prohibited marriage -- Penalty.

(1) [~~If any authorized person~~] Any person who knowingly, with or without a license, solemnizes a marriage [~~such as is herein prohibited, he shall be imprisoned in the state prison not exceeding three years, or fined not exceeding $1,000, or be both so fined and imprisoned~~] of a minor prohibited by law is guilty of a third degree felony.

(2) Any person who knowingly, with or without a license, solemnizes a marriage between two adults prohibited by law is guilty of a class A misdemeanor.

CHAPTER 130
S. B. 147
Passed February 21, 2001
Approved March 15, 2001
Effective April 30, 2001

EXTENDING CHILD VISITATION FOR DIVORCED FAMILIES

Sponsor: Terry R. Spencer

This act modifies the visitation schedule for children aged three to five years by allowing a noncustodial parent to pick the child up from daycare for a specified evening visitation.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
30-3-35.5, as last amended by Chapter 13, Laws of Utah 1998

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

Section 1. Section 30-3-35.5 is amended to read:

30-3-35.5. Minimum schedule for visitation for children under five years of age.

(1) The visitation schedule in this section applies to children under five years old.

(2) If the parties do not agree to a visitation schedule, the following schedule shall be considered the minimum visitation to which the noncustodial parent and the child shall be entitled:

(a) for children under five months of age:

(i) six hours of visitation per week to be specified by the court or the noncustodial parent preferably:

(A) divided into three visitation periods; and

(B) in the custodial home, established child care setting, or other environment familiar to the child; and

(ii) two hours on holidays and in the years specified in Subsections 30-3-35(2)(f) through (i) preferably in the custodial home, the established child care setting, or other environment familiar to the child;

(b) for children five months of age or older, but younger than [~~10~~] ten months of age:

(i) nine hours of visitation per week to be specified by the court or the noncustodial parent preferably:

(A) divided into three visitation periods; and

(B) in the custodial home, established child care setting, or other environment familiar to the child; and

(ii) two hours on the holidays and in the years specified in Subsections 30-3-35(2)(f) through (i) preferably in the custodial home, the established child care setting, or other environment familiar to the child;

(c) for children [~~10~~] ten months of age or older, but younger than 18 months of age:

(i) one eight hour visit per week to be specified by the noncustodial parent or court;

(ii) one three hour visit per week to be specified by the noncustodial parent or court;

(iii) eight hours on the holidays and in the years specified in Subsections 30-3-5(2)(f) through (i); and

(iv) brief phone contact with the noncustodial parent at least two times per week;

(d) for children 18 months of age or older, but younger than three years of age:

(i) one weekday evening [~~for two hours~~] between 5:30 p.m. and 8:30 p.m. to be specified by the noncustodial parent or court, however if the child is being cared for during the day outside his regular place of residence, the noncustodial parent may, with advance notice to the custodial parent, pick up the child from the caregiver at an earlier time and return him to the custodial parent by 8:30 p.m.;

(ii) alternative weekends beginning on the first weekend after the entry of the decree from 6[~~:00~~] p.m. on Friday until 7[~~:00~~] p.m. on Sunday continuing each year;

(iii) visitation on holidays as specified in Subsections 30-3-35(2)(c) through (i);

(iv) extended visitation may be:

(A) two one-week periods, separated by at least four weeks, at the option of the noncustodial parent;

(B) one week shall be uninterrupted time for the noncustodial parent;

(C) the remaining week shall be subject to visitation for the custodial parent consistent with these guidelines; and

(D) the custodial parent shall have an identical one-week period of uninterrupted time for vacation; and

(v) brief phone contact with the noncustodial parent at least two times per week;

(e) for children three years of age or older, but younger than five years of age:

(i) one weekday evening between 5:30 p.m. and 8:30 p.m. to be specified by the noncustodial parent or court, however if the child is being cared for during the day outside his regular place of residence, the noncustodial parent may, with advance notice to the custodial parent, pick up the child from the caregiver at an earlier time and return him to the custodial parent by 8:30 p.m.;

(ii) alternative weekends beginning on the first weekend after the entry of the decree from 6[~~:00~~] p.m. on Friday until 7[~~:00~~] p.m. on Sunday continuing each year;

(iii) visitation on holidays as specified in Subsections 30-3-35(2)(c) through (i);

(iv) extended visitation with the noncustodial parent may be:

(A) two two-week periods, separated by at least four weeks, at the option of the noncustodial parent;

(B) one two-week period shall be uninterrupted time for the noncustodial parent;

(C) the remaining two-week period shall be subject to visitation for the custodial parent consistent with these guidelines; and

(D) the custodial parent shall have an identical two-week period of uninterrupted time for vacation; and

(v) brief phone contact with the noncustodial parent at least two times per week.

(3) A parent shall notify the other parent at least 30 days in advance of extended visitation or vacation weeks.

(4) Telephone contact shall be at reasonable hours and for reasonable duration.

CHAPTER 131
S. B. 149
Passed February 16, 2001
Approved March 15, 2001
Effective April 30, 2001

UTAH PROSECUTION COUNCIL AMENDMENTS

Sponsor: Ron Allen

This act amends the chapter creating the Utah Prosecution Council by adding the chair of the Utah Prosecutorial Assistants Association as a voting member of the council. This act also clarifies procedure for reimbursement of unusual prosecution expenses, amends procedure for city prosecutors to be appointed to the council, and clarifies the terms of newly appointed members.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
67-5a-1, as last amended by Chapter 354, Laws of Utah 1997
67-5a-2, as last amended by Chapter 243, Laws of Utah 1996

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

Section 1. Section 67-5a-1 is amended to read:

67-5a-1. Utah Prosecution Council -- Duties -- Membership.

(1) There is created within the Office of the Attorney General the Utah Prosecution Council, referred to as the council in this chapter.

(2) The council shall:

(a) provide training and continuing legal education for state and local prosecutors;

(b) provide assistance to local prosecutors; and

(c) as funds are available and as are budgeted for this purpose, provide reimbursement for unusual expenses related to prosecution for violations of state laws.

(3) The council shall be composed of [~~nine~~] ten members, selected as follows:

(a) the attorney general or [~~his~~] a designated representative;

(b) the commissioner of public safety or [~~his~~] a designated representative;

(c) four [~~elected and acting~~] currently serving county or district attorneys designated by the county or district attorneys' section of the Utah Association of Counties; a county or district attorney's term expires when a successor is designated by the county or district attorneys' section or when he is no longer [~~an elected and acting~~] serving as a county attorney or district attorney, whichever occurs first;

(d) two city prosecutors designated by the Utah [~~League of Cities and Towns~~] Municipal Attorneys Association; a city prosecutor's term expires when a successor is designated by the association or when he is no longer employed as a city prosecutor, whichever occurs first; [~~and~~]

(e) the [~~chairman~~] chair of the [~~Advisory~~] Board of Directors of the Statewide Association of [~~Prosecutors~~] Public Attorneys of Utah[~~.~~]; and

(f) the chair of the governing board of the Utah Prosecutorial Assistants Association.

Section 2. Section 67-5a-2 is amended to read:

67-5a-2. Terms -- Filling vacancies -- Chair.

(1) The term of each council member is four years, unless the term is earlier terminated by:

(a) the authority that designated the member; or

(b) the member ceasing to hold the office that qualified him for membership.

(2) A member whose term has expired may continue, for not more than four months, to serve as a council member until a successor is selected and qualified.

[~~(2)~~] (3) Council members may serve for more than one successive term.

[~~(3)~~] (4) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for [~~the unexpired~~] a full term that commences on the date of appointment.

[~~(4)~~] (5) The council shall elect by a majority vote one of its members as chair at its first meeting and then annually.

CHAPTER 132
S. B. 151
Passed February 21, 2001
Approved March 15, 2001
Effective July 1, 2001

UNIFORM COMMERCIAL CODE - TECHNICAL AMENDMENTS

Sponsor: Lyle W. Hillyard

This act modifies the Uniform Commercial Code - Secured Transactions by correcting cross references. This act takes effect on July 1, 2001.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
70A-9a-334 (Effective 07/01/01), as enacted by Chapter 252, Laws of Utah 2000

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

Section 1. Section 70A-9a-334 (Effective 07/01/01) is amended to read:

70A-9a-334 (Effective 07/01/01). Priority of security interests in fixtures and crops.

(1) A security interest under this chapter may be created in goods that are fixtures or may continue in goods that become fixtures. A security interest does not exist under this chapter in ordinary building materials incorporated into an improvement on land.

(2) This chapter does not prevent creation of an encumbrance upon fixtures under real property law.

(3) In cases not governed by Subsections (4) through (8), a security interest in fixtures is subordinate to a conflicting interest of an encumbrancer or owner of the related real property other than the debtor.

(4) Except as otherwise provided in Subsection (8), a perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property and:

(a) the security interest is a purchase-money security interest;

(b) the interest of the encumbrancer or owner arises before the goods become fixtures; and

(c) the security interest is perfected by a fixture filing before the goods become fixtures or within 20 days thereafter.

(5) A perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(a) the debtor has an interest of record in the real property or is in possession of the real property and the security interest:

(i) is perfected by a fixture filing before the interest of the encumbrancer or owner is of record; and

(ii) has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner;

(b) before the goods become fixtures, the security interest is perfected by any method permitted by this chapter and the fixtures are readily removable:

(i) factory or office machines;

(ii) equipment that is not primarily used or leased for use in the operation of the real property; or

(iii) replacements of domestic appliances that are consumer goods;

(c) the conflicting interest is a lien on the real property obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this chapter; or

(d) the security interest is:

(i) created in a manufactured home in a manufactured-home transaction; and

(ii) perfected pursuant to a statute described in Subsection 70A-9a-311(1)(b).

(6) A security interest in fixtures, whether or not perfected, has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(a) the encumbrancer or owner has, in an authenticated record, consented to the security interest or disclaimed an interest in the goods as fixtures; or

(b) the debtor has a right to remove the goods as against the encumbrancer or owner.

(7) The priority of the security interest under Subsection (6)(b) continues for a reasonable time if the debtor's right to remove the goods as against the encumbrancer or owner terminates.

(8) A mortgage is a construction mortgage to the extent that it secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land, if a recorded record of the mortgage so indicates. Except as otherwise provided in Subsections (5) and (6), a security interest in fixtures is subordinate to a construction mortgage if a record of the mortgage is recorded before the goods become fixtures and the goods become fixtures before the completion of the construction. A mortgage has this priority to the same extent as a construction mortgage to the extent that it is given to refinance a construction mortgage.

(9) A perfected security interest in crops growing on real property has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property.

Section 2. Effective date.

This act takes effect on July 1, 2001.

CHAPTER 133
H. B. 7
Passed February 16, 2001
Approved March 15, 2001
Effective June 1, 2001

RECODIFICATION AND AMENDMENTS OF REDEVELOPMENT AGENCIES STATUTES

Sponsor: Wayne A. Harper

This act modifies Special Districts provisions by repealing, reenacting, and rewriting statutory provisions relating to redevelopment agencies. The act modifies the procedure to create an agency and clarifies the distinction between an agency and the community that creates the agency. The act expands the group of agencies that qualify to use certain tax increment funds and modifies the role of the taxing entity committee. The act modifies and clarifies the process for adopting a project area plan and a project area budget and clarifies the uses of tax increment. The act eliminates a restriction on the adoption of a project area budget. The act modifies and clarifies definitions, including the definition of blight, and clarifies the distinctions among and the requirements and other provisions applicable to redevelopment, economic development, and education housing development. The act streamlines the provisions relating to agency bonds. The act clarifies notice and hearing provisions and provisions relating to owner's rights. This act takes effect June 1, 2001.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
9-4-704, as last amended by Chapter 286, Laws of Utah 2000
10-3-1303, as last amended by Chapter 280, Laws of Utah 1992
11-25-3, as last amended by Chapter 30, Laws of Utah 1992
11-25-5, as last amended by Chapter 30, Laws of Utah 1992
11-25-11, as last amended by Chapter 50, Laws of Utah 1993
51-2-8, as last amended by Chapter 198, Laws of Utah 1981
59-2-906.1, as last amended by Chapters 19 and 322, Laws of Utah 1998
59-2-924, as last amended by Chapters 22, 61, 141 and 199, Laws of Utah 2000

ENACTS:
17B-4-101, Utah Code Annotated 1953
17B-4-102, Utah Code Annotated 1953
17B-4-103, Utah Code Annotated 1953
17B-4-104, Utah Code Annotated 1953
17B-4-105, Utah Code Annotated 1953
17B-4-201, Utah Code Annotated 1953
17B-4-202, Utah Code Annotated 1953
17B-4-203, Utah Code Annotated 1953
17B-4-204, Utah Code Annotated 1953
17B-4-205, Utah Code Annotated 1953
17B-4-206, Utah Code Annotated 1953
17B-4-301, Utah Code Annotated 1953
17B-4-302, Utah Code Annotated 1953
17B-4-303, Utah Code Annotated 1953
17B-4-401, Utah Code Annotated 1953
17B-4-402, Utah Code Annotated 1953
17B-4-403, Utah Code Annotated 1953
17B-4-404, Utah Code Annotated 1953
17B-4-405, Utah Code Annotated 1953
17B-4-406, Utah Code Annotated 1953
17B-4-407, Utah Code Annotated 1953
17B-4-408, Utah Code Annotated 1953
17B-4-409, Utah Code Annotated 1953
17B-4-410, Utah Code Annotated 1953
17B-4-411, Utah Code Annotated 1953
17B-4-501, Utah Code Annotated 1953
17B-4-502, Utah Code Annotated 1953
17B-4-503, Utah Code Annotated 1953
17B-4-504, Utah Code Annotated 1953
17B-4-505, Utah Code Annotated 1953
17B-4-506, Utah Code Annotated 1953
17B-4-507, Utah Code Annotated 1953
17B-4-601, Utah Code Annotated 1953
17B-4-602, Utah Code Annotated 1953
17B-4-603, Utah Code Annotated 1953
17B-4-604, Utah Code Annotated 1953
17B-4-605, Utah Code Annotated 1953
17B-4-701, Utah Code Annotated 1953
17B-4-702, Utah Code Annotated 1953
17B-4-703, Utah Code Annotated 1953
17B-4-704, Utah Code Annotated 1953
17B-4-705, Utah Code Annotated 1953
17B-4-801, Utah Code Annotated 1953
17B-4-802, Utah Code Annotated 1953
17B-4-901, Utah Code Annotated 1953
17B-4-902, Utah Code Annotated 1953
17B-4-1001, Utah Code Annotated 1953
17B-4-1002, Utah Code Annotated 1953
17B-4-1003, Utah Code Annotated 1953
17B-4-1004, Utah Code Annotated 1953
17B-4-1005, Utah Code Annotated 1953
17B-4-1006, Utah Code Annotated 1953
17B-4-1007, Utah Code Annotated 1953
17B-4-1008, Utah Code Annotated 1953
17B-4-1009, Utah Code Annotated 1953
17B-4-1010, Utah Code Annotated 1953
17B-4-1011, Utah Code Annotated 1953
17B-4-1101, Utah Code Annotated 1953
17B-4-1102, Utah Code Annotated 1953
17B-4-1103, Utah Code Annotated 1953
17B-4-1104, Utah Code Annotated 1953
17B-4-1201, Utah Code Annotated 1953
17B-4-1202, Utah Code Annotated 1953
17B-4-1203, Utah Code Annotated 1953
17B-4-1204, Utah Code Annotated 1953
17B-4-1205, Utah Code Annotated 1953
17B-4-1206, Utah Code Annotated 1953
17B-4-1207, Utah Code Annotated 1953
17B-4-1208, Utah Code Annotated 1953
17B-4-1301, Utah Code Annotated 1953
17B-4-1302, Utah Code Annotated 1953
17B-4-1303, Utah Code Annotated 1953
17B-4-1304, Utah Code Annotated 1953
17B-4-1305, Utah Code Annotated 1953
17B-4-1306, Utah Code Annotated 1953
17B-4-1401, Utah Code Annotated 1953

REPEALS:
17A-2-1201, as last amended by Chapter 50, Laws of Utah 1993
17A-2-1202, as last amended by Chapter 320, Laws of Utah 1995
17A-2-1203, as last amended by Chapter 50, Laws of Utah 1993
17A-2-1204, as repealed and reenacted by Chapter 50, Laws of Utah 1993
17A-2-1205, as last amended by Chapter 50, Laws of Utah 1993
17A-2-1206, as last amended by Chapter 249, Laws of Utah 1996
17A-2-1207, as repealed and reenacted by Chapter 50, Laws of Utah 1993
17A-2-1208, as repealed and reenacted by Chapter 50, Laws of Utah 1993
17A-2-1209, as repealed and reenacted by Chapter 50, Laws of Utah 1993
17A-2-1210, as last amended by Chapter 50, Laws of Utah 1993
17A-2-1210.5, as enacted by Chapter 50, Laws of Utah 1993
17A-2-1211, as last amended by Chapter 249, Laws of Utah 1996
17A-2-1212, as last amended by Chapter 183, Laws of Utah 1996
17A-2-1213, as last amended by Chapter 249, Laws of Utah 1996
17A-2-1214, as last amended by Chapter 50, Laws of Utah 1993
17A-2-1215, as last amended by Chapter 50, Laws of Utah 1993
17A-2-1216, as last amended by Chapter 50, Laws of Utah 1993
17A-2-1217, as last amended by Chapter 50, Laws of Utah 1993
17A-2-1218, as last amended by Chapter 320, Laws of Utah 1995
17A-2-1219, as renumbered and amended by Chapter 186, Laws of Utah 1990
17A-2-1220, as last amended by Chapter 50, Laws of Utah 1993
17A-2-1221, as renumbered and amended by Chapter 186, Laws of Utah 1990
17A-2-1222, as last amended by Chapter 249, Laws of Utah 1996
17A-2-1223, as renumbered and amended by Chapter 186, Laws of Utah 1990
17A-2-1224, as renumbered and amended by Chapter 186, Laws of Utah 1990
17A-2-1225, as last amended by Chapter 249, Laws of Utah 1996
17A-2-1226, as renumbered and amended by Chapter 186, Laws of Utah 1990
17A-2-1227, as last amended by Chapter 50, Laws of Utah 1993
17A-2-1228, as last amended by Chapter 320, Laws of Utah 1995
17A-2-1229, as last amended by Chapter 80, Laws of Utah 1996
17A-2-1230, as last amended by Chapter 50, Laws of Utah 1993
17A-2-1231, as renumbered and amended by Chapter 186, Laws of Utah 1990
17A-2-1232, as last amended by Chapter 10, Laws of Utah 1997
17A-2-1233, as renumbered and amended by Chapter 186, Laws of Utah 1990
17A-2-1234, as renumbered and amended by Chapter 186, Laws of Utah 1990
17A-2-1235, as renumbered and amended by Chapter 186, Laws of Utah 1990
17A-2-1236, as last amended by Chapter 50, Laws of Utah 1993
17A-2-1237, as renumbered and amended by Chapter 186, Laws of Utah 1990
17A-2-1238, as last amended by Chapter 320, Laws of Utah 1995
17A-2-1239, as last amended by Chapter 50, Laws of Utah 1993
17A-2-1240, as last amended by Chapter 50, Laws of Utah 1993
17A-2-1241, as renumbered and amended by Chapter 186, Laws of Utah 1990
17A-2-1242, as last amended by Chapter 50, Laws of Utah 1993
17A-2-1243, as last amended by Chapter 50, Laws of Utah 1993
17A-2-1244, as renumbered and amended by Chapter 186, Laws of Utah 1990
17A-2-1245, as renumbered and amended by Chapter 186, Laws of Utah 1990
17A-2-1246, as renumbered and amended by Chapter 186, Laws of Utah 1990
17A-2-1247, as last amended by Chapters 21 and 194, Laws of Utah 1999
17A-2-1247.5, as last amended by Chapters 21 and 194, Laws of Utah 1999
17A-2-1248, as last amended by Chapter 50, Laws of Utah 1993
17A-2-1249, as renumbered and amended by Chapter 186, Laws of Utah 1990
17A-2-1250, as last amended by Chapter 50, Laws of Utah 1993
17A-2-1250.5, as enacted by Chapter 320, Laws of Utah 1995
17A-2-1251, as last amended by Chapter 50, Laws of Utah 1993
17A-2-1252, as last amended by Chapter 50, Laws of Utah 1993
17A-2-1253, as last amended by Chapter 50, Laws of Utah 1993
17A-2-1254, as last amended by Chapter 50, Laws of Utah 1993
17A-2-1255, as renumbered and amended by Chapter 186, Laws of Utah 1990
17A-2-1256, as last amended by Chapter 80, Laws of Utah 1996
17A-2-1257, as renumbered and amended by Chapter 186, Laws of Utah 1990
17A-2-1258, as last amended by Chapter 50, Laws of Utah 1993
17A-2-1259, as last amended by Chapter 50, Laws of Utah 1993
17A-2-1260, as last amended by Chapter 194, Laws of Utah 1999
17A-2-1261, as enacted by Chapter 50, Laws of Utah 1993
17A-2-1262, as enacted by Chapter 50, Laws of Utah 1993
17A-2-1263, as enacted by Chapter 50, Laws of Utah 1993

17A-2-1264, as enacted by Chapter 279, Laws of Utah 1998

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

Section 1. Section 9-4-704 is amended to read:

9-4-704. Distribution of fund moneys.

(1) The executive director shall:

(a) make grants and loans from the fund for any of the activities authorized by Section 9-4-705, as recommended by the board;

(b) establish the criteria by which loans and grants will be made; and

(c) determine the order in which projects will be funded.

(2) The executive director shall distribute any federal moneys contained in the fund according to the procedures, conditions, and restrictions placed upon the use of those moneys by the federal government.

(3) (a) The executive director shall distribute any funds received pursuant to Section [~~17A-2-1264~~] 17B-4-1010 to pay the costs of providing income targeted housing within the community that created the redevelopment agency under Title [~~17A~~] 17B, Chapter [~~2~~] 4, [~~Part 12, Utah Neighborhood Development~~] Redevelopment Agencies Act.

(b) As used in Subsection (3)(a):

(i) "Community" has the meaning as defined in Subsection [~~17A-2-1202(5)~~] 17B-4-102(1).

(ii) "Income targeted housing" has the meaning as defined in Subsection [~~17A-2-1264~~] 17B-4-1010(1)[~~(g)~~].

(4) Except federal money and money received under Section [~~17A-2-1264~~] 17B-4-1010, the executive director shall distribute all other moneys from the fund according to the following requirements:

(a) Not less than 30% of all fund moneys shall be distributed to rural areas of the state.

(b) At least 50% of the moneys in the fund shall be distributed as loans to be repaid to the fund by the entity receiving them.

(i) (A) Of the fund moneys distributed as loans, at least 50% shall be distributed to benefit persons whose annual income is at or below 50% of the median family income for the state.

(B) The remaining loan moneys shall be distributed to benefit persons whose annual income is at or below 80% of the median family income for the state.

(ii) The executive director or his designee shall lend moneys in accordance with this Subsection (4) at a rate based upon the borrower's ability to pay.

(c) Any fund moneys not distributed as loans shall be distributed as grants.

(i) At least 90% of the fund moneys distributed as grants shall be distributed to benefit persons whose annual income is at or below 50% of the median family income for the state.

(ii) The remaining fund moneys distributed as grants may be used by the executive director to obtain federal matching funds or for other uses consistent with the intent of this part, including the payment of reasonable loan servicing costs, but no more than 3% of the revenues of the fund may be used to offset other department or board administrative expenses.

(5) The executive director may:

(a) enact rules to establish procedures for the grant and loan process by following the procedures and requirements of Title 63, Chapter 46a, Utah Administrative Rulemaking Act; and

(b) service or contract, pursuant to Title 63, Chapter 56, Utah Procurement Code, for the servicing of loans made by the fund.

Section 2. Section 10-3-1303 is amended to read:

10-3-1303. Definitions.

As used in this part:

(1) "Appointed officer" means any person appointed to any statutory office or position or any other person appointed to any position of employment with a city or with a redevelopment agency under Title 17B, Chapter 4, Redevelopment Agencies Act. Appointed officers include, but are not limited to, persons serving on special, regular, or full-time committees, agencies, or boards whether or not such persons are compensated for their services. The use of the word "officer" in this part is not intended to make appointed persons or employees "officers" of the municipality.

(2) "Assist" means to act, or offer or agree to act, in such a way as to help, represent, aid, advise, furnish information to, or otherwise provide assistance to a person or business entity, believing that such action is of help, aid, advice, or assistance to such person or business entity and with the intent to assist such person or business entity.

(3) "Business entity" means a sole proprietorship, partnership, association, joint venture, corporation, firm, trust, foundation, or other organization or entity used in carrying on a business.

(4) "Compensation" means anything of economic value, however designated, which is paid, loaned, granted, given, donated, or transferred to any person or business entity by anyone other than the governmental employer for or in consideration of personal services, materials, property, or any other thing whatsoever.

(5) "Elected officer" means any person elected or appointed to the office of mayor, commissioner, or council member.

(6) "Improper disclosure" means disclosure of private, controlled, or protected information to any person who does not have both the right and the need to receive the information.

(7) "Municipal employee" means a person who is not an elected or appointed officer who is employed on a full or part-time basis by a municipality or by a redevelopment agency under Title 17B, Chapter 4, Redevelopment Agencies Act.

(8) "Private, controlled, or protected information" means information classified as private, controlled, or protected under Title 63, Chapter 2, Government Records Access and Management Act or other applicable provision of law.

(9) "Substantial interest" means the ownership, either legally or equitably, by an individual, his spouse, or his minor children, of at least 10% of the outstanding shares of a corporation or 10% interest in any other business entity.

Section 3. Section 11-25-3 is amended to read:

11-25-3. Definitions.

As used in this act:

(1) "Bonds" mean any bonds, notes, interim certificates, debentures, or other obligations issued by an agency pursuant to this part and which are payable exclusively from the revenues, as defined in Subsection (9), and from any other funds specified in this part upon which the bonds may be made a charge and from which they are payable.

(2) "Citizen participation" means action by the agency to provide persons who will be affected by residential rehabilitation financed under the provisions of this part with opportunities to be involved in planning and carrying out the residential rehabilitation program. "Citizen participation" shall include, but not be limited to, all of the following:

(a) Holding a public meeting prior to considering selection of the area for designation.

(b) Consultation with representatives of owners of property in, and residents of, a residential rehabilitation area, in developing plans for public improvements and implementation of the residential rehabilitation program.

(c) Dissemination of information relating to the time and location of meetings, boundaries of the proposed residential rehabilitation area, and a general description of the proposed residential rehabilitation program.

Public meetings and consultations shall be conducted by an official designated by the agency. Public meetings shall be held at times and places convenient to residents and property owners.

(3) "Financing" means the lending of moneys or any other thing of value for the purpose of residential rehabilitation.

(4) "Agency" means a redevelopment agency functioning pursuant to [~~Section 17A-2-1203~~] Title 17B, Chapter 4, Redevelopment Agencies Act.

(5) "Participating party" means any person, company, corporation, partnership, firm, agency, political subdivision of the state, or other entity or group of entities requiring financing for residential rehabilitation pursuant to the provisions of this part. No elective officer of the state or any of its political subdivisions shall be eligible to be a participating party under the provision of this part.

(6) "Residential rehabilitation" means the construction, reconstruction, renovation, replacement, extension, repair, betterment, equipping, developing, embellishing, or otherwise improving residences consistent with standards of strength, effectiveness, fire resistance, durability, and safety, so that the structures are satisfactory and safe to occupy for residential purposes and are not conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime because of any one or more of the following factors:

(a) defective design and character of physical construction;

(b) faulty interior arrangement and exterior spacing;

(c) high density of population and overcrowding;

(d) inadequate provision for ventilation, light, sanitation, open spaces, and recreation facilities;

(e) age, obsolescence, deterioration, dilapidation, mixed character, or shifting of uses; and

(f) economic dislocation, deterioration, or disuse, resulting from faulty planning.

(7) "Residence" means a residential structure in residential rehabilitation areas. It also means a commercial structure which, in the judgment of the agency, is an integral part of a residential neighborhood.

(8) "Rehabilitation standards" mean the applicable local or state standards for the rehabilitation of buildings located in residential rehabilitation areas, including any higher standards adopted by the agency as part of its residential rehabilitation financing program.

(9) "Revenues" mean all amounts received as repayment of principal, interest, and all other charges received for, and all other income and receipts derived by, the agency from the financing of residential rehabilitation, including moneys deposited in a sinking, redemption, or reserve fund or other fund to secure the bonds or to provide for the payment of the principal of, or interest on, the bonds and such other moneys as the legislative body may, in its discretion, make available therefor.

(10) "Residential rehabilitation area" means the geographical area designated by the agency as one for inclusion in a comprehensive residential rehabilitation financing program pursuant to the provisions of this act.

Section 4. Section 11-25-5 is amended to read:

11-25-5. Bonds or notes -- Issuance -- Purposes -- Payment -- Maturity of bond anticipation notes.

An agency may, from time to time, issue its negotiable bonds or notes for the purpose of

financing residential rehabilitation as authorized by this act and for the purpose of funding or refunding these bonds or notes in the same manner as it may issue other bonds or notes as provided in [~~Sections 17A-2-1231 through 17A-2-1237 and Sections 17A-2-1243 through 17A-2-1246~~] Title 17B, Chapter 4, Part 12, Bonds. Every issue of its bonds shall be a special obligation of the agency payable from all or any part of the revenues specified in the act or funds legally received by the agency. In anticipation of the sale of the bonds, the agency may issue negotiable bond anticipation notes in accordance with Section 11-14-19.5, and may renew such notes from time to time. Bond anticipation notes may be paid from the proceeds of sale of the bonds of the agency in anticipation of which they were issued. Bond anticipation notes and agreements relating thereto and the resolution or resolutions authorizing the notes and agreements may obtain any provisions, conditions, or limitations which a bond, agreement relating thereto, or bond resolution of the agency may contain except that any note or renewal thereof shall mature at a time not later than five years from the date of the issuance of the original note.

Section 5. Section 11-25-11 is amended to read:

11-25-11. Comprehensive financing program ordinance -- Contents.

Prior to the issuance of any bonds or bond anticipation notes of the agency for residential rehabilitation, the agency shall by ordinance adopt a comprehensive residential rehabilitation financing program, including:

(1) Criteria for selection of residential rehabilitation areas by the agency including findings by the agency that:

(a) There are a substantial number of deteriorating structures in the area which do not conform to community standards for decent, safe, sanitary housing.

(b) Financial assistance from the agency for residential rehabilitation is necessary to arrest the deterioration of the area.

(c) Financing of residential rehabilitation in the area is economically feasible. These findings are not required, however, when the residential rehabilitation area is located within the boundaries of a project area covered by a project area redevelopment plan adopted in accordance with Section [~~17A-2-1226~~] 17B-4-408.

(2) Procedures for selection of residential rehabilitation areas by the agency including:

(a) Provisions for citizen participation in selection of residential rehabilitation areas.

(b) Provisions for a public hearing by the agency prior to selection of any particular residential rehabilitation area.

(3) A commitment that rehabilitation standards will be enforced on each residence for which financing is provided.

(4) Guidelines for financing residential rehabilitation which shall be subject to the following limitations:

(a) Outstanding loans on the property to be rehabilitated including the amount of the loans for rehabilitation, shall not exceed 80% of the anticipated after-rehabilitation value of the property to be rehabilitated, except that the agency may authorize loans of up to 95% of the anticipated after-rehabilitation value of the property if loans are made for the purpose of rehabilitating the property for residential purposes, there is demonstrated need for such higher limit, and there is a high probability that the value of the property will not be impaired during the term of the loan.

(b) The maximum repayment period for residential rehabilitation loans shall be 20 years or 3/4 of the economic life of the property, whichever is less.

(c) The maximum amount loan for rehabilitation for each dwelling unit and for each commercial unit which is, or is part of a "residence" as defined in this chapter, shall be established by resolution of the agency.

Section 6. Section 17B-4-101 is enacted to read:

CHAPTER 3. RESERVED

CHAPTER 4. REDEVELOPMENT AGENCIES ACT

Part 1. General Provisions

17B-4-101. Title.

This chapter is known as the "Redevelopment Agencies Act."

Section 7. Section 17B-4-102 is enacted to read:

17B-4-102. Definitions.

(1) "Agency" means a separate body corporate and politic, created under Section 17B-4-201, that is a political subdivision of the state, that is created to undertake or promote redevelopment, economic development, or education housing development, or any combination of them, as provided in this chapter, and whose geographic boundaries are coterminous with:

(a) for an agency created by a county, the unincorporated area of the county; and

(b) for an agency created by a city or town, the boundaries of the city or town.

(2) "Assessment property owner" or "assessment owner of property" means the owner of real property as shown on the assessment roll of the county in which the property is located, equalized as of the previous November 1.

(3) "Assessment roll" has the meaning as defined in Section 59-2-102.

(4) "Base taxable value" means the taxable value of the property within a project area from which tax increment will be collected, as shown upon the assessment roll last equalized before:

(a) for a pre-July 1, 1993 project area plan, the effective date of the project area plan; or

(b) for a post-June 30, 1993 project area plan:

(i) the date of the taxing entity committee's approval of the first project area budget; or

(ii) if no taxing entity committee approval is required for the project area budget, the later of:

(A) the date the project area plan is adopted by the community legislative body; and

(B) the date the agency adopts the first project area budget.

(5) "Blight" or "blighted" means the condition of an area that meets the requirements of Subsection 17B-4-604(1).

(6) "Blight hearing" means a public hearing under Subsection 17B-4-601(3) and Section 17B-4-603 regarding the existence or nonexistence of blight within the proposed redevelopment project area.

(7) "Blight study" means a study to determine the existence or nonexistence of blight within a survey area as provided in Section 17B-4-602.

(8) "Board" means the governing body of an agency, as provided in Section 17B-4-203.

(9) "Budget hearing" means the public hearing on a draft project area budget required under Subsection 17B-4-501(2)(e).

(10) "Community" means a county, city, or town.

(11) "Economic development" means to promote the creation or retention of public or private jobs within the state through:

(a) planning, design, development, construction, rehabilitation, business relocation, or any combination of these, within part or all of a project area; and

(b) the provision of office, industrial, manufacturing, warehousing, distribution, parking, public, or other facilities, or other improvements that benefit the state or a community.

(12) "Education housing development" means the provision of high density housing within a project area that is adjacent to a public or private institution of higher education.

(13) "Plan hearing" means the public hearing on a draft project area plan required under Subsection 17B-4-402(1)(e).

(14) "Post-June 30, 1993 project area plan" means a redevelopment, economic development, or education housing development project area plan adopted on or after July 1, 1993, whether or not amended subsequent to its adoption.

(15) "Pre-July 1, 1993 project area plan" means a redevelopment project area plan adopted before July 1, 1993, whether or not amended subsequent to its adoption.

(16) "Private," with respect to real property, means:

(a) not owned by the United States or any agency of the federal government, a public entity, or any other governmental entity; and

(b) not dedicated to public use.

(17) "Project area" means the geographic area described in a project area plan or draft project area plan where the redevelopment, economic development, or education housing development set forth in the project area plan or draft project area plan takes place or is proposed to take place.

(18) "Project area budget" means a multiyear projection of annual or cumulative revenues and expenses and other fiscal matters pertaining to a redevelopment, economic development, or education housing development project area that includes:

(a) the base taxable value of property in the project area;

(b) the projected tax increment expected to be generated within the project area;

(c) the amount of tax increment expected to be shared with other taxing entities;

(d) the amount of tax increment expected to be used to implement the project area plan, including the estimated amount of tax increment to be used for land acquisition, public improvements, infrastructure improvements, and loans, grants, or other incentives to private and public entities;

(e) the tax increment expected to be used to cover the cost of administering the project area plan;

(f) if the area from which tax increment is to be collected is less than the entire project area, a legal description of the portion of the project area from which tax increment will be collected; and

(g) for property that the agency owns and expects to sell, the expected total cost of the property to the agency and the expected selling price.

(19) "Project area plan" means a written plan under Part 4, Project Area Plan, that, after its effective date, guides and controls the redevelopment, economic development, or education housing development activities within the project area.

(20) "Property tax" includes privilege tax and each levy on an ad valorem basis on tangible or intangible personal or real property.

(21) "Public entity" means:

(a) the state, including any of its departments or agencies; or

(b) a political subdivision of the state, including a county, city, town, school district, special district, local district, or interlocal cooperation entity.

(22) "Public input hearing" means the public hearing required under Subsection 17B-4-402(1)(h)(ii) regarding a proposed redevelopment project.

(23) "Record property owner" or "record owner of property" means the owner of real property as shown on the records of the recorder of the county in which the property is located and includes a purchaser under a real estate contract if the contract is recorded in the office of the recorder of the county in which the property is located or the purchaser gives written notice of the real estate contract to the agency.

(24) "Redevelopment" means the development activities under a project area plan within a redevelopment project area, including:

(a) planning, design, development, demolition, clearance, construction, rehabilitation, or any combination of these, of part or all of a project area;

(b) the provision of residential, commercial, industrial, public, or other structures or spaces, including recreational and other facilities incidental or appurtenant to them;

(c) altering, improving, modernizing, demolishing, reconstructing, or rehabilitating, or any combination of these, existing structures in a project area;

(d) providing open space, including streets and other public grounds and space around buildings;

(e) providing public or private buildings, infrastructure, structures, and improvements; and

(f) providing improvements of public or private recreation areas and other public grounds.

(25) "Survey area" means an area designated by a survey area resolution for study to determine whether one or more redevelopment projects within the area are feasible.

(26) "Survey area resolution" means a resolution adopted by the agency board under Subsection 17B-4-401(1)(a) designating a survey area.

(27) (a) "Tax increment" means, except as provided in Subsection (27)(b), the difference between:

(i) the amount of property tax revenues generated each tax year by all taxing entities from the area within a project area designated in the project area plan as the area from which tax increment is to be collected, using the current assessed value of the property; and

(ii) the amount of property tax revenues that would be generated from that same area using the base taxable value of the property.

(b) "Tax increment" does not include taxes levied and collected under Section 59-2-906.1 on or after January 1, 1994 upon the taxable property in the project area unless:

(i) the project area plan was adopted before May 4, 1993, whether or not the project area plan was subsequently amended; and

(ii) the taxes were pledged to support bond indebtedness or other contractual obligations of the agency.

(28) "Taxing entity" means a public entity that levies a tax on property within a project area or proposed project area.

(29) "Taxing entity committee" means a committee representing the interests of taxing entities, created as provided in Section 17B-4-1002.

(30) "Trust fund board" means the Olene Walker Housing Trust Fund Board, established under Title 9, Chapter 4, Part 7, Olene Walker Housing Trust Fund.

Section 8. Section 17B-4-103 is enacted to read:

17B-4-103. Public entities may assist with redevelopment, economic development, or education housing development project.

(1) In order to assist and cooperate in the planning, undertaking, construction, or operation of a redevelopment, economic development, or education housing development project located within the area in which it is authorized to act, a public entity may:

(a) (i) cause to be furnished adjacent to or in connection with a redevelopment, economic development, or education housing development project:

(A) parks, playgrounds, or other recreational facilities;

(B) community, educational, water, sewer, or drainage facilities; or

(C) any other works which the public entity is otherwise empowered to undertake;

(ii) furnish, dedicate, close, vacate, pave, install, grade, regrade, plan, or replan streets, roads, roadways, alleys, sidewalks, or other places over which it has authority;

(iii) plan or replan, zone or rezone any part of a project area and make any legal exceptions from building regulations and ordinances;

(iv) purchase or legally invest in any of the bonds of an agency and exercise all of the rights of any holder of the bonds;

(v) enter into an agreement with another public entity concerning action to be taken pursuant to any of the powers granted in this chapter; and

(vi) do any and all things necessary to aid or cooperate in the planning or carrying out of a redevelopment, economic development, or education housing development project; and

(b) after 15 days public notice:

(i) (A) purchase or otherwise acquire property or lease property from an agency; or

(B) sell, grant, convey, or otherwise dispose of the public entity's property or lease the public entity's property to an agency;

(ii) in connection with the project area plan, become obligated to the extent authorized and funds have been made available to make required

improvements or construct required structures; and

(iii) lend, grant, or contribute funds to an agency for a redevelopment, economic development, or education housing development project.

(2) Notwithstanding any law to the contrary, an agreement under Subsection (1)(a)(v) may extend over any period.

Section 9. Section 17B-4-104 is enacted to read:

17B-4-104. Agency funds to be accounted for separately from community funds.

Agency funds shall be accounted for separately from the funds of the community that created the agency.

Section 10. Section 17B-4-105 is enacted to read:

17B-4-105. Limitations on applicability of chapter -- Amendment of previously adopted project area plan.

(1) Nothing in this chapter may be construed to:

(a) impose a requirement or obligation on an agency with respect to a project area plan adopted or an agency action taken before June 1, 2001 that was not imposed by the law in effect at the time the project area plan was adopted or the action taken;

(b) prohibit an agency from taking an action on or after June 1, 2001 that:

(i) was allowed by the law in effect immediately before June 1, 2001;

(ii) is permitted or required under the project area plan adopted before June 1, 2001; and

(iii) is not explicitly prohibited under this chapter;

(c) revive any right to challenge any action of the agency that had already expired; or

(d) require a project area plan adopted before June 1, 2001 to contain a provision that was not required by the law in effect at the time the project area plan was adopted.

(2) (a) A project area plan adopted before June 1, 2001 may be amended as provided in this chapter.

(b) Unless explicitly prohibited by this chapter, an amendment under Subsection (2)(a) may include a provision that is allowed under this chapter but that was not required or allowed by the law in effect before June 1, 2001.

Section 11. Section 17B-4-201 is enacted to read:

Part 2. Agency Creation, Powers, and Board

17B-4-201. Creation of agency -- Certification of incorporation -- Notice of creation.

(1) Subject to Subsection (2), a community may, by ordinance adopted by its legislative body, create an agency.

(2) (a) Within ten days after adopting a resolution under Subsection (1), the community legislative body shall cause a notice of the adoption of the resolution, with a copy of the resolution, to be filed with the lieutenant governor.

(b) Within ten days after receiving the notice under Subsection (2)(a), the lieutenant governor shall issue a certificate of incorporation for the agency and send a copy of the certificate to the community legislative body.

(c) Upon the lieutenant governor's issuance of the certificate of incorporation, the agency is created and incorporated.

(3) Within 20 days after the issuance of the certificate of incorporation, the agency shall cause a notice of the agency's creation and incorporation, with a copy of the certificate of incorporation attached, to be filed with the State Tax Commission and the state auditor.

Section 12. Section 17B-4-202 is enacted to read:

17B-4-202. Agency powers.

(1) An agency may:

(a) sue and be sued;

(b) enter into contracts generally;

(c) buy, obtain an option upon, or otherwise acquire any interest in real or personal property, including acquiring property by eminent domain as provided in this chapter;

(d) sell, convey, grant, dispose of by gift, or otherwise dispose of any interest in real or personal property;

(e) enter into a lease agreement on real or personal property, either as lessee or lessor;

(f) provide for redevelopment, economic development, and education housing development as provided in this chapter;

(g) receive tax increment as provided in this chapter;

(h) encourage the continued use of existing buildings in the project area;

(i) if disposing of or leasing land, retain controls or establish restrictions and covenants running with the land consistent with the project area plan;

(j) accept financial or other assistance from any public or private source for the agency's activities, powers, and duties, and expend any funds so received for any of the purposes of this chapter;

(k) borrow money or accept financial or other assistance from the federal government, a public entity, or any other source for any of the purposes of this chapter and comply with any conditions of such loan or assistance; and

(l) issue bonds to finance the undertaking of any redevelopment, economic development, or education housing development or for any of the agency's other purposes, including:

(i) reimbursing an advance made by the agency or by a public entity or the federal government to the agency;

(ii) refunding bonds to pay or retire bonds previously issued by the agency; and

(iii) refunding bonds to pay or retire bonds previously issued by the community that created the agency for expenses associated with a redevelopment, economic development, or education housing development project; and

(m) transact other business and exercise all other powers provided for in this chapter.

(2) The establishment of controls or restrictions and covenants under Subsection (1)(i) is a public purpose.

Section 13. Section 17B-4-203 is enacted to read:

17B-4-203. Agency board -- Quorum.

(1) The governing body of an agency is a board consisting of the current members of the legislative body of the community that created the agency.

(2) A majority of board members constitutes a quorum for the transaction of agency business.

(3) An agency board may not adopt a resolution, pass a motion, or take any other official board action without the concurrence of at least a majority of the board members present at a meeting at which a quorum is present.

Section 14. Section 17B-4-204 is enacted to read:

17B-4-204. Redevelopment, economic development, or education housing development by an adjoining agency -- Requirements.

(1) An agency may, by resolution of its board, authorize another agency to conduct redevelopment, economic development, or education housing development activities in a project area within the authorizing agency's boundaries if the project area is contiguous to the boundaries of the other agency.

(2) If an agency board adopts a resolution under Subsection (1) authorizing another agency to undertake redevelopment, economic development, or education housing development activities in the authorizing agency's project area:

(a) the other agency may act in all respects as if the project area were within its own boundaries;

(b) the board of the other agency has all the rights, powers, and privileges with respect to the project area as if it were within its own boundaries; and

(c) the other agency may be paid tax increment funds to the same extent as if the project area were within its own boundaries.

(3) Each project area plan approved by the other agency for the project area that is the subject of a resolution under Subsection (1) shall be:

(a) reviewed by the planning commission of the community in which the project area is located; and

(b) adopted by ordinance of the legislative body of the community in which the project area is located.

Section 15. Section 17B-4-205 is enacted to read:

17B-4-205. Change of project area from one community to another.

(1) For purposes of this section:

(a) "New agency" means the agency created by the new community.

(b) "New community" means the community in which the relocated project area is located after the change in community boundaries takes place.

(c) "Original agency" means the agency created by the original community.

(d) "Original community" means the community that adopted the project area plan that created the project area that has been relocated.

(e) "Relocated" means that a project area under a project area plan adopted by the original community has ceased to be located within that community and has become part of a new community because of a change in community boundaries through:

(i) a county or municipal annexation;

(ii) the creation of a new county;

(iii) a municipal incorporation, consolidation, dissolution, or boundary adjustment; or

(iv) any other action resulting in a change in community boundaries.

(2) If a project area under a project area plan adopted by a community becomes relocated, the project area shall, for purposes of this chapter, be considered to remain in the original community until:

(a) the new community has created an agency;

(b) the original agency has transferred or assigned to the new agency the original agency's real property, rights, indebtedness, obligations, tax increment, and other assets and liabilities related to the relocated project area; and

(c) the new agency by resolution approves the original agency's project area plan as the project area plan of the new agency; and

(d) the new community by ordinance adopts the project area plan that was approved by the new agency.

Section 16. Section 17B-4-206 is enacted to read:

17B-4-206. Acquisition of property of an agency board member or officer -- Use of eminent domain.

(1) An agency may not acquire property or an interest in property from an agency board member or officer unless:

(a) the board member or officer consents; and

(b) the agency uses eminent domain.

(2) (a) In addition to the power of eminent domain that an agency may exercise under Part 11, Eminent Domain in Redevelopment Project Area, an agency may use eminent domain to acquire any interest in property that is owned by an agency board member or officer and located within a redevelopment, economic development, or education housing development project area.

(b) The requirement under Subsection 17B-4-1101(1)(a) of a finding of blight does not apply to an agency's acquisition through eminent domain of property or an interest in property owned by an agency board member or officer in a redevelopment project area.

Section 17. Section 17B-4-301 is enacted to read:

Part 3. Agency Property

17B-4-301. Agency property exempt from taxation -- Exception.

(1) Agency property acquired or held for purposes of this chapter is declared to be public property used for essential public and governmental purposes and, subject to Subsection (2), is exempt from all taxes of a public entity.

(2) The exemption in Subsection (1) does not apply to property that the agency leases to a lessee that is not entitled to a tax exemption with respect to the property.

Section 18. Section 17B-4-302 is enacted to read:

17B-4-302. Agency property exempt from levy and execution sale -- Judgment against community or agency.

(1) All agency property, including funds the agency owns or holds for purposes of this chapter, are exempt from levy and execution sale, and no execution or judicial process may issue against agency property.

(2) A judgment against the community that created the agency may not be a charge or lien upon agency property.

(3) A judgment against an agency may not be a charge or lien upon property of the community that created the agency.

Section 19. Section 17B-4-303 is enacted to read:

17B-4-303. Summary of sale or other disposition of agency property -- Publication of summary.

(1) Upon the agency's sale, conveyance, grant, or other disposition of real property, the agency shall prepare a summary of the material provisions of the disposition.

(2) Each summary under Subsection (1) shall be a matter of public record.

(3) The agency shall publish each summary under Subsection (1) at least once in a newspaper of general circulation in the agency's boundaries no later than one month after the disposition is concluded.

Section 20. Section 17B-4-401 is enacted to read:

Part 4. Project Area Plan

17B-4-401. Resolution designating survey area or authorizing the preparation of a draft project area plan -- Request to adopt resolution.

(1) An agency board may begin the process of adopting a project area plan by adopting a resolution that:

(a) for a proposed redevelopment project area plan:

(i) designates an area located within the agency's boundaries as a survey area;

(ii) contains a statement that the survey area requires study to determine whether:

(A) one or more redevelopment projects within the survey area are feasible; and

(B) blight exists within the survey area; and

(iii) contains a description or map of the boundaries of the survey area; or

(b) for a proposed economic development or education housing development project area plan, authorizes the preparation of a draft project area plan.

(2) (a) Any person or any group, association, corporation, or other entity may submit a written request to the board to adopt a resolution under Subsection (1).

(b) A request under Subsection (2)(a) may include plans showing the redevelopment, economic development, or education housing development proposed for an area within the agency's boundaries.

(c) The board may, in its sole discretion, grant or deny a request under Subsection (2)(a).

Section 21. Section 17B-4-402 is enacted to read:

17B-4-402. Process for adopting project area plan -- Prerequisites -- Restrictions.

(1) In order to adopt a project area plan, after adopting a resolution under Subsection 17B-4-401(1) the agency shall:

(a) prepare a draft of a project area plan and conduct any examination, investigation, and negotiation regarding the project area plan that the agency considers appropriate;

(b) request input on the draft project area plan from the planning commission of the community in which the proposed project area is located;

(c) make the draft project area plan available to the public at the agency's offices during normal business hours;

(d) provide notice of the plan hearing as provided in Sections 17B-4-702 and 17B-4-704;

(e) hold a public hearing on the draft project area plan and, at that public hearing:

(i) allow public comment on:

(A) the draft project area plan; and

(B) whether the draft project area plan should be revised, approved, or rejected; and

(ii) receive all written and hear all oral objections to the draft project area plan;

(f) before holding the plan hearing, provide an opportunity for the State Board of Education and each taxing entity that levies a tax on property within the proposed project area to consult with the agency regarding the draft project area plan;

(g) if applicable, hold the election required under Subsection 17B-4-406(3);

(h) for a redevelopment project area plan:

(i) comply with the requirements of Part 6, Blight Determination in Redevelopment Project Areas;

(ii) before providing notice of the plan hearing, hold at least one public hearing to:

(A) inform the public about each area being considered for a redevelopment project area; and

(B) allow public input into agency deliberations on proposing each redevelopment project area;

(iii) select one or more project areas comprising part or all of the survey area; and

(iv) before sending the first notice to assessment owners of property for a public input hearing, blight hearing, or combined public input and blight hearing, prepare and adopt guidelines setting forth and governing the reasonable opportunities of record property owners and tenants to participate in the redevelopment;

(i) after holding the plan hearing, at the same meeting or at a subsequent meeting consider:

(i) the oral and written objections to the draft project area plan and evidence and testimony for or against adoption of the draft project area plan; and

(ii) whether to revise, approve, or reject the draft project area plan;

(j) approve the draft project area plan, with or without revisions, as the project area plan by a resolution that complies with Section 17B-4-407; and

(k) submit the project area plan to the community legislative body for adoption.

(2) An agency may not propose a project area plan under Subsection (1) unless the community in which the proposed project area is located:

(a) has a planning commission; and

(b) has adopted a general plan under:

(i) if the community is a city or town, Title 10, Chapter 9, Part 3, General Plan; or

(ii) if the community is a county, Title 17, Chapter 27, Part 3, General Plan.

(3) (a) Subject to Subsection (3)(b), an agency board may not approve a project area plan more than one year after:

(i) for a redevelopment project area plan involving the use of eminent domain, adoption of a resolution making a finding of blight under Subsection 17B-4-601(4)(b); or

(ii) for an economic development or education housing development project area plan, the date of the plan hearing.

(b) If a project area plan is submitted to an election under Subsection 17B-4-406(3), the time between the plan hearing and the date of the election does not count for purposes of calculating the year period under Subsection (3)(a).

(4) (a) Except as provided in Subsection (4)(b), a draft project area plan may not be modified to add real property to the proposed project area unless the board holds an additional plan hearing to consider the addition and gives notice of the additional plan hearing as required under Sections 17B-4-702 and 17B-4-704.

(b) The notice and hearing requirements under Subsection (4)(a) do not apply to a draft project area plan being modified to add real property to the proposed project area if:

(i) the property is:

(A) located within the survey area; and

(B) contiguous to the property already included in the proposed project area under the draft project area plan; and

(ii) the record owner of the property consents to adding the real property to the proposed project area.

Section 22. Section 17B-4-403 is enacted to read:

17B-4-403. Project area plan requirements.

(1) Each project area plan and draft project area plan shall:

(a) describe the boundaries of the project area;

(b) contain a general statement of the land uses, layout of principal streets, population densities,

and building intensities of the project area and how they will be affected by the redevelopment, economic development, or education housing development;

(c) state the standards that will guide the redevelopment, economic development, or education housing development;

(d) show how the purposes of this chapter will be attained by the redevelopment, economic development, or education housing development;

(e) be consistent with the general plan of the community in which the project area is located and show that the redevelopment, economic development, or education housing development will conform to the community's general plan;

(f) if the agency board made a finding of blight under Subsection 17B-4-601(4)(b):

(i) describe how the redevelopment will reduce or eliminate blight in the project area;

(ii) provide record owners of property located within the redevelopment project area and their tenants reasonable opportunities to participate in the redevelopment if the record property owner or tenant enters into a participation agreement with the agency; and

(iii) state that the agency has adopted or will adopt guidelines setting forth and governing the opportunities of record property owners and tenants to participate in the redevelopment, as required by Subsection 17B-4-402(1)(h)(iv);

(g) if the project area plan is for economic development, describe how the economic development will create additional jobs;

(h) if the project area plan is for education housing development, describe how the education housing development will meet the needs of the community in which the project area is located;

(i) describe any specific project or projects that are the object of the proposed redevelopment, economic development, or education housing development;

(j) identify how private developers, if any, will be selected to undertake the redevelopment, economic development, or education housing development and identify each private developer currently involved in the redevelopment, economic development, or education housing development process;

(k) contain a time limit of no more than three years after adoption of the project area plan for the agency to commence implementation of the project area plan, unless the project area plan is adopted again as if it were an amended project area plan under Section 17B-4-411;

(l) if the project area plan authorizes the use of eminent domain, contain a time limit of no more than five years after the effective date of the project area plan for the agency to commence acquisition of property through the use of eminent domain;

(m) if the project area plan provides for tax increment to be paid to the agency:

(i) contain a time limit of no more than 25 years after adoption of the project area plan for tax increment to be paid to the agency unless the taxing entity committee consents to a longer period; and

(ii) contain a provision that the project area may not exceed 100 acres of private real property unless the agency obtains the consent of the taxing entity committee;

(n) state the reasons for the selection of the project area;

(o) describe the physical, social, and economic conditions existing in the project area;

(p) provide a financial analysis describing the proposed method of financing the proposed redevelopment, economic development, or education housing development;

(q) describe any tax incentives offered private entities for facilities located in the project area;

(r) include a plan for the relocation of any families and persons who will be temporarily or permanently displaced from housing facilities in the project area;

(s) contain the report and state any recommendations of the community's planning commission;

(t) include an analysis, as provided in Subsection (2), of whether adoption of the project area plan is:

(i) for a redevelopment project area plan, necessary and appropriate to reduce or eliminate blight; or

(ii) for an economic development or education housing development project area plan, beneficial under a benefit analysis;

(u) if any of the existing buildings or uses in the project area are included in or eligible for inclusion in the National Register of Historic Places or the State Register, state that the agency shall comply with Subsection 9-8-404(1) as though the agency were a state agency; and

(v) include other information that the agency determines to be necessary or advisable.

(2) Each analysis under Subsection (1)(t) shall consider:

(a) the benefit of any financial assistance or other public subsidy proposed to be provided by the agency, including:

(i) an evaluation of the reasonableness of the costs of redevelopment, economic development, or education housing development;

(ii) efforts the agency has made or will make to maximize private investment;

(iii) the rationale for use of tax increment, including an analysis of whether the proposed development might reasonably be expected to occur in the foreseeable future solely through private investment; and

(iv) an estimate of the total amount of tax increment that will be expended in undertaking redevelopment, economic development, or education housing development and the length of time for which it will be expended; and

(b) the anticipated public benefit to be derived from the redevelopment, economic development, or education housing development, including:

(i) the beneficial influences upon the tax base of the community;

(ii) in the case of economic development or education housing development, the associated business and economic activity likely to be stimulated; and

(iii) in the case of economic development, the number of jobs or employment anticipated to be generated or preserved.

Section 23. Section 17B-4-404 is enacted to read:

17B-4-404. Limit on size of project area in certain project area plans.

A project area under a project area plan that provides for tax increment funds to be paid to the agency may not exceed 100 acres of private real property unless:

(1) the agency obtains the consent of the taxing entity committee; or

(2) the project area plan was adopted on or before April 1, 1983.

Section 24. Section 17B-4-405 is enacted to read:

17B-4-405. Existing and historic buildings and uses.

If any of the existing buildings or uses in a project area are included in or eligible for inclusion in the National Register of Historic Places or the State Register, the agency shall comply with Subsection 9-8-404(1) as though the agency were a state agency.

Section 25. Section 17B-4-406 is enacted to read:

17B-4-406. Objections to project area plan -- Owners' alternative project area plan -- Election if 40% of property owners object.

(1) At any time before the plan hearing or, if applicable, the additional plan hearing under Subsection 17B-4-402(4)(a), any person may file with the agency a written statement of objections to the draft project area plan.

(2) If the record owners of property of a majority of the private real property included within the proposed project area file a written petition before or at the plan hearing or, if applicable, the additional plan hearing under Subsection 17B-4-402(4)(a), proposing an alternative project area plan, the agency shall consider that proposed plan in conjunction with the project area plan proposed by the agency.

(3) (a) If the record property owners of at least 40% of the private land area within the proposed project area object in writing to the draft project area plan before or at the plan hearing or, if applicable, the additional plan hearing under Subsection 17B-4-402(4)(a) and do not withdraw their objections, an agency may not approve the project area plan until approved by voters within the boundaries of the agency in which the proposed project area is located at an election as provided in Subsection (3)(b).

(b) (i) Except as provided in this section, each election required under Subsection (3)(a) shall comply with Title 20A, Election Code.

(ii) An election under Subsection (3)(a) may be held on the same day and with the same election officials as an election held by the community in which the proposed project area is located.

(iii) If a majority of those voting on the proposed project area plan vote in favor of it, the project area plan shall be considered approved and the agency shall confirm the approval by resolution.

(4) If the record property owners of 2/3 of the private land area within the proposed project area object in writing to the draft project area plan before or at the plan hearing or, if applicable, the additional plan hearing under Subsection 17B-4-402(4)(a) and do not withdraw their objections, the project area plan may not be adopted and the agency may not reconsider the project area plan for three years.

Section 26. Section 17B-4-407 is enacted to read:

17B-4-407. Board resolution approving project area plan -- Requirements -- Additional requirements for redevelopment project area plan.

(1) Each board resolution approving a draft redevelopment, economic development, or education housing development project area plan as the project area plan under Subsection 17B-4-402(1)(j) shall contain:

(a) a legal description of the boundaries of the project area that is the subject of the project area plan;

(b) the agency's purposes and intent with respect to the project area;

(c) the project area plan incorporated by reference;

(d) the board findings and determinations that:

(i) there is a need to effectuate a public purpose;

(ii) there is a public benefit under the analysis described in Subsections 17B-4-403(1)(t) and (2);

(iii) it is economically sound and feasible to adopt and carry out the project area plan;

(iv) the project area plan conforms to the community's general plan; and

(v) carrying out the project area plan will promote the public peace, health, safety, and welfare of the community in which the project area is located.

(2) (a) As used in this Subsection (2), "comparable dwellings" means residential housing facilities that are:

(i) within the project area or in other areas not generally less desirable in regard to public utilities and public and commercial facilities;

(ii) at rents or prices within the financial means of the families and persons displaced from the project area; and

(iii) decent, safe, and sanitary and equal in number and available to displaced families and persons and reasonably accessible to their places of employment.

(b) In addition to the requirements under Subsection (1), each board resolution approving a redevelopment project area plan shall:

(i) recite the board's previous finding of blight within the project area and the date of the board's finding of blight; and

(ii) contain the board's findings and determinations that:

(A) if the use of eminent domain is provided for in the redevelopment project area plan:

(I) the use of eminent domain is or may be necessary to the execution of the redevelopment project area plan; and

(II) adequate provisions have been made for just compensation for property acquired by eminent domain; and

(B) if the project area plan may result in the temporary or permanent displacement of any residential occupants in the project area:

(I) the agency has a feasible method or plan for the relocation of families and persons displaced from the project area;

(II) comparable dwellings exist or will be provided to the families and persons displaced by the project area plan; and

(III) the board is satisfied that permanent housing facilities will be available within three years from the time occupants of the project area are displaced and, pending the development of these housing facilities, there will be available to the displaced occupants adequate temporary housing facilities at rents comparable to those in the community at the time of their displacement.

Section 27. Section 17B-4-408 is enacted to read:

17B-4-408. Plan to be adopted by community legislative body.

(1) A project area plan approved by board resolution under Section 17B-4-407 may not take effect until it has been adopted by ordinance of the legislative body of the community that created the agency and notice under Section 17B-4-409 is provided.

(2) Each ordinance under Subsection (1) shall:

(a) be adopted by the community legislative body after the board's approval of a resolution under Section 17B-4-407; and

(b) designate the approved project area plan as the official redevelopment, economic development, or education housing development plan of the project area.

Section 28. Section 17B-4-409 is enacted to read:

17B-4-409. Notice of project area plan adoption -- Effective date of plan -- Contesting the formation of the plan.

(1) (a) Upon the community legislative body's adoption of a project area plan, the legislative body shall provide notice as provided in Subsection (1)(b) by:

(i) publishing or causing to be published a notice in a newspaper of general circulation within the agency's boundaries; or

(ii) if there is no newspaper of general circulation within the agency's boundaries, causing a notice to be posted in at least three public places within the agency's boundaries.

(b) Each notice under Subsection (1)(a) shall:

(i) set forth the community legislative body's ordinance adopting the project area plan or a summary of the ordinance; and

(ii) include a statement that the project area plan is available for general public inspection and the hours for inspection.

(2) The project area plan shall become effective on the date of:

(a) if notice was published under Subsection (1)(a), publication of the notice; or

(b) if notice was posted under Subsection (1)(a), posting of the notice.

(3) (a) (i) For a period of 60 days after the effective date of the project area plan under Subsection (2), any person in interest may, except as provided in Subsection (3)(a)(ii), contest the project area plan or the procedure used to adopt the project area plan if the plan or procedure fails to comply with applicable statutory requirements.

(ii) Notwithstanding Subsection (3)(a)(i), a challenge to a finding of blight may be made only under Section 17B-4-605.

(b) After the 60-day period under Subsection (3)(a)(i) expires, no person may contest the project area plan or procedure used to adopt the project area plan for any cause.

(4) (a) Except as provided in Subsection (4)(b), upon adoption of the project area plan by the community's legislative body, the agency may carry out the project area plan.

(b) An agency may not commence implementation of a project area plan more than three years after the community legislative body adopts the plan, unless the plan is readopted as if it were an amended project area plan under Section 17B-4-411.

(5) Each agency shall make the adopted project area plan available to the general public at its offices during normal business hours.

Section 29. Section 17B-4-410 is enacted to read:

17B-4-410. Agency required to transmit and record documents after adoption of project area plan.

Within 30 days after the community legislative body adopts, under Section 17B-4-408, a project area plan, the agency shall:

(1) record with the recorder of the county in which the project area is located a document containing:

(a) a description of the land within the project area;

(b) a statement that the project area plan for the project area has been adopted; and

(c) the date of adoption; and

(2) for a project area plan that provides for the payment of tax increment to the agency, transmit a copy of the description of the land within the project area, a copy of the community legislative body ordinance adopting the project area plan, and a map or plat indicating the boundaries of the project area to:

(a) the auditor and assessor of the county in which the project area is located;

(b) the officer or officers performing the function of auditor or assessor for each taxing entity that does not use the county assessment roll or collect its taxes through the county;

(c) the legislative body or governing board of each taxing entity;

(d) the State Tax Commission; and

(e) the State Board of Education.

Section 30. Section 17B-4-411 is enacted to read:

17B-4-411. Amending the project area plan.

(1) An adopted project area plan may be amended as provided in this section.

(2) If an agency proposes to amend an adopted project area plan to enlarge a project area, the requirements under this part that apply to a project area plan apply equally to the proposed amendment as if it were a project area plan.

(3) If a proposed amendment does not propose to enlarge a project area, an agency board may adopt a resolution approving an amendment to an adopted project area plan after:

(a) the agency gives notice, as provided in Section 17B-4-702, of the proposed amendment and of the public hearing required by Subsection (3)(b);

(b) the agency board holds a public hearing on the proposed amendment that meets the requirements of a plan hearing;

(c) the agency obtains the taxing entity committee's consent to the amendment, if the amendment proposes:

(i) to enlarge the area within the project area from which tax increment is collected; or

(ii) to permit the agency to receive a greater percentage of tax increment or to receive tax increment for a longer period of time than allowed under the adopted project area plan; and

(iii) for an amendment to a project area plan that was adopted before April 1, 1983, to expand the area from which tax increment is collected to exceed 100 acres of private real property; and

(d) the agency obtains the consent of the legislative body or governing board of each taxing entity affected, if the amendment proposes to permit the agency to receive, from less than all taxing entities, a greater percentage of tax increment or to receive tax increment for a longer period of time, or both, than allowed under the adopted project area plan.

(4) (a) Notwithstanding Subsection (3) an adopted project area plan may be amended without complying with the notice and public hearing requirements of Subsections (3)(a) and (b) and without obtaining taxing entity committee approval under Subsection (3)(c)(i) if the amendment:

(i) makes a minor adjustment in the legal description of a project area boundary requested by a county assessor or county auditor to avoid inconsistent property boundary lines; or

(ii) subject to Subsection (4)(b), removes a parcel of real property from a project area because the agency determines that:

(A) the parcel is no longer blighted; or

(B) inclusion of the parcel is no longer necessary or desirable to the project area; and

(b) An amendment removing a parcel of real property from a project area under Subsection (4)(a)(ii) may not be made without the consent of the record property owner of the parcel being removed.

(5) (a) An amendment approved by board resolution under this section may not take effect until adopted by ordinance of the legislative body of the community in which the project area that is the subject of the project area plan being amended is located.

(b) Upon a community legislative body passing an ordinance adopting an amendment to a project area plan, the agency whose project area plan was amended shall comply with the requirements of Section 17B-4-410 to the same extent as if the amendment were a project area plan.

Section 31. Section 17B-4-501 is enacted to read:

Part 5. Project Area Budget

17B-4-501. Project area budget -- Requirements for adopting -- Contesting the budget or procedure -- Time limit.

(1) If an agency anticipates funding all or a portion of a post-June 30, 1993 project area plan with tax increment, the agency shall, subject to Section 17B-4-503, adopt a project area budget as provided in this part.

(2) To adopt a project area budget, the agency shall:

(a) prepare a draft of a project area budget;

(b) make a copy of the draft project area budget available to the public at the agency's offices during normal business hours;

(c) provide notice of the budget hearing as required by Part 7, Notice Requirements;

(d) at least seven days before the budget hearing:

(i) publish a display advertisement that complies with Section 17B-4-502 in a newspaper that is:

(A) of general circulation within the county in which the proposed project area is located; and

(B) to the extent practicable, of general interest and readership and not of limited subject matter; or

(ii) if there is no newspaper of general circulation within the county in which the proposed project area is located, post a notice that complies with Section 17B-4-502 in at least three conspicuous places within the agency's boundaries;

(e) hold a public hearing on the draft project area budget and, at that public hearing, allow public comment on:

(i) the draft project area budget; and

(ii) whether the draft project area budget should be revised, adopted, or rejected;

(f) (i) if required under Subsection 17B-4-505(1), obtain the approval of the taxing entity committee on the draft project area budget or a revised version of the draft project area budget; or

(ii) if applicable, comply with the requirements of Subsection 17B-4-505(2); and

(g) after the budget hearing, hold a board meeting in the same meeting as the public hearing or in a subsequent meeting to:

(i) consider comments made and information presented at the public hearing relating to the draft project area budget; and

(ii) adopt by resolution the draft project area budget, with any revisions, as the project area budget.

(3) (a) For a period of 60 days after the agency's adoption of the project area budget under Subsection (2)(g), any person in interest may contest the project area budget or the procedure used to adopt the project area budget if the budget or procedure fails to comply with applicable statutory requirements.

(b) After the 60-day period under Subsection (3)(a) expires, no person may contest the project area budget or procedure used to adopt the project area budget for any cause.

Section 32. Section 17B-4-502 is enacted to read:

17B-4-502. Display advertisement requirements.

(1) (a) Each display advertisement published under Subsection 17B-4-501(2)(d) shall appear in a portion of the newspaper other than where legal notices and classified advertisements appear.

(2) Each display advertisement published and notice posted under Subsection 17B-4-501(2)(d) shall contain:

(a) the following statement:

"NOTICE OF BUDGET HEARING FOR (NAME OF PROJECT AREA)

The (name of agency) has requested $_____ in property tax revenues that will be generated by development within the (name of project area) to fund a portion of project costs within the (name of project area). These property tax revenues will be used for the following: (list major budget categories and amounts). These property taxes will be taxes levied by the following governmental entities, and, assuming current tax rates, the taxes paid to the agency for this project area from each taxing entity will be as follows: (list each taxing entity levying taxes and the amount of total taxes that would be paid from each taxing entity). All of the property taxes to be paid to the agency for the development in the project area are taxes that will be generated only if the project area is developed.

All concerned citizens are invited to attend the project area budget hearing scheduled for (date, time, and place of hearing). A copy of the (name of project area) project area budget is available at the offices of (name of agency and office address)."; and

(b) other information that the agency considers appropriate.

Section 33. Section 17B-4-503 is enacted to read:

17B-4-503. Combined incremental value -- Restriction against adopting project area budget -- Taxing entity committee may waive restriction.

(1) For purposes of this section:

(a) "Adjusted tax increment" means:

(i) for tax increment under a pre-July 1, 1993 project area plan, tax increment under Section 17B-4-1003, excluding tax increment under Subsection 17B-4-1003(3); and

(ii) for tax increment under a post-June 30, 1993 project area plan, tax increment under Section 17B-4-1004, excluding tax increment under Subsection 17B-4-1004(3).

(b) "Combined incremental value" means the combined total of all incremental values from all project areas within the agency's boundaries under adopted project area plans and adopted project area budgets at the time that a project area budget for a new project area is being considered.

(c) "Incremental value" means a figure derived by multiplying the marginal value of the property located within a project area on which tax increment is collected by a number that represents the percentage of adjusted tax increment from that project area that is paid to the agency.

(d) "Marginal value" means the difference between actual taxable value and base taxable value.

(e) "Taxable value" means the value of property as shown on the last equalized assessment roll as certified by the county assessor.

(2) (a) Except as provided in Subsection (2)(b), an agency may not adopt a project area budget if, at the time the project area budget is being considered, the combined incremental value for the agency exceeds 10% of the total taxable value of property within the agency's boundaries in the year that the project area budget is being considered.

(b) A taxing agency committee may waive the restrictions imposed by Subsection (2)(a).

Section 34. Section 17B-4-504 is enacted to read:

17B-4-504. Part of tax increment funds to be used for housing -- Waiver of requirement.

(1) (a) Except as provided in Subsection (1)(b), each project area budget adopted on or after May 1, 2000 that provides for more than $100,000 of annual tax increment to be paid to the agency shall allocate at least 20% of the tax increment for housing as provided in Section 17B-4-1010.

(b) The 20% requirement of Subsection (1)(a) may be waived in part or whole by the mutual consent of the trust fund board and the taxing entity committee if they determine that 20% of tax increment is more than is needed to address the community's need for income targeted housing, as defined in Section 17B-4-1010.

(2) A project area budget not required under Subsection (1)(a) to allocate tax increment for housing may allocate 20% of tax increment payable to the agency over the life of the project area for housing as provided in Section 17B-4-1010 if the project area budget is under a project area plan that is adopted on or after July 1, 1998.

Section 35. Section 17B-4-505 is enacted to read:

17B-4-505. Consent of taxing entity committee.

(1) (a) Except as provided in Subsection (1)(b) and subject to Subsection (2), each agency shall obtain the consent of the taxing entity committee for each project area budget under a post-June 30, 1993 project area plan before the agency may collect any tax increment from the project area.

(b) For a project area budget adopted from July 1, 1998 through May 1, 2000 that allocates 20% or more of the tax increment for housing as provided in Section 17B-4-1010, an agency:

(i) need not obtain the consent of the taxing entity committee for the project area budget; and

(ii) may not collect any tax increment from all or part of the project area until after:

(A) the trust fund board has certified the project area budget as complying with the requirements of Section 17B-4-1010; and

(B) the agency board has approved and adopted the project area budget by a two-thirds vote.

(2) (a) Before a taxing entity committee may consent to a project area budget adopted on or after May 1, 2000 that is required under Subsection 17B-4-504(1)(a) to allocate 20% of tax increment for housing, the agency shall:

(i) adopt a housing plan showing the uses for the housing funds; and

(ii) provide a copy of the housing plan to the taxing entity committee and the trust fund board.

(b) If an agency amends a housing plan prepared under Subsection (2)(a), the agency shall provide a copy of the amendment to the taxing entity committee and the trust fund board.

Section 36. Section 17B-4-506 is enacted to read:

17B-4-506. Filing a copy of the project area budget.

Each agency adopting a project area budget shall:

(1) within 30 days after adopting the project area budget, file a copy of the project area budget with the auditor of the county in which the project area is located, the State Tax Commission, the state auditor, the State Board of Education, and each taxing entity affected by the agency's collection of tax increment under the project area budget; and

(2) if the project area budget allocates tax increment for housing under Section 17B-4-1010, file a copy of the project area budget with the trust fund board.

Section 37. Section 17B-4-507 is enacted to read:

17B-4-507. Amending the project area budget.

(1) An agency may by resolution amend a project area budget as provided in this section.

(2) To amend an adopted project area budget, the agency shall:

(a) advertise and hold one public hearing on the proposed amendment as provided in Subsection (3);

(b) obtain the approval of the taxing entity committee if the agency was required under Section 17B-4-505 to obtain the consent of the taxing entity

committee for the project area budget as originally adopted; and

(c) adopt a resolution amending the project area budget.

(3) The public hearing required under Subsection (2)(a) shall be conducted according to the procedures and requirements of Sections 17B-4-501 and 17B-4-502, except that if the amended project area budget proposes that the agency be paid a greater proportion of tax increment from a project area than was to be paid under the previous project area budget, the advertisement shall state the percentage paid under the previous project area budget and the percentage proposed under the amended project area budget.

(4) If a proposed amendment is not adopted, the agency shall continue to operate under the previously adopted project area budget without the proposed amendment.

Section 38. Section 17B-4-601 is enacted to read:

Part 6. Blight Determination in Redevelopment Project Areas

17B-4-601. Additional procedure for adopting a redevelopment project area plan.

In addition to other applicable requirements for adopting a project area plan, to adopt a redevelopment project area plan the agency shall:

(1) cause a blight study to be conducted within the survey area as provided in Section 17B-4-602;

(2) provide notice of a blight hearing as required under Part 7, Notice Requirements;

(3) hold a blight hearing as provided in Section 17B-4-603; and

(4) after the blight hearing has been held, hold a board meeting, either at the same time as the blight hearing or at a subsequent board meeting, at which the board shall:

(a) consider:

(i) the issue of blight and the evidence and information relating to the existence or nonexistence of blight; and

(ii) whether adoption of one or more redevelopment project area plans should be pursued; and

(b) by resolution make a finding regarding the existence of blight in the proposed redevelopment project area.

Section 39. Section 17B-4-602 is enacted to read:

17B-4-602. Blight study -- Requirements -- Deadline.

(1) Each blight study required under Subsection 17B-4-601(1) shall:

(a) provide data so the board may determine:

(i) whether the conditions described in Subsections 17B-4-604(1)(a) and (b) exist in part or all of the survey area; and

(ii) whether the factors listed in Subsection 17B-4-604(1)(c) are present in the survey area;

(b) include a written report setting forth:

(i) the conclusions reached; and

(ii) any other information requested by the agency to determine whether a redevelopment project area is feasible; and

(c) be completed within one year after the adoption of the survey area resolution.

(2) (a) If a blight study is not completed within one year after the adoption of the resolution under Subsection 17B-4-401(1)(a) designating a survey area, the agency may not approve a redevelopment project area plan based on that blight study unless it first adopts a new resolution under Subsection 17B-4-401(1)(a).

(b) A new resolution under Subsection (2)(a) shall in all respects be considered to be a resolution under Subsection 17B-4-401(1)(a) adopted for the first time, except that any actions taken toward completing a blight study under the resolution that the new resolution replaces shall be considered to have been taken under the new resolution.

Section 40. Section 17B-4-603 is enacted to read:

17B-4-603. Blight hearing -- Owners may review evidence of blight.

(1) In each hearing required under Subsection 17B-4-601(3), the agency shall:

(a) permit all evidence of the existence or nonexistence of blight within the proposed redevelopment project area to be presented; and

(b) permit each record owner of property located within the proposed redevelopment project area or the record property owner's representative the opportunity to:

(i) examine and cross-examine witnesses providing evidence of the existence or nonexistence of blight; and

(ii) present evidence and testimony, including expert testimony, concerning the existence or nonexistence of blight.

(2) The board shall allow record owners of property located within a proposed redevelopment project area the opportunity, for at least 30 days before the hearing, to review the evidence of blight compiled by the agency or by the person or firm conducting the blight study for the agency, including any expert report.

Section 41. Section 17B-4-604 is enacted to read:

17B-4-604. Conditions on board determination of blight -- Conditions of blight caused by the developer.

(1) An agency board may not make a finding of blight in a resolution under Subsection

17B-4-601(4)(b) unless the board finds that the redevelopment project area:

(a) contains buildings or improvements used or intended to be used for residential, commercial, industrial, or other urban purposes, or any combination of those uses;

(b) contains buildings or improvements on at least 50% of the number of parcels of private real property whose acreage is at least 50% of the acreage of the private real property within the proposed redevelopment project area; and

(c) is unfit or unsafe to occupy or may be conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime because of any three or more of the following factors:

(i) defective character of physical construction;

(ii) high density of population or overcrowding;

(iii) inadequate ventilation, light, or spacing between buildings;

(iv) mixed character and shifting of uses, resulting in obsolescence, deterioration, or dilapidation;

(v) economic deterioration or continued disuse;

(vi) lots of irregular shape or inadequate size for proper usefulness and development, or laying out of lots in disregard of the contours and other physical characteristics of the ground and surrounding conditions;

(vii) inadequate sanitation or public facilities which may include streets, open spaces, and utilities;

(viii) areas that are subject to being submerged by water; and

(ix) existence of any hazardous or solid waste, defined as any substance defined, regulated, or listed as a hazardous substance, hazardous material, hazardous waste, toxic waste, pollutant, contaminant, or toxic substance, or identified as hazardous to human health or the environment under state or federal law or regulation.

(2) (a) For purposes of Subsection (1), if a developer involved in the redevelopment project causes a condition listed in Subsection (1)(c) within the project area, the condition caused by the developer may not be used in the determination of blight.

(b) Subsection (2)(a) does not apply to a condition that was caused by an owner or tenant who becomes a developer under Section 17B-4-901.

Section 42. Section 17B-4-605 is enacted to read:

17B-4-605. Challenging a finding of blight -- Time limit -- De novo review.

(1) If the board makes a finding of blight under Subsection 17B-4-601(4)(b), a record owner of property located within the proposed redevelopment project area may challenge the finding by filing an action with the district court for the county in which the property is located.

(2) Each challenge under Subsection (1) shall be filed within 30 days after the board's adoption of the resolution containing the finding of blight.

(3) In each action under this section:

(a) the district court shall review de novo the finding of blight; and

(b) the agency maintains the burden of proof regarding the existence of blight.

Section 43. Section 17B-4-701 is enacted to read:

Part 7. Notice Requirements

17B-4-701. Agency to provide notice of hearings.

(1) Each agency shall provide notice, as provided in this part, of each:

(a) blight hearing;

(b) public input hearing;

(c) plan hearing; and

(e) budget hearing.

(2) (a) The notice required under Subsection (1) for a blight hearing may be combined with the notice required for a public input hearing if those two hearings are combined under Subsection 17B-4-801(1).

(b) The notice required under Subsection (1) for a plan hearing may be combined with the notice required for a budget hearing if those two hearings are combined under Subsection 17B-4-801(2).

Section 44. Section 17B-4-702 is enacted to read:

17B-4-702. Requirements for notice provided by agency.

(1) The notice required by Section 17B-4-701 shall be given by:

(a) (i) publishing notice in a newspaper of general circulation within the county in which the project area or proposed project area is located, at least once a week for the four successive weeks immediately preceding the hearing; or

(ii) if there is no newspaper of general circulation, posting notice in at least three conspicuous places within the county in which the project area or proposed project area is located;

(b) at least 30 days before the hearing:

(i) sending notice by certified mail to:

(A) each assessment owner of property located within the project area or proposed project area; and

(B) each assessment owner of property located outside but within 300 feet of the project area or proposed project area;

(ii) mailing notice to:

(A) the State Tax Commission;

(B) the assessor and auditor of the county in which the project area or proposed project area is located; and

(C) (I) each member of the taxing entity committee; or

(II) if a taxing entity committee has not yet been formed, the State Board of Education and the legislative body or governing board of each taxing entity.

(2) The agency shall include in each notice required under Section 17B-4-701:

(a) a specific description of the boundaries of the project area or proposed project area;

(b) a map of the boundaries of the project area or proposed project area;

(c) an explanation of the purpose of the hearing;

(d) a statement of the date, time, and location of the hearing.

(3) The agency shall include in each notice under Subsection (1)(b)(ii):

(a) a statement that property tax revenues resulting from an increase in valuation of property within the project area or proposed project area will be paid to the agency for redevelopment, economic development, or education housing development purposes rather than to the taxing entity to which the tax revenues would otherwise have been paid if:

(i) a majority of the taxing entity committee consents to the project area budget; and

(ii) the project area plan provides for the agency to receive tax increment; and

(b) an invitation to the recipient of the notice to submit to the agency comments concerning the subject matter of the hearing before the date of the hearing.

(4) An agency may include in a notice under Subsection (1) any other information the agency considers necessary or advisable, including the public purpose served by the project and any future tax benefits expected to result from the project.

Section 45. Section 17B-4-703 is enacted to read:

17B-4-703. Additional requirements for notices relating to redevelopment.

(1) The first notice to an assessment owner of property within a proposed redevelopment project area for a public input hearing, blight hearing, or combined public input and blight hearing under Subsection 17B-4-801(1) shall include the statement required by Section 17B-4-902.

(2) Each notice under Section 17B-4-702 for a blight hearing shall include a statement that:

(a) a redevelopment project area is being proposed;

(b) the proposed redevelopment project area may be declared to have blight;

(c) the record owner of property within the proposed project area has the right to present evidence at the blight hearing contesting the existence of blight;

(d) the agency will notify the assessment property owner of each additional public hearing held by the agency concerning the redevelopment project prior to the adoption of the redevelopment project area plan; and

(e) persons contesting the existence of blight in the proposed redevelopment project area may appear before the agency board and show cause why the proposed redevelopment project area should not be designated as a redevelopment project area.

Section 46. Section 17B-4-704 is enacted to read:

17B-4-704. Additional requirements for notice of hearing on draft project area plan.

Each notice under Section 17B-4-702 of a plan hearing shall include:

(1) a statement that any person objecting to the draft project area plan or contesting the regularity of any of the proceedings to adopt it may appear before the agency board at the hearing to show cause why the draft project area plan should not be adopted; and

(2) a statement that the proposed project area plan is available for inspection at the agency offices.

Section 47. Section 17B-4-705 is enacted to read:

17B-4-705. Notice required for continued hearing.

The board shall give notice of a hearing continued under Section 17B-4-802 by:

(1) announcing at the hearing the date, time, and place the hearing will be resumed; or

(2) causing a notice of the continued hearing to be:

(a) published once in a newspaper of general circulation within the agency boundaries at least seven days before the hearing is scheduled to resume; or

(b) if there is no newspaper of general circulation, posted in at least three conspicuous places within the boundaries of the agency in which the project area or proposed project area is located.

Section 48. Section 17B-4-801 is enacted to read:

Part 8. Hearing Provisions

17B-4-801. Combining hearings.

A board may combine:

(1) a blight hearing with a public input hearing; and

(2) a plan hearing with a budget hearing.

Section 49. Section 17B-4-802 is enacted to read:

17B-4-802. Continuing a hearing.

By announcing at the hearing that it is being continued to a later date, the board may continue from time to time a:

(1) blight hearing;

(2) public input hearing;

(3) combined blight hearing and plan hearing under Subsection 17B-4-801(1);

(4) plan hearing;

(5) budget hearing; or

(6) combined plan hearing and budget hearing under Subsection 17B-4-801(2).

Section 50. Section 17B-4-901 is enacted to read:

Part 9. Rights of Owners of Property in Redevelopment Projects

17B-4-901. Property owner and tenant opportunities to participate in redevelopment project -- Preferential opportunities.

(1) Each agency shall provide record owners of property located within and tenants within a redevelopment project area reasonable opportunities to enter into a participation agreement with the agency through which the owner or tenant may participate in the redevelopment, consistent with the redevelopment project area plan.

(2) (a) Owner participation in redevelopment under a participation agreement may consist of one or more of the following:

(i) retaining, maintaining, and, if necessary, rehabilitating all or portions of the owner's property;

(ii) acquiring adjacent or other properties in the redevelopment project area;

(iii) selling all or portions of the owner's improvements to the agency, retaining the land, and developing the owner's property;

(iv) selling all or portions of the owner's property to the agency and purchasing other property in the redevelopment project area;

(v) selling all or a portion of the owner's property to the agency and obtaining preferences to reenter the redevelopment project area; and

(vi) other methods approved by the agency.

(b) Tenant participation in redevelopment under a participation agreement may consist of:

(i) becoming an owner of property in the redevelopment project area, subject to the opportunities of persons who are already record owners of property in the redevelopment project area; and

(ii) other methods approved by the agency.

(3) An agency may extend reasonable preferential opportunities to record property owners and tenants in a redevelopment project area ahead of persons and entities from outside the redevelopment project area, to be owners and tenants in the redevelopment project area during and after the completion of the redevelopment.

Section 51. Section 17B-4-902 is enacted to read:

17B-4-902. Statement of rights of owners of property in redevelopment project area.

(1) Before sending the first notice to assessment owners of property for a public input hearing, blight hearing, or combined public input and blight hearing, each agency shall prepare a written statement regarding the rights of record property owners within a proposed redevelopment project area.

(2) Each written statement under Subsection (1) shall include a statement explaining:

(a) the right of each record property owner and the process to follow to:

(i) object to the inclusion of the record property owner's property within the redevelopment project area;

(ii) object to any required proceeding of the agency in the creation of the redevelopment project area; and

(iii) propose amendments or modifications to the draft redevelopment project area plan;

(b) the right of each record property owner to obtain any document from the agency including:

(A) the blight study;

(B) the draft redevelopment project area plan;

(C) the planning commission report on the redevelopment project area plan;

(D) the owner participation guidelines developed under Subsection 17B-4-402(1)(h)(iv);

(E) the relocation guidelines developed by the agency under Section 57-12-9; and

(F) other documents used by the agency in preparing the redevelopment project area plan or draft redevelopment project area plan; and

(c) the times during which the agency will be available to meet with the record property owner to discuss the process of formulating and implementing the redevelopment project area plan.

(3) Each agency shall, at no charge, provide to a record owner of property within the redevelopment project area one copy of the documents listed in Subsection (2)(b) if the record property owner requests the documents.

(4) A person may bring a civil action against an agency for a violation of this section that results in damage to that person.

Section 52. Section 17B-4-1001 is enacted to read:

Part 10. Tax Increment

17B-4-1001. Agency receipt and use of tax increment -- Distribution of tax increment.

(1) An agency may receive and use tax increment, as provided in this part.

(2) (a) The applicable length of time or number of years for which an agency is to be paid tax increment under this part shall be measured from the first tax year regarding which the agency accepts tax increment from the project area.

(b) Tax increment may not be paid to an agency for a tax year prior to the tax year following the effective date of the project area plan.

(3) With the written consent of a taxing entity, an agency may be paid tax increment, from that taxing entity's tax revenues only, in a higher percentage or for a longer period of time, or both, than otherwise authorized under this chapter.

(4) Each county that collects property tax on property within a project area shall pay and distribute to the agency the tax increment that the agency is entitled to collect under this chapter, in the manner and at the time provided in Section 59-2-1365.

Section 53. Section 17B-4-1002 is enacted to read:

17B-4-1002. Taxing entity committee.

(1) Each agency that adopts or proposes to adopt a post-June 30, 1993 project area plan shall, and any other agency may, cause a taxing entity committee to be created.

(2) (a) (i) Each taxing entity committee shall be composed of:

(A) two school district representatives appointed as provided in Subsection (2)(a)(ii);

(B) two representatives appointed by resolution of the legislative body of the county in which the agency is located;

(C) if the agency was created by a city or town, two representatives appointed by resolution of the legislative body of that city or town;

(D) one representative appointed by the State Board of Education; and

(E) one representative selected by majority vote of the legislative bodies or governing boards of all other taxing entities that levy a tax on property within the agency's boundaries, to represent the interests of those taxing entities on the taxing entity committee.

(ii) (A) If the agency boundaries include only one school district, that school district shall appoint the two school district representatives under Subsection (2)(a)(i)(A).

(B) If the agency boundaries include more than one school district, those school districts shall jointly appoint the two school district representatives under Subsection (2)(a)(i)(A).

(b) (i) Each taxing entity committee representative under Subsection (2) shall be appointed within 30 days after the agency provides notice of the creation of the taxing entity committee.

(ii) If a representative is not appointed within the time required under Subsection (2)(b)(i), the agency board may appoint a person to serve on the taxing entity committee in the place of the missing representative until that representative is appointed.

(c) (i) A taxing entity committee representative may be appointed for a set term or period of time, as determined by the appointing authority under Subsection (2)(a)(i).

(ii) Each taxing entity committee representative shall serve until a successor is appointed and qualified.

(d) (i) Upon the appointment of each representative under Subsection (2)(a)(i), whether an initial appointment or an appointment to replace an already serving representative, the appointing authority shall:

(A) notify the agency in writing of the name and address of the newly appointed representative; and

(B) provide the agency a copy of the resolution making the appointment or, if the appointment is not made by resolution, other evidence of the appointment.

(ii) Each appointing authority of a taxing entity committee representative under Subsection (2)(a)(i) shall notify the agency in writing of any change of address of a representative appointed by that appointing authority.

(3) A taxing entity committee represents all taxing entities regarding a project area and may:

(a) cast votes that will be binding on all taxing entities;

(b) negotiate with the agency concerning a draft project area plan;

(c) approve or disapprove a project area budget as provided in Section 17B-4-505;

(d) approve or disapprove amendments to a project area budget as provided in Section 17B-4-507;

(e) approve exceptions to the limits on the value and size of a project area imposed under this chapter;

(f) approve exceptions to the percentage of tax increment and the period of time that tax increment is paid to the agency as provided in this part;

(g) approve the use of tax increment for access and utilities outside of a project area that the agency and community legislative body determine to be of benefit to the project area, as provided in Subsection 17B-4-1007(1)(a)(ii)(D);

(h) waive the restrictions imposed by Subsection 17B-4-503(2)(a); and

(i) give other taxing entity committee approval or consent required or allowed under this chapter.

(4) A quorum of a taxing entity committee consists of:

(a) except as provided in Subsection (4)(b):

(i) if the project area is located within a city or town, five members; or

(ii) if the project area is not located within a city or town, four members; or

(b) for an education housing development project area as to which the school district has elected under Subsection 17B-4-1004(5) not to allow the agency to be paid tax increment from school district tax revenues:

(i) if the project area is located within a city or town, three members; or

(ii) if the project area is not located within a city or town, two members.

(5) Taxing entity committee approval, consent, or other action requires the affirmative vote of a majority of a quorum present at a taxing entity committee meeting.

(6) Each taxing entity committee shall be governed by Title 52, Chapter 4, Open and Public Meetings.

Section 54. Section 17B-4-1003 is enacted to read:

17B-4-1003. Tax increment under a pre-July 1, 1993 project area plan.

(1) This section applies to tax increment under a pre-July 1, 1993 project area plan only.

(2) (a) Beginning with the first tax year after April 1, 1983 for which an agency accepts tax increment, an agency may be paid:

(i) (A) for the first through the fifth tax years, 100% of tax increment;

(B) for the sixth through the tenth tax years, 80% of tax increment;

(C) for the eleventh through the fifteenth tax years, 75% of tax increment;

(D) for the sixteenth through the twentieth tax years, 70% of tax increment; and

(E) for the twenty-first through the twenty-fifth tax years, 60% of tax increment; or

(ii) for an agency that has caused a taxing entity committee to be created under Subsection 17B-4-1002(1), any percentage of tax increment up to 100% and for any length of time that the taxing entity committee approves.

(b) Notwithstanding any other provision of this section:

(i) an agency may be paid 100% of tax increment from a project area for 32 years after April 1, 1983 to pay principal and interest on agency indebtedness incurred before April 1, 1983, even though the size of the project area from which tax increment is paid to the agency exceeds 100 acres of privately owned property under a project area plan adopted on or before April 1, 1983; and

(ii) for up to 32 years after April 1, 1983, an agency debt incurred before April 1, 1983 may be refinanced and paid from 100% of tax increment if the principal amount of the debt is not increased in the refinancing.

(3) (a) For purposes of this Subsection (3), "additional tax increment" means the difference between 100% of tax increment for a tax year and the amount of tax increment an agency is paid for that tax year under the percentages and time periods specified in Subsection (2)(a).

(b) Notwithstanding the tax increment percentages and time periods in Subsection (2)(a) and Subsection 17B-4-403(1)(m)(i), an agency established by the legislative body of a city of the first or second class or by a city that is located in a county of the first class may be paid additional tax increment for a period ending 32 years after the first tax year after April 1, 1983 for which the agency receives tax increment from the project area if:

(i) (A) the additional tax increment is used solely to pay all or part of the value of the land for and the cost of the installation and construction of a publicly or privately owned convention center or sports complex or any building, facility, structure, or other improvement related to the convention center or sports complex, including parking and infrastructure improvements;

(B) construction of the convention center or sports complex or related building, facility, structure, or other improvement is commenced on or before June 30, 2002;

(C) the additional tax increment is pledged to pay all or part of the value of the land for and the cost of the installation and construction of the convention center or sports complex or related building, facility, structure, or other improvement; and

(D) the agency board and the community legislative body have determined by resolution that the convention center or sports complex is:

(I) within and a benefit to a project area;

(II) not within but still a benefit to a project area; or

(III) within a project area in which substantially all of the land is publicly owned and a benefit to the community.

(ii) (A) the additional tax increment is used to pay some or all of the cost of the land for and installation and construction of a recreational facility, as defined in Section 59-12-702, or a cultural facility, including parking and infrastructure improvements related to the recreational or cultural facility, whether or not the facility is located within a project area;

(B) construction of the recreational or cultural facility is commenced on or before June 30, 2002; and

(C) the additional tax increment is pledged on or before June 30, 2002 to pay all or part of the cost of the land for and the installation and construction of the recreational or cultural facility, including parking and infrastructure improvements related to the recreational or cultural facility;

(iii) (A) the additional tax increment is used solely to pay all or part of the cost of the installation and construction of an underpass that has not received funding from the Centennial Highway Fund under Section 72-2-118 as part of the construction of Interstate 15, whether or not the underpass is located within a project area;

(B) construction of the underpass is commenced on or before June 30, 2002; and

(C) the additional tax increment is pledged on or before June 30, 2002 to pay all or part of the cost of the installation and construction of the underpass;

(iv) (A) the additional tax increment is used solely to pay all or part of the cost of the installation, construction, or reconstruction of the 10000 South underpass or the 11400 South or 12300 South interchange on I-15 in Salt Lake County, whether or not the underpass is located within a project area;

(B) construction on the underpass or interchange is commenced on or before June 30, 2002; and

(C) the additional tax increment is pledged on or before June 30, 2002 to pay all or part of the cost of the installation, construction, or reconstruction of the underpass or interchange; or

(v) (A) the additional tax increment is used solely to pay part of the cost of relocating an agriculture related business, except a relocation resulting from the agency's exercise of eminent domain, from a city of the first class to another location within a county of the third, fourth, fifth, or sixth class, whether or not the agriculture related business is located within or is being relocated to a project area;

(B) the process of relocating the agriculture related business is commenced on or before December 31, 2002; and

(C) the additional tax increment is pledged on or before December 31, 2002 to pay part of the cost of relocating the agriculture related business.

(c) Notwithstanding Subsection (3)(b), a school district may not, without its consent, be paid less tax increment because of application of Subsection (3)(b) than it would have been paid without that subsection.

(4) Notwithstanding any other provision of this section, an agency may use tax increment received under Subsection (2) for any of the uses indicated in Subsection (3).

Section 55. Section 17B-4-1004 is enacted to read:

17B-4-1004. Tax increment under a post-June 30, 1993 project area plan.

(1) This section applies to tax increment under a post-June 30, 1993 project area plan only.

(2) An agency board may provide in the project area budget for the agency to be paid:

(a) if 20% of the project area budget is allocated for housing under Section 17B-4-504:

(i) 100% of annual tax increment for 15 years;

(ii) 75% of annual tax increment for 24 years; or

(iii) if approved by the taxing entity committee, any percentage of tax increment up to 100% for any period of time; or

(b) if 20% of the project area budget is not allocated for housing under Section 17B-4-504:

(i) 100% of annual tax increment for 12 years;

(ii) 75% of annual tax increment for 20 years; or

(iii) if approved by the taxing entity committee, any percentage of tax increment up to 100% for any period of time.

(3) (a) An agency may, without the approval of the taxing entity committee, elect to be paid 100% of annual tax increment for each year beyond the periods specified in Subsection (2) to a maximum of 25 years, including the years the agency is paid tax increment under Subsection (2), if:

(i) for an agency in a city in which is located all or a portion of an interchange on I-15 or that would directly benefit from an interchange on I-15:

(A) the tax increment paid to the agency during the additional years is used to pay some or all of the cost of the installation, construction, or reconstruction of:

(I) an interchange on I-15; or

(II) frontage and other roads connecting to the interchange, as determined by the Department of Transportation created under Section 72-1-201 and the Transportation Commission created under Section 72-1-301; and

(B) the installation, construction, or reconstruction of the interchange or frontage and other roads has begun on or before June 30, 2002;

(ii) for an agency in a city of the first or second class:

(A) the tax increment paid to the agency during the additional years is used to pay some or all of the cost of the land for and installation and construction of a recreational facility, as defined in Subsection 59-19-702(3), or a cultural facility, including parking and infrastructure improvements related to the recreational or cultural facility; and

(B) the installation or construction of the recreational or cultural facility has begun on or before June 30, 2002.

(b) Notwithstanding Subsection (3)(a), a school district may not, without its consent, receive less tax increment because of application of Subsection (3)(a) than it would have received without that subsection.

(4) Unless the taxing entity committee consents, an agency may not be paid tax increment more than 25 years after adoption of the project area plan.

(5) (a) A school district that levies a tax on property located within a project area under an education housing development project area plan may elect not to allow the agency to be paid tax increment from the property tax revenues generated by the school district.

(b) An election under Subsection (5)(a) shall be made in writing to the agency before the taxing entity committee's approval of the project area budget.

(c) If a school district makes an election under this Subsection (5):

(i) the agency may not be paid tax increment from property tax revenues generated by the school district; and

(ii) the school district representatives and the State Board of Education representative on the taxing entity committee may not vote on any matter concerning the education housing development project area or project area budget.

Section 56. Section 17B-4-1005 is enacted to read:

17B-4-1005. Limitations on tax increment.

(1) (a) If the development of retail sales of goods is the primary objective of the project area, tax increment may not be paid to or used by an agency unless a finding of blight is made under Part 6, Blight Determination in Redevelopment Project Areas.

(b) (i) Incidental or subordinate development of retail sales of goods does not disqualify an agency from receiving tax increment.

(ii) Incidental or subordinate development of retail sales of goods includes the development of retail sales of goods resulting from the installation and construction of any building, facility, structure, or other improvement of a publicly or privately owned convention center or sports complex, including parking and infrastructure improvements related to the convention center or sports complex.

(2) (a) An agency may not be paid any portion of a taxing entity's taxes resulting from an increase in the taxing entity's tax rate that occurs after the taxing entity committee approves the project area budget unless, at the time the taxing entity committee approves the project area budget, the taxing entity committee approves payment of those increased taxes to the agency.

(b) If the taxing entity committee does not approve of payment of the increased taxes to the agency under Subsection (2)(a), the county shall distribute to the taxing entity the taxes attributable to the tax rate increase in the same manner as other property taxes.

Section 57. Section 17B-4-1006 is enacted to read:

17B-4-1006. Base taxable value to be adjusted to reflect other changes.

(1) (a) (i) As used in this Subsection (1), "qualifying decrease" means:

(A) a decrease of more than 20% from the previous tax year's levy; or

(B) a cumulative decrease over a consecutive five-year period of more than 100% from the levy in effect at the beginning of the five-year period.

(ii) The year in which a qualifying decrease under Subsection (1)(a)(i)(B) occurs is the fifth year of the five-year period.

(b) If there is a qualifying decrease in the minimum basic school levy under Section 59-2-902 that would result in a reduction of the amount of tax increment to be paid to an agency:

(i) the base taxable value of taxable property within the project area shall be reduced in the year of the qualifying decrease to the extent necessary, even if below zero, to provide the agency with approximately the same amount of tax increment that would have been paid to the agency each year had the qualifying decrease not occurred; and

(ii) the amount of tax increment paid to the agency each year for the payment of bonds and indebtedness may not be less than what would have been paid to the agency if there had been no qualifying decrease.

(2) (a) The amount of the base taxable value to be used in determining tax increment shall be:

(i) increased or decreased by the amount of an increase or decrease that results from:

(A) a statute enacted by the Legislature or by the people through an initiative;

(B) a judicial decision;

(C) an order from the State Tax Commission to a county to adjust or factor its assessment rate under Subsection 59-2-704(2);

(D) a change in exemption provided in Utah Constitution Article XIII, Section 2, or Section 59-2-103; or

(E) an increase or decrease in the percentage of fair market value, as defined under Section 59-2-102; and

(ii) reduced for any year to the extent necessary, even if below zero, to provide an agency with approximately the same amount of money the agency would have received without a reduction in the county's certified tax rate if:

(A) in that year there is a decrease in the county's certified tax rate under Subsection 59-2-924(2)(c) or (d)(i);

(B) the amount of the decrease is more than 20% of the county's certified tax rate of the previous year; and

(C) the decrease would result in a reduction of the amount of tax increment to be paid to the agency.

(b) Notwithstanding an increase or decrease under Subsection (2)(a), the amount of tax increment paid to an agency each year for payment of bonds or other indebtedness may not be less than would have been paid to the agency each year if there had been no increase or decrease under Subsection (2)(a).

Section 58. Section 17B-4-1007 is enacted to read:

17B-4-1007. Allowable uses of tax increment.

(1) (a) An agency may use tax increment:

(i) for any of the purposes for which the use of tax increment is authorized under this chapter;

(ii) to pay for, including financing or refinancing, all or part of:

(A) the redevelopment, economic development, or education housing development in the project area from which the tax increment funds were collected;

(B) housing expenditures, projects, or programs as provided in Section 17B-4-1009 or 17B-4-1010;

(C) with the consent of the community legislative body and subject to Subsection (3), the value of the land for and the cost of the installation and construction of any publicly owned building, facility, structure, landscaping, or other improvement within the project area from which the tax increment funds were collected; and

(D) with the consent of the community legislative body and the taxing entity committee, the cost of the installation of publicly owned utilities and access outside the project area from which the tax increment funds were collected if the agency board and the community legislative body determine by resolution that the utilities and access are of benefit to the project area; or

(iii) for administrative, overhead, legal, and other operating expenses of the agency.

(b) The determination of the agency board and the community legislative body under Subsection (1)(a)(ii)(D) regarding benefit to the project area shall be final and conclusive.

(2) (a) An agency may contract with the community that created the agency or another public entity to use tax increment to reimburse the cost of items authorized by this chapter to be paid by the agency that have been or will be paid by the community or other public entity.

(b) If land has been or will be acquired or the cost of an improvement has been or will be paid by another public entity and the land or improvement has been or will be leased to the community, an agency may contract with and make reimbursement from tax increment funds to the community.

(3) An agency created by a city of the first or second class may use tax increment from one project area in another project area to pay all or part of the value of the land for and the cost of installation and construction of a publicly or privately owned convention center or sports complex or any building, facility, structure, or other improvement related to the convention center or sports complex, including parking and infrastructure improvements, if:

(a) construction on the convention center or sports complex or related building, facility, structure, or other improvement begins on or before June 30, 2002; and

(b) the tax increment is pledged to pay all or part of the value of the land for and the cost of the installation and construction of the convention center or sports complex or related building, facility, structure, or other improvement.

(4) Notwithstanding any other provision of this chapter, an agency may not use tax increment to construct municipal buildings, courts or other judicial buildings, or fire stations.

Section 59. Section 17B-4-1008 is enacted to read:

17B-4-1008. Agency may make payments to other taxing entities.

(1) An agency may grant tax increment or other agency funds to a taxing entity to offset some or all of the tax revenues that the taxing entity did not receive because of tax increment paid to the agency.

(2) (a) An agency may use tax increment or other agency funds to pay to a school district an amount of money that the agency determines to be appropriate to alleviate a financial burden or detriment borne by the school district because of the redevelopment, economic development, or education housing development.

(b) Each agency that agrees to pay money to a school district under the authority of Subsection (2)(a) shall provide a copy of that agreement to the State Board of Education.

Section 60. Section 17B-4-1009 is enacted to read:

17B-4-1009. Agency may use tax increment for housing costs in other project areas -- Funds to be held in separate accounts.

(1) For purposes of this section, "affordable housing" means housing to be owned or occupied by persons and families of low or moderate income, as determined by resolution of the agency.

(2) An agency may:

(a) use tax increment from a project area to pay all or part of the value of the land for and the cost of installation, construction, and rehabilitation of any building, facility, structure, or other housing improvement, including infrastructure improvements related to housing, located in any project area within the agency's boundaries; and

(b) use up to 20% of tax increment outside of project areas for the purpose of replacing housing units lost by redevelopment, economic

development, or education housing development, or increasing, improving, and preserving generally the affordable housing supply of the community that created the agency.

(3) (a) Each agency shall separately account for funds allocated under this section.

(b) Interest earned by the housing fund and any payments or repayments made to the agency for loans, advances, or grants of any kind from the fund, shall accrue to the housing fund.

(c) Each agency designating a housing fund under this section shall use the fund for:

(i) the purposes set forth in this section; or

(ii) the purposes set forth in this chapter relating to the redevelopment, economic development, or education housing development project area from which the funds originated.

(4) An agency may lend, grant, or contribute funds from the housing fund to a person, public entity, housing authority, private entity or business, or nonprofit corporation for affordable housing.

Section 61. Section 17B-4-1010 is enacted to read:

17B-4-1010. Income targeted housing -- Agency may use tax increment for income targeted housing.

(1) As used in this section:

(a) "Annual income" has the meaning as defined under regulations of the U.S. Department of Housing and Urban Development, 24 CFR, Part 813, as amended or as superseded by replacement regulations.

(b) "Fair share ratio" means the ratio derived by:

(i) for a city or town, comparing the percentage of all housing units within the city or town that are publicly subsidized income targeted housing units to the percentage of all housing units within the whole county that are publicly subsidized income targeted housing units; or

(ii) for the unincorporated part of a county, comparing the percentage of all housing units within the unincorporated county that are publicly subsidized income targeted housing units to the percentage of all housing units within the whole county that are publicly subsidized income targeted housing units.

(c) "Family" has the meaning as defined under regulations of the U.S. Department of Housing and Urban Development, 24 CFR, Part 813, as amended or as superseded by replacement regulations.

(d) "Housing funds" means the funds allocated in the project area budget under Section 17B-4-504 for the purposes provided in Subsection (2).

(e) "Income targeted housing" means housing to be owned or occupied by a family whose annual income is at or below 80% of the median annual income for the county in which the housing is located.

(f) "Unincorporated" means not within a city or town.

(2) (a) Each agency shall use all funds allocated for housing under this section to:

(i) pay part or all of the cost of land or construction of income targeted housing within the community that created the agency, if practicable in a mixed income development or area;

(ii) pay part or all of the cost of rehabilitation of income targeted housing within the community that created the agency;

(iii) pay part or all of the cost of land or installation, construction, or rehabilitation of any building, facility, structure, or other housing improvement, including infrastructure improvements, related to housing located in a project area where blight has been found to exist;

(iv) replace housing units lost as a result of the redevelopment, economic development, or education housing development;

(v) make payments on or establish a reserve fund for bonds:

(A) issued by the agency, the community, or the housing authority that provides income targeted housing within the community; and

(B) all or part of the proceeds of which are used within the community for the purposes stated in Subsection (2)(a)(i), (ii), (iii), or (iv); or

(vi) if the community's fair share ratio at the time of the first adoption of the project area budget is at least 1.1 to 1.0, make payments on bonds:

(A) that were previously issued by the agency, the community, or the housing authority that provides income targeted housing within the community; and

(B) all or part of the proceeds of which were used within the community for the purposes stated in Subsection (2)(a)(i), (ii), (iii), or (iv).

(b) As an alternative to the requirements of Subsection (2)(a), an agency may pay all housing funds to:

(i) the community for use as provided under Subsection (2)(a);

(ii) the housing authority that provides income targeted housing within the community for use in providing income targeted housing within the community; or

(iii) the Olene Walker Housing Trust Fund, established under Title 9, Chapter 4, Part 7, Olene Walker Housing Trust Fund, for use in providing income targeted housing within the community.

(3) The agency or community shall separately account for the housing funds, together with all interest earned by the housing funds and all payments or repayments for loans, advances, or grants from the housing funds.

(4) In using housing funds under Subsection (2)(a), an agency may lend, grant, or contribute housing funds to a person, public body, housing authority, private entity or business, or nonprofit organization for use as provided in Subsection (2)(a).

(5) An agency may:

(a) issue bonds from time to time to finance a housing undertaking under this section, including the payment of principal and interest upon advances for surveys and plans or preliminary loans; and

(b) issue refunding bonds for the payment or retirement of bonds under Subsection (5)(a) previously issued by the agency.

(6) (a) If an agency fails to provide housing funds in accordance with the project area budget and, if applicable, the housing plan adopted under Subsection 17B-4-505(2), the trust fund board may bring legal action to compel the agency to provide the housing funds.

(b) In an action under Subsection (6)(a), the court:

(i) shall award the trust fund board a reasonable attorney's fee, unless the court finds that the action was frivolous; and

(ii) may not award the agency its attorney's fees, unless the court finds that the action was frivolous.

Section 62. Section 17B-4-1011 is enacted to read:

17B-4-1011. Base taxable value for new tax.

For purposes of calculating tax increment with respect to a tax that a taxing entity levies for the first time after the effective date of the project area plan, the base taxable value shall be used, subject to any adjustments under Section 17B-4-1006.

Section 63. Section 17B-4-1101 is enacted to read:

Part 11. Eminent Domain in Redevelopment Project Area

17B-4-1101. Use of eminent domain in redevelopment project area -- Conditions -- Property devoted to a public use -- Relocation assistance.

(1) Subject to the provisions of this part, an agency may use eminent domain to acquire property within a redevelopment project area if:

(a) the agency board makes a finding of blight under Part 6, Blight Determination in Redevelopment Project Areas;

(b) the redevelopment project area plan provides for the use of eminent domain; and

(c) the agency commences the acquisition of the property within five years after the effective date of the redevelopment project area plan.

(2) (a) Subject to Subsection (2)(b), an agency may through eminent domain acquire property within the redevelopment project area already devoted to a public use.

(b) Property of a public entity within a redevelopment project area may not be acquired without the public entity's consent.

(3) Each agency that acquires real or personal property by eminent domain shall comply with Title 57, Chapter 12, Utah Relocation Assistance Act.

Section 64. Section 17B-4-1102 is enacted to read:

17B-4-1102. Prerequisites to exercise of eminent domain -- Civil action authorized -- Record of good faith negotiations to be retained.

(1) Before an agency may exercise the power of eminent domain, the agency shall:

(a) negotiate in good faith with the affected record property owner;

(b) provide to each affected record property owner a written declaration that includes:

(i) an explanation of the eminent domain process and the reasons for using it including:

(A) the need for the agency to obtain an independent appraisal that indicates the fair market value of the property and how the fair market value was determined;

(B) a statement explaining agency compliance with the owner participation guidelines;

(C) a statement that the agency may adopt a resolution authorizing the agency to make an offer to the record property owner to purchase the property for the fair market value amount determined by the appraiser and that, if the offer is rejected, the agency has the right to acquire the property through a condemnation proceeding; and

(D) a statement that the agency will prepare an offer that will include the price the agency is offering for the property, an explanation of how the agency determined the price being offered, the legal description of the property, conditions of the offer, and the time at which the offer will expire;

(ii) an explanation of the record property owner's relocation rights under Title 57, Chapter 12, Utah Relocation Assistance Act, and how to receive relocation assistance; and

(iii) a statement that the owner has the right to receive just compensation and an explanation of how to obtain it; and

(c) provide to the affected record property owner or the owner's designated representative a notice that is printed in a type size of at least ten-point type that contains:

(i) a description of the property to be acquired;

(ii) the name of the agency acquiring the property and the agency's contact person and telephone number; and

(iii) a copy of Title 57, Chapter 12, Utah Relocation Assistance Act.

(2) A person may bring a civil suit against an agency for a violation of Subsection (1)(b) that results in damage to that person.

(3) Each agency shall keep a record and evidence of the good faith negotiations required under Subsection (1)(a) and retain the record and evidence as provided in:

(a) Title 63, Chapter 2, Government Records Access and Management Act; or

(b) an ordinance or policy that the agency has adopted under Section 63-2-701.

(4) A record property owner whose property is being taken by an agency through the exercise of eminent domain may elect to receive for the real property being taken either fair market value or replacement property under Section 57-12-7.

Section 65. Section 17B-4-1103 is enacted to read:

17B-4-1103. Court award for court costs, attorney's fees, relocation expenses, and damage to fixtures or personal property.

If a property owner contests in district court an agency's exercise of eminent domain against that owner's property, the court may:

(1) if the amount of the court or jury award for the property exceeds the amount offered by the agency, award court costs and a reasonable attorney's fee, as determined by the court, to the owner;

(2) award a reasonable sum, as determined by the court or jury, as compensation for any costs and expenses of relocating an owner who occupied the acquired property, a party conducting a business on the acquired property, or a person displaced from the property, as permitted by Title 57, Chapter 12, Utah Relocation Assistance Act; and

(3) if fixtures or personal property owned by the owner of the acquired property or by a person conducting a business on the acquired property are damaged as a result of the acquisition or relocation, award an amount, as determined by the court or jury, to compensate for that damage.

Section 66. Section 17B-4-1104 is enacted to read:

17B-4-1104. Limitation on acquisition of property with existing building.

Without the consent of the owner, an agency may not acquire any real property on which an existing building is to be continued on its present site and in its present form and use unless:

(1) the building requires structural alteration, improvement, modernization, or rehabilitation;

(2) the site or lot on which the building is situated requires modification in size, shape, or use; or

(3) it is necessary to impose upon the property any of the standards, restrictions, and controls of the project area plan, and the owner fails or refuses to agree to participate in the project area plan.

Section 67. Section 17B-4-1201 is enacted to read:

Part 12. Bonds

17B-4-1201. Resolution authorizing issuance of agency bonds -- Characteristics of bonds.

(1) An agency may not issue bonds under this part unless the agency board first adopts a resolution authorizing their issuance.

(2) (a) As provided in the agency resolution authorizing the issuance of bonds under this part or the trust indenture under which the bonds are issued, bonds issued under this part may be issued in one or more series and may be sold at public or private sale and in the manner provided in the resolution or indenture.

(b) Bonds issued under this part shall bear the date, be payable at the time, bear interest at the rate, be in the denomination and in the form, carry the conversion or registration privileges, have the rank or priority, be executed in the manner, be subject to the terms of redemption or tender, with or without premium, be payable in the medium of payment and at the place, and have other characteristics as provided in the agency resolution authorizing their issuance or the trust indenture under which they are issued.

Section 68. Section 17B-4-1202 is enacted to read:

17B-4-1202. Sources from which bonds may be made payable -- Agency powers regarding bonds.

(1) The principal and interest on bonds issued by an agency may be made payable from:

(a) the income and revenues of the projects financed with the proceeds of the bonds;

(b) the income and revenues of certain designated projects whether or not they were financed in whole or in part with the proceeds of the bonds;

(c) the income, proceeds, revenues, property, and funds of the agency derived from or held in connection with its undertaking and carrying out redevelopment, economic development, or education housing development;

(d) tax increment funds;

(e) agency revenues generally;

(f) a contribution, loan, grant, or other financial assistance from the federal government or a public entity in aid of redevelopment, economic development, or education housing development; or

(g) funds derived from any combination of the methods listed in Subsections (1)(a) through (f).

(2) In connection with the issuance of agency bonds, an agency may:

(a) pledge all or any part of its gross or net rents, fees, or revenues to which its right then exists or may thereafter come into existence;

(b) encumber by mortgage, deed of trust, or otherwise all or any part of its real or personal property, then owned or thereafter acquired; and

(c) make the covenants and take the action that may be necessary, convenient, or desirable to secure its bonds, or, except as otherwise provided in this chapter, that will tend to make the bonds more marketable, even though such covenants or actions are not specifically enumerated in this chapter.

Section 69. Section 17B-4-1203 is enacted to read:

17B-4-1203. Signature of officer who leaves office.

If an agency officer whose signature appears on a bond issued under this part leaves office before delivery of the bond, the signature shall continue to be valid as if the official had remained in office until delivery of the bond.

Section 70. Section 17B-4-1204 is enacted to read:

17B-4-1204. Contesting the legality of resolution authorizing bonds -- Time limit -- Presumption.

(1) Any person may contest the legality of the resolution authorizing issuance of the bonds or any provisions for the security and payment of the bonds for a period of 30 days after:

(a) publication of the resolution authorizing the bonds; or

(b) publication of a notice of bonds containing substantially the items required under Subsection 11-14-21(3).

(2) After the 30-day period under Subsection (1), no lawsuit or other proceeding may be brought contesting the regularity, formality, or legality of the bonds for any reason.

(3) In a lawsuit or other proceeding involving the question of whether a bond issued under this part is valid or enforceable or involving the security for a bond, if a bond recites that the agency issued the bond in connection with a redevelopment, economic development, or education housing development:

(a) the bond shall be conclusively presumed to have been issued for that purpose; and

(b) the project area plan and project area shall be conclusively presumed to have been properly formed, adopted, planned, located, and carried out in accordance with this chapter.

Section 71. Section 17B-4-1205 is enacted to read:

17B-4-1205. Authority to purchase agency bonds.

(1) Any person, firm, corporation, association, political subdivision of the state, or other entity or public or private officer may purchase bonds issued by an agency under this part with funds owned or controlled by the purchaser.

(2) Nothing in this section may be construed to relieve a purchaser of agency bonds of any duty to exercise reasonable care in selecting securities.

Section 72. Section 17B-4-1206 is enacted to read:

17B-4-1206. Those executing bonds not personally liable -- Limitation of obligations under bonds -- Negotiability.

(1) A member of an agency board or other person executing an agency bond is not liable personally on the bond.

(2) (a) A bond issued by an agency is not a general obligation or liability of the community, the state, or any of its political subdivisions and does not constitute a charge against their general credit or taxing powers.

(b) A bond issued by an agency is not payable out of any funds or properties other than those of the agency.

(c) The community, the state, and its political subdivisions may not be liable on a bond issued by an agency.

(d) A bond issued by an agency does not constitute indebtedness within the meaning of any constitutional or statutory debt limitation.

(3) A bond issued by an agency under this part is fully negotiable.

Section 73. Section 17B-4-1207 is enacted to read:

17B-4-1207. Obligee rights -- Board may confer other rights.

(1) In addition to all other rights that are conferred on an obligee of a bond issued by an agency under this part and subject to contractual restrictions binding on the obligee, an obligee may:

(a) by mandamus, suit, action, or other proceeding, compel an agency and its board, officers, agents, or employees to perform every term, provision, and covenant contained in any contract of the agency with or for the benefit of the obligee, and require the agency to carry out the covenants and agreements of the agency and to fulfill all duties imposed on the agency by this part; and

(b) by suit, action, or proceeding in equity, enjoin any acts or things that may be unlawful or violate the rights of the obligee.

(2) (a) In a board resolution authorizing the issuance of bonds or in a trust indenture, mortgage, lease, or other contract, an agency board may confer upon an obligee holding or representing a specified amount in bonds, the rights described in Subsection (2)(b), to accrue upon the happening of an event or default prescribed in the resolution, indenture, mortgage, lease, or other contract, and to be exercised by suit, action, or proceeding in any court of competent jurisdiction.

(b) (i) The rights that the board may confer under Subsection (2)(a) are the rights to:

(A) cause possession of all or part of a redevelopment, economic development, or education housing development project to be surrendered to an obligee;

(B) obtain the appointment of a receiver of all or part of an agency's redevelopment, economic development, or education housing development project and of the rents and profits from it; and

(C) require the agency and its board and employees to account as if the agency and the board and employees were the trustees of an express trust.

(ii) If a receiver is appointed through the exercise of a right granted under Subsection (2)(b)(i)(B), the receiver:

(A) may enter and take possession of the redevelopment, economic development, or education housing development project or any part of it, operate and maintain it, and collect and receive all fees, rents, revenues, or other charges arising from it after the receiver's appointment; and

(B) shall keep money collected as receiver for the agency in separate accounts and apply it pursuant to the agency obligations as the court directs.

Section 74. Section 17B-4-1208 is enacted to read:

17B-4-1208. Bonds exempt from taxes -- Agency may purchase its own bonds.

(1) A bond issued by an agency under this part is issued for an essential public and governmental purpose and is, together with interest on the bond and income from it, exempt from all state taxes except the corporate franchise tax.

(2) An agency may purchase its own bonds at a price that its board determines.

(3) Nothing in this section may be construed to limit the right of an obligee to pursue a remedy for the enforcement of a pledge or lien given under this part by an agency on its rents, fees, grants, properties, or revenues.

Section 75. Section 17B-4-1301 is enacted to read:

Part 13. Agency budget and reports

17B-4-1301. Annual agency budget -- Fiscal year -- Public hearing required -- Auditor forms -- Requirement to file form.

(1) Each agency shall prepare and its board adopt an annual budget of revenues and expenditures for the agency for each fiscal year.

(2) Each annual agency budget shall be adopted:

(a) for an agency created by a city or town, before June 22; or

(b) for an agency created by a county, before December 15.

(3) The agency's fiscal year shall be the same as the fiscal year of the community that created the agency.

(4) (a) Before adopting an annual budget, each agency board shall hold a public hearing on the annual budget.

(b) Each agency shall provide notice of the public hearing on the annual budget by:

(i) publishing at least one notice in a newspaper of general circulation within the agency boundaries, one week before the public hearing; or

(ii) if there is no newspaper of general circulation within the agency boundaries, posting a notice of the public hearing in at least three public places within the agency boundaries.

(c) Each agency shall make the annual budget available for public inspection at least three days before the date of the public hearing.

(5) The state auditor shall prescribe the budget forms and the categories to be contained in each agency budget, including:

(a) revenues and expenditures for the budget year;

(b) legal fees; and

(c) administrative costs, including rent, supplies, and other materials, and salaries of agency personnel.

(6) Within 30 days after adopting an annual budget, each agency board shall file a copy of the annual budget with the auditor of the county in which the agency is located, the State Tax Commission, the state auditor, the State Board of Education, and each taxing entity that levies a tax on property from which the agency collects tax increment.

Section 76. Section 17B-4-1302 is enacted to read:

17B-4-1302. Amending the agency annual budget.

(1) An agency board may by resolution amend an annual agency budget.

(2) An amendment of the annual agency budget that would increase the total expenditures may be made only after public hearing by notice published as required for initial adoption of the annual budget.

(3) An agency may not make expenditures in excess of the total expenditures established in the annual budget as it is adopted or amended.

Section 77. Section 17B-4-1303 is enacted to read:

17B-4-1303. Agency report.

(1) On or before November 1 of each year, each agency shall prepare and file a report with the county auditor, the State Tax Commission, the State Board of Education, and each taxing entity that levies a tax on property from which the agency collects tax increment.

(2) Each report under Subsection (1) shall contain:

(a) an estimate of the tax increment to be paid to the agency for the calendar year ending December 31; and

(b) an estimate of the tax increment to be paid to the agency for the calendar year beginning the next January 1.

Section 78. Section 17B-4-1304 is enacted to read:

17B-4-1304. Audit requirements.

Each agency shall comply with the audit requirements of Title 51, Chapter 2, Audits of Political Subdivisions, Interlocal Organizations and Other Local Entities.

Section 79. Section 17B-4-1305 is enacted to read:

17B-4-1305. Audit report.

(1) Each agency required to be audited under Section 17B-4-1304 shall, within 180 days after the end of the agency's fiscal year, file a copy of the audit report with the county auditor, the State Tax Commission, the State Board of Education, and each taxing entity that levies a tax on property from which the agency collects tax increment.

(2) Each audit report under Subsection (1) shall include:

(a) the tax increment collected by the agency for each project area;

(b) the amount of tax increment paid to each taxing entity under Section 17B-4-1008;

(c) the outstanding principal amount of bonds issued or other loans incurred to finance the costs associated with the agency's project areas;

(d) the actual amount expended for:

(i) acquisition of property;

(ii) site improvements or site preparation costs;

(iii) installation of public utilities or other public improvements; and

(iv) administrative costs of the agency.

Section 80. Section 17B-4-1306 is enacted to read:

17B-4-1306. County auditor report on project areas.

(1) (a) On or before March 31 of each year, the auditor of each county in which an agency is located shall prepare a report on the project areas within each agency.

(b) The county auditor shall send a copy of each report under Subsection (1)(a) to the agency that is the subject of the report, the State Tax Commission, the State Board of Education, and each taxing entity that levies a tax on property from which the agency collects tax increment.

(2) Each report under Subsection (1)(a) shall report:

(a) the total assessed property value within each project area for the previous tax year;

(b) the base taxable value of property within each project area for the previous tax year;

(c) the tax increment available to be paid to the agency for the previous tax year;

(d) the tax increment requested by the agency for the previous tax year; and

(e) the tax increment paid to the agency for the previous tax year.

(3) Within 30 days after a request by an agency, the State Tax Commission, the State Board of Education, or any taxing entity that levies a tax on property from which the agency receives tax increment, the county auditor or the county assessor shall provide access to:

(a) the county auditor's method and calculations used to make adjustments under Section 17B-4-1006;

(b) the unequalized assessed valuation of an existing or proposed project area, or any parcel or parcels within an existing or proposed project area, if the equalized assessed valuation has not yet been determined for that year; and

(c) the most recent equalized assessed valuation of an existing or proposed project area or any parcel or parcels within an existing or proposed project area; and

(d) the tax rate of each taxing entity adopted as of November 1 for the previous tax year.

Section 81. Section 17B-4-1401 is enacted to read:

Part 14. Dissolution

17B-4-1401. Dissolution by ordinance -- Restrictions -- Filing copy of ordinance -- Agency records -- Dissolution expenses.

(1) Subject to Subsection (1)(b), the legislative body of the community that created an agency may, by ordinance, deactivate and dissolve the agency.

(b) An ordinance dissolving an agency may not be adopted unless the agency has no outstanding bonded indebtedness, other unpaid loans, indebtedness, or advances, and no legally binding contractual obligations with persons or entities other than the community.

(2) The legislative body of each community that adopts an ordinance under Subsection (1) shall:

(a) file a certified copy of the ordinance with the State Tax Commission, county assessor, county auditor, the State Board of Education, and each taxing entity; and

(b) cause a notice of dissolution to be published in a newspaper of general circulation in the county in which the dissolved agency is located.

(3) The books, documents, records, papers, and seal of each dissolved agency shall be deposited for safekeeping and reference with the recorder of the community that dissolved the agency.

(4) The agency shall pay all expenses of the deactivation and dissolution.

Section 82. Section 51-2-8 is amended to read:

51-2-8. Entities exempt from audit requirements -- Report required.

(1) (a) [~~Any~~] Except as provided in Subsection (1)(b), a political subdivision, interlocal organization, or other local entity [~~in which the budget for revenues or expenditures of all funds combined for any fiscal year does not exceed $150,000, or an appropriate amount established by the Utah state auditor which represents the above noted amount adjusted by economic factors such as inflation but not limited to such factors,~~] may[~~, with the approval of the state auditor,~~] be exempt from the provisions of Section 51-2-1[~~. In such event, its governing body must~~] if:

(i) its budget for revenues or expenditures of all funds for a fiscal year does not exceed $150,000, or an amount established by the state auditor that is $150,000 but adjusted for economic factors including inflation; and

(ii) the state auditor approves of the exemption.

(b) A redevelopment agency under Title 17B, Chapter 4, Redevelopment Agencies Act, may not be exempted from the requirements of Section 51-2-1.

(2) Each exempt entity under Subsection (1) shall:

(a) cause a report on the fiscal affairs of the [~~local~~] entity to be prepared in accordance with regulations and reporting forms prepared and issued by the state auditor[~~,~~]; and

(b) file that report with the state auditor within six months after the close of each fiscal year of that entity.

Section 83. Section 59-2-906.1 is amended to read:

59-2-906.1. Property Tax Valuation Agency Fund -- Creation -- Statewide levy -- Additional county levy permitted.

(1) (a) There is created the Property Tax Valuation Agency Fund, to be funded by a multicounty assessing and collecting levy not to exceed .0003 as provided in Subsection (2).

(b) The multicounty assessing and collecting levy under Subsection (1)(a) shall be imposed annually by each county in the state.

(c) The purpose of the multicounty assessing and collecting levy created under Subsection (1)(a) and the disbursement formulas established in Section 59-2-906.2 is to promote the accurate valuation of property, the establishment and maintenance of uniform assessment levels within and among counties, and the efficient administration of the property tax system, including the costs of assessment, collection, and distribution of property taxes.

(d) Income derived from the investment of money in the fund created in this Subsection (1) shall be deposited in and become part of the fund.

(2) (a) Except as authorized in Subsection (2)(b), beginning in fiscal year 1996-97 to fund the Property Tax Valuation Agency Fund the Legislature shall authorize the amount of the multicounty assessing and collecting levy, except that the multicounty assessing and collecting levy may not exceed the certified revenue levy as defined in Section 53A-17a-103.

(b) If the Legislature authorizes a multicounty assessing and collecting levy that exceeds the certified revenue levy, it is subject to the notice requirements of Section 59-2-926.

(c) For the calendar year beginning on January 1, 1998, and ending December 31, 1998, the certified revenue levy shall be increased by the amount necessary to offset the decrease in revenues from uniform fees on tangible personal property under Section 59-2-405 as a result of the decrease in uniform fees on tangible personal property under Section 59-2-405 enacted by the Legislature during the 1997 Annual General Session.

(d) For the calendar year beginning on January 1, 1999, and ending on December 31, 1999, the certified revenue levy shall be adjusted by the amount necessary to offset the adjustment in revenues from uniform fees on tangible personal property under Section 59-2-405.1 as a result of the adjustment in uniform fees on tangible personal property under Section 59-2-405.1 enacted by the Legislature during the 1998 Annual General Session.

(3) (a) The multicounty assessing and collecting levy authorized by the Legislature under Subsection (2) shall be separately stated on the tax notice as a multicounty assessing and collecting levy.

(b) The multicounty assessing and collecting levy authorized by the Legislature under Subsection (2) is:

(i) exempt from the redevelopment provisions of Sections [~~17A-2-1247 and 17A-2-1247.5~~] 17B-4-1003 and 17B-4-1004;

(ii) in addition to and exempt from the maximum levies allowable under Section 59-2-908; and

(iii) exempt from the notice requirements of Sections 59-2-918 and 59-2-919.

(c) Each county shall transmit quarterly to the state treasurer the portion of the .0003 multicounty assessing and collecting levy which is above the amount to which that county is entitled to under Section 59-2-906.2.

(i) The revenue shall be transmitted no later than the tenth day of the month following the end of the quarter in which the revenue is collected.

(ii) If revenue is transmitted after the tenth day of the month following the end of the quarter in which the revenue is collected, the county shall pay an interest penalty at the rate of 10% each year until the revenue is transmitted.

(d) The state treasurer shall deposit the revenue from the multicounty assessing and collecting levy,

any interest accrued from that levy, and any penalties received under Subsection (3)(c) in the Property Tax Valuation Agency Fund.

(4) Each county may levy an additional property tax up to .0002 per dollar of taxable value of taxable property as reported by each county. This levy shall be stated on the tax notice as a county assessing and collecting levy.

(a) The purpose of the levy established in this Subsection (4) is to promote the accurate valuation of property, the establishment and maintenance of uniform assessment levels within and among counties, and the efficient administration of the property tax system, including the costs of assessment, collection, and distribution of property taxes.

(b) Any levy established in Subsection (4)(a) is:

(i) exempt from the redevelopment provisions of Sections [~~17A-2-1247 and 17A-2-1247.5~~] 17B-4-1003 and 17B-4-1004;

(ii) in addition to and exempt from the maximum levies allowable under Section 59-2-908; and

(iii) is subject to the notice requirements of Sections 59-2-918 and 59-2-919.

Section 84. Section 59-2-924 is amended to read:

59-2-924. Report of valuation of property to county auditor and commission -- Transmittal by auditor to governing bodies -- Certified tax rate -- Adoption of tentative budget.

(1) (a) Before June 1 of each year, the county assessor of each county shall deliver to the county auditor and the commission the following statements:

(i) a statement containing the aggregate valuation of all taxable property in each taxing entity; and

(ii) a statement containing the taxable value of any additional personal property estimated by the county assessor to be subject to taxation in the current year.

(b) The county auditor shall, on or before June 8, transmit to the governing body of each taxing entity:

(i) the statements described in Subsections (1)(a)(i) and (ii);

(ii) an estimate of the revenue from personal property;

(iii) the certified tax rate; and

(iv) all forms necessary to submit a tax levy request.

(2) (a) (i) The "certified tax rate" means a tax rate that will provide the same ad valorem property tax revenues for a taxing entity as were collected by that taxing entity for the prior year.

(ii) For purposes of this Subsection (2), "ad valorem property tax revenues" do not include:

(A) collections from redemptions;

(B) interest; and

(C) penalties.

(iii) Except as provided in Subsection (2)(a)(iv), the certified tax rate shall be calculated by dividing the ad valorem property tax revenues collected for the prior year by the taxing entity by the taxable value established in accordance with Section 59-2-913.

(iv) The certified tax rates for the taxing entities described in this Subsection (2)(a)(iv) shall be calculated as follows:

(A) except as provided in Subsection (2)(a)(iv)(B), for new taxing entities the certified tax rate is zero;

(B) for each municipality incorporated on or after July 1, 1996, the certified tax rate is:

(I) in a county of the first, second, or third class, the levy imposed for municipal-type services under Sections 17-34-1 and 17-36-9; and

(II) in a county of the fourth, fifth, or sixth class, the levy imposed for general county purposes and such other levies imposed solely for the municipal-type services identified in Section 17-34-1 and Subsection 17-36-3(22);

(C) for debt service voted on by the public, the certified tax rate shall be the actual levy imposed by that section, except that the certified tax rates for the following levies shall be calculated in accordance with Section 59-2-913 and this section:

(I) school leeways provided for under Sections 11-2-7, 53A-16-110, 53A-17a-125, 53A-17a-127, 53A-17a-134, 53A-17a-143, 53A-17a-145, and 53A-21-103; and

(II) levies to pay for the costs of state legislative mandates or judicial or administrative orders under Section 59-2-906.3.

(v) (A) A judgment levy imposed under Section 59-2-1328 or Section 59-2-1330 shall be established at that rate which is sufficient to generate only the revenue required to satisfy one or more eligible judgments, as defined in Section 59-2-102.

(B) The ad valorem property tax revenue generated by the judgment levy shall not be considered in establishing the taxing entity's aggregate certified tax rate.

(b) (i) For the purpose of calculating the certified tax rate, the county auditor shall use the taxable value of property on the assessment roll.

(ii) For purposes of Subsection (2)(b)(i), the taxable value of property on the assessment roll does not include new growth as defined in Subsection (2)(b)(iii).

(iii) "New growth" means:

(A) the difference between the increase in taxable value of the taxing entity from the previous calendar year to the current year; minus

(B) the amount of an increase in taxable value described in Subsection (2)(b)(iv).

(iv) Subsection (2)(b)(iii)(B) applies to the following increases in taxable value:

(A) the amount of increase to locally assessed real property taxable values resulting from factoring, reappraisal, or any other adjustments; or

(B) the amount of an increase in the taxable value of property assessed by the commission under Section 59-2-201 resulting from a change in the method of apportioning the taxable value prescribed by:

(I) the Legislature;

(II) a court;

(III) the commission in an administrative rule; or

(IV) the commission in an administrative order.

(c) Beginning January 1, 1997, if a taxing entity receives increased revenues from uniform fees on tangible personal property under Section 59-2-404, 59-2-405, or 59-2-405.1 as a result of any county imposing a sales and use tax under Chapter 12, Part 11, County Option Sales and Use Tax, the taxing entity shall decrease its certified tax rate to offset the increased revenues.

(d) (i) Beginning July 1, 1997, if a county has imposed a sales and use tax under Chapter 12, Part 11, County Option Sales and Use Tax, the county's certified tax rate shall be:

(A) decreased on a one-time basis by the amount of the estimated sales tax revenue to be distributed to the county under Subsection 59-12-1102(3); and

(B) increased by the amount necessary to offset the county's reduction in revenue from uniform fees on tangible personal property under Section 59-2-404, 59-2-405, or 59-2-405.1 as a result of the decrease in the certified tax rate under Subsection (2)(d)(i)(A).

(ii) The commission shall determine estimates of sales tax distributions for purposes of Subsection (2)(d)(i).

(e) Beginning January 1, 1998, if a municipality has imposed an additional resort communities sales tax under Section 59-12-402, the municipality's certified tax rate shall be decreased on a one-time basis by the amount necessary to offset the first 12 months of estimated revenue from the additional resort communities sales tax imposed under Section 59-12-402.

(f) For the calendar year beginning on January 1, 1999, and ending on December 31, 1999, a taxing entity's certified tax rate shall be adjusted by the amount necessary to offset the adjustment in revenues from uniform fees on tangible personal property under Section 59-2-405.1 as a result of the adjustment in uniform fees on tangible personal property under Section 59-2-405.1 enacted by the Legislature during the 1998 Annual General Session.

(g) For purposes of Subsections (2)(h) through (j):

(i) "1998 actual collections" means the amount of revenues a taxing entity actually collected for the calendar year beginning on January 1, 1998, under Section 59-2-405 for:

(A) motor vehicles required to be registered with the state that weigh 12,000 pounds or less; and

(B) state-assessed commercial vehicles required to be registered with the state that weigh 12,000 pounds or less.

(ii) "1999 actual collections" means the amount of revenues a taxing entity actually collected for the calendar year beginning on January 1, 1999, under Section 59-2-405.1.

(h) For the calendar year beginning on January 1, 2000, the commission shall make the following adjustments:

(i) the commission shall make the adjustment described in Subsection (2)(i)(i) if, for the calendar year beginning on January 1, 1999, a taxing entity's 1998 actual collections were greater than the sum of:

(A) the taxing entity's 1999 actual collections; and

(B) any adjustments the commission made under Subsection (2)(f);

(ii) the commission shall make the adjustment described in Subsection (2)(i)(ii) if, for the calendar year beginning on January 1, 1999, a taxing entity's 1998 actual collections were greater than the taxing entity's 1999 actual collections, but the taxing entity's 1998 actual collections were less than the sum of:

(A) the taxing entity's 1999 actual collections; and

(B) any adjustments the commission made under Subsection (2)(f); and

(iii) the commission shall make the adjustment described in Subsection (2)(i)(iii) if, for the calendar year beginning on January 1, 1999, a taxing entity's 1998 actual collections were less than the taxing entity's 1999 actual collections.

(i) (i) For purposes of Subsection (2)(h)(i), the commission shall increase a taxing entity's certified tax rate under this section and a taxing entity's certified revenue levy under Section 59-2-906.1 by the amount necessary to offset the difference between:

(A) the taxing entity's 1998 actual collections; and

(B) the sum of:

(I) the taxing entity's 1999 actual collections; and

(II) any adjustments the commission made under Subsection (2)(f).

(ii) For purposes of Subsection (2)(h)(ii), the commission shall decrease a taxing entity's certified tax rate under this section and a taxing

entity's certified revenue levy under Section 59-2-906.1 by the amount necessary to offset the difference between:

(A) the sum of:

(I) the taxing entity's 1999 actual collections; and

(II) any adjustments the commission made under Subsection (2)(f); and

(B) the taxing entity's 1998 actual collections.

(iii) For purposes of Subsection (2)(h)(iii), the commission shall decrease a taxing entity's certified tax rate under this section and a taxing entity's certified revenue levy under Section 59-2-906.1 by the amount of any adjustments the commission made under Subsection (2)(f).

(j) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, for purposes of Subsections (2)(f) through (i), the commission may make rules establishing the method for determining a taxing entity's 1998 actual collections and 1999 actual collections.

(k) (i) (A) For fiscal year 2000, the certified tax rate of each county to which Subsection 17-34-3(4)(a) applies shall be decreased by the amount necessary to reduce revenues in that fiscal year by an amount equal to the difference between the amount the county budgeted in its 2000 fiscal year budget for advanced life support and paramedic services countywide and the amount the county spent during fiscal year 2000 for those services, excluding amounts spent from a municipal services fund for those services.

(B) For fiscal year 2001, the certified tax rate of each county to which Subsection 17-34-3(4)(a) applies shall be decreased by the amount necessary to reduce revenues in that fiscal year by the amount that the county spent during fiscal year 2000 for advanced life support and paramedic services countywide, excluding amounts spent from a municipal services fund for those services.

(ii) (A) For fiscal year 2001, a city or town located within a county of the first class to which Subsection 17-34-3(4)(a) applies may increase its certified tax rate by the amount necessary to generate within the city or town the same amount of revenues as the county would collect from that city or town if the decrease under Subsection (2)(k)(i) did not occur.

(B) An increase under Subsection (2)(k)(ii)(A) is not subject to the notice and hearing requirements of Sections 59-2-918 and 59-2-919.

(3) (a) On or before June 22, each taxing entity shall annually adopt a tentative budget.

(b) If the taxing entity intends to exceed the certified tax rate, it shall notify the county auditor of:

(i) its intent to exceed the certified tax rate; and

(ii) the amount by which it proposes to exceed the certified tax rate.

(c) The county auditor shall notify all property owners of any intent to exceed the certified tax rate in accordance with Subsection 59-2-919(2).

(4) (a) The taxable value for the base year under Subsection [~~17A-2-1247(2)(a) or 17A-2-1202(2), as the case may be,~~] 17B-4-102(4) shall be reduced for any year to the extent necessary to provide a redevelopment agency established under Title [~~17A~~] 17B, Chapter [~~2~~] 4, [~~Part 12, Utah Neighborhood Development~~] Redevelopment Agencies Act, with approximately the same amount of money the agency would have received without a reduction in the county's certified tax rate if:

(i) in that year there is a decrease in the certified tax rate under Subsection (2)(c) or (2)(d)(i);

(ii) the amount of the decrease is more than 20% of the county's certified tax rate of the previous year; and

(iii) the decrease results in a reduction of the amount to be paid to the agency under Section [~~17A-2-1247 or 17A-2-1247.5~~] 17B-4-1003 or 17B-4-1004.

(b) The taxable value of the base year under Subsection [~~17A-2-1247(2)(a) or 17A-2-1202(2), as the case may be,~~] 17B-4-101(4) shall be increased in any year to the extent necessary to provide a redevelopment agency with approximately the same amount of money as the agency would have received without an increase in the certified tax rate that year if:

(i) in that year the taxable value for the base year under Subsection [~~17A-2-1247(2) or 17A-2-1202(2)~~] 17B-4-101(4) is reduced due to a decrease in the certified tax rate under Subsection (2)(c) or (2)(d)(i); and

(ii) The certified tax rate of a city, school district, or special district increases independent of the adjustment to the taxable value of the base year.

(c) Notwithstanding a decrease in the certified tax rate under Subsection (2)(c) or (2)(d)(i), the amount of money allocated and, when collected, paid each year to a redevelopment agency established under Title [~~17A~~] 17B, Chapter [~~2~~] 4, [~~Part 12, Utah Neighborhood Development~~] Redevelopment Agencies Act, for the payment of bonds or other contract indebtedness, but not for administrative costs, may not be less than that amount would have been without a decrease in the certified tax rate under Subsection (2)(c) or (2)(d)(i).

Section 85. Repealer.

This act repeals:

Section 17A-2-1201, Short title.

Section 17A-2-1202, Definitions.

Section 17A-2-1203, Creation of redevelopment agencies -- Governing

body -- Powers -- Contiguous communities.

Section 17A-2-1204, Redevelopment survey areas.

Section 17A-2-1205, Preconditions for designating a project area.

Section 17A-2-1206, Selection of project areas -- Blight hearing.

Section 17A-2-1207, Contents of preliminary plan.

Section 17A-2-1208, Blight study -- Findings of blight.

Section 17A-2-1209, Use of eminent domain.

Section 17A-2-1210, Limits on value and size of project areas using tax increment financing without consent of local taxing agencies -- Time limits.

Section 17A-2-1210.5, Limits on length of time for project areas adopted after July 1, 1993.

Section 17A-2-1211, Property owner's rights.

Section 17A-2-1212, Project area and redevelopment restrictions.

Section 17A-2-1213, Plan preparation -- Hearing -- Notice -- Consultation with community planning commission.

Section 17A-2-1214, Opportunities to participate in project required -- Preferences -- Rules.

Section 17A-2-1215, Approval and adoption of plan -- Funding -- Reuse of property.

Section 17A-2-1216, Agency budget -- Hearing -- Public inspection -- Agency budget forms -- Copies of adopted budget filed -- Expenditures limited by budget.

Section 17A-2-1217, Annual reports by agency.

Section 17A-2-1218, Annual reports by county auditor.

Section 17A-2-1219, Audit of agency accounts.

Section 17A-2-1220, Report to accompany plan.

Section 17A-2-1221, Hearing.

Section 17A-2-1222, Notices of hearing required.

Section 17A-2-1223, Objections to plan -- Filing.

Section 17A-2-1224, Objections to plan -- Hearing.

Section 17A-2-1225, Adoption, rejection, or modification of plan -- Plan submitted to voters -- When rejection required -- Petition for alternative plan.

Section 17A-2-1226, Adoption of plan by ordinance -- Limitation on contest of legality.

Section 17A-2-1227, Adoption by ordinance.

Section 17A-2-1228, Acquisition and disposition of property -- Control of property sold or leased for private use -- Notice.

Section 17A-2-1229, Amendment or modification of plan.

Section 17A-2-1230, Powers of public body aiding and cooperating in redevelopment projects -- Notice requirement.

Section 17A-2-1231, Bonds -- Payments.

Section 17A-2-1232, Bonds as indebtedness -- Exemption from taxes.

Section 17A-2-1233, Bonds -- Type -- Form -- Interest -- Redemption.

Section 17A-2-1234, Sale of bonds.

Section 17A-2-1235, Validity of official signatures on bonds -- Negotiability.

Section 17A-2-1236, Actions on validity or enforceability of bonds -- Time for bringing action.

Section 17A-2-1237, Investment in bonds.

Section 17A-2-1238, Agency disposition of property within project area -- Eminent domain -- Just compensation, costs, damages.

Section 17A-2-1239, Acquisition of property from members or officers prohibited.

Section 17A-2-1240, Acquisition of real property without owner's consent prohibited -- Exceptions.

Section 17A-2-1241, Acquisition of public property.

Section 17A-2-1242, Rights and duties not affected.

Section 17A-2-1243, Bond issues -- Agency members and persons executing bonds not personally liable -- Bonds and obligations not general obligation or debt -- Negotiability.

Section 17A-2-1244, Agency powers in issuance of bonds.

Section 17A-2-1245, Rights of obligee.

Section 17A-2-1246, Bonds exempt from taxes except corporate franchise tax -- Purchase of bonds by agency -- Property of agency exempt from execution and taxes.

Section 17A-2-1247, Tax increment financing authorized -- Division of tax

revenues -- Greater allocation allowed if authorized by taxing agency.

Section 17A-2-1247.5, Tax increment financing -- Project area budget approval -- Payment of additional tax increment.

Section 17A-2-1248, Time for payment of taxes to agency.

Section 17A-2-1249, Determination of taxable value and names and addresses of assessees.

Section 17A-2-1250, Distribution of property taxes.

Section 17A-2-1250.5, Adjustment of base year taxable value required for minimum basic levy for school district decreases -- Minimum payment to agency.

Section 17A-2-1251, Adjustment of base year taxable value of area required for county rate adjustment.

Section 17A-2-1252, Adjustment of base year taxable value of area required for changes in exemptions -- Minimum payment to agency.

Section 17A-2-1253, Adjustment of base year taxable value of area required for changes in percentage of value assessed -- Minimum payment to agency.

Section 17A-2-1254, Pledge of increment for payment of loans, advances or indebtedness.

Section 17A-2-1255, Taxation of property leased by agency.

Section 17A-2-1256, Transmittal of description of land within project area and other documents to taxing agencies -- Notice to taxing agencies.

Section 17A-2-1257, Recording description of area and date of plan approval.

Section 17A-2-1258, Payments by agency in lieu of taxes.

Section 17A-2-1259, Transmittal of preliminary plan -- Consultation with taxing agencies.

Section 17A-2-1260, Payment authorized for land or cost of improvements within or without project area if beneficial to the project area -- Reimbursement of costs --Limitation on use of tax increment.

Section 17A-2-1261, Deactivation and dissolution of an agency -- Order of legislative body on own motion or agency recommendation -- Payment of obligations.

Section 17A-2-1262, Notice of dissolution -- Publication -- Disposition of records.

Section 17A-2-1263, Housing funds.

Section 17A-2-1264, Affordable housing funds under redevelopment plans adopted on or after July 1, 1998.

Section 86. Effective date.

This act takes effect on June 1, 2001.

CHAPTER 134
H. B. 12
Passed February 28, 2001
Approved March 15, 2001
Effective April 30, 2001

PROVISION FOR LEGAL RELINQUISHMENT OF A NEWBORN

Sponsor: Patrice M. Arent

This act modifies the Utah Human Services Code to provide a process for safe relinquishment of newborn children by a parent or a parent's designee. The act provides a process for hospitals to receive those children. The act provides a process for the Division of Child and Family Services to care for those children and petition for termination of parental rights and adoption. The act eliminates certain civil abuse and neglect requirements and proceedings when newborn children are safely abandoned. The act amends the civil definition of neglect, and provides a limited affirmative defense to any potential criminal liability based upon neglect or abandonment. This act provides a repeal date.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
62A-4a-101, as last amended by Chapter 274, Laws of Utah 1998
63-55-262, as last amended by Chapters 1 and 228, Laws of Utah 2000
78-3a-103, as last amended by Chapter 99, Laws of Utah 1999
78-3a-407, as renumbered and amended by Chapter 260, Laws of Utah 1994

ENACTS:
62A-4a-801, Utah Code Annotated 1953
62A-4a-802, Utah Code Annotated 1953

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

Section 1. Section 62A-4a-101 is amended to read:

62A-4a-101. Definitions.

As used in this chapter:

(1) "Abuse" means:

(a) actual or threatened nonaccidental physical or mental harm;

(b) negligent treatment;

(c) sexual exploitation; or

(d) any sexual abuse.

(2) "Adoption services" means placing children for adoption, subsidizing adoptions under Section 62A-4a-105, supervising adoption placements until the adoption is finalized by the court, conducting adoption studies, preparing adoption reports upon request of the court, and providing postadoptive placement services, upon request of a family, for the purpose of stabilizing a possible disruptive placement.

(3) "Board" means the Board of Child and Family Services established in accordance with Sections 62A-1-105, 62A-1-107, and 62A-4a-102.

(4) "Consumer" means a person who receives services offered by the division in accordance with this chapter.

(5) "Custody," with regard to the division, means the custody of a child in the division as of the date of disposition.

(6) "Day-care services" means care of a child for a portion of the day which is less than 24 hours, in his own home by a responsible person, or outside of his home in a day-care center, family group home, or family child care home.

(7) "Dependent child" means a child who is homeless or without proper care through no fault of his parent, guardian, or custodian.

(8) "Director" means the director of the Division of Child and Family Services.

(9) "Division" means the Division of Child and Family Services.

(10) (a) "Domestic violence services" means temporary shelter, treatment, and related services to persons who are victims of abuse and their dependent children and treatment services for domestic violence perpetrators.

(b) As used in this Subsection (10) "abuse" means the same as that term is defined in Section 30-6-1, and "domestic violence perpetrator" means a person who is alleged to have committed, has been convicted of, or has pled guilty to an act of domestic violence as defined in Subsection 77-36-1(2).

(11) "Homemaking service" means the care of individuals in their domiciles, and help given to individual caretaker relatives to achieve improved household and family management through the services of a trained homemaker.

(12) "Minor" means a person under 18 years of age. "Minor" may also include a person under 21 years of age for whom the division has been specifically ordered by the juvenile court to provide services.

(13) "Natural parent" means a child's biological or adoptive parent, and includes a child's noncustodial parent.

(14) (a) "Neglect" means:

(i) abandonment of a child, except as provided in Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn Child;

(ii) subjecting a child to mistreatment or abuse;

(iii) lack of proper parental care by reason of the fault or habits of the parent, guardian, or custodian;

(iv) failure or refusal of a parent, guardian, or custodian to provide proper or necessary subsistence, education, or medical care, including surgery or psychiatric services when required, or

any other care necessary for his health, safety, morals, or well-being; or

(v) a child at risk of being neglected or abused because another child in the same home is neglected or abused.

(b) The aspect of neglect relating to education, described in Subsection (14)(a)(iv), means that, after receiving notice that a child has been frequently absent from school without good cause, or that the child has failed to cooperate with school authorities in a reasonable manner, a parent or guardian fails to make a good faith effort to ensure that the child receives an appropriate education.

(c) A parent or guardian legitimately practicing religious beliefs and who, for that reason, does not provide specified medical treatment for a child, is not guilty of neglect.

(15) "Protective custody," with regard to the division, means the shelter of a child by the division from the time he is removed from his home until the shelter hearing, or his return home, whichever occurs earlier.

(16) "Protective services" means expedited services that are provided:

(a) in response to evidence of neglect, abuse, or exploitation of a minor;

(b) in an effort to substantiate evidence of neglect, abuse, or exploitation;

(c) to a cohabitant who is neglecting or abusing a child, in order to help him develop recognition of his duty of care and of the causes of neglect or abuse, and to strengthen his ability to provide safe and acceptable care; and

(d) in cases where the child's welfare is endangered:

(i) to bring the situation to the attention of the appropriate juvenile court and law enforcement agency;

(ii) to cause a protective order to be issued for the protection of the child, when appropriate; and

(iii) to protect the child from the circumstances that endanger his welfare including, when appropriate, removal from his home, placement in substitute care, and petitioning the court for termination of parental rights.

(17) "Services to unwed parents" means social, educational, and medical services arranged for or provided to unwed parents to help them plan for themselves and the unborn child.

(18) "Shelter care" means the temporary care of minors in nonsecure facilities.

(19) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or a territory or possession administered by the United States.

(20) "State plan" means the written description of the programs for children, youth, and family services administered by the division in accordance with federal law.

(21) "Status offender" means a minor who has been declared a runaway or ungovernable.

(22) "Substitute care" means:

(a) the placement of a minor in a family home, group care facility, or other placement outside the minor's own home, either at the request of a parent or other responsible relative, or upon court order, when it is determined that continuation of care in the child's own home would be contrary to the child's welfare;

(b) services provided for a child awaiting placement; and

(c) the licensing and supervision of a substitute care facility.

(23) "Temporary custody," with regard to the division, means the custody of a child in the division from the date of the shelter hearing until disposition.

(24) "Transportation services" means travel assistance given to an individual with escort service, if necessary, to and from community facilities and resources as part of a service plan.

(25) "Youth services" means services provided to families in crisis when a minor is ungovernable or runaway or where there is parent-child conflict, in an effort to resolve family conflict, maintain or reunite minors with their families, and to divert minors from the juvenile justice system. Those services may include crisis intervention, short-term shelter, time-out placement, and family counseling.

Section 2. Section 62A-4a-801 is enacted to read:

Part 8. Safe Relinquishment of a Newborn Child

62A-4a-801. Definitions.

As used in this part:

(1) "Hospital" means a general acute hospital, as that term is defined in Section 26-21-2, that is:

(a) equipped with an emergency room;

(b) open 24 hours a day, seven days a week; and

(c) employs full-time health care professionals who have emergency medical services training.

(2) "Newborn child" means a child who is approximately 72 hours of age or younger, as determined within a reasonable degree of medical certainty.

Section 3. Section 62A-4a-802 is enacted to read:

62A-4a-802. Safe Relinquishment of A Newborn Child.

(1) (a) A parent or a parent's designee may safely relinquish a newborn child at a hospital in

accordance with the provisions of this part and retain complete anonymity, so long as the child has not been subject to abuse or neglect.

(b) Safe relinquishment of a newborn child who has not otherwise been subject to abuse or neglect shall not, in and of itself, constitute neglect as defined in Subsection 62A-4a-101(14)(a)(i), and the child shall not be considered a neglected child, as defined in Section 78-3a-103, so long as the relinquishment is carried out in substantial compliance with the provisions of this part.

(2) (a) Personnel employed by a hospital shall accept a newborn child that is relinquished pursuant to the provisions of this part, and may presume that the person relinquishing is the child's parent or the parent's designee.

(b) The person receiving the newborn child may request information regarding the parent and newborn child's medical histories, and identifying information regarding the nonrelinquishing parent of the child.

(c) The division shall provide hospitals with medical history forms and stamped envelopes addressed to the division that a hospital may provide to a person relinquishing a child pursuant to the provisions of this part.

(d) Personnel employed by a hospital shall:

(i) provide any necessary medical care to the child and notify the division as soon as possible, but no later than 24 hours after receipt of the child; and

(ii) prepare a birth certificate or foundling birth certificate if parentage is unknown and file with the Office of Vital Records and Statistics.

(e) A hospital and personnel employed by a hospital are immune from any civil or criminal liability arising from accepting a newborn child if the personnel employed by the hospital substantially comply with the provisions of this part and medical treatment is administered according to standard medical practice.

(3) The division shall assume care and custody of the child immediately upon notice from the hospital.

(4) So long as the division determines there is no abuse or neglect of the newborn child, neither the newborn child nor the child's parents are subject to:

(a) the provisions of Part 2 of this chapter, Child Welfare Services;

(b) the investigation provisions contained in Section 62A-4a-409; or

(c) the provisions of Title 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency Proceedings.

(5) Unless identifying information relating to the nonrelinquishing parent of the newborn child has been provided:

(a) the division shall work with local law enforcement and the Bureau of Criminal Identification within the Department of Public Safety in an effort to ensure that the newborn child has not been identified as a missing child;

(b) the division shall immediately place or contract for placement of the newborn child in a potential adoptive home and, within ten days after receipt of the child, file a petition for termination of parental rights in accordance with Title 78, Chapter 3a, Part 4, Termination of Parental Rights Act;

(c) the division shall direct the Office of Vital Records and Statistics to conduct a search for a birth certificate for the child and an Initiation of Proceedings to Establish Paternity Registry for unmarried biological fathers maintained by the Office of Vital Records and Statistics within the Department of Health and provide notice to each potential father identified on the registry. Notice of termination of parental rights proceedings shall be provided in the same manner as is utilized for any other termination proceeding in which the identity of the child's parents is unknown;

(d) if no person has affirmatively identified himself or herself within two weeks after notice is complete and established paternity by scientific testing within as expeditious a time frame as practicable, a hearing on the petition for termination of parental rights shall be scheduled; and

(e) if a nonrelinquishing parent is not identified, relinquishment of a newborn child pursuant to the provisions of this part shall be considered grounds for termination of parental rights of both the relinquishing and nonrelinquishing parents under Subsection 78-3a-407(9).

(6) If at any time prior to the adoption, a court finds it is in the best interest of the child, the court shall deny the petition for termination of parental rights.

(7) The division shall provide for, or contract with a licensed child-placing agency to provide for expeditious adoption of the newborn child.

(8) So long as the person relinquishing a newborn child is the child's parent or designee, and there is no abuse or neglect, safe relinquishment of a newborn child in substantial compliance with the provisions of this part is an affirmative defense to any potential criminal liability for abandonment or neglect relating to that relinquishment.

Section 4. Section 63-55-262 is amended to read:

63-55-262. Repeal dates, Title 62A.

(1) Section 62A-4a-202.7, Pilot Program for Differentiated Responses to Child Abuse and Neglect Reports, is repealed July 1, 2005.

(2) Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn Child, is repealed July 1, 2006.

Section 5. Section 78-3a-103 is amended to read:

78-3a-103. Definitions.

(1) As used in this chapter:

(a) "Abused child" includes a minor less than 18 years of age who:

(i) has suffered or been threatened with nonaccidental physical or mental harm, negligent treatment, or sexual exploitation; or

(ii) has been the victim of any sexual abuse.

(b) "Adjudication" means a finding by the court, incorporated in a decree, that the facts alleged in the petition have been proved.

(c) "Adult" means a person 18 years of age or over, except that persons 18 years or over under the continuing jurisdiction of the juvenile court pursuant to Section 78-3a-121 shall be referred to as minors.

(d) "Board" means the Board of Juvenile Court Judges.

(e) "Child placement agency" means:

(i) a private agency licensed to receive minors for placement or adoption under this code; or

(ii) a private agency receiving minors for placement or adoption in another state, which agency is licensed or approved where such license or approval is required by law.

(f) "Commit" means to transfer legal custody.

(g) "Court" means the juvenile court.

(h) "Dependent child" includes a minor who is homeless or without proper care through no fault of his parent, guardian, or custodian.

(i) "Deprivation of custody" means transfer of legal custody by the court from a parent or the parents or a previous legal custodian to another person, agency, or institution.

(j) "Detention" means home detention and secure detention as defined in Section 62A-7-101 for the temporary care of minors who require secure custody in physically restricting facilities:

(i) pending court disposition or transfer to another jurisdiction; or

(ii) while under the continuing jurisdiction of the court.

(k) "Formal referral" means a written report from a peace officer or other person informing the court that a minor is or appears to be within the court's jurisdiction and that a petition may be filed.

(l) "Group rehabilitation therapy" means psychological and social counseling of one or more persons in the group, depending upon the recommendation of the therapist.

(m) "Guardianship of the person" includes the authority to consent to marriage, to enlistment in the armed forces, to major medical, surgical, or psychiatric treatment, and to legal custody, if legal custody is not vested in another person, agency, or institution.

(n) "Habitual truant" is a school-age minor who has received more than two truancy citations within one school year from the school in which the minor is or should be enrolled and eight absences without a legitimate or valid excuse or who, in defiance of efforts on the part of school authorities as required under Section 53A-11-103, refuses to regularly attend school or any scheduled period of the school day.

(o) "Legal custody" means a relationship embodying the following rights and duties:

(i) the right to physical custody of the minor;

(ii) the right and duty to protect, train, and discipline the minor;

(iii) the duty to provide the minor with food, clothing, shelter, education, and ordinary medical care;

(iv) the right to determine where and with whom the minor shall live; and

(v) the right, in an emergency, to authorize surgery or other extraordinary care.

(p) "Minor" means a person under the age of 18 years. It includes the term "child" as used in other parts of this chapter.

(q) "Natural parent" means a minor's biological or adoptive parent, and includes the minor's noncustodial parent.

(r) (i) "Neglected child" means a minor:

(A) whose parent, guardian, or custodian has abandoned [~~or~~] the minor, except as provided in Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn Child;

(B) whose parent, guardian, or custodian has subjected the minor to mistreatment or abuse;

[~~(B)~~] (C) who lacks proper parental care by reason of the fault or habits of the parent, guardian, or custodian;

[~~(C)~~] (D) whose parent, guardian, or custodian fails or refuses to provide proper or necessary subsistence, education, or medical care, including surgery or psychiatric services when required, or any other care necessary for health, safety, morals, or well-being; or

[~~(D)~~] (E) who is at risk of being a neglected or abused child as defined in this chapter because another minor in the same home is a neglected or abused child as defined in this chapter.

(ii) The aspect of neglect related to education, described in Subsection (1)(r)(i)[~~(C)~~](D), means that, after receiving notice that a minor has been frequently absent from school without good cause, or that the minor has failed to cooperate with school authorities in a reasonable manner, a parent or guardian fails to make a good faith effort to ensure that the minor receives an appropriate education.

(iii) A parent or guardian legitimately practicing religious beliefs and who, for that reason, does not provide specified medical treatment for a minor, is not guilty of neglect.

(s) "Nonjudicial adjustment" means closure of the case by the assigned probation officer without judicial determination upon the consent in writing of the minor, the parent, legal guardian or custodian, and the assigned probation officer.

(t) "Probation" means a legal status created by court order following an adjudication on the ground of a violation of law or under Section 78-3a-104, whereby the minor is permitted to remain in his home under prescribed conditions and under supervision by the probation department or other agency designated by the court, subject to return to the court for violation of any of the conditions prescribed.

(u) "Protective supervision" means a legal status created by court order following an adjudication on the ground of abuse, neglect, or dependency, whereby the minor is permitted to remain in his home, and supervision and assistance to correct the abuse, neglect, or dependency is provided by the probation department or other agency designated by the court.

(v) "Residual parental rights and duties" means those rights and duties remaining with the parent after legal custody or guardianship, or both, have been vested in another person or agency, including the responsibility for support, the right to consent to adoption, the right to determine the child's religious affiliation, and the right to reasonable visitation unless restricted by the court. If no guardian has been appointed, "residual parental rights and duties" also include the right to consent to marriage, to enlistment, and to major medical, surgical, or psychiatric treatment.

(w) "Secure facility" means any facility operated by or under contract with the Division of Youth Corrections, that provides 24-hour supervision and confinement for youth offenders committed to the division for custody and rehabilitation.

(x) "Shelter" means the temporary care of minors in physically unrestricted facilities pending court disposition or transfer to another jurisdiction.

(y) "State supervision" means a disposition which provides a more intensive level of intervention than standard probation but is less intensive or restrictive than a community placement with the Division of Youth Corrections.

(z) "Termination of parental rights" means the permanent elimination of all parental rights and duties, including residual parental rights and duties, by court order.

(aa) "Therapist" means a person employed by a state division or agency for the purpose of conducting psychological treatment and counseling of a minor in its custody, or any other person licensed or approved by the state for the purpose of conducting psychological treatment and counseling.

(2) As used in Part 3, Abuse, Neglect, and Dependency Proceedings, with regard to the Division of Child and Family Services:

(a) "Custody" means the custody of a minor in the Division of Child and Family Services as of the date of disposition.

(b) "Protective custody" means the shelter of a minor by the Division of Child and Family Services from the time the minor is removed from home until the shelter hearing, or the minor's return home, whichever occurs earlier.

(c) "Temporary custody" means the custody of a minor in the Division of Child and Family Services from the date of the shelter hearing until disposition.

Section 6. Section 78-3a-407 is amended to read:

78-3a-407. Grounds for termination of parental rights.

The court may terminate all parental rights with respect to one or both parents if it finds any one of the following:

(1) that the parent or parents have abandoned the child;

(2) that the parent or parents have neglected or abused the child;

(3) that the parent or parents are unfit or incompetent;

(4) that the child is being cared for in an out-of-home placement under the supervision of the court or the division, that the division or other responsible agency has made a diligent effort to provide appropriate services and the parent has substantially neglected, wilfully refused, or has been unable or unwilling to remedy the circumstances that cause the child to be in an out-of-home placement, and there is a substantial likelihood that the parent will not be capable of exercising proper and effective parental care in the near future;

(5) failure of parental adjustment, as defined in this chapter;

(6) that only token efforts have been made by the parent or parents:

(a) to support or communicate with the child;

(b) to prevent neglect of the child;

(c) to eliminate the risk of serious physical, mental, or emotional abuse of the child; or

(d) to avoid being an unfit parent;

(7) the parent or parents have voluntarily relinquished their parental rights to the child, and the court finds that termination is in the child's best interest; [~~or~~]

(8) the parent or parents, after a period of trial during which the child was returned to live in his own home, substantially and continuously or repeatedly refused or failed to give the child proper parental care and protection[~~.~~]; or

(9) the terms and conditions of safe relinquishment of a newborn child have been complied with, pursuant to Title 62A, Chapter 4a, Part 8, Safe Relinquishment of Newborn Child.

CHAPTER 135
H. B. 13
Passed February 19, 2001
Approved March 15, 2001
Effective April 30, 2001

RECOVERY OF SPECIAL DAMAGES FOR INJURIES

Sponsor: A. Lamont Tyler

This act modifies the Judicial Code to define special damages and clarify the circumstances under which they may be recovered in certain actions.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
78-11-12, as last amended by Chapter 113, Laws of Utah 1991

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

Section 1. Section 78-11-12 is amended to read:

78-11-12. Survival of action for injury to person or death upon death of wrongdoer or injured person -- Exception and restriction to out-of-pocket expenses.

(1) (a) Causes of action arising out of personal injury to the person or death caused by the wrongful act or negligence of another do not abate upon the death of the wrongdoer or the injured person. The injured person or the personal representatives or heirs of the person who died have a cause of action against the wrongdoer or the personal representatives of the wrongdoer for special and general damages, subject to Subsection (1)(b).

(b) If prior to judgment or settlement the injured person dies as a result of a cause other than the injury received as a result of the wrongful act or negligence of the wrongdoer, the personal representatives or heirs of that person [~~are entitled to receive no more than the out-of-pocket expenses incurred by or on behalf of that injured person as the result of his injury~~] have a cause of action against the wrongdoer or personal representatives of the wrongdoer only for special damages occurring prior to death that result from the injury caused by the wrongdoer, including income loss. "Special damages" does not include pain and suffering, loss of enjoyment of life, and other not readily quantifiable damages frequently referred to as general damages.

(2) Under Subsection (1) neither the injured person nor the personal representatives or heirs of the person who died may recover judgment except upon competent satisfactory evidence other than the testimony of that injured person.

CHAPTER 136
H. B. 17
Passed January 25, 2001
Approved March 15, 2001
Effective April 30, 2001

ELECTRONIC GOVERNMENT SERVICES AMENDMENTS - NATURAL RESOURCES

Sponsor: Richard M. Siddoway

This act modifies the Water and Irrigation Code. The act amends statutory language to facilitate the electronic delivery of government services by the state engineer.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
73-1-4, as last amended by Chapter 98, Laws of Utah 1996
73-3-2, as last amended by Chapter 137, Laws of Utah 1991
73-3-3, as last amended by Chapter 208, Laws of Utah 1992
73-3-5, as last amended by Chapter 137, Laws of Utah 1959
73-3-12, as last amended by Chapter 18, Laws of Utah 1997
73-3-27, Utah Code Annotated 1953
73-3-28, Utah Code Annotated 1953
73-5-13, as last amended by Chapter 198, Laws of Utah 1997

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

Section 1. Section 73-1-4 is amended to read:

73-1-4. Reversion to public by abandonment or forfeiture for nonuse within five years -- Extension of time.

(1) (a) When an appropriator or the appropriator's successor in interest abandons or ceases to use water for a period of five years, the water right ceases and the water reverts to the public, unless, before the expiration of the five-year period, the appropriator or the appropriator's successor in interest files a verified application for an extension of time with the state engineer.

(b) (i) A water right may not be forfeited unless a judicial action to declare the right forfeited is commenced within 15 years from the end of the latest period of nonuse of at least five years.

(ii) If forfeiture is asserted in an action for general determination of rights in conformance with the provisions of Chapter 4, the 15-year limitation period shall commence to run back in time from the date the state engineer's proposed determination of rights is served upon each claimant.

(iii) A decree entered in an action for general determination of rights under Chapter 4 shall bar any claim of forfeiture for prior nonuse against any right determined to be valid in the decree.

(c) The extension of time to resume the use of that water may not exceed five years unless the time is further extended by the state engineer.

(d) The provisions of this section are applicable whether the unused or abandoned water is permitted to run to waste or is used by others without right.

(2) (a) The state engineer shall furnish an application [~~blank~~] form that includes a space for:

(i) the name and address of the applicant;

(ii) the name of the source from which the right is claimed and the point on that source where the water was last diverted;

(iii) evidence of the validity of the right claimed by reference to application number in the state engineer's office;

(iv) date of court decree and title of case, or the date when the water was first used;

(v) the place, time, and nature of past use;

(vi) the flow of water that has been used in second-feet or the quantity stored in acre-feet;

(vii) the time the water was used each year;

(viii) the extension of time applied for;

(ix) a statement of the reason for the nonuse of the water; and

(x) any other information that the state engineer requires.

(b) Filing the application extends the time during which nonuse may continue until the state engineer issues his order on the application for an extension of time.

(c) (i) Upon receipt of the application, the state engineer shall publish, once a week for two successive weeks, a notice of the application in a newspaper of general circulation in the county in which the source of the water supply is located and where the water is to be used.

(ii) The notice may be published in more than one newspaper.

(iii) The notice shall inform the public of the nature of the right for which the extension is sought and the reasons for the extension.

(d) Any interested person may file a written protest with the state engineer against the granting of the application:

(i) within 20 days after the notice is published, if the adjudicative proceeding is informal; and

(ii) within 30 days after the notice is published, if the adjudicative proceeding is formal.

(e) In any proceedings to determine whether the application for extension should be approved or rejected, the state engineer shall follow the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act.

(f) After further investigation, the state engineer may approve or reject the application.

(3) (a) Applications for extension shall be granted by the state engineer for periods not exceeding five years each, upon a showing of reasonable cause for nonuse.

(b) Reasonable causes for nonuse include:

(i) financial crisis;

(ii) industrial depression;

(iii) operation of legal proceedings or other unavoidable cause; and

(iv) the holding of a water right without use by any municipality, metropolitan water district, or other public agency to meet the reasonable future requirements of the public.

(4) (a) Sixty days before the expiration of any extension of time, the state engineer shall notify the applicant by registered mail or by any form of electronic communication through which receipt is verifiable of the date when the extension period will expire.

(b) Before the date of expiration, the applicant shall either:

(i) file in a manner prescribed by the state engineer a [~~verified~~] signed statement with the state engineer setting forth the date on which use of the water was resumed, and whatever additional information is required by the state engineer; or

(ii) apply for a further extension of time in which to resume use of the water according to the procedures and requirements of this section.

(5) The appropriator's water right ceases and the water reverts to the public if the:

(a) appropriator or the appropriator's successor in interest fails to apply for an extension of time;

(b) state engineer denies the application for extension of time; or

(c) appropriator or the appropriator's successor in interest fails to apply for a further extension of time.

Section 2. Section 73-3-2 is amended to read:

73-3-2. Application for right to use unappropriated public water -- Necessity -- Form -- Contents -- Validation of prior applications by state or United States or officer or agency thereof.

(1) (a) In order to acquire the right to use any unappropriated public water in this state, any person who is a citizen of the United States, or who has filed his declaration of intention to become a citizen as required by the naturalization laws, or any association of citizens or declarants, or any corporation, or the state of Utah by the directors of the divisions of travel development, business and economic development, wildlife resources, and state lands and forestry, or the executive director of the Department of Transportation for the use and benefit of the public, or the United States of America shall make an application in [~~writing to the~~] a form prescribed by the state engineer before commencing the construction, enlargement, extension, or structural alteration of any ditch, canal, well, tunnel, or other distributing works, or performing similar work tending to acquire such rights or appropriation, or enlargement of an existing right or appropriation.

(b) The application shall be upon a [~~blank~~] form to be furnished by the state engineer and shall set forth:

(i) the name and post office address of the person, corporation, or association making the application;

(ii) the nature of the proposed use for which the appropriation is intended;

(iii) the quantity of water in acre-feet or the flow of water in second-feet to be appropriated;

(iv) the time during which it is to be used each year;

(v) the name of the stream or other source from which the water is to be diverted;

(vi) the place on the stream or source where the water is to be diverted and the nature of the diverting works;

(vii) the dimensions, grade, shape, and nature of the proposed diverting channel; and

(viii) other facts that clearly define the full purpose of the proposed appropriation.

(2) (a) In addition to the information required in Subsection (1)(b), if the proposed use is for irrigation, the application shall show:

(i) the legal subdivisions of the land proposed to be irrigated, with the total acreage thereof; and

(ii) the character of the soil.

(b) In addition to the information required in Subsection (1)(b), if the proposed use is for developing power, the application shall show:

(i) the number, size, and kind of water wheels to be employed and the head under which each wheel is to be operated;

(ii) the amount of power to be produced;

(iii) the purposes for which and the places where it is to be used; and

(iv) the point where the water is to be returned to the natural stream or source.

(c) In addition to the information required in Subsection (1)(b), if the proposed use is for milling or mining, the application shall show:

(i) the name of the mill and its location or the name of the mine and the mining district in which it is situated;

(ii) its nature; and

(iii) the place where the water is to be returned to the natural stream or source.

(d) (i) The point of diversion and point of return of the water shall be designated with reference to the United States land survey corners, mineral monuments or permanent federal triangulation or traverse monuments, when either the point of diversion or the point of return is situated within six miles of the corners and monuments.

(ii) If the point of diversion or point of return is located in unsurveyed territory, the point may be designated with reference to a permanent, prominent natural object.

(iii) The storage of water by means of a reservoir shall be regarded as a diversion, and the point of diversion in those cases is the point where the longitudinal axis of the dam crosses the center of the stream bed.

(iv) The point where released storage water is taken from the stream shall be designated as the point of rediversion.

(v) The lands to be inundated by any reservoir shall be described as nearly as may be, and by government subdivision if upon surveyed land. The height of the dam, the capacity of the reservoir, and the area of the surface when the reservoir is filled shall be given.

(vi) If the water is to be stored in an underground area or basin, the applicant shall designate, with reference to the nearest United States land survey corner if situated within six miles of it, the point of area of intake, the location of the underground area or basin, and the points of collection.

(e) Applications for the appropriation of water filed prior to the enactment of this title, by the United States of America, or any officer or agency of it, or the state of Utah, or any officer or agency of it, are validated, subject to any action by the state engineer.

Section 3. Section 73-3-3 is amended to read:

73-3-3. Permanent or temporary changes in point of diversion, place of use, or purpose of use.

(1) For purposes of this section:

(a) "Permanent changes" means changes for an indefinite length of time with an intent to relinquish the original point of diversion, place of use, or purpose of use.

(b) "Temporary changes" means changes for fixed periods not exceeding one year.

(2) (a) Any person entitled to the use of water may make permanent or temporary changes in the:

(i) point of diversion;

(ii) place of use; or

(iii) purpose of use for which the water was originally appropriated.

(b) A change may not be made if it impairs any vested right without just compensation.

(3) Both permanent and temporary changes of point of diversion, place of use, or purpose of use of water, including water involved in general adjudication or other suits, shall be made in the manner provided in this section.

(4) (a) A change may not be made unless the change application is approved by the state engineer.

(b) Applications shall be made upon forms furnished by the state engineer and shall set forth:

(i) the name of the applicant;

(ii) a description of the water right;

(iii) the quantity of water;

(iv) the stream or source;

(v) the point on the stream or source where the water is diverted;

(vi) the point to which it is proposed to change the diversion of the water;

(vii) the place, purpose, and extent of the present use;

(viii) the place, purpose, and extent of the proposed use; and

(ix) any other information that the state engineer requires.

(5) (a) The state engineer shall follow the same procedures, and the rights and duties of the applicants with respect to applications for permanent changes of point of diversion, place of use, or purpose of use shall be the same, as provided in this title for applications to appropriate water.

(b) The state engineer may, in connection with applications for permanent change involving only a change in point of diversion of 660 feet or less, waive the necessity for publishing a notice of application.

(6) (a) The state engineer shall investigate all temporary change applications.

(b) If the state engineer finds that the temporary change will not impair any vested rights of others, he shall issue an order authorizing the change.

(c) If the state engineer finds that the change sought might impair vested rights, before authorizing the change, he shall give notice of the application to any person whose rights may be affected by the change.

(d) Before making an investigation or giving notice, the state engineer may require the applicant to deposit a sum of money sufficient to pay the expenses of the investigation and publication of notice.

(7) (a) The state engineer may not reject applications for either permanent or temporary changes for the sole reason that the change would impair the vested rights of others.

(b) If otherwise proper, permanent or temporary changes may be approved for part of the water involved or upon the condition that conflicting rights are acquired.

(8) (a) Any person holding an approved application for the appropriation of water may either permanently or temporarily change the point of diversion, place of use, or purpose of use.

(b) A change of an approved application does not:

(i) affect the priority of the original application; or

(ii) extend the time period within which the construction of work is to begin or be completed.

(9) Any person who changes or who attempts to change a point of diversion, place of use, or purpose of use, either permanently or temporarily, without first applying to the state engineer in the manner provided in this section:

(a) obtains no right; and

(b) is guilty of a class B misdemeanor, each day of the unlawful change constituting a separate offense, separately punishable.

(10) (a) This section does not apply to the replacement of an existing well by a new well drilled within a radius of 150 feet from the point of diversion of the existing well.

(b) Any replacement well must be drilled in accordance with the requirements of Section 73-3-28.

(11) (a) In accordance with the requirements of this section, the Division of Wildlife Resources or Division of Parks and Recreation may file applications for permanent or temporary changes for the purpose of providing water for instream flows, within a designated section of a natural stream channel or altered natural stream channel, necessary within the state of Utah for:

(i) the propagation of fish;

(ii) public recreation; or

(iii) the reasonable preservation or enhancement of the natural stream environment.

(b) Applications may be filed for changes on:

(i) perfected water rights presently owned by the respective division;

(ii) perfected water rights purchased by the respective division for the purpose of providing water for instream flows, through funding provided for that purpose by legislative appropriation or acquired by lease, agreement, gift, exchange, or contribution; or

(iii) appurtenant water rights acquired with the acquisition of real property by either division.

(c) A physical structure or physical diversion from the stream is not required to implement a change for instream flow use.

(d) Subsection (11) does not allow enlargement of the water right sought to be changed nor may the change impair any vested water right.

(e) In addition to the other requirements of this section, an application filed by either division shall:

(i) set forth the legal description of the points on the stream between which the necessary instream flows will be provided by the change; and

(ii) include appropriate studies, reports, or other information required by the state engineer that demonstrate the necessity for the instream flows in the specified section of the stream and the projected benefits to the public that will result from the change.

(f) The Division of Wildlife Resources and Division of Parks and Recreation may:

(i) purchase water rights for the purposes provided in Subsection (11)(a) only with funds specifically appropriated by the Legislature for water rights purchases; or

(ii) accept a donated water right without legislative approval.

(g) Subsection (11) does not authorize either division to:

(i) appropriate unappropriated water under Section 73-3-2 for the purpose of providing instream flows; or

(ii) acquire water rights by eminent domain for instream flows or for any other purpose.

(h) Subsection (11) applies only to change applications filed on or after April 28, 1986.

(12) (a) Sixty days before the date on which proof of change for instream flows under Subsection (11) is due, the state engineer shall notify the applicant by registered mail or by any form of electronic communication through which receipt is verifiable of the date when proof of change is due.

(b) Before the date when proof of change is due, the applicant must either:

(i) file a verified statement with the state engineer that the instream flow uses have been perfected, which shall set forth:

(A) the legal description of the points on the natural stream channel or altered natural stream channel between which the necessary instream flows have been provided;

(B) detailed measurements of the flow of water in second feet changed;

(C) the period of use; and

(D) any additional information required by the state engineer; or

(ii) apply for a further extension of time as provided for in Section 73-3-12.

(c) Upon approval of the verified statement required under Subsection (12)(b)(i), the state engineer shall issue a certificate of change for instream flow use.

Section 4. Section 73-3-5 is amended to read:

73-3-5. Action by engineer on applications.

(1) On receipt of each application containing the information required by Section 73-3-2, and payment of the filing fee, it shall be the duty of the state engineer to make an endorsement thereon of the date of its receipt, and to make a record of such receipt [~~in a book kept in his office~~] for that purpose.

(2) It shall be [~~his~~] the duty of the state engineer to examine the application and determine whether any corrections, amendments or changes are required for clarity and if so, see that such changes are made before further processing.

(3) All applications which shall comply with the provisions of this chapter and with the regulations of the state engineer shall be filed and recorded [~~in a suitable book kept for that purpose~~].

(4) The state engineer may issue a temporary receipt to drill a well at any time after the filing of an application to appropriate water therefrom, as provided by this section if all fees be advanced and if in his judgment there is unappropriated water available in the proposed source and there is no likelihood of impairment of existing rights; provided, however, that the issuance of such temporary permits shall not dispense with the publishing of notice and the final approval or rejection of such application by the state engineer, as provided by this chapter.

(5) The state engineer may send the necessary notices and address all correspondence relating to each application to the owner thereof as shown by the state engineer's records, or to his attorney in fact provided a written power of attorney is filed in the state engineer's office.

Section 5. Section 73-3-12 is amended to read:

73-3-12. Time limit on construction and application to beneficial use -- Extensions -- Procedures and criteria.

(1) As used in this section, "public agency" means a public water supply agency of:

(a) the state; or

(b) a political subdivision of the state.

(2) (a) The construction of the works and the application of water to beneficial use shall be diligently prosecuted to completion within the time fixed by the state engineer.

(b) Extensions of time, not exceeding 50 years from the date of approval of the application, except as provided in Subsection (2)(c), may be granted by the state engineer on proper showing of diligence or reasonable cause for delay.

(c) Additional extensions of time, beyond 50 years, may be granted by the state engineer on applications held by any public agency, if the public agency can demonstrate the water will be needed to meet the reasonable future requirements of the public.

(d) All requests for extension of time shall be made by [~~affidavit~~] signed statement and shall be filed in the office of the state engineer on or before the date fixed for filing proof of appropriation.

(e) Extensions not exceeding 14 years after the date of approval may be granted by the state engineer upon a sufficient showing by [~~affidavit~~] signed statement, but extensions beyond 14 years shall be granted only after application and publication of notice.

(f) (i) (A) The state engineer shall publish notice once each week for two successive weeks in a newspaper of general circulation in the county in which the source of supply is located and where the water is to be used.

(B) The notice may be published in more than one newspaper.

(ii) The notice shall inform the public of the diligence claimed and the reason for the request.

(g) Any person who owns a water right from the source of supply referred to in Subsection (2)(f) or holds an application from that source of supply may file a protest with the state engineer:

(i) within 20 days after the notice is published, if the adjudicative proceeding is informal; and

(ii) within 30 days after the notice is published, if the adjudicative proceeding is formal.

(h) In considering an application to extend the time in which to place water to beneficial use under an approved application, the state engineer shall deny the extension and declare the application lapsed, unless the applicant affirmatively shows that the applicant has exercised or is exercising reasonable and due diligence in working toward completion of the appropriation.

(i) (i) If reasonable and due diligence is shown by the applicant, the state engineer shall approve the extension.

(ii) The approved extension is effective so long as the applicant continues to exercise reasonable diligence in completing the appropriation.

(j) The state engineer shall consider the holding of an approved application by any public agency to meet the reasonable future requirements of the public to be reasonable and due diligence within the meaning of this section for the first 50 years. The state engineer may approve extensions beyond 50 years for a public agency, if the agency provides information sufficient to demonstrate the water will be needed to meet the reasonable future requirements of the public.

(k) If the state engineer finds unjustified delay or lack of diligence in prosecuting the works to completion, the state engineer may deny the extension or may grant the request in part or upon conditions, including a reduction of the priority of all or part of the application.

(3) (a) Except as provided in Subsections (3)(b) and (c), an application upon which proof has not been submitted shall lapse and have no further force or effect after the expiration of 50 years from the date of its approval.

(b) If the works are constructed with which to make beneficial use of the water applied for, the state engineer may, upon showing of that fact, grant additional time beyond the 50-year period in which to make proof.

(c) An application held by a public agency to meet the reasonable future requirements of the public, for which proof of appropriation has not been submitted, shall lapse, unless extended as provided in Subsection (2)(j).

Section 6. Section 73-3-27 is amended to read:

73-3-27. Requests for segregation of pending applications.

Upon request in writing and approval by the state engineer, applications to appropriate or to permanently change the point of diversion, place or purpose of use of water may be divided or segregated into two or more separate parts; provided such request shall be made upon [~~blanks to be~~] forms furnished by the state engineer and shall include the serial number of the application to be segregated, the name, post-office address of the owner of the application, a statement of the nature of the proposed division or segregation, the reasons therefor, and such other information as the state engineer may require.

Action taken by the state engineer on applications for appropriation or permanent change prior to segregation shall be applicable in all respects to the segregated parts thereof. Upon segregation the original and each segregated part shall be treated as separate applications. The approval of a request for segregation shall not confirm the validity or good standing of the segregated application or extend the time for the construction of works. Action of the state engineer upon requests for segregation taken prior to the effective date of this act is approved and confirmed.

Requests for segregation shall be rejected if the approval thereof would impair rights or would prove detrimental to the public welfare.

Section 7. Section 73-3-28 is amended to read:

73-3-28. Replacement wells -- Requirements -- State engineer's approval -- Application to drill -- Filing -- Form -- Contents -- Notice -- Fees -- Definition -- Plugging of old well.

An existing well may be replaced with a replacement well within a radius of 150 feet from the existing well without the filing of a change application under Section 73-3-3, upon approval first having been obtained from the state engineer.

Such request for permission to drill a replacement well shall be filed with the state engineer upon a [~~blank~~] form to be furnished by the state engineer. Such [~~blank~~] form shall contain, but need not be limited to, the name and post office address of the person, corporation or association making the request. The number of the claim or application filed with the state engineer covering the well which is being replaced, the number of the award if in a decree, the reason for the replacement, the location of the replacement well with reference to the nearest United States land survey corner, and from the old well, and the name of the driller employed by the applicant to do the work.

No filing fee shall be required for the filing of such a request for permission to drill a replacement well and the state engineer need give only such notice as, in his judgment, is necessary to protect existing rights and in the event the state engineer shall determine that it is necessary to publish notice the advertising fee shall be paid in advance by the applicant.

The term "replacement well" as used herein means a new well drilled for the sole purpose of replacing an existing well which is impaired or made useless by structural difficulties and no new right in the use of water accrues. Upon completion of the new well the old well must be plugged by the applicant in a manner satisfactory to the state engineer.

Section 8. Section 73-5-13 is amended to read:

73-5-13. Claim to surface or underground water not otherwise represented -- Information required -- Corrections -- Filing -- Investigation -- Publication -- Judicial action to determine validity -- Rules.

(1) (a) All claimants to the right to the use of water, including both surface and underground, whose rights are not represented by certificates of appropriation issued by the state engineer, by applications filed with the state engineer, by court decrees, or by notice of claim filed pursuant to law, shall submit the claim to the state engineer.

(b) Subsections (2) through (7) shall only apply to claims submitted to the state engineer pursuant to this section after May 4, 1997.

(2) (a) Each claim submitted under this section shall be verified under oath by the claimant or the claimant's duly appointed representative and submitted on forms furnished by the state engineer setting forth any information the state engineer requires, including:

(i) the name and post office address of the person making the claim;

(ii) the quantity of water claimed in acre-feet or rate of flow in second-feet, or both, where appropriate;

(iii) the source of supply;

(iv) the priority date of the right;

(v) the location of the point of diversion with reference to a United States land survey corner;

(vi) the place of use;

(vii) the nature and extent of use;

(viii) the time during which the water has been used each year; and

(ix) the date when the water was first used.

(b) The claim shall also include the following information verified under oath by a registered engineer or land surveyor:

(i) measurements of the amount of water diverted;

(ii) a statement that the quantity of water claimed either in acre-feet or cubic feet per second is consistent with the beneficial use claimed and the supply which the source is capable of producing; and

(iii) a map showing the original diversion and conveyance works and where the water was placed to beneficial use, including irrigated lands, if irrigation is the claimed beneficial use.

(c) The state engineer may require additional information as necessary to evaluate any claim including:

(i) affidavits setting forth facts of which the affiant has personal knowledge;

(ii) authenticated or historic photographs, plat or survey maps, or surveyors' notes;

(iii) authenticated copies of original diaries, personal histories, or other historical documents which document the claimed use of water; and

(iv) other relevant records on file with any county recorder's, surveyor's, or assessor's office.

(3) (a) A claim may be corrected by submitting to the state engineer a verified corrected claim designated as such and bearing the same number as the original claim.

(b) No fee shall be charged for submitting a corrected claim.

(4) (a) Upon submission by a claimant of a claim that is acceptably complete under Subsection (2) and the deposit of money by a claimant with the state engineer sufficient to pay the expenses of conducting a field investigation and publishing a notice of the claim, the state engineer shall:

(i) file the claim;

(ii) endorse the date of its receipt;

(iii) assign the claim a water right number; and

(iv) publish a notice of the claim following the same procedures as provided in Section 73-3-6.

(b) Any claim not acceptably complete under Subsection (2) shall be returned to the claimant.

(c) The acceptance of any claim filed under this section by the state engineer may not be considered to be an adjudication by the state engineer of the validity of the claimed water right.

(5) (a) The state engineer shall:

(i) conduct a field investigation of each claim filed; and

(ii) prepare a report of the investigation.

(b) The report of the investigation shall:

(i) become part of the file on the claim; and

(ii) be admissible in any administrative or judicial proceeding on the validity of the claim.

(6) (a) Any person who may be damaged by a diversion and use of water as described in a claim submitted pursuant to this section may file an action in district court to determine the validity of the claim, whether or not the claim has been accepted for filing by the state engineer.

(b) Venue for the action shall be in the county in which the point of diversion listed in the claim is located, or in a county where the place of use, or some part of it, is located.

(c) The action shall be brought against the claimant to the use of water or the claimant's successor in interest.

(d) In any action brought to determine the validity of a claim to the use of water under this section, the claimant shall have the initial burden of proof as to the validity of the claimed right.

(e) Any person filing an action challenging the validity of a claim to the use of water under this section shall notify the state engineer [~~in writing~~] of the pendency of the action in a manner prescribed by the state engineer. Upon receipt of the notice, the state engineer may take no action on any change or exchange applications founded on the claim that is the subject of the pending litigation, until the court adjudicates the matter.

(f) Upon the entering of any final order or decree in any judicial action to determine the validity of a claim under this section, the prevailing party shall file a certified copy of the order or decree with the state engineer, which shall become part of the state engineer's file on the claim.

(7) The state engineer may make rules consistent with this section specifying information required to be included in a claim and claim procedures.

CHAPTER 137
H. B. 26
Passed February 13, 2001
Approved March 15, 2001
Effective April 30, 2001

CRIMINAL RESTITUTION AMENDMENTS

Sponsor: Sheryl L. Allen
Afton B. Bradshaw
A. Lamont Tyler
Gary F. Cox
Neal B. Hendrickson
David Ure
Ty McCartney
Carol Spackman Moss
Peggy Wallace
Trisha S. Beck
Duane E. Bourdeaux
Paul Ray
Matt Throckmorton
DeMar Bud Bowman
Jack A. Seitz
Douglas C. Aagard

This act modifies the Code of Criminal Procedure by creating the Crime Victims Restitution Act. The act defines terms and sets out procedures for collecting restitution from persons convicted of a crime and ordered by a court to pay restitution to their victims. The act requires input on the issue of restitution from law enforcement agencies, prosecutors, and the Department of Corrections. In addition, the defendant is required to provide information to the court to help the court determine restitution. The act also provides a mechanism by which a restitution order can be enforced through a civil action and declares that it is nondischargeable in bankruptcy. Priority, enforcement, and collection of restitution is also addressed.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
77-18-1, as last amended by Chapters 279 and 287, Laws of Utah 1999

ENACTS:
77-38a-101, Utah Code Annotated 1953
77-38a-102, Utah Code Annotated 1953
77-38a-201, Utah Code Annotated 1953
77-38a-202, Utah Code Annotated 1953
77-38a-203, Utah Code Annotated 1953
77-38a-301, Utah Code Annotated 1953
77-38a-302, Utah Code Annotated 1953
77-38a-401, Utah Code Annotated 1953
77-38a-402, Utah Code Annotated 1953
77-38a-403, Utah Code Annotated 1953
77-38a-404, Utah Code Annotated 1953
77-38a-501, Utah Code Annotated 1953
77-38a-502, Utah Code Annotated 1953

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

Section 1. Section 77-18-1 is amended to read:

77-18-1. Suspension of sentence -- Pleas held in abeyance -- Probation -- Supervision -- Presentence investigation -- Standards -- Confidentiality -- Terms and conditions -- Restitution -- Termination, revocation, modification, or extension -- Hearings -- Electronic monitoring.

(1) On a plea of guilty or no contest entered by a defendant in conjunction with a plea in abeyance agreement, the court may hold the plea in abeyance as provided in Title 77, Chapter 2a, Pleas in Abeyance, and under the terms of the plea in abeyance agreement.

(2) (a) On a plea of guilty, guilty and mentally ill, no contest, or conviction of any crime or offense, the court may suspend the imposition or execution of sentence and place the defendant on probation. The court may place the defendant:

(i) on probation under the supervision of the Department of Corrections except in cases of class C misdemeanors or infractions;

(ii) on probation with an agency of local government or with a private organization; or

(iii) on bench probation under the jurisdiction of the sentencing court.

(b) (i) The legal custody of all probationers under the supervision of the department is with the department.

(ii) The legal custody of all probationers under the jurisdiction of the sentencing court is vested as ordered by the court.

(iii) The court has continuing jurisdiction over all probationers.

(3) (a) The department shall establish supervision and presentence investigation standards for all individuals referred to the department. These standards shall be based on:

(i) the type of offense;

(ii) the demand for services;

(iii) the availability of agency resources;

(iv) the public safety; and

(v) other criteria established by the department to determine what level of services shall be provided.

(b) Proposed supervision and investigation standards shall be submitted to the Judicial Council and the Board of Pardons and Parole on an annual basis for review and comment prior to adoption by the department.

(c) The Judicial Council and the department shall establish procedures to implement the supervision and investigation standards.

(d) The Judicial Council and the department shall annually consider modifications to the standards based upon criteria in Subsection (3)(a) and other criteria as they consider appropriate.

(e) The Judicial Council and the department shall annually prepare an impact report and submit it to the appropriate legislative appropriations subcommittee.

(4) Notwithstanding other provisions of law, the department is not required to supervise the probation of persons convicted of class B or C misdemeanors or infractions or to conduct presentence investigation reports on class C misdemeanors or infractions. However, the department may supervise the probation of class B misdemeanants in accordance with department standards.

(5) (a) Prior to the imposition of any sentence, the court may, with the concurrence of the defendant, continue the date for the imposition of sentence for a reasonable period of time for the purpose of obtaining a presentence investigation report from the department or information from other sources about the defendant.

(b) The presentence investigation report shall include a victim impact statement describing the effect of the crime on the victim and the victim's family. The victim impact statement shall:

(i) identify [~~the victim~~] all victims of the offense;

(ii) include a specific statement of the recommended amount of complete restitution as defined in Subsection 76-3-201(4), accompanied by a recommendation from the department regarding the payment of court-ordered restitution as defined in Subsection 76-3-201(4) by the defendant;

(iii) identify any physical injury suffered by the victim as a result of the offense along with its seriousness and permanence;

(iv) describe any change in the victim's personal welfare or familial relationships as a result of the offense;

(v) identify any request for psychological services initiated by the victim or the victim's family as a result of the offense; and

(vi) contain any other information related to the impact of the offense upon the victim or the victim's family and any information required by Section 77-38a-203 that is relevant to the trial court's sentencing determination.

(c) The presentence investigation report shall include a specific statement of pecuniary damages, accompanied by a recommendation from the department regarding the payment of restitution with interest by the defendant in accordance with Subsection 76-3-201(4).

(d) The contents of the presentence investigation report, including any diagnostic evaluation report ordered by the court under Section 76-3-404, are protected and are not available except by court order for purposes of sentencing as provided by rule of the Judicial Council or for use by the department.

(6) (a) The department shall provide the presentence investigation report to the defendant's attorney, or the defendant if not represented by counsel, the prosecutor, and the court for review, three working days prior to sentencing. Any alleged inaccuracies in the presentence investigation report, which have not been resolved by the parties and the department prior to sentencing, shall be brought to the attention of the sentencing judge, and the judge may grant an additional ten working days to resolve the alleged inaccuracies of the report with the department. If after ten working days the inaccuracies cannot be resolved, the court shall make a determination of relevance and accuracy on the record.

(b) If a party fails to challenge the accuracy of the presentence investigation report at the time of sentencing, that matter shall be considered to be waived.

(7) At the time of sentence, the court shall receive any testimony, evidence, or information the defendant or the prosecuting attorney desires to present concerning the appropriate sentence. This testimony, evidence, or information shall be presented in open court on record and in the presence of the defendant.

(8) While on probation, and as a condition of probation, the court may require that the defendant:

(a) perform any or all of the following:

(i) pay, in one or several sums, any fine imposed at the time of being placed on probation;

(ii) pay amounts required under Title 77, Chapter 32a, Defense Costs;

(iii) provide for the support of others for whose support he is legally liable;

(iv) participate in available treatment programs;

(v) serve a period of time, not to exceed one year, in a county jail designated by the department, after considering any recommendation by the court as to which jail the court finds most appropriate;

(vi) serve a term of home confinement, which may include the use of electronic monitoring;

(vii) participate in compensatory service restitution programs, including the compensatory service program provided in Section 78-11-20.7;

(viii) pay for the costs of investigation, probation, and treatment services;

(ix) make restitution or reparation to the victim or victims with interest in accordance with Subsection 76-3-201(4); and

(x) comply with other terms and conditions the court considers appropriate; and

(b) if convicted on or after May 5, 1997:

(i) complete high school classwork and obtain a high school graduation diploma, a GED certificate, or a vocational certificate at the defendant's own expense if the defendant has not received the diploma, GED certificate, or vocational certificate prior to being placed on probation; or

(ii) provide documentation of the inability to obtain one of the items listed in Subsection (8)(b)(i) because of:

(A) a diagnosed learning disability; or

(B) other justified cause.

(9) The department shall collect and disburse the account receivable as defined by Section 76-3-201.1, with interest and any other costs assessed under Section 64-13-21 during:

(a) the parole period and any extension of that period in accordance with Subsection 77-27-6(4); and

(b) the probation period in cases for which the court orders supervised probation and any extension of that period by the department in accordance with Subsection 77-18-1(10).

(10) (a) (i) Probation may be terminated at any time at the discretion of the court or upon completion without violation of 36 months probation in felony or class A misdemeanor cases, or 12 months in cases of class B or C misdemeanors or infractions.

(ii) (A) If, upon expiration or termination of the probation period under Subsection (10)(a)(i), there remains an unpaid balance upon the account receivable as defined in Section 76-3-201.1, the court may retain jurisdiction of the case and continue the defendant on bench probation for the limited purpose of enforcing the payment of the account receivable.

(B) In accordance with Section 77-18-6, the court shall record in the registry of civil judgments any unpaid balance not already recorded and immediately transfer responsibility to collect the account to the Office of State Debt Collection.

(iii) Upon motion of the Office of State Debt Collection, prosecutor, victim, or upon its own motion, the court may require the defendant to show cause why his failure to pay should not be treated as contempt of court.

(b) (i) The department shall notify the sentencing court, the Office of State Debt Collection, and the prosecuting attorney in writing in advance in all cases when termination of supervised probation will occur by law.

(ii) The notification shall include a probation progress report and complete report of details on outstanding accounts receivable.

(11) (a) (i) Any time served by a probationer outside of confinement after having been charged with a probation violation and prior to a hearing to revoke probation does not constitute service of time toward the total probation term unless the probationer is exonerated at a hearing to revoke the probation.

(ii) Any time served in confinement awaiting a hearing or decision concerning revocation of probation does not constitute service of time toward the total probation term unless the probationer is exonerated at the hearing.

(b) The running of the probation period is tolled upon the filing of a violation report with the court alleging a violation of the terms and conditions of probation or upon the issuance of an order to show cause or warrant by the court.

(12) (a) (i) Probation may not be modified or extended except upon waiver of a hearing by the probationer or upon a hearing and a finding in court that the probationer has violated the conditions of probation.

(ii) Probation may not be revoked except upon a hearing in court and a finding that the conditions of probation have been violated.

(b) (i) Upon the filing of an affidavit alleging with particularity facts asserted to constitute violation of the conditions of probation, the court that authorized probation shall determine if the affidavit establishes probable cause to believe that revocation, modification, or extension of probation is justified.

(ii) If the court determines there is probable cause, it shall cause to be served on the defendant a warrant for his arrest or a copy of the affidavit and an order to show cause why his probation should not be revoked, modified, or extended.

(c) (i) The order to show cause shall specify a time and place for the hearing and shall be served upon the defendant at least five days prior to the hearing.

(ii) The defendant shall show good cause for a continuance.

(iii) The order to show cause shall inform the defendant of a right to be represented by counsel at the hearing and to have counsel appointed for him if he is indigent.

(iv) The order shall also inform the defendant of a right to present evidence.

(d) (i) At the hearing, the defendant shall admit or deny the allegations of the affidavit.

(ii) If the defendant denies the allegations of the affidavit, the prosecuting attorney shall present evidence on the allegations.

(iii) The persons who have given adverse information on which the allegations are based shall be presented as witnesses subject to questioning by the defendant unless the court for good cause otherwise orders.

(iv) The defendant may call witnesses, appear and speak in his own behalf, and present evidence.

(e) (i) After the hearing the court shall make findings of fact.

(ii) Upon a finding that the defendant violated the conditions of probation, the court may order the probation revoked, modified, continued, or that the entire probation term commence anew.

(iii) If probation is revoked, the defendant shall be sentenced or the sentence previously imposed shall be executed.

[~~(13) Restitution imposed under this chapter and interest accruing in accordance with Subsection~~

~~76-3-201(4) is considered a debt for willful and malicious injury for purposes of exceptions listed to discharge in bankruptcy as provided in Title 11 U.S.C.A. Sec. 523, 1985.~~]

[~~(14)~~] (13) The court may order the defendant to commit himself to the custody of the Division of Mental Health for treatment at the Utah State Hospital as a condition of probation or stay of sentence, only after the superintendent of the Utah State Hospital or his designee has certified to the court that:

(a) the defendant is appropriate for and can benefit from treatment at the state hospital;

(b) treatment space at the hospital is available for the defendant; and

(c) persons described in Subsection 62A-12-209(2)(g) are receiving priority for treatment over the defendants described in this Subsection [~~(14)~~] (13).

[~~(15)~~] (14) Presentence investigation reports, including presentence diagnostic evaluations, are classified protected in accordance with Title 63, Chapter 2, Government Records Access and Management Act. Notwithstanding Sections 63-2-403 and 63-2-404, the State Records Committee may not order the disclosure of a presentence investigation report. Except for disclosure at the time of sentencing pursuant to this section, the department may disclose the presentence investigation only when:

(a) ordered by the court pursuant to Subsection 63-2-202(7);

(b) requested by a law enforcement agency or other agency approved by the department for purposes of supervision, confinement, and treatment of the offender;

(c) requested by the Board of Pardons and Parole;

(d) requested by the subject of the presentence investigation report or the subject's authorized representative; or

(e) requested by the victim of the crime discussed in the presentence investigation report or the victim's authorized representative, provided that the disclosure to the victim shall include only information relating to statements or materials provided by the victim, to the circumstances of the crime including statements by the defendant, or to the impact of the crime on the victim or the victim's household.

[~~(16)~~] (15) (a) The court shall consider home confinement as a condition of probation under the supervision of the department, except as provided in Sections 76-3-406 and 76-5-406.5.

(b) The department shall establish procedures and standards for home confinement, including electronic monitoring, for all individuals referred to the department in accordance with Subsection [~~(17)~~] (16).

[~~(17)~~] (16) (a) If the court places the defendant on probation under this section, it may order the defendant to participate in home confinement through the use of electronic monitoring as described in this section until further order of the court.

(b) The electronic monitoring shall alert the department and the appropriate law enforcement unit of the defendant's whereabouts.

(c) The electronic monitoring device shall be used under conditions which require:

(i) the defendant to wear an electronic monitoring device at all times; and

(ii) that a device be placed in the home of the defendant, so that the defendant's compliance with the court's order may be monitored.

(d) If a court orders a defendant to participate in home confinement through electronic monitoring as a condition of probation under this section, it shall:

(i) place the defendant on probation under the supervision of the Department of Corrections;

(ii) order the department to place an electronic monitoring device on the defendant and install electronic monitoring equipment in the residence of the defendant; and

(iii) order the defendant to pay the costs associated with home confinement to the department or the program provider.

(e) The department shall pay the costs of home confinement through electronic monitoring only for those persons who have been determined to be indigent by the court.

(f) The department may provide the electronic monitoring described in this section either directly or by contract with a private provider.

Section 2. Section 77-38a-101 is enacted to read:

CHAPTER 38A. CRIME VICTIMS RESTITUTION ACT

Part 1. General Provisions

77-38a-101. Title.

This chapter is known as the "Crime Victims Restitution Act."

Section 3. Section 77-38a-102 is enacted to read:

77-38a-102. Definitions.

As used in this chapter:

(1) "Conviction" includes a:

(a) judgment of guilt;

(b) a plea of guilty; or

(c) a plea of no contest.

(2) "Criminal activities" means any offense of which the defendant is convicted or any other criminal conduct for which the defendant admits responsibility to the sentencing court with or without an admission of committing the criminal conduct.

(3) "Department" means the Department of Corrections.

(4) "Diversion" means suspending criminal proceedings prior to conviction on the condition that a defendant agree to participate in a rehabilitation program, make restitution to the victim, or fulfill some other condition.

(5) "Party" means the prosecutor, defendant, or department involved in a prosecution.

(6) "Pecuniary damages" means all special damages, but not general damages, which a person could recover against the defendant in a civil action arising out of the facts or events constituting the defendant's criminal activities and includes the money equivalent of property taken, destroyed, broken, or otherwise harmed, and losses including earnings and medical expenses.

(7) "Plea agreement" means an agreement entered between the prosecution and defendant setting forth the special terms and conditions and criminal charges upon which the defendant will enter a plea of guilty or no contest.

(8) "Plea in abeyance" means an order by a court, upon motion of the prosecution and the defendant, accepting a plea of guilty or of no contest from the defendant but not, at that time, entering judgment of conviction against him nor imposing sentence upon him on condition that he comply with specific conditions as set forth in a plea in abeyance agreement.

(9) "Plea in abeyance agreement" means an agreement entered into between the prosecution and the defendant setting forth the specific terms and conditions upon which, following acceptance of the agreement by the court, a plea may be held in abeyance.

(10) "Plea disposition" means an agreement entered into between the prosecution and defendant including diversion, plea agreement, plea in abeyance agreement, or any agreement by which the defendant may enter a plea in any other jurisdiction or where charges are dismissed without a plea.

(11) "Restitution" means full, partial, or nominal payment for pecuniary damages to a victim, including prejudgment interest, the accrual of interest from the time of sentencing, insured damages, and payment for expenses to a governmental entity for extradition or transportation and as further defined by law.

(12) "Screening" means the process used by a prosecuting attorney to terminate investigative action, proceed with prosecution, move to dismiss a prosecution that has been commenced, or cause a prosecution to be diverted.

(13) (a) "Victim" means any person whom the court determines has suffered pecuniary damages as a result of the defendant's criminal activities.

(b) "Victim" may not include a codefendant or accomplice.

Section 4. Section 77-38a-201 is enacted to read:

Part 2. Restitution Determination

77-38a-201. Restitution determination -- Law enforcement duties and responsibilities.

Any law enforcement agency conducting an investigation for criminal conduct which would constitute a felony or class A misdemeanor shall provide in the investigative reports whether a claim for restitution exists, the basis for the claim, and the estimated or actual amount of the claim.

Section 5. Section 77-38a-202 is enacted to read:

77-38a-202. Restitution determination -- Prosecution duties and responsibilities.

(1) At the time of entry of a conviction or entry of any plea disposition of a felony or class A misdemeanor, the attorney general, county attorney, municipal attorney, or district attorney shall provide to the district court:

(a) the names of all victims, including third parties, asserting claims for restitution;

(b) the actual or estimated amount of restitution determined at that time; and

(c) whether or not the defendant has agreed to pay the restitution specified as part of the plea disposition.

(2) In computing actual or estimated restitution, the attorney general, county attorney, municipal attorney, or district attorney shall:

(a) use the criteria set forth in Section 77-38a-302 for establishing restitution amounts; and

(b) in cases involving multiple victims, incorporate into any conviction or plea disposition all claims for restitution arising out of the investigation for which the defendant is charged.

(3) If charges are not to be prosecuted as part of a plea disposition, restitution claims from victims of those crimes shall also be provided to the court.

Section 6. Section 77-38a-203 is enacted to read:

77-38a-203. Restitution determination -- Department of Corrections -- Presentence investigation.

(1) (a) The department shall prepare a presentence investigation report in accordance with Subsection 77-18-1(5). The prosecutor and law enforcement agency involved shall provide all available victim information to the department upon request. The victim impact statement shall:

(i) identify all victims of the offense;

(ii) itemize any economic loss suffered by the victim as a result of the offense;

(iii) include for each identifiable victim a specific statement of the recommended amount of complete restitution as defined in Section 77-38a-302,

accompanied by a recommendation from the department regarding the payment by the defendant of court-ordered restitution with interest as defined in Section 77-38a-302;

(iv) identify any physical, mental, or emotional injuries suffered by the victim as a result of the offense, and the seriousness and permanence;

(v) describe any change in the victim's personal welfare or familial relationships as a result of the offense;

(vi) identify any request for mental health services initiated by the victim or the victim's family as a result of the offense; and

(vii) contain any other information related to the impact of the offense upon the victim or the victim's family that the court requires.

(b) The crime victim shall be responsible to provide to the department upon request all invoices, bills, receipts, and other evidence of injury, loss of earnings, and out-of-pocket loss. The crime victim shall also provide upon request:

(i) all documentation and evidence of compensation or reimbursement from insurance companies or agencies of the state of Utah, any other state, or federal government received as a direct result of the crime for injury, loss, earnings, or out-of-pocket loss; and

(ii) proof of identification, including date of birth, Social Security number, drivers license number, next of kin, and home and work address and telephone numbers.

(c) The inability, failure, or refusal of the crime victim to provide all or part of the requested information shall result in the court determining restitution based on the best information available.

(2) (a) The court shall order the defendant as part of the presentence investigation to submit to the department any information determined necessary to be disclosed for the purpose of ascertaining the restitution.

(b) The willful failure or refusal of the defendant to provide all or part of the requisite information shall constitute a waiver of any grounds to appeal or seek future amendment or alteration of the restitution order predicated on the undisclosed information.

(c) If the defendant objects to the imposition, amount, or distribution of the restitution recommended in the presentence investigation, or if the department is unable to determine the restitution for any reason, the court shall set a hearing date to resolve the matter.

(d) If any party fails to challenge the accuracy of the presentence investigation report at the time of sentencing, that matter shall be considered to be waived.

Section 7. Section 77-38a-301 is enacted to read:

Part 3. Restitution Requirements

77-38a-301. Restitution -- Convicted defendant may be required to pay.

In a criminal action, the court may require a convicted defendant to make restitution.

Section 8. Section 77-38a-302 is enacted to read:

77-38a-302. Restitution criteria.

(1) When a defendant is convicted of criminal activity that has resulted in pecuniary damages, in addition to any other sentence it may impose, the court shall order that the defendant make restitution to victims of crime as provided in this subsection, or for conduct for which the defendant has agreed to make restitution as part of a plea disposition. For purposes of restitution, a victim has the meaning as defined in Subsection 77-38a-102(12) and in determining whether restitution is appropriate, the court shall follow the criteria and procedures as provided in Subsections (2) through (5).

(2) In determining restitution, the court shall determine complete restitution and court-ordered restitution.

(a) "Complete restitution" means restitution necessary to compensate a victim for all losses caused by the defendant.

(b) "Court-ordered restitution" means the restitution the court having criminal jurisdiction orders the defendant to pay as a part of the criminal sentence at the time of sentencing.

(c) Complete restitution and court-ordered restitution shall be determined as provided in Subsection (5).

(3) If the court determines that restitution is appropriate or inappropriate under this part, the court shall make the reasons for the decision part of the court record.

(4) If the defendant objects to the imposition, amount, or distribution of the restitution, the court shall at the time of sentencing allow the defendant a full hearing on the issue.

(5) (a) For the purpose of determining restitution for an offense, the offense shall include any criminal conduct admitted by the defendant to the sentencing court or to which the defendant agrees to pay restitution. A victim of an offense that involves as an element a scheme, a conspiracy, or a pattern of criminal activity, includes any person directly harmed by the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern.

(b) In determining the monetary sum and other conditions for complete restitution, the court shall consider all relevant facts, including:

(i) the cost of the damage or loss if the offense resulted in damage to or loss or destruction of property of a victim of the offense;

(ii) the cost of necessary medical and related professional services and devices relating to physical or mental health care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment;

(iii) the cost of necessary physical and occupational therapy and rehabilitation;

(iv) the income lost by the victim as a result of the offense if the offense resulted in bodily injury to a victim; and

(v) the cost of necessary funeral and related services if the offense resulted in the death of a victim.

(c) In determining the monetary sum and other conditions for court-ordered restitution, the court shall consider the factors listed in Subsections (5)(a) and (b) and:

(i) the financial resources of the defendant and the burden that payment of restitution will impose, with regard to the other obligations of the defendant;

(ii) the ability of the defendant to pay restitution on an installment basis or on other conditions to be fixed by the court;

(iii) the rehabilitative effect on the defendant of the payment of restitution and the method of payment; and

(iv) other circumstances which the court determines may make restitution inappropriate.

(d) The court may decline to make an order or may defer entering an order of restitution if the court determines that the complication and prolongation of the sentencing process, as a result of considering an order of restitution under this subsection, substantially outweighs the need to provide restitution to the victim.

Section 9. Section 77-38a-401 is enacted to read:

Part 4. Restitution Judgments

77-38a-401. Entry of judgment -- Interest -- Civil actions -- Lien.

(1) Upon the court determining that a defendant owes restitution, the clerk of the court shall enter an order of complete restitution as defined in Section 77-38a-302 on the civil judgment docket and provide notice of the order to the parties.

(2) The order shall be considered a legal judgment, enforceable under the Utah Rules of Civil Procedure. In addition, the department may, on behalf of the person in whose favor the restitution order is entered, enforce the restitution order as judgment creditor under the Utah Rules of Civil Procedure.

(3) If the defendant fails to obey a court order for payment of restitution and the victim or department elects to pursue collection of the order by civil process, the victim shall be entitled to recover reasonable attorney's fees.

(4) A judgment ordering restitution when recorded in a registry of judgments docket shall have the same affect and is subject to the same rules as a judgment in a civil action. Interest shall accrue on the amount ordered from the time of sentencing, including prejudgment interest.

(5) The department shall make rules permitting the restitution payments to be credited to principal first and the remainder of payments credited to interest in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

Section 10. Section 77-38a-402 is enacted to read:

77-38a-402. Nondischargeability in bankruptcy.

Restitution imposed under this chapter and interest accruing in accordance with Subsection 77-38a-401(4) is considered a debt and may not be discharged in bankruptcy.

Section 11. Section 77-38a-403 is enacted to read:

77-38a-403. Civil action by victim for damages.

(1) Provisions in this part concerning restitution do not limit or impair the right of a person injured by a defendant's criminal activities to sue and recover damages from the defendant in a civil action. Evidence that the defendant has paid or been ordered to pay restitution under this part may not be introduced in any civil action arising out of the facts or events which were the basis for the restitution. However, the court shall credit any restitution paid by the defendant to a victim against any judgment in favor of the victim in the civil action.

(2) If conviction in a criminal trial necessarily decides the issue of a defendant's liability for pecuniary damages of a victim, that issue is conclusively determined as to the defendant if it is involved in a subsequent civil action.

Section 12. Section 77-38a-404 is enacted to read:

77-38a-404. Priority.

(1) If restitution to more than one person, agency, or entity is set at the same time, the department shall establish the following priorities of payment:

(a) the crime victim;

(b) the Office of Crime Victim Reparations;

(c) any other government agency which has provided reimbursement to the victim as a result of the offender's criminal conduct; and

(d) any insurance company which has provided reimbursement to the victim as a result of the offender's criminal conduct.

(2) All money collected for court-ordered obligations from offenders by the department will

be applied first to victim restitution, absent the $30 per month required to be collected by the department under Section 64-13-21.

Section 13. Section 77-38a-501 is enacted to read:

Part 5. Enforcement and Collection

77-38a-501. Collection, default, and sanctions.

When a defendant defaults in the payment of a judgment for restitution or any installment ordered, the court, on motion of the prosecutor, parole or probation agent, victim, or on its own motion may impose sanctions against the defendant as provided in Subsection 76-3-201(1).

Section 14. Section 77-38a-502 is enacted to read:

77-38a-502. Collection from inmate offenders.

In addition to the remedies provided in Section 77-38a-501, the department upon written request of the prosecutor, victim, or parole or probation agent, shall collect restitution from offender funds held by the department as provided in Section 64-13-23.

CHAPTER 138
H. B. 27
Passed January 26, 2001
Approved March 15, 2001
Effective April 30, 2001

ELECTRONIC GOVERNMENT SERVICES AMENDMENTS - ADMINISTRATIVE RULES AND PROCEDURES

Sponsor: Richard M. Siddoway

This act modifies the Utah Administrative Rulemaking Act and the Administrative Procedures Act by amending statutory language to facilitate the electronic delivery of government services by governmental agencies. The act provides definitions for purposes of electronic records in governmental agencies. The act amends provisions relating to the cost of rulemaking publications.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
26-1-5, as enacted by Chapter 126, Laws of Utah 1981
63-46a-2, as last amended by Chapter 60, Laws of Utah 1996
63-46a-3, as last amended by Chapter 332, Laws of Utah 1998
63-46a-4, as last amended by Chapter 219, Laws of Utah 1998
63-46a-6, as last amended by Chapter 60, Laws of Utah 1996
63-46a-7, as last amended by Chapter 219, Laws of Utah 1998
63-46a-10, as last amended by Chapter 60, Laws of Utah 1996
63-46a-10.5, as last amended by Chapter 219, Laws of Utah 1998
63-46a-11, as last amended by Chapter 332, Laws of Utah 1998
63-46a-12.1, as enacted by Chapter 224, Laws of Utah 1990
63-46b-3, as last amended by Chapter 72, Laws of Utah 1988
63-46b-6, as last amended by Chapter 72, Laws of Utah 1988
63-46b-9, as enacted by Chapter 161, Laws of Utah 1987
63-46b-10, as last amended by Chapter 72, Laws of Utah 1988
63-46b-12, as last amended by Chapter 72, Laws of Utah 1988
63-46b-13, as last amended by Chapter 72, Laws of Utah 1988
63-46b-15, as last amended by Chapter 164, Laws of Utah 1999

ENACTS:
46-4-502, Utah Code Annotated 1953
63-46a-17, Utah Code Annotated 1953
63-46b-23, Utah Code Annotated 1953

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

Section 1. Section 26-1-5 is amended to read:

26-1-5. Rules of department.

(1) Except in areas regulated by statutory committees created by this title, the department shall have the power to adopt, amend, or rescind rules necessary to carry out the provisions of this title.

(2) Rules shall have the force and effect of law and may deal with matters which materially affect the security of health or the preservation and improvement of public health in the state, and any matters as to which jurisdiction is conferred upon the department by this title.

(3) Every rule adopted by the department pursuant to this section, or a committee established under Section 26-1-7 or 26-1-7.5, shall be subject to [~~the~~] Title 63, Chapter 46a, Utah Administrative Rulemaking Act[~~,~~] and shall become effective at the time and in the manner provided in [~~the Utah Administrative Rulemaking Act, and shall be signed by the executive director~~] that act.

[~~(4) At the time a rule adopted by the department or a committee established by Section 26-1-7 or 26-1-7.5, is filed with the state archivist it shall also be filed with the legislative research director.~~]

[~~(5)~~] (4) If, at the next general session of the legislature following the filing of a rule with the legislative research director, the legislature passes a bill disapproving such rule, the rule shall be null and void.

[~~(6)~~] (5) The department or a committee created under Section 26-1-7 or 26-1-7.5, shall not adopt a rule identical to a rule disapproved under Subsection [~~(5)~~] (4) of this section, before the beginning of the next general session of the legislature following the general session at which the rule was disapproved.

Section 2. Section 46-4-502 is enacted to read:

46-4-502. Definitions.

For purposes of this part:

(1) "Copy" may include an electronic version of a document.

(2) "Mail" may include sending a document electronically, provided that the recipient can accept and process the electronic writing.

(3) "Mailing address" may include an electronic mailing address capable of receiving and processing an electronic writing.

(4) "Sign" or "signature" may include any form of electronic signature authorized by the governmental agency.

(5) "Written" or "writing" means information that is:

(a) inscribed on a tangible medium; or

(b) stored in an electronic or other medium and is retrievable.

Section 3. Section 63-46a-2 is amended to read:

63-46a-2. Definitions.

As used in this chapter:

(1) "Administrative record" means information an agency relies upon when making a rule under this chapter including [~~copies of~~]:

(a) the proposed rule, change in the proposed rule, and the rule analysis form;

(b) the public comment received and recorded by the agency during the public comment period;

(c) the agency's response to the public comment;

(d) the agency's analysis of the public comment; and

(e) the agency's report of its decision-making process.

(2) "Agency" means each state board, authority, commission, institution, department, division, officer, or other state government entity other than the Legislature, its committees, the political subdivisions of the state, or the courts, which is authorized or required by law to make rules, adjudicate, grant or withhold licenses, grant or withhold relief from legal obligations, or perform other similar actions or duties delegated by law.

(3) "Bulletin" means the Utah State Bulletin.

(4) "Catchline" means a short summary of each section, part, rule, or title of the code that follows the section, part, rule, or title reference placed before the text of the rule and serves the same function as boldface in legislation as described in Section 68-3-13.

(5) "Code" means the body of all effective rules as compiled and organized by the division and entitled "Utah Administrative Code."

(6) "Director" means the director of the Division of Administrative Rules.

(7) "Division" means the Division of Administrative Rules.

(8) "Effective" means operative and enforceable.

(9) (a) "File" means to submit a document to the division as prescribed by [~~this chapter~~] the division.

(b) "Filing date" means the day and time the document is recorded as received by the division.

(10) "Interested person" means any person affected by or interested in a proposed rule, amendment to an existing rule, or a nonsubstantive change made under Section 63-46a-10.

(11) "Order" means an agency action that determines the legal rights, duties, privileges, immunities, or other interests of one or more specific persons, but not a class of persons.

(12) "Person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency.

(13) (a) "Policy" means a statement applying to persons or agencies that:

(i) broadly prescribes a future course of action, guidelines, principles, or procedures; or

(ii) prescribes the internal management of an agency.

(b) A policy is a rule if it conforms to the definition of a rule.

(14) "Publication" or "publish" means making a rule available to the public by [~~printing~~] including the rule or a summary of the rule in the bulletin.

(15) "Publication date" means the inscribed date of the bulletin.

(16) "Register" may include an electronic database.

[~~(16)~~] (17) (a) "Rule" means an agency's written statement that:

(i) is explicitly or implicitly required by state or federal statute or other applicable law;

(ii) has the effect of law;

(iii) implements or interprets a state or federal legal mandate; and

(iv) applies to a class of persons or another agency.

(b) "Rule" includes the amendment or repeal of an existing rule.

(c) "Rule" does not mean:

(i) orders;

(ii) unenforceable policies;

(iii) internal management policies of the agency that do not restrict the legal rights of a class of persons or another agency;

(iv) the governor's executive orders or proclamations;

(v) opinions issued by the attorney general's office;

(vi) declaratory rulings issued by the agency according to [~~the provisions of~~] Section 63-46b-21 except as required by Section 63-46a-3; or

(vii) rulings by an agency in adjudicative proceedings, except as required by Subsection 63-46a-3(6).

[~~(17)~~] (18) "Rule analysis" means the format prescribed by the division to summarize and analyze rules.

[~~(18)~~] (19) "Substantive change" means a change in a rule that affects the application or results of agency actions.

Section 4. Section 63-46a-3 is amended to read:

63-46a-3. When rulemaking is required.

(1) Each agency shall:

(a) maintain a [~~complete copy~~] current version of its [~~current~~] rules; and

(b) make it available to the public for inspection during its regular business hours.

(2) In addition to other rulemaking required by law, each agency shall make rules when agency action:

(a) authorizes, requires, or prohibits an action;

(b) provides or prohibits a material benefit;

(c) applies to a class of persons or another agency; and

(d) is explicitly or implicitly authorized by statute.

(3) Rulemaking is also required when an agency issues a written interpretation of a state or federal legal mandate.

(4) Rulemaking is not required when:

(a) agency action applies only to internal agency management, inmates or residents of a state correctional, diagnostic, or detention facility, persons under state legal custody, patients admitted to a state hospital, members of the state retirement system, or students enrolled in a state education institution;

(b) a standardized agency manual applies only to internal fiscal or administrative details of governmental entities supervised under statute;

(c) an agency issues policy or other statements that are advisory, informative, or descriptive, and do not conform to the requirements of Subsections (2) and (3); or

(d) an agency makes nonsubstantive changes in a rule, except that the agency shall file all nonsubstantive changes in a rule with the division.

(5) A rule shall enumerate any penalty authorized by statute that may result from its violation.

(6) Each agency shall enact rules incorporating the principles of law not already in its rules that are established by final adjudicative decisions within 120 days after the decision is announced in its cases.

(7) (a) Each agency may enact a rule that incorporates by reference:

(i) all or any part of another code, rule, or regulation that has been adopted by a federal agency, an agency or political subdivision of this state, an agency of another state, or by a nationally recognized organization or association;

(ii) state agency implementation plans mandated by the federal government for participation in the federal program;

(iii) lists, tables, illustrations, or similar materials that are subject to frequent change, fully described in the rule, and are available for public inspection; or

(iv) lists, tables, illustrations, or similar materials that the director determines are too expensive to reproduce in the administrative code.

(b) Rules incorporating materials by reference shall:

(i) be enacted according to the procedures outlined in this chapter;

(ii) state that the referenced material is incorporated by reference;

(iii) state the date, issue, or version of the material being incorporated; and

(iv) define specifically what material is incorporated by reference and identify any agency deviations from it.

(c) The agency shall identify any substantive changes in the material incorporated by reference by following the rulemaking procedures of this chapter.

(d) The agency shall maintain a complete and current copy of the referenced material available for public [~~inspection~~] review at the agency and at the division.

(8) (a) This chapter is not intended to inhibit the exercise of agency discretion within the limits prescribed by statute or agency rule.

(b) An agency may enact a rule creating a justified exception to a rule.

(9) An agency may obtain assistance from the attorney general to ensure that its rules meet legal and constitutional requirements.

Section 5. Section 63-46a-4 is amended to read:

63-46a-4. Rulemaking procedure.

(1) Except as provided in Sections 63-46a-6 and 63-46a-7, when making, amending, or repealing a rule agencies shall comply with:

(a) the requirements of this section;

(b) consistent procedures required by other statutes;

(c) applicable federal mandates; and

(d) rules made by the division to implement this chapter.

(2) Subject to the requirements of this chapter, each agency shall develop and use flexible approaches in drafting rules that meet the needs of the agency and that involve persons affected by the agency's rules.

(3) (a) Each agency shall file its proposed rule and rule analysis with the division.

(b) [~~(i)~~] Rule amendments shall be marked with new language underlined and deleted language struck out.

[~~(ii) Alternatively, the repeal of an entire rule may be indicated by annotating the rule "repealed in its entirety" prominently on every page.~~]

(c) (i) The division shall publish the information required under Subsection (3) on the rule analysis and the text of the proposed rule in the next issue of the bulletin.

(ii) For rule amendments, only the section or subsection of the rule being amended need be printed.

(iii) If the director determines that the rule is too long to publish, the director shall publish the rule analysis and shall publish the rule by reference to a copy on file with the division.

(4) Prior to filing a rule with the division, the department head shall consider and comment on the fiscal impact a rule may have on businesses.

(5) The rule analysis shall contain:

(a) a summary of the rule or change;

(b) the purpose of the rule or reason for the change;

(c) the statutory authority or federal requirement for the rule;

(d) the anticipated cost or savings to:

(i) the state budget;

(ii) local governments; and

(iii) other persons;

(e) the compliance cost for affected persons;

(f) how interested persons may [~~inspect~~] review the full text of the rule;

(g) how interested persons may present their views on the rule;

(h) the time and place of any scheduled public hearing;

(i) the name and telephone number of an agency employee who may be contacted about the rule;

(j) the name of the agency head or designee who authorized the rule;

(k) the date on which the rule may become effective following the public comment period; and

(l) comments by the department head on the fiscal impact the rule may have on businesses.

(6) (a) For a rule being repealed and reenacted, the rule analysis shall contain a summary that generally includes the following:

(i) a summary of substantive provisions in the repealed rule which are eliminated from the enacted rule; and

(ii) a summary of new substantive provisions appearing only in the enacted rule.

(b) The summary required under this Subsection (6) is to aid in review and may not be used to contest any rule on the ground of noncompliance with the procedural requirements of this chapter.

(7) A copy of the rule analysis shall be mailed to all persons who have made timely request of the agency for advance notice of its rulemaking proceedings and to any other person who, by statutory or federal mandate or in the judgment of the agency, should also receive notice.

(8) Following the publication date, the agency shall allow at least 30 days for public comment on the rule.

(9) (a) Except as provided in Sections 63-46a-6 and 63-46a-7, a proposed rule becomes effective on any date specified by the agency that is no fewer than 30 nor more than 120 days after the publication date.

(b) The agency shall provide notice of the rule's effective date to the division in the form required by the division.

(c) The notice of effective date may not provide for an effective date prior to the date it is received by the division.

(d) The division shall publish notice of the effective date of the rule in the next issue of the bulletin.

(e) A proposed rule lapses if a notice of effective date or a change to a proposed rule is not filed with the division within 120 days of publication.

Section 6. Section 63-46a-6 is amended to read:

63-46a-6. Changes in rules.

(1) (a) To change a proposed rule already published in the bulletin, an agency shall file with the division:

(i) [~~a copy~~] the text of the changed rule; and

(ii) a rule analysis containing a description of the change and the information required by Section 63-46a-4.

(b) A change to a proposed rule may not be filed more than 120 days after publication of the rule being changed.

(c) The division shall publish the rule analysis for the changed rule in the bulletin.

(d) The changed proposed rule and its associated proposed rule will become effective on a date specified by the agency, not less than 30 days or more than 120 days after publication of the last change in proposed rule.

(e) A changed proposed rule and its associated proposed rule lapse if a notice of effective date or another change to a proposed rule is not filed with the division within 120 days of publication of the last change in proposed rule.

(2) If the rule change is nonsubstantive:

(a) the agency need not comply with the requirements of Subsection (1); and

(b) the agency shall notify the division of the change in writing.

(3) If the rule is effective, the agency shall amend the rule according to the procedures specified in Section 63-46a-4.

Section 7. Section 63-46a-7 is amended to read:

63-46a-7. Exceptions to rulemaking procedure.

(1) All agencies shall comply with the rulemaking procedures of Section 63-46a-4 unless an agency finds that these procedures would:

(a) cause an imminent peril to the public health, safety, or welfare;

(b) cause an imminent budget reduction because of budget restraints or federal requirements; or

(c) place the agency in violation of federal or state law.

(2) (a) When finding that its rule is excepted from regular rulemaking procedures by this section, the agency shall file with the division:

(i) [~~a copy~~] the text of the rule; and

(ii) a rule analysis that includes the specific reasons and justifications for its findings.

(b) The division shall publish the rule in the bulletin as provided in Subsection 63-46a-4(3).

(c) The agency shall notify interested persons as provided in Subsection 63-46a-4(7).

(d) The rule becomes effective for a period not exceeding 120 days on the date of filing or any later date designated in the rule.

(3) If the agency intends the rule to be effective beyond 120 days, the agency shall also comply with the procedures of Section 63-46a-4.

Section 8. Section 63-46a-10 is amended to read:

63-46a-10. Division of Administrative Rules -- Duties generally.

(1) The Division of Administrative Rules shall:

(a) establish all filing, publication, and hearing procedures necessary to make rules under this chapter;

(b) record in a register the receipt of all agency rules, rule analysis forms, and notices of effective dates;

(c) make the register, copies of all proposed rules, and rulemaking documents available for public inspection;

(d) publish all proposed rules, rule analyses, notices of effective dates, and review notices in the bulletin at least monthly, except that the division may publish the complete text of any proposed rule that the director determines is too long to print or too expensive to publish by reference to [~~a copy on file~~] the text maintained by the division;

(e) compile, format, number, and index all effective rules in an administrative code, and periodically publish that code and supplements or revisions to it;

(f) publish a digest[~~, at least monthly, summarizing~~] of all rules and notices [~~printed~~] contained in the most recent bulletin;

(g) publish at least annually an index of all changes to the administrative code and the effective date of each change;

(h) print, or contract to print, all rulemaking publications the division determines necessary to implement this chapter;

(i) distribute without charge [~~copies of~~] the bulletin and administrative code to state-designated repositories, the Administrative Rules Review Committee, the Office of Legislative Research and General Counsel, and the two houses of the Legislature;

(j) distribute without charge [~~copies of~~] the digest and index to state legislators, agencies, political subdivisions on request, and the Office of Legislative Research and General Counsel;

(k) distribute, at prices covering [~~all~~] publication costs, all paper rulemaking publications to all other requesting persons and agencies;

(l) provide agencies assistance in rulemaking; and

(m) administer this chapter and require state agencies to comply with filing, publication, and hearing procedures.

(2) The division may after notifying the agency make nonsubstantive changes to rules filed with the division or published in the bulletin or code by:

(a) implementing a uniform system of formatting, punctuation, capitalization, organization, numbering, and wording;

(b) correcting obvious errors and inconsistencies in punctuation, capitalization, numbering, referencing, and wording;

(c) changing a catchline to more accurately reflect the substance of each section, part, rule, or title;

(d) updating or correcting annotations associated with a section, part, rule, or title; and

(e) merging or determining priority of any amendment, enactment, or repeal to the same rule or section made effective by an agency.

(3) In addition, the division may make the following nonsubstantive changes with the concurrence of the agency:

(a) eliminate duplication within rules;

(b) eliminate obsolete and redundant words; and

(c) correcting defective or inconsistent section and paragraph structure in arrangement of the subject matter of rules.

(4) For nonsubstantive changes made in accordance with Subsection (2) or (3) after publication of the rule in the bulletin, the division shall publish a list of nonsubstantive changes in the bulletin. For each nonsubstantive change, the list shall include:

(a) the affected code citation;

(b) a brief description of the change; and

(c) the date the change was made.

(5) All funds appropriated or collected for publishing the division's publications shall be nonlapsing.

Section 9. Section 63-46a-10.5 is amended to read:

63-46a-10.5. Repeal and reenactment of Utah Administrative Code.

(1) When the director determines that the Utah Administrative Code requires extensive revision and reorganization, the division may repeal the code and reenact a new code according to the requirements of this section.

(2) The division may:

(a) reorganize, reformat, and renumber the code;

(b) require each agency to review its rules and make any organizational or substantive changes according to the requirements of Section 63-46a-6; and

(c) require each agency to prepare a brief summary of all substantive changes made by the agency.

(3) The division may make nonsubstantive changes in the code by:

(a) adopting a uniform system of punctuation, capitalization, numbering, and wording;

(b) eliminating duplication;

(c) correcting defective or inconsistent section and paragraph structure in arrangement of the subject matter of rules;

(d) eliminating all obsolete or redundant words;

(e) correcting obvious errors and inconsistencies in punctuation, capitalization, numbering, referencing, and wording;

(f) changing a catchline to more accurately reflect the substance of each section, part, rule, or title;

(g) updating or correcting annotations associated with a section, part, rule, or title; and

(h) merging or determining priority of any amendment, enactment, or repeal to the same rule or section made effective by an agency.

(4) (a) To inform the public about the proposed code reenactment, the division shall publish in the bulletin:

(i) notice of the code reenactment;

(ii) the date, time, and place of a public hearing where members of the public may comment on the proposed reenactment of the code;

(iii) locations where the proposed reenactment of the code may be [~~inspected~~] reviewed; and

(iv) agency summaries of substantive changes in the reenacted code.

(b) To inform the public about substantive changes in agency rules contained in the proposed reenactment, each agency shall:

(i) make [~~copies~~] the text of their reenacted rules available:

(A) for public [~~inspection~~] review during regular business hours; and

(B) in an electronic version; and

(ii) comply with the requirements of Subsection 63-46a-4(7).

(5) The division shall hold a public hearing on the proposed code reenactment no fewer than 30 days nor more than 45 days after the publication required by Subsection (3)(a).

(6) The division shall distribute complete [~~copies~~] text of the proposed code reenactment without charge to:

(a) state-designated repositories in Utah;

(b) the Administrative Rules Review Committee; and

(c) the Office of Legislative Research and General Counsel.

(7) The former code is repealed and the reenacted code is effective at noon on a date designated by the division that is not fewer than 45 days nor more than 90 days after the publication date required by this section.

(8) Repeal and reenactment of the code meets the requirements of Section 63-46a-9 for a review of all agency rules.

Section 10. Section 63-46a-11 is amended to read:

63-46a-11. Administrative Rules Review Committee.

(1) (a) There is created an Administrative Rules Review Committee of ten permanent members and four ex officio members.

(b) (i) The committee's permanent members shall be composed of five members of the Senate, appointed by the president of the Senate, and five members of the House, appointed by the speaker of the House, with no more than three senators and three representatives from the same political party.

(ii) The permanent members shall convene at least once each month as a committee to review new agency rules, amendments to existing agency rules, and repeals of existing agency rules. Meetings may be suspended at the discretion of the committee chairs.

(iii) Members shall serve for two-year terms or until their successors are appointed.

(iv) A vacancy exists whenever a committee member ceases to be a member of the Legislature, or when a member resigns from the committee. Vacancies shall be filled by the appointing

authority, and the replacement shall serve out the unexpired term.

(c) When the committee reviews existing rules, the committee's permanent members shall invite the Senate and House chairmen of the standing committee and the Senate and House chairmen of the appropriation subcommittee that have jurisdiction over the agency whose existing rules are being reviewed to participate as nonvoting, ex officio members with the committee.

(d) Three representatives and three senators from the permanent members are a quorum for the transaction of business at any meeting.

(2) Each agency rule as defined in Section 63-46a-2 shall be submitted to the committee at the same time public notice is given under Section 63-46a-4.

(3) (a) The committee shall exercise continuous oversight of the process of rulemaking.

(b) The committee shall examine rules submitted by each agency to determine:

(i) whether or not they are authorized by statute;

(ii) whether or not they comply with legislative intent;

(iii) their impact on the economy and the government operations of the state and local political subdivisions; and

(iv) their impact on affected persons.

(c) To carry out these duties, the committee may examine any other issues that it considers necessary. The committee may also notify and refer rules to the chairmen of the interim committee which has jurisdiction over a particular agency when the committee determines that an issue involved in an agency's rules may be more appropriately addressed by that committee.

(d) In reviewing the rules, the committee shall follow generally accepted principles of statutory construction.

(4) The committee may request that the Office of the Legislative Fiscal Analyst prepare a fiscal note on any rule.

(5) In order to accomplish its oversight functions, the committee has all the powers granted to legislative interim committees as set forth in Section 36-12-11.

(6) (a) The committee may prepare written findings of its review of each rule and may include any recommendations, including legislative action.

(b) The committee shall provide to the agency that enacted the rule:

(i) [~~a copy of~~] its findings, if any; and

(ii) a request that the agency notify the committee of any changes it makes in the rule.

(c) The committee shall provide [~~a copy of~~] its findings to any member of the Legislature and to any person affected by the rule who requests [~~a copy~~] the findings.

(d) The committee shall provide [~~a copy of~~] its findings to the presiding officers of both the House and the Senate, Senate and House [~~chairmen~~] chair of the standing committee, and the Senate and House chairmen of the Appropriation Subcommittee that have jurisdiction over the agency whose rules are the subject of the findings.

(7) (a) The committee may submit a report on its review of state agency rules to each member of the Legislature at each regular session.

(b) The report shall include:

(i) the findings and recommendations made by the committee under Subsection (6);

(ii) any action taken by an agency in response to committee recommendations; and

(iii) any recommendations by the committee for legislation.

Section 11. Section 63-46a-12.1 is amended to read:

63-46a-12.1. Judicial challenge to administrative rules.

(1) (a) Any person aggrieved by a rule may obtain judicial review of the rule by filing a complaint with the county clerk in the district court where the person resides or in the district court in Salt Lake County.

(b) Any person aggrieved by an agency's failure to comply with Section 63-46a-3 may obtain judicial review of the agency's failure to comply by filing a complaint with the clerk of the district court where the person resides or in the district court in Salt Lake County.

(2) (a) Except as provided in Subsection (2)(b), a person seeking judicial review under this section shall exhaust [~~his~~] that person's administrative remedies by complying with the requirements of Section 63-46a-12 before filing the complaint.

(b) When seeking judicial review of a rule, the person need not exhaust [~~his~~] that person's administrative remedies if:

(i) less than six months has passed since the date that the rule became effective and the person had submitted verbal or written comments on the rule to the agency during the public comment period;

(ii) a statute granting rulemaking authority expressly exempts rules made under authority of that statute from compliance with Section 63-46a-12; or

(iii) compliance with Section 63-46a-12 would cause the person irreparable harm.

(3) (a) [~~Besides~~] In addition to the information required by the Utah Rules of Civil Procedure, a complaint filed under this section shall contain:

(i) the name and mailing address of the plaintiff;

(ii) the name and mailing address of the defendant agency;

(iii) the name and mailing address of any other party joined in the action as a defendant;

(iv) [~~a copy~~] the text of the rule or proposed rule, if any;

(v) an allegation that [~~he~~] the person filing the complaint has either exhausted the administrative remedies by complying with Section 63-46a-12 or met the requirements for waiver of exhaustion of administrative remedies established by Subsection (2)(b);

(vi) the relief sought; and

(vii) factual and legal allegations supporting the relief sought.

(b) (i) The plaintiff shall serve a summons and a copy of the complaint as required by the Utah Rules of Civil Procedure.

(ii) The defendants shall file a responsive pleading as required by the Utah Rules of Civil Procedures.

(iii) The agency shall file the administrative record of the rule, if any, with its responsive pleading.

(4) The district court may grant relief to the petitioner by:

(a) declaring the rule invalid, if the court finds that:

(i) the rule violates constitutional or statutory law or the agency does not have legal authority to make the rule;

(ii) the rule is not supported by substantial evidence when viewed in light of the whole administrative record; or

(iii) the agency did not follow proper rulemaking procedure;

(b) declaring the rule nonapplicable to the petitioner;

(c) remanding the matter to the agency for compliance with proper rulemaking procedures or further fact-finding;

(d) ordering the agency to comply with Section 63-46a-3;

(e) issuing a judicial stay or injunction to enjoin the agency from illegal action or action that would cause irreparable harm to the petitioner; or

(f) any combination of Subsections (4)(a) through (e).

(5) If the plaintiff meets the requirements of Subsection (2)(b), the district court may review and act on a complaint under this section whether or not the plaintiff has requested the agency review under Section 63-46a-12.

Section 12. Section 63-46a-17 is enacted to read:

63-46a-17. Electronic records and conversion of written records by governmental agencies.

A governmental agency may make rules regarding electronic records and conversion of written records as prescribed by Title 46, Chapter 4, Part 5, Electronic Records in Government Agencies.

Section 13. Section 63-46b-3 is amended to read:

63-46b-3. Commencement of adjudicative proceedings.

(1) Except as otherwise permitted by Section 63-46b-20, all adjudicative proceedings shall be commenced by either:

(a) a notice of agency action, if proceedings are commenced by the agency; or

(b) a request for agency action, if proceedings are commenced by persons other than the agency.

(2) A notice of agency action shall be filed and served according to the following requirements:

(a) The notice of agency action shall be in writing, signed by a presiding officer, and shall include:

(i) the names and mailing addresses of all persons to whom notice is being given by the presiding officer, and the name, title, and mailing address of any attorney or employee who has been designated to appear for the agency;

(ii) the agency's file number or other reference number;

(iii) the name of the adjudicative proceeding;

(iv) the date that the notice of agency action was mailed;

(v) a statement of whether the adjudicative proceeding is to be conducted informally according to the provisions of rules adopted under Sections 63-46b-4 and 63-46b-5, or formally according to the provisions of Sections 63-46b-6 to 63-46b-11;

(vi) if the adjudicative proceeding is to be formal, a statement that each respondent must file a written response within 30 days of the mailing date of the notice of agency action;

(vii) if the adjudicative proceeding is to be formal, or if a hearing is required by statute or rule, a statement of the time and place of any scheduled hearing, a statement of the purpose for which the hearing is to be held, and a statement that a party who fails to attend or participate in the hearing may be held in default;

(viii) if the adjudicative proceeding is to be informal and a hearing is required by statute or rule, or if a hearing is permitted by rule and may be requested by a party within the time prescribed by rule, a statement that the parties may request a hearing within the time provided by the agency's rules;

(ix) a statement of the legal authority and jurisdiction under which the adjudicative proceeding is to be maintained;

(x) the name, title, mailing address, and telephone number of the presiding officer; and

(xi) a statement of the purpose of the adjudicative proceeding and, to the extent known by the presiding officer, the questions to be decided.

(b) When adjudicative proceedings are commenced by the agency, the agency shall:

(i) mail the notice of agency action to each party;

(ii) publish the notice of agency action, if required by statute; and

(iii) mail the notice of agency action to any other person who has a right to notice under statute or rule.

(3) (a) Where the law applicable to the agency permits persons other than the agency to initiate adjudicative proceedings, that person's request for agency action shall be in writing and signed by the person invoking the jurisdiction of the agency, or by [~~his~~] that person's representative, and shall include:

(i) the names and addresses of all persons to whom a copy of the request for agency action is being sent;

(ii) the agency's file number or other reference number, if known;

(iii) the date that the request for agency action was mailed;

(iv) a statement of the legal authority and jurisdiction under which agency action is requested;

(v) a statement of the relief or action sought from the agency; and

(vi) a statement of the facts and reasons forming the basis for relief or agency action.

(b) The person requesting agency action shall file the request with the agency and shall [~~send~~] mail a copy [~~by mail~~] to each person known to have a direct interest in the requested agency action.

(c) An agency may, by rule, prescribe one or more [~~printed~~] forms eliciting the information required by Subsection (3)(a) to serve as the request for agency action when completed and filed by the person requesting agency action.

(d) The presiding officer shall promptly review a request for agency action and shall:

(i) notify the requesting party in writing that the request is granted and that the adjudicative proceeding is completed;

(ii) notify the requesting party in writing that the request is denied and, if the proceeding is a formal adjudicative proceeding, that the party may request a hearing before the agency to challenge the denial; or

(iii) notify the requesting party that further proceedings are required to determine the agency's response to the request.

(e) (i) Any notice required by Subsection (3)(d)(ii) shall contain the information required by Subsection 63-46b-5(1)(i) in addition to disclosure required by Subsection (3)(d)(ii) [~~of this section~~].

(ii) The agency shall mail any notice required by Subsection (3)(d) to all parties, except that any notice required by Subsection (3)(d)(iii) may be published when publication is required by statute.

(iii) The notice required by Subsection (3)(d)(iii) shall:

(A) give the agency's file number or other reference number;

(B) give the name of the proceeding;

(C) designate whether the proceeding is one of a category to be conducted informally according to the provisions of rules enacted under Sections 63-46b-4 and 63-46b-5, with citation to the applicable rule authorizing that designation, or formally according to [~~the provisions of~~] Sections 63-46b-6 to 63-46b-11;

(D) in the case of a formal adjudicative proceeding, and where respondent parties are known, state that a written response must be filed within 30 days of the date of the agency's notice if mailed, or within 30 days of the last publication date of the agency's notice, if published;

(E) if the adjudicative proceeding is to be formal, or if a hearing is to be held in an informal adjudicative proceeding, state the time and place of any scheduled hearing, the purpose for which the hearing is to be held, and that a party who fails to attend or participate in a scheduled and noticed hearing may be held in default;

(F) if the adjudicative proceeding is to be informal, and a hearing is required by statute or rule, or if a hearing is permitted by rule and may be requested by a party within the time prescribed by rule, state the parties' right to request a hearing and the time within which a hearing may be requested under the agency's rules; and

(G) give the name, title, mailing address, and telephone number of the presiding officer.

(4) When initial agency determinations or actions are not governed by this chapter, but agency and judicial review of those initial determinations or actions are subject to the provisions of this chapter, the request for agency action seeking review must be filed with the agency within the time prescribed by the agency's rules.

(5) For designated classes of adjudicative proceedings, an agency may, by rule, provide for a longer response time than allowed by this section, and may provide for a shorter response time if required or permitted by applicable federal law.

(6) Unless the agency provides otherwise by rule or order, applications for licenses filed under authority of Title 32A, Chapters 3, Packaging Agencies, 4, Public Liquor License, and 5, Private Club Liquor License are not considered to be a request for agency action under this chapter.

(7) If the purpose of the adjudicative proceeding is to award a license or other privilege as to which

there are multiple competing applicants, the agency may, by rule or order, conduct a single adjudicative proceeding to determine the award of that license or privilege.

Section 14. Section 63-46b-6 is amended to read:

63-46b-6. Procedures for formal adjudicative proceedings -- Responsive pleadings.

(1) In all formal adjudicative proceedings, unless modified by rule according to Subsection 63-46b-3(5), the respondent, if any, shall file and serve a written response signed by the respondent or [~~his~~] the respondent's representative within 30 days of the mailing date or last date of publication of the notice of agency action or the notice under Subsection 63-46b-3(3)(d), which shall include:

(a) the agency's file number or other reference number;

(b) the name of the adjudicative proceeding;

(c) a statement of the relief that the respondent seeks;

(d) a statement of the facts; and

(e) a statement summarizing the reasons that the relief requested should be granted.

(2) [~~The response shall be filed with the agency and one copy shall be sent by mail to each party~~] The respondent shall send a copy of the response filed under Subsection (1) to each party.

(3) The presiding officer, or the agency by rule, may permit or require pleadings in addition to the notice of agency action, the request for agency action, and the response. All [~~papers~~] documents permitted or required to be filed shall be filed with the agency and one copy shall be sent [~~by mail~~] to each party.

Section 15. Section 63-46b-9 is amended to read:

63-46b-9. Procedures for formal adjudicative proceedings -- Intervention.

(1) Any person not a party may file a signed, written petition to intervene in a formal adjudicative proceeding with the agency. The person who wishes to intervene shall mail a copy of the petition to each party. The petition shall include:

(a) the agency's file number or other reference number;

(b) the name of the proceeding;

(c) a statement of facts demonstrating that the petitioner's legal rights or interests are substantially affected by the formal adjudicative proceeding, or that the petitioner qualifies as an intervenor under any provision of law; and

(d) a statement of the relief that the petitioner seeks from the agency.

(2) The presiding officer shall grant a petition for intervention if [~~he~~] the presiding officer determines that:

(a) the petitioner's legal interests may be substantially affected by the formal adjudicative proceeding; and

(b) the interests of justice and the orderly and prompt conduct of the adjudicative proceedings will not be materially impaired by allowing the intervention.

(3) (a) Any order granting or denying a petition to intervene shall be in writing and [~~sent by mail~~] mailed to the petitioner and each party.

(b) An order permitting intervention may impose conditions on the intervenor's participation in the adjudicative proceeding that are necessary for a just, orderly, and prompt conduct of the adjudicative proceeding.

(c) The presiding officer may impose the conditions at any time after the intervention.

Section 16. Section 63-46b-10 is amended to read:

63-46b-10. Procedures for formal adjudicative proceedings -- Orders.

In formal adjudicative proceedings:

(1) Within a reasonable time after the hearing, or after the filing of any posthearing [~~papers~~] documents permitted by the presiding officer, or within the time required by any applicable statute or rule of the agency, the presiding officer shall sign and issue an order that includes:

(a) a statement of the presiding officer's findings of fact based exclusively on the evidence of record in the adjudicative proceedings or on facts officially noted;

(b) a statement of the presiding officer's conclusions of law;

(c) a statement of the reasons for the presiding officer's decision;

(d) a statement of any relief ordered by the agency;

(e) a notice of the right to apply for reconsideration;

(f) a notice of any right to administrative or judicial review of the order available to aggrieved parties; and

(g) the time limits applicable to any reconsideration or review.

(2) The presiding officer may use [~~his~~] the presiding officer's experience, technical competence, and specialized knowledge to evaluate the evidence.

(3) [~~No~~] A finding of fact that was contested may not be based solely on hearsay evidence unless that evidence is admissible under the Utah Rules of Evidence.

(4) This section does not preclude the presiding officer from issuing interim orders to:

(a) notify the parties of further hearings;

(b) notify the parties of provisional rulings on a portion of the issues presented; or

(c) otherwise provide for the fair and efficient conduct of the adjudicative proceeding.

Section 17. Section 63-46b-12 is amended to read:

63-46b-12. Agency review -- Procedure.

(1) (a) If a statute or the agency's rules permit parties to any adjudicative proceeding to seek review of an order by the agency or by a superior agency, the aggrieved party may file a written request for review within 30 days after the issuance of the order with the person or entity designated for that purpose by the statute or rule.

(b) The request shall:

(i) be signed by the party seeking review;

(ii) state the grounds for review and the relief requested;

(iii) state the date upon which it was mailed; and

(iv) be [~~sent by mail~~] mailed to the presiding officer and to each party.

(2) (a) Within 15 days of the mailing date of the request for review, or within the time period provided by agency rule, whichever is longer, any party may file a response with the person designated by statute or rule to receive the response. [~~One copy of the response shall be sent by mail~~]

(b) The party who files a response under Subsection (2)(a) shall mail a copy of the response to each of the parties and to the presiding officer.

(3) If a statute or the agency's rules require review of an order by the agency or a superior agency, the agency or superior agency shall review the order within a reasonable time or within the time required by statute or the agency's rules.

(4) To assist in review, the agency or superior agency may by order or rule permit the parties to file briefs or other [~~papers~~] documents, or to conduct oral argument.

(5) Notice of hearings on review shall be mailed to all parties.

(6) (a) Within a reasonable time after the filing of any response, other filings, or oral argument, or within the time required by statute or applicable rules, the agency or superior agency shall issue a written order on review.

(b) The order on review shall be signed by the agency head or by a person designated by the agency for that purpose and shall be mailed to each party.

(c) The order on review shall contain:

(i) a designation of the statute or rule permitting or requiring review;

(ii) a statement of the issues reviewed;

(iii) findings of fact as to each of the issues reviewed;

(iv) conclusions of law as to each of the issues reviewed;

(v) the reasons for the disposition;

(vi) whether the decision of the presiding officer or agency is to be affirmed, reversed, or modified, and whether all or any portion of the adjudicative proceeding is to be remanded;

(vii) a notice of any right of further administrative reconsideration or judicial review available to aggrieved parties; and

(viii) the time limits applicable to any appeal or review.

Section 18. Section 63-46b-13 is amended to read:

63-46b-13. Agency review -- Reconsideration.

(1) (a) Within 20 days after the date that an order is issued for which review by the agency or by a superior agency under Section 63-46b-12 is unavailable, and if the order would otherwise constitute final agency action, any party may file a written request for reconsideration with the agency, stating the specific grounds upon which relief is requested.

(b) Unless otherwise provided by statute, the filing of the request is not a prerequisite for seeking judicial review of the order.

(2) The request for reconsideration shall be filed with the agency and one copy shall be [~~sent by mail~~] mailed to each party by the person making the request.

(3) (a) The agency head, or a person designated for that purpose, shall issue a written order granting the request or denying the request.

(b) If the agency head or the person designated for that purpose does not issue an order within 20 days after the filing of the request, the request for reconsideration shall be considered to be denied.

Section 19. Section 63-46b-15 is amended to read:

63-46b-15. Judicial review -- Informal adjudicative proceedings.

(1) (a) The district courts have jurisdiction to review by trial de novo all final agency actions resulting from informal adjudicative proceedings, except that the juvenile courts have jurisdiction over all state agency actions relating to:

(i) the removal or placement of children in state custody;

(ii) the support of children under Subsection (1)(a)(i) as determined administratively under Section 78-3a-906; and

(iii) substantiated findings of abuse or neglect pursuant to Section 62A-4a-116.5.

(b) Venue for judicial review of informal adjudicative proceedings shall be as provided in the statute governing the agency or, in the absence of such a venue provision, in the county where the petitioner resides or maintains [~~his~~] the petitioner's principal place of business.

(2) (a) The petition for judicial review of informal adjudicative proceedings shall be a complaint governed by the Utah Rules of Civil Procedure and shall include:

(i) the name and mailing address of the party seeking judicial review;

(ii) the name and mailing address of the respondent agency;

(iii) the title and date of the final agency action to be reviewed, together with a [~~duplicate~~] copy, summary, or brief description of the agency action;

(iv) identification of the persons who were parties in the informal adjudicative proceedings that led to the agency action;

(v) a copy of the written agency order from the informal proceeding;

(vi) facts demonstrating that the party seeking judicial review is entitled to obtain judicial review;

(vii) a request for relief, specifying the type and extent of relief requested; and

(viii) a statement of the reasons why the petitioner is entitled to relief.

(b) All additional pleadings and proceedings in the district court are governed by the Utah Rules of Civil Procedure.

(3) (a) The district court, without a jury, shall determine all questions of fact and law and any constitutional issue presented in the pleadings.

(b) The Utah Rules of Evidence apply in judicial proceedings under this section.

Section 20. Section 63-46b-23 is enacted to read:

63-46b-23. Electronic records and conversion of written records by governmental agencies.

A governmental agency may make rules regarding electronic records and conversion of written records as prescribed by Title 46, Chapter 4, Part 5, Electronic Records in Government Agencies.

CHAPTER 139
H. B. 32
Passed January 30, 2001
Approved March 15, 2001
Effective April 30, 2001

UNAUTHORIZED CHARGES ON UTILITIES - CRAMMING AMENDMENTS

Sponsor: Sheryl L. Allen

This act modifies the Public Utilities Code to exclude cities, towns, and counties as third party providers from the requirements regarding unauthorized charges to a public utility account and to make technical changes.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
54-4-37, as enacted by Chapter 31, Laws of Utah 2000

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

Section 1. Section 54-4-37 is amended to read:

54-4-37. Definitions -- Unauthorized charge to account -- Penalties -- Procedures for verification -- Authority of commission and Division of Public Utilities.

(1) For purposes of this section:

(a) "Agents" includes any person[~~, firm, or corporation~~] representing a public utility for purposes of billing for a service or merchandise from a third-party supplier.

(b) "Billing aggregator" means any person[~~, corporation, partnership, or other entity which~~] that:

(i) initiates charges[~~,~~];

(ii) combines or aggregates charges from third-party suppliers of services or merchandise[~~,~~]; or

(iii) (A) creates bills for account holders; and

(B) passes these bills for the billing of account holders to:

(I) another billing aggregator; or [~~to~~]

(II) a public utility [~~for the billing of account holders~~].

(c) (i) "Public utility" [~~means a company or utility providing:~~] is as defined in Section 54-2-1.

[~~(A) natural gas services;~~]

[~~(B) electrical services; or~~]

[~~(C) telecommunications services.~~]

(ii) "Public utility" does not include a telecommunications corporation providing only mobile wireless service or Internet access.

(d) "Subscriber" means a [~~corporation,~~] person[~~,~~] or government[~~,~~] or a person acting legally on behalf of a [~~corporation,~~] person[~~,~~] or government who [~~has authorized~~] authorizes a charge from a third-party provider of service or merchandise.

(e) (i) "Third party" means any person[~~, corporation, partnership, or other entity~~] other than the account holder and the public utility[~~, including aggregators and~~].

(ii) "Third party" includes:

(A) a billing aggregator;

(B) a public utility [~~or~~];

(C) a nonpublic utility [~~providers~~] provider of services and merchandise[~~, and includes~~];

(D) those [~~entities~~] persons billing for services or merchandise[~~,~~]; and

(E) those persons verifying a subscriber's authorization.

[~~(ii)~~] (iii) "Third party" does not include:

(A) an affiliated or subsidiary company of a public utility whose charges the commission determines by rule would be reasonably associated by a subscriber with the type of charges that would appear on that particular public utility's bill; [~~or~~]

(B) [~~charges from~~] a presubscribed local or long distance telecommunications corporation or its affiliated or subsidiary company as to charges for local or long distance telephone, data, or wireless services.

(2) This section does not apply to:

(a) telecommunications services that are used, initiated, or requested by the customer, including dial-around services such as:

(i) 10-10-XXX[~~,~~];

(ii) 1-900 numbers[~~,~~];

(iii) directory assistance[~~,~~];

(iv) operator-assisted calls[~~,~~];

(v) acceptance of collect calls[~~,~~]; and

(vi) other casual calling by the customer;

(b) changes in telecommunications providers regulated by Section 54-8b-18; [~~or~~]

(c) the provision of any charges for financing by an affiliated or subsidiary company of a public utility in connection with the purchase of services or merchandise[~~, provided that~~] if there is a written agreement for the financing between the customer and the affiliated or subsidiary company[~~.~~]; or

(d) except for Subsections (5) and (6), services provided by any of the following that are billed through a public utility:

(i) a city;

(ii) a town; or

(iii) a county.

(3) Pursuant to [~~the provisions of the~~] this section, a public utility may not charge an account holder for services the account holder never:

(a) ordered [~~nor~~]; or

(b) knowingly authorized.

(4) [~~Each~~] A public utility shall ensure that its account holders receive:

(a) identification of a third-party provider of services or merchandise;

(b) upon subscriber request, toll-free numbers to enable a subscriber to contact the third party to resolve disputes;

(c) a clear, concise description of services or merchandise being billed;

(d) highlight or identification of each service or merchandise different from prior billing cycle services or merchandise;

(e) clear identification of the payment amount needed for each service or merchandise to ensure that any public utility service will continue;

(f) prompt and courteous treatment of all disputed charges; and

(g) information abut the provisions in Subsections (5) and (6).

(5) (a) Unless specifically instructed by the account holder, each public utility shall first apply all payments received to the account holder's bill for the public utility's own tariffed utility services.

(b) Any remaining credit after the application of payment under Subsection (5)(a) shall [~~then~~] be allocated proportionally to other charges, unless otherwise specified by the account holder.

(6) [~~No~~] A public utility may not disconnect or threaten disconnection of any account holder's basic utility service for failure to pay third-party charges.

(7) Accounts receivable purchased by a public utility from third parties [~~are~~] may not [~~to~~] be treated as public utility charges regardless of the service or product upon which the account receivable is based.

(8) (a) If an account holder informs the public utility that a third-party service or merchandise charge is neither knowingly used nor authorized, or the charge in whole or part is disputed, the public utility shall:

(i) (A) immediately credit the account holder's account for the disputed amount; and

(B) refer the matter back to the third party for collection; or

(ii) suspend the account holder's obligation of payment of the disputed amount until it is determined whether the charge was either knowingly used or authorized.

(b) The public utility may not request the account holder to contact the third party to resolve the dispute prior to applying the credit under Subsection (8)(a).

(c) The disputed charge shall be removed from the public utility's bill to the account holder no later than two billing cycles following the billing cycle during which the complaint or dispute is registered unless it is later determined that the charge was authorized and the account holder is required to pay [~~such~~] the charge.

(d) [~~The public utility shall inform the account holder of this process and the holder's options immediately~~] Immediately upon the account holder's first complaint or inquiry, the public utility shall inform the account holder of:

(i) the process provided in this Subsection (8); and

(ii) the account holder's options.

(e) Except as provided in Subsection (8)(c), once the charges have been removed from the account holder's utility bill:

(i) the third party may not use the utility bill to:

(A) rebill the charges; or

(B) further attempt to collect the charge; and

(ii) the public utility may not allow any further collection attempts by the third party to involve the utility bill.

(9) (a) If requested by the account holder, [~~each~~] a public utility shall provide the account holder with toll-free numbers supplied by the provider of the service or merchandise, so the account holder may contact the third-party supplier of the services or merchandise billed.

(b) The public utility responsibility prescribed by Subsection (9)(a) applies through all layers of third parties, including:

(i) public utilities[~~,~~];

(ii) service providers[~~,~~];

(iii) merchandise providers[~~,~~];

(iv) affiliate billing companies[~~,~~]; or

(v) billing aggregators[~~, and the~~].

(c) A public utility shall perform due diligence to acquire [~~that~~] the information required under this Subsection (9) from any provider for whom it bills.

(10) A third-party provider of services or merchandise [~~shall~~] may not request a public utility to bill its charges unless and until it:

(a) has provided to the public utility valid toll-free numbers to enable a subscriber to contact the third-party to resolve any disputed charges;

(b) has provided updated toll-free numbers to the public utility upon any change in the numbers; and

(c) has received authorization from the subscriber for the service or merchandise through:

(i) obtaining the subscriber's written authorization;

(ii) having the subscriber's oral authorization verified by an independent verifier; or

(iii) any means provided by rule of the commission.

(11) If the subscriber is not an individual, an authorization shall be valid only if given by an authorized representative of the subscriber.

(12) The written authorization for the service or merchandise described in Subsection (10) shall:

(a) be signed by the subscriber; and [~~shall~~]

(b) contain a clear, conspicuous, and unequivocal request by the subscriber for the service or merchandise.

(13) The confirmation by a verifier shall, at a minimum:

(a) (i) confirm the subscriber's identity with information unique to the customer[~~, unless~~]; or

(ii) if the customer refuses to provide identifying information, [~~then that~~] note the fact [~~shall be noted~~] that the customer would not provide the identifying information;

(b) confirm that the subscriber requests the service or merchandise be provided by the third party; and

(c) confirm that the subscriber has the authority to request the service or merchandise be provided by the third party.

(14) A verifier shall meet each of the following:

(a) any criteria set for verifiers by the commission;

(b) not be directly or indirectly managed, controlled, directed, or owned wholly or in part by:

(i) [~~by~~] the public utility on whose bill the charge will appear[~~, the~~];

(ii) a third-party provider[~~, or their agents~~];

(iii) an agent of a public utility or third-party provider that [~~seek~~] seeks to provide the service or merchandise [~~or by any corporation, firm, or~~];

(iv) a person who directly owns or indirectly manages, controls, directs, or owns more than 5% of the public utility or third-party provider described in Subsection (14)(b)(i) or (ii); [~~or~~]

[~~(ii) by~~] (v) the marketing entity that seeks to market the third-party provider's service or merchandise; or [~~by~~]

(vi) any [~~corporation, firm, or~~] person who directly or indirectly manages, controls, or owns more than 5% of the marketing entity described in Subsection (14)(b)(v);

(c) operate from facilities physically separated from[~~: (i)~~] those facilities of:

(i) the public utility on whose bill the charge will appear[~~,~~];

(ii) the third party or its agents that seek to provide the service or merchandise to the subscriber; or

[~~(ii) those facilities of~~] (iii) the marketing entity that seeks to market the third-party provider's service or merchandise to the subscriber; and

(d) not derive commissions or compensation based upon the number of authorizations verified.

(15) A verifier that obtains the subscriber's oral verification regarding the change shall record that verification by obtaining the appropriate verification data.

(16) (a) The record verifying a subscriber's request for a third-party to provide services or merchandise shall be available to the subscriber upon request.

(b) Information obtained from the subscriber through verification may not be used for any other purpose.

(c) Any intentional unauthorized release of the information in violation of Subsection (16)(b) is grounds for:

(i) penalties or other action by the commission; or

(ii) remedies provided by law to the aggrieved subscriber against any of the following who is responsible for the violation:

(A) the third-party provider[~~,~~];

(B) the verifier[~~, their agents, or their employees who are responsible for the violation.~~];

(C) an agent or employee of the third-party provider or verifier.

(17) The verification shall occur in the same language as that in which the request was solicited.

(18) Each public utility shall allow account holders to prohibit the public utility from billing for all or selected third parties for services or merchandise.

(19) (a) Each public utility shall maintain monthly records of the number of complaints about unauthorized charges that appear on a public utility bill [~~which~~].

(b) The records described in Subsection (19)(a) shall be available to the commission upon request.

(20) (a) Proceedings for violations of this section may be commenced by request for agency action filed with the commission by:

(i) an account holder[~~,~~];

(ii) a public utility[~~,~~];

(iii) the Division of Public Utilities[~~,~~]; or [~~by~~]

(iv) the commission on [~~its~~] the commissioner's own motion.

(b) The remedies provided by this chapter are not exclusive and are in addition to all other causes of action, remedies, and penalties provided by law.

(21) Any public utility, its agents, or a third-party provider of goods or services who violates this section or rules adopted to implement this section shall be subject to [~~the provisions of~~] Sections 54-7-23 through 54-7-29.

(22) The Division of Public Utilities shall have power to seek injunctive relief to stop repeated unauthorized violations of this section by a public utility or a third-party provider of service or merchandise.

(23) The commission is granted authority to:

(a) enforce [~~provisions of~~] this section; and

(b) implement rules to carry out the requirements of the section.

CHAPTER 140
H. B. 35
Passed January 30, 2001
Approved March 15, 2001
Effective April 30, 2001

UTAH TECHNOLOGY INFRASTRUCTURE INNOVATION PROGRAM AMENDMENTS

Sponsor: Brent H. Goodfellow

This act modifies the Information Technology Act by amending the Utah Technology Infrastructure Innovation Program. The act expands the program to allow grants for cross-agency technology innovation projects.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
63D-1-304, as enacted by Chapter 35, Laws of Utah 2000

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

Section 1. Section 63D-1-304 is amended to read:

63D-1-304. Utah Technology Infrastructure Innovation Program.

(1) There is created within the office of the chief information officer a program known as the "Utah Technology Infrastructure Innovation Program."

(2) The Legislature recognizes the need for innovation in streamlining government processes and decreasing costs of government through technology which will provide greater efficiencies and better responsiveness by government to the citizens of the state.

(3) The program shall be funded from legislative appropriations made to the program.

(4) Money in the program shall be nonlapsing except that any monies in excess of $5,000,000 unexpended at the close of each fiscal year shall lapse into the General Fund.

(5) Notwithstanding the provisions of Section 63-38-3, the chief information officer:

(a) may provide grants to individual agencies for single-agency or cross-agency technology innovation projects as prescribed by Subsection (6); and

(b) shall favor granting monies to agency technology innovation projects that can show clear cost savings to the state.

(6) In order to receive funds for proposed technology innovation projects, the agency shall provide information to the chief information officer clearly identifying the return on investment and cost savings to the program or agency from implementation of the project.

CHAPTER 141
H. B. 36
Passed February 22, 2001
Approved March 15, 2001
Effective March 15, 2001

RETIREMENT OFFICE AMENDMENTS

Sponsor: Ron Bigelow

This act modifies the Utah State Retirement Act to amend definitions, service credit purchases, contribution transfers, post retirement limitations, employer obligations, beneficiary payments, alternate payee benefits, the administrative hearing process, membership exclusions, and firefighter disability benefit provisions. This act has an immediate effective date.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
49-1-407, as enacted by Chapter 202, Laws of Utah 1996
49-1-502, as last amended by Chapter 285, Laws of Utah 1990
49-1-505, as last amended by Chapter 283, Laws of Utah 2000
49-1-601, as last amended by Chapter 197, Laws of Utah 1995
49-1-606, as last amended by Chapter 283, Laws of Utah 2000
49-1-609, as last amended by Chapter 283, Laws of Utah 2000
49-1-610, as last amended by Chapter 226, Laws of Utah 1993
49-2-103, as last amended by Chapter 292, Laws of Utah 1999
49-3-103, as last amended by Chapter 292, Laws of Utah 1999
49-3-206, as last amended by Chapters 202 and 262, Laws of Utah 1998
49-3-410, as last amended by Chapters 83 and 328, Laws of Utah 1999
49-4-704, as last amended by Chapter 31, Laws of Utah 1997
49-4a-704, as last amended by Chapter 31, Laws of Utah 1997
49-5-502, as last amended by Chapter 267, Laws of Utah 1998
49-5-704, as last amended by Chapter 31, Laws of Utah 1997

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

Section 1. Section 49-1-407 is amended to read:

49-1-407. Member with public service not otherwise qualifying for benefit may purchase credit.

(1) A member may purchase service credit equal to the member's service in the following:

(a) federal employment;

(b) private school employment;

(c) public employment in this or another state that does not qualify for service credit under a system administered by the board;

(d) employment in a university or a public school system if the member is on a leave of absence for reasons relating to employment; [~~or~~]

(e) forfeited public service in this state if the member does not qualify for a retirement benefit for that service[~~.~~]; or

(f) the period of time for which disability benefits were paid if:

(i) the member was receiving:

(A) long-term disability benefits;

(B) short-term disability benefits; or

(C) worker's compensation disability benefits; and

(ii) the member's employer had not entered into a benefit protection contract pursuant to Section 49-1-404 during the period the member was disabled due to sickness or accident.

(2) To purchase credit, the member shall pay an amount fixed by the administrator that is established on an actuarial equivalent basis.

(3) The purchase may be made through payroll deductions or through a lump-sum deposit.

(4) The employer may make the purchase on behalf of the member.

(5) Total payment must be completed prior to retirement or service will be prorated in accordance with the amount paid.

Section 2. Section 49-1-502 is amended to read:

49-1-502. Refunds of vested contributions -- Transfers of contributions.

(1) If a member shall for any cause, except retirement, permanent or temporary disability, or death, cease to be employed in covered services for an employer then the member may:

(a) By signing a written request, affirming therein that the member has neither applied for, nor contemplates further employment with a covered unit, and directing the request to the retirement office, receive a refund of all accumulated contributions, less a withdrawal fee the amount of which the board shall establish by rule for the purpose of reimbursing its administrative fund for the cost entailed by the withdrawal. Notwithstanding the written request, if a member who has requested a refund accepts employment with another covered unit within the 60-day period, the member shall inform the retirement office immediately. In the event of this election, a terminating employee, upon later reemployment by an employer under this title, unless the employee redeposits the refund as permitted by this section, shall be treated as a new employee and the employee's service history and benefit rights shall then be based upon current services from the date of reemployment in covered services.

(b) Leave the member's account in the fund intact. In the event of this election, a terminating employee shall retain status as a member of the system, except for the lack of contributions paid into the fund by the member or on the member's behalf. In the event of reemployment by an employer for services covered by this title, the employee's service history and benefit rights shall be based upon the service credit accredited to the employee at the time of the employee's most recent termination of employment, as well as upon the current service credit that is acquired as the result of reemployment.

(2) Upon the attainment of retirement age, an inactive member has the same rights to retirement benefits, if so eligible, as any active employee member.

(3) Refunds of vested contributions may not be made prior to 60 days from the last day the contributions were made, and only upon the termination of the member.

(4) No refund may be made to an active member of any retirement system administered by the board. Contributions made in error will be returned to the employing unit.

(5) Members who are exempted from a retirement system administered by the board but who remain employed by a covered unit may request a plan-to-plan transfer of vested, untaxed employee contributions to a salary deferral plan administered by the board, as permitted by federal law.

(6) An employee, who is no longer a member of a retirement system administered by the board because the employee's employing unit withdrew from the retirement systems under this title, may request a plan transfer of vested employee contributions to a plan offered by the employer that is qualified to receive the transfer under federal law.

Section 3. Section 49-1-505 is amended to read:

49-1-505. Reemployment of a retired member of a system administered by the board.

The following laws govern the reemployment of a member of any system administered by the board who has retired from any agency and who returns to work at that agency after retirement. A member of any system administered by the board who has retired from any agency and who returns to work for a private employer or at a different agency from which the member retired is not subject to any reemployment restrictions under this section, except as provided in Subsection (4).

(1) (a) (i) If a member of any system administered by the board retires from any agency and is reemployed within a six month period by the agency from which the member retired, including exempt positions, but excluding part-time or full-time elected officials, the employer shall immediately notify the administrator.

(ii) If the member has full-time employment and is not subject to Subsection (1)(b), the administrator shall cancel the member's retirement allowance and reinstate the member to active member status.

(iii) This cancellation of retirement and reinstatement to active status is effective on the first day of the month following the date of reemployment.

(iv) If a member's retirement allowance is cancelled and the member is reinstated to active member status pursuant to this subsection, the member may not retire again with a recalculated benefit for a two-year period from the date of cancellation of the original retirement. If the member retires again within the two-year period, the original retirement benefit shall be resumed.

(v) A reinstated member shall be credited with the service credits standing to the member's account at the time of the first retirement and from that time shall be treated as a member of the system in all respects, including the accrual of additional service credits but subject to recalculation of the retirement allowance under Subsection (4).

(b) (i) If the member is reemployed on a part-time basis or is not an elected official and is otherwise subject to Section 49-4-205, 49-4a-206, or 49-5-204, that member or employee may earn, without penalty, compensation from that position or employment which is not in excess of the exempt earnings permitted by Social Security.

(ii) If a member or an employee receives compensation in a calendar year in excess of the limitation, 25% of the retirement allowance shall be suspended.

(iii) The effective date of a suspension and reinstatement of an allowance shall be set by the administrator.

(iv) Any suspension of a member's retirement allowance pursuant to Subsection (1)(b)(ii) shall be calculated on a calendar year basis.

(2) The member and employer shall maintain an accurate record of gross earnings in employment after retirement, shall report the gross earnings on a monthly basis to the retirement office, and shall immediately notify the administrator in writing of any postretirement earnings under Subsection (1)(a) and whether postretirement earnings equal or exceed the exempt earnings under Subsection (1)(b).

(3) If a member is reinstated to active service and subsequently retires after the two-year period as provided in Subsection (1)(a)(iv), the member's retirement allowance shall be calculated using:

(a) the formula in effect at the date of the member's original retirement for all service prior to that date; and

(b) the formula in effect at the date of the subsequent retirement for all service rendered between the first and the subsequent retirement dates.

(4) (a) A member who has retired from any agency and who returns to work at that agency or a

different agency from which the member retired may not accrue any additional service credit, except that a member who cancels the retirement allowance under Subsection (1) may earn additional service credit.

(b) If a member may not accrue additional service credit under Subsection (4)(a), then the member's employer shall contribute the same percentage of the member's salary that would have been contributed if the member were a member of the retirement system to a:

(i) defined contribution plan administered by the board [~~that would have been contributed if the member were a member of the retirement system~~] if the employer participates in the defined contribution plan administered by the board; or

(ii) defined contribution plan offered by the employer if the employer does not participate in the defined contribution plan administered by the board.

(5) For the purposes of this section:

(a) "full-time" employment means employment of 20 or more hours per week; and

(b) "part-time" employment means employment [~~contemplated as less than full-time by the employer at the time of hire~~] of less than 20 hours per week.

(6) The board may make rules to implement this section.

Section 4. Section 49-1-601 is amended to read:

49-1-601. Payment of employer contributions, fees, and premium taxes -- Failure to comply -- Interest added -- Adjustments to be made.

(1) The employer contributions, fees, and premium taxes shall be paid to the fund by the participating employer in accordance with rules adopted by the board.

(2) Any employing unit that fails to withhold the amount of any employee contributions is required to pay the contribution, together with any employer contribution, fee, or premium tax, to the fund, if necessary, out of its own funds.

(3) (a) If an employing unit does not make the payments required by this title as the payments become due, there is added as part of the amounts due, except for corrections in the amounts of contributions, fees, and premium taxes arising out of error in computation, interest established under this title.

(b) The board may waive all or any part of the interest if the board finds there were extenuating circumstances surrounding any delinquencies.

(4) If more or less than the correct amount of contributions, fees, and premium taxes required by this title is deducted with respect to any payment of compensation, the employer shall make the necessary adjustment with or without interest as required by the board.

Section 5. Section 49-1-606 is amended to read:

49-1-606. Beneficiary designations -- Revocation of beneficiary designation -- Procedure -- Beneficiary not designated -- Payment to survivors in order established under the Uniform Probate Code -- Restrictions on payment -- Payment of deceased's expenses.

(1) The beneficiary designation in a member's file at the retirement office at the time of the member's death is binding in the payment of any benefits due under this title.

(2) A member may revoke a designation of beneficiary at any time and may file a different beneficiary designation by executing and filing with the retirement office a written beneficiary designation on forms provided by the retirement office, except where an optional continuing plan is chosen, or the law makes a specific benefit designation to a dependent spouse, in which case the beneficiary designation may not be revoked.

(3) If no beneficiary is designated, all benefits payable from the retirement system[~~, including retirement benefits accrued but not received prior to death,~~] may be paid or applied to the benefit of the surviving next of kin of the deceased in the order of precedence established under Title 75, Chapter 2, Intestate Succession and Wills.

(4) No payment may be made to persons included in any of these groups if at the date of payment there are living persons in any of the groups preceding it. Payment to the persons in any group based upon receipt from those persons of an affidavit in a form satisfactory to the administrator that:

(a) there are no living individuals in the group preceding it;

(b) that the probate of the estate of the deceased has not been commenced; and

(c) that more than three months have elapsed since the date of death of the decedent, shall be in full satisfaction and discharge of all claims for benefits under this title and payable by reason of the death of the decedent.

(5) If the location of the nominated beneficiary cannot be ascertained or if the nominated beneficiary is the estate of the deceased person, the administrator may pay the costs of the deceased's last illness, convalescent care, and funeral expenses directly to the undertaking establishment, hospital, doctor, or convalescent home which provided the service. The administrator shall require verified statements of the charges before making partial or full payment. The payment shall discharge the obligation of the system and of the fund up to the amount paid.

Section 6. Section 49-1-609 is amended to read:

49-1-609. Nonassignability of benefits or payments -- Exemption from legal process -- Deduction of amounts owned.

(1) Except as provided in Subsection (4), the right of any member or beneficiary to any benefit, payment, or any other right accrued or accruing to any person under this title and the assets of the fund created by this title are not subject to alienation or assignment by the member or beneficiary and are not subject to attachment, execution, garnishment, or any other legal or equitable process.

(2) This section may not be construed to prohibit the administrator from deducting medical or other insurance premiums from a retirant's allowance as requested by the retirant providing that any request is within limitations and rules prescribed by the board.

(3) (a) Notwithstanding Subsection (1), the retirement board shall provide for the division of a member's service retirement allowance, continuing monthly death benefit, or refund of contributions upon termination to former spouses and family members pursuant to an order of a court of competent jurisdiction with respect to domestic relations matters on file with the retirement office.

(b) The court order shall specify the manner in which the retirement allowance or refund of contributions shall be partitioned, whether as a fixed amount or as a percentage of the benefit.

(c) The board may also provide for the division of a member's defined contribution account.

(d) Once benefit payments under a domestic relations order begin, the period for which the payment shall be made may not be altered.

(e) Benefit payments to an alternate payee shall begin at the time the member or beneficiary begins receiving benefit payments.

(f) The alternate payee shall receive benefits in the same form as benefits are received by the member.

[~~(d)~~] (g) The board shall make rules to implement this section.

(4) In accordance with federal law, the board may deduct the required amount from any benefit, payment, or other right accrued or accruing to any member of a system, plan, or program under this title to offset any amount that member owes to a system, plan, or program administered by the board.

Section 7. Section 49-1-610 is amended to read:

49-1-610. Right of appeal to hearing officer -- Council review of hearings -- Further board review -- Rules of procedure applied -- Judicial review.

(1) (a) All members of a system, plan, or program under this title shall acquaint themselves with their rights and obligations as members.

(b) A member shall request a ruling by the administrator on any benefit claim or legal right under this title.

(c) Any person who is dissatisfied by a ruling of the administrator with respect to any benefit claim or legal right under any system, plan, or program under this title shall request a review of that claim by a hearing officer.

(d) The hearing officer shall:

(i) be hired by the executive director after consultation and review with the membership council; and

(ii) follow the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act.

(2) (a) (i) The hearing officer shall hear and determine all facts pertaining to applications for benefits under any retirement system, plan, or program under this title and all matters pertaining to the administration of the system.

(ii) The membership council may examine the record of the hearing, provide a recommendation to the board, and recommend any necessary changes in retirement policy or procedure to the Legislature.

(b) (i) If the executive officer of the board cannot determine from the records or other information available the length of service, compensation, or age of any member, the executive officer may estimate, for the purpose of any determination required to be made, any of these factors.

(ii) The board shall review all decisions of the hearing officer.

(3) The moving party in any proceeding brought under this section shall bear the burden of proof.

[~~(3)~~] (4) Any applicant may file an application for reconsideration according to the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act, upon any of the following grounds:

(a) that the board acted in excess of its powers;

(b) that the order or award was procured by fraud;

(c) that the evidence does not justify the determination of the board; or

(d) that the applicant has discovered new material evidence that could not, with reasonable diligence, have been discovered or procured at the hearing.

[~~(4)~~] (5) A member aggrieved by the board's decision may obtain judicial review by complying with the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act.

Section 8. Section 49-2-103 is amended to read:

49-2-103. Definitions.

As used in this chapter:

(1) "Appointive officer" means an employee appointed to a position for a definite and fixed term of office by official and duly recorded action of the governing body of an employing unit who earns $500 or more per month over a 12-month period adjusted annually by the Bureau of Labor Statistics Consumer Price Index.

(2) (a) "Compensation," "salary," or "wages" means the total amount of payments made by an employer to an employee for services rendered to the employer, including:

(i) bonuses;

(ii) cost-of-living adjustments;

(iii) other payments currently includable in gross income and that are subject to Social Security deductions, including any payments in excess of the maximum amount subject to deduction under Social Security law; and

(iv) amounts that the employee authorizes to be deducted or reduced for salary deferral or other benefit programs authorized by federal law.

(b) "Compensation" for purposes of this chapter may not exceed the amount allowed under Internal Revenue Code Section 401(a)(17).

(c) "Compensation," "salary," or "wages" does not include:

(i) the monetary value of remuneration paid in kind, such as a residence or use of equipment;

(ii) all contributions made by an employer under any plan for the benefit of a participant;

(iii) salary paid to an employee working under the minimum number of hours required for membership;

(iv) salary paid to a temporary or exempt employee;

(v) any payments upon termination, including accumulated vacation, sick leave payments, or any other special payments; or

(vi) uniform, travel, or similar allowances.

(3) "Educational institution" means a political subdivision or instrumentality of the state or a combination thereof primarily engaged in educational activities or the administration or servicing of educational activities, including:

(a) the State Board of Education and its instrumentalities;

(b) any institution of higher learning and its branches;

(c) any school district and its instrumentalities;

(d) any vocational and technical school; and

(e) any entity arising out of a consolidation agreement between entities under this definition.

(4) (a) "Employee" or "regular employee" means any regular full-time employee whose term of employment for an employer contemplates continued employment during a calendar or school year and who performs covered service for one or more employers.

(b) "Employee" or "regular employee" means an officer, elective or appointive, who receives as compensation from an employer $500 or more per month over a 12-month period adjusted annually by the Bureau of Labor Statistics Consumer Price Index.

(5) "Employer" or "employing unit" means any department, educational institution, political subdivision, or organization or agency financed in whole or in part by public funds for which any employee or member performs services subject to this chapter.

(6) "Final average salary" means the amount computed by averaging the highest five years of annual compensation preceding retirement subject to Subsections (6)(a), (b), (c), and (d).

(a) Except as provided in Subsection (6)(b), the percentage increase in annual compensation in any one of the years used may not exceed the previous year's salary by more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power of the dollar during the previous year, as measured by the Consumer Price Index prepared by the United States Bureau of Labor Statistics.

(b) In cases where the employing unit provides acceptable documentation to the board, the limitation in Subsection (6)(a) may be exceeded if:

(i) the member has transferred from another employing unit; or

(ii) the member has been promoted to a new position.

(c) If the member retires more than six months from the date of termination of employment and for purposes of computing the member's final average salary only, the member is considered to have been in service at the member's last salary rate from the date of the termination of employment to the date retirement becomes effective if the member so requests.

(d) If participating service is less than five years, final average salary means the average annual compensation paid to the member during the full period of participating service.

(7) "Normal retirement age" means the age of 65 years.

(8) "Organization or agency financed in whole or in part by public funds" means an agency, association, or organization that receives public funds. The term does not include political subdivisions, departments, or educational institutions.

(9) "Public funds" means those funds derived, either directly or indirectly, from public taxes or public revenue, dues or contributions paid or donated by the membership of the organization, used to finance an activity whose objective is to improve, on a nonprofit basis, the governmental,

educational, and social programs and systems of the state or its political subdivisions.

(10) (a) "Regular full-time employee," in qualifying for membership and accrual of service credit under this system, means an employee whose employment normally requires an average of 20 hours or more per week, except as modified by the board, and who receives benefits normally provided by the employing unit.

(b) "Regular full-time employee" includes:

(i) a teacher who teaches half-time or more, or a classified school employee who works an average of 20 hours per week or more, regardless of benefits provided[.]; and

(ii) an individual who otherwise meets the definition of this Subsection (10) who performs services for a participating employer through an employee leasing or similar arrangement.

(11) "Years of service" or "service years" means:

(a) the number of periods, each to consist of 12 full months as determined by the board;

(b) a period determined by the board, whether consecutive or not, during which an employee performed services for an employer or employers, including any time the employee rendered service in the armed forces of the United States before membership in the system or was absent on a paid leave of absence granted by an employer or absent in the service of the United States government on military duty as provided by this chapter; or

(c) for a teacher, school administrator, or other contract employee of an educational institution, not less than eight months of full-time service constitutes a service year.

Section 9. Section 49-3-103 is amended to read:

49-3-103. Definitions.

As used in this chapter:

(1) "Appointive officer" means an employee appointed to a position for a definite and fixed term of office by official and duly recorded action of the governing body of an employing unit and who earns $500 or more per month over a 12-month period adjusted by the Bureau of Labor Statistics Consumer Price Index.

(2) (a) "Compensation," "salary," or "wages" means the total amount of payments made by an employer to an employee for services rendered to the employer, including:

(i) bonuses;

(ii) cost-of-living adjustments;

(iii) other payments currently includable in gross income and that are subject to Social Security deductions, including any payments in excess of the maximum amount subject to deduction under Social Security law; and

(iv) amounts that the employee authorizes to be deducted or reduced for salary deferral or other benefit programs authorized by federal law.

(b) "Compensation" for purposes of this chapter may not exceed the amount allowed under Internal Revenue Code Section 401(a)(17).

(c) "Compensation," "salary," or "wages" does not include:

(i) the monetary value of remuneration paid in kind, such as a residence or use of equipment;

(ii) all contributions made by an employer under any plan for the benefit of a participant;

(iii) salary paid to an employee working under the minimum number of hours required for membership;

(iv) salary paid to a temporary or exempt employee;

(v) any payments upon termination, including accumulated lump-sum vacation, sick leave payments, or any other special payments; or

(vi) uniform, travel, or similar allowances.

(3) "Educational institution" means a political subdivision or instrumentality of the state or a combination thereof primarily engaged in educational activities or the administration or servicing of educational activities, including:

(a) the State Board of Education and its instrumentalities;

(b) any institution of higher learning and its branches;

(c) any school district and its instrumentalities;

(d) any vocational and technical school; and

(e) any entity arising out of a consolidation agreement between entities under this definition.

(4) "Effective date" of the noncontributory system means 12:01 a.m., July 1, 1986.

(5) (a) "Employee" or "regular employee" means any regular full-time employee whose term of employment for an employer contemplates continued employment during a calendar or school year and who performs covered service for one or more employers.

(b) "Employee" or "regular employee" means an officer, elective or appointive, who receives as compensation from an employer $500 or more per month over a 12-month period adjusted by the Bureau of Labor Statistics Consumer Price Index.

(6) "Employer" or "employing unit" means any department, educational institution, political subdivision, or eligible organization, or agency financed in whole or in part by public funds for which any employee or member performs services subject to this chapter.

(7) "Final average salary" means the amount computed by averaging the highest three years of annual compensation preceding retirement subject to Subsections (7)(a), (b), and (c).

(a) Except as provided in Subsection (7)(b), the percentage increase in annual compensation in any one of the years used may not exceed the previous year's salary by more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power of the dollar during the previous year, as measured by the Consumer Price Index prepared by the United States Bureau of Labor Statistics.

(b) In cases where the employing unit provides acceptable documentation to the board, the limitation in Subsection (a) may be exceeded if:

(i) the member has transferred from another employing unit; or

(ii) the member has been promoted to a new position.

(c) If the member retires more than six months from the date of termination of employment and for purposes of computing the member's final average salary only, the member is considered to have been in service at his last salary rate from the date of the termination of employment to the date retirement becomes effective if the member so requests.

(8) "Normal retirement age" means the age of 65 years.

(9) "Organization or agency financed in whole or in part by public funds" means an agency, association, or organization that receives public funds. The term does not include political subdivisions, departments, or educational institutions.

(10) "Public funds" means those funds derived, either directly or indirectly, from public taxes or public revenue, dues, or contributions paid or donated by the membership of the organization used to finance an activity whose objective is to improve, on a nonprofit basis, the governmental, educational, and social programs and systems of the state or its political subdivisions.

(11) (a) "Regular full-time employee," in qualifying for membership and accrual of service credit under this system, means an employee whose employment normally requires an average of 20 hours or more per week, except as modified by the board, and who receives benefits normally provided by the employing unit.

(b) "Regular full-time employee" includes:

(i) a teacher who teaches half-time or more or a classified school employee who works an average of 20 hours per week or more, regardless of benefits provided[.]; and

(ii) an individual who otherwise meets the definition of this Subsection (11) who performs services for a participating employer through an employee leasing or similar arrangement.

(12) "Years of service" or "service years" means:

(a) the number of periods, each to consist of 12 full months as determined by the board;

(b) a period determined by the board, whether consecutive or not, during which an employee performed services for an employer or employers, including any time the employee rendered service in the armed forces of the United States before membership in the system or was absent on a paid leave of absence granted by an employer or absent in the service of the United States government on military duty as provided by this chapter; or

(c) for a teacher, school administrator, or other contract employee of an educational institution, not less than eight months of full-time service constitutes a service year.

Section 10. Section 49-3-206 is amended to read:

49-3-206. Exclusions from membership in system.

The following employees are excluded from membership in the retirement system:

(1) Every employee whose employment status is temporary in nature due to the nature or the type of work to be performed. If the term of employment exceeds six months, then for that employee a regular full-time status shall be assumed, and the employee shall be enrolled in the system effective the beginning of the seventh month of employment. If the same employee, previously terminated prior to enrollment as a member, is again employed within three months of termination by the same employer, the employee shall be immediately enrolled as a member if the work constitutes full-time as defined in this chapter.

(2) Full-time students or the spouse of a full-time student and persons employed in a trainee relationship may be excluded from coverage by rules adopted by the board.

(3) Every current or future employee of a two-year or four-year college or university who holds, or is entitled to hold, pursuant to Section 49-2-206, a retirement annuity contract with the Teachers' Insurance and Annuity Association of America or with any other public or private system, organization, or company during any period in which that employee has received contributions toward the premiums required on compensation from the employing unit. The employee, upon cessation of the employer contributions, shall immediately become a contributing member.

(4) Every employee serving as an exchange employee from outside the state.

(5) Elected officials who file a formal request for exemption.

(6) Executive department heads of the state or legislative directors, senior executives employed by the governor's office, members of the State Tax Commission, the Public Service Commission, the State Olympic Officer, and other members of full-time or part-time boards or commissions who file a formal request to be excluded from coverage.

(7) (a) Employees of the Department of Employment Security who are covered under another retirement system allowed under Title 35A, Chapter 4, Employment Security Act; or

(b) employees of the Department of Workforce Services who were covered under Subsection (7)(a)

and who are covered under another retirement system allowed under Title 35A, Chapter 4, Employment Security Act.

(8) Persons appointed as city managers or chief city administrators or other persons employed by a city, town, county, or other political subdivision, who are not entitled to merit or civil service protection. Persons eligible for exclusion under this subsection shall file a formal request for exclusion from coverage and be employed in a position designated as exempt under an employee exemption plan developed by the city, town, county, or political subdivision. Employee exemption plans shall be subject to the following limitations:

(a) The total number of positions a city, town, county, or political subdivision may exempt may not exceed the lesser of 30 positions or a number equal to 10% of the employees of the city, town, county, or political subdivision. However, every city, town, county, or political subdivision is entitled to a minimum exemption of one eligible employee.

(b) Employee exemption plans shall be filed annually with the retirement office, and the city, town, county, or political subdivision shall update the exemption plan in the event of any change.

(c) The retirement office may promulgate rules to implement this section.

Section 11. Section 49-3-410 is amended to read:

49-3-410. Purchase of retirement credit -- Conditions -- Cost.

(1) Any member of this system may receive retirement service credit in accordance with Subsection (2).

(2) (a) A member may purchase or a member and an employing unit may jointly purchase a combined maximum total of five years of retirement service credit which is not otherwise purchasable under this chapter.

(b) The number of years of retirement service credit purchased may exceed the number of years or age required by the member to retire with no actuarial reduction.

(c) The purchase of retirement service credit must allow the member to meet the retirement eligibility requirements of this system with no actuarial reduction.

(d) The member must retire effective immediately after the purchase of retirement service credit is made.

(e) The member shall pay at least 5% of the cost of the purchase.

(3) The purchase price for the retirement service credit shall be calculated and paid for as provided in Section 49-1-407.

(4) (a) The employing unit may elect to purchase retirement service credit for a member under Subsection (2) while the member is on an unpaid leave of absence.

(b) If the member is on an unpaid leave of absence, the employing unit may make installment payments towards the purchase in amounts fixed by the administrator.

(c) The member shall retire when the purchase obligations are fulfilled.

(5) [~~(a)~~] A member who retires after the employer purchases retirement service credit under this section [~~may not be reemployed by the employing unit from which the member retired~~] shall be subject to the provisions of Section 49-1-505.

[~~(b) Subsection (5)(a) does not apply to a member if the member does not earn compensation in excess of the exempt earnings permitted by Social Security.~~]

(6) Prior to making any purchase of service credit under this section, an employing unit shall adopt a purchase policy that includes nondiscriminatory participation standards for all employees.

Section 12. Section 49-4-704 is amended to read:

49-4-704. Death of retired member -- Benefits.

(1) [~~Except as provided in Subsection (3), if~~] If the member retired under Division A or Division B, the death benefit payable to the dependent spouse after the death of the retired member of this system is a monthly amount equal to 65% of the allowance that was being paid to the retired member at the time of death.

(2) (a) [~~Except as provided in Subsection (3), if~~] If the member retired solely under Division B or dies leaving dependent children, the children shall qualify for a benefit as prescribed for children under Section 49-4-702, with the total being paid as limited by that section.

(b) The effective date of accrual of this pension is on the first day of the month following the month in which the retirant died.

(c) [~~Except as provided in Subsection (3), payment~~] Payment of the full pension for this latter month shall be made to the dependent beneficiary in lieu of the deceased member.

[~~(3) (a) In the event of a court order complying with Section 49-1-609, a former spouse of a retired member is entitled to the court designated share of the retired member's monthly retirement benefit and the same percentage share of the spouse's death benefit.~~]

[~~(b) This subsection supersedes conflicting subsections of this section.~~]

Section 13. Section 49-4a-704 is amended to read:

49-4a-704. Death of retired member -- Benefits.

(1) [~~Except as provided in Subsection (3), if~~] If the member retired under Division A or Division B, the death benefit payable to the dependent spouse after the death of the retired member of this system is a monthly amount equal to 65% of the allowance that

was being paid to the retired member at the time of death.

(2) (a) [~~Except as provided in Subsection (3), if~~] If the member retired solely under Division B or dies leaving dependent children, the children shall qualify for a benefit as prescribed for children under Section 49-4a-702, with the total being paid as limited by that section.

(b) The effective date of accrual of this pension is on the first day of the month following the month in which the retirant died.

(c) [~~Except as provided in Subsection (3), payment~~] Payment of the full pension for this latter month shall be made to the dependent beneficiary in lieu of the deceased member.

[~~(3) (a) In the event of a court order complying with Section 49-1-609, a former spouse of a retired member is entitled to a court designated share of the retired member's monthly retirement benefit and the same percentage share of the spouse's death benefit.~~]

[~~(b) This subsection supersedes conflicting subsections of this section.~~]

Section 14. Section 49-5-502 is amended to read:

49-5-502. Disability retirement -- Disability allowance eligibility -- Conversion to service retirement -- Examinations -- Reemployment.

The following rules apply to all members applying for disability retirement under this part:

(1) Any member who applies and is qualified for disability retirement shall receive a disability allowance until the earlier of:

(a) the date the member is no longer disabled;

[~~(a)~~] (b) the date the member has accumulated 20 years of service credit, including years earned while disabled; or

[~~(b)~~] (c) the member has received disability benefits for the following time periods:

(i) if the member is under age 60, the disability allowance is payable until age 65;

(ii) if the member is 60-61, the disability allowance is payable for five years;

(iii) if the member is 62-63, the disability allowance is payable for four years;

(iv) if the member is 64-65, the disability allowance is payable for three years;

(v) if the member is 66-68, the disability allowance is payable for two years; and

(vi) if the member is age 69 or older, the disability benefit is payable for one year.

(2) (a) The member shall receive service credit in this system during the period of disability. However, if the member is employed by a participating employer during the period of disability, the member may not receive service credit for that employment.

(b) The disability retirement shall be converted to a service retirement at the time the disability benefits terminate.

(3) The board shall approve or disapprove applications for disability retirement based upon both:

(a) the evaluation and recommendations of one or more physicians along with medical records relating to the disability which may, at the board's option, be reviewed by an independent medical examiner selected by the board, to the effect that the member is mentally or physically totally disabled; and

(b) receipt of proof by the board from the employer that the member has become totally disabled.

(4) Any disability retirant who regains health and is regularly employed shall have the disability allowance reduced or suspended as the retirant's earnings justify.

(5) (a) Members receiving benefits under this section shall, upon request of the administrator, submit to a medical examination by one or more physicians as directed by the board.

(b) If the member resides outside the state and is requested to submit to an examination, the member shall be examined under the same rules in the area in which the member resides.

(c) If, after an examination, the examiners report that the retirant is physically able and capable of resuming employment, the retirant shall be reinstated at the retirant's former classification and rank, and disability benefits terminate.

(d) Examinations may not be required more than once every year.

(e) A retirant who returns to employment [~~of~~] with a participating employer in this system shall immediately commence accruing service credit that shall be added to that credit that has been accrued by virtue of previous service, including service credited while disabled.

(6) Retired members are not subject to medical examinations after reaching age 55.

(7) Refusal or neglect to submit to an examination is sufficient cause for suspension or discontinuance of benefits and if the refusal or neglect continues for one year, the member's rights to all benefits may be revoked by the board.

(8) Retirants who receive benefits under this part shall file a sworn statement with the retirement office on or before January 15 of each year for the first five years a retirant receives benefits. The sworn statement shall indicate whether or not the retirant engaged in any gainful employment during the preceding year and, if so, the amount of earnings received during the calendar year.

(a) If the retirant has been gainfully employed, the retirant's benefit payments shall be reduced in the year following employment so that the total

payments, when added to the compensation received for employment, do not exceed 125% of the retirant's final average salary.

(b) If any retirant refuses or neglects to file a sworn statement as required, the administrator may suspend payment of any and all benefits pending receipt of the statement. Upon filing the statement, the retirant's payments shall be resumed.

(9) The disability allowance shall be improved by the annual cost-of-living increase factor applied to retired members of the system that covered the employee at the time of disability.

(10) A line of duty disability allowance paid on or after January 1, 2002, under Subsection 49-5-501(1) is exempt from taxation to the extent permitted under federal law.

Section 15. Section 49-5-704 is amended to read:

49-5-704. Death of retired member -- Benefits.

(1) (a) [~~Except as provided in Subsection (3), the~~] The death benefit payable to a dependent spouse after death of the retirant is a monthly amount equal to 75% of the allowance being paid to the retirant at the time of death.

(b) The effective date of accrual of this pension is the first day of the month following the month the retirant died.

(c) [~~Except as provided in Subsection (3), payment~~] Payment of the full pension for this latter month shall be made to the dependent beneficiary instead of the deceased member.

(2) If the member retires under Division B and dies leaving dependent children, they qualify for benefits prescribed for children under Section 49-5-701 or 49-5-702.

[~~(3) (a) In the event of a court order complying with Section 49-1-609, a former spouse of a retired member is entitled to the court designated share of the retirant's monthly retirement benefit and the same percentage share of the spouse's death benefit.~~]

[~~(b) This subsection supersedes conflicting subsections of this section.~~]

Section 16. Effective date.

If approved by two-thirds of all the members elected to each house, this act takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 142
H. B. 37
Passed February 16, 2001
Approved March 15, 2001
Effective May 1, 2001

REAUTHORIZATION OF ADMINISTRATIVE RULES

Sponsor: David Ure

This act is required by the Administrative Rulemaking Act. It reauthorizes all state agency administrative rules except those enumerated. This act takes effect on May 1, 2001.

This act enacts uncodified material.

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

Section 1. Rules authorized.

All rules of Utah state agencies are reauthorized, except R156-55b-102(2), Commerce, Occupational and Professional Licensing, Electricians Licensing Rules, Definitions and Commerce, R156-55C-102(3) Construction Trade Licensing Act, Plumbers Licensing Rules, Definitions.

Section 2. Effective date.

This act takes effect on May 1, 2001.

CHAPTER 143
H. B. 51
Passed February 22, 2001
Approved March 15, 2001
Effective April 30, 2001

WORKFORCE SERVICES AMENDMENTS

Sponsor: Richard M. Siddoway

This act modifies the Employment Support Act. The act corrects and updates references to federal legislation. The act amends the duties of the Office of Child Care. The act repeals the Workforce Reentry Program.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
35A-3-114, as last amended by Chapter 133, Laws of Utah 2000
35A-3-203, as last amended by Chapter 1, Laws of Utah 1998
35A-3-304, as last amended by Chapter 1, Laws of Utah 1998

REPEALS:
35A-3-305, as enacted by Chapter 174, Laws of Utah 1997

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

Section 1. Section 35A-3-114 is amended to read:

35A-3-114. Programs for displaced homemakers.

(1) For purposes of this section, "displaced homemaker" means an individual:

(a) who has been a homemaker for a period of eight or more years without significant gainful employment outside the home;

(b) whose primary occupation during the period of time described in Subsection (1)(a) was the provision of unpaid household services for family members;

(c) has found it necessary to enter the job market;

(d) is not reasonably capable of obtaining employment sufficient to provide self-support or necessary support for dependents, due to a lack of marketable job skills or other skills necessary for self-sufficiency; and

(e) has depended on:

(i) the income of a family member and lost that income; or

(ii) governmental assistance as the parent of dependent children and is no longer eligible for that assistance.

(2) The department shall establish, in cooperation with state and local governmental agencies, community-based organizations, and private employers, a program for the education, training, and transitional counseling of displaced homemakers, which includes referral services and the following services:

(a) employment and skills training, career counseling, and placement services specifically designed to address the needs of displaced homemakers;

(b) assistance in obtaining access to existing public and private employment training programs;

(c) educational services, including information on high school or college programs, or assistance in gaining access to existing educational programs;

(d) health education and counseling, or assistance in gaining access to existing health education and counseling services;

(e) financial management services which provide information on insurance, taxes, estate and probate matters, mortgages, loans, and other financial issues; and

(f) prevocational self-esteem and assertiveness training.

(3) The department shall:

(a) (i) contract with existing governmental or private agencies or community-based organizations that have demonstrated effectiveness in serving displaced homemakers to provide a program for displaced homemakers in each county or group of counties, as the population demands; or

(ii) establish a program for displaced homemakers in that area;

(b) coordinate its program for displaced homemakers with existing state or federal programs of a similar nature and, where possible, utilize existing physical resources;

(c) establish rules to implement this section, and may form an advisory committee for recommendations on the establishment and improvement of a program for displaced homemakers;

(d) encourage the placement of displaced homemakers in programs established under:

(i) the [~~Job Training Partnership Act, 29 U.S.C. Section 1501~~] Workforce Investment Act of 1998; and

(ii) the Carl D. Perkins Vocational and Applied Technology Education Act, 20 U.S.C. Section 2301, et seq.; and

(e) prepare an evaluation of its program for displaced homemakers, including the success of placement of displaced homemakers in programs described in this section, and annually submit a written report of that evaluation to the Legislature.

(4) Displaced homemakers may act as peer counselors in programs for displaced homemakers.

(5) (a) Appropriate funds received by the state under Section 21-2-8 shall be deposited as nonlapsing dedicated credits and used for the purposes of this section.

(b) Notwithstanding Subsection (5)(a), if the nonlapsing amount exceeds $300,000 at the end of any fiscal year, the excess shall lapse into the General Fund.

(6) The department shall establish procedures for payment and repayment, when possible, by clients to the department of the costs of services provided to displaced homemakers under this section.

Section 2. Section 35A-3-203 is amended to read:

35A-3-203. Functions and duties of office.

The office shall:

(1) provide information:

(a) to employers for the development of options for child care in the work place; and

(b) for educating the public in obtaining quality child care;

(2) coordinate services for quality child care training and child care resource and referral core services;

(3) apply for, accept, or expend gifts or donations from public or private sources;

(4) provide administrative support services to the committee;

(5) work collaboratively with the following for the delivery of quality child care and early childhood programs, and school age programs in the state:

(a) the State Board of Education;

(b) the Department of Community and Economic Development; and

(c) the Department of Health;

(6) [~~recommend to the Legislature legislation~~] research child care programs and public policy that will improve quality and accessibility and that will further the purposes of the office and child care, early childhood programs, and school age programs; and

(7) provide planning and technical assistance for the development and implementation of programs in communities that lack child care, early childhood programs, and school age programs[~~.~~]; and

(8) provide organizational support for the establishment of nonprofit organizations approved by the Child Care Advisory Committee, created in Section 35A-3-205.

Section 3. Section 35A-3-304 is amended to read:

35A-3-304. Assessment -- Participation requirements and limitations -- Mentors.

(1) (a) Within 20 business days of the date of enrollment, a parent client shall:

(i) be assigned an employment counselor; and

(ii) complete an assessment provided by the division regarding the parent client's family circumstances, education, work history, skills, and ability to become self-sufficient.

(b) The assessment provided under Subsection (1) shall include a survey to be completed by the parent client with the assistance of the division.

(2) (a) Within 15 business days of a parent client completing an assessment, the division and the parent client shall enter into an employment plan.

(b) The employment plan shall contain a target date for entry into employment.

(c) The division shall provide a copy of the employment plan to the parent client.

(d) As to the parent client, the plan may include:

[~~(i) participation in the Workforce Reentry Program described in Section 35A-3-305;~~]

[~~(ii)~~] (i) job searching requirements;

[~~(iii)~~] (ii) participation in an educational program to obtain a high school diploma, or its equivalent, if the parent client does not have a high school diploma;

[~~(iv)~~] (iii) education or training necessary to obtain employment;

[~~(v)~~] (iv) a combination of work and education or training;

[~~(vi)~~] (v) assisting the Office of Recovery Services in good faith to:

(A) establish the paternity of a minor child; and

(B) establish or enforce a child support order; and

[~~(vii)~~] (vi) participation in available treatment for drug dependency and progress toward overcoming that dependency if the parent client is a drug dependent person as defined in Section 58-37-2.

(e) As to the division, the plan may include:

(i) providing cash and other types of public and employment assistance, including child care;

(ii) assisting the parent client to obtain education or training necessary for employment;

(iii) assisting the parent client to set up and follow a household budget; and

(iv) assisting the parent client to obtain employment.

(f) An employment plan may be amended to reflect new information or changed circumstances.

(g) If immediate employment is an activity contained in the employment plan the parent client shall:

(i) promptly commence a search for a specified number of hours each week for employment; and

(ii) regularly submit a report to the division on:

(A) how time was spent in search for a job;

(B) the number of job applications completed;

(C) the interviews attended;

(D) the offers of employment extended; and

(E) other related information required by the division.

(h) If full-time education or training to secure employment is an activity contained in an employment plan, the parent client shall promptly undertake a full-time education or training program. The employment plan may describe courses, education or training goals, and classroom hours.

(i) (i) As a condition of receiving cash assistance under this part, a parent client shall agree to make a good faith effort to comply with the employment plan.

(ii) If a parent client consistently fails to show good faith in complying with the employment plan, the division may seek under Subsection (2)(i)(iii) to terminate all or part of the cash assistance services provided under this part.

(iii) The division shall establish a process to reconcile disputes between a client and the division as to whether:

(A) the parent client has made a good faith effort to comply with the employment plan; or

(B) the division has complied with the employment plan.

(3) (a) Except as provided in Subsection (3)(b), a parent client's participation in education or training beyond that required to obtain a high school diploma or its equivalent is limited to the lesser of:

(i) 24 months; or

(ii) the completion of the education and training requirements of the employment plan.

(b) A parent client may participate in education or training for up to six months beyond the 24-month limit of Subsection (3)(a) if:

(i) the parent client is employed for 80 or more hours a month; and

(ii) the extension is for good cause shown and approved by the director.

(c) A parent client who receives an extension under Subsection (3)(b) remains subject to Subsection (4).

(4) A parent client with a high school diploma or equivalent who has received 24 months of education or training shall participate in full-time work activities. The 24 months need not be continuous and the department may define "full-time work activities" by rule.

(5) Beginning on July 1, 1998, as a condition for receiving cash assistance on behalf of a minor child under this part, the minor child shall be:

(a) enrolled in and attending school in compliance with Section 53A-11-101; or

(b) exempt from school attendance under Section 53A-11-102.

(6) This section does not apply to a person who has received diversion assistance under Section 35A-3-303.

(7) (a) The division shall recruit and train volunteers to serve as mentors for parent clients.

(b) A mentor may advocate on behalf of a parent client and help a parent client:

(i) develop life skills;

(ii) implement an employment plan; or

(iii) obtain services and supports from:

(A) the volunteer mentor;

(B) the division; or

(C) civic organizations.

Section 4. Repealer.

This act repeals:

Section 35A-3-305, Workforce Reentry Program.

CHAPTER 144
H. B. 52
Passed February 9, 2001
Approved March 15, 2001
Effective April 30, 2001

UNEMPLOYMENT INSURANCE AMENDMENTS

Sponsor: Richard M. Siddoway

This act modifies the Employment Security Act by amending provisions relating to the filing of reports, access to records, and the determination of benefit eligibility. The act requires that employers with over 250 employees file quarterly wage data on magnetic media or electronically. The act corrects a reference to language authorizing the assessment of penalties and interest. The act makes various changes to the provisions governing access to Department of Workforce Services records gathered from employers. The act clarifies that the determination of benefit eligibility is solely an agency function.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
35A-4-305, as last amended by Chapter 100, Laws of Utah 1999
35A-4-309, as last amended by Chapter 129 and renumbered and amended by Chapter 240, Laws of Utah 1996
35A-4-312, as last amended by Chapter 1, Laws of Utah 1998
35A-4-405, as last amended by Chapter 60, Laws of Utah 2000

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

Section 1. Section 35A-4-305 is amended to read:

35A-4-305. Collection of contributions -- Unpaid contributions to bear interest.

(1) (a) Contributions unpaid on the date on which they are due and payable, as prescribed by the division, shall bear interest at the rate of 1% per month from and after that date until payment plus accrued interest is received by the division.

(b) (i) Contribution reports not made and filed by the date on which they are due as prescribed by the division shall be subject to a penalty to be assessed and collected in the same manner as contributions due under this section equal to 5% of the contribution due if the failure to file on time was not more than 15 days, with an additional 5% for each additional 15 days or fraction thereof during which the failure continued, but not to exceed 25% in the aggregate and not less than $25 with respect to each reporting period.

(ii) If a report is filed after such time and it is shown to the satisfaction of the division or its authorized representative that the failure to file was due to a reasonable cause and not to willful neglect, no addition shall be made to the contribution.

(c) (i) If contributions are unpaid after ten days from the date of the mailing or personal delivery by the division or its authorized representative, of a written demand for payment, there shall attach to the contribution, to be assessed and collected in the same manner as contributions due under this section, a penalty equal to 5% of the contribution due.

(ii) A penalty may not attach if within ten days after the mailing or personal delivery, arrangements for payment have been made with the division, or its authorized representative, and payment is made in accordance with those arrangements.

(d) The division shall assess as a penalty a service charge, in addition to any other penalties that may apply, in an amount not to exceed the service charge imposed by Section 7-15-1 for dishonored instruments if:

(i) any amount due the division for contributions, interest, other penalties or benefit overpayments is paid by check, draft, order, or other instrument; and

(ii) the instrument is dishonored or not paid by the institution against which it is drawn.

(e) Except for benefit overpayments under Subsection 35A-4-405(5), benefit overpayments, contributions, interest, penalties, and assessed costs, uncollected three years after they become due, may be charged as uncollectable and removed from the records of the division if:

(i) no assets belonging to the liable person and subject to attachment can be found; and

(ii) in the opinion of the division there is no likelihood of collection at a future date.

(f) Interest and penalties collected in accordance with this section shall be paid into the Special Administrative Expense Fund.

(g) Action required for the collection of sums due under this chapter is subject to the applicable limitations of actions under Title 78, Chapter 12, Limitation of Actions.

(2) (a) If an employer fails to file a report when prescribed by the division for the purpose of determining the amount of the employer's contribution due under this chapter, or if the report when filed is incorrect or insufficient or is not satisfactory to the division, the division may determine the amount of wages paid for employment during the period or periods with respect to which the reports were or should have been made and the amount of contribution due from the employer on the basis of such information as it may be able to obtain.

(b) The division shall give written notice of the determination to the employer.

(c) The determination is considered correct unless:

(i) the employer, within ten days after mailing or personal delivery of notice of the determination,

applies to the division for a review of the determination as provided in Section 35A-4-508; or

(ii) unless the division or its authorized representative of its own motion reviews the determination.

(d) The amount of contribution so determined shall be subject to penalties and interest as provided in Subsection (1).

(3) (a) If, after due notice, any employer defaults in any payment of contributions, interest, or penalties on the contributions, or any claimant defaults in any repayment of benefit overpayments and penalties on the overpayments, the amount due shall be collectible by civil action in the name of the division, and the employer adjudged in default shall pay the costs of the action.

(b) Civil actions brought under this section to collect contributions, interest or penalties from an employer, or benefit overpayments and penalties from a claimant shall be:

(i) heard by the court at the earliest possible date; and

(ii) entitled to preference upon the calendar of the court over all other civil actions except:

(A) petitions for judicial review under this chapter; and

(B) cases arising under the workers' compensation law of this state.

(c) (i) To collect contributions, interest or penalties, or benefit overpayments and penalties due from employers or claimants located outside Utah the division may employ private collectors providing debt collection services outside Utah. Accounts may be placed with private collectors only after the employer or claimant has been given a final notice that the division intends to place the account with a private collector for further collection action. The notice shall advise the employer or claimant of the employer's or claimant's rights under this chapter and the rules applicable of the department.

(ii) A private collector may receive as compensation up to, but no more than, 25% of the lesser of the amount collected or the amount due, plus the costs and fees of any civil action or post-judgment remedy instituted by the private collector with the approval of the division. The employer or claimant shall be liable to pay the compensation of the collector, costs, and fees in addition to the original amount due.

(iii) A private collector is subject to the federal Fair Debt Collection Practices Act, 15 U.S.C. Sec. 1692 et seq.

(iv) A civil action may not be maintained by any private collector without specific prior written approval of the division. When division approval is given for civil action against an employer or claimant, the division may cooperate with the private collector to the extent necessary to effect the civil action.

(d) (i) Notwithstanding Section 35A-4-312, the division may disclose the contribution, interest, penalties or benefit overpayments and penalties, costs due, the name of the employer or claimant, and the employer's or claimant's address and telephone number when any collection matter is referred to a private collector under Subsection (3)(c).

(ii) A private collector is subject to the confidentiality requirements and penalty provisions provided in Section 35A-4-312 and Subsection 35A-4-104(4), except to the extent disclosure is necessary in any civil action to enforce collection of the amounts due.

(e) An action taken by the division under this section may not be construed to be an election to forego other collection procedures by the division.

(4) (a) In the event of any distribution of an employer's assets under an order of any court under the laws of Utah, including any receivership, assignment for benefits of creditors, adjudicated insolvency, composition, or similar proceedings, contributions then or thereafter due shall be paid in full prior to all other claims except taxes and claims for wages of not more than $400 to each claimant, earned within five months of the commencement of the proceeding.

(b) If an employer commences a proceeding in the Federal Bankruptcy Court under any chapter of the Bankruptcy Reform Act of 1978, 11 U.S.C. 101 et seq., as amended, contributions, interest, and penalties then or thereafter due shall be entitled to the priority provided for taxes, interest, and penalties in the Bankruptcy Reform Act of 1978.

(5) (a) In addition and as an alternative to any other remedy provided by this chapter and provided that no appeal or other proceeding for review provided by this chapter is then pending and the time for taking it has expired, the division may issue a warrant in duplicate, under its official seal, directed to the sheriff of any county of the state, commanding the sheriff to levy upon and sell the real and personal property of a delinquent employer or claimant found within the sheriff's county for the payment of the contributions due thereon, with the added penalties, interest, or benefit overpayment and penalties, and costs, and to return the warrant to the division and pay into the fund the money collected by virtue of the warrant by a time to be therein specified, not more than 60 days from the date of the warrant.

(b) Immediately upon receipt of the warrant in duplicate, the sheriff shall file the duplicate with the clerk of the district court in the sheriff's county. The clerk shall enter in the judgment docket, in the column for judgment debtors, the name of the delinquent employer or claimant mentioned in the warrant, and in appropriate columns the amount of the contribution, penalties, interest, or benefit overpayment and penalties, and costs, for which the warrant is issued and the date when the duplicate is filed.

(c) The amount of the warrant so docketed shall:

(i) have the force and effect of an execution against all personal property of the delinquent employer; and

(ii) become a lien upon the real property of the delinquent employer or claimant in the same manner and to the same extent as a judgment duly rendered by any district court and docketed in the office of the clerk.

(d) After docketing, the sheriff shall:

(i) proceed in the same manner as is prescribed by law with respect to execution issued against property upon judgments of a court of record; and

(ii) be entitled to the same fees for the sheriff's services in executing the warrant, to be collected in the same manner.

(6) (a) Contributions imposed by this chapter are a lien upon the property of any employer liable for the contribution required to be collected under this section who shall sell out the employer's business or stock of goods or shall quit business, if the employer fails to make a final report and payment on the date subsequent to the date of selling or quitting business on which they are due and payable as prescribed by rule.

(b) An employer's successor, successors, or assigns, if any, shall be required to withhold sufficient of the purchase money to cover the amount of the contributions and interest or penalties due and payable until such time as the former owner shall produce a receipt from the division showing that they have been paid or a certificate stating that no amount is due. If the purchaser of a business or stock of goods fails to withhold sufficient purchase money, the purchaser shall be personally liable for the payment of the amount of the contributions required to be paid by the former owner, interest and penalties accrued and unpaid by the former owner, owners, or assignors.

(7) (a) If any employer is delinquent in the payment of any contribution, the division may give notice of the amount of the delinquency by registered mail to all persons having in their possession or under their control, any credits or other personal property belonging to the employer, or owing any debts to the employer at the time of the receipt by them of the notice.

(b) Any persons notified under Subsection (7)(a) shall neither transfer nor make any other disposition of the credits, other personal property, or debts until:

(i) the division has consented to a transfer or disposition; or

(ii) 20 days after the receipt of the notice.

(c) All persons notified under Subsection (7)(a) shall, within five days after receipt of the notice, advise the division of credits, other personal property, or other debts in their possession, under their control or owing by them, as the case may be.

(8) (a) Each employer shall furnish the division necessary information for the proper administration of this chapter and shall include wage information for each employee, for each calendar quarter beginning October 1, 1984. The information shall be furnished at a time, in the form, and to those individuals as the department may by rule require.

(b) Each employer shall furnish each individual worker who is separated that information as the department may by rule require, and shall furnish within 48 hours of the receipt of a request from the division a report of the earnings of any individual during the individual's base-period. The report shall be on a form prescribed by the division and contain all information prescribed by the division.

(c) For each failure by an employer to conform to this Subsection (8) the division shall, unless good cause is shown to the satisfaction of the division for the failure, assess a $50 penalty to be collected in the same manner as contributions due under this chapter.

(d) The division shall prescribe rules providing standards for determining which contribution reports must be filed on magnetic media or in other machine-readable form. In prescribing these rules, the division:

(i) shall not require any employer to file contribution reports on magnetic media unless that employer is required to file wage data on at least 250 employees during any calender quarter;

(ii) shall take into account, among other relevant factors, the ability of the employer to comply at reasonable cost with the requirements of the rules; and

(iii) may require an employer to post a bond for failure to comply with the rules required by this Subsection (8)(d).

(9) If any person liable to pay any contribution or benefit overpayment imposed by this chapter neglects or refuses to pay the same after demand, the amount, including any interest, additional amount, addition to contributions, or assessable penalty, together with any additional accruable costs, shall be a lien in favor of the division upon all property and rights to property, whether real or personal belonging to the person.

(10) (a) The lien imposed by Subsection (9) arises at the time the assessment, as defined in the department rules, is made and continues until the liability for the amount so assessed, or a judgment against the taxpayer arising out of the liability, is satisfied.

(b) The lien imposed by Subsection (9) is not valid as against any purchaser, holder of a security interest, mechanics lien holder, or judgment lien creditor until a warrant which meets the requirements of Subsection (5) has been filed with the clerk of the district court. For the purposes of Subsection (10)(b):

(i) "Judgment lien creditor" means a person who obtains a valid judgment of a court of record for

recovery of specific property or a sum certain of money, and who in the case of a recovery of money, has a perfected lien under the judgment on the property involved. A judgment lien does not include inchoate liens such as attachment or garnishment liens until they ripen into a judgment. A judgment lien does not include the determination or assessment of a quasi-judicial authority, such as a state or federal taxing authority.

(ii) "Mechanics lien holder" means any person who has a lien on real property, or on the proceeds of a contract relating to real property, for services, labor, or materials furnished in connection with the construction or improvement of the property. A person has a lien on the earliest date the lien becomes valid against subsequent purchasers without actual notice, but not before the person begins to furnish the services, labor, or materials.

(iii) "Person" means:

(A) an individual;

(B) a trust;

(C) an estate;

(D) a partnership;

(E) an association;

(F) a company;

(G) a limited liability company;

(H) a limited liability partnership; or

(I) a corporation.

(iv) "Purchaser" means a person who, for adequate and full consideration in money or money's worth, acquires an interest, other than a lien or security interest, in property which is valid under state law against subsequent purchasers without actual notice.

(v) "Security interest" means any interest in property acquired by contract for the purpose of securing payment or performance of an obligation or indemnifying against loss or liability. A security interest exists at any time:

(A) the property is in existence and the interest has become protected under the law against a subsequent judgment lien arising out of an unsecured obligation; and

(B) to the extent that, at that time, the holder has parted with money or money's worth.

Section 2. Section 35A-4-309 is amended to read:

35A-4-309. Nonprofit organizations -- Contributions -- Payments in lieu of contributions.

(1) Notwithstanding any other provisions of this chapter for payments by employers, benefits paid to employees of nonprofit organizations, as described in Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3), that is exempt from income tax under Section 501(a), shall be financed in accordance with the following provisions:

(a) Any nonprofit organization which is, or becomes, subject to this chapter on or after January 1, 1972, shall pay contributions under the provisions of Section 35A-4-303, unless it elects in accordance with Subsection (1) to pay to the division for the unemployment fund an amount equal to the amount of regular benefits and of 1/2 of the extended benefits paid that is attributable to service in the employ of such nonprofit organization, to individuals for weeks of unemployment that begin during the effective period of this election.

(b) Any nonprofit organization that is or becomes subject to this chapter on or after January 1, 1972, may elect to become liable for payments in lieu of contributions for a period of not less than one contribution year beginning with the date on which the organization becomes subject to this chapter. The nonprofit organization shall file a written notice of its election with the division not later than 30 days immediately following the date that the division gives notice to the organization that it is subject to this chapter.

(c) Any nonprofit organization that makes an election in accordance with Subsection (1)(b) shall continue to be liable for payments in lieu of contributions until it files with the division a written notice terminating its election, not later than 30 days prior to the beginning of the contribution year for which this termination shall first be effective.

(d) Any nonprofit organization that has been paying contributions under this chapter for a period subsequent to January 1, 1972, may change to a reimbursable basis by filing with the division, no later than 30 days prior to the beginning of any contribution year, a written notice of election to become liable for payments in lieu of contributions. This election is not terminable by the organization for that year or the next year.

(e) The division may, for good cause, extend the period within which a notice of election or a notice of termination must be filed and may permit an election to be retroactive but not with respect to benefits paid prior to January 1, 1970.

(f) The division, in accordance with department rules, shall notify each nonprofit organization of any determination that the division may make of the organization's status as an employer, of the effective date of any election that it makes, and of any termination of this election. These determinations shall be subject to reconsideration, appeal, and review in accordance with the provisions of Section 35A-4-508.

(2) Payments in lieu of contributions shall be made in accordance with the provisions of Subsection (2).

(a) At the end of each calendar month, or at the end of any other period as determined by the division, the division shall bill each nonprofit organization or group of such organizations that has elected to make payments in lieu of contributions for an amount equal to the full amount of regular benefits plus 1/2 of the amount of

extended benefits paid during this month or other prescribed period that is attributable to service in the employ of the organization.

(b) (i) Every nonprofit organization that has elected payments in lieu of contributions may request permission to make payments under one of the methods provided in Subsection (2)(b). The method selected becomes effective upon approval by the division. At the end of each calendar month, or at the end of such other period as determined by the division, the division shall bill each organization for an amount representing the organization's choice of the following:

(A) for 1972, 0.1% of its total payroll for 1971;

(B) for years after 1972, the percentage of its total payroll for the immediately preceding calendar year as determined by the division, based upon the average benefit costs attributable to service in the employ of nonprofit organizations during the preceding calendar year; or

(C) for any organization that did not pay wages throughout the four calendar quarters of the preceding calendar year, the percentage of its payroll during the year as determined by the division.

(ii) At the end of each contribution year, the division may modify the monthly or other period's percentage of payroll thereafter payable by the nonprofit organization in order to minimize excess or insufficient payments.

(iii) At the end of each contribution year, the division shall determine whether the total of payments for the year made by a nonprofit organization is less than, or in excess of, the total amount of regular benefits plus 1/2 of the amount of extended benefits paid to individuals during the contribution year based on wages attributable to service in the employ of the organization. Each nonprofit organization whose total payments for the year are less than the amount so determined shall be liable for payment of the unpaid balance to the fund in accordance with Subsection (2)(c). If the total payments exceed the amount so determined for the contribution year, all or a part of the excess may, at the discretion of the division, be refunded from the fund or retained in the fund as part of the payments that may be required for the next contribution year.

(c) Payment of any bill rendered under Subsection (2)(a) or (2)(b) shall be made no later than 30 days after the bill was mailed to the last-known address of the nonprofit organization or was otherwise delivered to it, unless there has been an application for review and redetermination in accordance with Subsection (2)(e).

(d) Payments made by any nonprofit organization under the provisions of Subsection (2) shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the organization.

(e) (i) The amount due specified in any bill from the division shall be conclusive on the organization unless, not later than 15 days after the bill was mailed to its last-known address or otherwise delivered to it, the organization files an application for redetermination by the division or an appeal to the Workforce Appeals Board, setting forth the grounds for the application or appeal.

(ii) The division shall promptly review and reconsider the amount due specified in the bill and shall thereafter issue a redetermination in any case in which the application for redetermination has been filed.

(iii) Any redetermination shall be conclusive on the organization unless, no later than 15 days after the redetermination was mailed to its last known address or otherwise delivered to it, the organization files an appeal to a Workforce Appeals Board in accordance with Section 35A-4-508 and Chapter 1, Part 3, Adjudicative Proceedings, setting forth the grounds for the appeal.

(iv) Proceedings on appeal to the Workforce Appeals Board from the amount of a bill rendered under Subsection (2) or a redetermination of the amount shall be in accordance with Section 35A-4-508.

(f) Past due payments of amounts in lieu of contributions shall be subject to the same interest and penalties that, under Subsection 35A-4-305(1)[~~(a)~~], attach to past due contributions.

(3) If any nonprofit organization is delinquent in making payments in lieu of contributions as required under Subsection (2), the division may terminate the organization's election to make payment in lieu of contributions as of the beginning of the next contribution year, and this termination shall be effective for that and the next contribution year.

(4) In the discretion of the division, any nonprofit organization that elects to become liable for payments in lieu of contributions shall be required, within 30 days after the effective date of its election, to deposit money with the division. The amount of the deposit shall be determined in accordance with the provisions of Subsection (4).

(a) The amount of the deposit required by Subsection (4) shall be equal to 1% of the organization's total wages paid for employment as defined in Section 35A-4-204 for the four calendar quarters immediately preceding the effective date of the election, or the biennial anniversary of the effective date of election, whichever date shall be most recent and applicable. If the nonprofit organization did not pay wages in each of these four calendar quarters, the amount of the deposit shall be as determined by the division.

(b) (i) Any deposit of money in accordance with Subsection (4) shall be retained by the division in an escrow account until liability under the election is terminated, at which time it shall be returned to the organization, less any deductions as provided in Subsection (4).

(ii) The division may deduct from the money deposited under Subsection (4) by a nonprofit organization to the extent necessary to satisfy any

due and unpaid payments in lieu of contributions and any applicable interest and penalties provided for in Subsection (2)(f).

(iii) The division shall require the organization within 30 days following any deduction from a money deposit under the provisions of Subsection (4) to deposit sufficient additional money to make whole the organization's deposit at the prior level.

(iv) The division may, at any time, review the adequacy of the deposit made by any organization. If, as a result of this review, the division determines that an adjustment is necessary, it shall require the organization to make additional deposit within 30 days of written notice of the division's determination or shall return to it any portion of the deposit the division no longer considers necessary, as [~~deemed~~] considered appropriate.

(c) If any nonprofit organization fails to make a deposit, or to increase or make whole the amount of a previously made deposit, as provided under Subsection (4), the division may terminate the organization's election to make payments in lieu of contributions.

(d) (i) Termination under Subsection (4)(c) shall continue for not less than the four-consecutive-calendar-quarter period beginning with the quarter in which the termination becomes effective.

(ii) The division may extend for good cause the applicable filing, deposit, or adjustment period by not more than 60 days.

(5) Each employer liable for payments in lieu of contributions shall pay to the division for the fund the amount of regular benefits plus the amount of 1/2 of extended benefits paid that are attributable to service in the employ of the employer. If benefits paid to an individual are based on wages paid by more than one employer and one or more of these employers are liable for payments in lieu of contributions, the amount payable to the fund by each employer liable for the payments shall be determined in accordance with the provisions of Subsection (5)(a) or (b).

(a) If benefits paid to an individual are based on wages paid by one or more employers who are liable for payments in lieu of contributions and on wages paid by one or more employers who are liable for contributions, the amount of benefits payable by each employer that is liable for payments in lieu of contributions shall be an amount that bears the same ratio to the total benefits paid to the individual as the total base-period wages paid to the individual by such employer bear to the total base-period wages paid to the individual by all of the individual's base-period employers.

(b) If benefits paid to an individual are based on wages paid by two or more employers who are liable for payments in lieu of contributions, the amount of benefits payable by each such employer shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base-period wages paid to the individual by the employer bear to the total base-period wages paid to the individual by all of the individual's base-period employers.

(6) (a) Two or more employers who have become liable for payments in lieu of contributions, in accordance with the provisions of this section and Subsection 35A-4-204(2)(d), may file a joint application to the division for the establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employ of these employers. Each application shall identify and authorize a group representative to act as the group's agent for the purpose of this Subsection (6).

(b) Upon approval of the application, the division shall establish a group account for these employers effective as of the beginning of the calendar quarter in which it receives the application and shall notify the group's representative of the effective date of the account. This account shall remain in effect for not less than two contribution years and thereafter until terminated at the discretion of the division or upon application by the group.

(c) Upon establishment of the account, each member of the group shall be liable for payments in lieu of contributions with respect to each calendar quarter in the amount that bears the same ratio to the total benefits paid in such quarter attributable to service performed in the employ of all members of the group as the total wages paid for service in employment by such member in such quarter bear to the total wages paid during such quarter for service performed in the employ of all members of the group.

(d) The department shall prescribe rules, with respect to applications for establishment, maintenance, and termination of group accounts authorized by this Subsection (6), for addition of new members to, and withdrawal of active members from, these accounts, for the determination of the amounts that are payable under this Subsection (6) by members of the group, and the time and manner of these payments.

(7) (a) An employing unit that acquires a nonprofit organization or substantially all the assets of a nonprofit organization that has elected reimbursable coverage as defined in Subsection (1), in accordance with rules made by the commission, shall be given the subject date of the transferring nonprofit organization, provided the transferring nonprofit organization ceases to operate as an employing unit at the point of acquisition.

(b) The acquiring entity shall reimburse the Unemployment Compensation Fund for the transferring nonprofit organization's share of any unreimbursed benefits paid to former employees of the transferring nonprofit organization.

Section 3. Section 35A-4-312 is amended to read:

35A-4-312. Records.

(1) Each employing unit shall keep true and accurate work records containing any information the department may prescribe by rule. The records shall be open to inspection and subject to being

copied by the division or its authorized representatives at any reasonable time and as often as may be necessary. The employing unit shall make the records available in the state for three years after the calendar year in which the services were rendered.

(2) The division may require from any employing unit any sworn or unsworn reports with respect to persons employed by it that the division considers necessary for the effective administration of this chapter.

(3) [~~(a)~~] Except as provided in this section or in Sections 35A-4-103 and 35A-4-106, information obtained under this chapter or obtained from any individual may not be published or open to public inspection in any manner revealing the employing unit's or individual's identity.

[~~(b)~~] (4) (a) The information obtained by the division pursuant to this section may not be used in any court or admitted into evidence in an action or proceeding, except:

(i) in an action or proceeding arising out of this chapter;

(ii) in an action or proceeding by the Labor Commission to enforce the [~~workers' compensation coverage requirements~~] provisions of Title 34A, [~~Chapter 2 or 3~~] Utah Labor Code, or Chapters 21, 23, 28, and 40 of Title 34, Labor in General, provided the Labor Commission enters into a written agreement with the division pursuant to Subsection (6)(b); or

(iii) [~~where obtained~~] pursuant to the terms of a court order obtained pursuant to Subsection 63-2-202(7) and Section 63-2-207 of the Government Records Access and Management Act.

[~~(4)~~] (b) The information obtained by the division pursuant to this section shall be disclosed to:

[~~(a)~~] (i) a party to [~~a~~] an unemployment insurance hearing before an administrative law judge of the department or [~~the division~~] a review by the Workforce Appeals Board to the extent necessary for the proper presentation of the party's case; or

[~~(b)~~] (ii) an employer, upon request in writing for any information concerning claims for benefits with respect to the employer's former employees.

(5) The information obtained by the division pursuant to this section may be disclosed to:

(a) an employee of the department in the performance of the employee's duties in administering this chapter or other programs of the department;

(b) an employee of the Labor Commission for the purpose of carrying out the programs administered by the [~~department for the protection of workers in the workplace~~] Labor Commission;

(c) an employee of the governor's office and other state governmental agencies administratively responsible for statewide economic development, to the extent necessary for economic development policy analysis and formulation;

(d) an employee of [~~the department or~~] other governmental [~~agency~~] agencies that [~~is~~] are specifically identified and authorized by federal or state law to receive the information for the purposes stated in the law authorizing the employee of the agency to receive the information;

(e) an employee of a governmental agency or workers' compensation insurer to the extent the information will aid in the detection or avoidance of duplicate, inconsistent, or fraudulent claims against a workers' compensation program, public assistance funds, or the recovery of overpayments of workers' compensation or public assistance funds;

(f) an employee of a law enforcement agency to the extent the disclosure is necessary to avoid a significant risk to public safety or in aid of a felony criminal investigation;

(g) an employee of the State Tax Commission or the Internal Revenue Service for the purposes of audit verification or simplification, state or federal tax compliance, verification of Standard Industry Codes, and statistics;

(h) an employee or contractor of the department[~~,~~] or an educational institution, or other governmental entity engaged in [~~programs providing job training to individuals~~] workforce investment and development activities pursuant to the Workforce Investment Act of 1998 for the purpose of coordinating services [~~and~~] with the department, evaluating the effectiveness of [~~the job training programs~~] those activities, and measuring performance; [~~or~~]

(i) an employee of the Department of Community and Economic Development, for the purpose of periodically publishing in the Directory of Business and Industry, the name, address, telephone number, number of employees by range, Standard Industrial Code, and type of ownership of Utah employers[~~.~~];

(j) the public for any purpose following a written waiver by all interested parties of their rights to nondisclosure; or

(k) an individual whose wage data has been submitted to the department by an employer, so long as no information other than the individual's wage data and the identity of the party who submitted the information is provided to the individual.

(6) Disclosure of private information pursuant to Subsection (4)(a)(ii) or Subsection (5), with the exception of Subsections (5)[~~(d)~~] (a) and (f), shall be made only if:

(a) the division determines that the disclosure will not have a negative effect on the willingness of employers to report wage and employment information or on the willingness of individuals to file claims for unemployment benefits; and

(b) the agency enters into a written agreement with the division in accordance with rules made by the department.

(7) The employees of a division of the department other than the Division of Workforce Information

and Payment Services or an agency receiving private information from the division under this chapter are subject to the same requirements of privacy and confidentiality and to the same penalties for misuse or improper disclosure of the information as employees of the division. Use of private information obtained from the department by a person, or for a purpose other than one authorized in Subsection (4) or (5) violates Subsection 35A-4-104(4).

Section 4. Section 35A-4-405 is amended to read:

35A-4-405. Ineligibility for benefits.

An individual is ineligible for benefits or for purposes of establishing a waiting period:

(1) (a) For the week in which the claimant left work voluntarily without good cause, if so found by the division, and for each week thereafter until the claimant has performed services in bona fide, covered employment and earned wages for those services equal to at least six times the claimant's weekly benefit amount.

(b) A claimant shall not be denied eligibility for benefits if the claimant leaves work under circumstances of such a nature that it would be contrary to equity and good conscience to impose a disqualification.

(c) [~~The~~] Using available information from employers and the claimant, the division shall[~~, in cooperation with the employer,~~] consider for the purposes of this chapter the reasonableness of the claimant's actions, and the extent to which the actions evidence a genuine continuing attachment to the labor market in reaching a determination of whether the ineligibility of a claimant is contrary to equity and good conscience.

(d) Notwithstanding any other subsection of this section, a claimant who has left work voluntarily to accompany, follow, or join the claimant's spouse to or in a new locality does so without good cause for purposes of Subsection (1).

(2) (a) For the week in which the claimant was discharged for just cause or for an act or omission in connection with employment, not constituting a crime, which is deliberate, willful, or wanton and adverse to the employer's rightful interest, if so found by the division, and thereafter until the claimant has earned an amount equal to at least six times the claimant's weekly benefit amount in bona fide covered employment.

(b) For the week in which he was discharged for dishonesty constituting a crime or any felony or class A misdemeanor in connection with his work as shown by the facts, together with his admission, or as shown by his conviction of that crime in a court of competent jurisdiction and for the 51 next following weeks. Wage credits shall be deleted from the claimant's base period, and are not available for this or any subsequent claim for benefits.

(3) (a) If the division finds that the claimant has failed without good cause to properly apply for available suitable work, to accept a referral to suitable work offered by the employment office, or to accept suitable work offered by an employer or the employment office. The ineligibility continues until the claimant has performed services in bona fide covered employment and earned wages for the services in an amount equal to at least six times the claimant's weekly benefit amount.

(b) (i) A claimant shall not be denied eligibility for benefits for failure to apply, accept referral, or accept available suitable work under circumstances of such a nature that it would be contrary to equity and good conscience to impose a disqualification.

(ii) The division shall consider the purposes of this chapter, the reasonableness of the claimant's actions, and the extent to which the actions evidence a genuine continuing attachment to the labor market in reaching a determination of whether the ineligibility of a claimant is contrary to equity and good conscience.

(c) In determining whether or not work is suitable for an individual, the division shall consider the:

(i) degree of risk involved to his health, safety, and morals;

(ii) individual's physical fitness and prior training;

(iii) individual's prior earnings and experience;

(iv) individual's length of unemployment;

(v) prospects for securing local work in his customary occupation;

(vi) wages for similar work in the locality; and

(vii) distance of the available work from his residence.

(d) Prior earnings shall be considered on the basis of all four quarters used in establishing eligibility and not just the earnings from the most recent employer. The division shall be more prone to find work as suitable the longer the claimant has been unemployed and the less likely the prospects are to secure local work in his customary occupation.

(e) Notwithstanding any other provision of this chapter, no work is suitable, and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(i) if the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(ii) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; or

(iii) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(4) For any week in which the division finds that his unemployment is due to a stoppage of work that exists because of a strike involving his grade, class, or group of workers at the factory or establishment at which he is or was last employed.

(a) If the division finds that a strike has been fomented by a worker of any employer, none of the workers of the grade, class, or group of workers of the individual who is found to be a party to the plan, or agreement to foment a strike, shall be eligible for benefits. However, if the division finds that the strike is caused by the failure or refusal of any employer to conform to the provisions of any law of the state or of the United States pertaining to hours, wages, or other conditions of work, the strike shall not render the workers ineligible for benefits.

(b) If the division finds that the employer, his agent or representative has conspired, planned, or agreed with any of his workers, their agents or representatives to foment a strike, that strike shall not render the workers ineligible for benefits.

(c) A worker may receive benefits if, subsequent to his unemployment because of a strike as defined in this Subsection (4), he has obtained employment and has been paid wages of not less than the amount specified in Subsection 35A-4-401(4) and has worked as specified in Subsection 35A-4-403(1)(f). During the existence of the stoppage of work due to this strike the wages of the worker used for the determination of his benefit rights shall not include any wages he earned from the employer involved in the strike.

(5) (a) For each week with respect to which the claimant willfully made a false statement or representation or knowingly failed to report a material fact to obtain any benefit under the provisions of this chapter, and an additional 13 weeks for the first week the statement or representation was made or fact withheld and six weeks for each week thereafter; the additional weeks not to exceed 49 weeks.

(b) The additional period shall commence on the Sunday following the issuance of a determination finding the claimant in violation of this Subsection (5).

(c) Each individual found in violation of this Subsection (5) shall repay to the division the amount of benefits the claimant actually received and, as a civil penalty, an amount equal to the benefits the claimant received by direct reason of his fraud. The penalty amount shall be regarded as any other penalty under this chapter. These amounts shall be collectible by civil action or warrant in the manner provided in Subsections 35A-4-305(3) and (5).

(d) A claimant is ineligible for future benefits or waiting week credit, and any wage credits earned by the claimant shall be unavailable for purposes of paying benefits, if any amount owed under this Subsection (5) remains unpaid.

(e) Determinations under this Subsection (5) shall be appealable in the manner provided by this chapter for appeals from other benefit determinations.

(6) For any week with respect to which or a part of which he has received or is seeking unemployment benefits under an unemployment compensation law of another state or the United States. If the appropriate agency of the other state or of the United States finally determines that he is not entitled to those unemployment benefits, this disqualification does not apply.

(7) (a) For any week with respect to which he is receiving, has received, or is entitled to receive remuneration in the form of:

(i) wages in lieu of notice, or a dismissal or separation payment; or

(ii) accrued vacation or terminal leave payment.

(b) If the remuneration is less than the benefits that would otherwise be due, he is entitled to receive for that week, if otherwise eligible, benefits reduced as provided in Subsection 35A-4-401(3).

(8) (a) For any week in which the individual's benefits are based on service for an educational institution in an instructional, research, or principal administrative capacity and that begins during the period between two successive academic years, or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract if the individual performs services in the first of those academic years or terms and if there is a contract or reasonable assurance that the individual will perform services in that capacity for an educational institution in the second of the academic years or terms.

(b) For any week in which the individual's benefits are based on service in any other capacity for an educational institution, and that week begins during a period between two successive academic years or terms if the individual performs those services in the first of the academic years or terms and there is a reasonable assurance that the individual will perform the services in the second of the academic years or terms. If compensation is denied to any individual under this Subsection (8) and the individual was not offered an opportunity to perform the services for the educational institution for the second of the academic years or terms, the individual shall be entitled to a retroactive payment of compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of this Subsection (8).

(c) With respect to any services described in Subsection (8)(a) or (b), compensation payable on the basis of those services shall be denied to an individual for any week that commences during an established and customary vacation period or holiday recess if the individual performs the services in the period immediately before the vacation period or holiday recess, and there is a reasonable assurance that the individual will perform the services in the period immediately following the vacation period or holiday recess.

(d) With respect to services described in Subsection (8)(a) or (b), compensation payable on the basis of those services as provided in Subsection (8)(a), (b), or (c) shall be denied to an individual who performed those services in an educational institution while in the employ of an educational service agency. For purposes of this Subsection

(8)(d), "educational service agency" means a governmental agency or entity established and operated exclusively for the purpose of providing the services described in Subsection (8)(a) or (b) to an educational institution.

(e) Benefits based on service in employment, defined in Subsections 35A-4-204(2)(d) and (e) are payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the basis of other service subject to this chapter.

(9) For any week that commences during the period between two successive sport seasons or similar periods if the individual performed any services, substantially all of which consists of participating in sports or athletic events or training or preparing to participate in the first of those seasons or similar periods and there is a reasonable assurance that individual will perform those services in the later of the seasons or similar periods.

(10) (a) For any week in which the benefits are based upon services performed by an alien, unless the alien is an individual who has been lawfully admitted for permanent residence at the time the services were performed, was lawfully present for purposes of performing the services or, was permanently residing in the United States under color of law at the time the services were performed, including an alien who is lawfully present in the United States as a result of the application of Subsection 212(d)(5) of the Immigration and Nationality Act, 8 U.S.C. 1182(d)(5)(A).

(b) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits.

(c) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to the individual are not payable because of his alien status shall be made except upon a preponderance of the evidence.

CHAPTER 145
H. B. 56
Passed February 23, 2001
Approved March 15, 2001
Effective April 30, 2001

UTAH UNIFORM SECURITIES ACT AMENDMENTS

Sponsor: Patrice M. Arent

This act modifies provisions related to the Division of Securities. This act grants authority to the division director to designate investigators as special function officers.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
61-1-18, as last amended by Chapter 161, Laws of Utah 1991

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

Section 1. Section 61-1-18 is amended to read:

61-1-18. Division of Securities established -- Director -- Appointment -- Functions -- Investigators.

(1) (a) There is established within the Department of Commerce a Division of Securities.

(b) The division shall be under the direction and control of a director, appointed by the executive director with the governor's approval.

(c) The director shall be responsible for the administration and enforcement of this chapter.

(d) The director shall hold office at the pleasure of the governor.

(2) The director, with the approval of the executive director, may employ such staff as necessary to discharge the duties of the division at salaries to be fixed by the director according to standards established by the Department of Human Resource Management.

(3) An investigator employed pursuant to Subsection (2) who meets the training requirements of Subsection 53-13-105(3) may be designated a special function officer, as defined in Section 53-13-105, by the director, but is not eligible for retirement benefits under the Public Safety Employee's Retirement System.

CHAPTER 146
H. B. 58
Passed February 19, 2001
Approved March 15, 2001
Effective April 30, 2001

SCHOOL UNIFORMS AMENDMENTS

Sponsor: Karen W. Morgan
James R. Gowans
Patrice M. Arent
Trisha S. Beck
Judy Ann Buffmire
Cindy Beshear
Carl R. Saunders

This act modifies provisions related to the State System of Public Education by providing that a school uniform policy shall remain in place for at least a year after its formal implementation. The act provides a window for students to opt out of participating in the school uniform program.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
53A-15-602, as last amended by Chapter 135, Laws of Utah 2000

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

Section 1. Section 53A-15-602 is amended to read:

53A-15-602. Uniforms in public schools -- Determination by school board or school -- Patron approval.

(1) The Legislature recognizes that each student in the public schools should be allowed to learn in a safe environment which fosters the learning process and is free from unnecessary disruptions.

(2) The Legislature further recognizes that the wearing of certain types of clothing identifies students as members of youth gangs and has contributed to disruptive behavior and violence in the public schools.

(3) (a) Local school boards and school principals may require students enrolled at a public school to wear a designated uniform during the school day in order to help avoid the disruption of the classroom atmosphere and decorum and prevent disturbances among students.

(b) The uniform policy authorized in Subsection (3)(a) shall be adopted, if for more than one school, at the district level by the school board and, if for a single school, at the school level by the principal of the school subject to the following requirements:

(i) the adopting authority shall hold a public hearing on the matter prior to formal adoption of the school uniform policy;

(ii) (A) the adopting authority shall hold an election for approval of a school uniform policy prior to its adoption and must receive an affirmative vote from a majority of those voting at the election; and

(B) only parents and guardians of students subject to the proposed uniform policy may vote at the election, limited to one vote per family.

(4) (a) A local school board or principal is required to hold an election to consider adoption of a school district or individual school uniform policy if initiative petitions are presented as follows:

(i) for a district uniform policy, a petition signed by a parent or guardian of 20% of the district's students presented to the local school board; and

(ii) for an individual school, a petition signed by a parent or guardian of 20% of the school's students presented to the principal.

(b) The procedures required in Subsection (3)(b) apply to Subsection (4).

(5) (a) The procedures set forth in Subsections (3) and (4) shall apply to the discontinuance or modification of a school uniform policy adopted under this section.

(b) A vote to discontinue an adopted school uniform policy may not take place during the first year of its operation.

(6) The adopting authority shall establish the manner and time of an election required under this section.

(7) (a) A school uniform policy adopted under this section shall include a provision that would exempt a student from wearing a uniform at school if requested[~~, in writing,~~] by the student's custodial parent or legal guardian.

(b) The request under Subsection (7)(a) must be made:

(i) prior to the beginning of the school year for a student who is enrolled at the school at the beginning of the school year; or

(ii) within 15 days from enrollment at the school for a student who enrolls during the school year.

(c) The principal may at any time during the school year grant an exemption from wearing a uniform to a student who, because of extenuating circumstances, would not be able to wear a uniform.

CHAPTER 147
H. B. 62
Passed February 23, 2001
Approved March 15, 2001
Effective April 30, 2001

OPERATION AND MAINTENANCE OF STATE BUILDINGS

Sponsor: Gerry A. Adair

This act modifies code sections governing processes for capital development and capital improvement of state facilities. This act modifies the definitions of capital developments and capital improvements. This act increases the funding required to be set aside for capital improvements from .9% to 1.1% of the replacement cost of existing state facilities.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
63A-5-104, as last amended by Chapter 231, Laws of Utah 2000

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

Section 1. Section 63A-5-104 is amended to read:

63A-5-104. Capital development and capital improvement process -- Approval requirements -- Limitations on new projects -- Emergencies.

(1) As used in this section:

(a) "Capital developments" means any:

(i) remodeling, site, or utility projects with a total cost of [~~$1,000,000~~] $1,500,000 or more;

(ii) new facility with a construction cost of $250,000 or more; or

(iii) purchase of real property where an appropriation is requested to fund the purchase.

(b) "Capital improvements" means any:

(i) remodeling, alteration, replacement, or repair project with a total cost of less than [~~$1,000,000~~] $1,500,000;

(ii) site and utility improvement with a total cost of less than [~~$1,000,000~~] $1,500,000; or

(iii) new facility with a total construction cost of less than $250,000.

(c) (i) "New facility" means the construction of any new building on state property regardless of funding source.

(ii) "New facility" includes:

(A) an addition to an existing building; and

(B) the enclosure of space that was not previously fully enclosed.

(iii) "New facility" does not mean:

(A) the replacement of state-owned space that is demolished, if the total construction cost of the replacement space is less than [~~$1,000,000~~] $1,500,000; or

(B) the construction of facilities that do not fully enclose a space.

(d) "Replacement cost of existing state [~~buildings~~] facilities" means the replacement cost, as determined by the Division of Risk Management, of state [~~buildings~~] facilities, excluding auxiliary [~~buildings~~] facilities as defined by the State Building Board.

(2) The State Building Board, on behalf of all state agencies, commissions, departments, and institutions shall submit its capital development recommendations and priorities to the Legislature for approval and prioritization.

(3) (a) Except as provided in Subsections (3)(b), (d), and (e), a capital development project may not be constructed on state property without legislative approval.

(b) Legislative approval is not required for a capital development project if the State Building Board determines that:

(i) the requesting agency or institution has provided adequate assurance that state funds will not be used for the construction of, operations and maintenance to, and immediate or future capital improvements to the resulting facility; and

(ii) the use of the state property is:

(A) appropriate and consistent with the master plan for the property; and

(B) will not create an adverse impact on the state.

(c) The Division of Facilities Construction and Management shall maintain a record of facilities constructed under the exemption provided in Subsection 63A-5-104(3)(b).

(d) Legislative approval is not required for:

(i) the renovation, remodeling, or retrofitting of an existing facility with nonstate funds;

(ii) facilities to be built with nonstate funds and owned by nonstate entities within research park areas at the University of Utah and Utah State University; or

(iii) facilities to be built at This is the Place State Park by This is the Place Foundation with funds of the foundation, including grant monies from the state, or with donated services or materials.

(e) (i) Legislative approval is not required for capital development projects to be built for the Department of Transportation as a result of an exchange of real property under Section 72-5-111.

(ii) When the Department of Transportation approves those exchanges, it shall notify the president of the Senate, the speaker of the House, and the cochairs of the Capital Facilities and Administrative Services Subcommittee of the Legislature's Joint Appropriation Committee about any new facilities to be built under this exemption.

(4) (a) The State Building Board, on behalf of all state agencies, commissions, departments, and institutions shall by January 15 of each year, submit a list of anticipated capital improvement requirements to the Legislature for review and approval.

(b) Unless otherwise directed by the Legislature, the building board shall prioritize capital improvements from the list submitted to the Legislature up to the level of appropriation made by the Legislature.

(c) In prioritizing capital improvements, the building board shall consider the results of facility evaluations completed by an architect/engineer as stipulated by the building board's facilities maintenance standards.

(5) The Legislature may authorize:

(a) the total square feet to be occupied by each state agency; and

(b) the total square feet and total cost of lease space for each agency.

(6) The Legislature may not fund the design or construction of any new capital development projects, except to complete the funding of projects for which partial funding has been previously provided, until the Legislature has appropriated [~~.9%~~] 1.1% of the replacement cost of existing state [~~buildings~~] facilities to capital improvements.

(7) (a) If, after approval of capital development and capital improvement priorities by the Legislature under this section, emergencies arise that create unforeseen critical capital improvement projects, the State Building Board may, notwithstanding the requirements of Title 63, Chapter 38, Budgetary Procedures Act, reallocate capital improvement funds to address those projects.

(b) The building board shall report any changes it makes in capital improvement allocations approved by the Legislature to:

(i) the Office of Legislative Fiscal Analyst within 30 days of the reallocation; and

(ii) the Legislature at its next annual general session.

(8) (a) The State Building Board may adopt a rule allocating to institutions and agencies their proportionate share of capital improvement funding.

(b) The building board shall ensure that the rule:

(i) reserves funds for the Division of Facilities Construction and Management for emergency projects; and

(ii) allows the delegation of projects to some institutions and agencies with the requirement that a report of expenditures will be filed annually with the Division of Facilities Construction and Management and appropriate governing bodies.

(9) It is the intent of the Legislature that in funding capital improvement requirements under this section the General Fund be considered as a funding source for at least half of those costs.

CHAPTER 148
H. B. 65
Passed January 31, 2001
Approved March 15, 2001
Effective April 30, 2001

DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSURE AMENDMENTS

Sponsor: Jack A. Seitz

This act modifies the Division of Occupational and Professional Licensing Act by amending the definition of unprofessional conduct.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
58-1-501, as last amended by Chapter 159, Laws of Utah 2000

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

Section 1. Section 58-1-501 is amended to read:

58-1-501. Unlawful and unprofessional conduct.

(1) "Unlawful conduct" means conduct, by any person, that is defined as unlawful under this title and includes:

(a) practicing or engaging in, representing oneself to be practicing or engaging in, or attempting to practice or engage in any occupation or profession requiring licensure under this title if the person is:

(i) not licensed to do so or not exempted from licensure under this title; or

(ii) restricted from doing so by a suspended, revoked, restricted, temporary, probationary, or inactive license;

(b) impersonating another licensee or practicing an occupation or profession under a false or assumed name, except as permitted by law;

(c) knowingly employing any other person to practice or engage in or attempt to practice or engage in any occupation or profession licensed under this title if the employee is not licensed to do so under this title;

(d) knowingly permitting the person's authority to practice or engage in any occupation or profession licensed under this title to be used by another, except as permitted by law; or

(e) obtaining a passing score on a licensure examination, applying for or obtaining a license, or otherwise dealing with the division or a licensing board through the use of fraud, forgery, or intentional deception, misrepresentation, misstatement, or omission.

(2) "Unprofessional conduct" means conduct, by a licensee or applicant, that is defined as unprofessional conduct under this title or under any rule adopted under this title and includes:

(a) violating, or aiding or abetting any other person to violate, any statute, rule, or order regulating an occupation or profession under this title;

(b) violating, or aiding or abetting any other person to violate, any generally accepted professional or ethical standard applicable to an occupation or profession regulated under this title;

(c) engaging in conduct that results in conviction [~~of~~], [~~or~~] a plea of nolo contendere [~~to~~], or a plea of guilty or nolo contendere which is held in abeyance pending the successful completion of probation with respect to a crime of moral turpitude or any other crime that, when considered with the functions and duties of the occupation or profession for which the license was issued or is to be issued, bears a reasonable relationship to the licensee's or applicant's ability to safely or competently practice the occupation or profession;

(d) engaging in conduct that results in disciplinary action, including reprimand, censure, diversion, probation, suspension, or revocation, by any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession if the conduct would, in this state, constitute grounds for denial of licensure or disciplinary proceedings under Section 58-1-401;

(e) engaging in conduct, including the use of intoxicants, drugs, narcotics, or similar chemicals, to the extent that the conduct does, or might reasonably be considered to, impair the ability of the licensee or applicant to safely engage in the occupation or profession;

(f) practicing or attempting to practice an occupation or profession regulated under this title despite being physically or mentally unfit to do so;

(g) practicing or attempting to practice an occupation or profession regulated under this title through gross incompetence, gross negligence, or a pattern of incompetency or negligence;

(h) practicing or attempting to practice an occupation or profession requiring licensure under this title by any form of action or communication which is false, misleading, deceptive, or fraudulent;

(i) practicing or attempting to practice an occupation or profession regulated under this title beyond the scope of the licensee's competency, abilities, or education;

(j) practicing or attempting to practice an occupation or profession regulated under this title beyond the scope of the licensee's license;

(k) verbally, physically, mentally, or sexually abusing or exploiting any person through conduct connected with the licensee's practice under this title or otherwise facilitated by the licensee's license; or

(l) acting as a supervisor without meeting the qualification requirements for that position that are defined by statute or rule.

CHAPTER 149
H. B. 72
Passed February 23, 2001
Approved March 15, 2001
Effective April 30, 2001

PENALTY FOR MISUSE OF SECURITIES

Sponsor: Katherine M. Bryson

This act modifies the Utah Uniform Securities Act by amending the criminal penalties provisions. The act increases the penalties for cases involving the investment of money from home equity or a retirement account.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
61-1-21, as last amended by Chapter 160, Laws of Utah 1997

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

Section 1. Section 61-1-21 is amended to read:

61-1-21. Penalties for violations.

(1) A person is guilty of a third degree felony who willfully violates any provision of this chapter except Sections 61-1-1 and 61-1-16, or who willfully violates any rule or order under this chapter, or who willfully violates Section 61-1-16 knowing the statement made to be false or misleading in any material respect.

(2) A person who willfully violates Section 61-1-1:

(a) is guilty of a third degree felony if, at the time the crime was committed, the property, money, or thing unlawfully obtained or sought to be obtained was worth less than $10,000 [~~or less~~];

(b) is guilty of a second degree felony if[~~,~~]:

(i) at the time the crime was committed, the property, money, or thing unlawfully obtained or sought to be obtained was worth [~~more than~~] $10,000[~~.~~] or more; or

(ii) (A) at the time the crime was committed, the property, money, or thing unlawfully obtained or sought to be obtained was worth less than $10,000; and

(B) in connection with that violation, the violator knowingly accepted any money representing:

(I) equity in a person's home;

(II) a withdrawal from any individual retirement account; or

(III) a withdrawal from any qualified retirement plan as defined in the Internal Revenue Code; or

(c) is guilty of a second degree felony punishable by imprisonment for an indeterminate term of not less than three years or more than 15 years if:

(i) at the time the crime was committed, the property, money, or thing unlawfully obtained or sought to be obtained was worth $10,000 or more; and

(ii) in connection with that violation, the violator knowingly accepted any money representing:

(A) equity in a person's home;

(B) a withdrawal from any individual retirement account; or

(C) a withdrawal from any qualified retirement plan as defined in the Internal Revenue Code.

(3) No person may be imprisoned for the violation of any rule or order if he proves that he had no knowledge of the rule or order.

(4) In addition to any other penalty for a criminal violation of this chapter, the sentencing judge may impose any penalty or remedy provided for in Subsection 61-1-20(2)(b).

CHAPTER 150
H. B. 75
Passed February 9, 2001
Approved March 15, 2001
Effective April 30, 2001

NAVAJO REVITALIZATION FUND AMENDMENTS

Sponsor: Judy Ann Buffmire

This act modifies the Navajo Revitalization Fund Act and the Revenue and Taxation Code. The act clarifies what is an eligible entity under the fund, who can provide matching monies or services, and the purpose of the fund. The act modifies priorities for the fund and how fund monies may be distributed. This act makes technical changes.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
9-11-102, as enacted by Chapter 135, Laws of Utah 1996
9-11-103, as enacted by Chapter 135, Laws of Utah 1996
9-11-107, as enacted by Chapter 135, Laws of Utah 1996
59-5-119, as enacted by Chapter 135, Laws of Utah 1996

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

Section 1. Section 9-11-102 is amended to read:

9-11-102. Definitions.

As used in this chapter:

(1) "Board" means the Navajo Revitalization Fund Board.

(2) "Capital projects" means expenditures for land, improvements on the land, and equipment intended to have long-term beneficial use.

(3) "Division" means the Division of Community Development.

(4) "Eligible entities" means:

(a) the Navajo Nation [~~or~~];

(b) a department or division of the Navajo Nation;

(c) a Utah Navajo Chapter, as defined in Section 63-88-101;

[~~(b)~~] (d) the Navajo Utah Commission;

[~~(c)~~] (e) an agency of the state or a political subdivision of the state;

[~~(d)~~] (f) the Navajo Trust Fund established under Title 63, Chapter 88, Navajo Trust Fund; or

[~~(e)~~] (g) a nonprofit corporation.

(5) "Navajo Utah Commission" means the commission created by Resolution IGRJN-134-92 of the Intergovernmental Relations Committee of the Navajo Nation Council.

(6) "Revitalization fund" or "fund" means the Navajo Revitalization Fund.

Section 2. Section 9-11-103 is amended to read:

9-11-103. Legislative intent.

(1) The purpose of this chapter is to:

[~~(1)~~] (a) maximize the long-term benefit of state severance taxes derived from lands in Utah held in trust by the United States for the Navajo Nation and its members by fostering funding mechanisms that will, consistent with sound financial practices, result in the greatest use of financial resources for the greatest number of citizens of San Juan County; and

[~~(2)~~] (b) promote cooperation and coordination between the state, its political subdivisions, Indian tribes, and individuals, firms, and business organizations engaged in the development of oil and gas interests in Utah held in trust by the United States for the Navajo Nation and its members.

(2) Notwithstanding Subsection (1), the fund:

(a) consists of state severance tax monies to be spent at the discretion of the state; and

(b) does not constitute a trust fund.

Section 3. Section 9-11-107 is amended to read:

9-11-107. Revitalization fund administered by board -- Eligibility for assistance -- Review by board -- Restrictions on loans and grants -- Governor approval prerequisite -- Division to distribute monies.

(1) (a) If an eligible entity wishes to receive a loan or grant from the board, the eligible entity shall apply to the board. The application shall contain the information required by the board.

(b) The board shall review each application for a loan or grant before approving the loan or grant.

(c) The board may approve loan or grant applications subject to the applicant's compliance with certain conditions established by the board.

(2) In determining whether an eligible entity may receive a loan or grant, the board shall give priority to:

(a) capital projects and infrastructure, including electrical power, water, and other one time need projects; [~~or~~]

(b) housing projects that consist of:

(i) the purchase of new housing;

(ii) the construction of new housing; or

(iii) a significant remodeling of existing housing; or

[~~(b)~~] (c) matching educational endowments that:

(i) promote economic development within the Utah portion of the Navajo Reservation;

(ii) promote the preservation of Navajo culture, history, and language; or

(iii) support postsecondary educational opportunities for Navajo students enrolled in courses or programs taught within the Utah portion of the Navajo Reservation.

(3) A loan or grant issued under this chapter may not fund:

(a) start-up or operational costs of private business ventures;

(b) general operating budgets of the eligible entities; or

(c) a project or program that will operate or be located outside of the Navajo Reservation in San Juan County, Utah, except for educational endowments approved by the board under Subsection (2)[~~(b)~~](c).

(4) (a) The board may not approve a loan unless the loan:

(i) specifies the terms for repayment; and

(ii) is secured by proceeds from a general obligation, special assessment, or revenue bond, note, or other obligation.

(b) Any loan repayment or interest on a loan issued under this chapter shall be deposited into the [~~Revitalization~~] fund.

(5) The board may not approve a loan or grant unless the loan or grant provides for matching monies or in-kind services from:

(a) the Navajo Nation[~~,~~];

(b) the Navajo Trust Fund[~~,~~];

(c) San Juan County[~~,~~];

(d) the state[~~,~~];

(e) the federal government[~~, or~~];

(f) a Utah Navajo Chapter, as defined in Section 63-88-101; or

(g) other private or public organization.

(6) (a) During any fiscal year, the board may not approve a loan or grant unless the governor notifies the division in writing that loans and grants may be approved during that fiscal year.

(b) The governor shall provide the notice required by Subsection (6)(a) if the governor finds that there is progress in resolving issues between:

(i) the state, including its political subdivisions[~~,~~]; and

(ii) (A) the Navajo Nation; or

(B) the members of the Navajo Nation living in Utah.

(7) The division shall distribute loan and grant monies:

(a) if the loan or grant is approved by the board[~~,~~];

(b) in accordance with the instructions of the board, except that the board may not instruct that monies be distributed in a manner:

(i) inconsistent with this chapter; or

(ii) in violation of rules and procedures of the department; and

(c) in the case of a loan, in accordance with Section 63A-3-205.

Section 4. Section 59-5-119 is amended to read:

59-5-119. Disposition of certain taxes collected on Navajo Nation Land located in Utah.

(1) Except as provided in Subsection (2), [~~commencing July 1, 1997,~~] there shall be deposited into the Navajo Revitalization Fund established in Section 9-11-104 for taxes imposed under this part beginning on July 1, 1997:

(a) 33% of the taxes [~~imposed and~~] collected [~~under Section 59-5-102 from all wells existing on or before June 30, 1996, producing from~~] on oil [~~and~~], gas, or other hydrocarbon substances produced from a well:

(i) for which production began on or before June 30, 1996; and

(ii) attributable to interests in Utah held in trust by the United States for the Navajo Nation and its members; and

(b) 80% of the taxes [~~imposed and~~] collected [~~under Section 59-5-102 from new wells beginning production on or after July 1, 1996, producing from~~] on oil [~~and~~], gas, or other hydrocarbon substances produced from a well:

(i) for which production began on or after July 1, 1996; and

(ii) attributable to interests in Utah held in trust by the United States for the Navajo Nation and its members.

(2) (a) The maximum amount deposited in the Navajo Revitalization Fund may not exceed $2,000,000 in [~~one~~] any state fiscal year.

(b) Any amounts in excess of the maximum described in Subsection (2)(a) shall be deposited into the General Fund.

CHAPTER 151
H. B. 77
Passed February 27, 2001
Approved March 15, 2001
Effective July 1, 2001

STATE SCIENCE CENTER

Sponsor: A. Lamont Tyler

This act modifies the Community and Economic Development Code to reduce the size of the Utah Science Center Authority's board and clarify the scope of its science center. This act repeals the Utah Science Center Authority's power to issue bonds. This act appropriates $225,000, nonlapsing, from the General Fund for fiscal year 2001-02 only, to the Department of Community and Economic Development for the Utah Science Center Authority for the development of a state science center, conditioned on the authority securing a specified contract. This act takes effect on July 1, 2001.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
9-3-402, as enacted by Chapter 309, Laws of Utah 1993
9-3-403, as last amended by Chapters 194, 242 and 243, Laws of Utah 1996
9-3-407, as enacted by Chapter 309, Laws of Utah 1993

REPEALS:
9-3-408, as enacted by Chapter 309, Laws of Utah 1993

This act enacts uncodified material.

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

Section 1. Section 9-3-402 is amended to read:

9-3-402. Legislative findings -- State purpose.

(1) The Legislature finds and declares that:

(a) a Utah Science Center Authority can promote science, Utah's effort in high technology, engineering, the arts, culture, Utah's unique origins, and can enhance tourism and provide a valuable educational forum, and other benefits for Utah's citizens;

(b) fostering the development of science, arts, tourism, culture, and educational facilities is a state purpose affecting the welfare of all state citizens and the growth of the economy statewide.

(2) It is therefore the purpose of this part that the state provide a means to foster the development of science, technology, engineering, arts, tourism, cultural, and educational facilities in order to further the welfare of the citizens of the state and its economic growth.

Section 2. Section 9-3-403 is amended to read:

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

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

(2) (a) The authority shall be composed of [~~17~~] 13 members.

(b) The governor shall appoint:

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

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

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

(iv) one member of the Board of Travel Development;

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

(vi) [~~six~~] three public members representing Utah industry, [~~rural Utah~~] the diverse regions of the state, and the public at large.

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

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

(e) The [~~executive director of the Utah Arts Council or his designee and the~~] State Science Advisor or his designee [~~are~~] is also [~~members~~] a member of the authority.

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

(3) All members shall be residents of Utah.

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

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

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

(6) Any member may be removed from office by the governor or for cause by an affirmative vote of any [~~eleven~~] nine members of the authority.

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

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

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

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

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

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

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

(14) [~~Nine~~] Seven members constitute a quorum for transaction of authority business.

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

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

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

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

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

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

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

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

Section 3. Section 9-3-407 is amended to read:

9-3-407. Authority -- Powers.

(1) (a) The authority shall create, operate, and maintain a center that shall promote the purposes described in Section 9-3-402.

(b) The center shall:

(i) have an extensive outreach program that serves all regions of the state; and

(ii) collaborate and coordinate with education, arts, technology, and engineering entities, including schools and industries.

(2) The authority has perpetual succession as a body politic and corporate and may:

(a) adopt, amend, and repeal rules, policies, and procedures for the regulation of its affairs and the conduct of its business;

(b) sue and be sued in its own name;

(c) maintain an office at any place or places within this state it may designate;

(d) adopt, amend, and repeal bylaws and rules, not inconsistent with this part, to carry into effect the powers and purposes of the authority and the conduct of its business;

(e) purchase, lease, sell, and otherwise dispose of property and rights-of-way;

(f) employ experts, advisory groups, and other professionals it considers necessary;

(g) employ and retain independent legal counsel;

(h) make and execute contracts and all other instruments necessary or convenient for the performance of its duties and the exercise of its duties under this part to create, operate, and maintain a Science Center in Utah;

(i) procure insurance for liability and against any loss in connection with its property and other assets in amounts and from insurers it considers desirable;

(j) borrow money, receive appropriation from the Legislature, and receive other public moneys and accept aid or contributions from any source of money, property, labor, or other things of value to be held, used, and applied to carry out the purposes of this part subject to the conditions upon which the grants and contributions are made, including, but not limited to, gifts or grants from any department, agency, or instrumentality of the United States or of this state for any purpose consistent with this part;

(k) enter into agreements with any department, agency, or instrumentality or political subdivision of the United States or this state for the purpose of providing for the creation, operation, and maintenance of a Science Center in Utah; and

(l) to do any act necessary or convenient to the exercise of the powers granted by this part.

(3) All monies received by the authority under Subsection (2)(j) and from any other source shall be

for the exclusive use of the authority to create, operate, maintain, improve, and provide for a Science Center in Utah. The monies received by the authority may not be used for any other purpose or by any other entity.

Section 4. Repealer.

This act repeals:

Section 9-3-408, Bond issues -- Authority members and persons executing bonds not personally liable -- Bonds and obligations not general obligation or debt -- Negotiability.

Section 5. Appropriation.

(1) For fiscal year 2001-02 only, there is appropriated from the General Fund to the Department of Community and Economic Development for the Utah Science Center Authority $225,000.

(2) It is the intent of the Legislature that:

(a) the Utah Science Center Authority shall create a science center, including pursuing the Salt Lake City Library site; and

(b) the appropriation under Subsection (1) shall be used to develop a state science center.

(3) The appropriation under Subsection (1) is nonlapsing.

(4) The entire appropriation under Subsection (1) is conditioned upon the Utah Science Center Authority securing a contract of at least 30 years for the state science center site.

Section 6. Effective date.

This act takes effect on July 1, 2001.

CHAPTER 152
H. B. 78
Passed February 26, 2001
Approved March 15, 2001
Effective July 1, 2001

SALES AND USE TAX -
SALES RELATING TO SCHOOLS

Sponsor: Bradley T. Johnson

This act modifies the Sales and Use Tax Act to expand the exemption for sales relating to schools to include amounts paid or charged for admission to certain school-related events or school-related activities. This act defines terms and makes technical changes. This act takes effect on July 1, 2001.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
59-12-102 (Effective 07/01/01), as last amended by Chapter 253, Laws of Utah 2000
59-12-103 (Effective 07/01/01), as last amended by Chapters 147, 253, and 325, Laws of Utah 2000

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

Section 1. Section 59-12-102 (Effective 07/01/01) is amended to read:

59-12-102 (Effective 07/01/01). Definitions.

As used in this chapter:

(1) (a) "Admission or user fees" includes season passes.

(b) "Admission or user fees" does not include annual membership dues to private organizations.

(2) "Area agency on aging" is as defined in Section 62A-3-101.

(3) "Authorized carrier" means:

(a) in the case of vehicles operated over public highways, the holder of credentials indicating that the vehicle is or will be operated pursuant to both the International Registration Plan [~~(IRP)~~] and the International Fuel Tax Agreement [~~(IFTA)~~];

(b) in the case of aircraft, the holder of a Federal Aviation Administration [~~(FAA)~~] operating certificate or air carrier's operating certificate; or

(c) in the case of locomotives, freight cars, railroad work equipment, or other rolling stock, the holder of a certificate issued by the United States Interstate Commerce Commission.

(4) (a) For purposes of Subsection 59-12-104(43), "coin-operated amusement device" means:

(i) a coin-operated amusement, skill, or ride device;

(ii) that is not controlled through vendor-assisted, over-the-counter, sales of tokens; and

(iii) includes a music machine, pinball machine, billiard machine, video game machine, arcade machine, and a mechanical or electronic skill game or ride.

(b) For purposes of Subsection 59-12-104(43), "coin-operated amusement device" does not mean a coin-operated amusement device possessing a coinage mechanism that:

(i) accepts and registers multiple denominations of coins; and

(ii) allows the vendor to collect the sales and use tax at the time an amusement device is activated and operated by a person inserting coins into the device.

(5) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other fuels that does not constitute industrial use under Subsection (13) or residential use under Subsection (21).

(6) (a) "Common carrier" means a person engaged in or transacting the business of transporting passengers, freight, merchandise, or other property for hire within this state.

(b) (i) "Common carrier" does not include a person who, at the time the person is traveling to or from that person's place of employment, transports a passenger to or from the passenger's place of employment.

(ii) For purposes of Subsection (6)(b)(i), in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may make rules defining what constitutes a person's place of employment.

(7) "Component part" includes:

(a) poultry, dairy, and other livestock feed, and their components;

(b) baling ties and twine used in the baling of hay and straw;

(c) fuel used for providing temperature control of orchards and commercial greenhouses doing a majority of their business in wholesale sales, and for providing power for off-highway type farm machinery; and

(d) feed, seeds, and seedlings.

(8) "Construction materials" means any tangible personal property that will be converted into real property.

(9) (a) "Fundraising sales" means sales:

(i) (A) made by a [~~public or private elementary or secondary~~] school; or

(B) made by a [~~public or private elementary or secondary~~] school student[~~, grades kindergarten through 12~~];

(ii) that are for the purpose of raising funds for the school to purchase equipment, materials, or provide transportation; and

(iii) that are part of an officially sanctioned school activity.

(b) For purposes of Subsection (9)(a)(iii), "officially sanctioned school activity" means a school activity:

(i) that is conducted in accordance with a formal policy adopted by the school or school district governing the authorization and supervision of fundraising activities;

(ii) that does not directly or indirectly compensate an individual teacher or other educational personnel by direct payment, commissions, or payment in kind; and

(iii) the net or gross revenues from which are deposited in a dedicated account controlled by the school or school district.

(10) (a) "Hearing aid" means:

(i) an instrument or device having an electronic component that is designed to:

(A) (I) improve impaired human hearing; or

(II) correct impaired human hearing; and

(B) (I) be worn in the human ear; or

(II) affixed behind the human ear;

(ii) an instrument or device that is surgically implanted into the cochlea; or

(iii) a telephone amplifying device.

(b) "Hearing aid" does not include:

(i) except as provided in Subsection (10)(a)(i)(B) or (10)(a)(ii), an instrument or device having an electronic component that is designed to be worn on the body;

(ii) except as provided in Subsection (10)(a)(iii), an assistive listening device or system designed to be used by one individual, including:

(A) a personal amplifying system;

(B) a personal FM system;

(C) a television listening system; or

(D) a device or system similar to a device or system described in Subsections (10)(b)(ii)(A) through (C); or

(iii) an assistive listening device or system designed to be used by more than one individual, including:

(A) a device or system installed in:

(I) an auditorium;

(II) a church;

(III) a conference room;

(IV) a synagogue; or

(V) a theater; or

(B) a device or system similar to a device or system described in Subsections (10)(b)(iii)(A)(I) through (V).

(11) (a) "Hearing aid accessory" means a hearing aid:

(i) component;

(ii) attachment; or

(iii) accessory.

(b) "Hearing aid accessory" includes:

(i) a hearing aid neck loop;

(ii) a hearing aid cord;

(iii) a hearing aid ear mold;

(iv) hearing aid tubing;

(v) a hearing aid ear hook; or

(vi) a hearing aid remote control.

(c) "Hearing aid accessory" does not include:

(i) a component, attachment, or accessory designed to be used only with an:

(A) instrument or device described in Subsection (10)(b)(i); or

(B) assistive listening device or system described in Subsection (10)(b)(ii) or (iii); or

(ii) a hearing aid battery.

(12) (a) "Home medical equipment and supplies" means equipment and supplies that:

(i) a licensed physician prescribes or authorizes in writing as necessary for the treatment of a medical illness or injury or as necessary to mitigate an impairment resulting from illness or injury;

(ii) are used exclusively by the person for whom they are prescribed to serve a medical purpose; and

(iii) are listed as eligible for payment under Title [~~18~~] XVIII of the federal Social Security Act or under the state plan for medical assistance under Title [~~19~~] XIX of the federal Social Security Act.

(b) "Home medical equipment and supplies" does not include:

(i) equipment and supplies purchased by, for, or on behalf of any health care facility, as defined in Subsection (12)(c), doctor, nurse, or other health care provider for use in their professional practice;

(ii) eyeglasses, contact lenses, or equipment to correct impaired vision; or

(iii) hearing aids or hearing aid accessories.

(c) For purposes of Subsection (12)(b)(i), "health care facility" includes:

(i) a clinic;

(ii) a doctor's office; and

(iii) a health care facility as defined in Section 26-21-2.

(13) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil, or other fuels in:

(a) mining or extraction of minerals;

(b) agricultural operations to produce an agricultural product up to the time of harvest or placing the agricultural product into a storage facility, including:

(i) commercial greenhouses;

(ii) irrigation pumps;

(iii) farm machinery;

(iv) implements of husbandry as defined in Subsection 41-1a-102(23) that are not registered under Title 41, Chapter 1a, Part 2, Registration; and

(v) other farming activities; and

(c) manufacturing tangible personal property at an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget.

(14) "Manufactured home" means any manufactured home or mobile home as defined in Title 58, Chapter 56, Utah Uniform Building Standards Act.

(15) For purposes of Subsection 59-12-104(14), "manufacturing facility" means:

(a) an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget; or

(b) a scrap recycler if:

(i) from a fixed location, the scrap recycler utilizes machinery or equipment to process one or more of the following items into prepared grades of processed materials for use in new products:

(A) iron;

(B) steel;

(C) nonferrous metal;

(D) paper;

(E) glass;

(F) plastic;

(G) textile; or

(H) rubber; and

(ii) the new products under Subsection (15)(b)(i) would otherwise be made with nonrecycled materials.

(16) (a) "Medicine" means:

(i) insulin, syringes, and any medicine prescribed for the treatment of human ailments by a person authorized to prescribe treatments and dispensed on prescription filled by a registered pharmacist, or supplied to patients by a physician, surgeon, or podiatric physician;

(ii) any medicine dispensed to patients in a county or other licensed hospital if prescribed for that patient and dispensed by a registered pharmacist or administered under the direction of a physician; and

(iii) any oxygen or stoma supplies prescribed by a physician or administered under the direction of a physician or paramedic.

(b) "Medicine" does not include:

(i) any auditory, prosthetic, ophthalmic, or ocular device or appliance; or

(ii) any alcoholic beverage.

(17) "Olympic merchandise" means tangible personal property bearing an Olympic designation, emblem, insignia, mark, logo, service mark, symbol, terminology, trademark, or other copyrighted or protected material, including:

(a) one or more of the following terms:

(i) "Olympic";

(ii) "Olympiad"; or

(iii) "Citius Altius Fortius";

(b) the symbol of the International Olympic Committee, consisting of five interlocking rings;

(c) the emblem of the International Olympic Committee Corporation;

(d) a United States Olympic Committee designation, emblem, insignia, mark, logo, service mark, symbol, terminology, trademark, or other copyrighted or protected material;

(e) any emblem of the Olympic Winter Games of 2002 that is officially designated by the Salt Lake Organizing Committee of the Olympic Winter Games of 2002; or

(f) the mascot of the Olympic Winter Games of 2002.

(18) (a) "Other fuels" means products that burn independently to produce heat or energy.

(b) "Other fuels" includes oxygen when it is used in the manufacturing of tangible personal property.

(19) "Person" includes any individual, firm, partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city, municipality, district, or other local governmental entity of the state, or any group or combination acting as a unit.

(20) "Purchase price" means the amount paid or charged for tangible personal property or any other taxable transaction under Subsection 59-12-103(1), excluding only cash discounts taken or any excise tax imposed on the purchase price by the federal government.

(21) "Residential use" means the use in or around a home, apartment building, sleeping quarters, and similar facilities or accommodations.

(22) (a) "Retail sale" means any sale within the state of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), other than resale of such property, item, or service by a retailer or wholesaler to a user or consumer.

(b) "Retail sale" includes sales by any farmer or other agricultural producer of poultry, eggs, or dairy products to consumers if the sales have an average monthly sales value of $125 or more.

(c) "Retail sale" does not include, and no additional sales or use tax shall be assessed against, those transactions where a purchaser of tangible personal property pays applicable sales or use taxes on its initial nonexempt purchases of property and then enters into a sale-leaseback transaction by which title to such property is transferred by the purchaser-lessee to a lessor for consideration, provided:

(i) the transaction is intended as a form of financing for the property to the purchaser-lessee; and

(ii) pursuant to generally accepted accounting principles, the purchaser-lessee is required to capitalize the subject property for financial reporting purposes, and account for the lease payments as payments made under a financing arrangement.

(23) (a) "Retailer" means any person engaged in a regularly organized retail business in tangible personal property or any other taxable transaction under Subsection 59-12-103(1), and who is selling to the user or consumer and not for resale.

(b) "Retailer" includes commission merchants, auctioneers, and any person regularly engaged in the business of selling to users or consumers within the state.

(c) "Retailer" does not include farmers, gardeners, stockmen, poultrymen, or other growers or agricultural producers producing and doing business on their own premises, except those who are regularly engaged in the business of buying or selling for a profit.

(d) For purposes of this chapter the commission may regard as retailers the following if they determine it is necessary for the efficient administration of this chapter: salesmen, representatives, peddlers, or canvassers as the agents of the dealers, distributors, supervisors, or employers under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of these dealers, distributors, supervisors, or employers, except that:

(i) a printer's facility with which a retailer has contracted for printing shall not be considered to be a salesman, representative, peddler, canvasser, or agent of the retailer; and

(ii) the ownership of property that is located at the premises of a printer's facility with which the retailer has contracted for printing and that consists of the final printed product, property that becomes a part of the final printed product, or copy from which the printed product is produced, shall not result in the retailer being deemed to have or maintain an office, distribution house, sales house, warehouse, service enterprise, or other place of business, or to maintain a stock of goods, within this state.

(24) "Sale" means any transfer of title, exchange, or barter, conditional or otherwise, in any manner, of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), for consideration. It includes:

(a) installment and credit sales;

(b) any closed transaction constituting a sale;

(c) any sale of electrical energy, gas, services, or entertainment taxable under this chapter;

(d) any transaction if the possession of property is transferred but the seller retains the title as security for the payment of the price; and

(e) any transaction under which right to possession, operation, or use of any article of tangible personal property is granted under a lease or contract and the transfer of possession would be taxable if an outright sale were made.

(25) (a) "Sales relating to schools" means the following sales by, amounts paid to, or amounts charged by a [~~public~~] school [~~district or public or private elementary or secondary school, grades kindergarten through 12,~~]:

(i) sales that are directly related to the school's [~~or school district's~~] educational functions or activities [~~and include~~] including:

[~~(i)~~] (A) the sale of:

(I) textbooks[~~,~~];

(II) textbook fees[~~,~~];

(III) laboratory fees[~~,~~];

(IV) laboratory supplies[~~, and~~]; or

(V) safety equipment;

[~~(ii)~~] (B) the sale of clothing that:

[~~(A)~~] (I) a student is specifically required to wear as a condition of participation in a school-related event or school-related activity; and

[~~(B)~~] (II) is not readily adaptable to general or continued usage to the extent that it takes the place of ordinary clothing;

[~~(iii)~~] (C) sales of food if the net or gross revenues generated by the food sales are deposited into a school district fund or school fund dedicated to school meals; [~~and~~] or

[~~(iv)~~] (D) transportation charges for official school activities[~~.~~]; or

(ii) amounts paid to or amounts charged by a school for admission to a school-related event or school-related activity.

(b) "Sales relating to schools" does not include:

[~~(i) gate receipts;~~]

[~~(ii) special event admission fees;~~]

[~~(iii)~~] (i) bookstore sales of items that are not educational materials or supplies; [~~and~~]

[~~(iv)~~] (ii) except as provided in Subsection (25)(a)[~~(ii)~~](i)(B), clothing[~~.~~]; or

(iii) amounts paid to or amounts charged by a school for admission to a school-related event or school-related activity if the amounts paid or charged are passed through to a person:

(A) other than a:

(I) school;

(II) nonprofit organization authorized by a school board or a governing body of a private school to organize and direct a competitive secondary school activity; or

(III) nonprofit association authorized by a school board or a governing body of a private school to organize and direct a competitive secondary school activity; and

(B) that is required to collect sales and use taxes under this chapter.

(c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may make rules defining the term "passed through."

(26) For purposes of this section and Section 59-12-104, "school" means:

(a) an elementary school or a secondary school that:

(i) is a:

(A) public school; or

(B) private school; and

(ii) provides instruction for one or more grades kindergarten through 12; or

(b) a public school district.

[~~(26)~~] (27) "Senior citizen center" means a facility having the primary purpose of providing services to the aged as defined in Section 62A-3-101.

[~~(27)~~] (28) "State" means the state of Utah, its departments, and agencies.

[~~(28)~~] (29) "Storage" means any keeping or retention of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), in this state for any purpose except sale in the regular course of business.

[~~(29)~~] (30) (a) "Tangible personal property" means:

(i) all goods, wares, merchandise, produce, and commodities;

(ii) all tangible or corporeal things and substances which are dealt in or capable of being possessed or exchanged;

(iii) water in bottles, tanks, or other containers; and

(iv) all other physically existing articles or things, including property severed from real estate.

(b) "Tangible personal property" does not include:

(i) real estate or any interest or improvements in real estate;

(ii) bank accounts, stocks, bonds, mortgages, notes, and other evidence of debt;

(iii) insurance certificates or policies;

(iv) personal or governmental licenses;

(v) water in pipes, conduits, ditches, or reservoirs;

(vi) currency and coinage constituting legal tender of the United States or of a foreign nation; and

(vii) all gold, silver, or platinum ingots, bars, medallions, or decorative coins, not constituting legal tender of any nation, with a gold, silver, or platinum content of not less than 80%.

[~~(30)~~] (31) (a) "Use" means the exercise of any right or power over tangible personal property under Subsection 59-12-103(1), incident to the ownership or the leasing of that property, item, or service.

(b) "Use" does not include the sale, display, demonstration, or trial of that property in the regular course of business and held for resale.

[~~(31)~~] (32) "Vehicle" means any aircraft, as defined in Section 72-10-102; any vehicle, as defined in Section 41-1a-102; any off-highway vehicle, as defined in Section 41-22-2; and any vessel, as defined in Section 41-1a-102; that is required to be titled, registered, or both. "Vehicle" for purposes of Subsection 59-12-104(36) only, also includes any locomotive, freight car, railroad work equipment, or other railroad rolling stock.

[~~(32)~~] (33) "Vehicle dealer" means a person engaged in the business of buying, selling, or exchanging vehicles as defined in Subsection [~~(31)~~] (32).

[~~(33)~~] (34) (a) "Vendor" means any person receiving any payment or consideration upon a sale of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), or to whom the payment or consideration is payable.

(b) "Vendor" does not mean a printer's facility described in Subsection (23)(d).

Section 2. Section 59-12-103 (Effective 07/01/01) is amended to read:

59-12-103 (Effective 07/01/01). Sales and use tax base -- Rate -- Use of sales and use tax revenues.

(1) A tax is imposed on the purchaser as provided in this part for amounts paid or charged for the following transactions:

(a) retail sales of tangible personal property made within the state;

(b) amounts paid to common carriers or to telephone or telegraph corporations, whether the corporations are municipally or privately owned, for:

(i) all transportation;

(ii) intrastate telephone service; or

(iii) telegraph service;

(c) sales of the following for commercial use:

(i) gas;

(ii) electricity;

(iii) heat;

(iv) coal;

(v) fuel oil; or

(vi) other fuels;

(d) sales of the following for residential use:

(i) gas;

(ii) electricity;

(iii) heat;

(iv) coal;

(v) fuel oil; or

(vi) other fuels;

(e) sales of meals;

(f) except as provided in Section 59-12-104, amounts paid or charged as admission or user fees for theaters, movies, operas, museums, planetariums, shows of any type or nature, exhibitions, concerts, carnivals, amusement parks, amusement rides, circuses, menageries, fairs, races, contests, sporting events, dances, boxing matches, wrestling matches, closed circuit television broadcasts, billiard parlors, pool parlors, bowling lanes, golf, miniature golf, golf driving ranges, batting cages, skating rinks, ski lifts, ski runs, ski trails, snowmobile trails, tennis courts, swimming pools, water slides, river runs, jeep tours, boat tours, scenic cruises, horseback rides, sports activities, or any other amusement, entertainment, recreation, exhibition, cultural, or athletic activity;

(g) amounts paid or charged for services:

(i) for repairs or renovations of tangible personal property; or

(ii) to install tangible personal property in connection with other tangible personal property;

(h) except as provided in Subsection 59-12-104(7), amounts paid or charged for cleaning or washing of tangible personal property;

(i) amounts paid or charged for tourist home, hotel, motel, or trailer court accommodations and services for less than 30 consecutive days;

(j) amounts paid or charged for laundry or dry cleaning services;

(k) amounts paid or charged for leases or rentals of tangible personal property if:

(i) the tangible personal property's situs is in this state;

(ii) the lessee took possession of the tangible personal property in this state; or

(iii) within this state the tangible personal property is:

(A) stored;

(B) used; or

(C) otherwise consumed;

(l) amounts paid or charged for tangible personal property if within this state the tangible personal property is:

(i) stored;

(ii) used; or

(iii) consumed; and

(m) amounts paid or charged for prepaid telephone calling cards.

(2) (a) Except as provided in Subsections (2)(b) and (c), beginning on July 1, 2001, a state tax and a local tax is imposed on a transaction described in Subsection (1) equal to the sum of:

(i) a state tax imposed on the transaction at a rate of 4.75%; and

(ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the transaction under this chapter other than this part.

(b) Notwithstanding Subsection (2)(a), beginning on July 1, 2001, a state tax and a local tax is imposed on a transaction described in Subsection (1)(d) equal to the sum of:

(i) a state tax imposed on the transaction at a rate of 2%; and

(ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the transaction under this chapter other than this part.

(c) Notwithstanding Subsections (2)(a) and (b), beginning on July 1, 2001, if a vendor collects a tax under Subsection 59-12-107(1)(b) on a transaction described in Subsection (1), a state tax and a local tax is imposed on the transaction equal to the sum of:

(i) a state tax imposed on the transaction at a rate of:

(A) 4.75% for a transaction other than a transaction described in Subsection (1)(d); or

(B) 2% for a transaction described in Subsection (1)(d); and

(ii) except as provided in Subsection (2)(d), a local tax imposed on the transaction at a rate equal to the sum of the following tax rates:

(A) the lowest tax rate imposed by a county, city, or town under Section 59-12-204, but only if all of the counties, cities, and towns in the state impose the tax under Section 59-12-204;

(B) the lowest tax rate imposed by a county, city, or town under Section 59-12-205, but only if all of

the counties, cities, and towns in the state impose the tax under Section 59-12-205; and

(C) the tax rate authorized by Section 59-12-1102, but only if all of the counties in the state impose the tax under Section 59-12-1102.

(d) Tax rates authorized under the following do not apply to Subsection (2)(c)(ii):

(i) Subsection (2)(a)(i);

(ii) Subsection (2)(b)(i);

(iii) Subsection (2)(c)(i);

(iv) Section 59-12-301;

(v) Section 59-12-352;

(vi) Section 59-12-353;

(vii) Section 59-12-401;

(viii) Section 59-12-402;

(ix) Section 59-12-501;

(x) Section 59-12-502;

(xi) Section 59-12-603;

(xii) Section 59-12-703;

(xiii) Section 59-12-802;

(xiv) Section 59-12-804;

(xv) Section 59-12-1001;

(xvi) Section 59-12-1201; or

(xvii) Section 59-12-1302.

(3) (a) Except as provided in Subsections (4) through (9), the state taxes described in Subsections (2)(a)(i), (2)(b)(i), and (2)(c)(i) shall be deposited into the General Fund.

(b) The local taxes described in Subsections (2)(a)(ii) and (2)(b)(ii) shall be distributed to a county, city, or town as provided in this chapter.

(c) (i) Notwithstanding any provision of this chapter, each county, city, or town in the state shall receive the county's, city's, or town's proportionate share of the revenues generated by the local tax described in Subsection (2)(c)(ii) as provided in Subsection (3)(c)(ii).

(ii) The commission shall determine a county's, city's, or town's proportionate share of the revenues under Subsection (3)(c)(i) by:

(A) dividing the population of the county, city, or town by the total population of the state; and

(B) multiplying the percentage determined under Subsection (3)(c)(ii)(A) by the total amount of revenues generated by the local tax under Subsection (2)(c)(ii) for all counties, cities, and towns.

(iii) (A) Except as provided in Subsection (3)(c)(iii)(B), population figures for purposes of this section shall be derived from the most recent official census or census estimate of the United States Census Bureau.

(B) Notwithstanding Subsection (3)(c)(iii)(A), if a needed population estimate is not available from the United States Census Bureau, population figures shall be derived from the estimate from the Utah Population Estimates Committee created by executive order of the governor.

(C) For purposes of this section, the population of a county may only include the population of the unincorporated areas of the county.

(4) (a) Notwithstanding Subsection (3)(a), there shall be deposited in an Olympics special revenue fund or funds as determined by the Division of Finance under Section 51-5-4, for the use of the Utah Sports Authority created under Title 63A, Chapter 7, Utah Sports Authority Act:

(i) from January 1, 1990, through December 31, 1999, the amount of sales and use tax generated by a 1/64% tax rate on the taxable transactions under Subsection (1);

(ii) from January 1, 1990, through June 30, 1999, the amount of revenue generated by a 1/64% tax rate under Section 59-12-204 or Section 59-12-205 on the taxable transactions under Subsection (1); and

(iii) interest earned on the amounts under Subsections (4)(a)(i) and (ii).

(b) These funds shall be used:

(i) by the Utah Sports Authority as follows:

(A) to the extent funds are available, to transfer directly to a debt service fund or to otherwise reimburse to the state any amount expended on debt service or any other cost of any bonds issued by the state to construct any public sports facility as defined in Section 63A-7-103;

(B) to pay for the actual and necessary operating, administrative, legal, and other expenses of the Utah Sports Authority, but not including protocol expenses for seeking and obtaining the right to host the Winter Olympic Games;

(C) as otherwise appropriated by the Legislature; and

(D) unless the Legislature appropriates additional funds from the Olympics Special Revenue Fund to the Utah Sports Authority, the Utah Sports Authority may not expend, loan, or pledge in the aggregate more than:

(I) $59,000,000 of sales and use tax deposited into the Olympics Special Revenue Fund under Subsection (4)(a);

(II) the interest earned on the amount described in Subsection (4)(b)(i)(D)(I); and

(III) the revenues deposited into the Olympics Special Revenue Fund that are not sales and use taxes deposited under Subsection (4)(a) or interest on the sales and use taxes;

(ii) to pay salary, benefits, or administrative costs associated with the State Olympic Officer under Subsection 63A-10-103(3), except that the salary, benefits, or administrative costs may not be paid

from the sales and use tax revenues generated by municipalities or counties and deposited under Subsection (4)(a)(ii).

(c) A payment of salary, benefits, or administrative costs under Subsection 63A-10-103(3) is not considered an expenditure of the Utah Sports Authority.

(d) If the Legislature appropriates additional funds under Subsection (4)(b)(i)(D), the authority may not expend, loan, pledge, or enter into any agreement to expend, loan, or pledge the appropriated funds unless the authority:

(i) contracts in writing for the full reimbursement of the monies to the Olympics Special Revenue Fund by a public sports entity or other person benefitting from the expenditure; and

(ii) obtains a security interest that secures payment or performance of the obligation to reimburse.

(e) A contract or agreement entered into in violation of Subsection (4)(d) is void.

(5) (a)Notwithstanding Subsection (3)(a), beginning on July 1, 2001, the amount of sales and use tax generated annually by a 1/16% tax rate on the taxable transactions under Subsection (1) shall be used as provided in Subsections (5)(b) through (g).

(b) (i) Beginning on July 1, 2001, $2,300,000 each year shall be transferred as dedicated credits to the Department of Natural Resources to:

(A) implement the measures described in Subsections 63-34-14(4)(a) through (d) to protect sensitive plant and animal species; or

(B) award grants, up to the amount authorized by the Legislature in an appropriations act, to political subdivisions of the state to implement the measures described in Subsections 63-34-14(4)(a) through (d) to protect sensitive plant and animal species.

(ii) Money transferred to the Department of Natural Resources under Subsection (5)(b)(i) may not be used to assist the United States Fish and Wildlife Service or any other person to list or attempt to have listed a species as threatened or endangered under the Endangered Species Act of 1973, 16 U.S.C. Sec. 1531 et seq.

(iii) At the end of each fiscal year:

(A) 50% of any unexpended dedicated credits shall lapse to the Water Resources Conservation and Development Fund created in Section 73-10-24;

(B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan Program subaccount created in Section 73-10c-5; and

(C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan Program subaccount created in Section 73-10c-5.

(c) Five hundred thousand dollars each year shall be deposited in the Agriculture Resource Development Fund created in Section 4-18-6.

(d) (i) One hundred thousand dollars each year shall be transferred as dedicated credits to the Division of Water Rights to cover the costs incurred in hiring legal and technical staff for the adjudication of water rights.

(ii) At the end of each fiscal year:

(A) 50% of any unexpended dedicated credits shall lapse to the Water Resources Conservation and Development Fund created in Section 73-10-24;

(B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan Program subaccount created in Section 73-10c-5; and

(C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan Program subaccount created in Section 73-10c-5.

(e) Fifty percent of the remaining amount generated by the 1/16% tax rate shall be deposited in the Water Resources Conservation and Development Fund created in Section 73-10-24 for use by the Division of Water Resources. In addition to the uses allowed of the fund under Section 73-10-24, the fund may also be used to:

(i) provide a portion of the local cost share, not to exceed in any fiscal year 50% of the funds made available to the Division of Water Resources under this section, of potential project features of the Central Utah Project;

(ii) conduct hydrologic and geotechnical investigations by the Department of Natural Resources in a cooperative effort with other state, federal, or local entities, for the purpose of quantifying surface and ground water resources and describing the hydrologic systems of an area in sufficient detail so as to enable local and state resource managers to plan for and accommodate growth in water use without jeopardizing the resource;

(iii) fund state required dam safety improvements; and

(iv) protect the state's interest in interstate water compact allocations, including the hiring of technical and legal staff.

(f) Twenty-five percent of the remaining amount generated by the 1/16% tax rate shall be deposited in the Utah Wastewater Loan Program subaccount created in Section 73-10c-5 for use by the Water Quality Board to fund wastewater projects as defined in Section 73-10b-2.

(g) Twenty-five percent of the remaining amount generated by the 1/16% tax rate shall be deposited in the Drinking Water Loan Program subaccount created in Section 73-10c-5 for use by the Division of Drinking Water to:

(i) provide for the installation and repair of collection, treatment, storage, and distribution facilities for any public water system, as defined in Section 19-4-102;

(ii) develop underground sources of water, including springs and wells; and

(iii) develop surface water sources.

(6) (a) Notwithstanding Subsection (3)(a), beginning on July 1, 2001, the amount of sales and use tax generated annually by a 1/16% tax rate on the taxable transactions under Subsection (1) shall be used as provided in Subsections (6)(b) through (d).

(b) (i) Five hundred thousand dollars each year shall be deposited in the Transportation Corridor Preservation Revolving Loan Fund created in Section 72-2-117.

(ii) At least 50% of the money deposited in the Transportation Corridor Preservation Revolving Loan Fund under Subsection (6)(b)(i) shall be used to fund loan applications made by the Department of Transportation at the request of local governments.

(c) From July 1, 1997, through June 30, 2006, $500,000 each year shall be transferred as nonlapsing dedicated credits to the Department of Transportation for the State Park Access Highways Improvement Program created in Section 72-3-207.

(d) The remaining amount generated by the 1/16% tax rate shall be deposited in the class B and class C roads account to be expended as provided in Title 72, Chapter 2, Transportation Finances Act, for the use of class B and C roads.

(7) (a) Notwithstanding Subsection (3)(a), beginning on January 1, 2000, the Division of Finance shall deposit into the Centennial Highway Fund created in Section 72-2-118 a portion of the state sales and use tax under Subsection (2) equal to the revenues generated by a 1/64% tax rate on the taxable transactions under Subsection (1).

(b) Except for sales and use taxes deposited under Subsection (8), beginning on July 1, 1999, the revenues generated by the 1/64% tax rate:

(i) retained under Subsection 59-12-204(7)(a) shall be retained by the counties, cities, or towns as provided in Section 59-12-204; and

(ii) retained under Subsection 59-12-205(4)(a) shall be distributed to each county, city, and town as provided in Section 59-12-205.

(8) Notwithstanding Subsection (3)(a), beginning on July 1, 1999, the commission shall deposit into the Airport to University of Utah Light Rail Restricted Account created in Section 17A-2-1064 the portion of the sales and use tax under Sections 59-12-204 and 59-12-205 that is:

(a) generated by a city or town that will have constructed within its boundaries the Airport to University of Utah Light Rail described in the Transportation Equity Act for the 21st Century, Pub. L. No. 105-178, Sec. 3030(c)(2)(B)(i)(II), 112 Stat. 107; and

(b) equal to the revenues generated by a 1/64% tax rate on the taxable items and services under Subsection (1).

(9) (a) Notwithstanding Subsection (3)(a), for fiscal years beginning on or after fiscal year 2002-03, the commission shall on or before September 30 of each year deposit the difference described in Subsection (9)(b) into the Remote Sales Restricted Account created in Section 59-12-103.2 if that difference is greater than $0.

(b) The difference described in Subsection (9)(a) is equal to the difference between:

(i) the total amount of revenues the commission received from vendors collecting a tax under Subsection 59-12-107(1)(b) for the previous fiscal year; and

(ii) the total amount of revenues the commission received from vendors collecting a tax under Subsection 59-12-107(1)(b) for fiscal year 2000-01.

(10) (a) For purposes of amounts paid or charged as admission or user fees relating to the Olympic Winter Games of 2002, the amounts are considered to be paid or charged on the day on which the Salt Lake Organizing Committee for the Olympic Winter Games of 2002 or a person designated by the Salt Lake Organizing Committee for the Olympic Winter Games of 2002 sends a purchaser confirmation of the purchase of an admission or user fee described in Subsection (1)(f).

(b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission shall make rules defining what constitutes sending a purchaser confirmation under Subsection (10)(a).

Section 3. Effective date.

This act takes effect on July 1, 2001.

CHAPTER 153
H. B. 83
Passed February 27, 2001
Approved March 15, 2001
Effective April 30, 2001
(Subsection 78-3a-301(1)(m) is repealed on July 1, 2002.)

CHILD WELFARE AMENDMENTS

Sponsor: Wayne A. Harper

This act modifies provisions of the Judicial Code and the Human Services Code related to child welfare. This act requires the Division of Child and Family Services to maintain a separate database system for unsubstantiated reports of child abuse and reports of child abuse that are without merit. The act reduces the period of time unsubstantiated reports of child abuse are maintained on the database system from ten years to five years. The act establishes circumstances in which the division shall remove a name from the database. The act requires the Child Welfare Legislative Oversight Committee to study immunity of child protection service workers. The act clarifies the circumstances in which an officer may use force to remove a child from a home. This act clarifies the conditions that must be met before a child suspected of being abused or a sibling may be removed from the home. The act requires a court to order visitation with a parent at the shelter hearing and at the dispositional hearing unless visitation is not in the best interest of the child. This act includes a coordination clause.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
62A-4a-116, as last amended by Chapters 304 and 321, Laws of Utah 2000
62A-4a-116.5, as last amended by Chapter 304, Laws of Utah 2000
62A-4a-207, as last amended by Chapter 13, Laws of Utah 1998
78-3a-106, as last amended by Chapters 329 and 365, Laws of Utah 1997
78-3a-301, as last amended by Chapter 274, Laws of Utah 2000
78-3a-307, as last amended by Chapter 285, Laws of Utah 2000
78-3a-311, as last amended by Chapter 121, Laws of Utah 1999

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

Section 1. Section 62A-4a-116 is amended to read:

62A-4a-116. Management information system -- Requirements.

(1) The division shall develop and implement a management information system that meets the requirements of this section and the requirements of federal law and regulation.

(2) With regard to all child welfare cases, the management information system shall:

(a) provide each caseworker with a complete history of each child in his caseload, including:

(i) all past action taken by the division with regard to that child and his siblings, the complete case history and all reports and information in the control or keeping of the division regarding that child and his siblings;

(ii) the number of times the child has been in foster care;

(iii) the cumulative period of time the child has been in foster care;

(iv) all reports of abuse or neglect received by the division with regard to that child's parent or parents, including documentation regarding whether each report was substantiated, unsubstantiated, or without merit;

(v) the number of times the child's parent or parents have failed any treatment plan; and

(vi) the number of different caseworkers who have been assigned to that child in the past;

(b) contain all key elements of each family's current treatment plan, including the dates and number of times the plan has been administratively or judicially reviewed, the number of times the parent or parents have failed that treatment plan, and the exact length of time that treatment plan has been in effect;

(c) alert caseworkers regarding deadlines for completion of and compliance with treatment plans; [~~and~~]

(d) unless the executive director determines that there is good cause for keeping the report on the system based on standards established by rule, delete any reference to:

(i) a report that is without merit if no subsequent report involving the same alleged perpetrator has occurred within one year; or

(ii) a report that is unsubstantiated if no subsequent report involving the same alleged perpetrator has occurred within [~~ten~~] five years[~~.~~]; and

(e) maintain a separation of reports that are without merit in the system to identify the cases apart from substantiated cases and, where necessary, provide restricted access to the without merit cases.

(3) With regard to all child protective services cases, the management information system shall, in addition to the information required in Subsection (2), monitor compliance with the policy of the division, the laws of this state, and federal law and regulation.

(4) With regard to all child welfare and protective services cases, the age and date of birth of the alleged perpetrator, at the time the abuse or neglect is alleged to have occurred, shall be included in the management information system.

(5) (a) The division shall develop and maintain a part of the information management system for licensing purposes, which shall be:

(i) limited to:

(A) substantiated findings of child abuse or neglect since January 1, 1988, after notice and an opportunity to challenge has been provided under Section 62A-4a-116.5;

(B) the name of a person who was not sent a notice of agency action under Section 62A-4a-116.5 because his location was not available on the management information system or who was sent a notice of agency action that was returned to the division as undelivered for the sole purpose of alerting the division of the need to afford the person an opportunity to challenge the finding of child abuse or neglect under Section 62A-4a-116.5 before any adverse action, beyond delaying the person's licensing application to provide an opportunity for challenge, may be taken;

(C) an adjudication of child abuse or neglect by a court of competent jurisdiction if Subsection 62A-4a-116.5(5) has been met; and

(D) any criminal conviction or guilty plea related to neglect, physical abuse, or sexual abuse of any person; and

(ii) accessible by:

(A) the Office of Licensing for licensing purposes only;

(B) the division:

(I) to screen a person at the request of the Office of the Guardian Ad Litem Director, created by Section 78-3a-912, at the time the person seeks a paid or voluntary position with the Office of the Guardian Ad Litem and each year thereafter that the person remains with the office; and

(II) to respond to a request for information from the person who is identified as a perpetrator in the report, after advising the person of the screening prohibition in Subsection (4)(d)(iii);

(C) subject to the provisions of Subsection (5)(c), the Bureau of Health Facility Licensure within the Department of Health only for the purpose of licensing a child care program or provider, or for determining whether a person associated with a covered health care facility, as defined by the Department of Health by rule, who provides direct care to a child has a substantiated finding of child abuse or neglect; and

(D) the department as provided in Subsection (6) and Section 62A-1-118.

(b) For the purpose of Subsection (5)(a), "substantiated":

(i) means a finding that there is a reasonable basis to conclude that:

(A) a person 18 years of age or older committed one or more of the following types of child abuse or neglect:

(I) physical abuse;

(II) sexual abuse;

(III) sexual exploitation;

(IV) abandonment;

(V) medical neglect resulting in death, disability, or serious illness; or

(VI) chronic or severe neglect; and

(B) a person under the age of 18:

(I) caused serious physical injury, as defined in Subsection 76-5-109(1)(d), to another child which indicates a significant risk to other children; or

(II) engaged in sexual behavior with or upon another child which indicates a significant risk to other children; and

(ii) does not include:

(A) the use of reasonable and necessary physical restraint or force by an educator in accordance with Subsection 53A-11-802(2) or Section 76-2-401; or

(B) a person's conduct that:

(I) is justified under Section 76-2-401; or

(II) constituted the use of reasonable and necessary physical restraint or force in self-defense or otherwise appropriate to the circumstances to obtain possession of a weapon or other dangerous object in the possession or under the control of a child or to protect the child or another person from physical injury.

(iii) (A) For purposes of Subsection (5)(b)(i)(B), "significant risk" shall be determined in accordance with risk assessment tools and policies established by the division that focus on age, social factors, emotional factors, sexual factors, intellectual factors, family risk factors, and other related considerations.

(B) The division shall train its child protection workers to apply the risk assessment tools and policies established under Subsection (5)(b)(iii)(A).

(c) (i) The Department of Health shall:

(A) designate two persons within the Department of Health to access the licensing part of the management information system; and

(B) adopt measures to:

(I) protect the security of the licensing part of the management information system; and

(II) strictly limit access to the licensing part of the management information system to those designated under Subsection (5)(c)(i)(A).

(ii) Those designated under Subsection (5)(c)(i)(A) shall receive training from the department with respect to:

(A) accessing the licensing part of the management information system;

(B) maintaining strict security; and

(C) the criminal provisions in Section 62A-4a-412 for the improper release of information.

(iii) Those designated under Subsection (5)(c)(i)(A):

(A) are the only ones in the Department of Health with the authority to access the licensing part of the management information system; and

(B) may only access the licensing part of the management information system in accordance with the provisions of Subsection (5)(a)(ii).

(iv) The Department of Health may obtain information in the possession of the division that relates to a substantiated finding of abuse or neglect of a person screened under this Subsection (5)(c).

(d) (i) Information in the licensing part of the management information system is confidential and may only be used or disclosed as specifically provided in this section, Section 62A-2-121, and Section 62A-4a-116.5.

(ii) No person, unless listed in Subsection (5)(a)(ii), may request another person to obtain or release a report or any other information in the possession of the division obtained as a result of the report that is available under Subsection (5)(a)(ii)(A)(III) to screen for potential perpetrators of child abuse or neglect.

(iii) A person who requests information knowing that it is a violation of Subsection (5)(d)(ii) to do so is subject to the criminal penalty in Section 62A-4a-412.

(6) All information contained in the management information system shall be available to the department upon the approval of the executive director, on a need-to-know basis.

(7) (a) The division may allow its contract providers to have limited access to the management information system. The division shall limit that access to information about persons who are currently receiving services from the specific contract provider.

(b) Each contract provider shall:

(i) take all necessary precautions to safeguard the security of the information contained in the management information system;

(ii) train its employees regarding requirements for confidentiality and the criminal penalties under Sections 62A-4a-412 and 63-2-801 for improper release of information; and

(iii) monitor its employees to ensure that they comply with the confidentiality requirements related to the management information system.

(c) The division shall take reasonable precautions to ensure that its contract providers are complying with Subsection (7)(b).

(8) The division shall take all necessary precautions, including password protection and other appropriate technological techniques, to prevent unauthorized access to the information contained in the management information system.

(9) (a) The division shall send a certified letter to a person who submitted a report of child abuse or neglect that is put onto any part of the management information system if the division determines, at the conclusion of its investigation, that:

(i) the report is false;

(ii) it is more likely than not that the person knew that the report was false at the time the person submitted the report; and

(iii) the person's address is known or reasonably available.

(b) The letter shall inform the person of:

(i) the determination made under Subsection (9)(a);

(ii) the penalty for submitting false information under Section 76-8-506 and other applicable laws;

(iii) the obligation of the division to inform law enforcement and the alleged perpetrator:

(A) in the present instance if an immediate referral is justified by the facts; or

(B) if the person submits a subsequent false report involving the same alleged perpetrator or victim.

(c) (i) The division may inform law enforcement and the alleged perpetrator of a report for which a letter is required to be sent under Subsection (9)(a) if an immediate referral is justified by the facts.

(ii) The division shall inform law enforcement and the alleged perpetrator of a report for which a letter is required to be sent under Subsection (9)(a) if this is the second letter sent to the person involving the same alleged perpetrator or victim.

(iii) The division shall determine, in consultation with law enforcement:

(A) the information to be given to an alleged perpetrator about a false claim; and

(B) whether good cause exists, as defined by rule, for not informing an alleged perpetrator about a false claim.

(d) Nothing in this Subsection (9) may be construed as requiring the division to conduct an investigation, beyond what is required in Subsection (9)(a), to determine whether or not a report is false.

Section 2. Section 62A-4a-116.5 is amended to read:

62A-4a-116.5. Opportunity to challenge a finding of child abuse or neglect.

(1) (a) The division shall send a notice of agency action to a person if the division finds, at the conclusion of an investigation, that, in the opinion of the division, there is a reasonable basis to conclude that the person committed abuse or neglect listed in Subsection 62A-4a-116(5)(b)(i). In the event that the person is under the age of 18, the division shall:

(i) make reasonable efforts to identify the person's parent or legal guardian; and

(ii) send a notice to each parent or legal guardian identified under Subsection (1)(a)(i) that lives at a different address unless there is good cause, as defined by rule, for not sending a notice to a parent or legal guardian.

(b) For purposes of this section only, which governs the right of a person to challenge the division's initial finding or opinion of abuse or neglect as it pertains to the licensing part of the management information system, the division shall refer to a finding under Subsection (1)(a) as a "finding" or an "initial finding" of abuse or neglect when notifying or explaining a notification to a person.

(c) Nothing in this section may be construed as affecting:

(i) the manner in which the division conducts an investigation; or

(ii) the use or effect, in any other setting, of:

(A) an initial division finding or substantiation of child abuse or neglect at the completion of an investigation for any purpose other than for notification under Subsection (1)(b); or

(B) the term "substantiated" as used in any other provision of the code.

(2) The notice shall state:

(a) that the division conducted an investigation;

(b) that the division found, at the conclusion of the investigation, that there was, in the opinion of the division, a reasonable basis to conclude that abuse or neglect occurred;

(c) the facts that support the finding;

(d) that the person may be disqualified from adopting a child or working for or being licensed by:

(i) the department;

(ii) a human services licensee;

(iii) a child care provider or program; and

(iv) a covered health care facility;

(e) that the person has the right to request:

(i) a copy of the report; and

(ii) an opportunity to challenge the finding and its inclusion on the licensing part of the management information system described in Subsection 62A-4a-116(5), except as provided in Subsection (5)(b); and

(f) that failure to request an opportunity to challenge the finding within 30 days of the notice being received will result in an unappealable finding of substantiation of child abuse or neglect, unless the person can show good cause for why compliance within the 30-day requirement was virtually impossible or unreasonably burdensome.

(3) (a) A person may make a request to challenge a finding within 30 days of:

(i) a notice being received under Subsection (2);

(ii) a finding by a court of competent jurisdiction based on the same underlying facts that:

(A) child abuse or neglect, as described in Subsection 62A-4a-116(5)(b), did not occur; or

(B) the person was not responsible for the child abuse or neglect that did occur; or

(iii) the dismissal of criminal charges or a verdict of not guilty based on the same underlying facts.

(b) The 30-day requirement of Subsection (3)(a) shall be extended for good cause shown that compliance was virtually impossible or unreasonably burdensome.

(c) The division may approve or deny a request made under Subsection (3)(a).

(d) If the division denies the request or fails to act within 30 days after receiving a request submitted under Subsection (3)(a), the Office of Administrative Hearings shall hold an adjudicative proceeding pursuant to Title 63, Chapter 46b, Administrative Procedures Act.

(4) (a) In an adjudicative proceeding held pursuant to Subsection (3)(d), the division shall prove by a preponderance of the evidence that there is a reasonable basis to conclude that:

(i) child abuse or neglect, as described in Subsection 62A-4a-116(5)(b), occurred; and

(ii) the person was substantially responsible for the abuse or neglect that occurred.

(b) The administrative hearing officer may make a determination of substantiation based solely on the out-of-court statement of the child that the officer finds to be reliable under the standards set forth in:

(i) Section 76-5-411;

(ii) Utah Rules of Criminal Procedure, Rule 15.5;

(iii) Section 78-3a-116(5);

(iv) the Utah Rules of Evidence; or

(v) Utah case law.

(5) (a) [~~A~~] Except as provided in Subsection (5)(b), a person may not make a request to challenge a finding under Subsection (3)(a), if, at anytime, a court of competent jurisdiction has made a determination based on the same underlying facts that:

(i) child abuse or neglect, as described in Subsection 62A-4a-116(5)(b), occurred;

(ii) the person was substantially responsible for the abuse or neglect that occurred; and

(iii) the person:

(A) was a party to the proceeding; or

(B) (I) had notice of the proceeding; and

(II) was provided a meaningful opportunity to challenge the facts underlying the court's determination.

(b) The division shall remove a person's name from the database unless the division provides new notice under Subsection (1)(a) and an opportunity to be heard under Subsection (3)(a) when the court of competent jurisdiction:

(i) enters a finding of not guilty;

(ii) dismisses the information or indictment after compliance with the requirements of a diversion agreement under Section 77-2-6; or

(iii) dismisses the case or withdraws a plea under Section 77-2a-3 after the completion of a plea in abeyance agreement following a plea of no contest.

[~~(b)~~] (c) An adjudicative proceeding held pursuant to Subsection (4) may be stayed during the time a judicial action is pending.

(6) Nothing in this section may affect the inclusion or exclusion of a report or finding of child abuse or neglect from or access by the division, its caseworkers, and child protective services workers to that part of the management information system used for purposes of child welfare cases and child protective services as described in Subsections 62A-4a-116(2) and (3).

(7) By December 31, 1998, the division shall provide notice to each person with a finding of abuse or neglect since January 1, 1994.

(8) A person who, after receiving notice, fails to challenge a finding of child abuse or neglect may request the opportunity to challenge the finding under this section:

(a) if since the time that the person received notice, state law has been amended to permit a broader use of or access to information on the licensing part of the management information system; and

(b) before the finding may be used against the person in connection with the broader use or access.

Section 3. Section 62A-4a-207 is amended to read:

62A-4a-207. Legislative Oversight Panel -- Responsibilities.

(1) (a) There is created the Child Welfare Legislative Oversight Panel composed of the following members:

(i) two members of the Senate, one from the majority party and one from the minority party, appointed by the president of the Senate; and

(ii) three members of the House of Representatives, two from the majority party and one from the minority party, appointed by the speaker of the House of Representatives.

(b) Members of the panel shall serve for two-year terms, or until their successors are appointed.

(c) A vacancy exists whenever a member ceases to be a member of the Legislature, or when a member resigns from the panel. Vacancies shall be filled by the appointing authority, and the replacement shall fill the unexpired term.

(2) The president of the Senate shall designate one of the senators appointed to the panel under Subsection (1) as the Senate chair of the panel. The speaker of the House of Representatives shall designate one of the representatives appointed to the panel under Subsection (1) as the House chair of the panel.

(3) The panel shall follow the interim committee rules established by the Legislature.

(4) The panel shall:

(a) examine and observe the process and execution of laws governing the child welfare system by the executive branch and the judicial branch;

(b) upon request, receive testimony from the public, the juvenile court, and from all state agencies involved with the child welfare system including, but not limited to, the division, other offices and agencies within the department, the attorney general's office, the Office of the Guardian Ad Litem Director, and school districts;

(c) receive reports from the Consumer Hearing Panel, described in Subsection 62A-4a-102(3), and consider and review the actions, reports, and recommendations of that panel;

(d) receive recommendations from, and make recommendations to the governor, the Legislature, the attorney general, the division, the Office of the Guardian Ad Litem Director, the juvenile court, and the public;

(e) study and recommend proposed changes to laws governing the child welfare system;

(f) study and determine what measures may be appropriate in addressing the immunity or liability of government employees involved in child protective service investigations and removals, and report its findings to the Human Services Interim Committee on or before November 1, 2001;

[~~(f)~~] (g) perform such other duties related to the oversight of the child welfare system as the panel considers appropriate; and

[~~(g)~~] (h) annually report its findings and recommendations to the president of the Senate, the speaker of the House of Representatives, the Health and Human Services Interim Committee, and the Judiciary Interim Committee.

(5) The panel has authority to review and discuss individual cases. When an individual case is discussed, the panel's meeting may be held in private.

(6) (a) The panel has authority to make recommendations to the Legislature, the governor, the Board of Juvenile Court Judges, the division, and any other statutorily created entity related to the policies and procedures of the child welfare

system. The panel does not have authority to make recommendations to the court, the division, or any other public or private entity regarding the disposition of any individual case.

(b) The panel may hold public hearings, as it considers advisable, in various locations within the state in order to afford all interested persons an opportunity to appear and present their views regarding the child welfare system in this state.

(7) (a) All records of the panel regarding individual cases shall be classified private, and may be disclosed only in accordance with federal law and the provisions of Title 63, Chapter 2, Government Records Access and Management Act.

(b) The panel shall have access to all of the division's records, including those regarding individual cases. In accordance with Title 63, Chapter 2, Government Records Access Management Act, all documents and information received by the panel shall maintain the same classification that was designated by the division.

(8) In order to accomplish its oversight functions, the panel has:

(a) all powers granted to legislative interim committees in Section 36-12-11; and

(b) legislative subpoena powers under Title 36, Chapter 14, Legislative Subpoena Powers.

(9) Members of the panel shall receive salary and expenses in accordance with Section 36-2-2.

(10) (a) The Office of Legislative Research and General Counsel shall provide staff support to the panel.

(b) The panel is authorized to employ additional professional assistance and other staff members as it considers necessary and appropriate.

Section 4. Section 78-3a-106 is amended to read:

78-3a-106. Search warrants and subpoenas -- Authority to issue.

(1) The court has authority to issue search warrants, subpoenas, or investigative subpoenas in criminal cases, delinquency, and abuse, neglect, and dependency proceedings for the same purposes, in the same manner and pursuant to the same procedures set forth in the code of criminal procedure for the issuance of search warrants, subpoenas, or investigative subpoenas in other trial courts in the state.

(2) (a) If it appears to the court upon an affidavit sworn to by a peace officer or any other person, and upon the examination of other witnesses, if required by the judge, that there is probable cause to believe that a child is being ill-treated by his parent, guardian, or custodian, or is being detained, ill-treated, or harbored against the desires of his parent, guardian, or custodian, in any place within the jurisdiction of the court, the court may issue a warrant authorizing a peace officer to search for the child.

(b) [~~The~~] Pursuant to Section 77-23-210, the officer making the search may enter a house or premises by force, if necessary, in order to remove the child.

(c) The officer shall then take the child to the place of shelter designated by the court.

Section 5. Section 78-3a-301 is amended to read:

78-3a-301. Removing a child from his home -- Grounds for removal -- Exigent circumstances.

(1) The Division of Child and Family Services may not remove a child from the custody of his natural parent unless the division complies with the provisions of Title 62A, Chapter 4a, Child and Family Services, including Subsections 62A-4a-103(2)(b) and 62A-4a-201(3), and unless there is substantial cause to believe that any one of the following exist:

(a) there is a substantial danger to the physical health or safety of the minor and the minor's physical health or safety may not be protected without removing him from his parent's custody. If a minor has previously been adjudicated as abused, neglected, or dependent, and a subsequent incident of abuse, neglect, or dependency [~~occurs~~] has occurred involving the same alleged abuser or under similar circumstance as the previous abuse, that fact constitutes prima facie evidence that the child cannot safely remain in the custody of his parent;

(b) a parent engages in or threatens the child with unreasonable conduct that causes the minor [~~is suffering~~] to suffer emotional damage[~~, as may be indicated by, but not limited to, extreme anxiety, depression, withdrawal, or negative aggressive behavior toward self or others,~~] and there are no reasonable means available by which the minor's emotional health may be protected without removing the minor from the custody of his parent;

(c) (i) the minor or another minor residing in the same household has been physically or sexually abused, or is deemed to be at substantial risk of being physically or sexually abused, by a parent, a member of the parent's household, or other person known to the parent.

(ii) For purposes of this Subsection (1)(c), another minor residing in the same household may not be removed from the home unless that minor is deemed to be at substantial risk of being physically or sexually abused as described in Subsection (1)(c)(i) or (iii).

(iii) If a parent has received actual notice that physical or sexual abuse by a person known to the parent has occurred, and there is evidence that the parent [~~has allowed~~] failed to protect the child by allowing the child to be in the physical presence of the alleged abuser, that fact constitutes prima facie evidence that the child is at substantial risk of being physically or sexually abused;

(d) the parent is unwilling to have physical custody of the child;

(e) the minor has been left without any provision for his support;

(f) a parent who has been incarcerated or institutionalized has not or cannot arrange for safe and appropriate care for the minor;

(g) a relative or other adult custodian with whom the minor has been left by the parent is unwilling or unable to provide care or support for the minor, the whereabouts of the parent are unknown, and reasonable efforts to locate him have been unsuccessful;

(h) the minor is in immediate need of urgent medical care;

(i) [~~the physical~~] (i) a parent's actions, omissions, or habitual action create an environment [~~or the fact that the child is left unattended~~] that poses a threat to the child's health or safety; or

(ii) a parent's action in leaving a child unattended would reasonably pose a threat to the child's health or safety;

(j) (i) the minor or another minor residing in the same household has been neglected; and

(ii) for purposes of Subsection (j)(i), another minor residing in the same household may not be removed unless that minor is deemed to be at substantial risk of being neglected;

(k) an infant has been abandoned, as defined in Section 78-3a-313.5;

(l) the parent, or an adult residing in the same household as the parent, has been charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act, and any clandestine laboratory operation, as defined in Section 58-37d-3, was located in the residence or on the property where the child resided; or

(m) the child's welfare is otherwise endangered, as documented by the caseworker. This Subsection (1)(m) is repealed on July 1, 2002 unless further authorized by the Legislature.

(2) The Division of Child and Family Services may not remove a minor from the custody of his [~~natural~~] parent solely on the basis of educational neglect.

(3) The Division of Child and Family Services may not remove a minor from the custody of his parent solely on the basis of mental illness of the parent in the absence of one of the factors described in Subsection (1).

[~~(3)~~] (4) The Division of Child and Family Services shall comply with the provisions of Section 62A-4a-202.1 in effecting removal of a child pursuant to this section.

[~~(4)~~] (5) (a) A minor removed from the custody of his natural parent under this section may not be placed or kept in a secure detention facility pending court proceedings unless the minor is detainable based on guidelines promulgated by the Division of Youth Corrections.

(b) A minor removed from the custody of his natural parent but who does not require physical restriction shall be given temporary care in a shelter facility.

Section 6. Section 78-3a-307 is amended to read:

78-3a-307. Shelter hearing -- Placement with a noncustodial parent or relative -- DCFS custody.

(1) (a) At the shelter hearing, when the court orders that a child be removed from the custody of his parent in accordance with the requirements of Section 78-3a-306, the court shall first determine whether there is another natural parent as defined in Subsection (1)(b), with whom the child was not residing at the time the events or conditions that brought him within the court's jurisdiction occurred, who desires to assume custody of the child. If that parent requests custody, the court shall place the minor with that parent unless it finds that the placement would be unsafe or otherwise detrimental to the child. The provisions of this Subsection (1) are limited by the provisions of Subsection (8)(b).

(b) Notwithstanding the provisions of Section 78-3a-103, for purposes of this section "natural parent" includes only a biological or adoptive mother, an adoptive father, or a biological father who was married to the child's biological mother at the time the child was conceived or born, or who has strictly complied with the provisions of Section 78-30-4.14 prior to removal of the child or voluntary surrender of the child by the custodial parent. This definition applies regardless of whether the child has been or will be placed with adoptive parents or whether adoption has been or will be considered as a long term goal for the child.

(c) (i) The court shall make a specific finding regarding the fitness of that parent to assume custody, and the safety and appropriateness of the placement.

(ii) The court shall, at a minimum, order the division to visit the parent's home, perform criminal background checks described in Sections 78-3a-307.1 and 62A-4a-202.4, and check the division's management information system for any previous reports of abuse or neglect received by the division regarding the parent at issue.

(iii) The court may order the Division of Child and Family Services to conduct any further investigation regarding the safety and appropriateness of the placement.

(iv) The division shall report its findings in writing to the court.

(v) The court may place the child in the temporary custody of the division, pending its determination regarding that placement.

(2) If the court orders placement with a parent under Subsection (1), the child and the parent are under the continuing jurisdiction of the court. The court may order that the parent assume custody subject to the supervision of the court, and order

that services be provided to the parent from whose custody the child was removed, the parent who has assumed custody, or both. The court [~~may~~] shall also provide for reasonable visitation with the parent from whose custody the child was removed, [~~if that~~] unless visitation is not in the best interest of the child. The court's order shall be periodically reviewed to determine whether:

(a) placement with the parent continues to be in the child's best interest;

(b) the child should be returned to the original custodial parent;

(c) the child should be placed with a relative, pursuant to Subsection (5); or

(d) the child should be placed in the custody of the division.

(3) The time limitations described in Section 78-3a-311 with regard to reunification efforts, apply to children placed with a previously noncustodial parent in accordance with Subsection (1).

(4) Legal custody of the child is not affected by an order entered under Subsection (1) or (2). In order to affect a previous court order regarding legal custody, the party must petition that court for modification of the order.

(5) (a) If, at the time of the shelter hearing, a child is removed from the custody of his parent and is not placed in the custody of his other parent, the court shall, at that time, determine whether there is a relative who is able and willing to care for the child. The court may order the Division of Child and Family Services to conduct a reasonable search to determine whether there are relatives of the child who are willing and appropriate, in accordance with the requirements of this part and Title 62A, Chapter 4a, Part 2, Child Welfare Services, for placement of the child. The court shall order the parents to cooperate with the division, within five working days, to provide information regarding relatives who may be able and willing to care for the child. The child may be placed in the temporary custody of the division pending that determination. This section may not be construed as a guarantee that an identified relative will receive custody of the child. However, preferential consideration may be given to a relative's request for placement of the child, if it is in the best interest of the child, and the provisions of this section are satisfied.

(b) (i) If a willing relative is identified pursuant to Subsection (5)(a), the court shall make a specific finding regarding the fitness of that relative to assume custody, and the safety and appropriateness of placement with that relative. In order to be considered a "willing relative" under this section, the relative shall be willing to cooperate if the child's permanency goal is reunification with his parent or parents, and be willing to adopt or take permanent custody of the child if that is determined to be in the best interest of the child.

(ii) The court shall, at a minimum, order the division to conduct criminal background checks described in Sections 78-3a-307.1 and 62A-4a-202.4, visit the relative's home, check the division's management information system for any previous reports of abuse or neglect regarding the relative at issue, report its findings in writing to the court, and provide sufficient information so that the court may determine whether:

(A) the relative has any history of abusive or neglectful behavior toward other children that may indicate or present a danger to this child;

(B) the child is comfortable with the relative;

(C) the relative recognizes the parent's history of abuse and is determined to protect the child;

(D) the relative is strong enough to resist inappropriate requests by the parent for access to the child, in accordance with court orders;

(E) the relative is committed to caring for the child as long as necessary; and

(F) the relative can provide a secure and stable environment for the child.

(iii) The court may order the Division of Child and Family Services to conduct any further investigation regarding the safety and appropriateness of the placement.

(iv) The division shall complete and file its assessment regarding placement with a relative as soon as practicable, in an effort to facilitate placement of the child with a relative.

(c) The court may place the child in the temporary custody of the division, pending the division's investigation pursuant to Subsection (5)(b), and the court's determination regarding that placement. The court shall ultimately base its determination regarding placement with a relative on the best interest of the child.

(d) For purposes of this section, "relative" means an adult who is a grandparent, great grandparent, aunt, great aunt, uncle, great uncle, brother-in-law, sister-in-law, stepparent, first cousin, stepsibling, or sibling of the child. In the case of a child defined as an "Indian" under the Indian Child Welfare Act, 25 U.S.C. Section 1903, "relative" also means an "extended family member" as defined by that statute.

(6) (a) When the court vests physical custody of a child with a relative pursuant to Subsection (5), it shall order that the relative assume custody subject to the continuing supervision of the court, and shall order that any necessary services be provided to the minor and the relative. That child is not within the temporary custody or custody of the Division of Child and Family Services. The child and any relative with whom the child is placed are under the continuing jurisdiction of the court. The court may enter any order that it considers necessary for the protection and best interest of the child. The court shall provide for reasonable visitation with the parent or parents from whose custody the child was removed unless visitation is not in the best interest of the child.

(b) (i) Placement with a relative pursuant to Subsection (5) shall be periodically reviewed by the court, no less often than every six months, to determine whether:

(A) placement with the relative continues to be in the child's best interest;

(B) the child should be returned home; or

(C) the child should be placed in the custody of the division.

(ii) No later than 12 months after placement with a relative the court shall schedule a hearing for the purpose of entering a permanent order in accordance with the best interest of the child.

(iii) The time limitations described in Section 78-3a-311, with regard to reunification efforts, apply to children placed with a relative pursuant to Subsection (5).

(7) When the court orders that a child be removed from the custody of his parent and does not vest custody in another parent or relative under this section, the court shall order that the child be placed in the temporary custody of the Division of Child and Family Services, to proceed to adjudication and disposition and to be provided with care and services in accordance with this chapter and Title 62A, Chapter 4a, Child and Family Services.

(8) (a) Any preferential consideration that a relative may be initially granted pursuant to Subsection (5) expires 120 days from the date of the shelter hearing. After that time period has expired, a relative who has not obtained custody or asserted an interest in a child, may not be granted preferential consideration by the division or the court.

(b) When the time period described in Subsection (8)(a) has expired, the preferential consideration which may initially be granted to a natural parent in accordance with Subsection (1), is limited. After that time the court shall base its custody decision on the best interest of the child.

Section 7. Section 78-3a-311 is amended to read:

78-3a-311. Dispositional hearing -- Reunification services -- Exceptions.

(1) The court may make any of the dispositions described in Section 78-3a-118, place the child in the custody or guardianship of any individual or public or private entity or agency, order protective supervision, family preservation, medical or mental health treatment, or other services.

(2) (a) (i) Whenever the court orders continued removal at the dispositional hearing, and that the minor remain in the custody of the Division of Child and Family Services, it shall first establish a primary permanency goal for the minor and determine whether, in view of the primary permanency goal, reunification services are appropriate for the child and the child's family, pursuant to Subsection (3).

(ii) When the court determines that reunification services are appropriate for the child and the child's family, the court shall provide for reasonable visitation with the parent or parents from whose custody the child was removed, unless visitation is not in the best interest of the child.

(iii) In cases where obvious sexual abuse, abandonment, or serious physical abuse or neglect are involved, neither the division nor the court has any duty to make "reasonable efforts" or to, in any other way, attempt to provide reunification services, or to attempt to rehabilitate the offending parent or parents. In all cases, the child's health, safety, and welfare shall be the court's paramount concern in determining whether reasonable efforts to reunify should be made.

(b) (i) In addition to the primary permanency goal, the court shall establish a concurrent permanency goal. The concurrent permanency goal shall include a representative list of the conditions under which the primary permanency goal will be abandoned in favor of the concurrent permanency goal and an explanation of the effect of abandoning or modifying the primary permanency goal.

(ii) A permanency hearing shall be conducted in accordance with Subsection 78-3a-312(1)(b) within 30 days if something other than reunification is initially established as a child's primary permanency goal.

(iii) The court may amend a child's primary permanency goal before the establishment of a final permanency plan under Section 78-3a-312. The court is not limited to the terms of the concurrent permanency goal in the event that the primary permanency goal is abandoned. If, at anytime, the court determines that reunification is no longer a child's primary permanency goal, the court shall conduct a permanency hearing in accordance with Section 78-3a-312 within the earlier of 30 days of the court's determination or 12 months from the original removal of the child.

(c) If the court determines that reunification services are appropriate, it shall order that the division make reasonable efforts to provide services to the minor and his parent for the purpose of facilitating reunification of the family, for a specified period of time. In providing those services, the child's health, safety, and welfare shall be the division's paramount concern, and the court shall so order. The time period for reunification services may not exceed 12 months from the date that the child was initially removed from his home. Nothing in this section may be construed to entitle any parent to an entire 12 months of reunification services. If reunification services have been ordered, the court may terminate those services at any time. If, at any time, continuation of reasonable efforts to reunify a child is determined to be inconsistent with the final permanency plan for the child established pursuant to Subsection 78-3a-312, then measures shall be taken, in a timely manner, to place the child in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child.

(d) Any physical custody of the minor by the parent or a relative during the period described in Subsection (2)(c) does not interrupt the running of the period.

(e) (i) If reunification services have been ordered, a permanency hearing shall be conducted by the court in accordance with Section 78-3a-312 at the expiration of the time period for reunification services. The permanency hearing shall be held no later than 12 months after the original removal of the child.

(ii) If reunification services have not been ordered, a permanency hearing shall be conducted within 30 days, in accordance with Section 78-3a-312.

(f) With regard to a child who is two years of age or younger at the time the court orders reunification services, the court shall order the discontinuance of those services after six months if the parent or parents have not made substantial efforts to comply with the treatment plan. The burden is upon the parents, and the division if it supports continued reunification services, to show that the parents have made substantial efforts to comply with the plan during the first six months of reunification services.

(g) With regard to a child in the custody of the division whose parent or parents have been ordered to receive reunification services but who have abandoned that child for a period of six months since the date that reunification services were ordered, the court shall terminate reunification services, and the division shall petition the court for termination of parental rights.

(3) (a) Because of the state's interest in and responsibility to protect and provide permanency for children who are abused, neglected, or dependent, the Legislature finds that a parent's interest in receiving reunification services is limited. The court may[~~, under any circumstances,~~] determine that efforts to reunify a child with his family are not reasonable or appropriate, based on the individual circumstances, and that reunification services should not be provided. In determining "reasonable efforts" to be made with respect to a child, and in making "reasonable efforts," the child's health, safety, and welfare shall be the paramount concern.

(b) There is a presumption that reunification services should not be provided to a parent if the court finds, by clear and convincing evidence, that any of the following circumstances exist:

(i) the whereabouts of the parents are unknown, based upon a verified affidavit indicating that a reasonably diligent search has failed to locate the parent;

(ii) the parent is suffering from a mental illness of such magnitude that it renders him incapable of utilizing reunification services; that finding shall be based on competent evidence from mental health professionals establishing that, even with the provision of services, the parent is unlikely to be capable of adequately caring for the child within 12 months;

(iii) the minor has been previously adjudicated as an abused child due to physical or sexual abuse, that following the adjudication the child was removed from the custody of his parent, was subsequently returned to the custody of that parent, and the minor is being removed due to additional physical or sexual abuse;

(iv) the parent has caused the death of another child through abuse or neglect or has committed, aided, abetted, attempted, conspired, or solicited to commit murder or manslaughter of a child or child abuse homicide;

(v) the minor has suffered severe abuse by the parent or by any person known by the parent, if the parent knew or reasonably should have known that the person was abusing the minor;

(vi) the minor has been adjudicated an abused child as a result of severe abuse by the parent, and the court finds that it would not benefit the child to pursue reunification services with the offending parent;

(vii) the parent's rights have been terminated with regard to any other child;

(viii) the child has been removed from his home on at least two previous occasions and reunification services were offered or provided to the family at those times; or

(ix) the parent has abandoned the child for a period of six months or longer; or

(x) any other circumstance that the court determines should preclude reunification efforts or services.

(4) (a) Failure of the parent to respond to previous services or comply with any previous treatment plan, the fact that the child was abused while the parent was under the influence of drugs or alcohol, a past history of violent behavior, whether a parent continues to live with an individual who abused the child, any patterns of the parent's behavior that have exposed the child to repeated abuse, or testimony by a competent professional that the parent's behavior is unlikely to be successful, shall be considered in determining whether reunification services are appropriate.

(b) The court shall also consider whether the parent has expressed an interest in reunification with the child, in determining whether reunification services are appropriate.

(5) If reunification services are not ordered pursuant to Subsection (3)(a), and the whereabouts of a parent become known within six months of the out-of-home placement of the minor, the court may order the division to provide reunification services. The time limits described in Subsection (2), however, are not tolled by the parent's absence.

(6) If a parent is incarcerated or institutionalized, the court shall order reasonable services unless it determines that those services would be detrimental to the minor. In determining

detriment, the court shall consider the age of the child, the degree of parent-child bonding, the length of the sentence, the nature of the treatment, the nature of the crime or illness, the degree of detriment to the child if services are not offered and, for minors ten years of age or older, the minor's attitude toward the implementation of family reunification services, and any other appropriate factors. Reunification services for an incarcerated parent are subject to the 12-month limitation imposed in Subsection (2). Reunification services for an institutionalized parent are subject to the 12-month limitation imposed in Subsection (2), unless the court determines that continued reunification services would be in the child's best interest.

(7) If, pursuant to Subsection (3)(b)(ii), (iii), (iv),(v), (vi), (vii), (viii), (ix), or (x), the court does not order reunification services, a permanency hearing shall be conducted within 30 days, in accordance with Section 78-3a-312.

Section 8. Coordination clause.

If this bill and S.B. 165, Noncustodial Visitation, both pass, it is the intent of the Legislature that the amendments in S.B. 165 which change the term "visitation" to "parent time" supersede the amendments in Subsections 78-3a-307(2) and (6) and Subsection 78-3a-311(2) of this bill which use the current statutory term "visitation".

CHAPTER 154
H. B. 85
Passed February 20, 2001
Approved March 15, 2001
Effective April 30, 2001

SCHOOL BUS - VEHICLE SAFETY REQUIREMENTS

Sponsor: Neal B. Hendrickson

This act modifies the Public Safety Code by requiring vehicles used to transport students to comply with certain safety standards.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:
53-8-211.5, Utah Code Annotated 1953

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

Section 1. Section 53-8-211.5 is enacted to read:

53-8-211.5. School bus safety standards -- Exceptions.

(1) Beginning July 1, 2003, a school district or private school may not use a vehicle with a seating capacity of 11 or more, including the driver, for the transportation of its students unless the vehicle meets federal school bus safety standards under 49 U. S. C. Sec. 30101, et seq.

(2) Subsection (1) does not apply to a vehicle operated by a common carrier, as defined in Section 59-12-102, if the common carrier is not exclusively engaged in the transportation of students.

CHAPTER 155
H. B. 98
Passed February 26, 2001
Approved March 15, 2001
Effective April 30, 2001

ENTERPRISE ZONE AMENDMENTS

Sponsor: Bradley T. Johnson
Jackie Biskupski

This act modifies provisions relating to enterprise zones to provide a refundable income tax credit to targeted businesses located in certain areas within enterprise zones. The act defines terms and makes technical changes. The act creates an application process and defines the duties of the department, local zone administrators, and the State Tax Commission. The act prohibits a targeted business claiming the refundable income tax credit from claiming other tax credits under certain circumstances.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
9-2-413, as last amended by Chapter 170, Laws of Utah 1999
59-7-610, as last amended by Chapter 139, Laws of Utah 2000
59-10-108.7, as last amended by Chapter 139, Laws of Utah 2000

ENACTS:
9-2-1801, Utah Code Annotated 1953
9-2-1802, Utah Code Annotated 1953
9-2-1803, Utah Code Annotated 1953

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

Section 1. Section 9-2-413 is amended to read:

9-2-413. State tax credits.

(1) Subject to the limitations of Subsections (2) through (4), the following state tax credits against individual income taxes or corporate franchise and income taxes are applicable in an enterprise zone:

(a) a tax credit of $750 may be claimed by a business for each new full-time position filled for not less than six months during a given tax year;

(b) an additional $500 tax credit may be claimed if the new position pays at least 125% of:

(i) the county average monthly nonagricultural payroll wage for the respective industry as determined by the Department of Workforce Services; or

(ii) if the county average monthly nonagricultural payroll wage is not available for the respective industry, the total average monthly nonagricultural payroll wage in the respective county where the enterprise zone is located;

(c) an additional credit of $750 may be claimed if the new position is in a business that adds value to agricultural commodities through manufacturing or processing;

(d) an additional credit of $200 may be claimed for two consecutive years for each new employee who is insured under an employer-sponsored health insurance program if the employer pays at least 50% of the premium cost for two consecutive years;

(e) a credit of 50% of the value of a cash contribution to a private nonprofit corporation, except that the credit claimed may not exceed $100,000:

(i) that is exempt from federal income taxation under Section 501(c)(3), Internal Revenue Code;

(ii) whose primary purpose is community and economic development; and

(iii) that has been accredited by the board of directors of the Utah Rural Development Council;

(f) a credit of 25% of the first $200,000 spent on rehabilitating a building in the enterprise zone that has been vacant for two years or more; and

(g) an annual investment tax credit of 10% of the first $250,000 in investment, and 5% of the next $1,000,000 qualifying investment in plant, equipment, or other depreciable property.

(2) (a) Subject to the limitations of Subsection (2)(b), a business claiming a credit under Subsections (1)(a) through (d) may claim a credit for 30 full-time employee positions or less in each of its taxable years.

(b) A business that received a credit for its full-time employee positions under Subsections (1)(a) through (d) may claim an additional credit for a full-time employee position under Subsections (1)(a) through (d) if:

(i) the business creates a new full-time employee position;

(ii) the total number of full-time employee positions at the business is greater than the number of full-time employee positions previously claimed by the business under Subsections (1)(a) through (d); and

(iii) the total number of credits the business has claimed for its current taxable year, including the new full-time employee position for which the business is claiming a credit, is less than or equal to 30.

(c) A business existing in an enterprise zone on the date of its designation shall calculate the number of full-time positions based on the average number of employees reported to the Department of Workforce Services.

(d) Construction jobs are not eligible for the tax credit under Subsections (1)(a) through (d).

(3) If the amount of a tax credit under this section exceeds a business entity's tax liability under this chapter for a taxable year, the amount of the credit exceeding the liability may be carried forward for a period that does not exceed the next three taxable years.

(4) (a) If a business entity is located in a county that met the requirements of Subsections 9-2-404(1)(b) and (c) but did not qualify as an enterprise zone prior to January 1, 1998, because the county was located in a metropolitan statistical area in more than one state, the business entity:

(i) shall qualify for tax credits for a taxable year beginning on or after January 1, 1997, but beginning before December 31, 1997;

(ii) may claim a tax credit as described in Subsection (4)(a) in a taxable year beginning on or after January 1, 1997, but beginning before December 31, 1997; and

(iii) may qualify for tax credits for any taxable year beginning on or after January 1, 1998, if the county is designated as an enterprise zone in accordance with this part.

(b) If a business entity claims a tax credit under Subsection (4)(a)(ii), the business entity:

(i) may claim the tax credit by filing for the taxable year beginning on or after January 1, 1997, but beginning before December 31, 1997:

(A) an individual income tax return;

(B) an amended individual income tax return;

(C) a corporate franchise and income tax return; or

(D) an amended corporate franchise and income tax return; and

(ii) may carry forward the tax credit to a taxable year beginning on or after January 1, 1998, in accordance with Subsection (3).

(5) The tax credits under Subsections (1)(a) through (g) may not be claimed by a business engaged in retail trade or by a public utilities business.

(6) A business may not claim or carry forward a tax credit available under this part for a taxable year during which the business has claimed the targeted business income tax credit available under Section 9-2-1803.

Section 2. Section 9-2-1801 is enacted to read:

Part 18. Targeted Business Income Tax Credits Within an Enterprise Zone

9-2-1801. Definitions.

(1) As used in this part:

(a) "Allocated cap amount" means the total amount of the targeted business income tax credit that a business applicant is allowed to claim for a taxable year that represents a pro rata share of the total amount of $300,000 for each fiscal year allowed under Subsection 9-2-1803(2).

(b) "Business applicant" means a business that meets the criteria established in Section 9-2-1802.

(c) "Community investment project" means a project that includes one or more of the following criteria in addition to the normal operations of the business applicant:

(i) substantial new employment;

(ii) new capital development; or

(iii) a combination of both Subsections (1)(c)(i) and (ii).

(d) "Community investment project period" means the total number of years that the department determines a business applicant is eligible for a targeted business income tax credit for each community investment project.

(e) "Enterprise zone" means an area within a county or municipality that has been designated as an enterprise zone by the department under Part 4, Enterprise Zones.

(f) "Local zone administrator" means a person:

(i) designated by the governing authority of the county or municipal applicant as the local zone administrator in an enterprise zone application; and

(ii) approved by the department as the local zone administrator.

(g) "Targeted business income tax credit " means an income tax credit available under Section 9-2-1803.

(h) "Targeted business income tax credit eligibility form" means a document provided annually to the business applicant by the department that complies with the requirements of Subsection 9-2-1803(8).

(2) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, for purposes of Subsection (1), the department shall make rules:

(a) to define what constitutes:

(i) substantial new employment;

(ii) new capital development; and

(iii) a project; and

(b) to establish a formula for determining the allocated cap amount for each business applicant.

Section 3. Section 9-2-1802 is enacted to read:

9-2-1802. Application for targeted business income tax credits.

(1) (a) For taxable years beginning on or after January 1, 2002, a business applicant may elect to claim a targeted business income tax credit available under Section 9-2-1803 if the business applicant:

(i) is located in:

(A) an enterprise zone; and

(B) a county with:

(I) a population of less than 25,000; and

(II) an unemployment rate that for six months or more of each calendar year is at least one percentage point higher than the state average;

(ii) meets the requirements of Section 9-2-412;

(iii) provides:

(A) a community investment project within the enterprise zone; and

(B) a portion of the community investment project during each taxable year for which the business applicant claims the targeted business tax incentive; and

(iv) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, is not engaged in the following, as defined by the State Tax Commission by rule:

(A) construction;

(B) retail trade; or

(C) public utility activities.

(b) For a taxable year for which a business applicant claims a targeted business income tax credit available under this part, the business applicant may not claim or carry forward a tax credit available under Section 9-2-413, 59-7-610, or 59-10-108.7.

(2) (a) A business applicant seeking to claim a targeted business income tax credit under this part shall file an application as provided in Subsection (2)(b) with the local zone administrator by no later than June 1 of the year in which the business applicant is seeking to claim a targeted business income tax credit.

(b) The application described in Subsection (2)(a) shall include:

(i) any documentation required by the local zone administrator to demonstrate that the business applicant meets the requirements of Subsection (1);

(ii) a plan developed by the business applicant that outlines:

(A) if the community investment project includes substantial new employment, the projected number and anticipated wage level of the jobs that the business applicant plans to create as the basis for qualifying for a targeted business income tax credit;

(B) if the community investment project includes new capital development, a description of the capital development the business applicant plans to make as the basis for qualifying for a targeted business income tax credit; and

(C) a description of how the business applicant's plan coordinates with:

(I) the goals of the enterprise zone in which the business applicant is providing a community investment project; and

(II) the overall economic development goals of the county or municipality in which the business applicant is providing a community investment project; and

(iii) any additional information required by the local zone administrator.

(3) (a) The local zone administrator shall:

(i) evaluate an application filed under Subsection (2); and

(ii) determine whether the business applicant is eligible for a targeted business income tax credit.

(b) If the local zone administrator determines that the business applicant is eligible for a targeted business income tax credit, the local zone administrator shall:

(i) certify that the business applicant is eligible for the targeted business income tax credit;

(ii) structure the targeted business income tax credit for the business applicant in accordance with Section 9-2-1803; and

(iii) monitor a business applicant to ensure compliance with this section.

(4) A local zone administrator shall report to the department by no later than June 30 of each year:

(a) (i) any application approved by the local zone administrator during the last fiscal year; and

(ii) the information established in Subsections 9-2-1803(4)(a) through (d) for each new business applicant; and

(b) (i) the status of any existing business applicants that the local zone administrator monitors; and

(ii) any information required by the department to determine the status of an existing business applicant.

(5) (a) By July 15 of each year, the department shall notify the local zone administrator of the allocated cap amount that each business applicant that the local zone administrator monitors is eligible to claim.

(b) By September 15 of each year, the local zone administrator shall notify, in writing, each business applicant that the local zone administrator monitors of the allocated cap amount determined by the department under Subsection (5)(a) that the business applicant is eligible to claim for a taxable year.

Section 4. Section 9-2-1803 is enacted to read:

9-2-1803. Targeted business income tax credit structure -- Duties of the local zone administrator -- Duties of the State Tax Commission.

(1) For taxable years beginning on or after January 1, 2002, a business applicant that is certified under Subsection 9-2-1802(3) and issued a targeted business tax credit eligibility form by the department under Subsection (8) may claim a refundable income tax credit:

(a) against the business applicant's tax liability under:

(i) Title 59, Chapter 10, Individual Income Tax Act; or

(ii) Title 59, Chapter 7, Corporate Franchise and Income Taxes; and

(b) subject to requirements and limitations provided by this part.

(2) The total amount of the targeted business income tax credits allowed under this part for all business applicants may not exceed $300,000 in any fiscal year.

(3) (a) A targeted business income tax credit allowed under this part for each community investment project provided by a business applicant may not:

(i) be claimed by a business applicant for more than seven consecutive taxable years from the date the business applicant first qualifies for a targeted business income tax credit on the basis of a community investment project;

(ii) be carried forward or carried back;

(iii) exceed $100,000 in total amount for the community investment project period during which the business applicant is eligible to claim a targeted business income tax credit; or

(iv) exceed in any year that the targeted business income tax credit is claimed the lesser of:

(A) 50% of the maximum amount allowed by the local zone administrator; or

(B) the allocated cap amount determined by the department under Subsection 9-2-1802(5).

(b) A business applicant may apply to the local zone administrator to claim a targeted business income tax credit allowed under this part for each community investment project provided by the business applicant as the basis for its eligibility for a targeted business income tax credit.

(4) Subject to other provisions of this section, the local zone administrator shall establish for each business applicant that qualifies for a targeted business income tax credit:

(a) criteria for maintaining eligibility for the targeted business income tax credit that are reasonably related to the community investment project that is the basis for the business applicant's targeted business income tax credit;

(b) the maximum amount of the targeted business income tax credit the business applicant is allowed for the community investment project period;

(c) the time period over which the total amount of the targeted business income tax credit may be claimed;

(d) the maximum amount of the targeted business income tax credit that the business applicant will be allowed to claim each year; and

(e) requirements for a business applicant to report to the local zone administrator specifying:

(i) the frequency of the business applicant's reports to the local zone administrator, which shall be made at least quarterly; and

(ii) the information needed by the local zone administrator to monitor the business applicant's compliance with this Subsection (4) or Section 9-2-1802 that shall be included in the report.

(5) In accordance with Subsection (4)(e), a business applicant allowed a targeted business income tax credit under this part shall report to the local zone administrator.

(6) The amount of a targeted business income tax credit that a business applicant is allowed to claim for a taxable year shall be reduced by 25% for each quarter in which the department or the local zone administrator determines that the business applicant has failed to comply with a requirement of Subsection (3) or Section 9-2-1802.

(7) The department or local zone administrator may audit a business applicant to ensure:

(a) eligibility for a targeted business income tax credit; or

(b) compliance with Subsection (3) or Section 9-2-1802.

(8) The department shall issue a targeted business income tax credit eligibility form in a form jointly developed by the State Tax Commission and the department no later than 30 days after the last day of the business applicant's taxable year showing:

(a) the maximum amount of the targeted business income tax credit that the business applicant is eligible for that taxable year;

(b) any reductions in the maximum amount of the targeted business income tax credit because of failure to comply with a requirement of Subsection (3) or Section 9-2-1802;

(c) the allocated cap amount that the business applicant may claim for that taxable year; and

(d) the actual amount of the targeted business income tax credit that the business applicant may claim for that taxable year.

(9) (a) A business applicant shall attach a copy of the targeted business income tax credit eligibility form provided by the department under this Subsection (9) to any return upon which a business applicant claims a targeted business income tax credit under this section.

(b) The tax commission may audit a business applicant to ensure:

(i) eligibility for a targeted business income tax credit; or

(ii) compliance with Subsection (3) or Section 9-2-1802.

Section 5. Section 59-7-610 is amended to read:

59-7-610. Credit -- Recycling market development zone.

(1) For tax years beginning on or after January 1, 1996, the following state tax credits are applicable to businesses operating in a recycling market development zone as defined in Section 9-2-1602:

(a) (i) There shall be allowed a nonrefundable tax credit of 5% of the purchase price paid for machinery and equipment used directly in:

(A) commercial composting; or

(B) manufacturing facilities or plant units that:

(I) manufacture, process, compound, or produce recycled items of tangible personal property for sale; or

(II) reduce or reuse postconsumer waste material.

(ii) The Department of Community and Economic Development shall certify that the machinery and equipment are integral to the composting or recycling process on a form provided by the tax commission before the taxpayer is entitled to the tax credit under this section.

(iii) The taxpayer shall enclose with its tax return the certification received under Subsection (1)(a)(ii).

(b) There shall be allowed a nonrefundable tax credit equal to 20% of net expenditures up to $10,000 to third parties for rent, wages, supplies, tools, test inventory, and utilities made by the taxpayer for establishing and operating recycling or composting technology in Utah, with an annual maximum credit of $2,000.

(2) The total nonrefundable credit allowed under this section may not exceed 40% of the Utah income tax liability of the taxpayer prior to any credits in the taxable year of purchase prior to claiming the credit authorized by this section.

(3) (a) Any tax credit not used for the taxable year in which the purchase price on composting or recycling machinery and equipment was paid may be carried over for credit against the business's income taxes in the three succeeding taxable years until the total credit amount is used.

(b) Tax credits not claimed by a business on its state income tax return within three years are forfeited.

(4) The tax commission shall make rules governing what information shall be filed with the tax commission to verify the entitlement to and amount of a tax credit.

(5) (a) Notwithstanding Subsection (1)(a), for taxable years beginning on or after January 1, 2001, a taxpayer may not claim or carry forward a tax credit described in Subsection (1)(a) in a taxable year during which the taxpayer claims or carries forward a tax credit under Section 9-2-413.

(b) For a taxable year other than a taxable year during which the taxpayer may not claim or carry forward a tax credit in accordance with Subsection (5)(a), a taxpayer may claim or carry forward a tax credit described in Subsection (1)(a):

(i) if the taxpayer may claim or carry forward the credit in accordance with Subsections (1) and (2); and

(ii) subject to Subsections (3) and (4).

(6) Notwithstanding Subsection (1)(b), for taxable years beginning on or after January 1, 2001, a taxpayer may not claim a tax credit described in Subsection (1)(b) in a taxable year during which the taxpayer claims or carries forward a tax credit under Section 9-2-413.

(7) A taxpayer may not claim or carry forward a tax credit available under this section for a taxable year during which the taxpayer has claimed the targeted business income tax credit available under Section 9-2-1803.

Section 6. Section 59-10-108.7 is amended to read:

59-10-108.7. Recycling market development zones credit.

(1) For tax years beginning on or after January 1, 1996, the following state tax credits are applicable to an individual in a recycling market development zone as defined in Section 9-2-1602:

(a) (i) There shall be allowed a nonrefundable tax credit of 5% of the purchase price paid for machinery and equipment used directly in:

(A) commercial composting; or

(B) manufacturing facilities or plant units that:

(I) manufacture, process, compound, or produce recycled items of tangible personal property for sale; or

(II) reduce or reuse postconsumer waste material.

(ii) The Department of Community and Economic Development shall certify that the machinery and equipment are integral to the composting or recycling process on a form provided by the tax commission before the taxpayer is entitled to the tax credit under this section.

(iii) The taxpayer shall enclose with its tax return the certification received under Subsection (1)(a)(ii).

(b) There shall be allowed a nonrefundable tax credit equal to 20% of net expenditures up to $10,000 to third parties for rent, wages, supplies, tools, test inventory, and utilities made by the taxpayer for establishing and operating recycling or composting technology in Utah, with an annual maximum credit of $2,000.

(2) The total credit allowed under this section may not exceed 40% of the Utah income tax liability of the taxpayer prior to any credits in the taxable year of purchase prior to claiming the credit authorized by this section.

(3) (a) Any tax credit not used for the taxable year in which the purchase price on composting or recycling machinery and equipment was paid may be carried over for credit against the individual's income taxes in the three succeeding taxable years until the total credit amount is used.

(b) Tax credits not claimed by an individual on the individual's state income tax return within three years are forfeited.

(4) The tax commission shall make rules governing what information shall be filed with the tax commission to verify the entitlement to and amount of a tax credit.

(5) (a) Notwithstanding Subsection (1)(a), for taxable years beginning on or after January 1, 2001, a taxpayer may not claim or carry forward a tax credit described in Subsection (1)(a) in a taxable year during which the taxpayer claims or carries forward a tax credit under Section 9-2-413.

(b) For a taxable year other than a taxable year during which the taxpayer may not claim or carry forward a tax credit in accordance with Subsection (5)(a), a taxpayer may claim or carry forward a tax credit described in Subsection (1)(a):

(i) if the taxpayer may claim or carry forward the credit in accordance with Subsections (1) and (2); and

(ii) subject to Subsections (3) and (4).

(6) Notwithstanding Subsection (1)(b), for taxable years beginning on or after January 1, 2001, a taxpayer may not claim a tax credit described in Subsection (1)(b) in a taxable year during which the taxpayer claims or carries forward a tax credit under Section 9-2-413.

(7) A taxpayer may not claim or carry forward a tax credit available under this section for a taxable year during which the taxpayer has claimed the targeted business income tax credit available under Section 9-2-1803.

CHAPTER 156
H. B. 99
Passed February 23, 2001
Approved March 15, 2001
Effective April 30, 2001

READING SKILLS DEVELOPMENT CENTER AMENDMENTS

Sponsor: Karen W. Morgan

This act modifies provisions related to the State System of Public Education by changing the Reading Skills Development Center into a clinic to assist educators and parents of students in assessing elementary school students who do not demonstrate satisfactory progress in reading. The act requires the clinic to provide professional development programs in reading to help educators and parents become better prepared to assist all students in becoming better readers.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
53A-3-402.10, as enacted by Chapter 338, Laws of Utah 1999

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

Section 1. Section 53A-3-402.10 is amended to read:

53A-3-402.10. Reading Clinic -- Purpose.

(1) The Legislature recognizes the critical importance of identifying, assessing, and assisting students with reading difficulties at an early age in order for them to have successful and productive school and life experiences.

(2) In order to help accomplish this, there is established a Reading [~~Skills Development Center~~] Clinic, hereafter referred to as the[~~"center,"~~] "clinic," at the University of Utah to assist educators and parents of students statewide in:

[~~(a) assist school districts in detecting reading difficulties in students in the early grades; and~~]

(a) assessing elementary school students who do not demonstrate satisfactory progress in reading;

(b) [~~provide~~] providing instructional intervention to enable the students to overcome [~~their~~] reading difficulties[~~.~~]; and

(c) becoming better prepared to help all students become successful readers by providing them with professional development programs in reading that are based on best practices and the most current, scientific research available through nationally and internationally recognized reading researchers and instructional specialists.

[~~(3) (a) The center shall assist school districts by providing expertise in the assessment of reading difficulties and designing effective instructional interventions to overcome those difficulties.~~]

[~~(b) The assessment and intervention programs~~] (3) (a) The clinic shall focus primarily on students in grades one through three [~~in order to correct any detected difficulties by the end of the third grade, but~~] since research shows the need for students to become successful readers by the end of the third grade.

(b) The clinic shall make assessment and instructional intervention services [~~shall be~~] available to public education students of all ages.

[~~(c) School districts may use the assessment and intervention programs on site at the center, at the student's school, or by using interactive technology.~~]

[~~(4) (a) The center shall provide school districts with a professional development program for reading endorsements that can be added to active elementary certificates.~~]

[~~(b) Each school district may allow its teachers to participate in the program through:~~]

[~~(i) programs taught on-site at local schools;~~]

[~~(ii) distance education with videotaped classes and on-site facilitators; and~~]

[~~(iii) interactive delivery by computers and video.~~]

[~~(c) Each school district may use this professional teacher development program in an effort to place at least one reading specialist in each of its elementary schools.~~]

[~~(5)~~] (4) The [~~center~~] clinic shall provide [~~school district administrators, school administrators, and school teachers with the most current research-based knowledge about reading and reading instruction through nationally and internationally recognized reading researchers and instructional specialists~~] these services on-site at the University of Utah and through remote access interactive technology to reach educators, parents, and students throughout the state.

CHAPTER 157
H. B. 104
Passed February 22, 2001
Approved March 15, 2001
Effective April 30, 2001

MENTAL HEALTH PROFESSIONAL FINANCIAL ASSISTANCE GRANTS

Sponsor: Sheryl L. Allen

This act modifies the Mental Health Therapist Grant and Scholarship Program. This act expands program eligibility criteria to include persons in training, modifies obligated service provisions, and modifies penalty provisions for failure to fulfill service obligations. This act updates membership provisions for the Rural Mental Health Therapist Financial Assistance Committee.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
62A-13-102, as enacted by Chapter 158, Laws of Utah 1994
62A-13-103, as last amended by Chapter 276, Laws of Utah 1997
62A-13-108, as enacted by Chapter 158, Laws of Utah 1994

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

Section 1. Section 62A-13-102 is amended to read:

62A-13-102. Definitions.

As used in this chapter:

(1) "Applicant" means a person who meets the application requirements established by the committee for a grant or a scholarship under this chapter.

(2) "Committee" means the Rural Mental Health Therapist Financial Assistance Committee created by Section 62A-13-103.

(3) "Educational expenses" are tuition, fees, books, supplies, educational equipment and material, and reasonable living expenses.

(4) "Medically underserved rural area" means a county, city, town, or other service area with a population of less than 99 people per square mile and designated by the committee as underserved by mental health therapists.

(5) "Mental health therapist" means an individual exempt from licensure under Subsection 58-1-307(1)(c) or licensed under Title 58, Occupations and Professions, as a:

(a) physician and surgeon, or osteopathic physician engaged in the practice of mental health therapy;

(b) registered psychiatric mental health nurse specialist;

(c) psychologist qualified to engage in the practice of mental health therapy;

(d) clinical social worker;

(e) certified social worker;

(f) marriage and family therapist; or

(g) professional counselor.

(6) "Practice of mental health therapy" means treatment or prevention of mental illness, including:

(a) conducting a professional evaluation of an individual's condition of mental health, mental illness, or emotional disorder consistent with standards generally recognized in the professions of mental health therapy listed under Subsection (5);

(b) establishing a diagnosis in accordance with established written standards generally recognized in the professions of mental health therapy listed under Subsection (5);

(c) prescribing a plan for the prevention or treatment of a condition of mental illness or emotional disorder; or

(d) engaging in the conduct of professional intervention, including psychotherapy by the application of established methods and procedures generally recognized in the professions of mental health therapy listed under Subsection (5).

(7) "Recipient" means an applicant selected to receive a grant or a scholarship under this chapter.

Section 2. Section 62A-13-103 is amended to read:

62A-13-103. Rural Mental Health Therapist Financial Assistance Committee created.

[~~(1) As used in this section, "Council of Mental Health Programs" means a council consisting of all of the directors of Utah public mental health centers.~~]

[~~(2)~~] (1) The Rural Mental Health Therapist Financial Assistance Committee is comprised of ten members appointed by the governor with the advice and consent of the Senate. The committee members are:

(a) one faculty member of the graduate school of social work at a Utah university, nominated by the dean of the school;

(b) one employee of the department nominated by the director of the department;

(c) one rural representative of the Utah [~~Council of Mental Health Programs~~] Behavioral Healthcare Network nominated by the [~~president of the council~~] network;

(d) one member of the Utah Psychological Association nominated by the president of the association;

(e) one rural representative of the Association for Utah Community Health nominated by the board of the association;

(f) one rural representative nominated by Utah League of Cities and Towns;

(g) one rural representative nominated by the Association of Counties;

(h) one rural representative nominated by the Utah Counseling Association;

(i) one rural representative of the Utah Association for Marriage and Family Therapy; and

(j) one member of the Legislature chosen by the president and speaker, who serves as an ex officio member with no voting privileges.

[~~(3)~~] (2) (a) The names of all persons nominated to be members of the committee shall be submitted to the governor for confirmation or rejection.

(b) If a nominee is rejected by the governor, another nominee shall be selected in the same manner as the nominee the governor rejects.

[~~(4)~~] (3) (a) Except as required by Subsection (3)(b), the term of office of each committee member is four years.

(b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the committee is appointed every two years.

[~~(5)~~] (4) A committee member may not serve more than two consecutive terms.

[~~(6)~~] (5) The committee shall annually designate one of its members to serve as chair for a one-year period.

[~~(7)~~] (6) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

[~~(8)~~] (7) A majority of the committee members constitutes a quorum for the transaction of business.

[~~(9)~~] (8) (a) (i) Members who are not government employees shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

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

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

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

(c) Legislators on the committee shall receive compensation and expenses as provided by law and legislative rule.

(d) Members from higher education may not receive per diem or expenses for their service.

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

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

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

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

Section 3. Section 62A-13-108 is amended to read:

62A-13-108. Service obligation -- Repayment -- Penalty.

(1) (a) Before receiving a grant or a scholarship under this chapter, each recipient shall enter into a contract with the state agreeing to the conditions upon which the grant or scholarship is to be made.

(b) The contract shall include necessary conditions to carry out the purposes of this chapter.

(2) (a) In exchange for financial assistance under this chapter, the recipient shall practice full-time for a minimum of 24 months in an underserved rural area at a site approved by the committee.

(b) The recipient's full-time practice in an underserved rural area at a site approved by the committee retires the amount owed for the grant or scholarship according to a schedule established by the committee.

[~~(c) Periods of internship, preceptorship, or other clinical training do not satisfy the service obligation under this chapter.~~]

(3) A grant recipient under this chapter who fails to complete the obligated service shall pay:

(a) [~~pay~~] as a penalty, twice the total amount of the grant not yet [~~paid to him~~] retired by the recipient's services, on a prorated basis according to a schedule established by the committee [~~and~~];

(b) 12% per annum interest on the [~~unpaid penalty amount~~] unretired funds received under the grant, calculated from the date the grant is received until the date the grant is repaid; and

[~~(b)~~] (c) costs and expenses incurred in collection, including attorney fees.

(4) A scholarship recipient who fails to finish his schooling and become a mental health therapist within the period of time agreed upon with the committee shall within 90 days after the deadline

for completing his schooling or within 90 days of his failure to continue his schooling, whichever occurs earlier, repay:

(a) all scholarship money received;

(b) 12% per annum interest on the funds received under the scholarship, calculated from the date [~~each installment~~] the scholarship is received [~~under the scholarship~~] until the date it is repaid; and

(c) costs and expenses incurred in collection, including attorney fees.

(5) A scholarship recipient who finishes his schooling and becomes a mental health therapist but who fails to fulfill his service obligation shall pay:

(a) [~~repay~~] as a penalty, twice the total scholarship amount paid to him that is not yet retired by his service, on a prorated basis according to a schedule established by the committee;

(b) 12% per annum interest on the unretired funds received under the scholarship calculated from the date he received [~~each installment under~~] the scholarship until the date it is repaid; and

(c) costs and expenses incurred in collection, including attorney fees.

(6) Amounts recovered and damages collected under this section shall be deposited as dedicated credits to be used to carry out the provisions of this chapter.

CHAPTER 158
H. B. 106
Passed February 21, 2001
Approved March 15, 2001
Effective April 30, 2001

MOTOR VEHICLE FRANCHISE ACT AMENDMENTS

Sponsor: Kevin S. Garn

This act modifies the New Automobile Franchise Act. The act provides for the appointment of alternate members to the Utah Motor Vehicle Franchise Advisory Board and changes the term of board members. The act provides for emergency orders in cases where irreparable injury would otherwise result. The act makes other technical changes.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
13-14-103, as last amended by Chapter 162, Laws of Utah 1997
13-14-106, as last amended by Chapter 162, Laws of Utah 1997
13-14-107, as last amended by Chapter 162, Laws of Utah 1997

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

Section 1. Section 13-14-103 is amended to read:

13-14-103. Utah Motor Vehicle Franchise Advisory Board -- Creation -- Appointment of members -- Alternate members -- Chair -- Quorum -- Conflict of interest.

(1) There is created within the department the Utah Motor Vehicle Franchise Advisory Board that consists of:

(a) the executive director or the executive director's designee;

(b) six members appointed by the executive director, with the concurrence of the governor as follows:

(i) one motorcycle or recreational motor vehicle franchisee;

(ii) two new motor vehicle franchisees from among the three congressional districts of the state as the districts were constituted on January 1, 1996, no more than one of which shall be located in the same congressional district; [~~and~~]

(iii) three members representing motor vehicle franchisors registered by the department pursuant to Section 13-14-105, or three members of the general public, none of whom shall be related to any franchisee, or any combination of these representatives under this [~~subsection.~~] Subsection (1)(b)(iii); and

[~~(2) (a) In accordance with Subsection (1), the executive director shall appoint three of the initial members of the advisory board to one-year terms and three of the initial members of the advisory board to two-year terms. No more than two of the members appointed to two-year terms shall be franchisees.~~]

[~~(b) At the expiration of the initial terms under Subsection (2)(a), the executive director shall appoint a member to a term of two years.~~]

(iv) three alternate members, with one alternate from each of the designations set forth in Subsections (1)(b)(i), (1)(b)(ii), and (1)(b)(iii), who shall take the place of a regular advisory board member from the same designation at a meeting of the advisory board where that regular advisory board member is absent or otherwise disqualified from participating in the advisory board meeting.

(2) (a) Members of the advisory board shall be appointed for a term of four years.

(b) The executive director may adjust the term of members who were appointed to the advisory board prior to July 1, 2001, by extending the unexpired term of a member for up to two additional years in order to insure that approximately half of the members are appointed every two years.

(c) In the event of a vacancy on the advisory board, the executive director with the concurrence of the governor, shall appoint an individual to complete the unexpired term of the member whose office is vacant.

(d) A member may not be appointed to more than two consecutive terms.

(3) (a) The executive director or the executive director's designee shall be the chair of the advisory board.

(b) The department shall keep a record of all hearings, proceedings, transactions, communications, and recommendations of the advisory board.

(4) Four or more members of the advisory board constitute a quorum for the transaction of business. The action of a majority of the members of the advisory board is considered the action of the advisory board.

(5) (a) A member of the advisory board may not participate as a board member in a proceeding or hearing:

(i) involving the member's licensed business or employer; or

(ii) when a member, a member's business or family, or employer has a pecuniary interest in the outcome or other conflict of interest concerning an issue before the advisory board.

(b) If a member of the advisory board is disqualified under Subsection (5)(a), the executive director shall select [~~a replacement~~] the appropriate alternate member to act on the issue before the advisory board as provided in Subsection (1)(b)(iv).

(6) Except for the executive director or the executive director's designee, an individual may not be appointed or serve on the advisory board while

holding any other elective or appointive state or federal office.

(7) The members of the advisory board shall serve without compensation.

(8) The department shall provide necessary staff support to the advisory board.

Section 2. Section 13-14-106 is amended to read:

13-14-106. Administrative enforcement.

(1) [~~After~~] Except as provided in Subsection (5), after a hearing and after receipt of the advisory board's recommendation, if the executive director finds that a person has violated this chapter or any rule made under this chapter, the executive director may:

(a) issue a cease and desist order; and

(b) assess an administrative fine.

(2) [~~The~~] Except as provided in Subsection (5), the executive director shall comply with Title 63, Chapter 46b, Administrative Procedures Act, and shall consult with the advisory board prior to any order or assessment of fine.

(3) (a) In determining the amount and appropriateness of an administrative fine, the executive director shall consider:

(i) the gravity of the violation;

(ii) any history of previous violations; and

(iii) any attempt made by the person to retaliate against another person for seeking relief under this chapter or other federal or state law relating to the motor vehicle industry.

(b) In addition to any other action permitted under Subsection (1), the department may file an action with a court seeking to enforce the executive director's order and pursue the executive director's assessment of a fine in an amount not to exceed $5,000 for each day a person violates an order of the executive director.

(4) Any person aggrieved by an adverse determination by the executive director may either seek reconsideration of the order pursuant to Section 63-46b-13 of the Administrative Procedures Act or seek judicial review of the order.

(5) (a) In addition to the grounds for issuing an order on an emergency basis listed in Subsection 63-46b-20(1), the executive director may issue an order on an emergency basis if the executive director determines that irreparable damage is likely to occur if immediate action is not taken.

(b) In issuing an emergency order under Subsection (5)(a) the executive director shall comply with the requirements of Subsections 63-46b-20(2) and (3).

Section 3. Section 13-14-107 is amended to read:

13-14-107. Administrative hearings.

(1) (a) A person may commence an adjudicative proceeding [~~before the executive director and the advisory board,~~] in accordance with this chapter and with Title 63, Chapter 46b, Administrative Procedures Act to:

(i) remedy a violation of this chapter; or

(ii) obtain approval of an act regulated by this chapter.

(b) A person shall commence an adjudicative proceeding [~~before the executive director and the advisory board~~] by filing a request for agency action in accordance with Section 63-46b-3.

(2) (a) The advisory board shall conduct all adjudicative proceedings in accordance with Title 63, Chapter 46b, Administrative Procedures Act, with a quorum of the advisory board members in attendance.

(b) An order or decision issued by the executive director shall comply with Section 63-46b-10.

(c) Any hearing under this chapter shall be conducted as an informal proceeding unless otherwise designated as a formal proceeding pursuant to the provisions of Title 63, Chapter 46b, Administrative Procedures Act.

(3) The advisory board shall apportion in a fair and equitable manner between the parties any costs of the adjudicative proceeding, including reasonable attorney's fees subject to final approval by a court.

CHAPTER 159
H. B. 107
Passed February 27, 2001
Approved March 15, 2001
Effective April 30, 2001

TOURISM MARKETING AMENDMENTS

Sponsor: Sheryl L. Allen
David Ure
Thomas V. Hatch
Afton B. Bradshaw

This act modifies provisions of the Utah Code relating to tourism marketing. The act defines certain terms. The act increases the money in the Tourism Marketing Performance Fund. The act modifies the Tourism Marketing Performance Fund Committee to include members of the tourism industry. The act allows the Division of Travel Development to consult with counties and travel regions about effective tourism promotion. The act clarifies the purposes of the transient room tax and the tourism, recreation, cultural, and convention facilities tax. The act requires counties with no existing tourism tax advisory boards to create and utilize a tourism tax advisory board. The act makes technical changes.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
9-2-1702, as enacted by Chapter 301, Laws of Utah 1997
9-2-1703, as enacted by Chapter 301, Laws of Utah 1997
9-2-1704, as enacted by Chapter 301, Laws of Utah 1997
9-2-1705, as enacted by Chapter 301, Laws of Utah 1997
9-3-204, as last amended by Chapter 109, Laws of Utah 1994
17-31-2, as last amended by Chapter 146, Laws of Utah 1998
59-12-603, as last amended by Chapter 319, Laws of Utah 2000

ENACTS:
9-2-1703.5, Utah Code Annotated 1953
9-2-1706, Utah Code Annotated 1953
17-31-8, Utah Code Annotated 1953

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

Section 1. Section 9-2-1702 is amended to read:

9-2-1702. Definitions.

As used in this part:

[~~(1) "Administrator" means the Department of Community and Economic Development.~~]

[~~(2) "Commissioners" means the board of commissioners on the Division of Travel Development.~~]

[~~(3)~~] (1) "Committee" means the Tourism Marketing Performance Fund Committee as created in Section 9-2-1705.

[~~(4)~~] (2) "Department" means the Department of Community and Economic Development.

(3) "Division" means the Division of Travel Development created in Section 9-3-204.

[~~(5)~~] (4) "Fund" means the restricted account known as the Tourism Marketing Performance Fund created in Section 9-2-1703.

[~~(6)~~] (5) "Industry" means the following travel and tourism industry groups [~~as described in Subsections 9-2-1703(2)(c)(ii)(A) through (E).~~]:

(a) retail/eating and drinking;

(b) services/hotels and lodging;

(c) services/automotive rental;

(d) services/amusement and recreation; and

(e) transportation.

[~~(7) "Institutional advertising" means advertising of Utah's cultural, historical, recreational, scenic, and tourist attractions to consumers outside of Utah.~~]

[~~(8) "Performance measurement" means a standard to measure the economic growth in the travel and tourism industry in comparison with the previous year's sales tax receipts based on criteria as provided in Section 9-2-1703.~~]

(6) "Tourism marketing" means an activity to develop, encourage, solicit, or promote tourism within this state that attracts transient guests to the state, including:

(a) planning;

(b) product development; and

(c) advertising directed to out of state consumers that promotes leisure travel products or attractions specific to Utah.

(7) "Tourism oriented sales and use taxes" means a state sales and use tax imposed under Section 59-12-103 for amounts paid or charged for taxable items or services:

(a) described under Subsection 59-12-103(1); and

(b) provided by a person described by the following SIC Codes of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget:

(i) SIC Codes 4011 through 4789;

(ii) SIC Codes 5812 and 5813;

(iii) SIC Codes 7011 through 7041;

(iv) SIC Codes 7513 through 7519; and

(v) SIC Codes 7812 through 7999.

(8) "Utah Tourism Industry Coalition" means the private nonprofit corporation created under Title

16, Chapter 6a, Utah Revised Nonprofit Corporation Act, composed of tourism-related businesses, organizations, and associations authorized to nominate committee members under Section 9-2-1705.

Section 2. Section 9-2-1703 is amended to read:

9-2-1703. Creation and administration of fund.

(1) (a) There is created within the General Fund a restricted account known as the "Tourism Marketing Performance Fund."

(b) The fund shall be administered by the [~~administrator upon the advice and recommendations of the committee~~] department in accordance with Section 9-2-1704.

(2) The fund shall be funded by appropriations made to the fund by the Legislature in accordance with Section 9-2-1703.5.

(3) Any undistributed monies in the fund at the end of the fiscal year are nonlapsing except that any balance greater than $200,000 at the end of the fiscal year shall lapse to the General Fund.

[~~(2) (a) The annual appropriation for the fund shall be determined by measuring the economic growth in the travel and tourism industry in excess of the previous year's taxable sales. In no event shall the annual appropriation exceed $200,000.~~]

[~~(b) If the economic growth in the travel and tourism industry exceeds 4% growth, as measured by taxable sales, based on the previous year's taxable sales, the administrator may receive funding through distribution of revenues from the fund.~~]

[~~(c) The department shall utilize this criteria to qualify for an annual appropriation:~~]

[~~(i) the expenditures by the industry for promoting and marketing Utah's cultural, recreational, and scenic attractions to consumers outside of Utah in the previous fiscal year;~~]

[~~(A) as reported to the State Tax Commission on a form designed by the State Tax Commission;~~]

[~~(B) for the year beginning July 1 and ending June 30; and~~]

[~~(C) filed with the State Tax Commission prior to July 31 of each year; and~~]

[~~(ii) the amount of sales tax collected from the following industry groups:~~]

[~~(A) retail/eating and drinking;~~]

[~~(B) services/hotels and lodging;~~]

[~~(C) services/automotive rental;~~]

[~~(D) services/amusement and recreation; and~~]

[~~(E) transportation.~~]

[~~(d) If the department determines the industry's economic growth exceeds the previous year's taxable sales by 4%, the Legislature shall appropriate $200,000 for the upcoming fiscal year. The appropriation shall be the amount determined under Subsection (2)(c)(i) or (ii), whichever is the lesser amount.~~]

Section 3. Section 9-2-1703.5 is enacted to read:

9-2-1703.5. Appropriations to the fund.

(1) The Legislature shall appropriate $200,000 to the fund each fiscal year for which the State Tax Commission finds that the industry growth for the prior fiscal year equals or exceeds 4%.

(2) To determine the prior fiscal year industry growth the State Tax Commission shall:

(a) calculate the tourism-oriented sales and use taxes for the fiscal year two years preceding the fiscal year of appropriation;

(b) calculate the tourism-oriented sales and use taxes for the fiscal year three years preceding the fiscal year of the appropriation; and

(c) determine whether the tourism-oriented sales and use taxes calculated in Subsection (2)(a) increased from the tourism-oriented sales and use taxes calculated under Subsection (2)(b).

(3) The State Tax Commission shall report its determination under Subsection (2) to the State Budget Office by no later than September 30 of each year.

Section 4. Section 9-2-1704 is amended to read:

9-2-1704. Distribution of fund monies -- Determination of recipients.

The appropriation to the [~~Tourism Marketing Performance Fund~~] fund required by Section 9-2-1703.5 shall be distributed [~~in the following manner: (1) the administrator shall distribute the monies in the fund~~] by the department to the [~~Division of Travel Development~~] division to be used [~~for the purposes as provided in Section 9-3-204, with 75% of the funds allocated to marketing and 25% of the funds allocated to infrastructure; and~~] to fund the tourism marketing plan developed in accordance with Section 9-2-1706.

[~~(2) any undistributed appropriation at the end of the fiscal year shall be nonlapsing except any balance greater than $200,000 shall lapse to the General Fund.~~]

Section 5. Section 9-2-1705 is amended to read:

9-2-1705. Creation of Tourism Marketing Performance Fund Committee -- Members -- Appointment -- Qualifications --Terms -- Quorum -- Per diem and expenses -- Staff.

(1) There is created a Tourism Marketing Performance Fund Committee which shall consist of [~~21~~] 11 voting members and one nonvoting member.

[~~(2) The members of the committee shall include:~~]

[~~(a) five members appointed by the Board of Commissioners of the Division of Travel~~

~~Development, three of whom are members of the Board of Commissioners; and~~]

[~~(b) 16 members of a private coalition of the industry known as the Utah Tourism Industry Coalition recommended by the board of directors of the coalition.~~]

[~~(3) The governor shall appoint the committee members in Subsection (2)(b).~~]

(2) (a) The governor shall appoint 11 voting members to the committee including:

(i) one member from the automobile rental industry;

(ii) one member representing public lands;

(iii) one member representing Utah Travel Regions;

(iv) the director of the Division of Travel Development;

(v) one member representing county tourism selected from a list of three qualified individuals nominated by the Utah Association of Counties;

(vi) one member representing the restaurant industry selected from a list of three qualified individuals nominated by the Utah Tourism Industry Coalition;

(vii) one member representing the hotel and lodging industry selected from a list of three qualified individuals nominated by the Utah Tourism Industry Coalition;

(viii) one member representing the ski industry selected from a list of three qualified individuals nominated by the Utah Tourism Industry Coalition;

(ix) one member representing the amusement and recreation industry selected from a list of three qualified individuals nominated by the Utah Tourism Industry Coalition;

(x) one member representing the transportation industry selected from a list of three qualified individuals nominated by the Utah Tourism Industry Coalition; and

(xi) one at large member representing the Utah tourism industry selected from a list of three qualified individuals nominated by the Utah Tourism Industry Coalition.

(b) The president of the Senate and the speaker of the House of Representatives shall nominate and the governor shall appoint one nonvoting member of the committee from the Economic Development and Human Resources Appropriations Subcommittee.

(c) Members of the committee shall be nominated to provide geographic balance in representation on the committee.

[~~(4)~~] (3) (a) The first committee appointments shall be for terms as follows:

[~~(a) seven~~] (i) five members shall be appointed for terms of [~~two years~~] one year; and

[~~(b) seven~~] (ii) six members shall be appointed for terms of [~~three~~] two years[~~; and~~].

[~~(c) seven members shall be appointed for terms of four years.~~]

(b) All subsequent appointments shall be for terms of two years.

(c) A member may not serve more than two full consecutive terms unless the governor determines that an additional term is in the best interest of the state.

[~~(5)~~] (4) If a vacancy occurs, the [~~Board of Commissioners or the~~] governor shall appoint a qualified replacement to fill the unexpired term.

[~~(6)~~] (5) The committee shall elect a chair and a vice chair from its membership.

[~~(7) Eleven~~] (6) Six voting members of the committee shall constitute a quorum.

[~~(8) The committee shall advise the administrator on the recommended allocation of the monies in the fund as provided in Section 9-2-1704. The administrator shall distribute the monies in the fund to the Division of Travel Development.~~]

[~~(9) The committee shall determine the time and place of meetings and any other procedural matter not specified in this chapter.~~]

[~~(10)~~] (7) Members shall receive no compensation or benefits for their services, and shall receive no per diem and expenses incurred in the performance of the member's official duties.

(8) Staff services to the committee shall be provided by the division.

(9) The terms of the members who are serving on the committee on April 30, 2001, shall terminate on that date. The governor shall appoint members to the committee in accordance with this section as in effect on May 1, 2001.

Section 6. Section 9-2-1706 is enacted to read:

9-2-1706. Duties of Tourism Marketing Performance Fund Committee.

(1) The committee and the division shall jointly develop a tourism marketing plan to determine the best use of the funds in the Tourism Marketing Performance Fund.

(2) Any plan provided for under Subsection (1) shall address:

(a) enhancing the state's image;

(b) promoting Utah as a year-round destination;

(c) encouraging expenditures by visitors to the state; and

(d) the diversity of the state's travel regions.

(3) The committee shall comply with Title 52, Chapter 4, Open and Public Meetings, in determining and giving notice of the time and place of any meetings.

(4) The committee may not perform any function not authorized by this section.

Section 7. Section 9-3-204 is amended to read:

9-3-204. Division of Travel Development -- Powers and duties -- Travel development plan.

(1) There is created within the department the Division of Travel Development under the administration and general supervision of the director.

(2) The division shall be under the policy direction of the director.

(3) The division shall:

(a) be the travel development authority of the state;

(b) develop a travel promotion program for the state;

(c) develop a plan to increase the economic contribution by tourists visiting the state;

(d) plan and conduct a program of information, advertising, and publicity relating to the recreational, scenic, historic, highway, and tourist advantages and attractions of the state at large; and

(e) encourage and assist in the coordination of the activities of persons, firms, associations, corporations, travel regions, counties, and governmental agencies engaged in publicizing, developing, and promoting the scenic attractions and tourist advantages of the state.

(4) Any plan provided for under Subsection (3) shall address, but not be limited to, enhancing the state's image, promoting Utah as a year-round destination, encouraging expenditures by visitors to the state, and expanding the markets where the state is promoted.

Section 8. Section 17-31-2 is amended to read:

17-31-2. Purposes of transient room tax -- Purchase or lease of facilities -- Mitigating impacts of recreation, tourism, or conventions -- Issuance of bonds.

(1) Any county legislative body may impose the transient room tax provided for in Section 59-12-301 for the purposes of:

(a) establishing and promoting recreation, tourism, film production, and conventions;

(b) acquiring, leasing, constructing, furnishing, or operating convention meeting rooms, exhibit halls, visitor information centers, museums, and related facilities;

(c) acquiring or leasing land required for or related to the purposes listed in Subsection (1)(b); and

(d) as required to mitigate the impacts of recreation, tourism, or conventions in counties of the fourth, fifth, and sixth class, paying for:

(i) solid waste disposal operations;

(ii) emergency medical services;

(iii) search and rescue activities; and

(iv) law enforcement activities.

(2) [~~Counties~~] A county may use not more than 1/3 of the proceeds of the transient room tax provided in Section 59-12-301 [~~either~~] for any combination of the following purposes:

(a) (i) [~~to acquire, lease, construct, furnish, maintain, or operate~~] acquiring, leasing, constructing, furnishing, maintaining, or operating:

(A) convention meeting rooms[~~,~~];

(B) exhibit halls[~~,~~];

(C) visitor information centers[~~,~~];

(D) museums[~~,~~]; and

(E) related facilities[~~,~~]; and [~~to acquire or lease~~]

(ii) acquiring or leasing land required for or related to [~~these~~] the purposes[~~; or~~] described in Subsection (2)(a)(i);

(b) as required to mitigate the impacts of recreation, tourism, or conventions in counties of the fourth, fifth, and sixth class, to pay for:

(i) solid waste disposal operations;

(ii) emergency medical services;

(iii) search and rescue activities; and

(iv) law enforcement activities[~~.~~]; or

(c) making the annual payment of principal, interest, premiums, and necessary reserves for any or the aggregate of bonds authorized under Subsection (3).

(3) (a) The county legislative body may[~~: (i)~~] issue bonds or cause bonds to be issued, as permitted by law, to pay all or part of any costs incurred for the purposes set forth in [~~Subsection~~] Subsection (2)(a) or (b) that are permitted to be paid from bond proceeds[~~; and~~].

[~~(ii) use up to 1/3 of the proceeds of the transient room tax as provided in Section 59-12-301 to make the annual payment of principal, interest, premiums, and necessary reserves for any or the aggregate of bonds issued.~~]

(b) When the proceeds of the transient room tax provided in Section 59-12-301 are not needed for payment of principal, interest, premiums, and reserves on bonds issued as provided in Subsection [~~(3)~~] (2)(c), the county legislative body shall use those proceeds as provided in [~~Subsections~~] Subsection (1) [~~and~~], subject to the limitation of Subsection (2).

Section 9. Section 17-31-8 is enacted to read:

17-31-8. Tourism tax advisory boards.

(1) (a) Except as provided in Subsection (1)(b), any county that collects the following taxes shall operate a tourism tax advisory board:

(i) the transient room tax allowed under Section 59-12-301; or

(ii) the tourism, recreation, cultural, and convention facilities tax allowed under Section 59-12-603.

(b) Notwithstanding Subsection (1)(a), a county is exempt from Subsection (1)(a) if the county has an existing board, council, committee, convention visitor's bureau, or body that substantially conforms with Subsections (2), (3), and (4).

(2) A tourism tax advisory board created under Subsection (1) shall consist of at least five members.

(3) A tourism tax advisory board shall be composed of any of the following members that:

(a) are residents of the county; and

(b) represent the local:

(i) hotel and lodging industry;

(ii) restaurant industry;

(iii) recreational facilities;

(iv) convention facilities;

(v) museums;

(vi) cultural attractions; or

(vii) other tourism-related industries.

(4) A tourism tax advisory board shall advise the county legislative body on the best use of revenues collected from:

(a) the transient room tax allowed under Section 59-12-301; and

(b) the tourism, recreation, cultural, and convention facilities tax allowed under Section 59-12-603.

(5) A member of any county tourism tax advisory board:

(a) may not receive compensation or benefits for the member's services; and

(b) may receive per diem and expenses incurred in the performance of the member's official duties.

Section 10. Section 59-12-603 is amended to read:

59-12-603. County tax -- Bases -- Rates -- Ordinance required -- Collection -- Administration -- Distribution -- Imposition of tax -- Tax rate change -- Effective date -- Notice requirements.

(1) In addition to any other taxes, a county legislative body may, as provided in this part, impose a tourism, recreation, cultural, and convention tax as follows:

(a) (i) a county legislative body of any county may impose a tax of not to exceed 3% on all short-term leases and rentals of motor vehicles not exceeding 30 days, except for leases and rentals of motor vehicles made for the purpose of temporarily replacing a person's motor vehicle that is being repaired pursuant to a repair or an insurance agreement;

(ii) beginning on or after January 1, 1999, a county legislative body of any county imposing a tax under Subsection (1)(a)(i) may, in addition to imposing the tax under Subsection (1)(a)(i), impose a tax of not to exceed 4% on all short-term leases and rentals of motor vehicles not exceeding 30 days, except for leases and rentals of motor vehicles made for the purpose of temporarily replacing a person's motor vehicle that is being repaired pursuant to a repair or an insurance agreement;

(b) a county legislative body of any county may impose a tax of not to exceed 1% of all sales of prepared foods and beverages that are sold by restaurants; and

(c) a county legislative body of any county may impose a tax of not to exceed 1/2% of the rent for every occupancy of a suite, room, or rooms on all persons, companies, corporations, or other similar persons, groups, or organizations doing business as motor courts, motels, hotels, inns, or similar public accommodations.

(2) The revenue from the imposition of the taxes provided for in Subsections (1)(a) through (c) may be used for the purposes of financing[~~, in whole or in part,~~] tourism promotion, and the development, operation, and maintenance of tourist, recreation, cultural, and convention facilities as defined in Section 59-12-602.

(3) The tax imposed under Subsection (1)(c) shall be in addition to the transient room tax imposed under Part 3, Transient Room Tax, and may be imposed only by a county of the first class.

(4) (a) A tax imposed under this part shall be levied at the same time and collected in the same manner as provided in Part 2, Local Sales and Use Tax Act, except that the collection and distribution of the tax revenue is not subject to the provisions of Subsection 59-12-205(2).

(b) A tax imposed under this part may be pledged as security for bonds, notes, or other evidences of indebtedness incurred by a county under Title 11, Chapter 14, Utah Municipal Bond Act, to finance tourism, recreation, cultural, and convention facilities.

(5) (a) In order to impose the tax under Subsection (1), each county legislative body shall annually adopt an ordinance imposing the tax.

(b) (i) The ordinance under Subsection (5)(a) shall include provisions substantially the same as those contained in Part 1, Tax Collection, except that the tax shall be imposed only on those items and sales described in Subsection (1).

(ii) A county legislative body imposing a tax under this part shall impose the tax as provided in this section on the leases, rentals, and sales described in Subsection (1) relating to the Olympic Winter Games of 2002 made to or by an organization exempt from federal income taxation under Section 501(c)(3), Internal Revenue Code, except for leases, rentals, and sales described in Subsection (1):

(A) paid for in full by the Salt Lake Organizing Committee for the Olympic Winter Games of 2002;

(B) exclusively used by:

(I) an officer, a trustee, or an employee of the Salt Lake Organizing Committee for the Olympic Winter Games of 2002; or

(II) a volunteer supervised by the Salt Lake Organizing Committee for the Olympic Winter Games of 2002; and

(C) for which the Salt Lake Organizing Committee for the Olympic Winter Games of 2002 does not receive reimbursement.

(c) The name of the county as the taxing agency shall be substituted for that of the state where necessary, and an additional license is not required if one has been or is issued under Section 59-12-106.

(6) In order to maintain in effect its tax ordinance adopted under this part, each county legislative body shall, within 30 days of any amendment of any applicable provisions of Part 1, Tax Collection, adopt amendments to its tax ordinance to conform with the applicable amendments to Part 1, Tax Collection.

(7) The commission shall:

(a) administer, collect, and enforce the tax authorized under this part pursuant to:

(i) the same procedures used to administer, collect, and enforce the sales and use tax under Part 1, Tax Collection; and

(ii) Chapter 1, General Taxation Policies;

(b) (i) except as provided in Subsection (7)(c), for a tax under this part other than the tax under Subsection (1)(a)(ii), distribute the revenues to the county imposing the tax; and

(ii) except as provided in Subsection (7)(c), for a tax under Subsection (1)(a)(ii), distribute the revenues according to the distribution formula provided in Subsection (8); and

(c) deduct from the distributions under Subsection (7)(b) an administrative charge for collecting the tax as provided in Section 59-12-206.

(8) The commission shall distribute the revenues generated by the tax under Subsection (1)(a)(ii) to each county collecting a tax under Subsection (1)(a)(ii) according to the following formula:

(a) the commission shall distribute 70% of the revenues based on the percentages generated by dividing the revenues collected by each county under Subsection (1)(a)(ii) by the total revenues collected by all counties under Subsection (1)(a)(ii); and

(b) the commission shall distribute 30% of the revenues based on the percentages generated by dividing the population of each county collecting a tax under Subsection (1)(a)(ii) by the total population of all counties collecting a tax under Subsection (1)(a)(ii).

(9) (a) For purposes of this Subsection (9):

(i) "Annexation" means an annexation to a county under Title 17, Chapter 2, Annexation to County.

(ii) "Annexing area" means an area that is annexed into a county.

(b) (i) If, on or after May 1, 2000, a county enacts or repeals a tax or changes the rate of a tax under this part, the enactment, repeal, or change shall take effect:

(A) on the first day of a calendar quarter; and

(B) after a 75-day period beginning on the date the commission receives notice meeting the requirements of Subsection (9)(b)(ii) from the county.

(ii) The notice described in Subsection (9)(b)(i)(B) shall state:

(A) that the county will enact or repeal a tax or change the rate of a tax under this part;

(B) the statutory authority for the tax described in Subsection (9)(b)(ii)(A);

(C) the effective date of the tax described in Subsection (9)(b)(ii)(A); and

(D) if the county enacts the tax or changes the rate of the tax described in Subsection (9)(b)(ii)(A), the new rate of the tax.

(c) (i) If, for an annexation that occurs on or after May 1, 2000, the annexation will result in a change in the rate of a tax under this part for an annexing area, the change shall take effect:

(A) on the first day of a calendar quarter; and

(B) after a 75-day period beginning on the date the commission receives notice meeting the requirements of Subsection (9)(c)(ii) from the county that annexes the annexing area.

(ii) The notice described in Subsection (9)(c)(i)(B) shall state:

(A) that the annexation described in Subsection (9)(c)(i) will result in a change in the rate of a tax under this part for the annexing area;

(B) the statutory authority for the tax described in Subsection (9)(c)(ii)(A);

(C) the effective date of the tax described in Subsection (9)(c)(ii)(A); and

(D) the new rate of the tax described in Subsection (9)(c)(ii)(A).

CHAPTER 160
H. B. 108
Passed February 19, 2001
Approved March 15, 2001
Effective April 30, 2001

REQUIREMENTS FOR POSTING BOUNDARIES OF HUNTING UNITS

Sponsor: Craig W. Buttars

This act modifies the Wildlife Code by specifying requirements for the posting of boundaries of cooperative wildlife management units.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
23-23-7, as last amended by Chapter 94, Laws of Utah 2000

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

Section 1. Section 23-23-7 is amended to read:

23-23-7. Permits -- Acreage and lands that may be included -- Posting of boundaries.

(1) The division shall provide cooperative wildlife management unit authorizations for hunting small game or waterfowl to the cooperative wildlife management unit, free of charge.

(2) At least 50% of the cooperative wildlife management unit authorizations for hunting small game or waterfowl provided to a cooperative wildlife management unit shall be offered for sale to the general public at the times and places designated on the application for a certificate of registration.

(3) (a) Cooperative wildlife management units organized for hunting small game or waterfowl shall consist of private land.

(b) At least 75% of the acreage within the boundaries of each cooperative wildlife management unit organized for the hunting of small game or waterfowl shall be open to hunting by holders of valid authorizations.

(4) (a) The division may issue cooperative wildlife management unit permits for hunting cougar or big game to permittees:

(i) qualifying through a public drawing; or

(ii) named by the cooperative wildlife management unit operator.

(b) The Wildlife Board may specify by rule those persons who are eligible to draw a cooperative wildlife management unit permit in a public drawing.

(5) (a) Cooperative wildlife management units organized for hunting cougar or big game shall consist of private land to the extent practicable. Public land may be included within a cooperative wildlife management unit if:

(i) the public land is completely surrounded by private land or is otherwise inaccessible to the general public;

(ii) including public land is necessary to establish a readily identifiable boundary; or

(iii) including public land is necessary to achieve cougar or big game management objectives.

(b) If any public land is included within a cooperative wildlife management unit:

(i) the landowner association shall meet applicable federal or state land use requirements on the public land; and

(ii) the Wildlife Board shall increase the number of permits or hunting opportunities made available to the general public to reflect the proportion of public lands to private lands within the cooperative wildlife management unit.

(6) Each landowner association shall:

(a) clearly post all boundaries of the unit [~~and all corners, roads, trails, gates, and rights-of-way entering the unit with signs provided by the division~~] by displaying signs containing information prescribed by rule of the Wildlife Board at the locations specified in Subsection 23-20-14(1)(d); and

(b) provide a written copy of its guidelines to each holder of an authorization or permit.

CHAPTER 161
H. B. 109
Passed February 23, 2001
Approved March 15, 2001
Effective April 30, 2001

AMENDMENTS TO THE INSURANCE LAW

Sponsor: John E. Swallow

This act modifies provisions of the Insurance Code by recodifying the Utah Life and Disability Insurance Guaranty Association Act. The act amends the purpose and coverage of the act and makes technical changes. The act clarifies the rules of construction. The act modifies definitions. The act addresses membership in the association and the board of directors of the association. The act modifies the powers and duties of the association. The act addresses assessments made on member insurers. The act addresses the plan of operation of the association. The act modifies the powers and duties of the commissioner. The act addresses prevention of insolvencies. The act modifies miscellaneous provisions. The act modifies the requirements for examinations, annual reports, and summary documents. The act addresses advertisements. The act addresses prospective application.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
31A-28-102, as last amended by Chapter 316, Laws of Utah 1994
31A-28-103, as last amended by Chapter 316, Laws of Utah 1994
31A-28-104, as repealed and reenacted by Chapter 211, Laws of Utah 1991
31A-28-105, as last amended by Chapter 9, Laws of Utah 1996, Second Special Session
31A-28-106, as repealed and reenacted by Chapter 211, Laws of Utah 1991
31A-28-107, as last amended by Chapter 10, Laws of Utah 1997
31A-28-108, as last amended by Chapter 344, Laws of Utah 1995
31A-28-109, as repealed and reenacted by Chapter 211, Laws of Utah 1991
31A-28-110, as repealed and reenacted by Chapter 211, Laws of Utah 1991
31A-28-111, as repealed and reenacted by Chapter 211, Laws of Utah 1991
31A-28-112, as enacted by Chapter 211, Laws of Utah 1991
31A-28-113, as repealed and reenacted by Chapter 211, Laws of Utah 1991
31A-28-114, as last amended by Chapters 20 and 344, Laws of Utah 1995
31A-28-115, as repealed and reenacted by Chapter 211, Laws of Utah 1991
31A-28-117, as repealed and reenacted by Chapter 211, Laws of Utah 1991
31A-28-119, as repealed and reenacted by Chapter 211, Laws of Utah 1991

ENACTS:
31A-28-120, Utah Code Annotated 1953

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

Section 1. Section 31A-28-102 is amended to read:

31A-28-102. Purpose.

(1) The purpose of this part is to protect, subject to certain limitations, the persons specified in Subsection 31A-28-103(1) against failure in the performance of contractual obligations, under [~~the~~] a life and disability insurance [~~policies and~~] policy or annuity [~~contracts~~] contract specified in Subsection 31A-28-103(2), because of the impairment or insolvency of the member insurer that issued the [~~policies~~] policy or [~~contracts~~] contract.

(2) To provide the protection described in Subsection (1)[~~,~~]:

(a) the Utah Life and Disability Insurance Guaranty Association, which currently exists, is continued [~~in order~~] to pay benefits and to continue coverages as limited [~~in~~] by this part[~~,~~]; and

(b) members of the association are subject to assessment to provide funds to carry out the purpose of this part.

Section 2. Section 31A-28-103 is amended to read:

31A-28-103. Coverage and limitations.

(1) (a) This part provides coverage for the policies and contracts specified in Subsection (2) to [~~persons~~] a person who [~~are~~] is:

[~~(a)~~] (i) [~~beneficiaries, assignees, or payees of the persons covered under Subsection (1)(b),~~] a beneficiary, assignee, or payee of a person covered by Subsection (1)(a)(ii) regardless of where [~~they reside~~] that person resides, except for a nonresident certificate [~~holders~~] holder under a group [~~policies~~] policy or [~~contracts~~] contract; or

[~~(b) owners~~] (ii) an owner of or a certificate [~~holders~~] holder under [~~such policies~~] a policy or [~~contracts; or, in the case of~~] contract, other than an unallocated annuity [~~contracts~~] contract or structured settlement annuity, [~~to the persons who are the contract holders, and who are~~] if the owner or certificate holder is:

[~~(i) residents~~] (A) a resident of Utah; or

[~~(ii)~~] (B) not [~~residents~~] a resident of Utah, but only [~~under the following conditions~~] if:

[~~(A)~~] (I) the [~~insurers which~~] insurer that issued the [~~policies~~] policy or [~~contracts are~~] contract is domiciled in this state;

[~~(B)~~] (II) [~~the insurers never held a license or certificate of authority in~~] the [~~states~~] state in which the [~~persons reside;~~] person resides has an association similar to the association created by this part; and

(III) the person is not eligible for coverage by an association in any other state because the insurer

was not licensed in the state at the time specified in the state's guaranty association's law.

[~~(C) the states have associations similar to the association created by this chapter; and~~]

[~~(D) the persons are not eligible for coverage by the associations described in Subsection (1)(b)(ii)(C).~~]

(b) For an unallocated annuity contract specified in Subsection (2):

(i) Subsections (1)(a)(i) and (ii) do not apply; and

(ii) except as provided in Subsections (1)(d) and (1)(e), this part shall provide coverage for the unallocated annuity contract specified in Subsection (2) to a person who is:

(A) the owner of the unallocated annuity contract if the contract is issued to or in connection with a specific benefit plan whose plan sponsor has its principal place of business in this state; and

(B) an owner of an unallocated annuity contract issued to or in connection with a government lottery if the owner is a resident.

(c) For a structured settlement annuity specified in Subsection (2):

(i) Subsections (1)(a)(i) and (ii) do not apply; and

(ii) except as provided in Subsections (1)(d) and (1)(e), this part shall provide coverage for the structured settlement annuity specified in Subsection (2) to a person who is a payee under a structured settlement annuity, or beneficiary of a payee if the payee is deceased, if the payee:

(A) is a resident, regardless of where the contract owner resides; or

(B) is not a resident, but only if the contract owner of the structured settlement annuity is a resident, or the contract owner of the structured settlement annuity is not a resident, but:

(I) the insurer that issued the structured settlement annuity is domiciled in this state;

(II) the state in which the contract owner resides has an association similar to the association created by this part; and

(III) the payee, beneficiary, or the contract owner is not eligible for coverage by the association of the state in which the payee or contract owner resides.

(d) This part may not provide coverage for the policies and contracts specified in Subsection (2) to:

(i) a person who is a payee or beneficiary of a contract owner resident of this state, if the payee or beneficiary is afforded any coverage by the association of another state; or

(ii) a person covered under Subsection (1)(b), if any coverage is provided to the person by the association of another state.

(e) (i) This part provides coverage for a policy or contract specified in Subsection (2) to a person who is a resident of this state and, in special circumstances, to a nonresident.

(ii) To avoid duplicate coverage, if a person who would otherwise receive coverage under this part is provided coverage under the laws of any other state, the person may not be provided coverage under this part.

(iii) In determining the application of this Subsection (1)(e) in situations where a person could be covered by the association of more than one state, whether as an owner, payee, beneficiary, or assignee, this part shall be construed in conjunction with other state laws to result in coverage by only one association.

(2) (a) (i) Except as [~~otherwise~~] limited by this part, this part provides coverage to the persons specified in Subsection (1) for:

(A) a direct, nongroup life, disability, or annuity [~~and~~] policy or contract;

(B) a supplemental [~~policies or contracts, for certificates~~] contract to a policy or contract described in Subsection (2)(a)(i)(A);

(C) a certificate under a direct group [~~policies and contracts,~~] policy or contract; and [~~for~~]

(D) an unallocated annuity [~~contracts~~] contract issued by a member [~~insurers~~] insurer. [~~Annuity contracts~~]

(ii) For purposes of Subsection (2)(a)(i), an annuity contract and [~~certificates~~] a certificate under a group annuity [~~contracts include~~] contract includes:

(A) a guaranteed investment [~~contracts,~~] contract;

(B) a deposit administration [~~contracts,~~] contract;

(C) an unallocated funding [~~agreements,~~] agreement;

(D) a structured settlement [~~agreements, lottery contracts,~~] annuity;

(E) an annuity issued to or in connection with a government lottery; and [~~any~~]

(F) an immediate or deferred annuity [~~contracts~~] contract.

(b) This part does not provide coverage for:

(i) [~~any~~] a portion of a policy or contract:

(A) not guaranteed by the insurer[~~,~~]; or

(B) under which the risk is borne by the policy or contract [~~holder~~] owner;

(ii) [~~any~~] a policy or contract of reinsurance, unless:

(A) an assumption [~~certificates have been~~] certificate is issued;

(B) the assumption certificate required by Subsection (2)(b)(ii)(A) is in effect pursuant to the reinsurance policy or contract; and

(C) the reinsurance contract is approved by the appropriate regulatory authorities; or

(iii) [~~any~~] a portion of a policy or contract to the extent that the rate of interest on which it is based[~~:~~] or the interest rate, crediting rate, or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value, if the interest rate, crediting rate, or similar factor:

(A) is not excluded from coverage by Subsection (2)(b)(xii); and

(B) averaged over the period of four years prior to the date on which the association becomes obligated with respect to the policy or contract, exceeds a rate of interest determined by subtracting two percentage points from Moody's Corporate Bond Yield Average averaged:

(I) for that same four-year period; or

(II) for the corresponding lesser period if the policy or contract was issued less than four years before the association became obligated; [~~and~~]

[~~(B) on or after the date on which the association becomes obligated with respect to the policy or contract, exceeds the rate of interest determined by subtracting three percentage points from Moody's Corporate Bond Yield Average as most recently available;~~]

(iv) [~~any~~] a portion of a policy or contract issued to a plan or program of an employer, association, or [~~similar entity~~] other person to provide life, disability, or annuity benefits to its employees [~~or~~], members, or others, to the extent that the plan or program is self-funded or uninsured, including benefits payable by an employer, association, or [~~similar entity~~] other person under:

(A) a multiple employer welfare arrangement as defined in [~~Section 514 of the Employee Retirement Income Security Act of 1974, as amended~~] 29 U.S.C. Sec. 1144;

(B) a minimum premium group insurance plan;

(C) a stop-loss group insurance plan; or

(D) an administrative services only contract;

(v) [~~any~~] a portion of a policy or contract to the extent that it provides [~~dividends or experience rating credits, or provides that any fees or allowances be paid to any person, including the policy or contract holder, in connection with the service to or administration of the policy or contract;~~]:

(A) a dividend;

(B) an experience rating credit;

(C) voting rights; or

(D) payment of a fee or allowance to any person, including the policy or contract owner, in connection with the service to or administration of the policy or contract;

(vi) [~~any~~] a policy or contract issued in this state by a member insurer at a time when:

(A) it was not licensed; or

(B) did not have a certificate of authority to issue the policy or contract in this state;

(vii) [~~any~~] an unallocated annuity contract issued to [~~an employee~~] or in connection with a benefit plan protected under the federal Pension Benefit Guaranty Corporation, regardless of whether the federal Pension Benefit Guaranty Corporation has yet become liable to make any payment with respect to the benefit plan; [~~and~~]

(viii) [~~any~~] a portion of [~~any~~] an unallocated annuity contract [~~which~~] that is not issued to or in connection with:

(A) a specific [~~employee,~~] benefit plan of:

(I) employees;

(II) a union[~~,~~]; or

(III) an association of natural persons [~~benefit plan~~]; or

(B) a government lottery[~~.~~];

(ix) a portion of a policy or contract to the extent that the assessment required by Section 31A-28-109 that applies to the policy or contract is preempted by federal or state law;

(x) an obligation that does not arise under the express written terms of the policy or contract issued by an insurer to the contract owner or policy owner, including:

(A) a claim based on marketing materials;

(B) a claim based on documents that are issued by the insurer without meeting applicable policy form filing or approval requirements;

(C) a misrepresentation regarding a policy benefit;

(D) an extra-contractual claim;

(E) a claim for penalties; or

(F) a claim for consequential or incidental damages;

(xi) a contract that establishes the member insurer's obligations to provide a book value accounting guaranty for defined contribution benefit plan participants by reference to a portfolio of assets that is owned by a person that is:

(A) (I) the benefit plan; or

(II) the benefit plan's trustee; and

(B) not an affiliate of the member insurer; and

(xii) a portion of a policy or contract to the extent it provides for interest or other changes in value:

(A) to be determined by the use of an index or other external reference stated in the policy or contract; and

(B) (I) that have not been credited to the policy or contract; or

(II) as to which the policy or contract owner's rights are subject to forfeiture as of the date the member insurer becomes an impaired or insolvent insurer under this part.

[~~(c) The~~] (3) Subject to Subsection (4), the benefits for which the association may become liable [~~shall in no event~~] may not exceed the lesser of:

[~~(i)~~] (a) the contractual obligations for which the insurer is liable or would have been liable if it were not an impaired or insolvent insurer; [~~or~~]

[~~(ii) (A)~~] (b) with respect to [~~any~~] one life, regardless of the number of policies or contracts:

[~~(I) $300,000 in life insurance death benefits, but not more than $100,000 in net cash surrender and net cash withdrawal values for life insurance;~~]

[~~(II) $100,000 in disability insurance benefits, including any net cash surrender and net cash withdrawal values;~~]

[~~(III) $100,000 in the present value of annuity benefits, including net cash surrender and net cash withdrawal values;~~]

(i) for a life insurance policy:

(A) if the insured died before the coverage date, $500,000 of the death benefit;

(B) if the insurer received a valid request for cash surrender before the coverage date but has not paid the cash surrender value before the coverage date, $200,000 of cash surrender benefits; or

(C) if neither Subsection (3)(b)(i)(A) nor (B) apply, the covered portion of each benefit provided under the policy;

(ii) for an annuity contract, the covered portion of each benefit provided under the contract;

(iii) for a disability policy:

(A) classified as basic hospital and medical or major medical, $500,000; or

(B) not classified as basic hospital and medical or major medical, the covered portion of each benefit provided under the policy;

[~~(B)~~] (c) [~~with respect to each~~] for an individual, or a beneficiary of that individual if the individual is deceased, participating in a governmental retirement plan established under Section [~~401(k)~~] 401, 403(b), or 457 [~~of the~~], Internal Revenue Code, covered by an unallocated annuity contract [~~or the beneficiaries of each such individual if deceased~~], in the aggregate[~~, $100,000~~] $200,000 in present value of annuity benefits, including:

(i) net cash surrender; and

(ii) net cash withdrawal values; or

(d) for a payee of a structured settlement annuity or a beneficiary of the payee if the payee is deceased, the limits set forth in Subsection (3)(b).

[~~(C)~~] (4) [~~however, in no event shall~~] Notwithstanding Subsections (3)(a) through (d), the association [~~be liable to expend more than $300,000 in the aggregate with respect to any one individual under Subsections (2)(c)(ii)(A) and (ii)(B);~~] may not be obligated to cover more than:

[~~(iii) with respect to any one contract holder covered by any unallocated annuity contract not included in Subsection (2)(c)(ii)(B), $5,000,000 in benefits, irrespective of the number of contracts held by that contract holder.~~]

(a) an aggregate of $500,000 in benefits for any one life under:

(i) Subsection (3)(b)(i)(A);

(ii) Subsection (3)(b)(i)(B);

(iii) Subsection (3)(b)(ii); or

(iv) Subsection (3)(b)(iii);

(b) $5,000,000 in benefits for one owner of multiple nongroup policies of life insurance:

(i) whether the policy owner is an individual, firm, corporation, or other person;

(ii) whether the persons insured are officers, managers, employees, or other persons; and

(iii) regardless of the number of policies and contracts held by the owner; and

(c) $5,000,000 in benefits, regardless of the number of contracts held by the contract owner or plan sponsor, for:

(i) one contract owner provided coverage under Subsection (1)(b)(ii)(B); or

(ii) one plan sponsor whose plans own, directly or in trust, one or more unallocated annuity contracts not included in Subsection (3)(b)(ii).

(5) (a) Notwithstanding Subsection (4)(c) and except as provided in Subsection (5)(b), the association shall provide coverage if one or more unallocated annuity contracts are:

(i) covered contracts under this part;

(ii) owned by a trust or other entity for the benefit of two or more plan sponsors; and

(iii) the largest interest in the trust or entity owning the contract or contracts is held by a plan sponsor whose principal place of business is in the state.

(b) Notwithstanding Subsection (5)(a) the association may not be obligated to cover more than $5,000,000 in benefits with respect to all unallocated contracts described in Subsection (5)(a).

(6) (a) The limitations set forth in Subsections (3) and (4) are limitations on the benefits for which the association is obligated before taking into account:

(i) the association's subrogation and assignment rights; or

(ii) the extent to which those benefits could be provided out of the assets of the impaired or insolvent insurer attributable to covered policies.

(b) The costs of the association's obligations under this part may be met by the use of assets:

(i) attributable to covered policies; or

(ii) reimbursed to the association pursuant to the association's subrogation and assignment rights.

(c) On and after the date on which the association becomes obligated for any covered policy, the association may not be obligated to provide benefits to the extent that the benefits are based on an interest rate, crediting rate, or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value if the interest rate, crediting rate, or similar factor exceeds the rate of interest determined by subtracting three percentage points from Moody's Corporate Bond Yield Average as most recently available on each date on which interest is credited or attributed to the covered policy.

(d) In performing its obligations to provide coverage under Section 31A-28-108, the association may not be required to guarantee, assume, reinsure, perform, or cause to be guaranteed, assumed, reinsured, or performed a contractual obligation of the insolvent or impaired insurer under a covered policy or contract that does not materially affect the economic values or economic benefits of the covered policy or contract.

Section 3. Section 31A-28-104 is amended to read:

31A-28-104. Construction.

This part shall be [~~liberally~~] construed to effect the purposes under Section 31A-28-102 [~~constituting an aid and guide to interpretation of this part~~].

Section 4. Section 31A-28-105 is amended to read:

31A-28-105. Definitions.

As used in this [~~chapter~~] part:

[~~(1) "Account" means any of the two accounts created under Section 31A-28-106.~~]

[~~(2)~~] (1) "Association" means the Utah Life and Disability Insurance Guaranty Association continued under Section 31A-28-106.

(2) (a) "Authorized assessment" or "authorized," when used in the context of assessments, means that the board of directors passed a resolution whereby an assessment will be called immediately or in the future from member insurers for an amount set forth in the resolution.

(b) An assessment is authorized when the resolution is passed.

(3) "Benefit plan" means a specific benefit plan of:

(a) employees;

(b) a union; or

(c) an association of natural persons.

(4) (a) "Called assessment" or "called," when used in the context of assessments, means that the association issued a notice to member insurers requiring that an authorized assessment be paid within the time frame set forth in the notice.

(b) All or part of an authorized assessment becomes a called assessment when notice is mailed by the association to member insurers.

[~~(3)~~] (5) "Contractual obligation" means an obligation under any [~~obligation under~~] of the following for which coverage is provided under Section 31A-28-103:

(a) a policy or contract[~~, or~~];

(b) a certificate under a group policy or contract[~~,~~]; or

(c) a portion of [~~the~~] a policy or contract [~~for which coverage is provided under Section 31A-28-103~~].

(6) "Coverage date" means the date on which the association becomes responsible for the obligations of a member insurer.

[~~(4)~~] (7) "Covered policy" means any of the following for which coverage is provided in Section 31A-28-103:

(a) a policy or contract [~~within the scope of this chapter under Section 31A-28-103~~]; or

(b) a portion of a policy or contract.

(8) (a) "Covered portion" means:

(i) for any covered policy that has a cash surrender value, a fraction obtained by dividing:

(A) the lesser of:

(I) $200,000; or

(II) the cash surrender value of the policy; by

(B) the cash surrender value of the policy; and

(ii) for any covered policy that does not have a cash surrender value, a fraction obtained by dividing:

(A) the lesser of:

(I) $200,000; or

(II) the policy's minimum statutory reserve; by

(B) the policy's minimum statutory reserve.

(b) The cash surrender value and the minimum statutory reserve are determined as of the coverage date in accordance with the exclusions in Subsection 31A-28-103(2)(b)(iii).

(9) "Extra-contractual claim" includes a claim relating to:

(a) bad faith in the payment of a claim;

(b) punitive or exemplary damages; or

(c) attorneys' fees and costs.

[~~(5)~~] (10) "Impaired insurer" means a member insurer that is not an insolvent insurer and:

(a) is considered by the commissioner to be hazardous pursuant to this title; or

(b) is placed under an order of rehabilitation or conservation by a court of competent jurisdiction.

[~~(6)~~] (11) "Insolvent insurer" means a member insurer [~~which~~] that is placed under an order of

liquidation by a court of competent jurisdiction with a finding of insolvency.

[~~(7)~~] (12) (a) "Member insurer" means a person that:

(i) is an insurer [~~licensed or holding~~]; and

(ii) holds a certificate of authority to transact in this state any kind of insurance for which coverage is provided under [~~Sections~~] Section 31A-28-103 [~~and 31A-28-202~~]. [~~The term~~]

(b) "Member insurer" includes an insurer whose license or certificate of authority in this state may have been:

(i) suspended[~~,~~];

(ii) revoked[~~,~~];

(iii) not renewed[~~,~~]; or

(iv) voluntarily withdrawn.

[~~(b)~~] (c) "Member insurer" does not include:

[~~(i) a limited health plan;~~]

[~~(ii)~~] (i) a health maintenance organization;

[~~(iii)~~] (ii) a fraternal benefit society;

[~~(iv)~~] (iii) a mandatory state pooling plan;

[~~(v)~~] (iv) a mutual assessment company or [~~any entity~~] other person that operates on an assessment basis; [~~or~~]

(v) an insurance exchange; or

(vi) [~~any~~] an entity similar to [~~any of the above~~] an entity described in Subsections (12)(c)(i) through (v).

[~~(8)~~] (13) "Moody's Corporate Bond Yield Average" means the Monthly Average Corporates as published by Moody's [~~Investment~~] Investors Service, Inc., or any successor [~~thereto~~] to Moody's Investors Service, Inc.

(14) (a) "Owner" of a policy or contract, "policy owner," or "contract owner" means the person who:

(i) is identified as the legal owner under the terms of the policy or contract; or

(ii) is otherwise vested with legal title to the policy or contract through a valid assignment:

(A) completed in accordance with the terms of the policy or contract; and

(B) properly recorded as the owner on the books of the insurer.

(b) "Owner," "policy owner," or "contract owner" does not include a person with only a beneficial interest in a policy or contract.

[~~(9)~~] (15) "Person" means any:

(a) individual[~~,~~];

(b) corporation[~~,~~];

(c) limited liability company;

(d) partnership[~~,~~];

(e) association[~~,~~];

(f) governmental body or entity; or

(g) voluntary organization.

(16) "Plan sponsor" means:

(a) the employer, in the case of a benefit plan established or maintained by a single employer;

(b) the employee organization, in the case of a benefit plan established or maintained by an employee organization; or

(c) the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain a benefit plan, in the case of a benefit plan established or maintained by:

(i) two or more employers; or

(ii) jointly by:

(A) one or more employers; and

(B) one or more employee organizations.

[~~(10)~~] (17) (a) "Premiums" means [~~amounts~~] an amount or consideration received [~~in any calendar year~~] on covered policies or contracts, less:

(i) returned:

(A) premiums[~~,~~];

(B) considerations[~~,~~]; and

(C) deposits [~~returned~~]; and

(ii) dividends and experience credits [~~on the amounts~~].

(b) (i) "Premiums" does not include [~~any amounts~~] an amount or consideration received for [~~any policies or contracts or for~~]:

(A) a policy or contract for which coverage is not provided under Subsection 31A-28-103(2); or

(B) the [~~portions~~] portion of [~~any~~] [~~policies or contracts~~] a policy or contract for which coverage is not provided under Subsection 31A-28-103(2)[~~, except that assessable premiums~~].

(ii) Notwithstanding Subsection (17)(b)(i), an assessable premium may not be reduced on account of:

(A) Subsection 31A-28-103(2)(b)(iii) relating to interest limitations; and

(B) Subsection 31A-28-103[~~(2)(c)~~](3) relating to limitations [~~with respect to any~~] for:

(I) one individual[~~,~~];

(II) any one participant[~~,~~]; and

(III) any one contract [~~holder~~] owner.

(c) "Premiums" may not include any premiums in excess of $5,000,000:

(i) on any unallocated annuity contract not issued under a governmental retirement plan established under Section [~~401(k)~~] 401, 403(b), or 457 [~~of the~~], Internal Revenue Code[~~,~~]; or

(ii) for multiple nongroup policies of life insurance owned by one owner:

(A) whether the policy owner is an individual, firm, corporation, or other person;

(B) whether the persons insured are officers, managers, employees, or other persons; and

(C) regardless of the number of policies or contracts held by the owner.

(18) (a) Except as provided in Subsection (18)(b), "principal place of business" of a plan sponsor or a person other than a natural person means the single state:

(i) in which the natural persons who establish policy for the direction, control, and coordination of the operations of the entity as a whole primarily exercise the function; and

(ii) determined by the association in its reasonable judgment by considering the following factors:

(A) the state in which the primary executive and administrative headquarters of the entity are located;

(B) the state in which the principal office of the chief executive officer of the entity is located;

(C) the state in which the board of directors, or similar governing person or persons, of the entity conducts the majority of its meetings;

(D) the state in which the executive or management committee of the board of directors, or similar governing person, of the entity conducts the majority of its meetings;

(E) the state from which the management of the overall operations of the entity is directed; and

(F) in the case of a benefit plan sponsored by affiliated companies comprising a consolidated corporation, the state in which the holding company or controlling affiliate has its principal place of business as determined using the factors described in Subsections (18)(a)(ii)(A) through (E).

(b) Notwithstanding Subsection (18)(a), in the case of a plan sponsor, if more than 50% of the participants in the benefit plan are employed in a single state, the state where more than 50% of the participants are employed is considered to be the principal place of business of the plan sponsor.

(c) (i) The principal place of business of a plan sponsor of a benefit plan described in Subsection (3) is considered to be the principal place of business of the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan.

(ii) If for a benefit plan described in Subsection (3) there is not a specific or clear designation of a principal place of business under Subsection (18)(c)(i), the principal place of business is considered to be the principal place of business of the employer or employee organization that has the largest investment in the benefit plan.

(19) "Receivership court" means the court in the insolvent or impaired insurer's state having jurisdiction over the conservation, rehabilitation, or liquidation of the insurer.

[~~(11)~~] (20) (a) "Resident" means [~~any~~] a person:

(i) to whom a contractual obligation is owed; and

(ii) who resides in this state [~~at the time~~] on the earlier of the date a member insurer is [~~determined to be~~] an:

(A) impaired insurer; or

(B) insolvent insurer [~~and to whom a contractual obligation is owed~~].

(b) A person may be a resident of only one state, which in the case of a person other than a natural person shall be [~~the state in which~~] its principal place of business [~~is located~~].

(c) A citizen of the United States that is either a resident of a foreign country or a resident of a United States possession, territory, or protectorate that does not have an association similar to the association created by this part, is considered a resident of the state of domicile of the insurer that issued the policy or contract.

(21) "State" means:

(a) a state;

(b) the District of Columbia;

(c) Puerto Rico; and

(d) a United States possession, territory, or protectorate.

(22) "Structured settlement annuity" means an annuity purchased to fund periodic payments for a plaintiff or other claimant in payment for personal injury suffered by the plaintiff or other claimant.

[~~(12)~~] (23) "Supplemental contract" means [~~any~~] a written agreement entered into for the distribution of [~~policy or contract~~] proceeds under a policy or contract for:

(a) life;

(b) disability; or

(c) annuity.

[~~(13)~~] (24) "Unallocated annuity contract" means [~~any~~] an annuity contract or group annuity certificate [~~which~~] that is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under [~~such~~] the contract or certificate.

Section 5. Section 31A-28-106 is amended to read:

31A-28-106. Continuation of the association -- Association duties -- Allocation of assessments.

(1) (a) There is continued under this [~~chapter~~] part the nonprofit legal entity known as the Utah Life and Disability Insurance Guaranty Association created under former provisions of this title.

(b) All member insurers shall be and remain members of the association as a condition of their

authority to transact [~~business~~] insurance in this state.

(c) The association shall:

(i) perform its functions under the plan of operation established and approved under Section 31A-28-110; and [~~shall~~]

(ii) exercise its powers through a board of directors established under [~~the provisions of~~] Section 31A-28-107. [~~For purposes of administration and assessment the~~]

(d) The association shall [~~maintain two accounts~~] allocate assessments among the following classes or subclasses:

[~~(a)~~] (i) the life insurance and annuity [~~account~~] class, which includes the following [~~subaccounts~~] subclasses:

[~~(i)~~] (A) the life insurance [~~Account~~] subclass;

[~~(ii)~~] (B) the annuity [~~Account~~] subclass:

(I) which includes annuity contracts owned by a governmental retirement plan, or its trustee, established under Section 401, 403(b), or 457, Internal Revenue Code; and

(II) otherwise excludes unallocated annuities; and

[~~(iii)~~] (C) the unallocated annuity [~~account~~] subclass, which [~~includes~~] excludes contracts [~~qualified~~] owned by a governmental retirement benefit plan, or its trustee, established under Sections [~~401(k)~~] 401, 403(b), or 457 [~~of the~~], Internal Revenue Code; and

[~~(b)~~] (ii) the disability insurance [~~account~~] class.

(2) (a) The association shall:

(i) come under the immediate supervision of the commissioner; and [~~shall~~]

(ii) be subject to the applicable provisions of the insurance laws of this state.

(b) Meetings or records of the association may be opened to the public upon majority vote of the board of directors of the association.

Section 6. Section 31A-28-107 is amended to read:

31A-28-107. Board of directors.

(1) (a) The board of directors of the association shall consist of at least five but not more than nine member insurers serving terms [~~of four years each~~] as established in the plan of operation.

(b) (i) The members of the board of directors shall be selected by member insurers, subject to the approval of the commissioner.

(ii) When a vacancy occurs in the membership of the board of directors for any reason, [~~the~~] a replacement [~~shall~~] may be elected for the unexpired term by a majority vote of the remaining board members, subject to the approval of the commissioner.

(c) In approving selections or in appointing members to the board of directors, the commissioner shall consider, among other things, whether all member insurers are fairly represented.

(d) Notwithstanding [~~the requirements of~~] Subsection (1)(a), the commissioner shall, at the time of election or reelection, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board of directors is selected [~~every two years~~] during any two-year period.

(2) (a) [~~Members shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107 from the assets of the association~~] A member of the board of directors may be reimbursed from the assets of the association for expenses incurred by the member as a member of the board of directors.

(b) Except as provided in Subsection (2)(a), a member of the board of directors may not be compensated by the association for the member's services.

[~~(b) Members may decline to receive per diem and expenses for their service.~~]

Section 7. Section 31A-28-108 is amended to read:

31A-28-108. Powers and duties of the association.

(1) (a) If a member insurer is an impaired [~~domestic~~] insurer, [~~the association in its discretion and~~] subject to any conditions imposed by the association that do not impair the contractual obligations of the impaired insurer [~~that are approved by the commissioner, and also by the impaired insurer, except in cases of court-ordered conservation or rehabilitation, may:~~], the association may elect to provide the protections provided by this part to the policyholders of the impaired insurer.

(b) If the association makes the election described in Subsection (1)(a), the association may proceed under one or more of the options described in Subsection (3).

[~~(a) guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, any or all of the policies or contracts of the impaired insurer;~~]

[~~(b) provide the necessary monies, pledges, notes, guarantees or other means to effectuate Subsection (1)(a) and assure payment of the contractual obligations of the impaired insurer pending action under Subsection (1)(a); or~~]

[~~(c) loan money to the impaired insurer.~~]

[~~(2) (a) If a member insurer is an impaired insurer, whether domestic, foreign, or alien, and the insurer is not paying claims timely, the association shall in its discretion and subject to the preconditions specified in Subsection (2)(b), either:~~]

[~~(i) take any of the actions specified in Subsection (1), subject to the conditions specified in Subsection (1); or~~]

[~~(ii) provide substitute benefits in lieu of the contractual obligations of the impaired insurer solely for disability claims, periodic annuity benefit payments, death benefits, supplemental benefits, and cash withdrawals for policy or contract owners who petition for such benefits under claims of emergency or hardship in accordance with the standards proposed by the association and approved by the commissioner.~~]

[~~(b) The association is subject to the requirements of Subsection (2)(a) only if:~~]

[~~(i) the laws of the impaired insurer's state of domicile provide that until all payments of, or an account of, the impaired insurer's contractual obligations by all guaranty associations, along with all expenses of the obligation and interest on all such payments and expenses, have been repaid to the guaranty associations or a plan of repayment by the impaired insurer has been approved by the guaranty associations:~~]

[~~(A) the delinquency proceeding shall not be dismissed;~~]

[~~(B) neither the impaired insurer nor its assets shall be returned to the control of its shareholders or private management;~~]

[~~(C) it shall not be permitted to solicit or accept new business or have any suspended or revoked license restored; and~~]

[~~(ii) (A) if the impaired insurer is a domestic insurer, it has been placed under an order of rehabilitation by a court of competent jurisdiction in this state; or~~]

[~~(B) if the impaired insurer is a foreign or alien insurer:~~]

[~~(I) it has been prohibited from soliciting or accepting new business in this state;~~]

[~~(II) its certificate of authority has been suspended or revoked in this state; and~~]

[~~(III) a petition for rehabilitation or liquidation has been filed in a court of competent jurisdiction in its state of domicile by the commissioner of the state.~~]

[~~(3)~~] (2) If a member insurer is an insolvent insurer, the association [~~in its discretion~~] shall [~~either:~~] provide the protections provided by this part to the policyholders of the insolvent insurer by electing in its discretion to proceed under one or more of the options in Subsection (3).

(3) With respect to the covered portions of covered policies of an impaired or insolvent insurer, the association may:

(a) (i) (A) guaranty, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the policies or contracts of the [~~insolvent~~] insurer; or

[~~(ii)~~] (B) assure payment of the contractual obligations of the insolvent insurer; and

[~~(iii)~~] (ii) provide such monies, pledges, guarantees, or other means as are reasonably necessary to discharge such duties; or

[~~(b) with respect only to disability insurance policies, provide benefits and coverages in accordance with Subsection (4).~~]

[~~(4) When proceeding under Subsections (2)(a)(ii) or (3)(b), with respect only to disability insurance policies, the association shall:~~]

(b) provide benefits and coverages in accordance with Subsection (4).

(4) (a) In accordance with Subsection (3)(b), the association may:

(i) assure payment of benefits for premiums identical to the premiums and benefits, except for terms of conversion and renewability, that would have been payable under the policies or contracts of the [~~insolvent~~] insurer, for claims incurred:

[~~(i)~~] (A) with respect to group policies[~~,~~]:

(I) not later than the earlier of the next renewal date under the policies or contracts or 45 days[~~, but~~] after the coverage date; and

(II) in no event less than 30 days[~~,~~] after the coverage date [~~on which the association becomes obligated with respect to the policies~~]; or

[~~(ii)~~] (B) with respect to [~~individual~~] nongroup policies[~~,~~] or contracts:

(I) not later than the earlier of the next renewal date, if any, under the policies or contracts or one year[~~, but~~] from the coverage date; and

(II) in no event less than 30 days[~~,~~] from the coverage date [~~on which the association becomes obligated with respect to the policies~~];

[~~(b)~~] (ii) make diligent efforts to provide 30 days' notice of [~~the~~] any termination of the benefits provided to:

(A) all known insureds[~~,~~] or annuitants for nongroup policies and contracts; or

(B) group [~~policyholders with respect to~~] policy owners for group policies and contracts; and

[~~(c)~~] (iii) with respect to nongroup life and disability insurance policies and annuities, make available substitute coverage on an individual basis, in accordance with [~~the provisions of~~] Subsection (4)[~~(d)~~] (b), to each known insured, annuitant, or owner [~~under an individual policy,~~] and to each individual formerly insured or formerly an annuitant under a group policy who is not eligible for replacement group coverage on an individual basis in accordance with Subsection (4)(b), if the insured or annuitant had a right under law or the terminated policy or annuity contract to:

(A) convert coverage to individual coverage; or [~~to~~]

(B) continue an individual policy in force until a specified age or for a specified time during which the insurer had:

(I) no right unilaterally to make changes in any provision of the policy; or [had]

(II) a right only to make changes in premium by class.

[(d)] (b) (i) In providing the substitute coverage required under Subsection (4)[(c)](a)(iii), the association may offer [either] to:

(A) reissue the terminated coverage; or [to]

(B) issue an alternative policy.

(ii) [Alternate] An alternative or reissued [policies] policy under Subsection (4)(b)(i):

(A) shall be offered without requiring evidence of insurability[,]; and [shall]

(B) may not provide for any waiting period or exclusion that would not have applied under the terminated policy.

(iii) The association may reinsure any alternative or reissued policy.

[(e)] (c) (i) [Alternative policies] An alternative policy adopted by the association shall be subject to the approval of the commissioner.

(ii) The association may adopt alternative policies of various types for future issuance without regard to any particular impairment or insolvency.

[(ii) Alternative policies]

(iii) An alternative policy:

(A) shall contain at least the minimum statutory provisions required in this state; and

(B) provide benefits that are not unreasonable in relation to the premium charged.

(iv) The association shall set the premium for an alternative policy in accordance with [its] a table of [adopted] rates that the association adopts. The premium shall reflect:

(A) the amount of insurance to be provided; and

(B) the age and class of risk of each insured.

(v) For an alternative [policies] policy issued [to insureds] under an individual [policies] policy of the impaired or insolvent insurer[,]:

(A) age shall be determined in accordance with the original policy provisions; and

(B) class of risk shall be the class of risk under the original policy.

(vi) For an alternative [policies] policy issued to individuals insured under a group policy[,]:

(A) age and class of risk shall be determined by the association in accordance with the alternative policy provisions and risk classification standards approved by the commissioner[. However,]; and

(B) the premium may not reflect any changes in the health of the insured after the original policy was last underwritten.

[(iii)] (vii) Any alternative policy issued by the association shall provide coverage of a type similar to that of the policy issued by the impaired or insolvent insurer, as determined by the association.

[(f)] (d) If the association elects to reissue terminated coverage at a premium rate different from that charged under the terminated policy, the premium shall be set by the association in accordance with the amount of insurance provided and the age and class of risk, subject to the approval of the commissioner or by a court of competent jurisdiction.

[(g)] (e) The association's obligations with respect to coverage under any policy of the impaired or insolvent insurer or under any reissued or alternative policy shall cease on the date the coverage or policy is replaced by another similar policy by:

(i) the policyholder[,];

(ii) the insured[,]; or

(iii) the association.

[(h)] (f) (i) With respect to [claims] a claim unpaid as of the coverage date [of insolvency] and [claims] a claim incurred during the period defined in Subsection (4)(a)(i), a provider of health care services, by accepting a payment from the association upon a claim of the provider against an insured whose health care insurer is an insolvent member insurer, agrees to forgive the insured of 20% of the debt which otherwise would be paid by the insurer had it not been insolvent, subject to a maximum of [$4,000] $8,000 being required to be forgiven by any one provider as to each claimant.

(ii) The obligations of a solvent [insurers] insurer to pay all or part of the covered claim are not diminished by the forgiveness provided for in this section.

(5) When proceeding under Subsection [(2)(a)(ii) or] (3)(b) with respect to any policy or contract carrying guaranteed minimum interest rates, the association shall assure the payment or crediting of a rate of interest consistent with Subsection 31A-28-103(2)(b)(iii).

(6) Nonpayment of premiums within 31 days after the date required under the terms of any guaranteed, assumed, alternative, or reissued policy or contract or substitute coverage shall terminate the association's obligations under the policy or coverage under this [chapter] part with respect to the policy or coverage, except with respect to any claims incurred or any net cash surrender value [which] that may be due in accordance with [the provisions of] this [chapter] part.

(7) (a) Premiums due [for coverage after entry of an order of liquidation of an] after the coverage date with respect to the covered portion of a policy or contract of an impaired or insolvent insurer shall belong to and be payable at the direction of the association[, and the].

(b) The association [shall be] is liable to the policy or contract owners for unearned premiums due to

policy or contract owners [~~of the insurer after the entry of the order~~] arising after the coverage date with respect to the covered portion of the policy or contract.

(8) The protection provided by this [~~chapter~~] part does not apply if any guaranty protection is provided to residents of this state by laws of the domiciliary state or jurisdiction of the impaired or insolvent insurer other than this state.

(9) In carrying out its duties under [~~this subsection and~~] Subsections [~~(2)~~] (1) and [~~(3)~~] (2), and subject to approval by [~~the~~] a court in this state, the association may:

(a) impose permanent policy or contract liens in connection with [~~any~~] a guarantee, assumption, or reinsurance agreement, if the association finds that:

(i) the amounts [~~which~~] that can be assessed under this [~~chapter~~] part are less than the amounts needed to assure full and prompt performance of the association's duties under this [~~chapter,~~] part; or [~~that~~]

(ii) the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of the permanent policy or contract liens to be in the public interest;

(b) impose temporary moratoriums or liens on payments of cash values and policy loans, or any other right to withdraw funds held in conjunction with policies or contracts, in addition to any contractual provisions for deferral of cash or policy loan value[~~.~~]; and

(c) if the receivership court imposes a temporary moratorium or moratorium charge on payment of cash values or policy loans, or on any other right to withdraw funds held in conjunction with policies or contracts, out of the assets of the impaired or insolvent insurer, defer the payment of cash values, policy loans, or other rights by the association for the period of the moratorium or moratorium charge imposed by the receivership court, except for claims covered by the association to be paid in accordance with a hardship procedure:

(i) established by the liquidator or rehabilitator; and

(ii) approved by the receivership court.

(10) (a) A deposit in this state held pursuant to law or required by the commissioner for the benefit of creditors, including policy owners, that is not turned over to the domiciliary liquidator upon the entry of a final order of liquidation or order approving a rehabilitation plan of an insurer domiciled in this state or in a reciprocal state, defined in Subsection 31A-27-102(1)(p), shall be promptly paid to the association.

(b) Any amount paid under Subsection (10)(a) to the association less the amount retained by the association shall be treated as a distribution of estate assets pursuant to Subsection 31A-27-337(2).

[~~(10)~~] (11) If the association fails to act within a reasonable period of time as provided in [~~Subsections (2)(a)(ii), (3), and (4)~~] this section, the commissioner shall have the powers and duties of the association under this [~~chapter~~] part with respect to an impaired or insolvent [~~insurers~~] insurer.

[~~(11)~~] (12) The association may render assistance and advice to the commissioner, upon [~~his~~] the commissioner's request, concerning:

(a) rehabilitation[~~,~~];

(b) payment of claims[~~,~~];

(c) continuance of coverage[~~,~~]; or

(d) the performance of other contractual obligations of any impaired or insolvent insurer.

[~~(12)~~] (13) (a) The association has standing to appear or intervene before [~~any~~] a court or agency in this state with jurisdiction over:

(i) an impaired or insolvent insurer concerning which the association is or may become obligated under this [~~chapter~~] part; or

(ii) any person or property against which the association may have rights through subrogation or otherwise. [~~Standing~~]

(b) The standing referred to in Subsection (13)(a) extends to all matters germane to the powers and duties of the association, including:

(i) proposals for reinsuring, modifying, or guaranteeing the policies or contracts of the impaired or insolvent insurer; and

(ii) the determination of the policies or contracts and contractual obligations.

(c) The association [~~also~~] has the right to appear or intervene before a court in another state with jurisdiction over:

(i) an impaired or insolvent insurer for which the association is or may become obligated; or [~~with jurisdiction over a third party~~]

(ii) any person or property against [~~whom~~] which the association may have rights through subrogation of the insurer's policyholders.

[~~(13)~~] (14) (a) Any person receiving benefits under this [~~chapter~~] part shall be considered to have assigned the rights under, and any causes of action against any person for losses arising under, resulting from, or otherwise relating to the covered policy or contract to the association to the extent of the benefits received because of this [~~chapter~~] part, whether the benefits are payments of, or on account of[~~,~~]:

(i) contractual obligations[~~,~~];

(ii) continuation of coverage[~~,~~]; or

(iii) provision of substitute or alternative coverages. [~~The~~]

(b) As a condition precedent to the receipt of any right or benefits conferred by this part upon that person, the association may require an assignment

to it of [~~these~~] the rights and causes of action described in Subsection (14)(a) by any:

(i) payee[~~,~~];

(ii) policy or contract owner[~~,~~];

(iii) beneficiary[~~,~~];

(iv) insured[~~,~~]; or

(v) annuitant [~~as a condition precedent to the receipt of any right or benefits conferred by this chapter upon that person~~].

[~~(b)~~] (c) The subrogation rights obtained by the association under this [~~subsection become third class claims under Section 31A-27-335~~] Subsection (14) shall have the same priority against the assets of the impaired or insolvent insurer as that possessed by the person entitled to receive benefits under this part.

[~~(c)~~] (d) In addition to Subsections [~~(13)~~] (14)(a) [~~and (b)~~] through (c), the association has all common law rights of subrogation and any other equitable or legal remedy [~~which~~] that would have been available to the impaired or insolvent insurer or [~~holder~~] owner, beneficiary, or payee of a policy or contract with respect to the policy or contract, including in the case of a structured settlement annuity any rights of the owner, beneficiary, or payee of the annuity to the extent of benefits received pursuant to this part against a person originally or by succession responsible for the losses arising from the personal injury relating to the annuity or payment of the annuity.

(e) If a provision of this Subsection (14) is invalid or ineffective with respect to any person or claim for any reason, the amount payable by the association with respect to the related covered obligations shall be reduced by the amount realized by any other person with respect to the person or claim that is attributable to the policies, or portion of the policies, covered by the association.

(f) If the association has provided benefits with respect to a covered policy and a person recovers amounts as to which the association has rights as described in this Subsection (14), the person shall pay to the association the portion of the recovery attributable to the covered policies.

[~~(14)~~] (15) (a) [~~The~~] In addition to the rights and powers elsewhere in this part, the association may:

[~~(a)~~] (i) enter into contracts [~~which~~] that are necessary or proper to carry out the provisions and purposes of this [~~chapter~~] part;

[~~(b)~~] (ii) sue or be sued, including taking any legal actions necessary or proper to:

(A) recover any unpaid assessments under Section 31A-28-109; and [~~to~~]

(B) settle claims or potential claims against [~~it~~] the association;

[~~(c)~~] (iii) borrow money to effect the purposes of this [~~chapter, and any notes or other evidence or indebtedness of the association not in default shall be legal investments for domestic insurers and may be carried as admitted assets~~] part;

[~~(d)~~] (iv) employ or retain the persons necessary or the appropriate staff members to:

(A) handle the financial transactions of the association[~~,~~]; and [~~to~~]

(B) perform other functions as become necessary or proper under this [~~chapter~~] part;

[~~(e)~~] (v) take necessary or appropriate legal action to avoid or recover payment of improper claims;

[~~(f)~~] (vi) exercise, for the purposes of this [~~chapter~~] part and to the extent approved by the commissioner, the powers of a domestic life or health insurer, but in no case may the association issue insurance policies or annuity contracts other than those issued to perform its obligation under this [~~chapter~~] part; [~~or~~]

(vii) request information from a person seeking coverage from the association to aid the association in determining the association's obligations under this part with respect to the person;

(viii) take other necessary or appropriate action to discharge the association's duties and obligations under this part or to exercise the association's powers under this part; and

[~~(g)~~] (ix) act as a special deputy liquidator if appointed by the commissioner.

(b) Any note or other evidence of indebtedness of the association under Subsection (15)(a)(iii) that is not in default:

(i) is a legal investment for a domestic insurer; and

(ii) may be carried as admitted assets.

(c) A person seeking coverage from the association shall promptly comply with a request for information by the association under Subsection (15)(a)(vii).

[~~(15)~~] (16) The association may join an organization of one or more other state associations of similar purposes to further the purposes and administer the powers and duties of the association.

(17) (a) Except as provided in Subsection (17)(b), at any time within one year after the coverage date, the association may elect to succeed to the rights and obligations of the member insurer that:

(i) accrue on or after the coverage date; and

(ii) relate to covered policies under any one or more indemnity reinsurance agreements entered into by the member insurer as a ceding insurer and selected by the association.

(b) Notwithstanding Subsection (17)(a), the association may not exercise an election with respect to a reinsurance agreement if the receiver, rehabilitator, or liquidator of the member insurer has previously and expressly disaffirmed the reinsurance agreement.

(c) The election described in Subsection (17)(a) shall be effected by a notice to:

(i) (A) the receiver;

(B) rehabilitator; or

(C) liquidator; and

(ii) the affected reinsurers.

(d) If the association makes an election under Subsection (17)(a), the association shall comply with Subsections (17)(d)(i) through (vi) with respect to the agreements selected by the association.

(i) For contracts covered, in whole or in part, by the association, the association shall be responsible for:

(A) all unpaid premiums due under the agreements for periods both before and after the coverage date; and

(B) the performance of all other obligations to be performed after the coverage date.

(ii) The association may charge contracts covered in part by the association the costs for reinsurance in excess of the obligations of the association, through reasonable allocation methods.

(iii) The association is entitled to any amounts payable by the reinsurer under the agreements with respect to losses or events that:

(A) occur in periods after the coverage date; and

(B) relate to contracts covered by the association, in whole or in part.

(iv) On receipt of any amounts under Subsection (17)(d)(iii), the association shall pay to the beneficiary under the policy or contract on account of which the amounts were paid an amount equal to the excess of the amount received by the association over the benefits paid or payable by the association on account of the policy or contract.

(v) (A) Within 30 days following the association's election, the association and each indemnity reinsurer shall calculate the net balance due to or from the association under each reinsurance agreement as of the date of the association's election, giving full credit to all items paid by either the member insurer, or its receiver, rehabilitator, or liquidator, or the indemnity reinsurer during the period between the coverage date and the date of the association's election.

(B) Either the association or indemnity reinsurer shall pay the net balance due the other within five days of the completion of the calculation under Subsection (17)(d)(v)(A).

(C) If the receiver, rehabilitator, or liquidator has received any amounts due the association pursuant to Subsection (17)(d)(iii), the receiver, rehabilitator, or liquidator shall remit the same to the association as promptly as practicable.

(vi) If the association, within 60 days of the election, pays the premiums due for periods both before and after the coverage date that relate to contracts covered by the association, in whole or in part, the reinsurer may not:

(A) terminate the reinsurance agreements, to the extent the agreements relate to contracts covered by the association, in whole or in part; and

(B) set off any unpaid premium due for periods prior to the coverage date against amounts due the association.

(e) An insurer other than the association shall succeed to the rights and obligations of the association under Subsections (17)(a) through (d) effective as of the date agreed upon by the association and the other insurer and regardless of whether the association has made the election referred to in Subsections (17)(a) through (d) provided that:

(i) the association transfers its obligations to the other insurer;

(ii) the association and the other insurer agree to the transfer;

(iii) the indemnity reinsurance agreements automatically terminate for new reinsurance unless the indemnity reinsurer and the other insurer agree to the contrary;

(iv) the obligations described in Subsection (17)(d)(iv) may not apply on and after the date the indemnity reinsurance agreement is transferred to the third party insurer; and

(v) this Subsection (17)(e) may not apply if the association has previously expressly determined in writing that the association will not exercise the election referred to in Subsections (17)(a) through (d).

(f) (i) This Subsection (17) supersedes the provisions of any law of this state or of any affected reinsurance agreement that provides for or requires any payment of reinsurance proceeds on account of losses or events that occur in periods after the coverage date, to the receiver, liquidator, or rehabilitator of an insolvent member insurer.

(ii) The receiver, rehabilitator, or liquidator shall remain entitled to any amounts payable by the reinsurer under the reinsurance agreement with respect to losses or events that occur in periods prior to the coverage date, subject to applicable setoff provisions.

(g) Except as otherwise expressly provided in Subsections (17)(a) through (f), this Subsection (17) does not:

(i) alter or modify the terms and conditions of the indemnity reinsurance agreements of the insolvent member insurer;

(ii) abrogate or limit any rights of any reinsurer to claim that it is entitled to rescind a reinsurance agreement; or

(iii) give a policy owner or beneficiary an independent cause of action against an indemnity reinsurer that is not otherwise set forth in the indemnity reinsurance agreement.

(18) The board of directors of the association shall have discretion and may exercise reasonable business judgment to determine the means by

which the association is to provide the benefits of this part in an economical and efficient manner.

(19) If the association has arranged or offered to provide the benefits of this part to a covered person under a plan or arrangement that fulfills the association's obligations under this part, the person is not entitled to benefits from the association in addition to or other than those provided under the plan or arrangement.

(20) (a) Venue in a suit against the association arising under this part shall be in Salt Lake County.

(b) The association may not be required to give an appeal bond in an appeal that relates to a cause of action arising under this part.

Section 8. Section 31A-28-109 is amended to read:

31A-28-109. Assessments.

(1) (a) For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers, separately for each [~~account~~] class or subclass, at the time and for the amounts that the board of directors finds necessary. [~~Assessments are~~]

(b) Member liability for an assessment is established as of the coverage date.

(c) Subject to Subsection (1)(d), a called assessment:

(i) is due not less than 30 days after prior written notice to the member [~~insurers. Class B assessments, described in Subsection (2)(b),~~] insurer; and

(ii) shall accrue interest at 10% per annum on and after the due date.

(d) Notwithstanding Subsection (1)(c), the association may:

(i) assess the association's members as of the coverage date; and

(ii) defer the collection of the assessment described in Subsection (1)(d)(i).

(e) An assessment:

(i) has the force and effect of a judgment lien against the member insurer; and

(ii) may not be extinguished until paid.

(2) [~~There are~~] The two classes of assessment[~~:~~] are described in Subsections (2)(a) and (2)(b).

(a) A Class A [~~assessments~~] assessment shall be [~~made~~] authorized and called for the purpose of meeting administrative and legal costs and other expenses [~~and examinations conducted under the authority of Subsection 31A-28-112 (5)~~]. A Class A [~~assessments~~] assessment may be [~~made~~] authorized and called whether or not related to a particular impaired or insolvent insurer.

(b) A Class B [~~assessments~~] assessment shall be [~~made~~] authorized and called to the extent necessary to carry out the powers and duties of the association under Section 31A-28-108 with regard to an impaired or an insolvent insurer.

(3) (a) (i) The amount of [~~any~~] a Class A assessment:

(A) shall be determined by the board of directors; and

(B) may be [~~made~~] authorized and called on a pro rata or non-pro rata basis.

(ii) If the Class A assessment is pro rata, the board of directors may credit the assessment against future Class B assessments. [~~A~~]

(iii) The total of all non-pro rata [~~assessment~~] assessments may not exceed [~~$150~~] $300 per member insurer in any one calendar year.

(b) The amount of [~~any~~] a Class B assessment shall be allocated for assessment purposes among [~~the accounts~~] subclasses pursuant to an allocation formula [~~which~~] that may be based on:

(i) the premiums or reserves of the impaired or insolvent insurer; or [~~based on~~]

(ii) any other standard determined by the board of directors in [~~its~~] the board of directors' sole discretion [~~to be~~] as being fair and reasonable under the circumstances.

(c) (i) A Class B [~~assessments~~] assessment against a member [~~insurers~~] insurer for [~~each account and subaccount~~] the life insurance subclass, the annuity subclass, and the unallocated annuity subclass shall be in the proportion that the premiums received on business in this state by [~~each assessed~~] the member insurer on policies or contracts included in the subclass for the three most recent calendar years for which information is available preceding the year which includes the coverage date bears to the premiums received on business in this state for the same [~~calendar years~~] period by all assessed member insurers.

(ii) [~~"Premiums received" is based~~] A Class B assessment against a member insurer for a disability insurance subclass shall be in the proportion that the premiums received on business in this state by each assessed member insurer on policies or contracts included in the subclass for the most recent calendar year for which information is available preceding the year in which the assessment is made bears to the premiums received on business in this state on policies or contracts [~~covered by each account~~] included in the subclass for [~~the three most recent calendar years for which information is available, which precede the year in which the insurer became impaired or insolvent~~] that calendar year by all assessed member insurers.

(d) Assessments for funds to meet the requirements of the association with respect to an impaired or insolvent insurer may not be [~~made~~] authorized or called until necessary to implement the purposes of this [~~chapter~~] part.

(e) Classification of assessments and premiums under Subsection (3)(b) and computation of assessments under this Subsection (3) shall be

made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible.

(4) (a) The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board of directors, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. [~~In the event~~]

(b) If an assessment against a member insurer is abated or deferred in whole or in part under Subsection (4)(a), the amount by which the assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section.

(c) Once a condition that caused a deferral is removed or rectified, the member insurer shall pay all assessments that were deferred pursuant to a repayment plan approved by the association.

(5) (a) (i) [~~The~~] Subject to Subsection (5)(b), the total of all assessments [~~upon~~] authorized by the association on a member insurer for [~~the life and annuity account, and for each subaccount, may not in any one calendar year exceed 2% and the disability account~~] each subclass may not in any one calendar year exceed 2% [~~of the insurer's yearly average premiums received in this state on the policies and contracts covered by the account during the three calendar years preceding the year in which the insurer became an impaired or insolvent insurer. If the maximum assessment, together with the other assets of the association in any account, does not provide in any one year in either account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds shall be assessed as soon as permitted by this chapter~~] of that member's total average annual assessable premium in that subclass as defined in Subsection (3).

(ii) If two or more assessments are authorized in one calendar year with respect to one or more insurers that become impaired or insolvent in different calendar years, the average annual premiums for purposes of the aggregate assessment percentage limitation in Subsection (5)(a)(i) shall be equal and limited to the highest of the total average annual assessable premiums of the different calendar year periods involved in the assessment or assessments.

(iii) If the maximum assessment together with the other assets of the association do not provide in one year an amount sufficient to carry out the responsibilities of the association, the necessary additional funds shall be assessed as soon after as permitted by this part.

(b) The board of directors may provide in the plan of operation a method of allocating funds among claims, whether relating to one or more impaired or insolvent insurers, when the maximum assessment will be insufficient to cover anticipated claims.

(c) If [~~a 1%~~] the maximum assessment for [~~any subaccount of~~] the life insurance [~~and~~] or annuity [~~account~~] subclass in any one year does not provide an amount sufficient to carry out the responsibilities of the association, the board of directors shall assess [~~all subaccounts~~] the other of the subclasses of the life insurance and annuity [~~account~~] class for the necessary additional amount:

(i) pursuant to Subsection (3)(b)[~~,~~]; and

(ii) subject to the maximum stated in Subsection (5)(a).

(6) (a) The board of directors may, by an equitable method established in the plan of operation, refund to member insurers in proportion to the contribution of each insurer to that [~~account~~] subclass the amount by which the assets of the [~~account~~] subclass exceed the amount the board of directors finds is necessary to carry out [~~during the coming year~~] the obligations of the association with regard to that [~~account~~] subclass, including assets accruing from:

(i) assignment[~~,~~];

(ii) subrogation[~~,~~];

(iii) net realized gains[~~,~~]; and

(iv) income from investments. [~~A~~]

(b) Notwithstanding Subsection (6)(a), a reasonable amount may be retained [~~in any account~~] to provide funds for the continuing expenses of the association and for future losses.

(7) [~~It shall be proper for any~~] A member insurer, in determining its premium rates and policyowner dividends as to any kind of insurance within the scope of this [~~chapter~~] part, [~~to~~] may consider the amount reasonably necessary to meet its assessment obligations under this [~~chapter~~] part.

(8) (a) The association shall issue to each insurer paying an assessment under this [~~chapter~~] part, other than a Class A assessment, a certificate of contribution, in a form approved by the commissioner, for the amount of the assessment [~~so~~] paid.

(b) All outstanding certificates described in Subsection (8)(a) shall be of equal dignity and priority without reference to amounts or dates of issue.

(c) (i) A certificate of contribution described in Subsection (8)(a) may be shown by the insurer in its financial statement as an asset [~~in such form and for such amount, if any, and period of time as the commissioner may approve~~] in the amount of the certificate of contribution less the amount by which the insurer's premium taxes have already been reduced with respect to the certificate.

(ii) For good cause shown, the commissioner may order the insurer to show a different amount in its financial statement than the amount under Subsection (8)(c)(i).

Section 9. Section 31A-28-110 is amended to read:

31A-28-110. Plan of operation.

(1) (a) The association shall submit to the commissioner a plan of operation and any

amendments to the plan necessary or suitable to assure the fair, reasonable, and equitable administration of the association.

(b) The plan of operation and any amendments become effective:

(i) upon the commissioner's written approval; or

(ii) after 30 days from the date the plan of operation or amendment is submitted to the commissioner if [~~he~~] the commissioner has not disapproved [~~it~~] the plan or amendment.

[~~(b)~~] (c) (i) If the association fails to submit a suitable amendment to the plan [~~of operation prior to November 1, 1991, or if at any time after November 1, 1991, the association fails to submit suitable amendments to the plan~~], the commissioner, after notice and hearing, shall adopt reasonable rules [~~which~~] that are necessary or advisable to effectuate the provisions of this part. [~~These~~]

(ii) The rules described in Subsection (1)(c)(i) shall continue in force until:

(A) modified by the commissioner; or

(B) superseded by [~~a~~] an amendment to the plan:

(I) submitted by the association; and

(II) approved by the commissioner.

(2) All member insurers shall comply with the plan of operation.

(3) The plan of operation shall, in addition to [~~requirements enumerated elsewhere~~] any other requirement in this part:

(a) establish procedures for handling the assets of the association;

(b) establish the amount and method of reimbursing members of the board of directors under Section 31A-28-107;

(c) establish regular places and times for meetings of the board of directors, including telephone conference calls;

(d) establish procedures for records to be kept of all financial transactions of:

(i) the association[~~, its~~];

(ii) the association's agents[~~,~~]; and

(iii) the board of directors;

(e) subject to Section 31A-28-107, establish the procedures [~~whereby selections~~] to be followed for [~~the~~]:

(i) selecting members to the board of directors [~~will be made~~]; and [~~submitted~~]

(ii) submitting the selected members to the commissioner for approval;

(f) establish any additional procedures for assessments under Section 31A-28-109; and

(g) contain additional provisions necessary or proper for the execution of the powers and duties of the association.

(4) (a) The plan of operation may provide that any or all powers and duties of the association, except those under Subsection 31A-28-108[~~(13)(e)~~](14)(d) and Section 31A-28-109, are delegated to a corporation, association, or other organization [~~which~~] that will perform functions similar to those of the association, or its equivalent, in two or more states. [~~Such a~~]

(b) A corporation, association, or organization described in Subsection (4)(a) shall be:

(i) reimbursed for any payments made on behalf of the association; and [~~shall be~~]

(ii) paid for its performance of any function of the association.

(c) A delegation under this Subsection (4):

(i) shall take effect only with the approval of [~~both~~]:

(A) the board of directors; and

(B) the commissioner[~~,~~]; and

(ii) may be made only to a corporation, association, or organization [~~which~~] that extends protection not substantially less favorable and effective than that provided by this [~~chapter~~] part.

Section 10. Section 31A-28-111 is amended to read:

31A-28-111. Duties and powers under this part.

In addition to the duties and powers enumerated elsewhere in this [~~chapter.~~] part, the persons listed in this section have the duties and powers described in Subsections (1) through (6).

(1) The commissioner shall:

(a) upon request of the board of directors, provide the association with a statement of the premiums [~~in this state~~] for each member insurer [~~upon request of the board of directors;~~]:

(i) in this state; and

(ii) any other appropriate state;

(b) if an impairment is declared and the amount of the impairment is determined, serve a demand upon the impaired insurer to make good the impairment within a reasonable time [~~after an impairment is declared and the amount of the impairment is determined:~~]; and

[~~(i) notice to the impaired insurer shall constitute notice to its shareholders, if any;~~]

[~~(ii) the failure of the insurer to promptly comply with the commissioner's demand does not excuse the association from the performance of its powers and duties under this part;~~]

(c) in a liquidation or rehabilitation proceeding involving a domestic insurer, be appointed as the liquidator or rehabilitator [~~in any liquidation or~~

~~rehabilitation proceeding involving a domestic insurer~~].

(2) Notice to the impaired insurer under Subsection (1)(b) shall constitute notice to the shareholders of the impaired insurer if the impaired insurer has shareholders.

(3) The failure of the insurer to promptly comply with the commissioner's demand under Subsection (1)(b) does not excuse the association from the performance of its powers and duties under this part.

[~~(2)~~] (4) (a) After notice and hearing, the commissioner may suspend or revoke the certificate of authority to transact insurance in this state of any member insurer [~~which~~] that fails to:

(i) pay an assessment when due; or [~~which fails to~~]

(ii) comply with the plan of operation.

(b) (i) As an alternative to suspending or revoking a certificate of authority under Subsection (4)(a), the commissioner may levy a forfeiture on any member insurer [~~which~~] that fails to pay an assessment when due.

(ii) A forfeiture described in Subsection (4)(b)(i):

(A) may not exceed 5% of the unpaid assessment per month[~~. However, no forfeiture shall~~]; and

(B) may not be less than $100 per month.

[~~(3)~~] (5) (a) [~~Any~~] A final action of the board of directors or the association may be appealed to the commissioner by any member insurer if appeal is taken within 60 days of the date the member insurer received notice of the final action being appealed.

(b) If a member [~~company~~] insurer is appealing an assessment, the amount assessed shall be:

(i) paid to the association; and [~~shall be~~]

(ii) made available to meet association obligations during the pendency of an appeal.

(c) If the appeal on the assessment described in Subsection (5)(b) is upheld, the amount paid in error or excess shall be returned to the member [~~company~~] insurer.

(d) Any final action or order of the commissioner shall be subject to judicial review in a court of competent jurisdiction in accordance with the laws of this state that apply to the actions or orders of the commissioner.

[~~(4)~~] (6) The liquidator, rehabilitator, or conservator of any impaired insurer shall notify all interested persons of the effect of this [~~chapter~~] part.

Section 11. Section 31A-28-112 is amended to read:

31A-28-112. Prevention of insolvencies.

[~~To~~] (1) The purpose of this section is to aid in the detection and prevention of insurer insolvencies or impairments[~~:~~].

[~~(1)~~] (2) [~~It is the duty of the~~] The commissioner shall:

(a) [~~to~~] notify the [~~commissioners~~] commissioner of every state[~~, the territories of the United States, and the District of Columbia~~] within 30 days following the action taken or the date the action occurs, when [~~he~~] the commissioner takes [~~either of~~] the following actions against a member insurer:

(i) revokes its license; [~~or~~]

(ii) suspends its license[~~.~~]; or

[~~(b) Such notice shall be mailed to all commissioners within 30 days following the action taken or the date on which the action occurs.~~]

(iii) makes a formal order that the member insurer:

(A) restrict its premium writing;

(B) obtain additional contributions to surplus;

(C) withdraw from the state;

(D) reinsure all or any part of its business; or

(E) increase capital, surplus, or any other account for the security of policy owners or creditors;

[~~(c) To~~] (b) report to the board of directors when [~~he~~] the commissioner has:

(i) taken any of the actions set forth in Subsection (2)(a); or [~~has~~]

(ii) received a report from any other commissioner indicating that [~~any such~~] an action described in Subsection (2)(a) has been taken in another state[~~. The~~];

(c) include in the report to the board of directors [~~shall contain~~] required by Subsection (2)(b):

(i) all significant details of the action taken; or

(ii) the report received from another commissioner[~~.~~];

(d) [~~To~~] promptly report to the board of directors when [~~he~~] the commissioner has reasonable cause to believe from [~~any~~] an examination of any member [~~company~~] insurer, whether completed or in process, that the [~~company~~] insurer may be an impaired or insolvent insurer[~~.~~]; and

(e) [~~To~~] furnish to the board of directors the National Association of Insurance Commissioners [~~(NAIC)~~] Insurance Regulatory Information System [~~(IRIS)~~] ratios and listings of companies not included in the ratios developed by [~~NAIC~~] the National Association of Insurance Commissioners.

(3) (a) The board of directors may use the information contained [~~therein~~] in the ratios and listings described in Subsection (2)(e) in carrying out [~~its~~] the board of directors' duties and responsibilities under this section. [~~Such~~]

(b) The report and the information contained in the ratios and listings shall be kept confidential by the board of directors until the commissioner or other lawful authority publishes the information.

[~~(2)~~] (4) The commissioner may seek the advice and recommendations of the board of directors

concerning any matter affecting [~~his~~] the commissioner's duties and responsibilities regarding the financial condition of member insurers and companies seeking admission to transact insurance business in this state.

[~~(3)~~] (5) (a) The board of directors may[~~, upon majority vote,~~] make reports and recommendations to the commissioner upon any matter germane to:

(i) the solvency, liquidation, rehabilitation, or conservation of any member insurer; or [~~germane to~~]

(ii) the solvency of any company seeking to do an insurance business in this state.

(b) The reports and recommendations of the board of directors described in Subsection (5)(a) may not be considered public documents.

[~~(4) It is the duty of the~~]

(6) The board of directors may, upon majority vote, [~~to~~] notify the commissioner of any information indicating [~~any~~] a member insurer may be an impaired or insolvent insurer.

[~~(5) (a)~~] (7) The board of directors may[~~, upon majority vote, request that the commissioner order an examination of any member insurer which the board in good faith believes may be an impaired or insolvent insurer. Within 30 days of the receipt of the request the commissioner shall begin the examination. The examination may be conducted as a NAIC examination or may be conducted by any person designated by the commissioner. The cost of the examination shall be paid by the association. The examination report shall be treated as are other examination reports. Subject to the commissioner's compliance with Subsection (1), the examination report may not be released to the board of directors prior to its release to the public~~] make recommendations to the commissioner for the detection and prevention of insurer insolvencies.

[~~(b) The commissioner shall notify the board of directors when the examination is completed. The request for an examination shall be kept on file by the commissioner and may not be open to public inspection prior to the release of the examination report to the public.~~]

[~~(6) The board of directors may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer insolvencies.~~]

[~~(7)~~] (8) (a) At the conclusion of any insurer insolvency in which the association was obligated to pay covered claims, the board of directors shall prepare a report to the commissioner containing the information the board of directors has in its possession bearing on the history and causes of the insolvency. [~~The board shall cooperate with the boards of directors of guaranty associations in other states in~~]

(b) In preparing a report on the history and causes of insolvency of a particular insurer, [~~and~~] the board of directors may cooperate with:

(i) the board of directors of a guaranty association in another state; or

(ii) an organization described in Subsection 31A-28-108(16).

(c) The board of directors may adopt by reference any report prepared by [~~other~~]:

(i) a guaranty association in another state [~~associations.~~]; or

(ii) an organization described in Subsection 31A-28-108(16).

Section 12. Section 31A-28-113 is amended to read:

31A-28-113. Credit for assessments paid.

(1) (a) A member insurer may offset against its premium tax liability to this state an assessment described in Subsection 31A-28-109(2)(b) to the extent of 20% of the amount of the assessment for each of the five calendar years following the year in which the assessment was paid.

(b) To the extent [~~these~~] that the offsets described in Subsection (1)(a) exceed premium tax liability, [~~they~~] the offsets may be carried forward and used to offset premium tax liability in future years. [~~In the event~~]

(c) If a member insurer ceases doing business, all uncredited assessments may be credited against its premium tax liability for the year it ceases doing business.

(2) (a) [~~Any sums which~~] Monies shall be paid by the insurers to the state in a manner required by the State Tax Commission if the monies:

(i) are acquired by refund [~~from the association by member insurers under~~] in accordance with Subsection 31A-28-109(6)[~~,~~] from the association by member insurers; and [~~which~~]

(ii) have been offset against premium taxes as provided in Subsection (1)[~~, shall be paid by the insurers to the state in a manner required by the State Tax Commission~~].

(b) The association shall notify the commissioner that the refunds described in Subsection (2)(a) have been made.

Section 13. Section 31A-28-114 is amended to read:

31A-28-114. Miscellaneous provisions.

(1) Nothing in this [~~chapter~~] part shall be construed to reduce the liability for unpaid assessments of the insureds of an impaired or insolvent insurer operating under a plan with assessment liability.

(2) (a) Records shall be kept of all [~~negotiations and~~] meetings [~~in which the association or its representatives are involved~~] of the board of directors to discuss the activities of the association in carrying out it powers and duties under Section 31A-28-108.

(b) Records of [~~such negotiations or meetings shall be made public only upon the termination of a~~

~~liquidation, rehabilitation, or conservation proceeding involving the impaired or insolvent insurer, upon the termination of~~] the association with respect to an impaired or insolvent insurer may not be disclosed before the earlier of:

(i) the termination of a liquidation, rehabilitation, or conservation proceeding involving the impaired or insolvent insurer;

(ii) the termination of the impairment or insolvency of the insurer[~~,~~]; or

(iii) upon the order of a court of competent jurisdiction.

(c) Nothing in this Subsection (2) shall limit the duty of the association to render a report of its activities under Section 31A-28-115.

(3) (a) For the purpose of carrying out its obligations under this [~~chapter~~] part, the association shall be considered to be a creditor of [~~the~~] an impaired or insolvent insurer to the extent of assets attributable to covered policies reduced by any amounts to which the association is entitled as subrogee pursuant to Subsection 31A-28-108[~~(13)~~](14).

(b) Assets of the impaired or insolvent insurer attributable to covered policies shall be used to continue all covered policies and pay all contractual obligations of the impaired or insolvent insurer as required by this [~~chapter~~] part.

[~~(b)~~] (c) As used in this Subsection (3), assets attributable to covered policies are that proportion of the assets which the reserves that should have been established for covered policies bear to the reserves that should have been established for all policies of insurance written by the impaired or insolvent insurer.

[~~(c) The creditor status obtained by the association under Subsection (3)(a) entitles it to file a third class claim under Section 31A-27-335.~~]

(4) (a) As a creditor of the impaired or insolvent insurer under Subsection (3) and consistent with Section 31A-27-335, the association and any other similar association are entitled to receive a disbursement of assets out of the marshaled assets, from time to time as the assets become available to reimburse the association and any other similar association.

(b) If, within 120 days of a final determination of insolvency of an insurer by the receivership court, the liquidator has not made an application to the court for the approval of a proposal to disburse assets out of marshaled assets to all guaranty associations having obligations because of the insolvency, the association is entitled to make application to the receivership court for approval of the association's proposal for disbursement of these assets.

[~~(4)~~] (5) (a) Prior to the termination of any liquidation, rehabilitation, or conservation proceeding, the court may take into consideration the contributions of the respective parties, including:

(i) the association[~~,~~];

(ii) the shareholders[~~,~~];

(iii) policyowners of the insolvent insurer[~~,~~]; and

(iv) any other party with a bona fide interest in making an equitable distribution of the ownership rights of the insolvent insurer.

(b) In making [~~such~~] a determination[~~, consideration shall be given to~~] under Subsection (5)(a), the court shall consider the welfare of the policyholders of the continuing or successor insurer.

[~~(b)~~] (c) A distribution to any stockholder of an impaired or insolvent insurer may not be made until and unless the total amount of valid claims of the association with interest has been fully recovered by the association for funds expended in carrying out its powers and duties under Section 31A-28-108 with respect to the insurer.

(6) (a) If an order for liquidation or rehabilitation of an insurer domiciled in this state has been entered, the receiver appointed under the order shall have a right to recover on behalf of the insurer, from any affiliate that controlled the insurer, the amount of distributions, other than stock dividends paid by the insurer on its capital stock, made at any time during the five years preceding the petition for liquidation or rehabilitation subject to the limitations of Subsections (6)(b) through (d).

(b) A distribution described in Subsection (6)(a) may not be recovered if the insurer shows that:

(i) when paid the distribution was lawful and reasonable; and

(ii) the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

(c) (i) A person that was an affiliate that controlled the insurer at the time the distributions were paid shall be liable up to the amount of distributions received.

(ii) A person that was an affiliate that controlled the insurer at the time the distributions were declared shall be liable up to the amount of distributions that would have been received if they had been paid immediately.

(iii) If two or more persons are liable with respect to the same distributions, they shall be jointly and severally liable.

(d) The maximum amount recoverable under this Subsection (6) shall be the amount needed in excess of all other available assets of the insolvent insurer to pay the contractual obligations of the insolvent insurer.

(e) If any person liable under Subsection (6)(c) is insolvent, all of its affiliates that controlled it at the time the distribution was paid shall be jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate.

Section 14. Section 31A-28-115 is amended to read:

31A-28-115. Examination of the association -- Annual report.

(1) The association shall be subject to examination and regulation by the commissioner.

(2) The board of directors shall submit to the commissioner each year, not later than 120 days after the association's fiscal year[~~,~~]:

(a) a financial report in a form approved by the commissioner; and

(b) a report of its activities during the preceding fiscal year.

(3) At the request of a member insurer, the association shall provide the member insurer with a copy of a report submitted under Subsection (2).

Section 15. Section 31A-28-117 is amended to read:

31A-28-117. Immunity.

(1) [~~There shall be~~] For any action or omission committed in the performance of their powers and duties under this part, there is no liability on the part of, and no cause of action of any nature shall arise against[~~,~~]:

(a) any member insurer [~~or its~~];

(b) a member insurer's agents or employees[~~,~~];

(c) the association [~~or its~~];

(d) the association's:

(i) agents or employees[~~,~~]; or

(ii) members of the board of directors [~~or their~~];

(e) representatives[~~, or~~] of persons described in Subsections (1)(a) through (d);

(f) the commissioner; or [~~his~~]

(g) the commissioner's representatives [~~for any action or omission committed in the performance of their powers and duties under this chapter. This~~].

(2) The immunity described in Subsection (1) extends to:

(a) the participation in any organization of one or more other state associations of similar purposes [~~and to any such~~];

(b) an organization described in Subsection (2)(a); and [~~its~~]

(c) the agents or employees of an organization described in Subsection (2)(a).

Section 16. Section 31A-28-119 is amended to read:

31A-28-119. Prohibited advertisement of the association -- Notice to policyholders.

(1) (a) [~~A~~] Except as provided in Subsection (1)(b), a person, including an insurer, agent, or affiliate of an insurer may not make, publish, disseminate, circulate, or place before the public, or cause directly or indirectly to be made, published, disseminated, circulated, or placed before the public, in any newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio station or television station, or in any other way, any advertisement, announcement, or statement written or oral, which uses the existence of the association for the purpose of sales, solicitation, or inducement to purchase any form of insurance [~~covered by the association under this chapter. However,~~].

(b) Notwithstanding Subsection (1)(a), this section does not apply to:

(i) the association; or

(ii) any other entity [~~which~~] that does not sell or solicit insurance.

(2) (a) Prior to January 1, [~~1992~~] 2002, the association shall:

(i) prepare a summary document describing the general purposes and current limitations of this [~~chapter~~] part that complies with Subsection (3)[~~. The summary shall be submitted~~]; and

(ii) submit the summary document described in Subsection (2)(a)(i) to the commissioner for approval.

(b) Sixty days after [~~receiving~~] the [~~commissioner's approval~~] day on which the commissioner approves the summary document described in Subsection (2)(a), [~~no~~] an insurer may not deliver a policy or contract [~~described in Subsection 31A-28-103 (2)(a)~~] to a policy or contract [~~holder~~] owner unless the summary document is also delivered to the policy or contract [~~holder~~] owner prior to, or at the time of, delivery of the policy or contract[~~, except as provided in Subsection (4)~~].

(c) The summary document shall [~~also~~] be available upon request by a [~~policyholder~~] policy owner.

[~~(c)~~] (d) The distribution, delivery, or contents or interpretation of the summary [~~may not state~~] document does not guarantee that:

(i) the policy or the contract is covered in the event of the impairment or insolvency of a member insurer; or

(ii) the [~~holder~~] owner of the policy or contract [~~would be~~] is covered in the event of the impairment or insolvency of a member insurer.

[~~(d)~~] (e) The summary document shall be revised by the association as amendments to this part may require.

[~~(e)~~] (f) Failure to receive the summary document as required in Subsection (2)(b) does not give the policyholder, contract holder, certificate holder, or insured any greater rights than those stated in this part.

(3) (a) The summary document prepared under Subsection (2) shall contain a clear and conspicuous disclaimer on its face.

(b) The commissioner shall, by rule, establish the form and content of the disclaimer[~~. The~~] described in Subsection (3)(a), except that the disclaimer shall:

[~~(a)~~] (i) state the name and address of:

(A) the association; and

(B) the insurance department;

[~~(b)~~] (ii) prominently warn the policy or contract [~~holder~~] owner that:

(A) the association may not cover the policy; or[~~,~~]

(B) if coverage is available, [~~that~~] it [~~may be~~] is:

(I) subject to substantial limitations [~~or~~] and exclusions; and

(II) conditioned on continued residence in the state;

(iii) state the types of policies for which the association will provide coverage;

[~~(c)~~] (iv) state that the insurer and its agents are prohibited by law from using the existence of the association for the purpose of sales, solicitation, or inducement to purchase any form of insurance;

[~~(d) emphasize~~] (v) state that the policy or contract [~~holder~~] owner should not rely on coverage under the association when selecting an insurer; [~~and~~]

(vi) explain the rights available and procedures for filing a complaint to allege a violation of this part; and

[~~(e)~~] (vii) provide other information as directed by the commissioner including sources for information about the financial condition of insurers provided that the information:

(A) is not proprietary; and

(B) is subject to disclosure under public records laws.

(4) [~~No~~] (a) An insurer or agent may not deliver a policy or contract described in Subsection 31A-28-103(2)(a) and wholly excluded under Subsection 31A-28-103(2)(b)(i) from coverage under this [~~chapter~~] part unless the insurer or agent, prior to or at the time of delivery, gives the policy or contract holder a separate written notice [~~which~~] that clearly and conspicuously discloses that the policy or contract is not covered by the association.

(b) The commissioner shall by rule specify the form and content of the notice required by Subsection (4)(a).

(5) A member insurer shall retain evidence of compliance with Subsection (2) for the later of:

(a) three years; or

(b) until the conclusion of the next market conduct examination by the department of insurance where the member insurer is domiciled.

Section 17. Section 31A-28-120 is enacted to read:

31A-28-120. Prospective application.

Notwithstanding any prior or subsequent law, the provisions of this part that are in effect on the date on which the association first becomes obligated for the policies or contracts of an insolvent or impaired member shall govern the association's rights and obligations to the policyholders of the insolvent or impaired member.

CHAPTER 162
H. B. 110
Passed February 23, 2001
Approved March 15, 2001
Effective July 1, 2001

SALES TAX REFUND FOR QUALIFIED EMERGENCY FOOD AGENCIES

Sponsor: Judy Ann Buffmire

This act modifies the Sales and Use Tax Act by allowing an association of governments created under the Interlocal Cooperation Act to claim a sales tax refund as a qualified emergency food agency. The act provides purposes for which sales tax refund monies may be used, provides that the State Community Services Office shall certify, monitor, and decertify qualified emergency food agencies for purposes of the sales tax refund, and makes technical changes. This act takes effect on July 1, 2001.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
9-4-1404, as enacted by Chapter 286, Laws of Utah 2000
59-12-901, as enacted by Chapter 264, Laws of Utah 1997
59-12-902 (Effective 07/01/01), as last amended by Chapters 253 and 325, Laws of Utah 2000

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

Section 1. Section 9-4-1404 is amended to read:

9-4-1404. Duties of office.

The office shall:

(1) coordinate state activities designed to reduce poverty;

(2) encourage entities in the private sector to participate in efforts to ameliorate poverty in the community;

(3) cooperate with agencies of local, state, and federal government in reducing poverty and implementing community, social, and economic programs;

(4) receive and expend funds for the purposes outlined in this part;

(5) enter into contracts with and award grants to public and private nonprofit agencies and organizations;

(6) develop a state plan based on needs identified by community action agencies and community action statewide organizations;

(7) designate community action agencies to receive funds through the Community Services Block Grant program;

(8) fund community action agencies and community action statewide organizations;

(9) make rules in conjunction with the division pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act, to carry out the purposes of this part;

(10) provide assistance to local governments or private organizations for the purpose of establishing and operating a community action agency;

(11) provide technical assistance to community action agencies to improve program planning, program development, administration, and the mobilization of public and private resources;

(12) convene public meetings which provide citizens the opportunity to comment on public policies and programs to reduce poverty;

(13) advise the governor and Legislature of the nature and extent of poverty in the state and make recommendations concerning changes in state and federal policies and programs;

(14) encourage Utah's nonprofit humanitarian assistance agencies serving low-income persons by facilitating, coordinating, training, partnerships, and providing technical assistance in addressing Utah's low-income persons by enhancing management, improving service and program delivery, and preserving flexibility and local initiative;

(15) develop and implement management goals which fulfill the Community Services Block Grant mission, state requirements, and the mandates of federal legislation;

(16) prepare a Community Services Block Grant plan which contains provisions describing how the state will carry out the assurances of the Community Services Block Grant Act;

(17) act as the state agency responsible for the evaluation and improvement of emergency food assistance services in the state;

(18) monitor the impact of social policies on the emergency food network;

(19) provide training and technical assistance to all grantees to assist them in program development and implementation, compliance with state and federal regulations, and reporting and management information systems;

(20) certify, monitor, and decertify [~~food pantries eligible for state~~] qualified emergency food agencies for purposes of the sales tax [~~rebates~~] refund under Section 59-12-902; and

(21) administer other programs to alleviate poverty assigned to the office.

Section 2. Section 59-12-901 is amended to read:

59-12-901. Definitions.

As used in this part:

(1) "Association of governments" means the following created under the authority of Title 11, Chapter 13, Interlocal Cooperation Act:

(a) an association of governments; or

(b) a regional council that acts as an association of governments.

[~~(1)~~] (2) "Consumer price index" is as described in Section [~~(~~]1[~~)~~](f)(4), Internal Revenue Code, and defined in Section [~~(~~]1[~~)~~](f)(5), Internal Revenue Code.

[~~(2)~~] (3) "Pounds of food donated" means the aggregate number of pounds of food donated to a qualified emergency food agency:

(a) on or after January 1, 1998; and

(b) for which sales or use tax was paid under Part 1, Tax Collection, by the person donating the food.

[~~(3)~~] (4) "Qualified emergency food agency" means an organization that is:

(a) [~~is~~] (i) exempt from federal income taxation under Section 501(c)(3), Internal Revenue Code; or

(ii) an association of governments;

(b) as part of its activities operates a program[~~,~~ ~~the~~] that has as the program's primary purpose [~~of which is~~] to:

(i) warehouse and distribute food to other agencies and organizations providing food to low-income persons; or

(ii) provide food directly to low-income persons; and

(c) is certified to claim a refund by the [~~Division of Community Development created in Section 9-4-201~~] State Community Services Office in accordance with Section 9-4-1404.

Section 3. Section 59-12-902 (Effective 07/01/01) is amended to read:

59-12-902 (Effective 07/01/01). Sales tax refund for qualified emergency food agencies -- Use of amounts received as refund -- Administration -- Rulemaking authority.

(1) Beginning on January 1, 1998, a qualified emergency food agency may claim a sales tax refund as provided in this section on the pounds of food donated to the qualified emergency food agency.

(2) (a) Subject to the adjustments provided for in Subsection (2)(b), a qualified emergency food agency may claim a refund in an amount equal to the pounds of food donated to the qualified emergency food agency multiplied by:

(i) $1.70; and

(ii) the sum of:

(A) 4.75%; and

(B) except as provided in Subsection (2)(c), the sum of the tax rates provided for in Subsection (2)(b).

(b) Tax rates authorized under the following apply to Subsection (2)(a)(ii)(B):

(i) the lowest tax rate imposed by a county, city, or town under Section 59-12-204, but only if all of the counties, cities, and towns in the state impose the tax under Section 59-12-204;

(ii) the lowest tax rate imposed by a county, city, or town under Section 59-12-205, but only if all of the counties, cities, and towns in the state impose the tax under Section 59-12-205;

(iii) the tax rate authorized by Section 59-12-501 or Section 59-12-1001, but only if all of the counties, cities, and towns in the state impose the tax:

(A) under Section 59-12-501; or

(B) under Section 59-12-1001;

(iv) the tax rate authorized by Section 59-12-502, but only if all of the counties, cities, and towns in the state impose the tax under Section 59-12-502;

(v) the tax rate authorized by Section 59-12-703, but only if all of the counties in the state impose the tax under Section 59-12-703; and

(vi) the tax rate authorized by Section 59-12-1102, but only if all of the counties in the state impose the tax under Section 59-12-1102.

(c) Tax rates authorized under the following do not apply to Subsection (2)(a)(ii)(B):

(i) Subsection 59-12-103(2)(a)(i);

(ii) Subsection 59-12-103(2)(b)(i);

(iii) Subsection 59-12-103(2)(c)(i);

(iv) Section 59-12-301;

(v) Section 59-12-352;

(vi) Section 59-12-353;

(vii) Section 59-12-401;

(viii) Section 59-12-402;

(ix) Section 59-12-603;

(x) Section 59-12-802;

(xi) Section 59-12-804;

(xii) Section 59-12-1201; or

(xiii) Section 59-12-1302.

(d) Beginning on January 1, 1999, the commission shall annually adjust on or before the second Monday of February the $1.70 provided in Subsection (2)(a)(i) by a percentage equal to the percentage difference between the food at home category of the Consumer Price Index for:

(i) the preceding calendar year; and

(ii) calendar year 1997.

(3) To claim a sales tax refund under this section, a qualified emergency food agency shall file an application with the commission.

(4) A qualified emergency food agency may use amounts received as a sales tax refund under this section only for a purpose related to:

(a) warehousing and distributing food to other agencies and organizations providing food to low-income persons; or

(b) providing food directly to low-income persons.

[~~(4)~~] (5) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may make rules providing procedures for implementing the sales tax refund under this section, including:

[~~(a) procedures for an organization to apply for recognition as a qualified emergency food agency;~~]

[~~(b)~~] (a) standards for determining and verifying the amount of the sales tax refund; and

[~~(c)~~] (b) procedures for a qualified emergency food agency to apply for a sales tax refund, including the frequency with which a qualified emergency food agency may apply for a sales tax refund.

[~~(5)~~] (6) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the Division of Community Development may establish rules providing for the certification of emergency food agencies to claim a refund under this part.

Section 4. Effective date.

This act takes effect on July 1, 2001.

CHAPTER 163
H. B. 112
Passed February 28, 2001
Approved March 15, 2001
Effective April 30, 2001

PREVENTION OF RETALIATORY LAWSUITS

Sponsor: Rebecca D. Lockhart
Ralph Becker
David L. Hogue

This act modifies the Judicial Code by creating the Citizen Participation in Government Act. The act creates a summary procedure for the courts to use to determine whether a suit is a retaliatory lawsuit for participation by the defendant in the government process. The act also allows for "slappback" suits and specifies damages.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:
78-58-101, Utah Code Annotated 1953
78-58-102, Utah Code Annotated 1953
78-58-103, Utah Code Annotated 1953
78-58-104, Utah Code Annotated 1953
78-58-105, Utah Code Annotated 1953

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

Section 1. Section 78-58-101 is enacted to read:

CHAPTER 58. CITIZEN PARTICIPATION IN GOVERNMENT ACT

78-58-101. Title.

This chapter is known as the "Citizen Participation in Government Act."

Section 2. Section 78-58-102 is enacted to read:

78-58-102. Definitions.

As used in this chapter:

(1) "Action involving public participation in the process of government" means any lawsuit, cause of action, claim, cross-claim, counterclaim, or other judicial pleading or filing requesting relief to which this act applies.

(2) "Government" includes a branch, department, agency, instrumentality, official, employee, agent, or other person acting under color of law of the United States, a state, or subdivision of a state or other public authority.

(3) "Moving party" means any person on whose behalf the motion is filed.

(4) "Person" means the same as defined in Section 68-3-12.

(5) "Process of government" means the mechanisms and procedures by which the legislative and executive branches of government make decisions, and the activities leading up to the decisions, including the exercise by a citizen of the right to influence those decisions under the First Amendment to the U.S. Constitution.

(6) "Responding party" means any person against whom the motion described in Section 78-58-103 is filed.

(7) "State" means the same as defined in Section 68-3-12.

Section 3. Section 78-58-103 is enacted to read:

78-58-103. Applicability.

(1) A defendant in an action who believes that the action is primarily based on, relates to, or is in response to an act of the defendant while participating in the process of government and is done primarily to harass the defendant, may file:

(a) an answer supported by an affidavit of the defendant detailing his belief that the action is designed to prevent, interfere with, or chill public participation in the process of government, and specifying in detail the conduct asserted to be the participation in the process of government believed to give rise to the complaint; and

(b) a motion for judgment on the pleadings in accordance with the Utah Rules of Civil Procedure Rule 12(c).

(2) Affidavits detailing activity not adequately detailed in the answer may be filed with the motion.

Section 4. Section 78-58-104 is enacted to read:

78-58-104. Procedures.

(1) On the filing of a motion for judgment on the pleadings:

(a) all discovery shall be stayed pending resolution of the motion unless the court orders otherwise;

(b) the trial court shall hear and determine the motion as expeditiously as possible with the moving party providing by clear and convincing evidence that the primary reason for the filing of the complaint was to interfere with the first amendment right of the defendant; and

(c) the moving party shall have a right to seek interlocutory appeal from a trial court order denying the motion or from a trial court failure to rule on the motion in expedited fashion.

(2) The court shall grant the motion and dismiss the action upon a finding that the primary purpose of the action is to prevent, interfere with, or chill the moving party's proper participation in the process of government.

(3) Any government body to which the moving party's acts were directed or the attorney general may intervene to defend or otherwise support the moving party.

Section 5. Section 78-58-105 is enacted to read:

78-58-105. Counter actions -- Attorney's fees -- Damages.

(1) A defendant in an action involving public participation in the process of government may maintain an action, claim, cross-claim, or counterclaim to recover:

(a) costs and reasonable attorney's fees, upon a demonstration that the action involving public participation in the process of government was commenced or continued without a substantial basis in fact and law and could not be supported by a substantial argument for the extension, modification, or reversal of existing law; and

(b) other compensatory damages upon an additional demonstration that the action involving public participation in the process of government was commenced or continued for the purpose of harassing, intimidating, punishing, or otherwise maliciously inhibiting the free exercise of rights granted under the First Amendment to the U.S. Constitution.

(2) Nothing in this section shall affect or preclude the right of any party to any recovery otherwise authorized by law.

CHAPTER 164
H. B. 113
Passed February 22, 2001
Approved March 15, 2001
Effective April 30, 2001

SURREPTITIOUS ADMINISTRATION OF A SUBSTANCE

Sponsor: Ron Bigelow
Patrice M. Arent

This act modifies the Criminal Code to create the specific criminal offense of surreptitiously administering deleterious or alcoholic substances or drugs to another person. The act provides definitions, and also graduated penalties based on the risks posed by the substance administered. The act includes a defense for administering medical treatment.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:
76-5-113, Utah Code Annotated 1953

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

Section 1. Section 76-5-113 is enacted to read:

76-5-113. Surreptitious administration of certain substances -- Definitions -- Penalties -- Defenses.

(1) As used in this section:

(a) "Administer" means the introduction of a substance into the body by injection, inhalation, ingestion, or by any other means.

(b) "Alcoholic beverage" has the same meaning as "alcoholic beverages" in Section 32A-1-105.

(c) "Bodily injury" has the same definition as in Section 76-1-601.

(d) "Controlled substance" has the same definition as in Section 58-37-2.

(e) "Deleterious substance" means a substance which, if administered, would likely cause bodily injury.

(f) "Poisonous" means a substance which, if administered, would likely cause serious bodily injury or death.

(g) "Prescription drug" has the same definition as in Section 58-17a-102.

(h) "Serious bodily injury" has the same definition as in Section 19-2-115.

(i) "Substance" means a controlled substance, poisonous substance, or deleterious substance as defined in this Subsection (1).

(2) In addition to any other offense the actor's conduct may constitute, it is a criminal offense for a person, surreptitiously or by means of fraud, deception, or misrepresentation, to cause another person to unknowingly consume or receive the administration of:

(a) any poisonous, deleterious, or controlled substance; or

(b) any alcoholic beverage.

(3) A violation of Subsection (2) is:

(a) a second degree felony if the substance is a poisonous substance, regardless of whether the substance is a controlled substance or a prescription drug;

(b) a third degree felony if the substance is not within the scope of Subsection (3)(a), and is a controlled substance or a prescription drug; and

(c) a class A misdemeanor if the substance is a deleterious substance or an alcoholic beverage.

(4) (a) It is an affirmative defense to a prosecution under Subsection (2) that the actor:

(i) provided the appropriate administration of a prescription drug; and

(ii) acted on the reasonable belief that his conduct was in the best interest of the well-being of the person to whom the prescription drug was administered.

(b) (i) The defendant shall file and serve on the prosecuting attorney a notice in writing of his intention to claim a defense under Subsection (4)(a) not fewer than 20 days before the trial.

(ii) The notice shall specifically identify the factual basis for the defense and the names and addresses of the witnesses the defendant proposes to examine to establish the defense.

(c) The prosecuting attorney shall file and serve the defendant with a notice containing the names and addresses of the witnesses the prosecutor proposes to examine in order to contradict or rebut the defendant's claim of an affirmative defense under Subsection (4)(a). This notice shall be filed or served not more than ten days after receipt of the defendant's notice under Subsection (4)(b), or at another time as the court may direct.

(d) (i) Failure of a party to comply with the requirements of Subsection (4)(b) or (4)(c) entitles the opposing party to a continuance to allow for preparation.

(ii) If the court finds that a party's failure to comply is the result of bad faith, it may impose appropriate sanctions.

(5) This section does not diminish the scope of authorized health care by a health care provider as defined in Section 26-23a-1.

CHAPTER 165
H. B. 115
Passed February 23, 2001
Approved March 15, 2001
Effective July 1, 2001

WASTE TIRE RECYCLING

Sponsor: Neal B. Hendrickson

This act modifies the Environmental Quality Code to amend provisions related to the waste tire recycling program. The waste tire recycling fee is increased. The act restricts eligibility for partial reimbursement of recycling costs to recyclers within the state who recycle a minimum number of waste tires generated within the state. The act modifies the reimbursement amounts recyclers may receive and reduces reimbursements for removing waste tires from an abandoned waste tire pile or landfill waste tire pile. The act allows the executive secretary of the Solid and Hazardous Waste Control Board to deny reimbursement of costs to remove waste tires from an abandoned waste tire pile or landfill waste tire pile, if payment of the removal costs would result in there being insufficient funds to reimburse costs of recyclers. The act prohibits double payments to reimburse recycling costs when waste tires are converted into crumb rubber which is subsequently used to create an ultimate product. The act amends definitions and makes technical changes. This act takes effect on July 1, 2001.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
19-6-803, as renumbered and amended by Chapter 51, Laws of Utah 2000
19-6-805, as renumbered and amended by Chapter 51, Laws of Utah 2000
19-6-809, as renumbered and amended by Chapter 51, Laws of Utah 2000
19-6-810, as renumbered and amended by Chapter 51, Laws of Utah 2000
19-6-811, as renumbered and amended by Chapter 51, Laws of Utah 2000
19-6-813, as renumbered and amended by Chapter 51, Laws of Utah 2000
19-6-815, as renumbered and amended by Chapter 51, Laws of Utah 2000
19-6-816, as renumbered and amended by Chapter 51, Laws of Utah 2000
19-6-819, as renumbered and amended by Chapter 51, Laws of Utah 2000
19-6-820, as renumbered and amended by Chapter 51, Laws of Utah 2000

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

Section 1. Section 19-6-803 is amended to read:

19-6-803. Definitions.

As used in this part:

(1) "Abandoned waste tire pile" means a waste tire pile regarding which the local department of health has not been able to:

(a) locate the persons responsible for the tire pile; or

(b) cause the persons responsible for the tire pile to remove it.

(2) (a) "Beneficial use" means the use of chipped [~~waste~~] tires [~~or chipped material derived from waste tires~~] in a manner that is not recycling, storage, or disposal, but that serves as a replacement for another product or material for specific purposes[~~, including~~].

(b) "Beneficial use" includes the use of chipped tires:

(i) as daily landfill cover[~~,~~];

(ii) for civil engineering[~~,~~] purposes;

(iii) as low-density, light-weight aggregate fill[~~, and~~]; or

(iv) for septic or drain field construction.

[~~(b)~~] (c) "Beneficial use" does not include the use of waste tires or material derived from waste tires:

(i) in the construction of fences[~~,~~]; or

(ii) as fill, other than low-density, light-weight aggregate fill.

(3) "Board" means the Solid and Hazardous Waste Control Board created under Section 19-1-106.

(4) "Chip" or "chipped tire" means a two inch square or smaller piece of a waste tire.

(5) "Commission" means the Utah State Tax Commission.

(6) (a) "Consumer"[~~: (a)~~] means a person who purchases a new tire to satisfy a direct need, rather than for resale[~~; and~~].

(b) "Consumer" includes a person who purchases a new tire for a motor vehicle to be rented or leased.

(7) "Crumb rubber" means waste tires that have been ground, shredded, or otherwise reduced in size [~~so the resulting material is 95%~~] such that the particles are less than or equal to 3/8 inch in diameter and are 98% wire free by weight.

(8) "Disposal" means the deposit, dumping, or permanent placement of any waste tire in or on any land or in any water in the state.

[~~(8)~~] (9) "Dispose of" [~~or "disposal"~~] means to deposit, dump, or permanently place any waste tire in or on any land or in any water in the state.

[~~(9)~~] (10) "Division" means the Division of Solid and Hazardous Waste created in Section 19-1-105, within the Department of Environmental Quality.

[~~(10)~~] (11) "Executive secretary" means the executive secretary of the Solid and Hazardous Waste Control Board created in Section 19-1-106.

[~~(11)~~] (12) "Landfill waste tire pile" means a waste tire pile:

(a) located within the permitted boundary of a landfill operated by a governmental entity; and

(b) consisting solely of waste tires brought to a landfill for disposal and diverted from the landfill waste stream to the waste tire pile.

[~~(12)~~] (13) "Local health department" means the city-county health department or district health department, as defined in Section 26A-1-102, with jurisdiction over the recycler.

[~~(13)~~] (14) "Materials derived from waste tires" means tire sections, tire chips, tire shreddings, rubber, steel, fabric, or other similar materials derived from waste tires.

[~~(14)~~] (15) "Mobile facility" means a mobile facility capable of cutting waste tires on site so the waste tires may be effectively disposed of by burial, such as in a landfill.

[~~(15)~~] (16) "New motor vehicle" means a motor vehicle which has never been titled or registered.

[~~(16)~~] (17) "Passenger tire equivalent" means a measure of mixed sizes of tires where each 25 pounds of whole tires or material derived from waste tires is equal to one waste tire.

[~~(17)~~] (18) "Proceeds of the fee" means the money collected by the commission from payment of the recycling fee including interest and penalties on delinquent payments.

[~~(18)~~] (19) "Recycler" means a person who:

(a) annually uses, or can reasonably be expected within the next year to use, a minimum of 100,000 waste tires generated in the state or 1,000 tons of waste tires [~~per year~~] generated in the state to recover energy or produce energy, crumb rubber, chipped tires, [~~an ultimate product, or to apply to a beneficial use, but does not include tires that are stored, disposed of, retreaded, or sold as used tires~~] or an ultimate product; and

(b) is registered as a recycler in accordance with Section 19-6-806.

[~~(19)~~] (20) "Recycling fee" means the fee provided for in Section 19-6-805.

[~~(20) (a) Before January 1, 2000, "shredded," when referring to waste tires, means waste tires or material derived from waste tires that has been subjected to a "primary shred" as defined by board rule. The rule shall define the maximum size of a piece of material derived from waste tires that is considered to be the result of a primary shred.~~]

[~~(b)~~] (21) [~~On and after January 1, 2000, "shredded," when referring to~~] "Shredded waste tires[~~,~~]" means waste tires or material derived from waste tires that has been reduced to a six inch square or smaller.

(22) (a) "Storage" means the placement of waste tires in a manner that does not constitute disposal of the waste tires.

(b) "Storage" does not include:

(i) the use of waste tires as ballast to maintain covers on agricultural materials or to maintain covers at a construction site; or

(ii) the storage for five or fewer days of waste tires or material derived from waste tires that are to be recycled or applied to a beneficial use.

[~~(21)~~] (23) (a) "Store" [~~or "storage"~~] means [~~the placing of~~] to place waste tires in a manner that does not constitute disposal of the waste tires.

(b) "Store" [~~or "storage"~~] does not include:

(i) to use waste tires [~~or material derived from waste tires that is stored for five or fewer days and that is to be: (i) used~~] as ballast to maintain covers on agricultural materials or to maintain covers at a construction site; or

(ii) to store for five or fewer days waste tires or material derived from waste tires that are to be recycled or applied to a beneficial use.

[~~(22)~~] (24) "Tire" means a pneumatic rubber covering designed to encircle the wheel of a vehicle in which a person or property is or may be transported or drawn upon a highway.

[~~(23)~~] (25) "Tire retailer" means any person engaged in the business of selling new tires either as replacement tires or as part of a new vehicle sale.

[~~(24)~~] (26) "Trust fund" means the Waste Tire Recycling Expendable Trust Fund provided for in Section 19-6-807.

[~~(25)~~] (27) (a) "Ultimate product" means a product that has as a component materials derived from waste tires and that the [~~board~~] executive secretary finds has a demonstrated market.

(b) "Ultimate product"[~~: (i)~~] includes pyrolized materials derived from:

(i) waste tires [~~and~~]; or

(ii) chipped tires[~~; and~~].

[~~(ii)~~] (c) "Ultimate product" does not include a product regarding which a waste tire remains after the product is disposed of or disassembled.

[~~(26)~~] (28) "Waste tire" means a tire that is no longer suitable for its original intended purpose because of wear, damage, or defect.

[~~(27)~~] (29) "Waste tire pile" means a pile of 1,000 or more waste tires at one location.

[~~(28)~~] (30) (a) "Waste tire transporter"[~~: (a)~~] means a person or entity engaged in picking up or transporting at one time more than ten whole waste tires [~~per year~~], or the equivalent amount of material derived from waste tires, generated in Utah for the purpose of storage, processing, or disposal[~~;~~].

(b) "Waste tire transporter" includes any person engaged in the business of collecting, hauling, or transporting waste tires or who performs these functions for another person[~~;~~], except as provided in Subsection (30)(c).

(c) "Waste tire transporter" does not include [~~a person transporting tires generated solely by~~]:

(i) a person transporting waste tires generated solely by:

[~~(i)~~] (A) that person's personal vehicles;

[~~(ii)~~] (B) a commercial vehicle fleet owned or operated by that person or that person's employer;

[~~(iii)~~] (C) vehicles sold, leased, or purchased by a motor vehicle dealership owned or operated by that person or that person's employer; or

[~~(iv)~~] (D) a retail tire business [~~and hauled by the business owner or an employee of the business~~] owned or operated by that person or that person's employer;

[~~(v)~~] (ii) a solid waste collector operating under a license issued by a unit of local government as defined in Section 63-51-2, or a local health department; [~~or~~]

[~~(vi)~~] (iii) a recycler [~~or processor~~] of [~~whole~~] waste tires [~~into chipped tires~~]; [~~and~~]

[~~(d)~~] (iv) [~~does not include~~] a person transporting tires by rail as a common carrier subject to federal regulation[~~.~~]; or

(v) a person transporting processed or chipped tires.

Section 2. Section 19-6-805 is amended to read:

19-6-805. Recycling fee.

(1) (a) [~~Beginning July 1, 1990, a~~] A recycling fee is imposed upon each purchase from a tire retailer of a new tire by a consumer. The fee shall be paid by the consumer to the tire retailer at the time the new tire is purchased.

(b) The recycling fee does not apply to recapped or resold used tires.

(2) The fee for each tire with a rim diameter up to and including 24.5 inches, single or dual bead capacity is[~~: (a)~~] $1[~~, before July 1, 1996;~~].

[~~(b) 50 cents on and after July 1, 1996; and~~]

[~~(c) 85 cents on and after July 1, 1999.~~]

Section 3. Section 19-6-809 is amended to read:

19-6-809. Partial reimbursement.

(1) (a) Any recycler may submit an application under Section 19-6-813 to the local health department having jurisdiction over the applicant's business address for partial reimbursement of the cost of transporting and processing[~~, if the recycler on or after the effective date of this act uses~~] waste tires or materials derived from waste tires that:

(i) meet the requirements of [~~Subsection~~] Subsections (3) and (4) [~~exclusively for:~~]; and

(ii) are used within the state for:

[~~(i)~~] (A) energy recovery or production;

[~~(ii)~~] (B) the creation of ultimate products;

[~~(iii)~~] (C) the production of crumb rubber, if a contract exists for the sale of the crumb rubber for use, either within or outside the state, as a component in an ultimate product;

(D) the production of chipped tires, if the chipped tires are to be applied to a beneficial use, either within or outside the state, and a contract exists for their sale; or

[~~(iv)~~] (E) any use defined by board rule as recycling[~~; or~~].

[~~(v) any beneficial use.~~]

(b) A recycler [~~who recycles, at an out-of-state location, tires that are generated within the state shall apply to the executive secretary for partial reimbursement, rather than to a local health department.~~] is not eligible to receive partial reimbursement of transportation or processing costs related to the creation of an ultimate product if:

(i) the recycler used crumb rubber as a component of the ultimate product; and

(ii) the recycler, or another recycler, previously received under this section partial reimbursement of transportation or processing costs related to the production of the crumb rubber.

(c) A recycler who qualifies under this section for partial reimbursement may waive the reimbursement and request in writing that the reimbursement be paid to a person who:

(i) delivers waste tires or material derived from waste tires to [~~a~~] the recycler; or

(ii) processes the waste tires prior to the recycler's receipt of the waste tires or [~~his receipt of~~] materials derived from the waste tires for recycling[~~, but only if the recycler is conducting the recycling operation within the state~~].

(2) (a) Subject to the limitations in Section 19-6-816, a recycler is entitled to $75 as partial reimbursement for each ton of [~~tires recycled on and after the effective date of this act~~] waste tires or material derived from waste tires converted to crumb rubber, if a contract exists for the sale of the crumb rubber for use as a component in an ultimate product.

(b) Subject to the limitations in Section 19-6-816, a recycler is entitled to [~~$60~~] $65 as partial reimbursement for each ton of waste tires or material derived from waste tires [~~used for a beneficial use on and after the effective date of this act~~] recycled, other than as crumb rubber.

(c) Subject to the limitations in Section 19-6-816, a recycler is entitled to $50 as partial reimbursement for each ton of chipped tires used for a beneficial use.

(3) (a) In order for a recycler [~~within the state~~] to be eligible for partial reimbursement, the recycler shall establish in cooperation with tire retailers or transporters, or [~~with~~] both, a reasonable schedule to remove waste tires in sufficient quantities to allow for economic transportation of waste tires

located in any municipality within the state as defined in Section 10-1-104.

(b) A recycler complying with Subsection (3)(a) [~~or a recycler operating at an out-of-state location~~] may also receive partial reimbursement for recycling tires received from locations within the state other than those associated with retail tire businesses, including waste tires from waste tire piles and abandoned waste tire piles, under Section 19-6-810.

(4) A recycler who applies for partial reimbursement under Subsection (1) shall [~~also~~] demonstrate the waste tires or materials derived from waste tires that qualify for the reimbursement:

(a) (i) were removed and transported by a registered waste tire transporter, a recycler, or a tire retailer; or

(ii) were generated by a private person who is not a waste tire transporter as defined in Section 19-6-803, and that person brings the waste tires to the recycler;

(b) were generated in the state; and

(c) if the tires are from a waste tire pile or abandoned waste tire pile, the recycler complies with the applicable provisions of Section 19-6-810.

Section 4. Section 19-6-810 is amended to read:

19-6-810. Recycling waste tires from abandoned waste tire piles and other waste tire piles.

(1) A recycler may be reimbursed for recycling or beneficial use of waste tires from an abandoned waste tire pile within the state if:

(a) prior to recycling or the beneficial use of any of the waste tires, [~~he~~] the recycler receives an affidavit from the local health department of the jurisdiction where the waste tire pile is located, stating:

(i) the waste tire pile is abandoned; and

(ii) the local health department has not been able to:

(A) locate the persons responsible for the waste tire pile; or [~~has not been able to~~]

(B) cause the persons responsible for the waste tire pile to remove it;

(b) the waste tire transporter who transports the waste tires to the recycler:

(i) is registered[~~,~~];

(ii) has received from the local health department an affidavit stating it has authorized the transporter to remove the waste tires and deliver them to a recycler[~~,~~]; and

(iii) provides a copy of the affidavit to the recycler; and

(c) the recycler provides to the local health department [~~or the executive secretary, as is appropriate under Section 19-6-809,~~]:

(i) proof of compliance with this Subsection (1) in the required form; and

(ii) the information required under Section 19-6-809.

(2) A recycler may receive [~~the~~] partial reimbursement for recycling or the beneficial use of waste tires from waste tire piles within the state that are not abandoned if:

(a) prior to recycling or the beneficial use of any of the waste tires, [~~he~~] the recycler receives an affidavit from the local health department of the jurisdiction where the waste tire pile is located, stating the waste tire pile is not abandoned;

(b) [~~he~~] the recycler obtains an affidavit from the owner of the waste tire pile or [~~his~~] the owner's authorized designee stating:

(i) the waste tires are from a pile to which no tires have been added after June 30, 1991; or

(ii) if the waste tires are from a waste tire pile to which waste tires have been added after June 30, 1991, all the waste tires provided to the recycler were generated within the state;

(c) the waste tires are transported to the recycler by a registered waste tire transporter, who provides a manifest to the recycler; and

(d) the recycler provides to the local health department [~~or the executive secretary, as is appropriate under Section 19-6-809,~~]:

(i) proof of compliance with this Subsection (2) in the required form; and

(ii) the information required under Section 19-6-809.

Section 5. Section 19-6-811 is amended to read:

19-6-811. Funding for management of certain landfill or abandoned waste tire piles -- Limitations.

(1) (a) A county or municipality may apply to the executive secretary for payment from the trust fund for [~~the~~] costs of a waste tire [~~transporter's removing~~] transporter or recycler to remove waste tires from an abandoned waste tire pile or a landfill waste tire pile operated by a state or local governmental entity and deliver the waste tires to a recycler [~~under the following procedure:~~].

(b) The executive secretary may authorize a maximum reimbursement of:

(i) 100% of a waste tire transporter's or recycler's costs allowed under Subsection (2) to remove waste tires from an abandoned waste tire pile or landfill waste tire pile and deliver the waste tires to a recycler, if no waste tires have been added to the abandoned waste tire pile or landfill waste tire pile on or after July 1, 2001; or

(ii) 60% of a waste tire transporter's or recycler's costs allowed under Subsection (2) to remove waste

tires from an abandoned waste tire pile or landfill waste tire pile and deliver the waste tires to a recycler, if waste tires have been added to the abandoned waste tire pile or landfill waste tire pile on or after July 1, 2001.

(c) The executive secretary may deny an application for payment of waste tire pile removal and delivery costs, if the executive secretary determines that payment of the costs will result in there not being sufficient monies in the trust fund to pay expected reimbursements for recycling or beneficial use under Section 19-6-809 during the next quarter.

(2) (a) [~~(i)~~] The maximum number of miles for which the executive secretary may reimburse for transportation costs incurred by a waste tire transporter under this section, is the number of miles, one way, between the location of the waste tire pile and the State Capitol Building, in Salt Lake City, Utah, or to the recycler, whichever is less.

[~~(ii)~~] (b) This maximum number of miles available for reimbursement applies regardless of the location of the recycler to which the waste tires are transported under this section.

[~~(iii)~~] (c) The executive secretary shall, upon request, advise any person preparing a bid under this section of the maximum number of miles available for reimbursement under this Subsection [~~(1)(a)~~] (2).

[~~(iv)~~] (d) The cost under this Subsection [~~(1)~~] (2) shall be calculated based on the cost to transport one ton of waste tires one mile.

[~~(b)~~] (3) (a) The county or municipality shall through a competitive bidding process make a good faith attempt to obtain a bid for the removal of the landfill or abandoned waste tire pile and transport to a recycler.

[~~(c)~~] (b) The county or municipality shall submit to the executive secretary:

(i) (A) (I) a statement from the local health department stating the landfill waste tire pile is operated by a state or local governmental entity[~~,~~] and consists solely of waste tires diverted from the landfill waste stream [~~and describing~~];

(II) a description of the size and location of the landfill waste tire pile; [~~or~~] and

(III) landfill records showing the origin of the waste tires; or

(B) a statement from the local health department that the waste tire pile is abandoned; and

(ii) (A) the bid selected by the county or municipality; or [~~the fact that~~]

(B) if no bids were received, a statement to that fact.

[~~(2)~~] (4) (a) If a bid is submitted, the executive secretary shall determine if the bid is reasonable, taking into consideration:

(i) the location and size of the landfill or abandoned waste tire pile;

(ii) the number and size of any other landfill or abandoned waste tire piles in the area; and

[~~(iii) the cost, as allowed under Subsection (1)(a), of transporting the landfill or abandoned waste tires to a recycler as compared to the cost of contracting with a mobile facility to cut the waste tires so they may be disposed in the landfill; and~~]

[~~(iv)~~] (iii) the current market for waste tires of the type in the landfill or abandoned waste tire pile.

(b) The executive secretary shall advise the county or municipality within 30 days of receipt of the bid whether or not the bid is determined to be reasonable.

[~~(c)~~] (5) (a) If the bid is found to be reasonable, the county or municipality may proceed to have the landfill or abandoned waste tire pile removed pursuant to the bid.

(b) The county or municipality shall advise the executive secretary that the landfill or abandoned waste tire pile has been removed.

[~~(d)~~] (6) The recycler or waste tire transporter that removed the landfill or abandoned waste tires pursuant to the bid shall submit to the executive secretary a copy of the manifest, which shall state:

(a) the number or tons of waste tires transported[~~,~~];

(b) the location from which they were removed [~~from,~~];

(c) the recycler to which the waste tires were delivered[~~,~~]; and

(d) the amount charged by the transporter or recycler.

[~~(e)~~] (7) Upon receipt of the information required under Subsection [~~(2)(d)~~] (6), and determination that the information is complete, the executive secretary shall, within 30 days after receipt authorize the Division of Finance to reimburse the waste tire transporter or recycler the amount established under this [~~Subsection (2)~~] section.

Section 6. Section 19-6-813 is amended to read:

19-6-813. Application for partial reimbursement -- Penalty.

(1) An application for partial reimbursement shall be on the form prescribed by the local health department [~~or the executive secretary, as is appropriate under Section 19-6-809,~~] and shall include:

(a) the recycler's name and a brief description of the recycler's business;

(b) the quantity, in tons, of waste tires recycled or used in a beneficial use;

(c) originals or copies of log books, receipts, bills of lading, or other similar documents to establish the tonnage of waste tires recycled or used in a beneficial use;

(d) a description of how the waste tires were recycled;

(e) proof that is satisfactory to the local health department [~~or the executive secretary, as is appropriate under Section 19-6-809,~~] that the waste tires were recycled or used in a beneficial use; and

(f) the affidavit of the recycler warranting that the recycled waste tires or waste tires used for a beneficial use for which reimbursement is sought meet the requirements of Subsection 19-6-809(4).

(2) In addition to any other penalty imposed under Section 19-6-821 or 19-6-822 or by any other law, any person who knowingly or intentionally provides false information to the local health department [~~or to the executive secretary~~] under Subsection (1):

(a) is ineligible to receive any further reimbursement under this part; and

(b) shall return to the Division of Finance any reimbursement previously received for deposit in the trust fund.

Section 7. Section 19-6-815 is amended to read:

19-6-815. Payment by Division of Finance.

(1) The Division of Finance is authorized to pay the recycler partial reimbursements described in Section 19-6-809 from the trust fund.

(2) The Division of Finance shall pay the dollar amount of partial reimbursement approved by the local health department [~~or the executive secretary~~] to the recycler within the next payment period established by rule of the Division of Finance, after receipt of the local health department's [~~or the executive secretary's~~] report and recommendation.

Section 8. Section 19-6-816 is amended to read:

19-6-816. Limitations on reimbursement.

(1) The costs reimbursed under this part may not exceed the monies in the trust fund.

(2) If applications for [~~partial~~] reimbursement under Section 19-6-809, 19-6-811, or 19-6-812 during any month exceed the monies in the trust fund, the Division of Finance shall prorate the amount of all claims for [~~partial~~] reimbursement for the month and defer payment of the remainder.

(3) The amount remaining unpaid on a claim for [~~partial~~] reimbursement [~~or a claim under Section 19-6-811~~] shall be treated as a new application for [~~partial~~] reimbursement in the next succeeding month until the unpaid amount is $500 or less, at which time the balance of the claim shall be paid in full.

Section 9. Section 19-6-819 is amended to read:

19-6-819. Powers and duties of the board.

(1) The board shall make rules under Title 63, Chapter 46a, Utah Administrative Rulemaking Act, as necessary to administer this part. For these purposes the board shall establish by rule:

(a) conditions and procedures for acting to issue or revoke a registration as a waste tire recycler or transporter under Section 19-6-806;

(b) the amount of liability insurance or other financial responsibility the applicant is required to have to qualify for registration under Section 19-6-806, [~~but the~~] which amount may not be more than $300,000 for any liability the waste tire transporter or recycler may incur in recycling or transporting waste tires;

(c) the form and amount of financial assurance required for a site or facility used to store waste tires, which amount shall be sufficient to ensure the cleanup or removal of waste tires from that site or facility;

(d) standards and required documentation for tracking and record keeping of waste tires subject to regulation under this part, including:

(i) manifests for handling and transferring waste tires;

(ii) records documenting date, quantities, and size or type of waste tires transported, processed, transferred, or sold;

(iii) records documenting persons between whom transactions under this Subsection (1)(d) occurred and the amounts of waste tires involved in those transactions; and

(iv) requiring that documentation under this Subsection (1)(d) be submitted on a quarterly basis, and that this documentation be made available for public inspection;

(e) authorize inspections and audits of waste tire recycling, transportation, or storage facilities and operations subject to this part;

(f) standards for payments authorized under Sections 19-6-809, 19-6-810, [~~and~~] 19-6-811, and 19-6-812;

(g) regarding applications to the executive secretary for reimbursements under Section 19-6-811, the content of the reimbursement application form and the procedure to apply for reimbursement;

(h) requirements for the storage of waste tires, including permits for storage;

(i) the types of energy recovery or other appropriate environmentally compatible uses eligible for reimbursement, which:

(i) shall include pyrolization, but not retreading; and

[~~(ii) shall be $75 for recycling and $60 for using waste tires for a beneficial use; and~~]

[~~(iii)~~] (ii) shall apply to all waste tire recycling and beneficial use reimbursements [~~both~~] within [~~and outside of~~] the state;

(j) the applications of waste tires that are not eligible for reimbursement;

(k) the applications of waste tires that are considered to be the storage or disposal of waste tires; and

(l) provisions governing the storage or disposal of waste tires, including the process for issuing permits for waste tire storage sites.

(2) The board may:

(a) require retention and submission of the records required under this part;

(b) require audits of the records and record keeping procedures required under this part and rules made under this part, except that audits of records regarding the fee imposed and collected by the commission under Sections 19-6-805 and 19-6-808 are the responsibility of the commission; and

(c) as necessary, make rules requiring additional information as the board determines necessary to effectively administer Section 19-6-812, [~~but these~~] which rules may not place an undue burden on the operation of landfills.

Section 10. Section 19-6-820 is amended to read:

19-6-820. Powers and duties of the executive secretary.

(1) The executive secretary shall:

(a) administer and enforce the rules and orders of the board;

(b) issue and revoke [~~registration~~] registrations for waste tire recyclers and transporters; and

(c) require forms, analyses, documents, maps, and other records as the executive secretary finds necessary to:

(i) issue recycler and transporter registrations;

(ii) [~~issue recycler partial~~] authorize reimbursements under Section 19-6-811;

(iii) inspect a site, facility, or activity regulated under this part; and

(iv) issue permits for and inspect waste tire storage sites.

(2) The executive secretary may:

(a) authorize any division employee to enter any site or facility regulated under this part at reasonable times and upon presentation of credentials, for the purpose of inspection, audit, or sampling:

(i) at the site or facility; or

(ii) of the records, operations, or products;

(b) as authorized by the board, enforce board rules by issuing orders which are subsequently subject to the board's amendment or revocation; and

(c) coordinate with federal, state, and local governments, and other agencies, including entering into memoranda of understanding, to:

(i) ensure effective regulation of waste tires under this part;

(ii) minimize duplication of regulation; and

(iii) encourage responsible recycling of waste tires.

Section 11. Effective date.

This act takes effect on July 1, 2001.

CHAPTER 166
H. B. 116
Passed February 23, 2001
Approved March 15, 2001
Effective April 30, 2001

JUDICIAL RETENTION ELECTION AMENDMENTS

Sponsor: Gary F. Cox

This act modifies campaign and financial reporting requirements by adding requirements governing judges standing for a retention election. This act requires judges to establish a campaign committee under certain circumstances, requires them to establish a separate account for campaign funds, and establishes the dates they must file and information they must provide on campaign finance reports. This act establishes notice requirements and penalties if judges fail to file their campaign reports.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
20A-7-702, as last amended by Chapter 221, Laws of Utah 2000
20A-11-103, as last amended by Chapter 17, Laws of Utah 2000

ENACTS:
20A-12-301, Utah Code Annotated 1953
20A-12-302, Utah Code Annotated 1953
20A-12-303, Utah Code Annotated 1953
20A-12-304, Utah Code Annotated 1953
20A-12-305, Utah Code Annotated 1953
20A-12-306, Utah Code Annotated 1953

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

Section 1. Section 20A-7-702 is amended to read:

20A-7-702. Voter information pamphlet -- Form -- Contents -- Distribution.

(1) The lieutenant governor shall ensure that all information submitted for publication in the voter information pamphlet is:

(a) printed and bound in a single pamphlet;

(b) printed in clear readable type, no less than ten-point, except that the text of any measure may be set forth in eight-point type; and

(c) printed on a quality and weight of paper that best serves the voters.

(2) The voter information pamphlet shall contain the following items in this order:

(a) a cover title page;

(b) an introduction to the pamphlet by the lieutenant governor;

(c) a table of contents;

(d) a list of all candidates for constitutional offices;

(e) a list of candidates for each legislative district;

(f) a 100-word statement of qualifications for each candidate for the office of governor, lieutenant governor, attorney general, state auditor, or state treasurer, if submitted by the candidate to the lieutenant governor's office before July 15 at 5 p.m.;

(g) information pertaining to all measures to be submitted to the voters, beginning a new page for each measure and containing, in the following order for each measure:

(i) a copy of the number and ballot title of the measure;

(ii) the final vote cast by the Legislature on the measure if it is a measure submitted by the Legislature or by referendum;

(iii) the impartial analysis of the measure prepared by the Office of Legislative Research and General Counsel;

(iv) the arguments in favor of the measure, the rebuttal to the arguments in favor of the measure, the arguments against the measure, and the rebuttal to the arguments against the measure, with the name and title of the authors at the end of each argument or rebuttal;

(v) for each constitutional amendment, a complete copy of the text of the constitutional amendment, with all new language underlined, and all deleted language placed within brackets; and

(vi) for each initiative qualified for the ballot, a copy of the measure as certified by the lieutenant governor;

(h) a description provided by the Judicial Council of the selection and retention process for judges [~~of courts of record~~], including, in the following order:

(i) a description of the judicial selection process;

(ii) a description of the judicial performance evaluation process;

(iii) a description of the judicial retention election process;

(iv) a list of the criteria and minimum standards of judicial performance evaluation;

(v) the names of the judges standing for retention election; and

(vi) for each judge:

(A) the counties in which the judge is subject to retention election;

(B) a short biography of professional qualifications and a recent photograph;

(C) for each standard of performance, a statement identifying whether or not the judge met the standard and, if not, the manner in which the judge failed to meet the standard;

(D) a statement identifying the cumulative number of public orders issued by the Utah Supreme Court under Utah Constitution Article VIII, Section 13 during the judge's current term and the immediately preceding term, and a statement of

the basis for each order that the judge has received; and

(E) a statement identifying whether or not the judge was certified by the Judicial Council;

(vii) (A) except as provided in Subsection (2)(h)(vii)(B), for each judge, in graphic format, the [~~favorable response rating~~] responses for each attorney, jury, and other survey question used by the Judicial Council for certification of judges, displayed in 1% increments [~~and identifying the minimum standards of performance for each question~~];

(B) notwithstanding Subsection (2)(h)(vii)(A), if the sample size for the survey for a particular judge is too small to provide statistically reliable information in 1% increments, the survey results for that judge shall be reported as being above or below 70% and a statement by the surveyor explaining why the survey is statistically unreliable shall also be included;

(i) an explanation of ballot marking procedures prepared by the Office of Legislative Research and General Counsel, indicating the ballot marking procedure used by each county and explaining how to mark the ballot for each procedure;

(j) voter registration information;

(k) a list of all county clerks' offices and phone numbers;

(l) an index of subjects in alphabetical order; and

(m) on the back cover page, a printed copy of the following statement signed by the lieutenant governor:

"I, _____ (print name), Lieutenant Governor of Utah, certify that the measures contained in this pamphlet will be submitted to the voters of Utah at the election to be held throughout the state on ____ (date of election), and that this pamphlet is complete and correct according to law. SEAL

Witness my hand and the Great Seal of the State, at Salt Lake City, Utah this ____ day of ____ (month), ____ (year)(signed) _____Lieutenant Governor"

(3) The lieutenant governor shall:

(a) ensure that one copy of the voter information pamphlet is placed in one issue of every newspaper of general circulation in the state not more than 40 nor less than 15 days before the day fixed by law for the election;

(b) ensure that a sufficient number of printed voter information pamphlets are available for distribution as required by this section;

(c) provide voter information pamphlets to each county clerk for free distribution upon request and for placement at polling places; and

(d) ensure that the distribution of the voter information pamphlets is completed 15 days before the election.

Section 2. Section 20A-11-103 is amended to read:

20A-11-103. Reports -- Form of submission.

(1) (a) (i) Ten days before a report from a state office candidate, legislative office candidate, state school board candidate, political party, political action committee, [~~or~~] political issues committee, or judge is due under this chapter, the lieutenant governor shall inform those candidates, judges, and entities by postal mail or, if requested by the candidate, judge, party, or committee, by electronic mail:

(A) that the report is due; and

(B) the date that the report is due.

(ii) In addition to the information required by Subsection (1)(a)(i) and in the same mailing, ten days before the interim reports for candidates or judges are due, the lieutenant governor shall inform the candidate or judge that if the report is not received in the lieutenant governor's office by 5 p.m. on the date that it is due, voters will be informed that the candidate or judge has been disqualified and any votes cast for the candidate or judge will not be counted.

(iii) In addition to the information required by Subsection (1)(a)(i) and in the same mailing, ten days before the interim reports or verified financial statements for entities that are due September 15 and before the regular general election are due, and ten days before summary reports or January 5 financial statements are due, the lieutenant governor shall inform the entity, candidate, judge, or officeholder that if the report is not received in the lieutenant governor's office by the date that it is due, the entity, candidate, judge, or officeholder may be guilty of a class B misdemeanor for failing to file the report or statement.

(b) Ten days before a report from a local school board candidate is due under this chapter, the county clerk shall inform the candidate by postal mail or, if requested, by electronic mail:

(i) that the report is due;

(ii) the date that the report is due; and

(iii) if the report is not received in the county clerk's office by 5 p.m. on the date that it is due, voters will be informed that the candidate has been disqualified and any votes cast for the candidate will not be counted.

(2) Persons or entities submitting reports required by this chapter may submit them:

(a) on paper, printed, typed, or legibly handwritten or hand printed;

(b) on a computer disk according to specifications established by the chief election officer that protect against fraudulent filings and secure the accuracy of the information contained on the computer disk;

(c) via fax; or

(d) via electronic mail according to specifications established by the chief election officer.

(3) A report is considered filed if:

(a) it is received in the chief election officer's office no later than 5:00 p.m. on the date that it is due;

(b) it is received in the chief election officer's office with a postmark three days or more before the date that the report was due; or

(c) the candidate, judge, or entity has proof that the report was mailed, with appropriate postage and addressing, three days before the report was due.

Section 3. Section 20A-12-301 is enacted to read:

Part 3. Campaign and Financial Reporting Requirements for Judicial Retention Elections

20A-12-301. Definitions.

As used in this part:

(1) (a) "Contribution" means any of the following when done for political purposes:

(i) a gift, subscription, donation, loan, advance, or deposit of money or anything of value given to the judge or the judge's personal campaign committee;

(ii) an express, legally enforceable contract, promise, or agreement to make a gift, subscription, donation, unpaid or partially unpaid loan, advance, or deposit of money or anything of value to the judge or the judge's personal campaign committee;

(iii) any transfer of funds from another reporting entity or a corporation to the judge or the judge's personal campaign committee;

(iv) compensation paid by any person or reporting entity other than the judge or the judge's personal campaign committee for personal services provided without charge to the judge or the judge's personal campaign committee; and

(v) goods or services provided to or for the benefit of the judge or the judge's personal campaign committee at less than fair market value.

(b) "Contribution" does not include:

(i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of the judge or the judge's personal campaign committee; or

(ii) money lent to the judge or the judge's personal campaign committee by a financial institution in the ordinary course of business.

(2) (a) "Corporation" means a domestic or foreign, profit or nonprofit, business organization that is registered as a corporation or is authorized to do business in a state and makes any expenditure from corporate funds for political purposes.

(b) "Corporation" does not mean:

(i) a business organization's political action committee as defined in Section 20A-11-101 or political issues committee as defined in Section 20A-11-101; or

(ii) a business entity organized as a partnership or a sole proprietorship.

(3) "Detailed listing" means:

(a) for each contribution:

(i) the name and address of the individual or source making the contribution;

(ii) the amount or value of the contribution; and

(iii) the date the contribution was made; and

(b) for each expenditure:

(i) the amount of the expenditure;

(ii) the person or entity to whom it was disbursed;

(iii) the specific purpose, item, or service acquired by the expenditure; and

(iv) the date the expenditure was made.

(4) (a) "Expenditure" means:

(i) any disbursement from contributions or from the separate bank account required by this chapter;

(ii) a purchase, payment, donation, distribution, loan, advance, deposit, gift of money, or anything of value made for political purposes;

(iii) an express, legally enforceable contract, promise, or agreement to make any purchase, payment, donation, distribution, loan, advance, deposit, gift of money, or anything of value for political purposes;

(iv) compensation paid by a corporation or reporting entity for personal services rendered by a person without charge to the judge or the judge's personal campaign committee;

(v) a transfer of funds between the judge's personal campaign committee and another judge's personal campaign committee; or

(vi) goods or services provided by the judge's personal campaign committee to or for the benefit of another judge for political purposes at less than fair market value.

(b) "Expenditure" does not include:

(i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of the judge or judge's personal campaign committee; or

(ii) money lent to a judge's personal campaign committee by a financial institution in the ordinary course of business.

(5) "Individual" means a natural person.

(6) "Interim report" means a report identifying the contributions received and expenditures made since the last report.

(7) "Personal campaign committee" means the committee appointed by a judge to act for the judge as provided in this chapter.

(8) "Political purposes" means an act done with the intent or in a way to influence or tend to influence, directly or indirectly, any person to refrain from voting or to vote for or against any judge standing for retention at any election.

(9) "Reporting entity" means a judge, judge's personal campaign committee, candidate, a candidate's personal campaign committee, an officeholder, and a party committee, a political action committee, and a political issues committee.

(10) "Summary report" means the year-end report containing the summary of a reporting entity's contributions and expenditures.

Section 4. Section 20A-12-302 is enacted to read:

20A-12-302. Campaign committee required.

(1) (a) When permitted to do so by the Code of Judicial Conduct promulgated by the Utah Supreme Court, and if the judge chooses to solicit contributions or make expenditures to promote his retention, the judge may establish no more than one retention election personal campaign committee, consisting of one or more persons, to receive contributions, make expenditures, and shall file reports connected with the judge's retention election campaign.

(b) A judge or person acting in concert with or with the knowledge of the judge may not receive any contributions or make any expenditures other than through the personal campaign committee established under this section.

(2) (a) The judge shall file with the lieutenant governor a signed written statement containing the name and address of each member and the secretary of the judge's personal campaign committee.

(b) The judge may change the membership of the personal campaign committee at any time by filing with the lieutenant governor a signed statement containing the name and address of any additional members and identifying any members that have been removed from the committee.

(c) The judge or the judge's personal campaign committee may not make any expenditures on behalf of the judge until the statement has been filed.

(3) (a) The judge's personal campaign committee may not make an expenditure of more than $1,000 unless the judge or the secretary of the personal campaign committee authorizes the expenditure in writing.

(b) A judge or the judge's personal campaign committee may not make any expenditures prohibited by law.

(4) A judge's personal campaign committee is dissolved on the date that the summary report required by Section 20A-12-304 is filed.

Section 5. Section 20A-12-303 is enacted to read:

20A-12-303. Separate account for campaign funds.

(1) The judge or the judge's personal campaign committee shall deposit each contribution in one or more separate personal campaign accounts in a financial institution.

(2) The judge or the judge's personal campaign committee may not deposit or mingle any contributions received into a personal or business account.

Section 6. Section 20A-12-304 is enacted to read:

20A-12-304. Judicial retention election candidates -- Financial reporting requirements -- Year-end summary report.

(1) The judge's personal campaign committee shall file a summary report with the lieutenant governor by January 5 of the year after the regular general election year.

(2) (a) Each summary report shall include the following information as of December 31 of the last regular general election year:

(i) a single figure equal to the total amount of contributions reported on the interim report;

(ii) a single figure equal to the total amount of expenditures reported on the interim report;

(iii) a detailed listing of each contribution received since the last summary report that has not been reported in detail on the interim report;

(iv) for each nonmonetary contribution, the fair market value of the contribution;

(v) a detailed listing of each expenditure made since the last summary report that has not been reported in detail on the interim report;

(vi) for each nonmonetary expenditure, the fair market value of the expenditure; and

(vii) the net balance for the year, consisting of all contributions minus all expenditures.

(b) (i) For all single contributions of $50 or less, an aggregate figure may be reported without a separate detailed listing.

(ii) Two or more contributions from the same source for a total of more than $50 may not be reported in the aggregate, but shall be reported in the detailed listing.

(3) The summary report shall contain a statement signed by the judge certifying that, to the best of the judge's knowledge, all contributions and all expenditures have been reported as of December 31 of the last regular general election year and that there are no financial obligations outstanding except as set forth in the report.

Section 7. Section 20A-12-305 is enacted to read:

20A-12-305. Judicial retention election candidates -- Financial reporting requirements -- Interim report.

(1) The judge's personal campaign committee shall file an interim report with the lieutenant governor no later than 5 p.m. on the date seven days before the regular general election date.

(2) Each interim report shall include the following information:

(a) a detailed listing of each contribution received since the last summary report;

(b) for each nonmonetary contribution, the fair market value of the contribution;

(c) a detailed listing of each expenditure made since the last summary report;

(d) for each nonmonetary expenditure, the fair market value of the expenditure; and

(e) a net balance for the year consisting of all contributions since the last summary report minus all expenditures since the last summary report.

(3) (a) For all individual contributions of $50 or less, a single aggregate figure may be reported without separate detailed listings.

(b) Two or more contributions from the same source that have an aggregate total of more than $50 may not be reported in the aggregate, but shall be reported separately.

(4) In preparing each interim report, all contributions and expenditures shall be reported as of five days before the required filing date of the report.

Section 8. Section 20A-12-306 is enacted to read:

20A-12-306. Judges -- Failure to file reports -- Penalties.

(1) (a) If a judge's personal campaign committee fails to file the interim report due before the regular general election, the lieutenant governor shall, after making a reasonable attempt to discover if the report was timely mailed, inform the county clerk and other appropriate election officials who:

(i) shall, if practicable, remove the name of the judge by blacking out the judge's name before the ballots are delivered to voters; or

(ii) shall, if removing the judge's name from the ballot is not practicable, inform the voters by any practicable method that the judge has been disqualified and that votes cast for the judge will not be counted; and

(iii) may not count any votes for that judge.

(b) Any judge who fails to file timely a financial statement required by this part is disqualified.

(c) Notwithstanding Subsections (1)(a) and (1)(b), a judge is not disqualified if:

(i) the candidate files the reports required by this section;

(ii) those reports are completed, detailing accurately and completely the information required by this part except for inadvertent omissions or insignificant errors or inaccuracies; and

(iii) those omissions, errors, or inaccuracies are corrected in an amended report or in the next scheduled report.

(2) (a) Within 30 days after a deadline for the filing of a summary report, the lieutenant governor shall review each filed summary report to ensure that:

(i) each judge that is required to file a summary report has filed one; and

(ii) each summary report contains the information required by this part.

(b) If it appears that any judge has failed to file the summary report required by law, if it appears that a filed summary report does not conform to the law, or if the lieutenant governor has received a written complaint alleging a violation of the law or the falsity of any summary report, the lieutenant governor shall, within five days of discovery of a violation or receipt of a written complaint, notify the judge of the violation or written complaint and direct the judge to file a summary report correcting the problem.

(c) (i) It is unlawful for any judge to fail to file or amend a summary report within 14 days after receiving notice from the lieutenant governor under this section.

(ii) Each judge who violates Subsection (2)(c)(i) is guilty of a class B misdemeanor.

(iii) The lieutenant governor shall report all violations of Subsection (2)(c)(i) to the attorney general.

CHAPTER 167
H. B. 117
Passed February 27, 2001
Approved March 15, 2001
Effective April 30, 2001

AMENDING THE GROUNDS FOR TAKING A CHILD INTO PROTECTIVE CUSTODY

Sponsor: Thomas V. Hatch

This act modifies the requirements for taking a child into protective custody when child abuse is suspected. This act requires a court-ordered warrant to take a child into protective custody except in limited circumstances.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
62A-4a-202.1, as last amended by Chapter 274, Laws of Utah 2000

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

Section 1. Section 62A-4a-202.1 is amended to read:

62A-4a-202.1. Taking a child into protective custody -- Peace officer -- Division of Child and Family Services caseworker.

(1) [~~Any peace officer may, without a warrant, take a minor into protective custody when the officer has substantial cause to believe that any of the factors described in Section 78-3a-301 exist.~~] A state officer, peace officer, or child welfare worker may not remove a child from the child's home or school, or take a child into protective custody without a warrant or court order issued under Section 78-3a-106 unless:

(a) the state officer, peace officer, or child welfare worker has reasonable grounds to believe that the exigent circumstances described in Section 78-3a-301, which defines substantial danger to a child's health or safety, exist; and

(b) the removal of the child or placement of the child into protective custody is not motivated purely by an intent to seize or obtain evidence unrelated to the potential abuse or neglect allegation.

(2) (a) A child welfare worker within the Division of Child and Family Services may take and maintain protective custody of a minor, without a warrant, in accordance with the requirements of this section and Section 78-3a-301 when accompanied by a peace officer, or without a peace officer, when a peace officer is not reasonably available.

(b) If possible, consistent with the child's safety and welfare, before taking a child into protective custody, the worker shall also determine whether there are services reasonably available to the worker which, if provided to the minor's parent or to the minor, would eliminate the need to remove the minor from the custody of his parent in accordance with the provisions and limitations of Section 78-3a-301. If those services are reasonably available, they shall be utilized. In determining whether services are reasonably available, and in making reasonable efforts to provide those services, the child's health, safety, and welfare shall be the worker's paramount concern.

(c) (i) Except as provided in Subsection (2)(c)(ii), if a child welfare worker determines that there is substantial cause to believe that one or more of the factors described in Section 78-3a-301 exist and determines, pursuant to Subsection (2)(b), that services are not reasonably available to eliminate the need for removal, the child welfare worker may proceed with removal of the child after the worker has reviewed the reasons for removal and other available options with a family services specialist within the division.

(ii) The provisions of Subsection (2)(c)(i) requiring a family services specialist's review prior to removal of a child do not apply and are not necessary if, in the child welfare worker's opinion, that process would create a delay that may endanger the health, safety, or welfare of the child.

(iii) From its existing staff, the division shall train and appoint family services specialists who are available 24 hours a day, seven days a week, to perform the duties described in Subsection (2)(c)(i).

CHAPTER 168
H. B. 122
Passed February 23, 2001
Approved March 15, 2001
Effective April 30, 2001

ADMINISTRATIVE TRAFFIC CHECKPOINT AMENDMENTS

Sponsor: David Ure

This act modifies the Utah Code of Criminal Procedure by restricting the use of administrative traffic checkpoints.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
77-23-104, as last amended by Chapter 284, Laws of Utah 1997

ENACTS:
77-23-104.5, Utah Code Annotated 1953

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

Section 1. Section 77-23-104 is amended to read:

77-23-104. Written plan -- Approval of magistrate.

(1) An administrative traffic checkpoint may be established and operated upon written authority of a magistrate.

(2) A magistrate may issue written authority to establish and operate an administrative traffic checkpoint if:

(a) a command level officer submits to the magistrate a written plan signed by the command level officer describing:

(i) the location of the checkpoint including geographical and topographical information;

(ii) the date, time, and duration of the checkpoint;

(iii) the sequence of traffic to be stopped;

(iv) the purpose of the checkpoint, including the inspection or inquiry to be conducted;

(v) the minimum number of personnel to be employed in operating the checkpoint, including the rank of the officer or officers in charge at the scene;

(vi) the configuration and location of signs, barriers, and other means of informing approaching motorists that they must stop and directing them to the place to stop;

(vii) any advance notice to the public at large of the establishment of the checkpoint; and

(viii) the instructions to be given to the enforcement officers operating the checkpoint; [~~and~~]

(b) the magistrate makes an independent judicial determination that the plan appropriately:

(i) minimizes the length of time the motorist will be delayed;

(ii) minimizes the intrusion of the inspection or inquiry;

(iii) minimizes the fear and anxiety the motorist will experience;

(iv) minimizes the degree of discretion to be exercised by the individual enforcement officers operating the checkpoint; and

(v) maximizes the safety of the motorist and the enforcement officers[~~.~~]; and

(c) the administrative traffic checkpoint has the primary purpose of inspecting, verifying, or detecting:

(i) drivers that may be under the influence of alcohol or drugs;

(ii) license plates, registration certificates, insurance certificates, or driver licenses;

(iii) violations of Title 23, Wildlife Resources Code of Utah; or

(iv) other circumstances that are specifically distinguishable by the magistrate from a general interest in crime control.

(3) Upon determination by the magistrate that the plan meets the requirements of Subsection (2)[~~(b)~~], the magistrate shall sign the authorization and issue it to the command level officer, retaining a copy for the court's file.

(4) A copy of the plan and signed authorization shall be issued to the checkpoint command level officer participating in the operation of the checkpoint.

(5) Any enforcement officer participating in the operation of the checkpoint shall conform his activities as nearly as practicable to the procedures outlined in the plan.

(6) The checkpoint command level officer shall be available to exhibit a copy of the plan and signed authorization to any motorist who has been stopped at the checkpoint upon request of the motorist.

Section 2. Section 77-23-104.5 is enacted to read:

77-23-104.5. Signs -- Prohibitions.

An enforcement officer may not display a sign that notifies motorists of an administrative traffic checkpoint unless the checkpoint is being operated under the authority of a magistrate as provided in Section 77-23-104.

CHAPTER 169
H. B. 124
Passed February 21, 2001
Approved March 15, 2001
Effective April 30, 2001

AMENDMENTS TO VOTER INFORMATION PAMPHLET

Sponsor: J. Morgan Philpot

This act modifies Election Code provisions governing the Voter Information Pamphlet. This act requires notice of an appeal of the ballot title or impartial analysis to opponents of measures submitted to the voters.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
20A-7-209, as last amended by Chapter 21, Laws of Utah 1999
20A-7-308, as last amended by Chapters 20 and 153, Laws of Utah 1995

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

Section 1. Section 20A-7-209 is amended to read:

20A-7-209. Ballot title -- Duties of lieutenant governor and Office of Legislative Research and General Counsel.

(1) By July 6 before the regular general election, the lieutenant governor shall deliver a copy of all of the proposed laws that have qualified for the ballot to the Office of Legislative Research and General Counsel.

(2) (a) The Office of Legislative Research and General Counsel shall:

(i) prepare a ballot title for each initiative; and

(ii) return each petition and ballot title to the lieutenant governor by July 20.

(b) The ballot title may be distinct from the title of the proposed law attached to the initiative petition, and shall express, in not more than 100 words, the purpose of the measure.

(c) The ballot title and the number of the measure as determined by the Office of Legislative Research and General Counsel shall be printed on the official ballot.

(d) In preparing ballot titles, the Office of Legislative Research and General Counsel shall, to the best of its ability, give a true and impartial statement of the purpose of the measure.

(e) The ballot title may not intentionally be an argument, or likely to create prejudice, for or against the measure.

(3) By July 21, the lieutenant governor shall mail a copy of the ballot title to any sponsor of the petition.

(4) (a) (i) If the ballot title furnished by the Office of Legislative Research and General Counsel is unsatisfactory or does not comply with the requirements of this section, at least three of the sponsors of the petition may, by July 30, appeal the wording of the ballot title prepared by the Office of Legislative Research and General Counsel to the Supreme Court.

(ii) After receipt of the appeal, the Supreme Court shall direct the lieutenant governor to send notice of the appeal to:

(A) any person or group that has filed an argument for or against the measure that is the subject of the challenge; or

(B) any political issues committee established under Section 20A-11-801 that has filed written or electronic notice with the lieutenant governor that identifies the name, mailing or email address, and telephone number of the person designated to receive notice about any issues relating to the initiative.

(b) The Supreme Court shall:

(i) examine the ballot title;

(ii) hear arguments; and

(iii) by August 10, certify to the lieutenant governor a ballot title for the measure that fulfills the intent of this section.

(c) By September 1, the lieutenant governor shall certify the title verified to him by the Supreme Court to the county clerks to be printed on the official ballot.

Section 2. Section 20A-7-308 is amended to read:

20A-7-308. Ballot title -- Duties of lieutenant governor and Office of Legislative Research and General Counsel.

(1) Whenever a referendum petition is declared sufficient for submission to a vote of the people, the lieutenant governor shall deliver a copy of the petition and the proposed law to the Office of Legislative Research and General Counsel.

(2) (a) The Office of Legislative Research and General Counsel shall:

(i) prepare a ballot title for the referendum; and

(ii) return the petition and the ballot title to the lieutenant governor within 15 days after its receipt.

(b) The ballot title may be distinct from the title of the law that is the subject of the petition, and shall express, in not more than 100 words, the purpose of the measure.

(c) The ballot title and the number of the measure as determined by the Office of Legislative Research and General Counsel shall be printed on the official ballot.

(d) In preparing ballot titles, the Office of Legislative Research and General Counsel shall, to the best of its ability, give a true and impartial statement of the purpose of the measure.

(e) The ballot title may not intentionally be an argument, or likely to create prejudice, for or against the measure.

(3) Immediately after the Office of Legislative Research and General Counsel files a copy of the ballot title with the lieutenant governor, the lieutenant governor shall mail a copy of the ballot title to any of the sponsors of the petition.

(4) (a) (i) If the ballot title furnished by the Office of Legislative Research and General Counsel is unsatisfactory or does not comply with the requirements of this section, at least three of the sponsors of the petition may, within 15 days of the date the lieutenant governor mails the ballot title, appeal the wording of the ballot title prepared by the Office of Legislative Research and General Counsel to the Supreme Court.

(ii) After receipt of the appeal, the Supreme Court shall direct the lieutenant governor to send notice of the appeal to:

(A) any person or group that has filed an argument for or against the measure that is the subject of the challenge; or

(B) any political issues committee established under Section 20A-11-801 that has filed written or electronic notice with the lieutenant governor that identifies the name, mailing or email address, and telephone number of the person designated to receive notice about any issues relating to the initiative.

(b) The Supreme Court shall:

(i) examine the ballot title;

(ii) hear arguments; and

(iii) within five days of its decision, certify to the lieutenant governor a ballot title for the measure that fulfills the intent of this section.

(c) The lieutenant governor shall certify the title verified to him by the Supreme Court to the county clerks to be printed on the official ballot.

CHAPTER 170
H. B. 126
Passed February 19, 2001
Approved March 15, 2001
Effective July 1, 2001

AMENDMENTS TO SALES AND USE TAX EXEMPTION FOR MEALS

Sponsor: Afton B. Bradshaw

This act modifies the Sales and Use Tax Act by amending the sales and use tax exemption for sales of meals served by an institution of higher education to exempt certain meals that are prepaid as part of a student meal plan, and making technical changes. This act takes effect on July 1, 2001.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
59-12-104, as last amended by Chapter 325, Laws of Utah 2000

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

Section 1. Section 59-12-104 is amended to read:

59-12-104. Exemptions.

The following sales and uses are exempt from the taxes imposed by this chapter:

(1) sales of aviation fuel, motor fuel, and special fuel subject to a Utah state excise tax under Title 59, Chapter 13, Motor and Special Fuel Tax Act;

(2) sales to the state, its institutions, and its political subdivisions; however, this exemption does not apply to sales of construction materials except:

(a) construction materials purchased by or on behalf of institutions of the public education system as defined in Utah Constitution Article X, Section 2, provided the construction materials are clearly identified and segregated and installed or converted to real property which is owned by institutions of the public education system; and

(b) construction materials purchased by the state, its institutions, or its political subdivisions which are installed or converted to real property by employees of the state, its institutions, or its political subdivisions;

(3) sales of food, beverage, and dairy products from vending machines in which the proceeds of each sale do not exceed $1 if the vendor or operator of the vending machine reports an amount equal to 150% of the cost of items as goods consumed;

(4) sales of food, beverage, dairy products, similar confections, and related services to commercial airline carriers for in-flight consumption;

(5) sales of parts and equipment installed in aircraft operated by common carriers in interstate or foreign commerce;

(6) sales of commercials, motion picture films, prerecorded audio program tapes or records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture exhibitor, distributor, or commercial television or radio broadcaster;

(7) sales of cleaning or washing of tangible personal property by a coin-operated laundry or dry cleaning machine;

(8) (a) except as provided in Subsection (8)(b), sales made to or by religious or charitable institutions in the conduct of their regular religious or charitable functions and activities, if the requirements of Section 59-12-104.1 are fulfilled;

(b) the exemption provided for in Subsection (8)(a) does not apply to the following sales, uses, leases, or rentals relating to the Olympic Winter Games of 2002 made to or by an organization exempt from federal income taxation under Section 501(c)(3), Internal Revenue Code:

(i) retail sales of Olympic merchandise;

(ii) except as provided in Subsection (51), admissions or user fees described in Subsection 59-12-103(1)(f);

(iii) sales of accommodations and services as provided in Subsection 59-12-103(1)(i), except for accommodations and services:

(A) paid for in full by the Salt Lake Organizing Committee for the Olympic Winter Games of 2002;

(B) exclusively used by:

(I) an officer, a trustee, or an employee of the Salt Lake Organizing Committee for the Olympic Winter Games of 2002; or

(II) a volunteer supervised by the Salt Lake Organizing Committee for the Olympic Winter Games of 2002; and

(C) for which the Salt Lake Organizing Committee for the Olympic Winter Games of 2002 does not receive reimbursement; or

(iv) a lease or rental of a vehicle as defined in Section 41-1a-102, except for a lease or rental of a vehicle:

(A) paid for in full by the Salt Lake Organizing Committee for the Olympic Winter Games of 2002;

(B) exclusively used by:

(I) an officer, a trustee, or an employee of the Salt Lake Organizing Committee for the Olympic Winter Games of 2002; or

(II) a volunteer supervised by the Salt Lake Organizing Committee for the Olympic Winter Games of 2002; and

(C) for which the Salt Lake Organizing Committee for the Olympic Winter Games of 2002 does not receive reimbursement;

(9) sales of vehicles of a type required to be registered under the motor vehicle laws of this state which are made to bona fide nonresidents of this state and are not afterwards registered or used in this state except as necessary to transport them to the borders of this state;

(10) sales of medicine;

(11) sales or use of property, materials, or services used in the construction of or incorporated in pollution control facilities allowed by Sections 19-2-123 through 19-2-127;

(12) (a) sales of meals served by:

[~~(a)~~] (i) [~~churches, charitable institutions, and institutions of higher education,~~] the following if the meals are not available to the general public[~~; and~~]:

(A) a church; or

(B) a charitable institution;

(ii) an institution of higher education if:

(A) the meals are not available to the general public; or

(B) the meals are prepaid as part of a student meal plan offered by the institution of higher education; or

(b) inpatient meals provided at:

(i) a medical facility; or

(ii) a nursing [~~facilities~~] facility;

(13) isolated or occasional sales by persons not regularly engaged in business, except the sale of vehicles or vessels required to be titled or registered under the laws of this state in which case the tax is based upon:

(a) the bill of sale or other written evidence of value of the vehicle or vessel being sold; or

(b) in the absence of a bill of sale or other written evidence of value, the then existing fair market value of the vehicle or vessel being sold as determined by the commission;

(14) (a) the following purchases or leases by a manufacturer on or after July 1, 1995:

(i) machinery and equipment:

(A) used in the manufacturing process;

(B) having an economic life of three or more years; and

(C) used:

(I) to manufacture an item sold as tangible personal property; and

(II) in new or expanding operations in a manufacturing facility in the state; and

(ii) subject to the provisions of Subsection (14)(b), normal operating replacements that:

(A) have an economic life of three or more years;

(B) are used in the manufacturing process in a manufacturing facility in the state;

(C) are used to replace or adapt an existing machine to extend the normal estimated useful life of the machine; and

(D) do not include repairs and maintenance;

(b) the rates for the exemption under Subsection (14)(a)(ii) are as follows:

(i) beginning July 1, 1996, through June 30, 1997, 30% of the sale or lease described in Subsection (14)(a)(ii) is exempt;

(ii) beginning July 1, 1997, through June 30, 1998, 60% of the sale or lease described in Subsection (14)(a)(ii) is exempt; and

(iii) beginning July 1, 1998, 100% of the sale or lease described in Subsection (14)(a)(ii) is exempt;

(c) for purposes of this Subsection (14), the commission shall by rule define the terms "new or expanding operations" and "establishment"; and

(d) on or before October 1, 1991, and every five years after October 1, 1991, the commission shall:

(i) review the exemptions described in Subsection (14)(a) and make recommendations to the Revenue and Taxation Interim Committee concerning whether the exemptions should be continued, modified, or repealed; and

(ii) include in its report:

(A) the cost of the exemptions;

(B) the purpose and effectiveness of the exemptions; and

(C) the benefits of the exemptions to the state;

(15) sales of tooling, special tooling, support equipment, and special test equipment used or consumed exclusively in the performance of any aerospace or electronics industry contract with the United States government or any subcontract under that contract, but only if, under the terms of that contract or subcontract, title to the tooling and equipment is vested in the United States government as evidenced by a government identification tag placed on the tooling and equipment or by listing on a government-approved property record if a tag is impractical;

(16) intrastate movements of:

(a) freight by common carriers; and

(b) passengers:

(i) by taxicabs as described in SIC Code 4121 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget; or

(ii) transported by an establishment described in SIC Code 4111 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget, if the transportation originates and terminates within a county of the first, second, or third class;

(17) sales of newspapers or newspaper subscriptions;

(18) tangible personal property, other than money, traded in as full or part payment of the purchase price, except that for purposes of calculating sales or use tax upon vehicles not sold by

a vehicle dealer, trade-ins are limited to other vehicles only, and the tax is based upon:

(a) the bill of sale or other written evidence of value of the vehicle being sold and the vehicle being traded in; or

(b) in the absence of a bill of sale or other written evidence of value, the then existing fair market value of the vehicle being sold and the vehicle being traded in, as determined by the commission;

(19) sprays and insecticides used to control insects, diseases, and weeds for commercial production of fruits, vegetables, feeds, seeds, and animal products, but not those sprays and insecticides used in the processing of the products;

(20) (a) sales of tangible personal property used or consumed primarily and directly in farming operations, including sales of irrigation equipment and supplies used for agricultural production purposes, whether or not they become part of real estate and whether or not installed by farmer, contractor, or subcontractor, but not sales of:

(i) machinery, equipment, materials, and supplies used in a manner that is incidental to farming, such as hand tools with a unit purchase price not in excess of $250, and maintenance and janitorial equipment and supplies;

(ii) tangible personal property used in any activities other than farming, such as office equipment and supplies, equipment and supplies used in sales or distribution of farm products, in research, or in transportation; or

(iii) any vehicle required to be registered by the laws of this state, without regard to the use to which the vehicle is put;

(b) sales of hay;

(21) exclusive sale of locally grown seasonal crops, seedling plants, or garden, farm, or other agricultural produce if sold by a producer during the harvest season;

(22) purchases of food as defined in 7 U.S.C. Sec. 2012(g) under the Food Stamp Program, 7 U.S.C. Sec. 2011 et seq.;

(23) sales of nonreturnable containers, nonreturnable labels, nonreturnable bags, nonreturnable shipping cases, and nonreturnable casings to a manufacturer, processor, wholesaler, or retailer for use in packaging tangible personal property to be sold by that manufacturer, processor, wholesaler, or retailer;

(24) property stored in the state for resale;

(25) property brought into the state by a nonresident for his or her own personal use or enjoyment while within the state, except property purchased for use in Utah by a nonresident living and working in Utah at the time of purchase;

(26) property purchased for resale in this state, in the regular course of business, either in its original form or as an ingredient or component part of a manufactured or compounded product;

(27) property upon which a sales or use tax was paid to some other state, or one of its subdivisions, except that the state shall be paid any difference between the tax paid and the tax imposed by this part and Part 2, Local Sales and Use Tax Act, and no adjustment is allowed if the tax paid was greater than the tax imposed by this part and Part 2, Local Sales and Use Tax Act;

(28) any sale of a service described in Subsections 59-12-103(1)(b), (c), and (d) to a person for use in compounding a service taxable under the subsections;

(29) purchases of supplemental foods as defined in 42 U.S.C. Sec. 1786(b)(14) under the special supplemental nutrition program for women, infants, and children established in 42 U.S.C. Sec. 1786;

(30) beginning on July 1, 1999, through June 30, 2004, sales or leases of rolls, rollers, refractory brick, electric motors, or other replacement parts used in the furnaces, mills, or ovens of a steel mill described in SIC Code 3312 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget;

(31) sales of boats of a type required to be registered under Title 73, Chapter 18, State Boating Act, boat trailers, and outboard motors which are made to bona fide nonresidents of this state and are not thereafter registered or used in this state except as necessary to transport them to the borders of this state;

(32) sales of tangible personal property to persons within this state that is subsequently shipped outside the state and incorporated pursuant to contract into and becomes a part of real property located outside of this state, except to the extent that the other state or political entity imposes a sales, use, gross receipts, or other similar transaction excise tax on it against which the other state or political entity allows a credit for taxes imposed by this chapter;

(33) sales of aircraft manufactured in Utah if sold for delivery and use outside Utah where a sales or use tax is not imposed, even if the title is passed in Utah;

(34) amounts paid for the purchase of telephone service for purposes of providing telephone service;

(35) fares charged to persons transported directly by a public transit district created under the authority of Title 17A, Chapter 2, Part 10, Utah Public Transit District Act;

(36) sales or leases of vehicles to, or use of vehicles by an authorized carrier;

(37) (a) 45% of the sales price of any new manufactured home; and

(b) 100% of the sales price of any used manufactured home;

(38) sales relating to schools and fundraising sales;

(39) sales or rentals of home medical equipment and supplies;

(40) (a) sales to a ski resort of electricity to operate a passenger ropeway as defined in Section 72-11-102; and

(b) the commission shall by rule determine the method for calculating sales exempt under Subsection (40)(a) that are not separately metered and accounted for in utility billings;

(41) sales to a ski resort of:

(a) snowmaking equipment;

(b) ski slope grooming equipment; and

(c) passenger ropeways as defined in Section 72-11-102;

(42) sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for industrial use;

(43) sales or rentals of the right to use or operate for amusement, entertainment, or recreation a coin-operated amusement device as defined in Section 59-12-102;

(44) sales of cleaning or washing of tangible personal property by a coin-operated car wash machine;

(45) sales by the state or a political subdivision of the state, except state institutions of higher education as defined in Section 53B-3-102, of:

(a) photocopies; or

(b) other copies of records held or maintained by the state or a political subdivision of the state; and

(46) (a) amounts paid:

(i) to a person providing intrastate transportation to an employer's employee to or from the employee's primary place of employment;

(ii) by an:

(A) employee; or

(B) employer; and

(iii) pursuant to a written contract between:

(A) the employer; and

(B) (I) the employee; or

(II) a person providing transportation to the employer's employee; and

(b) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may for purposes of Subsection (46)(a) make rules defining what constitutes an employee's primary place of employment;

(47) amounts paid for admission to an athletic event at an institution of higher education that is subject to the provisions of Title IX of the Education Amendments of 1972, 20 U.S.C. Sec. 1681 et seq.;

(48) sales of telephone service charged to a prepaid telephone calling card;

(49) (a) sales of hearing aids; and

(b) sales of hearing aid accessories;

(50) (a) sales made to or by:

(i) an area agency on aging; or

(ii) a senior citizen center owned by a county, city, or town; or

(b) sales made by a senior citizen center that contracts with an area agency on aging; and

(51) (a) beginning on July 1, 2000, through June 30, 2002, amounts paid or charged as admission or user fees described in Subsection 59-12-103(1)(f) relating to the Olympic Winter Games of 2002 if the amounts paid or charged are established by the Salt Lake Organizing Committee for the Olympic Winter Games of 2002 in accordance with requirements of the International Olympic Committee; and

(b) the State Olympic Officer and the Salt Lake Organizing Committee for the Olympic Winter Games of 2002 shall make at least two reports during the 2000 interim:

(i) to the:

(A) Olympic Coordination Committee; and

(B) Revenue and Taxation Interim Committee; and

(ii) regarding the status of:

(A) agreements relating to the funding of public safety services for the Olympic Winter Games of 2002;

(B) agreements relating to the funding of services, other than public safety services, for the Olympic Winter Games of 2002;

(C) other agreements relating to the Olympic Winter Games of 2002 as requested by the Olympic Coordination Committee or the Revenue and Taxation Interim Committee;

(D) other issues as requested by the Olympic Coordination Committee or the Revenue and Taxation Interim Committee; or

(E) a combination of Subsections (51)(b)(ii)(A) through (D).

Section 2. Effective date.

This act takes effect on July 1, 2001.

CHAPTER 171
H. B. 130
Passed February 28, 2001
Approved March 15, 2001
Effective April 30, 2001

EXEMPTION FOR DOMESTIC WORKERS FOR PERSONS ELIGIBLE FOR STATE AND FEDERAL PROGRAMS

Sponsor: Trisha S. Beck

This act modifies the Utah Labor Code to exempt certain domestic workers from coverage under workers' compensation provisions and to make technical and conforming changes.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
34A-2-104, as last amended by Chapter 45, Laws of Utah 1998

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

Section 1. Section 34A-2-104 is amended to read:

34A-2-104. "Employee," "worker," or "operative" defined -- Mining lessees and sublessees -- Corporate officers and directors -- Real estate agents and brokers -- Prison inmates -- Insurance agents -- Certain domestic workers.

(1) As used in this chapter and Chapter 3, Utah Occupational Disease Act, "employee," "worker," and "operative" mean:

(a) (i) each elective and appointive officer and any other person[~~,~~]:

(A) in the service of:

(I) the state[~~,~~]; [~~or of any~~]

(II) a county, city, or town[~~,~~] within the state; or

(III) a school district within the state[~~,~~];

(B) serving the state, or any county, city, town, or school district under [~~any~~]:

(I) an election [~~or~~];

(II) appointment[~~,~~]; or [~~under~~]

(III) any contract of hire, express or implied, written or oral[~~,~~]; and

(ii) including [~~each~~]:

(A) an officer [~~and~~] or employee of the state institutions of learning; and [~~members~~]

(B) a member of the National Guard while on state active duty; and

(b) each person in the service of any employer, as defined in Section 34A-2-103, who employs one or more workers or operatives regularly in the same business, or in or about the same establishment[~~,~~]:

(i) under any contract of hire[~~,~~]:

(A) express or implied[~~,~~]; and

(B) oral or written[~~,~~];

(ii) including aliens and minors, whether legally or illegally working for hire[~~, but~~]; and

(iii) not including any person whose employment:

(A) is casual; and

(B) not in the usual course of the trade, business, or occupation of the employee's employer.

(2) (a) Unless a lessee provides coverage as an employer under this chapter and Chapter 3, any lessee in mines or of mining property and each employee and sublessee of the lessee shall be:

(i) covered for compensation by the lessor under this chapter and Chapter 3[~~, and shall be~~];

(ii) subject to this chapter and Chapter 3; and

(iii) entitled to [~~its~~] the benefits of this chapter and Chapter 3, to the same extent as if [~~they~~] the lessee, employee, or sublessee were employees of the lessor drawing the wages paid employees for substantially similar work.

(b) The lessor may deduct from the proceeds of ores mined by the lessees an amount equal to the insurance premium for that type of work.

(3) (a) A partnership or sole proprietorship may elect to include any partner of the partnership or owner of the sole proprietorship as an employee of the partnership or sole proprietorship under this chapter and Chapter 3.

(b) If a partnership or sole proprietorship makes an election under Subsection (3)(a), [~~it~~] the partnership or sole proprietorship shall serve written notice upon its insurance carrier naming the persons to be covered.

(c) A partner of a partnership or owner of a sole proprietorship may not be considered an employee of the partner's partnership or the owner's sole proprietorship under this chapter or Chapter 3[~~, Utah Occupational Disease Act,~~] until [~~this~~] the notice [~~has been~~] described in Subsection (3)(b) is given.

[~~(c)~~] (d) For premium rate making, the insurance carrier shall assume the salary or wage of the partner or sole proprietor electing coverage under Subsection (3)(a) to be 100% of the state's average weekly wage.

(4) (a) A corporation may elect not to include any director or officer of the corporation as an employee under this chapter and Chapter 3[~~, Utah Occupational Disease Act~~].

(b) If a corporation makes an election under Subsection (4)(a), [~~it~~] the corporation shall serve written notice upon its insurance carrier naming the persons to be excluded from coverage.

(c) A director or officer of a corporation is considered an employee under this chapter and Chapter 3[~~, Utah Occupational Disease Act,~~] until [~~this~~] the notice [~~has been~~] described in Subsection (4)(b) is given.

(5) As used in this chapter and Chapter 3, "employee," "worker," and "operative" do not include:

(a) a real estate sales agent or real estate broker, as defined in Section 61-2-2, who performs services in that capacity for a real estate broker if:

(i) substantially all of the real estate sales agent's or associated broker's income for services is from real estate commissions; and

(ii) the services of the real estate sales agent or associated broker are performed under a written contract that:

(A) the real estate agent is an independent contractor; and

(B) the real estate sales agent or associated broker is not to be treated as an employee for federal income tax purposes;

(b) an offender performing labor under Section 64-13-16 or 64-13-19, except as required by federal statute or regulation; [~~or~~]

(c) an individual who for an insurance agent or broker, as defined in Section 31A-1-301, solicits, negotiates, places or procures insurance if:

(i) substantially all of the individual's income from those services is from insurance commissions; and

(ii) the services of the individual are performed under a written contract that states that the individual:

(A) is an independent contractor;

(B) is not to be treated as an employee for federal income tax purposes; and

(C) can derive income from more than one insurance company[~~.~~]; or

(d) notwithstanding Subsection 34A-2-103(4), an individual who provides domestic work for a person if:

(i) the person for whom the domestic work is being provided receives or is eligible to receive the domestic work under a state or federal program designed to pay the costs of domestic work to prevent the person from being placed in:

(A) an institution; or

(B) a more restrictive placement than where that person resides at the time the person receives the domestic work;

(ii) the individual is paid by a person designated by the Secretary of the Treasury in accordance with Section 3504, Internal Revenue Code, as a fiduciary, agent, or other person that has the control, receipt, custody, or disposal of, or pays the wages of the individual; and

(iii) the domestic work is performed under a written contract that notifies the individual that the individual is not an employee under this chapter or Chapter 3.

(6) An individual described in Subsection (5)(d) may become an employee under this chapter and Chapter 3 if the employer of the individual complies with:

(a) this chapter and Chapter 3; and

(b) commission rules.

CHAPTER 172
H. B. 131
Passed February 23, 2001
Approved March 15, 2001
Effective July 1, 2001

INTERNET CHILD PROTECTION ACT

Sponsor: Bradley A. Winn

This act modifies the State Library Division Code to establish policy and reporting requirements for local library boards which provide Internet and online access by minors in public libraries in order to prevent minor's access to obscene material. The act modifies the Public Education Code to create and establish policy and reporting requirements for local school boards which provide Internet and online access in elementary and secondary schools in order to prevent access to obscene material. The act provides an effective date.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
9-7-101, as last amended by Chapter 32, Laws of Utah 1995

ENACTS:
9-7-216, Utah Code Annotated 1953
9-7-217, Utah Code Annotated 1953
53A-3-422, Utah Code Annotated 1953
53A-3-423, Utah Code Annotated 1953
53A-3-424, Utah Code Annotated 1953

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

Section 1. Section 9-7-101 is amended to read:

9-7-101. Definitions.

As used in this chapter:

(1) "Division" means the State Library Division.

(2) "Library board" means the library board of directors appointed locally as authorized by Section 9-7-402 or 9-7-502 and which exercises general policy authority for library services within a city or county of the state, regardless of the title by which it is known locally.

(3) "Policy" means the public library online access policy adopted by a library board to meet the requirements of Section 9-7-215.

[~~(2)~~] (4) "Political subdivision" means any county, city, town, school district, public transit district, redevelopment agency, or special improvement or taxing district.

[~~(3)~~] (5) "State agency" means the state, any office, department, agency, authority, commission, board, institution, hospital, college, university, or other instrumentality of the state.

[~~(4)~~] (6) (a) "State publication" means any book, compilation, directory, document, contract or grant report, hearing memorandum, journal, law, legislative bill, magazine, map, monograph, order, ordinance, pamphlet, periodical, proceeding, public memorandum, resolution, register, rule, report, statute, audiovisual material, electronic publication, micrographic form and tape or disc recording regardless of format or method of reproduction, issued or published by any state agency or political subdivision for distribution.

(b) "State publication" does not include any correspondence, internal confidential publications, office memoranda, university press publications, or publications of the state historical society.

Section 2. Section 9-7-216 is enacted to read:

9-7-216. Process and content standards for policy.

(1) (a) Each library's policy shall be developed under the direction of the library board, adopted in an open meeting, and have an effective date. The library board shall review the policy at least every three years, and a footnote shall be added to the policy indicating the effective date of the last review.

(b) Notice of the availability of the policy shall be posted in a conspicuous place within the library for all patrons to observe. The library board may issue any other public notice it considers appropriate to inform the community about the policy.

(2) The policy shall:

(a) state that it restricts access by minors to Internet or online sites that contain obscene material and shall state how the library board intends to meet the requirements of Section 9-7-215;

(b) inform patrons that administrative procedures and guidelines for the staff to follow in enforcing the policy have been adopted and are available for review at the library; and

(c) inform patrons that procedures for use by patrons and staff to handle complaints about the policy, its enforcement, or about observed patron behavior have been adopted and are available for review at the library.

Section 3. Section 9-7-217 is enacted to read:

9-7-217. Reporting.

The division shall make a report to the Business, Labor, and Economic Development Interim Committee of the Legislature at least once every three years regarding the compliance of library boards with Section 9-7-215.

Section 4. Section 53A-3-422 is enacted to read:

53A-3-422. Internet and online access policy required.

No state funds appropriated in accordance with Section 53A-1-702 shall be provided to any local school board that provides access to the Internet or an online service unless the local school board adopts and enforces a policy to restrict access to Internet or online sites that contain obscene material.

Section 5. Section 53A-3-423 is enacted to read:

53A-3-423. Process and content standards for policy.

(1) "Policy" as used in this section means the elementary and secondary school online access policy adopted by a local school board to meet the requirements of Section 53A-3-422.

(2) (a) Each policy shall be developed under the direction of the local school board, adopted in an open meeting, and have an effective date. The local school board shall review the policy at least every three years, and a footnote shall be added to the policy indicating the effective date of the last review.

(b) Notice of the availability of the policy shall be posted in a conspicuous place within each school. The local school board may issue any other public notice it considers appropriate.

(3) The policy shall:

(a) state that it restricts access to Internet or online sites that contain obscene material and shall state how the local school board intends to meet the requirements of Section 53A-3-422;

(b) inform the public that administrative procedures and guidelines for the staff to follow in enforcing the policy have been adopted and are available for review at the school; and

(c) inform the public that procedures to handle complaints about the policy, its enforcement, or about observed behavior have been adopted and are available for review at the school.

Section 6. Section 53A-3-424 is enacted to read:

53A-3-424. Rulemaking -- Reporting.

(1) The State Office of Education may make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, regarding compliance standards and reporting requirements for local school boards with respect to the policy required by Section 53A-3-422.

(2) The State Office of Education shall make a report to the Education Interim Committee of the Legislature at least once every three years regarding the compliance of local school boards with Section 53A-3-422.

Section 7. Effective date.

This act takes effect on July 1, 2001.

CHAPTER 173
H. B. 132
Passed February 28, 2001
Approved March 15, 2001
Effective April 30, 2001

ALTERNATIVE DISPUTE RESOLUTION

Sponsor: Ralph Becker

This act modifies provisions related to administrative procedures to encourage state agencies to develop and implement alternative dispute resolution procedures. The act defines terms. The act provides guidelines for developing alternative dispute resolution procedures. The act requires confidentiality of information in alternative dispute resolution procedures. The act makes technical changes.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:
63-46c-101, Utah Code Annotated 1953
63-46c-102, Utah Code Annotated 1953
63-46c-103, Utah Code Annotated 1953
63-46c-104, Utah Code Annotated 1953

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

Section 1. Section 63-46c-101 is enacted to read:

CHAPTER 46c. GOVERNMENTAL DISPUTE RESOLUTION ACT

63-46c-101. Title.

This chapter is known as the "Governmental Dispute Resolution Act."

Section 2. Section 63-46c-102 is enacted to read:

63-46c-102. Definitions.

As used in this chapter:

(1) "Agency" is defined in Section 63-46b-2.

(2) "Alternative dispute resolution" or "ADR" means a process other than litigation used to resolve disputes including mediation, arbitration, facilitation, regulatory negotiation, fact-finding, conciliation, early neutral evaluation, and policy dialogues.

(3) "ADR organization" is defined in Section 78-31b-2.

(4) (a) "ADR provider" means a neutral person who:

(i) meets the qualifications established by Judicial Council rules authorized under Section 78-31b-5; and

(ii) conducts an ADR procedure.

(b) "ADR provider" includes an arbitrator, mediator, and early neutral evaluator and may be an employee or an independent contractor.

(5) "Arbitration" means a private hearing before an ADR provider or panel of ADR providers who hear the evidence, consider the contentions of the parties, and enter a written award to resolve the issues presented.

(6) "Mediation" is defined in Section 78-31b-2.

(7) "Neutral" means a person who holds himself out to the public as a qualified person trained to use alternative dispute resolution techniques to resolve conflicts.

Section 3. Section 63-46c-103 is enacted to read:

63-46c-103. Alternative dispute resolution -- Authorization -- Procedures -- Agency coordinators -- Contracts.

(1) An agency may use an ADR procedure to resolve any dispute, issue, or controversy involving any of the agency's operations, programs, or functions, including formal and informal adjudications, rulemakings, enforcement actions, permitting, certifications, licensing, policy development, and contract administration only with the consent of all the interested parties.

(2) (a) An agency may develop and adopt an ADR procedure governed by rules, adopted in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(b) In developing and adopting an ADR procedure under Subsection (2)(a), an agency shall consider:

(i) public interest in maintaining open access to and neutrality of an ADR provider or neutral;

(ii) providing a broad selection of ADR providers or neutrals; and

(iii) creating objective criteria for an ADR provider or neutral to become qualified to conduct an agency ADR procedure.

(3) ADR procedures developed and used by an agency must be consistent with the requirements of Title 63, Chapter 46b, Administrative Procedures Act.

(4) ADR procedures are voluntary and may be used:

(a) at the discretion of the agency; or

(b) with an agency that has adopted an ADR procedure under Subsection (2), at the request of an interested party to a dispute.

(5) An agency that chooses to use an ADR procedure shall develop an agreement with interested parties that provides:

(a) (i) for the appointment of an ADR provider or a neutral;

(ii) whose appointment is agreed upon by all parties to the dispute;

(b) specifies any limitation periods applicable to the commencement or conclusion of formal administrative or judicial proceedings and, if applicable, specifies any time periods that the parties have agreed to waive; and

(c) sets forth how costs and expenses shall be apportioned among the parties.

(6) (a) An ADR provider or neutral agreed upon in Subsection (5) shall have no official, financial, or personal conflict of interest with any issue or party in controversy unless the conflict of interest is fully disclosed in writing to all of the parties and all of the parties agree that the person may continue to serve.

(b) An agency may make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, to develop standards to assure the neutrality of an ADR provider or neutral.

(7) An agreement developed in accordance with Subsection (5) may be included in an enforcement order, stipulation, contract, permit, or other document entered into or issued by the agency.

(8) (a) The administrative head of an agency may designate an employee as the ADR coordinator for that agency.

(b) The agency ADR coordinator shall:

(i) make recommendations to the agency's executive staff on issues and disputes that are suitable for alternative dispute resolution;

(ii) analyze the agency's enabling statutes and rules to determine whether they contain impediments to the use of ADR procedures and suggest any modifications;

(iii) monitor the agency's use of ADR procedures;

(iv) arrange for training of agency staff in ADR procedures; and

(v) provide information about the agency's ADR procedures to the agency's staff and to the public.

(9) In order to implement the purposes of this chapter, an agency may employ or contract with a neutral, an ADR provider, an ADR organization, another agency, or a private entity for any service necessary on a case-by-case basis, on a service basis, or on a program basis.

(10) ADR procedures developed and used under this chapter are subject to the confidentiality requirements of Section 78-31b-8.

Section 4. Section 63-46c-104 is enacted to read:

63-46c-104. Effect on other laws.

Nothing in this chapter or in the agreements and procedures developed in Section 63-46c-103 shall:

(1) limit other dispute resolution procedures available to an agency; and

(2) deny a person a right granted under federal or other state law, including a right to an administrative or judicial hearing.

CHAPTER 174
H. B. 133
Passed February 27, 2001
Approved March 15, 2001
Effective April 30, 2001

BILL OF RIGHTS AND CONSTITUTION DAY

Sponsor: J. Morgan Philpot
Carl R. Saunders
DeMar Bud Bowman
Max W. Young
Chad E. Bennion
David L. Hogue
Douglas C. Aagard
James A. Ferrin
Glenn A. Donnelson
Bryan D. Holladay
Rebecca D. Lockhart
Carl W. Duckworth
Kevin S. Garn
Jeff Alexander
Stephen D. Clark
Paul Ray
Merlynn T. Newbold
Don E. Bush
Margaret Dayton
A. Lamont Tyler
Sheryl L. Allen
Neal B. Hendrickson
Craig W. Buttars
Bradley T. Johnson
Stephen H. Urquhart
Ron Bigelow
Matt Throckmorton
Jackie Biskupski
Mike Thompson
Greg J. Curtis

This act designates December 15 of each year as Bill of Rights Day and September 17 of each year as Constitution Day.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:
63-13-5.6, Utah Code Annotated 1953

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

Section 1. Section 63-13-5.6 is enacted to read:

63-13-5.6. Commemorative days.

The following days shall be commemorated yearly on the designated calendar date:

(1) Bill of Rights Day, December 15; and

(2) Constitution Day, September 17.

CHAPTER 175
H. B. 134
Passed February 27, 2001
Approved March 15, 2001
Effective July 1, 2001

STATE ACCOUNTING STANDARDS

Sponsor: Jeff Alexander

This act modifies statutes governing State Accounting Procedures. The act defines a new fund type within the governmental funds, and clarifies the definitions of enterprise and trust funds. The act makes technical corrections and provides an effective date.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
9-4-303, as last amended by Chapter 299, Laws of Utah 2000
9-4-701, as last amended by Chapter 276, Laws of Utah 1998
9-4-702, as last amended by Chapter 276, Laws of Utah 1998
9-10-102, as enacted by Chapter 341, Laws of Utah 1995
9-11-104, as enacted by Chapter 135, Laws of Utah 1996
51-5-3, as last amended by Chapter 85, Laws of Utah 1993
51-5-4, as last amended by Chapter 222, Laws of Utah 2000
51-5-8, as last amended by Chapter 4, Laws of Utah 1993
63-38-3.5, as last amended by Chapter 263, Laws of Utah 1999
63-38-6, as enacted by Chapter 207, Laws of Utah 1969
63-38-8, as last amended by Chapter 76, Laws of Utah 1994
63-38-8.1, as last amended by Chapter 24, Laws of Utah 1999
63-65-4, as last amended by Chapter 150, Laws of Utah 1997
63-88-102, as last amended by Chapter 281, Laws of Utah 2000
73-10c-2, as last amended by Chapter 282, Laws of Utah 2000
73-10c-4, as last amended by Chapter 199, Laws of Utah 1996
73-10c-5, as last amended by Chapter 282, Laws of Utah 2000
73-10c-6, as last amended by Chapter 30, Laws of Utah 1992
73-10c-7, as enacted by Chapter 354, Laws of Utah 1983
73-10c-9, as last amended by Chapter 285, Laws of Utah 1992

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

Section 1. Section 9-4-303 is amended to read:

9-4-303. Impact fund -- Deposits and contents -- Use of fund monies.

(1) There is created an [~~internal service~~] enterprise fund entitled the "Permanent Community Impact Fund."

(2) The fund consists of:

(a) all amounts appropriated to the impact fund under Section 59-21-2;

(b) bonus payments deposited to the impact fund pursuant to Subsection 59-21-1(2);

(c) bonus payments deposited to the impact fund pursuant to Section 53C-3-202;

(d) all amounts received for the repayment of loans made by the impact board under this chapter; and

(e) all other monies appropriated or otherwise made available to the impact fund by the Legislature.

(3) The state treasurer shall:

(a) invest the monies in the impact fund by following the procedures and requirements of Title 51, Chapter 7, State Money Management Act; and

(b) deposit all interest or other earnings derived from those investments into the impact fund.

(4) The amounts in the impact fund available for loans, grants, administrative costs, or other purposes of this part shall be limited to that which the Legislature appropriates for these purposes.

(5) Federal mineral lease revenue received by the state under the Leasing Act that is deposited into the impact fund shall be used:

(a) in a manner consistent with:

(i) the Leasing Act; and

(ii) this part; and

(b) for loans, grants, or both to state agencies or subdivisions that are socially or economically impacted by the leasing of minerals under the Leasing Act.

(6) Mineral lease revenue collected by the School and Institutional Trust Lands Administration from the lease of minerals on acquired lands or the lease of acquired mineral interests that is deposited into the impact fund shall be used:

(a) in a manner consistent with this part; and

(b) for loans, grants, or both to state agencies or subdivisions socially or economically impacted by the leasing of:

(i) minerals on acquired lands; or

(ii) acquired mineral interests.

Section 2. Section 9-4-701 is amended to read:

9-4-701. Definitions.

As used in this part:

(1) "Board" means the Housing Board created by this part.

(2) "Fund" means the Olene Walker Housing [~~Trust~~] Loan Fund [~~in the General Fund~~] created by this part.

(3) "Rural" means any county in the state other than Utah, Salt Lake, Davis, or Weber.

Section 3. Section 9-4-702 is amended to read:

9-4-702. Creation and administration.

(1) (a) There is created [~~a restricted account in the General Fund~~] an enterprise fund known as the Olene Walker Housing [~~Trust~~] Loan Fund, administered by the executive director or his designee.

(b) The department shall be the [~~trustee~~] administrator of the fund.

(2) There shall be deposited into the fund:

(a) grants, paybacks, bonuses, entitlements, and other moneys received by the department from the federal government to preserve, rehabilitate, build, restore, or renew housing or other activities authorized by the fund;

(b) transfers, grants, gifts, bequests, or any money made available from any source to implement this part; and

(c) moneys appropriated to the fund by the Legislature.

(3) The moneys in the fund shall be invested by the state treasurer according to the procedures and requirements of Title 51, Chapter 7, except that all interest or other earnings derived from the fund moneys shall be deposited in the fund.

Section 4. Section 9-10-102 is amended to read:

9-10-102. Legislative intent -- Uintah Basin Revitalization Fund -- Deposits and contents.

(1) In order to maximize the long-term benefit of severance taxes derived from lands held in trust by the United States for the Tribe and its members by fostering funding mechanisms that will, consistent with sound financial practices, result in the greatest use of financial resources for the greatest number of citizens of the Uintah Basin, and in order to promote cooperation and coordination between the state, its political subdivisions, Indian tribes, and individuals, firms, and business organizations engaged in the development of oil and gas interests held in trust for the Tribe and its members, there is created [~~an enterprise~~] a special revenue fund entitled the "Uintah Basin Revitalization Fund."

(2) The fund consists of all monies deposited to the Revitalization Fund under this part and Section 59-5-116.

(3) (a) The Revitalization Fund shall earn interest.

(b) All interest earned on fund monies shall be deposited into the fund.

Section 5. Section 9-11-104 is amended to read:

9-11-104. San Juan Navajo Revitalization Fund.

(1) (a) There is created [~~an enterprise~~] a special revenue fund called the "Navajo Revitalization Fund."

(b) The fund shall consist of:

(i) monies deposited to the fund under this chapter;

(ii) monies deposited to the fund under Section 59-5-119; and

(iii) any loan repayment or interest on a loan issued under this chapter.

(2) (a) The revitalization fund shall earn interest.

(b) All interest earned on fund monies shall be deposited into the fund.

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

(4) The division may use fund monies for the administration of the fund, but this amount may not exceed 2% of the annual receipts to the fund.

Section 6. Section 51-5-3 is amended to read:

51-5-3. Definitions.

As used in this chapter:

(1) "Account groups" means a self-balancing set of accounts used to establish accounting control and accountability for the state's general fixed assets and general long-term obligations.

(2) "Accrual basis" means the basis of accounting under which revenues are recorded when earned and expenditures are recorded when they result in liabilities for benefits received, even though the receipt of the revenue or payment of the expenditures may take place, in whole or in part, in another accounting period.

(3) "Activity" means a specific and distinguishable line of work performed by one or more organizational components of a governmental unit to accomplish a function for which the governmental unit is responsible.

(4) "Appropriation" means a legislative authorization to make expenditures and to incur obligations for specific purposes.

(5) "Budgetary accounts" means those accounts necessary to reflect budgetary operations and conditions, such as estimated revenues, appropriations, and encumbrances.

(6) "Cash basis" means the basis of accounting under which revenues are recorded when received in cash and expenditures are recorded when paid.

(7) "Dedicated credit" means:

(a) revenue that is required by law or by the contractual terms under which the revenue is accepted, to be expended for specified activities; and

(b) revenue that is appropriated by provisions of law to the department, institution, or agency that assessed the revenue, to be expended for the specified activities.

(8) "Encumbrances" means obligations in the form of purchase orders, contracts, or salary commitments that are chargeable to an appropriation and for which a part of the appropriation is reserved. Encumbrances cease when paid or when the actual liability is set up.

(9) (a) "Expenditures" means decreases in net financial resources from other than interfund transfers, refundings of general long-term capital debt, and other items indicated by GASB.

(b) "Expenditures" may include current operating expenses, debt service, capital outlays, employee benefits, earned entitlements, and shared revenues.

(10) (a) "Financial resources" means assets that are obtained or controlled as a result of past transactions or events that in the normal course of operations will become cash.

(b) "Financial resources" includes cash, claims to cash such as taxes receivable, and claims to goods or services such as prepaids.

(11) "Fiscal period" means any period at the end of which a governmental unit determines its financial position and the results of its operations.

(12) "Function" means a group of related activities aimed at accomplishing a major service or regulatory program for which a governmental unit is responsible.

(13) "Fund" means an independent fiscal and accounting entity with a self-balancing set of accounts, composed of financial resources and other assets, all related liabilities and residual equities or balances and changes in those resources, assets, liabilities, and equities that, when recorded, are segregated for the purpose of carrying on specific activities or attaining certain objectives, according to special regulations, restrictions, or limitations.

(14) "Fund accounts" means all accounts necessary to set forth the financial operations and financial position of a fund.

(15) "GASB" means the Governmental Accounting Standards Board that is responsible for accounting standards used by public entities.

(16) (a) "Governmental fund" means funds used to account for the acquisition, use, and balances of expendable financial resources and related liabilities using a measurement focus that emphasizes the flow of financial resources.

(b) "Governmental fund" includes the following types: General Fund, special revenue funds, debt service funds, [~~and~~] capital projects funds, and permanent funds.

(17) "Lapse," as applied to appropriations, means the automatic termination of an unexpended appropriation.

(18) "Liabilities" are the probable future sacrifices of economic benefits, arising from present obligations of a particular entity to transfer assets or provide services to other entities in the future.

(19) "Net financial resources" means:

(a) the difference between the amount of a governmental fund's financial resources and liabilities; and

(b) the fund balance of a governmental fund.

(20) "Postemployment" means that period of time following:

(a) the last day worked by an employee as a result of his long-term disability; or

(b) the date that an employee identifies as the date on which the employee intends to retire or terminate from state employment.

(21) "Postemployment benefits" means benefits earned by employees that will not be paid until postemployment, including unused vacation leave, unused converted sick leave, sick leave payments, and health and life insurance benefits as provided in Section 67-19-14.

(22) "Proprietary funds" means those funds or subfunds that show actual financial position and the results of operations, such as actual assets, liabilities, reserves, fund balances, revenues, and expenses.

(23) "Restricted revenue" means revenue that is required by law to be expended only:

(a) for specified activities; and

(b) to the amount of the legislative appropriation.

(24) "Revenue" means the increase in ownership equity during a designated period of time that is recognized as earned.

(25) "Subfund" means a restricted account, established within an independent fund, that has a self-balancing set of accounts to restrict revenues, expenditures, or the fund balance.

(26) "Surplus" means the excess of the assets of a fund over its liabilities and restricted fund equity.

(27) "Unappropriated surplus" means that portion of the surplus of a given fund that is not segregated for specific purposes.

(28) "Unrestricted revenue" means revenue of a fund that may be expended by legislative appropriation for functions authorized in the provisions of law that establish each fund.

Section 7. Section 51-5-4 is amended to read:

51-5-4. Funds established -- Titles of funds -- Fund functions.

(1) (a) (i) The funds enumerated in this section are established as major fund types.

(ii) All resources and financial transactions of Utah state government shall be accounted for within one of these major fund types.

(b) (i) All funds or subfunds shall be consolidated into one of the state's major fund types.

(ii) Where a specific statute requires that a restricted fund be established, that fund shall be accounted for as an individual fund or subfund within the major fund type to meet generally accepted accounting principles.

(iii) Existing and new activities of state government authorized by the Legislature shall be accounted for within the framework of the major fund types established in this section.

(c) The Division of Finance shall determine the accounting classification that complies with generally accepted accounting principles for all funds or subfunds created by the Legislature.

(d) (i) Major fund types shall be added by amending this chapter.

(ii) Whenever a new act creates or establishes a fund without amending this chapter, the reference to a fund in the new act [~~means a subfund~~] shall be classified within one of the major fund types established by this section.

(2) Major Fund Type Titles:

(a) General Fund;

(b) Special Revenue Funds;

(c) Capital Projects Funds;

(d) Debt Service Funds;

(e) Permanent Funds;

[~~(e)~~] (f) Enterprise Funds;

[~~(f)~~] (g) Internal Service Funds;

[~~(g)~~] (h) Trust and Agency Funds;

[~~(h)~~] (i) General Fixed Assets Account Group;

[~~(i)~~] (j) General Long-Term Obligation Account Group; and

[~~(j)~~] (k) College and University Funds.

(3) The General Fund shall receive all revenues and account for all expenditures not otherwise provided for by law in any other fund.

(4) Special Revenue Funds [~~shall~~] account for proceeds of specific revenue sources, [~~(~~]other than [~~expendable trusts,~~] permanent funds, trust and agency funds, or major capital projects[~~)~~], that are legally restricted to expenditures for a specific purpose.

(a) The Uniform School Fund is a Special Revenue Fund that [~~shall account~~] accounts for all revenues that are required by law to be expended for the public school programs of the state.

(b) The Transportation Fund is a Special Revenue Fund that [~~shall account~~] accounts for all revenues that are required by [~~Article XIII, Sec. 13, Utah Constitution,~~] law to be expended for highway purposes.

(5) Capital Projects Funds [~~shall~~] account for financial resources to be expended for the acquisition or construction of major capital facilities, except that when financing for the acquisition or construction of a major capital facility is obtained from a trust fund or a proprietary type fund within one of the major fund types, the monies shall be accounted for in those accounts.

(6) Debt Service Funds [~~shall~~] account for the accumulation of resources for, and the payment of, the principal and interest on general long-term obligations.

(7) Permanent Funds account for assets that are legally restricted to the extent that only earnings, and not principal, may be used for a specific purpose.

[~~(7)~~ (a)] (8) Enterprise Funds are designated to account for the following:

[~~(i)~~] (a) operations, financed and operated in a manner similar to private business enterprises, where the Legislature intends that the costs of providing goods or services to the public are financed or recovered primarily through user charges; [~~or~~]

[~~(ii)~~] (b) operations where the Legislature requires periodic determination of revenues earned, expenses incurred, and net income[~~.~~];

[~~(b) The Alcoholic Beverage Control Fund is an Enterprise Fund that shall account for the state-controlled liquor merchandising operations.~~]

[~~(c) The Utah Housing Finance Agency Fund, the Utah Correctional Industries Fund, and the Workers' Compensation Fund, are Enterprise Funds.~~]

(c) operations for which a fee is charged to external users for goods or services; or

(d) operations that are financed with debt that is secured solely by a pledge of the net revenues from fees and charges of the operations.

[~~(8)~~] (9) Internal Service Funds [~~shall~~] account for the financing of goods or services provided by one department, division, or agency to other departments, divisions, or agencies of the state, or to other governmental units, on a cost-reimbursement basis.

[~~(9)~~] (10) (a) Trust and Agency Funds [~~shall~~] account for assets held by the state as trustee or agent for individuals, private organizations, or other governmental units[~~, or other funds~~].

(b) [~~Expendable~~] Pension Trust Funds, [~~Nonexpendable~~] Investment Trust Funds, Private-Purpose Trust Funds, and Agency Funds are Trust and Agency Funds.

[~~(i) The Retirement Systems Fund is a Trust Fund that shall account for resources received and held by the state as trustee for the state retirement systems established by the Utah School Employees' Retirement Act, the Utah Public Employees' Retirement Act, and the Firemen's Pension Act. Additional retirement systems that are established~~

~~by the Legislature shall be included in the Retirement Systems Fund.~~]

[~~(ii) The State Land Principal Fund is a Nonexpendable Trust Fund that shall account for resources received by the state as trustee for land grants made in the Enabling Act of the state of Utah.~~]

[~~(10)~~] (11) The General Fixed Assets Account Group [~~shall account~~] accounts for all fixed assets acquired or constructed for use by the state, except for the fixed assets accounted for in the Internal Service, Enterprise, Trust and Agency, and College and University Funds.

[~~(11)~~] (12) The General Long-Term Obligation Account Group [~~shall account~~] accounts for general obligation bonds, revenue bonds, capital lease obligations, accrued annual and compensatory leave, and other long-term obligations not otherwise recorded in Internal Service, Enterprise, Trust and Agency, and College and University Funds.

[~~(12)~~] (13) College and University Funds [~~shall~~] account for the financial resources used to operate the state's colleges and universities. [~~They shall include the Current Funds, Fiduciary Funds, and Plant Funds for each college and university.~~]

Section 8. Section 51-5-8 is amended to read:

51-5-8. Construction of terms and provisions relating to funds in other statutes.

(1) Direct or indirect references to the word "fund," or any other synonymous word contained in the Utah Code Annotated 1953, that is used to identify a separate accounting entity, [~~shall mean~~] means a fund account or subfund except where that fund meets the definition of a major fund type according to generally accepted accounting principles.

(2) The following terms and all other terms similar in meaning, except when they meet the definition of a fund in accordance with generally accepted accounting principles, [~~shall~~] mean a subfund or account within the funds established by this chapter: "special funds"; "separate funds";[~~"permanent funds";~~] "departmental funds"; "association funds"; "trust," such as "in trust" or "held in trust"; "deposits," such as "security deposits" or "certificates of deposit"; "reserves," such as "special reserves," "contingent reserves," and "reserve funds"; "accounts," such as "special accounts" or "clearing accounts"; and "collections," such as "departmental collections" or "dedicated credits."

(3) Provisions of law governing the assessment and collection of the state's various taxes, licenses, permits, fees, and other charges and provisions controlling the expenditures of those revenues remain in force and are undisturbed by the provisions of this chapter.

(4) Provisions of law that specify that the balance in a fund reverts or is closed out to another fund [~~shall mean~~] means that the balance in that fund reverts to the unappropriated surplus account of the governmental fund in which that fund is placed.

(5) Provisions of law that specify that the balance in a fund [~~shall~~] does not lapse or otherwise become part of the state General Fund [~~shall mean~~] means that the balance in that fund [~~shall~~] does not lapse or otherwise become part of the unappropriated surplus account of the fund in which that fund is placed.

Section 9. Section 63-38-3.5 is amended to read:

63-38-3.5. Internal service funds -- Governance and review.

(1) For purposes of this section:

(a) "Agency" means a department, division, office, bureau, or other unit of state government, and includes any subdivision of an agency.

(b) "Internal service fund agency" means an agency that provides goods or services to other agencies of state government or to other governmental units on a capital maintenance and cost reimbursement basis, and which recovers costs through interagency billings.

(c) "Revolving loan fund" means each of the revolving loan funds defined in Section 63A-3-205.

(2) An internal service fund agency is not subject to this section with respect to its administration of a revolving loan fund.

(3) An internal service fund agency may not bill another agency for services that it provides, unless the Legislature has:

(a) reviewed and approved the internal service fund agency's budget request;

(b) reviewed and approved the internal service fund agency's rates, fees, and other amounts that it charges those who use its services and included those rates, fees, and amounts in an appropriation act;

(c) approved the number of full-time, permanent positions of the internal service fund agency as part of the annual appropriation process; and

(d) appropriated to the internal service fund agency the internal service fund's estimated revenue based upon the rates and fee structure that are the basis for the estimate.

(4) (a) Except as provided in Subsection (4)(b), an internal service fund agency may not charge rates, fees, and other amounts that exceed the rates, fees, and amounts established by the Legislature in the appropriations act.

(b) (i) An internal service fund agency that begins a new service or introduces a new product between annual general sessions of the Legislature may establish and charge an interim rate or amount for that service or product.

(ii) The internal service fund agency shall submit that interim rate or amount to the Legislature for approval at the next annual general session.

(5) The internal service fund agency budget request shall separately identify the capital needs and the related capital budget.

(6) In the fiscal year that the accounting change referred to in Subsection 51-5-6(2) is implemented by the Division of Finance, the Division of Finance shall transfer equity created by that accounting change to any internal service fund agency up to the amount needed to eliminate any long-term debt and deficit working capital in the fund.

(7) No new internal service fund agency may be established unless reviewed and approved by the Legislature.

(8) (a) An internal service fund agency may not acquire capital assets unless legislative approval for acquisition of the assets has been included in an appropriations act for the internal service fund agency.

(b) An internal service fund agency may not acquire capital assets after the transfer mandated by Subsection (4) has occurred unless the internal service fund agency has adequate working capital.

(c) The internal service fund agency shall provide working capital from the following sources in the following order:

(i) first, from operating revenues to the extent allowed by state rules and federal regulations;

(ii) second, from long-term debt, subject to the restrictions of this section; and

(iii) last, from an appropriation.

(d) (i) To eliminate negative working capital, an internal service fund agency may incur long-term debt from the General Fund or Special Revenue Funds to acquire capital assets.

(ii) The internal service fund agency shall repay all long-term debt borrowed from the General Fund or Special Revenue Funds by making regular payments over the useful life of the asset according to the asset's depreciation schedule.

(e) (i) The Division of Finance may not allow an internal service fund agency's borrowing to exceed 90% of the net book value of the agency's capital assets as of the end of the fiscal year.

(ii) If an internal service fund agency wishes to purchase authorized assets or enter into equipment leases that would increase its borrowing beyond 90% of the net book value of the agency's capital assets, the agency may purchase those assets only with monies appropriated from another fund, such as the General Fund or a special revenue fund.

(f) (i) Except as provided in Subsection (8)(f)(ii), capital assets acquired through agency appropriation may not be transferred to any internal service fund agency without legislative approval.

(ii) Vehicles acquired by agencies, or monies appropriated to agencies for vehicle purchases, may be transferred to the Division of Fleet Operations and, when transferred, become part of the [~~Consolidated~~] Fleet Operations Internal Service Fund.

(9) The Division of Finance shall adopt policies and procedures related to the accounting for assets, liabilities, equity, revenues, expenditures, and transfers of internal service funds agencies.

Section 10. Section 63-38-6 is amended to read:

63-38-6. Warrants -- Not to be drawn until claim processed -- Redemption.

(1) No warrant to cover any claim against any appropriation or fund shall be drawn until such claim has been processed as provided by law.

(2) The state treasurer shall return all redeemed warrants to the state fiscal officer for purposes of reconciliation, post-audit and verification of the state treasurer's fund balances. [~~The fiscal officer shall return all redeemed warrants to the state auditor for post-auditing and filing.~~]

Section 11. Section 63-38-8 is amended to read:

63-38-8. End of fiscal year -- Unexpended balances -- Funds not to be closed out -- Pending claims -- Transfer of amounts from item of appropriation.

(1) As used in this section, "transaction control number" means the unique numerical identifier established by the Department of Health to track each medical claim, which indicates the date upon which the claim is entered.

(2) On or before [~~July~~] August 31 of each fiscal year, the director of the Division of Finance shall close out to the proper fund or account all remaining unexpended and unencumbered balances of appropriations made by the Legislature, except:

(a) those funds classified under Title 51, Chapter 5, Funds Consolidation Act as:

(i) enterprise funds;

(ii) internal service funds;

(iii) trust and agency funds;

(iv) capital projects funds;

(v) college and university funds; [~~and~~]

(vi) debt service funds; and

(vii) permanent funds;

(b) appropriations made to the Legislature and its committees;

(c) acquisition and development funds appropriated to the Division of Parks and Recreation;

(d) funds encumbered to pay purchase orders issued prior to May 1 for capital equipment if delivery is expected before June 30;

(e) unexpended and unencumbered balances of appropriations that meet the requirements of Section 63-38-8.1; and

(f) any other appropriations excepted by statute or by an annual appropriations act.

(3) (a) Liabilities and related expenses for goods and services received on or before June 30 shall be recognized as expenses due and payable from appropriations made prior to June 30.

(b) The liability and related expense shall be recognized within time periods established by the Division of Finance but shall be recognized not later than [~~July~~] August 31.

(c) Liabilities and expenses not so recognized may be paid from regular departmental appropriations for the subsequent fiscal year, if these claims do not exceed unexpended and unencumbered balances of appropriations for the years in which the obligation was incurred.

(d) No amounts may be transferred from an item of appropriation of any department, institution, or agency into the Capital Projects Fund or any other fund without the prior express approval of the Legislature.

(4) (a) For purposes of this chapter, claims processed under the authority of Title 26, Chapter 18, Medical Assistance Act, may not be considered a liability to the state for budgetary purposes until they are received by the Division of Health Care Financing.

(b) The transaction control number recorded on each claim invoice by the division is considered the date of receipt and is the date that liability is recognized by the state.

Section 12. Section 63-38-8.1 is amended to read:

63-38-8.1. Nonlapsing authority.

(1) As used in this section:

(a) (i) "Agency" means each department, commission, board, council, agency, institution, officer, corporation, fund, division, office, committee, authority, laboratory, library, unit, bureau, panel, or other administrative unit of the state.

(ii) "Agency" does not include those entities whose unappropriated and unencumbered balances are made nonlapsing by the operation of Subsection 63-38-8(2).

(b) "Appropriation balance" means the unexpended and unencumbered balance of a line item appropriation made by the Legislature to an agency that exists at the end of a fiscal year.

(c) "Nonlapsing" means that an agency's appropriation balance is not closed out to the appropriate fund at the end of a fiscal year as required by Section 63-38-8.

(d) "One-time project" means a project or program that can be completed with the appropriation balance and includes such items as employee incentive awards and bonuses, purchase of equipment, and one-time training.

(e) "One-time project's list" means:

(i) a prioritized list of one-time projects, upon which an agency would like to spend any appropriation balance; and

(ii) for each project, the maximum amount the agency is estimating for the project.

(f) "Program" means a service provided by an agency to members of the public, other agencies, or to employees of the agency.

(2) Notwithstanding the requirements of Section 63-38-8, an agency may:

(a) by following the procedures and requirements of this section, retain and expend any appropriation balance; and

(b) comply with the requirements of Subsections 63-9-67(2) and 63-38-18(2).

(3) (a) Each agency that wishes to preserve any part or all of its appropriation balance as nonlapsing shall include a one-time project's list as part of the budget request that it submits to the governor and the Legislature at the annual general session of the Legislature immediately before the end of the fiscal year in which the agency may have an appropriation balance.

(b) An agency may not include a proposed expenditure on its one-time project's list if:

(i) the expenditure creates a new program;

(ii) the expenditure enhances the level of an existing program; or

(iii) the expenditure will require a legislative appropriation in the next fiscal year.

(c) The governor:

(i) may approve some or all of the items from an agency's one-time project's list; and

(ii) shall identify and prioritize any approved one-time projects in the budget that he submits to the Legislature.

(4) The Legislature:

(a) may approve some or all of the specific items from an agency's one-time project's list as authorized expenditures of an agency's appropriation balance;

(b) shall identify any authorized one-time projects in the appropriate line item appropriation; and

(c) may prioritize one-time projects in intent language.

[~~(5) The Legislative Fiscal Analyst shall:~~]

[~~(a) conduct a study of the nonlapsing authority granted in this section and its effects on the budget, the budget process, the source of or reason for the appropriation balance, and the legislative appropriations power; and~~]

[~~(b) report the analysis and any recommendations to the Legislative Management Committee and Interim Appropriations Committee by October 1, 1996.~~]

Section 13. Section 63-65-4 is amended to read:

63-65-4. Custodial officer -- Powers and duties.

(1) There is created within the Division of Finance an officer responsible for the care, custody, safekeeping, collection, and accounting of all bonds, notes, contracts, trust documents, and other evidences of indebtedness owned by:

(a) the state or any of its agencies; and

(b) revolving loan funds except the:

(i) Agriculture Resource Development Fund, created in Section 4-18-6;

(ii) Utah Rural Rehabilitation Fund, created in Section 4-19-4;

(iii) Petroleum Storage Tank Loan Fund, created in Section 19-6-405.3; and

(iv) Olene Walker Housing [~~Trust~~] Loan Fund, created in Section 9-4-702.

(2) (a) Each authorizing agency shall deliver to this officer for his care, custody, safekeeping, collection, and accounting all bonds, notes, contracts, trust documents, and other evidences of indebtedness owned by:

(i) the state or any of its agencies; and

(ii) revolving loan funds.

(b) This officer shall:

(i) establish systems, programs, and facilities for the care, custody, safekeeping, collection, and accounting for the bonds, notes, contracts, trust documents, and other evidences of indebtedness submitted to him under this Subsection (2); and

(ii) shall make available updated reports to each authorizing agency as to the status of loans under their authority.

(3) The officer described in Section 63-65-3 shall deliver to this officer for his care, custody, safekeeping, collection, and accounting all bonds, notes, contracts, trust documents, and other evidences of indebtedness closed as provided in Subsection 63-65-3(2)(b).

Section 14. Section 63-88-102 is amended to read:

63-88-102. Trust Fund -- Creation -- Oversight.

(1) There is created [~~an expendable~~] a private-purpose trust fund entitled the "Navajo Trust Fund."

(2) The fund consists of:

(a) revenues received by the state that represent the 37-1/2% of the net oil royalties from the Aneth Extension of the Navajo Indian Reservation required by P.L. 72-403, 47 Stat. 1418, to be paid to the state;

(b) monies received by the trust administrator or Dineh Committee from any contracts executed by:

(i) the trust administrator;

(ii) the board; or

(iii) the Dineh Committee;

(c) appropriations made to the fund by the Legislature, if any;

(d) income as defined in Subsection 63-88-101(9); and

(e) other revenues received from other sources.

(3) The Division of Finance shall account for the receipt and expenditures of fund monies.

(4) (a) The state treasurer shall invest fund monies by following the procedures and requirements of Title 51, Chapter 7, State Money Management Act.

(b) (i) The fund shall earn interest.

(ii) The state treasurer shall deposit all interest or other revenue earned from investment of the fund back into the fund.

(5) The state auditor shall:

(a) conduct an annual audit of the fund's finances, internal controls, and compliance with statutes, rules, policies, and regulations according to the procedures and requirements of Title 67, Chapter 3, Auditor; and

(b) deliver a copy of that audit report to the:

(i) board;

(ii) trust administrator;

(iii) Dineh Committee;

(iv) Office of Legislative Research and General Counsel for presentation to the Native American Legislative Liaison Committee, created in Section 36-22-1;

(v) governor's office;

(vi) Division of Indian Affairs;

(vii) U.S. Bureau of Indian Affairs;

(viii) Navajo Nation; and

(ix) U.S. Secretary of the Interior.

Section 15. Section 73-10c-2 is amended to read:

73-10c-2. Definitions.

As used in this chapter:

(1) "Board" means the Board of Water Resources of the Department of Natural Resources.

(2) "Council" means the Water Development Coordinating Council created pursuant to Section 63-34-3, and this chapter.

(3) "Credit enhancement agreement" means any agreement entered into under this chapter between the Drinking Water Board or Water Quality Board, on behalf of the state, and a political subdivision, for the purpose of providing methods and assistance to political subdivisions to improve the security for and marketability of drinking water project obligations and wastewater project obligations.

(4) "Drinking Water Board" means the Drinking Water Board created in Title 19, Chapter 4, Safe Drinking Water Act.

(5) "Drinking water or wastewater project obligation" means, as appropriate, any bond, note, or other obligation of a political subdivision issued to finance all or part of the cost of acquiring, constructing, expanding, upgrading, or improving a drinking water project or wastewater project.

(6) "Drinking water project" means any work or facility necessary or desirable to provide water for human consumption and other domestic uses, which has at least 15 service connections or serves an average of 25 individuals daily for at least 60 days of the year and includes collection, treatment, storage, and distribution facilities under the control of the operator and used primarily with the system and collection pretreatment or storage facilities used primarily in connection with the system but not under its control.

(7) "Financial assistance programs" means the various programs administered by the state whereby loans, grants, and other forms of financial assistance are made available to political subdivisions of this state to finance the costs of water and wastewater projects.

(8) "Hardship Grant Assessment" means the charge the Water Quality Board or Drinking Water Board assesses to recipients of loans under Subsection 73-10c-5(2)(b) or 73-10c-5(3)(b) in lieu of or in addition to interest charged on these loans.

(9) "Nonpoint source project" means any facility, system, practice, or mechanism to abate, prevent, or reduce pollution of waters of this state caused by nonpoint sources.

(10) "Political subdivision" means any county, city, town, improvement district, water conservancy district, special service district, drainage district, metropolitan water district, irrigation district, separate legal or administrative entity created under Title 11, Chapter 13, Interlocal Cooperation Act, or any other entity constituting a political subdivision under the laws of this state.

(11) "Security [~~account~~] fund" means the Water Development Security [~~Account within the General~~] Fund created by this chapter.

(12) "Wastewater project" means any sewer, storm or sanitary sewage system, sewage treatment facility, lagoon, sewage collection facility and system, and related pipelines, and all similar systems, and works, and facilities necessary or desirable to collect, hold, cleanse, or purify any sewage or other polluted waters of this state.

(13) "Waters of this state" means any stream, lake, pond, marsh, watercourse, waterway, well, spring, irrigation system, drainage system, or other body or accumulation of water whether surface, underground, natural, artificial, public, private, or other water resource of the state which is contained within or flows in or through the state.

(14) "Water Quality Board" means the Water Quality Board created in Title 19, Chapter 5, Water Quality Act.

Section 16. Section 73-10c-4 is amended to read:

73-10c-4. Credit enhancement and interest buy-down agreements -- Loans -- Hardship grants.

(1) On behalf of the state, the Water Quality Board and the Drinking Water Board may each enter into credit enhancement agreements with political subdivisions containing terms and provisions the acting board determines will reasonably improve the security for or marketability of drinking water and wastewater project obligations, including any of the following:

(a) a term providing security for drinking water and wastewater project obligations, as provided in Subsection 73-10c-6(2)(b), by agreeing to purchase the drinking water or wastewater project obligations of, or to make loans to, political subdivisions from a subaccount of the security [~~account~~] fund for the purpose of preventing defaults in the payment of principal and interest on drinking water and wastewater project obligations;

(b) a term making loans to political subdivisions to pay the cost of obtaining:

(i) letters of credit from banks, savings and loan institutions, insurance companies, or other financial institutions;

(ii) municipal bond insurance; or

(iii) other forms of insurance or security to provide security for drinking water and wastewater project obligations; and

(c) a term providing other methods and assistance to political subdivisions which are reasonable and proper to enhance the marketability of or security for drinking water and wastewater project obligations.

(2) (a) The Drinking Water Board and the Water Quality Board may each make loans from a security [~~account~~] fund subaccount to political subdivisions to finance all or part of drinking water and wastewater project costs using the procedures established under Sections 73-10b-5, 73-10b-6, 73-10g-4, and 73-10g-5, as applicable.

(b) These loans may only be made after credit enhancement agreements, interest buy-down agreements, and all other financing alternatives have been evaluated by the acting board and the board determines those options are unavailable or unreasonably expensive for the subdivision requesting assistance.

(c) Loans may be made from the security [~~account~~] fund subaccount at interest rates determined by the board.

(d) Loans may not be made from the $5,000,000 appropriated to the security [~~account~~] fund subaccount by the Legislature for fiscal year 1983-84.

(3) The Drinking Water Board and the Water Quality Board may each make loans or grants from the security [~~account~~] fund to political subdivisions for interest buy-down agreements for drinking water or wastewater project obligations.

(4) (a) Of the total amount of money annually available to the Drinking Water Board and Water Quality Board for financial assistance to political subdivisions, at least 10% shall be allocated by each board for credit enhancement and interest buy-down agreements.

(b) The requirement specified in Subsection (4)(a) shall apply only so long as sales and use tax is transferred to the Utah Wastewater Loan Program Subaccount and Drinking Water Loan Program Subaccount as provided in Section 59-12-103.

(5) To the extent money is available in the hardship grant subaccounts of the security [~~account~~] fund, the Drinking Water Board and the Water Quality Board may each make grants to political subdivisions that meet the drinking water or wastewater project loan considerations respectively, but whose projects are determined by the granting board to not be economically feasible unless grant assistance is provided.

(6) The Drinking Water and Water Quality Boards may at any time transfer money out of their respective hardship grant subaccounts of the security [~~account~~] fund to their respective loan program subaccounts.

Section 17. Section 73-10c-5 is amended to read:

73-10c-5. Water Development Security Fund created -- Water Quality Security and Drinking Water Security Subaccounts created -- Use -- Revolving loan funds -- Hardship grants.

(1) There is established [~~a restricted account within the General Fund~~] an enterprise fund known as the Water Development Security [~~Account~~] Fund which includes the Water Quality Security Subaccount and the Drinking Water Security Subaccount.

(2) The Water Quality Security Subaccount consists of three subaccounts:

(a) the Utah Wastewater Loan Program Subaccount, which consists of:

(i) money appropriated to the subaccount by the Legislature;

(ii) money received from the repayment of the principal of loans made by the Water Quality Board under Sections 73-10b-5, 73-10c-4, 73-10c-6, 73-10g-4, and 73-10h-4 from the Utah Wastewater Loan Program Subaccount;

(iii) except for payments, if any, necessary to comply with Section 148(f), Internal Revenue Code of 1986, income earned after June 30, 1984, on proceeds of bonds authorized by Sections 73-10b-5, 73-10g-4, and 73-10h-4; and

(iv) money deposited in the subaccount under any other law;

(b) the Utah State Revolving Fund for Wastewater Projects Subaccount, which consists of:

(i) money appropriated to the subaccount by the Legislature;

(ii) money received from the Utah Wastewater Loan Program Subaccount applied to meet match requirements for federal funds under 33 U.S.C.A. 1251 et seq., federal Clean Water Act;

(iii) money received from the repayment of loans made by the Water Quality Board under Section 73-10c-4 from the Utah State Revolving Fund for Wastewater Projects Subaccount;

(iv) money received from the repayment of loans made by the Water Quality Board under Section 73-10c-4.5;

(v) money deposited in the subaccount under any other law;

(vi) money received under and subject to the restrictions of 33 U.S.C.A. 1251 et seq., federal Clean Water Act, and which is eligible for use in state revolving loan funds established to meet the requirements of the act; and

(vii) all investment income derived from money in the Utah State Revolving Fund for Wastewater Projects Subaccount; and

(c) the Hardship Grant Program for Wastewater Projects Subaccount, which consists of:

(i) money appropriated to the subaccount by the Legislature;

(ii) money received as interest payments on loans made by the Water Quality Board under Sections 73-10b-5, 73-10c-4, 73-10c-6, 73-10g-4, and 73-10h-4, from the Utah Wastewater Loan Program Subaccount;

(iii) money deposited in the subaccount under any other law;

(iv) the Hardship Grant Assessment charged to State Revolving Fund loan recipients; and

(v) all investment income derived from money in the Utah Wastewater Loan Program Subaccount or the Hardship Grant Program for Wastewater Projects Subaccount.

(3) The Drinking Water Security Subaccount consists of three subaccounts:

(a) the Drinking Water Loan Program Subaccount, which consists of:

(i) money appropriated to the subaccount by the Legislature;

(ii) money received from the repayment of the principal of loans made by the Drinking Water Board under Sections 73-10b-6, 73-10c-4, 73-10c-6, 73-10g-5, and 73-10h-5, from the Drinking Water Loan Program Subaccount;

(iii) except for payments, if any, necessary to comply with Section 148(f), Internal Revenue Code of 1986, income earned after June 30, 1984, on proceeds of bonds authorized by Sections 73-10b-6, 73-10g-5, and 73-10h-5; and

(iv) money deposited in the subaccount under any other law;

(b) the State Revolving Fund for Drinking Water Projects Subaccount, which consists of:

(i) money appropriated to the subaccount by the Legislature;

(ii) money received from the Utah Drinking Water Loan Program Subaccount and applied to meet match requirements for federal funds under 42 U.S.C.A. 300f et seq., federal Safe Drinking Water Act;

(iii) money received from the repayment of loans made by the Drinking Water Board under Section 73-10c-4 from the State Revolving Fund for Drinking Water Projects Subaccount;

(iv) money deposited in the subaccount under any other law;

(v) money received under and subject to the restrictions of 42 U.S.C.A. 300f et seq., federal Safe Drinking Water Act, and which is eligible for use in state revolving loan funds established to meet the requirements of the act; and

(vi) all investment income derived from money in the State Revolving Fund for Drinking Water Projects Subaccount; and

(c) the Hardship Grant Program for Drinking Water Projects Subaccount, which consists of:

(i) money appropriated to the subaccount by the Legislature;

(ii) money received from interest payments on loans made by the Drinking Water Board under Sections 73-10b-6, 73-10c-4, 73-10c-6, 73-10g-5, and 73-10h-5, from the Drinking Water Loan Program Subaccount;

(iii) money deposited in the subaccount under any other law;

(iv) the Hardship Grant Assessment charged to State Revolving Fund loan recipients; and

(v) all investment income derived from money in the Drinking Water Loan Program Subaccount or the Hardship Grant Program for Drinking Water Projects Subaccount.

(4) State monies in the Water Quality Security Subaccount and the Drinking Water Security Subaccount may be applied to meet match requirements for federal funds under 33 U.S.C.A. 1251 et seq., federal Clean Water Act and 42 U.S.C.A. 300f et seq., federal Safe Drinking Water Act.

(5) If the money in the security [~~account~~] fund is insufficient for the purposes for which the security [~~account~~] fund is established, the council shall ask the governor to request the Legislature to appropriate additional money to the account.

(6) (a) The Drinking Water Board and Water Quality Board may use the money in the appropriate security [~~account~~] fund subaccount only to the extent of the money available in the account, for the support of drinking water projects and wastewater projects in accordance with the terms of credit enhancement agreements, grant agreements, and loan agreements.

(b) Repayments to the security [~~account~~] fund from loans made by the acting board, monies allocated by the Legislature, and interest accrued on these monies shall remain available for use by that board for further project funding.

(7) Funds received under Section 1452 of the federal Safe Drinking Water Act, 42 U.S.C.A. 300f et seq., may be used for providing financial assistance to community water systems and nonprofit noncommunity water systems as defined and within the limits of that act.

Section 18. Section 73-10c-6 is amended to read:

73-10c-6. Credit enhancement agreement -- Provisions for use of funds.

(1) (a) A credit enhancement agreement may be made for the purpose of facilitating financing for political subdivisions.

(b) A credit enhancement agreement may provide for the use of funds from the security [~~account~~] fund to accomplish the purposes specified in Section 73-10c-4.

(2) (a) The political subdivision, prior to the sale or issuance of a drinking water or a wastewater project obligation, shall:

(i) apply to the Drinking Water Board or Water Quality Board to have its drinking water or wastewater project obligation or both, as desired, designated as covered by a credit enhancement agreement; and

(ii) have entered into a credit enhancement agreement with the Drinking Water Board or Water Quality Board setting forth the terms and conditions of the security or other forms of assistance provided by the agreement.

(b) The Drinking Water Board and Water Quality Board may not designate any drinking water or wastewater project obligation as covered by the credit enhancement agreement:

(i) unless immediately after the designation there is on deposit in the security [~~account~~] fund, based on the purchase or then market price of the investments therein, whichever is lower, an amount determined by the Drinking Water Board or Water Quality Board to be sufficient to:

(A) reasonably improve the security for and marketability of the drinking water or wastewater project obligation, or both; and

(B) comply with the terms and provisions of all existing credit enhancement agreements; and

(ii) while held by the state, any agency of the state, the federal government, or any agency of the federal government.

(c) A drinking water project obligation may not be designated as covered by a credit enhancement agreement unless the drinking water project for which it was issued by the political subdivision has been approved by the Department of Environmental Quality, acting through the Drinking Water Board.

(d) A wastewater project obligation may not be designated as secured by a credit enhancement unless the wastewater project for which it was issued by the political subdivision has been approved by the Department of Environmental Quality, acting through the Water Quality Board.

(3) (a) A credit enhancement agreement must provide that the security provided under this chapter and the credit enhancement agreement:

(i) is limited to the money available in the security [~~account~~] fund; and

(ii) does not constitute a pledge of or charge against the general revenues, credit, or taxing powers of the state or any political subdivision.

(b) A credit enhancement agreement which obligates the state to pay principal of or interest on any drinking water or wastewater project obligation, including any credit enhancement agreement entered into under Section 73-10c-4, may provide that:

(i) the political subdivision or its agent will notify the council whenever it is not able to pay principal of or interest on the drinking water or wastewater project obligation covered by the credit enhancement agreement and request payment from the security [~~account~~] fund; and

(ii) money in the security [~~account~~] fund needed to make the payment requested by the political subdivision may be segregated within the security [~~account~~] fund and held until the requested payment is made.

(c) A default of the political subdivision under the drinking water or wastewater project obligation may not alter, in any manner, the obligations of the state as provided in the credit enhancement agreement.

(d) Any drinking water or wastewater project obligation covered by the credit enhancement agreement which is represented by a bond, note, or other written instrument shall bear a legend which states these provisions and makes reference to this chapter and the credit enhancement agreement pursuant to which the obligation is secured.

(4) Any credit enhancement agreement for a drinking water or wastewater project obligation may provide that the Drinking Water Board or Water Quality Board:

(a) purchase from the money in the security [~~account~~] fund the obligation which the political subdivision is unable to pay, whereupon the Drinking Water Board or Water Quality Board, on behalf of the state, will become the holder of the obligation and entitled to all rights of a holder under the terms of the obligation;

(b) pay, as a loan to the political subdivision from the money in the security [~~account~~] fund, to the holder of the obligation the principal or interest, or both, due or to become due on the obligation which the political subdivision is unable to pay;

(c) take both actions referred to in Subsections (4)(a) and (b) relating to any issue of obligations; or

(d) take any other action specified in or contemplated by the credit enhancement agreement.

(5) (a) Any credit enhancement agreement must require that the political subdivision repay to the state any loan of money made from the security [~~account~~] fund to make any payments specified in the credit enhancement agreement, which repayment obligation may also be evidenced by bonds or notes of the political subdivision, as the Drinking Water Board or Water Quality Board may determine.

(b) The loan may be for a term, may bear interest at a rate or rates or may bear no interest, as the Drinking Water Board or Water Quality Board may determine, and may be secured by any security the Drinking Water Board or Water Quality Board may determine.

(c) The interest rate for any loan contemplated by, but not made at the time the credit enhancement agreement is executed, may be specified in relationship to a prime rate or other identifiable rate existing at the time the loan is made.

(d) The term of the loan may be specified in the credit enhancement agreement as a maximum term and the actual term stated when the loan is made.

(e) Any security for the loan may include:

(i) a pledge of the revenues from the particular drinking water project or wastewater project;

(ii) an assignment from the holder or holders of the drinking water or wastewater project obligation of the holders' interest in any security for the obligation in the amount needed to service the indebtedness represented by the loan; or

(iii) any other security device.

(f) The Drinking Water Board or Water Quality Board, on behalf of the state, is subrogated to all rights of the holder of the drinking water or wastewater project obligation against the political subdivision which issued the obligation with respect to the collection of the amount of the loan, but the state is not relieved by this subrogation from its obligation to make payments from the security

[~~account~~] fund as provided in its credit enhancement agreement with the political subdivision.

(6) Prior to entering into a credit enhancement agreement, the Drinking Water Board or Water Quality Board shall obtain an opinion of counsel experienced in bond matters to the effect that the drinking water or wastewater project obligation to be purchased or with respect to which a loan is to be made, is a valid and binding obligation of the political subdivision which issued it.

(7) Prior to making any payment under the credit enhancement agreement, the Drinking Water Board or Water Quality Board shall:

(a) verify the correctness of the information in any notification referred to in Subsection (3); and

(b) determine that funds in the security [~~account~~] fund are adequate to purchase the drinking water or wastewater project obligations or to make any loan of funds provided by the credit enhancement agreement.

Section 19. Section 73-10c-7 is amended to read:

73-10c-7. Use of deposits in security fund.

All money and investments [~~from time to time~~] on deposit in the security [~~account~~] fund shall be held for the purposes for which the security [~~account~~] fund is established, as provided in this chapter, and [~~shall~~] may not be used for any other purpose.

Section 20. Section 73-10c-9 is amended to read:

73-10c-9. Investments of money in security fund.

(1) Unless otherwise required to preserve the exemption of any obligations of the state from federal taxation, the state treasurer shall invest the money in the security [~~account~~] fund by following the procedures and requirements of Title 51, Chapter 7, State Money Management Act.

(2) If necessary to preserve the exemption of any obligations of the state from federal taxation, the board may make investments in any manner necessary to preserve this exemption.

Section 21. Effective date.

This act takes effect on July 1, 2001.

CHAPTER 176
H. B. 135
Passed February 21, 2001
Approved March 15, 2001
Effective April 30, 2001

CHILD PORNOGRAPHY AMENDMENTS

Sponsor: Katherine M. Bryson

This act modifies provisions of the Utah Criminal Code relating to the sexual exploitation of children. The act defines terms related to child pornography. The act modifies the crime related to sexual exploitation of a minor. The act also makes technical changes.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
76-5a-2, as last amended by Chapter 226, Laws of Utah 1985
76-5a-3, as last amended by Chapter 128, Laws of Utah 2000

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

Section 1. Section 76-5a-2 is amended to read:

76-5a-2. Definitions.

As used in this chapter:

(1) "Child pornography" means any visual depiction, including any live performance, photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where:

(a) the production of the visual depiction involves the use of a minor engaging in sexually explicit conduct;

(b) the visual depiction is of a minor engaging in sexually explicit conduct; or

(c) the visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct.

[~~(1)~~] (2) "Distribute" means the selling, exhibiting, displaying, wholesaling, retailing, providing, giving, granting admission to, or otherwise transferring or presenting [~~material or live performances~~] child pornography with or without consideration.

(3) "Identifiable minor":

(a) means a person:

(i) (A) who was a minor at the time the visual depiction was created, adapted, or modified; or

(B) whose image as a minor was used in creating, adapting, or modifying the visual depiction; and

(ii) who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a birthmark, or other recognizable feature; and

(b) does not require proof of the actual identity of the identifiable minor.

[~~(2)~~] (4) "Live performance" means any act, play, dance, pantomime, song, or other activity performed by live actors in person.

[~~(3) "Material" means any visual representation including photographs, motion pictures, slides, videotapes, or other pictorial representations produced or recorded by any mechanical, chemical, photographic, or electrical means and includes undeveloped photographs, negatives, or other latent representational objects.~~]

[~~(4)~~] (5) "Minor" means a person younger than 18 years of age.

[~~(5) "Nude~~] (6) "Nudity or [~~partially nude~~] partial nudity" means any state of dress or undress in which the human genitals, pubic region, buttocks, or the female breast, at a point below the top of the areola, is less than completely and opaquely covered.

[~~(6)~~] (7) "Produce" means the photographing, filming, taping, directing, producing, creating, designing, or composing of [~~material or live performances~~] child pornography or the securing or hiring of persons to engage in the production of [~~material or live performances~~] child pornography.

[~~(7) "Sexual~~] (8) "Sexually explicit conduct" means [~~and includes the following acts, whether actual or simulated, regardless of the gender of the participants or their state of dress~~] actual or simulated:

(a) sexual intercourse [~~or deviate sexual intercourse~~], including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

(b) masturbation;

(c) [~~sodomy or~~] bestiality;

(d) [~~sadomasochistic activities~~] sadistic or masochistic activities;

(e) lascivious exhibition of the genitals or pubic area of any person;

(f) the visual depiction of nudity or partial nudity for the purpose of causing sexual arousal of any person;

[~~(e)~~] (g) the fondling or touching [~~for purpose of sexual arousal~~] of the genitals, pubic region, buttocks, or female breast; or

[~~(f)~~] (h) the explicit representation of the defecation or urination functions.

[~~(8)~~] (9) "Simulated [~~sexual~~] sexually explicit conduct" means a feigned or pretended act of [~~sexual~~] sexually explicit conduct which duplicates, within the perception of an average person, the appearance of an actual act of [~~sexual~~] sexually explicit conduct.

Section 2. Section 76-5a-3 is amended to read:

76-5a-3. Sexual exploitation of a minor -- Offenses.

(1) A person is guilty of sexual exploitation of a minor:

(a) when [~~he~~] the person knowingly produces, distributes, possesses, or possesses with intent to distribute, [~~material or a live performance depicting:~~] child pornography; or

[~~(i) a nude or partially nude minor for the purpose of causing sexual arousal of any person; or~~]

[~~(ii) any minor's engagement in sexual conduct alone or with another person; or~~]

(b) if [~~he~~] the person is a minor's parent or legal guardian and knowingly consents to or permits that minor to be sexually exploited under Subsection (1)(a) [~~above~~].

(2) Sexual exploitation of a minor is a felony of the second degree.

(3) It is a separate offense under this section:

(a) for each minor depicted, and if more than one minor is depicted in the [~~same material or live performance~~] child pornography in violation of this section, the depiction of each individual minor in the [~~material or live performance~~] child pornography is a separate offense; and

(b) each time the same minor is depicted in different [~~material; and~~] child pornography.

[~~(c) each time the same minor is depicted in a separate live performance.~~]

(4) It is an affirmative defense to a charge of violating this section that no person under 18 years of age was actually depicted in the visual depiction or used in producing or advertising the visual depiction.

CHAPTER 177
H. B. 136
Passed February 21, 2001
Approved March 15, 2001
Effective July 1, 2001

REVENUE AND TAXATION
CRIMINAL OFFENSES AND PENALTIES

Sponsor: Bryan D. Holladay

This act modifies the Revenue and Taxation Code and the Utah Criminal Code to clarify revenue and taxation penalties and offenses. The act provides for the offense of intentionally attempting to evade or defeat a tax or the payment of a tax, modifies the statute of limitations for prosecuting certain offenses, and makes technical changes. This act takes effect on July 1, 2001.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
59-1-401 (Effective 07/01/01), as last amended by Chapter 253, Laws of Utah 2000
76-8-1101, as enacted by Chapter 3, Laws of Utah 1987

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

Section 1. Section 59-1-401 (Effective 07/01/01) is amended to read:

59-1-401 (Effective 07/01/01). Offenses and penalties -- Statute of limitations -- Commission authority to waive, reduce, or compromise penalty or interest.

(1) (a) The penalty for failure to file a tax return within the time prescribed by law including extensions is the greater of $20 or 10% of the unpaid tax due on the return.

(b) Subsection (1) does not apply to amended returns.

(2) The penalty for failure to pay tax due shall be the greater of $20 or 10% of the unpaid tax for:

(a) failure to pay any tax, as reported on a timely filed return;

(b) failure to pay any tax within 90 days of the due date of the return, if there was a late filed return subject to the penalty provided under Subsection (1)(a);

(c) failure to pay any tax within 30 days of the date of mailing any notice of deficiency of tax unless a petition for redetermination or a request for agency action is filed within 30 days of the date of mailing the notice of deficiency;

(d) failure to pay any tax within 30 days after the date the commission's order constituting final agency action resulting from a timely filed petition for redetermination or request for agency action is issued or is considered to have been [~~issued~~] denied under Subsection 63-46b-13(3)(b); and

(e) failure to pay any tax within 30 days after the date of a final judicial decision resulting from a timely filed petition for judicial review.

(3) (a) Beginning January 1, 1995, in the case of any underpayment of estimated tax or quarterly installments required by Sections 59-5-107, 59-5-207, 59-7-504, and 59-9-104, there shall be added a penalty in an amount determined by applying the interest rate provided under Section 59-1-402 plus four percentage points to the amount of the underpayment for the period of the underpayment.

(b) (i) For purposes of Subsection (3)(a), the amount of the underpayment shall be the excess of the required installment over the amount, if any, of the installment paid on or before the due date for the installment.

(ii) The period of the underpayment shall run from the due date for the installment to whichever of the following dates is the earlier:

(A) the original due date of the tax return, without extensions, for the taxable year; or

(B) with respect to any portion of the underpayment, the date on which that portion is paid.

(iii) For purposes of this Subsection (3), a payment of estimated tax shall be credited against unpaid required installments in the order in which the installments are required to be paid.

(4) (a) In case of an extension of time to file an individual income tax or corporate franchise tax return, if the lesser of 90% of the total tax reported on the tax return or 100% of the prior year's tax is not paid by the due date of the return, not including extensions, a 2% per month penalty shall apply on the unpaid tax during the period of extension.

(b) If a return is not filed within the extension time period as provided in Section 59-7-505 or 59-10-516, penalties as provided in Subsection (1) and Subsection (2)(b) shall be added in lieu of the penalty assessed under this Subsection (4) as if no extension of time for filing a return had been granted.

(5) (a) Additional penalties for underpayments of tax are as provided in Subsections (5)(a)(i) through (iv).

(i) Except as provided in Subsection (5)(c), if any underpayment of tax is due to negligence, the penalty is 10% of the underpayment.

(ii) Except as provided in Subsection (5)(d), if any underpayment of tax is due to intentional disregard of law or rule, the penalty is 15% of the underpayment.

(iii) For intent to evade the tax, the penalty is the greater of $500 per period or 50% of the tax due.

(iv) If the underpayment is due to fraud with intent to evade the tax, the penalty is the greater of $500 per period or 100% of the underpayment.

(b) If the commission determines that a person is liable for a penalty imposed under Subsection

(5)(a)(ii), (iii), or (iv), the commission shall notify the taxpayer of the proposed penalty.

(i) The notice of proposed penalty shall:

(A) set forth the basis of the assessment; and

(B) be mailed by registered mail, postage prepaid, to the person's last-known address.

(ii) Upon receipt of the notice of proposed penalty, the person against whom the penalty is proposed may:

(A) pay the amount of the proposed penalty at the place and time stated in the notice; or

(B) proceed in accordance with the review procedures of Subsection (5)(b)(iii).

(iii) Any person against whom a penalty has been proposed in accordance with this Subsection (5) may contest the proposed penalty by filing a petition for an adjudicative proceeding with the commission.

(iv) If the commission determines that a person is liable for a penalty under this Subsection (5), the commission shall assess the penalty and give notice and demand for payment. The notice and demand for payment shall be mailed by registered mail, postage prepaid, to the person's last-known address.

(c) Notwithstanding Subsection (5)(a)(i), a vendor that collects a tax under Subsection 59-12-107(1)(b) is not subject to the penalty under Subsection (5)(a)(i) if on or after July 1, 2001:

(i) a court of competent jurisdiction issues a final unappealable judgment or order determining that:

(A) the vendor meets one or more of the criteria described in Subsection 59-12-107(1)(a); and

(B) the commission or a county, city, or town may require the vendor to collect a tax under Subsection 59-12-103(2)(a) or (b); or

(ii) the commission issues a final unappealable administrative order determining that:

(A) the vendor meets one or more of the criteria described in Subsection 59-12-107(1)(a); and

(B) the commission or a county, city, or town may require the vendor to collect a tax under Subsection 59-12-103(2)(a) or (b).

(d) Notwithstanding Subsection (5)(a)(ii), a vendor that collects a tax under Subsection 59-12-107(1)(b) is not subject to the penalty under Subsection (5)(a)(ii) if:

(i) (A) a court of competent jurisdiction issues a final unappealable judgment or order determining that:

(I) the vendor meets one or more of the criteria described in Subsection 59-12-107(1)(a); and

(II) the commission or a county, city, or town may require the vendor to collect a tax under Subsection 59-12-103(2)(a) or (b); or

(B) the commission issues a final unappealable administrative order determining that:

(I) the vendor meets one or more of the criteria described in Subsection 59-12-107(1)(a); and

(II) the commission or a county, city, or town may require the vendor to collect a tax under Subsection 59-12-103(2)(a) or (b); and

(ii) the vendor's intentional disregard of law or rule is warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.

(6) The penalty for failure to file an information return or a complete supporting schedule is $50 for each return or schedule up to a maximum of $1,000.

(7) If any taxpayer, in furtherance of a frivolous position, has a prima facie intent to delay or impede administration of the tax law and files a purported return that fails to contain information from which the correctness of reported tax liability can be determined or that clearly indicates that the tax liability shown must be substantially incorrect, the penalty is $500.

(8) For monthly payment of sales and use taxes under Section 59-12-108, in addition to any other penalties for late payment, a vendor may not retain a percentage of sales and use taxes collected as otherwise allowable under Section 59-12-108.

(9) (a) As provided in Section 76-8-1101, [~~the following are~~] criminal offenses and penalties[~~:~~] are as provided in Subsections (9)(b) through (d).

[~~(a)~~] (b) (i) Any person who is required by this title or any laws the commission administers or regulates to register with or obtain a license or permit from the commission, [~~or~~] who operates without having registered or secured a license or permit, or who operates when the registration, license, or permit is expired or not current, is guilty of a class B misdemeanor[~~, except that, notwithstanding~~].

(ii) Notwithstanding Section 76-3-301, for purposes of Subsection (9)(b)(i), the fine [~~is~~] may not:

(A) be less than $500 [~~nor more than~~]; or

(B) exceed $1,000.

[~~(b)~~] (c) (i) Any person who, with intent to evade any tax or requirement of this title or any lawful requirement of the commission, fails to make, render, sign, or verify any return or to supply any information within the time required [~~under this title~~] by law, or who makes, renders, signs, or verifies any false or fraudulent return or statement, or who supplies any false or fraudulent information, is guilty of a third degree felony[~~, except that, notwithstanding~~].

(ii) Notwithstanding Section 76-3-301, for purposes of Subsection (9)(c)(i), the fine [~~is~~] may not:

(A) be less than $1,000 [~~nor more than~~]; or

(B) exceed $5,000.

[~~(c)~~] (d) (i) Any person who intentionally or willfully attempts to evade or defeat any tax or the payment [~~thereof~~] of a tax is, in addition to other penalties provided by law, guilty of a second degree felony[~~, except that, notwithstanding~~].

(ii) Notwithstanding Section 76-3-301, for purposes of Subsection (9)(d)(i), the fine [~~is~~] may not:

(A) be less than $1,500 [~~nor more than~~]; or

(B) exceed $25,000.

[~~(d)~~] (e) The statute of limitations for prosecution for a violation of this [~~section~~] Subsection (9) is the later of six years:

(i) from the date the tax should have been remitted; or

(ii) after the day on which the person commits the criminal offense.

(10) Upon making a record of its actions, and upon reasonable cause shown, the commission may waive, reduce, or compromise any of the penalties or interest imposed under this part.

Section 2. Section 76-8-1101 is amended to read:

76-8-1101. Criminal offenses and penalties relating to revenue and taxation -- Statute of limitations.

(1) (a) As provided in Section 59-1-401[~~:~~], criminal offenses and penalties are as provided in Subsections (1)(b) through (d).

[~~(a)~~] (b) (i) Any person who is required by Title 59 or any laws the State Tax Commission administers or regulates to register with or obtain a license or permit from the State Tax Commission, [~~or~~] who operates without having registered or secured a license or permit, or who operates when the registration, license, or permit is expired or not current, is guilty of a class B misdemeanor[~~, except that, notwithstanding~~].

(ii) Notwithstanding Section 76-3-301, for purposes of Subsection (1)(b)(i), the fine [~~is~~] may not:

(A) be less than $500 [~~nor more than~~]; or

(B) exceed $1,000.

[~~(b)~~] (c) (i) Any person who, with intent to evade any tax or requirement of Title 59 or any lawful requirement of the State Tax Commission, fails to make, render, sign, or verify any return or to supply any information within the time required [~~under this title~~] by law, or who makes, renders, signs, or verifies any false or fraudulent return or statement, or who supplies any false or fraudulent information, is guilty of a third degree felony[~~, except that, notwithstanding~~].

(ii) Notwithstanding Section 76-3-301, for purposes of Subsection (1)(c)(i), the fine [~~is~~] may not:

(A) be less than $1,000 [~~nor more than~~]; or

(B) exceed $5,000.

[~~(c)~~] (d) (i) Any person who intentionally or willfully attempts to evade or defeat any tax or the payment [~~thereof~~] of a tax is, in addition to other penalties provided by law, guilty of a second degree felony[~~, except that, notwithstanding~~].

(ii) Notwithstanding Section 76-3-301, for purposes of Subsection (1)(d)(i), the fine [~~is~~] may not:

(A) be less than $1,500 [~~nor more than~~]; or

(B) exceed $25,000.

(2) The statute of limitations for prosecution for a violation of this section is the later of six years:

(a) from the date the tax should have been remitted; or

(b) after the day on which the person commits the criminal offense.

Section 3. Effective date.

This act takes effect on July 1, 2001.

CHAPTER 178
H. B. 139
Passed February 28, 2001
Approved March 15, 2001
Effective April 30, 2001

CITIES AND TOWNS -
CLASSIFICATION AND RELATED ISSUES

Sponsor: Wayne A. Harper

This act modifies provisions of the Utah Municipal Code relating to cities and towns. The act modifies provisions relating to the direction, control, and supervision of a chief of police or marshal in a third class city or town and their appointment of assistants. The act revises municipal classifications and adjusts certain city and town budgetary procedural requirements to be more consistent with each other. The act modifies civil service commission provisions. The act establishes existing forms of government for first, second, and third class cities and towns as optional forms for all classes of municipalities. The act also makes technical changes.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
10-2-301, as repealed and reenacted by Chapter 318, Laws of Utah 2000
10-3-918, as last amended by Chapter 33, Laws of Utah 1983
10-3-1001, as enacted by Chapter 48, Laws of Utah 1977
10-3-1002, as last amended by Chapter 44, Laws of Utah 1977
10-3-1003, as enacted by Chapter 48, Laws of Utah 1977
10-3-1012, as last amended by Chapter 221, Laws of Utah 1991
10-3-1203, as last amended by Chapters 10 and 389, Laws of Utah 1997
10-3-1209, as last amended by Chapter 39, Laws of Utah 1979
10-5-107, as last amended by Chapter 3, Laws of Utah 1988
10-5-108, as last amended by Chapter 118, Laws of Utah 1989
10-6-118, as last amended by Chapter 300, Laws of Utah 1999

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

Section 1. Section 10-2-301 is amended to read:

10-2-301. Classification of municipalities according to population.

(1) Each municipality shall be classified according to its population, as provided in this section.

(2) (a) A municipality with a population of 100,000 or more is a city of the first class.

(b) A municipality with a population of 60,000 or more but less than 100,000 is a city of the second class.

(c) A municipality with a population of [~~800~~] 1,000 or more but less than 60,000 is a city of the third class.

(d) A municipality with a population under [~~800~~] 1,000 is a town.

Section 2. Section 10-3-918 is amended to read:

10-3-918. Chief of police or marshal in third class cities and towns.

[~~In cities of the third class and towns, the~~] The chief of police or marshal [~~shall~~] in a city of the third class or town:

(1) shall:

(a) exercise and perform [~~such~~] the duties [~~as may be~~] that are prescribed by the [~~governing~~] legislative body[~~. The chief of police or marshal shall~~]; and

(b) be under the direction, control, and supervision of the [~~mayor. The chief of police or marshal may with the consent of the mayor~~] person or body that appointed the chief or marshal; and

(2) may, with the consent of the person or body that appointed the chief or marshal, appoint assistants to the chief of police or marshal.

Section 3. Section 10-3-1001 is amended to read:

10-3-1001. Subordinates in police, health, and fire departments to be appointed from list.

[~~The~~] Subject to the rules and regulations of the civil service commission, the head of [~~each of~~] the police and fire departments [~~of cities~~] of [~~the~~] each first and second class city that establishes a civil service commission and the health officer in [~~cities of the~~] each first class city that establishes a civil service commission shall, from the classified civil service list furnished by the civil service commission and by and with the advice and consent of the [~~board of~~] city [~~commissioners, and subject to the rules and regulations of the civil service commission,~~] legislative body:

(1) appoint [~~from the classified civil service list furnished by the civil service commission~~] all subordinate officers, employees, members, or agents in [~~his~~] the department[~~,~~]; and [~~in like manner~~]

(2) fill [~~all~~] vacancies in the [~~same~~] positions listed in Subsection (1).

Section 4. Section 10-3-1002 is amended to read:

10-3-1002. Classified civil service -- Places of employment constituting classified civil service -- Appointments to and from classified civil service.

(1) The classified civil service shall consist of all places of employment now existing or hereafter

created in or under the police department and the fire department of each first or second class city [~~of the first and second class,~~] that establishes a civil service commission and the health department in [~~cities of the~~] each first class[~~,~~] city that establishes a civil service commission, except the head of the departments, deputy chiefs of the police and fire departments, and assistant chiefs of the police department in cities of the first and second class, and the members of the board of health of the departments.

(2) No appointments to any of the places of employment constituting the classified civil service in the departments shall be made except according to law and under the rules and regulations of the civil service commission.

(3) The head of each of the departments may, and the deputy chiefs of the police and fire departments and assistant chiefs of the police department shall, be appointed from the classified civil service, and upon the expiration of [~~his~~] the term or upon the appointment of a successor shall be returned thereto.

Section 5. Section 10-3-1003 is amended to read:

10-3-1003. Commission -- Number, term, vacancies.

[~~In each~~] (1) (a) A city of the first [~~and~~] or second class [~~there shall be~~] may establish a civil service commission[~~, consisting~~] under this part.

(b) A city that establishes a civil service commission under this part before January 1, 2001 may not dissolve the civil service commission.

(2) Each civil service commission under this part shall consist of three members appointed by the [~~board of commissioners~~] city legislative body. [~~Their~~]

(3) (a) The term of office of commission members shall be six years, but [~~they~~] members shall be appointed so that the term of office of one member shall expire on the 30th day of June of each even-numbered year.

(b) If a vacancy occurs in the civil service commission, it shall be filled by appointment by the [~~board of~~] city [~~commissioners~~] legislative body for the unexpired term.

Section 6. Section 10-3-1012 is amended to read:

10-3-1012. Suspension or discharge by department head -- Appeal to commission -- Hearing and decision.

(1) All persons in the classified civil service may be suspended as provided in Section 10-3-912, or removed from office or employment by the head of the department for misconduct, incompetency, failure to perform [~~his~~] duties, or failure to observe properly the rules of the department, but subject to appeal by the suspended or discharged person to the civil service commission.

(2) Any person suspended or discharged may, within five days from the issuance by the head of the department of the order [~~suspending or discharging him~~] of suspension or discharge, appeal to the civil service commission, which shall fully hear and determine the matter.

(3) The suspended or discharged person shall be entitled to appear in person and to have counsel and a public hearing.

(4) The finding and decision of the civil service commission upon the hearing shall be certified to the head of the department from whose order the appeal is taken, and shall be final and immediately enforced by [~~him~~] the head.

Section 7. Section 10-3-1203 is amended to read:

10-3-1203. Election requirements and procedure for organization under optional form of government.

(1) A municipality may reorganize under any form of municipal government provided for in this part or under Sections 10-3-103, 10-3-104, 10-3-105, or 10-3-106, regardless of the city's class under Section 10-2-301.

(2) Reorganization under Subsection (1) shall be by approval of a majority of registered voters of the municipality voting in a special election held for that purpose.

(3) (a) The proposal may be entered on the ballot by resolution passed by the governing body of the municipality or by initiative as provided for in Title 20A, Chapter 7, Part 5, Local Initiatives - Procedures.

(b) The resolution or petition shall state the number, method of election, and initial terms of council members and shall specify the boundaries of districts substantially equal in population if some or all council members are to be chosen from these districts.

(4) (a) The proposal shall be voted upon at a special election to be held not more than twelve months after the resolution is passed or after receipt of a valid initiative petition.

(b) The special election shall be held at least 90 days before or after regular municipal elections.

(c) The ballot for the special election to adopt or reject one of the forms of municipal government shall be in substantially the following form:

Shall (name of municipality), Utah, adopt the(council-mayor)(council-manager) (five-member commission) (three-member commission) (six-member council) (five-member council) form of municipal government?	Yes No

Section 8. Section 10-3-1209 is amended to read:

10-3-1209. Optional forms defined.

(1) (a) The optional form of government known as the council-mayor form vests the government of a municipality [~~which~~] that adopts this form in two separate, independent, and equal branches of municipal government[~~;~~]: the executive branch, consisting of a mayor and the administrative departments and officers; and the legislative branch, consisting of a municipal council.

(b) The optional form known as the council-manager form vests the government of the municipality in a municipal council, which [~~shall be deemed~~] is considered to be the governing body of the municipality, and a manager appointed by the council.

(c) The optional form known as the five-member commission is as described in Section 10-3-103.

(d) The optional form known as the three-member commission is as described in Section 10-3-104.

(e) The optional form known as the six-member council is as described in Section 10-3-105.

(f) The optional form known as the five-member council is as described in Section 10-3-106.

(2) Notwithstanding language contained in Sections 10-3-103, 10-3-104, 10-3-105, and 10-3-106 indicating that those forms of municipal government are only for the class of municipality specified in those sections, any of those forms may be chosen by any class of municipality as an optional form under this part.

(3) All provisions of this chapter that apply to the form of government specified in Sections 10-3-103, 10-3-104, 10-3-105, and 10-3-106 shall apply equally to a municipality choosing one of those forms of government as an optional form under this part.

Section 9. Section 10-5-107 is amended to read:

10-5-107. Tentative budgets required for public inspection -- Contents -- Adoption of tentative budget.

(1) (a) [~~At least seven days prior to its adoption~~] On or before the first regularly scheduled town council meeting of May, the mayor shall:

(i) prepare for the ensuing year, on forms provided by the state auditor, [~~and have available for public inspection,~~] a tentative budget for each fund for which a budget is required[~~.~~];

(ii) make the tentative budget available for public inspection; and

(iii) submit the tentative budget to the town council.

(b) The tentative budget of each fund shall set forth in tabular form:

[~~(a)~~] (i) actual revenues and expenditures in the last completed fiscal year;

[~~(b)~~] (ii) estimated total revenues and expenditures for the current fiscal year; and

[~~(c)~~] (iii) the mayor's estimates of revenues and expenditures for the budget year.

(2) The mayor shall estimate the amount of revenue available to serve the needs of each fund, estimate the portion to be derived from all sources other than general property taxes, and estimate the portion that must be derived from general property taxes. From these estimates the mayor shall compute and disclose in the budget the lowest rate of property tax levy that will raise the required amount of revenue, calculating the levy on the latest taxable value.

(3) (a) Before the public hearing required under Section 10-5-108, the town council:

(i) shall review, consider, and tentatively adopt the tentative budget in any regular meeting or special meeting called for that purpose; and

(ii) may amend or revise the tentative budget.

(b) At the meeting at which the town council adopts the tentative budget, the council shall establish the time and place of the public hearing required under Section 10-5-108.

Section 10. Section 10-5-108 is amended to read:

10-5-108. Budget hearing -- Notice -- Adjustments.

(1) Prior to the adoption of the final budget, each town council shall hold a public hearing to receive public comment.

(2) [~~Notice~~] The council shall provide notice of the place, purpose, and time of the public hearing [~~shall be published~~] by publishing notice at least seven days before the hearing at least once in a newspaper of general circulation in the town, but if there is no newspaper of general circulation, then [~~notice may be given~~] by posting the notice in three public places at least 48 hours prior to the hearing.

(3) After the hearing, the council, subject to Section 10-5-110, may adjust expenditures and revenues in conformity with this [~~act~~] chapter.

Section 11. Section 10-6-118 is amended to read:

10-6-118. Adoption of final budget -- Certification and filing.

Before the last June [~~30~~] 22 of each fiscal period, or, in the case of a property tax increase under Sections 59-2-919 through 59-2-923, before August [~~31~~] 17 of the year for which a property tax increase is proposed, the governing body shall by resolution or ordinance adopt a budget for the ensuing fiscal period for each fund for which a budget is required under this chapter. A copy of the final budget for each fund shall be certified by the budget officer and filed with the state auditor within 30 days after adoption.

CHAPTER 179
H. B. 145
Passed February 28, 2001
Approved March 15, 2001
Effective April 30, 2001

READING ACHIEVEMENT IN ELEMENTARY SCHOOLS - KINDERGARTEN THROUGH GRADE THREE

Sponsor: Karen W. Morgan

This act modifies provisions related to the State System of Public Education by setting a goal of having 90% or more of all third graders reading on or above grade level by the end of the third grade by 2006. The act requires an annual report on the percentage of students reading on or above grade level in the first, second, and third grades by school and by school district. The act requires each elementary school to develop a plan to achieve the reading goal and requires the plan to have assessment, intervention, and reporting components.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
53A-1-606.5, as enacted by Chapter 57, Laws of Utah 1999

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

Section 1. Section 53A-1-606.5 is amended to read:

53A-1-606.5. Reading achievement in grades one through three -- Monitoring -- Reporting -- Additional instruction.

(1) (a) The Legislature recognizes that:

(i) reading is the most fundamental skill, the gateway to knowledge and lifelong learning;

(ii) there is an ever increasing demand for literacy in the highly technological society we live in;

(iii) students who do not learn to read will be economically and socially disadvantaged;

(iv) reading problems exist in almost every classroom;

(v) almost all reading failure is preventable if reading difficulties are diagnosed and treated by no later than the end of the third grade; and

(vi) early identification and treatment of reading difficulties can result in students learning to read by the end of the third grade.

(b) It is therefore [~~a~~]:

(i) the long-term goal of the state to have every student in the state's public education system reading on or above grade level by the end of the third grade[~~.~~]; and

(ii) the short-term goal of the state to have 90% or more of all third graders reading on or above grade level by the end of the third grade in 2006.

(c) (i) The superintendent of public instruction or the superintendent's designee shall make an annual report to the State Board of Education and to the Legislature's Education Interim Committee on the goals established in Subsection (1)(b).

(ii) The information shall be reported as part of the U-PASS testing program as required under Section 53A-3-602.5, beginning with the 2001-02 school year, and include the following for each school district and elementary school:

(A) the number and percent of all students reading on or above grade level at the end of the first, second, and third grades;

(B) the annual reading achievement growth from the prior year and cumulative reading achievement growth from the base year of 2001-02 in the percent of students reading on or above grade level for each year;

(C) those schools that reach the 90% reading achievement goal or achieve a sufficient magnitude of gain each year as determined by the State Board of Education from the 2001-02 base year or do both; and

(D) those elementary schools that fail to achieve a sufficient magnitude of gain each year as determined by the State Board of Education from the 2001-02 base year.

(d) The State Board of Education, through the superintendent of public instruction, shall determine as part of the U-PASS testing program:

(i) the appropriate statewide tests to assess reading levels at the end of each year in the first, second, and third grades;

(ii) an appropriate standard or cut score on each assessment for determining grade level reading mastery; and

(iii) the actual percent of students reading on or above grade level in the first, second, and third grades at each public elementary school as required under Subsection (1)(c)(i) by dividing the headcount enrollment of students reading on or above grade level at that grade by the headcount enrollment of students in the building at that grade on the date that the reading assessment is administered.

(2) [~~In order to ensure that all students are reading on or above the third grade level by the end of the third grade, the State Board of Education and local~~] Local school boards shall [~~work with the Legislature, through its interim committees and any task force that may be created to study and review accountability in public education~~] annually review the U-PASS data regarding reading at school and district levels and shall work with districts and schools to review and revise plans as needed to meet the goal set in Subsection (1)(b).

(3) (a) Each school district shall [~~work with~~] require the elementary schools within its district boundaries to develop, in conjunction with all other school planning processes and requirements, a [~~school~~] reading achievement plan at each school [~~focused on having all students reading at the third grade level by the end of the third grade~~] for its

kindergarten, first, second, and third graders to reach the reading goals set in Subsection (1)(b).

(b) The school principal shall take primary responsibility to provide leadership and allocate resources and support for teachers and students, most particularly for those who are reading below grade level, to achieve the reading goals.

(c) Each reading achievement plan shall include:

(i) an assessment component that:

(A) identifies those students who are reading below grade level;

(B) uses U-PASS and local assessment information throughout the year to determine students' instructional needs; and

(C) is consistent with the exemption provisions of Subsection 53A-1-603(3)(c) regarding such students as students with disabilities or limited English proficiency;

(ii) an intervention component:

(A) that provides adequate and appropriate interventions focused on bringing each student up to reading at or above grade level and which would permit retention in the grade level of a student reading below grade level based on a joint determination made by the principal or the principal's designee, the student's teacher, and the student's parent;

(B) based on best practices identified through proven researched-based methods;

(C) that includes parental participation; and

(D) that, as resources allow, involves a reading specialist; and

(iii) a reporting component consistent with the data to be included in the school performance report required under Section 53A-3-602.5.

(4) The school district shall approve each school's plan prior to its implementation and review each plan annually.

CHAPTER 180
H. B. 148
Passed February 23, 2001
Approved March 15, 2001
Effective April 30, 2001

CHILD WELFARE - ALTERNATIVE DISPUTE RESOLUTION

Sponsor: A. Lamont Tyler

This act modifies the Judicial Code to authorize the courts to order a family unity conference under the authority of the Division of Child and Family Services when requested by the parents or the parties to an abuse or neglect action. The act establishes the purposes of a family unity conference and describes circumstances in which the court may not order a family unity conference. The act requires current statutory time-lines to be followed when family unity conferences are ordered and provides for confidentiality.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
78-3a-109, as last amended by Chapter 288, Laws of Utah 2000

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

Section 1. Section 78-3a-109 is amended to read:

78-3a-109. Title of petition and other court documents -- Form and contents of petition -- Order for temporary custody -- Physical or psychological examination of minor, parent, or guardian -- Dismissal of petition.

(1) The petition and all subsequent court documents in the proceeding shall be entitled:

"State of Utah, in the interest of....., a person under 18 years of age (or a person under 21 years of age)."

(2) The petition shall be verified and statements in the petition may be made upon information and belief.

(3) The petition shall be written in simple and brief language and include the facts which bring the minor within the jurisdiction of the court, as provided in Section 78-3a-104.

(4) The petition shall further state:

(a) the name, age, and residence of the minor;

(b) the names and residences of the minor's parents;

(c) the name and residence of the guardian, if there is one;

(d) the name and address of the nearest known relative, if no parent or guardian is known; and

(e) the name and residence of the person having physical custody of the minor. If any of the facts required are not known by the petitioner, the petition shall so state.

(5) At any time after a petition is filed, the court may make an order providing for temporary custody of the minor.

(6) The court may order that a minor concerning whom a petition has been filed shall be examined by a physician, surgeon, psychiatrist, or psychologist and may place the minor in a hospital or other facility for examination. After notice and a hearing set for the specific purpose, the court may order a similar examination of a parent or guardian whose ability to care for a minor is at issue, if the court finds from the evidence presented at the hearing that the parent's or guardian's physical, mental, or emotional condition may be a factor in causing the neglect, dependency, or delinquency of the minor.

(7) Pursuant to Rule 506(d)(3), Utah Rules of Evidence, examinations conducted pursuant to Subsection (6) are not privileged communications, but are exempt from the general rule of privilege.

(8) The court may dismiss a petition at any stage of the proceedings.

(9) If the petition is filed under Section 78-3a-305 or 78-3a-405 or if the matter is referred to the court under Subsection 78-3a-105(3)(b)[~~,~~]:

(a) the court may require the parties to participate in mediation in accordance with Title 78, Chapter 31b, Alternative Dispute Resolution[~~.~~]; and

(b) the Division of Child and Family Services or a party to the petition may request and the court may order the parties to participate in a family unity conference under the authority of the Division of Child and Family Services in accordance with Subsection (10).

(10) (a) A family unity conference may be ordered by the court for any of the following purposes:

(i) discussing and reviewing the case history;

(ii) designing a service plan for the child and family, including concurrent planning;

(iii) discussing a visitation schedule and rules for visitation;

(iv) identifying possible kinship placements under the requirements of Subsection 78-3a-307(5), and designing services to support the kinship placement;

(v) conflict resolution between the family and Division of Child and Family Services staff;

(vi) discussing child custody issues; or

(vii) crisis clinical intervention to reduce trauma to the child and family.

(b) The family unity conference may be attended by individuals chosen by the family and the Division of Child and Family Services, and may include extended family members, friends, clergy, service providers, and others who may support the family in keeping the child safe.

(c) A family unity conference may not be held in the following circumstances:

(i) when there is a criminal charge pending in the case;

(ii) to resolve petition disputes; and

(iii) when a family unity conference may pose a threat to the safety of a child or other family member.

(d) With regard to a family unity conference ordered by a court under Subsection (9)(b):

(i) the requirements of Subsection 78-31b-7(3)(b) apply except all parties to the proceeding:

(A) shall be given no less than five days notice of any recommendation made to the court from the family unity conference; and

(B) shall be given an opportunity to be heard by the court; and

(ii) the confidentiality requirements of Section 78-31b-8 apply, except that admissions by a party to the allegations on the petition are admissible at any proceeding.

CHAPTER 181
H. B. 151
Passed February 28, 2001
Approved March 15, 2001
Effective April 30, 2001

OLENE WALKER HOUSING TRUST FUND AMENDMENT

Sponsor: Chad E. Bennion

This act modifies provisions relating to the Olene Walker Housing Trust Fund Board. The act modifies the duties of the board. The act provides that the board direct the distribution of moneys from the fund. The act designates the director as a nonvoting member of the board.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
9-4-703, as last amended by Chapters 242 and 243, Laws of Utah 1996
9-4-704, as last amended by Chapter 286, Laws of Utah 2000
9-4-705, as last amended by Chapter 265, Laws of Utah 1994
9-4-707, as last amended by Chapter 276, Laws of Utah 1998
9-4-708, as renumbered and amended by Chapter 241, Laws of Utah 1992

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

Section 1. Section 9-4-703 is amended to read:

9-4-703. Housing trust fund board -- Duties -- Expenses.

(1) There is created the Olene Walker Housing Trust Fund Board [~~to advise the executive director in determining how fund moneys shall be allocated and distributed~~].

(2) The board shall be composed of [~~13~~] 11 voting members.

(a) The governor shall appoint the following members to four-year terms:

(i) two members from local governments;

(ii) [~~one member~~] two members from the mortgage lending community;

(iii) one member from real estate sales interests;

(iv) one member from home builders interests;

(v) one member from rental housing interests;

(vi) one member from housing advocacy interests;

(vii) one member of the manufactured housing interest; and

(viii) two members of the general public.

(b) The director or his designee [~~is a member of the board and~~] shall serve as [~~chair~~] the secretary of the committee.

[~~(c) The president of the Senate shall appoint a senator to serve on the board.~~]

[~~(d) The speaker of the House of Representatives shall appoint a representative to serve on the board.~~]

(c) The members of the board shall annually elect a chair from among the voting membership of the board.

[~~(3) The legislators shall serve two-year terms or until their legislative term expires, whichever comes first.~~]

[~~(4)~~] (3) (a) Notwithstanding the requirements of Subsection (2), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.

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

[~~(5)~~] (4) (a) The board shall:

(i) meet regularly, at least quarterly, on dates fixed by the board;

(ii) keep minutes of its meetings; and

(iii) comply with the procedures and requirements of Title 52, Chapter 4, Open and Public Meetings.

(b) Seven members of the board constitute a quorum, and the governor, the chair, or a majority of the board may call a meeting of the board.

[~~(6)~~] (5) The board shall:

(a) [~~advise the director on~~] review the housing needs in the state;

(b) [~~advise the director on~~] determine the relevant operational aspects of any grant, loan, or revenue collection program established under the authority of this chapter;

(c) [~~advise the director on~~] determine the means to implement the policies and goals of this chapter; [~~and~~]

(d) [~~recommend~~] determine specific projects [~~to the director~~] that the board considers should receive grant or loan moneys[~~.~~]; and

(e) determine how fund moneys shall be allocated and distributed.

[~~(7)~~] (6) (a) (i) Members who are not government employees shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

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

(b) (i) State government [~~officer and~~] employee members who do not receive salary, per diem, or expenses from their agency for their service may

receive per diem and expenses incurred in the performance of their official duties from the board at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

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

[~~(c) Legislators on the committee shall receive compensation and expenses as provided by law and legislative rule.~~]

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

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

Section 2. Section 9-4-704 is amended to read:

9-4-704. Distribution of fund moneys.

(1) The executive director shall:

(a) make grants and loans from the fund for any of the activities authorized by Section 9-4-705, as [~~recommended~~] directed by the board;

(b) establish the criteria with the approval of the board by which loans and grants will be made; and

(c) determine with the approval of the board the order in which projects will be funded.

(2) The executive director shall distribute, as directed by the board, any federal moneys contained in the fund according to the procedures, conditions, and restrictions placed upon the use of those moneys by the federal government.

(3) (a) The executive director shall distribute, as directed by the board, any funds received pursuant to Section 17A-2-1264 to pay the costs of providing income targeted housing within the community that created the redevelopment agency under Title 17A, Chapter 2, Part 12, Utah Neighborhood Development Act.

(b) As used in Subsection (3)(a):

(i) "Community" has the meaning as defined in Subsection 17A-2-1202(5).

(ii) "Income targeted housing" has the meaning as defined in Subsection 17A-2-1264(1)(g).

(4) Except federal money and money received under Section 17A-2-1264, the executive director shall distribute, as directed by the board, all other moneys from the fund according to the following requirements:

(a) Not less than 30% of all fund moneys shall be distributed to rural areas of the state.

(b) At least 50% of the moneys in the fund shall be distributed as loans to be repaid to the fund by the entity receiving them.

(i) (A) Of the fund moneys distributed as loans, at least 50% shall be distributed to benefit persons whose annual income is at or below 50% of the median family income for the state.

(B) The remaining loan moneys shall be distributed to benefit persons whose annual income is at or below 80% of the median family income for the state.

(ii) The executive director or his designee shall lend moneys in accordance with this Subsection (4) at a rate based upon the borrower's ability to pay.

(c) Any fund moneys not distributed as loans shall be distributed as grants.

(i) At least 90% of the fund moneys distributed as grants shall be distributed to benefit persons whose annual income is at or below 50% of the median family income for the state.

(ii) The remaining fund moneys distributed as grants may be used by the executive director to obtain federal matching funds or for other uses consistent with the intent of this part, including the payment of reasonable loan servicing costs, but no more than 3% of the revenues of the fund may be used to offset other department or board administrative expenses.

(5) The executive director may with the approval of the board:

(a) enact rules to establish procedures for the grant and loan process by following the procedures and requirements of Title 63, Chapter 46a, Utah Administrative Rulemaking Act; and

(b) service or contract, pursuant to Title 63, Chapter 56, Utah Procurement Code, for the servicing of loans made by the fund.

Section 3. Section 9-4-705 is amended to read:

9-4-705. Activities authorized to receive fund moneys -- Powers of the executive director.

[~~With the recommendation~~] At the direction of the board, the executive director may:

(1) provide fund moneys to any of the following activities:

(a) acquisition, rehabilitation, or new construction of low-income housing units;

(b) matching funds for social services projects directly related to providing housing for special-need renters in assisted projects;

(c) shelters and transitional housing for the homeless; and

(d) other activities that will assist in improving the availability or quality of housing in the state for low-income persons;

(2) do any act necessary or convenient to the exercise of the powers granted by this part or reasonably implied therefrom including:

(a) making or executing contracts and other instruments necessary or convenient for the

performance of the executive director and board's duties and the exercise of the executive director and board's powers and functions under this part, including contracts or agreements for the servicing and originating of mortgage loans;

(b) procuring insurance against any loss in connection with property or other assets held by the fund, including mortgage loans, in amounts and from insurers it considers desirable;

(c) entering into agreements with any department, agency, or instrumentality of the United States or this state and with mortgagors and mortgage lenders for the purpose of planning and regulating and providing for the financing and refinancing, purchase, construction, reconstruction, rehabilitation, leasing, management, maintenance, operation, sale, or other disposition of any residential housing undertaken with the assistance of the department under this part;

(d) proceeding with a foreclosure action, to own, lease, clear, reconstruct, rehabilitate, repair, maintain, manage, operate, assign, encumber, sell, or otherwise dispose of any real or personal property obtained by the fund due to the default on any mortgage loan held by the fund in preparation for disposition of the property, taking assignments of leases and rentals, proceeding with foreclosure actions, and taking other actions necessary or incidental to the performance of its duties; and

(e) selling, at a public or private sale, with [~~or without~~] public bidding, any mortgage or other obligation held by the fund.

Section 4. Section 9-4-707 is amended to read:

9-4-707. Application process and priorities.

(1) (a) In each calendar year that moneys are available from the fund for [~~use~~] distribution by the executive director under the direction of the board, the director shall, at least once in that year, announce a grant and loan application period by sending notice to interested persons.

(b) The executive director shall accept applications which are received in a timely manner.

(2) The executive director shall give first priority to applications for projects and activities that use existing privately-owned housing stock, including privately owned housing stock purchased by nonprofit public development authorities.

(3) [~~The executive director shall give preference~~] Preference shall be given to applications that demonstrate the following:

(a) a high degree of leverage with other sources of financing;

(b) high recipient contributions to total project costs, including allied contributions from other sources such as professional, craft and trade services, and lender interest rate subsidies;

(c) high local government project contributions in the form of infrastructure improvements, or other assistance;

(d) projects that encourage ownership, management, and other project-related responsibility opportunities;

(e) projects that demonstrate a strong probability of serving the original target group or income level for a period of at least 15 years;

(f) projects where the applicant has demonstrated the ability, stability, and resources to complete the project;

(g) projects that appear to serve the greatest need;

(h) projects that provide housing for persons and families with the lowest income;

(i) projects that promote economic development benefits;

(j) projects that allow integration into a local government housing plan; and

(k) projects that would mitigate or correct existing health, safety, or welfare problems.

Section 5. Section 9-4-708 is amended to read:

9-4-708. Annual accounting.

(1) The executive director shall monitor the activities of recipients of grants and loans issued under this part on a yearly basis to ensure compliance with the terms and conditions imposed on the recipient by the director with the approval of the board or by this part.

(2) The entities receiving grants or loans shall provide the executive director with an annual accounting of how the moneys they received from the fund have been spent.

(3) The executive director shall make an annual report to the board accounting for the expenditures authorized by the board.

(4) The board shall submit an annual written report accounting for expenditures authorized by the board and evaluating the effectiveness of the program to the Business, Labor, and Economic Development Interim Committee before December 1 of each year.

CHAPTER 182
H. B. 157
Passed February 28, 2001
Approved March 15, 2001
Effective April 30, 2001

CONSUMER PROTECTION FROM LOTTERY ADVERTISEMENTS

Sponsor: Stephen D. Clark

This act modifies the Offenses Against Public Health, Safety, Welfare and Morals Act. The act makes it a crime if the words "Void in Utah" are not conspicuously printed on any written or printed material containing an advertisement or solicitation for participation in a lottery.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:
76-10-1104.5, Utah Code Annotated 1953

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

Section 1. Section 76-10-1104.5 is enacted to read:

76-10-1104.5. Advertisement or solicitation for participation in lotteries -- Void in Utah.

(1) For purposes of this section:

(a) "Conspicuously printed" means printed in either larger or bolder type size than the adjacent and surrounding material so as to be clearly legible to any person viewing the print.

(b) "Lottery" means the same as defined in Section 76-10-1101.

(2) It is unlawful for any person to distribute or disseminate any advertisement or other written or printed material containing an advertisement or solicitation for participation in any lottery unless the advertisement or solicitation contains or includes the words "Void in Utah" conspicuously printed.

(3) (a) Any person who is convicted of violating Subsection (2) shall be fined the sum of $2,500.

(b) Any person who is twice or more convicted under this section shall be fined the sum of $10,000.

CHAPTER 183
H. B. 169
Passed February 19, 2001
Approved March 15, 2001
Effective April 30, 2001

NAME OF SPECIAL DISTRICT AMENDMENTS

Sponsor: Eli H. Anderson

This act modifies provisions relating to Special Districts to authorize a special district board to change the name of the special district and to require notice of the name change to be given.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
17A-1-204, as enacted by Chapter 185, Laws of Utah 2000

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

Section 1. Section 17A-1-204 is amended to read:

17A-1-204. Name of special district -- Name change.

(1) The name of each special district created on or after May 1, 2000 shall comply with Subsection 17-50-103(2)(a).

(2) The board of each special district affected by Subsection 17-50-103(2)(b) shall ensure that after January 1, 2005 the special district name complies with the requirements of that subsection.

(3) (a) A special district board may change the name of that special district by:

(i) holding a public hearing on the proposed name change;

(ii) adopting a resolution approving the name change; and

(iii) giving written notice of the name change to the lieutenant governor, the State Tax Commission, the state auditor, and the clerk, recorder, and assessor of each county in which any part of the special district is located.

(b) A name change under Subsection (3)(a) becomes effective upon the board's giving the notice required under Subsection (3)(a)(iii).

CHAPTER 184
H. B. 170
Passed February 28, 2001
Approved March 15, 2001
Effective April 30, 2001

PRESCRIBING PSYCHIATRIC DRUGS OR MEDICATION

Sponsor: Matt Throckmorton

This act modifies the Human Services Code. The act amends the definition of substantiated child abuse to exclude the failure to administer prescribed medication or course of treatment if the parent or legal guardian has not been notified of the opportunity to obtain a physical examination of the minor by a health care professional. The act authorizes the Division of Child and Family Services to report an individual to the appropriate licensing authority if the division has reason to believe the individual exceeded the individual's scope of practice by recommending medication for a minor.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
62A-4a-116, as last amended by Chapters 304 and 321, Laws of Utah 2000

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

Section 1. Section 62A-4a-116 is amended to read:

62A-4a-116. Management information system -- Requirements.

(1) The division shall develop and implement a management information system that meets the requirements of this section and the requirements of federal law and regulation.

(2) With regard to all child welfare cases, the management information system shall:

(a) provide each caseworker with a complete history of each child in his caseload, including:

(i) all past action taken by the division with regard to that child and his siblings, the complete case history and all reports and information in the control or keeping of the division regarding that child and his siblings;

(ii) the number of times the child has been in foster care;

(iii) the cumulative period of time the child has been in foster care;

(iv) all reports of abuse or neglect received by the division with regard to that child's parent or parents, including documentation regarding whether each report was substantiated, unsubstantiated, or without merit;

(v) the number of times the child's parent or parents have failed any treatment plan; and

(vi) the number of different caseworkers who have been assigned to that child in the past;

(b) contain all key elements of each family's current treatment plan, including the dates and number of times the plan has been administratively or judicially reviewed, the number of times the parent or parents have failed that treatment plan, and the exact length of time that treatment plan has been in effect;

(c) alert caseworkers regarding deadlines for completion of and compliance with treatment plans; and

(d) unless the executive director determines that there is good cause for keeping the report on the system based on standards established by rule, delete any reference to:

(i) a report that is without merit if no subsequent report involving the same alleged perpetrator has occurred within one year; or

(ii) a report that is unsubstantiated if no subsequent report involving the same alleged perpetrator has occurred within ten years.

(3) With regard to all child protective services cases, the management information system shall, in addition to the information required in Subsection (2), monitor compliance with the policy of the division, the laws of this state, and federal law and regulation.

(4) With regard to all child welfare and protective services cases, the age and date of birth of the alleged perpetrator, at the time the abuse or neglect is alleged to have occurred, shall be included in the management information system.

(5) (a) The division shall develop and maintain a part of the information management system for licensing purposes, which shall be:

(i) limited to:

(A) substantiated findings of child abuse or neglect since January 1, 1988, after notice and an opportunity to challenge has been provided under Section 62A-4a-116.5;

(B) the name of a person who was not sent a notice of agency action under Section 62A-4a-116.5 because his location was not available on the management information system or who was sent a notice of agency action that was returned to the division as undelivered for the sole purpose of alerting the division of the need to afford the person an opportunity to challenge the finding of child abuse or neglect under Section 62A-4a-116.5 before any adverse action, beyond delaying the person's licensing application to provide an opportunity for challenge, may be taken;

(C) an adjudication of child abuse or neglect by a court of competent jurisdiction if Subsection 62A-4a-116.5(5) has been met; and

(D) any criminal conviction or guilty plea related to neglect, physical abuse, or sexual abuse of any person; and

(ii) accessible by:

(A) the Office of Licensing for licensing purposes only;

(B) the division:

(I) to screen a person at the request of the Office of the Guardian Ad Litem Director, created by Section 78-3a-912, at the time the person seeks a paid or voluntary position with the Office of the Guardian Ad Litem and each year thereafter that the person remains with the office; and

(II) to respond to a request for information from the person who is identified as a perpetrator in the report, after advising the person of the screening prohibition in Subsection (4)(d)(iii);

(C) subject to the provisions of Subsection (5)(c), the Bureau of Health Facility Licensure within the Department of Health only for the purpose of licensing a child care program or provider, or for determining whether a person associated with a covered health care facility, as defined by the Department of Health by rule, who provides direct care to a child has a substantiated finding of child abuse or neglect; and

(D) the department as provided in Subsection (6) and Section 62A-1-118.

(b) For the purpose of Subsection (5)(a), "substantiated":

(i) means a finding that there is a reasonable basis to conclude that:

(A) a person 18 years of age or older committed one or more of the following types of child abuse or neglect:

(I) physical abuse;

(II) sexual abuse;

(III) sexual exploitation;

(IV) abandonment;

(V) medical neglect resulting in death, disability, or serious illness; or

(VI) chronic or severe neglect; and

(B) a person under the age of 18:

(I) caused serious physical injury, as defined in Subsection 76-5-109(1)(d), to another child which indicates a significant risk to other children; or

(II) engaged in sexual behavior with or upon another child which indicates a significant risk to other children; and

(ii) does not include:

(A) the use of reasonable and necessary physical restraint or force by an educator in accordance with Subsection 53A-11-802(2) or Section 76-2-401; [~~or~~]

(B) a person's conduct that:

(I) is justified under Section 76-2-401; or

(II) constituted the use of reasonable and necessary physical restraint or force in self-defense or otherwise appropriate to the circumstances to obtain possession of a weapon or other dangerous object in the possession or under the control of a child or to protect the child or another person from physical injury[~~.~~]; or

(C) (I) failure to administer prescribed or recommended medication or to follow a course of treatment prescribed or recommended by a health care provider as defined in Section 78-14-3, if the division has not provided the legal guardian or parent notice of the opportunity to obtain, at the parent's or guardian's expense, a physical examination of the minor by a health care professional licensed under Title 58, Chapter 67, Utah Medical Practice Act, Chapter 68, Utah Osteopathic Medical Practices Act, Chapter 70a, Physician Assistant Act, or licensed as an advance practice registered nurse under Chapter 31b, Nurse Practices Act, to determine if the course of treatment chosen by the legal guardian or parent is a medically acceptable alternative and is in the best interest of the minor under the circumstances;

(II) Subsection (5)(b)(ii)(C)(I) does not apply in circumstances where a delay in the prescribed or recommended medical treatment may result in death, permanent loss of a body function, or significant physical or mental impairment of the minor; and

(III) for purposes of this Subsection (5)(b)(ii)(C), if the division has reason to believe that an individual is making medical recommendations concerning the administration of medication, and the individual is not licensed as a health care provider, as defined in Section 78-14-3, the division may report that individual to the appropriate licensing authority.

(iii) (A) For purposes of Subsection (5)(b)(i)(B), "significant risk" shall be determined in accordance with risk assessment tools and policies established by the division that focus on age, social factors, emotional factors, sexual factors, intellectual factors, family risk factors, and other related considerations.

(B) The division shall train its child protection workers to apply the risk assessment tools and policies established under Subsection (5)(b)(iii)(A).

(c) (i) The Department of Health shall:

(A) designate two persons within the Department of Health to access the licensing part of the management information system; and

(B) adopt measures to:

(I) protect the security of the licensing part of the management information system; and

(II) strictly limit access to the licensing part of the management information system to those designated under Subsection (5)(c)(i)(A).

(ii) Those designated under Subsection (5)(c)(i)(A) shall receive training from the department with respect to:

(A) accessing the licensing part of the management information system;

(B) maintaining strict security; and

(C) the criminal provisions in Section 62A-4a-412 for the improper release of information.

(iii) Those designated under Subsection (5)(c)(i)(A):

(A) are the only ones in the Department of Health with the authority to access the licensing part of the management information system; and

(B) may only access the licensing part of the management information system in accordance with the provisions of Subsection (5)(a)(ii).

(iv) The Department of Health may obtain information in the possession of the division that relates to a substantiated finding of abuse or neglect of a person screened under this Subsection (5)(c).

(d) (i) Information in the licensing part of the management information system is confidential and may only be used or disclosed as specifically provided in this section, Section 62A-2-121, and Section 62A-4a-116.5.

(ii) No person, unless listed in Subsection (5)(a)(ii), may request another person to obtain or release a report or any other information in the possession of the division obtained as a result of the report that is available under Subsection (5)(a)(ii)(A)(III) to screen for potential perpetrators of child abuse or neglect.

(iii) A person who requests information knowing that it is a violation of Subsection (5)(d)(ii) to do so is subject to the criminal penalty in Section 62A-4a-412.

(6) All information contained in the management information system shall be available to the department upon the approval of the executive director, on a need-to-know basis.

(7) (a) The division may allow its contract providers to have limited access to the management information system. The division shall limit that access to information about persons who are currently receiving services from the specific contract provider.

(b) Each contract provider shall:

(i) take all necessary precautions to safeguard the security of the information contained in the management information system;

(ii) train its employees regarding requirements for confidentiality and the criminal penalties under Sections 62A-4a-412 and 63-2-801 for improper release of information; and

(iii) monitor its employees to ensure that they comply with the confidentiality requirements related to the management information system.

(c) The division shall take reasonable precautions to ensure that its contract providers are complying with Subsection (7)(b).

(8) The division shall take all necessary precautions, including password protection and other appropriate technological techniques, to prevent unauthorized access to the information contained in the management information system.

(9) (a) The division shall send a certified letter to a person who submitted a report of child abuse or neglect that is put onto any part of the management information system if the division determines, at the conclusion of its investigation, that:

(i) the report is false;

(ii) it is more likely than not that the person knew that the report was false at the time the person submitted the report; and

(iii) the person's address is known or reasonably available.

(b) The letter shall inform the person of:

(i) the determination made under Subsection (9)(a);

(ii) the penalty for submitting false information under Section 76-8-506 and other applicable laws;

(iii) the obligation of the division to inform law enforcement and the alleged perpetrator:

(A) in the present instance if an immediate referral is justified by the facts; or

(B) if the person submits a subsequent false report involving the same alleged perpetrator or victim.

(c) (i) The division may inform law enforcement and the alleged perpetrator of a report for which a letter is required to be sent under Subsection (9)(a) if an immediate referral is justified by the facts.

(ii) The division shall inform law enforcement and the alleged perpetrator of a report for which a letter is required to be sent under Subsection (9)(a) if this is the second letter sent to the person involving the same alleged perpetrator or victim.

(iii) The division shall determine, in consultation with law enforcement:

(A) the information to be given to an alleged perpetrator about a false claim; and

(B) whether good cause exists, as defined by rule, for not informing an alleged perpetrator about a false claim.

(d) Nothing in this Subsection (9) may be construed as requiring the division to conduct an investigation, beyond what is required in Subsection (9)(a), to determine whether or not a report is false.

CHAPTER 185
S. B. 208
Passed February 28, 2001
Approved March 16, 2001
Effective April 30, 2001

GOVERNMENTAL IMMUNITY FOR TRANSPORTING PERSONS FROM REMOTE OR INACCESSIBLE AREAS

Sponsor: Leonard M. Blackham

This act modifies the Governmental Immunity Act. The bill adds an exception for waiver of immunity for injury caused by negligent act or omission of employee when transporting injured persons to a place where medical assistance can be rendered or an ambulance is available.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
63-30-10, as last amended by Chapters 159 and 264, Laws of Utah 1996

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

Section 1. Section 63-30-10 is amended to read:

63-30-10. Waiver of immunity for injury caused by negligent act or omission of employee -- Exceptions.

Immunity from suit of all governmental entities is waived for injury proximately caused by a negligent act or omission of an employee committed within the scope of employment except if the injury arises out of, in connection with, or results from:

(1) the exercise or performance or the failure to exercise or perform a discretionary function, whether or not the discretion is abused;

(2) assault, battery, false imprisonment, false arrest, malicious prosecution, intentional trespass, abuse of process, libel, slander, deceit, interference with contract rights, infliction of mental anguish, or violation of civil rights;

(3) the issuance, denial, suspension, or revocation of or by the failure or refusal to issue, deny, suspend, or revoke any permit, license, certificate, approval, order, or similar authorization;

(4) a failure to make an inspection or by making an inadequate or negligent inspection;

(5) the institution or prosecution of any judicial or administrative proceeding, even if malicious or without probable cause;

(6) a misrepresentation by an employee whether or not it is negligent or intentional;

(7) riots, unlawful assemblies, public demonstrations, mob violence, and civil disturbances;

(8) the collection of and assessment of taxes;

(9) the activities of the Utah National Guard;

(10) the incarceration of any person in any state prison, county or city jail, or other place of legal confinement;

(11) any natural condition on publicly owned or controlled lands, any condition existing in connection with an abandoned mine or mining operation, or any activity authorized by the School and Institutional Trust Lands Administration or the Division of Forestry, Fire and State Lands;

(12) research or implementation of cloud management or seeding for the clearing of fog;

(13) the management of flood waters, earthquakes, or natural disasters;

(14) the construction, repair, or operation of flood or storm systems;

(15) the operation of an emergency vehicle, while being driven in accordance with the requirements of Section 41-6-14;

(16) a latent dangerous or latent defective condition of any highway, road, street, alley, crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them;

(17) a latent dangerous or latent defective condition of any public building, structure, dam, reservoir, or other public improvement;

(18) the activities of:

(a) providing emergency medical assistance;

(b) fighting fire;

(c) regulating, mitigating, or handling hazardous materials or hazardous wastes;

(d) emergency evacuations; [~~or~~]

(e) transporting or removing injured persons to a place where emergency medical assistance can be rendered or where the person can be transported by a licensed ambulance service; or

[~~(e)~~] (f) intervening during dam emergencies; or

(19) the exercise or performance or the failure to exercise or perform any function pursuant to Title 73, Chapter 5a, Dam Safety, or Title 73, Chapter 10, Board of Water Resources - Division of Water Resources, which immunity is in addition to all other immunities granted by law.

CHAPTER 186
S. B. 210
Passed February 26, 2001
Approved March 16, 2001
Effective April 30, 2001

HIGHER EDUCATION
TUITION DISCLOSURE

Sponsor: Carlene M. Walker

This act modifies provisions related to the State System of Higher Education by requiring higher education institutions to hold a public meeting prior to increasing tuition rates. The act details the procedures to be followed for the meeting, including publication of a notice and the information to be supplied to those at the meeting.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:
53B-7-101.5, Utah Code Annotated 1953

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

Section 1. Section 53B-7-101.5 is enacted to read:

53B-7-101.5. Proposed tuition increases -- Notice -- Hearings.

(1) If an institution within the State System of Higher Education listed in Section 53B-1-102 considers increasing tuition rates for undergraduate students in the process of preparing or implementing its budget, it shall hold a meeting to receive public input and response on the issue.

(2) The institution shall advertise the hearing required under Subsection (1) using the following procedure:

(a) The institution shall advertise its intent to consider an increase in student tuition rates in the institution's student newspaper.

(b) The advertisement shall be run twice during a period of ten days prior to the meeting.

(c) The advertisement shall state that the institution will meet on a certain day, time, and place fixed in the advertisement, which shall not be less than seven days after the day the second advertisement is published, for the purpose of hearing comments regarding the proposed increase and to explain the reasons for the proposed increase.

(3) The form and content of the notice shall be substantially as follows:

"NOTICE OF PROPOSED TUITION INCREASE

The (name of the higher education institution) is proposing to increase student tuition rates. This would be an increase of _____ %, which is an increase of $_____ per semester for a full-time resident undergraduate student. All concerned students and citizens are invited to a public hearing on the proposed increase to be held at (meeting place) on (date) at (time)."

(4) (a) The institution shall provide the following information to those in attendance at the meeting required under Subsection (1):

(i) the current year's student enrollment for:

(A) the State System of Higher Education, if a systemwide increase is being considered; or

(B) the institution, if an increase is being considered for just a single institution;

(ii) total tuition revenues for the current school year;

(iii) projected student enrollment growth for the next school year and projected tuition revenue increases from that anticipated growth; and

(iv) a detailed accounting of how and where the increased tuition revenues would be spent.

(b) The enrollment and revenue data required under Subsection (4)(a) shall be broken down into majors or departments if the proposed tuition increases are department or major specific.

(5) If the institution does not make a final decision on the proposed tuition increase at the meeting, it shall announce the date, time, and place of the meeting where that determination shall be made.

CHAPTER 187
S. B. 211
Passed February 27, 2001
Approved March 16, 2001
Effective April 30, 2001

SOLEMNIZATION OF MARRIAGES

Sponsor: Gene Davis

This act provides that ordination by Internet is not valid in Utah for the performing of marriage ceremonies.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:
30-1-6.1, Utah Code Annotated 1953

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

Section 1. Section 30-1-6.1 is enacted to read:

30-1-6.1. Ordination by Internet not valid.

Certification, licensure, ordination, or any other endorsement received by a person through application over the Internet or by mail that purports to give that person religious authority is not valid for the purposes of Subsection 30-1-6(1)(a).

CHAPTER 188
S. B. 213
Passed February 27, 2001
Approved March 16, 2001
Effective July 1, 2001

TAXATION OF TELEPHONE CORPORATIONS

Sponsor: Curtis S. Bramble

This act modifies the Revenue and Taxation Code to address definitions relating to telephone corporations for purposes of sales and use taxes, and to make technical changes. This act takes effect on July 1, 2001.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
59-12-102 (Effective 07/01/01), as last amended by Chapter 253, Laws of Utah 2000
59-12-103 (Effective 07/01/01), as last amended by Chapters 147, 253 and 325, Laws of Utah 2000

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

Section 1. Section 59-12-102 (Effective 07/01/01) is amended to read:

59-12-102 (Effective 07/01/01). Definitions.

As used in this chapter:

(1) (a) "Admission or user fees" includes season passes.

(b) "Admission or user fees" does not include annual membership dues to private organizations.

(2) "Area agency on aging" is as defined in Section 62A-3-101.

(3) "Authorized carrier" means:

(a) in the case of vehicles operated over public highways, the holder of credentials indicating that the vehicle is or will be operated pursuant to both the International Registration Plan (IRP) and the International Fuel Tax Agreement (IFTA);

(b) in the case of aircraft, the holder of a Federal Aviation Administration (FAA) operating certificate or air carrier's operating certificate; or

(c) in the case of locomotives, freight cars, railroad work equipment, or other rolling stock, the holder of a certificate issued by the United States Interstate Commerce Commission.

(4) (a) For purposes of Subsection 59-12-104(43), "coin-operated amusement device" means:

(i) a coin-operated amusement, skill, or ride device;

(ii) that is not controlled through vendor-assisted, over-the-counter, sales of tokens; and

(iii) includes a music machine, pinball machine, billiard machine, video game machine, arcade machine, and a mechanical or electronic skill game or ride.

(b) For purposes of Subsection 59-12-104(43), "coin-operated amusement device" does not mean a coin-operated amusement device possessing a coinage mechanism that:

(i) accepts and registers multiple denominations of coins; and

(ii) allows the vendor to collect the sales and use tax at the time an amusement device is activated and operated by a person inserting coins into the device.

(5) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other fuels that does not constitute industrial use under Subsection (13) or residential use under Subsection (21).

(6) (a) "Common carrier" means a person engaged in or transacting the business of transporting passengers, freight, merchandise, or other property for hire within this state.

(b) (i) "Common carrier" does not include a person who, at the time the person is traveling to or from that person's place of employment, transports a passenger to or from the passenger's place of employment.

(ii) For purposes of Subsection (6)(b)(i), in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may make rules defining what constitutes a person's place of employment.

(7) "Component part" includes:

(a) poultry, dairy, and other livestock feed, and their components;

(b) baling ties and twine used in the baling of hay and straw;

(c) fuel used for providing temperature control of orchards and commercial greenhouses doing a majority of their business in wholesale sales, and for providing power for off-highway type farm machinery; and

(d) feed, seeds, and seedlings.

(8) "Construction materials" means any tangible personal property that will be converted into real property.

(9) (a) "Fundraising sales" means sales:

(i) (A) made by a public or private elementary or secondary school; or

(B) made by a public or private elementary or secondary school student, grades kindergarten through 12;

(ii) that are for the purpose of raising funds for the school to purchase equipment, materials, or provide transportation; and

(iii) that are part of an officially sanctioned school activity.

(b) For purposes of Subsection (9)(a)(iii), "officially sanctioned school activity" means a school activity:

(i) that is conducted in accordance with a formal policy adopted by the school or school district governing the authorization and supervision of fundraising activities;

(ii) that does not directly or indirectly compensate an individual teacher or other educational personnel by direct payment, commissions, or payment in kind; and

(iii) the net or gross revenues from which are deposited in a dedicated account controlled by the school or school district.

(10) (a) "Hearing aid" means:

(i) an instrument or device having an electronic component that is designed to:

(A) (I) improve impaired human hearing; or

(II) correct impaired human hearing; and

(B) (I) be worn in the human ear; or

(II) affixed behind the human ear;

(ii) an instrument or device that is surgically implanted into the cochlea; or

(iii) a telephone amplifying device.

(b) "Hearing aid" does not include:

(i) except as provided in Subsection (10)(a)(i)(B) or (10)(a)(ii), an instrument or device having an electronic component that is designed to be worn on the body;

(ii) except as provided in Subsection (10)(a)(iii), an assistive listening device or system designed to be used by one individual, including:

(A) a personal amplifying system;

(B) a personal FM system;

(C) a television listening system; or

(D) a device or system similar to a device or system described in Subsections (10)(b)(ii)(A) through (C); or

(iii) an assistive listening device or system designed to be used by more than one individual, including:

(A) a device or system installed in:

(I) an auditorium;

(II) a church;

(III) a conference room;

(IV) a synagogue; or

(V) a theater; or

(B) a device or system similar to a device or system described in Subsections (10)(b)(iii)(A)(I) through (V).

(11) (a) "Hearing aid accessory" means a hearing aid:

(i) component;

(ii) attachment; or

(iii) accessory.

(b) "Hearing aid accessory" includes:

(i) a hearing aid neck loop;

(ii) a hearing aid cord;

(iii) a hearing aid ear mold;

(iv) hearing aid tubing;

(v) a hearing aid ear hook; or

(vi) a hearing aid remote control.

(c) "Hearing aid accessory" does not include:

(i) a component, attachment, or accessory designed to be used only with an:

(A) instrument or device described in Subsection (10)(b)(i); or

(B) assistive listening device or system described in Subsection (10)(b)(ii) or (iii); or

(ii) a hearing aid battery.

(12) (a) "Home medical equipment and supplies" means equipment and supplies that:

(i) a licensed physician prescribes or authorizes in writing as necessary for the treatment of a medical illness or injury or as necessary to mitigate an impairment resulting from illness or injury;

(ii) are used exclusively by the person for whom they are prescribed to serve a medical purpose; and

(iii) are listed as eligible for payment under Title 18 of the federal Social Security Act or under the state plan for medical assistance under Title 19 of the federal Social Security Act.

(b) "Home medical equipment and supplies" does not include:

(i) equipment and supplies purchased by, for, or on behalf of any health care facility, as defined in Subsection (12)(c), doctor, nurse, or other health care provider for use in their professional practice;

(ii) eyeglasses, contact lenses, or equipment to correct impaired vision; or

(iii) hearing aids or hearing aid accessories.

(c) For purposes of Subsection (12)(b)(i), "health care facility" includes:

(i) a clinic;

(ii) a doctor's office; and

(iii) a health care facility as defined in Section 26-21-2.

(13) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil, or other fuels in:

(a) mining or extraction of minerals;

(b) agricultural operations to produce an agricultural product up to the time of harvest or placing the agricultural product into a storage facility, including:

(i) commercial greenhouses;

(ii) irrigation pumps;

(iii) farm machinery;

(iv) implements of husbandry as defined in Subsection 41-1a-102(23) that are not registered under Title 41, Chapter 1a, Part 2, Registration; and

(v) other farming activities; and

(c) manufacturing tangible personal property at an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget.

(14) "Manufactured home" means any manufactured home or mobile home as defined in Title 58, Chapter 56, Utah Uniform Building Standards Act.

(15) For purposes of Subsection 59-12-104(14), "manufacturing facility" means:

(a) an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget; or

(b) a scrap recycler if:

(i) from a fixed location, the scrap recycler utilizes machinery or equipment to process one or more of the following items into prepared grades of processed materials for use in new products:

(A) iron;

(B) steel;

(C) nonferrous metal;

(D) paper;

(E) glass;

(F) plastic;

(G) textile; or

(H) rubber; and

(ii) the new products under Subsection (15)(b)(i) would otherwise be made with nonrecycled materials.

(16) (a) "Medicine" means:

(i) insulin, syringes, and any medicine prescribed for the treatment of human ailments by a person authorized to prescribe treatments and dispensed on prescription filled by a registered pharmacist, or supplied to patients by a physician, surgeon, or podiatric physician;

(ii) any medicine dispensed to patients in a county or other licensed hospital if prescribed for that patient and dispensed by a registered pharmacist or administered under the direction of a physician; and

(iii) any oxygen or stoma supplies prescribed by a physician or administered under the direction of a physician or paramedic.

(b) "Medicine" does not include:

(i) any auditory, prosthetic, ophthalmic, or ocular device or appliance; or

(ii) any alcoholic beverage.

(17) "Olympic merchandise" means tangible personal property bearing an Olympic designation, emblem, insignia, mark, logo, service mark, symbol, terminology, trademark, or other copyrighted or protected material, including:

(a) one or more of the following terms:

(i) "Olympic";

(ii) "Olympiad"; or

(iii) "Citius Altius Fortius";

(b) the symbol of the International Olympic Committee, consisting of five interlocking rings;

(c) the emblem of the International Olympic Committee Corporation;

(d) a United States Olympic Committee designation, emblem, insignia, mark, logo, service mark, symbol, terminology, trademark, or other copyrighted or protected material;

(e) any emblem of the Olympic Winter Games of 2002 that is officially designated by the Salt Lake Organizing Committee of the Olympic Winter Games of 2002; or

(f) the mascot of the Olympic Winter Games of 2002.

(18) (a) "Other fuels" means products that burn independently to produce heat or energy.

(b) "Other fuels" includes oxygen when it is used in the manufacturing of tangible personal property.

(19) "Person" includes any individual, firm, partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city, municipality, district, or other local governmental entity of the state, or any group or combination acting as a unit.

(20) "Purchase price" means the amount paid or charged for tangible personal property or any other taxable transaction under Subsection 59-12-103(1), excluding only cash discounts taken or any excise tax imposed on the purchase price by the federal government.

(21) "Residential use" means the use in or around a home, apartment building, sleeping quarters, and similar facilities or accommodations.

(22) (a) "Retail sale" means any sale within the state of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), other than resale of such property, item, or service by a retailer or wholesaler to a user or consumer.

(b) "Retail sale" includes sales by any farmer or other agricultural producer of poultry, eggs, or dairy products to consumers if the sales have an average monthly sales value of $125 or more.

(c) "Retail sale" does not include, and no additional sales or use tax shall be assessed against,

those transactions where a purchaser of tangible personal property pays applicable sales or use taxes on its initial nonexempt purchases of property and then enters into a sale-leaseback transaction by which title to such property is transferred by the purchaser-lessee to a lessor for consideration, provided:

(i) the transaction is intended as a form of financing for the property to the purchaser-lessee; and

(ii) pursuant to generally accepted accounting principles, the purchaser-lessee is required to capitalize the subject property for financial reporting purposes, and account for the lease payments as payments made under a financing arrangement.

(23) (a) "Retailer" means any person engaged in a regularly organized retail business in tangible personal property or any other taxable transaction under Subsection 59-12-103(1), and who is selling to the user or consumer and not for resale.

(b) "Retailer" includes commission merchants, auctioneers, and any person regularly engaged in the business of selling to users or consumers within the state.

(c) "Retailer" does not include farmers, gardeners, stockmen, poultrymen, or other growers or agricultural producers producing and doing business on their own premises, except those who are regularly engaged in the business of buying or selling for a profit.

(d) For purposes of this chapter the commission may regard as retailers the following if they determine it is necessary for the efficient administration of this chapter: salesmen, representatives, peddlers, or canvassers as the agents of the dealers, distributors, supervisors, or employers under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of these dealers, distributors, supervisors, or employers, except that:

(i) a printer's facility with which a retailer has contracted for printing shall not be considered to be a salesman, representative, peddler, canvasser, or agent of the retailer; and

(ii) the ownership of property that is located at the premises of a printer's facility with which the retailer has contracted for printing and that consists of the final printed product, property that becomes a part of the final printed product, or copy from which the printed product is produced, shall not result in the retailer being deemed to have or maintain an office, distribution house, sales house, warehouse, service enterprise, or other place of business, or to maintain a stock of goods, within this state.

(24) "Sale" means any transfer of title, exchange, or barter, conditional or otherwise, in any manner, of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), for consideration. It includes:

(a) installment and credit sales;

(b) any closed transaction constituting a sale;

(c) any sale of electrical energy, gas, services, or entertainment taxable under this chapter;

(d) any transaction if the possession of property is transferred but the seller retains the title as security for the payment of the price; and

(e) any transaction under which right to possession, operation, or use of any article of tangible personal property is granted under a lease or contract and the transfer of possession would be taxable if an outright sale were made.

(25) (a) "Sales relating to schools" means sales by a public school district or public or private elementary or secondary school, grades kindergarten through 12, that are directly related to the school's or school district's educational functions or activities and include:

(i) the sale of textbooks, textbook fees, laboratory fees, laboratory supplies, and safety equipment;

(ii) the sale of clothing that:

(A) a student is specifically required to wear as a condition of participation in a school-related event or activity; and

(B) is not readily adaptable to general or continued usage to the extent that it takes the place of ordinary clothing;

(iii) sales of food if the net or gross revenues generated by the food sales are deposited into a school district fund or school fund dedicated to school meals; and

(iv) transportation charges for official school activities.

(b) "Sales relating to schools" does not include:

(i) gate receipts;

(ii) special event admission fees;

(iii) bookstore sales of items that are not educational materials or supplies; and

(iv) except as provided in Subsection (25)(a)(ii), clothing.

(26) "Senior citizen center" means a facility having the primary purpose of providing services to the aged as defined in Section 62A-3-101.

(27) "State" means the state of Utah, its departments, and agencies.

(28) "Storage" means any keeping or retention of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), in this state for any purpose except sale in the regular course of business.

(29) (a) "Tangible personal property" means:

(i) all goods, wares, merchandise, produce, and commodities;

(ii) all tangible or corporeal things and substances which are dealt in or capable of being possessed or exchanged;

(iii) water in bottles, tanks, or other containers; and

(iv) all other physically existing articles or things, including property severed from real estate.

(b) "Tangible personal property" does not include:

(i) real estate or any interest or improvements in real estate;

(ii) bank accounts, stocks, bonds, mortgages, notes, and other evidence of debt;

(iii) insurance certificates or policies;

(iv) personal or governmental licenses;

(v) water in pipes, conduits, ditches, or reservoirs;

(vi) currency and coinage constituting legal tender of the United States or of a foreign nation; and

(vii) all gold, silver, or platinum ingots, bars, medallions, or decorative coins, not constituting legal tender of any nation, with a gold, silver, or platinum content of not less than 80%.

(30) (a) "Telephone corporation" means a corporation that:

(i) owns, controls, operates, or manages a telephone service; and

(ii) engages in an activity described in Subsection (30)(a)(i) for the shared use with or resale to any person of the telephone service.

(b) A corporation described in Subsection (30)(a) is a telephone corporation whether or not the Public Service Commission of Utah regulates:

(i) the corporation; or

(ii) the telephone service that the corporation owns, controls, operates, or manages.

(31) (a) For purposes of Subsection (30) and Section 59-12-103, "telephone service" means a two-way transmission:

(i) by:

(A) wire;

(B) radio;

(C) lightwave; or

(D) other electromagnetic means; and

(ii) of one or more of the following:

(A) a sign;

(B) a signal;

(C) writing;

(D) an image;

(E) sound;

(F) a message;

(G) data; or

(H) other information of any nature.

(b) "Telephone service" includes:

(i) cellular telephone service;

(ii) private communications service; or

(iii) automated digital telephone answering service.

(c) "Telephone service" does not include a service or a transaction that a state or a political subdivision of a state is prohibited from taxing as of July 1, 2001, under the Internet Tax Freedom Act, Pub. L. No. 105-277.

[~~(30)~~] (32) (a) "Use" means the exercise of any right or power over tangible personal property under Subsection 59-12-103(1), incident to the ownership or the leasing of that property, item, or service.

(b) "Use" does not include the sale, display, demonstration, or trial of that property in the regular course of business and held for resale.

[~~(31)~~] (33) "Vehicle" means any aircraft, as defined in Section 72-10-102; any vehicle, as defined in Section 41-1a-102; any off-highway vehicle, as defined in Section 41-22-2; and any vessel, as defined in Section 41-1a-102; that is required to be titled, registered, or both. "Vehicle" for purposes of Subsection 59-12-104(36) only, also includes any locomotive, freight car, railroad work equipment, or other railroad rolling stock.

[~~(32)~~] (34) "Vehicle dealer" means a person engaged in the business of buying, selling, or exchanging vehicles as defined in Subsection [~~(31)~~] (33).

[~~(33)~~] (35) (a) "Vendor" means any person receiving any payment or consideration upon a sale of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), or to whom the payment or consideration is payable.

(b) "Vendor" does not mean a printer's facility described in Subsection (23)(d).

Section 2. Section 59-12-103 (Effective 07/01/01) is amended to read:

59-12-103 (Effective 07/01/01). Sales and use tax base -- Rate -- Use of sales and use tax revenues.

(1) A tax is imposed on the purchaser as provided in this part for amounts paid or charged for the following transactions:

(a) retail sales of tangible personal property made within the state;

(b) amounts paid to common carriers or to telephone corporations or telegraph corporations, whether the corporations are municipally or privately owned, for:

(i) all transportation;

(ii) intrastate telephone service; or

(iii) telegraph service;

(c) sales of the following for commercial use:

(i) gas;

(ii) electricity;

(iii) heat;

(iv) coal;

(v) fuel oil; or

(vi) other fuels;

(d) sales of the following for residential use:

(i) gas;

(ii) electricity;

(iii) heat;

(iv) coal;

(v) fuel oil; or

(vi) other fuels;

(e) sales of meals;

(f) amounts paid or charged as admission or user fees for theaters, movies, operas, museums, planetariums, shows of any type or nature, exhibitions, concerts, carnivals, amusement parks, amusement rides, circuses, menageries, fairs, races, contests, sporting events, dances, boxing matches, wrestling matches, closed circuit television broadcasts, billiard parlors, pool parlors, bowling lanes, golf, miniature golf, golf driving ranges, batting cages, skating rinks, ski lifts, ski runs, ski trails, snowmobile trails, tennis courts, swimming pools, water slides, river runs, jeep tours, boat tours, scenic cruises, horseback rides, sports activities, or any other amusement, entertainment, recreation, exhibition, cultural, or athletic activity;

(g) amounts paid or charged for services:

(i) for repairs or renovations of tangible personal property; or

(ii) to install tangible personal property in connection with other tangible personal property;

(h) except as provided in Subsection 59-12-104(7), amounts paid or charged for cleaning or washing of tangible personal property;

(i) amounts paid or charged for tourist home, hotel, motel, or trailer court accommodations and services for less than 30 consecutive days;

(j) amounts paid or charged for laundry or dry cleaning services;

(k) amounts paid or charged for leases or rentals of tangible personal property if:

(i) the tangible personal property's situs is in this state;

(ii) the lessee took possession of the tangible personal property in this state; or

(iii) within this state the tangible personal property is:

(A) stored;

(B) used; or

(C) otherwise consumed;

(l) amounts paid or charged for tangible personal property if within this state the tangible personal property is:

(i) stored;

(ii) used; or

(iii) consumed; and

(m) amounts paid or charged for prepaid telephone calling cards.

(2) (a) Except as provided in Subsections (2)(b) and (c), beginning on July 1, 2001, a state tax and a local tax is imposed on a transaction described in Subsection (1) equal to the sum of:

(i) a state tax imposed on the transaction at a rate of 4.75%; and

(ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the transaction under this chapter other than this part.

(b) Notwithstanding Subsection (2)(a), beginning on July 1, 2001, a state tax and a local tax is imposed on a transaction described in Subsection (1)(d) equal to the sum of:

(i) a state tax imposed on the transaction at a rate of 2%; and

(ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the transaction under this chapter other than this part.

(c) Notwithstanding Subsections (2)(a) and (b), beginning on July 1, 2001, if a vendor collects a tax under Subsection 59-12-107(1)(b) on a transaction described in Subsection (1), a state tax and a local tax is imposed on the transaction equal to the sum of:

(i) a state tax imposed on the transaction at a rate of:

(A) 4.75% for a transaction other than a transaction described in Subsection (1)(d); or

(B) 2% for a transaction described in Subsection (1)(d); and

(ii) except as provided in Subsection (2)(d), a local tax imposed on the transaction at a rate equal to the sum of the following tax rates:

(A) the lowest tax rate imposed by a county, city, or town under Section 59-12-204, but only if all of the counties, cities, and towns in the state impose the tax under Section 59-12-204;

(B) the lowest tax rate imposed by a county, city, or town under Section 59-12-205, but only if all of the counties, cities, and towns in the state impose the tax under Section 59-12-205; and

(C) the tax rate authorized by Section 59-12-1102, but only if all of the counties in the state impose the tax under Section 59-12-1102.

(d) Tax rates authorized under the following do not apply to Subsection (2)(c)(ii):

(i) Subsection (2)(a)(i);

(ii) Subsection (2)(b)(i);

(iii) Subsection (2)(c)(i);

(iv) Section 59-12-301;

(v) Section 59-12-352;

(vi) Section 59-12-353;

(vii) Section 59-12-401;

(viii) Section 59-12-402;

(ix) Section 59-12-501;

(x) Section 59-12-502;

(xi) Section 59-12-603;

(xii) Section 59-12-703;

(xiii) Section 59-12-802;

(xiv) Section 59-12-804;

(xv) Section 59-12-1001;

(xvi) Section 59-12-1201; or

(xvii) Section 59-12-1302.

(3) (a) Except as provided in Subsections (4) through (9), the state taxes described in Subsections (2)(a)(i), (2)(b)(i), and (2)(c)(i) shall be deposited into the General Fund.

(b) The local taxes described in Subsections (2)(a)(ii) and (2)(b)(ii) shall be distributed to a county, city, or town as provided in this chapter.

(c) (i) Notwithstanding any provision of this chapter, each county, city, or town in the state shall receive the county's, city's, or town's proportionate share of the revenues generated by the local tax described in Subsection (2)(c)(ii) as provided in Subsection (3)(c)(ii).

(ii) The commission shall determine a county's, city's, or town's proportionate share of the revenues under Subsection (3)(c)(i) by:

(A) dividing the population of the county, city, or town by the total population of the state; and

(B) multiplying the percentage determined under Subsection (3)(c)(ii)(A) by the total amount of revenues generated by the local tax under Subsection (2)(c)(ii) for all counties, cities, and towns.

(iii) (A) Except as provided in Subsection (3)(c)(iii)(B), population figures for purposes of this section shall be derived from the most recent official census or census estimate of the United States Census Bureau.

(B) Notwithstanding Subsection (3)(c)(iii)(A), if a needed population estimate is not available from the United States Census Bureau, population figures shall be derived from the estimate from the Utah Population Estimates Committee created by executive order of the governor.

(C) For purposes of this section, the population of a county may only include the population of the unincorporated areas of the county.

(4) (a)Notwithstanding Subsection (3)(a), there shall be deposited in an Olympics special revenue fund or funds as determined by the Division of Finance under Section 51-5-4, for the use of the Utah Sports Authority created under Title 63A, Chapter 7, Utah Sports Authority Act:

(i) from January 1, 1990, through December 31, 1999, the amount of sales and use tax generated by a 1/64% tax rate on the taxable transactions under Subsection (1);

(ii) from January 1, 1990, through June 30, 1999, the amount of revenue generated by a 1/64% tax rate under Section 59-12-204 or Section 59-12-205 on the taxable transactions under Subsection (1); and

(iii) interest earned on the amounts under Subsections (4)(a)(i) and (ii).

(b) These funds shall be used:

(i) by the Utah Sports Authority as follows:

(A) to the extent funds are available, to transfer directly to a debt service fund or to otherwise reimburse to the state any amount expended on debt service or any other cost of any bonds issued by the state to construct any public sports facility as defined in Section 63A-7-103;

(B) to pay for the actual and necessary operating, administrative, legal, and other expenses of the Utah Sports Authority, but not including protocol expenses for seeking and obtaining the right to host the Winter Olympic Games;

(C) as otherwise appropriated by the Legislature; and

(D) unless the Legislature appropriates additional funds from the Olympics Special Revenue Fund to the Utah Sports Authority, the Utah Sports Authority may not expend, loan, or pledge in the aggregate more than:

(I) $59,000,000 of sales and use tax deposited into the Olympics Special Revenue Fund under Subsection (4)(a);

(II) the interest earned on the amount described in Subsection (4)(b)(i)(D)(I); and

(III) the revenues deposited into the Olympics Special Revenue Fund that are not sales and use taxes deposited under Subsection (4)(a) or interest on the sales and use taxes;

(ii) to pay salary, benefits, or administrative costs associated with the State Olympic Officer under Subsection 63A-10-103(3), except that the salary, benefits, or administrative costs may not be paid from the sales and use tax revenues generated by municipalities or counties and deposited under Subsection (4)(a)(ii).

(c) A payment of salary, benefits, or administrative costs under Subsection

63A-10-103(3) is not considered an expenditure of the Utah Sports Authority.

(d) If the Legislature appropriates additional funds under Subsection (4)(b)(i)(D), the authority may not expend, loan, pledge, or enter into any agreement to expend, loan, or pledge the appropriated funds unless the authority:

(i) contracts in writing for the full reimbursement of the monies to the Olympics Special Revenue Fund by a public sports entity or other person benefitting from the expenditure; and

(ii) obtains a security interest that secures payment or performance of the obligation to reimburse.

(e) A contract or agreement entered into in violation of Subsection (4)(d) is void.

(5) (a) Notwithstanding Subsection (3)(a), beginning on July 1, 2001, the amount of sales and use tax generated annually by a 1/16% tax rate on the taxable transactions under Subsection (1) shall be used as provided in Subsections (5)(b) through (g).

(b) (i) Beginning on July 1, 2001, $2,300,000 each year shall be transferred as dedicated credits to the Department of Natural Resources to:

(A) implement the measures described in Subsections 63-34-14(4)(a) through (d) to protect sensitive plant and animal species; or

(B) award grants, up to the amount authorized by the Legislature in an appropriations act, to political subdivisions of the state to implement the measures described in Subsections 63-34-14(4)(a) through (d) to protect sensitive plant and animal species.

(ii) Money transferred to the Department of Natural Resources under Subsection (5)(b)(i) may not be used to assist the United States Fish and Wildlife Service or any other person to list or attempt to have listed a species as threatened or endangered under the Endangered Species Act of 1973, 16 U.S.C. Sec. 1531 et seq.

(iii) At the end of each fiscal year:

(A) 50% of any unexpended dedicated credits shall lapse to the Water Resources Conservation and Development Fund created in Section 73-10-24;

(B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan Program subaccount created in Section 73-10c-5; and

(C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan Program subaccount created in Section 73-10c-5.

(c) Five hundred thousand dollars each year shall be deposited in the Agriculture Resource Development Fund created in Section 4-18-6.

(d) (i) One hundred thousand dollars each year shall be transferred as dedicated credits to the Division of Water Rights to cover the costs incurred in hiring legal and technical staff for the adjudication of water rights.

(ii) At the end of each fiscal year:

(A) 50% of any unexpended dedicated credits shall lapse to the Water Resources Conservation and Development Fund created in Section 73-10-24;

(B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan Program subaccount created in Section 73-10c-5; and

(C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan Program subaccount created in Section 73-10c-5.

(e) Fifty percent of the remaining amount generated by the 1/16% tax rate shall be deposited in the Water Resources Conservation and Development Fund created in Section 73-10-24 for use by the Division of Water Resources. In addition to the uses allowed of the fund under Section 73-10-24, the fund may also be used to:

(i) provide a portion of the local cost share, not to exceed in any fiscal year 50% of the funds made available to the Division of Water Resources under this section, of potential project features of the Central Utah Project;

(ii) conduct hydrologic and geotechnical investigations by the Department of Natural Resources in a cooperative effort with other state, federal, or local entities, for the purpose of quantifying surface and ground water resources and describing the hydrologic systems of an area in sufficient detail so as to enable local and state resource managers to plan for and accommodate growth in water use without jeopardizing the resource;

(iii) fund state required dam safety improvements; and

(iv) protect the state's interest in interstate water compact allocations, including the hiring of technical and legal staff.

(f) Twenty-five percent of the remaining amount generated by the 1/16% tax rate shall be deposited in the Utah Wastewater Loan Program subaccount created in Section 73-10c-5 for use by the Water Quality Board to fund wastewater projects as defined in Section 73-10b-2.

(g) Twenty-five percent of the remaining amount generated by the 1/16% tax rate shall be deposited in the Drinking Water Loan Program subaccount created in Section 73-10c-5 for use by the Division of Drinking Water to:

(i) provide for the installation and repair of collection, treatment, storage, and distribution facilities for any public water system, as defined in Section 19-4-102;

(ii) develop underground sources of water, including springs and wells; and

(iii) develop surface water sources.

(6) (a) Notwithstanding Subsection (3)(a), beginning on July 1, 2001, the amount of sales and

use tax generated annually by a 1/16% tax rate on the taxable transactions under Subsection (1) shall be used as provided in Subsections (6)(b) through (d).

(b) (i) Five hundred thousand dollars each year shall be deposited in the Transportation Corridor Preservation Revolving Loan Fund created in Section 72-2-117.

(ii) At least 50% of the money deposited in the Transportation Corridor Preservation Revolving Loan Fund under Subsection (6)(b)(i) shall be used to fund loan applications made by the Department of Transportation at the request of local governments.

(c) From July 1, 1997, through June 30, 2006, $500,000 each year shall be transferred as nonlapsing dedicated credits to the Department of Transportation for the State Park Access Highways Improvement Program created in Section 72-3-207.

(d) The remaining amount generated by the 1/16% tax rate shall be deposited in the class B and class C roads account to be expended as provided in Title 72, Chapter 2, Transportation Finances Act, for the use of class B and C roads.

(7) (a) Notwithstanding Subsection (3)(a), beginning on January 1, 2000, the Division of Finance shall deposit into the Centennial Highway Fund created in Section 72-2-118 a portion of the state sales and use tax under Subsection (2) equal to the revenues generated by a 1/64% tax rate on the taxable transactions under Subsection (1).

(b) Except for sales and use taxes deposited under Subsection (8), beginning on July 1, 1999, the revenues generated by the 1/64% tax rate:

(i) retained under Subsection 59-12-204(7)(a) shall be retained by the counties, cities, or towns as provided in Section 59-12-204; and

(ii) retained under Subsection 59-12-205(4)(a) shall be distributed to each county, city, and town as provided in Section 59-12-205.

(8) Notwithstanding Subsection (3)(a), beginning on July 1, 1999, the commission shall deposit into the Airport to University of Utah Light Rail Restricted Account created in Section 17A-2-1064 the portion of the sales and use tax under Sections 59-12-204 and 59-12-205 that is:

(a) generated by a city or town that will have constructed within its boundaries the Airport to University of Utah Light Rail described in the Transportation Equity Act for the 21st Century, Pub. L. No. 105-178, Sec. 3030(c)(2)(B)(i)(II), 112 Stat. 107; and

(b) equal to the revenues generated by a 1/64% tax rate on the taxable items and services under Subsection (1).

(9) (a) Notwithstanding Subsection (3)(a), for fiscal years beginning on or after fiscal year 2002-03, the commission shall on or before September 30 of each year deposit the difference described in Subsection (9)(b) into the Remote Sales Restricted Account created in Section 59-12-103.2 if that difference is greater than $0.

(b) The difference described in Subsection (9)(a) is equal to the difference between:

(i) the total amount of revenues the commission received from vendors collecting a tax under Subsection 59-12-107(1)(b) for the previous fiscal year; and

(ii) the total amount of revenues the commission received from vendors collecting a tax under Subsection 59-12-107(1)(b) for fiscal year 2000-01.

(10) (a) For purposes of amounts paid or charged as admission or user fees relating to the Olympic Winter Games of 2002, the amounts are considered to be paid or charged on the day on which the Salt Lake Organizing Committee for the Olympic Winter Games of 2002 or a person designated by the Salt Lake Organizing Committee for the Olympic Winter Games of 2002 sends a purchaser confirmation of the purchase of an admission or user fee described in Subsection (1)(f).

(b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission shall make rules defining what constitutes sending a purchaser confirmation under Subsection (10)(a).

Section 3. Effective date.

This act takes effect on July 1, 2001.

CHAPTER 189
S. B. 224
Passed February 28, 2001
Approved March 16, 2001
Effective April 30, 2001

DAMAGE TO UNDERGROUND UTILITY FACILITIES

Sponsor: Bill Wright

This act modifies the Public Utilities Code to address requirements when excavating. The act addresses notification requirements. The act addresses how an excavator shall respond if it contacts or damages underground facilities. This act addresses attorneys' fees. This act provides for alternative dispute resolution.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
54-8a-4, as last amended by Chapter 198, Laws of Utah 1998
54-8a-7, as last amended by Chapter 198, Laws of Utah 1998
54-8a-8, as last amended by Chapter 87, Laws of Utah 1993

ENACTS:
54-8a-8.5, Utah Code Annotated 1953

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

Section 1. Section 54-8a-4 is amended to read:

54-8a-4. Notice of excavation.

(1) (a) Before excavating, an excavator [~~must~~] shall notify each operator with underground facilities in the area of the proposed excavation.

(b) The requirements of Subsection (1)(a) do not apply:

(i) if there is an emergency;

(ii) while gardening; or

(iii) while tilling private ground.

(2) [~~Notice must~~] The notice required by Subsection (1) shall:

(a) be given:

(i) by telephone[~~,~~];

(ii) in person[~~,~~]; or

(iii) by other means acceptable to each operator;

(b) be given not:

(i) less than 48 hours [~~nor more than seven days~~] before [~~the commencement of~~] excavation begins; [~~and~~] or

(ii) more than seven days before excavation begins; and

(c) include the proposed excavation's anticipated:

(i) location[~~,~~];

(ii) dimensions[~~,~~];

(iii) type; and

(iv) duration.

(3) If the proposed excavation's anticipated location and dimensions cannot be described as required under Subsection (2)(c), an excavator [~~must~~] shall mark the proposed excavation site in white.

(4) If there is an association in the county, notice to that association constitutes notice to each operator in the county.

(5) If an excavation on a single project lasts more than 14 days, the excavator [~~must~~] shall give notice at least once each additional 14-day period.

(6) If markings made by the operator have been disturbed so that [~~they~~] the markings no longer identify the underground facilities:

(a) before excavating the site an excavator shall notify:

(i) the association; or

(ii) each operator [~~before excavating the site~~]; and

(b) the operator shall mark the area again within 48 hours of the renotification.

(7) An excavator may begin excavation if:

(a) (i) all underground facilities have been:

(A) located; and

(B) marked; or

(ii) the operators have indicated that there are no underground facilities within the proposed excavation site;

(b) (i) 48 hours have elapsed from the time of initial notice; and

(ii) the excavator has not:

(A) been notified by the operator; or

(B) received a request for a meeting under Subsection 54-8a-5(2); or

(c) 48 hours have elapsed from the time of renotification under Subsection (6).

(8) Unless an operator remarks an area pursuant to Subsection (6), the excavator shall be responsible for the costs incurred by an operator to remark its underground facilities following the second or subsequent notice given by an excavator for a proposed excavation designated by the same location request assignment.

Section 2. Section 54-8a-7 is amended to read:

54-8a-7. Notice of damage -- Repairs.

(1) If an excavator contacts or damages an underground facility, the excavator shall immediately notify the appropriate operator and then proceed in a manner that is reasonably calculated to avoid further damage to the underground facility.

(2) Upon receipt of notice, the operator shall immediately examine the underground facility, and, if necessary, make repairs.

Section 3. Section 54-8a-8 is amended to read:

54-8a-8. Civil penalty for damage -- Action by excavator, operator, or county attorney -- Exceptions -- Remedies supplemental.

(1) (a) An excavator or operator who negligently violates [~~any of the provisions of~~] this chapter is subject to a civil penalty in the amount of $500 for each violation, not to exceed $5,000 total penalty.

(b) An excavator or operator who knowingly and willfully violates any of the provisions of this chapter is subject to a civil penalty in an amount of $1,000 for each violation, not to exceed $25,000 total penalty.

(2) (a) Actions to recover the civil penalties under this section shall be brought [~~either~~] by:

(i) the excavator[~~,~~];

(ii) the operator whose underground facilities are damaged[~~,~~]; or [~~by~~]

(iii) the county attorney of the county in which the damage occurs.

(b) In an action brought under this section, the prevailing party shall be awarded its costs and attorney's fees as determined by the court.

[~~(b)~~] (c) All penalties recovered from the action shall be paid into the General Fund.

(3) Subsection (1) does not apply to an excavation made:

(a) during an emergency, if reasonable precautions are taken to protect underground facilities;

(b) in agricultural operations;

(c) for the purpose of finding or extracting natural resources; or

(d) with hand tools on property owned or occupied by the excavator.

(4) (a) The civil penalties in this section are in addition to any damages that an operator or an excavator may seek to recover.

(b) In an action brought under this section, the prevailing party shall be awarded its costs and attorney's fees as determined by the court.

Section 4. Section 54-8a-8.5 is enacted to read:

54-8a-8.5. Alternative dispute resolution.

(1) An association formed under Section 54-8a-9 shall make available an alternative dispute resolution program to resolve disputes arising from damage to underground facilities between:

(a) an operator;

(b) an owner;

(c) an excavator; or

(d) other interested party.

(2) The alternative dispute program created under this section is in addition to the ability of a party to bring a civil action under Section 54-8a-8.

(3) The alternative dispute resolution program shall:

(a) include mediation and arbitration;

(b) require that one or more appointed mediators or arbitrators decide:

(i) the issue of liability for any reimbursement; and

(ii) the amount of reimbursement; and

(c) shall be consistent with Title 78, Chapter 31a, Utah Arbitration Act.

(4) Nothing in this section shall be construed to change the basis for civil liability for damages.

CHAPTER 190
S. B. 226
Passed February 28, 2001
Approved March 16, 2001
Effective April 30, 2001

PROPERTY TAX - NOTICE OF APPEALS

Sponsor: Scott K. Jenkins

This act modifies the Property Tax Act to require that a copy of an application to object to an assessment of property assessed by the State Tax Commission be provided to certain persons, and makes technical changes.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
59-2-1007, as last amended by Chapter 3, Laws of Utah 1999

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

Section 1. Section 59-2-1007 is amended to read:

59-2-1007. Objection to assessment by commission -- Application -- Contents of application -- Amending an application -- Hearings -- Appeals.

(1) (a) If the owner of any property assessed by the commission, or any county upon a showing of reasonable cause, objects to the assessment, [~~either party~~] the owner or the county may, on or before June 1, apply to the commission for a hearing.

(b) [~~Both the county, upon a showing of reasonable cause, and the owner~~] The commission shall [~~be allowed~~] allow the following to be a party at [~~any~~] a hearing under this section[~~.~~]:

(i) the owner; and

(ii) the county upon a showing of reasonable cause.

(2) The owner or county shall include in the application under Subsection (1)(a):

(a) a written statement setting forth the known facts and legal basis supporting a different fair market value than the value assessed by the commission; and

(b) the owner's or county's estimate of the fair market value of the property.

(3) (a) An owner's or a county's estimate on an application under Subsection (2) of the fair market value of the property may be amended prior to the hearing as provided by rule.

(b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may make rules governing the procedures for amending an estimate of fair market value under Subsection (3)(a).

(4) (a) An owner applying to the commission for a hearing in accordance with Subsection (1) shall for the property for which the owner objects to the commission's assessment file a copy of the application with the county auditor of each county in which the property is located.

(b) A county auditor receiving a copy of an application in accordance with Subsection (4)(a) shall provide a copy of the application to the county:

(i) assessor;

(ii) attorney;

(iii) legislative body; and

(iv) treasurer.

[~~(4)~~] (5) (a) On or before August 1, the commission shall conduct a scheduling conference with all parties to a hearing under this section.

(b) At the scheduling conference under Subsection [~~(4)~~] (5)(a), the commission shall establish dates for:

(i) the completion of discovery;

(ii) the filing of prehearing motions; and

(iii) conducting a hearing on the [~~protest~~] objection to the assessment.

[~~(5)~~] (6) (a) The commission shall [~~render~~] issue a written decision no later than 120 days after the later of:

(i) the hearing described in Subsection (5)(b) is completed; [~~and~~] or

(ii) all posthearing briefs are submitted.

(b) Any applications not resolved by the commission within a two-year period from the date of filing are considered to be denied, unless the parties stipulate to a different time period for resolving an application.

(c) A party may appeal to the district court pursuant to Section 59-1-601 within 30 days from the day on which an application is considered to be denied.

[~~(6)~~] (7) At the hearing on the application, the commission may increase, lower, or sustain the assessment if:

(a) the commission finds an error in the assessment; or

(b) [~~it~~] the commission determines that increasing, lowering, or sustaining the assessment is necessary to equalize the assessment with other similarly assessed property.

[~~(7)~~] (8) (a) (i) The commission shall send notice of a commission action under Subsection (7) to [~~the~~] a county auditor if:

(A) the commission proposes to adjust an assessment which was made pursuant to Section 59-2-201;

(B) the county's tax revenues may be affected by the commission's decision; and

(C) the county has not already been made a party pursuant to Subsection (1).

(ii) The written notice sent by the commission under Subsection [~~(7)~~] (8)(a)(i):

(A) may be transmitted by:

(I) any form of electronic communication[~~,~~];

(II) first class mail[~~,~~]; or

(III) private carrier[~~,~~]; and

(B) shall request the county to show good cause why the commission should not adjust the assessment by [~~providing~~] requesting the county to provide to the commission a written statement:

[~~(A)~~] (I) setting forth the known facts and legal basis for not adjusting the assessment; and

[~~(B)~~] (II) within 30 days from the date of the notice.

(b) If a county [~~files a response~~] provides to the [~~commission's request~~] commission a written statement in accordance with Subsection (8)(a)(ii)(B), the commission shall:

(i) hold a hearing or take other appropriate action to consider the good cause alleged by the county; and

(ii) issue a written decision increasing, lowering, or sustaining the assessment.

(c) If a county does not [~~file a response to the request issued by~~] provide to the commission a written statement in accordance with Subsection (8)(a)(ii)(B), within 30 days after the commission sends the notice described in Subsection (8)(a), the commission shall adjust the assessment and send a copy of [~~its~~] the commission's written decision to the [~~affected~~] county.

[~~(8) The provisions in~~] (9) Subsection [~~(7) do~~] (8) does not limit the rights of any county as [~~outlined~~] described in Subsection (1).

CHAPTER 191
S. B. 232
Passed February 27, 2001
Approved March 16, 2001
Effective April 30, 2001

RESTRICTIONS ON COURT HOUSE PARKING LOTS

Sponsor: John L. Valentine

This act requires that parking fees at state-owned or leased court facilities be approved by the Legislature before implementation.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:
63-38-3.3, Utah Code Annotated 1953

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

Section 1. Section 63-38-3.3 is enacted to read:

63-38-3.3. (Codified as 63-38-3.4) Parking fees at court buildings.

(1) State-owned or leased court facilities may not charge or collect fees for parking without prior approval by the Legislature.

(2) The Legislature may approve, increase, decrease and approve, or reject any parking fee submitted to it by the courts.

CHAPTER 192
S. B. 234
Passed February 28, 2001
Approved March 16, 2001
Effective July 1, 2001

SALES AND USE TAX - BOTANICAL, CULTURAL, RECREATIONAL, AND ZOOLOGICAL ORGANIZATIONS OR FACILITIES AMENDMENTS

Sponsor: Lyle W. Hillyard
Ron Allen
Mike Dmitrich
John L. Valentine

This act modifies the Sales and Use Tax Act to allow a city or town to impose a tax beginning on or after January 1, 2003 for the support of recreational and zoological facilities and botanical, cultural, and zoological organizations if the county in which the city or town is located does not impose a similar tax. The act indicates the purpose of the tax and provides definitions. The act provides for an opinion vote, for the imposition of the tax, and for notification to the State Tax Commission of changes in the imposition of the tax. This act addresses the distribution of the city or town tax and the distribution of the similar county tax. This act has a July 1, 2001 effective date.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
59-12-703 (Effective 07/01/01), as last amended by Chapters 253 and 319, Laws of Utah 2000
59-12-704, as last amended by Chapter 202, Laws of Utah 2000

ENACTS:
59-12-1401, Utah Code Annotated 1953
59-12-1402, Utah Code Annotated 1953
59-12-1403, Utah Code Annotated 1953

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

Section 1. Section 59-12-703 (Effective 07/01/01) is amended to read:

59-12-703 (Effective 07/01/01). Opinion question election -- Imposition of tax -- Uses of tax monies.

(1) (a) (i) Except as provided in Subsection (1)(a)(ii), a county legislative body may[~~, by majority vote of all members,~~] submit an opinion question to the residents of that county, by majority vote of all members of the legislative body, so that each resident of the county has an opportunity to express the resident's opinion on the imposition of a local sales and use tax of [~~1/10 of 1%~~] .1% on the transactions described in Subsection 59-12-103(1), to fund recreational and zoological facilities and botanical, cultural, and zoological organizations in that county.

(ii) Notwithstanding Subsection (1)(a)(i), a county legislative body may not impose a tax under this section on:

(A) the sales and uses described in Section 59-12-104 to the extent the sales and uses are exempt from taxation under Section 59-12-104; and

(B) any amounts paid or charged by a vendor that collects a tax under Subsection 59-12-107(1)(b).

(b) The election shall follow the procedures outlined in Title 11, Chapter 14, Utah Municipal Bond Act.

(2) If the county legislative body determines that a majority of the [~~qualified electors~~] county's registered voters voting on the [~~opinion question has assented to~~] imposition of the tax have voted in favor of the imposition of [~~a local sales and use~~] the tax as prescribed in Subsection (1)(a), the county legislative body may[~~,~~] impose the tax by a majority vote of all members[~~, impose such a tax.~~] of the legislative body on the transactions:

(a) described in Subsection (1); and

(b) within the county, including the cities and towns located in the county.

(3) The monies generated from any tax imposed under Subsection (2) shall be used for financing:

(a) recreational and zoological facilities within the county or a city or town located in the county; and

(b) ongoing operating expenses of botanical, cultural, and zoological organizations within the county.

(4) Taxes imposed under this part shall be:

(a) levied at the same time and collected in the same manner as provided in [~~Title 59, Chapter 12,~~] Part 2, Local Sales and Use Tax Act, except that the collection and distribution of the tax revenue is not subject to Subsection 59-12-205(2); and

(b) levied for a period of ten years and may be reauthorized at the end of the ten-year period in accordance with this section.

(5) (a) For purposes of this Subsection (5):

(i) "Annexation" means an annexation to a county under Title 17, Chapter 2, Annexation to County.

(ii) "Annexing area" means an area that is annexed into a county.

(b) (i) If, on or after May 1, 2000, a county enacts or repeals a tax or changes the rate of a tax under this part, the enactment, repeal, or change shall take effect:

(A) on the first day of a calendar quarter; and

(B) after a 75-day period beginning on the date the commission receives notice meeting the requirements of Subsection (5)(b)(ii) from the county.

(ii) The notice described in Subsection (5)(b)(i)(B) shall state:

(A) that the county will enact or repeal a tax or change the rate of a tax under this part;

(B) the statutory authority for the tax described in Subsection (5)(b)(ii)(A);

(C) the effective date of the tax described in Subsection (5)(b)(ii)(A); and

(D) if the county enacts the tax or changes the rate of the tax described in Subsection (5)(b)(ii)(A), the new rate of the tax.

(c) (i) If, for an annexation that occurs on or after May 1, 2000, the annexation will result in a change in the rate of a tax under this part for an annexing area, the change shall take effect:

(A) on the first day of a calendar quarter; and

(B) after a 75-day period beginning on the date the commission receives notice meeting the requirements of Subsection (5)(c)(ii) from the county that annexes the annexing area.

(ii) The notice described in Subsection (5)(c)(i)(B) shall state:

(A) that the annexation described in Subsection (5)(c)(i) will result in a change in the rate of a tax under this part for the annexing area;

(B) the statutory authority for the tax described in Subsection (5)(c)(ii)(A);

(C) the effective date of the tax described in Subsection (5)(c)(ii)(A); and

(D) the new rate of the tax described in Subsection (5)(c)(ii)(A).

Section 2. Section 59-12-704 is amended to read:

59-12-704. Distribution of revenues -- Advisory board creation -- Determining operating expenses.

(1) Except as provided in Subsections (3)(b) and (5), and subject to the requirements of this section, any revenues collected by a county of the first class under this part shall be distributed annually by the county legislative body to support recreational and zoological facilities and botanical, cultural, and zoological organizations within that first class county as follows:

(a) 30% of the revenue collected by the county under this section shall be distributed by the county legislative body to support recreational facilities located within the county;

(b) (i) 12.5% of the revenue collected by the county under this section shall be distributed by the county legislative body to support zoological facilities and organizations located within the county; and

(ii) the county legislative body shall determine how the monies shall be distributed among the zoological organizations;

(c) (i) 52.5% of the revenue collected by the county under this section shall be distributed to botanical and cultural organizations with average annual operating expenses of more than $250,000 as determined under Subsection (3);

(ii) subject to Subsection (1)(c)(iii), the county legislative body shall distribute the monies described in Subsection (1)(c)(i) among the organizations and in proportion to their average annual operating expenses as determined under Subsection (3); and

(iii) the amount distributed to any organization described in Subsection (1)(c)(i) may not exceed 35% of the organization's budget; and

(d) (i) 5% of the revenue collected by the county under this section shall be distributed to botanical and cultural organizations with average annual operating expenses of less than $250,000 as determined under Subsection (3); and

(ii) the county legislative body shall determine how the monies shall be distributed among the organizations described in Subsection (1)(d)(i).

(2)(a) The county legislative body of each county of the first class shall create an advisory board to advise the county legislative body on disbursement of funds to botanical and cultural organizations under Subsection (1)(c)(i).

(b) (i) The advisory board under Subsection (2)(a) shall consist of seven members appointed by the county legislative body.

(ii) Two of the seven members of the advisory board under Subsection (2)(a) shall be appointed from the Utah Arts Council.

(3) (a) Except as provided in Subsection (3)(b), to be eligible to receive monies collected by the county under this part, a botanical, cultural, and zoological organization located within a county of the first class shall, every three years:

(i) calculate their average annual expenses based upon audited expenses for three preceding fiscal years; and

(ii) submit to the appropriate county legislative body:

(A) a verified audit of annual expenses for each of those three preceding fiscal years; and

(B) the average annual expenses as calculated under Subsection (3)(a)(i).

(b) Notwithstanding Subsection (3)(a), the county legislative body may waive the expense reporting requirements under Subsection (3)(a) for organizations described in Subsection (1)(d)(i).

(4) When calculating average annual expenses as described in Subsection (3), each botanical, cultural, and zoological organization shall use the same three-year fiscal period as determined by the county legislative body.

(5) (a) By July 1 of each year, the county legislative body of a first class county may index the threshold amount in Subsections (1)(c) and (d).

(b) Any change under Subsection (5)(a) shall be rounded off to the nearest $100.

(6) (a) Beginning on July 1, [~~2000~~] 2001, in a county except for a county of the first class, the county legislative body shall by ordinance provide for the distribution of [~~100%~~] the entire amount of of the revenues generated by the tax imposed by this section as [~~follows:~~] provided in this Subsection (6).

[~~(a) the county legislative body shall in the ordinance providing for the distribution of the revenues generated by a tax imposed by this section specify a percentage of revenues:~~]

[~~(i) that is not less than 30% but that does not exceed 45%; and~~]

[~~(ii) to be distributed to support recreational facilities within the county; and~~]

[~~(b) after specifying the percentage of revenues to be distributed to support recreational facilities under Subsection (6)(a), the county legislative body shall provide in the ordinance providing for the distribution of the revenues generated by a tax imposed by this section that the remainder of the revenues shall be distributed to support the following:~~]

[~~(i) one or more botanical organizations;~~]

[~~(ii) one or more cultural organizations;~~]

[~~(iii) one or more zoological organizations;~~]

[~~(iv) one or more zoological facilities; or~~]

[~~(v) a combination of Subsections (6)(b)(i) through (iv).~~]

(b) Pursuant to an interlocal agreement established in accordance with Title 11, Chapter 13, Interlocal Cooperation Act, a county described in Subsection (6)(a) may distribute to a city, town, or political subdivision within the county revenues generated by a tax under this part.

(c) The revenues distributed under Subsection (6)(a) or (b) shall be used for one or more organizations or facilities defined in Section 59-12-702 regardless of whether the revenues are distributed:

(i) directly by the county described in Subsection (6)(a) to be used for an organization or facility defined in Section 59-12-702; or

(ii) in accordance with an interlocal agreement described in Subsection (6)(b).

(7) The commission may retain an amount not to exceed 1-1/2% of the [~~county option funding~~] tax collected under this part for the cost of administering this part.

Section 3. Section 59-12-1401 is enacted to read:

Part 14. City or Town Option Funding for Botanical, Cultural, Recreational, and Zoological Organizations or Facilities

59-12-1401. Purpose statement -- Definitions -- Scope of part.

(1) The purpose of the tax imposed by this part is the same for cities and towns as is stated in Section 59-12-701 for counties.

(2) The definitions of Section 59-12-702 are incorporated into this part.

(3) This part applies only to a city or town that is located within a county of the third, fourth, fifth, or sixth class as designated in Section 17-50-501.

Section 4. Section 59-12-1402 is enacted to read:

59-12-1402. Opinion question election -- Imposition of tax -- Uses of tax monies.

(1) (a) (i) Except as provided in Subsection (1)(a)(ii) and subject to Subsection (6), beginning on January 1, 2003, a city or town legislative body subject to this part may submit an opinion question to the residents of that city or town, by majority vote of all members of the legislative body, so that each resident of the city or town has an opportunity to express the resident's opinion on the imposition of a local sales and use tax of .1% on the transactions described in Subsection 59-12-103(1), to fund recreational and zoological facilities and botanical, cultural, and zoological organizations in that city or town.

(ii) Notwithstanding Subsection (1)(a)(i), a city or town legislative body may not impose a tax under this section:

(A) if the county in which the city or town is located imposes a tax under Part 7, County Option Funding for Botanical, Cultural, Recreational, and Zoological Organizations or Facilities;

(B) on the sales and uses described in Section 59-12-104 to the extent the sales and uses are exempt from taxation under Section 59-12-104; and

(C) on any amounts paid or charged by a vendor that collects a tax under Subsection 59-12-107(1)(b).

(b) The election shall follow the procedures outlined in Title 11, Chapter 14, Utah Municipal Bond Act, except as provided in Subsection (6).

(2) If the city or town legislative body determines that a majority of the city's or town's registered voters voting on the imposition of the tax have voted in favor of the imposition of the tax as prescribed in Subsection (1)(a), the city or town legislative body may impose the tax by a majority vote of all members of the legislative body.

(3) The monies generated from any tax imposed under Subsection (2) shall be used for financing:

(a) recreational and zoological facilities within the city or town; and

(b) ongoing operating expenses of botanical, cultural, and zoological organizations within the city or town.

(4) Taxes imposed under this part shall be:

(a) levied at the same time and collected in the same manner as provided in Part 2, Local Sales and Use Tax Act, except that the collection and distribution of the tax revenue is not subject to Subsection 59-12-205(2); and

(b) (i) levied for a period of five years; and

(ii) may be reauthorized at the end of the five-year period in accordance with this section.

(5) (a) For purposes of this Subsection (5):

(i) "Annexation" means an annexation to a city or town under Title 10, Chapter 2, Part 4, Annexation.

(ii) "Annexing area" means an area that is annexed into a city or town.

(b) (i) If, on or after January 1, 2003, a city or town enacts or repeals a tax or changes the rate of a tax under this part, the enactment, repeal, or change shall take effect:

(A) on the first day of a calendar quarter; and

(B) after a 75-day period beginning on the date the commission receives notice meeting the requirements of Subsection (5)(b)(ii) from the city or town.

(ii) The notice described in Subsection (5)(b)(i)(B) shall state:

(A) that the city or town will enact or repeal a tax or change the rate of a tax under this part;

(B) the statutory authority for the tax described in Subsection (5)(b)(ii)(A);

(C) the effective date of the tax described in Subsection (5)(b)(ii)(A); and

(D) if the city or town enacts the tax or changes the rate of the tax described in Subsection (5)(b)(ii)(A), the new rate of the tax.

(c) (i) If, for an annexation that occurs on or after January 1, 2003, the annexation will result in a change in the rate of a tax under this part for an annexing area, the change shall take effect:

(A) on the first day of a calendar quarter; and

(B) after a 75-day period beginning on the date the commission receives notice meeting the requirements of Subsection (5)(c)(ii) from the city or town that annexes the annexing area.

(ii) The notice described in Subsection (5)(c)(i)(B) shall state:

(A) that the annexation described in Subsection (5)(c)(i) will result in a change in the rate of a tax under this part for the annexing area;

(B) the statutory authority for the tax described in Subsection (5)(c)(ii)(A);

(C) the effective date of the tax described in Subsection (5)(c)(ii)(A); and

(D) the new rate of the tax described in Subsection (5)(c)(ii)(A).

(6) (a) Before a city or town legislative body submits an opinion question to the residents of the city or town under Subsection (1)(a)(i), the city or town legislative body shall:

(i) submit to the county legislative body in which the city or town is located a written notice of the intent to submit the opinion question to the residents of the city or town; and

(ii) receive from the county legislative body:

(A) a written resolution passed by the county legislative body stating that the county legislative body is not seeking to impose a tax under Part 7, County Option Funding for Botanical, Cultural, Recreational, and Zoological Organizations or Facilities; or

(B) a written statement that in accordance with Subsection (6)(b) the results of a county opinion question submitted to the residents of the county under Part 7, County Option Funding for Botanical, Cultural, Recreational, and Zoological Organizations or Facilities, permit the city or town legislative body to submit the opinion question to the residents of the city or town in accordance with this part.

(b) (i) Within 60 days after the day the county legislative body receives from a city or town legislative body described in Subsection (6)(a) the notice of the intent to submit an opinion question to the residents of the city or town, the county legislative body shall provide the city or town legislative body:

(A) the written resolution described in Subsection (6)(a)(ii)(A); or

(B) written notice that the county legislative body will submit an opinion question to the residents of the county under Part 7, County Option Funding for Botanical, Cultural, Recreational, and Zoological Organizations or Facilities, for the county to impose a tax under that part.

(ii) If the county legislative body provides the city or town legislative body the written notice that the county legislative body will submit an opinion question as provided in Subsection (6)(b)(i)(B), the county legislative body shall submit the opinion question by no later than, from the date the county legislative body sends the written notice, the later of:

(A) a 12-month period;

(B) the next regular primary election; or

(C) the next regular general election.

(iii) Within 30 days of the date of the canvass of the election at which the opinion question under Subsection (6)(b)(ii) is voted on, the county legislative body shall provide the city or town legislative body described in Subsection (6)(a) written results of the opinion question submitted by the county legislative body under Part 7, County Option Funding for Botanical, Cultural, Recreational, and Zoological Organizations or Facilities, indicating that:

(A) (I) the city or town legislative body may not impose a tax under this part because a majority of the county's registered voters voted in favor of the county imposing the tax and the county legislative body by a majority vote approved the imposition of the tax; or

(II) for at least 12 months from the date the written results are submitted to the city or town legislative body, the city or town legislative body

may not submit to the county legislative body a written notice of the intent to submit an opinion question under this part because a majority of the county's registered voters voted against the county imposing the tax and the majority of the registered voters who are residents of the city or town described in Subsection (6)(a) voted against the imposition of the county tax; or

(B) the city or town legislative body may submit the opinion question to the residents of the city or town in accordance with this part because although a majority of the county's registered voters voted against the county imposing the tax, the majority of the registered voters who are residents of the city or town voted for the imposition of the county tax.

(c) Notwithstanding Subsection (6)(b), at any time a county legislative body may provide a city or town legislative body described in Subsection (6)(a) a written resolution passed by the county legislative body stating that the county legislative body is not seeking to impose a tax under Part 7, County Option Funding for Botanical, Cultural, Recreational, and Zoological Organizations or Facilities, which permits the city or town legislative body to submit under Subsection (1)(a)(i) an opinion question to the city's or town's residents.

Section 5. Section 59-12-1403 is enacted to read:

59-12-1403. Distribution of revenues -- Administrative costs.

(1) (a) The city or town legislative body shall by ordinance provide for the distribution of the entire amount of the revenues generated by the tax imposed by this part in accordance with this section.

(b) A city or town may participate in an interlocal agreement provided for under Section 59-12-704 and distribute the revenues generated by the tax imposed by this part to participants in the interlocal agreement.

(c) The revenues generated by the tax shall be used for one or more organizations or facilities defined in Section 59-12-702.

(2) The commission may retain an amount not to exceed 1-1/2% of the tax collected under this part for the cost of administering this part.

Section 6. Effective date.

This act takes effect on July 1, 2001.

CHAPTER 193
S. B. 237
Passed February 27, 2001
Approved March 16, 2001
Effective April 30, 2001

EXCISE TAX BOND PROCESS

Sponsor: John L. Valentine

This act modifies the Municipal Bond Act provisions governing revenue bonds payable from excise tax revenues. This act establishes a process for notice and a public hearing on the issuance of revenue bonds payable from excise tax revenues and requires the question of whether or not to issue the bonds to be submitted to a vote of the people upon receipt of a petition signed by 20% of the registered voters. This act makes technical corrections.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
11-14-17.5, as last amended by Chapter 270, Laws of Utah 1998

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

Section 1. Section 11-14-17.5 is amended to read:

11-14-17.5. Revenue bonds payable out of excise tax revenues.

(1) To the extent constitutionally permissible, cities, towns, or counties may issue bonds payable solely from a special fund into which are to be deposited excise taxes levied and collected by the city, town, or county, or excise taxes levied by the state and rebated pursuant to law to the city, town, or county, or any combination of those excise taxes, or may pledge all or any part thereof as an additional source of payment for their general obligation bonds. [~~For purposes of this section, excise tax revenues include class B and class C road funds apportioned to counties, cities, and towns under Section 72-2-108.~~]

(2) (a) Any resolution authorizing the issuance of bonds payable in whole or in part from the proceeds of excise tax revenues may contain covenants with the holder or holders of the bonds as to the excise tax revenues, the disposition of the excise tax revenues, the issuance of future bonds, and other pertinent matters [~~as may be deemed~~] that are considered necessary by the governing body to assure the marketability of those bonds, provided the covenants are not inconsistent with the provisions of this chapter. [~~Such~~]

(b) The resolution may also include provisions to insure the enforcement, collection, and proper application of excise tax revenues as the governing body may think proper.

(c) The proceeds of bonds payable in whole or in part from pledged class B or C road funds shall be used to construct, repair, and maintain streets and roads in accordance with Sections 72-6-108 and 72-6-110 and to fund any reserves and costs incidental to the issuance of the bonds.

(d) When any bonds payable from excise tax revenues have been issued, the resolution or other enactment of the governing body imposing the excise tax and pursuant to which the tax is being collected, the obligation of the governing body to continue to levy, collect, and allocate the excise tax, and to apply the revenues derived therefrom in accordance with the provisions of the authorizing resolution or other enactment, shall be irrevocable until the bonds have been paid in full as to both principal and interest, and is not subject to amendment in any manner which would impair the rights of the holders of those bonds or which would in any way jeopardize the timely payment of principal or interest when due.

(3) (a) The state pledges to and agrees with the holders of any bonds issued by a city, town, or county to which the proceeds of excise taxes collected by the state and rebated to the city, town, or county are devoted or pledged as authorized in this section, that the state will not alter, impair, or limit the excise taxes in a manner that reduces the amounts to be rebated to the city, town, or county which are devoted or pledged as authorized in this section until the bonds or other securities, together with applicable interest, are fully met and discharged.

(b) Nothing in this [~~section may preclude such~~] Subsection (3) precludes alteration, impairment, or limitation of excise taxes if adequate provision is made by law for the protection of the holders of the bonds.

(c) Each city, town, or county may include this pledge and undertaking for the state in those bonds.

(4) The outstanding bonds to which excise tax revenues have been pledged as the sole source of payment may not at any one time exceed an amount for which the average annual installments of principal and interest will exceed 80% of the total excise tax revenues received by the issuing entity from the collection or rebate of the excise tax revenues during the fiscal year of the issuing entity immediately preceding the fiscal year in which the resolution authorizing the issuance of bonds is adopted.

(5) Bonds issued solely from a special fund into which are to be deposited excise tax revenues constitutes a borrowing solely upon the credit of the excise tax revenues received or to be received by the city, town, or county and does not constitute an indebtedness or pledge of the general credit of the city, town, or county. [~~To the extent constitutionally permissible, such bonds are not subject to the limitations of Article XIV, Utah Constitution nor to any statutory provisions implementing that article.~~]

(6) (a) Before issuing any bonds under this section, a city, town, or county shall:

(i) give public notice of its intent to issue the bonds; and

(ii) hold a public hearing to receive input from the public with respect to the issuance of the bonds.

(b) The city, county, or town shall:

(i) publish the notice once each week for two consecutive weeks in the official newspaper as designated under Section 11-14-21, with the first publication being not less than 14 days before the public hearing; and

(ii) ensure that the notice identifies:

(A) the purpose for the issuance of the bonds;

(B) the maximum principal amount of the bonds to be issued;

(C) the excise taxes proposed to be pledged for repayment of the bonds; and

(D) the time, place, and location of the public hearing.

(7) A city, town, or county shall submit the question of whether or not to issue any bonds under this section to voters for their approval or rejection if, within 30 calendar days after the notice required by Subsection (6), a written petition requesting an election and signed by at least 20% of the registered voters in the city, town, or county is filed with the city, town, or county.

CHAPTER 194
S. B. 238
Passed February 28, 2001
Approved March 16, 2001
Effective April 30, 2001

FISCAL YEAR FOR UTAH COMPREHENSIVE HEALTH INSURANCE POOL

Sponsor: Gene Davis

This act modifies the Comprehensive Health Insurance Pool Act. This act changes the annual reporting period from a calendar year to a fiscal year and makes a corresponding change in the due date of the report to the insurance commissioner.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
31A-29-108, as enacted by Chapter 232, Laws of Utah 1990

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

Section 1. Section 31A-29-108 is amended to read:

31A-29-108. Examination -- Financial report.

(1) The pool is subject to examination by the commissioner.

(2) By [~~March~~] December 1 of each year, the board shall submit to the commissioner an audited financial report for the preceding [~~calendar~~] fiscal year in a form approved by the commissioner.

CHAPTER 195
S. B. 241
Passed February 28, 2001
Approved March 16, 2001
Effective April 30, 2001

SPECIAL DISTRICT AMENDMENTS

Sponsor: Gene Davis

This act modifies provisions relating to Special Districts to include, for a first class county, the providing, operating, and maintaining of jails among the services that special service districts are authorized to provide. The act requires the number of members of an administrative control board for a special service district providing jail service to be increased. The act restricts funding for a special service district providing jail service to a property tax. The act modifies provisions relating to municipal jails. This act also makes technical changes.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
10-8-58, as last amended by Chapter 227, Laws of Utah 1993
17A-2-1304, as last amended by Chapter 46, Laws of Utah 2000
17A-2-1320, as renumbered and amended by Chapter 186, Laws of Utah 1990
17A-2-1322, as renumbered and amended by Chapter 186, Laws of Utah 1990
17A-2-1326, as last amended by Chapter 254, Laws of Utah 2000
59-2-924, as last amended by Chapters 22, 61, 141 and 199, Laws of Utah 2000

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

Section 1. Section 10-8-58 is amended to read:

10-8-58. Jails and workhouses -- Establishment and maintenance.

The governing body of a city or town may:

(1) establish, erect, and maintain city jails, houses of correction, and workhouses for the temporary confinement, not to exceed 72 hours, of persons convicted of violating any city ordinances;

(2) make rules for the government of them;

(3) appoint necessary jailers and keepers; and

(4) use the county jail for the confinement or punishment of offenders, subject to any conditions that are imposed by law, and with the consent of the county legislative body.

Section 2. Section 17A-2-1304 is amended to read:

17A-2-1304. Establishing special service districts -- Improvement districts within special service districts.

(1) (a) A county or a municipality may establish a special service district for the purpose of providing within the area of the special service district any of the following services or any combination of them:

(i) water;

(ii) sewerage;

(iii) drainage;

(iv) flood control;

(v) garbage;

(vi) health care;

(vii) transportation;

(viii) recreation;

(ix) fire protection;

(x) in a county of the first class, providing, operating, and maintaining jail facilities for the confinement of municipal, state, and other detainees and prisoners;

[~~(x)~~] (xi) street lighting; and

[~~(xi)~~] (xii) consolidated 911 and emergency dispatch.

(b) Snow removal services may be provided in special service districts established under this section to more effectively carry out the purposes of those special service districts.

(c) These services may be provided through facilities or systems acquired or constructed for that purpose through construction, purchase, lease, contract, gift, or condemnation or any combination of the above.

(d) [~~Service~~] Special service districts may contract with a franchised, certificated public utility for the construction and operation of an electrical service distribution system within the special service district.

(2) (a) The area within any special service district may include all or any part of the county or municipality that established it except that:

(i) a special service district may not include the area of any other special service district established by the same county or municipality that is now providing the same service proposed to be supplied by the new special service district;

(ii) a special service district established by a county may contain all or a part of any municipality or of an existing improvement district that provides the same service proposed to be provided by the special service district, but only with the consent of the governing authority as provided in a resolution or ordinance adopted by the governing authority; and

(iii) a special service district may not include any area not directly benefited by the services provided under this section without the consent of the nonbenefited landowner.

(b) All parts of a special service district need not be contiguous.

(3) (a) As provided in Section 17A-2-1315, the governing authority of any special service district created under this part may create one or more improvement districts within the boundaries of the special service district by following the procedures in, and meeting the requirements of, Chapter 3, Part 2, County Improvement District Act, or Part 3, Utah Municipal Improvement District Act.

(b) The intent to create an improvement district need not be present at the time a special service district is organized.

(c) Any improvement district created within the boundaries of a special service district may only be organized to undertake projects or improvements for which the special service district creating that improvement district was organized.

(d) The special service district shall meet all procedural requirements for creating an improvement district at the time the improvement district is created, as provided in Section 17A-2-1315 and in Chapter 3, Part 2, County Improvement District Act, or Part 3, Utah Municipal Improvement District Act.

(e) In determining whether or not a project or improvement undertaken by an improvement district is within the scope of the purposes for which the special service district creating that improvement district was organized, any project or improvement reasonably related to the purposes for which the special service district creating that improvement district was organized is considered to be within the scope of those purposes.

(4) The creation of a special service district to provide jail services as provided in Subsection (1)(a)(x) does not affect the ability of a municipality under Section 10-8-58 to provide, operate, and maintain facilities for the temporary incarceration, not to exceed 72 hours, of persons charged with the violation of a municipal ordinance.

Section 3. Section 17A-2-1320 is amended to read:

17A-2-1320. Fees or charges -- Penalties for delinquencies.

(1) (a) [~~The~~] Except as provided in Subsection (3), the governing authority of a service district may enact a resolution or ordinance that imposes fees or charges for any commodities, services, or facilities provided by the service district.

(b) (i) The governing authority may collect those fees or charges, and may pledge all or part of the revenues from those fees and charges to the payment of any bonds issued by the service district, whether the bonds are issued as revenue bonds, guaranteed bonds, or as general obligations of the district.

(ii) When revenue bonds are issued payable solely from the fees and charges authorized by this subsection, the fees and charges shall be sufficient to carry out any provisions of the resolution or ordinance authorizing the issuance of the revenue bonds, including provisions for payment of the principal of and interest on the bonds, the operation and maintenance of the facilities, and the establishment and maintenance of appropriate reserve funds while these bonds are outstanding.

(2) (a) The governing authority may adopt rules to assure the proper collection and enforcement of all fees and charges imposed by this section.

(b) (i) The governing authority may assess and collect penalties and interest if the fees and charges are not paid when due.

(ii) Any penalty or interest on delinquent charges assessed under the authority of this subsection shall be the same as applied to delinquent real property taxes for the year in which the fee or charge became delinquent.

(c) When more than one commodity, service, or facility is furnished by the district, the fees and charges for all commodities, services, and facilities may be billed to the user in a single bill.

(d) All or any of the commodities, services, and facilities furnished to a user by the service district may be suspended if any fees or charges due the service district are not paid in full when due.

(3) A special service district that provides jail service as provided in Subsection 17A-2-1304(1)(a)(x) may not impose any fee or charge under this section for the service it provides.

Section 4. Section 17A-2-1322 is amended to read:

17A-2-1322. Tax levy and bonds -- Approval by majority of electors voting in election -- Procedure for election.

(1) The governing authority of a county or municipality which has established a service district may levy a tax on all taxable property within the service district in addition to all other taxes on such property levied or imposed by the county or municipality or by any other public corporation, district, or political subdivision in which the service district is located, and may also issue bonds payable in whole or in part from these taxes. No tax may be levied and no bonds or guaranteed bonds shall be issued, however, unless authorized, except as otherwise provided in Section 17A-2-1325, by a majority of the qualified electors of the service district voting at an election for that purpose held as provided in this section.

(2) The proposition to levy the tax or to issue the bonds shall be submitted to the qualified electors of the service district at an election called and held and for which notice is given in the same manner as is provided in [~~the~~] Title 11, Chapter 14, Utah Municipal Bond Act, for the holding of bond elections. The proposition shall state the purpose or purposes for which the taxes are to be levied or the bonds are to be issued. In addition, a proposition for the issuance of bonds shall state the maximum amount of bonds to be issued, the maximum number of years from their respective dates for which the bonds may run, and, if the bonds are to be payable in whole or in part from taxes, that fact and that taxes may be levied on all taxable property in the service district to pay the principal of and interest on the

bonds. The purpose or purposes may be stated in general terms and need not specify the particular projects or services for which the taxes are to be levied or the bonds are to be issued nor the specific amount of the proceeds of the taxes or of the bonds to be expended for each project or service. If bonds are to be payable in part from tax proceeds and in part from the operating revenues of the service district or from any combination of them, the proposition shall so indicate but need not specify how the bonds are to be divided as to source of payment. If the bonds are to be issued as guaranteed bonds, the proposition shall also clearly state that fact together with the name or names of the guarantors. A proposition for the levy of taxes and for the issuance of bonds may be combined as a single proposition.

(3) (a) A tax levied under this section shall be the sole source of funding for a special service district that provides jail service as provided in Subsection 17A-2-1304(1)(a)(x).

(b) Each tax levied under this section for a special service district that provides jail service as provided in Subsection 17A-2-1304(1)(a)(x) shall be considered to be levied by the county for purposes of the county's tax limitation under Section 59-2-908.

Section 5. Section 17A-2-1326 is amended to read:

17A-2-1326. Administrative control board -- Powers -- Compensation.

(1) (a) The governing authority of a municipality or the county legislative body that has established a special service district may, by resolution adopted at the time of the establishment or at any time afterwards, create an administrative control board for the special service district.

(b) (i) [~~The~~] Except as provided in Subsection (1)(e), each administrative control board shall consist of at least three and no more than seven persons, each of whom is a qualified elector of the service district.

(ii) If a county establishes a service district that includes all or part of one or more municipalities or one or more improvement districts organized under Title 17A, Chapter 2, Part 3, County Improvement Districts for Water, Sewerage, Flood Control, Electric and Gas, to provide the same service as the service district, the municipality or improvement district may appoint one member to represent it on any administrative control board created.

(iii) That member may, but need not, be a qualified elector of the service district.

(c) (i) If a service district is providing commodities, services, or facilities to an institution of higher education, that institution may appoint the number of members necessary to assure that it has at least 1/3 of the total of the board members to represent it on the board.

(ii) Those members may, but need not, be qualified electors of the service district.

(d) The number of members of the administrative control board shall be increased by the number of improvement district, municipal, or institution of higher education members appointed.

(e) Notwithstanding Subsection (1)(b), each administrative control board of a special service district that provides jail services as provided in Subsection 17A-2-1304(1)(a)(x) shall consist of nine members, three of whom shall be selected from a list of at least six recommendations from the county sheriff, three of whom shall be selected from a list of at least six recommendations from the municipalities within the county, and three of whom shall be selected from a list of at least six recommendations from the county executive.

(2) Members of the administrative control board other than improvement district, municipal, or institution of higher education members shall be either appointed or elected as provided in Title 17A, Chapter 1, Part 3, Special District Board Selection Procedures.

(3) (a) If a service district was established to provide either water or sewerage service or both, the governing authority may by resolution adopted at or after the time of establishment, or if the service district was established before March 29, 1983, or within 90 days after that date, create an administrative control board according to Subsection (1).

(b) A resolution creating a service district for water or sewerage purposes adopted under Section 17A-2-1305 after March 29, 1983, shall identify all existing water and sewerage districts within the area of the proposed service district.

(4) (a) One-half of the members initially elected or appointed shall serve two-year terms and 1/2 shall serve four year terms.

(b) The initial terms shall be determined by lot.

(5) (a) The governing authority of the municipality or the county legislative body that established the service district may, by resolution, delegate any of its powers to the administrative control board, including the power to act as the governing authority of the service district and to exercise all or any of the powers provided for in Sections 17A-2-1314, 17A-2-1316, 17A-2-1320, and 17A-2-1321.

(b) Notwithstanding anything to the contrary in this part, the governing authority of the municipality or the county legislative body may not delegate the power to:

(i) levy a tax on the taxable property of the service district;

(ii) issue bonds payable from taxes;

(iii) call or hold an election for the authorization of the tax or bonds;

(iv) levy assessments for improvements in an improvement district created under [~~Title 17A,~~] Chapter 3, Part 3, Utah Municipal Improvement [~~Districts~~] District Act, or [~~Title 17A,~~] Chapter 3,

Part 2, County Improvement [~~Districts~~] District Act;

(v) issue interim warrants or bonds payable from those assessments; or

(vi) appoint a board of equalization under Section 17A-3-217 or Section 17A-3-317.

(c) The administrative control board may not hold an election, levy a tax or assessment, or issue bonds or interim warrants unless the county or municipal legislative body that created the district has approved.

[~~(d)~~] (6) The county or municipal legislative body that created the district may revoke in whole or in part any power or authority delegated to an administrative control board or other officers or employees.

[~~(6)~~] (7) Administrative control board members may receive compensation and reimbursement of expenses as provided in Section 17B-2-404 to the same extent as if they were members of a board of trustees of a local district.

(8) If a county legislative body establishes an administrative control board under this section for a special service district that provides jail service as provided in Subsection 17A-2-1304(1)(a)(x), the administrative control board may review and approve any amount charged to the special service district as reimbursement to the county for services provided under Subsection 17A-2-1314(1)(g) before the amount is included in the special service district budget.

Section 6. Section 59-2-924 is amended to read:

59-2-924. Report of valuation of property to county auditor and commission -- Transmittal by auditor to governing bodies -- Certified tax rate -- Adoption of tentative budget.

(1) (a) Before June 1 of each year, the county assessor of each county shall deliver to the county auditor and the commission the following statements:

(i) a statement containing the aggregate valuation of all taxable property in each taxing entity; and

(ii) a statement containing the taxable value of any additional personal property estimated by the county assessor to be subject to taxation in the current year.

(b) The county auditor shall, on or before June 8, transmit to the governing body of each taxing entity:

(i) the statements described in Subsections (1)(a)(i) and (ii);

(ii) an estimate of the revenue from personal property;

(iii) the certified tax rate; and

(iv) all forms necessary to submit a tax levy request.

(2) (a) (i) The "certified tax rate" means a tax rate that will provide the same ad valorem property tax revenues for a taxing entity as were collected by that taxing entity for the prior year.

(ii) For purposes of this Subsection (2), "ad valorem property tax revenues" do not include:

(A) collections from redemptions;

(B) interest; and

(C) penalties.

(iii) Except as provided in Subsection (2)(a)(iv), the certified tax rate shall be calculated by dividing the ad valorem property tax revenues collected for the prior year by the taxing entity by the taxable value established in accordance with Section 59-2-913.

(iv) The certified tax rates for the taxing entities described in this Subsection (2)(a)(iv) shall be calculated as follows:

(A) except as provided in Subsection (2)(a)(iv)(B), for new taxing entities the certified tax rate is zero;

(B) for each municipality incorporated on or after July 1, 1996, the certified tax rate is:

(I) in a county of the first, second, or third class, the levy imposed for municipal-type services under Sections 17-34-1 and 17-36-9; and

(II) in a county of the fourth, fifth, or sixth class, the levy imposed for general county purposes and such other levies imposed solely for the municipal-type services identified in Section 17-34-1 and Subsection 17-36-3(22);

(C) for debt service voted on by the public, the certified tax rate shall be the actual levy imposed by that section, except that the certified tax rates for the following levies shall be calculated in accordance with Section 59-2-913 and this section:

(I) school leeways provided for under Sections 11-2-7, 53A-16-110, 53A-17a-125, 53A-17a-127, 53A-17a-134, 53A-17a-143, 53A-17a-145, and 53A-21-103; and

(II) levies to pay for the costs of state legislative mandates or judicial or administrative orders under Section 59-2-906.3.

(v) (A) A judgment levy imposed under Section 59-2-1328 or Section 59-2-1330 shall be established at that rate which is sufficient to generate only the revenue required to satisfy one or more eligible judgments, as defined in Section 59-2-102.

(B) The ad valorem property tax revenue generated by the judgment levy shall not be considered in establishing the taxing entity's aggregate certified tax rate.

(b) (i) For the purpose of calculating the certified tax rate, the county auditor shall use the taxable value of property on the assessment roll.

(ii) For purposes of Subsection (2)(b)(i), the taxable value of property on the assessment roll does not include new growth as defined in Subsection (2)(b)(iii).

(iii) "New growth" means:

(A) the difference between the increase in taxable value of the taxing entity from the previous calendar year to the current year; minus

(B) the amount of an increase in taxable value described in Subsection (2)(b)(iv).

(iv) Subsection (2)(b)(iii)(B) applies to the following increases in taxable value:

(A) the amount of increase to locally assessed real property taxable values resulting from factoring, reappraisal, or any other adjustments; or

(B) the amount of an increase in the taxable value of property assessed by the commission under Section 59-2-201 resulting from a change in the method of apportioning the taxable value prescribed by:

(I) the Legislature;

(II) a court;

(III) the commission in an administrative rule; or

(IV) the commission in an administrative order.

(c) Beginning January 1, 1997, if a taxing entity receives increased revenues from uniform fees on tangible personal property under Section 59-2-404, 59-2-405, or 59-2-405.1 as a result of any county imposing a sales and use tax under Chapter 12, Part 11, County Option Sales and Use Tax, the taxing entity shall decrease its certified tax rate to offset the increased revenues.

(d) (i) Beginning July 1, 1997, if a county has imposed a sales and use tax under Chapter 12, Part 11, County Option Sales and Use Tax, the county's certified tax rate shall be:

(A) decreased on a one-time basis by the amount of the estimated sales tax revenue to be distributed to the county under Subsection 59-12-1102(3); and

(B) increased by the amount necessary to offset the county's reduction in revenue from uniform fees on tangible personal property under Section 59-2-404, 59-2-405, or 59-2-405.1 as a result of the decrease in the certified tax rate under Subsection (2)(d)(i)(A).

(ii) The commission shall determine estimates of sales tax distributions for purposes of Subsection (2)(d)(i).

(e) Beginning January 1, 1998, if a municipality has imposed an additional resort communities sales tax under Section 59-12-402, the municipality's certified tax rate shall be decreased on a one-time basis by the amount necessary to offset the first 12 months of estimated revenue from the additional resort communities sales tax imposed under Section 59-12-402.

(f) For the calendar year beginning on January 1, 1999, and ending on December 31, 1999, a taxing entity's certified tax rate shall be adjusted by the amount necessary to offset the adjustment in revenues from uniform fees on tangible personal property under Section 59-2-405.1 as a result of the adjustment in uniform fees on tangible personal property under Section 59-2-405.1 enacted by the Legislature during the 1998 Annual General Session.

(g) For purposes of Subsections (2)(h) through (j):

(i) "1998 actual collections" means the amount of revenues a taxing entity actually collected for the calendar year beginning on January 1, 1998, under Section 59-2-405 for:

(A) motor vehicles required to be registered with the state that weigh 12,000 pounds or less; and

(B) state-assessed commercial vehicles required to be registered with the state that weigh 12,000 pounds or less.

(ii) "1999 actual collections" means the amount of revenues a taxing entity actually collected for the calendar year beginning on January 1, 1999, under Section 59-2-405.1.

(h) For the calendar year beginning on January 1, 2000, the commission shall make the following adjustments:

(i) the commission shall make the adjustment described in Subsection (2)(i)(i) if, for the calendar year beginning on January 1, 1999, a taxing entity's 1998 actual collections were greater than the sum of:

(A) the taxing entity's 1999 actual collections; and

(B) any adjustments the commission made under Subsection (2)(f);

(ii) the commission shall make the adjustment described in Subsection (2)(i)(ii) if, for the calendar year beginning on January 1, 1999, a taxing entity's 1998 actual collections were greater than the taxing entity's 1999 actual collections, but the taxing entity's 1998 actual collections were less than the sum of:

(A) the taxing entity's 1999 actual collections; and

(B) any adjustments the commission made under Subsection (2)(f); and

(iii) the commission shall make the adjustment described in Subsection (2)(i)(iii) if, for the calendar year beginning on January 1, 1999, a taxing entity's 1998 actual collections were less than the taxing entity's 1999 actual collections.

(i) (i) For purposes of Subsection (2)(h)(i), the commission shall increase a taxing entity's certified tax rate under this section and a taxing entity's certified revenue levy under Section 59-2-906.1 by the amount necessary to offset the difference between:

(A) the taxing entity's 1998 actual collections; and

(B) the sum of:

(I) the taxing entity's 1999 actual collections; and

(II) any adjustments the commission made under Subsection (2)(f).

(ii) For purposes of Subsection (2)(h)(ii), the commission shall decrease a taxing entity's certified tax rate under this section and a taxing entity's certified revenue levy under Section 59-2-906.1 by the amount necessary to offset the difference between:

(A) the sum of:

(I) the taxing entity's 1999 actual collections; and

(II) any adjustments the commission made under Subsection (2)(f); and

(B) the taxing entity's 1998 actual collections.

(iii) For purposes of Subsection (2)(h)(iii), the commission shall decrease a taxing entity's certified tax rate under this section and a taxing entity's certified revenue levy under Section 59-2-906.1 by the amount of any adjustments the commission made under Subsection (2)(f).

(j) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, for purposes of Subsections (2)(f) through (i), the commission may make rules establishing the method for determining a taxing entity's 1998 actual collections and 1999 actual collections.

(k) (i) (A) For fiscal year 2000, the certified tax rate of each county to which Subsection 17-34-3(4)(a) applies shall be decreased by the amount necessary to reduce revenues in that fiscal year by an amount equal to the difference between the amount the county budgeted in its 2000 fiscal year budget for advanced life support and paramedic services countywide and the amount the county spent during fiscal year 2000 for those services, excluding amounts spent from a municipal services fund for those services.

(B) For fiscal year 2001, the certified tax rate of each county to which Subsection 17-34-3(4)(a) applies shall be decreased by the amount necessary to reduce revenues in that fiscal year by the amount that the county spent during fiscal year 2000 for advanced life support and paramedic services countywide, excluding amounts spent from a municipal services fund for those services.

(ii) (A) For fiscal year 2001, a city or town located within a county of the first class to which Subsection 17-34-3(4)(a) applies may increase its certified tax rate by the amount necessary to generate within the city or town the same amount of revenues as the county would collect from that city or town if the decrease under Subsection (2)(k)(i) did not occur.

(B) An increase under Subsection (2)(k)(ii)(A) is not subject to the notice and hearing requirements of Sections 59-2-918 and 59-2-919.

(l) (i) This Subsection (2)(l) applies to each county that:

(A) establishes a countywide special service district under Title 17A, Chapter 2, Part 13, Utah Special Service District Act, to provide jail service, as provided in Subsection 17A-2-1304(1)(a)(x); and

(B) levies a property tax on behalf of the special service district under Section 17A-2-1322.

(ii) (A) The certified tax rate of each county to which this Subsection (2)(l) applies shall be decreased by the amount necessary to reduce county revenues by the same amount of revenues that will be generated by the property tax imposed on behalf of the special service district.

(B) Each decrease under Subsection (2)(l)(ii)(A) shall occur contemporaneously with the levy on behalf of the special service district under Section 17A-2-1322.

(3) (a) On or before June 22, each taxing entity shall annually adopt a tentative budget.

(b) If the taxing entity intends to exceed the certified tax rate, it shall notify the county auditor of:

(i) its intent to exceed the certified tax rate; and

(ii) the amount by which it proposes to exceed the certified tax rate.

(c) The county auditor shall notify all property owners of any intent to exceed the certified tax rate in accordance with Subsection 59-2-919(2).

(4) (a) The taxable value for the base year under Subsection 17A-2-1247(2)(a) or 17A-2-1202(2), as the case may be, shall be reduced for any year to the extent necessary to provide a redevelopment agency established under Title 17A, Chapter 2, Part 12, Utah Neighborhood Development Act, with approximately the same amount of money the agency would have received without a reduction in the county's certified tax rate if:

(i) in that year there is a decrease in the certified tax rate under Subsection (2)(c) or (2)(d)(i);

(ii) the amount of the decrease is more than 20% of the county's certified tax rate of the previous year; and

(iii) the decrease results in a reduction of the amount to be paid to the agency under Section 17A-2-1247 or 17A-2-1247.5.

(b) The taxable value of the base year under Subsection 17A-2-1247(2)(a) or 17A-2-1202(2), as the case may be, shall be increased in any year to the extent necessary to provide a redevelopment agency with approximately the same amount of money as the agency would have received without an increase in the certified tax rate that year if:

(i) in that year the taxable value for the base year under Subsection 17A-2-1247(2) or 17A-2-1202(2) is reduced due to a decrease in the certified tax rate under Subsection (2)(c) or (2)(d)(i); and

(ii) The certified tax rate of a city, school district, or special district increases independent of the adjustment to the taxable value of the base year.

(c) Notwithstanding a decrease in the certified tax rate under Subsection (2)(c) or (2)(d)(i), the amount of money allocated and, when collected, paid each year to a redevelopment agency established under Title 17A, Chapter 2, Part 12, Utah Neighborhood Development Act, for the payment of bonds or other contract indebtedness, but not for administrative costs, may not be less than that amount would have been without a decrease in the certified tax rate under Subsection (2)(c) or (2)(d)(i).

CHAPTER 196
S. B. 245
Passed February 22, 2001
Approved March 16, 2001
Effective April 30, 2001

CONSUMER PROTECTION AMENDMENTS

Sponsor: Mike Dmitrich

This act modifies the Commerce and Trade Code. The act amends the definition of a deceptive act or practice by a supplier. The act amends the definition of an assisted marketing plan. The act adjusts the bonding requirements for credit services organizations and health spa facilities.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
13-11-4, as last amended by Chapter 21, Laws of Utah 1999
13-15-2, as last amended by Chapter 85, Laws of Utah 1995
13-21-3, as last amended by Chapter 124, Laws of Utah 1999
13-23-5, as last amended by Chapter 89, Laws of Utah 1995

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

Section 1. Section 13-11-4 is amended to read:

13-11-4. Deceptive act or practice by supplier.

(1) A deceptive act or practice by a supplier in connection with a consumer transaction violates this chapter whether it occurs before, during, or after the transaction.

(2) Without limiting the scope of Subsection (1), a supplier commits a deceptive act or practice if the supplier knowingly or intentionally:

(a) indicates that the subject of a consumer transaction has sponsorship, approval, performance characteristics, accessories, uses, or benefits, if it has not;

(b) indicates that the subject of a consumer transaction is of a particular standard, quality, grade, style, or model, if it is not;

(c) indicates that the subject of a consumer transaction is new, or unused, if it is not, or has been used to an extent that is materially different from the fact;

(d) indicates that the subject of a consumer transaction is available to the consumer for a reason that does not exist;

(e) indicates that the subject of a consumer transaction has been supplied in accordance with a previous representation, if it has not;

(f) indicates that the subject of a consumer transaction will be supplied in greater quantity than the supplier intends;

(g) indicates that replacement or repair is needed, if it is not;

(h) indicates that a specific price advantage exists, if it does not;

(i) indicates that the supplier has a sponsorship, approval, or affiliation the supplier does not have;

(j) indicates that a consumer transaction involves or does not involve a warranty, a disclaimer of warranties, particular warranty terms, or other rights, remedies, or obligations, if the representation is false;

(k) indicates that the consumer will receive a rebate, discount, or other benefit as an inducement for entering into a consumer transaction in return for giving the supplier the names of prospective consumers or otherwise helping the supplier to enter into other consumer transactions, if receipt of the benefit is contingent on an event occurring after the consumer enters into the transaction;

(l) after receipt of payment for goods or services, fails to ship the goods or furnish the services within the time advertised or otherwise represented or, if no specific time is advertised or represented, fails to ship the goods or furnish the services within 30 days, unless within the applicable time period the supplier provides the buyer with the option to either cancel the sales agreement and receive a refund of all previous payments to the supplier or to extend the shipping date to a specific date proposed by the supplier, but any refund shall be mailed or delivered to the buyer within ten business days after the seller receives written notification from the buyer of the buyer's right to cancel the sales agreement and receive the refund;

(m) fails to furnish a notice of the purchaser's right to cancel a direct solicitation sale within three business days of the time of purchase if the sale is made other than at the supplier's established place of business pursuant to the supplier's personal contact, whether through mail, electronic mail, facsimile transmission, telephone, or [~~personal contact~~] any other form of direct solicitation and if the sale price exceeds $25, unless the supplier's cancellation policy is communicated to the buyer and the policy offers greater rights to the buyer than this Subsection (2)(m), which notice shall be a conspicuous statement written in dark bold at least 12 point type, on the first page of the purchase documentation, and shall read as follows: "YOU, THE BUYER, MAY CANCEL THIS CONTRACT AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY (or time period reflecting the supplier's cancellation policy but not less than three business days) AFTER THE DATE OF THE TRANSACTION OR RECEIPT OF THE PRODUCT, WHICHEVER IS LATER.";

(n) promotes, offers, or grants participation in a pyramid scheme as defined under Title 76, Chapter 6a, Pyramid Scheme Act;

(o) represents that the funds or property conveyed in response to a charitable solicitation will be donated or used for a particular purpose or will be donated to or used by a particular organization, if the representation is false; [~~or~~]

(p) if a consumer indicates his intention of making a claim for a motor vehicle repair against his motor vehicle insurance policy:

(i) commences the repair without first giving the consumer oral and written notice of:

(A) the total estimated cost of the repair; and

(B) the total dollar amount the consumer is responsible to pay for the repair, which dollar amount may not exceed the applicable deductible or other copay arrangement in the consumer's insurance policy; or

(ii) requests or collects from a consumer an amount that exceeds the dollar amount a consumer was initially told he was responsible to pay as an insurance deductible or other copay arrangement for a motor vehicle repair under Subsection (2)(p)(i), even if that amount is less than the full amount the motor vehicle insurance policy requires the insured to pay as a deductible or other copay arrangement, unless:

(A) the consumer's insurance company denies that coverage exists for the repair, in which case, the full amount of the repair may be charged and collected from the consumer; or

(B) the consumer misstates, before the repair is commenced, the amount of money the insurance policy requires the consumer to pay as a deductible or other copay arrangement, in which case, the supplier may charge and collect from the consumer an amount that does not exceed the amount the insurance policy requires the consumer to pay as a deductible or other copay arrangement[.];

(q) includes in any contract, receipt, or other written documentation of a consumer transaction, or any addendum to any contract, receipt, or other written documentation of a consumer transaction, any confession of judgment or any waiver of any of the rights to which a consumer is entitled under this chapter; or

(r) charges a consumer for a consumer transaction that has not previously been agreed to by the consumer.

Section 2. Section 13-15-2 is amended to read:

13-15-2. Definitions.

As used in this chapter:

(1) (a) "Assisted marketing plan" means the sale or lease of any products, equipment, supplies, or services that are sold to the purchaser upon payment of an initial required consideration of $300 or more for the purpose of enabling the purchaser to start a business, and in which the seller represents:

(i) that the seller will provide locations or assist the purchaser in finding locations for the use or operation of vending machines, racks, display cases, or other similar devices, or currency operated amusement machines or devices, on premises neither owned nor leased by the purchaser or seller;

(ii) that the seller will purchase any or all products made, produced, fabricated, grown, or modified by the purchaser, using in whole or in part the supplies, services, or chattels sold to the purchaser;

(iii) that the seller will provide the purchaser with a guarantee that the purchaser will receive income from the assisted marketing plan that exceeds the price paid for the assisted marketing plan, or repurchase any of the products, equipment, supplies, or chattels supplied by the seller if the purchaser is dissatisfied with the assisted marketing plan; or

(iv) that upon payment by the purchaser of a fee or sum of money, which exceeds $300 to the seller, the seller will provide a sales program or marketing program that will enable the purchaser to derive income from the assisted marketing plan that exceeds the price paid for the marketing plan[~~, but Subsection (1)(a)(iv) does not apply to the sale of a sales program or marketing program made in conjunction with the licensing of a registered trademark or service mark~~].

(b) "Assisted marketing plan" does not include:

(i) the sale of an ongoing business when the owner of that business sells and intends to sell only that one assisted marketing plan;

(ii) not-for-profit sale of sales demonstration equipment, materials, or samples for a total price of $300 or less; or

(iii) the sale of a package franchise or a product franchise defined by and in compliance with Federal Trade Commission rules governing franchise and business opportunity ventures[~~, if the seller does not make any representation defined in Subsections (1)(a)(i), (ii), (iii), or (iv)~~].

(c) As used in Subsection (1)(a)(iii) "guarantee" means a written agreement, signed by the purchaser and seller, disclosing the complete details and any limitations or exceptions of the agreement.

(2) "Business opportunity" means an assisted marketing plan subject to this chapter.

(3) "Division" means the Division of Consumer Protection of the Department of Commerce.

(4) (a) "Initial required consideration" means the total amount a purchaser is obligated to pay under the terms of the assisted marketing plan, either prior to or at the time of delivery of the products, equipment, supplies, or services, or within six months of the commencement of operation of the assisted marketing plan by the purchaser. If payment is over a period of time, "initial required consideration" means the sum of the down payment and the total monthly payments.

(b) "Initial required consideration" does not mean the not-for-profit sale of sales demonstration equipment, materials, or supplies for a total price of less than $300.

(5) "Person" means any natural person, corporation, partnership, organization, association, trust, or any other legal entity.

(6) "Purchaser" means a person who becomes obligated to pay for an assisted marketing plan.

(7) "Registered trademark" or "service mark" means a trademark, trade name, or service mark registered with the United States Patent and Trademark Office, or Utah, or the state of incorporation if a corporation.

(8) "Seller" means a person who sells or offers to sell an assisted marketing plan.

Section 3. Section 13-21-3 is amended to read:

13-21-3. Credit services organizations -- Prohibitions.

(1) A credit services organization, its salespersons, agents, and representatives, and independent contractors who sell or attempt to sell the services of a credit services organization may not do any of the following:

(a) conduct any business regulated by this chapter without first:

(i) securing a certificate of registration from the division; and

(ii) unless exempted under Section 13-21-4, posting a bond, letter of credit, or certificate of deposit with the division in the amount of $100,000;

(b) make a false statement, or fail to state a material fact, in connection with an application for registration with the division;

(c) charge or receive any money or other valuable consideration prior to full and complete performance of the services the credit services organization has agreed to perform for the buyer [~~unless the credit services organization meets the requirements of Subsection (1)(a)(ii)~~];

(d) dispute or challenge, or assist a person in disputing or challenging an entry in a credit report prepared by a consumer reporting agency without a factual basis for believing and obtaining a written statement for each entry from the person stating that that person believes that the entry contains a material error or omission, outdated information, inaccurate information, or unverifiable information;

(e) charge or receive any money or other valuable consideration solely for referral of the buyer to a retail seller who will or may extend credit to the buyer, if the credit that is or will be extended to the buyer is upon substantially the same terms as those available to the general public;

(f) make, or counsel or advise any buyer to make, any statement that is untrue or misleading and that is known, or that by the exercise of reasonable care should be known, to be untrue or misleading, to a credit reporting agency or to any person who has extended credit to a buyer or to whom a buyer is applying for an extension of credit, with respect to a buyer's creditworthiness, credit standing, or credit capacity;

(g) make or use any untrue or misleading representations in the offer or sale of the services of a credit services organization or engage, directly or indirectly, in any act, practice, or course of business that operates or would operate as fraud or deception upon any person in connection with the offer or sale of the services of a credit services organization; and

(h) transact any business as a credit services organization, as defined in Section 13-21-2, without first having registered with the division by paying an annual fee set pursuant to Section 63-38-3.2 and filing proof that it has obtained a bond or letter of credit as required by Subsection (1).

(2) (a) A bond, letter of credit from a Utah depository, or certificate of deposit posted with the division shall be used to cover the losses of any person arising from a violation of this chapter by the posting credit services organization. A bond, letter of credit, or certificate of deposit may also be used to satisfy administrative fines and civil damages arising from any enforcement action against the posting credit service organization.

(b) A bond, letter of credit, or certificate of deposit shall remain in force:

(i) until replaced by a bond, letter of credit, or certificate of deposit of identical or superior coverage; or

(ii) for one year after the credit servicing organization notifies the division in writing that it has ceased all activities regulated by this chapter.

Section 4. Section 13-23-5 is amended to read:

13-23-5. Registration -- Bond, letter of credit, or certificate of deposit required -- Penalties.

(1) (a) (i) It is unlawful for any health spa facility to operate in this state unless the facility is registered with the division.

(ii) Registration is effective for one year. If the health spa facility renews its registration, the registration shall be renewed at least 30 days prior to its expiration.

(iii) The division shall provide by rule for the form, content, application process, and renewal process of the registration.

(b) Each health spa registering in this state shall designate a registered agent for receiving service of process. The registered agent shall be reasonably available from 8 a.m. until 5 p.m. during normal working days.

(c) The division shall charge and collect a fee for registration under guidelines provided in Section 63-38-3.2.

(2) (a) Each health spa shall obtain and maintain:

(i) a performance bond issued by a surety authorized to transact surety business in this state;

(ii) an irrevocable letter of credit issued by a financial institution authorized to do business in this state; or

(iii) a certificate of deposit.

(b) The bond, letter of credit, or certificate of deposit shall be payable to the division for the benefit of any consumer who incurs damages as the result of:

(i) the health spa's violation of this chapter; or

(ii) as the result of the health spa's going out of business or relocating and failing to offer an alternate location within ten miles.

(c) The division may recover from the bond, letter of credit, or certificate of deposit the costs of collecting and distributing funds under this section, up to 10% of the face value of the bond, letter of credit, or certificate of deposit but only if the consumers have fully recovered their damages first. The total liability of the issuer of the bond, letter of credit, or certificate of deposit may not exceed the amount of the bond, letter of credit, or certificate of deposit. The health spa shall maintain a bond, letter of credit, or certificate of deposit in force for one year after it notifies the division in writing that it has ceased all activities regulated by this chapter.

(d) A health spa providing services at more than one location shall comply with the requirements of Subsection (2)(a) for each separate location.

(e) The division may impose a fine against a health spa that fails to comply with the requirements of Subsection (2)(a) of up to $100 per day that the health spa remains out of compliance. All penalties received shall be deposited into the Consumer Protection Education and Training Fund created in Section 13-2-8.

(3) The minimum principal amount of the bond, letter of credit, or certificate of credit required under Subsection (2) shall be based on the number of unexpired contracts for health spa services to which the health spa is a party, in accordance with the following schedule:

Principal Amount of Bond, Letter of Credit, or Certificate of Deposit	Number of Contracts [~~with an Unexpired Term~~ ~~Exceeding 90 Days~~]
$15,000	500 or fewer
35,000	501 to 1,500
50,000	1,500 to 3,000
75,000	3,001 or more

(4) Each health spa shall obtain the bond, letter of credit, or certificate of deposit and furnish a certified copy of the bond, letter of credit, or certificate of deposit to the division prior to selling, offering or attempting to sell, soliciting the sale of, or becoming a party to any contract to provide health spa services. A health spa is considered to be in compliance with this section only if the proof provided to the division shows that the bond, letter of credit, or certificate of credit is current.

(5) Each health spa shall maintain accurate records of the bond, letter of credit, or certificate of credit and of any payments made, due, or to become due to the issuer and shall open the records to inspection by the division at any time during normal business hours.

(6) If a health spa changes ownership, ceases operation, discontinues facilities, or relocates and fails to offer an alternate location within ten miles within 30 days after its closing, the health spa is subject to the requirements of this section as if it were a new health spa coming into being at the time the health spa changed ownership. The former owner may not release, cancel, or terminate the owner's liability under any bond, letter of credit, or certificate of deposit previously filed with the division, unless:

(a) the new owner has filed a new bond, letter of credit, or certificate of deposit for the benefit of consumers covered under the previous owner's bond, letter of credit, or certificate of deposit; or

(b) the former owner has refunded all unearned payments to consumers.

(7) If a health spa ceases operation or relocates and fails to offer an alternative location within ten miles, the health spa shall provide the division with 45 days prior notice.

CHAPTER 197
S. B. 253
Passed February 28, 2001
Approved March 16, 2001
Effective March 16, 2001
(Exception clause in Section 3)

UTAH STATE FAIRPARK STUDY

Sponsor: L. Steven Poulton

This act enacts new material directing the governor to form a committee to study the use of land and facilities at the Utah State Fairpark. This act establishes the membership of the committee and defines the committee's responsibilities. This act requires the committee to report to the Natural Resources, Agriculture, and Environment Interim Committee, the governor, and the State Fair Board by November 30, 2001. This act takes effect immediately. This act is repealed January 1, 2002.

This act enacts uncodified material.

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

Section 1. State Fairpark study.

(1) Because the Legislature and the governor believe that Utah must have a Utah State Fair that celebrates Utah's agricultural and cultural roots, the governor shall appoint a committee composed of 11 members as follows:

(a) two members of the State Fair Board from nominations submitted by the board;

(b) one member of the House of Representatives from nominations submitted by the Speaker of the House;

(c) one member of the State Senate from nominations submitted by the President of the Senate;

(d) one member from the Utah State University Extension representing the 4-H community, from nominations made by the Utah State University Extension;

(e) one member of the Utah Farm Bureau, from nominations made by the Utah Farm Bureau;

(f) two members representing the livestock community from nominations made by the:

(i) Utah Cattlemen's Association;

(ii) Utah Dairymen's Association;

(iii) Utah Wool Grower's Association;

(iv) Utah Pork Producers; and

(v) Utah Farmer's Union;

(g) two at-large members;

(h) one member of the Utah Fairpark Community Council, from nominations made by the Utah Fairpark Community Council.

(2) The governor shall designate a member appointed under Subsection (1) as chair of the committee.

(3) A majority of the members of the committee constitute a quorum.

(4) (a) Salaries and expenses of the members of the committee who are legislators shall be paid in accordance with Section 36-2-2 and Legislative Joint Rule 15.03.

(b) A member of the committee who is not a legislator may not receive compensation for their work associated with the committee, but may receive per diem and reimbursement for travel expenses incurred as a member of the committee at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(5) The governor shall assign staff from the executive branch to assist the committee in performing its duties and shall pay all costs of appraisals, meetings, and per diems.

(6) The committee shall:

(a) study and recommend viable solutions about the use of the land and facilities in the State Fairpark, including the feasibility of selling the land and facilities of the State Fairpark and using the proceeds to relocate and fund the Utah State Fair; and

(b) report its findings and recommendations to the governor and to the Legislature's Natural Resources, Agriculture, and Environment Interim Committee and State Fair Board no later than November 30, 2001.

(7) In conducting its study and making recommendations, the committee shall:

(a) ensure that any proposed plan maintains the long term viability of the fair as an enterprise and maintains and implements the state's commitment to the agricultural, industrial, artistic, and educational heritage of Utah as the mission of the Utah State Fair;

(b) obtain a reliable estimate of the market value of the State Fairpark assets, with an analysis of whether or not proceeds of the sale of the assets would be sufficient to relocate and perpetually support the Utah State Fair; and

(c) actively explore possible partnerships with private entities, local governments, and other organizations.

(8) (a) No land comprising any part of the current State Fairpark may be sold without affirmative approval of the Legislature.

(b) The current State Fair may not be relocated without affirmative approval of the Legislature.

Section 2. Effective date.

If approved by two-thirds of all the members elected to each house, this act takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's

signature, or in the case of a veto, the date of veto override.

Section 3. Repeal date.

This act is repealed January 1, 2002.

CHAPTER 198
S. B. 254
Passed February 27, 2001
Approved March 16, 2001
Effective April 30, 2001

RESIDENCE LIENS
RECOVERY FUND AMENDMENTS

Sponsor: Lyle W. Hillyard
David L. Gladwell
Scott K. Jenkins

This act modifies the Residence Lien Restriction and Lien Recovery Fund Act and related provisions of the Utah Construction Trades Licensing Act. The act adds factory built housing to the scope of the fund. The act repeals the lifetime cap on recovery from the fund. The act extends the filing deadline. The act requires the inclusion of instructions and a form affidavit and motion when serving a complaint on a homeowner.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
38-1-11, as last amended by Chapter 172, Laws of Utah 1995
38-11-102, as last amended by Chapter 193, Laws of Utah 1999
38-11-107, as last amended by Chapter 49, Laws of Utah 1998
38-11-203, as last amended by Chapter 193, Laws of Utah 1999
38-11-204, as last amended by Chapter 193, Laws of Utah 1999
38-11-207, as enacted by Chapter 308, Laws of Utah 1994
38-11-301, as last amended by Chapter 146, Laws of Utah 1996
58-55-302, as last amended by Chapter 317, Laws of Utah 2000
58-55-303, as renumbered and amended by Chapter 181, Laws of Utah 1994
58-55-501, as last amended by Chapters 233 and 317, Laws of Utah 2000
58-55-502, as last amended by Chapter 317, Laws of Utah 2000
58-55-503, as last amended by Chapters 100, 233, and 317, Laws of Utah 2000

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

Section 1. Section 38-1-11 is amended to read:

38-1-11. Enforcement -- Time for -- Lis pendens -- Action for debt not affected -- Instructions and form affidavit and motion.

(1) A lien claimant shall file an action to enforce the lien filed under this chapter within:

(a) [~~twelve~~] 12 months from the date of final completion of the original contract not involving a residence as defined in Section 38-11-102; or

(b) 180 days from the date the lien claimant last performed labor and services or last furnished equipment or material for a residence, as defined in Section 38-11-102.

(2) (a) Within the time period provided for filing in Subsection (1) the lien claimant shall file for record with the county recorder of each county in which the lien is recorded a notice of the pendency of the action, in the manner provided in actions affecting the title or right to possession of real property, or the lien shall be void, except as to persons who have been made parties to the action and persons having actual knowledge of the commencement of the action.

(b) The burden of proof shall be upon the lien claimant and those claiming under him to show actual knowledge.

(3) This section may not be interpreted to impair or affect the right of any person to whom a debt may be due for any work done or materials furnished to maintain a personal action to recover the same.

(4) (a) If a lien claimant files an action to enforce a lien filed under this chapter involving a residence, as defined in Section 38-11-102, the lien claimant shall include with the service of the complaint on the owner of the residence:

(i) instructions to the owner of the residence relating to the owner's rights under Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act; and

(ii) a form affidavit and motion for summary judgment to enable the owner of the residence to specify the grounds upon which the owner may exercise available rights under Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act.

(b) The lien claimant may file a notice to submit for decision on the motion for summary judgment. The motion may be ruled upon after the service of the summons and complaint upon the nonpaying party, as defined in Section 38-11-102, and the time for the nonpaying party to respond, as provided in the Utah Rules of Civil Procedure, has elapsed.

(c) The instructions and form affidavit and motion required by Subsection (4)(a) shall meet the requirements established by rule by the Division of Occupational and Professional Licensing in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(d) If the nonpaying party, as defined by Section 38-11-102, files for bankruptcy protection and there is a bankruptcy stay in effect, the motion for summary judgment and the action to enforce the lien shall be stayed until resolution of the related claim under Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act.

(e) If a lien claimant fails to provide to the owner of the residence the instructions and form affidavit required by Subsection (4)(a), the lien claimant shall be barred from maintaining or enforcing the lien upon the residence.

Section 2. Section 38-11-102 is amended to read:

38-11-102. Definitions.

(1) "Board" means the Residence Lien Recovery Fund Advisory Board established under Section 38-11-104.

(2) "Construction on an owner-occupied residence" means designing, engineering, constructing, altering, remodeling, improving, repairing, or maintaining a new or existing residence.

(3) "Department" means the Department of Commerce.

(4) "Director" means the director of the Division of Occupational and Professional Licensing.

(5) "Division" means the Division of Occupational and Professional Licensing.

(6) "Encumbered fund balance" means the aggregate amount of all outstanding claims against the fund. The remainder of monies in the fund are unencumbered funds.

(7) "Executive director" means the executive director of the Department of Commerce.

(8) "Factory built housing" is as defined in Section 58-56-3.

(9) "Factory built housing retailer" means a person that sells factory built housing to consumers.

[~~(8)~~] (10) "Fund" means the Residence Lien Recovery Fund established under Section 38-11-201.

[~~(9)~~] (11) "Laborer" means a person who provides services at the site of the construction on an owner-occupied residence as an employee of an original contractor or other qualified beneficiary performing qualified services on the residence.

[~~(10)~~] (12) "Licensee" means any holder of a license issued under Title 58, Chapters 3a, 22, 53, and 55.

[~~(11)~~] (13) "Nonpaying party" means the original contractor, subcontractor, or real estate developer who has failed to pay the qualified beneficiary making a claim against the fund.

[~~(12)~~] (14) "Original contractor" means a person who contracts with the owner of real property or the owner's agent to provide services, labor, or material for the construction of an owner-occupied residence.

[~~(13)~~] (15) "Owner" means a person who:

(a) contracts with a person who is licensed as a contractor or is exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, for the construction on an owner-occupied residence upon real property owned by that person;

(b) contracts with a real estate developer to buy a residence upon completion of the construction on the owner-occupied residence; or

(c) buys a residence from a real estate developer after completion of the construction on the owner-occupied residence.

[~~(14)~~] (16) "Owner-occupied residence" means a residence that is, or after completion of the construction on the residence will be, occupied by the owner or the owner's tenant or lessee as a primary or secondary residence within 180 days from the date of the completion of the construction on the residence.

[~~(15)~~] (17) "Qualified beneficiary" means a person who:

(a) provides qualified services;

(b) pays all necessary fees or assessment required under this chapter; and

(c) registers with the division:

(i) as a licensed contractor under Subsection 38-11-301(1) or (2) if that person seeks recovery from the fund as a licensed contractor; or

(ii) as a person providing qualified services other than as a licensed contractor under Subsection 38-11-301(3) if the person seeks recovery from the fund in a capacity other than as a licensed contractor.

[~~(16)~~] (18) (a) "Qualified services" means the following performed in construction on an owner-occupied residence:

[~~(a)~~] (i) contractor services provided by a contractor licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act;

[~~(b)~~] (ii) architectural services provided by an architect licensed under Title 58, Chapter 3a;

[~~(c)~~] (iii) engineering and land surveying services provided by a professional engineer or land surveyor licensed or exempt from licensure under Title 58, Chapter 22;

[~~(d)~~] (iv) landscape architectural services by a landscape architect licensed or exempt from licensure under Title 58, Chapter 53;

[~~(e)~~] (v) design and specification services of mechanical or other systems;

[~~(f)~~] (vi) other services related to the design, drawing, surveying, specification, cost estimation, or other like professional services;

[~~(g)~~] (vii) providing materials, supplies, components, or similar products;

[~~(h)~~] (viii) renting equipment or materials; [~~and~~]

[~~(i)~~] (ix) labor at the site of the construction on the owner-occupied residence[~~.~~]; and

(x) site preparation, set up, and installation of factory built housing.

(b) "Qualified services" do not include the construction of factory built housing in the factory.

[~~(17)~~] (19) "Real estate developer" means a person having an ownership interest in real property who contracts for the construction of a residence that is offered for sale to the public.

[~~(18)~~] (20) "Residence" means an improvement to real property used or occupied, to be used or occupied as, or in conjunction with, a primary or secondary detached single-family dwelling or multifamily dwelling up to two units, including factory built housing.

[~~(19)~~] (21) "Subsequent owner" means a person who purchases a residence from an owner within 180 days from the date of the completion of the construction on the residence.

Section 3. Section 38-11-107 is amended to read:

38-11-107. Restrictions upon maintaining a lien against residence or owner's interest in the residence.

(1) A person qualified to file a lien upon an owner-occupied residence and the real property associated with that residence under the provisions of Title 38, Chapter 1, Mechanics' Liens, who provides qualified services under an agreement effective on or after January 1, 1995, other than directly with the owner, shall be barred after January 1, 1995, from maintaining a lien upon that residence and real property or recovering a judgment in any civil action against the owner or the owner-occupied residence to recover monies owed for qualified services provided by that person if:

(a) the conditions described in Subsections 38-11-204(3)(a) and (3)(b) are met; or

(b) (i) a subsequent owner purchases a residence from an owner;

(ii) the subsequent owner who purchased the residence under Subsection (1)(b)(i) occupies the residence as a primary or secondary residence within 180 days from the date of transfer or the residence is occupied by the subsequent owner's tenant or lessee as a primary or secondary residence within 180 days from the date of transfer; and

(iii) the owner from whom the subsequent owner purchased the residence met the conditions described in Subsections 38-11-204(3)(a) and (3)(b).

(2) If a residence is constructed under conditions that do not meet all of the provisions of Subsection (1), that residence and the real property associated with that residence as defined in Section 38-1-4, shall be subject to any mechanics' lien as provided in Section 38-1-3.

(3) A lien claimant who files a mechanics' lien or foreclosure action upon an owner-occupied residence is not liable for costs and attorneys' fees under Sections 38-1-17 and 38-1-18 or for any damages arising from a civil action related to the lien filing or foreclosure action if the lien claimant removes the lien within ten days from the date the owner establishes compliance, through written findings of fact from a court of competent jurisdiction or, in cases where a bankruptcy has been filed, from the director, with the requirements of Subsections 38-11-204(3)(a) and (3)(b).

Section 4. Section 38-11-203 is amended to read:

38-11-203. Disbursements from the fund -- Limitations.

(1) A payment of any claim upon the fund by a qualified beneficiary shall be made only upon an order issued by the director finding that:

(a) the claimant was a qualified beneficiary during the construction on a residence;

(b) the claimant complied with the requirements of Section 38-11-204; and

(c) there is adequate money in the fund to pay the amount ordered.

(2) A payment of a claim upon the fund by a laborer shall be made only upon an order issued by the director finding that:

(a) the laborer complied with the requirements of Subsection 38-11-204(6); and

(b) there is adequate money in the fund to pay the amount ordered.

(3) (a) An order under this section may be issued only after the division has complied with the procedures established by rule under Section 38-11-105.

(b) The director shall order payment of the qualified services as established by evidence, or if the claimant has obtained a judgment, then in the amount awarded for qualified services in the judgment to the extent the qualified services are attributable to the owner-occupied residence at issue in the claim.

(c) The director shall order payment of interest on all amounts claimed for qualified services at the rate of 12%, annual percentage rate, from the date payment was due to the date the claim is approved for payment except for delays attributable to the claimant.

(d) The director shall order payment of costs in the amount stated in the judgment. If the judgment does not state a sum certain for costs, or if no judgment has been obtained, the director shall order payment of reasonable costs as supported by evidence. The claim application fee as established by the division pursuant to Subsection 38-11-204(1)(b) is not a reimbursable cost.

(e) The director shall order payment of attorney's fees in the amount stated in a judgment.

(4) (a) Payments made from the fund may not exceed[~~: (i)~~] $75,000 per [~~residence~~] construction project to all qualified beneficiaries and laborers who have claim against the fund for that [~~residence; and~~] construction project.

[~~(ii) $500,000 per qualified beneficiary or laborer for payments to the qualified beneficiary over the qualified beneficiary's lifetime.~~]

(b) If claims against the fund for a [~~residence~~] construction project exceed $75,000, the $75,000 shall be awarded proportionately so that each qualified beneficiary and laborer awarded compensation from the fund for qualified services shall receive an identical percentage of the qualified beneficiary's or laborer's award.

(5) Subject to the limitations of Subsection (4), if on the day the order is issued there are inadequate funds to pay the entire claim and the director determines that the claimant has otherwise met the requirements of Subsection (1) or (2), the director shall order additional payments once the fund meets the balance limitations of Section 38-11-206.

Section 5. Section 38-11-204 is amended to read:

38-11-204. Claims against the fund -- Requirement to make a claim -- Qualifications to receive compensation.

(1) To claim recovery from the fund a person shall:

(a) meet the requirements of either Subsection (3) or (6);

(b) pay an application fee determined by the division under Section 63-38-3.2; and

(c) file with the division a completed application on a form provided by the division accompanied by supporting documents establishing:

(i) that the person meets the requirements of either Subsection (3) or (6);

(ii) that the person was a qualified beneficiary or laborer during the construction on the owner-occupied residence; and

(iii) the basis for the claim.

(2) To recover from the fund, the application required by Subsection (1) shall be filed no later than [~~120 days~~] one year:

(a) from the date the judgment required by Subsection (3)(c) is entered;

(b) from the date the nonpaying party filed bankruptcy, if the claimant is precluded from obtaining a judgment or from satisfying the requirements of Subsection (3)(c) because the nonpaying party filed bankruptcy within [~~120 days~~] one year after the entry of judgment; or

(c) if a laborer, from the date the laborer completed the laborer's qualified services.

(3) To recover from the fund, regardless of whether the residence is occupied by the owner, a subsequent owner, or the owner or subsequent owner's tenant or lessee, a qualified beneficiary shall establish that:

(a) (i) the owner of the owner-occupied residence or the owner's agent entered into a written contract with an original contractor licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, for the performance of qualified services, to obtain the performance of qualified services by others, or for the supervision of the performance by others of qualified services in construction on that residence; [~~or~~]

(ii) the owner of the owner-occupied residence or the owner's agent entered into a written contract with a real estate developer for the purchase of an owner-occupied residence; or

(iii) the owner of the owner-occupied residence or the owner's agent entered into a written contract with a factory built housing retailer for the purchase of an owner-occupied residence;

(b) the owner has paid in full the original contractor, licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, real estate developer, or [~~both,~~] factory built housing retailer under Subsection (3)(a)[~~(i) or (ii)~~] with whom the owner has a written contract in accordance with the written contract and any amendments to the contract, and:

(i) the original contractor [~~or real estate developer~~], licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, the real estate developer, or the factory built housing retailer subsequently failed to pay a qualified beneficiary who is entitled to payment under an agreement with that original contractor or real estate developer licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, for services performed or materials supplied by the qualified beneficiary;

(ii) a subcontractor who contracts with the original contractor [~~or real estate developer~~], licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, the real estate developer, or the factory built housing retailer failed to pay a qualified beneficiary who is entitled to payment under an agreement with that subcontractor or supplier; or

(iii) a subcontractor who contracts with a subcontractor or supplier failed to pay a qualified beneficiary who is entitled to payment under an agreement with that subcontractor or supplier;

(c) (i) the qualified beneficiary filed:

(A) an action against the nonpaying party to recover monies owed him within 180 days from the date the qualified beneficiary last provided qualified services, unless precluded from doing so by the nonpaying party's bankruptcy filing within the 180 days after completion of services; and

(B) a notice of commencement of action with the division within 30 days from the date the qualified beneficiary filed the civil action if a civil action was filed as required by Subsection (3)(c)(i)(A);

(ii) the qualified beneficiary has obtained a judgment against the nonpaying party who failed to pay the qualified beneficiary under an agreement to provide qualified services for construction of that owner-occupied residence;

(iii) (A) the qualified beneficiary has obtained from a court of competent jurisdiction the issuance of an order requiring the judgment debtor, or if a

corporation any officer of the corporation, to appear before the court at a specified time and place to answer concerning the debtor's or corporation's property, has received return of service of the order from a person qualified to serve documents under the Utah Rules of Civil Procedure, Rule 4(b), and has made reasonable efforts to obtain asset information from the supplemental proceedings; and

(B) if assets subject to execution are discovered as a result of the order required under Subsection (3)(c)(iii)(A) or for any other reason, to obtain the issuance of a writ of execution from a court of competent jurisdiction; or

(iv) the claimant timely filed a proof of claim where permitted in the bankruptcy action, if the nonpaying party has filed bankruptcy; and

(d) the qualified beneficiary is not entitled to reimbursement from any other person.

(4) The requirements of Subsection [~~38-11-204~~](3)(c) need not be met if the qualified beneficiary has been precluded from obtaining a judgment against the nonpaying party or from satisfying the requirements of Subsection [~~38-11-204~~](3)(c) because the nonpaying party filed bankruptcy.

(5) If a qualified beneficiary fails to file the notice with the division required under Subsection (3)(c)(i)(B), the claim of the qualified beneficiary shall be paid:

(a) if otherwise qualified under this chapter;

(b) to the extent that the limit of Subsection 38-11-203(4)(a)(i) has not been reached by payments from the fund to qualified beneficiaries who have complied with the notice requirements of Subsection (3)(c)(i)(B); and

(c) in the order that the claims are filed by persons who fail to comply with Subsection (3)(c)(i)(B), not to exceed the limit of Subsection 38-11-203(4)(a)(i).

(6) To recover from the fund a laborer shall:

(a) establish that the laborer has not been paid wages due for the work performed at the site of a construction on an owner-occupied residence; and

(b) provide any supporting documents or information required by rule by the division.

(7) A fee determined by the division under Section 63-38-3.2 shall be deducted from any recovery from the fund received by a laborer.

(8) The requirements of Subsection (3)(a)(i) may be satisfied if a claimant establishes to the satisfaction of the director that the owner of the owner-occupied residence or the owner's agent entered into a written contract with an original contractor who:

(a) was a business entity that was not licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, but was solely owned by an individual that was licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act; or

(b) was a natural person who was not licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, but who was the sole owner and qualifier of a business entity that was licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act.

Section 6. Section 38-11-207 is amended to read:

38-11-207. Reimbursement to the fund.

(1) If the director disburses monies from the fund as a result of a person licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, or a qualified beneficiary failing to pay qualified beneficiaries[~~, the licensee or qualified beneficiary shall reimburse the fund within 90 days from~~]:

(a) the division shall issue a notice of the disbursement from the fund[.] and the obligation to reimburse the fund to the licensee or qualified beneficiary; and

(b) the licensee or qualified beneficiary shall reimburse the fund within 20 days from the issuance of the notice required by Subsection (1)(a).

(2) The notice required by Subsection (1)(a) shall meet the requirements established by rule by the division in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(3) (a) A finding of fact in an administrative action that a payment of any amount has been made from the fund in settlement of a claim arising from the act, representation, transaction, or conduct of a person licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, in violation of Section 58-55-603 shall result in the immediate suspension of that person's license without further compliance with Title 63, Chapter 46b, Administrative Procedures Act.

(b) The finding of fact for Subsection (3)(a) may be made in the same administrative action as the related claim and may be included in the findings required by Section 38-11-203.

(c) The suspension required by Subsection (3)(a) shall remain in effect until the person applies for reinstatement and is issued a license in accordance with Sections 58-1-308 and 58-55-303.

Section 7. Section 38-11-301 is amended to read:

38-11-301. Registration as a qualified beneficiary -- Initial regular assessment -- Affidavit.

(1) A person licensed as of July 1, 1995, as a contractor under the provisions of Title 58, Chapter 55, Utah Construction Trades Licensing Act, in license classifications that regularly engage in providing qualified services shall be automatically registered as a qualified beneficiary upon payment of the initial assessment.

(2) A person applying for licensure as a contractor after July 1, 1995, in license classifications that

regularly engage in providing qualified services shall be automatically registered as a qualified beneficiary upon issuance of a license and payment of the initial assessment.

(3) (a) After July 1, 1995, any person providing qualified services as other than a contractor as provided in Subsection (1) or any person exempt from licensure under the provisions of Title 58, Chapter 55, Utah Construction Trades Licensing Act, may register as a qualified beneficiary by:

(i) submitting an application in a form prescribed by the division;

(ii) demonstrating registration with the Division of Corporations and Commercial Code as required by state law;

(iii) paying a registration fee determined by the division under Section 63-38-3.2; and

(iv) paying the initial assessment established under Subsection (4), and any special assessment determined by the division under Subsection 38-11-206(1).

(b) A person [~~other than a contractor~~] who does not register under Subsection (1), (2), or (3)(a) shall be prohibited from recovering under the fund as a qualified beneficiary for work performed as qualified services while not registered with the fund.

(4) (a) An applicant shall pay an initial assessment determined by the division under Section 63-38-3.2.

(b) The initial assessment to qualified registrants under Subsection (1) shall be made not later than July 15, 1995, and shall be paid no later than November 1, 1995.

(c) The initial assessment to qualified registrants under Subsections (2) and (3) shall be paid at the time of application for license or registration, however, beginning on May 1, 1996, only one initial assessment or special assessments thereafter shall be required for persons having multiple licenses under this section.

(5) A person shall be considered to have been registered as a qualified beneficiary on January 1, 1995, for purposes of meeting the requirements of Subsection 38-11-204(1)(c)(ii) if the person:

(a) (i) is licensed on or before July 1, 1995, as a contractor under the provisions of Title 58, Chapter 55, Utah Construction Trades Licensing Act, in license classifications that regularly engage in providing qualified services; or

(ii) provides qualified services after July 1, 1995, as other than a contractor as provided in Subsection (5)(a)(i) or is exempt from licensure under the provisions of Title 58, Chapter 55, Utah Construction Trades Licensing Act; and

(b) registers as a qualified beneficiary under Subsection (1) or (3) on or before November 1, 1995.

Section 8. Section 58-55-302 is amended to read:

58-55-302. Qualifications for licensure.

(1) Each applicant for a license under this chapter shall:

(a) submit an application prescribed by the division;

(b) pay a fee as determined by the department under Section 63-38-3.2;

(c) (i) meet the examination requirements established by rule by the division in collaboration with the appropriate board, except for the classifications of apprentice plumber, residential apprentice plumber, and apprentice electrician for whom no examination is required; or

(ii) the individual qualifier must pass the required examination if the applicant is a business entity;

(d) if an apprentice, identify the proposed supervisor of the apprenticeship;

(e) if an applicant for a contractor's license:

(i) produce satisfactory evidence of financial responsibility, except for construction trades instructor for whom evidence of financial responsibility is not required;

(ii) produce satisfactory evidence of knowledge and experience in the construction industry and knowledge of the principles of the conduct of business as a contractor, reasonably necessary for the protection of the public health, safety, and welfare; and

(iii) be a licensed master electrician if an applicant for an electrical contractor's license or a licensed master residential electrician if an applicant for a residential electrical contractor's license; or

(iv) be a journeyman plumber or residential journeyman plumber if an applicant for a plumbing contractor's license; and

(f) if an applicant for a construction trades instructor license, satisfy any additional requirements established by rule.

(2) After approval of an applicant for a contractor's license by the board and the division, the applicant shall file the following with the division before the division issues the license:

(a) proof of workers' compensation insurance which covers employees of the applicant in accordance with applicable Utah law;

(b) proof of public liability insurance in coverage amounts and form established by rule except for a construction trades instructor for whom public liability insurance is not required; and

(c) proof of registration as required by applicable law with the:

(i) Utah Department of Commerce;

(ii) Division of Corporations and Commercial Code;

(iii) Division of Workforce Information and Payment Services in the Department of Workforce Services, for purposes of Title 35A, Chapter 4, Employment Security Act;

(iv) State Tax Commission; and

(v) Internal Revenue Service.

(3) In addition to the general requirements for each applicant in Subsection (1), applicants shall comply with the following requirements to be licensed in the following classifications:

(a) A journeyman plumber applicant shall produce:

(i) satisfactory evidence of successful completion of the equivalent of at least four years of full-time training and instruction as a licensed apprentice plumber under supervision of a licensed journeyman plumber and in accordance with a planned program of training approved by the division;

(ii) satisfactory evidence of at least eight years of full-time experience approved by the division in collaboration with the Plumbers Licensing Board; or

(iii) satisfactory evidence of meeting the qualifications determined by the division and board to be equivalent to Subsection (3)(a)(i) or (a)(ii).

(b) A residential journeyman plumber shall produce satisfactory evidence of completion of:

(i) the equivalent of at least three years of full-time training and instruction as a licensed apprentice plumber under the supervision of a licensed residential journeyman plumber or licensed journeyman plumber in accordance with a planned program of training approved by the division;

(ii) at least six years of full-time experience in a maintenance or repair trade involving substantial plumbing work; or

(iii) satisfactory evidence of meeting the qualifications determined by the division and board to be equivalent to Subsection (3)(b)(i) or (b)(ii).

(c) A master electrician applicant shall produce satisfactory evidence that he either:

(i) is a graduate electrical engineer of an accredited college or university approved by the division and has one year of practical electrical experience as a licensed apprentice electrician;

(ii) is a graduate of an electrical trade school, having received an associate of applied sciences degree following successful completion of a course of study approved by the division, and has two years of practical experience as a licensed journeyman electrician;

(iii) is a graduate of an electrical trade school, having received a certificate of completion following successful completion of a course of study approved by the division, and has four years of practical experience as a journeyman electrician;

(iv) has at least eight years of practical experience under the supervision of a licensed journeyman or master electrician; or

(v) meets the qualifications determined by the division and board to be equivalent to these qualifications.

(d) A master residential electrician applicant shall produce satisfactory evidence that he:

(i) has at least two years of practical experience as a residential journeyman electrician; or

(ii) meets the qualifications determined by the division and board to be equivalent to this practical experience.

(e) A journeyman electrician applicant shall produce satisfactory evidence that he either:

(i) has successfully completed at least four years of full-time training and instruction as a licensed apprentice electrician under the supervision of a master electrician or journeyman electrician and in accordance with a planned training program approved by the division;

(ii) has six years of practical experience in wiring, installing, and repairing electrical apparatus and equipment for light, heat, and power under the supervision of a licensed master or journeyman electrician; or

(iii) meets the qualifications determined by the division and board to be equivalent to these qualifications.

(f) A residential journeyman electrician applicant shall produce satisfactory evidence that he:

(i) has successfully completed two years of training in an electrical training program approved by the division;

(ii) has four years of practical experience in wiring, installing, and repairing electrical apparatus and equipment for light, heat, and power under the supervision of a licensed master, journeyman, residential master, or residential journeyman electrician; or

(iii) meets the qualifications determined by the division and board to be equivalent to Subsection (3)(f)(i) or (f)(ii).

(g) The conduct of licensed apprentice electricians and their licensed supervisors shall be in accordance with the following:

(i) A licensed apprentice electrician shall be under the immediate supervision of a licensed master, journeyman, residential master, or residential journeyman electrician. An apprentice in the fourth year of training may work without supervision for a period not to exceed eight hours in any 24-hour period.

(ii) A licensed master, journeyman, residential master, or residential journeyman electrician may have under his immediate supervision on a residential project up to three licensed apprentice electricians.

(iii) A licensed master or journeyman electrician may have under his immediate supervision on

nonresidential projects only one licensed apprentice electrician.

(h) An alarm company applicant shall:

(i) have a qualifying agent who is an officer, director, partner, proprietor, or manager of the applicant who:

(A) demonstrates 6,000 hours of experience in the alarm company business;

(B) demonstrates 2,000 hours of experience as a manager or administrator in the alarm company business or in a construction business; and

(C) passes an examination component established by rule by the division in collaboration with the board;

(ii) if a corporation, provide:

(A) the names, addresses, dates of birth, social security numbers, and fingerprint cards of all corporate officers, directors, and those responsible management personnel employed within the state or having direct responsibility for managing operations of the applicant within the state; and

(B) the names, addresses, dates of birth, social security numbers, and fingerprint cards of all shareholders owning 5% or more of the outstanding shares of the corporation, except this shall not be required if the stock is publicly listed and traded;

(iii) if a limited liability company, provide:

(A) the names, addresses, dates of birth, social security numbers, and fingerprint cards of all company officers, and those responsible management personnel employed within the state or having direct responsibility for managing operations of the applicant within the state; and

(B) the names, addresses, dates of birth, social security numbers, and fingerprint cards of all individuals owning 5% or more of the equity of the company;

(iv) if a partnership, the names, addresses, dates of birth, social security numbers, and fingerprint cards of all general partners, and those responsible management personnel employed within the state or having direct responsibility for managing operations of the applicant within the state;

(v) if a proprietorship, the names, addresses, dates of birth, social security numbers, and fingerprint cards of the proprietor, and those responsible management personnel employed within the state or having direct responsibility for managing operations of the applicant within the state;

(vi) be of good moral character in that officers, directors, shareholders described in Subsection (3)(h)(ii)(B), partners, proprietors, and responsible management personnel have not been convicted of a felony, a misdemeanor involving moral turpitude, or any other crime that when considered with the duties and responsibilities of an alarm company is considered by the division and the board to indicate that the best interests of the public are served by granting the applicant a license;

(vii) document that none of the applicant's officers, directors, shareholders described in Subsection (3)(h)(ii)(B), partners, proprietors, and responsible management personnel have been declared by any court of competent jurisdiction incompetent by reason of mental defect or disease and not been restored;

(viii) document that none of the applicant's officers, directors, shareholders described in Subsection (3)(h)(ii)(B), partners, proprietors, and responsible management personnel are currently suffering from habitual drunkenness or from drug addiction or dependence;

(ix) file and maintain with the division evidence of:

(A) comprehensive general liability insurance in form and in amounts to be established by rule by the division in collaboration with the board;

(B) workers' compensation insurance that covers employees of the applicant in accordance with applicable Utah law; and

(C) registration as is required by applicable law with the:

(I) Division of Corporations and Commercial Code;

(II) Division of Workforce Information and Payment Services in the Department of Workforce Services, for purposes of Title 35A, Chapter 4, Employment Security Act;

(III) State Tax Commission; and

(IV) Internal Revenue Service; and

(x) meet with the division and board.

(i) Each applicant for licensure as an alarm company agent shall:

(i) submit an application in a form prescribed by the division accompanied by fingerprint cards;

(ii) pay a fee determined by the department under Section 63-38-3.2;

(iii) be of good moral character in that the applicant has not been convicted of a felony, a misdemeanor involving moral turpitude, or any other crime that when considered with the duties and responsibilities of an alarm company agent is considered by the division and the board to indicate that the best interests of the public are served by granting the applicant a license;

(iv) not have been declared by any court of competent jurisdiction incompetent by reason of mental defect or disease and not been restored;

(v) not be currently suffering from habitual drunkenness or from drug addiction or dependence; and

(vi) meet with the division and board if requested by the division or the board.

(4) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the division

may make rules establishing when Federal Bureau of Investigation records shall be checked for applicants as an alarm company or alarm company agent.

(5) To determine if an applicant meets the qualifications of Subsections (3)(h)(vi) and (3)(i)(iii), the division shall provide an appropriate number of copies of fingerprint cards to the Department of Public Safety with the division's request to:

(a) conduct a search of records of the Department of Public Safety for criminal history information relating to each applicant for licensure as an alarm company or alarm company agent and each applicant's officers, directors, and shareholders described in Subsection (3)(h)(ii)(B), partners, proprietors, and responsible management personnel; and

(b) forward to the Federal Bureau of Investigation a fingerprint card of each applicant requiring a check of records of the F.B.I. for criminal history information under this section.

(6) The Department of Public Safety shall send to the division:

(a) a written record of criminal history, or certification of no criminal history record, as contained in the records of the Department of Public Safety in a timely manner after receipt of a fingerprint card from the division and a request for review of Department of Public Safety records; and

(b) the results of the F.B.I. review concerning an applicant in a timely manner after receipt of information from the F.B.I.

(7) (a) The division shall charge each applicant for licensure as an alarm company or alarm company agent a fee, in accordance with Section 63-38-3.2, equal to the cost of performing the records reviews under this section.

(b) The division shall pay the Department of Public Safety the costs of all records reviews, and the Department of Public Safety shall pay the F.B.I. the costs of records reviews under this section.

(8) Information obtained by the division from the reviews of criminal history records of the Department of Public Safety and the F.B.I. shall be used or disseminated by the division only for the purpose of determining if an applicant for licensure as an alarm company or alarm company agent is qualified for licensure.

(9) (a) An application for licensure under this chapter shall be denied if:

(i) the applicant has had a previous license, which was issued under this chapter, suspended or revoked within one year prior to the date of the applicant's application;

(ii) (A) the applicant is a partnership, corporation, or limited liability company; and

(B) any corporate officer, director, shareholder holding 25% or more of the stock in the applicant, partner, member, agent acting as a qualifier, or any person occupying a similar status, performing similar functions, or directly or indirectly controlling the applicant has served in any similar capacity with any person or entity which has had a previous license, which was issued under this chapter, suspended or revoked within one year prior to the date of the applicant's application; or

(iii) (A) the applicant is an individual or sole proprietorship; and

(B) any owner or agent acting as a qualifier has served in any capacity listed in Subsection (9)(a)(ii)(B) in any entity which has had a previous license, which was issued under this chapter, suspended or revoked within one year prior to the date of the applicant's application.

(b) An application for licensure under this chapter shall be reviewed by the appropriate licensing board prior to approval if:

(i) the applicant has had a previous license, which was issued under this chapter, suspended or revoked more than one year prior to the date of the applicant's application;

(ii) (A) the applicant is a partnership, corporation, or limited liability company; and

(B) any corporate officer, director, shareholder holding 25% or more of the stock in the applicant, partner, member, agent acting as a qualifier, or any person occupying a similar status, performing similar functions, or directly or indirectly controlling the applicant has served in any similar capacity with any person or entity which has had a previous license, which was issued under this chapter, suspended or revoked more than one year prior to the date of the applicant's application; or

(iii) (A) the applicant is an individual or sole proprietorship; and

(B) any owner or agent acting as a qualifier has served in any capacity listed in Subsection (9)(b)(ii)(B) in any entity which has had a previous license, which was issued under this chapter, suspended or revoked more than one year prior to the date of the applicant's application.

Section 9. Section 58-55-303 is amended to read:

58-55-303. Term of license -- Expiration -- Renewal.

(1) Each license issued under this chapter shall be issued in accordance with a two-year renewal cycle established by rule. The division may by rule extend or shorten a renewal period by as much as one year to stagger the renewal cycle it administers.

(2) At the time of renewal, the licensee shall show satisfactory evidence of continuing financial responsibility as required under Section 58-55-306.

(3) Each license automatically expires on the expiration date shown on the license unless the licensee renews the license in accordance with Section 58-1-308.

(4) The requirements of Subsection 58-55-302(9) shall also apply to applicants seeking to renew or reinstate a license.

(5) In addition to any other requirements imposed by law, if a license has been suspended or revoked for any reason, the applicant must pay in full all fines imposed by the division, resolve any outstanding citations or disciplinary actions with the division, satisfy any Section 58-55-503 judgment and sentence or nontrial resolution, complete a new financial responsibility review as required under Section 58-55-306, using only titled assets, and pay in full any reimbursement amount as provided in Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act.

Section 10. Section 58-55-501 is amended to read:

58-55-501. Unlawful conduct.

Unlawful conduct includes:

(1) engaging in a construction trade, acting as a contractor, an alarm business or company, or an alarm company agent, or representing oneself to be engaged in a construction trade or to be acting as a contractor in a construction trade requiring licensure, unless the person doing any of these is appropriately licensed or exempted from licensure under this chapter;

(2) acting in a construction trade, as an alarm business or company, or as an alarm company agent beyond the scope of the license held;

(3) hiring or employing in any manner an unlicensed person, other than an employee for wages who is not required to be licensed under this chapter, to engage in a construction trade for which licensure is required or to act as a contractor or subcontractor in a construction trade requiring licensure;

(4) applying for or obtaining a building permit either for oneself or another when not licensed or exempted from licensure as a contractor under this chapter;

(5) issuing a building permit to any person for whom there is no evidence of a current license or exemption from licensure as a contractor under this chapter;

(6) applying for or obtaining a building permit for the benefit of or on behalf of any other person who is required to be licensed under this chapter but who is not licensed or is otherwise not entitled to obtain or receive the benefit of the building permit;

(7) failing to obtain a building permit when required by law or rule;

(8) submitting a bid for any work for which a license is required under this chapter by a person not licensed or exempted from licensure as a contractor under this chapter;

(9) willfully or deliberately misrepresenting or omitting a material fact in connection with an application to obtain or renew a license under this chapter;

(10) allowing one's license to be used by another except as provided by statute or rule;

(11) doing business under a name other than the name appearing on the license, except as permitted by statute or rule;

(12) if licensed as a specialty contractor in the electrical trade or plumbing trade, journeyman plumber, residential journeyman plumber, journeyman electrician, master electrician, or residential electrician, failing to directly supervise an apprentice under one's supervision or exceeding the number of apprentices one is allowed to have under his supervision;

(13) if licensed as a contractor or representing oneself to be a contractor, receiving any funds in payment for a specific project from an owner or any other person, which funds are to pay for work performed or materials and services furnished for that specific project, and after receiving the funds to exercise unauthorized control over the funds by failing to pay the full amounts due and payable to persons who performed work or furnished materials or services within a reasonable period of time;

(14) employing as an alarm company an unlicensed individual as an alarm company agent, except as permitted under the exemption from licensure provisions under Section 58-1-307;

(15) if licensed as an alarm company or alarm company agent, filing with the division fingerprint cards for an applicant which are not those of the applicant, or are in any other way false or fraudulent and intended to mislead the division in its consideration of the applicant for licensure;

(16) if licensed under this chapter, willfully or deliberately disregarding or violating:

(a) the building or construction laws of this state or any political subdivision;

(b) the safety and labor laws applicable to a project;

(c) any provision of the health laws applicable to a project;

(d) the workers' compensation insurance laws of the state applicable to a project;

(e) the laws governing withholdings for employee state and federal income taxes, unemployment taxes, FICA, or other required withholdings; or

(f) reporting, notification, and filing laws of this state or the federal government;

(17) aiding or abetting any person in evading the provisions of this chapter or rules established under the authority of the division to govern this chapter; [~~or~~]

(18) engaging in the construction trade or as a contractor for the construction of residences of up to two units when not currently registered or exempt from registration as a qualified beneficiary under Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act[~~.~~]; or

(19) failing, as an original contractor, as defined in Section 38-11-102, to include in a written contract the notification required in Section 38-11-108.

Section 11. Section 58-55-502 is amended to read:

58-55-502. Unprofessional conduct.

Unprofessional conduct includes:

(1) failing to establish, maintain, or demonstrate financial responsibility while licensed as a contractor under this chapter;

(2) disregarding or violating through gross negligence or a pattern of negligence:

(a) the building or construction laws of this state or any political subdivision;

(b) the safety and labor laws applicable to a project;

(c) any provision of the health laws applicable to a project;

(d) the workers' compensation insurance laws of this state applicable to a project;

(e) the laws governing withholdings for employee state and federal income taxes, unemployment taxes, FICA, or other required withholdings; or

(f) any reporting, notification, and filing laws of this state or the federal government;

(3) any willful, fraudulent, or deceitful act by a licensee, caused by a licensee, or at a licensee's direction which causes material injury to another;

(4) contract violations that pose a threat or potential threat to the public health, safety, and welfare including:

(a) willful, deliberate, or grossly negligent departure from or disregard for plans or specifications, or abandonment or failure to complete a project without the consent of the owner or his duly authorized representative or the consent of any other person entitled to have the particular project completed in accordance with the plans, specifications, and contract terms;

(b) failure to deposit funds to the benefit of an employee as required under any written contractual obligation the licensee has to the employee;

(c) failure to maintain in full force and effect any health insurance benefit to an employee that was extended as a part of any written contractual obligation or representation by the licensee, unless the employee is given written notice of the licensee's intent to cancel or reduce the insurance benefit at least 45 days before the effective date of the cancellation or reduction;

(d) failure to reimburse the Residence Lien Recovery Fund [~~within 90 days after any disbursement from the fund resulting from the licensee's failure to pay qualified beneficiaries as provided in Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act~~] as required by Section 38-11-207;

(e) failure to provide, when applicable, the information required by Section 38-11-108; and

(f) willfully or deliberately misrepresenting or omitting a material fact in connection with an application to claim recovery from the Residence Lien Recovery Fund under Section 38-11-204;

(5) failing as an alarm company to notify the division of the cessation of performance of its qualifying agent, or failing to replace its qualifying agent as required under Section 58-55-304;

(6) failing as an alarm company agent to carry or display a copy of the licensee's license as required under Section 58-55-311; or

(7) failing to comply with operating standards established by rule in accordance with Section 58-55-308.

Section 12. Section 58-55-503 is amended to read:

58-55-503. Penalty for unlawful conduct -- Citations.

(1) Any person who violates Subsections 58-55-501(1), (2), (3), (9), (10), (12), or (17), or who fails to comply with a citation issued under this section after it is final, is guilty of a class A misdemeanor. Any person who violates the provisions of Subsection 58-55-501(8) may not be awarded and may not accept a contract for the performance of the work.

(2) Any person who violates the provisions of Subsection 58-55-501(13) is guilty of an infraction unless the violator did so with the intent to deprive the person to whom money is to be paid of the money received, in which case the violator is guilty of theft, as classified in Section 76-6-412.

(3) Grounds for immediate suspension of the licensee's license by the division and the board include the issuance of a citation for violation of Section 58-55-501 or the failure by a licensee to make application to, report to, or notify the division with respect to any matter for which application, notification, or reporting is required under this chapter or rules adopted under this chapter, including applying to the division for a new license to engage in a new specialty classification or to do business under a new form of organization or business structure, filing with the division current financial statements, notifying the division concerning loss of insurance coverage, or change in qualifier.

(4) (a) If upon inspection or investigation, the division concludes that a person has violated the provisions of Subsections 58-55-501(1), (2), (3), (9), (10), (12), (14), (19), or any rule or order issued with respect to these subsections, and that disciplinary action is appropriate, the director or his designee from within the division for each alternative respectively, shall, promptly issue a citation to the person according to this chapter and any pertinent rules, attempt to negotiate a stipulated settlement, or notify the person to appear before an adjudicative proceeding conducted under Title 63, Chapter 46b, Administrative Procedures Act.

(i) Any person who is in violation of the provisions of Subsection 58-55-501(1), (2), (3), (9), (10), (12),

[~~or~~] (14), or (19), as evidenced by an uncontested citation, a stipulated settlement, or by a finding of violation in an adjudicative proceeding, may be assessed a fine pursuant to this Subsection (4) and may, in addition to or in lieu of, be ordered to cease and desist from violating Subsection 58-55-501(1), (2), (3), (9), (10), (12), [~~or~~] (14), or (19).

(ii) Except for a cease and desist order, the licensure sanctions cited in Section 58-55-401 may not be assessed through a citation.

(b) Each citation shall be in writing and describe with particularity the nature of the violation, including a reference to the provision of the chapter, rule, or order alleged to have been violated. The citation shall clearly state that the recipient must notify the division in writing within 20 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing conducted under Title 63, Chapter 46b, Administrative Procedures Act. The citation shall clearly explain the consequences of failure to timely contest the citation or to make payment of any fines assessed by the citation within the time specified in the citation.

(c) Each citation issued under this section, or a copy of each citation, may be served upon any person upon whom a summons may be served in accordance with the Utah Rules of Civil Procedure and may be made personally or upon his agent by a division investigator or by any person specially designated by the director or by mail.

(d) If within 20 calendar days from the service of a citation, the person to whom the citation was issued fails to request a hearing to contest the citation, the citation becomes the final order of the division and is not subject to further agency review. The period to contest a citation may be extended by the division for cause.

(e) The division may refuse to issue or renew, suspend, revoke, or place on probation the license of a licensee who fails to comply with a citation after it becomes final.

(f) The failure of an applicant for licensure to comply with a citation after it becomes final is a ground for denial of license.

(g) No citation may be issued under this section after the expiration of six months following the occurrence of any violation.

(h) Fines shall be assessed by the director or his designee according to the following:

(i) for a first offense handled pursuant to Subsection (4)(a), a fine of up to $1,000;

(ii) for a second offense handled pursuant to Subsection (4)(a), a fine of up to $2,000; and

(iii) for any subsequent offense handled pursuant to Subsection (4)(a), a fine of up to $2,000 for each day of continued offense.

(i) (i) For purposes of issuing a final order under this section and assessing a fine under Subsection (4)(i), an offense constitutes a second or subsequent offense if:

(A) the division previously issued a final order determining that a person committed a first or second offense in violation of Subsection 58-55-501(1), (2), (3), (9), (10), (12), [~~or~~] (14), or (19); or

(B) (I) the division initiated an action for a first or second offense;

(II) no final order has been issued by the division in the action initiated under Subsection (4)(i)(i)(B)(I);

(III) the division determines during an investigation that occurred after the initiation of the action under Subsection (4)(i)(i)(B)(I) that the person committed a second or subsequent violation of the provisions of Subsection 58-55-501(1), (2), (3), (9), (10), (12), [~~or~~] (14), or (19); and

(IV) after determining that the person committed a second or subsequent offense under Subsection (4)(i)(i)(B)(III), the division issues a final order on the action initiated under Subsection (4)(i)(i)(B)(I).

(ii) In issuing a final order for a second or subsequent offense under Subsection (4)(i)(i), the division shall comply with the requirements of this section.

(5) Any penalty imposed by the director under Subsection (4)(h) shall be deposited into the Commerce Service Fund. Any penalty which is not paid may be collected by the director by either referring the matter to a collection agency or bringing an action in the district court of the county in which the person against whom the penalty is imposed resides or in the county where the office of the director is located. Any county attorney or the attorney general of the state is to provide legal assistance and advice to the director in any action to collect the penalty. In any action brought to enforce the provisions of this section, reasonable attorney's fees and costs shall be awarded.

CHAPTER 199
S. B. 263
Passed February 28, 2001
Approved March 16, 2001
Effective April 30, 2001

AMENDMENTS TO DUTIES OF COUNTY EXECUTIVE

Sponsor: Gene Davis

This act modifies provisions relating to Counties to expand a county executive's duties to include signing deeds that convey county property.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
17-53-302, as enacted by Chapter 133, Laws of Utah 2000

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

Section 1. Section 17-53-302 is amended to read:

17-53-302. County executive duties.

Each county executive shall:

(1) exercise supervisory control over all functions of the executive branch of county government;

(2) direct and organize the management of the county in a manner consistent with state law, county ordinance, and the county's optional plan of county government;

(3) carry out programs and policies established by the county legislative body;

(4) faithfully ensure compliance with all applicable laws and county ordinances;

(5) exercise supervisory and coordinating control over all departments of county government;

(6) except as otherwise vested in the county legislative body by state law or by the optional plan of county government, appoint, suspend, and remove the directors of all county departments and all appointive officers of boards and commissions;

(7) except as otherwise delegated by statute to another county officer, exercise administrative and auditing control over all funds and assets, tangible and intangible, of the county;

(8) except as otherwise delegated by statute to another county officer, supervise and direct centralized budgeting, accounting, personnel management, purchasing, and other service functions of the county;

(9) conduct planning studies and make recommendations to the county legislative body relating to financial, administrative, procedural, and operational plans, programs, and improvements in county government;

(10) maintain a continuing review of expenditures and of the effectiveness of departmental budgetary controls;

(11) develop systems and procedures, not inconsistent with statute, for planning, programming, budgeting, and accounting for all activities of the county;

(12) if the county executive is an elected county executive, exercise a power of veto over ordinances enacted by the county legislative body, including an item veto upon budget appropriations, in the manner provided by the optional plan of county government; [~~and~~]

(13) perform all other functions and duties required of the executive by state law, county ordinance, and the optional plan of county government[~~.~~]; and

(14) sign on behalf of the county all deeds that convey county property.

CHAPTER 200
S. B. 276
Passed February 28, 2001
Approved March 16, 2001
Effective April 30, 2001

WORKERS' COMPENSATION COVERAGE FOR PUBLIC SAFETY WORKERS DURING THE OLYMPICS

Sponsor: Beverly Ann Evans

This act modifies the Labor Code. The act enacts the Olympic Law Enforcement and Public Safety Workers' Compensation Act. The act provides for workers' compensation coverage for law enforcement and public safety volunteers and paid officers who provide public safety services during the Olympic Winter Games of 2002 and the Paralympic Winter Games of 2002. The act provides that the workers compensation coverage is the public safety officer's and public safety volunteer's exclusive remedy against their employers, as defined in the act. The act is repealed January 1, 2003.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
63-55b-134, as enacted by Chapter 79, Laws of Utah 1999

ENACTS:
34A-10-101, Utah Code Annotated 1953
34A-10-102, Utah Code Annotated 1953
34A-10-201, Utah Code Annotated 1953
34A-10-202, Utah Code Annotated 1953
34A-10-301, Utah Code Annotated 1953
34A-10-302, Utah Code Annotated 1953
34A-10-303, Utah Code Annotated 1953

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

Section 1. Section 34A-10-101 is enacted to read:

CHAPTER 10. OLYMPIC LAW ENFORCEMENT AND PUBLIC SAFETY WORKERS' COMPENSATION ACT

Part 1. General Provisions

34A-10-101. Title.

This chapter is known as the "Olympic Law Enforcement and Public Safety Workers' Compensation Act."

Section 2. Section 34A-10-102 is enacted to read:

34A-10-102. Definitions.

As used in this chapter:

(1) "Command" means the Olympic Public Safety Command created in Section 53-12-201.

(2) "Exercises control over the general nature and quality of the public safety services" means to exercise or to have the right to exercise control over the nature and quality of the public safety services provided by the command in accordance with the public safety plan, including the authority to:

(a) direct the command to correct deficiencies in the quality of public safety services being provided in accordance with the public safety plan;

(b) coordinate with the command with respect to the number of public safety officers or public safety volunteers that are assigned at sites at which public safety services are being provided in accordance with the public safety plan; and

(c) coordinate other services provided by the organizing committee with public safety services provided in accordance with the public safety plan.

(3) "Olympics" means the Olympic Winter Games of 2002 to be hosted by Salt Lake City.

(4) "Organizing committee" has the same meaning as in Section 63A-10-102.

(5) "Paralympics" means the Paralympic Winter Games of 2002 to be hosted by Salt Lake City.

(6) "Public safety agency" means the following as defined in Section 53-12-102:

(a) a local law enforcement agency;

(b) a local public safety agency;

(c) a state law enforcement agency; or

(d) state public safety agency.

(7) (a) "Public safety officer" means an individual who provides public safety services in accordance with the public safety plan.

(b) "Public safety officer" does not include:

(i) a law enforcement or public safety officer employed by the federal government; or

(ii) a public safety volunteer.

(8) (a) "Public safety plan" means the written plan that:

(i) provides for law enforcement and public safety services; and

(ii) is required under Section 53-12-202.

(b) "Public safety plan" includes actions taken by the Olympic law enforcement commander under Subsection 53-12-301(3) in providing public safety services for the Olympics or Paralympics.

(9) "Public safety services" means law enforcement and public safety services as defined in Section 53-12-102.

(10) (a) "Public safety volunteer" means an individual who provides public safety services without pay in accordance with the public safety plan.

(b) "Public safety volunteer" does not include a law enforcement or public safety officer employed by the federal government.

(11) "Regular employer" means the state or political subdivision of the state that regularly employs and provides compensation to the public safety officer.

(12) "Without pay" means to receive no remuneration other than:

(a) meals;

(b) a uniform;

(c) transportation;

(d) lodging; or

(e) reimbursement for incidental expenses.

Section 3. Section 34A-10-201 is enacted to read:

Part 2. Workers' Compensation for Olympic Public Safety Officers

34A-10-201. Employers of Olympic public safety officers -- Conditions.

(1) Subject to Subsection (2), the following are considered to be an employer of a public safety officer while the public safety officer is providing public safety services in accordance with the public safety plan:

(a) the regular employer of the public safety officer;

(b) the command if the command exercises or has the right to exercise supervision or control over the public safety officer in accordance with the public safety plan;

(c) the organizing committee if the organizing committee exercises control over the general nature and quality of the public safety services provided in accordance with the public safety plan; and

(d) a public safety agency that, in accordance with the public safety plan:

(i) is designated to provide personnel in a supervisory capacity; and

(ii) provides personnel who:

(A) act in a supervisory capacity; and

(B) exercise supervision or control over the public safety officer.

(2) An entity listed in Subsection (1) is considered to be an employer of a public safety officer if the public safety officer's regular employer:

(a) defines the scope of employment of a public safety officer to include allowing the public safety officer to provide public safety services in accordance with the public safety plan;

(b) enters into a contract with the command to provide public safety officers in accordance with the public safety plan; and

(c) provides workers' compensation coverage, in a manner provided in Section 34A-2-201, for the public safety officer that includes coverage for the public safety officer while providing public safety services in accordance with the public safety plan.

(3) An employer described in Subsection (1) is considered to be an employer of a public safety officer for the purposes of:

(a) workers' compensation coverage under Chapter 2, Workers' Compensation Act, and Chapter 3, Utah Occupational Disease Act; and

(b) Chapter 8, Utah Injured Worker Reemployment Act.

Section 4. Section 34A-10-202 is enacted to read:

34A-10-202. Olympic public safety officer's exclusive remedy.

A public safety officer's right under Chapter 2, Workers' Compensation Act, and Chapter 3, Utah Occupational Disease Act, to recover compensation against an employer described in Subsection 34A-10-201(1), for accident, injury, or death in the course of, because of, or arising out of the public safety officer's providing public safety services in accordance with the public safety plan, is the public safety officer's exclusive remedy, as provided in Section 34A-2-105, against an employer described in Subsection 34A-10-201(1).

Section 5. Section 34A-10-301 is enacted to read:

Part 3. Workers' Compensation for Olympic Public Safety Volunteers

34A-10-301. Employers of Olympic public safety volunteers.

(1) For purposes of Subsection (2), the following are considered to be an employer of a public safety volunteer:

(a) the command if:

(i) the public safety volunteer provides public safety services in accordance with the public safety plan; and

(ii) the command exercises or has the right to exercise supervision or control over the public safety volunteer in accordance with the public safety plan;

(b) the organizing committee if the organizing committee exercises control over the general nature and quality of the public safety services provided in accordance with the public safety plan; and

(c) a public safety agency that, in accordance with the public safety plan:

(i) is designated to provide personnel in a supervisory capacity; and

(ii) provides personnel who:

(A) act in a supervisory capacity; and

(B) exercise supervision or control over the public safety volunteer.

(2) An employer described in Subsection (1) is considered to be an employer of a public safety volunteer for the purposes of:

(a) workers' compensation coverage under Chapter 2, Workers' Compensation Act, and Chapter 3, Utah Occupational Disease Act; and

(b) Chapter 8, Utah Injured Worker Reemployment Act.

(3) A public safety volunteer's eligibility for the benefits described in Subsection (2) shall be determined in accordance with this chapter, notwithstanding:

(a) Chapter 9, Olympic Volunteer Workers' Compensation Act; and

(b) Title 67, Chapter 20, Volunteer Government Workers Act.

Section 6. Section 34A-10-302 is enacted to read:

34A-10-302. Olympic public safety volunteer's exclusive remedy -- Conditions.

(1) (a) Subject to Subsection (2), a public safety volunteer's right under Chapter 2, Workers' Compensation Act, and Chapter 3, Utah Occupational Disease Act, to recover compensation against an employer described in Subsection 34A-10-301(1) or the regular employer of a public safety officer providing public safety services in accordance with the public safety plan for accident, injury, or death in the course of, because of, or arising out of the public safety volunteer's providing public safety services in accordance with the public safety plan, is the public safety volunteer's exclusive remedy, as provided in Section 34A-2-105, against an employer described in Subsection 34A-10-301(1) and the regular employer of a public safety officer providing public safety services in accordance with the public safety plan.

(b) A public safety volunteer's exclusive remedy shall be determined in accordance with this part, notwithstanding:

(i) Chapter 9, Olympic Volunteer Workers' Compensation Act; and

(ii) Title 67, Chapter 20, Volunteer Government Workers Act.

(2) Subsection (1) applies if:

(a) before the public safety volunteer provides public safety services, the command:

(i) notifies the public safety volunteer that the public safety volunteer is, for purposes of workers' compensation, an employee of the employers described in Subsection 34A-10-301(1); and

(ii) designates in writing that the public safety volunteer is to provide public safety services without pay; and

(b) the command provides workers' compensation coverage for the public safety volunteer while engaged in providing public safety services in accordance with the public safety plan.

Section 7. Section 34A-10-303 is enacted to read:

34A-10-303. Average weekly wage for Olympic public safety volunteer.

For purposes of computing compensation, the average weekly wage rate of a public safety volunteer considered an employee of an employer described in Subsection 34A-10-301(1) is considered to be $400.

Section 8. Section 63-55b-134 is amended to read:

63-55b-134. Repeal dates -- Title 34A.

(1) Title 34A, Chapter 9, Olympic Volunteer Workers' Compensation Act, is repealed on January 1, 2003.

(2) Title 34A, Chapter 10, Olympic Law Enforcement and Public Safety Workers' Compensation Act, is repealed on January 1, 2003.

CHAPTER 201
H. B. 28
Passed February 22, 2001
Approved March 16, 2001
Effective July 1, 2002

INDEPENDENT ENTITIES ACT

Sponsor: Ron Bigelow

This act creates the Independent Entities Code, including definitions. This act recodifies certain existing provisions and creates additional regulations relating to independent entities. This act creates an Independent Corporations Act. This act takes effect on July 1, 2002.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:
63E-1-101, Utah Code Annotated 1953
63E-1-102, Utah Code Annotated 1953
63E-1-201, Utah Code Annotated 1953
63E-1-202, Utah Code Annotated 1953
63E-1-203, Utah Code Annotated 1953
63E-1-301, Utah Code Annotated 1953
63E-1-302, Utah Code Annotated 1953
63E-1-303, Utah Code Annotated 1953
63E-1-401, Utah Code Annotated 1953
63E-1-402, Utah Code Annotated 1953
63E-1-403, Utah Code Annotated 1953
63E-1-404, Utah Code Annotated 1953
63E-2-101, Utah Code Annotated 1953
63E-2-102, Utah Code Annotated 1953
63E-2-103, Utah Code Annotated 1953
63E-2-104, Utah Code Annotated 1953
63E-2-105, Utah Code Annotated 1953
63E-2-106, Utah Code Annotated 1953
63E-2-107, Utah Code Annotated 1953
63E-2-108, Utah Code Annotated 1953
63E-2-109, Utah Code Annotated 1953
63E-2-110, Utah Code Annotated 1953
63E-2-111, Utah Code Annotated 1953

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

Section 1. Section 63E-1-101 is enacted to read:

TITLE 63E. INDEPENDENT ENTITIES CODE

CHAPTER 1. INDEPENDENT ENTITIES ACT

Part 1. General Provisions

63E-1-101. Title.

(1) This title is known as the "Independent Entities Code."

(2) This chapter is known as the "Independent Entities Act."

Section 2. Section 63E-1-102 is enacted to read:

63E-1-102. Definitions.

As used in this title:

(1) "Authorizing statute" means the statute creating an entity as an independent entity.

(2) "Committee" means the Legislative Independent Entities Committee created in Section 63E-1-201.

(3) "Independent corporation" means a corporation incorporated in accordance with Chapter 2, Independent Corporations Act.

(4) (a) "Independent entity" means an entity having a public purpose relating to the state or its citizens that is individually created by the state or is given by the state the right to exist and conduct its affairs as an:

(i) independent state agency; or

(ii) independent corporation.

(b) "Independent entity" includes the:

(i) Dairy Commission created in Title 4, Chapter 22, Dairy Promotion Act;

(ii) Utah Technology Finance Corporation created in Title 9, Chapter 13, Utah Technology and Small Business Finance Act;

(iii) Heber Valley Railroad Authority created in Title 9, Chapter 3, Part 3, Heber Valley Historic Railroad Authority;

(iv) Utah Science Center Authority created in Title 9, Chapter 3, Part 4, Utah Science Center Authority;

(v) Utah Housing Finance Agency created in Title 9, Chapter 4, Part 9, Utah Housing Finance Agency Act;

(vi) Utah State Fair Corporation created in Title 9, Chapter 4, Part 11, Utah State Fair Corporation Act;

(vii) Workers' Compensation Fund created in Title 31A, Chapter 33, Workers' Compensation Fund;

(viii) Utah State Retirement Office created in Title 49, Chapter 1, Part 2, Retirement Office and Board;

(ix) School and Institutional Trust Lands Administration created in Title 53C, Chapter 1, Part 2, School and Institutional Trust Lands Administration; and

(x) Utah Communications Agency Network created in Title 63C, Chapter 7, Utah Communications Agency Network Act.

(c) Notwithstanding this Subsection (4), "independent entity" does not include:

(i) the Public Service Commission of Utah created in Section 54-1-1;

(ii) an institution within the state system of higher education;

(iii) a city, county, or town;

(iv) a local school district;

(v) a special district created under the authority of Title 17A, Special Districts; or

(vi) a local district created under the authority of Title 17B, Limited Purpose Local Government Entities.

(5) "Independent state agency" means an entity that is created by the state, but is independent of the governor's direct supervisory control.

(6) "Monies held in trust" means monies maintained for the benefit of:

(a) one or more private individuals, including public employees;

(b) one or more public or private entities; or

(c) the owners of a quasi-public corporation.

(7) "Public corporation" means an artificial person, public in ownership, individually created by the state as a body politic and corporate for the administration of a public purpose relating to the state or its citizens.

(8) "Quasi-public corporation" means an artificial person, private in ownership, individually created as a corporation by the state which has accepted from the state the grant of a franchise or contract involving the performance of a public purpose relating to the state or its citizens.

Section 3. Section 63E-1-201 is enacted to read:

Part 2. Legislative Committee

63E-1-201. Legislative Independent Entities Committee creation.

(1) There is created a Legislative Independent Entities Committee composed of 14 legislators appointed as follows:

(a) five senators, appointed by the president of the Senate, with at least two senators from the minority party; and

(b) nine representatives, appointed by the speaker of the House of Representatives, with at least three representatives from the minority party.

(2) (a) The president of the Senate shall designate one of the Senate appointees as a cochair of the committee.

(b) The speaker of the House of Representatives shall designate one of the House of Representatives appointees as a cochair of the committee.

(3) Committee members serve for two years, but may be reappointed by the speaker or the president.

(4) The committee shall meet at least twice each year, but may meet more frequently if the chairs determine that additional meetings are needed.

(5) In conducting all of its business, the committee shall comply with the rules of legislative interim committees.

(6) The Office of Legislative Research and General Counsel shall provide staff services to the committee.

(7) Salaries and expenses of legislative committee members shall be paid in accordance with:

(a) Section 36-2-2; and

(b) Legislative Joint Rule 15.03.

Section 4. Section 63E-1-202 is enacted to read:

63E-1-202. Duties of the committee.

(1) The committee shall:

(a) study the scope of this title and determine what entities should be treated under this title as independent entities;

(b) study the provisions of the Utah Code that govern each independent entity, including whether or not there should be consistency in these provisions;

(c) study what provisions of the Utah Code, if any, from which each independent entity should be exempted;

(d) study whether or not the state should receive services from or provide services to each independent entity;

(e) request and hear reports from each independent entity;

(f) review the annual audit of each independent entity that is performed in accordance with the statutes governing the independent entity;

(g) comply with Part 3, Creation of Independent Entities, in reviewing a proposal to create a new independent entity;

(h) if the committee recommends a change in the organizational status of an independent entity as provided in Subsection (2) and subject to Part 4, Privatization of Independent Entities, recommend the appropriate method of changing the organizational status of the independent entity;

(i) study the following concerning an entity created by local agreement under Title 11, Chapter 13, Interlocal Cooperation Act, if the state is a party to the agreement creating the entity:

(i) whether or not the entity should be subject to this chapter;

(ii) whether or not the state should receive services from or provide services to the entity;

(iii) reporting and audit requirements for the entity; and

(iv) the need, if any, to modify statutes related to the entity;

(j) make a recommendation on the organizational status of each independent entity prior to the 2002 General Session; and

(k) report annually to the Legislative Management Committee by no later than the Legislative Management Committee's November meeting.

(2) The committee may:

(a) establish a form for any report required under Subsection (1);

(b) make recommendations to the Legislature concerning the organizational status of an independent entity;

(c) advise the Legislature concerning issues involving independent entities; and

(d) study issues related to the implementation of Title 49, Utah State Retirement Act.

Section 5. Section 63E-1-203 is enacted to read:

63E-1-203. Exemptions from committee activities.

Notwithstanding the other provisions of this Part 2 and Subsection 63E-1-102(4), the following independent entities are exempt from the study by the committee under Section 63E-1-202:

(1) the Utah Housing Finance Agency created in Title 9, Chapter 4, Part 9; and

(2) the Workers' Compensation Fund created in Title 31A, Chapter 33.

Section 6. Section 63E-1-301 is enacted to read:

Part 3. Creation of Independent Entities

63E-1-301. Definitions.

As used in this part, "Government requestor" means:

(1) the governor;

(2) an executive branch officer other than the governor;

(3) an executive branch agency;

(4) a legislator, including a legislative sponsor of legislation creating an independent entity; or

(5) a legislative committee.

Section 7. Section 63E-1-302 is enacted to read:

63E-1-302. Review by committee required for creating an independent entity.

(1) If a government requestor proposes that the Legislature create an independent entity, that government requestor shall request that the committee review the proposal.

(2) After receiving a request for review under Subsection (1), the chairs of the committee:

(a) shall schedule a meeting of the committee to review the proposal; and

(b) may request information from executive and legislative branch entities and officers concerning the proposal including:

(i) whether or not the proposed independent entity should be exempt from any state statute;

(ii) the need for oversight of the proposed independent entity by an executive branch agency;

(iii) the need for and requirements of audits of the proposed independent entity;

(iv) the custody of the proposed independent entity's funds;

(v) the legal representation of the proposed independent entity;

(vi) whether or not the state should receive services from or provide services to the proposed independent entity; and

(vii) the legal liability, if any, to the state if the proposed independent entity is created.

(3) In requesting information from executive and legislative branch entities or officers under Subsection (2), the committee should specifically consider seeking information from:

(a) the state auditor;

(b) the state treasurer;

(c) the attorney general;

(d) the risk manager; and

(e) the executive director of the Department of Administrative Services.

Section 8. Section 63E-1-303 is enacted to read:

63E-1-303. Recommendations of the committee.

After the committee has reviewed a proposal to create an independent entity in accordance with Section 63E-1-302, the committee shall make a report to the Legislature stating whether the committee:

(1) recommends creation of the proposed independent entity;

(2) recommends that the proposed independent entity not be created; or

(3) makes no recommendation regarding the creation of the proposed independent entity.

Section 9. Section 63E-1-401 is enacted to read:

Part 4. Privatization of Independent Entities

63E-1-401. Definitions.

As used in this part:

(1) "Asset" means property of all kinds, real and personal, tangible and intangible, and includes:

(a) cash, except reasonable compensation or salary for services rendered;

(b) stock or other investments;

(c) goodwill;

(d) real property;

(e) an ownership interest;

(f) a license;

(g) a cause of action; and

(h) any similar property.

(2) "Business interest" means:

(a) holding the position of trustee, director, officer, or other similar position with a business entity; or

(b) the ownership, either legally or equitably, of at least 10% of the outstanding shares of a corporation or 10% interest in any other business entity, being held by:

(i) an individual;

(ii) the individual's spouse;

(iii) a minor child of the individual; or

(iv) any combination of Subsections (2)(b)(i) through (iii).

(3) "Interested party" means a person that held or holds the position of trustee, director, officer, or other similar position with an independent entity within:

(a) five years prior to the date of an action described in Subsection (5); or

(b) during the privatization of an independent entity.

(4) "Lobbyist" is a person that provided or provides services as a lobbyist, as defined in Section 36-11-102, within:

(a) five years prior to the date of an action described in Subsection (5); or

(b) during the privatization of an independent entity.

(5) (a) "Privatized" means an action described in Subsection (5)(b) taken under circumstances in which the operations of the independent entity are continued by a successor entity that:

(i) is privately owned;

(ii) is unaffiliated to the state; and

(iii) receives any asset of the independent entity.

(b) An action referred to in Subsection (5)(a) includes:

(i) the repeal of the authorizing statute of an independent entity and the revision to state laws to terminate the relationship between the state and the independent entity;

(ii) the dissolution of the independent entity;

(iii) the merger or consolidation of the independent entity with another entity; or

(iv) the sale of all or substantially all of the assets of the independent entity.

Section 10. Section 63E-1-402 is enacted to read:

63E-1-402. Benefits to interested parties of an independent entity.

(1) If an independent entity is privatized, the following may not receive any benefit prohibited under Subsection (2):

(a) an interested party of the independent entity;

(b) an entity in which an interested party holds a business interest;

(c) a lobbyist of the independent entity; or

(d) an entity in which a lobbyist of the independent entity holds a business interest.

(2) If an independent entity is privatized:

(a) a person described in Subsection (1)(a) or (b) may not receive:

(i) compensation from an independent entity that is conditioned in whole or in part on:

(A) the passage, defeat, or amendment of legislative action related to privatization; or

(B) the approval, modification, or denial of an executive action related to privatization; or

(ii) any asset of the independent entity or its successor; and

(b) a person described in Subsection (1)(c) or (d) may not receive any:

(i) compensation that if received by the lobbyist would be in violation of Section 36-11-301; or

(ii) asset of the independent entity or its successor.

Section 11. Section 63E-1-403 is enacted to read:

63E-1-403. Privatization process -- Audit.

(1) If an independent entity seeks to privatize the independent entity, it shall:

(a) submit to the Legislature recommended legislation to:

(i) repeal the authorizing statute and revise state law as necessary to terminate its relationship to the state; and

(ii) address the value of any interests the state holds in the independent entity and whether the state should receive compensation for those interests as part of privatization; and

(b) be audited by the state auditor:

(i) within one year prior to the effective date of legislation that repeals the authorizing statute to terminate the relationship between the independent entity and the state; and

(ii) to determine the amount, nature, and source of revenues and assets of the independent entity.

(2) The relationship between the state and an independent entity may not be terminated except by the repeal of the authorizing statute of the independent entity.

Section 12. Section 63E-1-404 is enacted to read:

63E-1-404. Penalties for violation.

(1) A person who knowingly violates this part:

(a) is guilty of a third degree felony if the combined value of any compensation or assets received by the person as a result of the violation is equal to or greater than $10,000; or

(b) is guilty of a class A misdemeanor if the combined value of any compensation or assets received by the person as a result of the violation is less than $10,000.

(2) (a) In addition to any penalty imposed under Subsection (1), a person that violates this part shall return to the successor of the independent entity any compensation or assets received in violation of this part.

(b) If the assets received by the person in violation of this part are no longer in the possession of the person, the person shall pay the successor of the independent entity an amount equal to the fair market value of the asset at the time the person received the asset.

(3) Notwithstanding Subsection 36-11-401(3), if a lobbyist violates Subsection 63E-1-402(2)(b)(i), the lobbyist is guilty of the crime outlined in Subsection (1), which crime shall be determined by the value of compensation or assets received by the lobbyist.

Section 13. Section 63E-2-101 is enacted to read:

CHAPTER 2. INDEPENDENT CORPORATIONS ACT

63E-2-101. Title.

This chapter is known as the "Independent Corporations Act."

Section 14. Section 63E-2-102 is enacted to read:

63E-2-102. Independent corporations.

An independent corporation is granted a franchise to incorporate in this state in accordance with this title and its authorizing statute.

Section 15. Section 63E-2-103 is enacted to read:

63E-2-103. Public purpose -- Legislative findings.

(1) Each independent corporation shall have a specific public purpose related to the state or its citizens stated in its authorizing statute.

(2) Prior to enacting its authorizing statute, the Legislature shall make a finding that the independent corporation needs to be created by the state or be given by the state the right to exist and conduct its affairs as an independent corporation to serve its public purpose.

(3) Prior to enacting an authorizing statute, the Legislature shall also make a finding that:

(a) if the independent corporation receives ongoing state funding for operations, it:

(i) performs a public purpose that is not performed by private entities; or

(ii) acts as a trustee over monies held in trust;

(b) if the independent corporation does not receive ongoing state funding for operations, it requires:

(i) exemption from federal or state income tax to meet its public purpose; or

(ii) the interest on its indebtedness to be exempt from federal or state income tax to meet its public purpose; or

(c) the independent corporation is created by the Utah Constitution.

Section 16. Section 63E-2-104 is enacted to read:

63E-2-104. Legislative review.

(1) Each independent corporation is subject to review by the Legislative Independent Entities Committee in accordance with Chapter 1, Independent Entities Act.

(2) Notwithstanding Section 36-12-15, the Office of Legislative Auditor General may conduct comprehensive and special purpose audits, examinations, and reviews of any independent corporation.

(3) Each independent corporation shall report, as requested, to the committee on matters related to audits.

Section 17. Section 63E-2-105 is enacted to read:

63E-2-105. Boards.

(1) As used in this section, "director" includes a trustee or other board member.

(2) Each independent corporation shall be governed by a board of directors.

(3) The authorizing statute of each independent corporation shall specify:

(a) the process for appointing, removing, and replacing directors;

(b) the number and terms of office for directors;

(c) the board chair selection procedure;

(d) board quorum requirements;

(e) director qualifications; and

(f) the duties and fiduciary responsibilities of directors.

Section 18. Section 63E-2-106 is enacted to read:

63E-2-106. Powers.

Except as specifically modified in its authorizing statute, each independent corporation shall have the power to:

(1) exist as a:

(a) public corporation; or

(b) quasi-public corporation;

(2) perform its stated public purpose;

(3) sue and be sued in its own name;

(4) retain and be represented by legal counsel independent of the attorney general;

(5) create foundations or subsidiaries;

(6) act in accordance with all other powers granted in its authorizing statute and by duly issued license or franchise;

(7) act in all ways as a nonprofit corporation established under Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, that do not conflict with:

(a) this title;

(b) the authorizing statute of the independent corporation; or

(c) statutes and regulations to which the independent corporation is subject.

Section 19. Section 63E-2-107 is enacted to read:

63E-2-107. Prohibited participation.

Except as specifically modified in its authorizing statute, each independent corporation may not participate in the:

(1) issuance of bonds that are the obligation of the state; or

(2) services provided to state agencies, including:

(a) fuel dispensing;

(b) motor pool services;

(c) surplus property services;

(d) risk management coverage;

(e) information technology services; or

(f) archive services.

Section 20. Section 63E-2-108 is enacted to read:

63E-2-108. Eligible participation.

Except as specifically modified in its authorizing statute, each independent corporation may participate in the state retirement system.

Section 21. Section 63E-2-109 is enacted to read:

63E-2-109. State statutes.

(1) Except as specifically modified in its authorizing statute, each independent corporation shall be exempt from the statutes governing state agencies, including:

(a) Title 51, Chapter 5, Funds Consolidation Act;

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

(c) Title 63, Chapter 38, Budgetary Procedures Act;

(d) Title 63, Chapter 38a, Revenue Procedures and Control Act;

(e) Title 63, Chapter 46a, Utah Administrative Rulemaking Act;

(f) Title 63, Chapter 46b, Administrative Procedures Act;

(g) Title 63, Chapter 56, Utah Procurement Code;

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

(i) Title 67, Chapter 19, Utah Personnel Management Act.

(2) Except as specifically modified in its authorizing statute, each independent corporation shall be subject to:

(a) Title 52, Chapter 4, Open and Public Meetings; and

(b) Title 63, Chapter 2, Government Records Access and Management Act.

(3) Each independent corporation board may adopt its own policies and procedures governing its:

(a) funds management;

(b) audits; and

(c) personnel.

Section 22. Section 63E-2-110 is enacted to read:

63E-2-110. Budgetary and fiscal requirements.

(1) The board of each independent corporation shall annually adopt a budget.

(2) (a) All monies held in trust by an independent corporation are not public funds, even if they were public funds before those monies were received by the independent corporation.

(b) The monies of an independent corporation are not required to be held in the custody of the state treasurer.

Section 23. Section 63E-2-111 is enacted to read:

63E-2-111. State liability.

Except as expressly provided in this title or in an authorizing statute, the state is not liable for any independent corporation's obligations, expenses, debts, and liabilities.

Section 24. Effective date.

This act takes effect on July 1, 2002.

CHAPTER 202
H. B. 30
Passed February 26, 2001
Approved March 16, 2001
Effective July 1, 2001

VEHICLE TOWING AND REPORTING REQUIREMENTS

Sponsor: James R. Gowans
Chad E. Bennion

This act modifies motor vehicle, public safety, and transportation provisions relating to vehicles, vessels, and outboard motors that are removed by a tow truck motor carrier. This act regulates the removal of unattended vehicles and requires reporting of towed vehicles. This act requires certification of certain tow truck operations. This act authorizes certain fees and provides criminal penalties. This act takes effect on July 1, 2001.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
41-1a-1101, as last amended by Chapters 270 and 281, Laws of Utah 1998
41-6-44.30, as last amended by Chapter 334, Laws of Utah 2000
41-6-102, as last amended by Chapter 270, Laws of Utah 1998
41-6-116.10, as last amended by Chapter 1, Laws of Utah 1992
53-1-106, as last amended by Chapter 130, Laws of Utah 1999
53-3-106, as last amended by Chapter 334, Laws of Utah 2000
72-9-601, as renumbered and amended by Chapter 270, Laws of Utah 1998
72-9-602, as renumbered and amended by Chapter 270, Laws of Utah 1998
72-9-603, as renumbered and amended by Chapter 270, Laws of Utah 1998
73-18-12.7, as last amended by Chapter 1, Laws of Utah 1992
73-18-12.8, as enacted by Chapter 118, Laws of Utah 1987
73-18-20.1, as enacted by Chapter 216, Laws of Utah 1990
73-18-20.2, as last amended by Chapter 1, Laws of Utah 1992

ENACTS:
41-6-102.5, Utah Code Annotated 1953
41-6-102.7, Utah Code Annotated 1953

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

Section 1. Section 41-1a-1101 is amended to read:

41-1a-1101. Seizure -- Circumstances where permitted -- Impound lot standards.

(1) The division or any peace officer, without a warrant, may seize and take possession of any vehicle, vessel, or outboard motor:

(a) that the division or the peace officer has reason to believe has been stolen;

(b) on which any identification number has been defaced, altered, or obliterated;

(c) that has been abandoned on the public highways;

(d) for which the applicant has written a check for registration or title fees that has not been honored by the applicant's bank and that is not paid within 30 days;

(e) that is placed on the water with improper registration; or

(f) that is being operated on a highway:

(i) with registration that has been expired for more than three months;

(ii) having never been properly registered by the current owner; or

(iii) with registration that is suspended or revoked.

(2) If necessary for the transportation of a seized vessel, the vessel's trailer may be seized to transport and store the vessel.

(3) Any peace officer seizing or taking possession of a vehicle, vessel, or outboard motor under this section shall [~~immediately notify the division of the action~~] comply with the provisions of Section 41-6-102.5.

[~~(4) A vehicle or vessel seized under this section shall be moved by a peace officer or by a tow truck that meets the standards established: ~~]

[~~(a) by the Department of Public Safety under Subsection 41-6-102(4)(b); and~~]

[~~(b) under Title 72, Chapter 9, Motor Carrier Safety Act.~~]

[~~(5)~~] (4) (a) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission shall make rules setting standards for public garages, impound lots, and impound yards that may be used by peace officers and the division.

(b) The standards shall be equitable, reasonable, and unrestrictive as to the number of public garages, impound lots, or impound yards per geographical area.

[~~(6)~~] (5) (a) Except as provided under Subsection [~~(6)~~] (5)(b), a person may not operate or allow to be operated a vehicle stored in a public garage, impound lot, or impound yard regulated under this part without prior written permission of the owner of the vehicle.

(b) Incidental and necessary operation of a vehicle to move the vehicle from one parking space to another within the facility and that is necessary for the normal management of the facility is not prohibited under this Subsection [~~(6)~~] (5)(a).

[~~(7)~~] (6) A person who violates the provisions of Subsection [~~(6)~~] (5) is guilty of a class C misdemeanor.

[~~(8)~~] (7) The division or the peace officer who seizes a vehicle shall record the mileage shown on the vehicle's odometer at the time of seizure, if:

(a) the vehicle is equipped with an odometer; and

(b) the odometer reading is accessible to the division or the peace officer.

Section 2. Section 41-6-44.30 is amended to read:

41-6-44.30. Seizure and impoundment of vehicles by peace officers -- Impound requirements -- Removal of vehicle by owner.

(1) [~~(a)~~] If a peace officer arrests or cites the operator of a vehicle for violating Section 41-6-44 or 41-6-44.10, or a local ordinance similar to Section 41-6-44 which complies with Subsection 41-6-43(1), the officer shall seize and impound the vehicle in accordance with Section 41-6-102.5, except as provided under Subsection (2).

[~~(b) A vehicle seized and impounded under this section shall be moved by a peace officer or by a tow truck that meets the standards established:~~]

[~~(i) by the department under Subsection 41-6-102(4)(b); and~~]

[~~(ii) under Title 72, Chapter 9, Motor Carrier Safety Act.~~]

(2) If a registered owner of the vehicle, other than the operator, is present at the time of arrest, the officer may release the vehicle to that registered owner, but only if the registered owner:

(a) requests to remove the vehicle from the scene;

(b) presents to the officer a valid operator's license and sufficient identification to prove ownership of the vehicle;

(c) complies with all restrictions of his operator's license; and

(d) would not, in the judgment of the officer, be in violation of Section 41-6-44 or 41-6-44.10, or a local ordinance similar to Section 41-6-44 which complies with Subsection 41-6-43(1), if permitted to operate the vehicle, and if the vehicle itself is legally operable.

[~~(3) (a) The peace officer or agency by whom the officer is employed shall, within 24 hours after the seizure, notify, in writing, the Motor Vehicle Division of the seizure and impoundment.~~]

[~~(b) The notice shall state:~~]

[~~(i) the operator's name;~~]

[~~(ii) a description of the vehicle;~~]

[~~(iii) its identification number, if any;~~]

[~~(iv) its license number;~~]

[~~(v) the date, time, and place of impoundment;~~]

[~~(vi) the reason for impoundment; and~~]

[~~(vii) the name of the garage or place where the vehicle is stored.~~]

[~~(4) Upon receipt of notice, the Motor Vehicle Division shall give notice to the registered owner of the vehicle in the manner prescribed by Section 41-1a-114. The notice shall:~~]

[~~(a) state the date, time, and place of impoundment, the name of the person operating the vehicle at the time of seizure, if applicable, the reason for seizure and impoundment, and the name of the garage or place where the vehicle is stored;~~]

[~~(b) state that the registered owner is responsible for payment of towing, impound, and storage fees charged against the vehicle; and~~]

[~~(c) inform the registered owner of the vehicle of the conditions under Subsection (5) that must be satisfied before the vehicle is released.~~]

[~~(5) (a) The impounded vehicle shall be released after the registered owner or the owner's agent:~~]

[~~(i) makes a claim in person for release of the vehicle at any office of the State Tax Commission;~~]

[~~(ii) pays an administrative impound fee of $200;~~]

[~~(iii) presents identification sufficient to prove ownership of the impounded vehicle; and~~]

[~~(iv) pays all towing and storage fees to the impound lot where the vehicle is stored.~~]

[~~(b) (i) Twenty-five dollars of the impound fees assessed under this Subsection (5) are dedicated credits to the Motor Vehicle Division;~~]

[~~(ii) $84 of the impound fees assessed under this Subsection (5) shall be deposited in the Department of Public Safety Restricted Account created in Section 53-3-106; and~~]

[~~(iii) the remainder shall be deposited in the General Fund.~~]

[~~(6) An impounded vehicle not claimed by the registered owner or the owner's agent within the time prescribed by Section 41-1a-1103 shall be sold in accordance with that section and the proceeds, if any, disposed of under Section 41-1a-1103. The date of impoundment is considered the date of seizure for computing the time period provided in Section 41-1a-1103.~~]

[~~(7) The registered owner of the vehicle upon the payment of all fees and charges incurred in the seizure and impoundment of the owner's vehicle has a cause of action for all the fees and charges, together with damages, court costs, and attorney fees, against the operator of the vehicle whose actions caused the impoundment.~~]

[~~(8) Liability may not be imposed upon any peace officer, the state, or any of its political subdivisions on account of the enforcement of this section.~~]

Section 3. Section 41-6-102 is amended to read:

41-6-102. Peace officer authorized to move vehicle.

(1) If a peace officer finds a vehicle in violation of Section 41-6-101, the officer may move the vehicle,

cause the vehicle to be moved, or require the driver or other person responsible for the vehicle to move the vehicle to a safe position off the highway.

(2) A peace officer may remove or cause to be removed to a place of safety any unattended vehicle left standing upon any highway in violation of this article or in a position or under circumstances that the vehicle obstructs the normal movement of traffic.

(3) [~~A~~] In accordance with Section 41-6-102.5, a peace officer may remove or cause to be removed to the nearest garage or other place of safety any vehicle found upon a highway when:

(a) the vehicle has been reported stolen or taken without the consent of its owner;

(b) the person responsible for the vehicle is unable to provide for its custody or removal; or

(c) the person operating the vehicle is arrested for an alleged offense for which the peace officer is required by law to take the person arrested before a proper magistrate without unnecessary delay.

[~~(4) (a) A peace officer who causes to be removed a vehicle under this section shall have the vehicle removed by a tow truck service that meets standards established:~~]

[~~(i) by the department under Subsection (b);~~]

[~~(ii) under Title 72, Chapter 9, Motor Carrier Safety Act.~~]

[~~(b) The department shall make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, setting the performance standards for towing companies to be used by the department.~~]

Section 4. Section 41-6-102.5 is enacted to read:

41-6-102.5. Removal and impound of vehicles -- Reporting and notification requirements.

(1) If a vehicle, vessel, or outboard motor is removed or impounded as provided under Sections 41-1a-1101, 41-6-44.30, 41-6-102, 41-6-116.10, 73-18-12.7, 73-18-12.8, or 73-18-20.1 by an order of a peace officer or by an order of a person acting on behalf of a law enforcement agency or highway authority as defined in Section 72-1-102, the removal or impoundment of the vehicle, vessel, or outboard motor shall be at the expense of the owner, to a state impound yard, or if none, to a garage, docking area, or other place of safety.

(2) The peace officer may move a vehicle, vessel, or outboard motor or cause it to be removed by a tow truck motor carrier that meets standards established:

(a) under Title 72, Chapter 9, Motor Carrier Safety Act; and

(b) by the department under Subsection (9).

(3) (a) Immediately after the removal of the vehicle, vessel, or outboard motor, a report of the removal shall be sent to the Motor Vehicle Division by:

(i) the peace officer or agency by whom the peace officer is employed; and

(ii) the tow truck operator or the tow truck motor carrier by whom the tow truck operator is employed.

(b) The report shall be in a form specified by the Motor Vehicle Division and shall include:

(i) the operator's name, if known;

(ii) a description of the vehicle, vessel, or outboard motor;

(iii) the vehicle identification number or vessel or outboard motor identification number;

(iv) the license number or other identification number issued by a state agency;

(v) the date, time, and place of impoundment;

(vi) the reason for removal or impoundment;

(vii) the name of the tow truck motor carrier who removed the vehicle, vessel, or outboard motor; and

(viii) the place where the vehicle, vessel, or outboard motor is stored.

(c) Until the tow truck operator or tow truck motor carrier reports the removal as required under Subsection (3), a tow truck motor carrier or impound yard may not:

(i) collect any fee associated with the removal; and

(ii) begin charging storage fees.

(4) (a) Upon receipt of the report, the Motor Vehicle Division shall give notice to the registered owner of the vehicle, vessel, or outboard motor and any lien holder in the manner prescribed by Section 41-1a-114.

(b) The notice shall:

(i) state the date, time, and place of removal, the name, if applicable, of the person operating the vehicle, vessel, or outboard motor at the time of removal, the reason for removal, and the place where the vehicle, vessel, or outboard motor is stored;

(ii) state that the registered owner is responsible for payment of towing, impound, and storage fees charged against the vehicle, vessel, or outboard motor; and

(iii) inform the registered owner of the vehicle, vessel, or outboard motor of the conditions that must be satisfied before the vehicle, vessel, or outboard motor is released.

(c) If the vehicle, vessel, or outboard motor is not registered in this state, the Motor Vehicle Division shall make a reasonable effort to notify the registered owner and any lien holder of the removal and the place where the vehicle, vessel, or outboard motor is stored.

(d) The Motor Vehicle Division shall forward a copy of the notice to the place where the vehicle, vessel, or outboard motor is stored.

(5) (a) The vehicle, vessel, or outboard motor shall be released after the registered owner, lien holder, or the owner's agent:

(i) makes a claim for release of the vehicle, vessel, or outboard motor at any office of the State Tax Commission;

(ii) presents identification sufficient to prove ownership of the impounded vehicle, vessel, or outboard motor;

(iii) completes the registration, if needed, and pays the appropriate fees;

(iv) pays an administrative impound fee of $200, if the vehicle was impounded under Section 41-6-44.30;

(v) pays an administrative impound fee of $25, if the vessel or outboard motor was impounded under Section 73-18-12.7; and

(vi) pays all towing and storage fees to the place where the vehicle, vessel, or outboard motor is stored.

(b) (i) Twenty-five dollars of the impound fees assessed under Subsection (5)(a)(iv) are dedicated credits to the Motor Vehicle Division;

(ii) $84 of the impound fees assessed under Subsection (5)(a)(iv) shall be deposited in the Department of Public Safety Restricted Account created in Section 53-3-106; and

(iii) the remainder of the impound fees assessed under Subsection (5)(a)(iv) shall be deposited in the General Fund.

(c) The revenue from the administrative impound fee assessed under Subsection (5)(a)(v) are dedicated credits to the Motor Vehicle Division.

(6) An impounded vehicle, vessel, or outboard motor not claimed by the registered owner or the owner's agent within the time prescribed by Section 41-1a-1103 shall be sold in accordance with that section and the proceeds, if any, shall be disposed of as provided in Section 41-1a-1104. The date of impoundment is considered the date of seizure for computing the time period provided in Section 41-1a-1103.

(7) The registered owner who pays all fees and charges incurred in the impoundment of the owner's vehicle, vessel, or outboard motor, has a cause of action for all the fees and charges, together with damages, court costs, and attorney fees, against the operator of the vehicle, vessel, or outboard motor whose actions caused the removal or impoundment.

(8) Towing, impound fees, and storage fees are a possessory lien on the vehicle, vessel, or outboard motor.

(9) The department shall make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, setting the performance standards for towing companies to be used by the department.

(10) (a) The Motor Vehicle Division may specify that a report required under Subsection (3) be submitted in electronic form utilizing a database for submission, storage, and retrieval of the information.

(b) Unless otherwise provided by statute, the Motor Vehicle Division or the administrator of the database may adopt a schedule of fees assessed for utilizing the database. The fees shall be reasonable and fair and shall reflect the cost of administering the database.

Section 5. Section 41-6-102.7 is enacted to read:

41-6-102.7. Removal of unattended vehicles prohibited without authorization -- Penalties.

(1) In cases not amounting to burglary or theft of a vehicle, a person may not remove an unattended vehicle without prior authorization of:

(a) a peace officer;

(b) a law enforcement agency;

(c) a highway authority, as defined under Section 72-1-102, having jurisdiction over the highway on which there is an unattended vehicle; or

(d) the owner or person in lawful possession or control of the real property.

(2) (a) An authorization from a person specified under Subsection (1)(a), (b), or (c) shall be in a form specified by the Motor Vehicle Division.

(b) The removal of the unattended vehicle shall comply with requirements of Section 41-6-102.5.

(3) The removal of the unattended vehicle authorized under Subsection (1)(d) shall comply with requirements of Section 72-9-603.

(4) A person who violates Subsections (1) or (3) is guilty of a class C misdemeanor.

Section 6. Section 41-6-116.10 is amended to read:

41-6-116.10. Abandoned vehicles -- Removal by peace officer -- Report -- Procedure if not reclaimed.

(1) As used in this section, "abandoned vehicle" means a vehicle that is left unattended:

(a) on a highway for a period in excess of 48 hours; or

(b) on any public or private property for a period in excess of seven days without express or implied consent of the owner or person in lawful possession or control of the property.

[~~(1)~~] (2) A person may not abandon a vehicle upon any highway.

[~~(2)~~] (3) A person may not abandon a vehicle upon any public or private property without the express or implied consent of the owner or person in lawful possession or control of the property.

[~~(3) (a)~~] (4) A peace officer who has reasonable grounds to believe that a vehicle has been

abandoned may remove the vehicle or cause it to be removed[~~, at the expense of the owner, to the nearest state impound yard or if none, to a garage or other place of safety~~] in accordance with Section 41-6-102.5.

[~~(b) The peace officer shall immediately send a written report of the removal to the Motor Vehicle Division. The report shall include a description of the vehicle, the date, time and place of removal, the grounds for removal, and the name of the garage or place where the vehicle is stored.~~]

[~~(c) Upon receipt of a report, the Motor Vehicle Division shall attempt to notify the registered owner of the vehicle or any lien holder giving the grounds for removal and the name of the garage or place where the vehicle is stored.~~]

[~~(d) If the vehicle is not registered in this state, the Motor Vehicle Division shall make a reasonable effort to notify the registered owner or any lien holder of the removal and the name of the garage or place where the vehicle is stored.~~]

[~~(e) The Motor Vehicle Division shall forward a copy of the notice to the owner or person in charge of the garage or place where the vehicle is stored.~~]

[~~(4) For the purposes of this section, a vehicle is presumed to be abandoned if it is left unattended:~~]

[~~(a) on a highway for a period in excess of 24 hours; or~~]

[~~(b) on any public or private property for a period in excess of seven days without express or implied consent of the owner or person in lawful possession or control of the property.~~]

(5) If the motor number, manufacturer's number or identification mark of the abandoned vehicle has been defaced, altered or obliterated, the vehicle may not be released or sold until the original motor number, manufacturer's number or identification mark has been replaced, or until a new number assigned by the Motor Vehicle Division has been stamped on the vehicle.

[~~(6) If the abandoned vehicle is not reclaimed by the registered owner or any lien holder within 30 days after actual notice or reasonable attempt to give notice to the registered owner or any lien holder, the provisions of Sections 41-1a-1009 and 41-1a-1102 shall apply, and the abandoned vehicle may be sold as provided in Section 41-1a-1301.~~]

Section 7. Section 53-1-106 is amended to read:

53-1-106. Department duties -- Powers.

(1) In addition to the responsibilities contained in this title, the department shall:

(a) make rules and perform the functions specified in Title 41, Chapter 6, Traffic Rules and Regulations, including:

(i) setting performance standards for towing companies to be used by the department, as required by Section [~~41-6-102~~] 41-6-102.5; and

(ii) advising the Department of Transportation regarding the safe design and operation of school buses, as required by Section 41-6-115;

(b) make rules to establish and clarify standards pertaining to the curriculum and teaching methods of a motor vehicle accident prevention course under Section 31A-19a-211;

(c) aid in enforcement efforts to combat drug trafficking using funds appropriated under Section 58-37-20;

(d) as part of the annual budget hearings, provide the Executive Offices, Criminal Justice, and Legislature Appropriations Subcommittee with a complete accounting of expenditures and revenues from the funds under Section 58-37-20;

(e) meet with the Department of Administrative Services to formulate contracts, establish priorities, and develop funding mechanisms for dispatch and telecommunications operations, as required by Section 63A-6-107;

(f) provide assistance to the Crime Victims' Reparations Board and Reparations Office in conducting research or monitoring victims' programs, as required by Section 63-25a-405;

(g) develop sexual assault exam protocol standards in conjunction with the Utah Hospital Association, as required by Section 63-25a-409; and

(h) engage in emergency planning activities, including preparation of policy and procedure and rulemaking necessary for implementation of the federal Emergency Planning and Community Right to Know Act of 1986, as required by Section 63-5-5.

(2) (a) The department may establish a schedule of fees as required or allowed in this title for services provided by the department.

(b) The fees shall be established in accordance with Section 63-38-3.2.

Section 8. Section 53-3-106 is amended to read:

53-3-106. Disposition of revenues under this chapter -- Restricted account created -- Uses as provided by appropriation -- Nonlapsing.

(1) There is created within the Transportation Fund a restricted account known as the "Department of Public Safety Restricted Account."

(2) The account consists of monies generated from the following revenue sources:

(a) all monies received under this chapter;

(b) administrative fees received according to the fee schedule authorized under this chapter and Section 63-38-3.2; and

(c) any appropriations made to the account by the Legislature.

(3) (a) The account shall earn interest.

(b) All interest earned on account monies shall be deposited in the account.

(4) The expenses of the department in carrying out this chapter shall be provided for by legislative appropriation from this account.

(5) The amount in excess of $35 of the fees collected under Subsection 53-3-105(29) shall be appropriated by the Legislature from this account to the department to implement the provisions of Section 53-1-117, except that of the amount in excess of $35, $30 shall be deposited in the State Laboratory Drug Testing restricted account created in Section 26-1-34.

(6) All monies received under [~~Section 41-6-44.30~~] Subsection 41-6-102.5(5)(b)(ii) shall be appropriated by the Legislature from this account to the department to implement the provisions of Section 53-1-117.

(7) Appropriations to the department from the account are nonlapsing.

Section 9. Section 72-9-601 is amended to read:

72-9-601. Tow truck motor carrier requirements -- Authorized towing certificates.

(1) In addition to the requirements of this chapter, a tow truck motor carrier shall:

[~~(1)~~] (a) ensure that all the motor carrier's tow truck drivers are properly:

[~~(a)~~] (i) trained to operate tow truck equipment; [~~and~~]

[~~(b)~~] (ii) licensed, as required under Title 53, Chapter 3, Uniform Driver License Act; and

(iii) complying with the requirements under Sections 41-6-102.5 and 72-9-603; and

[~~(2)~~] (b) obtain and display a current authorized towing certificate [~~of inspection~~] for the tow truck motor carrier, and each tow truck and driver, as required under Section 72-9-602.

(2) A tow truck motor carrier may only perform a towing service described in Section 41-6-102.5, 41-6-102.7, or 72-9-603, with a tow truck and driver that has a current authorized towing certificate under this part.

Section 10. Section 72-9-602 is amended to read:

72-9-602. Towing inspections, investigations, and certification -- Equipment requirements -- Consumer information.

(1) (a) The department shall [~~conduct inspections of~~] inspect, investigate, and certify tow truck motor carriers, tow trucks, and tow truck drivers to ensure compliance with this chapter and compliance with Sections 41-6-102.5 and 41-6-102.7.

(b) [~~Each~~] The inspection [~~of a tow truck~~], investigation, and certification shall be conducted prior to [~~the~~] any tow truck [~~beginning~~] operation and at least every two years thereafter.

(c) (i) The department shall issue [~~a~~] an authorized towing certificate [~~of inspection~~] for each tow truck motor carrier, tow truck, and driver that complies with this part.

(ii) The [~~inspection~~] certificate shall expire two years from the month of issuance.

(d) The department may charge a biennial fee established under Section 63-38-3.2 to cover the cost of the inspection, investigation, and certification required under this [~~section~~] part.

(2) The department shall make consumer protection information available to the public that may use a tow truck motor carrier.

Section 11. Section 72-9-603 is amended to read:

72-9-603. Towing notice requirements -- Cost responsibilities -- Abandoned vehicle title restrictions -- Rules for maximum rates and certification.

(1) [~~Unless a vehicle is impounded under Section 41-6-44.30, after performing a~~] Except for tow truck service that was ordered by a peace officer, or a person acting on behalf of a law enforcement agency, or a highway authority, as defined in Section 72-1-102, after performing a tow truck service that is being done without the vehicle, vessel, or outboard motor owner's knowledge, the [~~person operating the~~] tow truck operator or the tow truck motor carrier shall:

(a) [~~within one hour of~~] immediately upon arriving at the place of storage or impound of the vehicle, vessel, or outboard motor, contact the law enforcement agency having jurisdiction over the area where the vehicle, vessel, or outboard motor was picked up and notify the agency of the:

(i) location of the vehicle, vessel, or outboard motor;

(ii) date, time, and location from which the vehicle, vessel, or outboard motor was removed;

(iii) reasons for the removal of the vehicle, vessel, or outboard motor;

(iv) person who requested the removal of the vehicle, vessel, or outboard motor; and

(v) [~~vehicle's~~] vehicle, vessel, or outboard motor's description, including its identification number and license number or other identification number issued by a state agency; and

(b) within [~~five~~] two business days of performing the tow truck service, send a certified letter to the last known address of the registered owner of the vehicle, vessel, or outboard motor obtained from the Motor Vehicle Division or if the person has actual knowledge of the owner's address to the current address, notifying him of the:

(i) location of the vehicle, vessel, or outboard motor;

(ii) date, time, location from which the vehicle, vessel, or outboard motor was removed;

(iii) reasons for the removal of the vehicle, vessel, or outboard motor;

(iv) person who requested the removal of the vehicle, vessel, or outboard motor;

(v) [~~vehicle's~~] a description, including its identification number and license number or other identification number issued by a state agency; and

(vi) costs and procedures to retrieve the vehicle, vessel, or outboard motor.

(2) Until the tow truck operator or tow truck motor carrier reports the removal as required under Subsection (1)(a), a tow truck motor carrier or impound yard may not:

(i) collect any fee associated with the removal; and

(ii) begin charging storage fees.

[~~(2)~~] (3) The [~~registered~~] owner of a vehicle, vessel, or outboard motor lawfully removed is only responsible for paying:

(a) the towing[~~, impound,~~] and storage fees set in accordance with Subsection (7); and

(b) the administrative impound fee set in Section 41-6-102.5, if applicable.

[~~(3)~~] (4) [~~Towing, impound, and storage~~] The fees under Subsection (3) are a possessory lien on the vehicle, vessel, or outboard motor until paid.

[~~(4)~~] (5) A person may not request a transfer of title to an abandoned vehicle until at least 30 days after notice has been sent under Subsection (1)(b).

(6) A tow truck motor carrier or impound yard shall clearly and conspicuously post and disclose all its current fees and rates for towing and storage of a vehicle in accordance with rules established under Subsection (7).

[~~(5)~~] (7) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the Department of Transportation [~~may~~] shall:

(a) set maximum rates that:

[~~(a)~~] (i) tow truck motor carriers may charge for the towing of [~~vehicles~~] a vehicle, vessel, or outboard motor that are transported in response to:

[~~(i)~~] (A) a peace officer dispatch call;

[~~(ii)~~] (B) a motor vehicle division call; and

[~~(iii)~~] (C) any other call where the owner of the vehicle, vessel, or outboard motor has not consented to the removal [~~of his vehicle~~]; and

[~~(b)~~] (ii) impound yards may charge for the storage of [~~vehicles~~] a vehicle, vessel, or outboard motor stored as a result of one of the conditions listed under Subsection [~~(5)~~] (7)(a)[~~.~~];

(b) establish authorized towing certification requirements, not in conflict with federal law, related to incident safety, clean-up, and hazardous material handling; and

(c) specify the form and content of the posting and disclosure of fees and rates charged by a tow truck motor carrier or impound yard.

Section 12. Section 73-18-12.7 is amended to read:

73-18-12.7. Operating under the influence -- Seizure and impoundment of vessel.

(1) If a peace officer arrests or cites the operator of a vessel for violating Section 73-18-12.2 or a local ordinance similar to Section 73-18-12.2, which complies with Section 73-18-12.1, the peace officer shall seize and impound the vessel in accordance with Section 41-6-102.5, except as provided under Subsection (2). If necessary for transportation of the vessel for impoundment, the vessel's trailer may be used to transport the vessel.

(2) If a registered owner of the vessel, other than the driver, is present at the time of arrest, the peace officer may release the vessel to that registered owner, but only if:

(a) the registered owner:

(i) requests removal of the vessel from the scene;

(ii) presents to the peace officer sufficient identification to prove ownership of the vessel; and

(iii) would not, in the judgment of the peace officer, be in violation of Section 73-18-12.2 or a local ordinance adopted in compliance with Section 73-18-12.1, if permitted to operate the vessel; and

(b) the vessel is legally operable.

[~~(3) (a) Any peace officer who impounds a vessel under this section shall remove, or cause the vessel to be removed, to the nearest accessible docking area, public or private garage, state impound lot, or other approved storage facility that meets the standards set by rule by the Motor Vehicle Division of the State Tax Commission, or if there is none, another reasonably safe place. The standards set by the Motor Vehicle Division shall be fair and reasonable and shall be unrestrictive as to the number of docking or other impoundment areas per geographical area.~~]

[~~(b) The peace officer or agency by whom the peace officer is employed shall within 24 hours after the seizure notify the Motor Vehicle Division of the seizure and impoundment. The notice shall set forth:~~]

[~~(i) the operator's name;~~]

[~~(ii) a description of the vessel, its identification number, if any, and its assigned number;~~]

[~~(iii) the date, time, and place of impoundment;~~]

[~~(iv) the reason for impoundment; and~~]

[~~(v) the location of the dock or other place where the vessel is stored.~~]

[~~(4) Upon receipt of the notice, the Motor Vehicle Division shall give notice to the registered owner of the vessel in the same manner as prescribed for vehicles by Section 41-1a-114. The notice shall:~~]

[~~(a) set forth:~~]

[~~(i) the date, time, and place of impoundment;~~]

[~~(ii) the name of the person operating the vessel at the time of seizure;~~]

[~~(iii) the reason for seizure and impoundment; and~~]

[~~(iv) the location where the vessel is stored;~~]

[~~(b) inform the registered owner that he is responsible for payment of transportation charges, impound fees, and storage fees charged against the vessel; and~~]

[~~(c) inform the registered owner of the vessel of the conditions prescribed in Subsection (5) which must be satisfied before the vessel may be released.~~]

[~~(5) (a) The impounded vessel shall be released after the registered owner or the owner's agent:~~]

[~~(i) makes a claim for release of the vessel at any state office designated by the Motor Vehicle Division;~~]

[~~(ii) pays an impound fee of $25;~~]

[~~(iii) presents identification sufficient to prove ownership of the impounded vessel; and~~]

[~~(iv) pays all transportation, impound, and storage fees.~~]

[~~(b) The transportation and storage fees shall be paid to the docking area or other storage facility where the vessel is stored. All impound fees assessed under this subsection are dedicated revenue to the Motor Vehicle Division.~~]

[~~(6) (a) Any impounded vessel not claimed by the registered owner or the owner's agent within 30 days shall be sold in accordance with the procedures specified in Section 41-1a-1103 for the sale of impounded motor vehicles.~~]

[~~(b) The proceeds, if any, shall be disposed of in the manner specified in Section 41-1a-1104.~~]

[~~(c) The date of impoundment is considered the date of seizure for purposes of computing the time period.~~]

[~~(7)~~] (3) (a) Transportation and storage fees shall be established by the Motor Vehicle Division and shall be reviewed by the Motor Vehicle Division annually to ensure equity for vessel owners and transportation and storage operators.

(b) Transportation, impound fees, or storage fees are a lien on the vessel.

[~~(8) The registered owner of the vessel, upon the payment of all fees and charges incurred in the seizure and impoundment of the owner's vessel, has a cause of action for all the fees and charges, together with damages, court costs, and attorney fees, against the operator of the vessel whose actions caused the impoundment.~~]

[~~(9) Liability may not be imposed upon any peace officer, the state, or any of its political subdivisions on account of the enforcement of this section.~~]

Section 13. Section 73-18-12.8 is amended to read:

73-18-12.8. Operating under the influence -- Removal or impoundment of vehicle used to tow impounded vessel.

A vehicle used to tow a vessel which is impounded under this chapter may be removed under the provisions of Subsection 41-6-44.30 (2), but if no person is able to move the vehicle under that section, the vehicle may be removed and impounded under Section 41-6-102.5 if leaving it unattended is contrary to the safety of the public.

Section 14. Section 73-18-20.1 is amended to read:

73-18-20.1. Seizure of a vessel.

(1) A peace officer, without a warrant, may seize and take possession of a vessel:

(a) that is placed or being operated on the waters of this state with improper registration;

(b) that the peace officer has reason to believe has been stolen;

(c) on which any hull identification number or serial number for an engine or outboard motor has been defaced, altered, or obliterated;

(d) that has been abandoned on public land, highways, or waters of this state; or

(e) if the registration or title fees for the vessel or outboard motor have not been paid.

(2) If necessary for the transportation of a seized vessel, the vessel's trailer may be seized to transport and store the vessel.

(3) Any peace officer seizing or taking possession of a vessel under this section shall [~~immediately notify the Motor Vehicle Division of the State Tax Commission of the action and shall impound the vessel at a docking area, public or private garage, state impound lot, or other storage facility approved by the Motor Vehicle Division~~] comply with the provisions of Section 41-6-102.5.

Section 15. Section 73-18-20.2 is amended to read:

73-18-20.2. Release and sale of a seized vessel.

[~~(1) A vessel seized under Section 73-18-20.1 shall remain impounded until:~~]

[~~(a) the vessel's registration has been properly completed and the appropriate fees have been paid; or~~]

[~~(b) the ownership of the vessel is established to the satisfaction of the division or its authorized agent.~~]

[~~(2)~~] If the hull identification number or serial number for the engine or outboard motor of a vessel seized under Section 73-18-20.1 has been defaced, altered, or obliterated, the vessel may not be released until:

[~~(a)~~] (1) the original manufacturer's hull identification number or engine or outboard motor serial number has been replaced; or

[~~(b)~~] (2) a new number assigned by the division or its authorized agent has been provided and has been affixed to the vessel, engine, or outboard motor.

[~~(3) (a) Any seized vessel not claimed by the registered owner or the owner's agent within 30 days shall be sold and handled in accordance with the procedures specified in Sections 41-1a-1103 through 41-1a-1106 for the sale of impounded motor vehicles.~~]

[~~(b) The proceeds, if any, shall be disposed of in the same manner as under Section 41-1a-1104.~~]

[~~(c) Transportation, impound fees, or storage fees are a lien on the vessel.~~]

Section 16. Effective date.

This act takes effect on July 1, 2001.

CHAPTER 203
H. B. 90
Passed February 15, 2001
Approved March 16, 2001
Effective April 30, 2001

RESIDENTIAL FACILITIES FOR PERSONS WITH A DISABILITY

Sponsor: Kory M. Holdaway

This act modifies municipal and county provisions relating to residences for persons with a disability. The act modifies certain restrictions on municipal and county ordinances relating to residential facilities for persons with a disability and makes technical changes.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
10-9-605, as last amended by Chapters 21 and 140, Laws of Utah 1999
17-27-605, as last amended by Chapters 21 and 140, Laws of Utah 1999

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

Section 1. Section 10-9-605 is amended to read:

10-9-605. Residences for persons with a disability.

(1) As used in this section:

(a) "Disability" is defined in Section 57-21-2.

(b) "Residential facility for persons with a disability" means a residence:

(i) in which more than one person with a disability resides; and

(ii) (A) is licensed or certified by the Department of Human Services under Title 62A, Chapter 2, Licensure of Programs and Facilities; or

(B) is licensed or certified by the Department of Health under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

(2) Each municipality shall adopt an ordinance for residential facilities for persons with a disability. The ordinance:

(a) shall comply with Title 57, Chapter 21, Utah Fair Housing Act, and the federal Fair Housing Amendments Act of 1988, 42 U.S.C. Sec. 3601 et seq.;

(b) may require[~~, if consistent with Subsection (2)(a),~~] residential facilities for persons with a disability:

(i) if consistent with Subsection (2)(a), to be reasonably dispersed throughout the municipality; and

(ii) to obtain permits that verify compliance with the same building, safety, and health regulations as are applicable in the same zoning area to similar uses that are not residential facilities for persons with a disability; and

(c) shall, to the extent required by federal law, provide that a residential facility for persons with a disability[~~: (i)~~] is a permitted use in any zoning area where residential dwellings are allowed[~~; and~~].

[~~(ii) may only be required to obtain permits that verify compliance with the building, safety, and health regulations that are applicable to similar structures.~~]

(3) The responsibility to license programs or entities that operate facilities for persons with a disability, as well as to require and monitor the provision of adequate services to persons residing in those facilities, shall rest with:

(a) for programs or entities licensed or certified by the Department of Human Services, the Department of Human Services as provided in Title 62A, Chapter 5, Services to People with Disabilities; and

(b) for programs or entities licensed or certified by the Department of Health, the Department of Health under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

Section 2. Section 17-27-605 is amended to read:

17-27-605. Residences for persons with a disability.

(1) As used in this section:

(a) "Disability" is defined in Section 57-21-2.

(b) "Residential facility for persons with a disability" means a residence:

(i) in which more than one person with a disability resides; and

(ii) (A) is licensed or certified by the Department of Human Services under Title 62A, Chapter 2, Licensure of Programs and Facilities; or

(B) is licensed or certified by the Department of Health under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

(2) Each county shall adopt an ordinance for residential facilities for persons with a disability. The ordinance:

(a) shall comply with Title 57, Chapter 21, Utah Fair Housing Act, and the federal Fair Housing Amendments Act of 1988, 42 U.S.C. Sec. 3601 et seq.;

(b) may require[~~, if consistent with Subsection (2)(a),~~] residential facilities for persons with a disability:

(i) if consistent with Subsection (2)(a), to be reasonably dispersed throughout the county; and

(ii) to obtain permits that verify compliance with the same building, safety, and health regulations as are applicable in the same zoning area to similar uses that are not residential facilities for persons with a disability; and

(c) shall, to the extent required by federal law, provide that a residential facility for persons with a disability[~~: (i)~~] is a permitted use in any zoning area where residential dwellings are allowed[~~; and~~].

[~~(ii) may only be required to obtain permits that verify compliance with the building, safety, and health regulations that are applicable to similar structures.~~]

(3) The responsibility to license programs or entities that operate facilities for persons with a disability, as well as to require and monitor the provision of adequate services to persons residing in those facilities, shall rest with:

(a) for programs or entities licensed or certified by the Department of Human Services, the Department of Human Services as provided in Title 62A, Chapter 5, Services to People with Disabilities; and

(b) for programs or entities licensed or certified by the Department of Health, the Department of Health under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

CHAPTER 204
H. B. 105
Passed February 23, 2001
Approved March 16, 2001
Effective April 30, 2001
(Exception clause in Section 14)

LICENSURE OF ESTHETICIANS AND NAIL TECHNICIANS

Sponsor: Sheryl L. Allen

This act modifies the Cosmetologist/Barber Licensing Act by adding estheticians and nail technicians to the scope of the act. The act renames and amends the cosmetology/barbering licensing board. The act sets forth qualifications for licensure and provides exemptions from licensure. The act defines unpro fessional and unlawful conduct. The act creates the Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Education and Enforcement Fund. The act provides for citation authority. The act provides an effective date.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
58-11a-101, as enacted by Chapter 96, Laws of Utah 1996
58-11a-102, as enacted by Chapter 96, Laws of Utah 1996
58-11a-201, as enacted by Chapter 96, Laws of Utah 1996
58-11a-301, as enacted by Chapter 96, Laws of Utah 1996
58-11a-302, as enacted by Chapter 96, Laws of Utah 1996
58-11a-303, as enacted by Chapter 96, Laws of Utah 1996
58-11a-304, as last amended by Chapter 180, Laws of Utah 2000
58-11a-305, as enacted by Chapter 96, Laws of Utah 1996
58-11a-306, as enacted by Chapter 96, Laws of Utah 1996
58-11a-501, as enacted by Chapter 96, Laws of Utah 1996

ENACTS:
58-11a-103, Utah Code Annotated 1953
58-11a-502, Utah Code Annotated 1953
58-11a-503, Utah Code Annotated 1953

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

Section 1. Section 58-11a-101 is amended to read:

CHAPTER 11a. COSMETOLOGIST/BARBER, ESTHETICIAN, ELECTROLOGIST, AND NAIL TECHNICIAN LICENSING ACT

58-11a-101. Title.

This chapter is known as the "Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Licensing Act."

Section 2. Section 58-11a-102 is amended to read:

58-11a-102. Definitions.

(1) "Approved cosmetologist/barber apprenticeship" means an apprenticeship that meets the requirements of [~~Section~~] Subsection 58-11a-306(1) and the requirements established by rule by the division in collaboration with the board in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(2) "Approved esthetician apprenticeship" means an apprenticeship that meets the requirements of Subsection 58-11a-306(2) and the requirements established by rule by the division in collaboration with the board in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(3) "Approved master esthetician apprenticeship" means an apprenticeship that meets the requirements of Subsection 58-11a-306(3) and the requirements established by rule by the division in collaboration with the board in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(4) "Approved nail technician apprenticeship" means an apprenticeship that meets the requirements of Subsection 58-11a-306(4) and the requirements established by rule by the division in collaboration with the board in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

[~~(2)~~] (5) "Board" means the Cosmetology/Barbering, Esthetics, Electrology, and Nail Technology Licensing Board created in Section 58-11a-201.

[~~(3)~~] (6) "Cosmetologist/barber" means a person who is licensed under this chapter to engage in the practice of cosmetology/barbering.

[~~(4) "Cosmetologist/barber apprentice" means a person who is licensed under this chapter to engage in the practice of cosmetology/barbering in an approved cosmetologist/barber apprenticeship.~~]

[~~(5)~~] (7) "Cosmetologist/barber instructor" means a cosmetologist/barber who is licensed under this chapter to teach cosmetology/barbering at a licensed cosmetology/barber school.

[~~(6) "Cosmetology/barber shop" means a place, shop, or establishment in which cosmetology, barbering, or both, are practiced.~~]

[~~(7)~~] (8) "Direct supervision" means that the supervisor of [~~the cosmetology/barber~~] an apprentice or the instructor of a [~~cosmetology/barber~~] student is immediately available for consultation, advice, instruction, and evaluation.

[~~(8)~~] (9) "Electrologist" means a person who is licensed under this chapter to engage in the practice of electrology.

(10) "Electrologist instructor" means an electrologist who is licensed under this chapter to teach electrology at a licensed electrology school.

(11) "Esthetician" means a person who is licensed under this chapter to engage in the practice of esthetics.

(12) "Esthetician instructor" means a master esthetician who is licensed under this chapter to teach the practice of esthetics and the practice of master-level esthetics at a licensed esthetics school.

(13) "Fund" means the Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Education and Enforcement Fund created in Section 58-11a-103.

[~~(9)~~] (14) "Licensed cosmetology/barber school" means a cosmetology/barber school licensed under this chapter.

(15) "Licensed electrology school" means an electrology school licensed under this chapter.

(16) "Licensed esthetics school" means an esthetics school licensed under this chapter.

(17) "Licensed nail technology school" means a nail technology school licensed under this chapter.

(18) "Master esthetician" means an individual who is licensed under this chapter to engage in the practice of master-level esthetics.

(19) "Nail technician" means an individual who is licensed under this chapter to engage in the practice of nail technology.

(20) "Nail technician instructor" means a nail technician licensed under this chapter to teach the practice of nail technology in a licensed nail technology school.

[~~(10)~~] (21) (a) "Practice of cosmetology/barbering" means:

[~~(a)~~] (i) styling, arranging, dressing, curling, waving, permanent waving, cleansing, singeing, bleaching, dyeing, tinting, coloring, or similarly treating the hair of the head of a person;

[~~(b)~~] (ii) cutting, clipping, or trimming the hair by the use of scissors, shears, clippers, or other appliances;

[~~(c)~~] (iii) arching eyebrows, or tinting eyebrows or eyelashes, or both;

[~~(d)~~] (iv) removing hair from the face, neck, shoulders, arms, back, bikini line, or legs of a person by the use of depilatories, waxing, or shaving equipment;

[~~(e)~~] (v) cutting, curling, styling, fitting, measuring, or forming caps for wigs or hairpieces or both on the human head; or

[~~(f)~~] (vi) practicing hair weaving or hair fusing or servicing previously medically implanted hair.

(b) The term "practice of cosmetology/barbering" includes:

(i) the practice of esthetics; and

(ii) the practice of nail technology.

[~~(11)~~] (22) "Practice of cosmetology/barbering instruction" means instructing cosmetology/barbering in a licensed cosmetology/barber school.

[~~(12)~~] (23) "Practice of electrology" means the removal of superfluous hair from the body of a person by the use of electricity.

(24) "Practice of electrology instruction" means instructing electrology in a licensed electrology school.

(25) "Practice of esthetics" means any one of the following skin care procedures done on the head, face, neck, torso, abdomen, back, arms, hands, legs, feet, eyebrows, or eyelashes for cosmetic purposes and not for the treatment of medical, physical, or mental ailments:

(a) cleansing, stimulating, manipulating, exercising, applying oils, antiseptics, clays, or masks, extraction, depilatories, waxes, tweezing, natural nail manicures or pedicures, or callous removal by buffing or filing;

(b) manual lymphatic massage of the face and neck;

(c) limited chemical exfoliation as defined by rule;

(d) removing superfluous hair by means other than electrolysis or laser procedures; or

(e) other esthetic preparations or procedures with the use of the hands, a high-frequency or galvanic electrical apparatus, or a heat lamp for beautifying or similar work performed on the body for cosmetic purposes and not for the treatment of medical, physical, or mental ailments.

(26) "Practice of esthetics instruction" means instructing esthetics or master-level esthetics in a licensed esthetics school.

(27) (a) "Practice of master-level esthetics" means:

(i) any of the following when done for cosmetic purposes and not for the treatment of medical, physical, or mental ailments:

(A) body wraps as defined by rule;

(B) hydrotherapy as defined by rule;

(C) chemical exfoliation as defined by rule;

(D) advanced pedicures as defined by rule;

(E) sanding, including microdermabrasion; or

(F) other esthetic preparations or procedures with the use of:

(I) the hands; or

(II) a mechanical or electrical apparatus which is approved for use by division rule for beautifying or similar work performed on the body for cosmetic purposes and not for the treatment of a medical, physical, or mental ailment; and

(ii) lymphatic massage by manual or other means.

(b) Notwithstanding the provisions of Subsection (27)(a), a master-level esthetician may perform procedures listed in Subsection (27)(a)(i) for noncosmetic purposes if done under the supervision of a licensed health care practitioner acting within the scope of his or her license.

(c) The term "practice of master-level esthetics" includes the practice of esthetics.

(28) "Practice of nail technology" means to cut, clean, manicure, shape, massage, or enhance the appearance of the nails of the hands or feet of an individual including the application and removal of sculptured or artificial nails.

(29) "Practice of nail technology instruction" means instructing nail technology in a licensed nail technician school.

[~~(13)~~] (30) "Recognized cosmetology/barber school" means a cosmetology/barber school located in another state, whose students, upon graduation, are recognized as having completed the educational requirements for licensure in that state.

[~~(14)~~] (31) "Recognized electrology school" means an electrology school[~~: (a) located in this state whose curriculum consists of 500 hours of instruction approved by rule; or (b)~~] located in another state[~~: (i) whose curriculum consists of 500 hours of instruction; and (ii)~~], whose students, upon graduation, are recognized as having completed the educational requirements for licensure in that state.

(32) "Recognized esthetics school" means an esthetics school located in another state, whose students, upon graduation, are recognized as having completed the educational requirements for licensure in that state.

(33) "Recognized nail technology school" means a nail technology school in another state, whose students, upon graduation, are recognized as having completed the educational requirements for licensure in that state.

(34) "Salon" means a place, shop, or establishment in which cosmetology/barbering, esthetics, electrology, or nail technology is practiced.

[~~(15)~~] (35) "Unlawful conduct" is as defined in [~~Section~~] Sections 58-1-501 and 58-11a-502.

[~~(16)~~] (36) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-11a-501 and as may be further defined by rule by the division in collaboration with the board in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

Section 3. Section 58-11a-103 is enacted to read:

58-11a-103. Education and enforcement fund.

(1) There is created a special revenue fund known as the "Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Education and Enforcement Fund."

(2) The fund consists of monies from administrative penalties collected pursuant to this chapter.

(3) The fund shall earn interest and all interest earned on fund monies shall be deposited into the fund.

(4) The director may, with concurrence of the board, make distributions from the fund for the following purposes:

(a) education and training of licensees under this chapter;

(b) education and training of the public or other interested persons in matters concerning the laws governing the practices licensed under this chapter; and

(c) enforcement of this chapter by:

(i) investigating unprofessional or unlawful conduct; and

(ii) providing legal representation to the division when the division takes legal action against a person engaging in unprofessional or unlawful conduct.

(5) The division shall report annually to the appropriate appropriations subcommittee of the Legislature concerning the fund.

Section 4. Section 58-11a-201 is amended to read:

58-11a-201. Board.

(1) There is created the Cosmetology/Barbering, Esthetics, Electrology, and Nail Technology Licensing Board consisting of nine members as follows:

(a) [~~three cosmetologists/barbers~~] one cosmetologist/barber;

(b) (i) one cosmetologist/barber instructor; or

[~~(c)~~] (ii) one representative of a licensed cosmetology/barber school;

(c) one master esthetician;

(d) (i) one esthetician instructor; or

(ii) one representative of a licensed esthetics school;

(e) one nail technician;

(f) (i) one nail technician instructor; or

(ii) one representative of a licensed nail technician school;

[~~(d)~~] (g) one electrologist; and

[~~(e) one member~~] (h) two members from the general public.

(2) (a) The board shall be appointed and serve in accordance with Section 58-1-201.

(b) (i) At least one of the members of the board appointed under Subsections (1)(b), (d), and (f) shall be an instructor at or a representative of a public school.

(ii) At least one of the members of the board appointed under Subsections (1)(b), (d), and (f) shall be an instructor at or a representative of a private school.

(3) The duties and responsibilities of the board are in accordance with Sections 58-1-202 and 58-1-203. In addition, the board shall designate one of its members on a permanent or rotating basis to:

(a) assist the division in reviewing complaints concerning the unlawful or unprofessional conduct of a licensee; and

(b) advise the division in its investigation of these complaints.

(4) A board member who has, under Subsection (3), reviewed a complaint or advised in its investigation may be disqualified from participating with the board when the board serves as a presiding officer in an adjudicative proceeding concerning the complaint.

Section 5. Section 58-11a-301 is amended to read:

58-11a-301. Licensure required -- License classifications.

(1) Except as specifically provided in Section 58-1-307 or [~~58-11a-305~~] 58-11a-304, a license is required to:

(a) engage in the practice of:

[~~(a)~~] (i) cosmetology/ barbering;

[~~(b)~~] (ii) cosmetology/barbering instruction; or

[~~(c)~~] (iii) electrology[~~.~~]; or

(b) operate a cosmetology/barbering school.

(2) Beginning October 1, 2001, except as specifically provided in Section 58-1-307 or 58-11a-304, a license is required to:

(a) engage in the practice of:

(i) electrology instruction;

(ii) esthetics;

(iii) master-level esthetics;

(iv) esthetics instruction;

(v) nail technology; or

(vi) nail technology instruction; or

(b) operate:

(i) an electrology school;

(ii) an esthetics school; or

(iii) a nail technology school.

[~~(2)~~] (3) The division shall issue to a person who qualifies under this chapter a license in the following classifications:

(a) cosmetologist/barber;

[~~(b) cosmetologist/barber apprentice;~~]

[~~(c)~~] (b) cosmetologist/barber instructor;

[~~(c)~~] (c) cosmetology/barber school[~~.~~];

(d) electrologist; [~~and~~]

(e) electrologist instructor;

(f) electrology school;

(g) esthetician;

(h) master esthetician;

(i) esthetician instructor;

(j) esthetics school;

(k) nail technology;

(l) nail technology instructor; and

(m) nail technology school.

Section 6. Section 58-11a-302 is amended to read:

58-11a-302. Qualifications for licensure.

(1) Each applicant for licensure as a cosmetologist/barber shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63-38-3.2;

(c) be of good moral character;

(d) provide satisfactory documentation of:

(i) graduation from a licensed or recognized cosmetology/barber school whose curriculum consists of a minimum of 2,000 hours of instruction or the equivalent number of credit hours over a period of not less than 12 months;

(ii) (A) having graduated from a recognized cosmetology/barber school whose curriculum consists of less than 2,000 hours of instruction or the equivalent number of credit hours; and

(B) having practiced as a licensed cosmetologist/barber for a period of not less than 4,000 hours; or

(iii) having completed an approved cosmetology/barber apprenticeship; and

(e) meet the examination requirement established by rule.

[~~(2) Each applicant for licensure as a cosmetologist/barber apprentice shall:~~]

[~~(a) submit an application in a form prescribed by the division;~~]

[~~(b) pay a fee determined by the department under Section 63-38-3.2;~~]

[~~(c) be of good moral character;~~]

[~~(d) meet the examination requirement established by rule; and~~]

[~~(e) provide satisfactory documentation of having enrolled in an approved cosmetology/barber apprenticeship.~~]

[~~(3)~~] (2) Each applicant for licensure as a cosmetologist/barber instructor shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63-38-3.2;

(c) provide satisfactory documentation that the applicant is currently licensed as a cosmetologist/barber;

(d) be of good moral character;

(e) provide satisfactory documentation of completion of:

(i) an instructor training program conducted by a cosmetology/barber school consisting of a minimum of 1,000 hours or the equivalent number of credit hours; or

(ii) a minimum of 4,000 hours of experience as a cosmetologist/barber; and

(f) meet the examination requirement established by rule.

(3) Each applicant for licensure as a cosmetologist/barber school shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63-38-3.2; and

(c) provide satisfactory documentation:

(i) of appropriate registration with the Division of Corporations and Commercial Code;

(ii) of business licensure from the city, town, or county in which the school is located;

(iii) that the applicant's physical facilities comply with the requirements established by rule; and

(iv) that the applicant meets the standards for cosmetology/barber schools, including staff and accreditation requirements, established by rule.

(4) Each applicant for licensure as an electrologist shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63-38-3.2;

(c) be of good moral character;

(d) provide satisfactory documentation of having graduated from a licensed or recognized electrology school after completing a curriculum of 500 hours of instruction [~~approved by rule~~] or the equivalent number of credit hours; and

(e) meet the examination requirement established by rule.

[~~(5) Each applicant for licensure as a cosmetologist/barber school shall:~~]

[~~(a) submit an application in a form prescribed by the division;~~]

[~~(b) pay a fee determined by the department under Section 63-38-3.2; and~~]

[~~(c) provide satisfactory documentation:~~]

[~~(i) of appropriate registration with the Division of Corporations and Commercial Code;~~]

[~~(ii) of business licensure from the city, town, or county in which the school is located;~~]

[~~(iii) that the applicant's physical facilities comply with the requirements established by rule; and~~]

[~~(iv) that the applicant meets the standards for cosmetology/barber schools, including staff and accreditation requirements, established by rule.~~]

(5) Each applicant for licensure as an electrologist instructor shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63-38-3.2;

(c) provide satisfactory documentation that the applicant is currently licensed as an electrologist;

(d) be of good moral character;

(e) provide satisfactory documentation of completion of:

(i) an instructor training program conducted by an electrology school consisting of a minimum of 175 hours or the equivalent number of credit hours; or

(ii) a minimum of 1,000 hours of experience as an electrologist; and

(f) meet the examination requirement established by rule.

(6) Each applicant for licensure as an electrologist school shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63-38-3.2; and

(c) provide satisfactory documentation:

(i) of appropriate registration with the Division of Corporations and Commercial Code;

(ii) of business licensure from the city, town, or county in which the school is located;

(iii) that the applicant's facilities comply with the requirements established by rule; and

(iv) that the applicant meets the standards for electrologist schools, including staff, curriculum,

and accreditation requirements, established by rule.

(7) Each applicant for licensure as an esthetician shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63-38-3.2;

(c) be of good moral character; and

(d) provide satisfactory documentation of one of the following:

(i) (A) graduation from a licensed or recognized esthetic school whose curriculum consists of not less than 15 weeks of esthetic instruction with a minimum of 600 hours or the equivalent number of credit hours; and

(B) having met the examination requirement established by division rule;

(ii) (A) completion of an approved esthetician apprenticeship; and

(B) having met the examination requirement established by division rule;

(iii) being engaged in the practice of esthetics prior to January 1, 2001, with a business license issued by the city, town, or county where the applicant was practicing esthetics;

(iv) being engaged in the practice of esthetics prior to January 1, 2001, as an employee of an employer who meets the requirements of Subsection (7)(d)(iii); or

(v) having met the examination requirement established by division rule prior to December 31, 2001.

(8) Each applicant for licensure as a master esthetician shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63-38-3.2;

(c) be of good moral character; and

(d) provide satisfactory documentation of one of the following:

(i) (A) completion of 1,200 hours of training or the equivalent number of credit hours, including 200 hours of training or the equivalent number of credit hours in lymphatic massage, at a licensed or recognized esthetics school; and

(B) having met the examination requirement established by division rule;

(ii) (A) completion of an approved master esthetician apprenticeship; and

(B) having met the examination requirement established by division rule;

(iii) being engaged in the practice of master-level esthetics prior to January 1, 2001, with a business license issued by the city, town, or county where the applicant was practicing esthetics;

(iv) being engaged in the practice of master-level esthetics prior to January 1, 2001, as an employee of an employer who meets the requirements of Subsection (8)(d)(iii); or

(v) having met the examination requirement established by division rule prior to December 31, 2001.

(9) Each applicant for licensure as an esthetician instructor shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63-38-3.2;

(c) provide satisfactory documentation that the applicant is currently licensed as a master esthetician;

(d) be of good moral character;

(e) provide satisfactory documentation of completion of:

(i) an instructor training program conducted by a licensed or recognized esthetics school consisting of a minimum of 300 hours or the equivalent number of credit hours; or

(ii) a minimum of 1,000 hours of experience in esthetics; and

(f) meet the examination requirement established by rule.

(10) Each applicant for licensure as an esthetics school shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63-38-3.2; and

(c) provide satisfactory documentation:

(i) of appropriate registration with the Division of Corporations and Commercial Code;

(ii) of business licensure from the city, town, or county in which the school is located;

(iii) that the applicant's physical facilities comply with the requirements established by rule; and

(iv) that the applicant meets the standards for esthetics schools, including staff, curriculum, and accreditation requirements, established by division rule made in collaboration with the board.

(11) Each applicant for licensure as a nail technician shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63-38-3.2;

(c) be of good moral character; and

(d) provide satisfactory documentation of one of the following:

(i) (A) graduation from a licensed or recognized nail technology school whose curriculum consists of not less than 200 hours or the equivalent number of credit hours of not more than eight hours a day and six days a week during the program; and

(B) having met the examination requirement established by division rule;

(ii) (A) having completed an approved nail technician apprenticeship; and

(B) having met the examination requirement established by division rule;

(iii) being engaged in the practice of nail technology prior to January 1, 2001, with a business license issued by the city, town, or county where the applicant was practicing nail technology;

(iv) being engaged in the practice of nail technology prior to January 1, 2001, as an employee of an employer who meets the requirements of Subsection (11)(d)(iii); or

(v) having met the examination requirement established by division rule prior to December 31, 2001.

(12) Each applicant for licensure as a nail technician instructor shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63-38-3.2;

(c) provide satisfactory documentation that the applicant is currently licensed as a nail technician;

(d) be of good moral character;

(e) provide satisfactory documentation of completion of:

(i) an instructor training program conducted by a licensed or recognized nail technology school consisting of a minimum of 100 hours or the equivalent number of credit hours; or

(ii) a minimum of 400 hours of experience in nail technology; and

(f) meet the examination requirement established by rule.

(13) Each applicant for licensure as a nail technology school shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63-38-3.2; and

(c) provide satisfactory documentation:

(i) of appropriate registration with the Division of Corporations and Commercial Code;

(ii) of business licensure from the city, town, or county in which the school is located;

(iii) that the applicant's facilities comply with the requirements established by rule; and

(iv) that the applicant meets the standards for nail technology schools, including staff, curriculum, and accreditation requirements, established by rule.

(14) Each applicant for licensure under this chapter whose education in the field for which a license is sought was completed at a foreign school may satisfy the educational requirement for licensure by demonstrating, to the satisfaction of the division, the educational equivalency of the foreign school education with a licensed school under this chapter.

Section 7. Section 58-11a-303 is amended to read:

58-11a-303. Terms of license -- Expiration -- Renewal.

(1) (a) The division shall issue each license under this chapter in accordance with a two-year renewal cycle established by rule, except that [~~a cosmetology/barber~~] an instructor license is a one-time certificate and does not expire unless the licensee fails to [~~maintain a~~] keep current [~~cosmetology/barber~~] the license that qualified the licensee to be an instructor under Section 58-11a-302.

(b) The division may by rule extend or shorten a renewal period by as much as one year to stagger the renewal cycles it administers.

(2) At the time of renewal, a [~~cosmetology/barber~~] licensed school shall[~~: (a)~~] show satisfactory evidence [~~of accreditation with the National Accrediting Commission of Cosmetology Arts and Sciences or other accrediting commissions recognized by the State Board of Regents for postsecondary schools; and~~] that the school meets the standards for that type of school, including staff, curriculum, and accreditation requirements, established by rule.

[~~(b) provide satisfactory documentation that the applicant meets the standards for cosmetology/barber schools established by rule.~~]

(3) Each license expires on the expiration date shown on the license unless the licensee renews it in accordance with Section 58-1-308.

Section 8. Section 58-11a-304 is amended to read:

58-11a-304. Exemptions from licensure.

In addition to the exemptions from licensure in Section 58-1-307, the following persons may engage in the practice of cosmetology/barbering, esthetics, master-level esthetics, electrology, or nail technology without being licensed under this chapter:

(1) persons licensed under the laws of this state to engage in the practice of medicine, surgery, osteopathy, or chiropractic when engaged in the practice of the profession for which they are licensed;

(2) commissioned physicians and surgeons serving in the armed forces of the United States or another federal agency;

(3) registered nurses, undertakers, and morticians licensed under the laws of this state when engaged in the practice of the profession for which they are licensed;

(4) persons who visit the state to engage in instructional seminars, advanced classes, trade shows, or competitions of a limited duration;

(5) persons who engage in the practice of cosmetology/barbering, esthetics, master-level esthetics, electrology, or nail technology without compensation;

(6) persons instructing adult education classes and other educational programs directed toward persons who are not licensed [~~in cosmetology/barbering~~] under this chapter and that are not intended to train persons to become licensed [~~to engage in cosmetology/barbering~~] under this chapter, provided:

[~~(a) each instructor is licensed as a cosmetologist/barber; and~~]

[~~(b)~~] (a) attendees receive no credit toward the educational requirement for licensure under this chapter; and

(b) (i) the instructor is properly licensed; or

(ii) the instructor receives no compensation;

(7) persons instructing in workshops, seminars, training meetings, and other educational programs whose purpose is to provide continuing professional development to licensed cosmetologist/barbers, estheticians, master estheticians, nail technicians, or electrologists; [~~and~~]

(8) persons currently enrolled in a licensed cosmetology/barber school [~~may participate~~] when participating in an on the job training internship under the direct supervision of a licensed cosmetologist/barber upon completion of a basic program under the standards established by rule by the division in collaboration with the board[~~.~~];

(9) persons enrolled in an approved apprenticeship pursuant to Section 58-11a-306; and

(10) employees of a company which is primarily engaged in the business of selling products used in the practice of cosmetology/barbering, esthetics, master-level esthetics, electrology, or nail technology when demonstrating the company's products to potential customers.

Section 9. Section 58-11a-305 is amended to read:

58-11a-305. Requirement to display license.

Each licensee under this chapter shall prominently display the licensee's license at the location where the licensee [~~is engaged~~] engages in the practice [~~of cosmetology/barbering, electrology, or cosmetology/barbering instruction~~] for which that license is issued under this chapter.

Section 10. Section 58-11a-306 is amended to read:

58-11a-306. Apprenticeship.

[~~A~~] (1) An approved cosmetologist/barber apprenticeship shall:

[~~(1)~~] (a) consist of not less than 2,500 hours of training in not less than 15 months; and

[~~(2)~~] (b) be conducted by a supervisor who:

[~~(a)~~] (i) is licensed under this chapter as a cosmetologist/barber instructor; and

[~~(b)~~] (ii) provides direct supervision of the cosmetologist/barber apprentice during the apprenticeship program.

(2) An approved esthetician apprenticeship shall:

(a) consist of not less than 800 hours of training in not less than nine months; and

(b) be conducted by a supervisor who:

(i) is licensed under this chapter as an esthetician instructor; and

(ii) provides direct supervision of the esthetician apprentice during the apprenticeship program.

(3) An approved master esthetician apprenticeship shall:

(a) consist of not less than 1,500 hours of training in not less than 18 months; and

(b) be conducted by a supervisor who:

(i) is licensed under this chapter as a master-level esthetician instructor; and

(ii) provides direct supervision of the master esthetician apprentice during the apprenticeship program.

(4) An approved nail technician apprenticeship shall:

(a) consist of not less than 250 hours of training in not less than six months; and

(b) be conducted by a supervisor who:

(i) is licensed under this chapter as a nail technician instructor; and

(ii) provides direct supervision of the nail technician apprentice during the apprenticeship program.

Section 11. Section 58-11a-501 is amended to read:

58-11a-501. Unprofessional conduct.

Unprofessional conduct includes:

(1) failing as a [~~cosmetology/barber~~] licensed school to obtain or maintain accreditation [~~as a cosmetology/barber school~~] as required by rule;

(2) failing as a [~~cosmetology/barber~~] licensed school to comply with the standards of accreditation applicable to [~~cosmetology/barber~~] such schools;

(3) failing as a [~~cosmetology/barber~~] licensed school to provide adequate instruction to enrolled students;

(4) failing as [~~a cosmetology/barber~~] an apprentice supervisor to provide direct supervision to the apprentice;

(5) failing as [~~a cosmetology/barber~~] an instructor to provide direct supervision to [~~cosmetology/barber or cosmetology/barber instructor~~] students under their instruction;

[~~(6) failing as a cosmetology/barber apprentice or supervisor to comply with the apprentice's or supervisor's requirements under an approved apprenticeship program;~~]

(6) failing as an apprentice supervisor to comply with division rules relating to apprenticeship programs under this chapter;

(7) keeping a [~~shop~~] salon or school, its furnishing, tools, utensils, linen, or appliances in an unsanitary condition;

(8) failing to comply with Title 26, Utah Health Code; [~~and~~]

(9) failing to display licenses or certificates as required under Section 58-11a-305[~~.~~];

(10) failing to comply with physical facility requirements established by rule;

(11) failing to maintain mechanical or electrical equipment in safe operating condition;

(12) failing to adequately monitor patrons using steam rooms, dry heat rooms, baths, showers, or saunas;

(13) prescribing or administering prescription drugs;

(14) failing to comply with all applicable state and local health or sanitation laws;

(15) engaging in any act or practice in a professional capacity that is outside the applicable scope of practice;

(16) engaging in any act or practice in a professional capacity which the licensee is not competent to perform through education or training;

(17) in connection with the use of a chemical exfoliant, unless under the supervision of a licensed health care practitioner acting within the scope of his or her license:

(a) using any acid, concentration of an acid, or combination of treatments which violates the standards established by rule;

(b) removing any layer of skin deeper than the stratum corneum of the epidermis; or

(c) using an exfoliant that contains phenol, TCA acid, or BCA acid;

(18) in connection with the sanding of the skin, unless under the supervision of a licensed health care practitioner acting within the scope of his or her license, removing any layer of skin deeper than the stratum corneum of the epidermis; or

(19) using as a cosmetologist/barber, esthetician, master esthetician, or nail technician any laser procedure or intense, pulsed light source.

Section 12. Section 58-11a-502 is enacted to read:

58-11a-502. Unlawful conduct.

Unlawful conduct includes:

(1) practicing or engaging in, or attempting to practice or engage in activity for which a license is required under this chapter unless:

(a) the person holds the appropriate license under this chapter; or

(b) an exemption in Section 58-1-307 or 58-11a-304 applies;

(2) knowingly employing any other person to engage in or practice or attempt to engage in or practice any occupation or profession licensed under this chapter if the employee is not licensed to do so under this chapter or exempt from licensure; and

(3) touching, or applying an instrument or device to the following areas of a client's body:

(a) the genitals or the anus; or

(b) the breast of a female patron, except in cases in which the female patron states to a licensee that the patron requests breast skin procedures and signs a written consent form, which must also include the signature of a parent or legal guardian if the patron is a minor, authorizing the licensee to perform breast skin procedures.

Section 13. Section 58-11a-503 is enacted to read:

58-11a-503. Penalties.

(1) Unless Subsection (2) applies, an individual who commits an act of unlawful conduct under Section 58-11a-502 or who fails to comply with a citation issued under this section after it is final is guilty of a class A misdemeanor.

(2) Sexual conduct that violates Section 58-11a-502 and Title 76, Criminal Code, shall be subject to the applicable penalties in Title 76.

(3) Grounds for immediate suspension of a licensee's license by the division include the issuance of a citation for violation of Subsection 58-11a-502(1) or (2).

(4) (a) If upon inspection or investigation, the division concludes that a person has violated the provisions of Subsection 58-11a-502(1) or (2) or any rule or order issued with respect to Subsection 58-11a-502(1) or (2), and that disciplinary action is appropriate, the director or his designee from within the division shall promptly issue a citation to the person according to this chapter and any pertinent rules, attempt to negotiate a stipulated settlement, or notify the person to appear before an adjudicative proceeding conducted under Title 63, Chapter 46b, Administrative Procedures Act.

(i) Any person who is in violation of the provisions of Subsection 58-11a-502(1) or (2), as evidenced by

an uncontested citation, a stipulated settlement, or by a finding of violation in an adjudicative proceeding, may be assessed a fine pursuant to this Subsection (4) and may, in addition to or in lieu of, be ordered to cease and desist from violating Subsection 58-11a-502(1) or (2).

(ii) Except for a cease and desist order, the licensure sanctions cited in Section 58-11a-401 may not be assessed through a citation.

(b) Each citation shall be in writing and describe with particularity the nature of the violation, including a reference to the provision of the chapter, rule, or order alleged to have been violated. The citation shall clearly state that the recipient must notify the division in writing within 20 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing conducted under Title 63, Chapter 46b, Administrative Procedures Act. The citation shall clearly explain the consequences of failure to timely contest the citation or to make payment of any fines assessed by the citation within the time specified in the citation.

(c) Each citation issued under this section, or a copy of each citation, may be served upon any person upon whom a summons may be served in accordance with the Utah Rules of Civil Procedure and may be made personally or upon his agent by a division investigator or by any person specially designated by the director or by mail.

(d) If within 20 calendar days from the service of a citation, the person to whom the citation was issued fails to request a hearing to contest the citation, the citation becomes the final order of the division and is not subject to further agency review. The period to contest a citation may be extended by the division for cause.

(e) The division may refuse to issue or renew, suspend, revoke, or place on probation the license of a licensee who fails to comply with a citation after it becomes final.

(f) The failure of an applicant for licensure to comply with a citation after it becomes final is a ground for denial of license.

(g) No citation may be issued under this section after the expiration of six months following the occurrence of any violation.

(h) Fines shall be assessed by the director or his designee according to the following:

(i) for a first offense handled pursuant to Subsection (4)(a), a fine of up to $1,000;

(ii) for a second offense handled pursuant to Subsection (4)(a), a fine of up to $2,000; and

(iii) for any subsequent offense handled pursuant to Subsection (4)(a), a fine of up to $2,000 for each day of continued offense.

(i) (i) For purposes of issuing a final order under this section and assessing a fine under Subsection (4)(h), an offense constitutes a second or subsequent offense if:

(A) the division previously issued a final order determining that a person committed a first or second offense in violation of Subsection 58-11a-502(1) or (2); or

(B) (I) the division initiated an action for a first or second offense;

(II) no final order has been issued by the division in the action initiated under Subsection (4)(i)(i)(B)(I);

(III) the division determines during an investigation that occurred after the initiation of the action under Subsection (4)(i)(i)(B)(I) that the person committed a second or subsequent violation of the provisions of Subsection 58-11a-502(1) or (2); and

(IV) after determining that the person committed a second or subsequent offense under Subsection (4)(i)(i)(B)(III), the division issues a final order on the action initiated under Subsection (4)(i)(i)(B)(I).

(ii) In issuing a final order for a second or subsequent offense under Subsection (4)(i)(i), the division shall comply with the requirements of this section.

(5) Any penalty imposed by the director under Subsection (4)(h) shall be deposited into the Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Education and Enforcement Fund. Any penalty which is not paid may be collected by the director by either referring the matter to a collection agency or bringing an action in the district court of the county in which the person against whom the penalty is imposed resides or in the county where the office of the director is located. Any county attorney or the attorney general of the state is to provide legal assistance and advice to the director in any action to collect the penalty. In any action brought to enforce the provisions of this section, reasonable attorney's fees and costs shall be awarded.

Section 14. Effective date.

This act takes effect on April 30, 2001, except that Section 58-11a-201 takes effect on October 1, 2001.

CHAPTER 205
H. B. 118
Passed February 21, 2001
Approved March 16, 2001
Effective July 1, 2001

MINERAL LEASE AMENDMENTS

Sponsor: Max W. Young

This act modifies the Revenue and Taxation Code and Cities, Counties, and Local Taxing Units to allow a county that receives in lieu tax payments appropriated from the Mineral Lease Account to distribute the money to school districts, and to make technical changes. The act takes effect on July 1, 2001.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
11-14-17.6, as last amended by Chapter 221, Laws of Utah 1999
59-21-2, as last amended by Chapter 299, Laws of Utah 2000

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

Section 1. Section 11-14-17.6 is amended to read:

11-14-17.6. Special service district bonds secured by federal mineral lease payments -- Use of bond proceeds -- Bond resolution -- Nonimpairment of appropriation formula -- Issuance of bonds.

(1) Special service districts may:

(a) issue bonds payable, in whole or in part, from federal mineral lease payments which are to be deposited into the Mineral Lease Account under Section 59-21-1 and [~~appropriated~~] distributed to special service districts under [~~Section~~] Subsection 59-21-2(3)(h); or

(b) pledge all or any part of the mineral lease payments referred to in Subsection (1)(a) as an additional source of payment for their general obligation bonds.

(2) The proceeds of these bonds may be used:

(a) to construct, repair, and maintain streets and roads;

(b) to fund any reserves and costs incidental to the issuance of the bonds and pay any associated administrative costs; and

(c) for capital projects of the special service district.

(3) (a) The special service district board shall enact a resolution authorizing the issuance of bonds which, until the bonds have been paid in full:

(i) shall be irrevocable; and

(ii) may not be amended in any manner that would:

(A) impair the rights of the bond holders; or

(B) jeopardize the timely payment of principal or interest when due.

(b) Notwithstanding any other provision of this chapter, the resolution may contain covenants with the bond holder regarding:

(i) mineral lease payments, or their disposition;

(ii) the issuance of future bonds; or

(iii) other pertinent matters considered necessary by the governing body to:

(A) assure the marketability of the bonds; or

(B) insure the enforcement, collection, and proper application of mineral lease payments.

(4) (a) Except as provided in Subsection (4)(b), the state may not alter, impair, or limit the statutory appropriation formula provided in [~~Subsections~~] Subsection 59-21-2[~~(2)(f) and 59-21-2(5)~~](3)(h), in a manner that reduces the amounts to be distributed to the special service district until the bonds and the interest on the bonds are fully met and discharged. Each special service district may include this pledge and undertaking of the state in these bonds.

(b) Nothing in this section:

(i) may preclude the alteration, impairment, or limitation of these bonds if adequate provision is made by law for the protection of the bond holders; or

(ii) shall be construed:

(A) as a pledge guaranteeing the actual dollar amount ultimately received by individual special service districts;

(B) to require the Department of Transportation to allocate the mineral lease payments in a manner contrary to the general allocation method described in Subsection 59-21-2[~~(5)~~](3)(h); or

(C) to limit the Department of Transportation in making rules or procedures allocating mineral lease payments pursuant to Subsection 59-21-2[~~(5)~~](3)(h).

(5) (a) The average annual installments of principal and interest on bonds to which mineral lease payments have been pledged as the sole source of payment may not at any one time exceed:

(i) 80% of the total mineral lease payments received by the issuing entity during the fiscal year of the issuing entity immediately preceding the fiscal year in which the resolution authorizing the issuance of bonds is adopted; or

(ii) if the bonds are issued during the first fiscal year the issuing entity is eligible to receive funds, 60% of the amount estimated by the Department of Transportation to be appropriated to the issuing entity in that fiscal year.

(b) The Department of Transportation shall not be liable for any loss or damage resulting from reliance on the estimates.

(6) The final maturity date of the bonds may not exceed 15 years from the date of their issuance.

(7) Bonds may not be issued under this section after December 31, 2010.

(8) Bonds which are payable solely from a special fund into which mineral lease payments are deposited constitute a borrowing based solely upon the credit of the mineral lease payments received or to be received by the special service district and do not constitute an indebtedness or pledge of the general credit of the special service district or the state.

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

59-21-2. Definitions -- Mineral Bonus Account created -- Contents -- Use of Mineral Bonus Account money -- Mineral Lease Account created -- Contents -- Appropriation of monies from Mineral Lease Account.

(1) As used in this section:

(a) "Acquired lands" is as defined in Section 53C-3-201.

(b) "Acquired mineral interests" is as defined in Section 53C-3-201.

(2) (a) The Mineral Bonus Account is created within the General Fund.

(b) The Mineral Bonus Account consists of federal mineral lease bonus payments deposited pursuant to Subsection 59-21-1(3).

(c) The Legislature shall make appropriations from the Mineral Bonus Account in accordance with Section 35 of the Mineral Lands Leasing Act of 1920, 30 U.S.C. Sec. 191.

(d) The state treasurer shall:

(i) invest the money in the Mineral Bonus Account by following the procedures and requirements of Title 51, Chapter 7, State Money Management Act; and

(ii) deposit all interest or other earnings derived from the account into the Mineral Bonus Account.

(3) (a) The Mineral Lease Account is created within the General Fund.

(b) The Mineral Lease Account consists of:

(i) federal mineral lease money deposited pursuant to Subsection 59-21-1(1); and

(ii) rentals and royalties from the lease of the following deposited pursuant to Section 53C-3-202:

(A) minerals on acquired lands; or

(B) acquired mineral interests.

(c) The Legislature shall make appropriations from the Mineral Lease Account as provided in Subsection 59-21-1(1) and this Subsection (3).

(d) The Legislature shall annually appropriate 32.5% of all deposits made to the Mineral Lease Account to the Permanent Community Impact Fund established by Section 9-4-303.

(e) The Legislature shall annually appropriate 2.25% of all deposits made to the Mineral Lease Account to the State Board of Education, to be used for education research and experimentation in the use of staff and facilities designed to improve the quality of education in Utah.

(f) The Legislature shall annually appropriate 2.25% of all deposits made to the Mineral Lease Account to the Utah Geological Survey, to be used for activities carried on by the survey having as a purpose the development and exploitation of natural resources in the state.

(g) The Legislature shall annually appropriate 2.25% of all deposits made to the Mineral Lease Account to the Water Research Laboratory at Utah State University, to be used for activities carried on by the laboratory having as a purpose the development and exploitation of water resources in the state.

(h) (i) The Legislature shall annually appropriate to the Department of Transportation 40% of all deposits made to the Mineral Lease Account to be distributed as provided in Subsection (3)(h)(ii) to:

(A) counties;

(B) special service districts established:

(I) by counties;

(II) under Title 17A, Chapter 2, Part 13, Utah Special Service District Act; and

(III) for the purpose of constructing, repairing, or maintaining roads; or

(C) special service districts established:

(I) by counties;

(II) under Title 17A, Chapter 2, Part 13, Utah Special Service District Act; and

(III) for other purposes authorized by statute.

(ii) The Department of Transportation shall allocate the funds specified in Subsection (3)(h)(i):

(A) in amounts proportionate to the amount of mineral lease money generated by each county; and

(B) to a county or special service district established by a county under Title 17A, Chapter 2, Part 13, Utah Special Service District Act, as determined by the county legislative body.

(i) (i) The Legislature shall annually appropriate 5% of all deposits made to the Mineral Lease Account to the Department of Community and Economic Development to be distributed to:

(A) special service districts established:

(I) by counties;

(II) under Title 17A, Chapter 2, Part 13, Utah Special Service District Act; and

(III) for the purpose of constructing, repairing, or maintaining roads; or

(B) special service districts established:

(I) by counties;

(II) under Title 17A, Chapter 2, Part 13, Utah Special Service District Act; and

(III) for other purposes authorized by statute.

(ii) The Department of Community and Economic Development may distribute the amounts described in Subsection (3)(i)(i) only to special service districts established under Title 17A, Chapter 2, Part 13, Utah Special Service District Act, by counties:

(A) of the third, fourth, fifth, or sixth class;

(B) in which 4.5% or less of the mineral lease moneys within the state are generated; and

(C) that are significantly socially or economically impacted as provided in Subsection (3)(i)(iii) by the development of:

(I) minerals under the Mineral Lands Leasing Act, 30 U.S.C. Sec. 181 et seq.;

(II) minerals on acquired lands; or

(III) acquired mineral interests.

(iii) The significant social or economic impact required under Subsection (3)(i)(ii)(C) shall be as a result of:

(A) the transportation within the county of hydrocarbons, including solid hydrocarbons as defined in Section 59-5-101;

(B) the employment of persons residing within the county in hydrocarbon extraction, including the extraction of solid hydrocarbons as defined in Section 59-5-101; or

(C) a combination of Subsections (3)(i)(iii)(A) and (B).

(iv) For purposes of distributing the appropriations under this Subsection (3)(i) to special service districts established by counties under Title 17A, Chapter 2, Part 13, Utah Special Service District Act, the Department of Community and Economic Development shall:

(A) (I) allocate 50% of the appropriations equally among the counties meeting the requirements of Subsections (3)(i)(ii) and (iii); and

(II) allocate 50% of the appropriations based on the ratio that the population of each county meeting the requirements of Subsections (3)(i)(ii) and (iii) bears to the total population of all of the counties meeting the requirements of Subsections (3)(i)(ii) and (iii); and

(B) after making the allocations described in Subsection (3)(i)(iv)(A), distribute the allocated revenues to special service districts established by the counties under Title 17A, Chapter 2, Part 13, Utah Special Service District Act, as determined by the executive director of the Department of Community and Economic Development after consulting with the county legislative bodies of the counties meeting the requirements of Subsections (3)(i)(ii) and (iii).

(v) The executive director of the Department of Community and Economic Development:

(A) shall determine whether a county meets the requirements of Subsections (3)(i)(ii) and (iii);

(B) shall distribute the appropriations under Subsection (3)(i)(i) to special service districts established by counties under Title 17A, Chapter 2, Part 13, Utah Special Service District Act, that meet the requirements of Subsections (3)(i)(ii) and (iii); and

(C) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, may make rules:

(I) providing a procedure for making the distributions under this Subsection (3)(i) to special service districts; and

(II) defining the term "population" for purposes of Subsection (3)(i)(iv).

(j) (i) The Legislature shall annually make the following appropriations from the Mineral Lease Account:

(A) an amount equal to 52 cents multiplied by the number of acres of school or institutional trust lands, lands owned by the Division of Parks and Recreation, and lands owned by the Division of Wildlife Resources that are not under an in lieu of taxes contract, to each county in which those lands are located;

(B) to each county in which school or institutional trust lands are transferred to the federal government after December 31, 1992, an amount equal to the number of transferred acres in the county multiplied by a payment per acre equal to the difference between 52 cents per acre and the per acre payment made to that county in the most recent payment under the federal payment in lieu of taxes program, 31 U.S.C. Sec. 6901 et seq., unless the federal payment was equal to or exceeded the 52 cents per acre, in which case a payment under this Subsection (3)(j)(i)(B) may not be made for the transferred lands;

(C) to each county in which federal lands, which are entitlement lands under the federal in lieu of taxes program, are transferred to the school or institutional trust, an amount equal to the number of transferred acres in the county multiplied by a payment per acre equal to the difference between the most recent per acre payment made under the federal payment in lieu of taxes program and 52 cents per acre, unless the federal payment was equal to or less than 52 cents per acre, in which case a payment under this Subsection (3)(j)(i)(C) may not be made for the transferred land; and

(D) to a county of the fifth or sixth class, an amount equal to the product of:

(I) $1,000; and

(II) the number of residences described in Subsection (3)(j)(iv) that are located within the county.

(ii) A county receiving money under Subsection (3)(j)(i) may, as determined by the county legislative

body, distribute the money or a portion of the money to:

(A) special service districts established by the county under Title 17A, Chapter 2, Part 13, Utah Special Service District Act[~~, as determined by the county legislative body~~]; or

(B) school districts.

(iii) (A) Beginning in fiscal year 1994-95 and in each year after fiscal year 1994-95, the Division of Finance shall increase or decrease the amounts per acre provided for in Subsections (3)(j)(i)(A) through (C) by the average annual change in the Consumer Price Index for all urban consumers published by the Department of Labor.

(B) For fiscal years beginning on or after fiscal year 2001-02, the Division of Finance shall increase or decrease the amount described in Subsection (3)(j)(i)(D)(I) by the average annual change in the Consumer Price Index for all urban consumers published by the Department of Labor.

(iv) Residences [~~described in~~] for purposes of Subsection (3)(j)(i)(D)(II) are residences that are:

(A) owned by:

(I) the Division of Parks and Recreation; or

(II) the Division of Wildlife Resources;

(B) located on lands that are owned by:

(I) the Division of Parks and Recreation; or

(II) the Division of Wildlife Resources; and

(C) are not subject to taxation under:

(I) Chapter 2, Property Tax Act; or

(II) Chapter 4, Privilege Tax.

(k) The Legislature shall annually appropriate to the Permanent Community Impact Fund all deposits remaining in the Mineral Lease Account after making the appropriations provided for in Subsections (3)(d) through (j).

(4) (a) Each agency, board, institution of higher education, and political subdivision receiving money under this chapter shall provide the Legislature, through the Office of the Legislative Fiscal Analyst, with a complete accounting of the use of that money on an annual basis.

(b) The accounting required under Subsection (4)(a) shall:

(i) include actual expenditures for the prior fiscal year, budgeted expenditures for the current fiscal year, and planned expenditures for the following fiscal year; and

(ii) be reviewed by the Economic Development and Human Resources Appropriation Subcommittee as part of its normal budgetary process under Title 63, Chapter 38, Budgetary Procedures Act.

Section 3. Effective date.

This act takes effect on July 1, 2001.

CHAPTER 206
H. B. 155
Passed February 28, 2001
Approved March 16, 2001
Effective April 30, 2001

ANNEXATION AMENDMENTS

Sponsor: Marda Dillree

This act modifies provisions of the Utah Municipal Code relating to municipal annexations. The act establishes an annexation procedure for counties of the second, third, fourth, fifth, and sixth classes that is different from that for counties of the first class. The act requires municipalities within counties of the second, third, fourth, fifth, and sixth classes to adopt an annexation policy plan before future annexations after a certain date may occur. The act eliminates the feasibility study requirement for annexations of areas in a county of the second, third, fourth, fifth, and sixth classes. The act allows an owner of nonfederal public property to file an annexation petition. The act restricts annexations from taking place in counties of the first class for a specified period, with certain exceptions. The act enacts uncodified material that requires first class counties and cities within first class counties to prepare a plan for annexations within the county and to submit the plan to the Legislative Management Committee. The act also makes technical changes.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
10-2-401, as repealed and reenacted by Chapter 389, Laws of Utah 1997
10-2-402, as repealed and reenacted by Chapter 389, Laws of Utah 1997
10-2-403, as last amended by Chapter 205, Laws of Utah 1999
10-2-405, as last amended by Chapter 193, Laws of Utah 2000
10-2-406, as repealed and reenacted by Chapter 389, Laws of Utah 1997
10-2-407, as last amended by Chapter 193, Laws of Utah 2000
10-2-408, as last amended by Chapter 193, Laws of Utah 2000
10-2-409, as repealed and reenacted by Chapter 389, Laws of Utah 1997
10-2-410, as repealed and reenacted by Chapter 389, Laws of Utah 1997
10-2-411, as last amended by Chapter 21, Laws of Utah 1999
10-2-412, as repealed and reenacted by Chapter 389, Laws of Utah 1997
10-2-413, as last amended by Chapter 21, Laws of Utah 1999
10-2-414, as last amended by Chapter 21, Laws of Utah 1999
10-2-415, as last amended by Chapter 21, Laws of Utah 1999
10-2-416, as last amended by Chapter 1, Laws of Utah 2000
10-2-421, as repealed and reenacted by Chapter 389, Laws of Utah 1997
10-2-426, as enacted by Chapter 337, Laws of Utah 1998

ENACTS:
10-2-401.5, Utah Code Annotated 1953
10-2-409.5, Utah Code Annotated 1953

REPEALS:
10-2-404, as last amended by Chapter 193, Laws of Utah 2000

This act enacts uncodified material.

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

Section 1. Section 10-2-401 is amended to read:

10-2-401. Definitions -- Property owner provisions.

(1) As used in this part:

(a) "Affected entity" means:

(i) a county in whose unincorporated area the area proposed for annexation is located;

(ii) an independent special district under Title 17A, Chapter 2, Independent Special Districts, whose boundaries include any part of an area proposed for annexation;

(iii) a school district whose boundaries include any part of an area proposed for annexation; and

(iv) a municipality whose boundaries are within 1/2 mile of an area proposed for annexation.

[~~(a)~~] (b) "Annexation petition" means a petition under Section 10-2-403 proposing the annexation to a municipality of a contiguous, unincorporated area that is contiguous to the municipality.

[~~(b)~~] (c) "Commission" means a boundary commission established under Section 10-2-409 for the county in which the property that is proposed for annexation is located.

(d) "Expansion area" means the unincorporated area that is identified in an annexation policy plan under Section 10-2-401.5 as the area that the municipality anticipates annexing in the future.

[~~(c)~~] (e) "Feasibility consultant" means a person or firm with expertise in the processes and economics of local government.

[~~(d)~~] (f) "Municipal selection committee" means a committee in each county composed of the mayor of each municipality within that county.

[~~(e)~~] (g) "Private," with respect to real property, means not owned by the United States or any agency of the federal government, the state, a county, a municipality, a school district, a special district under Title 17A, Special Districts, or any other political subdivision or governmental entity of the state.

(h) "Specified county" means a county of the second, third, fourth, fifth, or sixth class.

(i) "Urban development" means:

(i) a housing development with more than 15 residential units and an average density greater than one residential unit per acre; or

(ii) a commercial or industrial development for which cost projections exceed $750,000 for all phases.

(2) For purposes of this part:

(a) the owner of real property shall be the record title owner according to the records of the county recorder on the date of the filing of the petition or protest; and

(b) the value of private real property shall be determined according to the last assessment roll for county taxes before the filing of the petition or protest.

(3) For purposes of each provision of this part that requires the owners of private real property covering a percentage or majority of the total private land area within an area to sign a petition or protest:

(a) a parcel of real property may not be included in the calculation of the required percentage or majority unless the petition or protest is signed by:

(i) except as provided in Subsection (3)(a)(ii), owners representing a majority ownership interest in that parcel; or

(ii) if the parcel is owned by joint tenants or tenants by the entirety, 50% of the number of owners of that parcel;

(b) the signature of a person signing a petition or protest in a representative capacity on behalf of an owner is invalid unless:

(i) the person's representative capacity and the name of the owner the person represents are indicated on the petition or protest with the person's signature; and

(ii) the person provides documentation accompanying the petition or protest that substantiates the person's representative capacity; and

(c) subject to Subsection (3)(b), a duly appointed personal representative may sign a petition or protest on behalf of a deceased owner.

Section 2. Section 10-2-401.5 is enacted to read:

10-2-401.5. Annexation policy plan.

(1) After December 31, 2002, no municipality may annex an unincorporated area located within a specified county unless the municipality has adopted an annexation policy plan as provided in this section.

(2) To adopt an annexation policy plan:

(a) the planning commission shall:

(i) prepare a proposed annexation policy plan that complies with Subsection (3);

(ii) hold a public meeting to allow affected entities to examine the proposed annexation policy plan and to provide input on it;

(iii) provide notice of the public meeting under Subsection (2)(a)(ii) to each affected entity at least 14 days before the meeting;

(iv) accept and consider any additional written comments from affected entities until ten days after the public meeting under Subsection (2)(a)(ii);

(v) before holding the public hearing required under Subsection (2)(a)(vi), make any modifications to the proposed annexation policy plan the planning commission considers appropriate, based on input provided at or within ten days after the public meeting under Subsection (2)(a)(ii);

(vi) hold a public hearing on the proposed annexation policy plan;

(vii) provide reasonable public notice, including notice to each affected entity, of the public hearing required under Subsection (2)(a)(vi) at least 14 days before the date of the hearing;

(viii) make any modifications to the proposed annexation policy plan the planning commission considers appropriate, based on public input provided at the public hearing; and

(ix) submit its recommended annexation policy plan to the municipal legislative body; and

(b) the municipal legislative body shall:

(i) hold a public hearing on the annexation policy plan recommended by the planning commission;

(ii) provide reasonable notice, including notice to each affected entity, of the public hearing at least 14 days before the date of the hearing;

(iii) after the public hearing under Subsection (2)(b)(ii), make any modifications to the recommended annexation policy plan that the legislative body considers appropriate; and

(iv) adopt the recommended annexation policy plan, with or without modifications.

(3) Each annexation policy plan shall include:

(a) a map of the expansion area which may include territory located outside the county in which the municipality is located;

(b) a statement of the specific criteria that will guide the municipality's decision whether or not to grant future annexation petitions, addressing matters relevant to those criteria including:

(i) the character of the community;

(ii) the need for municipal services in developed and undeveloped unincorporated areas;

(iii) the municipality's plans for extension of municipal services;

(iv) how the services will be financed;

(v) an estimate of the tax consequences to residents both currently within the municipal boundaries and in the expansion area; and

(vi) the interests of all affected entities;

(c) justification for excluding from the expansion area any area containing urban development within 1/2 mile of the municipality's boundary; and

(d) a statement addressing any comments made by affected entities at or within ten days after the public meeting under Subsection (2)(a)(ii).

(4) In developing, considering, and adopting an annexation policy plan, the planning commission and municipal legislative body shall:

(a) attempt to avoid gaps between or overlaps with the expansion areas of other municipalities;

(b) consider population growth projections for the municipality and adjoining areas for the next 20 years;

(c) consider current and projected costs of infrastructure, urban services, and public facilities necessary:

(i) to facilitate full development of the area within the municipality; and

(ii) to expand the infrastructure, services, and facilities into the area being considered for inclusion in the expansion area;

(d) consider, in conjunction with the municipality's general plan, the need over the next 20 years for additional land suitable for residential, commercial, and industrial development;

(e) consider the reasons for including agricultural lands, forests, recreational areas, and wildlife management areas in the municipality; and

(f) be guided by the principles set forth in Subsection 10-2-403(5).

(5) Within 30 days after adopting an annexation policy plan, the municipal legislative body shall submit a copy of the plan to the legislative body of each county in which any of the municipality's expansion area is located.

(6) Nothing in this chapter may be construed to prohibit or restrict two or more municipalities in specified counties from negotiating and cooperating with respect to defining each municipality's expansion area under an annexation policy plan.

Section 3. Section 10-2-402 is amended to read:

10-2-402. Annexation -- Limitations.

(1) (a) A contiguous, unincorporated area that is contiguous to a municipality may be annexed to the municipality as provided in this part.

(b) An unincorporated area may not be annexed to a municipality unless:

(i) it is a contiguous area;

(ii) it is contiguous to the municipality; [~~and~~]

(iii) except as provided in Subsection 10-2-418(1)(b), annexation will not leave or create an unincorporated island or peninsula; and

(iv) for an area located in a specified county with respect to an annexation that occurs after December 31, 2002, the area is within the proposed annexing municipality's expansion area .

(2) Except as provided in Section 10-2-418, a municipality may not annex an unincorporated area unless a petition under Section 10-2-403 is filed requesting annexation.

(3) An annexation under this part may not include part of a parcel of real property and exclude part of that same parcel unless the owner of that parcel has signed the annexation petition under Section 10-2-403.

(4) A municipality may not annex an unincorporated area in a specified county for the sole purpose of acquiring municipal revenue or to retard the capacity of another municipality to annex the same or a related area unless the municipality has the ability and intent to benefit the annexed area by providing municipal services to the annexed area.

(5) The legislative body of a specified county may not approve urban development within a municipality's expansion area unless:

(a) the county notifies the municipality of the proposed development; and

(b) (i) the municipality consents in writing to the development; or

(ii) (A) within 90 days after the county's notification of the proposed development, the municipality submits to the county a written objection to the county's approval of the proposed development; and

(B) the county responds in writing to the municipality's objections.

(6) (a) Except as provided in Subsection (6)(b), no annexation petition under this part may be filed with a municipality located within a county of the first class on or after April 30, 2001 until after November 15, 2001, and no municipality located in a county of the first class may accept an annexation petition under this part during that time.

(b) Notwithstanding Subsection (6)(a), an annexation petition may be filed with a municipality located within a county of the first class and a municipality located in a county of the first class may accept an annexation petition from April 30, 2001 to November 15, 2001 if the requirements of Subsection 10-2-405(1)(b) are met.

(c) Nothing in this Subsection (6) may be construed to affect an annexation proceeding initiated by a petition filed before April 30, 2001.

Section 4. Section 10-2-403 is amended to read:

10-2-403. Annexation petition -- Requirements.

(1) Except as provided in Section 10-2-418, the process to annex an unincorporated area to a municipality is initiated by a petition as provided in this section.

(2) Each petition under Subsection (1) shall:

(a) be filed with the city recorder or town clerk, as the case may be, of the proposed annexing municipality;

(b) contain the signatures of:

(i) the owners of private real property that:

[~~(i)~~] (A) is located within the area proposed for annexation;

[~~(ii) (A)~~] (B) (I) subject to Subsection (2)(b)[~~(ii)~~](i)(B)(II), covers a majority of the private land area within the area proposed for annexation; and

[~~(B)~~] (II) covers 100% of the private land area within the area proposed for annexation, if the area is within an agriculture protection area created under Title 17, Chapter 41, Agriculture Protection Area; and

[~~(iii)~~] (C) is equal in value to at least 1/3 of the value of all private real property within the area proposed for annexation; or

(ii) if all the real property within the area proposed for annexation is owned by a public entity other than the federal government, the owner of all the publicly owned real property;

(c) be accompanied by an accurate [~~plat or~~] and recordable map, prepared by a licensed surveyor, of the area proposed for annexation; and

(d) designate up to five of the signers of the petition as sponsors, one of whom shall be designated as the contact sponsor, and indicate the mailing address of each sponsor.

(3) A petition under Subsection (1) may not propose the annexation of all or part of an area proposed for annexation to a municipality in a previously filed petition that has not been denied, rejected, or granted.

(4) A petition under Subsection (1) proposing the annexation of an area located in a county of the first class may not propose the annexation of an area that includes some or all of an area proposed to be incorporated in a request for a feasibility study under Section 10-2-103 or a petition under Section 10-2-125 if:

(a) the request or petition was filed before the filing of the annexation petition; and

(b) the request, a petition under Section 10-2-109 based on that request, or a petition under Section 10-2-125 is still pending on the date the annexation petition is filed.

(5) If practicable and feasible, the boundaries of an area proposed for annexation shall be drawn:

(a) along the boundaries of existing special districts for sewer, water, and other services, along the boundaries of school districts whose boundaries follow city boundaries or school districts adjacent to school districts whose boundaries follow city boundaries, and along the boundaries of other taxing entities[~~:~~];

[~~(a)~~] (b) to eliminate islands and peninsulas of territory that is not receiving municipal-type services;

[~~(b)~~] (c) to facilitate the consolidation of overlapping functions of local government;

[~~(c)~~] (d) to promote the efficient delivery of services; and

[~~(d)~~] (e) to encourage the equitable distribution of community resources and obligations.

(6) On the date of filing, the petition sponsors shall deliver or mail a copy of the petition to:

(a) the clerk of the county in which the area proposed for annexation is located; and

(b) the chair of the planning commission of each township in which any part of the area proposed for annexation is located.

Section 5. Section 10-2-405 is amended to read:

10-2-405. Acceptance or rejection of an annexation petition -- Modified petition.

(1) (a) (i) (A) A municipal legislative body may:

[~~(A)~~] (I) except as provided in Subsection (1)(b) and subject to Subsection (1)(a)(i)(B), deny a petition filed under Section 10-2-403; or

[~~(B)~~] (II) accept the petition for further consideration under this part.

(B) A municipal legislative body's failure to act to deny or accept a petition under Subsection (1)(a)(i)(A) within 14 days after the filing of the petition shall be considered to be an acceptance of the petition for further consideration under this part.

(ii) If a municipal legislative body denies a petition under Subsection (1)(a)(i)(A), it shall, within five days of the denial, mail written notice of the denial to the contact sponsor, the clerk of the county in which the area proposed for annexation is located, and the chair of the planning commission of each township in which any part of the area proposed for annexation is located.

(b) A municipal legislative body may not deny a petition filed under Section 10-2-403 proposing to annex an area located in a county of the first class if:

(i) the petition contains the signatures of the owners of private real property that:

(A) is located within the area proposed for annexation;

(B) covers a majority of the private land area within the area proposed for annexation; and

(C) is equal in value to at least 1/2 of the value of all private real property within the area proposed for annexation;

(ii) the population in the area proposed for annexation does not exceed 10% of the population of the proposed annexing municipality; [~~and~~]

(iii) the property tax rate for municipal services in the area proposed to be annexed is higher than the property tax rate of the proposed annexing municipality; and

(iv) all annexations by the proposed annexing municipality during the year that the petition was filed have not increased the municipality's population by more than 20%.

(2) If the municipal legislative body accepts a petition under Subsection (1)(a)(i)[~~(B)~~] (A) or is considered to have accepted the petition under Subsection (1)(a)(i)(B), the city recorder or town clerk, as the case may be, shall, within 30 days of that acceptance:

(a) with the assistance of the municipal attorney and of the clerk, surveyor, and recorder of the county in which the area proposed for annexation is located, determine whether the petition meets the requirements of Subsections 10-2-403(2), (3), and (4); and

(b) (i) if the city recorder or town clerk determines that the petition meets those requirements, certify the petition and mail or deliver written notification of the certification to the municipal legislative body, the contact sponsor, the county legislative body, and the chair of the planning commission of each township in which any part of the area proposed for annexation is located; or

(ii) if the city recorder or town clerk determines that the petition fails to meet any of those requirements, reject the petition and mail or deliver written notification of the rejection and the reasons for the rejection to the municipal legislative body, the contact sponsor, the county legislative body, and the chair of the planning commission of each township in which any part of the area proposed for annexation is located.

(3) (a) (i) If the city recorder or town clerk rejects a petition under Subsection (2)(b)(ii), the petition may be modified to correct the deficiencies for which it was rejected and then refiled with the city recorder or town clerk, as the case may be.

(ii) A signature on an annexation petition filed under Section 10-2-403 may be used toward fulfilling the signature requirement of Subsection 10-2-403(2)(b) for the petition as modified under Subsection (3)(a)(i).

(b) If a petition is refiled under Subsection (3)(a) after having been rejected by the city recorder or town clerk under Subsection (2)(b)(ii), the refiled petition shall be treated as a newly filed petition under Subsection 10-2-403(1).

(4) Each county clerk, surveyor, and recorder shall cooperate with and assist a city recorder or town clerk in the determination under Subsection (2)(a).

Section 6. Section 10-2-406 is amended to read:

10-2-406. Notice of certification -- Publishing and providing notice of petition.

(1) After receipt of the notice of certification from the city recorder or town clerk under Subsection 10-2-405(2)(b)(i), the municipal legislative body shall:

(a) (i) publish a notice at least once a week for three successive weeks, beginning no later than ten days after receipt of the notice of certification, in a newspaper of general circulation within:

(A) the area proposed for annexation; and

(B) the unincorporated area within 1/2 mile of the area proposed for annexation; or

(ii) if there is no newspaper of general circulation within those areas, post written notices in conspicuous places within those areas that are most likely to give notice to residents within those areas; and

(b) within 20 days of receipt of the notice of certification under Subsection 10-2-405(2)(b)(i), mail written notice to[~~:~~] each affected entity.

[~~(i) the legislative body of the county in which the area proposed for annexation is located;~~]

[~~(ii) the board of each special district under Title 17A, Chapter 2, Independent Special Districts, whose boundaries include part or all of the area proposed for annexation;~~]

[~~(iii) the legislative body of each municipality whose boundaries are within 1/2 mile of the area proposed for annexation; and~~]

[~~(iv) each school district whose boundaries include part or all of the area proposed for annexation.~~]

(2) (a) The notice under Subsections (1)(a) and (b) shall:

(i) state that a petition has been filed with the municipality proposing the annexation of an area to the municipality;

(ii) state the date of the municipal legislative body's receipt of the notice of certification under Subsection 10-2-405(2)(b)(i);

(iii) describe the area proposed for annexation in the annexation petition;

(iv) state that the complete annexation petition is available for inspection and copying at the office of the city recorder or town clerk;

(v) state in conspicuous and plain terms that the municipality may grant the petition and annex the area described in the petition unless, within the time required under Subsection 10-2-407(2)(a)(i)(A) [~~or 10-2-407(2)(c), as the case may be~~], a written protest to the annexation petition is filed with the commission and a copy of the protest delivered to the city recorder or town clerk of the proposed annexing municipality; and

(vi) state the address of the commission or, if a commission has not yet been created in the county, the county clerk, where a protest to the annexation petition may be filed.

(b) The statement required by Subsection (2)(a)(v) shall state the deadline for filing a written protest in terms of the actual date rather than by reference to the statutory citation.

(c) In addition to the requirements under Subsection (2)(a), a notice under Subsection (1)(a) for a proposed annexation of an area within a county of the first class shall include a statement that a protest to the annexation petition may be filed with the commission by property owners if it contains the signatures of the owners of private real property that:

(i) is located in the unincorporated area within 1/2 mile of the area proposed for annexation;

(ii) covers at least 25% of the private land area located in the unincorporated area within 1/2 mile of the area proposed for annexation; and

(iii) is equal in value to at least 15% of all real property located in the unincorporated area within 1/2 mile of the area proposed for annexation.

Section 7. Section 10-2-407 is amended to read:

10-2-407. Protest to annexation petition -- Township planning commission recommendation -- Petition requirements -- Disposition of petition if no protest filed.

(1) (a) A protest to an annexation petition under Section 10-2-403 may be filed by:

(i) the legislative body [~~of the county in which the area proposed for annexation is located;~~] or governing board of an affected entity; or

[~~(ii) the board of a special district whose boundaries include part or all of the area proposed for annexation;~~]

[~~(iii) the legislative body of a municipality whose boundaries are within 1/2 mile of the area proposed for annexation; or~~]

[~~(iv)~~] (ii) for a proposed annexation of an area within a county of the first class, the owners of private real property that:

(A) is located in the unincorporated area within 1/2 mile of the area proposed for annexation;

(B) covers at least 25% of the private land area located in the unincorporated area within 1/2 mile of the area proposed for annexation; and

(C) is equal in value to at least 15% of all real property located in the unincorporated area within 1/2 mile of the area proposed for annexation.

(b) (i) [~~(A) Except as provided in Subsection (1)(b)(i)(B), a township~~] A planning commission of a township located in a county of the first class may recommend to the legislative body of the county in which the township is located that the county legislative body file a protest against a proposed annexation under this part of an area located within the township.

[~~(B) Subsection (1)(b)(i)(A) does not apply if the time for filing a protest under Subsection (2)(a)(i)(A) or (2)(e) expires before July 17, 1997.~~]

(ii) (A) [~~Except as provided in Subsection (1)(b)(ii)(B), the~~] The township planning commission shall communicate each recommendation under Subsection (1)(b)(i) in writing to the county legislative body within 30 days of the city recorder or town clerk's certification of the annexation petition under Subsection 10-2-405(2)(b)(i).

[~~(B) Notwithstanding Subsection (1)(b)(ii)(A), if the city recorder or town clerk's certification under Subsection 10-2-405(2)(b)(i) occurs before July 17, 1997, the township planning commission shall communicate its recommendation under Subsection (1)(b)(i) in writing to the county legislative body on or before August 16, 1997, but no later than the deadline for filing a protest under Subsection (2)(a)(i)(A) or (2)(e), excluding an extension under Subsection (2)(f).~~]

[~~(C)~~] (B) At the time the recommendation is communicated to the county legislative body under Subsection (1)(b)(ii)(A), the township planning commission shall mail or deliver a copy of the recommendation to the legislative body of the proposed annexing municipality and to the contact sponsor.

(2) (a) Each protest under Subsection (1)(a) shall:

(i) be filed:

(A) [~~except as provided in Subsections (2)(e) and (f),~~] no later than [~~60~~] 30 days after the municipal legislative body's receipt of the notice of certification under Subsection 10-2-405(2)(b)(i); and

(B) (I) in a county that has already created a commission under Section 10-2-409, with the commission; or

(II) in a county that has not yet created a commission under Section 10-2-409, with the clerk of the county in which the area proposed for annexation is located; and

(ii) state each reason for the protest of the annexation petition and, if the area proposed to be annexed is located in a specified county, justification for the protest under the standards established in this chapter;

(iii) if the area proposed to be annexed is located in a specified county, contain other information that the commission by rule requires or that the party filing the protest considers pertinent; and

(iv) the name and address of a contact person who is to receive notices sent by the commission with respect to the protest proceedings.

(b) The party filing a protest under this section shall on the same date deliver or mail a copy of the

protest to the city recorder or town clerk of the proposed annexing municipality.

(c) Each clerk who receives a protest under Subsection (2)(a)(i)(B)(II) shall immediately notify the county legislative body of the protest and shall deliver the protest to the boundary commission within five days of its creation under Subsection 10-2-409(1)(b).

(d) Each protest of a proposed annexation of an area located in a county of the first class under Subsection (1)(a)[~~(iv)~~] (i)(D) shall, in addition to the requirements of Subsections (2)(a) and (b):

(i) indicate the typed or printed name and current residence address of each owner signing the protest; and

(ii) designate one of the signers of the protest as the contact person and state the mailing address of the contact person.

[~~(e) Notwithstanding Subsection (2)(a)(i)(A) and except as provided in Subsection (2)(f), each protest under Subsection (1) shall be filed no later than 40 days after the municipal legislative body's receipt of the notice of certification under Subsection 10-2-405(2)(b)(i) if the annexation petition proposes the annexation of an area that:~~]

[~~(i) is undeveloped; and~~]

[~~(ii) covers an area that is equivalent to less than 5% of the total land mass of all private real property within the municipality.~~]

[~~(f) The deadline under Subsection (2)(a)(i)(A) or (2)(e) for the county legislative body to file a protest is extended by ten days if:~~]

[~~(i) the city recorder or town clerk's certification of the annexation petition under Subsection 10-2-405(2)(b)(i) occurs before July 17, 1997; and~~]

[~~(ii) the time for filing a protest under Subsection (2)(a)(i)(A) or (2)(e) has not expired as of July 17, 1997.~~]

(3) (a) (i) If a protest is filed under this section:

(A) the municipal legislative body may, at its next regular meeting after expiration of the deadline under Subsection (2)(a)(i)(A) [~~or (e)~~] and, for a proposed annexation of an area located in a county of the first class, except as provided in Subsection (3)(a)(iii), deny the annexation petition; or

(B) if the municipal legislative body does not deny the annexation petition under Subsection (3)(a)(i)(A), the municipal legislative body may take no further action on the annexation petition until after receipt of the commission's notice of its decision on the protest under Section 10-2-416.

(ii) If a municipal legislative body denies an annexation petition under Subsection (3)(a)(i)(A), the municipal legislative body shall, within five days of the denial, send notice of the denial in writing to:

(A) the contact sponsor of the annexation petition;

(B) the commission;

(C) each entity that filed a protest; and

(D) if a protest was filed under Subsection (1)(a)[~~(iv)~~](ii) for a proposed annexation of an area located in a county of the first class, the contact person.

(iii) A municipal legislative body may not deny an annexation petition proposing to annex an area located in a county of the first class if:

(A) the petition contains the signatures of the owners of private real property that:

(I) is located within the area proposed for annexation;

(II) covers a majority of the private land area within the area proposed for annexation; and

(III) is equal in value to at least 1/2 of the value of all private real property within the area proposed for annexation;

(B) the population in the area proposed for annexation does not exceed 10% of the population of the proposed annexing municipality; [~~and~~]

(C) the property tax rate for municipal services in the area proposed to be annexed is higher than the property tax rate of the proposed annexing municipality; and

(D) all annexations by the proposed annexing municipality during the year that the petition was filed have not increased the municipality's population by more than 20%.

(b) (i) If no timely protest is filed under this section, the municipal legislative body may, subject to Subsection (3)(b)(ii), grant the petition and, by ordinance, annex the area that is the subject of the annexation petition.

(ii) Before granting an annexation petition under Subsection (3)(b)(i), the municipal legislative body shall:

(A) hold a public hearing; and

(B) at least seven days before the public hearing under Subsection (3)(b)(ii)(A):

(I) publish notice of the hearing in a newspaper of general circulation within the municipality and the area proposed for annexation; or

(II) if there is no newspaper of general circulation in those areas, post written notices of the hearing in conspicuous places within those areas that are most likely to give notice to residents within those areas.

Section 8. Section 10-2-408 is amended to read:

10-2-408. Denial of or granting the annexation petition.

(1) After receipt of the commission's decision on a protest under Subsection 10-2-416(2), a municipal legislative body may:

(a) except as provided in Subsection (2) for a proposed annexation of an area located in a county of the first class, deny the annexation petition; or

(b) if the commission approves the annexation, grant the annexation petition and, by ordinance and consistent with the commission's decision, annex the area that is the subject of the annexation petition.

(2) A municipal legislative body may not deny an annexation petition proposing to annex an area located in a county of the first class if:

(a) the petition contains the signatures of the owners of private real property that:

(i) is located within the area proposed for annexation;

(ii) covers a majority of the private land area within the area proposed for annexation; and

(iii) is equal in value to at least 1/2 of the value of all private real property within the area proposed for annexation;

(b) the population in the area proposed for annexation does not exceed 10% of the population of the proposed annexing municipality; [~~and~~]

(c) the property tax rate for municipal services in the area proposed to be annexed is higher than the property tax rate of the proposed annexing municipality; and

(d) all annexations by the proposed annexing municipality during the year that the petition was filed have not increased the municipality's population by more than 20%.

Section 9. Section 10-2-409 is amended to read:

10-2-409. Boundary commission -- Creation -- Members.

(1) The legislative body of each county:

(a) may create a boundary commission on its own initiative at any time; and

(b) shall create a boundary commission within 30 days of the filing of a protest under Section 10-2-407.

(2) [~~(a)~~] Each commission shall be composed of:

[~~(i)~~] (a) in a county with two or more municipalities:

[~~(A)~~] (i) two members who are elected county officers, appointed by:

(A) (I) in a county of the first class operating under a form of government in which the executive and legislative functions are separated, the county executive with the advice and consent of the county legislative body; or

(II) in a county of the first class operating under a form of government in which the executive and legislative functions of the governing body are not separated, the county legislative body; or

(B) in a specified county, the county legislative body;

[~~(B)~~] (ii) two members who are elected municipal officers from separate municipalities within the county, appointed by the municipal selection committee; and

[~~(C)~~] (iii) three members who are residents of the county, none of whom is a county or municipal officer, appointed by the four other members [~~under Subsections (2)(a)(i)(A) and (B)~~] of the boundary commission; and

[~~(ii)~~] (b) in a county with only one municipality:

[~~(A)~~] (i) two members who are county elected officers, appointed by[~~:~~] the county legislative body;

[~~(I) in a county operating under a form of government in which the executive and legislative functions are separated, the county executive with the advice and consent of the county legislative body; or~~]

[~~(II) in a county operating under a form of government in which the executive and legislative functions of the governing body are not separated, the county legislative body;~~]

[~~(B)~~] (ii) one member who is a municipal officer, appointed by the [~~municipal legislative~~] governing body of the municipality; and

[~~(C)~~] (iii) two members who are residents of the county, neither of whom is a county or municipal officer, appointed by the other three members [~~under Subsections (2)(a)(ii)(A) and (B)~~] of the boundary commission.

[~~(b) For purposes of Subsection (2)(a)(i)(B), a majority of the municipal selection committee constitutes a quorum, and action of the municipal selection committee requires a majority vote of a quorum.~~]

(3) At the expiration of the term of each member appointed under this section, the member's successor shall be appointed by the same body that appointed the member whose term is expiring, as provided in this section.

[~~(4) Each boundary commission created before May 5, 1997, under Chapter 25, Laws of Utah 1979, shall continue in existence and thereafter be governed by the provisions of this part.~~]

Section 10. Section 10-2-409.5 is enacted to read:

10-2-409.5. Municipal selection committee.

(1) In each county in which there are two or more municipalities there shall be a municipal selection committee consisting of the mayor of each municipality.

(2) A majority of the members of the municipal selection committee constitutes a quorum.

(3) The municipal selection committee shall appoint each municipal member of the county boundary commission under Subsection 10-2-409(2)(a)(iii) and fill each vacancy in that position as it occurs.

Section 11. Section 10-2-410 is amended to read:

10-2-410. Boundary commission member terms -- Staggered terms -- Chair -- Quorum -- Vacancy.

(1) Except as provided in Subsection (2), the term of each member of a boundary commission is four years and begins and expires the first Monday in January of the applicable year.

(2) Notwithstanding Subsection (1), the terms of the first members of a commission shall be staggered by lot so that:

(a) on a seven-member commission, the term of one member is approximately one year, the term of two members is approximately two years, the term of two members is approximately three years, and the term of two members is approximately four years; and

(b) on a five-member commission, the term of two members is approximately two years and the term of the other three members is approximately four years.

(3) (a) The members of each boundary commission shall elect as chair a person from their number whose term on the boundary commission does not expire for at least two years.

(b) The term of a boundary commission chair is two years.

(4) A majority of the commission constitutes a quorum, and commission action requires a majority vote of [~~a quorum~~] the commission.

(5) Each vacancy on a commission of a member or an alternate member shall be filled for the remaining unexpired term of the vacating member by the body that appointed the vacating member under Section 10-2-409.

Section 12. Section 10-2-411 is amended to read:

10-2-411. Disqualification of commission member -- Alternate member.

(1) A member of the boundary commission is disqualified with respect to a protest before the commission if that member owns property:

(a) for a proposed annexation of an area located within a county of the first class:

(i) within the area proposed for annexation in a petition that is the subject of the protest; or

[~~(b)~~] (ii) that is in the unincorporated area within 1/2 mile of the area proposed for annexation in a petition that is the subject of a protest under Subsection 10-2-407(1)(a)[~~(iv)~~] (i)(D); or

(b) for a proposed annexation of an area located in a specified county, within the area proposed for annexation.

(2) If a member is disqualified under Subsection (1), the body that appointed the disqualified member shall appoint an alternate member to serve on the commission for purposes of the protest as to which the member is disqualified.

Section 13. Section 10-2-412 is amended to read:

10-2-412. Boundary commission authority -- Expenses -- Records.

(1) The boundary commission for each county shall hear and decide, according to the provisions of this part, each protest filed under Section 10-2-407, with respect to an area that is located within that county.

(2) A boundary commission may:

(a) adopt and enforce rules of procedure for the orderly and fair conduct of its proceedings;

(b) authorize a member of the commission to administer oaths if necessary in the performance of the commission's duties;

(c) employ staff personnel and professional or consulting services reasonably necessary to enable the commission to carry out its duties; and

(d) incur reasonable and necessary expenses to enable the commission to carry out its duties.

(3) The legislative body of each county shall, with respect to the boundary commission in that county:

(a) furnish the commission necessary quarters, equipment, and supplies;

(b) pay necessary operating expenses incurred by the commission; and

(c) reimburse the reasonable and necessary expenses incurred by each member appointed under Subsection 10-2-409(2)(a)[~~(i)(C)~~](iii) or [~~(ii)(C)~~] (b)(iii), unless otherwise provided by interlocal agreement.

(4) Each county or municipal legislative body shall reimburse the reasonable and necessary expenses incurred by a commission member who is an elected county or municipal officer, respectively.

(5) Records, information, and other relevant materials necessary to enable the commission to carry out its duties shall, upon request by the commission, be furnished to the boundary commission by the personnel, employees, and officers of:

(a) for a proposed annexation of an area located in a county of the first class:

(i) each county and special district whose boundaries include an area that is the subject of a protest under the commission's consideration; and

[~~(b)~~] (ii) each municipality whose boundaries may be affected by action of the boundary commission; or

(b) for a proposed annexation of an area located in a specified county, each affected entity:

(i) whose boundaries include any part of the area proposed for annexation; or

(ii) that may be affected by action of the boundary commission.

Section 14. Section 10-2-413 is amended to read:

10-2-413. Feasibility consultant -- Feasibility study -- Modifications to feasibility study.

(1) (a) [~~Unless~~] For a proposed annexation of an area located in a county of the first class, unless a proposed annexing municipality denies an annexation petition under Subsection 10-2-407(3)(a)(i)(A) and except as provided in Subsection (1)(b), the commission shall choose and engage a feasibility consultant within 45 days of:

(i) the commission's receipt of a protest under Section 10-2-407, if the commission had been created before the filing of the protest; or

(ii) the commission's creation, if the commission is created after the filing of a protest.

(b) Notwithstanding Subsection (1)(a), the commission may not require a feasibility study with respect to a [~~proposed~~] petition that proposes the annexation of an area that [~~meets the criteria of Subsection 10-2-407(2)(c)~~]:

(i) is undeveloped; and

(ii) covers an area that is equivalent to less than 5% of the total land mass of all private real property within the municipality.

(2) The commission shall require the feasibility consultant to:

(a) complete a feasibility study on the proposed annexation and submit written results of the study to the commission no later than 75 days after the feasibility consultant is engaged to conduct the study;

(b) submit with the full written results of the feasibility study a summary of the results no longer than a page in length; and

(c) attend the public hearing under Subsection 10-2-415(1) and present the feasibility study results and respond to questions at that hearing.

(3) (a) Subject to Subsection (4), the feasibility study shall consider:

(i) the population and population density within the area proposed for annexation, the surrounding unincorporated area, and, if a protest was filed by a municipality with boundaries within 1/2 mile of the area proposed for annexation, that municipality;

(ii) the geography, geology, and topography of and natural boundaries within the area proposed for annexation, the surrounding unincorporated area, and, if a protest was filed by a municipality with boundaries within 1/2 mile of the area proposed for annexation, that municipality;

(iii) whether the proposed annexation eliminates, leaves, or creates an unincorporated island or peninsula;

(iv) whether the proposed annexation will hinder or prevent a future and more logical and beneficial annexation or a future logical and beneficial incorporation;

(v) the fiscal impact of the proposed annexation on the remaining unincorporated area, other municipalities, special districts, school districts, and other governmental entities;

(vi) current and five-year projections of demographics and economic base in the area proposed for annexation and surrounding unincorporated area, including household size and income, commercial and industrial development, and public facilities;

(vii) projected growth in the area proposed for annexation and the surrounding unincorporated area during the next five years;

(viii) the present and five-year projections of the cost of governmental services in the area proposed for annexation;

(ix) the present and five-year projected revenue to the proposed annexing municipality from the area proposed for annexation;

(x) the projected impact the annexation will have over the following five years on the amount of taxes that property owners within the area proposed for annexation, the proposed annexing municipality, and the remaining unincorporated county will pay;

(xi) past expansion in terms of population and construction in the area proposed for annexation and the surrounding unincorporated area;

(xii) the extension during the past ten years of the boundaries of each other municipality near the area proposed for annexation, the willingness of the other municipality to annex the area proposed for annexation, and the probability that another municipality would annex some or all of the area proposed for annexation during the next five years if the annexation did not occur;

(xiii) the history, culture, and social aspects of the area proposed for annexation and surrounding area;

(xiv) the method of providing and the entity that has provided municipal-type services in the past to the area proposed for incorporation and the feasibility of municipal-type services being provided by the proposed annexing municipality; and

(xv) the effect on each school district whose boundaries include part or all of the area proposed for annexation or the proposed annexing municipality.

(b) For purposes of Subsection (3)(a)(ix), the feasibility consultant shall assume ad valorem property tax rates on residential property within the area proposed for annexation at the same level that residential property within the proposed annexing municipality would be without the annexation.

(c) For purposes of Subsection (3)(a)(viii), the feasibility consultant shall assume that the level and quality of governmental services that will be

provided to the area proposed for annexation in the future is essentially comparable to the level and quality of governmental services being provided within the proposed annexing municipality at the time of the feasibility study.

(4) (a) Except as provided in Subsection (4)(b), the commission may modify the depth of study of and detail given to the items listed in Subsection (3)(a) by the feasibility consultant in conducting the feasibility study depending upon:

(i) the size of the area proposed for annexation;

(ii) the size of the proposed annexing municipality;

(iii) the extent to which the area proposed for annexation is developed;

(iv) the degree to which the area proposed for annexation is expected to develop and the type of development expected; and

(v) the number and type of protests filed against the proposed annexation.

(b) Notwithstanding Subsection (4)(a), the commission may not modify the requirement that the feasibility consultant provide a full and complete analysis of the items listed in Subsections (3)(a)(viii), (ix), and (xv).

(5) If the results of the feasibility study do not meet the requirements of Subsection 10-2-416(3), the feasibility consultant may, as part of the feasibility study, make recommendations as to how the boundaries of the area proposed for annexation may be altered so that the requirements of Subsection 10-2-416(3) may be met.

(6) (a) Except as provided in Subsection (6)(b), the feasibility consultant fees and expenses shall be shared equally by the proposed annexing municipality and each entity or group under Subsection 10-2-407(1) that files a protest.

(b) (i) Except as provided in Subsection (6)(b)(ii), if a protest is filed by property owners under Subsection 10-2-407(1)(a)[~~(iv)~~](ii), the county in which the area proposed for annexation shall pay the owners' share of the feasibility consultant's fees and expenses.

(ii) Notwithstanding Subsection (6)(b)(i), if both the county and the property owners file a protest, the county and the proposed annexing municipality shall equally share the property owners' share of the feasibility consultant's fees and expenses.

Section 15. Section 10-2-414 is amended to read:

10-2-414. Modified annexation petition -- Supplemental feasibility study.

(1) (a) (i) If the results of the feasibility study with respect to a proposed annexation of an area located in a county of the first class do not meet the requirements of Subsection 10-2-416(3), the sponsors of the annexation petition may, within 45 days of the feasibility consultant's submission of the results of the study, file with the city recorder or town clerk of the proposed annexing municipality a modified annexation petition altering the boundaries of the proposed annexation.

(ii) On the date of filing a modified annexation petition under Subsection (1)(a)(i), the sponsors of the annexation petition shall deliver or mail a copy of the modified annexation petition to the clerk of the county in which the area proposed for annexation is located.

(b) Each modified annexation petition under Subsection (1)(a) shall comply with the requirements of Subsections 10-2-403(2), (3), and (4).

(2) (a) Within 20 days of the city recorder or town clerk's receipt of the modified annexation petition, the city recorder or town clerk, as the case may be, shall follow the same procedure for the modified annexation petition as provided under Subsections 10-2-405(2) and (3)(a) for an original annexation petition.

(b) If the city recorder or town clerk certifies the modified annexation petition under Subsection 10-2-405(2)(b)(i), the city recorder or town clerk, as the case may be, shall send written notice of the certification to:

(i) the commission;

(ii) each entity that filed a protest to the annexation petition; and

(iii) if a protest was filed under Subsection 10-2-407(1)(a)[~~(iv)~~](ii), the contact person.

(c) (i) If the modified annexation petition proposes the annexation of an area that includes part or all of a special district or school district that was not included in the area proposed for annexation in the original petition, the city recorder or town clerk, as the case may be, shall also send notice of the certification of the modified annexation petition to the board of the special district or school district.

(ii) If the area proposed for annexation in the modified annexation petition is within 1/2 mile of the boundaries of a municipality whose boundaries were not within 1/2 mile of the area proposed for annexation in the original annexation petition, the city recorder or town clerk, as the case may be, shall also send notice of the certification of the modified annexation petition to the legislative body of that municipality.

(3) Within ten days of the commission's receipt of the notice under Subsection (2)(b), the commission shall engage the feasibility consultant that conducted the feasibility study to supplement the feasibility study to take into account the information in the modified annexation petition that was not included in the original annexation petition.

(4) The commission shall require the feasibility consultant to complete the supplemental feasibility study and to submit written results of the supplemental study to the commission no later than

30 days after the feasibility consultant is engaged to conduct the supplemental feasibility study.

Section 16. Section 10-2-415 is amended to read:

10-2-415. Public hearing -- Notice.

(1) (a) (i) If the results of the feasibility study or supplemental feasibility study meet the requirements of Subsection 10-2-416(3) with respect to a proposed annexation of an area located in a county of the first class, the commission shall hold a public hearing within 30 days of receipt of the feasibility study or supplemental feasibility study results.

[~~(2)~~] (ii) At the hearing under Subsection (1)(a)(i), the commission shall:

[~~(a)~~] (A) require the feasibility consultant to present the results of the feasibility study and, if applicable, the supplemental feasibility study;

[~~(b)~~] (B) allow those present to ask questions of the feasibility consultant regarding the study results; and

[~~(c)~~] (C) allow those present to speak to the issue of annexation.

[~~(3) (a)~~] (iii) (A) The commission shall:

[~~(i)~~] (I) publish notice of [~~the~~] each hearing under Subsection (1)(a)(i) at least once a week for two successive weeks in a newspaper of general circulation within the area proposed for annexation, the surrounding 1/2 mile of unincorporated area, and the proposed annexing municipality; and

[~~(ii)~~] (II) send written notice of the hearing to the municipal legislative body of the proposed annexing municipality, the contact sponsor on the annexation petition, each entity that filed a protest, and, if a protest was filed under Subsection 10-2-407(1)(a)[~~(iv)~~](ii), the contact person.

[~~(b)~~] (B) If there is no newspaper of general circulation within the areas described in Subsection [~~(3)(a)(i)~~] (1)(a)(iii)(A)(I), the commission shall give the notice required under that subsection by posting notices, at least seven days before the hearing, in conspicuous places within those areas that are most likely to give notice of the hearing to the residents of those areas.

[~~(c)~~] (C) The notices under Subsections [~~(3)(a) and (b)~~] (1)(a)(iii)(A) and (B) shall include the feasibility study summary under Subsection 10-2-413(2)(b) and shall indicate that a full copy of the study is available for inspection and copying at the office of the commission.

(b) (i) Within 30 days after the time under Subsection 10-2-407(2) for filing a protest has expired with respect to a proposed annexation of an area located in a specified county, the boundary commission shall hold a hearing on all protests that were filed with respect to the proposed annexation.

(ii) (A) At least 14 days before the date of each hearing under Subsection (1)(b)(i), the commission chair shall cause notice of the hearing to be published in a newspaper of general circulation within the area proposed for annexation.

(B) Each notice under Subsection (1)(b)(ii)(A) shall:

(I) state the date, time, and place of the hearing;

(II) briefly summarize the nature of the protest; and

(III) state that a copy of the protest is on file at the commission's office.

(iii) The commission may continue a hearing under Subsection (1)(b)(i) from time to time, but no continued hearing may be held later than 60 days after the original hearing date.

(iv) In considering protests, the commission shall consider whether the proposed annexation:

(A) complies with the requirements of Sections 10-2-402 and 10-2-403 and the annexation policy plan of the proposed annexing municipality;

(B) conflicts with the annexation policy plan of another municipality; and

(C) if the proposed annexation includes urban development, will have an adverse tax consequence on the remaining unincorporated area of the county.

[~~(4)~~] (2) (a) The commission shall record [~~the~~] each hearing under this section by electronic means.

(b) A transcription of the recording under Subsection [~~(4)~~] (2)(a), the feasibility study, if applicable, information received at the hearing, and the written decision of the commission shall constitute the record of the hearing.

Section 17. Section 10-2-416 is amended to read:

10-2-416. Commission decision -- Time limit -- Limitation on approval of annexation.

(1) Subject to Subsection (3), after the public hearing under Subsection 10-2-415(1) the boundary commission may:

(a) approve the proposed annexation, either with or without conditions;

(b) make minor modifications to the proposed annexation and approve it, either with or without conditions; or

(c) disapprove the proposed annexation.

(2) The commission shall issue a written decision on the proposed annexation within [~~20~~] 30 days [~~of~~] after the conclusion of the hearing under [~~Subsection 10-2-415(1)~~] Section 10-2-415 and shall send a copy of the decision to:

(a) the legislative body of the county in which the area proposed for annexation is located;

(b) the legislative body of the proposed annexing municipality;

(c) the contact person on the annexation petition;

(d) the contact person of each entity that filed a protest; and

(e) if a protest was filed under Subsection 10-2-407(1)(a)[~~(iv)~~](ii) with respect to a proposed annexation of an area located in a county of the first class, the contact person designated in the protest.

(3) [~~The~~] Except for an annexation for which a feasibility study may not be required under Subsection 10-2-413(1)(b), the commission may not approve a proposed annexation of an area located within a county of the first class unless the results of the feasibility study under Section 10-2-413 show that the average annual amount under Subsection 10-2-413(3)(a)(ix) does not exceed the average annual amount under Subsection 10-2-413(3)(a)(viii) by more than 5%.

Section 18. Section 10-2-421 is amended to read:

10-2-421. Electric utility service in annexed area -- Reimbursement for value of facilities.

(1) If the electric consumers of the area being annexed are receiving electric utility services from sources other than the annexing municipality, the municipality may not, without the consent of the electric utility, furnish its electric utility services to the electric consumers until the municipality has reimbursed the electric utility company [~~which~~] that previously provided the services for the [~~fair market~~] value of those facilities dedicated to provide service to the annexed area.

(2) If the annexing municipality and the electric utility cannot agree on the [~~fair market~~] value, [~~it shall be determined by~~] the state court having jurisdiction shall determine the fair market value of those facilities, and the municipality shall reimburse the fair market value, as determined by the court, to the electric utility company.

Section 19. Section 10-2-426 is amended to read:

10-2-426. Division of municipal-type services revenues.

(1) The legislative body of [~~the~~] each county of the first class in which an area proposed for annexation under this part is located shall, until the date of annexation, continue:

(a) to levy and collect ad valorem property tax and other revenues from or pertaining to the area; and

(b) except as otherwise agreed by the county legislative body and the municipal legislative body, to provide the same services to the area proposed for annexation as the county provided before the commencement of the annexation proceedings.

(2) (a) The legislative body of [~~the~~] each county of the first class in which an area proposed for annexation is located shall, after annexation, share pro rata with the annexing municipality the taxes and service charges or fees levied and collected by the county under Section 17-34-3 during the year of the annexation if and to the extent that the annexing municipality provides, by itself or by contract, the same services for which the county levied and collected the taxes and service charges or fees.

(b) The pro rata allocation of taxes under Subsection (2)(a) shall be based on the date of annexation, and the pro rata allocation of service charges and fees shall be based on the proportion of services related to the service charges and fees that remain to be rendered after annexation.

Section 20. Legislative intent.

It is the intent of the Legislature that officials from each county of the first class and from each municipality within each county of the first class shall together:

(1) by November 15, 2001, prepare a master plan for municipal annexations and incorporations within the county that:

(a) proposes how the remainder of unincorporated areas within the county are to be included within municipalities, through municipal annexation or incorporation;

(b) shows the boundaries of municipalities as they are expected to exist after annexations and incorporations of all unincorporated areas have occurred; and

(c) includes a method for an unincorporated area to be added to a municipality when it so desires; and

(2) present the plan to the Legislative Management Committee at its first meeting after November 15, 2001.

Section 21. Repealer.

This act repeals:

Section 10-2-404, Certain annexation petitions invalid -- Certain petitions considered filed on May 5, 1997 -- Signatures on invalid petitions -- Special requirements for certain petitions.

CHAPTER 207
H. B. 254
Passed February 22, 2001
Approved March 16, 2001
Effective April 30, 2001

INSURANCE COMPANY NOTIFICATION REQUIREMENTS

Sponsor: Chad E. Bennion

This act modifies the Insurance Code by amending provisions related to health insurance for dependents after a divorce. The act amends the requirements for an insurance company to inform custodial parents of insurance available through a noncustodial parent's employer. The act modifies the notice that must be provided before terminating dependent coverage.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
31A-22-610.5, as last amended by Chapters 102 and 137, Laws of Utah 1995

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

Section 1. Section 31A-22-610.5 is amended to read:

31A-22-610.5. Dependent coverage.

(1) As used in this section, "child" has the same meaning as defined in Section 78-45-2.

(2) (a) Any individual or group health insurance policy or health maintenance organization contract that provides coverage for a policyholder's or certificate holder's dependent shall not terminate coverage of an unmarried dependent by reason of the dependent's age before the dependent's 26th birthday and shall, upon application, provide coverage for all unmarried dependents up to age 26.

(b) The cost of coverage for unmarried dependents 19 to 26 years of age shall be included in the premium on the same basis as other dependent coverage.

(c) This section does not prohibit the employer from requiring the employee to pay all or part of the cost of coverage for unmarried dependents.

(3) An individual or group health insurance policy or health maintenance organization contract shall reinstate dependent coverage, and for purposes of all exclusions and limitations, shall treat the dependent as if the coverage had been in force since it was terminated; if:

(a) the dependent has not reached the age of 26 by July 1, 1995;

(b) the dependent had coverage prior to July 1, 1994;

(c) prior to July 1, 1994, the dependent's coverage was terminated solely due to the age of the dependent; and

(d) the policy has not been terminated since the dependent's coverage was terminated.

(4) (a) When a parent is required by a court or administrative order to provide health insurance coverage for a child, a disability insurer may not deny enrollment of a child under the disability insurance plan of the child's parent on the grounds the child:

(i) was born out of wedlock and is entitled to coverage under Subsection (6);

(ii) was born out of wedlock and the custodial parent seeks enrollment for the child under the custodial parent's policy;

(iii) is not claimed as a dependent on the parent's federal tax return; or

(iv) does not reside with the parent or in the insurer's service area.

(b) A disability insurer providing enrollment under Subsection (4)(a)(iv) is subject to the requirements of Subsection (5).

(5) A health maintenance organization or a preferred provider organization may use alternative delivery systems or indemnity insurers to provide coverage under Subsection (4)(a)(iv) outside its service area. The provisions of Section 31A-8-408 do not apply to this Subsection (5).

(6) When a child has disability coverage through an insurer of a noncustodial parent, and when requested by the noncustodial or custodial parent, the insurer shall:

(a) provide information to the custodial parent as necessary for the child to obtain benefits through that coverage, but the insurer or employer, or the agents or employees of either of them, are not civilly or criminally liable for providing information in compliance with this Subsection (6)(a), whether the information is provided pursuant to a verbal or written request;

(b) permit the custodial parent or the service provider, with the custodial parent's approval, to submit claims for covered services without the approval of the noncustodial parent; and

(c) make payments on claims submitted in accordance with Subsection (6)(b) directly to the custodial parent, the child who obtained benefits, the provider, or the state Medicaid agency.

(7) When a parent is required by a court or administrative order to provide health coverage for a child, and the parent is eligible for family health coverage, the insurer shall:

(a) permit the parent to enroll, under the family coverage, a child who is otherwise eligible for the coverage without regard to an enrollment season restrictions;

(b) if the parent is enrolled but fails to make application to obtain coverage for the child, enroll the child under family coverage upon application of the child's other parent, the state agency administering the Medicaid program, or the state agency administering 42 U.S.C. 651 through 669, the child support enforcement program; and

(c) (i) when the child is covered by an individual policy, not disenroll or eliminate coverage of the

child unless the insurer is provided satisfactory written evidence that:

[~~(i)~~] (A) the court or administrative order is no longer in effect; or

[~~(ii)~~] (B) the child is or will be enrolled in comparable disability coverage through another insurer which will take effect not later than the effective date of disenrollment[~~.~~]; or

(ii) when the child is covered by a group policy, not disenroll or eliminate coverage of the child unless the employer is provided with satisfactory written evidence, which evidence is also provided to the insurer, that Subsection (10)(c)(i), (ii) or (iii) has happened.

(8) An insurer may not impose requirements on a state agency which has been assigned the rights of an individual eligible for medical assistance under Medicaid and covered for disability benefits from the insurer that are different from requirements applicable to an agent or assignee of any other individual so covered.

(9) Insurers may not reduce their coverage of pediatric vaccines below the benefit level in effect on May 1, 1993.

(10) When a parent is required by a court or administrative order to provide health coverage, which is available through an employer doing business in this state, the employer shall:

(a) permit the parent to enroll under family coverage any child who is otherwise eligible for coverage without regard to any enrollment season restrictions;

(b) if the parent is enrolled but fails to make application to obtain coverage of the child, enroll the child under family coverage upon application by the child's other parent, by the state agency administering the Medicaid program, or the state agency administering 42 U.S.C. 651 through 669, the child support enforcement program;

(c) not disenroll or eliminate coverage of the child unless the employer is provided satisfactory written evidence that:

(i) the court order is no longer in effect;

(ii) the child is or will be enrolled in comparable coverage which will take effect no later than the effective date of disenrollment; or

(iii) the employer has eliminated family health coverage for all of its employees; and

(d) withhold from the employee's compensation the employee's share, if any, of premiums for health coverage and to pay this amount to the insurer.

(11) An order issued under Section 62A-11-326.1 may be considered a "qualified medical support order" for the purpose of enrolling a dependent child in a group disability insurance plan as defined in Section 609(a), Federal Employee Retirement Income Security Act of 1974.

(12) This section does not affect any insurer's ability to require as a precondition of any child being covered under any policy of insurance that:

(a) the parent continues to be eligible for coverage;

(b) the child shall be identified to the insurer with adequate information to comply with this section; and

(c) the premium shall be paid when due.

(13) The provisions of this section apply to employee welfare benefit plans as defined in Section 26-19-2.

CHAPTER 208
H. B. 257
Passed February 16, 2001
Approved March 16, 2001
Effective April 30, 2001

MANDATORY CHILD PROTECTIVE SERVICE REQUIREMENTS

Sponsor: Matt Throckmorton

This act requires the Division of Child and Family Services to follow the same investigative requirements for both preremoval and postremoval investigations of child abuse or neglect.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
62A-4a-202.3, as last amended by Chapters 274 and 321, Laws of Utah 2000
62A-4a-409, as last amended by Chapters 274 and 321, Laws of Utah 2000

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

Section 1. Section 62A-4a-202.3 is amended to read:

62A-4a-202.3. Investigation -- Substantiation of reports -- Child in protective custody.

(1) When a child is taken into protective custody in accordance with Sections 62A-4a-202.1 and 78-3a-301, the Division of Child and Family Services shall immediately initiate [~~a post-removal~~] an investigation of the circumstances of the minor and the facts surrounding his being taken into protective custody.

(2) The division's [~~post-removal~~] investigation shall include, among other actions necessary to meet reasonable professional standards:

(a) a search for and review of any records of past reports of abuse or neglect involving the same child, any sibling or other child residing in that household, and the alleged perpetrator;

(b) with regard to a child who is five years of age or older, a personal interview with the child outside of the presence of the alleged perpetrator, conducted in accordance with the requirements of Subsection (7);

(c) an interview with the child's natural parents or other guardian, unless their whereabouts are unknown;

(d) an interview with the person who reported the abuse, unless anonymous;

(e) where possible and appropriate, interviews with other third parties who have had direct contact with the child, including school personnel and the child's health care provider;

(f) an unscheduled visit to the child's home, unless the division has reasonable cause to believe that the reported abuse was committed by a person who does not:

(i) live in the child's home; or

(ii) have access to the child; and

(g) if appropriate and indicated in any case alleging physical injury, sexual abuse, or failure to meet the child's medical needs, a medical examination. That examination shall be obtained no later than 24 hours after the child was placed in protective custody.

(3) The division may rely on a written report of a prior interview rather than conducting an additional interview, if:

(a) law enforcement has previously conducted a timely and thorough investigation regarding the alleged abuse or neglect and has produced a written report;

(b) that investigation included one or more of the interviews required by Subsection (2); and

(c) the division finds that an additional interview is not in the best interest of the child.

(4) (a) [~~With regard to both pre- and post-removal, the~~] The division's determination of whether a report is substantiated or unsubstantiated may be based on the child's statements alone.

(b) Inability to identify or locate the perpetrator may not be used by the division as a basis for determining that a report is unsubstantiated, or for closing the case.

(c) The division may not determine a case to be unsubstantiated or identify a case as unsubstantiated solely because the perpetrator was an out-of-home perpetrator.

(d) Decisions regarding whether a report is substantiated, unsubstantiated, or without merit shall be based on the facts of the case at the time the report was made.

(5) The division should maintain protective custody of the child if it finds that one or more of the following conditions exist:

(a) the minor has no natural parent, guardian, or responsible relative who is able and willing to provide safe and appropriate care for the minor;

(b) shelter of the minor is a matter of necessity for the protection of the minor and there are no reasonable means by which the minor can be protected in his home or the home of a responsible relative;

(c) there is substantial evidence that the parent or guardian is likely to flee the jurisdiction of the court; or

(d) the minor has left a previously court ordered placement.

(6) (a) Within 24 hours after receipt of a child into protective custody, excluding weekends and holidays, the Division of Child and Family Services shall convene a child protection team to review the

circumstances regarding removal of the child from his home, and prepare the testimony and evidence that will be required of the division at the shelter hearing, in accordance with Section 78-3a-306.

(b) Members of that team shall include:

(i) the caseworker assigned to the case and the caseworker who made the decision to remove the child;

(ii) a representative of the school or school district in which the child attends school;

(iii) the peace officer who removed the child from the home;

(iv) a representative of the appropriate Children's Justice Center, if one is established within the county where the child resides;

(v) if appropriate, and known to the division, a therapist or counselor who is familiar with the child's circumstances; and

(vi) any other individuals as determined to be appropriate and necessary by the team coordinator and chair.

(c) At that 24-hour meeting, the division shall have available for review and consideration, the complete child protective services and foster care history of the child and the child's parents and siblings.

(7) After receipt of a child into protective custody and prior to the adjudication hearing, all investigative interviews with the child that are initiated by the division shall be audio or video taped, and the child shall be allowed to have a support person of the child's choice present. That support person may not be an alleged perpetrator.

(8) The division shall cooperate with law enforcement investigations regarding the alleged perpetrator.

(9) The division may not close an investigation solely on the grounds that the division investigator is unable to locate the child, until all reasonable efforts have been made to locate the child and family members. Those efforts include:

(a) visiting the home at times other than normal work hours;

(b) contacting local schools;

(c) contacting local, county, and state law enforcement agencies; and

(d) checking public assistance records.

Section 2. Section 62A-4a-409 is amended to read:

62A-4a-409. Investigation by division -- Temporary protective custody -- Preremoval interviews of children.

(1) The division shall make a thorough pre-removal investigation upon receiving either an oral or written report of alleged abuse, neglect, fetal alcohol syndrome, or fetal drug dependency, when there is reasonable cause to suspect a situation of abuse, neglect, fetal alcohol syndrome, or fetal drug dependency. The primary purpose of that investigation shall be protection of the child.

(2) The preremoval investigation [~~may include inquiry into the child's home environment, emotional, or mental health, nature and extent of injuries, and physical safety~~] shall include the same investigative requirements described in Section 62A-4a-202.3.

(3) The division shall make a written report of its investigation. The written report shall include a determination regarding whether the alleged abuse or neglect was substantiated, unsubstantiated, or without merit.

(4) (a) The division shall use an interdisciplinary approach whenever possible in dealing with reports made under this part.

(b) For this purpose, the division shall convene appropriate interdisciplinary "child protection teams" to assist it in its protective, diagnostic, assessment, treatment, and coordination services.

(c) A representative of the division shall serve as the team's coordinator and chair. Members of the team shall serve at the coordinator's invitation, and whenever possible, the team shall include representatives of health, mental health, education, law enforcement agencies, and other appropriate agencies or individuals.

(5) In any case where the division supervises, governs, or directs the affairs of any individual, institution, or facility that has been alleged to be involved in acts or omissions of child abuse or neglect, the investigation of the reported child abuse or neglect shall be conducted by an agency other than the division.

(6) If a report of neglect is based upon or includes an allegation of educational neglect the division shall immediately consult with school authorities to verify the child's status in accordance with Sections 53A-11-101 through 53A-11-103.

(7) When the division has completed its initial investigation under this part, it shall give notice of that completion to the person who made the initial report.

(8) Division workers or other child protection team members have authority to enter upon public or private premises, using appropriate legal processes, to investigate reports of alleged child abuse or neglect.

(9) With regard to any interview of a child prior to removal of that child from his home:

(a) except as provided in Subsection (9)(b) or (c), the division shall notify a parent of the child prior to the interview;

(b) if a child's parent or stepparent, or a parent's paramour has been identified as the alleged perpetrator, the division need not notify a parent of the child prior to an initial interview with the child;

(c) if the perpetrator is unknown, or if the perpetrator's relationship to the child's family is

unknown, the division may conduct a minimal interview, not to exceed 15 minutes, with the child prior to notification of the child's parent;

(d) in all cases described in Subsection (9)(b) or (c), a parent of the child shall be notified as soon as practicable after the child has been interviewed, but in no case later than 24 hours after the interview has taken place;

(e) a child's parents shall be notified of the time and place of all subsequent interviews with the child; and

(f) the child shall be allowed to have a support person of the child's choice present. That support person:

(i) may include, but is not limited to, a school teacher or administrator, guidance counselor, or child care provider; and

(ii) may not be a person who is alleged to be, or potentially may be, the perpetrator.

(10) In accordance with the procedures and requirements of Sections 62A-4a-202.1 through 62A-4a-202.3 and 78-3a-301, a division worker or child protection team member may take a child into protective custody, and deliver the child to a law enforcement officer, or place the child in an emergency shelter facility approved by the juvenile court, at the earliest opportunity subsequent to the child's removal from its original environment. Control and jurisdiction over the child is determined by the provisions of Title 78, Chapter 3a, and as otherwise provided by law.

(11) With regard to cases in which law enforcement has or is conducting an investigation of alleged abuse or neglect of a child:

(a) the division shall coordinate with law enforcement to ensure that there is an adequate safety plan to protect the child from further abuse or neglect; and

(b) the division is not required to duplicate an aspect of the investigation that, in the division's determination, has been satisfactorily completed by law enforcement.

CHAPTER 209
H. B. 258
Passed February 21, 2001
Approved March 16, 2001
Effective April 30, 2001

CRIMINAL SENTENCING AMENDMENTS

Sponsor: Scott Daniels

This act modifies the Criminal Code by amending sentencing provisions regarding imprisonment and life imprisonment without parole and clarifying that capital offenses are capital felonies. This act creates a new section providing an enhanced penalty for specified violent offenses committed by a prisoner and amending the section dealing only with aggravated assault by a prisoner. This act amends the section that provides that a murder is aggravated murder if the defendant was previously convicted of a violent offense, by specifically listing the offenses. This act also makes cross reference corrections.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
76-3-201, as last amended by Chapter 270, Laws of Utah 1999
76-3-203.1, as last amended by Chapter 214, Laws of Utah 2000
76-3-206, as last amended by Chapter 142, Laws of Utah 1992
76-3-207, as last amended by Chapter 137, Laws of Utah 1998
76-3-207.5, as enacted by Chapter 142, Laws of Utah 1992
76-4-201, as last amended by Chapter 32, Laws of Utah 1974
76-5-103.5, as last amended by Chapter 207, Laws of Utah 1997
76-5-202, as last amended by Chapter 125, Laws of Utah 2000
76-8-306, as last amended by Chapter 203, Laws of Utah 2000
76-8-316, as enacted by Chapter 51, Laws of Utah 1995
77-16a-201, as enacted by Chapter 171, Laws of Utah 1992
77-16a-202, as last amended by Chapter 256, Laws of Utah 2000
77-18-5.5, as last amended by Chapter 190, Laws of Utah 1988
77-20-1, as last amended by Chapter 293, Laws of Utah 1998
77-32-201, as enacted by Chapter 354, Laws of Utah 1997
77-32-601, as enacted by Chapter 354, Laws of Utah 1997
77-32-604, as last amended by Chapter 333, Laws of Utah 1998
78-46-5, as repealed and reenacted by Chapter 44, Laws of Utah 1996

ENACTS:
76-3-203.6, Utah Code Annotated 1953

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

Section 1. Section 76-3-201 is amended to read:

76-3-201. Definitions -- Sentences or combination of sentences allowed -- Civil penalties -- Restitution -- Hearing.

(1) As used in this section:

(a) "Conviction" includes a:

(i) judgment of guilt; and

(ii) plea of guilty.

(b) "Criminal activities" means any offense of which the defendant is convicted or any other criminal conduct for which the defendant admits responsibility to the sentencing court with or without an admission of committing the criminal conduct.

(c) "Pecuniary damages" means all special damages, but not general damages, which a person could recover against the defendant in a civil action arising out of the facts or events constituting the defendant's criminal activities and includes the money equivalent of property taken, destroyed, broken, or otherwise harmed, and losses including earnings and medical expenses.

(d) "Restitution" means full, partial, or nominal payment for pecuniary damages to a victim, including the accrual of interest from the time of sentencing, insured damages, and payment for expenses to a governmental entity for extradition or transportation and as further defined in Subsection (4)(c).

(e) (i) "Victim" means any person whom the court determines has suffered pecuniary damages as a result of the defendant's criminal activities.

(ii) "Victim" does not include any coparticipant in the defendant's criminal activities.

(2) Within the limits prescribed by this chapter, a court may sentence a person convicted of an offense to any one of the following sentences or combination of them:

(a) to pay a fine;

(b) to removal or disqualification from public or private office;

(c) to probation unless otherwise specifically provided by law;

(d) to imprisonment;

[~~(e) to life imprisonment;~~]

[~~(f)~~] (e) on or after April 27, 1992, to life in prison without parole; or

[~~(g)~~] (f) to death.

(3) (a) This chapter does not deprive a court of authority conferred by law to:

(i) forfeit property;

(ii) dissolve a corporation;

(iii) suspend or cancel a license;

(iv) permit removal of a person from office;

(v) cite for contempt; or

(vi) impose any other civil penalty.

(b) A civil penalty may be included in a sentence.

(4) (a) (i) When a person is convicted of criminal activity that has resulted in pecuniary damages, in addition to any other sentence it may impose, the court shall order that the defendant make restitution to victims of crime as provided in this subsection, or for conduct for which the defendant has agreed to make restitution as part of a plea agreement. For purposes of restitution, a victim has the meaning as defined in Subsection (1)(e).

(ii) In determining whether restitution is appropriate, the court shall follow the criteria and procedures as provided in Subsections (4)(c) and (4)(d).

(iii) If the court finds the defendant owes restitution, the clerk of the court shall enter an order of complete restitution as defined in Subsection (8)(b) on the civil judgment docket and provide notice of the order to the parties.

(iv) The order is considered a legal judgment enforceable under the Utah Rules of Civil Procedure, and the person in whose favor the restitution order is entered may seek enforcement of the restitution order in accordance with the Utah Rules of Civil Procedure. In addition, the Department of Corrections may, on behalf of the person in whose favor the restitution order is entered, enforce the restitution order as judgment creditor under the Utah Rules of Civil Procedure.

(v) If the defendant fails to obey a court order for payment of restitution and the victim or department elects to pursue collection of the order by civil process, the victim shall be entitled to recover reasonable attorney's fees.

(vi) A judgment ordering restitution constitutes a lien when recorded in a judgment docket and shall have the same effect and is subject to the same rules as a judgment for money in a civil action. Interest shall accrue on the amount ordered from the time of sentencing.

(vii) The Department of Corrections shall make rules permitting the restitution payments to be credited to principal first and the remainder of payments credited to interest in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(b) (i) If a defendant has been extradited to this state under Title 77, Chapter 30, Extradition, to resolve pending criminal charges and is convicted of criminal activity in the county to which he has been returned, the court may, in addition to any other sentence it may impose, order that the defendant make restitution for costs expended by any governmental entity for the extradition.

(ii) In determining whether restitution is appropriate, the court shall consider the criteria in Subsection (4)(c).

(c) In determining restitution, the court shall determine complete restitution and court-ordered restitution.

(i) Complete restitution means the restitution necessary to compensate a victim for all losses caused by the defendant.

(ii) Court-ordered restitution means the restitution the court having criminal jurisdiction orders the defendant to pay as a part of the criminal sentence at the time of sentencing.

(iii) Complete restitution and court-ordered restitution shall be determined as provided in Subsection (8).

(d) (i) If the court determines that restitution is appropriate or inappropriate under this subsection, the court shall make the reasons for the decision a part of the court record.

(ii) In any civil action brought by a victim to enforce the judgment, the defendant shall be entitled to offset any amounts that have been paid as part of court-ordered restitution to the victim.

(iii) A judgment ordering restitution constitutes a lien when recorded in a judgment docket and shall have the same effect and is subject to the same rules as a judgment for money in a civil action. Interest shall accrue on the amount ordered from the time of sentencing.

(iv) The Department of Corrections shall make rules permitting the restitution payments to be credited to principal first and the remainder of payments credited to interest in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(e) If the defendant objects to the imposition, amount, or distribution of the restitution, the court shall at the time of sentencing allow the defendant a full hearing on the issue.

(5) (a) In addition to any other sentence the court may impose, the court shall order the defendant to pay restitution of governmental transportation expenses if the defendant was:

(i) transported pursuant to court order from one county to another within the state at governmental expense to resolve pending criminal charges;

(ii) charged with a felony or a class A, B, or C misdemeanor; and

(iii) convicted of a crime.

(b) The court may not order the defendant to pay restitution of governmental transportation expenses if any of the following apply:

(i) the defendant is charged with an infraction or on a subsequent failure to appear a warrant is issued for an infraction; or

(ii) the defendant was not transported pursuant to a court order.

(c) (i) Restitution of governmental transportation expenses under Subsection (5)(a)(i) shall be calculated according to the following schedule:

(A) $75 for up to 100 miles a defendant is transported;

(B) $125 for 100 up to 200 miles a defendant is transported; and

(C) $250 for 200 miles or more a defendant is transported.

(ii) The schedule of restitution under Subsection (5)(c)(i) applies to each defendant transported regardless of the number of defendants actually transported in a single trip.

(6) (a) If a statute under which the defendant was convicted mandates that one of three stated minimum terms shall be imposed, the court shall order imposition of the term of middle severity unless there are circumstances in aggravation or mitigation of the crime.

(b) Prior to or at the time of sentencing, either party may submit a statement identifying circumstances in aggravation or mitigation or presenting additional facts. If the statement is in writing, it shall be filed with the court and served on the opposing party at least four days prior to the time set for sentencing.

(c) In determining whether there are circumstances that justify imposition of the highest or lowest term, the court may consider the record in the case, the probation officer's report, other reports, including reports received under Section 76-3-404, statements in aggravation or mitigation submitted by the prosecution or the defendant, and any further evidence introduced at the sentencing hearing.

(d) The court shall set forth on the record the facts supporting and reasons for imposing the upper or lower term.

(e) In determining a just sentence, the court shall consider sentencing guidelines regarding aggravating and mitigating circumstances promulgated by the Sentencing Commission.

(7) If during the commission of a crime described as child [~~kidnaping~~] kidnapping, rape of a child, object rape of a child, sodomy upon a child, or sexual abuse of a child, the defendant causes substantial bodily injury to the child, and if the charge is set forth in the information or indictment and admitted by the defendant, or found true by a judge or jury at trial, the defendant shall be sentenced to the highest minimum term in state prison. This subsection takes precedence over any conflicting provision of law.

(8) (a) For the purpose of determining restitution for an offense, the offense shall include any criminal conduct admitted by the defendant to the sentencing court or to which the defendant agrees to pay restitution. A victim of an offense, that involves as an element a scheme, a conspiracy, or a pattern of criminal activity, includes any person directly harmed by the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern.

(b) In determining the monetary sum and other conditions for complete restitution, the court shall consider all relevant facts, including:

(i) the cost of the damage or loss if the offense resulted in damage to or loss or destruction of property of a victim of the offense;

(ii) the cost of necessary medical and related professional services and devices relating to physical, psychiatric, and psychological care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment; the cost of necessary physical and occupational therapy and rehabilitation; and the income lost by the victim as a result of the offense if the offense resulted in bodily injury to a victim; and

(iii) the cost of necessary funeral and related services if the offense resulted in the death of a victim.

(c) In determining the monetary sum and other conditions for court-ordered restitution, the court shall consider the factors listed in Subsection (8)(b) and:

(i) the financial resources of the defendant and the burden that payment of restitution will impose, with regard to the other obligations of the defendant;

(ii) the ability of the defendant to pay restitution on an installment basis or on other conditions to be fixed by the court;

(iii) the rehabilitative effect on the defendant of the payment of restitution and the method of payment; and

(iv) other circumstances which the court determines make restitution inappropriate.

(d) The court may decline to make an order or may defer entering an order of restitution if the court determines that the complication and prolongation of the sentencing process, as a result of considering an order of restitution under this subsection, substantially outweighs the need to provide restitution to the victim.

Section 2. Section 76-3-203.1 is amended to read:

76-3-203.1. Offenses committed in concert with two or more persons -- Notice -- Enhanced penalties.

(1) (a) A person who commits any offense listed in Subsection (4) is subject to an enhanced penalty for the offense as provided in Subsection (3) if the trier of fact finds beyond a reasonable doubt that the person acted in concert with two or more persons.

(b) "In concert with two or more persons" as used in this section means the defendant was aided or encouraged by at least two other persons in committing the offense and was aware that he was so aided or encouraged, and each of the other persons:

(i) was physically present; or

(ii) participated as a party to any offense listed in Subsection (4).

(c) For purposes of Subsection (1)(b)(ii):

(i) other persons participating as parties need not have the intent to engage in the same offense or degree of offense as the defendant; and

(ii) a minor is a party if the minor's actions would cause him to be a party if he were an adult.

(2) The prosecuting attorney, or grand jury if an indictment is returned, shall cause to be subscribed upon the information or indictment notice that the defendant is subject to the enhanced penalties provided under this section.

(3) The enhanced penalty for a:

(a) class B misdemeanor is a class A misdemeanor;

(b) class A misdemeanor is a third degree felony;

(c) third degree felony is a second degree felony;

(d) second degree felony is a first degree felony; and

(e) first degree felony is an [~~enhanced minimum~~] indeterminate prison term of not less than nine years [~~in prison; and~~] and which may be for life.

[~~(f) capital offense for which a life sentence is imposed is a minimum term of 20 years in prison.~~]

(4) Offenses referred to in Subsection (1) are:

(a) any criminal violation of Title 58, Chapter 37, 37a, 37b, or 37c, regarding drug-related offenses;

(b) assault and related offenses under Title 76, Chapter 5, Part 1;

(c) any criminal homicide offense under Title 76, Chapter 5, Part 2;

(d) kidnapping and related offenses under Title 76, Chapter 5, Part 3;

(e) any felony sexual offense under Title 76, Chapter 5, Part 4;

(f) sexual exploitation of a minor as defined in Section 76-5a-3;

(g) any property destruction offense under Title 76, Chapter 6, Part 1;

(h) burglary, criminal trespass, and related offenses under Title 76, Chapter 6, Part 2;

(i) robbery and aggravated robbery under Title 76, Chapter 6, Part 3;

(j) theft and related offenses under Title 76, Chapter 6, Part 4;

(k) any fraud offense under Title 76, Chapter 6, Part 5, except Sections 76-6-503, 76-6-504, 76-6-505, 76-6-507, 76-6-508, 76-6-509, 76-6-510, 76-6-511, 76-6-512, 76-6-513, 76-6-514, 76-6-516, 76-6-517, 76-6-518, and 76-6-520;

(l) any offense of obstructing government operations under Title 76, Chapter 8, Part 3, except Sections 76-8-302, 76-8-303, 76-8-304, 76-8-307, 76-8-308, and 76-8-312;

(m) tampering with a witness or other violation of Section 76-8-508;

(n) extortion or bribery to dismiss criminal proceeding as defined in Section 76-8-509;

(o) any explosives offense under Title 76, Chapter 10, Part 3;

(p) any weapons offense under Title 76, Chapter 10, Part 5;

(q) pornographic and harmful materials and performances offenses under Title 76, Chapter 10, Part 12;

(r) prostitution and related offenses under Title 76, Chapter 10, Part 13;

(s) any violation of Title 76, Chapter 10, Part 15, Bus Passenger Safety Act;

(t) any violation of Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act;

(u) communications fraud as defined in Section 76-10-1801;

(v) any violation of Title 76, Chapter 10, Part 19, Money Laundering and Currency Transaction Reporting Act; and

(w) burglary of a research facility as defined in Section 76-10-2002.

(5) It is not a bar to imposing the enhanced penalties under this section that the persons with whom the actor is alleged to have acted in concert are not identified, apprehended, charged, or convicted, or that any of those persons are charged with or convicted of a different or lesser offense.

Section 3. Section 76-3-203.6 is enacted to read:

76-3-203.6. Enhanced penalty for certain offenses committed by prisoner.

(1) As used in this section, "serving a sentence" means a prisoner is sentenced and committed to the custody of the Department of Corrections, the sentence has not been terminated or voided, and the prisoner:

(a) has not been paroled; or

(b) is in custody after arrest for a parole violation.

(2) If the trier of fact finds beyond a reasonable doubt that a prisoner serving a sentence for a capital felony or a first degree felony commits any offense listed in Subsection (3), the court shall sentence the defendant to life in prison without parole. However, the court may sentence the defendant to an indeterminate prison term of not less than 20 years and which may be for life if the court finds that the interests of justice would best be served and states the specific circumstances justifying the disposition on the record.

(3) Offenses referred to in Subsection (2) are:

(a) aggravated assault, Subsection 76-5-103(2);

(b) mayhem, Section 76-5-105;

(c) attempted murder, Section 76-5-203;

(d) kidnapping, Section 76-5-301;

(e) child kidnapping, Section 76-5-301.1;

(f) aggravated kidnapping, Section 76-5-302;

(g) rape, Section 76-5-402;

(h) rape of a child, Section 76-5-402.1;

(i) object rape, Section 76-5-402.2;

(j) object rape of a child, Section 76-5-402.3;

(k) forcible sodomy, Section 76-5-403;

(l) sodomy on a child, Section 76-5-403.1;

(m) aggravated sexual abuse of a child, Section 76-5-404.1;

(n) aggravated sexual assault, Section 76-5-405;

(o) aggravated arson, Section 76-6-103;

(p) aggravated burglary, Section 76-6-203; and

(q) aggravated robbery, Section 76-6-302.

Section 4. Section 76-3-206 is amended to read:

76-3-206. Capital felony -- Penalties.

(1) A person who has pled guilty to or been convicted of a capital felony shall be sentenced in accordance with Section 76-3-207. That sentence shall be death, [~~life imprisonment~~] an indeterminate prison term of not less than 20 years and which may be for life, or, on or after April 27, 1992, life in prison without parole.

(2) (a) The judgment of conviction and sentence of death [~~shall be~~] is subject to automatic review by the Utah State Supreme Court within 60 days after certification by the sentencing court of the entire record unless time is extended an additional period not to exceed 30 days by the Utah State Supreme Court for good cause shown. [~~Such~~]

(b) The review by the Utah State Supreme Court [~~shall have~~] has priority over all other cases and shall be heard in accordance with rules promulgated by the Utah State Supreme Court.

Section 5. Section 76-3-207 is amended to read:

76-3-207. Capital felony -- Sentencing proceeding.

(1) (a) When a defendant has pled guilty to or been found guilty of a capital felony, there shall be further proceedings before the court or jury on the issue of sentence.

(b) In the case of a plea of guilty to a capital felony, the sentencing proceedings shall be conducted before a jury or, upon request of the defendant and with the approval of the court and the consent of the prosecution, by the court which accepted the plea.

(c) (i) When a defendant has been found guilty of a capital felony, the proceedings shall be conducted before the court or jury which found the defendant guilty, provided the defendant may waive hearing before the jury with the approval of the court and the consent of the prosecution, in which event the hearing shall be before the court.

(ii) If, however, circumstances make it impossible or impractical to reconvene the same jury for the sentencing proceedings, the court may dismiss that jury and convene a new jury for the proceedings.

(d) If a retrial of the sentencing proceedings is necessary as a consequence of a remand from an appellate court, the sentencing authority shall be determined as provided in Subsection (5).

(2) (a) In capital sentencing proceedings, evidence may be presented on:

(i) the nature and circumstances of the crime;

(ii) the defendant's character, background, history, mental and physical condition;

(iii) the victim and the impact of the crime on the victim's family and community without comparison to other persons or victims; and

(iv) any other facts in aggravation or mitigation of the penalty that the court considers relevant to the sentence.

(b) Any evidence the court considers to have probative force may be received regardless of its admissibility under the exclusionary rules of evidence. The state's attorney and the defendant shall be permitted to present argument for or against the sentence of death.

(3) Aggravating circumstances include those outlined in Section 76-5-202. Mitigating circumstances include:

(a) the defendant has no significant history of prior criminal activity;

(b) the homicide was committed while the defendant was under the influence of mental or emotional disturbance;

(c) the defendant acted under duress or under the domination of another person;

(d) at the time of the homicide, the capacity of the defendant to appreciate the wrongfulness of his conduct or to conform his conduct to the requirement of law was impaired as a result of mental disease, intoxication, or influence of drugs;

(e) the youth of the defendant at the time of the crime;

(f) the defendant was an accomplice in the homicide committed by another person and the defendant's participation was relatively minor; and

(g) any other fact in mitigation of the penalty.

(4) (a) The court or jury, as the case may be, shall retire to consider the penalty. Except as provided in Subsection 76-3-207.5(2), in all proceedings before a jury, under this section, it shall be instructed as to the punishment to be imposed upon a unanimous

decision for death and that the penalty of either [~~life in prison~~] an indeterminate prison term of not less than 20 years and which may be for life or life in prison without parole, shall be imposed if a unanimous decision for death is not found.

(b) The death penalty shall only be imposed if, after considering the totality of the aggravating and mitigating circumstances, the jury is persuaded beyond a reasonable doubt that total aggravation outweighs total mitigation, and is further persuaded, beyond a reasonable doubt, that the imposition of the death penalty is justified and appropriate in the circumstances. If the jury reports unanimous agreement to impose the sentence of death, the court shall discharge the jury and shall impose the sentence of death.

(c) If the jury is unable to reach a unanimous decision imposing the sentence of death[~~, except as provided in Subsection 76-3-207.5(2)~~] or the state is not seeking the death penalty, the jury shall then determine whether the penalty of life in prison without parole shall be imposed, except as provided in Subsection 76-3-207.5(2). The penalty of life in prison without parole shall only be imposed if the jury determines that the sentence of life in prison without parole is appropriate. If the jury reports agreement by ten jurors or more to impose the sentence of life in prison without parole, the court shall discharge the jury and shall impose the sentence of life in prison without parole. If ten jurors or more do not agree upon a sentence of life in prison without parole, the court shall discharge the jury and impose [~~the sentence of life imprisonment with the possibility of parole~~] an indeterminate prison term of not less than 20 years and which may be for life.

(d) If the defendant waives hearing before the jury as to sentencing, with the approval of the court and the consent of the prosecution, the court shall determine the appropriate penalty according to the standards of this Subsection (4)(d).

(5) Upon any appeal by the defendant where the sentence is of death, the appellate court, if it finds prejudicial error in the sentencing proceeding only, may set aside the sentence of death and remand the case to the trial court for new sentencing proceedings to the extent necessary to correct the error or errors. No error in the sentencing proceedings shall result in the reversal of the conviction of a capital felony. In cases of remand for new sentencing proceedings, all exhibits and a transcript of all testimony and other evidence properly admitted in the prior trial and sentencing proceedings shall be admissible in the new sentencing proceedings, and if the sentencing proceeding was before a:

(a) jury, a new jury shall be impaneled for the new sentencing proceeding unless the defendant waives the hearing before the jury with the approval of the court and the consent of the prosecution, in which case the proceeding shall be held according to Subsection (5)(b) or (c), as applicable;

(b) judge, the original trial judge shall conduct the new sentencing proceeding; or

(c) judge, and the original trial judge is unable or unavailable to conduct a new sentencing proceeding, then another judge shall be designated to conduct the new sentencing proceeding, and the new proceeding will be before a jury unless the defendant waives the hearing before the jury with the approval of the court and the consent of the prosecution.

(6) In the event the death penalty is held to be unconstitutional by the Utah Supreme Court or the United States Supreme Court, the court having jurisdiction over a person previously sentenced to death for a capital felony shall cause the person to be brought before the court, and the court shall sentence the person to [~~life in prison~~] an indeterminate prison term of not less than 20 years and which may be for life, if the death penalty is held unconstitutional prior to April 27, 1992, or life in prison without parole if the death penalty is held unconstitutional on or after April 27, 1992, and any person who is thereafter convicted of a capital felony shall be sentenced to [~~life in prison~~] an indeterminate prison term of not less than 20 years and which may be for life or life in prison without parole.

Section 6. Section 76-3-207.5 is amended to read:

76-3-207.5. Applicability -- Effect on sentencing -- Options of offenders.

(1) (a) The sentencing option of life without parole provided in Sections 76-3-201 and 76-3-207 applies only to those capital [~~offenses~~] felonies for which the offender is sentenced on or after April 27, 1992.

(b) The sentencing option of life without parole provided in Sections 76-3-201 and 76-3-207 has no effect on sentences imposed in capital cases prior to April 27, 1992.

(2) An offender, who commits a capital [~~offense~~] felony prior to April 27, 1992, but is sentenced on or after April 27, 1992, shall be given the option, prior to a sentencing hearing pursuant to Section 76-3-207, to proceed either under the law which was in effect at the time the offense was committed or under the additional sentencing option of life in prison without parole provided in Sections 76-3-201 and 76-3-207.

Section 7. Section 76-4-201 is amended to read:

76-4-201. Conspiracy -- Elements of offense.

For purposes of this part a person is guilty of conspiracy when he, intending that conduct constituting a crime be performed, agrees with one or more persons to engage in or cause the performance of [~~such~~] the conduct and any one of them commits an overt act in pursuance of the conspiracy, except where the offense is a capital [~~offense~~] felony, a felony against the person, arson, burglary, or robbery, the overt act is not required for the commission of conspiracy.

Section 8. Section 76-5-103.5 is amended to read:

76-5-103.5. Aggravated assault by prisoner.

(1) Any prisoner, not serving a sentence for a capital felony or a felony of the first degree, who commits aggravated assault is guilty of:

(a) a felony of the second degree if no serious bodily injury was intentionally caused; or

(b) a felony of the first degree if serious bodily injury was intentionally caused.

[~~(2) Any prisoner serving a sentence for a capital felony or a felony of the first degree who commits aggravated assault is guilty of:~~]

[~~(a) a felony of the first degree if no serious bodily injury was intentionally caused; or~~]

[~~(b) a capital felony if serious bodily injury was intentionally caused.~~]

[~~(3)~~] (2) For the purpose of this section, "serving a sentence" means sentenced and committed to the custody of the Department of Corrections, the sentence has not been terminated or voided, and the prisoner is:

(a) not on parole; or

(b) in custody after arrest for a parole violation.

Section 9. Section 76-5-202 is amended to read:

76-5-202. Aggravated murder.

(1) Criminal homicide constitutes aggravated murder if the actor intentionally or knowingly causes the death of another under any of the following circumstances:

(a) the homicide was committed by a person who is confined in a jail or other correctional institution;

(b) the homicide was committed incident to one act, scheme, course of conduct, or criminal episode during which two or more persons were killed, or during which the actor attempted to kill one or more persons in addition to the victim who was killed;

(c) the actor knowingly created a great risk of death to a person other than the victim and the actor;

(d) the homicide was committed while the actor was engaged in the commission of, or an attempt to commit, or flight after committing or attempting to commit, aggravated robbery, robbery, rape, rape of a child, object rape, object rape of a child, forcible sodomy, sodomy upon a child, forcible sexual abuse, sexual abuse of a child, aggravated sexual abuse of a child, child abuse as defined in Subsection 76-5-109(2)(a), or aggravated sexual assault, aggravated arson, arson, aggravated burglary, burglary, aggravated [~~kidnaping~~] kidnapping, [~~kidnaping~~] kidnapping, or child [~~kidnaping~~] kidnapping;

(e) the homicide was committed for the purpose of avoiding or preventing an arrest of the defendant or another by a peace officer acting under color of legal authority or for the purpose of effecting the defendant's or another's escape from lawful custody;

(f) the homicide was committed for pecuniary or other personal gain;

(g) the defendant committed, or engaged or employed another person to commit the homicide pursuant to an agreement or contract for remuneration or the promise of remuneration for commission of the homicide;

(h) the actor was previously convicted of [~~aggravated murder, murder, or of a felony involving the use or threat of violence to a person. For the purpose of this subsection an offense committed in another jurisdiction, which if committed in Utah would be punishable as aggravated murder or murder, is considered aggravated murder or murder;~~]:

(i) aggravated murder, Section 76-5-202;

(ii) murder, Section 76-5-203;

(iii) aggravated assault, Subsection 76-5-103(2);

(iv) mayhem, Section 76-5-105;

(v) attempted murder, Section 76-5-203;

(vi) kidnapping, Section 76-5-301;

(vii) child kidnapping, Section 76-5-301.1;

(viii) aggravated kidnapping, Section 76-5-302;

(ix) rape, Section 76-5-402;

(x) rape of a child, Section 76-5-402.1;

(xi) object rape, Section 76-5-402.2;

(xii) object rape of a child, Section 76-5-402.3;

(xiii) forcible sodomy, Section 76-5-403;

(xiv) sodomy on a child, Section 76-5-403.1;

(xv) aggravated sexual abuse of a child, Section 76-5-404.1;

(xvi) aggravated sexual assault, Section 76-5-405;

(xvii) aggravated arson, Section 76-6-103;

(xviii) aggravated burglary, Section 76-6-203;

(xix) aggravated robbery, Section 76-6-302; or

(xx) an offense committed in another jurisdiction which if committed in this state would be a violation of a crime listed in Subsection (1)(h);

(i) the homicide was committed for the purpose of:

(i) preventing a witness from testifying;

(ii) preventing a person from providing evidence or participating in any legal proceedings or official investigation;

(iii) retaliating against a person for testifying, providing evidence, or participating in any legal proceedings or official investigation; or

(iv) disrupting or hindering any lawful governmental function or enforcement of laws;

(j) the victim is or has been a local, state, or federal public official, or a candidate for public

office, and the homicide is based on, is caused by, or is related to that official position, act, capacity, or candidacy;

(k) the victim is or has been a peace officer, law enforcement officer, executive officer, prosecuting officer, jailer, prison official, firefighter, judge or other court official, juror, probation officer, or parole officer, and the victim is either on duty or the homicide is based on, is caused by, or is related to that official position, and the actor knew, or reasonably should have known, that the victim holds or has held that official position;

(l) the homicide was committed by means of a destructive device, bomb, explosive, incendiary device, or similar device which was planted, hidden, or concealed in any place, area, dwelling, building, or structure, or was mailed or delivered;

(m) the homicide was committed during the act of unlawfully assuming control of any aircraft, train, or other public conveyance by use of threats or force with intent to obtain any valuable consideration for the release of the public conveyance or any passenger, crew member, or any other person aboard, or to direct the route or movement of the public conveyance or otherwise exert control over the public conveyance;

(n) the homicide was committed by means of the administration of a poison or of any lethal substance or of any substance administered in a lethal amount, dosage, or quantity;

(o) the victim was a person held or otherwise detained as a shield, hostage, or for ransom; or

[~~(p) the actor was under a sentence of life imprisonment or a sentence of death at the time of the commission of the homicide; or~~]

[~~(q)~~] (p) the homicide was committed in an especially heinous, atrocious, cruel, or exceptionally depraved manner, any of which must be demonstrated by physical torture, serious physical abuse, or serious bodily injury of the victim before death.

(2) Aggravated murder is a capital [~~offense~~] felony.

(3) (a) It is an affirmative defense to a charge of aggravated murder or attempted aggravated murder that the defendant caused the death of another or attempted to cause the death of another:

(i) under the influence of extreme emotional distress for which there is a reasonable explanation or excuse; or

(ii) under a reasonable belief that the circumstances provided a legal justification or excuse for his conduct although the conduct was not legally justifiable or excusable under the existing circumstances.

(b) Under Subsection (3)(a)(i), emotional distress does not include:

(i) a condition resulting from mental illness as defined in Section 76-2-305; or

(ii) distress that is substantially caused by the defendant's own conduct.

(c) The reasonableness of an explanation or excuse under Subsection (3)(a)(i) or the reasonable belief of the actor under Subsection (3)(a)(ii) shall be determined from the viewpoint of a reasonable person under the then existing circumstances.

(d) This affirmative defense reduces charges only as follows:

(i) aggravated murder to murder; and

(ii) attempted aggravated murder to attempted murder.

Section 10. Section 76-8-306 is amended to read:

76-8-306. Obstructing justice -- Penalties.

(1) A person is guilty of an offense if, with intent to hinder, prevent, or delay the discovery, apprehension, prosecution, conviction, or punishment of another for the commission of a crime, he:

(a) knowing an offense has been committed, conceals it from a magistrate;

(b) harbors or conceals the offender;

(c) provides the offender a weapon;

(d) provides the offender transportation, disguise, or other means for avoiding discovery or apprehension;

(e) warns the offender of impending discovery or apprehension;

(f) conceals, destroys, or alters any physical evidence that might aid in the discovery, apprehension, or conviction of the offender;

(g) obstructs by force, intimidation, or deception anyone from performing an act that might aid in the discovery, apprehension, prosecution, or conviction of the offender; or

(h) having knowledge that a law enforcement officer has been authorized or has applied for authorization under either Section 77-23a-10 or 77-23a-15 to intercept a wire, electronic, or oral communication, gives notice or attempts to give notice of the possible interception to any person.

(2) Except as provided under Subsection (3), an offense under:

(a) Subsection (1)(a) or Subsections (1)(d) through (g) is a class B misdemeanor;

(b) Subsection (1)(b) regarding harboring or concealing the offender is a class A misdemeanor, except as provided in Subsection (6); and

(c) Subsection (1)(c) regarding providing a weapon is a third degree felony.

(3) (a) If the person committing an offense under Subsection (1)(a) or Subsections (1)(d) through (g) knows that the offender has committed a second or third degree felony, the offense is a class A misdemeanor.

(b) If the person committing an offense under Subsection (1)(b) regarding harboring or concealing the offender knows the offender has committed a second or third degree felony, the offense is a third degree felony.

(c) If the person committing an offense under Subsection (1)(c) regarding providing a weapon knows the offender has committed a second or third degree felony, the offense is a second degree felony.

(d) If the person committing an offense under Subsections (1)(a) through (g) knows the offender has committed a capital [~~offense~~] felony or a felony of the first degree, the offense is a second degree felony.

(4) An offense under Subsection (1)(h) is a third degree felony.

(5) Subsection (1)(f) does not apply to an act against a juror. Obstructing the function of a juror is addressed in Section 76-8-508.5.

(6) A person is guilty of a third degree felony who:

(a) harbors or conceals an offender who has absconded from a facility or from supervision as these offenses are defined in Section 76-8-309.5; or

(b) has escaped from official custody as defined in Section 76-8-309.

(7) The provisions of Section 76-8-316 govern an act or threat against a judge or a member of the Board of Pardons and Parole or the judge's or member's immediate family.

Section 11. Section 76-8-316 is amended to read:

76-8-316. Influencing, impeding, or retaliating against a judge or member of the Board of Pardons and Parole.

(1) A person is guilty of a third degree felony if the person threatens to assault, kidnap, or murder a judge or a member of the Board of Pardons and Parole with the intent to impede, intimidate, or interfere with the judge or member of the board while engaged in the performance of the judge's or member's official duties or with the intent to retaliate against the judge or member on account of the performance of those official duties.

(2) A person is guilty of a second degree felony if the person commits an assault on a judge or a member of the Board of Pardons and Parole with the intent to impede, intimidate, or interfere with the judge or member of the board while engaged in the performance of the judge's or member's official duties, or with the intent to retaliate against the judge or member on account of the performance of those official duties.

(3) A person is guilty of a first degree felony if the person commits aggravated assault or attempted murder on a judge or a member of the Board of Pardons and Parole with the purpose to impede, intimidate, or interfere with the judge or member of the board while engaged in the performance of the judge's or member's official duties or with the purpose to retaliate against the judge or member on account of the performance of those official duties.

(4) As used in this section:

(a) "Immediate family" means parents, spouse, surviving spouse, children, and siblings of the officer.

(b) "Judge" means judges of all courts of record and courts not of record.

(c) "Judge or member" includes the members of the judge's or member's immediate family.

(d) "Member of the Board of Pardons and Parole" means appointed members of the board.

(5) A member of the Board of Pardons and Parole is an executive officer for purposes of [~~Subsections~~] Subsection 76-5-202(1)(k).

Section 12. Section 77-16a-201 is amended to read:

77-16a-201. Probation.

(1) (a) When the court proposes to place on probation a defendant who has pled or is found guilty and mentally ill, it shall request UDC to provide a presentence investigation report regarding whether probation is appropriate for that defendant and, if so, recommending a specific treatment program. If the defendant is placed on probation, that treatment program shall be made a condition of probation, and the defendant shall remain under the jurisdiction of the sentencing court.

(b) The court may not place a mentally ill offender who has been convicted of a capital [~~offense~~] felony on probation.

(2) The period of probation may be for no less than five years, or until the expiration of the defendant's sentence, whichever occurs first. Probation may not be subsequently reduced by the sentencing court without consideration of an updated report on the mental health status of the defendant.

(3) (a) Treatment ordered by the court under this section may be provided by or under contract with the department, a mental health facility, a local mental health authority, or, with the approval of the sentencing court, any other public or private mental health provider.

(b) The entity providing treatment under this section shall file a report with the defendant's probation officer at least every six months during the term of probation.

(c) Any request for termination of probation regarding a defendant who is receiving treatment under this section shall include a current mental health report prepared by the treatment provider.

(4) Failure to continue treatment or any other condition of probation, except by agreement with the entity providing treatment and the sentencing court, is a basis for initiating probation violation hearings.

(5) The court may not release a mentally ill offender into the community, as a part of probation, if it finds by clear and convincing evidence that he:

(a) poses an immediate physical danger to himself or others, including jeopardizing his own or others' safety, health, or welfare if released into the community; or

(b) lacks the ability to provide the basic necessities of life, such as food, clothing, and shelter, if released into the community.

(6) A mentally ill offender who is not eligible for release into the community under the provisions of Subsection (5) may be placed by the court, on probation, in an appropriate mental health facility.

Section 13. Section 77-16a-202 is amended to read:

77-16a-202. Person found guilty and mentally ill -- Commitment to department -- Admission to Utah State Hospital.

(1) In sentencing and committing a mentally ill offender to the department under Subsection 77-16a-104(3)(a), the court shall:

(a) sentence the offender to a term of imprisonment and order that he be committed to the department and admitted to the Utah State Hospital for care and treatment until transferred to UDC in accordance with Sections 77-16a-203 and 77-16a-204, making provision for readmission to the Utah State Hospital whenever the requirements and conditions of Section 77-16a-204 are met; or

(b) sentence the offender to a term of imprisonment and order that he be committed to the department for care and treatment for no more than 18 months, or until the offender's condition has been stabilized to the point that commitment to the department and admission to the Utah State Hospital is no longer necessary to ensure adequate mental health treatment, whichever occurs first. At the expiration of that time, the court may recall the sentence and commitment, and resentence the offender. A commitment and retention of jurisdiction under this Subsection (1)(b) shall be specified in the sentencing order. If that specification is not included in the sentencing order, the offender shall be committed in accordance with Subsection (1)(a).

(2) The court may not retain jurisdiction, under Subsection (1)(b), over the sentence of a mentally ill offender who has been convicted of a capital [~~offense~~] felony. In capital cases, the court shall make the findings required by this section after the capital sentencing proceeding mandated by Section 76-3-207.

(3) When an offender is committed to the department and admitted to the Utah State Hospital under Subsection (1)(b), the department shall provide the court with reports of the offender's mental health status every six months. Those reports shall be prepared in accordance with the requirements of Section 77-16a-203. Additionally, the court may appoint an independent examiner to assess the mental health status of the offender.

(4) The period of commitment to the department and admission to the Utah State Hospital, and any subsequent retransfers to the Utah State Hospital made pursuant to Section 77-16a-204 may not exceed the maximum sentence imposed by the court. Upon expiration of that sentence, the administrator of the facility where the offender is located may initiate civil proceedings for involuntary commitment in accordance with Title 62A, Chapter 12 or Title 62A, Chapter 5.

Section 14. Section 77-18-5.5 is amended to read:

77-18-5.5. Judgment of death -- Defendant to select method -- Time of selection.

When a person is convicted of a capital [~~offense~~] felony and the judgment of death has been imposed, the defendant is entitled to select, at the time of sentencing, either a firing squad or a lethal intravenous injection as the method of execution. If the defendant does not indicate a preference at that time to the court, the judgment of death shall be executed by lethal intravenous injection.

Section 15. Section 77-20-1 is amended to read:

77-20-1. Right to bail -- Denial of bail -- Hearing.

(1) A person charged with or arrested for a criminal offense shall be admitted to bail as a matter of right, except if the person is charged with a:

(a) capital [~~offense~~] felony, when the court finds there is substantial evidence to support the charge;

(b) felony committed while on probation or parole, or while free on bail awaiting trial on a previous felony charge, when the court finds there is substantial evidence to support the current felony charge;

(c) felony when there is substantial evidence to support the charge and the court finds by clear and convincing evidence that the person would constitute a substantial danger to any other person or to the community, or is likely to flee the jurisdiction of the court, if released on bail; or

(d) felony when the court finds there is substantial evidence to support the charge and it finds by clear and convincing evidence that the person violated a material condition of release while previously on bail.

(2) Any person who may be admitted to bail may be released either on his own recognizance or upon posting bail, on condition that he appear in court for future court proceedings in the case, and on any other conditions imposed in the discretion of the magistrate or court that will reasonably:

(a) ensure the appearance of the accused;

(b) ensure the integrity of the court process;

(c) prevent direct or indirect contact with witnesses or victims by the accused, if appropriate; and

(d) ensure the safety of the public.

(3) The initial order denying or fixing the amount of bail shall be issued by the magistrate or court

issuing the warrant of arrest or by the magistrate or court presiding over the accused's first judicial appearance. The magistrate or court may rely upon information contained in:

(a) the indictment or information;

(b) any sworn probable cause statement;

(c) information provided by any pretrial services agency; or

(d) any other reliable record or source.

(4) A motion to modify the initial order may be made by a party at any time upon notice to the opposing party sufficient to permit the opposing party to prepare for hearing and to permit any victim to be notified and be present. Hearing on a motion to modify may be held in conjunction with a preliminary hearing or any other pretrial hearing. The magistrate or court may rely on information as provided in Subsections (3)(a) through (d) and may base its ruling on evidence provided at the hearing so long as each party is provided an opportunity to present additional evidence or information relevant to bail.

(5) Subsequent motions to modify bail orders may be made only upon a showing that there has been a material change in circumstances.

(6) An appeal may be taken from an order of any court denying bail to the Supreme Court, which shall review the determination under Subsection (1).

Section 16. Section 77-32-201 is amended to read:

77-32-201. Definitions.

For the purposes of this chapter:

(1) "Board" means the Indigent Defense Funds Board created in Section 77-32-401.

(2) "Indigent" means a person qualifying as an indigent under indigency standards established in Part 3, Counsel for Indigents.

(3) "Participating county" means a county which has complied with the provisions of this chapter for participation in the Indigent Capital Defense Trust Fund as provided in Sections 77-32-602 and 77-32-603 or the Indigent Felony Defense Trust Fund as provided in Sections 77-32-702 and 77-32-703.

(4) "Serious offense" means a felony or capital [~~offense~~] felony.

Section 17. Section 77-32-601 is amended to read:

77-32-601. Establishment of Indigent Capital Defense Trust Fund -- Use of fund -- Compensation for indigent legal defense from fund.

(1) For purposes of this part, "fund" means the Indigent Capital Defense Trust Fund.

(2) There is established an expendable trust fund known as the Indigent Capital Defense Trust Fund which shall be nonlapsing and shall be disbursed by the Division of Finance at the direction of the board and subject to the provisions of this chapter.

(3) The fund consists of:

(a) monies received from participating counties as provided in Sections 77-32-602 and 77-32-603;

(b) appropriations made to the fund by the Legislature as provided in Section 77-32-603; and

(c) interest and earnings from the investment of fund monies.

(4) Fund monies shall be invested by the state treasurer with the earnings and interest accruing to the fund.

(5) The fund shall be used to assist participating counties with financial resources, as provided in Subsection (6), to fulfill their constitutional and statutory mandates for the provision of an adequate defense for indigents prosecuted for the violation of state laws in cases involving capital [~~offenses~~] felonies.

(6) Monies allocated to or deposited in this fund shall be used only:

(a) to reimburse participating counties for expenditures made for an attorney appointed to represent an indigent, other than a state inmate in a state prison, prosecuted for a capital [~~offense~~] felony in a participating county; and

(b) for administrative costs pursuant to Section 77-32-401.

Section 18. Section 77-32-604 is amended to read:

77-32-604. Application and qualification for fund money.

(1) Any participating county may apply to the board for benefits from the fund if that county has incurred, or reasonably anticipates incurring, expenses in the defense of an indigent for capital [~~offenses~~] felonies in violation of state law arising out of a single criminal episode.

(2) No application shall be made nor benefits provided from the fund for cases filed before September 1, 1998.

(3) If the application of a participating county is approved by the board, the board shall negotiate, enter into, and administer a contract with counsel for the indigent and costs incurred for the defense of that indigent, including fees for counsel and reimbursement for defense costs incurred by defense counsel.

(4) Nonparticipating counties are responsible for paying indigent costs in their county and shall not be eligible for any legislative relief. However, nonparticipating counties may provide for payment of indigent costs through an increase in the county tax levy as provided in Section 77-32-307.

(5) This part may not become effective unless the board has received resolutions before August 1,

1998, from at least 15 counties adopted as described in Subsection 77-32-602(2).

Section 19. Section 78-46-5 is amended to read:

78-46-5. Trial by jury.

(1) A trial jury [~~shall consist~~] consists of:

(a) twelve persons in a capital case;

(b) eight persons in a criminal case which carries a term of incarceration of more than one year as a possible sentence for the most serious offense charged;

(c) six persons in a criminal case which carries a term of incarceration of more than six months but not more than one year as a possible sentence for the most serious offense charged;

(d) four persons in a criminal case which carries a term of incarceration of six months or less as a possible sentence for the most serious offense charged; and

(e) eight persons in a civil case at law except that the jury shall be four persons in a civil case for damages of less than $20,000, exclusive of costs, interest, and attorney fees.

(2) Except in the trial of a capital [~~offense~~] felony, the parties may stipulate upon the record to a jury of a lesser number than established by this section.

(3) (a) The verdict in a criminal case shall be unanimous.

(b) The verdict in a civil case shall be by not less than three-fourths of the jurors.

(4) There is no jury in the trial of small claims cases.

(5) There is no jury in the adjudication of a minor charged with what would constitute a crime if committed by an adult.

CHAPTER 210
H. B. 259
Passed February 23, 2001
Approved March 16, 2001
Effective April 30, 2001

CHARITABLE SOLICITATIONS ACT AMENDMENTS

Sponsor: Patrice M. Arent
Afton B. Bradshaw

This act modifies the Charitable Solicitations Act. The act defines a charitable sales promotion and requires the filing of a notice before a promotion is conducted. The act repeals the bonding requirement for professional fund raisers. The act repeals the requirement to issue an information card. The act amends the exemptions to the Charitable Solicitations Act. The act imposes fiduciary duties upon solicitors. The act makes other technical changes.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
13-22-2, as last amended by Chapter 187, Laws of Utah 1996
13-22-5, as last amended by Chapter 187, Laws of Utah 1996
13-22-8, as last amended by Chapter 187, Laws of Utah 1996
13-22-9, as last amended by Chapter 187, Laws of Utah 1996
13-22-12, as last amended by Chapter 187, Laws of Utah 1996
13-22-14, as last amended by Chapter 187, Laws of Utah 1996
13-22-15, as last amended by Chapter 187, Laws of Utah 1996
13-22-16, as enacted by Chapter 280, Laws of Utah 1993

ENACTS:
13-22-22, Utah Code Annotated 1953
13-22-23, Utah Code Annotated 1953

REPEALS:
13-22-10, as last amended by Chapter 187, Laws of Utah 1996

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

Section 1. Section 13-22-2 is amended to read:

13-22-2. Definitions.

As used in this chapter:

(1) (a) "Charitable organization" or "organization" means any person, joint venture, partnership, limited liability company, corporation, association, group, or other entity[~~, excluding the state and its political subdivisions~~]:

(i) that is or holds itself out to be:

(A) a benevolent, educational, voluntary health, philanthropic, humane, patriotic, religious or eleemosynary, social welfare or advocacy, public health, environmental or conservation, or civic organization;

(B) for the benefit of a public safety, law enforcement, or firefighter fraternal association; or

(C) established for any charitable purpose;

(ii) who solicits or obtains contributions solicited from the public for a charitable purpose; or

(iii) in any manner employs a charitable appeal as the basis of any solicitation or employs an appeal that reasonably suggests or implies that there is a charitable purpose to any solicitation.

(b) "Charitable organization" includes a "chapter," "branch," "area," "office," or similar "affiliate" or any person soliciting contributions within the state for a charitable organization that has its principal place of business outside the state.

(2) "Charitable purpose" means any benevolent, educational, philanthropic, humane, patriotic, religious, eleemosynary, social welfare or advocacy, public health, environmental, conservation, civic, or other charitable objective or for the benefit of a public safety, law enforcement, or firefighter fraternal association.

(3) "Charitable solicitation" or "solicitation" means any request, directly or indirectly, for money, credit, property, financial assistance, or any other thing of value on the plea or representation that it will be used for a charitable purpose. A charitable solicitation may be made in any manner, including:

(a) any oral or written request, including any [~~telephonic~~] request by telephone, radio or television, or other advertising or communications media;

(b) the distribution, circulation, or posting of any handbill, written advertisement, or publication; or

(c) the sale of, offer or attempt to sell, or request of donations in exchange for any advertisement, book, card, chance, coupon, device, magazine, membership, merchandise, subscription, ticket, flower, flag, button, sticker, ribbon, token, trinket, tag, souvenir, candy, or any other article in connection with which any appeal is made for any charitable purpose, or the use of the name of any charitable organization or movement as an inducement or reason for making any purchase donation, or, in connection with any sale or donation, stating or implying that the whole or any part of the proceeds of any sale or donation will go to or be donated to any charitable purpose.

(4) "Charitable sales promotion" means an advertising or sales campaign, conducted by a commercial co-venturer, which represents that the purchase or use of goods or services offered by the commercial co-venturer will benefit, in whole or in part, a charitable organization or purpose.

(5) "Commercial co-venturer" means a person who for profit is regularly and primarily engaged in trade or commerce other than in connection with soliciting for charitable organizations or purposes.

[~~(4)~~] (6) (a) "Contribution" means the pledge or grant for a charitable purpose of any money or property of any kind, including any of the following:

(i) a gift, subscription, loan, advance, or deposit of money or anything of value;

(ii) a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for charitable purposes; and

(iii) fees, dues, or assessments paid by members, when membership is conferred solely as consideration for making a contribution.

(b) "Contribution" does not include:

(i) money loaned to a charitable organization by a financial institution in the ordinary course of business; or

(ii) fees, dues, or assessments paid by members when membership is not conferred solely as consideration for making a contribution.

[~~(5)~~] (7) "Contributor" means any donor, pledgor, purchaser, or other person who makes a contribution.

[~~(6)~~] (8) "Director" means the director of the Division of Consumer Protection.

[~~(7)~~] (9) "Division" means the Division of Consumer Protection of the Department of Commerce.

[~~(8)~~] (10) "Material fact" means information that a person of ordinary intelligence and prudence would consider relevant in deciding whether or not to make a contribution in response to a charitable solicitation.

[~~(9) (a) "Paid solicitor" means any person who, for financial or other consideration:~~]

[~~(i) solicits contribution for charitable purposes; or~~]

[~~(ii) acts as an employee or agent for any charitable organization or professional fund raiser to solicit contributions for charitable purposes.~~]

[~~(b) "Paid solicitor" does not include any clerical employee who is not primarily involved with soliciting.~~]

[~~(10)~~] (11) (a) "Professional fund raiser," except as provided in Subsection [~~(10)~~] (11)(b), means any person who:

(i) for compensation or any other consideration solicits contributions for charitable purposes, or plans or manages the solicitation of contributions for or on behalf of any charitable organization or any other person;

(ii) engages in, or who holds himself out to persons in this state as being independently engaged in, the business of soliciting contributions for a charitable organization;

(iii) manages, supervises, or trains any [~~paid~~] solicitor whether as an employee or otherwise; or

(iv) uses a vending device or vending device decal for financial or other consideration that implies a solicitation of contributions or donations for any charitable organization or charitable purposes.

(b) "Professional fund raiser" does not include a bona fide officer, director, volunteer, or full-time employee of a charitable organization.

[~~(11)~~] (12) (a) "Professional fund raising counsel or consultant" or other comparable designation or title means a person who:

(i) for compensation plans, manages, advises, counsels, consults, or prepares material for, or with respect to, the solicitation in this state of contributions for a charitable organization, whether or not at any time the person has custody of contributions from a solicitation;

(ii) does not solicit contributions; and

(iii) does not employ, procure, or engage any compensated person to solicit or receive contributions.

(b) "Professional fund raising counsel or consultant" does not include an attorney, investment counselor, or banker who in the conduct of that person's profession advises a client when actually engaged in the giving of legal, investment, or financial advice.

[~~(12)~~] (13) "Vending device" means a container used by a charitable organization[~~, paid solicitor,~~] or professional fund raiser, for the purpose of collecting a charitable solicitation, contribution, or donation whether or not the device offers a product or item in return for the contribution or donation. "Vending device" includes machines, boxes, jars, wishing wells, barrels, or any other container.

[~~(13)~~] (14) "Vending device decal" means any decal, tag, or similar designation material that is attached to a vending device, whether or not used or placed by a charitable organization[~~, paid solicitor,~~] or professional fund raiser, that would indicate that all or a portion of the proceeds from the purchase of items from the vending device will go to a specific charitable organization.

Section 2. Section 13-22-5 is amended to read:

13-22-5. Registration required.

(1) It is unlawful for any organization that is not exempt under Section 13-22-8 to knowingly solicit, request, promote, advertise, or sponsor the solicitation in this state of any contribution for a charitable purpose, unless the organization is registered with the division.

(2) Subsection (1) does not prohibit an organization from receiving an unsolicited contribution.

(3) It is unlawful for any professional fund raiser to knowingly solicit, request, promote, advertise, or sponsor the solicitation in this state of any contribution for a charitable organization, whether or not the charitable organization is exempt under Section 13-22-8, unless the professional fund raiser [~~is~~] and any nonexempt charitable

organization that is benefitted are registered with the division.

(4) It is unlawful for any professional fund raising counsel or consultant to knowingly plan, manage, advise, counsel, consult, or prepare material for, or with respect to, the solicitation in this state of a contribution for a charitable organization, whether or not the charitable organization is exempt under Section 13-22-8, unless the professional fund raising counsel or consultant [~~is~~] and any nonexempt charitable organization that is benefitted are registered with the division.

Section 3. Section 13-22-8 is amended to read:

13-22-8. Exemptions.

(1) Section 13-22-5 does not apply to:

(a) a solicitation that an organization conducts among its own established and bona fide membership exclusively through the voluntarily donated efforts of other members or officers of the organization;

(b) a bona fide religious, ecclesiastical, or denominational organization if:

(i) the solicitation is made for a church, missionary, religious, or humanitarian purpose; and

(ii) the organization is either:

(A) a lawfully organized corporation, institution, society, church, or established physical place of worship, at which nonprofit religious services and activities are regularly conducted and carried on;

(B) a bona fide religious group:

(I) that does not maintain specific places of worship;

(II) that is not subject to federal income tax; and

(III) not required to file an IRS Form 990 under any circumstance; [~~and~~] or

(C) a separate group or corporation that is an integral part of an institution that is an income tax exempt organization under 26 U.S.C. Sec. 501(c)(3) and is not primarily supported by funds solicited outside its own membership or congregation;

(c) a solicitation by a broadcast media owned or operated by an educational institution or governmental entity, or any entity organized solely for the support of that broadcast media;

(d) except as provided in Subsection 13-22-21(1), a solicitation for the relief of any person sustaining a life-threatening illness or injury specified by name at the time of solicitation if the entire amount collected without any deduction is turned over to the named person;

(e) a political party authorized to transact its affairs within this state and any candidate and campaign worker of the party if the content and manner of any solicitation make clear that the solicitation is for the benefit of the political party or candidate;

(f) a political action committee or group soliciting funds relating to issues or candidates on the ballot if the committee or group is [~~registered with the lieutenant governor's office under:~~] required to file financial information with a federal or state election commission;

[~~(i) Title 20A, Chapter 11, Part 6, Political Action Committee Registration and Financial Reporting Requirements; or~~]

[~~(ii) Title 20A, Chapter 11, Part 8, Political Issues Committees - Registration and Financial Reporting;~~]

(g) any school accredited by the state, any accredited institution of higher learning, or club or parent, teacher, or student organization within and authorized by the school in support of the operations or extracurricular activities of the school;

(h) a public or higher education foundation established under Title 53A or 53B;

(i) a television station, radio station, or newspaper of general circulation that donates air time or print space for no consideration as part of a cooperative solicitation effort on behalf of a charitable organization, whether or not that organization is required to register under this chapter; [~~and~~]

(j) a volunteer fire department, rescue squad, or local civil defense organization whose financial oversight is under the control of a local governmental entity[~~.~~]; and

(k) any governmental unit of any state or the United States.

(2) Any organization claiming an exemption under this section bears the burden of proving its eligibility for, or the applicability of, the exemption claimed.

(3) Each organization exempt from registration pursuant to this section that makes a material change in its legal status, officers, address, or similar changes shall file a report informing the division of its current legal status, business address, business phone, officers, and primary contact person within 30 days of the change.

(4) The division may by rule:

(a) require organizations exempt from registration pursuant to this section to file a notice of claim of exemption;

(b) prescribe the contents of the notice of claim; and

(c) require a filing fee for the notice, as determined under Section 63-38-3.2.

Section 4. Section 13-22-9 is amended to read:

13-22-9. Professional fund raiser's or fund raising counsel's or consultant's permit.

(1) It is unlawful for any person or entity to act as a professional fund raiser or professional fund raising counsel or consultant, whether or not representing an organization exempt from registration under Section 13-22-8, without first obtaining a permit from the division by complying with all of the following application requirements:

(a) pay an application fee as determined under Section 63-38-3.2; and

(b) submit a written application, verified under oath, on a form approved by the division that includes:

(i) the applicant's name, address, telephone number, facsimile number, if any;

(ii) the name and address of any organization or person controlled by, controlling, or affiliated with the applicant;

(iii) the applicant's business, occupation, or employment for the three-year period immediately preceding the date of the application;

(iv) whether it is an individual, joint venture, partnership, limited liability company, corporation, association, or other entity;

(v) the names and residence addresses of any officer or director of the applicant;

(vi) the name and address of the registered agent for service of process and a consent to service of process;

(vii) if a professional fund raiser:

(A) the purpose of the solicitation and use of the contributions to be solicited;

(B) the method by which the solicitation will be conducted and the projected length of time it is to be conducted;

(C) the anticipated expenses of the solicitation, including all commissions, costs of collection, salaries, and any other items;

(D) a statement of what percentage of the contributions collected as a result of the solicitation are projected to remain available to the charitable organization declared in the application, including a satisfactory statement of the factual basis for the projected percentage and projected anticipated revenues provided to the charitable organization, and if a flat fee is charged, documentation to support the reasonableness of the flat fee; and

(E) a statement of total contributions collected or received by the professional fund raiser within the calendar year immediately preceding the date of the application, including a description of the expenditures made from or the use made of the contributions;

(viii) if a professional fund raising counsel or consultant:

(A) the purpose of the plan, management, advise, counsel or preparation of materials for, or respect to the solicitation and use of the contributions solicited;

(B) the method by which the plan, management, advise, counsel, or preparation of materials for, or respect to the solicitation will be organized or coordinated and the projected length of time of the solicitation;

(C) the anticipated expenses of the plan, management, advise, counsel, or preparation of materials for, or respect to the solicitation, including all commissions, costs of collection, salaries, and any other items;

(D) a statement of total fees to be earned or received from the charitable organization declared in the application, and what percentage of the contributions collected as a result of the plan, management, advise, counsel, or preparation of materials for, or respect to the solicitation are projected after deducting the total fees to be earned or received remain available to the charitable organization declared in the application, including a satisfactory statement of the factual basis for the projected percentage and projected anticipated revenues provided to the charitable organization, and if a flat fee is charged, documentation to support the reasonableness of such flat fee; and

(E) a statement of total net fees earned or received within the calendar year immediately preceding the date of the application, including a description of the expenditures made from or the use of the net earned or received fees in the planning, management, advising, counseling, or preparation of materials for, or respect to the solicitation and use of the contributions solicited for the charitable organization;

(ix) disclosure of any injunction, judgment, or administrative order against the applicant or the applicant's conviction of any crime involving moral turpitude;

(x) a copy of any written agreements with any charitable organization;

(xi) the disclosure of any injunction, judgment, or administrative order or conviction of any crime involving moral turpitude with respect to any officer, director, manager, operator, or principal of the applicant;

(xii) a copy of all agreements to which the applicant is, or proposes to be, a party regarding the use of proceeds;

(xiii) an acknowledgment that fund raising in the state will not commence until both the professional fund raiser or professional fund raising counsel or consultant and the charity, its parent foundation, if any, are registered and in compliance with this chapter; and

(xiv) any additional information the division may require by rule.

(2) If any information contained in the application for a permit becomes incorrect or incomplete, the applicant or registrant shall, within 30 days after the information becomes incorrect or incomplete, correct the application or file the complete information required by the division.

(3) In addition to the permit fee, an applicant failing to file a permit application or renewal by the

due date or filing an incomplete permit application or renewal shall pay an additional fee of $25 for each month or part of a month after the date on which the permit application or renewal were due to be filed.

[~~(4) (a) Each applicant shall provide proof that the applicant is either bonded or provide a letter of credit in the amount of at least $25,000.~~]

[~~(b) The bond or letter or credit shall be payable to the state for the benefit of parties who may be damaged by any violation of this chapter.~~]

[~~(c) (i) The issuer of a bond shall be a surety authorized to transact surety business in this state.~~]

[~~(ii) The letter of credit shall be from a federally insured depository institution.~~]

[~~(d) The applicant shall maintain the bond or letter of credit for the entire duration of the permit and for a period of not less than one year after the division received notice in writing from the professional fund raiser or professional fund raising counsel or consultant that all activities in the state have ceased.~~]

[~~(e) The division may prescribe rules under which parties may recover on the bond or letter of credit.~~]

Section 5. Section 13-22-12 is amended to read:

13-22-12. Grounds for denial, suspension, or revocation.

(1) The director may, in accordance with Title 63, Chapter 46b, Administrative Procedures Act, issue an order to deny, suspend, or revoke an application, registration, permit, or information card, upon a finding that the order is in the public interest and that:

(a) the application for registration or renewal is incomplete or misleading in any material respect;

(b) the applicant or registrant or any officer, director, agent, or employee of the applicant or registrant has:

(i) violated this chapter or committed any of the prohibited acts and practices described in this chapter;

(ii) been enjoined by any court, or is the subject of an administrative order issued in this or another state, if the injunction or order includes a finding or admission of fraud, breach of fiduciary duty, material misrepresentation, or if the injunction or order was based on a finding of lack of integrity, truthfulness, or mental competence of the applicant;

(iii) been convicted of a crime involving moral turpitude;

(iv) obtained or attempted to obtain a registration or a permit by misrepresentation;

(v) materially misrepresented or caused to be misrepresented the purpose and manner in which contributed funds and property will be used in connection with any solicitation;

(vi) caused or allowed any paid solicitor to violate any rule made or order issued under this chapter by the division;

(vii) failed [~~reasonably to supervise his agents, employees, paid solicitors or, in the case of an organization, its professional fund raisers or professional fund raising counsels or consultants~~] to take corrective action with its solicitors who have violated this chapter or committed any of the prohibited acts and practices of this chapter;

(viii) used, or attempted to use a name that either is deceptively similar to a name used by an existing registered or exempt charitable organization, or appears reasonably likely to cause confusion of names;

(ix) failed to timely file with the division any report required in this chapter or by rules made under this chapter; or

(x) failed to pay a fine imposed by the division in accordance with Section 13-22-3; or

[~~(c) a professional fund raiser or professional fund raising counselor or consultant does not have a bond or letter of credit in force as required by Subsection 13-22-9(4); or~~]

[~~(d)~~] (c) the applicant for registration or renewal has no charitable purpose.

(2) The director may, in accordance with Title 63, Chapter 46b, Administrative Procedures Act, issue an order to revoke or suspend a claim of exemption filed under Subsection 13-22-8(4), upon a finding that the order is in the public interest and that:

(a) the notice of claim of exemption is incomplete or false or misleading in any material respect; or

(b) any provision of this chapter, or any rule made or order issued by the division under this chapter has been violated in connection with a charitable solicitation by any exempt organization.

Section 6. Section 13-22-14 is amended to read:

13-22-14. Accuracy not guaranteed.

(1) By issuing a permit [~~or by providing forms for an information card~~], the state does not guarantee the accuracy of any representation contained in the permit [~~or information card~~], nor does it warrant that any statement made by the holder of the permit [~~or information card~~] is truthful. The state makes no certification as to the charitable worthiness of any organization on whose behalf a solicitation is made nor as to the moral character of the holder of the permit [~~or information card~~].

(2) The following statement shall appear on each permit [~~and information card in uppercase letters, in close proximity to the seal or acknowledgment required under Subsection 13-22-10(3)(b): "THE STATE OF UTAH DOES NOT WARRANT THAT THE INFORMATION CONTAINED ON THIS CARD IS TRUE."~~]: "THE STATE OF UTAH MAKES NO CERTIFICATION AS TO THE CHARITABLE WORTHINESS OF ANY ORGANIZATION ON WHOSE BEHALF A SOLICITATION IS MADE NOR AS TO THE

MORAL CHARACTER OF THE HOLDER OF THE PERMIT."

(3) No solicitation for charitable purposes shall use the fact or requirement of registration or of the filing of any report with the division pursuant to this chapter with the intent to cause or in a manner tending to cause any person to believe that the solicitation, the manner in which it is conducted, its purposes, any use to which the proceeds will be applied or the person or organization conducting it has been or will be in any way endorsed, sanctioned, or approved by the division or any governmental agency or office.

Section 7. Section 13-22-15 is amended to read:

13-22-15. Financial reports required.

(1) Each charitable organization registered under this chapter shall[~~, during its first year of registration, provide quarterly financial reports to~~] file each year of registration an annual financial report or an IRS Form 990, 990EZ, or 990PF. The financial report or IRS Form 990, 990EZ, or 990PF shall be filed with the division within 30 days after the end of the [~~quarter~~] year reported. [~~Each~~] If an annual financial report or IRS Form 990, 990EZ, or 990PF are not available during its first year of registration, the charitable organization shall provide quarterly financial reports to the division within 30 days after the end of the quarter reported.

(2) Each financial report shall disclose:

(a) the gross amount of contributions received;

(b) the amount of contributions disbursed or to be disbursed to each charitable organization or charitable purpose represented;

(c) aggregate amounts paid to any professional fund raiser;

(d) amounts spent for overhead, expenses, commissions, and similar purposes; and

(e) the name and address of any [~~paid solicitor~~] professional fund raiser used by the organization.

[~~(2) After the first year of continuous registration, a charitable organization shall file an annual financial report or IRS Form 990 on an annual basis within 30 days after the end of the year reported.~~]

(3) Each report required under this section shall be signed under oath by an officer or principal of the organization.

(4) The registration of any organization that fails to file a timely report or IRS Form 990, 990EZ, or 990PF as required in this section or files an incomplete report or IRS Form 990, 990EZ, or 990PF is automatically suspended pending a final order of the division under Section 13-22-12. The division may reinstate the registration after receiving:

(a) a report or IRS Form 990, 990EZ, or 990PF fulfilling the requirements of this section;

(b) an application for renewed registration; and

(c) a penalty of $25 for each month or part of a month after the date on which the quarterly report or IRS Form 990 was due to be filed.

Section 8. Section 13-22-16 is amended to read:

13-22-16. Separate accounts and receipts required.

(1) Each organization required to be registered under this chapter and each professional fund raiser [~~and paid solicitor~~] shall segregate and maintain all contributed funds in an account held separately from its operating account. [~~The account shall be held in Utah at a depository institution regulated by the Department of Financial Institutions.~~] Each contribution in the control or custody of the professional solicitor shall, in its entirety and within ten days of its receipt, be deposited in an account at a bank or other federally insured financial institution which shall be in the name of the charitable organization. The charitable organization shall maintain and administer the account and shall have sole control of all withdrawals.

(2) Each organization required to be registered under this chapter and each professional fund raiser [~~and paid solicitor~~] shall maintain and use duplicate receipts for contributions of money, securities, and cash equivalents so that one receipt is issued to each contributor and one is maintained by the charitable organization.

Section 9. Section 13-22-22 is enacted to read:

13-22-22. Charitable sales promotions.

(1) Every charitable organization which agrees to permit a charitable sales promotion to be conducted by a commercial co-venturer on its behalf shall file with the division a notice of the promotion prior to its commencement within this state. The notice shall state:

(a) the names of the charitable organization and commercial co-venturer;

(b) that the charitable organization and the commercial co-venturer will conduct a charitable sales promotion; and

(c) the date the charitable sales promotion is expected to commence.

(2) Prior to the commencement of a charitable sales promotion within this state, every charitable organization which agrees to permit a charitable sales promotion to be conducted in its behalf, shall obtain a written agreement, containing such terms as may be required by rule of the division, from the commercial co-venturer which shall be available to the division upon request.

(3) A commercial co-venturer shall keep the final accounting for each charitable sales promotion conducted in this state for three years after the final accounting date and make the accounting available to the division upon request.

(4) The commercial co-venturer shall disclose in each advertisement for a charitable sales promotion

the dollar amount or percent per unit of goods or services purchased or used that will benefit the charitable organization or purpose.

Section 10. Section 13-22-23 is enacted to read:

13-22-23. Fiduciary capacity.

Every person soliciting, collecting, or expending contributions for charitable purposes, and every officer, director, trustee, or employee of any person concerned with the solicitation, collection, or expenditure of those contributions, shall be considered to be a fiduciary and acting in a fiduciary capacity.

Section 11. Repealer.

This act repeals:

Section 13-22-10, Obtaining, use and display of permits and information cards.

CHAPTER 211
H. B. 263
Passed February 22, 2001
Approved March 16, 2001
Effective April 30, 2001

INTERSTATE BRANCHING OF DEPOSITORY INSTITUTION

Sponsor: Kevin S. Garn

This act modifies the Financial Institutions Code to permit de novo branching in Utah under limited circumstances and to make technical changes.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
7-1-702, as repealed and reenacted by Chapter 49, Laws of Utah 1995

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

Section 1. Section 7-1-702 is amended to read:

7-1-702. Interstate acquisition, merger, and branching.

(1) A Utah depository institution or its holding company may acquire control of, acquire all or substantially all the assets of, or merge with:

(a) an out-of-state depository institution; or [~~its~~]

(b) a holding company of an out-of-state depository institution.

(2) An out-of-state depository institution or its holding company may acquire control of, acquire all or substantially all the assets of, or merge with:

(a) a Utah depository institution; or [~~its~~]

(b) a holding company of a Utah depository institution.

(3) A Utah depository institution may acquire, through merger or otherwise, a branch of a depository institution in another state without acquiring:

(a) the depository institution [~~itself~~] in the other state; or [~~its~~]

(b) the charter of the depository institution described in Subsection (3)(a).

(4) An out-of-state depository institution may acquire, through merger or otherwise, a branch of a depository institution in Utah without acquiring:

(a) the Utah depository institution [~~itself~~]; or [~~its~~]

(b) the charter of the Utah depository institution.

(5) (a) A Utah depository institution may establish a de novo branch in any state that allows de novo interstate branching as described in 12 U.S.C. Secs. 36(g) and 1828(d)(4), as amended.

(b) [~~De~~] Except as provided in Subsection (5)(c), de novo interstate branching [~~into~~] in Utah is prohibited.

(c) An out-of-state depository institution may establish a de novo branch in Utah if the home state of that out-of-state depository institution permits a Utah state chartered depository institution to establish and maintain a de novo branch in that home state under substantially the same terms and conditions as that out-of-state depository institution establishes its de novo branch in Utah.

(6) [~~A~~] (a) Any of the following may do anything described in Subsection (6)(b):

(i) a Utah depository institution or holding company that acquires an out-of-state depository institution[~~, or~~];

(ii) a Utah depository institution that is the resulting depository institution after merging with an out-of-state depository institution[~~,~~]; or

(iii) a Utah depository institution that otherwise establishes or acquires a branch in a host state[~~,~~].

(b) A depository institution or holding company described in Subsection (6)(a) may do any of the following in accordance with applicable state and federal law, including the law of the host state:

[~~(a)~~] (i) continue to operate the out-of-state depository institution or branch;

[~~(b)~~] (ii) convert any existing main office or branch in the host state into a branch of the Utah depository institution;

[~~(c)~~] (iii) establish or acquire additional branches of the Utah depository institution in any state where the out-of-state depository institution could have done so if [~~it~~] the out-of-state depository institution had not been acquired or merged; and

[~~(d)~~] (iv) exercise any power and engage in any activity in a host state to the same extent as a depository institution of the same class whose home state is that state.

(7) [~~An~~] (a) Any of the following may do anything described in Subsection (7)(b):

(i) an out-of-state depository institution or holding company that acquires a Utah depository institution[~~, or~~];

(ii) an out-of-state depository institution that is the resulting depository institution after merging with a Utah depository institution[~~,~~]; or

(iii) an out-of-state depository institution that otherwise establishes or acquires a branch in Utah[~~,~~].

(b) A depository institution or holding company described in Subsection (7)(a) may do any of the following in accordance with applicable state and federal law, including the law of this state:

[~~(a)~~] (i) continue to operate the Utah depository institution or branch;

[~~(b)~~] (ii) convert any existing main office or branch in Utah into a branch of the out-of-state depository institution;

[~~(c)~~] (iii) establish or acquire additional branches of the out-of-state depository institution in any

state where the Utah depository institution could have done so if [~~it~~] the Utah depository institution had not been acquired or merged; and

[~~(d)~~] (iv) exercise any power and engage in any activity in this state to the same extent as a depository institution of the same class whose home state is Utah.

(8) (a) A Utah branch of an out-of-state depository institution shall comply with:

(i) the law of the institution's home state[~~,~~]; or [~~comply with~~]

(ii) the federal law in the case of a federally chartered institution.

(b) If the laws of this state as a host state conflict with the laws of another state as a home state, the laws of the home state prevail except as provided in this section.

[~~(b)~~] (c) The commissioner may order that Utah law prevails over home state law if the application of Utah law is necessary to:

(i) preserve the safe and sound operation of the Utah branch;

(ii) prevent significant competitive disadvantage to Utah depository institutions in local financial markets; or

(iii) otherwise protect the citizens of this state.

[~~(c)~~] (d) The laws of this state regarding community reinvestment, consumer protection, fair lending, and intrastate branching apply to a Utah branch of an out-of-state depository institution to the same extent as those laws apply to a Utah branch of a depository institution chartered by this state.

[~~(d)~~] (e) An out-of-state depository institution authorized to operate a branch in Utah may underwrite or sell insurance, engage in the direct marketing of securities, or engage in the brokerage of real estate only to the extent permissible for a Utah depository institution of the same class.

(9) Subsection (8) does not affect the jurisdiction or authority of the commissioner to:

(a) examine, supervise, and regulate an out-of-state depository institution operating or seeking to operate a branch in this state; or [~~to~~]

(b) take any action or issue any order with regard to [~~that~~] a branch described in Subsection (9)(a).

(10) The acquisition of a charter entitles the acquiring institution to engage in any activity the acquired institution could have engaged in if [~~it~~] the acquired institution had not been acquired, so long as the acquiring institution does not convert the acquired institution into, or operate it as, an institution of a different class.

(11) (a) The activities authorized in this section are subject to:

(i) the limitations for mergers and acquisitions set forth in Sections 7-1-703 and 7-1-705[~~,~~]; and

(ii) the limitations for branching set forth in Section 7-1-708.

(b) An institution shall file all required applications and receive all appropriate approvals before engaging in any of the activities authorized in this section.

(12) An out-of-state depository institution that operates a branch in this state shall:

(a) maintain a certificate of authority to transact business in this state [~~and~~];

(b) comply with all [~~other~~] applicable corporate filing requirements under Title 16, Chapter 10a, Utah Revised Business Corporation Act, to the same extent as any nondepository corporation transacting business in this state; and

[~~(b)~~] (c) provide written notification to the department of [~~its~~] the out-of-state depository certificate of authority to transact business in this state.

CHAPTER 212
H. B. 265
Passed February 21, 2001
Approved March 16, 2001
Effective April 30, 2001

ELECTRIC COOPERATIVE REGULATORY FEES

Sponsor: Gordon E. Snow

This act modifies the Public Utilities Code to adjust the fees paid by certain electrical cooperatives. This act amends definitions and makes technical and conforming amendments. This act provides a coordination clause.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
54-2-1, as last amended by Chapter 55, Laws of Utah 2000
54-5-1.5 (Repealed 07/01/01), as last amended by Chapter 170, Laws of Utah 1996

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

Section 1. Section 54-2-1 is amended to read:

54-2-1. Definitions.

As used in this title:

(1) "Avoided costs" means the incremental costs to an electrical corporation of electric energy or capacity or both which, due to the purchase of electric energy or capacity or both from small power production or cogeneration facilities, the electrical corporation would not have to generate itself or purchase from another electrical corporation.

(2) "Cogeneration facility":

(a) means a facility which produces:

(i) electric energy; and

(ii) steam or forms of useful energy, including heat, which are used for industrial, commercial, heating, or cooling purposes; and

(b) is a qualifying cogeneration facility under federal law.

(3) "Commission" means the Public Service Commission of [~~the state of~~] Utah.

(4) "Commissioner" means a member of the commission.

(5) (a) "Corporation" includes an association, and a joint stock company having any powers or privileges not possessed by individuals or partnerships. [~~It~~]

(b) "Corporation" does not include towns, cities, counties, conservancy districts, improvement districts, or other governmental units created or organized under any general or special law of this state.

(6) "Distribution electrical cooperative" includes an electrical corporation that:

(a) is a cooperative;

(b) conducts a business that includes the retail distribution of electricity the cooperative purchases or generates for the cooperative's members; and

(c) is required to allocate or distribute savings in excess of additions to reserves and surplus on the basis of patronage to the cooperative's:

(i) members; or

(ii) patrons.

[~~(6)~~] (7) "Electrical corporation" includes every corporation, cooperative association, and person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any electric plant, or in any way furnishing electric power for public service or to its consumers or members for domestic, commercial, or industrial use, within this state, except independent energy producers, and except where electricity is generated on or distributed by the producer solely for [~~his~~] the producer's own use, or the use of [~~his~~] the producer's tenants, or for the use of members of an association of unit owners formed under Title 57, Chapter 8, Condominium Ownership Act, and not for sale to the public generally.

[~~(7)~~] (8) "Electric plant" includes all real estate, fixtures, and personal property owned, controlled, operated, or managed in connection with or to facilitate the production, generation, transmission, delivery, or furnishing of electricity for light, heat, or power, and all conduits, ducts, or other devices, materials, apparatus, or property for containing, holding, or carrying conductors used or to be used for the transmission of electricity for light, heat, or power.

[~~(8)~~] (9) "Gas corporation" includes every corporation and person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any gas plant for public service within this state or for the selling or furnishing of natural gas to any consumer or consumers within the state for domestic, commercial, or industrial use, except in the situation that:

(a) gas is made or produced on, and distributed by the maker or producer through, private property[~~,~~]:

(i) solely for [~~his~~] the maker's or producer's own use or the use of [~~his~~] the maker's or producer's tenants; and

(ii) not for sale to others;

(b) gas is compressed on private property solely for the owner's own use or the use of [~~his~~] the owner's employees as a motor vehicle fuel; or

(c) gas is compressed by a retailer of motor vehicle fuel on [~~his~~] the retailer's property solely for sale as a motor vehicle fuel.

[~~(9)~~] (10) "Gas plant" includes all real estate, fixtures, and personal property owned, controlled, operated, or managed in connection with or to

facilitate the production, generation, transmission, delivery, or furnishing of gas, natural or manufactured, for light, heat, or power.

[~~(10)~~] (11) "Heat corporation" includes every corporation and person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any heating plant for public service within this state.

[~~(11)~~] (12) (a) "Heating plant" includes all real estate, fixtures, machinery, appliances, and personal property controlled, operated, or managed in connection with or to facilitate the production, generation, transmission, delivery, or furnishing of artificial heat.

(b) "Heating plant" does not include either small power production facilities or cogeneration facilities.

[~~(12)~~] (13) "Independent energy producer" means every electrical corporation, person, corporation, or government entity, their lessees, trustees, or receivers, that own, operate, control, or manage a small power production or cogeneration facility.

[~~(13)~~] (14) "Private telecommunications system" includes all facilities for the transmission of signs, signals, writing, images, sounds, messages, data, or other information of any nature by wire, radio, lightwaves, or other electromagnetic means, excluding mobile radio facilities, that are owned, controlled, operated, or managed by a corporation or person, including their lessees, trustees, receivers, or trustees appointed by any court, for the use of that corporation or person and not for the shared use with or resale to any other corporation or person on a regular basis.

[~~(14)~~] (15) (a) "Public utility" includes every railroad corporation, gas corporation, electrical corporation, distribution electrical cooperative, wholesale electrical cooperative, telephone corporation, telegraph corporation, water corporation, sewerage corporation, heat corporation, and independent energy producer not described in Subsection [~~(14)~~] (15)(d), where the service is performed for, or the commodity delivered to, the public generally, or in the case of a gas corporation or electrical corporation where the gas or electricity is sold or furnished to any member or consumers within the state for domestic, commercial, or industrial use.

(b) (i) If any railroad corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, sewerage corporation, heat corporation, or independent energy producer not described in Subsection [~~(14)~~] (15)(d), performs a service for or delivers a commodity to the public, it is considered to be a public utility, subject to the jurisdiction and regulation of the commission and this title.

(ii) If a gas corporation, independent energy producer not described in Subsection [~~(14)~~] (15)(d), or electrical corporation sells or furnishes gas or electricity to any member or consumers within the state, for domestic, commercial, or industrial use, for which any compensation or payment is received, it is considered to be a public utility, subject to the jurisdiction and regulation of the commission and this title.

(c) Any corporation or person not engaged in business exclusively as a public utility as defined in this section is governed by this title in respect only to the public utility owned, controlled, operated, or managed by [~~it or by him~~] the corporation or person, and not in respect to any other business or pursuit.

(d) An independent energy producer is exempt from the jurisdiction and regulations of the commission if it meets the requirements of Subsection (15)(d)(i), (ii), or (iii), or any combination of these:

(i) the commodity or service is produced or delivered, or both, by an independent energy producer solely for the uses exempted in Subsection [~~(6)~~] (7) or for the use of state-owned facilities;

(ii) the commodity or service is sold by an independent energy producer to an electrical corporation; or

(iii) (A) the commodity or service delivered by the independent energy producer is delivered to an entity which controls, is controlled by, or affiliated with the independent energy producer or to a user located on real property managed by the independent energy producer; and

(B) the real property on which the service or commodity is used is contiguous to real property which is owned or controlled by the independent energy producer. Parcels of real property separated solely by public roads or easements for public roads shall be considered as contiguous for purposes of this Subsection [~~(14)~~] (15).

(e) Any person or corporation defined as an electrical corporation or public utility under this section may continue to serve its existing customers subject to any order or future determination of the commission in reference to the right to serve those customers.

(f) (i) "Public utility" does not include any person that is otherwise considered a public utility under [~~the provisions of~~] this Subsection [~~(14)~~] (15) solely because of [~~its~~] that person's ownership of an interest in an electric plant, cogeneration facility, or small power production facility in this state if all of the following conditions are met:

(A) the ownership interest in the electric plant, cogeneration facility, or small power production facility is leased to:

(I) a public utility, and that lease has been approved by the commission;

(II) a person or government entity that is exempt from commission regulation as a public utility; or

(III) a combination of Subsections [~~(14)~~] (15)(f)(i)(A)(I) and (II);

(B) the lessor of the ownership interest identified in Subsection [~~(14)~~] (15)(f)(i)(A) is:

(I) primarily engaged in a business other than the business of a public utility; or

(II) a person whose total equity or beneficial ownership is held directly or indirectly by another person engaged in a business other than the business of a public utility; and

(C) the rent reserved under the lease does not include any amount based on or determined by revenues or income of the lessee.

(ii) Any person that is exempt from classification as a public utility under Subsection [~~(14)~~] (15)(f)(i) shall continue to be so exempt from classification following termination of the lessee's right to possession or use of the electric plant for so long as the former lessor does not operate the electric plant or sell electricity from the electric plant. If the former lessor operates the electric plant or sells electricity, the former lessor shall continue to be so exempt for a period of 90 days following termination, or for a longer period that is ordered by the commission. This period may not exceed one year. [~~No~~] A change in rates that would otherwise require commission approval may not be effective during the 90-day or extended period without commission approval.

(g) "Public utility" does not include any person that provides financing for, but has no ownership interest in an electric plant, small power production facility, or cogeneration facility. In the event of a foreclosure in which an ownership interest in an electric plant, small power production facility, or cogeneration facility is transferred to a third-party financer of an electric plant, small power production facility, or cogeneration facility, then that third-party financer is exempt from classification as a public utility for 90 days following the foreclosure, or for a longer period that is ordered by the commission. This period may not exceed one year.

(h) (i) The distribution or transportation of natural gas for use as a motor vehicle fuel does not cause the distributor or transporter to be a "public utility," unless the commission, after notice and a public hearing, determines by rule that it is in the public interest to regulate the distributers or transporters, but the retail sale alone of compressed natural gas as a motor vehicle fuel may not cause the seller to be a "public utility."

(ii) In determining whether it is in the public interest to regulate the distributors or transporters, the commission shall consider, among other things, the impact of the regulation on the availability and price of natural gas for use as a motor fuel.

[~~(15)~~] (16) "Purchasing utility" means any electrical corporation that is required to purchase electricity from small power production or cogeneration facilities pursuant to the Public Utility Regulatory Policies Act, 16 U.S.C. Section 824a-3.

[~~(16)~~] (17) "Railroad" includes every commercial, interurban, and other railway, other than a street railway, and each branch or extension of a railway, by any power operated, together with all tracks, bridges, trestles, rights-of-way, subways, tunnels, stations, depots, union depots, yards, grounds, terminals, terminal facilities, structures, and equipment, and all other real estate, fixtures, and personal property of every kind used in connection with a railway owned, controlled, operated, or managed for public service in the transportation of persons or property.

[~~(17)~~] (18) "Railroad corporation" includes every corporation and person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any railroad for public service within this state.

[~~(18)~~] (19) (a) "Sewerage corporation" includes every corporation and person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any sewerage system for public service within this state. [~~It~~]

(b) "Sewerage corporation" does not include private sewerage companies engaged in disposing of sewage only for their stockholders, or towns, cities, counties, conservancy districts, improvement districts, or other governmental units created or organized under any general or special law of this state.

[~~(19)~~] (20) "Small power production facility" means a facility which:

(a) produces electric energy solely by the use, as a primary energy source, of biomass, waste, renewable resources, geothermal resources, or any combination of them;

(b) has a power production capacity [~~which~~] that, together with any other facilities located at the same site, is not greater than 80 megawatts; and

(c) is a qualifying small power production facility under federal law.

[~~(20)~~] (21) "Telegraph corporation" includes every corporation and person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any telegraph line for public service within this state.

[~~(21)~~] (22) "Telegraph line" includes all conduits, ducts, poles, wires, cables, instruments, and appliances, and all other real estate, fixtures, and personal property owned, controlled, operated, or managed in connection with or to facilitate communication by telegraph, whether that communication be had with or without the use of transmission wires.

[~~(22)~~] (23) (a) "Telephone corporation" means any corporation or person, and their lessees, trustee, receivers, or trustees appointed by any court, who owns, controls, operates, manages, or resells a public telecommunications service as defined in Section 54-8b-2.

(b) "Telephone corporation" does not mean a corporation, partnership, or firm providing:

(i) intrastate telephone service offered by a provider of cellular, personal communication systems (PCS), or other commercial mobile radio

service as defined in 47 U.S.C. Sec. 332 that has been issued a covering license by the Federal Communications Commission;

(ii) Internet service; or

(iii) resold intrastate toll service.

[~~(23)~~] (24) "Telephone line" includes all conduits, ducts, poles, wires, cables, instruments, and appliances, and all other real estate, fixtures, and personal property owned, controlled, operated, or managed in connection with or to facilitate communication by telephone whether that communication is had with or without the use of transmission wires.

[~~(24)~~] (25) "Transportation of persons" includes every service in connection with or incidental to the safety, comfort, or convenience of the person transported, and the receipt, carriage, and delivery of that person and [~~his~~] that person's baggage.

[~~(25)~~] (26) "Transportation of property" includes every service in connection with or incidental to the transportation of property, including in particular its receipt, delivery, elevation, transfer, switching, carriage, ventilation, refrigeration, icing, dunnage, storage, and hauling, and the transmission of credit by express companies.

[~~(26)~~] (27) "Water corporation" includes every corporation and person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any water system for public service within this state. It does not include private irrigation companies engaged in distributing water only to their stockholders, or towns, cities, counties, water conservancy districts, improvement districts, or other governmental units created or organized under any general or special law of this state.

[~~(27)~~] (28) (a) "Water system" includes all reservoirs, tunnels, shafts, dams, dikes, headgates, pipes, flumes, canals, structures, and appliances, and all other real estate, fixtures, and personal property owned, controlled, operated, or managed in connection with or to facilitate the diversion, development, storage, supply, distribution, sale, furnishing, carriage, appointment, apportionment, or measurement of water for power, fire protection, irrigation, reclamation, or manufacturing, or for municipal, domestic, or other beneficial use. [~~It~~]

(b) "Water system" does not include private irrigation companies engaged in distributing water only to their stockholders.

[~~(28)~~] (29) "Wholesale electrical cooperative" includes every electrical corporation that is:

(a) [~~which is~~] in the business of the wholesale distribution of electricity it has purchased or generated to its members and the public; and

(b) [~~which is~~] required to distribute or allocate savings in excess of additions to reserves and surplus to members or patrons on the basis of patronage.

Section 2. Section 54-5-1.5 (Repealed 07/01/01) is amended to read:

54-5-1.5 (Repealed 07/01/01). Special regulation fee -- Supplemental Levy Committee -- Supplemental fee -- Fee for electrical cooperatives.

(1) (a) A special fee to defray the cost of regulation is imposed upon all public utilities subject to the jurisdiction of the Public Service Commission.

(b) The special fee is in addition to any charge now assessed, levied, or required by law.

(2) (a) The executive director of the Department of Commerce shall determine the special fee for the Department of Commerce.

(b) The [~~chairman~~] chair of the Public Service Commission shall determine the special fee for the Public Service Commission.

(c) The fee shall be assessed as a uniform percentage of the gross operating revenue for the preceding calendar year derived from each public utility's business and operations during that period within this state, excluding income derived from interstate business. Gross operating revenue shall not include income to a wholesale electric cooperative derived from the sale of power to a rural electric cooperative which resells that power within the state.

(3) (a) The executive director of the Department of Commerce shall notify each public utility subject to the provisions of this chapter of the amount of the fee.

(b) The fee is due and payable on or before July 1 of each year.

(4) (a) It is the intent of the Legislature that the public utilities provide all of the funds for the administration, support, and maintenance of:

(i) the Public Service Commission;

(ii) state agencies within the Department of Commerce involved in the regulation of public utilities; and

(iii) expenditures by the attorney general for utility regulation.

(b) [~~The~~] Notwithstanding Subsection (4)(a), the fee imposed by [~~this section may~~] Subsection (1) shall not [~~be~~] exceed the greater [~~than 3/10 of 1%~~] of:

(i) (A) for a public utility other than an electrical cooperative, .3% of the public utility's gross operating revenues for the preceding calendar year[~~,~~]; or

(B) for an electrical cooperative, .15% of the electrical cooperative's gross operating revenues for the preceding calendar year; or

(ii) $50[~~, whichever is greater~~].

(5) (a) There is created a Supplemental Levy Committee to levy additional assessments on public utilities when unanticipated costs of regulation occur in any fiscal year.

(b) The Supplemental Levy Committee shall consist of:

(i) one member selected by the executive director of the Department of Commerce;

(ii) one member selected by the chairman of the Public Service Commission;

(iii) two members selected by the three public utilities that paid the largest percent of the current regulatory fee; and

(iv) one member selected by the four appointed members.

(c) (i) The members of the Supplemental Levy Committee shall be selected within ten working days after the executive director of the Department of Commerce gives written notice to the Public Service Commission and the public utilities that a supplemental levy committee is needed.

(ii) If the members of the Supplemental Levy Committee have not been appointed within the time prescribed, the governor shall appoint the members of the Supplemental Levy Committee.

(d) (i) During any state fiscal year, the Supplemental Levy Committee, by a majority vote and subject to audit by the state auditor, may impose a supplemental fee on the regulated utilities for the purpose of defraying any increased cost of regulation.

(ii) The supplemental fee imposed upon the utilities shall equal a percentage of their gross operating revenue for the preceding calendar year.

(iii) The aggregate of all fees, including any supplemental fees assessed, shall not exceed [~~3/10 of 1%~~] .3% of the gross operating revenue of the utilities assessed for the preceding calendar year.

(iv) Payment of the supplemental fee is due within 30 days after receipt of the assessment.

(v) The utility may, within ten days after receipt of assessment, request a hearing before the Public Service Commission if it questions the need for, or the reasonableness of, the supplemental fee.

(e) (i) Any supplemental fee collected to defray the cost of regulation shall be transferred to the state treasurer as a departmental collection according to the provisions of Section 63-38-9.

(ii) Supplemental fees are excess collections, credited according to the procedures of Section 63-38-9.

(iii) Charges billed to the Department of Commerce by any other state department, institution, or agency for services rendered in connection with regulation of a utility shall be credited by the state treasurer from the special or supplemental fees collected to the appropriations account of the entity providing that service according to the procedures provided in Title 63, Chapter 38, Budgetary Procedures Act.

(6) (a) For purposes of this section, "electrical cooperative" means:

(i) a distribution electrical cooperative; or

(ii) a wholesale electrical cooperative.

(b) Subject to Subsection (6)(c), if the regulation of one or more electrical cooperatives causes unanticipated costs of regulation in a fiscal year, the commission may impose a supplemental fee on the one or more electrical cooperatives in this state responsible for the increased cost of regulation.

(c) The aggregate of all fees imposed under this section on an electrical cooperative in a calendar year shall not exceed the greater of:

(i) .3% of the electrical cooperative's gross operating revenues for the preceding calendar year; or

(ii) $50.

Section 3. Coordination clause.

If this bill and H.B. 184, Public Utilities Amendments - Repeal, both pass, it is the intent of the Legislature that Section 54-5-1.5 not be repealed and the amendments in this bill will continue in effect after July 1, 2001.

CHAPTER 213
H. B. 269
Passed February 27, 2001
Approved March 16, 2001
Effective April 30, 2001

AMENDMENTS TO CONCURRENT JURISDICTION IN ADOPTION CASES

Sponsor: Matt Throckmorton

This act modifies the Juvenile Courts Act to give the juvenile court exclusive original jurisdiction in adoption proceedings.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
78-3a-104, as last amended by Chapter 149, Laws of Utah 2000
78-3a-105, as last amended by Chapter 149, Laws of Utah 2000
78-3a-119, as last amended by Chapter 329 and renumbered and amended by Chapter 365, Laws of Utah 1997
78-30-7, as last amended by Chapter 10, Laws of Utah 1997

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

Section 1. Section 78-3a-104 is amended to read:

78-3a-104. Jurisdiction of juvenile court -- Original -- Exclusive.

(1) Except as otherwise provided by law, the juvenile court has exclusive original jurisdiction in proceedings concerning:

(a) a minor who has violated any federal, state, or local law or municipal ordinance or a person younger than 21 years of age who has violated any law or ordinance before becoming 18 years of age, regardless of where the violation occurred, excluding traffic laws and ordinances;

(b) a person 21 years of age or older who has failed or refused to comply with an order of the juvenile court to pay a fine or restitution, if the order was imposed prior to the person's 21st birthday; however, the continuing jurisdiction is limited to causing compliance with existing orders;

(c) a minor who is an abused child, neglected child, or dependent child, as those terms are defined in Section 78-3a-103;

(d) a protective order for a minor who is alleged to be an abused child or neglected child, except as provided in Section 78-3a-105, and unless the petition is filed by a natural parent or stepparent of the minor against a natural parent or stepparent of the minor;

(e) the determination of the custody of a minor or to appoint a guardian of the person or other guardian of a minor who comes within the court's jurisdiction under other provisions of this section;

(f) the termination of the legal parent-child relationship in accordance with Part 4, Termination of Parental Rights Act, including termination of residual parental rights and duties;

(g) the treatment or commitment of a mentally retarded minor;

(h) a minor who is a habitual truant from school;

(i) the judicial consent to the marriage of a minor under age 16 upon a determination of voluntariness or where otherwise required by law, employment, or enlistment of a minor when consent is required by law;

(j) any parent or parents of a minor committed to a secure youth corrections facility, to order, at the discretion of the court and on the recommendation of a secure youth corrections facility, the parent or parents of a minor committed to a secure youth corrections facility for a custodial term, to undergo group rehabilitation therapy under the direction of a secure youth corrections facility therapist, who has supervision of that parent's or parents' minor, or any other therapist the court may direct, for a period directed by the court as recommended by a secure youth corrections facility;

(k) a minor under Title 55, Chapter 12, Interstate Compact on Juveniles;

(l) the treatment or commitment of a mentally ill child. The court may commit a child to the physical custody of a local mental health authority or to the legal custody of the Division of Mental Health in accordance with the procedures and requirements of Title 62A, Chapter 12, Part 2A, Commitment of Persons Under Age 18 to Division of Mental Health. The court may not commit a child directly to the Utah State Hospital;

(m) the commitment of a minor in accordance with Section 62A-8-501; [~~and~~]

(n) de novo review of final agency actions resulting from an informal adjudicative proceeding as provided in Section 63-46b-15[~~.~~]; and

(o) adoptions conducted in accordance with the procedures described in Title 78, Chapter 30, Adoption, when the juvenile court has previously entered an order terminating the rights of a parent and finds that adoption is in the best interest of the minor.

(2) In addition to the provisions of Subsection (1)(a) the juvenile court has exclusive jurisdiction over any traffic offense committed by a minor under 16 years of age and concurrent jurisdiction over all other traffic offenses committed by a minor 16 years of age or older, except that the court shall have exclusive jurisdiction over the following traffic offenses committed by a minor under 18 years of age:

(a) Section 76-5-207, automobile homicide;

(b) Section 41-6-44, operating a vehicle while under the influence of alcohol or drugs;

(c) Section 41-6-45, reckless driving;

(d) Section 41-1a-1314, unauthorized control over a motor vehicle, trailer, or semitrailer for an extended period of time; and

(e) Section 41-6-13.5, fleeing a peace officer.

(3) The court also has jurisdiction over traffic offenses that are part of a single criminal episode filed in a petition that contains an offense over which the court has jurisdiction.

(4) The juvenile court has jurisdiction over questions of custody, support, and visitation certified to it by the district court pursuant to Section 78-3a-105.

(5) The juvenile court has jurisdiction over an ungovernable or runaway minor who is referred to it by the Division of Child and Family Services or by public or private agencies that contract with the division to provide services to that minor where, despite earnest and persistent efforts by the division or agency, the minor has demonstrated that he:

(a) is beyond the control of his parent, guardian, lawful custodian, or school authorities to the extent that his behavior or condition endangers his own welfare or the welfare of others; or

(b) has run away from home.

(6) This section does not restrict the right of access to the juvenile court by private agencies or other persons.

(7) The juvenile court has jurisdiction of all magistrate functions relative to cases arising under Section 78-3a-602.

Section 2. Section 78-3a-105 is amended to read:

78-3a-105. Concurrent jurisdiction -- District court and juvenile court.

(1) The district court or other court has concurrent jurisdiction with the juvenile court as follows:

(a) when a person who is 18 years of age or older and who is under the continuing jurisdiction of the juvenile court under Section 78-3a-118 violates any federal, state, or local law or municipal ordinance;

[~~(b) in adoption proceedings, when the juvenile court has previously entered an order terminating the rights of a parent, and finds that adoption is in the best interest of the minor; adoption proceedings under this section shall be conducted in accordance with the procedures described in Title 78, Chapter 30, Adoption;~~]

[~~(c)~~] (b) in establishing paternity and ordering testing for the purposes of establishing paternity, in accordance with Title 78, Chapter 45a, Uniform Act on Paternity, with regard to proceedings initiated under Part 3, Abuse, Neglect, and Dependency Proceedings, or Part 4, Termination of Parental Rights Act; and

[~~(d)~~] (c) in proceedings brought on behalf of a minor pursuant to Title 30, Chapter 6, Cohabitant Abuse Act, unless the petition is filed by a natural parent or stepparent of the minor against a natural parent or stepparent of the minor.

(2) The juvenile court has jurisdiction over petitions to modify a minor's birth certificate if the court otherwise has jurisdiction over the minor.

(3) (a) This section does not deprive the district court of jurisdiction to appoint a guardian for a minor, or to determine the support, custody, and visitation of a minor upon writ of habeas corpus or when the question of support, custody, and visitation is incidental to the determination of a cause in the district court.

(b) However, if a petition involving the same minor is pending in the juvenile court or the juvenile court has previously acquired continuing jurisdiction over the same minor, the district court shall certify the question of support, custody, and visitation to the juvenile court for determination.

(4) When a question is certified to the juvenile court under Subsection (3), the findings and order of the juvenile court judge are the order of the district court.

(5) (a) Where a support, custody, or visitation award has been made by a district court in a divorce action or other proceeding, and the jurisdiction of the district court in the case is continuing, the juvenile court may acquire jurisdiction in a case involving the same minor if the minor is dependent, abused, neglected, or otherwise comes within the jurisdiction of the juvenile court under Section 78-3a-104.

(b) The juvenile court may, by order, change the custody, support, and visitation rights previously ordered in the district court as necessary to implement the order of the juvenile court for the safety and welfare of the minor. The juvenile court order remains in effect so long as the jurisdiction of the juvenile court continues.

(6) When a copy of the findings and order of the juvenile court has been filed with the district court, the findings and order of the juvenile court are binding on the parties to the divorce action as though entered in the district court.

Section 3. Section 78-3a-119 is amended to read:

78-3a-119. Period of operation of judgment, decree, or order -- Rights and responsibilities of agency or individual granted legal custody.

(1) A judgment, order, or decree of the juvenile court does not operate after the minor becomes 21 years of age, except for:

(a) orders of commitment to the Utah State Developmental Center or to the custody of the Division of Mental Health;

(b) adoption orders under [~~Section 78-3a-105~~] Subsection 78-3a-104(1)(o);

(c) orders permanently terminating the rights of a parent, guardian, or custodian, and permanent orders of custody and guardianships; and

(d) unless terminated by the court, orders to pay any fine or restitution.

(2) (a) Except as provided in Part 3, Abuse, Neglect, and Dependency Proceedings, an order vesting legal custody or guardianship of a minor in an individual, agency, or institution may be for an indeterminate period. A review hearing shall be held, however, upon the expiration of 12 months, and, with regard to petitions filed by the Division of Child and Family Services, no less than once every six months thereafter. The individual, agency, or institution involved shall file the petition for that review hearing. The court may terminate the order, or after notice and hearing, continue the order if it finds continuation of the order necessary to safeguard the welfare of the minor or the public interest. The findings of the court and its reasons shall be entered with the continuation order or with the order denying continuation.

(b) Subsection (2)(a) does not apply to minors who are in the custody of the Division of Child and Family Services, and who are placed in foster care, a secure youth corrections facility, the Division of Mental Health, the Utah State Developmental Center, or any agency licensed for child placements and adoptions, in cases where all parental rights of the natural parents have been terminated by the court under Part 4, Termination of Parental Rights Act, and custody of the minor has been granted to the agency for adoption or other permanent placement.

(3) (a) An agency granted legal custody may determine where and with whom the minor will live, provided that placement of the minor does not remove him from the state without court approval.

(b) An individual granted legal custody shall personally exercise the rights and responsibilities involved in legal custody, unless otherwise authorized by the court.

Section 4. Section 78-30-7 is amended to read:

78-30-7. Jurisdiction of district and juvenile court -- Time for filing.

(1) Adoption proceedings shall be commenced by filing a petition with the clerk of the district court in the district where the person adopting resides, or with the juvenile court as provided in [~~Section 78-3a-105~~] Subsection 78-3a-104(1)(o). All orders, decrees, agreements, and notices in the proceedings shall be filed with the clerk of that court.

(2) A petition for adoption shall be filed within 30 days of the date the adoptee is placed in the home of the petitioners for the purpose of adoption, unless the time for filing has been extended by the court, or unless the adoption is arranged by a licensed child placing agency in which case the agency may extend the filing time.

CHAPTER 214
H. B. 271
Passed February 26, 2001
Approved March 16, 2001
Effective April 30, 2001

APPRAISALS AND APPRAISERS AMENDMENTS

Sponsor: Gerry A. Adair

This act modifies the Real Estate Appraiser Licensing and Certification Act and the Property Tax Act. The act amends sections relating to the authority of appraisers in order to comply with federal guidelines. The act makes technical changes to appraisal provisions of the Property Tax Act to reflect changes made in appraiser terminology.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
17-17-2, as last amended by Chapter 133, Laws of Utah 2000
59-2-701, as last amended by Chapter 117, Laws of Utah 1999
59-2-702, as last amended by Chapter 5, Laws of Utah 1991
59-2-703, as last amended by Chapter 173, Laws of Utah 1994
61-2b-10, as last amended by Chapter 117, Laws of Utah 1999
61-2b-13, as last amended by Chapter 117, Laws of Utah 1999
61-2b-17, as last amended by Chapter 117, Laws of Utah 1999

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

Section 1. Section 17-17-2 is amended to read:

17-17-2. Assessor to be state qualified -- Vacancy -- Filling vacancy.

(1) In addition to the requirements of Section 17-16-1, any person elected to the office of county assessor after November 1, 1993, shall be a [~~state-registered,~~] state-licensed[~~,~~] or state-certified appraiser as defined in Title 61, Chapter 2b, prior to the expiration of [~~24~~] 36 months from the day on which his term of office begins.

(2) (a) If an assessor fails to meet the requirement of this section, the assessor's office is automatically vacant.

(b) (i) In the event of a vacancy under this section, the county executive shall fill the vacancy in the manner provided for in Sections 17-53-104 and 20A-1-508. However, a person selected to fill the vacancy must be a [~~state-registered,~~] state-licensed[~~,~~] or state-certified appraiser within six months after assuming the office of county assessor.

(ii) If a [~~state-registered,~~] state-licensed[~~,~~] or state-certified appraiser cannot be found to fill a vacancy which resulted from the requirements of this section, the county executive may contract with a [~~state-registered,~~] state-licensed[~~,~~] or state-certified appraiser from outside the county to fill the remainder of the term in the office of county assessor.

Section 2. Section 59-2-701 is amended to read:

59-2-701. Appraisal by certified or licensed appraisers only -- Certification of elected county assessors.

(1) Any person performing an appraisal for purposes of establishing fair market value of real estate or real property for the assessment roll shall be the holder of an appraiser's certificate[~~,~~] or license[~~, or registration~~] issued by the Division of Real Estate under Title 61, Chapter 2b, except uncertified[~~,~~] or unlicensed[~~, or unregistered~~] appraiser trainees may, for up to [~~24~~] 36 months after the date of hire or appointment as an appraiser trainee, appraise property under the direction of a holder of an appraiser's certificate or [~~registration~~] license issued by the division.

(2) The limitations on appraisal authority under Subsections 61-2b-10(1) and (2) and Section 61-2b-13 do not apply to a person performing an appraisal for purposes of establishing fair market value for the assessment roll.

[~~(2)~~] (3) The commission may prescribe additional requirements for any person performing an appraisal for purposes of establishing fair market value for the assessment roll.

[~~(3)~~] (4) The commission may, by rule, establish qualifications for personal property appraisers exempt from [~~registration~~] licensure under Title 61, Chapter 2b, Real Estate Appraiser [~~Registration~~] Licensing and Certification Act.

[~~(4)~~] (5) It is the duty of a county assessor, as established in Section 17-17-1, to ensure that the assessor's office is in compliance with this section and any additional rules or requirements for property appraisers established by the commission.

Section 3. Section 59-2-702 is amended to read:

59-2-702. Education and training of appraisers -- Continuing education for appraisers and county assessors.

(1) The commission shall conduct, at its own expense, a program of education and training of appraisal personnel preparatory to the examination of applicants for appraisers' and assessors' [~~registration and~~] certification or licensure required by Section 59-2-701.

(2) To ensure that the assessment of property will be performed in a professional manner by competent personnel, meeting specified professional qualifications, the commission shall conduct a continuing program of in-service education and training for county assessors and property appraisers in the principles and practices of assessment and appraisal of property. For this purpose the commission may cooperate with educational institutions, local, regional, state, or national assessors' organizations, and with other

appropriate professional organizations. The commission may reimburse the participation expenses incurred by assessors and other employees of the state or its subdivisions whose attendance at in-service training programs is approved by the commission.

Section 4. Section 59-2-703 is amended to read:

59-2-703. Commission to assist county assessors -- Appraisers provided upon request -- Costs of services -- Contingency fee arrangements prohibited.

(1) The commission shall, upon request and pursuant to mutual agreement, provide county assessors with technical assistance and appraisal aid. It shall provide [~~registered or~~] certified or licensed appraisers who, upon request of the county assessor and pursuant to mutual agreement, shall perform appraisals of property and other technical services as needed by the county assessor. The costs of these services shall be computed by the commission upon the basis of the number of days of services rendered. Each county shall pay to the commission 50% of the cost of the services which they receive.

(2) (a) Both the commission and counties may contract with a private firm or an individual to conduct appraisals.

(b) Notwithstanding Title 63, Chapter 2, Government Records Access and Management Act, the commission and counties may disclose the name of the taxpayer and the taxpayer's address to the contract appraiser. A private appraiser is subject to the confidentiality requirements and penalty provisions provided in Title 63, Chapter 2, Part 8, [~~Government Records Access and Management Act~~] Remedies.

(c) Neither the commission nor a county may contract with a private firm or an individual under a contingency fee arrangement to assess property or prosecute or defend an appeal. An appraisal that has been prepared on a contingency fee basis may not be allowed in any proceeding before a county board of equalization or the commission.

Section 5. Section 61-2b-10 is amended to read:

61-2b-10. State-licensed appraiser -- Authority and qualifications.

(1) A state-licensed appraiser is authorized to appraise [~~all types of real property in this state if the appraisal: (a) is not performed in conjunction with a federally related transaction; or (b) does not exceed the~~] complex and noncomplex 1-4 family residential units in this state having a transaction value permitted under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and related federal regulations.

(2) A state-licensed appraiser is also authorized to appraise vacant or unimproved land having a transaction value permitted under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and related federal regulations that is utilized for 1-4 family purposes or for which the highest and best use is 1-4 family purposes and subdivisions for which a development analysis/appraisal is not necessary.

[~~(2)~~] (3) A state-licensed appraiser may not issue a certified appraisal report.

[~~(3)~~] (4) To qualify as a state-licensed appraiser, an applicant must:

(a) be of good moral character;

(b) pass the licensing examination with a satisfactory score as determined by the board;

(c) successfully complete not less than 90 classroom hours in courses of study approved by the board that relate to:

(i) real estate appraisal;

(ii) the Uniform Standards of Professional Appraisal Practice; and

(iii) ethical rules to be observed by a real estate appraiser as required by Section 61-2b-27; and

(d) possess the minimum number of hours of experience in real property appraisal as established by rule.

[~~(4)~~] (5) The courses of study under Subsection (3)(b) shall be conducted by:

(a) an accredited university, college, or junior college;

(b) an approved appraisal society, institute, or association; or

(c) such other school as the board may approve.

[~~(5)~~] (6) The board shall require and pass upon proof necessary to determine the honesty, competency, integrity, and truthfulness of each applicant.

Section 6. Section 61-2b-13 is amended to read:

61-2b-13. State-certified appraisers -- Authority.

(1) A state-certified residential appraiser is authorized to appraise all types of real estate which a state-licensed appraiser is authorized to appraise. [~~In addition, a~~]

(2) A state-certified residential appraiser is also authorized to appraise 1-4 unit residential real estate [~~in federally related transactions so long as net income capitalization analysis is not required by the terms of the assignment. A state-certified residential appraiser is also authorized to appraise building lots, vacant land, and subdivisions in federally related transactions so long as discounted cash flow analysis is not required by the terms of the assignment~~] without regard to transaction value or complexity.

(3) A state-certified residential appraiser is not authorized to appraise subdivisions for which a development analysis/appraisal is necessary.

[~~(2)~~] (4) A state-certified general appraiser is authorized to appraise all types of real estate and real property.

Section 7. Section 61-2b-17 is amended to read:

61-2b-17. State-certified, state-licensed, and state-registered appraisers -- Restrictions on use of terms -- Conduct prohibited.

(1) (a) The terms "state-certified general appraiser," "state-certified residential appraiser," "state-licensed appraiser," "state-registered appraiser," and "senior appraiser" may only be used to refer to an individual who is certified, licensed, or registered under this chapter and may not be used following, or immediately in connection with, the name or signature of a firm, partnership, corporation, or group, or in any manner that it might be interpreted as referring to a firm, partnership, corporation, group, or to anyone other than the individual who is certified, registered, or licensed under this chapter.

(b) This requirement shall not be construed to prevent a state-certified general appraiser from signing an appraisal report on behalf of a corporation, partnership, firm, or group practice if it is clear that only the individual is certified and that the corporation, partnership, firm, or group practice is not.

(c) Except as provided in Section 61-2b-25, no certificate, registration, or license may be issued under the provisions of this chapter to a corporation, partnership, firm, or group.

(2) (a) No person other than a state-certified general appraiser or state-certified residential appraiser, may assume or use any title, designation, or abbreviation likely to create the impression of certification in this state as a real estate appraiser.

(b) No person other than a state-licensed appraiser may assume or use any title, designation, or abbreviation likely to create the impression of licensure in this state as a real estate appraiser.

(3) (a) Only an individual who has qualified under the certification requirements of Sections 61-2b-14 and 61-2b-15 is authorized to prepare and sign a certified appraisal report relating to real estate or real property in this state.

(b) If a certified appraisal report is prepared and signed by a state-certified residential appraiser, the certified appraisal report shall state, immediately following the signature on the report, "State-Certified Residential Appraiser."

(c) If a certified appraisal report is prepared and signed by a state-certified general appraiser, the certified appraisal report shall state, immediately following the signature on the report, "State-Certified General Appraiser."

(d) An appraisal report prepared by a state-licensed appraiser shall state, immediately following the signature on the report, "[~~State-licensed~~] State-Licensed Appraiser[~~,~~]." [~~along with a disclosure that the appraisal may not qualify for federally related transactions.~~]

(e) When signing a certified appraisal report, a state-certified appraiser shall also place on the report, immediately below his signature, a seal on the report showing his certificate number and its expiration date.

(f) A state-certified residential appraiser may not prepare a certified appraisal report outside his area of expertise as defined in Section 61-2b-13. However, a state-certified residential appraiser may prepare an appraisal report for any type property for which a state-licensed appraiser is authorized to appraise under Section 61-2b-10.

(g) A state-licensed appraiser or state-registered appraiser who assisted in the preparation of a certified appraisal report is authorized to cosign the certified appraisal report.

(4) A person who has not qualified under either Section 61-2b-14 or 61-2b-15 may not describe or refer to any appraisal or appraisal report relating to real estate or real property in this state by the terms "certified appraisal" or "certified appraisal report."

CHAPTER 215
H. B. 273
Passed February 28, 2001
Approved March 16, 2001
Effective July 1, 2001

EDUCATION PROTECTION FUNDING PROGRAM

Sponsor: Kevin S. Garn

This act modifies provisions relating to the State System of Public Education by creating the Growth in Student Population Restricted Account within the Uniform School Fund. The act allows monies from the account to be used by school districts to address the anticipated surge in student growth. The act appropriates up to $20,000,000 to the account and has an effective date of July 1, 2001.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:
53A-16-112, Utah Code Annotated 1953

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

Section 1. Section 53A-16-112 is enacted to read:

53A-16-112. Growth in Student Population Restricted Account.

(1) There is created within the Uniform School Fund a restricted account known as the "Growth in Student Population Restricted Account."

(2) The account shall be funded from the following revenue sources:

(a) any voluntary contributions received to help alleviate the anticipated surge in student growth in public elementary and secondary schools during the early part of the 21st Century; and

(b) appropriations made to the fund by the Legislature.

(3) The account shall be used to help school districts meet the challenges created by anticipated significant increases in student growth in the state's public schools.

(4) (a) The account shall earn interest.

(b) All interest earned on account monies shall be deposited in the account.

Section 2. Intent language.

(1) It is the intent of the Legislature that after allocating all contingent appropriations or designations required by statute for fiscal year 2001-02, all unrestricted, undesignated, and unencumbered surplus remaining in the Uniform School Fund up to $20,000,000 is appropriated to the Growth in Student Population Restricted Account created in Section 53A-16-112 to be used for the purpose listed in Subsection 53A-16-112(3).

(2) The appropriation is nonlapsing.

Section 3. Effective date.

This act takes effect on July 1, 2001.

CHAPTER 216
H. B. 281
Passed February 28, 2001
Approved March 16, 2001
Effective January 1, 2002

INDIVIDUAL INCOME TAX - CONTRIBUTION FOR EDUCATION

Sponsor: Richard M. Siddoway

This act modifies the Individual Income Tax Act by expanding the individual income tax contributions for education to allow a contribution for applied technology centers or applied technology service centers. This act addresses the contribution requirements for purposes of the contributions for education, requires the State Tax Commission to remove the designation for the contribution for applied technology centers or applied technology service centers if the contribution does not generate a certain amount of revenues within a certain time period, and makes technical changes. The act takes effect for taxable years beginning on or after January 1, 2002.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
59-10-549, as last amended by Chapter 12, Laws of Utah 1997
59-10-551, as enacted by Chapter 12, Laws of Utah 1997

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

Section 1. Section 59-10-549 is amended to read:

59-10-549. Contributions for education.

(1) Except as provided in Section 59-10-551, a taxpayer [~~who~~] that files a return pursuant to Section 59-10-502 may designate on the return a contribution [~~of the amount of his refund, if any, or any other amount~~] as provided in this section to:

(a) the State Board of Regents created by Section 53B-1-103 for [~~the following purposes~~]:

(i) libraries; or

(ii) library equipment; [~~or~~]

(b) an institution of higher education created by Section 53B-2-101 for:

(i) libraries; or

(ii) library equipment;

[~~(b)~~] (c) the foundation of any school district [~~or any~~] that is exempt from federal income taxation under Section 501(c)(3), Internal Revenue Code;

(d) a chapter of the Utah Public Education Foundation[~~.~~]; or

(e) (i) an applied technology center listed in Section 53A-15-202.5; or

(ii) an applied technology service center.

(2) (a) [~~Any amount designated as~~] A taxpayer may designate as a contribution under this section any whole dollar amount of $1 or more.

(b) (i) If the taxpayer is owed an individual income tax refund for the taxable year, the amount of a contribution under [~~Subsection (1)~~] this section shall be deducted from the taxpayer's [~~state~~] individual income tax refund.

(ii) If the taxpayer is not owed an individual income tax refund for the taxable year, the taxpayer may remit a contribution under this section with the taxpayer's individual income tax return.

(c) If a taxpayer files a joint return [~~is filed~~], the contribution under this section shall be a joint contribution. [~~This option, once exercised,~~]

(d) A contribution under this section is irrevocable during the [~~tax~~] taxable year [~~in~~] for which [~~it was effective~~] the taxpayer makes the contribution. [~~If no refund is due, the taxpayer may remit the contribution with the return.~~]

(3) If a taxpayer designates an amount as a contribution under Subsection (1)[~~(a)~~](b), but [~~fails to direct the contribution to~~] does not designate a particular institution of higher education to receive the contribution, the [~~designated~~] contribution shall be [~~directed~~] made to the State Board of Regents for [~~libraries or library equipment~~] the purposes described in Subsection (1)(a).

(4) If a taxpayer designates an amount as a contribution under Subsection (1)[~~(b)~~](c), but [~~fails to direct the contribution to~~] does not designate a particular school district foundation to receive the contribution, the [~~designated~~] contribution shall be [~~directed~~] made to the Utah Public Education Foundation.

(5) [~~The~~] In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may make rules to implement this section.

(6) The commission shall:

(a) determine annually the total amount of contributions designated [~~pursuant to~~] in accordance with this section; and [~~shall~~]

(b) report this amount to the state treasurer [~~who shall credit this amount to the appropriate institution~~].

(7) The state treasurer shall credit any contributions reported to the state treasurer in accordance with Subsection (6) to the educational institution described in Subsection (1) designated by the taxpayer in accordance with this section.

Section 2. Section 59-10-551 is amended to read:

59-10-551. Removal of designation and prohibitions on collection for certain contributions on income tax form -- Conditions for removal and prohibitions on collection -- Commission reporting requirements.

(1) (a) Beginning on January 1, 1998, if a contribution [~~provided for in Section 59-10-530,~~

~~59-10-530.5, Subsection 59-10-549(1)(a) or (1)(b), or Section 59-10-550 generates~~] or combination of contributions described in Subsection (1)(b) generate less than $30,000 per year for three consecutive years, the commission shall remove the designation for the contribution from the income tax return and may not collect the contribution from a taxpayer beginning two taxable years after the three-year period for which the contribution generates less than $30,000 per year.

(b) The following contributions apply to Subsection (1)(a):

(i) the contribution provided for in Section 59-10-530;

(ii) the contribution provided for in Section 59-10-530.5;

(iii) the sum of the contributions provided for in:

(A) Subsection 59-10-549(1)(a); and

(B) Subsection 59-10-549(1)(b);

(iv) the sum of the contributions provided for in:

(A) Subsection 59-10-549(1)(c); and

(B) Subsection 59-10-549(1)(d);

(v) the contribution provided for in Subsection 59-10-549(1)(e); or

(vi) the contribution provided for in Section 59-10-550.

(2) If the commission removes the designation for a contribution under Subsection (1), the commission shall report to the Revenue and Taxation Interim Committee that it removed the designation on or before the November interim meeting of the year in which the commission determines to remove the designation.

Section 3. Effective date.

This act takes effect for taxable years beginning on or after January 1, 2002.

CHAPTER 217
H. B. 287
Passed February 28, 2001
Approved March 16, 2001
Effective March 16, 2001
(Exception clause in Section 4)

PUBLIC TRANSIT
TAX AMENDMENTS

Sponsor: Wayne A. Harper

This act modifies the Revenue and Taxation Code by modifying the allocation of a portion of the additional public transit tax. This act creates the Public Transportation System Tax Highway Fund, a special revenue fund, and restricts its use. This act provides an effective date.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
59-12-502 (Superseded 07/01/01), as last amended by Chapter 253, Laws of Utah 2000
59-12-502 (Effective 07/01/01), as last amended by Chapter 253, Laws of Utah 2000

ENACTS:
72-2-121, Utah Code Annotated 1953

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

Section 1. Section 59-12-502 (Superseded 07/01/01) is amended to read:

59-12-502 (Superseded 07/01/01). Additional public transit tax for expanded system and fixed guideway and interstate improvements -- Rate -- Voter approval.

(1) (a) In addition to other sales and use taxes, and the public transit district tax authorized by Section 59-12-501, any county, city, or town within a transit district organized under Title 17A, Chapter 2, Part 10, Utah Public Transit District Act, may impose a sales and use tax of 1/4 of 1% on the sales and uses described in Subsection 59-12-103(1), subject to the exemptions provided in Section 59-12-104, to fund a fixed guideway and expanded public transportation system.

(b) A county, city, or town may impose the tax under this section only if the governing body of the county, city, or town submits, by resolution, the proposal to all the qualified voters within the county, city, or town for approval at a general or special election conducted in the manner provided by statute. Notice of the election shall be given by the county, city, or town governing body 15 days in advance in the manner prescribed by statute.

(2) If the majority of the voters voting in this election approve the proposal, it shall become effective on the date provided by the county, city, or town governing body.

(3) This section may not be construed to require an election in jurisdictions where voters have previously approved a public transit sales or use tax. This section shall be construed to require an election to impose the sales and use tax authorized by this section, including jurisdictions where the voters have previously approved the transit district sales and use tax authorized by Section 59-12-501, but this section may not be construed to affect the sales and use tax authorized by Section 59-12-501.

(4) No public funds shall be spent to promote the required election.

(5) Notwithstanding the designated use of revenues in Subsection (1), of the revenues generated by the tax imposed under this section by any county of the first class[~~,~~]:

(a) 75% shall be allocated to fund a fixed guideway and expanded public transportation system; and

(b) 25% shall be allocated to fund new construction, major renovations, [~~repairs,~~] and improvements to Interstate 15 and state highways within the county and to pay any debt service and bond issuance costs related to those projects.

(6) A county of the first class may, through an interlocal agreement, authorize the deposit or transfer of the portion of the revenues described in Subsection 59-12-502(5)(b) to the Public Transportation System Tax Highway Fund created in Section 72-2-121.

Section 2. Section 59-12-502 (Effective 07/01/01) is amended to read:

59-12-502 (Effective 07/01/01). Additional public transit tax for expanded system and fixed guideway and interstate improvements -- Base -- Rate -- Voter approval.

(1) (a) (i) Except as provided in Subsection (1)(a)(ii), and in addition to other sales and use taxes, including the public transit district tax authorized by Section 59-12-501, a county, city, or town within a transit district organized under Title 17A, Chapter 2, Part 10, Utah Public Transit District Act, may impose a sales and use tax of 1/4 of 1% on the transactions described in Subsection 59-12-103(1), to fund a fixed guideway and expanded public transportation system.

(ii) Notwithstanding Subsection (1)(a)(i), a county, city, or town may not impose a tax under this section on:

(A) the sales and uses described in Section 59-12-104 to the extent the sales and uses are exempt from taxation under Section 59-12-104; and

(B) any amounts paid or charged by a vendor that collects a tax under Subsection 59-12-107(1)(b).

(b) A county, city, or town may impose the tax under this section only if the governing body of the county, city, or town submits, by resolution, the proposal to all the qualified voters within the county, city, or town for approval at a general or special election conducted in the manner provided by statute. Notice of the election shall be given by the county, city, or town governing body 15 days in advance in the manner prescribed by statute.

(2) If the majority of the voters voting in this election approve the proposal, it shall become

effective on the date provided by the county, city, or town governing body.

(3) (a) This section may not be construed to require an election in jurisdictions where voters have previously approved a public transit sales or use tax.

(b) This section shall be construed to require an election to impose the sales and use tax authorized by this section, including jurisdictions where the voters have previously approved the sales and use tax authorized by Section 59-12-501, but this section may not be construed to affect the sales and use tax authorized by Section 59-12-501.

(4) No public funds shall be spent to promote the required election.

(5) Notwithstanding the designated use of revenues in Subsection (1), of the revenues generated by the tax imposed under this section by any county of the first class[~~,~~]:

(a) 75% shall be allocated to fund a fixed guideway and expanded public transportation system; and

(b) 25% shall be allocated to fund new construction, major renovations, [~~repairs,~~] and improvements to Interstate 15 and state highways within the county and to pay any debt service and bond issuance costs related to those projects.

(6) A county of the first class may, through an interlocal agreement, authorize the deposit or transfer of the portion of the revenues described in Subsection 59-12-502(5)(b) to the Public Transportation System Tax Highway Fund created in Section 72-2-121.

Section 3. Section 72-2-121 is enacted to read:

72-2-121. Public Transportation System Tax Highway Fund.

(1) There is created a special revenue fund entitled the Public Transportation System Tax Highway Fund.

(2) The fund consists of monies generated from the following revenue sources:

(a) any voluntary contributions received for new construction, major renovations, and improvements to Interstate 15 and state highways within a county of the first class; and

(b) the portion of the sales and use tax described in Subsection 59-12-502(5)(b) deposited in or transferred to the fund through an interlocal agreement.

(3) (a) The fund shall earn interest.

(b) All interest earned on fund monies shall be deposited into the fund.

(4) The executive director may use fund monies, as prioritized by the Transportation Commission, only for new construction, major renovations, and improvements to Interstate 15 and state highways within a county of the first class and to pay any debt service and bond issuance costs related to those projects.

Section 4. Effective date.

If approved by two-thirds of all the members elected to each house, this act takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override, except that Section 59-12-502 (Effective 07/01/01) takes effect on July 1, 2001.

CHAPTER 218
H. B. 295
Passed February 28, 2001
Approved March 16, 2001
Effective April 30, 2001

ELECTRONIC PROXY VOTING FOR CORPORATIONS

Sponsor: Stephen H. Urquhart

This act modifies provisions relating to corporations. The act defines electronic transmission. The act allows proxy voting for corporations to be conducted by electronic transmission. The act makes technical changes.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
16-10a-102, as last amended by Chapter 41, Laws of Utah 1996
16-10a-722, as enacted by Chapter 277, Laws of Utah 1992
31A-5-101 (Effective 04/30/01), as last amended by Chapter 300, Laws of Utah 2000
42-2-6.6 (Effective 04/30/01), as last amended by Chapters 131 and 300, Laws of Utah 2000

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

Section 1. Section 16-10a-102 is amended to read:

16-10a-102. Definitions.

As used in this chapter:

(1) "Address" means a location where mail can be delivered by the United States Postal Service. "Address" includes post office box numbers, rural free delivery route numbers, and street names and numbers.

(2) "Affiliate" means a person that directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, the person specified.

(3) "Assumed corporate name" means the name assumed for use in this state by a foreign corporation pursuant to Section 16-10a-1506 because its corporate name is not available for use in this state.

(4) "Articles of incorporation" include amended and restated articles of incorporation, articles of merger, and documents of a similar import.

(5) "Authorized shares" means the shares of all classes a domestic or foreign corporation is authorized to issue.

(6) "Bylaws" includes amended bylaws and restated bylaws.

(7) "Cash" and "money" are used interchangeably in this chapter and mean legal tender and negotiable instruments and other cash equivalents readily convertible into legal tender.

(8) "Conspicuous" means so written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing or typing in italics, boldface, contrasting color, capitals, or underlining is conspicuous.

(9) "Control" or a "controlling interest" means the direct or indirect possession of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting shares, by contract, or otherwise.

(10) "Corporate name" means:

(a) the name of a domestic corporation or a domestic nonprofit corporation as stated in its articles of incorporation; or

(b) the name of a foreign corporation or a foreign nonprofit corporation as stated in its articles of incorporation or document of similar import.

(11) "Corporation" or "domestic corporation" means a corporation for profit, which is not a foreign corporation, incorporated under or subject to the provisions of this chapter.

(12) "Deliver" includes delivery by mail and any other means of transmission authorized by Section 16-10a-103, except that delivery to the division means actual receipt by the division.

(13) "Distribution" means a direct or indirect transfer of money or other property, except a corporation's own shares, or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend, a purchase, redemption, or other acquisition of shares, distribution of indebtedness, or otherwise.

(14) "Division" means the Division of Corporations and Commercial Code.

(15) "Effective date," when referring to a document filed by the division, means the time and date determined in accordance with Section 16-10a-123.

(16) "Effective date of notice" means the date notice is effective as provided in Section 16-10a-103.

(17) "Electronic transmission" or "electronically transmitted" means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of information by the recipient.

[~~(17)~~] (18) "Employee" includes an officer but not a director. A director may accept duties that make that director also an employee.

[~~(18)~~] (19) "Entity" includes a domestic and foreign corporation, a nonprofit corporation, a limited liability company, a profit or nonprofit unincorporated association, a business trust, an estate, a partnership, a trust, two or more persons having a joint or common economic interest, state, the United States, and a foreign government.

[~~(19)~~] (20) "Foreign corporation" means a corporation for profit incorporated under a law other than the law of this state.

[~~(20)~~] (21) "Governmental subdivision" means county, municipality, and any other types of

governmental subdivision authorized by the laws of this state.

[~~(21)~~] (22) "Individual" means a natural person, the estate of an incompetent individual, or the estate of a deceased individual.

[~~(22)~~] (23) "Mail," "mailed," or "mailing" means deposit, deposited, or depositing in the United States mail, properly addressed, first class postage prepaid, and includes registered or certified mail for which the proper fee has been paid.

[~~(23)~~] (24) "Notice" is as provided in Section 16-10a-103.

[~~(24)~~] (25) "Principal office" means the office, in or out of this state, designated by a domestic or foreign corporation as its principal office in the most recent document on file with the division providing [~~such~~] the information, including an annual report, an application for a certificate of authority, or a notice of change of principal office.

[~~(25)~~] (26) "Proceeding" includes a civil suit, arbitration or mediation, and a criminal, administrative, or investigatory action.

[~~(26)~~] (27) "Qualified shares" means, with respect to a director's conflicting interest transaction pursuant to Section 16-10a-853, any shares entitled to vote on the transaction, except shares that, to the knowledge, before the vote, of the secretary, other officer, or agent of the corporation authorized to tabulate votes, are beneficially owned, or the voting of which is controlled, by a director who has a conflicting interest respecting the transaction, or by a related person of that director, or both.

[~~(27)~~] (28) "Receive," when used in reference to receipt of a writing or other document by a domestic or foreign corporation, means the writing or other document is actually received:

(a) by the corporation at its registered office in this state or at its principal office;

(b) by the secretary of the corporation, wherever the secretary is found; or

(c) by any other person authorized by the bylaws or the board of directors to receive the writing or other document, wherever that person is found.

[~~(28)~~] (29) "Record date" means the date established under Part 6 or 7 of this chapter on which a corporation determines the identity of its shareholders. The determination shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

[~~(29)~~] (30) "Registered office" means the office within this state designated by a domestic or foreign corporation as its registered office in the most recent document on file with the division providing that information, including articles of incorporation, an application for a certificate of authority, or a notice of change of registered office.

[~~(30)~~] (31) "Related person" of a director means:

(a) the spouse of the director, or a child, grandchild, sibling, or parent of the director;

(b) the spouse of a child, grandchild, sibling, or parent of the director;

(c) an individual having the same home as the director;

(d) a trust or estate of which the director or any other individual specified in this Subsection [~~(30)~~] (31) is a substantial beneficiary; or

(e) a trust, estate, incompetent, conservatee, or minor of which the director is a fiduciary.

[~~(31)~~] (32) "Secretary" means the corporate officer to whom the bylaws or the board of directors has delegated responsibility under Subsection 16-10a-830(3) for the preparation and maintenance of minutes of the meetings of the board of directors and of the shareholders and of the other records and information required to be kept by the corporation by Section 16-10a-830, and for authenticating records of the corporation.

[~~(32)~~] (33) "Shares" means the units into which the proprietary interests in a corporation are divided.

[~~(33)~~] (34) "Shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent recognized pursuant to Section 16-10a-723. For purposes of this chapter:

(a) the following, which are identified as a shareholder in a corporation's current record of shareholders, constitute one shareholder:

(i) (A) three or fewer coowners;

(B) in the case of more than three coowners each coowner in excess of the first three will be counted as a separate shareholder;

(ii) a corporation, limited liability company, partnership, trust, estate, or other entity; and

(iii) the trustees, guardians, custodians, or other fiduciaries of a single trust, estate, or account;

(b) shareholdings registered in substantially similar names constitute one shareholder if it is reasonable to believe that the names represent the same person; and

(c) in any case where the record of shareholders has not been maintained in accordance with accepted practice, any additional person who would be identified as an owner on that record if it had been maintained in accordance with accepted practice shall be included as a holder of record.

[~~(34)~~] (35) "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

[~~(35)~~] (36) "Voting group" means all shares of one or more classes or series that under the articles of incorporation or this chapter are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this chapter to vote generally on the matter are for that purpose a single voting group.

Section 2. Section 16-10a-722 is amended to read:

16-10a-722. Proxies.

(1) A shareholder may vote his shares in person or by proxy.

[~~(2) Without limiting the manner in which a shareholder may appoint a proxy to vote or otherwise act for that shareholder, the following constitute valid means of appointment:~~]

[~~(a)~~] (2) A shareholder, his agent, or attorney-in-fact, may appoint a proxy to vote or otherwise act for the shareholder by signing an appointment form[~~, either personally or by the shareholder's attorney-in-fact~~] or by an electronic transmission. An electronic transmission must contain or be accompanied by information that indicates that the shareholder, the shareholder's agent, or the shareholder's attorney-in-fact authorized the transmission.

[~~(b) A shareholder may appoint a proxy by transmitting or authorizing the transmission of a telegram, teletype, or other electronic transmission providing a written statement of the appointment to the proxy, to a proxy solicitor, proxy support service organization, or other person duly authorized by the proxy to receive appointments as agent for the proxy, or to the corporation, provided that the transmitted appointment shall set forth or be transmitted with written evidence from which it can be determined that the shareholder transmitted or authorized the transmission of the appointment.~~]

(3) An appointment of a proxy is effective when a signed appointment form or an electronic transmission of the appointment is received by the [~~corporation, including receipt by the corporation of an appointment transmitted pursuant to Subsection (2)(b)~~] inspector of election or the officer or agent of the corporation authorized to tabulate votes. An appointment is valid for 11 months unless a longer period is expressly provided in the appointment form.

[~~(4) Any complete copy, including an electronically transmitted facsimile, of an appointment of a proxy may be substituted for or used in lieu of the original appointment for any purpose for which the original appointment could be used.~~]

[~~(5)~~] (4) An appointment of a proxy is revocable [~~by the shareholder, and is revoked upon the death or incapacity of the shareholder upon receipt of notice of either event as provided in Subsection (6),~~] unless the appointment form [~~conspicuously~~] or electronic transmission states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of any of the following persons or their designees:

(a) a pledgee;

(b) a person who purchased or agreed to purchase the shares;

(c) a creditor of the corporation who extended its credit under terms requiring the appointment;

(d) an employee of the corporation whose employment contract requires the appointment; or

(e) a party to a voting agreement created under Section 16-10a-731.

[~~(6)~~] (5) The death or incapacity of the shareholder appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless the appointment is not irrevocable and coupled with an interest, and notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises the authority under the appointment.

[~~(7)~~] (6) An appointment made irrevocable under Subsection [~~(5)~~] (4) is revoked when the interest with which it is coupled is extinguished but the revocation does not affect the right of the corporation to accept the proxy's authority unless:

(a) the corporation had notice that the appointment was coupled with that interest and notice that the interest is extinguished is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises the authority under the appointment; or

(b) other notice of the revocation of the appointment is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises the authority under the appointment.

[~~(8)~~] (7) The corporation is not required to recognize an appointment made irrevocable under Subsection [~~(5)~~] (4) if it has received a writing revoking the appointment signed by the shareholder either personally or by [~~such~~] the shareholder's attorney-in-fact, notwithstanding that the revocation may be a breach of an obligation of the shareholder to another person not to revoke the appointment. This provision shall not affect any claim [~~such~~] the other person may have against the shareholder with respect to the revocation.

[~~(9)~~] (8) A transferee for value of shares subject to an irrevocable appointment may revoke the appointment if [~~such~~] the transferee did not know of its existence when acquiring the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.

[~~(10)~~] (9) Subject to Section 16-10a-724 and to any express limitation on the proxy's authority [~~appearing on the face of~~] stated in the appointment form or electronic transmission, a corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

Section 3. Section 31A-5-101 (Effective 04/30/01) is amended to read:

31A-5-101 (Effective 04/30/01). Definitions.

In this chapter, unless the context requires otherwise:

(1) The definitions applicable to the Utah Revised Business Corporation Act in Subsections 16-10a-102(2), [~~(22), and~~] (23), and (24) apply to stock corporations.

(2) The definitions applicable to nonprofit corporations in Subsections 16-6a-102(4), (6), and [~~(30)~~] (31) apply to mutuals.

(3) "Promoter securities" are securities issued by a stock insurer to the incorporators, directors, officers, or their families or nominees at any time prior to, and up to one year following, the issuance of a certificate of authority to the stock insurer.

Section 4. Section 42-2-6.6 (Effective 04/30/01) is amended to read:

42-2-6.6 (Effective 04/30/01). Assumed name.

(1) The assumed name:

(a) may not contain any word or phrase that indicates or implies that the business is organized for any purpose other than one or more of the purposes contained in its application;

(b) shall be distinguishable from any registered name or trademark of record in the offices of the Division of Corporations and Commercial Code, as defined in Subsection 16-10a-401(5), except as authorized by the Division of Corporations and Commercial Code pursuant to Subsection (2);

(c) without the written consent of the United States Olympic Committee, may not contain the words:

(i) "Olympic";

(ii) "Olympiad"; or

(iii) "Citius Altius Fortius";

(d) without the written consent of the State Board of Regents issued in accordance with Section 53B-5-114, may not contain the words:

(i) "university";

(ii) "college"; or

(iii) "institute"; and

(e) an assumed name authorized for use in this state on or after May 1, 2000, may not contain the words:

(i) "incorporated";

(ii) "inc."; or

(iii) a variation of "incorporated" or "inc."

(2) Notwithstanding Subsection (1)(e), an assumed name may contain a word listed in Subsection (1)(e) if the Division of Corporations and Commercial Code authorizes the use of the name by a corporation as defined in:

(a) Subsection 16-6a-102[~~(25)~~](26);

(b) Subsection 16-6a-102[~~(32)~~](33);

(c) Subsection 16-10a-102(11); or

(d) Subsection 16-10a-102[~~(19)~~](20).

(3) The Division of Corporations and Commercial Code shall authorize the use of the name applied for if:

(a) the name is distinguishable from one or more of the names and trademarks that are on the division's records; or

(b) the applicant delivers to the division a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(4) The assumed name, for purposes of recordation, shall be either translated into English or transliterated into letters of the English alphabet if it is not in English.

(5) The Division of Corporations and Commercial Code may not approve an application for an assumed name to any person violating this section.

(6) The director of the Division of Corporations and Commercial Code shall have the power and authority reasonably necessary to interpret and efficiently administer this section and to perform the duties imposed on the division by this section.

(7) A name that implies by any word in the name that it is an agency of the state or of any of its political subdivisions, if it is not actually such a legally established agency, may not be approved for filing by the Division of Corporations and Commercial Code.

(8) Section 16-10a-403 applies to this chapter.

(9) (a) The requirements of Subsection (1)(d) do not apply to a person who filed a certificate of assumed and of true name with the Division of Corporations and Commercial Code on or before May 4, 1998, until December 31, 1998.

(b) On or after January 1, 1999, any person who carries on, conducts, or transacts business in this state under an assumed name shall comply with the requirements of Subsection (1)(d).

CHAPTER 219
H. B. 297
Passed February 23, 2001
Approved March 16, 2001
Effective April 30, 2001

PROCEDURES FOR SMALL TELEPHONE COMPANY RATE CASES

Sponsor: Thomas V. Hatch

This act modifies the Public Utilities Code to increase the size of a telephone company that is allowed to follow an abbreviated rate increase process. This act makes technical changes. This act provides a coordination clause.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
54-7-12 (Superseded 07/01/01), as last amended by Chapter 170, Laws of Utah 1996

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

Section 1. Section 54-7-12 (Superseded 07/01/01) is amended to read:

54-7-12 (Superseded 07/01/01). Rate increase or decrease -- Procedure -- Effective dates -- Electrical or telephone cooperative.

(1) As used in this section:

[~~(b)~~] (a) "Rate decrease" means:

(i) any direct decrease in a rate, fare, toll, rental, or other charge of a public utility; or

(ii) any modification of a classification, contract, practice, or rule that decreases a rate, fare, toll, rental, or other charge of a public utility.

[~~(a)~~] (b) "Rate increase" means:

(i) any direct increase in a rate, fare, toll, rental, or other charge of a public utility; or

(ii) any modification of a classification, contract, practice, or rule that increases a rate, fare, toll, rental, or other charge of a public utility.

(2) (a) Any public utility or other party that proposes to increase or decrease rates shall file appropriate schedules with the commission setting forth the proposed rate increase or decrease.

(b) The commission shall, after reasonable notice, hold a hearing to determine whether the proposed rate increase or decrease, or some other rate increase or decrease, is just and reasonable. If a rate decrease is proposed by a public utility, the commission may waive a hearing unless it seeks to suspend, alter, or modify the rate decrease.

(c) Except as otherwise provided in Subsections (3) and (4), [~~no~~] a proposed rate increase or decrease is not effective until after completion of the hearing and issuance of a final order by the commission concerning the proposed increase or decrease.

(3) The following rules apply to the implementation of any proposed rate increase or decrease filed by a utility or proposed by any other party and to the implementation of any other increase or decrease in lieu of that proposed by a utility or other party that is determined to be just and reasonable by the commission[~~:~~].

(a) On its own initiative or in response to an application by a public utility or other party, the commission, after a hearing, may allow any proposed rate increase or decrease, or a reasonable part of the rate increase or decrease, to take effect, subject to the commission's right to order a refund or surcharge, upon the filing of the utility's schedules or at any time during the pendency of [~~its~~] the commission's hearing proceedings. The evidence presented in the hearing held pursuant to this subsection need not encompass all issues that may be considered in a rate case hearing held pursuant to Subsection (2)(b), but shall establish an adequate prima facie showing that the interim rate increase or decrease is justified.

(b) (i) If the commission completes a hearing concerning a utility's revenue requirement before the expiration of 240 days from the date the rate increase or decrease proposal is filed, [~~it~~] the commission may issue a final order within that period establishing the utility's revenue requirement and fixing [~~its~~] the utility's interim allowable rates before [~~it~~] the commission determines the allocation of the increase or decrease among categories of customers and classes of service.

(ii) If the commission in [~~its~~] the commission's final order on a utility's revenue requirement finds that the interim increase order under Subsection (3)(a) exceeds the increase finally ordered, [~~it~~] the commission shall order the utility to refund the excess to customers. If the commission in [~~its~~] the commission's final order on a utility's revenue requirement finds that the interim decrease order under Subsection (3)(a) exceeds the decrease finally ordered, [~~it~~] the commission shall order a surcharge to customers to recover the excess decrease.

(c) If the commission fails to enter [~~its~~] the commission's order granting or revising a revenue increase within 240 days after the utility's schedules are filed, the rate increase proposed by the utility is final and the commission may not order a refund of any amount already collected by the utility under its filed rate increase.

(d) (i) When a public utility files a proposed rate increase based upon an increased cost to the utility for fuel or energy purchased or obtained from independent contractors, other independent suppliers, or any supplier whose prices are regulated by a governmental agency, the commission shall issue a tentative order with respect to the proposed increase within ten days after the proposal is filed, unless it issues a final order with respect to the rate increase within 20 days after the proposal is filed.

(ii) The commission shall hold a public hearing within 30 days after it issues the tentative order to determine if the proposed rate increase is just and reasonable.

(4) (a) Notwithstanding any other provisions of this title, any schedule, classification, practice, or rule filed by a public utility with the commission that does not result in any rate increase shall take effect 30 days after the date of filing or within any lesser time the commission may grant, subject to its authority after a hearing to suspend, alter, or modify that schedule, classification, practice, or rule.

(b) When the commission suspends a schedule, classification, practice, or rule, [~~it~~] the commission shall hold a hearing on the schedule, classification, practice, or rule before issuing its final order.

(c) For purposes of this Subsection (4), any schedule, classification, practice, or rule that introduces a service or product not previously offered may not result in a rate increase.

(5) (a) Notwithstanding any other provision of this title, whenever a public utility files with the commission any schedule, classification, practice, or rule that does not result in an increase in any rate, fare, toll, rental, or charge, the schedule, classification, practice, or rule shall take effect 30 days after the date of filing or at any earlier time the commission may grant, subject to the authority of the commission, after a hearing, to suspend, alter, or modify the schedule, classification, practice, or rule.

(b) (i) Notwithstanding any other provision of this title, whenever a public utility files with the commission a request for an increase in rates, fares, tolls, rentals, or charges based solely upon cost increases to the public utility of fuel supplied by an independent contractor or independent source of supply, the requested increase shall take effect ten days after the filing of the request with the commission or at any earlier time after the filing of the request as the commission may by order permit.

(ii) The commission shall order the increase to take effect only after a showing has been made by the public utility to the commission that the increase is justified.

(iii) The commission may, after a hearing, suspend, alter, or modify the increase.

(6) This section does not apply to any rate changes of an electrical or telephone cooperative that meets all of the [~~following~~] requirements[~~:~~] of this Subsection (6).

(a) (i) The cooperative is organized for the purpose of either distributing electricity or providing telecommunication services to its members and the public at cost.

(ii) "At cost" includes interest costs and a reasonable rate of return as determined by the cooperative's board of directors.

(b) The cooperative's board of directors and any appropriate agency of the federal government have approved the rate increase or other rate change and all necessary tariff revisions reflecting the increased rate or rate change.

(c) Before implementing any rate increases, the cooperative has held a public meeting for all its customers and members. The cooperative shall mail a notice of the meeting to all of the cooperative's customers and members not less than ten days prior to the date that the meeting is held.

(d) The cooperative has filed its tariff revisions reflecting the rate increase or other rate change with the commission, who shall make the tariffs available for public inspection.

(7) [~~Procedures~~] Notwithstanding Subsections (2) and (3), the procedures for [~~the implementation of~~] implementing a proposed rate increase by a telephone corporation having less than [~~5,000~~] 30,000 subscriber access lines in the state are [~~as follows:~~] provided in this Subsection (7).

(a) (i) The proposed rate increase [~~may become~~] by a telephone corporation subject to this Subsection (7) may become effective [~~upon the filing of~~] on the day the telephone corporation files with the commission the proposed tariff revisions and necessary information to support a determination by the commission that the proposed rate increase is just and reasonable.

(ii) The telephone corporation shall [~~provide 30 days' notice to~~] notify the commission and all potentially affected access line subscribers of the proposed rate increase 30 days before filing the proposed rate increase or change.

(b) (i) The commission may investigate whether the proposed rate increase is just and reasonable.

(ii) If the commission determines, after notice and hearing, that the rate increase is unjust or unreasonable in whole or in part, the commission may establish the rates, charges, or classifications that [~~it~~] the commission finds to be just and reasonable.

(c) The commission shall investigate and hold a hearing to determine whether any proposed rate increase is just and reasonable if 10% or more of the telephone corporation's potentially affected access line subscribers file a request for agency action requesting an investigation and hearing.

Section 2. Coordination clause.

If this bill and H.B. 184, Public Utilities Amendments - Repeal, both pass, it is the intent of the Legislature that Section 54-7-12 not be superseded and the amendments in this bill will continue in effect after July 1, 2001.

CHAPTER 220
H. B. 310
Passed February 28, 2001
Approved March 16, 2001
Effective April 30, 2001

STATE BOARDS AND COMMISSIONS AMENDMENTS

Sponsor: Afton B. Bradshaw

This act modifies provisions governing Utah Boards and Commissions. This act establishes set terms for certain members of the Commission on Criminal and Juvenile Justice, the Utah Substance Abuse and Anti-Violence Coordinating Council, the Justice Committee, the Treatment Committee, the Prevention Committee, and the Judiciary Committee and modifies membership of those groups and makes other technical corrections to those sections. This act makes technical corrections to the Crime Victims Reparations Trust Fund and the State Executive and Judicial Compensation Commission.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
63-25a-102, as last amended by Chapter 270, Laws of Utah 1999
63-25a-104, as last amended by Chapters 270 and 346, Laws of Utah 1999
63-25a-201, as last amended by Chapter 102, Laws of Utah 1998
63-25a-204, as last amended by Chapter 270, Laws of Utah 1999
63-63a-4, as last amended by Chapter 308, Laws of Utah 1997
67-8-4, as last amended by Chapter 243, Laws of Utah 1996

REPEALS:
63-25a-501, as last amended by Chapter 1, Laws of Utah 2000
63-25a-502, as enacted by Chapter 346, Laws of Utah 1999
63-25a-503, as enacted by Chapter 346, Laws of Utah 1999

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

Section 1. Section 63-25a-102 is amended to read:

63-25a-102. Composition -- Ex officio members -- Appointees of governor -- Terms -- U.S. Attorney as nonvoting member.

(1) The commission on criminal and juvenile justice shall be composed of 20 voting members as follows:

(a) the chief justice of the supreme court, as the presiding officer of the judicial council, or a judge designated by the chief justice;

(b) the state court administrator;

[~~(c) a juvenile court judge appointed by the chief justice, as presiding officer of the Judicial Council;~~]

[~~(d)~~] (c) the executive director of the Department of Corrections;

[~~(e)~~] (d) the director of the Division of Youth Corrections;

[~~(f)~~] (e) the commissioner of the Department of Public Safety;

[~~(g)~~] (f) the attorney general;

[~~(h) a representative of the statewide association of public attorneys designated by the association's officers;~~]

[~~(i)~~] (g) the president of the [~~chief~~] chiefs of police association or a chief of police designated by the association's president;

[~~(j)~~] (h) the president of the [~~sheriff's~~] sheriffs' association or a sheriff designated by the association's president;

[~~(k)~~] (i) the chair of the Board of Pardons and Parole or a member designated by the chair;

[~~(l)~~] (j) the chair of the Utah Sentencing Commission;

[~~(m)~~] (k) the chair of the Utah Substance Abuse and Anti-Violence Coordinating Council;

[~~(n)~~] (l) the chair of the Utah Board of Juvenile Justice; [~~and~~]

[~~(o)~~] (m) the chair of the Utah Council on Victims of Crime or the chair's designee[~~.~~]; and

(n) the following members designated to serve four-year terms:

(i) a juvenile court judge, appointed by the chief justice, as presiding officer of the Judicial Council; and

(ii) a representative of the statewide association of public attorneys designated by the association's officers.

(2) The governor shall appoint the remaining five members [~~shall be appointed by the governor, with the advice and consent of the Senate,~~] to [~~two-year~~] four-year staggered terms as follows:

(a) one criminal defense attorney appointed from a list of three nominees submitted by the Utah State Bar Association;

(b) one state senator;

(c) one state representative;

(d) one representative of public education; and

(e) one citizen representative.

(3) In addition to the members designated under Subsections (1) and (2), the United States Attorney for the district of Utah may serve as a nonvoting member.

(4) In appointing the members under Subsection (2), the governor shall take into account the geographical makeup of the commission [~~and the~~

~~representation from local criminal justice advisory groups~~].

Section 2. Section 63-25a-104 is amended to read:

63-25a-104. Duties of commission.

The state commission on criminal and juvenile justice administration shall:

(1) promote the commission's purposes as enumerated in Section 63-25a-101;

(2) promote the communication and coordination of all criminal and juvenile justice agencies;

(3) study, evaluate, and report on the status of crime in the state and on the effectiveness of criminal justice policies, procedures, and programs that are directed toward the reduction of crime in the state;

(4) study, evaluate, and report on policies, procedures, and programs of other jurisdictions which have effectively reduced crime;

(5) identify and promote the implementation of specific policies and programs the commission determines will significantly reduce crime in Utah;

(6) provide analysis and recommendations on all criminal and juvenile justice legislation, state budget, and facility requests, including program and fiscal impact on all components of the criminal and juvenile justice system;

(7) provide analysis, accountability, recommendations, and supervision for state and federal criminal justice grant monies;

(8) provide public information on the criminal and juvenile justice system and give technical assistance to agencies or local units of government on methods to promote public awareness;

(9) promote research and program evaluation as an integral part of the criminal and juvenile justice system;

(10) provide a comprehensive criminal justice plan annually;

(11) review agency forecasts regarding future demands on the criminal and juvenile justice systems, including specific projections for secure bed space; and

(12) promote the development of criminal and juvenile justice information systems that are consistent with common standards for data storage and are capable of appropriately sharing information with other criminal justice information systems by:

(a) developing and maintaining common data standards for use by all state criminal justice agencies;

(b) annually performing audits of criminal history record information maintained by state criminal justice agencies to assess their accuracy, completeness, and adherence to standards;

(c) defining and developing state and local programs and projects associated with the improvement of information management for law enforcement and the administration of justice; and

(d) establishing general policies concerning criminal and juvenile justice information systems and making rules as necessary to carry out the duties under this Subsection (12) and Subsection (10)[~~; and~~].

[~~(13) administer the Crime Reduction Planning Grant Program outlined in Title 63, Chapter 25a, Part 5, State and Local Agencies' Crime Reduction Planning Grant, which may include conferences regarding crime reduction.~~]

Section 3. Section 63-25a-201 is amended to read:

63-25a-201. Creation of council -- Membership -- Terms.

(1) There is created within the governor's office the Utah Substance Abuse and Anti-Violence Coordinating Council.

(2) The Utah Substance Abuse and Anti-Violence Coordinating Council comprises 26 voting members as follows:

[~~(a) a member of the House of Representatives annually designated by the speaker;~~]

[~~(b) a member of the Senate annually designated by the president;~~]

[~~(c) a member of the judiciary annually designated by the chief justice of the Utah Supreme Court;~~]

[~~(d)~~] (a) the attorney general;

[~~(e)~~] (b) a county commissioner [~~annually~~] designated by the Utah Association of Counties;

[~~(f)~~] (c) the commissioner of public safety;

[~~(g)~~] (d) the director of the Division of Substance Abuse;

[~~(h)~~] (e) the state superintendent of public instruction;

[~~(i) a representative from the offices of minority affairs annually designated by the directors of those offices or a designee;~~]

[~~(j)~~] (f) the director of the Department of Health;

[~~(k)~~] (g) the director of the Division of Mental Health;

[~~(l)~~] (h) the executive director of the Commission on Criminal and Juvenile Justice;

[~~(m)~~] (i) the governor or his designee;

[~~(n)~~] (j) the chairs of the Justice, Prevention, Treatment, and Judiciary Committees;

[~~(o)~~] (k) the executive director of the Department of Corrections;

[~~(p)~~] (l) the director of the Division of Youth Corrections;

[~~(q) a representative annually designated by the Utah League of Cities and Towns;~~]

[~~(r)~~] (m) the chair of the Domestic Violence Advisory Council or his designee;

(n) the following members designated to serve four-year terms:

(i) a member of the House of Representatives designated by the speaker;

(ii) a member of the Senate designated by the president;

(iii) a member of the judiciary designated by the chief justice of the Utah Supreme Court;

(iv) a representative designated by the Utah League of Cities and Towns; and

(v) a representative from the offices of minority affairs designated by the directors of those offices or a designee; and

(o) the following members appointed by the governor to serve four-year terms:

[~~(s)~~] (i) a representative of the Utah National Guard, appointed by the governor [~~to a two-year term~~];

[~~(t) four members of the general public appointed by the governor with the advice and consent of the Senate to two-year terms:~~]

[~~(i)~~] (ii) one resident of the state who has been personally affected by domestic violence;

[~~(ii)~~] (iii) one resident of the state who has been personally affected by gang violence;

[~~(iii)~~] (iv) one resident of the state who has been personally affected by alcohol or other drug abuse; and

[~~(iv)~~] (v) one citizen representative.

Section 4. Section 63-25a-204 is amended to read:

63-25a-204. Creation of committees -- Membership -- Terms.

(1) There is created within the governor's office, the Justice Committee, the Treatment Committee, the Prevention Committee, and the Judiciary Committee.

(2) The president of the Senate may [~~annually~~] designate a member of the Senate to serve on each committee for a four-year term.

(3) The speaker of the House may [~~annually~~] designate a member of the House of Representatives to serve on each committee for a four-year term.

(4) (a) The Justice Committee comprises a minimum of 15 voting members as follows:

(i) the director of the Criminal Investigations Bureau of the Department of Public Safety or his designee;

(ii) the following members designated to serve four-year terms:

[~~(i)~~] (A) a representative [~~annually~~] designated by the Utah Chiefs of Police Association;

[~~(ii)~~] (B) a representative [~~annually~~] designated by the Utah Sheriff's Association;

[~~(iii)~~] (C) a representative [~~annually~~] designated by the Statewide Association of Public Attorneys;

[~~(iv)~~] (D) a representative [~~annually~~] designated by the Department of Commerce;

[~~(v)~~] (E) an assistant attorney general [~~annually~~] designated by the attorney general;

[~~(vi)~~] (F) a representative [~~annually~~] designated by the commissioner of the Department of Public Safety;

[~~(vii) the director of the Criminal Investigations Bureau of the Department of Public Safety or his designee;~~]

[~~(viii)~~] (G) a representative [~~annually~~] designated by the executive director of the Department of Corrections;

[~~(ix)~~] (H) a representative [~~annually~~] designated by the director of the Division of Youth Corrections;

[~~(x) a representative from a drug task force within the state appointed by the governor to serve for two years;~~]

[~~(xi) a gang intelligence officer appointed by the governor to serve for two years;~~]

[~~(xii) a representative of crime victims appointed by the governor to serve for two years;~~]

[~~(xiii)~~] (I) a district director of juvenile probation or his designee, [~~annually~~] designated by the presiding officer of the Judicial Council; and

[~~(xiv)~~] (J) a representative of adult probation and parole [~~annually~~] designated by the executive director of the Department of Corrections; and

[~~(xv) a school resource officer annually appointed by the governor to serve for two years.~~]

(iii) the following members appointed by the governor to serve four-year terms:

(A) a representative from a drug task force within the state;

(B) a representative of crime victims;

(C) a gang intelligence officer; and

(D) a school resource officer.

[~~(b) In addition to the members designated under Subsection (4)(a):~~]

(b) The following organizations may also designate a representative to be a voting member of the committee for a four-year term:

(i) the Federal Bureau of Investigation [~~may annually designate a representative to be a voting member of the committee~~];

(ii) the United States Attorney's Office [~~may annually designate a representative to be a voting member of the committee~~]; and

(iii) the Drug Enforcement Administration [~~may annually designate a representative to be a voting member of the committee~~].

(c) Additional committee members may be selected by a majority of the committee to serve as voting members for [~~two-year~~] four-year terms.

(5) (a) The Treatment Committee comprises a minimum of 17 voting members as follows:

(i) a representative of an urban local substance abuse authority [~~annually~~] designated by the Utah Behavioral Healthcare Network;

(ii) a representative of a rural local substance abuse authority [~~annually~~] designated by the Utah Behavioral Healthcare Network;

(iii) a representative [~~annually~~] designated by the Division of Substance Abuse;

(iv) a representative [~~annually~~] designated by the director of the Division of Youth Corrections;

(v) a registered pharmacist [~~annually~~] designated by the Utah Pharmaceutical Association;

(vi) a representative [~~annually~~] designated by the Utah Hospital and Health Systems Association;

(vii) a licensed physician [~~annually~~] designated by the Utah Medical Association;

(viii) a licensed psychologist [~~annually~~] designated by the Utah Psychological Association;

(ix) a licensed social worker [~~annually~~] designated by the National Association of Social Workers (Utah Chapter);

(x) a registered nurse [~~annually~~] designated by the Utah Nurses Association;

(xi) a substance abuse counselor [~~annually~~] designated by the Utah Association of Alcohol and Drug Abuse Counselors;

(xii) a representative [~~annually~~] designated by the Utah Association of Local Health Officers;

(xiii) a domestic violence treatment professional [~~annually~~] appointed by the Domestic Violence Advisory Council;

(xiv) a school counselor [~~annually~~] designated by the Utah School Counselors Association;

(xv) an elementary school principal from a high risk school [~~annually~~] designated by the Utah Association of Elementary School Principals;

(xvi) a secondary school principal from a high risk school [~~annually~~] designated by the Utah Association of Secondary School Principals; and

(xvii) a representative [~~annually~~] designated by the executive director of the Department of Workforce Services.

(b) Additional committee members may be selected by a majority of the committee [~~to serve as voting members for two-year terms~~].

(c) Each committee member shall serve a four-year term.

(6) (a) The Prevention Committee comprises a minimum of 18 voting members as follows:

(i) the executive director of the Utah Council for Crime Prevention or his designee;

(ii) a representative from the State Board of Regents;

(iii) the president of the Utah Federation for Youth or his designee;

(iv) the president of the state Parent Teacher Association or his designee;

(v) the director of the Association of Youth Councils or his designee;

(vi) the chair of the Coalition for Tobacco Free Utah or the chair's designee;

(vii) the following members designated to serve four-year terms:

[~~(i)~~] (A) a representative [~~annually~~] designated by the director of the Division of Substance Abuse;

[~~(ii) the executive director of the Utah Council for Crime Prevention or his designee;~~]

[~~(iii)~~] (B) a representative [~~annually~~] designated by the state superintendent of public instruction, State Office of Education;

[~~(iv) the commissioner of higher education, from the State Board of Regents, or his designee;~~]

[~~(v)~~] (C) a representative [~~annually~~] designated by the executive director of the Department of Health;

[~~(vi) the president of the Utah Federation for Youth or his designee;~~]

[~~(vii)~~] (D) a Safe and Drug-Free Schools program director from an urban school district, [~~annually~~] designated by the Utah School Superintendents Association;

[~~(viii)~~] (E) a Safe and Drug-Free Schools program director from a rural school district, [~~annually~~] designated by the Utah School Superintendents Association;

[~~(ix) the president of the state Parent Teacher Association or his designee;~~]

[~~(x)~~] (F) a representative of an urban local substance abuse authority, [~~annually~~] designated by the Utah Behavioral Healthcare Network;

[~~(xi)~~] (G) a representative [~~annually~~] designated by the commissioner of the Labor Commission;

[~~(xii)~~] (H) a representative of a rural local substance abuse authority, [~~annually~~] designated by the Utah Behavioral Healthcare Network; and

[~~(xiii)~~] (I) a representative [~~annually~~] designated by the Utah Association of Local Health Officers; and

(viii) the following members appointed by the governor to serve four-year terms:

[~~(xiv)~~] (A) a representative of the academic and research community who is knowledgeable in the field of substance abuse or violence prevention[~~, appointed by the governor to serve for two years~~];

[~~(xv) the director of the Association of Youth Councils or his designee;~~]

[~~(xvi)~~] (B) a representative of a community-based organization that provides services to children [~~appointed by the governor to serve for two years~~]; and

[~~(xvii)~~] (C) one or more members of the religious community [~~appointed by the governor to serve for two years; and~~].

[~~(xviii) the chair of the Coalition for Tobacco Free Utah or the chair's designee.~~]

(b) Additional committee members may be selected by a majority of the committee to serve as voting members for [~~two-year~~] four-year terms.

(7) (a) The Judiciary Committee comprises a minimum of 17 voting members as follows:

(i) the following members designated by the presiding officer of the Judicial Council to serve four-year terms:

[~~(i)~~] (A) a juvenile court judge [~~annually designated by the presiding officer of the Judicial Council~~];

[~~(ii)~~] (B) a district court judge [~~annually designated by the presiding officer of the Judicial Council~~];

[~~(iii)~~] (C) an appellate court judge [~~annually designated by the presiding officer of the Judicial Council~~];

[~~(iv)~~] (D) a justice court judge [~~annually designated by the presiding officer of the Judicial Council~~];

[~~(v)~~] (E) two court executives [~~annually designated by the presiding officer of the Judicial Council~~];

[~~(vi)~~] (F) two court administrative officers [~~annually designated by the presiding officer of the Judicial Council~~];

[~~(vii)~~] (G) a representative of court treatment or prevention programs [~~annually designated by the presiding officer of the Judicial Council~~]; and

(H) a guardian ad litem;

(ii) the following members designated to serve four-year terms:

[~~(viii)~~] (A) a representative [~~annually~~] designated by the director of the Division of Substance Abuse;

[~~(ix)~~] (B) a defense attorney [~~annually~~] designated by the Utah State Bar;

[~~(x)~~] (C) a prosecuting attorney [~~annually~~] designated by the Utah Prosecution Council;

[~~(xi)~~] (D) an assistant attorney general [~~annually~~] designated by the attorney general;

[~~(xii)~~] (E) a director of pupil services from a local school district [~~annually~~] designated by the state superintendent of public instruction; and

[~~(xiii)~~] (F) a law-related education specialist [~~annually~~] designated by the state superintendent of public instruction; and

[~~(xiv) a guardian ad litem annually designated by the presiding officer of the Judicial Council; and~~]

[~~(xv)~~] (iii) a commander of a gang task force, or his designee, appointed by the governor to serve [~~for two years~~] a four-year term.

(b) In addition to the members designated under Subsection (7)(a), the presiding federal judge may [~~annually~~] designate a federal trial judge to be a voting member of the committee for a four-year term.

(c) Additional committee members may be selected by a majority of the committee to serve as voting members for [~~two-year~~] four-year terms.

Section 5. Section 63-63a-4 is amended to read:

63-63a-4. Reparation fund -- Victim reparation and specific appropriations.

(1) In this section:

(a) "Reparation fund" means the Crime Victim Reparation Trust Fund.

(b) "Safety fund" means the Public Safety Support Fund.

(2) (a) There is created an expendable trust fund known as the Crime Victim Reparation Trust Fund to be administered and distributed as provided in this chapter by the Reparations Office under Title 63, Chapter 25a, Part 4, Crime Victims' Reparations Act, in cooperation with the Division of Finance.

(b) Monies deposited in this fund are for victim reparations, other victim services, and, as appropriated, for administrative costs of the Reparations Office under Title 63, Chapter 25a, Part 4, Crime Victims' Reparations Act.

(3) (a) There is created a restricted revenue fund in the General Fund known as the Public Safety Support Fund to be administered and distributed by the Department of Public Safety in cooperation with the Division of Finance as provided in this chapter.

(b) Monies deposited in this fund shall be appropriated to:

(i) the Division of Peace Officer Standards and Training (POST) as described in Title 53, Chapter 6, Peace Officer Standards and Training Act; and

(ii) the Office of the Attorney General for the support of the Utah Prosecution Council established in Title 67, Chapter 5a, and the fulfillment of the council's duties.

(4) The Division of Finance shall allocate from the collected surcharge established in Section 63-63a-1:

(a) 35% to the reparation fund, but not to exceed $2,500,000 for fiscal year 1993-94;

(b) 18.5% to the safety fund for POST, but not to exceed the amount appropriated by the Legislature; and

(c) 3% to the safety fund for support of the Utah Prosecution Council, but not to exceed the amount appropriated by the Legislature.

(5) (a) In addition to the funding provided by other sections of this chapter, a percentage of the income earned by inmates working for correctional industries in a federally certified private sector/prison industries enhancement program shall be deposited in the reparation fund.

(b) The percentage of income deducted from inmate pay under Subsection (5)(a) shall be determined by the executive director of the Department of Corrections in accordance with the requirements of the private sector/prison industries enhancement program.

(6) (a) In addition to the money collected from the surcharge, judges are encouraged to, and may in their discretion, impose additional reparations to be paid into the reparation fund by convicted criminals.

(b) The additional discretionary reparations may not exceed the statutory maximum fine permitted by Title 76, Utah Criminal Code, for that offense.

Section 6. Section 67-8-4 is amended to read:

67-8-4. State Executive and Judicial Compensation Commission created -- Composition -- Appointment -- Terms -- Organization -- Vacancies -- Quorum -- Compensation -- Secretary.

(1) There is created a state Executive and Judicial Compensation Commission comprised of six members, not more than three of whom may be from the same political party, appointed as follows:

(a) one member appointed by the governor;

(b) one member appointed by the president of the Senate;

(c) one member appointed by the speaker of the House of Representatives;

(d) two members appointed by the other three appointed members; and

(e) one member appointed by the State Bar Commission.

(2) (a) Except as required by Subsection (2)(b), all persons appointed to the commission shall serve four-year terms or until their successors are duly appointed and qualified.

(b) Notwithstanding the requirements of Subsection (2)(a), the [~~governor~~] appointing authority shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of commission members are staggered so that approximately half of the commission is appointed every two years.

(3) (a) The commission shall select a chair and a vice chair from opposite political parties at its first meeting.

(b) Four members of the commission shall constitute a quorum.

(c) The commission shall take no action nor make any determination without the concurrence of a majority of its members being present.

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

(5) No member or employee of the legislative, judicial, or executive branch of government is eligible for appointment to the commission. The legislative fiscal analyst shall serve as an ex officio, nonvoting secretary of the commission.

(6) (a) Members shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(b) Legislators on the committee shall receive compensation and expenses as provided by law and legislative rule.

Section 7. Repealer.

This act repeals:

Section 63-25a-501, Definitions.

Section 63-25a-502, Notification of grant funds.

Section 63-25a-503, Application for grant funds -- Balance nonlapsing.

CHAPTER 221
H. B. 313
Passed February 28, 2001
Approved March 16, 2001
Effective April 30, 2001

PROPERTY TAX RELIEF

Sponsor: A. Lamont Tyler

This act modifies the Property Tax Act to address property tax exemptions, abatements, and other tax relief. This act gives to the county legislative body the authority to determine who performs functions given to the county. This act addresses extensions of filing deadlines. This act addresses tax relief claimed for disabled veterans or related persons, tax relief claimed by blind persons or related persons, and tax relief for indigent persons. This act clarifies the relationship between different property tax relief. This act addresses the process of applying for the homeowner's credit. The act makes technical changes.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
59-2-1101, as last amended by Chapter 86, Laws of Utah 2000
59-2-1104, as last amended by Chapter 354, Laws of Utah 1999
59-2-1105, as last amended by Chapter 354, Laws of Utah 1999
59-2-1106, as last amended by Chapter 87, Laws of Utah 1996
59-2-1107, as last amended by Chapter 195, Laws of Utah 1998
59-2-1108, as last amended by Chapter 227, Laws of Utah 1993
59-2-1109, as last amended by Chapter 86, Laws of Utah 2000
59-2-1202, as last amended by Chapter 309, Laws of Utah 1998
59-2-1203, as renumbered and amended by Chapter 4, Laws of Utah 1987
59-2-1206, as last amended by Chapters 20 and 309, Laws of Utah 1998
59-2-1207, as last amended by Chapter 20, Laws of Utah 1998
59-2-1211, as renumbered and amended by Chapter 4, Laws of Utah 1987
59-2-1214, as last amended by Chapter 227, Laws of Utah 1993
59-2-1215, as last amended by Chapter 227, Laws of Utah 1993
59-2-1219, as last amended by Chapter 227, Laws of Utah 1993
59-2-1220, as last amended by Chapter 20, Laws of Utah 1998

REPEALS:
59-2-1210, as renumbered and amended by Chapter 4, Laws of Utah 1987

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

Section 1. Section 59-2-1101 is amended to read:

59-2-1101. Exemption of property devoted to public, religious, or charitable uses -- Proportional payments for government-owned property -- Intangibles exempt -- Signed statement required -- County legislative body authority to adopt rules or ordinances.

(1) The exemptions, deferrals, and abatements authorized by this part may be allowed only if the claimant is the owner of the property as of January 1 of the year the exemption is claimed, unless the claimant is a federal, state, or political subdivision entity under Subsection (2)(a), (b), or (c), in which case the entity shall collect and pay a proportional tax based upon the length of time that the property was not owned by the entity.

(2) The following property is exempt from taxation:

(a) property exempt under the laws of the United States;

(b) property of the state, school districts, and public libraries;

(c) property of counties, cities, towns, special districts, and all other political subdivisions of the state, except as provided in Title 11, Chapter 13, [~~the~~] Interlocal Cooperation Act;

(d) property owned by a nonprofit entity which is used exclusively for religious, charitable, or educational purposes;

(e) places of burial not held or used for private or corporate benefit;

(f) farm equipment and machinery; and

(g) intangible property.

(3) (a) The owner who receives exempt status for property, if required by the commission, shall file a signed statement, on or before March 1 each year, certifying the use to which the property has been placed during the past year. The signed statement shall contain the following information in summary form:

(i) identity of the individual who signed the statement;

(ii) the basis of the signer's knowledge of the use of the property;

(iii) authority to make the signed statement on behalf of the owner;

(iv) county where property is located; and

(v) nature of use of the property.

(b) If the signed statement is not filed within the time limits prescribed by the county [~~board of equalization~~], the exempt status may, after notice and hearing, be revoked and the property then placed on the tax rolls.

(4) The county legislative body may adopt rules or ordinances to:

(a) effectuate the exemptions, deferrals, abatements, or other relief from taxation provided in this part[~~.~~]; and

(b) designate one or more persons to perform the functions given the county under this part.

Section 2. Section 59-2-1104 is amended to read:

59-2-1104. Exemption of property owned by disabled veterans or their unmarried surviving spouses and minor orphans -- Amount of exemption.

(1) As used in this section, "residence" is as defined in Section 59-2-1202, except that a rented dwelling is not considered to be a residence.

(2) (a) Subject to Section 59-2-1105, including the reduction provided for in Subsection 59-2-1105(5)(b), the first $82,500 of taxable value of the property described in Subsection (2)(b) is exempt from taxation if the residence is owned by:

(i) a person who:

(A) is less than 100% disabled; and

(B) was disabled in the line of duty during any war, international conflict, or military training in the military service of the United States or of this state; or

(ii) the [~~unremarried~~] unmarried surviving spouse and minor orphans of any person described in Subsection (2)(a)(i), or of a person who, during any war, international conflict, or military training in the military service of the United States or of this state, was killed in action or died in the line of duty as a result of the military service.

(b) Subsection (2)(a) applies to the following property:

(i) a residence;

(ii) tangible personal property; or

(iii) a combination of Subsections (2)(b)(i) and (ii).

(3) (a) Subject to Section 59-2-1105, the first $82,500 of the total taxable value of property described in Subsection (3)(b) is exempt from taxation if the property is owned by:

(i) a person who:

(A) is 100% disabled; and

(B) was disabled in the line of duty during any war, international conflict, or military training in the military service of the United States or of this state; or

(ii) the [~~unremarried~~] unmarried surviving spouse and minor orphans of any person described in Subsection (3)(a)(i), or of a person who, during any war, international conflict, or military training in the military service of the United States or of this state, was killed in action or died in the line of duty as a result of the military service.

(b) Subsection (3)(a) applies to the following property:

(i) real property, including a residence;

(ii) tangible personal property; or

(iii) a combination of Subsections (3)(b)(i) and (ii).

Section 3. Section 59-2-1105 is amended to read:

59-2-1105. Application for disabled veteran's exemption -- Proof requirements -- Limitations on exemption.

(1) (a) The exemptions authorized by Section 59-2-1104 may be allowed only if the interest of the claimant is on record on January 1 of the year the exemption is claimed.

(b) If the claimant has an interest in real property under a contract, the exemption under Section 59-2-1104 may be allowed if it is proved to the satisfaction of the county [~~legislative body~~] that the claimant is:

(i) the purchaser under the contract; and [~~is~~]

(ii) obligated to pay the taxes on the property beginning January 1 of [~~that~~] the year the exemption is claimed.

(c) If the claimant is the grantor of a trust holding title to real or tangible personal property on which an exemption is claimed, the claimant may claim the portion of the exemption under Section 59-2-1104 and be treated as the owner of that portion of the property held in trust for which the claimant proves to the satisfaction of the county that:

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

(A) by:

(I) the claimant as grantor of the trust;

(II) a nonadverse party; or

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

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

(I) to revoke;

(II) to terminate;

(III) to alter;

(IV) to amend; or

(V) to appoint;

(ii) the claimant is obligated to pay the taxes on that portion of the trust property beginning January 1 of the year the claimant claims the exemption; and

(iii) the claimant meets the requirements under this part for the exemption.

(2) (a) On or before September 1 each year, any person applying for a veteran's exemption shall file an application with the county [~~legislative body of the county~~] in which that person resides.

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

[~~(b) A~~] (c) The following shall accompany the initial application for exemption:

(i) a copy of the veteran's certificate of discharge from the military service of:

(A) the United States; or [~~of~~]

(B) this state[~~,~~]; or

(ii) other satisfactory evidence of eligible military service[~~, shall accompany the initial application for exemption~~].

(3) If the application is made by a veteran who served in the military of the United States or of this state prior to January 1, 1921, or by the [~~unremarried~~] unmarried surviving spouse or minor orphan of that veteran, a certificate from the Department of Veterans Affairs, or from any other source required by the county [~~legislative body~~], showing the percentage of disability of the veteran shall accompany the application.

(4) Any application made by a veteran who served in the military service of the United States or of this state on or after January 1, 1921, or by the [~~unremarried~~] unmarried surviving spouse or minor orphan of that veteran, shall be accompanied by a certificate from the Department of Veterans Affairs, or from any other source required by the county [~~legislative body~~], showing the percentage of disability incurred or aggravated in the line of duty during any war, international conflict, or military training in the military service of the United States or of this state.

(5) (a) If the veteran is 100% disabled, the veteran's property tax exemption is as provided in Subsection 59-2-1104(3).

(b) If the certificate under this section shows a lesser percentage of disability, the exemption allowed under Subsection 59-2-1104(2) is that percentage of $82,500, except that [~~no~~] an exemption [~~is~~] may not be allowed for any disability below 10%.

(6) The [~~unremarried~~] unmarried surviving spouse and minor orphans of a deceased veteran are entitled to the greater of:

(a) the full exemption if the veteran's disability was 10% or more and the veteran served prior to January 1, 1921; or

(b) the same exemption to which the disabled veteran would have been entitled, if the veteran served on or after January 1, 1921.

[~~(7) The county legislative body may adopt rules to effectuate the exemptions from taxation under Section 59-2-1104.~~]

Section 4. Section 59-2-1106 is amended to read:

59-2-1106. Exemption of property owned by blind persons or their unmarried surviving spouses or minor orphans -- Amount -- Application.

(1) [~~The~~] (a) Subject to Subsections (2) and (3), the first $11,500 of taxable value of real and tangible personal property in this state owned by the following is exempt from taxation:

(i) a blind [~~persons, their unremarried~~] person;

(ii) the unmarried surviving [~~spouses,~~] spouse of a blind person; or [~~their~~]

(iii) a minor [~~orphans is exempt from taxation, subject to Subsections (2) and (3)~~] orphan of a blind person.

(b) If the claimant is the grantor of a trust holding title to real or tangible personal property on which an exemption is claimed, the claimant may claim the portion of the exemption under this section and be treated as the owner of that portion of the property held in trust for which the claimant proves to the satisfaction of the county that:

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

(A) by:

(I) the claimant as grantor of the trust;

(II) a nonadverse party; or

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

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

(I) to revoke;

(II) to terminate;

(III) to alter;

(IV) to amend; or

(V) to appoint;

(ii) the claimant is obligated to pay the taxes on that portion of the trust property beginning January 1 of the year the claimant claims the exemption; and

(iii) the claimant meets the requirements under this part for the exemption.

(2) (a) Every person [~~applying for~~] claiming the exemption [~~for the blind~~] under Subsection (1) shall[~~, on or before September 1 in each year,~~] file an application:

(i) on or before September 1 in each year; and

(ii) with the county [~~executive of the county~~] in which the person resides.

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

(3) The first year's application shall be accompanied by a statement signed by a licensed ophthalmologist verifying that the person:

(a) has no more than 20/200 visual acuity in the better eye when corrected; or

(b) has, in the case of better than 20/200 central vision, a restriction of the field of vision in the better eye which subtends an angle of vision no greater than 20 degrees.

Section 5. Section 59-2-1107 is amended to read:

59-2-1107. Indigent persons -- Amount of abatement.

The county [~~executive~~] may remit or abate the taxes of any poor person meeting the requirements of Section 59-2-1109 in an amount not exceeding the lesser of:

(1) the amount provided as a homeowner's credit for the lowest household income bracket under Section 59-2-1208; or

(2) 50% of the total tax [~~assessed~~] levied for the current year.

Section 6. Section 59-2-1108 is amended to read:

59-2-1108. Indigent persons -- Deferral of taxes -- Treatment of deferred taxes.

(1) (a) The county [~~board of equalization~~] may, after giving notice, defer any tax levied on residential property, subject to the conditions of Section 59-2-1109.

(b) If the owner of [~~that~~] the property described in Subsection (1)(a) is poor, the property may not be subjected to a tax sale during the period of deferment.

(2) (a) Taxes deferred by the [~~board of equalization~~] county accumulate with interest as a lien against the property until the property is sold or otherwise disposed of.

(b) Deferred taxes bear interest at the rate of 6% per year and have the same status as a lien under Sections 59-2-1301 and 59-2-1325.

(3) Deferral may be granted by the county [~~legislative body~~] at any time if:

(a) the holder of any mortgage or trust deed outstanding on the property gives written approval of the application; and

(b) the applicant is not the owner of income producing assets [~~which~~] that could be liquidated to pay the tax.

(4) Any assets transferred to relatives in the prior three-year period shall be considered by the county [~~legislative body~~] in making [~~its~~] the county's determination.

Section 7. Section 59-2-1109 is amended to read:

59-2-1109. Indigent persons -- Deferral or abatement -- Application.

(1) [~~No~~] A person under the age of 65 years is not eligible for [~~tax relief,~~] a deferral[~~,~~] or abatement provided for poor people under Sections 59-2-1107 and 59-2-1108 unless:

(a) the county [~~legislative body~~] finds that extreme hardship would prevail if the grants were not made; or

(b) the person is disabled.

(2) (a) An application for the [~~exemption~~] deferral or abatement shall be filed on or before September 1 with the county [~~legislative body of the county~~] in which the property is located. [~~The application shall set forth adequate facts to support the person's eligibility to receive the exemption.~~]

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

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

(i) in which they both reside; and

(ii) which they own as joint tenants.

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

(3) For purposes of this section:

(a) [~~A~~] a poor person is any person:

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

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

(iii) who is unable to meet the tax assessed on the person's residential property as the tax becomes due[~~.~~]; and

(b) ["~~Residence~~"] "residence" includes a mobile home as defined under Section 59-2-601.

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

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

(i) by:

(A) the claimant as grantor of the trust;

(B) a nonadverse party; or

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

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

(A) to revoke;

(B) to terminate;

(C) to alter;

(D) to amend; or

(E) to appoint;

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

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

[~~(4)~~] (5) The commission shall adopt rules to implement this section.

[~~(5)~~] (6) Any poor person may qualify for:

(a) the deferral of taxes under Section 59-2-1108[~~, or~~];

(b) if the person meets the requisites of this section, for the abatement of taxes under Section 59-2-1107[~~,~~]; or

(c) both[~~.~~]:

(i) the deferral described in Subsection (6)(a); and

(ii) the abatement described in Subsection (6)(b).

Section 8. Section 59-2-1202 is amended to read:

59-2-1202. Definitions.

As used in this part:

(1) (a) "Claimant" means a homeowner or renter who:

(i) has filed a claim under this part;

(ii) is domiciled in this state for the entire calendar year for which a claim for relief is filed under this part; and

(iii) has reached the age of 65 prior to the close of that calendar year.

(b) A surviving spouse, who otherwise qualifies under this section, is an eligible claimant regardless of age.

(c) If two or more individuals of a household are able to meet the qualifications for a claimant, they may determine among them as to who the claimant shall be, but if they are unable to agree, the matter shall be referred to the county legislative body for a determination of the claimant of an owned residence and to the commission for a determination of the claimant of a rented residence.

(2) (a) "Gross rent" means rental actually paid in cash or its equivalent solely for the right of occupancy, at arm's-length, of a residence, exclusive of charges for any utilities, services, furniture, furnishings, or personal appliances furnished by the landlord as a part of the rental agreement.

(b) If a claimant occupies two or more residences in the year and does not own the residence as of the lien date, "gross rent" means the total rent paid for the residences during the one-year period for which the renter files a claim under this part.

(3) "Homeowner's credit" means a credit against a claimant's property tax liability.

(4) "Household" means the association of persons who live in the same dwelling, sharing its furnishings, facilities, accommodations, and expenses.

(5) "Household income" means all income received by all persons of a household in:

(a) the calendar year next preceding the year in which property taxes are due; or[~~,~~]

(b) in the case of renters, the year in which a claim is filed.

(6) (a) (i) "Income" means the sum of:

(A) federal adjusted gross income as defined in Section 62, Internal Revenue Code[~~, plus~~]; and

(B) all nontaxable income as defined in Subsection (6)(b).

(ii) "Income" does not include:

(A) aid, assistance, or contributions from a tax-exempt nongovernmental source;

(B) surplus foods;

(C) relief in kind supplied by a public or private agency; or

(D) relief provided under this part, Section 59-2-1108, or Section 59-2-1109.

(b) For purposes of Subsection (6)(a)(i), "nontaxable income" means amounts excluded from adjusted gross income under the Internal Revenue Code, including:

(i) capital gains;

(ii) loss carry forwards claimed during the taxable year in which a claimant files for relief under this part, Section 59-2-1108, or Section 59-2-1109;

(iii) depreciation claimed pursuant to the Internal Revenue Code by a claimant on the residence for which the claimant files for relief under this part, Section 59-2-1108, or Section 59-2-1109;

(iv) support money received;

(v) nontaxable strike benefits;

(vi) cash public assistance or relief;

(vii) the gross amount of a pension or annuity, including benefits under the Railroad Retirement Act of 1974, 45 U.S.C. Sec. 231, and veterans disability pensions;

(viii) payments received under the Social Security Act;

(ix) state unemployment insurance amounts;

(x) nontaxable interest received from any source;

(xi) workers' compensation;

(xii) the gross amount of "loss of time" insurance; and

(xiii) voluntary contributions to a tax-deferred retirement plan.

(7) (a) "Property taxes accrued" means property taxes, exclusive of special assessments, delinquent interest, and charges for service, levied on a claimant's residence in this state[~~, and in the case of~~].

(b) For a mobile home, "property taxes accrued" includes taxes imposed on both the land upon which the home is situated and [~~also~~] on the structure of the home itself, whether classified as real property or personal property taxes.

[~~(b)~~] (c) (i) Beginning on January 1, 1999, for a claimant who owns a residence, "property taxes accrued" are the property taxes described in Subsection (7)(a) levied for the calendar year on 35% of the fair market value of the residence as reflected on the assessment roll.

(ii) The [~~reduction in fair market value under~~] amount described in Subsection (7)[~~(b)~~](c)(i) constitutes:

(A) a tax abatement for the poor in accordance with Utah Constitution Article XIII, Section 2; and

(B) the residential exemption provided for in Section 59-2-103.

[~~(c)~~] (d) (i) For purposes of this Subsection (7) property taxes accrued are levied on the lien date.

(ii) If a claimant owns a residence on the lien date, property taxes accrued mean taxes levied on the lien date, even if that claimant does not own a residence for the entire year.

[~~(d)~~] (e) When a household owns and occupies two or more different residences in this state in the same calendar year, property taxes accrued shall relate only to the residence occupied on the lien date by the household as its principal place of residence.

[~~(e)~~] (f) (i) If a residence is an integral part of a large unit such as a farm or a multipurpose or multidwelling building, property taxes accrued shall be the same percentage of the total property taxes accrued as the value of the residence is of the total value.

(ii) For purposes of this Subsection (7)(f), "unit" refers to the parcel of property covered by a single tax statement of which the residence is a part.

(8) (a) "Residence" means the dwelling, whether owned or rented, and so much of the land surrounding it, not exceeding one acre, as is reasonably necessary for use of the dwelling as a home, and may consist of a part of a multidwelling or multipurpose building and a part of the land upon which it is built and includes a mobile home or houseboat.

(b) "Residence" does not include personal property such as furniture, furnishings, or appliances.

(c) For purposes of this Subsection (8), "owned" includes a vendee in possession under a land contract or one or more joint tenants or tenants in common.

Section 9. Section 59-2-1203 is amended to read:

59-2-1203. Right to file claim -- Death of claimant.

(1) (a) The right to file a claim under this part is personal to the claimant [~~and~~].

(b) The right to file a claim does not survive the claimant's death[~~, but this~~].

(c) The right to file a claim may be exercised on behalf of a claimant by:

(i) a legal guardian of the claimant; or

(ii) an attorney-in-fact of the claimant.

(2) (a) If a claimant dies after having filed a timely claim, the amount of the claim shall be disbursed to another member of the household as determined by the commission by rule.

(b) If the claimant described in Subsection (2)(a) was the only member of the household, the claim may be paid to the executor or administrator, [~~but~~] except that if neither an executor or administrator is appointed and qualified within two years of the filing of the claim, the amount of the claim shall escheat to the state.

(3) If the claimant is the grantor of a trust holding title to real or tangible personal property on which a credit is claimed, the claimant may claim the portion of the credit and be treated as the owner of that portion of the property held in trust for which the claimant proves to the satisfaction of the county that:

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

(i) by:

(A) the claimant as grantor of the trust;

(B) a nonadverse party; or

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

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

(A) to revoke;

(B) to terminate;

(C) to alter;

(D) to amend; or

(E) to appoint;

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

(c) the claimant meets the requirements under this part for the credit.

(4) The amount described in Subsection 59-2-1202(7)(c)(i) is in addition to any other exemption or reduction for which a homeowner may be eligible, including the homeowner's credit provided for in Section 59-2-1206.

Section 10. Section 59-2-1206 is amended to read:

59-2-1206. Application for homeowner's credit -- Time for filing -- Payment from General Fund.

(1) (a) [~~Except as provided in Subsection (1)(d), a~~] A claimant applying for a homeowner's credit shall annually file an application for the credit with the county [~~legislative body~~] before September 1.

(b) The application under this section shall:

(i) be on forms provided by:

(A) the commission; or

(B) the county in which the applicant resides; and

(ii) include a household income statement signed by the claimant stating that:

(A) the income statement is correct; and

(B) the claimant qualifies for the credit.

(c) (i) Subject to [~~the provisions of Subsections~~] Subsection (1)(c)(ii) [~~and (1)(c)(iii)~~], a county [~~or the commission~~] shall [~~reduce a claimant's property tax liability~~] apply the credit in accordance with this section and Section 59-2-1207 for the year in which the claimant applies for a homeowner's credit if the claimant meets the criteria for obtaining a homeowner's credit as provided in this part.

(ii) A homeowner's credit under this part may not exceed the claimant's property tax liability for the year in which the claimant applies for a homeowner's credit under this part.

[~~(iii) Except as provided in Section 59-2-1220, a county or the commission may not apply a homeowner's credit under this part against a property tax liability that is more than 90 days delinquent.~~]

[~~(d) An eligible claimant who fails to submit an application before the September 1 deadline may request reimbursement for allowable credit by filing the application form directly with the commission on or before December 31.~~]

[~~(e)~~] (d) A claimant may qualify for a homeowner's credit under this part regardless of whether the claimant owes delinquent property taxes.

(2) (a) (i) The county [~~legislative body~~] shall compile a list of claimants and the homeowner's credits granted to the claimants for purposes of obtaining payment from the General Fund for the amount of credits granted.

(ii) A county [~~legislative body~~] may not obtain payment from the General Fund for the [~~reduction in fair market value provided for~~] amount described in Subsection 59-2-1202(7).

(b) Upon certification by the commission the payment for the credits under this Subsection (2) shall be made to the county on or before January 1 if the list of claimants and the credits granted are received by the commission on or before November 30 of the year in which the credits under this part are granted.

(c) If the commission does not receive the list under this Subsection (2) on or before November 30, payment shall be made within 30 days of receipt of the list of claimants and credits from the county.

Section 11. Section 59-2-1207 is amended to read:

59-2-1207. Claim applied against tax liability -- One claimant per household per year.

(1) [~~The commission or a~~] A county [~~may~~] shall apply as provided in Subsection 59-2-1206(1)(c) the amount of a credit under this part against:

(a) a claimant's property tax liability; or

(b) [~~against~~] the property tax liability of a spouse who was a member of the claimant's household in the year in which the claimant applies for a homeowner's credit under this part.

(2) Only one claimant per household per year is entitled to payment under this part.

Section 12. Section 59-2-1211 is amended to read:

59-2-1211. Commission to provide forms and instructions -- County may prepare forms and instructions -- County legislative body authority to adopt rules or ordinances.

(1) The commission shall prescribe and make available suitable forms and instructions for:

(a) claimants; and [~~county governing bodies.~~]

(b) counties.

(2) A county is not required to use the forms and instructions prescribed by the commission under Subsection (1) if the county prepares suitable forms and instructions for a claimant consistent with:

(a) this chapter; and

(b) rules adopted by the commission.

(3) The county legislative body may adopt rules or ordinances to:

(a) effectuate the property tax relief under this part; and

(b) designate one or more persons to perform the functions given the county under this part.

Section 13. Section 59-2-1214 is amended to read:

59-2-1214. Redetermination of claim by commission or county.

(1) If, on the audit of any claim filed under this part, the commission or the county [~~legislative body~~] determines the amount has been incorrectly determined, the commission or the county [~~legislative body~~] shall:

(a) redetermine the claim; and

(b) notify the claimant of the redetermination and its reason for the redetermination.

(2) The redetermination provided in Subsection (1)(a) shall be final unless appealed within 30 days after [~~this~~] the notice required by Subsection (1)(b).

Section 14. Section 59-2-1215 is amended to read:

59-2-1215. Fraudulent or negligently prepared claim -- Penalties and interest -- Procedure.

(1) (a) If the commission or the county [~~legislative body~~] determines that a claim is excessive and was filed with fraudulent intent[~~,~~]:

(i) the claim shall be disallowed in full[~~,~~];

(ii) the credit shall be cancelled[~~, and~~];

(iii) the amount paid or claimed [~~may~~] shall be recovered by assessment[~~,~~]; and

(iv) the assessment provided for in Subsection (1)(a)(iii) shall bear interest:

(A) from the date of the claim[~~,~~];

(B) until refunded or paid[~~,~~]; and

(C) at the rate of 1% per month.

(b) The claimant, and any person who assists in the preparation or filing of an excessive claim or supplies information upon which an excessive claim was prepared, with fraudulent intent, is guilty of a class A misdemeanor.

(2) If the commission or the county [~~legislative body~~] determines that a claim is excessive and negligently prepared[~~,~~]:

(a) 10% of the corrected claim shall be disallowed[~~,~~];

(b) the proper portion of any amount paid shall be similarly recovered by assessment[~~,~~]; and

(c) the assessment provided for in Subsection (2)(b) shall bear interest at 1% per month from the date of payment until refunded or paid.

Section 15. Section 59-2-1219 is amended to read:

59-2-1219. Claim disallowed if residence obtained for purpose of receiving benefits.

A claim shall be disallowed if the commission or county [~~legislative body~~] finds that the claimant received title to a residence primarily for the purpose of receiving benefits under this part.

Section 16. Section 59-2-1220 is amended to read:

59-2-1220. Extension of time for filing claim.

[~~(1) In case of sickness, absence, or other disability, or if, in its judgment, good cause exists, the~~] The commission or a county [~~legislative body~~] may extend the time for filing a claim [~~for a period not to exceed six months~~] until December 31 of the year the claim is required to be filed, if the commission or county finds that good cause exists to extend the deadline.

[~~(2) Notwithstanding Subsection 59-2-1206(1)(c)(iii), if the commission or a county legislative body extends the time for filing a claim under Subsection (1), the commission or the county legislative body may apply a homeowner's credit under this part against a property tax liability that is more than 90 days delinquent.~~]

Section 17. Repealer.

This act repeals:

Section 59-2-1210, Effective date for homeowner's and renter's credits.

CHAPTER 222
H. B. 315
Passed February 27, 2001
Approved March 16, 2001
Effective April 30, 2001

OLYMPIC PUBLIC SAFETY AND TRANSPORTATION ROUTES

Sponsor: David Ure

This act modifies the Transportation Code. The act allows the executive director of the Department of Transportation, during a specified period, to designate highways as statewide public safety interest highways if certain conditions are met.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
72-3-301, as last amended by Chapter 133, Laws of Utah 2000

ENACTS:
63-55b-172, Utah Code Annotated 1953

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

Section 1. Section 63-55b-172 is enacted to read:

63-55b-172. Repeal dates -- Title 72.

Subsection 72-3-301(6) pertaining to the designation of a state highway during the Olympic Winter Games of 2002 is repealed April 1, 2002.

Section 2. Section 72-3-301 is amended to read:

72-3-301. Statewide public safety interest highway defined -- Designations -- Control -- Maintenance -- Improvement restrictions -- Formula funding provisions.

(1) As used in this part, "statewide public safety interest highway" means a designated state highway that serves a compelling statewide public safety interest.

(2) Statewide public safety interest highways include:

(a) SR-900. From near the east bound on and off ramps of the I-80 Delle Interchange on the I-80 south frontage road, traversing northwesterly, westerly, and northeasterly, including on portions of a county road and a Bureau of Land Management road for a distance of 9.24 miles. Then beginning again at the I-80 south frontage road traversing southwesterly and northwesterly on a county road for a distance of 4.33 miles. Then beginning again at the I-80 south frontage road traversing southwesterly, northerly, northwesterly, westerly, and northeasterly on a county road and a Bureau of Land Management road to near the east bound on and off ramps of I-80 Low/Lakeside Interchange for a distance of 2.61 miles. The entire length of SR-900 is a total distance of 16.18 miles.

(b) SR-901. From SR-196 traversing westerly and northwesterly on a county road to a junction with a Bureau of Land Management road described as part of SR-901, then northwesterly to a junction with a county road for a distance of 8.70 miles. Then beginning again at a junction with SR-901 traversing northwesterly on a Bureau of Land Management road to a junction with a county road for a distance of 6.52 miles. Then beginning again at a junction with SR-901 traversing southwesterly on a Bureau of Land Management road to a junction with a county road for a distance of 5.44 miles. Then beginning again from a junction with SR-901 traversing southwesterly on a county road to a junction with a county road a distance of 11.52 miles. Then beginning again at a junction with SR-196 traversing westerly on a Bureau of Land Management road to a junction with a county road for a distance of 11.30 miles. The entire length of SR-901 is a total distance of 43.48 miles.

(3) The department has jurisdiction and control over all statewide public safety interest highways.

(4) (a) A county shall maintain the portions of a statewide public safety interest highway that was a class B county road under the county's jurisdiction prior to the designation under this section.

(b) Notwithstanding the provisions of Section 17-50-305, a county may not abandon any portion of a statewide public safety interest highway.

(c) Except under written authorization of the executive director of the department, a statewide public safety interest highway shall remain the same class of highway that it was prior to the designation under this section with respect to grade, drainage, surface, and improvements and it may not be upgraded or improved to a higher class of highway.

(5) A class B county road that is designated a statewide public safety interest highway under this section is considered a class B county road for the purposes of the distribution formula and distributions of funds. The amount of funds received by any jurisdiction from the class B and C roads account under Section 72-2-107 may not be affected by the provisions of this section.

(6) (a) Subject to Subsection (6)(b), the executive director may designate any highway as a statewide public safety interest highway if:

(i) the commissioner of the Department of Public Safety appointed under Section 53-1-107 recommends the designation to the executive director; and

(ii) the commission approves the designation.

(b) A designation as a statewide public safety interest highway under Subsection (6)(a) may not take effect earlier than January 25, 2002 and may not extend beyond April 1, 2002.

(c) Notwithstanding Subsection 72-1-302(2), the governor may call an emergency meeting of the commission to consider a designation under Subsection (6)(a).

CHAPTER 223
H. B. 316
Passed February 28, 2001
Approved March 16, 2001
Effective April 30, 2001

PROCUREMENT AMENDMENTS FOR EQUIPMENT USED DURING THE OLYMPICS

Sponsor: David Ure

This act modifies the Utah Procurement Code. The act allows for an exemption from procurement code provisions when a public procurement unit purchases tangible assets used in the Olympics.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
63-55b-163, as last amended by Chapters 1 and 210, Laws of Utah 2000

ENACTS:
63-56-35.9, Utah Code Annotated 1953

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

Section 1. Section 63-55b-163 is amended to read:

63-55b-163. Repeal dates -- Title 63.

(1) Title 63, Chapter 95, Parts 2 and 3 are repealed July 1, 2004.

(2) Sections 63-63b-101 and 63-63b-102 are repealed on July 1, 2002.

(3) Section 63-56-35.9 is repealed July 1, 2005.

Section 2. Section 63-56-35.9 is enacted to read:

63-56-35.9. Purchase of tangible assets used during Olympics.

(1) As used in this section:

(a) "Command" means the State Olympic Public Safety Command created in Section 53-12-201.

(b) "Exempt procurement unit" means any political subdivision exempt from the requirements of this chapter.

(c) "Olympics" has the same meaning as in Section 63A-10-102.

(d) "Organizing committee" has the same meaning as in Section 63A-10-102.

(2) Notwithstanding any other provision of this chapter, a public procurement unit may, without competitive bidding or a competitive proposal, enter into a contract with a private entity, the organizing committee, or the command to purchase a tangible asset that a private entity leased, sold, or donated to the organizing committee or the command for use in connection with the Olympics if the procurement unit conducts an independent cost analysis and makes a written finding that the price offered for the tangible asset considered for purchase does not exceed the fair market value of the asset.

(3) An exempt procurement unit may adopt a resolution or ordinance, substantially similar to Subsection (2), that allows the exempt procurement unit to enter into a contract with a private entity, the organizing committee, or the command to purchase a tangible asset as provided in Subsection (2).

CHAPTER 224
H. B. 318
Passed February 28, 2001
Approved March 16, 2001
Effective April 30, 2001

WILDLIFE RESOURCES - LICENSE SUSPENSION PROCESS

Sponsor: Stephen D. Clark

This act modifies the Wildlife Resources Code to prescribe procedures for the suspension of privileges conferred by a license, permit, or certificate of registration issued by the Division of Wildlife Resources. The act specifies the grounds for which license, permit, or certificate of registration privileges may be suspended and suspension periods. The Wildlife Board is directed to make rules containing guidelines for determining the type of license or permit privileges to suspend.

This act affects sections of Utah Code Annotated 1953 as follows:

REPEALS AND REENACTS:
23-19-9, as last amended by Chapter 13, Laws of Utah 1998

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

Section 1. Section 23-19-9 is repealed and reenacted to read:

23-19-9. Suspension of license or permit privileges -- Suspension of certificates of registration.

(1) As used in this section, "license or permit privileges" means the privilege of applying for, purchasing, and exercising the benefits conferred by a license or permit issued by the division.

(2) A hearing officer, appointed by the division, shall suspend a person's privilege of applying for, purchasing, and exercising the benefits conferred by one or more licenses or permits issued by the division if:

(a) in a court of law, the person:

(i) is convicted of:

(A) violating this title or a rule of the Wildlife Board;

(B) killing or injuring domestic livestock while engaged in an activity regulated under this title; or

(C) violating Section 76-10-508 while engaged in an activity regulated under this title;

(ii) enters into a plea in abeyance agreement, in which the person pleads guilty or no contest to an offense listed in Subsection (2)(a)(i), and the plea is held in abeyance; or

(iii) is charged with committing an offense listed in Subsection (2)(a)(i), and the person enters into a diversion agreement which suspends the prosecution of the offense; and

(b) the hearing officer determines the person committed the offense intentionally, knowingly, or recklessly, as defined in Section 76-2-103.

(3) The Wildlife Board shall make rules establishing guidelines for a hearing officer to consider in determining the type of license or permit privileges to suspend.

(4) Except as provided in Subsection (5), a hearing officer shall suspend a person's license or permit privileges pursuant to Subsection (2) for the following time periods:

(a) seven years for:

(i) a felony conviction;

(ii) a plea of guilty or no contest to an offense punishable as a felony, which plea is held in abeyance pursuant to a plea in abeyance agreement; or

(iii) being charged with an offense punishable as a felony, the prosecution of which is suspended pursuant to a diversion agreement;

(b) five years for:

(i) a class A misdemeanor conviction;

(ii) a plea of guilty or no contest to an offense punishable as a class A misdemeanor, which plea is held in abeyance pursuant to a plea in abeyance agreement; or

(iii) being charged with an offense punishable as a class A misdemeanor, the prosecution of which is suspended pursuant to a diversion agreement; and

(c) three years for:

(i) a class B misdemeanor conviction under Section 23-20-4;

(ii) a plea of guilty or no contest to an offense punishable as a class B misdemeanor under Section 23-20-4, which plea is held in abeyance pursuant to a plea in abeyance agreement; or

(iii) being charged with an offense punishable as a class B misdemeanor under Section 23-20-4, the prosecution of which is suspended pursuant to a diversion agreement.

(5) Suspension periods as set forth in Subsection (4) shall be doubled for offenses:

(a) committed in violation of an existing suspension or revocation order issued by the courts, division, or Wildlife Board; or

(b) involving the unlawful taking of a trophy animal, as defined in Section 23-13-2.

(6) (a) A hearing officer may suspend, pursuant to Subsection (2), a person's privilege to apply for, purchase, and exercise the benefits conferred by a particular license or permit only once for each single criminal episode, as defined in Section 76-1-401.

(b) If a hearing officer addresses two or more single criminal episodes in a hearing, the suspension periods of any license or permit privileges of the same type suspended, pursuant to Subsection (2), shall run consecutively.

(c) If a hearing officer suspends, pursuant to Subsection (2), license or permit privileges of the type that have been previously suspended by a court, a hearing officer, or the Wildlife Board and the suspension period has not expired, the suspension periods shall run consecutively.

(7) (a) A hearing officer, appointed by the division, shall suspend a person's privilege of applying for, purchasing, and exercising the benefits conferred by one or more licenses or permits issued by the division if:

(i) within a five-year period, the person, on three or more occasions, in a court of law, is convicted or enters into a plea in abeyance agreement or diversion agreement as follows:

(A) the person is convicted of an offense listed in Subsection (2)(a)(i) that is punishable as a class B or C misdemeanor;

(B) the person enters into a plea in abeyance agreement in which the person pleads guilty or no contest to an offense listed in Subsection (2)(a)(i) that is punishable as a class B or C misdemeanor, and the plea is held in abeyance; or

(C) the person is charged with an offense listed in Subsection (2)(a)(i) that is punishable as a class B or C misdemeanor, and the person enters into a diversion agreement, which suspends the prosecution of the offense;

(ii) each conviction, plea in abeyance agreement, or diversion agreement listed in Subsection (7)(a)(i) originated from a separate single criminal episode; and

(iii) a suspension or revocation order has not been previously issued as a result of any conviction, plea in abeyance agreement, or diversion agreement listed in Subsection (7)(a)(i).

(b) An order of suspension may be issued, under this Subsection (7), on a strict liability basis.

(c) A hearing officer shall suspend a person's license or permit privileges, pursuant to this Subsection (7), for a time period equal to the sum of the following:

(i) one year for each:

(A) class B misdemeanor conviction;

(B) plea of guilty or no contest to an offense punishable as a class B misdemeanor, which plea is held in abeyance pursuant to a plea in abeyance agreement; or

(C) charge of committing an offense punishable as a class B misdemeanor, the prosecution of which is suspended pursuant to a diversion agreement; and

(ii) six months for each:

(A) class C misdemeanor conviction;

(B) plea of guilty or no contest to an offense punishable as a class C misdemeanor, which plea is held in abeyance pursuant to a plea in abeyance agreement; or

(C) charge of committing an offense punishable as a class C misdemeanor, the prosecution of which is suspended pursuant to a diversion agreement.

(8) (a) A hearing officer, appointed by the division, may suspend a person's privilege of applying for, purchasing, and exercising the benefits conferred by a certificate of registration if:

(i) the hearing officer determines the person intentionally, knowingly, or recklessly, as defined in Section 76-2-103, violated:

(A) this title;

(B) a rule or order of the Wildlife Board;

(C) the terms of a certificate of registration; or

(D) the terms of a certificate of registration application or agreement; or

(ii) the person, in a court of law:

(A) is convicted of an offense that the hearing officer determines bears a reasonable relationship to the person's ability to safely and responsibly perform the activities authorized by the certificate of registration;

(B) pleads guilty or no contest to an offense that the hearing officer determines bears a reasonable relationship to the person's ability to safely and responsibly perform the activities authorized by the certificate of registration, and the plea is held in abeyance in accordance with a plea in abeyance agreement; or

(C) is charged with an offense that the hearing officer determines bears a reasonable relationship to the person's ability to safely and responsibly perform the activities authorized by the certificate of registration, and prosecution of the offense is suspended in accordance with a diversion agreement.

(b) All certificates of registration for the harvesting of brine shrimp eggs, as defined in Section 59-23-3, shall be suspended by a hearing officer, if the hearing officer determines the holder of the certificates of registration has violated Section 59-23-5.

(c) Subsections (4), (5), and (6) do not apply to suspensions of certificates of registration.

(9) The director shall appoint a qualified person as a hearing officer to perform the adjudicative functions provided in this section. The director may not appoint a division employee who investigates or enforces wildlife violations.

(10) (a) The courts may suspend, in criminal sentencing, a person's privilege to apply for, purchase, or exercise the benefits conferred by a license, permit, or certificate of registration.

(b) The courts shall promptly notify the division of any suspension orders or recommendations entered.

(c) The division, upon receiving notification of suspension from the courts, shall prohibit the person from applying for, purchasing, or exercising the benefits conferred by a license, permit, or

certification of registration for the duration and of the type specified in the court order.

(d) The hearing officer shall consider any recommendation made by a sentencing court concerning suspension before issuing a suspension order.

(11) (a) A person may not apply for, purchase, possess, or attempt to exercise the benefits conferred by any permit, license, or certificate of registration specified in an order of suspension while that order is in effect. Any license possessed or obtained in violation of the order shall be considered invalid.

(b) A person who violates Subsection (11)(a) is guilty of a class B misdemeanor.

(12) Before suspension under this section, a person must be:

(a) given written notice of any action the division intends to take; and

(b) provided with an opportunity for a hearing.

(13) (a) A person may file an appeal of a hearing officer's decision with the Wildlife Board.

(b) The Wildlife Board shall review the hearing officer's findings and conclusions and any written documentation submitted at the hearing. The Wildlife Board may:

(i) take no action;

(ii) vacate or remand the decision; or

(iii) amend the period or type of suspension.

(14) The division shall suspend and reinstate all hunting, fishing , trapping, and falconry privileges consistent with Title 23, Chapter 25, Wildlife Violator Compact.

(15) The Wildlife Board may make rules to implement this section in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, and Title 63, Chapter 46b, Administrative Procedures Act.

CHAPTER 225
H. B. 322
Passed February 28, 2001
Approved March 16, 2001
Effective April 30, 2001

DOMESTIC TERRORISM OF COMMERCIAL ENTERPRISES

Sponsor: Gerry A. Adair

This act modifies the Criminal Code by creating a specific offense of commercial terrorism, concerning the interference with the operation of a retail business establishment, by providing the elements of the offense, and providing penalties. This act also modifies the Criminal Code by enacting provisions regarding enhanced penalties for criminal offenses committed against animal enterprises.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
76-6-206, as last amended by Chapter 132, Laws of Utah 2000

ENACTS:
76-6-110, Utah Code Annotated 1953
76-10-2401, Utah Code Annotated 1953
76-10-2402, Utah Code Annotated 1953

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

Section 1. Section 76-6-110 is enacted to read:

76-6-110. Offenses committed against animal enterprises -- Definitions -- Enhanced penalties.

(1) As used in this section:

(a) "Animal enterprise" means a commercial or academic enterprise that:

(i) uses animals for food or fiber production;

(ii) is an agricultural operation, including a facility for the production of crops or livestock, or livestock products;

(iii) operates a zoo, aquarium, circus, rodeo, or lawful competitive animal event; or

(iv) any fair or similar event intended to advance agricultural arts and sciences.

(b) "Livestock" means cattle, sheep, goats, swine, horses, mules, poultry, domesticated elk as defined in Section 4-39-102, or any other domestic animal or domestic furbearer raised or kept for profit.

(c) "Property" includes any buildings, vehicles, animals, data, or records.

(2) (a) A person who commits any criminal offense with the intent to halt, impede, obstruct, or interfere with the lawful operation of an animal enterprise or to damage, take, or cause the loss of any property owned by, used by, or in the possession of a lawful animal enterprise, is subject to an enhanced penalty under Subsection (3).

(b) Subsection (2)(a) does not apply to action protected by the National Labor Relations Act, 29 U.S.C. Section 151 et seq., or the Federal Railway Labor Act, 45 U.S.C. Section 151 et seq.

(c) The prosecuting attorney, or grand jury if an indictment is returned, shall cause to be subscribed upon the information or indictment notice that the defendant is subject to the enhanced penalties provided under this section.

(3) If the trier of fact finds beyond a reasonable doubt that the defendant committed any criminal offense with the intent to halt, impede, obstruct, or interfere with the lawful operation of an animal enterprise or to damage, take, or cause the loss of any property owned by, used by, or in the possession of a lawful animal enterprise, the penalties are enhanced as provided in this Subsection (3):

(a) a class C misdemeanor is a class B misdemeanor, with a mandatory fine of not less than $1,000, which is in addition to any term of imprisonment the court may impose;

(b) a class B misdemeanor is a class A misdemeanor, with a fine of not less than $2,500, which is in addition to any term of imprisonment the court may impose;

(c) a class A misdemeanor is a third degree felony, with a fine of not less than $5,000, which is in addition to any term of imprisonment the court may impose;

(d) a third degree felony is a second degree felony, with a fine of not less than $7,500, which is in addition to any term of imprisonment the court may impose; and

(e) a second degree felony is subject to a fine of not less than $10,000, which is in addition to any term of imprisonment the court may impose.

Section 2. Section 76-6-206 is amended to read:

76-6-206. Criminal trespass.

(1) For purposes of this section, "enter" means intrusion of the entire body.

(2) A person is guilty of criminal trespass if, under circumstances not amounting to burglary as defined in Section 76-6-202, 76-6-203, or 76-6-204 or a violation of Section 76-10-2402 regarding commercial terrorism:

(a) he enters or remains unlawfully on property and:

(i) intends to cause annoyance or injury to any person or damage to any property, including the use of graffiti as defined in Section 76-6-107;

(ii) intends to commit any crime, other than theft or a felony; or

(iii) is reckless as to whether his presence will cause fear for the safety of another;

(b) knowing his entry or presence is unlawful, he enters or remains on property as to which notice against entering is given by:

(i) personal communication to the actor by the owner or someone with apparent authority to act for the owner;

(ii) fencing or other enclosure obviously designed to exclude intruders; or

(iii) posting of signs reasonably likely to come to the attention of intruders; or

(c) he enters a condominium unit in violation of Subsection 57-8-7(7).

(3) (a) A violation of Subsection (2)(a) is a class C misdemeanor unless it was committed in a dwelling, in which event it is a class B misdemeanor.

(b) A violation of Subsection (2)(b) is an infraction.

(4) It is a defense to prosecution under this section that the:

(a) property was open to the public when the actor entered or remained; and

(b) actor's conduct did not substantially interfere with the owner's use of the property.

Section 3. Section 76-10-2401 is enacted to read:

Part 24. Commercial Terrorism

76-10-2401. Definitions.

As used in this part:

(1) "Building", in addition to its commonly accepted meaning, means any watercraft, aircraft, trailer, sleeping car, or other structure or vehicle adapted for overnight accommodations of persons or for carrying on business and includes:

(a) each separately secured or occupied portion of the building or vehicle; and

(b) each structure appurtenant or connected to the building or vehicle.

(2) "Business" means a retail business dealing in tangible personal property.

(3) "Enter" means:

(a) an intrusion of any part of the body; or

(b) the intrusion of any physical object, sound wave, light ray, electronic signal, or other means of intrusion under the control of the actor.

Section 4. Section 76-10-2402 is enacted to read:

76-10-2402. Commercial terrorism -- Penalties.

(1) A person is guilty of commercial terrorism if he enters or remains unlawfully on the premises or in a building of any business with the intent to interfere with the employees, customers, personnel, or operations of a business through any conduct that does not constitute an offense listed under Subsection (2). A violation of this Subsection (1) is a class A misdemeanor.

(2) A person is guilty of commercial terrorism if he enters or remains unlawfully on the premises or in a building of any business with the intent to interfere with the employees, customers, personnel, or operations of a business and also with the intent to:

(a) obtain unauthorized control over any merchandise, property, records, data, or proprietary information of the business;

(b) alter, eradicate, or remove any merchandise, records, data, or proprietary information of the business;

(c) damage, deface, or destroy any property on the premises of the business;

(d) commit an assault on any person; or

(e) commit any other felony.

(3) A person who violates any provision in Subsection (2) is guilty of a felony of the second degree.

(4) This section does not apply to action protected by the National Labor Relations Act, 29 U.S.C. Section 151 et seq., or the Federal Railway Labor Act, 45 U.S.C. Section 151 et seq.

(5) It is the intent of the Legislature that this section does not prohibit or interfere with a person's exercise of the rights under the First Amendment to the Constitution of the United States or under Article I, Sec. 15 of the Utah Constitution.

CHAPTER 226
H. B. 323
Passed February 23, 2001
Approved March 16, 2001
Effective July 1, 2001

SALES AND USE TAX -
RURAL HOSPITAL TAX AMENDMENTS

Sponsor: DeMar Bud Bowman

This act modifies the Sales and Use Tax Act to address the issue of double taxation when both a county and city impose a hospital tax. This act makes technical changes. This act has a July 1, 2001 effective date.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
59-12-802 (Effective 07/01/01), as last amended by Chapter 253, Laws of Utah 2000

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

Section 1. Section 59-12-802 (Effective 07/01/01) is amended to read:

59-12-802 (Effective 07/01/01). Imposition of rural county health care facilities tax -- Base -- Rate.

(1) (a) A county legislative body may impose a sales and use tax of up to 1%:

(i) except as provided in Subsection (1)(b), on the transactions described in Subsection 59-12-103(1); and

(ii) to fund rural county health care facilities in that county.

(b) Notwithstanding Subsection (1)(a)(i), a county legislative body may not impose a tax under this section on:

(i) the sales and uses described in Section 59-12-104 to the extent the sales and uses are exempt from taxation under Section 59-12-104; [~~and~~]

(ii) any amounts paid or charged by a vendor that collects a tax under Subsection 59-12-107(1)(b)[~~.~~]; and

(iii) a transaction to the extent a rural city hospital tax is imposed on that transaction in a city that imposes a tax under Section 59-12-804.

(2) (a) Before imposing or increasing a tax under Subsection (1)(a), a county legislative body shall obtain approval to impose or increase the tax from a majority of the:

(i) members of the county's legislative body; and

(ii) county's registered voters voting on the imposition of the tax.

(b) The county legislative body shall conduct the election according to the procedures and requirements of Title 11, Chapter 14, Utah Municipal Bond Act.

(3) The monies generated by a tax imposed under Subsection (1) may only be used for the financing of:

(a) ongoing operating expenses of a rural county health care facility;

(b) the acquisition of land for a rural county health care facility; or

(c) the design, construction, equipping, or furnishing of a rural county health care facility.

(4) Taxes imposed under this section shall be:

(a) levied at the same time and collected in the same manner as provided in Part 2, Local Sales and Use Tax Act, except that the collection and distribution of the tax revenue is not subject to Subsection 59-12-205(2); and

(b) levied for a period of ten years and may be reauthorized at the end of the ten-year period by the county legislative body as provided in Subsection (1).

(5) The commission may retain an amount not to exceed 1-1/2% of the tax collected under this section for the cost of administering this tax.

Section 2. Effective date.

This act takes effect on July 1, 2001.

CHAPTER 227
H. B. 325
Passed February 28, 2001
Approved March 16, 2001
Effective April 30, 2001

OWNER BUILDER SELLING HOME

Sponsor: Chad E. Bennion

This act modifies the Construction Trades Licensing Act to allow sole owners of property to build no more than one residential structure per year and no more than three residential structures per five years on their own property for their own noncommercial, nonpublic use.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
58-55-305, as last amended by Chapter 264, Laws of Utah 1999

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

Section 1. Section 58-55-305 is amended to read:

58-55-305. Exemptions from licensure.

In addition to the exemptions from licensure in Section 58-1-307, the following persons may engage in acts or practices included within the practice of construction trades subject to the stated circumstances and limitations without being licensed under this chapter:

(1) an authorized representative of the United States government or an authorized employee of the state or any of its political subdivisions when working on construction work of the state or the subdivision, and when acting within the terms of his trust, office, or employment;

(2) a person engaged in construction or operation incidental to the construction and repair of irrigation and drainage ditches of regularly constituted irrigation districts, reclamation districts, and drainage districts or construction and repair relating to farming, dairying, agriculture, livestock or poultry raising, metal and coal mining, quarries, sand and gravel excavations, well drilling, hauling to and from construction sites, and lumbering;

(3) public utilities operating under the rules of the Public Service Commission on construction work incidental to their own business;

(4) sole owners of property engaged in building:

(a) no more than [~~two~~] one residential [~~structures~~] structure per year and no more than three residential structures per five years on their property for their own noncommercial, nonpublic use [~~that the owner lives in for at least three months~~]; except, any person other than the property owner or individuals described in Subsection (5) who engages in building the structure must be licensed under this chapter if he is otherwise required to be licensed under this chapter; or

(b) structures on their property for their own noncommercial, nonpublic use which are incidental to a residential structure on the property, including sheds, carports, or detached garages;

(5) (a) an individual engaged in construction or renovation of a residential building for noncommercial, nonpublic use if that person:

(i) works without compensation other than token compensation that is not considered salary or wages; and

(ii) works under the direction of the property owner who engages in building the structure;

(b) for purposes of this Subsection (5), "token compensation" means compensation paid by a sole owner of property exempted from licensure under Subsection (4) to an individual exempted from licensure under this Subsection (5), that is:

(i) minimal in value when compared with the fair market value of the services provided by the individual;

(ii) not related to the fair market value of the services provided by the individual; and

(iii) is incidental to providing of services by the individual including paying for or providing meals or refreshment while services are being provided, or paying reasonable transportation costs incurred by the individual in travel to the site of construction;

(6) a person engaged in the sale or merchandising of personal property that by its design or manufacture may be attached, installed, or otherwise affixed to real property who has contracted with a person, firm, or corporation licensed under this chapter to install, affix, or attach that property;

(7) a contractor submitting a bid on a federal aid highway project, if, before undertaking any construction under that bid, the contractor is licensed under this chapter;

(8) (a) a person engaged in the alteration, repair, remodeling, or addition to or improvement of any building with a contracted or agreed value of less than $1,000, including both labor and materials, and including all changes or additions to the contracted or agreed upon work;

(b) notwithstanding Subsection (8)(a), work in the plumbing and electrical trades must be performed by a licensed electrician or plumber except as otherwise provided in this section;

(9) a person practicing a specialty contractor classification or construction trade which is not classified by rule by the director as significantly impacting the public's health, safety, and welfare;

(10) owners and lessees of property and persons regularly employed for wages by owners or lessees of property or their agents for the purpose of maintaining the property, are exempt from this chapter when doing work upon the property;

(11) (a) a person engaged in minor plumbing work incidental to the replacement or repair of a fixture or an appliance in a residential or small commercial

building, or structure used for agricultural use, as defined in Section 58-56-4, provided that no modification is made to existing culinary water, soil, waste, or vent piping;

(b) except as provided in Subsection (5), installation for the first time of a fixture or an appliance is not included in the exemption provided under Subsection (11)(a);

(12) a person who ordinarily would be subject to the plumber licensure requirements set forth in this chapter when installing or repairing a water conditioner or other water treatment apparatus if the conditioner or apparatus:

(a) meets the appropriate state construction codes or local plumbing standards; and

(b) is installed or repaired under the direction of a person authorized to do such work under an appropriate specialty contractor license;

(13) a person who ordinarily would be subject to the electrician licensure requirements set forth in this chapter when employed by or under contract with:

(a) railroad corporations, telephone corporations or their corporate affiliates, elevator contractors or constructors, or street railway systems; or

(b) public service corporations, rural electrification associations, or municipal utilities who generate, distribute, or sell electrical energy for light, heat, or power;

(14) a person involved in minor electrical work incidental to a mechanical or service installation; and

(15) a student participating in construction trade education and training programs approved by the division in collaboration with the board under the condition that:

(a) all work intended as a part of a finished product on which there would normally be an inspection by a building inspector is, in fact, inspected and found acceptable by a licensed building inspector; and

(b) a licensed contractor obtains the necessary building permits.

CHAPTER 228
H. B. 331
Passed February 28, 2001
Approved March 16, 2001
Effective April 30, 2001

EMERGENCY MEDICAL SERVICES AMENDMENTS

Sponsor: Kory M. Holdaway

This act modifies the Emergency Medical Services System Act. The act designates that the State Emergency Medical Services Committee shall report annually to the Law Enforcement Criminal Justice Interim Committee, and the specifications for that report.

AMENDS:
26-8a-103, as last amended by Chapter 86, Laws of Utah 2000

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

Section 1. Section 26-8a-103 is amended to read:

26-8a-103. State Emergency Medical Services Committee -- Membership -- Expenses.

(1) The State Emergency Medical Services Committee created by Section 26-1-7 shall be composed of the following 16 members appointed by the governor, at least five of whom must reside in a county of the third, fourth, fifth, or sixth class:

(a) five physicians licensed under Title 58, Chapter 67, Utah Medical Practice Act, or Chapter 68, Utah Osteopathic Medical Practice Act, as follows:

(i) one surgeon who actively provides trauma care at a hospital;

(ii) one rural physician involved in emergency medical care;

(iii) two physicians who practice in the emergency department of a general acute hospital; and

(iv) one pediatrician who practices in the emergency department or critical care unit of a general acute hospital or a children's specialty hospital;

(b) one representative from a private ambulance provider;

(c) one representative from an ambulance provider that is neither privately owned nor operated by a fire department;

(d) two chief officers from fire agencies operated by the following classes of licensed or designated emergency medical services providers: municipality, county, and fire district, provided that no class of medical services providers may have more than one representative under this Subsection (1)(d);

(e) one director of a law enforcement agency that provides emergency medical services;

(f) one hospital administrator;

(g) one emergency care nurse;

(h) one paramedic in active field practice;

(i) one emergency medical technician in active field practice;

(j) one certified emergency medical dispatcher affiliated with an emergency medical dispatch center; and

(k) one consumer.

(2) (a) Except as provided in Subsection (2)(b), members shall be appointed to a four-year term beginning July 1.

(b) Notwithstanding Subsection (2)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the committee is appointed every two years.

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

(3) (a) Each January, the committee shall organize and select one of its members as chair and one member as vice chair. The committee may organize standing or ad hoc subcommittees, which shall operate in accordance with guidelines established by the committee.

(b) The chair shall convene a minimum of four meetings per year. The chair may call special meetings. The chair shall call a meeting upon request of five or more members of the committee.

(c) Nine members of the committee constitute a quorum for the transaction of business and the action of a majority of the members present is the action of the committee.

(4) The committee shall submit a report in a form acceptable to the committee each November at the Law Enforcement and Criminal Justice Interim Committee meeting concerning its:

(a) funding priorities and recommended sources;

(b) closest responder recommendations;

(c) centralized dispatch;

(d) duplication of services and any taxing consequences;

(e) appropriate providers for emergency medical services; and

(f) recommendations and suggested legislation.

[~~(4)~~] (5) (a) Members shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

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

[~~(5)~~] (6) Administrative services for the committee shall be provided by the department.

CHAPTER 229
H. B. 335
Passed February 28, 2001
Approved March 16, 2001
Effective April 30, 2001

MECHANICS' LIENS AMENDMENTS

Sponsor: Kevin S. Garn

This act modifies the Mechanics' Lien Act. The act provides for the recording of a notice of release of lien and substitution of alternate security in order to release property encumbered by a mechanics' lien. The act prohibits the variance by agreement of the provisions of the Mechanics' Lien Act.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
38-1-27, as last amended by Chapter 110, Laws of Utah 1991

ENACTS:
38-1-28, Utah Code Annotated 1953
38-1-29, Utah Code Annotated 1953

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

Section 1. Section 38-1-27 is amended to read:

38-1-27. Preliminary notice to original contractor -- Form and contents -- Service -- Notice of commencement of project or improvement.

(1) This section relating to preliminary notices does not apply to residential construction or to work performed in the development of subdivisions whose end use is for residential construction. For the purposes of this section, residential construction means single family detached housing and multifamily attached housing up to and including fourplexes, and includes rental housing.

(2) Except subcontractors who are in privity of contract with an original contractor or except for persons performing labor for wages, any person claiming, reserving the right to claim, or intending to claim a mechanic's lien under this chapter for labor, service, equipment, or material shall provide preliminary notice to the original contractor as prescribed by this section. Any person who fails to provide this preliminary notice has no right to claim a mechanic's lien under this chapter.

(3) The preliminary notice required by this section shall be in writing and may be given at any time during the course of the project or improvement.

(4) A person required by this section to give preliminary notice is only required to give one notice for each project or improvement, which may include an entire structure or a scheme of improvements.

(5) If the labor, service, equipment, or material is furnished pursuant to contracts with more than one subcontractor or with more than one original contractor, the notice requirements must be met with respect to the labor, service, equipment, or materials furnished to each such subcontractor or original contractor.

(6) The person required by this section to give preliminary notice is precluded from making a claim for any labor, service, equipment, or material which was provided more than 45 days prior to the date the preliminary notice is given. The preliminary notice must be given before a notice of lien is filed with the county recorder pursuant to Section 38-1-7.

(7) The preliminary notice under this section shall include:

(a) the name, address, and telephone number of the person furnishing the labor, service, equipment, or material;

(b) the name and address of the person who contracted for the furnishing of the labor, service, equipment, or material; and

(c) the address of the project or improvement or a drawing sufficient to describe the location of the project or improvement.

(8) (a) Service of a preliminary notice is sufficient if the notice is deposited in the United States mail, certified or registered, return receipt requested, postage prepaid. Service of the preliminary notice by mail is complete upon deposit of the certified or registered mail.

(b) A preliminary notice served by mail may be addressed to the original contractor at his place of business, or his address as shown on the notice of commencement on record with the county recorder as required by Subsection (10).

[~~(9) The applicability of this section, including the waiver of rights or privileges granted or protected by this section, may not be varied by agreement.~~]

[~~(10)~~] (9) Any right to assert a defense of failure to comply with the preliminary notice requirements of this section is void unless the original contractor records a notice of commencement of the project or improvement with the county recorder for the county or counties where the project is located within 30 days after commencement of the project. The notice of commencement shall include the following:

(a) the name and address of the owner of the project or improvement;

(b) the name and address of the original contractor;

(c) the name and address of the surety providing any payment bond for the project or improvement, or if none exists, a statement that a payment bond was not required for the work being performed;

(d) the name and address of the project; and

(e) a legal description of the property on which the project is located.

Section 2. Section 38-1-28 is enacted to read:

38-1-28. Notice of release of lien and substitution of alternate security.

(1) The owner of any interest in real property which is subject to a mechanics' lien recorded under this chapter, or any original contractor or subcontractor affected by the lien, who disputes the correctness or validity of the lien may, either before or after the commencement of an action to enforce the lien, record a notice of release of lien and substitution of alternate security, which meets the requirements of Subsection (2), in the office of the county recorder where the lien was recorded.

(2) A notice of release of lien and substitution of alternate security recorded under Subsection (1) shall meet the requirements for the recording of documents in Title 57, Chapter 3, Recording of Documents, shall reference the lien sought to be released, and shall have as an attachment a surety bond or evidence of a cash deposit which:

(a) (i) if a surety bond, is executed by a surety company which is treasury listed, A-rated by AM Best Company, and authorized to issue surety bonds in this state; or

(ii) if a letter of credit or evidence of a cash deposit, meets the requirements established by rule by the Department of Commerce in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act;

(b) is in an amount equal to 150% of the amount claimed by the lien claimant in connection with the parcel of real property sought to be released;

(c) is made payable to the lien claimant;

(d) is conditioned for the payment of the judgment which would have been rendered against the property in the action to enforce the lien together with any costs and attorneys' fees awarded by the court; and

(e) has as principal the owner of the interest in the real property, or the original contractor or subcontractor affected by the lien.

(3) Upon the recording of the notice of release of lien and substitution of alternate security under Subsection (1), the real property described in the notice shall be released from the mechanics' lien to which the notice applies.

(4) (a) Upon the recording of a notice of release of lien and substitution of alternate security under Subsection (1), the person recording the notice shall cause a copy of the notice, together with any attachments, to be served within 30 days upon the lien claimant.

(b) If a suit is pending to foreclose the lien at the time the notice is served upon the lien claimant under Subsection (4)(a), the lien claimant shall, within 90 days from the receipt of the notice, institute proceedings to add the alternate security as a party to the lien foreclosure suit.

(5) The alternate security attached to a notice of release of lien shall be discharged and released upon:

(a) the failure of the lien claimant to commence a suit against the alternate security within the same time as an action to enforce the lien under Section 38-1-11;

(b) the failure of the lien claimant to institute proceedings to add the alternate security as a party to a lien foreclosure suit within the time required by Subsection (4)(b); or

(c) the dismissal with prejudice of the foreclosure suit or suit against the alternate security as to the lien claimant or the entry of judgment against the lien claimant in such a suit.

(6) If a copy of the notice of release of lien and substitution of alternate security is not served upon the lien claimant as provided in Subsection (4)(a), the lien claimant shall have six months after the discovery of the notice to commence an action against the alternate security, except that no action may be commenced against the alternate security after two years from the date the notice was recorded.

Section 3. Section 38-1-29 is enacted to read:

38-1-29. No waiver of rights.

The applicability of the provisions of this chapter, including the waiver of rights or privileges granted under this chapter, may not be varied by agreement.

CHAPTER 230
H. B. 337
Passed February 28, 2001
Approved March 16, 2001
Effective March 16, 2001

GOVERNMENTAL LAW AMENDMENTS

Sponsor: Greg J. Curtis

This act requires that the Legislature pass a resolution regarding a proposed contract between the Department of Corrections and a county government to house inmates in county facilities not currently under construction or in existence. The act also clarifies that the resolution does not bind the Legislature or the department regarding the proposed contract. The effective date of this act is upon approval.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
64-13c-302, as enacted by Chapter 287, Laws of Utah 1999

ENACTS:
64-13c-401, Utah Code Annotated 1953

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

Section 1. Section 64-13c-302 is amended to read:

64-13c-302. Procedures for setting county reimbursement for core inmate incarceration costs, and medical and transportation costs.

(1) (a) In order for counties to receive reimbursement under this chapter, the Utah Sheriffs Association and the department shall annually before [~~July~~] January 1 negotiate for the fiscal year beginning on July 1 of the same year a single reimbursement rate, applicable to all counties, for daily core inmate incarceration costs.

(b) The reimbursement rate negotiated under Subsection (1)(a) shall be approved by the Legislature in the annual appropriations act before the rate may be implemented.

(2) Each county shall negotiate directly with the department to establish reimbursement rates for providing transportation services and medical care for inmates housed under Section 64-13c-201.

Section 2. Section 64-13c-401 is enacted to read:

64-13c-401. Legislative approval of contracting.

(1) Except as provided under Subsection (2), the department may enter into a contract with a county government to house inmates only if the Legislature has previously passed a joint resolution which includes the following information regarding the proposed agreement:

(a) the approximate number of beds to be contracted;

(b) the county's average daily rate the department will pay the county per inmate, as determined under Title 64, Chapter 13c, Part 3, Reimbursement of Inmate Costs; and

(c) the approximate amount of the county's long-term debt and the length of that debt for the facility where the inmates are to be housed.

(2) The department may enter into a contract with a county government to house inmates without complying with the approval process in Subsection (1) only if the county facility is currently under construction or currently exists as of the effective date of this act.

(3) Any resolution passed by the Legislature under Subsection (1) does not bind or obligate the Legislature or the department regarding the proposed contract.

Section 3. Effective date.

If approved by two-thirds of all the members elected to each house, this act takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 231
H. B. 340
Passed February 28, 2001
Approved March 16, 2001
Effective April 30, 2001

PUBLIC SAFETY OFFICERS EDUCATION REQUIREMENTS

Sponsor: David L. Hogue

This act amends the State Officers and Employees title of the code to provide that the director of the Department of Human Resource Management establish a plan for education compensation for law enforcement officers and correctional officers that addresses tuition and step increases for obtaining specified higher education degrees.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:
67-19-12.4, Utah Code Annotated 1953

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

Section 1. Section 67-19-12.4 is enacted to read:

67-19-12.4. (Codified as 67-19-12.2) Education benefit plan for law enforcement and correctional officers.

(1) As used in this section, "law enforcement officer" has the same meaning as in Section 53-13-103 and "correctional officer" has the same meaning as in Section 53-13-104.

(2) The director shall establish a plan authorizing any state agency to implement an educational compensation program for law enforcement officers and correctional officers employed by that state agency.

(3) The program shall provide that in order for a law enforcement officer or correctional officer to qualify for education benefits for college or university education, the law enforcement officer or correctional officer shall:

(a) provide a certified transcript of grades, demonstrating a grade point average of 3.0 or greater, from an accredited college or university; and

(b) have successfully completed the probationary employment period with the employing agency.

(4) The program shall also provide that the agency may consider a law enforcement officer or correctional officer to receive additional compensation as follows for higher education degrees earned on or after April 30, 2001, in a subject area directly related to the law enforcement officer's or correctional officer's employment with the agency:

(a) two steps for an associate's degree;

(b) two steps for a bachelor's degree; and

(c) two steps for a master's degree.

(5) Expenses incurred by an agency to provide additional compensation under this section may be only from the agency's existing budget.

CHAPTER 232
S. B. 22
Passed February 14, 2001
Approved March 19, 2001
Effective March 19, 2001

NAVAJO NATION - MOTOR AND SPECIAL FUEL TAXES

Sponsor: Mike Dmitrich

This act modifies the Revenue and Tax Code to provide for a reduction of motor and special fuel taxes if the motor or special fuel is taxed by the Navajo Nation and to make technical changes. The act authorizes agreements with the Navajo Nation related to administration of motor and special fuels taxes. The act has an immediate effective date.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
59-13-201, as last amended by Chapter 283, Laws of Utah 1999
59-13-204, as last amended by Chapter 258, Laws of Utah 2000
59-13-301, as last amended by Chapter 86, Laws of Utah 2000

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

Section 1. Section 59-13-201 is amended to read:

59-13-201. Rate -- Tax basis -- Exemptions -- Revenue deposited in the Transportation Fund -- Restricted account for boating uses -- Refunds -- Reduction of tax in limited circumstances.

(1) (a) A tax is imposed at the rate of 24-1/2 cents per gallon upon all motor fuel that is sold, used, or received for sale or used in this state.

(b) A tax is imposed at the rate of 3/19 of the rate imposed under Subsection (1)(a), rounded up to the nearest penny, upon all motor fuels that meet the definition of clean fuel in Section 59-13-102 and are sold, used, or received for sale or use in this state.

(2) Any increase or decrease in tax rate applies to motor fuel that is imported to the state or sold at refineries in the state on or after the effective date of the rate change.

(3) (a) No tax is imposed upon:

(i) motor fuel that is brought into and sold in this state in original packages as purely interstate commerce sales;

(ii) motor fuel that is exported from this state if proof of actual exportation on forms prescribed by the commission is made within 180 days after exportation;

(iii) motor fuel or components of motor fuel that is sold and used in this state and distilled from coal, oil shale, rock asphalt, bituminous sand, or solid hydrocarbons located in this state; or

(iv) motor fuel that is sold to the United States government, this state, or the political subdivisions of this state where sale and delivery is made in quantities of 750 gallons or more.

(b) For purposes of this subsection, the state and its political subdivisions may make collective purchases for purposes of meeting the 750 gallon requirement, and the state and political subdivisions may provide for this purchase in any manner approved by the commission.

(4) The commission may either collect no tax on motor fuel exported from the state or, upon application, refund the tax paid.

(5) (a) All revenue received by the commission under this part shall be deposited daily with the state treasurer and credited to the Transportation Fund.

(b) An appropriation from the Transportation Fund shall be made to the commission to cover expenses incurred in the administration and enforcement of this part and the collection of the motor fuel tax.

(6) (a) The commission shall determine what amount of motor fuel tax revenue is received from the sale or use of motor fuel used in motorboats registered under the provisions of the State Boating Act, and this amount shall be deposited in a restricted revenue account in the General Fund of the state.

(b) The funds from this account shall be used for the construction, improvement, operation, and maintenance of state-owned boating facilities and for the payment of the costs and expenses of the Division of Parks and Recreation in administering and enforcing the State Boating Act.

(7) (a) The United States government or any of its instrumentalities, this state, or a political subdivision of this state that has purchased motor fuel from a licensed distributor or from a retail dealer of motor fuel and has paid the tax on the motor fuel as provided in this section is entitled to a refund of the tax and may file with the commission for a quarterly refund.

(b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission shall make rules governing the application and refund provided for in Subsection (7)(a).

(8) (a) The commission shall refund annually into the Off-Highway Vehicle Account in the General Fund an amount equal to the lesser of the following:

(i) .5% of the motor fuel tax revenues collected under this section; or

(ii) $850,000.

(b) This amount shall be used as provided in Section 41-22-19.

(c) This Subsection (8) sunsets on July 1, 2010.

(9) (a) Beginning on April 1, 2001, a tax imposed under this section on motor fuel that is sold, used, or

received for sale or use in this state is reduced to the extent provided in Subsection (9)(b) if:

(i) a tax imposed on the basis of the sale, use, or receipt for sale or use of the motor fuel is paid to the Navajo Nation;

(ii) the tax described in Subsection (9)(a)(i) is imposed without regard to whether or not the person required to pay the tax is an enrolled member of the Navajo Nation; and

(iii) the commission and the Navajo Nation execute and maintain an agreement as provided in this Subsection (9) for the administration of the reduction of tax.

(b) (i) If but for Subsection (9)(a) the motor fuel is subject to a tax imposed by this section:

(A) the state shall be paid the difference described in Subsection (9)(b)(ii) if that difference is greater than $0; and

(B) a person may not require the state to provide a refund, a credit, or similar tax relief if the difference described in Subsection (9)(b)(ii) is less than or equal to $0.

(ii) The difference described in Subsection (9)(b)(i) is equal to the difference between:

(A) the amount of tax imposed on the motor fuel by this section; less

(B) the tax imposed and collected by the Navajo Nation on the motor fuel.

(c) For purposes of Subsections (9)(a) and (b), the tax paid to the Navajo Nation under a tax imposed by the Navajo Nation on the basis of the sale, use, or receipt for sale or use of motor fuel does not include any interest or penalties a taxpayer may be required to pay to the Navajo Nation.

(d) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission shall make rules governing the procedures for administering the reduction of tax provided under this Subsection (9).

(e) The agreement required under Subsection (9)(a):

(i) may not:

(A) authorize the state to impose a tax in addition to a tax imposed under this chapter;

(B) provide a reduction of taxes greater than or different from the reduction described in this Subsection (9); or

(C) affect the power of the state to establish rates of taxation;

(ii) shall:

(A) be in writing;

(B) be signed by:

(I) the chair of the commission or the chair's designee; and

(II) a person designated by the Navajo Nation that may bind the Navajo Nation;

(C) be conditioned on obtaining any approval required by federal law;

(D) state the effective date of the agreement; and

(E) state any accommodation the Navajo Nation makes related to the construction and maintenance of state highways and other infrastructure within the Utah portion of the Navajo Nation; and

(iii) may:

(A) notwithstanding Section 59-1-403, authorize the commission to disclose to the Navajo Nation information that is:

(I) contained in a document filed with the commission; and

(II) related to the tax imposed under this section;

(B) provide for maintaining records by the commission or the Navajo Nation; or

(C) provide for inspections or audits of distributors, carriers, or retailers located or doing business within the Utah portion of the Navajo Nation.

(f) (i) If, on or after April 1, 2001, the Navajo Nation changes the tax rate of a tax imposed on motor fuel, any change in the reduction of taxes under this Subsection (9) as a result of the change in the tax rate is not effective until the first day of the calendar quarter after a 60-day period beginning on the date the commission receives notice:

(A) from the Navajo Nation; and

(B) meeting the requirements of Subsection (9)(f)(ii).

(ii) The notice described in Subsection (9)(f)(i) shall state:

(A) that the Navajo Nation has changed or will change the tax rate of a tax imposed on motor fuel;

(B) the effective date of the rate change of the tax described in Subsection (9)(f)(ii)(A); and

(C) the new rate of the tax described in Subsection (9)(f)(ii)(A).

(g) If the agreement required by Subsection (9)(a) terminates, a reduction of tax is not permitted under this Subsection (9) beginning on the first day of the calender quarter after a 30-day period beginning on the day the agreement terminates.

(h) If there is a conflict between this Subsection (9) and the agreement required by Subsection (9)(a), this Subsection (9) governs.

Section 2. Section 59-13-204 is amended to read:

59-13-204. Distributors liable for tax -- Computations -- Exceptions -- Assumption of liability statements -- Motor fuel received -- Tax to be added to price of motor fuel.

(1) Distributors licensed under this part who receive motor fuel are liable for the tax as provided by this part, and shall report the receipt of the motor fuel to the commission and pay the tax as prescribed.

(2) (a) Distributors shall compute the tax on the total taxable amount of motor fuel produced, purchased, received, imported, or refined in this state, and all distributors shipping motor fuels into this state shall compute the tax on the total taxable amount of motor fuels received for sale or use in this state.

(b) All motor fuel distributed by any distributor to the distributor's branches within this state is considered to be sold at the time of this distribution and is subject to this part as if actually sold.

(c) Distributors licensed under this part may sell motor fuel to other licensed distributors without the payment or collection of the tax, if the purchasing distributor furnishes the seller with an assumption of liability statement indicating the purchasing distributor is a licensed and bonded Utah motor fuel distributor and will assume the Utah motor fuel tax responsibility on all motor fuel purchased from the seller. The seller shall report each sale to the commission in a monthly report of sales as provided under Section 59-13-206.

(3) If motor fuels have been purchased outside of this state and brought into this state in original packages from a distributor for the use of the consumer, then the tax shall be imposed when the motor fuel is received.

(4) (a) Every distributor and retail dealer of motor fuels shall add the amount of the taxes levied and assessed by this part to the price of the motor fuels.

(b) This Subsection (4) in no way affects the method of the collection of the taxes as specified in this part.

(c) Notwithstanding Subsection (4)(a), if the Ute tribe may receive a refund under Section 59-13-201.5, the Ute tribe is not required to add the amount of the taxes levied and assessed by this part to the price of motor fuel that is purchased:

(i) by a Ute tribal member; and

(ii) at a retail station:

(A) wholly owned by the Ute tribe; and

(B) located on Ute trust land.

(d) For purposes of Subsection (4)(a), the amount of taxes levied and assessed by this part do not include the amount of the reduction of tax under Subsection 59-3-201(9).

Section 3. Section 59-13-301 is amended to read:

59-13-301. Tax basis -- Rate -- Exemptions -- Revenue deposited with treasurer and credited to Transportation Fund -- Reduction of tax in limited circumstances.

(1) (a) Except as provided in Subsections (2) [~~and~~], (3), and (11) and Section 59-13-304, a tax is imposed at the same rate imposed under Subsection 59-13-201(1)(a) on the:

(i) removal of undyed diesel fuel from any refinery;

(ii) removal of undyed diesel fuel from any terminal;

(iii) entry into the state of any undyed diesel fuel for consumption, use, sale, or warehousing;

(iv) sale of undyed diesel fuel to any person who is not registered as a supplier under this part unless the tax has been collected under this section;

(v) any untaxed special fuel blended with undyed diesel fuel; or

(vi) use of untaxed special fuel, other than a clean special fuel.

(b) The tax imposed under this section shall only be imposed once upon any special fuel.

(2) (a) No special fuel tax is imposed or collected upon dyed diesel fuel which:

(i) is sold or used for any purpose other than to operate or propel a motor vehicle upon the public highways of the state, but this exemption applies only in those cases where the purchasers or the users of special fuel establish to the satisfaction of the commission that the special fuel was used for purposes other than to operate a motor vehicle upon the public highways of the state; or

(ii) is sold to this state or any of its political subdivisions.

(b) No special fuel tax is imposed on undyed diesel fuel which:

(i) is sold to the United States government or any of its instrumentalities or to this state or any of its political subdivisions;

(ii) is exported from this state if proof of actual exportation on forms prescribed by the commission is made within 180 days after exportation;

(iii) is used in a vehicle off-highway;

(iv) is used to operate a power take-off unit of a vehicle;

(v) is used for off-highway agricultural uses;

(vi) is used in a separately fueled engine on a vehicle that does not propel the vehicle upon the highways of the state; or

(vii) is used in machinery and equipment not registered and not required to be registered for highway use.

(3) No tax is imposed or collected on special fuel if it is:

(a) purchased for business use in machinery and equipment not registered and not required to be registered for highway use; and

(b) used pursuant to the conditions of a state implementation plan approved under Title 19, Chapter 2, Air Conservation Act.

(4) Upon request of a buyer meeting the requirements under Subsection (3), the Division of Air Quality shall issue an exemption certificate that may be shown to a seller.

(5) The special fuel tax shall be paid by the supplier.

(6) (a) The special fuel tax shall be paid by every user who is required by Sections 59-13-303 and 59-13-305 to obtain a special fuel permit and file special fuel tax reports.

(b) The user shall receive a refundable credit for special fuel taxes paid on purchases which are delivered into vehicles and for which special fuel tax liability is reported.

(7) (a) All revenue received by the commission from taxes and license fees under this part shall be deposited daily with the state treasurer and credited to the Transportation Fund.

(b) An appropriation from the Transportation Fund shall be made to the commission to cover expenses incurred in the administration and enforcement of this part and the collection of the special fuel tax.

(8) The commission may either collect no tax on special fuel exported from the state or, upon application, refund the tax paid.

(9) (a) The United States government or any of its instrumentalities, this state, or a political subdivision of this state that has purchased special fuel from a supplier or from a retail dealer of special fuel and has paid the tax on the special fuel as provided in this section is entitled to a refund of the tax and may file with the commission for a quarterly refund in a manner prescribed by the commission.

(b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission shall make rules governing the application and refund provided for in Subsection (9)(a).

(10) (a) The purchaser shall pay the tax on diesel fuel purchased for uses under Subsections (2)(b)(i), (iii), (iv), (v), (vi), and (vii) and apply for a refund for the tax paid as provided in Subsections (9) and (10).

(b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission shall make rules governing the application and refund for off-highway and nonhighway uses provided under Subsections (2)(b)(iii), (iv), (vi), and (vii).

(c) A refund of tax paid under this part on diesel fuel used for nonhighway agricultural uses shall be made in accordance with the tax return procedures under Section 59-13-202.

(11) (a) Beginning on April 1, 2001, a tax imposed under this section on special fuel is reduced to the extent provided in Subsection (11)(b) if:

(i) the Navajo Nation imposes a tax on the special fuel;

(ii) the tax described in Subsection (11)(a)(i) is imposed without regard to whether the person required to pay the tax is an enrolled member of the Navajo Nation; and

(iii) the commission and the Navajo Nation execute and maintain an agreement as provided in this Subsection (11) for the administration of the reduction of tax.

(b) (i) If but for Subsection (11)(a) the special fuel is subject to a tax imposed by this section:

(A) the state shall be paid the difference described in Subsection (11)(b)(ii) if that difference is greater than $0; and

(B) a person may not require the state to provide a refund, a credit, or similar tax relief if the difference described in Subsection (11)(b)(ii) is less than or equal to $0.

(ii) The difference described in Subsection (11)(b)(i) is equal to the difference between:

(A) the amount of tax imposed on the special fuel by this section; less

(B) the tax imposed and collected by the Navajo Nation on the special fuel.

(c) For purposes of Subsections (11)(a) and (b), the tax paid to the Navajo Nation on the special fuel does not include any interest or penalties a taxpayer may be required to pay to the Navajo Nation.

(d) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission shall make rules governing the procedures for administering the reduction of tax provided under this Subsection (11).

(e) The agreement required under Subsection (11)(a):

(i) may not:

(A) authorize the state to impose a tax in addition to a tax imposed under this chapter;

(B) provide a reduction of taxes greater than or different from the reduction described in this Subsection (11); or

(C) affect the power of the state to establish rates of taxation;

(ii) shall:

(A) be in writing;

(B) be signed by:

(I) the chair of the commission or the chair's designee; and

(II) a person designated by the Navajo Nation that may bind the Navajo Nation;

(C) be conditioned on obtaining any approval required by federal law;

(D) state the effective date of the agreement; and

(E) state any accommodation the Navajo Nation makes related to the construction and maintenance

of state highways and other infrastructure within the Utah portion of the Navajo Nation; and

(iii) may:

(A) notwithstanding Section 59-1-403, authorize the commission to disclose to the Navajo Nation information that is:

(I) contained in a document filed with the commission; and

(II) related to the tax imposed under this section;

(B) provide for maintaining records by the commission or the Navajo Nation; or

(C) provide for inspections or audits of suppliers, distributors, carriers, or retailers located or doing business within the Utah portion of the Navajo Nation.

(f) (i) If, on or after April 1, 2001, the Navajo Nation changes the tax rate of a tax imposed on special fuel, any change in the amount of the reduction of taxes under this Subsection (11) as a result of the change in the tax rate is not effective until the first day of the calendar quarter after a 60-day period beginning on the date the commission receives notice:

(A) from the Navajo Nation; and

(B) meeting the requirements of Subsection (11)(f)(ii).

(ii) The notice described in Subsection (11)(f)(i) shall state:

(A) that the Navajo Nation has changed or will change the tax rate of a tax imposed on special fuel;

(B) the effective date of the rate change of the tax described in Subsection (11)(f)(ii)(A); and

(C) the new rate of the tax described in Subsection (11)(f)(ii)(A).

(g) If the agreement required by Subsection (11)(a) terminates, a reduction of tax is not permitted under this Subsection (11) beginning on the first day of the calender quarter after a 30-day period beginning on the day the agreement terminates.

(h) If there is a conflict between this Subsection (11) and the agreement required by Subsection (11)(a), this Subsection (11) governs.

Section 4. Effective date.

If approved by two-thirds of all the members elected to each house, this act takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 233
S. B. 24
Passed February 27, 2001
Approved March 19, 2001
Effective April 30, 2001
(Retrospective operation to January 1, 2001)

INDIVIDUAL INCOME TAX - ADDITIONS TO FEDERAL TAXABLE INCOME

Sponsor: John L. Valentine

This act modifies the Individual Income Tax Act by amending an addition to federal taxable income for certain lump sum distributions, requiring an addition to federal taxable income for certain amounts of a child's income, and making technical changes. This act has retrospective operation for taxable years beginning on or after January 1, 2001.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
59-10-114, as last amended by Chapter 257, Laws of Utah 2000

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

Section 1. Section 59-10-114 is amended to read:

59-10-114. Additions to and subtractions from federal taxable income of an individual.

(1) There shall be added to federal taxable income of a resident or nonresident individual:

(a) the amount of any income tax imposed by this or any predecessor Utah individual income tax law and the amount of any income tax imposed by the laws of another state, the District of Columbia, or a possession of the United States, to the extent deducted from federal adjusted gross income, as defined by Section 62, Internal Revenue Code, in determining federal taxable income;

(b) a lump sum distribution [~~allowable as a deduction under Section 402(d)(3), Internal Revenue Code, to the extent deductible under Section 62(a)(8), Internal Revenue Code, in determining federal adjusted gross~~] that the taxpayer does not include in adjusted gross income on the taxpayer's federal individual income tax return for the taxable year;

(c) for taxable years beginning on or after January 1, 2002, the amount of a child's income calculated under Subsection (5) that:

(i) a parent elects to report on the parent's federal individual income tax return for the taxable year; and

(ii) the parent does not include in adjusted gross income on the parent's federal individual income tax return for the taxable year;

[~~(c)~~] (d) 25% of the personal exemptions, as defined and calculated in the Internal Revenue Code;

[~~(d)~~] (e) a withdrawal from a medical care savings account and any penalty imposed in the taxable year if:

(i) the taxpayer did not deduct or include the amounts on his federal tax return pursuant to Section 220, Internal Revenue Code; and

(ii) the withdrawal is subject to Subsections 31A-32a-105(1) and (2); and

(e) the amount refunded to a participant under Title 53B, Chapter 8a, Higher Education Savings Incentive Program, in the year in which the amount is refunded.

(2) There shall be subtracted from federal taxable income of a resident or nonresident individual:

(a) the interest or dividends on obligations or securities of the United States and its possessions or of any authority, commission, or instrumentality of the United States, to the extent includable in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States, but the amount subtracted under this subsection shall be reduced by any interest on indebtedness incurred or continued to purchase or carry the obligations or securities described in this subsection, and by any expenses incurred in the production of interest or dividend income described in this subsection to the extent that such expenses, including amortizable bond premiums, are deductible in determining federal taxable income;

(b) 1/2 of the net amount of any income tax paid or payable to the United States after all allowable credits, as reported on the United States individual income tax return of the taxpayer for the same taxable year;

(c) the amount of adoption expenses which, for purposes of this subsection, means any actual medical and hospital expenses of the mother of the adopted child which are incident to the child's birth and any welfare agency, child placement service, legal, and other fees or costs relating to the adoption;

(d) amounts received by taxpayers under age 65 as retirement income which, for purposes of this section, means pensions and annuities, paid from an annuity contract purchased by an employer under a plan which meets the requirements of Section 404(a)(2), Internal Revenue Code, or purchased by an employee under a plan which meets the requirements of Section 408, Internal Revenue Code, or paid by the United States, a state, or political subdivision thereof, or the District of Columbia, to the employee involved or the surviving spouse;

(e) for each taxpayer age 65 or over before the close of the taxable year, a $7,500 personal retirement exemption;

(f) 75% of the amount of the personal exemption, as defined and calculated in the Internal Revenue

Code, for each dependent child with a disability and adult with a disability who is claimed as a dependent on a taxpayer's return;

(g) any amount included in federal taxable income that was received pursuant to any federal law enacted in 1988 to provide reparation payments, as damages for human suffering, to United States citizens and resident aliens of Japanese ancestry who were interned during World War II;

(h) subject to the limitations of Subsection (3)(e), amounts a taxpayer pays during the taxable year for health care insurance, as defined in Title 31A, Chapter 1, General Provisions:

(i) for:

(A) the taxpayer;

(B) the taxpayer's spouse; and

(C) the taxpayer's dependents; and

(ii) to the extent the taxpayer does not deduct the amounts under Section 125, 162, or 213, Internal Revenue Code, in determining federal taxable income for the taxable year;

(i) except as otherwise provided in this subsection, the amount of a contribution made in the tax year on behalf of the taxpayer to a medical care savings account and interest earned on a contribution to a medical care savings account established pursuant to Title 31A, Chapter 32a, Medical Care Savings Account Act, to the extent the contribution is accepted by the account administrator as provided in the Medical Care Savings Account Act, and if the taxpayer did not deduct or include amounts on his federal tax return pursuant to Section 220, Internal Revenue Code. A contribution deductible under this subsection may not exceed either of the following:

(i) the maximum contribution allowed under the Medical Care Savings Account Act for the tax year multiplied by two for taxpayers who file a joint return, if neither spouse is covered by health care insurance as defined in Section 31A-1-301 or self-funded plan that covers the other spouse, and each spouse has a medical care savings account; or

(ii) the maximum contribution allowed under the Medical Care Savings Account Act for the tax year for taxpayers:

(A) who do not file a joint return; or

(B) who file a joint return, but do not qualify under Subsection (2)(i)(i); and

(j) the amount included in federal taxable income that was derived from money paid by the taxpayer to the program fund under Title 53B, Chapter 8a, Higher Education Savings Incentive Program, not to exceed amounts determined under Subsection 53B-8a-106(1)(d) and investment income earned on participation agreements under Subsection 53B-8a-106(1) when used for higher education costs of the beneficiary;

(k) for tax years beginning on or after January 1, 2000, any amounts paid for premiums [~~on~~] for long-term care insurance [~~policies~~] as defined in Section 31A-22-1402 to the extent the amounts paid for long-term care insurance were not deducted under Section 213, Internal Revenue Code, in determining federal taxable income; and

(l) for taxable years beginning on or after January 1, 2000, if the conditions of Subsection (4)(a) are met, the amount of income derived by a Ute tribal member:

(i) during a time period that the Ute tribal member resides on homesteaded land diminished from the Uintah and Ouray Reservation; and

(ii) from a source within the Uintah and Ouray Reservation.

(3) (a) For purposes of Subsection (2)(d), the amount of retirement income subtracted for taxpayers under 65 shall be the lesser of the amount included in federal taxable income, or $4,800, except that:

(i) for married taxpayers filing joint returns, for each $1 of adjusted gross income earned over $32,000, the amount of the retirement income exemption that may be subtracted shall be reduced by 50 cents;

(ii) for married taxpayers filing separate returns, for each $1 of adjusted gross income earned over $16,000, the amount of the retirement income exemption that may be subtracted shall be reduced by 50 cents; and

(iii) for individual taxpayers, for each $1 of adjusted gross income earned over $25,000, the amount of the retirement income exemption that may be subtracted shall be reduced by 50 cents.

(b) For purposes of Subsection (2)(e), the amount of the personal retirement exemption shall be further reduced according to the following schedule:

(i) for married taxpayers filing joint returns, for each $1 of adjusted gross income earned over $32,000, the amount of the personal retirement exemption shall be reduced by 50 cents;

(ii) for married taxpayers filing separate returns, for each $1 of adjusted gross income earned over $16,000, the amount of the personal retirement exemption shall be reduced by 50 cents; and

(iii) for individual taxpayers, for each $1 of adjusted gross income earned over $25,000, the amount of the personal retirement exemption shall be reduced by 50 cents.

(c) For purposes of Subsections (3)(a) and (b), adjusted gross income shall be calculated by adding to federal adjusted gross income any interest income not otherwise included in federal adjusted gross income.

(d) For purposes of determining ownership of items of retirement income common law doctrine will be applied in all cases even though some items may have originated from service or investments in a community property state. Amounts received by

the spouse of a living retiree because of the retiree's having been employed in a community property state are not deductible as retirement income of such spouse.

(e) For purposes of Subsection (2)(h), a subtraction for an amount paid for health care insurance as defined in Title 31A, Chapter 1, General Provisions, is not allowed:

(i) for an amount that is reimbursed or funded in whole or in part by the federal government, the state, or an agency or instrumentality of the federal government or the state; and

(ii) for a taxpayer who is eligible to participate in a health plan maintained and funded in whole or in part by the taxpayer's employer or the taxpayer's spouse's employer.

(4) (a) A subtraction for an amount described in Subsection (2)(l) is allowed only if:

(i) the taxpayer is a Ute tribal member; and

(ii) the governor and the Ute tribe execute and maintain an agreement meeting the requirements of this Subsection (4).

(b) The agreement described in Subsection (4)(a):

(i) may not:

(A) authorize the state to impose a tax in addition to a tax imposed under this chapter;

(B) provide a subtraction under this section greater than or different from the subtraction described in Subsection (2)(l); or

(C) affect the power of the state to establish rates of taxation; and

(ii) shall:

(A) provide for the implementation of the subtraction described in Subsection (2)(l);

(B) be in writing;

(C) be signed by:

(I) the governor; and

(II) the chair of the Business Committee of the Ute tribe;

(D) be conditioned on obtaining any approval required by federal law; and

(E) state the effective date of the agreement.

(c) (i) The governor shall report to the commission by no later than February 1 of each year regarding whether or not an agreement meeting the requirements of this Subsection (4) is in effect.

(ii) If an agreement meeting the requirements of this Subsection (4) is terminated, the subtraction permitted under Subsection (2)(l) is not allowed for taxable years beginning on or after the January 1 following the termination of the agreement.

(d) For purposes of Subsection (2)(l) and in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may make rules:

(i) for determining whether income is derived from a source within the Uintah and Ouray Reservation; and

(ii) that are substantially similar to how federal adjusted gross income derived from Utah sources is determined under Section 59-10-117.

(5) (a) For purposes of this Subsection (5), "Form 8814" means:

(i) the federal individual income tax Form 8814, Parents' Election To Report Child's Interest and Dividends; or

(ii) (A) for taxable years beginning on or after January 1, 2002, a form designated by the commission in accordance with Subsection (5)(a)(ii)(B) as being substantially similar to 2000 Form 8814 if for purposes of federal individual income taxes the information contained on 2000 Form 8814 is reported on a form other than Form 8814; and

(B) for purposes of Subsection (5)(a)(ii)(A) and in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may make rules designating a form as being substantially similar to 2000 Form 8814 if for purposes of federal individual income taxes the information contained on 2000 Form 8814 is reported on a form other than Form 8814.

(b) The amount of a child's income added to adjusted gross income under Subsection (1)(c) is equal to the difference between:

(i) the lesser of:

(A) the base amount specified on Form 8814; and

(B) the sum of the following reported on Form 8814:

(I) the child's taxable interest;

(II) the child's ordinary dividends; and

(III) the child's capital gain distributions; and

(ii) the amount not taxed that is specified on Form 8814.

Section 2. Retrospective operation.

This act has retrospective operation for taxable years beginning on or after January 1, 2001.

CHAPTER 234
S. B. 35
Passed February 22, 2001
Approved March 19, 2001
Effective July 1, 2001

PUBLIC EDUCATION CAPITAL OUTLAY ACT AMENDMENTS

Sponsor: Michael G. Waddoups
Lyle W. Hillyard
Paula F. Julander
David H. Steele
Howard A. Stephenson
Dan R. Eastman
Karen Hale
Ron Allen
Bill Wright

This act modifies provisions related to the State System of Public Education to address issues in the capital outlay foundation program. The act deletes provisions regarding an emergency building needs program that terminates on June 30, 2001. It increases the state appropriation for the capital outlay foundation program from $28,358,000 to $38,358,000. This act takes effect July 1, 2001.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
53A-21-102, as repealed and reenacted by Chapter 326, Laws of Utah 1996
53A-21-103, as last amended by Chapter 129, Laws of Utah 1999
53A-21-105, as last amended by Chapter 264, Laws of Utah 2000

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

Section 1. Section 53A-21-102 is amended to read:

53A-21-102. Capital outlay foundation program -- Loan Program.

(1) There is established a capital outlay foundation program[~~, which shall include an emergency school building needs program through June 30, 2001,~~] to provide revenues to school districts for the purposes of capital outlay bonding, construction, and renovation.

(2) There is established a capital outlay loan program to provide short-term help to school districts to meet district needs for school building construction and renovation.

(3) School districts shall use the monies provided to them under the foundation and loan programs solely for school district capital outlay and debt service purposes.

Section 2. Section 53A-21-103 is amended to read:

53A-21-103. Qualifications for participation in the foundation program -- Distribution of monies -- Distribution formulas.

(1) In order for a school district to qualify for monies under the capital outlay foundation program established in Subsection 53A-21-102(1), a local school board must levy a tax rate of up to .0024 per dollar of taxable value for capital outlay and debt service.

(2) (a) The State Board of Education shall adopt a rule in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, that allows a school district levying less than the full .0024 tax rate to receive proportional funding under the foundation program based upon the percentage of the .0024 tax rate levied by the district.

(b) The rules may include hold harmless provisions for up to two years.

[~~(3) (a) Through June 30, 2001, 20% of the monies in the capital outlay foundation program shall be used in an emergency school building needs program.~~]

[~~(b) Beginning July 1, 2001, the emergency school building needs program shall be terminated and the monies otherwise spent in that program shall be used for the general purposes of the capital outlay foundation program.~~]

[~~(4)~~] (3) The State Board of Education shall distribute monies in the capital outlay foundation program [~~and the emergency school building needs program~~] in accordance with [~~formulas~~] a formula developed by the state superintendent of public instruction[~~. (a) The board shall distribute capital outlay foundation monies on the basis of~~] based on a minimum guarantee per average daily membership as computed by the state superintendent [~~of public instruction~~] using:

[~~(i)~~] (a) available monies; and

[~~(ii)~~] (b) the assessed valuation per average daily membership in each school district.

[~~(b) The formula for the emergency school building needs distribution shall include the following components:~~]

[~~(i) a school district's ability to raise money for school building needs as related to the assessed valuation per student for real property within the school district;~~]

[~~(ii) need as reflected by:~~]

[~~(A) the current number of students in the school district who are in alternative housing; and~~]

[~~(B) growth, both within the district and compared to the state as a whole; and~~]

[~~(iii) the school district's effort to raise money based on:~~]

[~~(A) the district's total tax rate; and~~]

[~~(B) the district's bond and bond interest payments compared to its ability to raise revenue.~~]

Section 3. Section 53A-21-105 is amended to read:

53A-21-105. State contribution to capital outlay programs.

The state contribution toward the cost of the programs established under Section 53A-21-102 for the fiscal year beginning July 1, [~~2000~~] 2001, shall consist of an appropriation totaling [~~$28,358,000~~] $38,358,000 to the State Board of Education from the Uniform School Fund.

Section 4. Effective date.

This act takes effect on July 1, 2001.

CHAPTER 235
S. B. 49
Passed February 23, 2001
Approved March 19, 2001
Effective July 1, 2001

AVIATION FUEL TAX

Sponsor: John L. Valentine

This act modifies the Revenue and Taxation Code by authorizing a partial tax refund or credit for a federally certificated air carrier who purchases aviation fuel at the Salt Lake International Airport. This act reallocates certain aviation fuel tax proceeds. This act takes effect on July 1, 2001.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
59-13-402, as last amended by Chapter 179, Laws of Utah 1999

ENACTS:
59-13-404, Utah Code Annotated 1953

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

Section 1. Section 59-13-402 is amended to read:

59-13-402. Revenue from taxes deposited with treasurer -- Credit to Aeronautics Restricted Account -- Purposes for which funds may be used -- Allocation of funds -- Reports -- Returns required.

(1) (a) All revenue received by the commission under this part shall be deposited daily with the state treasurer who shall credit all of the revenue collected to the Transportation Fund.

(b) An appropriation from the Transportation Fund shall be made to the commission to cover expenses incurred in the administration and enforcement of this part and the collection of the aviation fuel tax.

(c) Refunds to which taxpayers are entitled under this part shall be paid from the Transportation Fund.

(2) The state treasurer shall place an amount equal to the total amount received from the sale or use of aviation fuel in the Transportation Fund's Restricted Revenue Account for aeronautical operations of the Department of Transportation for:

(a) the construction, improvement, operation, and maintenance of publicly used airports in this state and the payment of principal and interest on indebtedness incurred for those purposes;

(b) the promotion of aeronautics in this state; and

(c) the payment of the costs and expenses of the Department of Transportation in administering this part or other law conferring upon it the duty of regulating and supervising aeronautics in this state.

(3) The tax imposed on each gallon of aviation fuel under Section 59-13-401 shall be allocated to the airport where the aviation fuel was sold and to aeronautical operations of the Department of Transportation as follows:

	Total Tax Allocated	Allocation to Airport	Allocation to Aeronautical Operations
(a) Tax on Each Gallon of Aviation Fuel Purchased for Use by a Federally Certificated Air Carrier Other than at the Salt Lake International Airport	$.04	$.03	$.01
(b) Tax, less a refund or credit claimed under Section 59-13-404, on Each Gallon of Aviation Fuel Purchased for Use by a Certificated Air Carrier at the Salt Lake International Airport	$.025	$.015	$.01
(c) Tax on Each Gallon of Aviation Fuel Purchased for Use by a Person Other than a Federally Certificated Air Carrier at the Salt Lake International Airport			
beginning July 1, 1999	$.06	$.02	$.04
beginning July 1, 2000	$.08	$.01	$.07
beginning July 1, 2001	$.09	$.00	$.09
(d) Tax on Each Gallon of Aviation Fuel Purchased for Use by a Person Other than a Federally Certificated Air Carrier Other than at the Salt Lake International Airport			
beginning July 1, 1999	$.06	$.03	$.03
beginning July 1, 2000	$.08	$.03	$.05
beginning July 1, 2001	$.09	$.03	$.06

[~~(a)~~] (e) The allocation to the publicly used airport may be used at the discretion of the airport's governing authority for the purposes specified in Subsection (2)(a).

[~~(b)~~] (f) Upon appropriation by the Legislature, the allocation to aeronautical operations of the Department of Transportation shall be used as provided in Subsection (2).

(4) (a) The commission shall require reports and returns from distributors, retail dealers, and users in order to enable the commission and the Department of Transportation to allocate the revenue to be credited to the Transportation Fund's Restricted Revenue Account for the aeronautical operations of that department and the separate accounts of individual airports.

(b) (i) Except as provided by Subsection (4)(b)(ii), any unexpended amount remaining in the account of any publicly used airport on the first day of January, April, July, and October shall be paid to the authority operating the airport.

(ii) Aviation fuel tax allocated to any airport owned and operated by a city of the first class shall be paid to the city treasurer on the first day of each month.

(c) The state treasurer shall place aviation fuel tax collected on fuel sold at places other than publicly used airports in the Transportation Fund's Restricted Revenue Account for the aeronautical operations of the Department of Transportation.

Section 2. Section 59-13-404 is enacted to read:

59-13-404. Refunds of aviation fuel tax -- Filing claims -- Commission approval -- Rulemaking -- Appeals -- Penalties.

(1) A federally certificated air carrier is entitled to a $.015 refund or credit of the aviation fuel tax paid on gallons of aviation fuel purchased at the Salt Lake International Airport, subject to the conditions and limitations provided under this section.

(2) (a) A federally certificated air carrier shall file a claim for a refund or credit with the commission within 90 days of the end of the tax year for which a claim is made.

(b) A federally certificated air carrier filing a claim for a refund or credit shall furnish any or all of the information outlined in this section upon request of the commission.

(3) (a) The claim shall include an application containing:

(i) the name of the federally certificated air carrier claimant;

(ii) the number of gallons actually purchased;

(iii) the place of purchase; and

(iv) any other information required by the commission to support the claim.

(b) This original claim and all information contained in it, constitutes a permanent file with the commission in the name of the federally certificated air carrier claimant.

(4) Upon commission approval of the claim for a refund, the commission shall pay the amount found due to the federally certificated air carrier claimant. The total amount of claims for refunds shall be paid from the Transportation Fund.

(5) (a) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may promulgate rules to enforce this part, and may refuse to accept unsubstantiated evidence for the claim.

(b) If the commission is not satisfied with the evidence submitted in connection with the claim, it may reject the claim or require additional evidence.

(6) A federally certificated air carrier aggrieved by the decision of the commission with respect to a refund or credit may file a request for agency action, requesting a hearing before the commission.

(7) A federally certificated air carrier who makes any false claim, report, or statement, with intent to defraud or secure a refund or credit to which the claimant is not entitled, is subject to the criminal penalties provided under Section 59-1-401, and the commission shall initiate the filing of a complaint for alleged violations of this part. In addition to these penalties, the federally certificated air carrier may not receive any refund or credit as a claimant for a period of five years.

Section 3. Effective date.

This act takes effect on July 1, 2001.

CHAPTER 236
S. B. 53
Passed February 22, 2001
Approved March 19, 2001
Effective April 30, 2001

TRUST DEED LAW AMENDMENTS

Sponsor: Michael G. Waddoups

This act modifies provisions related to trust deeds. The act alters the qualifications and outlines the duties for trustees of trust deeds. The act modifies provisions relating to successor trustees. The act alters the trustee's requirements when filing a notice of default. The act alters provisions relating to the trustee's sale of trust property and the proceeds of the sale. The act modifies the requirements for the sale of trust property by public auction. The act amends the requirements for the trustee's course of action once a default under a trust deed is cured. The act designates the determinative value for trust property. The act establishes the effect of an erroneously recorded reconveyance of a trust deed. The act also makes technical corrections.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
57-1-20, as enacted by Chapter 181, Laws of Utah 1961
57-1-21, as last amended by Chapter 182, Laws of Utah 1996
57-1-22, as last amended by Chapter 75, Laws of Utah 2000
57-1-23, as enacted by Chapter 181, Laws of Utah 1961
57-1-24, as last amended by Chapter 88, Laws of Utah 1989
57-1-25, as last amended by Chapter 75, Laws of Utah 2000
57-1-26, as last amended by Chapter 75, Laws of Utah 2000
57-1-27, as last amended by Chapter 82, Laws of Utah 1988
57-1-28, as last amended by Chapter 68, Laws of Utah 1985
57-1-29, as last amended by Chapter 215, Laws of Utah 1997
57-1-31, as last amended by Chapter 75, Laws of Utah 2000
57-1-32, as last amended by Chapter 68, Laws of Utah 1985
57-1-33.1, as enacted by Chapter 185, Laws of Utah 1995

ENACTS:
57-1-21.5, Utah Code Annotated 1953

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

Section 1. Section 57-1-20 is amended to read:

57-1-20. Transfers in trust of real property -- Purposes -- Effect.

Transfers in trust of real property may be made to secure the performance of an obligation of the trustor or any other person named in the trust deed to a beneficiary. All right, title, interest and claim in and to the trust property acquired by the trustor, or [~~his~~] the trustor's successors in interest, subsequent to the execution of the trust deed, shall inure to the trustee as security for the obligation or obligations for which the trust property is conveyed [~~in like manner~~] as if acquired before execution of the trust deed.

Section 2. Section 57-1-21 is amended to read:

57-1-21. Trustees of trust deeds -- Qualifications.

(1) (a) The trustee of a trust deed shall be:

(i) any active member of the Utah State Bar residing in Utah;

(ii) any depository institution as defined in Section 7-1-103, or insurance company authorized to do business and actually doing business in Utah under the laws of Utah or the United States;

(iii) any corporation authorized to conduct a trust business and actually conducting a trust business in Utah under the laws of Utah or the United States;

(iv) any title insurance or abstract company authorized to do business and actually doing business in Utah under the laws of Utah;

(v) any agency of the United States government; or

(vi) any association or corporation [~~which~~] that is licensed, chartered, or regulated by the Farm Credit Administration or its successor.

(b) Subsection (1) is not applicable to a trustee of a trust deed existing prior to the effective date of this chapter, nor to any agreement that is supplemental to that trust deed.

(2) The trustee of a trust deed may not be the beneficiary of the trust deed, unless the beneficiary is qualified to be a trustee under Subsection (1)(a)(ii), (iii), (v), or (vi).

(3) The power of sale conferred by Section 57-1-23 may only be exercised by the trustee of a trust deed if the trustee is qualified under Subsection (1)(a)(i) or (iv).

(4) A trust deed with an unqualified trustee or without a trustee shall be effective to create a lien on the trust property, but the power of sale and other trustee powers under the trust deed may be exercised only if, prior to the exercise of those powers, the beneficiary has appointed a qualified successor trustee under Section 57-1-22.

Section 3. Section 57-1-21.5 is enacted to read:

57-1-21.5. Trustees of trust deeds -- Duties.

(1) The following duties of the trustee may not be delegated:

(a) the preparation and execution of:

(i) the notice of default and election to sell;

(ii) the cancellation of notice of default and election to sell;

(iii) the notice of sale;

(iv) the trustee's deed; and

(v) the deed of reconveyance;

(b) the notification of foreclosure through publication, posting, and certified or registered mail;

(c) the receiving and responding to requests for reinstatement or payoff requirements; and

(d) the handling of reinstatement or payoff funds.

(2) Nothing in this section is intended to prevent the trustee from using clerical or office staff employed by the trustee and under the trustee's direct and immediate supervision to assist in the duties described in Subsection (1) or from using the services of others for publication, posting, marketing, or advertising the sale.

Section 4. Section 57-1-22 is amended to read:

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

(1) The beneficiary may appoint a successor trustee at any time by filing for record in the office of the county recorder of each county in which the trust property or some part [~~thereof~~] of the trust property is situated, a substitution of trustee. [~~From the time the substitution is filed for record, the~~] The new trustee shall succeed to all the power, duties, authority, and title of the trustee named in the deed of trust and of any successor trustee. The beneficiary may, by express provision in the substitution of trustee, ratify and confirm action taken on the beneficiary's behalf by the new trustee prior to the recording of the substitution of trustee.

(2) The substitution shall:

(a) identify the trust deed by stating the names of the original parties [~~thereto~~] to the trust deed, the date of recordation, and the book and page where the same is recorded or the entry number;

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

(c) state the name of the new trustee; and

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

(3) If not previously recorded, at the time of recording [~~the~~] a notice of default, the successor trustee shall file for record, in the office of the county recorder of each county in which the trust property or some part of it is situated, the substitution of trustee[~~, and a~~]. A copy [~~thereof~~] of the substitution of trustee shall be sent in the manner provided in [~~Section~~] Subsection 57-1-26(2) to all persons to whom a copy of [~~the~~] a notice of default would be required to be mailed by [~~Section~~] Subsections 57-1-26(1)(a) and (3). [~~In addition thereto, a copy shall be sent to the prior trustee by regular mail to his last-known address.~~]

(4) A substitution of trustee shall be [~~sufficient if made~~] in substantially the following form:

Substitution of Trustee
(insert name and address of new trustee)

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

(Insert legal description)

Signature _____
(Certificate of Acknowledgment)

Section 5. Section 57-1-23 is amended to read:

57-1-23. Sale of trust property -- Power of trustee -- Foreclosure of trust deed.

[~~A power of sale is hereby conferred upon the~~] The trustee who is qualified under Subsection 57-1-21(1)(a)(i) or (iv) is given the power of sale by which the trustee may exercise and [~~under which~~] cause the trust property [~~may~~] to be sold in the manner [~~hereinafter~~] provided in Sections 57-1-24 and 57-1-27, after a breach of an obligation for which the trust property is conveyed as security; or, at the option of the beneficiary, a trust deed may be foreclosed in the manner provided by law for the foreclosure of mortgages on real property. The power of sale may be exercised by the trustee without express provision [~~therefor~~] for it in the trust deed.

Section 6. Section 57-1-24 is amended to read:

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

The power of sale conferred upon the trustee who is qualified under Subsection 57-1-21(1)(a)(i) or (iv) may not be exercised until:

(1) the trustee first files for record, in the office of the recorder of each county where the trust property or some part or parcel [~~thereof~~] of the trust property is situated, a notice of default, identifying the trust deed by stating the name of the trustor named [~~therein~~] in the trust deed and giving the book and page, or the recorder's entry number, where the trust deed is recorded and a legal description of the trust property, and containing a statement that a breach of an obligation for which the trust property was conveyed as security has occurred, and setting forth the nature of that breach and of [~~his~~] the trustee's election to sell or cause to be sold the property to satisfy the obligation;

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

(3) after the lapse of at least three months the trustee shall give notice of sale as provided in [~~this act~~] Sections 57-1-25 and 57-1-26.

Section 7. Section 57-1-25 is amended to read:

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

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

(a) by publication of the notice, at least three times, once a week for three consecutive weeks, the last publication to be at least ten days but not more than 30 days prior to the sale, in [~~some~~] a newspaper having a general circulation in each county in which the property to be sold, or some part [~~thereof~~] of the property to be sold, is situated; and

(b) by posting the notice, at least 20 days before the date of sale, in some conspicuous place on the property to be sold and also [~~in at least three public places of each city or county in which the property to be sold, or some part thereof, is situated~~] at the office of the county recorder of each county in which the trust property, or some part of it, is located.

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

(b) The time of sale shall be between the hours of [~~9~~] 8 a.m. and [~~5~~] 8 p.m. [~~and at the courthouse of the county in which the property to be sold, or some part thereof, is situated.~~]

(c) The place of sale shall be clearly identified in the notice of sale under Subsection (1) and shall be one of the following:

(i) at a courthouse serving the county in which the property to be sold, or some part of the property to be sold, is located; or

(ii) at the property to be sold, provided that:

(A) if the described property comprises more than one acre, the location on the property where the sale will be conducted is specifically described; and

(B) the property is accessible to the public at the time of the sale.

(3) The notice of sale shall be [~~sufficient if made~~] in substantially the following form:

Notice of Trustee's Sale

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

(Insert legal description)

[~~(Certificate of Acknowledgment, if recorded)~~]

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

Dated_____(month\day\year).

_____
Trustee

Section 8. Section 57-1-26 is amended to read:

57-1-26. Requests for copies of notice of default and notice of sale -- Mailing by trustee or beneficiary -- Publication of notice of default.

(1) (a) Any person desiring a copy of any notice of default and of any notice of sale under any trust deed [~~may~~] shall, at any time subsequent to the filing for record of the trust deed and prior to the filing for record of a notice of default [~~thereunder~~] of the trust deed, file for record in the office of the county recorder of any county in which [~~any part or parcel of~~] the trust property, or any part of the trust property, is situated, a duly acknowledged request for a copy of any notice of default and notice of sale. [~~The~~] Except as provided in Subsection (3), the request may not be included in any other recorded instrument. The request shall set forth the name and address of the [~~person or~~] persons requesting copies of [~~such~~] those notices and shall identify the trust deed by stating the names of the original parties [~~thereto~~] to the trust deed, the date of filing for record [~~thereof~~] of the trust deed, the book and page where [~~the same~~] the trust deed is recorded or the recorder's entry number, and the legal description of the trust property. The request shall be in substantially the following form:

REQUEST FOR NOTICE

[~~Request is hereby made~~] The undersigned requests that a copy of any notice of default and a copy of notice of sale under the trust deed filed for record _____(month\day\year), and recorded in Book ____, Page ____, Records of ____ County, (or filed for record _____(month\day\year), with recorder's entry number ____, _____ County), Utah, executed by ____ and _____ as [~~trustor~~] trustors, in which ____ is named as beneficiary and ____ as trustee, be mailed to ____ (insert name) ____ at ____ (insert address) _____:

(Insert legal description)

Signature _____

(Certificate of Acknowledgement)

(b) Upon filing for record of a request for notice, the recorder shall index the request in the mortgagor's index, mortgagee's index, and abstract record. Except as provided in [~~this section~~] Subsection (3), the trustee under any [~~such~~] deed of trust is not required to send notice of default or notice of sale to any person not filing a request for notice as described [~~herein~~] in Subsection (1)(a).

(2) Not later than ten days after recordation of a notice of default, the trustee or beneficiary shall

mail, by certified or registered mail, with postage prepaid, a copy of [~~such~~] the notice of default with the recording date shown [~~thereon~~], addressed to each person whose name and address are set forth in a request [~~therefor which~~] that has been recorded prior to the filing for record of the notice of default, directed to the address designated in the request. At least 20 days before the date of sale, the trustee shall mail, by certified or registered mail, return receipt requested with postage prepaid, a copy of the notice of the time and place of sale, addressed to each person whose name and address are set forth in a request [~~therefor which~~] that has been recorded prior to the filing for record of the notice of default, directed to the address designated in the request.

(3) Any trust deed may contain a request that a copy of any notice of default and a copy of any notice of sale [~~thereunder~~] under the trust deed be mailed to any person who is a party [~~thereto~~] to the trust deed at the address of the person set forth [~~therein, and a~~] in the trust deed. A copy of any notice of default and of any notice of sale shall be mailed to [~~each such~~] any person requesting the notice who is a party to the trust deed at the same time and in the same manner required in Subsection (2) as though a separate request [~~therefor~~] had been filed by each [~~of such persons~~] person as provided in [~~this section~~] Subsection (1)(a).

(4) If no address of the trustor is set forth in the trust deed and if no request for notice by the trustor has been recorded as provided in this section, a copy of the notice of default shall, no later than 15 days after the filing for record of the notice of default, either be:

(a) mailed to the address of the property described in the notice of default; or

(b) posted on the property.

[~~(4) If no address of the trustor is set forth in the trust deed and if no request for notice by the trustor has been recorded as provided in this section, a copy of the notice of default shall be published at least three times, once a week for three consecutive weeks, in a newspaper of general circulation in each county in which the trust property, or some part thereof, is situated, such publication to commence not later than ten days after the filing for record of the notice of default. In lieu of this publication, a copy of the notice of default may be delivered personally to the trustor within the ten days or at any time before publication is completed.~~]

(5) No request for a copy of any notice filed for record [~~pursuant to this section~~] under Subsections (1) and (3), nor any statement or allegation in any [~~such request~~] of those requests, nor any record [~~thereof~~] of those requests, shall affect the title to trust property or be considered notice to any person that any person requesting copies of notice of default or of notice of sale has or claims any right, title or interest in, or lien or claim upon, the trust property.

Section 9. Section 57-1-27 is amended to read:

57-1-27. Sale of trust property by public auction -- Postponement of sale.

(1) (a) On the date and at the time and place designated in the notice of sale, the trustee or the attorney for the trustee shall sell the property at public auction to the highest bidder. The trustee, or the attorney for the trustee, may conduct the sale and act as the auctioneer. The trustor, or [~~his~~] the trustor's successor in interest, if present at the sale, may direct the order in which the trust property shall be sold, if the property consists of several known lots or parcels which can be sold [~~to advantage~~] separately. The trustee or attorney for the trustee shall follow these directions. Any person, including the beneficiary or trustee, may bid at the sale. The trustee may bid for the beneficiary. Each bid is considered an irrevocable offer[~~, and if~~]. If the [~~purchaser~~] highest bidder refuses to pay the amount bid by [~~him~~] the highest bidder for the property [~~sold to him at the sale~~], the trustee, or the attorney for the trustee, [~~may again sell the property at any time to the highest bidder. The party~~] shall either:

(i) renotice the sale in the same manner as notice of the original sale is required to be given; or

(ii) sell the property to the next highest bidder.

(b) A bidder refusing to pay the bid price is liable for any loss occasioned by the refusal, including interest, costs, and trustee's and reasonable attorneys' fees. The trustee or the attorney for the trustee may thereafter reject any other bid of that person for the property.

(2) The person conducting the sale may, for any cause he considers expedient, postpone the sale [~~up to a period not to exceed 72 hours~~]. [~~If the last hour of the postponement falls on a Saturday, a Sunday, or a legal holiday, the sale may be postponed until the same hour of the next day which is not a Saturday, a Sunday, or a legal holiday.~~] The person conducting the sale shall give notice of [~~the~~] each postponement by public declaration, by written notice or oral postponement, at the time and place last appointed for the sale. No other notice of the postponed sale is required, unless the [~~sale is postponed for longer than 72 hours beyond the date designated in the notice of sale. In the event of a longer postponement, the sale shall be cancelled and renoticed in the same~~] postponement exceeds 45 days. In that event, the sale shall be renoticed in the same manner as the original notice of sale is required to be given.

Section 10. Section 57-1-28 is amended to read:

57-1-28. Sale of trust property by trustee -- Payment of bid -- Trustee's deed delivered to purchaser -- Recitals -- Effect.

(1) The purchaser at the sale shall pay the price bid as directed by the trustee [~~and upon~~]. The beneficiary shall receive a credit on the beneficiary's bid in an amount not to exceed the amount representing the unpaid principal owed,

accrued interest as of the date of the sale, advances for the payment of taxes, insurance, and maintenance and protection of the trust property and the beneficiary's lien on the trust property, and costs of sale, including reasonable trustee's and attorney's fees. Upon receipt of payment, the trustee shall execute and deliver [~~his~~] the trustee's deed to [~~such~~] the purchaser. The trustee's deed may contain recitals of compliance with the requirements of Sections 57-1-19 through 57-1-36 relating to the exercise of the power of sale and sale of the property described [~~therein~~] in the trustee's deed, including recitals concerning any mailing, personal delivery, and publication of the notice of default, any mailing and the publication and posting of the notice of sale, and the conduct of sale. These recitals constitute prima facie evidence of [~~such~~] compliance with Sections 57-1-19 through 57-1-36, and are conclusive evidence in favor of bona fide purchasers and encumbrancers for value and without notice.

(2) The trustee's deed shall operate to convey to the purchaser, without right of redemption, the trustee's title and all right, title, interest, and claim of the trustor and [~~his~~] the trustor's successors in interest and of all persons claiming by, through, or under them, in and to the property sold, including all [~~such~~] right, title, interest, and claim in and to [~~such~~] the property acquired by the trustor or [~~his~~] the trustor's successors in interest subsequent to the execution of the trust deed, which trustee's deed shall be considered effective and relate back to the time of the sale.

Section 11. Section 57-1-29 is amended to read:

57-1-29. Proceeds of trustee's sale -- Disposition.

(1) The trustee shall apply the proceeds of the trustee's sale, first, to the costs and expenses of exercising the power of sale and of the sale, including the payment of the trustee's and attorney's fees actually incurred not to exceed the amount which may be provided for in the trust deed, second, to payment of the obligation secured by the trust deed, and the balance, if any, to the person or persons legally entitled to the proceeds, or the trustee, in [~~his~~] the trustee's discretion, may deposit the balance of the proceeds with the clerk of the district court of the county in which the sale took place. If the proceeds are deposited with the clerk of the district court, the trustee shall file an affidavit with the clerk setting forth the facts of the deposit and a list of all known claimants, including known addresses. Upon depositing the balance and filing the affidavit, the trustee shall be discharged from all further responsibility and the clerk shall deposit the proceeds with the state treasurer subject to the order of the district court.

(2) The clerk shall give notice of the deposited funds to all claimants listed in the trustee's affidavits within 15 days of receiving the affidavit of deposit from the trustee.

(3) Any claimant may file a petition for adjudication of priority to the funds. The petitioner requesting the funds shall give notice of the petition to all claimants listed in the trustee's affidavit and to any other claimants known to the petitioner. The petitioner's notice must specify that all claimants have 20 days to contest the petition by affidavit or counter-petition. If no affidavit or counter-petition is filed within 20 days, the court shall, without a hearing, enter an order directing the clerk of the court or the county treasurer to disburse the funds to the petitioner according to the petition.

(4) If a petition for adjudication is contested by affidavit or counter-petition, the district court shall, within 20 days, conduct a hearing to establish the priorities of the parties to the deposited funds and give notice to all known claimants of the date and time of the hearing. At the hearing, the court will establish the priorities of the parties to the deposited funds and enter an order directing the clerk of the court or county treasurer to disburse the funds according to the court's determination.

(5) All persons having or claiming to have an interest in the disposition of funds deposited with the court under Subsection (1) who fail to appear and assert their claims are barred from any claim to the funds after the entry of the court's order under Subsection (4).

Section 12. Section 57-1-31 is amended to read:

57-1-31. Trust deeds -- Default in performance of obligations secured -- Reinstatement -- Cancellation of recorded notice of default.

(1) Whenever all or a portion of the principal sum of any obligation secured by a trust deed has, prior to the maturity date fixed in the obligation, become due or been declared due by reason of a breach or default in the performance of any obligation secured by the trust deed, including a default in the payment of interest or of any installment of principal, or by reason of failure of the trustor to pay, in accordance with the terms of the trust deed, taxes, assessments, premiums for insurance, or advances made by the beneficiary in accordance with terms of the obligation or of the trust deed, the trustor or [~~his~~] the trustor's successor in interest in the trust property or any part [~~thereof~~] of the trust property or any other person having a subordinate lien or encumbrance of record [~~thereon~~] on the trust property or any beneficiary under a subordinate trust deed, at any time within three months of the filing for record of notice of default under the trust deed, if the power of sale is to be exercised, may pay to the beneficiary or [~~his~~] the beneficiary's successor in interest the entire amount then due under the terms of the trust deed (including costs and expenses actually incurred in enforcing the terms of the obligation, or trust deed, and the trustee's and attorney's fees actually incurred) other than that portion of the principal as would not then be due had no default occurred, and thereby cure the existing default [~~theretofore existing and, thereupon, all proceedings theretofore had or instituted shall be dismissed or discontinued and~~]. After the beneficiary or beneficiary's successor in interest has been paid and the default cured, the obligation and

trust deed shall be reinstated [~~and shall be and remain in force and effect the same~~] as if no [~~such~~] acceleration had occurred.

(2) If the default is cured and the trust deed reinstated in the manner provided in Subsection (1), [~~the beneficiary, or his assignee, shall, on demand of any person having an interest in the trust property, execute and deliver to him a request to the~~] and a reasonable fee is paid for cancellation, including the cost of recording the cancellation of notice of default, the trustee [~~to~~] shall execute, acknowledge, and deliver a cancellation of the recorded notice of default under the trust deed; and any [~~beneficiary under a trust deed, or his assignee,~~] trustee who[~~, for a period of 30 days after such demand,~~] refuses to [~~request the trustee to~~] execute and [~~deliver~~] record this cancellation within 30 days is liable to the person [~~entitled to such request~~] curing the default for all actual damages resulting from this refusal. A [~~release and~~] reconveyance given by the trustee [~~or beneficiary, or both,~~] or the execution of a trustee's deed constitutes a cancellation of a notice of default. Otherwise, a cancellation of a recorded notice of default under a trust deed is, when acknowledged, entitled to be recorded and is sufficient if made and executed by the trustee in substantially the following form:

Cancellation of Notice of Default

The undersigned hereby cancels the notice of default filed for record _____(month\day\year), and recorded in Book ____, Page ____, Records of ____ County, (or filed of record _____(month\day\year), with recorder's entry No. ____, ____ County), Utah, which notice of default refers to the trust deed executed by ____ and _____ as [~~trustor~~] trustors, in which ____ is named as beneficiary and ____ as trustee, and filed for record _____(month\day\year), and recorded in Book ____, Page ____, Records of ____ County, (or filed of record _____(month\day\year), with recorder's entry No. ____, ____ County), Utah.

(legal description)

Signature of Trustee_____

Section 13. Section 57-1-32 is amended to read:

57-1-32. Sale of trust property by trustee -- Action to recover balance due upon obligation for which trust deed was given as security -- Collection of costs and attorney's fees.

At any time within three months after any sale of property under a trust deed[~~,~~] as [~~hereinabove~~] provided in Sections 57-1-23, 57-1-24, and 57-1-27, an action may be commenced to recover the balance due upon the obligation for which the trust deed was given as security, and in [~~such~~] that action the complaint shall set forth the entire amount of the indebtedness [~~which~~] that was secured by [~~such~~] the trust deed, the amount for which [~~such~~] the property was sold, and the fair market value [~~thereof at the~~] of the property at the date of sale. Before rendering judgment, the court shall find the fair market value of the property at the date of sale [~~of the property sold~~]. The court may not render judgment for more than the amount by which the amount of the indebtedness with interest, costs, and expenses of sale, including trustee's and attorney's fees, exceeds the fair market value of the property as of the date of the sale. In any action brought under this section, the prevailing party shall be entitled to collect its costs and reasonable attorney fees incurred [~~in bringing an action under this section~~].

Section 14. Section 57-1-33.1 is amended to read:

57-1-33.1. Reconveyance of a trust deed -- Erroneous reconveyance.

(1) (a) When an obligation secured by a trust deed has been satisfied, the trustee shall, upon written request by the beneficiary, reconvey the trust property.

(b) At the time the beneficiary requests a reconveyance under Subsection (1)(a), the beneficiary shall deliver to the trustee or the trustee's successor in interest the trust deed and the note or other evidence that the obligation securing the trust deed has been satisfied.

(2) The reconveyance under Subsection (1) may designate the grantee as "the person or persons entitled thereto."

(3) If a reconveyance is erroneously recorded by a beneficiary, the effect of the reconveyance may be nullified and the trust deed reinstated by the recording of a corrective affidavit executed by the then current beneficiary describing the trust deed and setting forth the fact of the erroneous reconveyance. Upon the recording of a corrective affidavit or similar instrument, the trust deed has the same priority as it did prior to the erroneous reconveyance. However, any lien or interest that was recorded or attached to the trust deed property between the time of the recording of the erroneous reconveyance and the recording of the corrective affidavit or similar instrument has priority over the reinstated trust deed, unless the lien or interest was recorded or attached with actual knowledge that the trust deed had been reconveyed erroneously.

CHAPTER 237
S. B. 60
Passed February 20, 2001
Approved March 19, 2001
Effective April 30, 2001

UNIFORM ATHLETE AGENTS ACT

Sponsor: Lyle W. Hillyard

This act enacts the Uniform Athlete Agents Act. The act defines terms. The act requires registration of athlete agents and describes the form of the application for registration. The act creates requirements for agency contracts including warnings to student athletes. The act requires a student-athlete to notify the educational institution where the student is enrolled within 72 hours of signing an agency contract. The act allows a student-athlete to cancel an agency contract within 14 days after it is signed. The act requires an athlete agent to retain records. The act prohibits an athlete agent from engaging in certain conduct. The act provides criminal, civil, and administrative penalties.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:
15-9-101, Utah Code Annotated 1953
15-9-102, Utah Code Annotated 1953
15-9-103, Utah Code Annotated 1953
15-9-104, Utah Code Annotated 1953
15-9-105, Utah Code Annotated 1953
15-9-106, Utah Code Annotated 1953
15-9-107, Utah Code Annotated 1953
15-9-108, Utah Code Annotated 1953
15-9-109, Utah Code Annotated 1953
15-9-110, Utah Code Annotated 1953
15-9-111, Utah Code Annotated 1953
15-9-112, Utah Code Annotated 1953
15-9-113, Utah Code Annotated 1953
15-9-114, Utah Code Annotated 1953
15-9-115, Utah Code Annotated 1953
15-9-116, Utah Code Annotated 1953
15-9-117, Utah Code Annotated 1953
15-9-118, Utah Code Annotated 1953
15-9-119, Utah Code Annotated 1953

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

Section 1. Section 15-9-101 is enacted to read:

CHAPTER 9. UNIFORM ATHLETE AGENTS ACT

15-9-101. Title.

This chapter is known as the "Uniform Athlete Agents Act."

Section 2. Section 15-9-102 is enacted to read:

15-9-102. Definitions.

As used in this chapter:

(1) "Agency contract" means an agreement in which a student-athlete authorizes a person to negotiate or solicit on behalf of the student-athlete a professional-sports-services contract or an endorsement contract.

(2) "Athlete agent" means an individual who enters into an agency contract with a student-athlete or, directly or indirectly, recruits or solicits a student-athlete to enter into an agency contract. The term includes an individual who represents to the public that the individual is an athlete agent. The term does not include a spouse, parent, sibling, or grandparent of the student-athlete or an individual acting solely on behalf of a professional sports team or professional sports organization.

(3) "Athletic director" means an individual responsible for administering the overall athletic program of an educational institution or, if an educational institution has separately administered athletic programs for male students and female students, the athletic program for males or the athletic program for females, as appropriate.

(4) "Contact" means a communication, direct or indirect, between an athlete agent and a student-athlete, to recruit or solicit the student-athlete to enter into an agency contract.

(5) "Division" means the Division of Occupational and Professional Licensing created in Section 58-1-103.

(6) "Endorsement contract" means an agreement under which a student-athlete is employed or receives consideration to use on behalf of the other party any value that the student-athlete may have because of publicity, reputation, following, or fame obtained because of athletic ability or performance.

(7) "Intercollegiate sport" means a sport played at the collegiate level for which eligibility requirements for participation by a student-athlete are established by a national association for the promotion or regulation of collegiate athletics.

(8) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

(9) "Professional-sports-services contract" means an agreement under which an individual is employed or agrees to render services as a player on a professional sports team, with a professional sports organization, or as a professional athlete.

(10) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(11) "Registration" means registration as an athlete agent pursuant to this chapter.

(12) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular

possession subject to the jurisdiction of the United States.

(13) "Student-athlete" means an individual who engages in, is eligible to engage in, or may be eligible in the future to engage in, any intercollegiate sport. If an individual is permanently ineligible to participate in a particular intercollegiate sport, the individual is not a student-athlete for purposes of that sport.

Section 3. Section 15-9-103 is enacted to read:

15-9-103. Administration -- Rulemaking -- Service of process -- Athlete Agents Licensing Board.

(1) (a) This chapter shall be administered by the Division of Occupational and Professional Licensing and is subject to the requirements of Title 58, Chapter 1, Division of Occupational and Professional Licensing Act, so long as the requirements of Title 58, Chapter 1, are not inconsistent with the requirements of this chapter.

(b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the division may make rules necessary to implement the provisions of this chapter.

(2) By acting as an athlete agent in this state, a nonresident individual appoints the director of the division as the individual's agent for service of process in any civil action in this state related to the individual's acting as an athlete agent in this state.

(3) (a) There is created the Athlete Agents Licensing Board consisting of four athlete agents and one member of the general public.

(b) The Athlete Agents Licensing Board shall be appointed and serve in accordance with Section 58-1-201.

(c) The duties and responsibilities of the Athlete Agents Licensing Board are in accordance with Sections 58-1-202 and 58-1-203.

(d) In addition, the Athlete Agents Licensing Board shall designate one of its members on a permanent or rotating basis to:

(i) assist the division in reviewing complaints concerning the unlawful or unprofessional conduct of a licensee; and

(ii) advise the division in its investigation of these complaints.

(e) A member of the Athlete Agents Licensing Board who has, under Subsection (3)(d), reviewed a complaint or advised in its investigation may be disqualified from participating with the board when the board serves as a presiding officer in an adjudicative proceeding concerning the complaint.

Section 4. Section 15-9-104 is enacted to read:

15-9-104. Athlete agents -- Registration required -- Void contracts.

(1) Except as otherwise provided in Subsection (2), an individual may not act as an athlete agent in this state without holding a certificate of registration under Section 15-9-106 or 15-9-108.

(2) Before being issued a certificate of registration, an individual may act as an athlete agent in this state for all purposes except signing an agency contract, if:

(a) a student-athlete or another person acting on behalf of the student-athlete initiates communication with the individual; and

(b) within seven days after an initial act as an athlete agent, the individual submits an application for registration as an athlete agent in this state.

(3) An agency contract resulting from conduct in violation of this section is void and the athlete agent shall return any consideration received under the contract.

Section 5. Section 15-9-105 is enacted to read:

15-9-105. Registration as an athlete agent -- Form -- Requirements.

(1) An applicant for registration shall submit an application for registration to the division in a form prescribed by the division. An application filed under this section is a public record under Title 63, Chapter 2, Government Records Access and Management Act. The application must be in the name of an individual and, except as otherwise provided in Subsection (2), signed or otherwise authenticated by the applicant under penalty of perjury and state or contain:

(a) the name of the applicant and the address of the applicant's principal place of business;

(b) the name of the applicant's business or employer, if applicable;

(c) any business or occupation engaged in by the applicant for the five years immediately preceding the date of submission of the application;

(d) a description of the applicant's:

(i) formal training as an athlete agent;

(ii) practical experience as an athlete agent; and

(iii) educational background relating to the applicant's activities as an athlete agent;

(e) the names and addresses of three individuals not related to the applicant who are willing to serve as references;

(f) the name, sport, and last-known team for each individual for whom the applicant acted as an athlete agent during the five years next preceding the date of submission of the application;

(g) the names and addresses of all persons who are:

(i) with respect to the athlete agent's business if it is not a corporation, the partners, members, officers, managers, associates, or profit-sharers of the business; and

(ii) with respect to a corporation employing the athlete agent, the officers, directors, and any shareholder of the corporation having an interest of 5% or greater;

(h) whether the applicant or any person named pursuant to Subsection (1)(g) has been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony, and identify the crime;

(i) whether there has been any administrative or judicial determination that the applicant or any person named pursuant to Subsection (1)(g) has made a false, misleading, deceptive, or fraudulent representation;

(j) any instance in which the conduct of the applicant or any person named pursuant to Subsection (1)(g) resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student-athlete or educational institution;

(k) any sanction, suspension, or disciplinary action taken against the applicant or any person named pursuant to Subsection (1)(g) arising out of occupational or professional conduct; and

(l) whether there has been any denial of an application for, suspension or revocation of, or refusal to renew, the registration or licensure of the applicant or any person named pursuant to Subsection (1)(g) as an athlete agent in any state.

(2) An individual who has submitted an application for, and holds a certificate of, registration or licensure as an athlete agent in another state, may submit a copy of the application and certificate in lieu of submitting an application in the form prescribed pursuant to Subsection (1). The division shall accept the application and the certificate from the other state as an application for registration in this state if the application to the other state:

(a) was submitted in the other state within six months immediately preceding the submission of the application in this state and the applicant certifies that the information contained in the application is current;

(b) contains information substantially similar to or more comprehensive than that required in an application submitted in this state; and

(c) was signed by the applicant under penalty of perjury.

Section 6. Section 15-9-106 is enacted to read:

15-9-106. Certificate of registration -- Issuance or denial -- Renewal.

(1) Except as otherwise provided in Subsection (2), the division shall issue a certificate of registration to an individual who complies with Subsection 15-9-105(1) or whose application has been accepted under Subsection 15-9-105(2).

(2) The division may refuse to issue a certificate of registration if the division determines that the applicant has engaged in conduct that has a significant adverse effect on the applicant's fitness to act as an athlete agent. In making the determination, the division may consider whether the applicant has:

(a) been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony;

(b) made a materially false, misleading, deceptive, or fraudulent representation in the application or as an athlete agent;

(c) engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity;

(d) engaged in conduct prohibited by Section 15-9-114;

(e) had a registration or licensure as an athlete agent suspended, revoked, or denied or been refused renewal of registration or licensure as an athlete agent in any state;

(f) engaged in conduct the consequence of which was that a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event was imposed on a student-athlete or educational institution; or

(g) engaged in conduct that significantly, adversely reflects on the applicant's credibility, honesty, or integrity.

(3) In making a determination under Subsection (2), the division shall consider:

(a) how recently the conduct occurred;

(b) the nature of the conduct and the context in which it occurred; and

(c) any other relevant conduct of the applicant.

(4) An athlete agent may apply to renew a registration by submitting an application for renewal in a form prescribed by the division. An application filed under this section is a public record under Title 63, Chapter 2, Government Records Access and Management Act. The application for renewal must be signed by the applicant under penalty of perjury and must contain current information on all matters required in an original registration.

(5) An individual who has submitted an application for renewal of registration or licensure in another state, in lieu of submitting an application for renewal in the form prescribed pursuant to Subsection (4), may file a copy of the application for renewal and a valid certificate of registration or licensure from the other state. The division shall accept the application for renewal from the other state as an application for renewal in this state if the application to the other state:

(a) was submitted in the other state within six months immediately preceding the filing in this state and the applicant certifies the information contained in the application for renewal is current;

(b) contains information substantially similar to or more comprehensive than that required in an application for renewal submitted in this state; and

(c) was signed by the applicant under penalty of perjury.

(6) A certificate of registration or a renewal of a registration is valid for two years.

Section 7. Section 15-9-107 is enacted to read:

15-9-107. Suspension, revocation, or refusal to renew registration.

(1) The division may suspend, revoke, or refuse to renew a registration for conduct that would have justified denial of registration under Subsection 15-9-106(2).

(2) The division may suspend, revoke, or refuse to renew a certificate of registration or licensure only after proper notice and an opportunity for a hearing. Title 63, Chapter 46b, Administrative Procedures Act, applies to this chapter.

Section 8. Section 15-9-108 is enacted to read:

15-9-108. Temporary registration.

The division may issue a temporary certificate of registration while an application for registration or renewal of registration is pending.

Section 9. Section 15-9-109 is enacted to read:

15-9-109. Registration and renewal fees.

(1) An application for registration or renewal of registration must be accompanied by a fee in an amount determined by the division in accordance with Section 63-38-3.2.

(2) The division shall establish fees for:

(a) an initial application for registration;

(b) an application for registration based upon a certificate of registration or licensure issued by another state;

(c) an application for renewal of registration; and

(d) an application for renewal of registration based upon an application for renewal of registration or licensure submitted in another state.

Section 10. Section 15-9-110 is enacted to read:

15-9-110. Required form of contract.

(1) An agency contract must be in a record, signed or otherwise authenticated by the parties.

(2) An agency contract must state or contain:

(a) the amount and method of calculating the consideration to be paid by the student-athlete for services to be provided by the athlete agent under the contract and any other consideration the athlete agent has received or will receive from any other source for entering into the contract or for providing the services;

(b) the name of any person not listed in the application for registration or renewal of registration who will be compensated because the student-athlete signed the agency contract;

(c) a description of any expenses that the student-athlete agrees to reimburse;

(d) a description of the services to be provided to the student-athlete;

(e) the duration of the contract; and

(f) the date of execution.

(3) An agency contract must contain, in close proximity to the signature of the student-athlete, a conspicuous notice in boldface type in capital letters stating:

WARNING TO STUDENT-ATHLETE

IF YOU SIGN THIS CONTRACT:

(1) YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT-ATHLETE IN YOUR SPORT;

(2) IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN 72 HOURS AFTER ENTERING INTO THIS CONTRACT, BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR; AND

(3) YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.

(4) An agency contract that does not conform to this section is voidable by the student-athlete. If a student-athlete voids an agency contract, the student-athlete is not required to pay any consideration under the contract or to return any consideration received from the athlete agent to induce the student-athlete to enter into the contract.

(5) The athlete agent shall give a record of the signed or otherwise authenticated agency contract to the student-athlete at the time of execution.

Section 11. Section 15-9-111 is enacted to read:

15-9-111. Notice to educational institution.

(1) Within 72 hours after entering into an agency contract or before the next scheduled athletic event in which the student-athlete may participate, whichever occurs first, the athlete agent shall give notice in a record of the existence of the contract to the athletic director of the educational institution at which the student-athlete is enrolled or the athlete agent has reasonable grounds to believe the student-athlete intends to enroll.

(2) Within 72 hours after entering into an agency contract or before the next athletic event in which the student-athlete may participate, whichever occurs first, the student-athlete shall inform the athletic director of the educational institution at

which the student-athlete is enrolled that he or she has entered into an agency contract.

Section 12. Section 15-9-112 is enacted to read:

15-9-112. Student-athlete's right to cancel.

(1) A student-athlete may cancel an agency contract by giving notice of the cancellation to the athlete agent in a record within 14 days after the contract is signed.

(2) A student-athlete may not waive the right to cancel an agency contract.

(3) If a student-athlete cancels an agency contract, the student-athlete is not required to pay any consideration under the contract or to return any consideration received from the athlete agent to induce the student-athlete to enter into the contract.

Section 13. Section 15-9-113 is enacted to read:

15-9-113. Required records.

(1) An athlete agent shall retain the following records for a period of five years:

(a) the name and address of each individual represented by the athlete agent;

(b) any agency contract entered into by the athlete agent; and

(c) any direct costs incurred by the athlete agent in the recruitment or solicitation of a student-athlete to enter into an agency contract.

(2) Records required by Subsection (1) to be retained are open to inspection by the division during normal business hours.

Section 14. Section 15-9-114 is enacted to read:

15-9-114. Prohibited conduct.

(1) An athlete agent, with the intent to induce a student-athlete to enter into an agency contract, may not:

(a) give any materially false or misleading information or make a materially false promise or representation;

(b) furnish anything of value to a student-athlete before the student-athlete enters into the agency contract; or

(c) furnish anything of value to any individual other than the student-athlete or another registered athlete agent.

(2) An athlete agent may not intentionally:

(a) initiate contact with a student-athlete unless registered under this chapter;

(b) refuse or fail to retain or permit inspection of the records required to be retained by Section 15-9-113;

(c) fail to register when required by Section 15-9-104;

(d) provide materially false or misleading information in an application for registration or renewal of registration;

(e) predate or postdate an agency contract; or

(f) fail to notify a student-athlete before the student-athlete signs or otherwise authenticates an agency contract for a particular sport that the signing or authentication may make the student-athlete ineligible to participate as a student-athlete in that sport.

Section 15. Section 15-9-115 is enacted to read:

15-9-115. Criminal penalties.

An athlete agent who violates Section 15-9-114 is guilty of a class A misdemeanor.

Section 16. Section 15-9-116 is enacted to read:

15-9-116. Civil remedies.

(1) An educational institution has a right of action against an athlete agent or a former student-athlete for damages caused by a violation of this chapter. In an action under this section, the court may award to the prevailing party costs and reasonable attorney's fees.

(2) Damages of an educational institution under Subsection (1) include losses and expenses incurred because, as a result of the conduct of an athlete agent or former student-athlete, the educational institution was injured by a violation of this chapter or was penalized, disqualified, or suspended from participation in athletics by a national association for the promotion and regulation of athletics, by an athletic conference, or by reasonable self-imposed disciplinary action taken to mitigate sanctions likely to be imposed by such an organization.

(3) A right of action under this section does not accrue until the educational institution discovers or by the exercise of reasonable diligence would have discovered the violation by the athlete agent or former student-athlete.

(4) Any liability of the athlete agent or the former student-athlete under this section is several and not joint.

(5) This chapter does not restrict rights, remedies, or defenses of any person under law or equity.

Section 17. Section 15-9-117 is enacted to read:

15-9-117. Civil and administrative penalty.

(1) The division may assess a civil penalty against an athlete agent not to exceed $25,000 for a violation of this chapter.

(2) An administrative penalty collected under Subsection (1) shall be deposited into the Commerce Service Fund created in Section 13-1-2.

Section 18. Section 15-9-118 is enacted to read:

15-9-118. Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Section 19. Section 15-9-119 is enacted to read:

15-9-119. Electronic Signatures in Global and National Commerce Act.

The provisions of this chapter governing the legal effect, validity, or enforceability of electronic records or signatures, and of contracts formed or performed with the use of such records or signatures conform to the requirements of Section 102 of the Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106-229, 114 Stat. 464 (2000), and supersede, modify, and limit the Electronic Signatures in Global and National Commerce Act.

CHAPTER 238
S. B. 61
Passed February 23, 2001
Approved March 19, 2001
Effective July 1, 2001
(Exception clause in Section 9)

ENHANCEMENTS TO THE STATE SYSTEMS OF PUBLIC AND HIGHER EDUCATION

Sponsor: Lyle W. Hillyard
Ron Allen
D. Edgar Allen
Leonard M. Blackham
Curtis S. Bramble
D. Chris Buttars
Gene Davis
Mike Dmitrich
Dan R. Eastman
Beverly Ann Evans
David L. Gladwell
Karen Hale
Parley Hellewell
John W. Hickman
Scott K. Jenkins
Paula F. Julander
Peter C. Knudson
Al Mansell
Ed P. Mayne
Millie M. Peterson
L. Steven Poulton
Terry R. Spencer
David H. Steele
Howard A. Stephenson
Pete Suazo
John L. Valentine
Michael G. Waddoups
Carlene M. Walker
Bill Wright

This act modifies provisions related to the state systems of public and higher education by establishing an Engineering and Computer Science Initiative within the state system of higher education and the Public Education Job Enhancement Program for secondary teachers in mathematics, physics, chemistry, physical science, and information technology within the public education system. The act identifies components of the higher education initiative to include increasing program capacity, providing supplemental monies for equipment purchases, and providing incentives. The act provides for a $4,000,000 appropriation to fund the Engineering and Computer Science Initiative and a $9,900,000 appropriation to fund the Public Education Job Enhancement Program. The act has a split effective date of May 1, 2001, and July 1, 2001.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
63-55-253, as last amended by Chapter 59, Laws of Utah 2000

ENACTS:
53A-1a-601, Utah Code Annotated 1953
53A-1a-602, Utah Code Annotated 1953
53B-6-105, Utah Code Annotated 1953
53B-6-105.5, Utah Code Annotated 1953
53B-6-105.7, Utah Code Annotated 1953
53B-6-105.9, Utah Code Annotated 1953

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

Section 1. Section 53A-1a-601 is enacted to read:
Part 6. Public Education Job Enhancement Program

53A-1a-601. Job enhancements for technology training.

(1) In conjunction with the Engineering and Computer Science Initiative provided for in Section 53B-6-105, there is established a Public Education Job Enhancement Program to attract, train, and retain highly qualified secondary teachers in mathematics, physics, chemistry, physical science, learning technology, and information technology.

(2) The program shall provide for the following:

(a) application by a school district superintendent or the principal of a secondary school on behalf of a qualified teacher;

(b) an award of up to $20,000 or a scholarship to cover the tuition costs for a master's degree, an endorsement, or graduate education in the areas identified in Subsection (1) to be given to selected public school teachers on a competitive basis:

(i) whose applications are approved under Subsection 53A-1a-602(4); and

(ii) who teach at the secondary level in the state's public education system for four years in the areas identified in Subsection (1);

(c) (i) as to the cash awards under Subsection (2)(b), payment of the award in two installments, with an initial payment of up to $10,000 at the beginning of the term and up to $10,000 at the conclusion of the term;

(ii) repayment of a portion of the initial payment by the teacher if the teacher fails to complete two years of the four-year teaching term in the areas identified in Subsection (1) as provided by rule of the State Board of Education in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, unless waived for good cause by the Job Enhancement Committee created in Section 53A-1a-602; and

(iii) nonpayment of the second installment if the teacher fails to complete the four-year teaching term; and

(d) (i) as to the scholarships awarded under Subsection (2)(b), provision for the providing institution to certify adequate performance in obtaining the master's degree, endorsement, or graduate education in order for the teacher to maintain the scholarship; and

(ii) repayment by the teacher of a prorated portion of the scholarship, if the teacher fails to teach in the state system of public education in the areas identified in Subsection (1) for four years after obtaining the master's degree, the endorsement, or graduate education.

(3) An individual teaching in the public schools under a letter of authorization may participate in the cash award program if:

(a) the individual has taught under the letter of authorization for at least one year in the areas referred to in Subsection (1); and

(b) the application made under Subsection (2)(a) is based in large part upon the individual receiving a superior evaluation as a classroom teacher.

(4) (a) The program may provide for the expenditure of up to $1,000,000 of available monies, if at least an equal amount of matching monies become available, to provide professional development training to superintendents and principals in the effective use of technology in public schools.

(b) An award granted under this Subsection (4) shall be made in accordance with criteria developed and adopted by the Job Enhancement Committee created in Section 53A-1-602.

Section 2. Section 53A-1a-602 is enacted to read:

53A-1a-602. Job Enhancement Committee -- Composition -- Duties -- Appropriation.

(1) There is created a Job Enhancement Committee to implement and administer the Public Education Job Enhancement Program established in Section 53A-1a-601.

(2) (a) The committee shall consist of:

(i) two members of the State Board of Education selected by the board;

(ii) two members of the State Board of Regents selected by the board;

(iii) six members of the general public who have business experience in mathematics, physics, chemistry, physical science, learning technology, or information technology selected by the governor; and

(iv) a master high school teacher, who has teaching experience in mathematics, physics, chemistry, physical science, learning technology, or information technology, selected by the superintendent of public instruction.

(b) Committee members shall receive no compensation or benefits for their service on the committee, but may receive per diem and expenses incurred in the performance of their duties at rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(3) (a) The committee shall receive and review applications submitted for participation in the Public Education Job Enhancement Program established under Section 53A-1a-601.

(b) In reviewing applications, the committee shall focus on:

(i) the prioritized critical areas of need identified under Subsection (4)(a); and

(ii) the awards being made on a competitive basis.

(c) If the committee approves an application received under Subsection (3)(a), it shall contract directly with the teacher applicant to receive the award or the scholarship for a master's degree, an endorsement, or graduate education, subject to Subsection 53A-1a-601(2).

(d) The State Board of Education, through the superintendent of public instruction, shall provide staff support for the committee and adequate and reliable data on the state's supply of and demand for qualified secondary teachers in the subjects listed in Subsection 53A-1a-601(1).

(4) The committee may apply for grants and matching monies to enhance funding available for the program established in Section 53A-1a-601.

(5) The committee shall make a rule in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, establishing policies and procedures for:

(a) making the awards and offering the scholarships in accordance with prioritized critical areas of need as determined by the committee;

(b) timelines for the submission and approval of applications under Subsection (3); and

(c) the distribution of the awards and scholarships to successful applicants based on available monies provided by legislative appropriation.

(6) The Legislature shall make an annual appropriation to the State Board of Education to fund the Public Education Job Enhancement Program established under Section 53A-1a-601.

(7) The committee shall make an annual report to the Legislature through the Education Interim Committee, the governor, the State Board of Education, and the State Board of Regents on the status of the program, together with any recommendations for modification, expansion, or termination of the program.

Section 3. Section 53B-6-105 is enacted to read:

53B-6-105. Engineering and Computer Technology Initiative.

(1) The Legislature recognizes that a significant increase in the number of engineering, computer science, and related technology graduates from the state system of higher education is required over the next several years to advance the intellectual, cultural, social, and economic well-being of the state and its citizens.

(2) (a) (i) The State Board of Regents shall therefore develop, establish, and maintain an Engineering and Computer Science Initiative within the state system of higher education to

double the number of graduates in engineering, computer science, and related technology by 2006 and triple the number of graduates by 2009.

(ii) The board shall make a rule in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, providing the criteria for those fields of study that qualify as "related technology" under this section and Sections 53B-6-105.7 and 53B-6-105.9.

(b) The initiative shall include components that:

(i) improve the quality of instructional programs in engineering, computer science, and related technology by providing supplemental monies for equipment purchases; and

(ii) provide incentives to:

(A) students through a loan and loan forgiveness program under Section 53B-6-105.7; and

(B) institutions to hire and retain faculty under Section 53B-6-105.9.

(3) The increase in program capacity under Subsection (2)(a) shall include funding for new and renovated capital facilities and funding for new engineering and computer science programs.

(4) The Legislature shall provide an annual appropriation to fund the initiative as a budget line item for the State Board of Regents.

Section 4. Section 53B-6-105.5 is enacted to read:

53B-6-105.5. Technology Initiative Advisory Board -- Composition -- Duties.

(1) There is created a Technology Initiative Advisory Board to assist and make recommendations to the State Board of Regents in its administration of the Engineering and Computer Science Initiative established under Section 53B-6-105.

(2) (a) The advisory board shall consist of individuals appointed by the governor from business and industry who have expertise in the areas of engineering, computer science, and related technologies.

(b) The advisory board shall select a chair and cochair.

(c) The advisory board shall meet at the call of the chair.

(d) The State Board of Regents, through the commissioner of higher education, shall provide staff support for the advisory board.

(3) Members of the advisory board shall receive no compensation for their service on the board, but may receive per diem and expenses incurred in the performance of their duties at rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(4) The advisory board has the following duties and responsibilities:

(a) to make recommendations to the State Board of Regents on the allocation and distribution of monies appropriated to fund the faculty incentive program established in Section 53B-6-105.9 and the equipment purchases required to improve the quality of instructional programs under Subsection 53B-6-105(2)(b)(i) to include;

(i) a strategic plan that details actions required by the board of regents to meet the intent of the Engineering and Technology Science Initiative; and

(ii) a review and assessment of engineering, computer science, and related technology programs currently being offered at higher education institutions and their impact on the economic prosperity of the state;

(b) to provide the State Board of Regents with an assessment and reporting plan that:

(i) measures results against expectations under the initiative, including verification of the matching requirements for institutions of higher education to receive monies under Subsection 53B-6-105.9(1); and

(ii) includes an analysis of market demand for technical employment, program articulation among higher education institutions in engineering, computer science, and related technology, tracking of student placement, student admission to the initiative program by region, transfer rates, and retention in and graduation rates from the initiative program; and

(c) to make an annual report of its activities to the State Board of Regents, the Legislature through the Education Interim Committee and the Higher Education Appropriations Subcommittee, and the governor.

Section 5. Section 53B-6-105.7 is enacted to read:

53B-6-105.7. Initiative student loan and loan forgiveness program.

(1) (a) There is established an engineering, computer science, and related technology student loan program as a component of the initiative created in Section 53B-6-105.

(b) The program is established to recruit and train engineering, computer science, and related technology students to assist in providing for and advancing the intellectual and economic welfare of the state.

(2) (a) The board:

(i) may make rules for the overall administration of the program in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act; and

(ii) shall administer the program consistent with the general student loan provisions outlined in Title 53B.

(b) The board shall also use the following policies and procedures in administering the student loan program:

(i) students may use their loans at any institution within the state system of higher education that

offers an engineering, computer science, or related technology baccalaureate degree;

(ii) loans shall be given to students who declare an intent to complete a prescribed course of instruction in one of the areas referred to in Subsection (2)(b)(i) and to work in the state for a period of four years after graduation in one of those areas;

(iii) a loan may be cancelled at any time by the institution of attendance, if the student fails to make reasonable progress towards obtaining the baccalaureate degree or there appears to be a reasonable certainty that the student does not intend to work in the state upon graduation, and the board shall require repayment together with interest; and

(iv) (A) a loan recipient who does not work in the state in one of the areas listed in Subsection (1)(a) for a term equal to the number of years of the loan within a reasonable period of time after graduation shall repay a graduated portion of the loan based upon the uncompleted term together with appropriate interest, unless waived for good cause; and

(B) one year of employment as an engineer or in the field of computer science or related technologies is credit for a one-year loan for tuition and fees.

(3) The Legislature shall make an annual appropriation to the board to fund the student loan program created in this section.

Section 6. Section 53B-6-105.9 is enacted to read:

53B-6-105.9. Incentive program for engineering, computer science, and related technology faculty.

(1) The Legislature shall provide an annual appropriation to help fund the faculty incentive component of the Engineering and Computer Science Initiative established under Subsection 53B-6-105(2)(b)(ii)(B).

(2) The appropriation shall be used to hire, recruit, and retain outstanding faculty in engineering, computer science, and related technology fields under guidelines established by the State Board of Regents.

(3) (a) State institutions of higher education shall match the appropriation on a one-to-one basis in order to qualify for state monies appropriated under Subsection (1).

(b) (i) Qualifying institutions shall annually report their matching dollars to the board.

(ii) The board shall make a summary report of the institutional matches to the Education Interim Committee of the Legislature.

(4) The board shall make a rule in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, establishing policies and procedures to apply for and distribute the state appropriation to qualifying institutions.

Section 7. Section 63-55-253 is amended to read:

63-55-253. Repeal dates, Title 53A.

The following provisions of Title 53A are repealed on the following dates:

(1) Title 53A, Chapter 1a, Part 2, Strategic Planning for Public and Higher Education Committee is repealed July 1, 2002.

(2) Title 53A, Chapter 1a, Part 6, Public Education Job Enhancement Program is repealed July 1, 2005.

[~~(2)~~] (3) The State Textbook Commission, created in Section 53A-14-101, is repealed July 1, 2001.

[~~(3)~~] (4) Title 53A, Chapter 20a, Public Education Revenue Bond Act, is repealed July 1, 2007.

Section 8. Appropriation.

(1) For fiscal year 2001-02, there is appropriated from the following sources to the State Board of Regents the following amounts for the following purposes:

(a) $1,000,000 of income tax revenues for the faculty incentive program established under Section 53B-6-105.9;

(b) a one-time appropriation of $2,500,000 of income tax revenues for equipment purchases to improve the quality of instructional programs under the engineering and computer science initiative as provided in Subsection 53B-6-105(2)(b)(ii); and

(c) a one-time appropriation of $500,000 of income tax revenues to capitalize the student loan program established under Section 53B-6-105.7.

(2) (a) For fiscal year 2001-02, there is appropriated from the Uniform School Fund to the State Board of Education $2,400,000 to help fund the Public Education Job Enhancement Program as required under Subsection 53A-1a-602(5)(a).

(b) For fiscal year 2000-01, there is appropriated from the Uniform School Fund to the State Board of Education $7,500,000 as a one-time supplemental appropriation to help fund the Public Education Job Enhancement Program as required under Subsection 53A-1a-602(5)(a).

(3) The appropriations under Subsections (1) and (2) are nonlapsing.

Section 9. Effective date.

This act takes effect on July 1, 2001 except that Subsection (2)(b) of the Appropriation Section 8 takes effect May 1, 2001.

CHAPTER 239
S. B. 65
Passed February 21, 2001
Approved March 19, 2001
Effective April 30, 2001

BONDING FOR SOLDIER HOLLOW GOLF COURSE

Sponsor: David H. Steele

This act modifies provisions related to bonding. The act authorizes the State Building Ownership Authority to issue revenue bonds for funding the construction of a 36-hole golf course at Soldier Hollow in the Wasatch Mountain State Park.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:
63B-10-301, Utah Code Annotated 1953

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

Section 1. Section 63B-10-301 is enacted to read:
Part 3. Revenue Bond Authorization

63B-10-301. (Codified as 63B-10-302) Soldier Hollow bond authorization.

(1) It is the intent of the Legislature that the State Building Ownership Authority, under the authority of Title 63, Chapter 9a, State Building Ownership Act, may issue or execute obligations to provide up to $12,000,000 for the construction of a 36-hole golf course at Soldier Hollow in the Wasatch Mountain State Park, including necessary facilities such as a clubhouse, restroom facilities, and maintenance facilities, together with additional amounts necessary to:

(a) pay costs of issuance;

(b) pay capitalized interest; and

(c) fund any debt service reserve requirements.

(2) The State Building Ownership Authority shall work cooperatively with the Division of Parks and Recreation in the design and construction of the golf course at Soldier Hollow.

CHAPTER 240
S. B. 69
Passed February 27, 2001
Approved March 19, 2001
Effective September 1, 2001

MEDICAL CLAIMS AMENDMENTS

Sponsor: Leonard M. Blackham

This act modifies the Insurance Code to establish a health care provider claims practice. The act establishes the duties of an insurer to timely pay providers and the duty of providers to respond to insurer request for information. The act provides for penalties for failure to timely pay a claim or failure to timely provide information on a claim. The act defines an unfair claim settlement practice. The act authorizes the Insurance Commissioner to audit compliance, impose sanctions, and adopt rules necessary to enforce the act. The act provides an effective date.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
31A-26-301.5, as last amended by Chapter 198, Laws of Utah 2000

ENACTS:
31A-26-301.6, Utah Code Annotated 1953

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

Section 1. Section 31A-26-301.5 is amended to read:

31A-26-301.5. Health care claims practices.

(1) Except as provided in Section 31A-8-407, an insured retains ultimate responsibility for paying for health care services the insured receives. If a service is covered by one or more individual or group health insurance policies, all insurers covering the insured have the responsibility to pay valid health care claims in a timely manner according to the terms and limits specified in the policies.

(2) (a) Except as provided in Section 31A-22-610.1, a health care provider may bill and collect for any deductible, copayment, or uncovered service.

(b) A health care provider may bill an insured for services covered by health insurance policies or may otherwise notify the insured of the expenses covered by the policies. However, a provider may not make any report to a credit bureau, use the services of a collection agency, or use methods other than routine billing or notification until the later of:

[~~(i) 15 days after the date all insurance companies covering the insured have paid their portion of the claim covered by the policies;~~]

[~~(ii) 60 days from the date all insurers covering the insured are billed for the covered service; or~~]

(i) the expiration of the time afforded to an insurer under Section 31A-26-301.6 to determine its obligation to pay or deny the claim without penalty; or

[~~(iii)~~] (ii) in the case of medicare beneficiaries or retirees 65 years of age or older, 60 days from the date medicare determines its liability for the claim.

(c) Beginning October 31, 1992, all insurers covering the insured shall notify the insured of payment and the amount of payment made to the provider.

(3) The commissioner shall make rules consistent with this chapter governing disclosure to the insured of customary charges by health care providers on the explanation of benefits as part of the claims payment process. These rules shall be limited to the form and content of the disclosures on the explanation of benefits, and shall include:

(a) a requirement that the method of determination of any specifically referenced customary charges and the range of the customary charges be disclosed; and

(b) a prohibition against an implication that the provider is charging excessively if the provider is:

(i) a participating provider; and

(ii) prohibited from balance billing.

Section 2. Section 31A-26-301.6 is enacted to read:

31A-26-301.6. Health care provider claims practices.

(1) As used in this section:

(a) "Articulable reason" may include a determination regarding:

(i) eligibility for coverage;

(ii) preexisting conditions;

(iii) applicability of other public or private insurance;

(iv) medical necessity; and

(v) any other reason that would justify an extension of the time to investigate a claim.

(b) "Health care provider" means a person licensed to provide health care under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act, or Title 58, Occupations and Professions.

(c) "Insurer" means an admitted or authorized insurer, as defined in Section 31A-1-301, and includes:

(i) a health maintenance organization; and

(ii) a third-party administrator that is subject to this title, provided that nothing in this section may be construed as requiring a third party administrator to use its own funds to pay claims that have not been funded by the entity for which the third party administrator is paying claims.

(d) "Provider" means a health care provider to whom an insurer is obligated to pay directly in connection with a claim by virtue of:

(i) an agreement between the insurer and the provider;

(ii) a health insurance policy or contract of the insurer; or

(iii) state or federal law.

(2) An insurer shall timely pay every valid insurance claim submitted by a provider in accordance with this section.

(3) (a) Within 30 days of receiving a written claim, an insurer shall do one of the following:

(i) pay the claim unless Subsection (3)(a)(ii), (iii), (iv), or (v) applies;

(ii) provide a written explanation if the claim is denied;

(iii) specifically describe and request any additional information from the provider that is necessary to process the claim;

(iv) inform the provider, pursuant to Subsection (4), of the 30-day extension of the insurer's investigation of the claim; or

(v) request additional information and inform the provider of the 30-day extension if both Subsections (3)(a)(iii) and (iv) apply.

(b) A provider shall respond to each request by an insurer for additional necessary information made under Subsection (3)(a)(iii) or (v) within 30 days of receipt of the request by providing the requested information that is in the possession of the provider, unless:

(i) the provider has requested and received the permission of the insurer to extend the 30-day period; or

(ii) the provider explains to the insurer in writing that additional time, which may not exceed 30 days, is necessary to comply with the request for information.

(c) Subsection (7) shall apply after an insurer has received the information requested.

(4) The time to investigate a claim may be extended by the insurer for an additional 30-days if:

(a) the investigation of the claim cannot reasonably be completed within the initial 30-day period of Subsection (3)(a);

(b) before the end of the 30-day period in Subsection (3)(a), the insurer informs the provider in writing of the reason for the payment delay, the nature of the investigation, the timelines for investigations established in this section, and the anticipated completion date.

(5) Notwithstanding Subsection (4), the time to investigate a claim may be extended beyond the initial 30-day period and the extended 30-day period if:

(a) due to matters beyond the control of the insurer, the investigation cannot reasonably be completed within 60 days as to some part or all of the claim;

(b) before the end of the combined 60-day period, the insurer makes a written request to the commissioner for an extension, including the reason for the delay, the nature of the investigation, the anticipated completion date, and the amount of any partial payment of the claim made pursuant to Subsection (5)(d);

(c) before the end of the combined 60-day period, the commissioner informs the insurer that the request for an extension has been granted, based on a finding that:

(i) there is a good faith and articulable reason to believe that the insurer is not obligated to pay some part or all of the claim; and

(ii) the investigation cannot reasonably be completed within 60 days; and

(d) the insurer identifies and pays all sums the insurer is obligated to pay on the claim and which are not subject to the extension requested under this Subsection (5).

(6) An extension granted by the commissioner under Subsection (5)(c) shall include the completion date for the investigation.

(7) (a) An insurer shall pay all sums to the provider that the insurer is obligated to pay on the claim, and provide a written explanation of any part of the claim that is denied within 20 days of:

(i) receiving the information requested under Subsection (3)(a)(iii);

(ii) completing an investigation under Subsection (4) or (5); or

(iii) the latter of Subsection (3)(a)(iii) or (iv), if Subsection (3)(a)(v) applies.

(b) (i) Except as provided in Subsection (7)(c), an insurer may send a follow-up request for additional information within the 20-day time period in Subsection (7)(a) if the previous response of the provider was not sufficient for the insurer to make a decision on the claim.

(ii) A follow-up request for additional necessary information shall state with specificity:

(A) the reason why the previous response was insufficient;

(B) the information that is necessary to comply with the request for information; and

(C) the reason why the requested information is necessary to process the claim.

(c) Unless an insurer has an extension for an investigation pursuant to Subsection (4) or (5), the insurer shall pay all sums it is obligated to pay on a claim and provide a written explanation of any part of the claim that is denied within 15 days of receiving a notice from the provider that the provider has submitted all requested information in the provider's possession that is related to the claim.

(8) (a) Whenever an insurer makes a payment to a provider on any part of a claim under this section, the insurer shall also send to the insured an explanation of benefits paid.

(b) Whenever an insurer denies any part of a claim under this section, the insurer shall also send to the insured a written explanation of the part of the claim that was denied and notice of the grievance review process established under Section 31A-22-629.

(c) This Subsection (8) does not apply to a person receiving benefits under the state Medicaid program as defined in Section 26-18-2, unless required by the Department of Health or federal law.

(9) (a) Beginning with health care claims submitted on or after January 1, 2002, a late fee shall be imposed on:

(i) an insurer that fails to timely pay a claim in accordance with this section; and

(ii) a provider that fails to timely provide information on a claim in accordance with this section.

(b) For the first 90 days that a claim payment or a provider response to a request for information is late, the late fee shall be determined by multiplying together:

(i) the total amount of the claim;

(ii) the total number of days the response or the payment; and

(iii) .1%.

(c) For a claim payment or a provider response to a request for information that is 91 or more days late, the late fee shall be determined by adding together:

(i) the late fee for a 90-day period under Subsection (9)(b); and

(ii) the following sum multiplied together:

(A) the total amount of the claim;

(B) the total number of days the response or payment was late beyond the initial 90-day period; and

(C) the rate of interest set in accordance with Section 15-1-1.

(d) Any late fee paid or collected under this section shall be separately identified on the documentation used by the insurer to pay the claim.

(e) For purposes of this Subsection (9), "late fee" does not include an amount that is less than $1.

(10) Each insurer shall establish a grievance review process to resolve claims-related disputes between the insurer and providers.

(11) No insurer or person representing an insurer may engage in any unfair claim settlement practice with respect to a provider. Unfair claim settlement practices include:

(a) knowingly misrepresenting a material fact or the contents of an insurance policy in connection with a claim;

(b) failing to acknowledge and substantively respond within 15 days to any written communication from a provider relating to a pending claim;

(c) denying or threatening to deny the payment of a claim for any reason that is not clearly described in the insured's policy;

(d) failing to maintain a payment process sufficient to comply with this section;

(e) failing to maintain claims documentation sufficient to demonstrate compliance with this section;

(f) failing, upon request, to give to the provider written information regarding the specific rate and terms under which the provider will be paid for health care services;

(g) failing to timely pay a valid claim in accordance with this section as a means of influencing, intimidating, retaliating, or gaining an advantage over the provider with respect to an unrelated claim, an undisputed part of a pending claim, or some other aspect of the contractual relationship;

(h) failing to pay the sum when required and as required under Subsection (9) when a violation has occurred;

(i) threatening to retaliate or actual retaliation against a provider for availing himself of the provisions of this section;

(j) any material violation of this section; and

(k) any other unfair claim settlement practice established in rule or law.

(12) (a) The provisions of this section shall apply to each contract between an insurer and a provider for the duration of the contract.

(b) Notwithstanding Subsection (12)(a), this section may not be the basis for a bad faith insurance claim.

(c) Nothing in Subsection (12)(a) may be construed as limiting the ability of an insurer and a provider from including provisions in their contract that are more stringent than the provisions of this section.

(13) (a) Pursuant to Chapter 2, Part 2, Duties and Powers of Commissioner, and beginning January 1, 2002, the commissioner may conduct examinations to determine an insurer's level of compliance with this section and impose sanctions for each violation.

(b) The commissioner may adopt rules only as necessary to implement this section.

(c) After December 31, 2002, the commissioner may establish rules to facilitate the exchange of electronic confirmations when claims-related information has been received.

(d) Notwithstanding the provisions of Subsection (13)(b), the commissioner may not adopt rules

regarding the grievance process required by Subsection (10).

(14) Nothing in this section may be construed as limiting the collection rights of a provider under Section 31A-26-301.5.

(15) Nothing in this section may be construed as limiting the ability of an insurer to:

(a) recover any amount improperly paid to a provider:

(i) in accordance with Section 31A-31-103 or any other provision of state or federal law;

(ii) within 36 months for a coordination of benefits error; or

(iii) within 18 months for any other reason not identified in Subsection (15)(a)(i) or (ii);

(b) take any action against a provider that is permitted under the terms of the provider contract and not prohibited by this section;

(c) report the provider to a state or federal agency with regulatory authority over the provider for unprofessional, unlawful, or fraudulent conduct; or

(d) enter into a mutual agreement with a provider to resolve alleged violations of this section through mediation or binding arbitration.

Section 3. Effective date.

This act takes effect on September 1, 2001.

CHAPTER 241
S. B. 80
Passed February 27, 2001
Approved March 19, 2001
Effective April 30, 2001

COUNTY STATUTES REVISION

Sponsor: David L. Gladwell

This act modifies provisions relating to Counties. The act prohibits separate ownership or conveyance of a common area on a recorded plat and contains provisions for how a common area is to be treated for assessment purposes and for purposes of instruments describing a parcel on the plat. The act modifies county and municipal land use and development provisions including county board of adjustment power provisions and conditional use and other appeal provisions. The act directs county legislative bodies to define how their power to consent of appointments takes place and authorizes the delegation of that power to the executive. The act modifies county budget provisions, including the designation of the county budget officer. The act modifies county clerk and county recorder provisions, including provisions relating to the recording of documents. The act modifies county surveyor provisions and requires all survey work to be done by a licensed land surveyor and distinguishes those surveyor functions that may be performed by someone who is not a licensed land surveyor. The act shifts responsibility for approving plats in the county from the legislative body to the executive. The act repeals certain duties of a county treasurer and a county auditor and repeals penalties for a treasurer or auditor who does not fulfill certain duties. The act modifies certain duties of a county treasurer and repeals a provision authorizing the county legislative body to suspend a treasurer who is charged with official misconduct. The act modifies county career service council provisions, allows for the appointment of alternate members of the career service council, modifies the authority of the career service council with respect to appeals of personnel matters, contains provisions relating to district court review of a career service council decision, and allows the appointment of administrative law judges to hear appeals referred by the career service council. The act modifies provisions relating to the office of personnel management and makes the position of director a merit position. The act modifies the procedure for adopting an alternate form of county government, modifies the makeup of the appointment council, eliminates some alternate forms of government, requires an optional plan to be prepared by a study committee before being presented to voters, and replaces the county attorney for the attorney general with respect to a review of the optional plan for compliance with applicable law. The act authorizes the county executive and county legislative body to exercise limited direction and supervision over other county elected officers and modifies executive functions and powers. The act modifies the procedure for electing a county or district attorney under certain circumstances. The act provides for boundary agreements to act as quitclaim deeds under certain circumstances and eliminates a requirement for water right deeds to be transmitted by the county recorder to the state engineer. The act imposes a one-year limit on actions against a county legislative body or county executive for decisions they make. The act also makes technical changes.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
10-9-804, as last amended by Chapter 209, Laws of Utah 2000
10-9-805, as last amended by Chapter 209, Laws of Utah 2000
10-9-811, as last amended by Chapter 209, Laws of Utah 2000
17-16-7, as last amended by Chapter 139, Laws of Utah 1997
17-19-3, as last amended by Chapter 133, Laws of Utah 2000
17-19-19, as last amended by Chapter 22, Laws of Utah 1975
17-20-1, as last amended by Chapter 153, Laws of Utah 1989
17-20-4, as last amended by Chapter 227, Laws of Utah 1993
17-21-1, as last amended by Chapter 85, Laws of Utah 1999
17-21-6, as last amended by Chapter 85, Laws of Utah 1999
17-21-13, as last amended by Chapter 85, Laws of Utah 1999
17-21-17, as last amended by Chapter 85, Laws of Utah 1999
17-21-19, as last amended by Chapter 85, Laws of Utah 1999
17-21-21, as last amended by Chapter 85, Laws of Utah 1999
17-21-22, as last amended by Chapter 85, Laws of Utah 1999
17-23-1, as last amended by Chapter 133, Laws of Utah 2000
17-23-2, as last amended by Chapter 227, Laws of Utah 1993
17-23-3, as last amended by Chapter 227, Laws of Utah 1993
17-23-5, as last amended by Chapter 227, Laws of Utah 1993
17-23-14, as last amended by Chapter 150, Laws of Utah 1995
17-23-15, as enacted by Chapter 29, Laws of Utah 1987
17-23-16, as enacted by Chapter 29, Laws of Utah 1987

17-23-17, as last amended by Chapter 150, Laws of Utah 1995
17-23-17.5, as enacted by Chapter 150, Laws of Utah 1995
17-23-18, as last amended by Chapter 93, Laws of Utah 1989
17-24-1, as last amended by Chapter 207, Laws of Utah 1999
17-24-4, as last amended by Chapter 133, Laws of Utah 2000
17-24-12, as last amended by Chapter 227, Laws of Utah 1993
17-27-103, as last amended by Chapters 34 and 209, Laws of Utah 2000
17-27-406, as enacted by Chapter 235, Laws of Utah 1991
17-27-702, as last amended by Chapter 179, Laws of Utah 1995
17-27-703, as last amended by Chapter 23, Laws of Utah 1992
17-27-704, as last amended by Chapter 179, Laws of Utah 1995
17-27-708, as last amended by Chapter 291, Laws of Utah 1999
17-27-804, as last amended by Chapter 209, Laws of Utah 2000
17-27-805, as last amended by Chapter 209, Laws of Utah 2000
17-27-806, as last amended by Chapter 209, Laws of Utah 2000
17-27-808, as last amended by Chapter 209, Laws of Utah 2000
17-27-809, as last amended by Chapter 69, Laws of Utah 1997
17-27-810, as last amended by Chapter 179, Laws of Utah 1995
17-27-811, as last amended by Chapter 209, Laws of Utah 2000
17-27-901, as enacted by Chapter 235, Laws of Utah 1991
17-27-1001, as last amended by Chapter 291, Laws of Utah 1999
17-33-1, as enacted by Chapter 81, Laws of Utah 1981
17-33-4, as last amended by Chapter 182, Laws of Utah 1999
17-33-5, as last amended by Chapter 182, Laws of Utah 1999
17-33-7, as last amended by Chapter 182, Laws of Utah 1999
17-33-8, as last amended by Chapter 146, Laws of Utah 1994
17-36-3, as last amended by Chapter 300, Laws of Utah 1999
17-50-402, as renumbered and amended by Chapter 133, Laws of Utah 2000
17-52-101, as renumbered and amended by Chapter 133, Laws of Utah 2000
17-52-102, as enacted by Chapter 133, Laws of Utah 2000
17-52-201, as renumbered and amended by Chapter 133, Laws of Utah 2000
17-52-202, as renumbered and amended by Chapter 133, Laws of Utah 2000
17-52-203, as renumbered and amended by Chapter 133, Laws of Utah 2000
17-52-204, as renumbered and amended by Chapter 133, Laws of Utah 2000
17-52-205, as renumbered and amended by Chapter 133, Laws of Utah 2000
17-52-206, as renumbered and amended by Chapter 133, Laws of Utah 2000
17-52-207, as enacted by Chapter 133, Laws of Utah 2000
17-52-301, as renumbered and amended by Chapter 133, Laws of Utah 2000
17-52-302, as renumbered and amended by Chapter 133, Laws of Utah 2000
17-52-303, as renumbered and amended by Chapter 133, Laws of Utah 2000
17-52-401, as renumbered and amended by Chapter 133, Laws of Utah 2000
17-52-402, as renumbered and amended by Chapter 133, Laws of Utah 2000
17-52-403, as renumbered and amended by Chapter 133, Laws of Utah 2000
17-53-201, as enacted by Chapter 133, Laws of Utah 2000
17-53-301, as enacted by Chapter 133, Laws of Utah 2000
17-53-302, as enacted by Chapter 133, Laws of Utah 2000
17-53-315, as renumbered and amended by Chapter 133, Laws of Utah 2000
20A-1-102, as last amended by Chapters 133 and 328, Laws of Utah 2000
20A-6-302, as last amended by Chapter 139, Laws of Utah 1997
21-2-3, as last amended by Chapter 79, Laws of Utah 1996
57-3-106, as last amended by Chapter 320, Laws of Utah 2000
59-2-502, as last amended by Chapter 235, Laws of Utah 1992
59-2-1366, as last amended by Chapter 3, Laws of Utah 1988
68-3-12, as last amended by Chapter 133, Laws of Utah 2000
73-1-10, as last amended by Chapter 36, Laws of Utah 2000
78-12-29, as last amended by Chapter 79, Laws of Utah 1996

ENACTS:
10-9-806.5, Utah Code Annotated 1953
17-27-806.5, Utah Code Annotated 1953
17-33-4.5, Utah Code Annotated 1953
17-52-203.5, Utah Code Annotated 1953
17-53-106, Utah Code Annotated 1953
17-53-316, Utah Code Annotated 1953
17-53-317, Utah Code Annotated 1953
57-1-45, Utah Code Annotated 1953

REPEALS:
17-5-213, as renumbered and amended by Chapter 147, Laws of Utah 1994
17-23-4, as last amended by Chapter 33, Laws of Utah 1961
17-24-17, as last amended by Chapter 146, Laws of Utah 1994
17-52-503, as renumbered and amended by Chapter 133, Laws of Utah 2000
17-52-506, as renumbered and amended by Chapter 133, Laws of Utah 2000
59-2-1367, as renumbered and amended by

Chapter 4, Laws of Utah 1987
59-2-1368, as last amended by Chapter 227, Laws of Utah 1993
59-2-1369, as renumbered and amended by Chapter 4, Laws of Utah 1987
59-2-1370, as last amended by Chapter 3, Laws of Utah 1988
59-2-1371, as last amended by Chapter 227, Laws of Utah 1993

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

Section 1. Section 10-9-804 is amended to read:

10-9-804. Plats required.

(1) Unless exempt under Section 10-9-806 or not included in the definition of subdivision under Subsection 10-9-103(1), whenever any lands are laid out and platted, the owner of those lands shall provide an accurate plat that describes or specifies:

(a) the boundaries, course, and dimensions of the parcels of ground;

(b) whether the parcels of ground are intended to be used as streets or for other public uses, and whether any areas are reserved for public purposes;

(c) the lot or unit reference, the block or building reference, the street or site address, the street name or coordinate address, the acreage or square footage for all parcels, units, or lots, and the length and width of the blocks and lots intended for sale; and

(d) existing right-of-way and easement grants of record for underground facilities, as defined in Section 54-8a-2, and for other utility facilities.

(2) (a) The owner of the land shall acknowledge the plat before an officer authorized by law to take the acknowledgement of conveyances of real estate.

(b) The surveyor making the plat shall certify it.

(c) The owner or operator of the underground and utility facilities shall approve the plat of its property interest if it specifies:

(i) the boundary, course, dimensions, and intended use of the right-of-way and easement grants of record;

(ii) the location of existing underground and utility facilities; and

(iii) any conditions or restrictions governing the location of the facilities within the right-of-way, and easement grants of records, and utility facilities within the subdivision.

(d) The legislative body shall approve the plat as provided in this part. Before the legislative body may approve a plat, the owner of the land shall provide the legislative body with a tax clearance indicating that all taxes, interest, and penalties owing on the land have been paid.

(3) After the plat has been acknowledged, certified, and approved, the owner of the land shall [~~file and~~] record it in the county recorder's office in the county in which the lands platted and laid out are situated.

Section 2. Section 10-9-805 is amended to read:

10-9-805. Subdivision approval procedure.

(1) A person may not submit a plat of a subdivision to the county recorder's office for recording unless a recommendation has been received from the planning commission and:

(a) the plat has been approved by:

(i) the legislative body of the municipality in which the subdivision is located; or

(ii) other officers that the municipal legislative body designates in an ordinance; and

(b) the [~~approvals are~~] approval is entered in writing on the plat by the mayor or chairperson of the legislative body or by the other officers designated in the ordinance.

(2) In municipalities under the council-mayor form of government, Section 10-3-1219.5 governs.

(3) A subdivision plat recorded without the approval required under this section is void.

Section 3. Section 10-9-806.5 is enacted to read:

10-9-806.5. Common area parcels on a plat -- No separate ownership -- Ownership interest equally divided among other parcels on plat and included in description of other parcels.

(1) A parcel designated as common area on a plat recorded in compliance with this part may not be separately owned or conveyed independent of the other parcels created by the plat.

(2) The ownership interest in a parcel described in Subsection (1) shall:

(a) for purposes of assessment, be divided equally among all parcels created by the plat, unless a different division of interest for assessment purposes is indicated on the plat or an accompanying document; and

(b) be considered to be included in the description of each instrument describing a parcel on the plat by its identifying plat number, even if the common area interest is not explicitly stated in the instrument.

Section 4. Section 10-9-811 is amended to read:

10-9-811. Prohibited acts.

[~~(1) (a) A county recorder may not record a subdivision plat that has not been approved by the legislative body of the municipality in which the subdivision is located.~~]

[~~(b) A plat of a subdivision recorded without the approval of the municipal legislative body required by this part is void.~~]

[~~(2)~~] (1) (a) An owner of any land located in a subdivision, as defined in this chapter, who transfers or sells any land in that subdivision before a plat of the subdivision has been approved and

recorded violates this part for each lot or parcel transferred or sold.

(b) The description by metes and bounds in the instrument of transfer or other documents used in the process of selling or transferring does not exempt the transaction from being a violation of Subsection [~~(2)~~] (1)(a) or from the penalties or remedies provided in this chapter.

(c) Notwithstanding any other provision of this Subsection [~~(2)~~] (1), the recording of an instrument of transfer or other document used in the process of selling or transferring real property that violates this part:

(i) does not affect the validity of the instrument or other document; and

(ii) does not affect whether the property that is the subject of the instrument or other document complies with applicable municipal ordinances on land use and development.

[~~(3)~~] (2) (a) A municipality may bring an action against an owner to require the property to conform to the provisions of this part or an ordinance enacted under the authority of this part.

(b) An action under this Subsection [~~(3)~~] (2) may include an injunction, abatement, merger of title, or any other appropriate action or proceeding to prevent, enjoin, or abate the violation.

(c) A municipality need only establish the violation to obtain the injunction.

Section 5. Section 17-16-7 is amended to read:

17-16-7. Deputies and employees -- Appointments -- County legislative body consent power -- Liability of principal -- Deputy may serve despite vacancy in office of appointing officer.

(1) [~~Every~~] (a) A county or precinct officer, including [~~any~~] an elected county executive, except a county commissioner or county council member, may, with the consent of the county legislative body, appoint deputies and [~~assistants~~] employees as necessary for the discharge of the duties of [~~his~~] the officer's office.

(b) The county legislative body's consent power under Subsection (1)(a) shall be defined in county ordinance and may include consent by:

(i) the budget approval process;

(ii) approval of an allocation of a certain number of positions; or

(iii) approval or disapproval of the hiring of individual applicants.

(c) A county legislative body may by ordinance delegate to the county executive the authority to consent to the appointment of deputies and employees under this Subsection (1).

(2) [~~The county legislative body shall provide the clerk of the district court in those counties where~~] If the county clerk performs district court clerk functions, the legislative body of that county shall provide the clerk with deputies and [~~assistants~~] employees for the business of the district courts as considered necessary and advisable by the judge or judges of the district court, consistent with the level of funding for clerk services from the court administrator's office.

(3) (a) Each officer appointing a deputy shall, for each deputy appointed, file a signed writing with the county clerk that memorializes the appointment.

(b) The officer appointing the deputy is liable for all official acts of the deputy.

(c) If the office of the officer who appointed the deputy becomes vacant, the deputy may continue to serve despite the vacancy.

Section 6. Section 17-19-3 is amended to read:

17-19-3. Payments -- Notification.

(1) (a) Subject to Subsection (1)(b), each [~~bill, account, or charge~~] claim incurred by the county and legally examined and allowed and ordered paid by the county executive shall, if approved by the county auditor as to the availability of funds as provided in Section 17-19-1, be paid by [~~either~~]:

(i) a warrant drawn by the auditor on the county treasurer in favor of the person entitled to payment; or

(ii) a county check or such other payment mechanism as may be adopted pursuant to Chapter 36, Uniform Fiscal Procedures Act for Counties.

(b) No [~~bill, account, or charge shall~~] claim may be paid until:

(i) the auditor:

[~~(i)~~] (A) receives from the county executive the certified list mentioned in Subsection 17-20-1.7(4); and

(B) makes a recommendation regarding payment as provided in Section 17-50-401; and

(ii) the county executive approves payment of the claim in accordance with the standards and procedures of Section 17-50-401.

(2) Each debt and demand against the county, when the amount is fixed by law and not directed to be audited by some other person or tribunal, shall be paid by either:

(a) a warrant drawn by the auditor on the county treasurer; or

(b) a check or such other payment mechanism as may be adopted pursuant to Chapter 36, Uniform Fiscal Procedures Act for Counties.

(3) (a) The auditor shall distinctly specify on each warrant the liability for which it is made and when the liability accrued. The auditor shall also notify the treasurer of the date, amount, and payee of and number assigned to each warrant issued and the aggregate amount of all contemporaneous payments by warrant.

(b) The auditor shall notify the treasurer and the county executive of the amount and payee of all payments to be made by check or other payment mechanism and, if the auditor issues the check or other payment mechanism, the date of and number assigned to each check or other payment mechanism and the aggregate amount of all such contemporaneous payments.

Section 7. Section 17-19-19 is amended to read:

17-19-19. Budget officer -- Departmental revenue and expenditure reports.

[~~(1) The county auditor or the county clerk in those counties in which the functions of the clerk and auditor are combined shall be and act as budget officer of the county.~~]

(1) (a) Subject to Subsection (1)(b), the budget officer of a county is:

(i) except as provided in Subsection (1)(a)(ii), the county auditor; or

(ii) in a county in which the functions of clerk and auditor are combined, the county clerk.

(b) Notwithstanding Subsection (1)(a), if a county has adopted an optional plan, as defined in Section 17-52-101, that provides for the county executive to be the county budget officer, the county budget officer is the county executive.

(2) Each department for which county funds are appropriated shall file with the county [~~auditor~~] budget officer not less than three months before the commencement of each fiscal year on forms furnished by the county [~~auditor~~] budget officer a detailed estimate and statement of the revenue and necessary expenditures of [~~such~~] the department for the next budget year. The estimate and statement shall set forth the number of persons to be regularly employed; the kinds of service to be performed, the salaries and wages to be paid, the kind of work to be performed and the improvements to be made together with the estimated cost of [~~such~~] the service, work and improvements. The statement shall also record performance data expressed in work units, unit costs, man hours, and man years sufficient in detail, content, and scope to permit the county [~~auditor~~] budget officer to prepare and process the county budget.

(3) In the preparation of the budget, the county [~~auditor~~] budget officer and all other county officers are subject to Sections 17-36-1 to 17-36-44 and to the uniform system of budgeting, accounting, and reporting established pursuant thereto.

Section 8. Section 17-20-1 is amended to read:

17-20-1. County clerk -- District court clerk duties.

The county clerk is the clerk of the [~~governing~~] legislative body of the county. [~~He~~] The clerk shall act as clerk of the district court in secondary counties of the state district court administrative system and those counties not in the system, and shall perform the duties listed in Section 78-3-30.

Section 9. Section 17-20-4 is amended to read:

17-20-4. Duties of county clerk.

A county clerk shall:

(1) issue all marriage licenses and keep a register of marriages as provided by law;

(2) execute under [~~his~~] the clerk's seal and in the name of and for the county, all deeds and conveyances of all real estate conveyed by the county [~~pursuant to resolutions of the county legislative body~~];

(3) take and certify acknowledgments and administer oaths;

(4) keep a fee book as provided by law; and

(5) take charge of and safely keep the seal of the county [~~clerk~~], and keep [~~such~~] other records and perform [~~such~~] other duties as may be prescribed by law.

Section 10. Section 17-21-1 is amended to read:

17-21-1. Recorder -- Document custody responsibility.

The recorder [~~has custody~~]:

(1) is custodian of[~~, and shall keep,~~] all [~~books,~~] recorded documents and records[~~, maps, and papers~~] required by law[~~.~~] to be recorded; and

(2) shall establish policies and procedures that the recorder considers necessary to protect recorded documents and records in the recorder's custody, including determining the appropriate method for the public to obtain copies of the public record under Section 17-21-19 and supervision of those who make copies of the public record.

Section 11. Section 17-21-6 is amended to read:

17-21-6. General duties of recorder -- Records and indexes.

(1) [~~Every~~] Each recorder shall:

(a) keep an entry record, in which the recorder shall, upon acceptance of any instrument, enter the instrument in the order of its reception, the names of the parties to the instrument, its date, the hour, the day of the month and the year of recording, and a brief description, and endorse upon each instrument a number corresponding with the number of the entry;

(b) keep a grantors' index, in which the recorder shall index deeds and final judgments or decrees partitioning or affecting the title to or possession of real property, which shall show the entry number of the instrument, the name of each grantor in alphabetical order, the name of the grantee, the date of the instrument, the time of recording, the kind of instrument, the book and page, and a brief description;

(c) keep a grantees' index, in which the recorder shall index deeds and final judgments or decrees partitioning or affecting the title to or possession of

real property, which shall show the entry number of the instrument, the name of each grantee in alphabetical order, the name of the grantor, the date of the instrument, the time of recording, the kind of instrument, the book and page, and a brief description;

(d) keep a mortgagors' index, in which the recorder shall enter all mortgages, deeds of trust, liens, and other instruments in the nature of an encumbrance upon real estate, which shall show the entry number of the instrument, the name of each mortgagor, debtor, or person charged with the encumbrance in alphabetical order, the name of the mortgagee, lien holder, creditor, or claimant, the date of the instrument, the time of recording, the instrument, consideration, the book and page, and a brief description;

(e) keep a mortgagees' index, in which the recorder shall enter all mortgages, deeds of trust, liens, and other instruments in the nature of an encumbrance upon real estate, which shall show the entry number of the instrument, the name of each mortgagee, lien holder, creditor, or claimant, in alphabetical order, the name of the mortgagor or person charged with the encumbrance, the date of the instrument, the time of recording, the kind of instrument, the consideration, the book and page, and a brief description;

(f) keep a tract index, which shall show by description every instrument recorded, the date and the kind of instrument, the time of recording, and the book and page and entry number;

(g) keep an index of recorded maps, plats, and subdivisions;

(h) keep an index of powers of attorney[~~, labeled "powers of attorney,"~~] showing[~~: "~~] the date and time of recording,[~~"~~][~~–"~~]the book,[~~"~~][~~–"~~]the page,[~~"~~] and[~~ "~~]the entry number[~~"~~];

(i) keep a miscellaneous index, in which the recorder shall enter all instruments of a miscellaneous character not otherwise provided for in this section, showing[~~:~~][~~—"~~]the date of recording,[~~"~~][~~–"~~]the book,[~~"~~][~~–"~~]the page,[~~"~~][~~–"~~]the entry number,[~~"~~][~~–"~~]the kind of instrument,[~~"~~][~~ "~~]from,[~~"~~][~~–"~~]to,[~~"~~] and[~~–"~~]the parties[~~"~~];

(j) keep an index of judgments[~~, labeled " judgments," each page divided into columns headed, respectively, "~~] showing the judgment debtors,[~~"~~][~~—"~~] the judgment creditors,[~~"~~][~~—"~~]the amount of judgment,[~~" "when recorded,"~~] the date and time of recording, the satisfaction, and[~~ "when satisfied"~~] the book, the page, and the entry number; and

(k) keep a general recording index in which the recorder shall index all executions and writs of attachment, and any other instruments not required by law to be spread upon the records, and in separate columns the recorder shall enter the names of the plaintiffs in the execution and the names of the defendants in the execution.

(2) The recorder shall alphabetically arrange the indexes required by this section and keep a reverse index.

(3) The tract index required by Subsection (1)(f) shall be kept so that it shows a true chain of title to each tract or parcel, together with their encumbrances, according to the records of the office.

(4) Nothing in this section prevents the recorder from using a single name index if that index includes all of the indexes required by this section.

Section 12. Section 17-21-13 is amended to read:

17-21-13. Endorsement of book and page -- Return of instrument.

(1) (a) The recorder may also endorse upon each instrument, paper, or notice the book and page reference.

(b) If the entry number is endorsed on each page of the instrument, the recorder may omit the book and page reference[~~.~~]:

(i) on the instrument; and

(ii) in all indexes required by statute.

(c) If the county recorder has elected to omit the book and page reference under Subsection (1)(b), documents presented for recording in that county that are required to recite recording data may omit the book and page reference.

(2) The recorder shall return the instrument to the appropriate party.

Section 13. Section 17-21-17 is amended to read:

17-21-17. Prohibited acts.

Upon acceptance of an instrument entitled to be recorded, the recorder may not:

[~~(1) neglect to record the instrument within a reasonable time after accepting it;~~]

[~~(2)~~] (1) record [~~any~~] the instrument in any manner other than the manner required by this chapter; or

[~~(3)~~] (2) alter, change, obliterate, or insert any new matter in any instrument of record.

Section 14. Section 17-21-19 is amended to read:

17-21-19. Records open to inspection -- Copies.

(1) All instruments of record and all indexes required by this chapter are open to public inspection [~~free of charge~~] during office hours.

(2) [~~Any~~] Upon payment of the applicable fee, a person [~~copying or taking notes from~~] may obtain copies of the public record [~~in the recorder's office may do so only by pencil, typewriter, photocopy, microfilm, or electronic printout~~].

Section 15. Section 17-21-21 is amended to read:

17-21-21. Ownership plats -- Use of geographic information systems or computer systems.

(1) The county recorder shall prepare and keep ownership plats drawn to a convenient scale, which show the record owners of each tract of land in the county, together with the dimensions of the tract.

(2) The county recorder may not be required to:

[~~(a) trace any title back of apparent ownership as of February 6, 1899, at 12 o'clock noon;~~]

[~~(b)~~] (a) show ownership of timeshare units or timeshare estates on ownership plats; or

[~~(c)~~] (b) show lot or unit ownership on subdivisions or condominium plats or other ownership plats if that information is available through computer systems or other indexes.

(3) Nothing in this chapter precludes the use of geographic information systems or computer systems by the recorder if the systems include all of the information required by this section.

Section 16. Section 17-21-22 is amended to read:

17-21-22. Annual revision -- Reporting changes in ownership to county assessors -- Use of geographic information systems or computer systems.

(1) The county recorder shall:

(a) each year, prepare copies of ownership plats and descriptions, showing record owners at noon on January 1;

(b) on or before January 15 of each year, transmit the copies to the county assessor;

(c) report all changes in recorded ownership of real property made during the first seven months of each calendar year to the county assessor not later than August 15 of that year;

(d) for the remainder of the calendar year, report the changes in the ownership of real property that are recorded in the county recorder's office each month on or before the 15th day of the month following the month in which the changes were recorded;

(e) transmit the changes of ownership on appropriate forms that show the current owner's name and a full legal description of the property conveyed; and

(f) where only a part of the grantor's property is conveyed, transmit an additional form showing a full legal description of the portion retained.

(2) Nothing in this chapter precludes the use of geographic information systems or computer systems by the recorder if the systems include all of the information required by this section.

[~~(3) Not later than the first Monday in October of each year, the assessor may return the plat books and descriptions to the recorder for extension, alterations, and carrying to date for the ensuing year.~~]

Section 17. Section 17-23-1 is amended to read:

17-23-1. County surveyor to be elected -- Requirement to be licensed land surveyor -- Authority to contract with licensed land surveyor if no elected county surveyor -- County surveyor duties.

(1) (a) The office of the county surveyor in each county shall be filled by election and, except as provided in Subsection (1)(b), the county surveyor shall be a [~~registered~~] licensed professional land surveyor in the state.

(b) In a county where the office of county surveyor is consolidated with another elected office, [~~the officeholder need not be a registered professional land surveyor, but~~] all county surveying work [~~must~~] shall be performed by a [~~registered~~] licensed professional land surveyor.

(c) In a county where there is no elected county surveyor[~~,~~]:

(i) the county executive or legislative body may, consistent with Section 17-53-313, contract with a [~~registered~~] licensed professional land surveyor to perform those duties[~~.~~];

(ii) all county survey work shall be done by a licensed land surveyor;

(iii) the county recorder shall assume and perform all statutory functions and duties of the county surveyor related to the retention and maintenance of survey records;

(iv) the recorder's office shall act as the county surveyor's office only for the purpose of accepting, retaining, and managing county survey records;

(v) the county shall furnish sufficient office space, furniture, stationery, and record books necessary for the county recorder's office to fulfill its functions and duties under Subsection (1)(a)(iv); and

(vi) for purposes of this chapter, "county surveyor" means:

(A) for purposes of the retention and management of county survey records, the county recorder; and

(B) except as provided in Subsection (1)(a)(vi)(A), the licensed land surveyor under contract with the county to perform county surveyor duties.

(2) The county surveyor shall execute:

(a) all orders directed to the surveyor by any court; and

(b) all orders of survey required by the county executive or county legislative body.

(3) (a) The surveyor of each county shall:

(i) advise the county executive and county legislative body regarding all surveying work;

(ii) perform or arrange for the performance of all surveying work for the county;

(iii) permanently keep at county government offices at the county seat a fair and accurate record

of all surveys made, including legal descriptions and geographic coordinates, all surveys received pursuant to Section 17-23-17, and all corner files received pursuant to Section 17-23-17.5;

(iv) number progressively all surveys received and state by whom and for whom the surveys were made;

(v) deliver a copy of any survey to any person or court requiring the survey after the payment of the fee established by the county legislative body;

(vi) ensure that all surveys of legal subdivisions of sections are made according to the [~~current~~] United States Manual of Surveying Instructions in effect at the time the survey is completed;

(vii) verify the correctness of or establish correct coordinates for all survey reference monuments set in place and shown on all subdivision maps and plats which have a spatial relationship with any section or quarter section corner; and

(viii) perform other duties required by law.

(b) In arranging for the performance of surveying work for the county under Subsection (3)(a)(ii), a surveyor may comply with Section 17-53-313.

(4) (a) The county surveyor or his designee shall establish all corners of government surveys and reestablish all corners of government surveys where corners have been destroyed and where witness markers or other evidences of the government corners remain so that the corners established by government survey can be positively located.

(b) The corners shall be reestablished in the manner provided in Section 17-23-13 for establishing corners.

(c) The county surveyor shall keep a separate record of the established and reestablished corners of government surveys, giving the date and names of persons present and shall provide those records to his successor when he vacates his office.

(d) Established or reestablished corners shall be recognized as the legal and permanent corners.

(5) The county executive or legislative body may direct the county surveyor or his staff to perform engineering and architectural work if the county surveyor or his staff is qualified and licensed to perform that work.

Section 18. Section 17-23-2 is amended to read:

17-23-2. Office furnishings and supplies -- Filing and indexing fees -- Records remain county property.

(1) The county [~~executive~~] shall furnish an office, furniture, and all stationery and record books necessary for the surveyor's office.

(2) The county legislative body, by ordinance or resolution, may establish the fee to be collected by the county [~~surveyor~~] for filing and indexing a map of a survey. Fees for filing of maps under Section 17-23-17 shall be governed by Section 17-23-19.

(3) All records, maps, plats, profiles, calculations, and field notes of all surveys made by the county surveyor in [~~his~~] an official capacity during [~~his~~] the surveyor's term of office, or by persons designated by [~~him~~] the surveyor to do survey work on behalf of the county, or maps of a survey filed under Section 17-23-17, shall be the property of the county, open to the inspection of any person [~~free of charge~~], and shall be delivered by the surveyor to [~~his~~] a successor in office. [~~In counties where there is no elected county surveyor, the county legislative body may designate another office within the county to act as a depository for all documents filed in compliance with this section.~~]

Section 19. Section 17-23-3 is amended to read:

17-23-3. Seal.

The county surveyor shall have a seal, to be furnished by the county [~~legislative body~~], the impression of which shall contain the following words: "State of Utah, County Surveyor," together with the name of the county in which the same is to be used.

Section 20. Section 17-23-5 is amended to read:

17-23-5. Maps for county or county officers.

[~~The~~] (1) Except as provided in Subsection (2), each county surveyor shall:

(a) trace, blueprint, or otherwise make all maps necessary for the county or any county officer[~~, when so requested, and the same shall be filed in his office, together with~~]; and

(b) file those maps and all data obtained by [~~him~~] the surveyor from other sources[~~; provided, that in counties where the salary of the county surveyor is not intended to cover the expenses of such work, the county executive may enter into a contract or other arrangement with the county surveyor, or another surveyor, or other person competent to make maps and plats for such mapping and platting as is required by law~~] in the surveyor's office.

(2) Subsection (1) does not apply to an ownership plat that the county recorder is required under Section 17-21-21 to prepare and keep.

Section 21. Section 17-23-14 is amended to read:

17-23-14. Disturbed corners -- County surveyor to be notified.

(1) Any person who finds it necessary to disturb any established corner in the improvement of a road, or for any other cause, or finds a monument which needs rehabilitation, shall notify the county surveyor.

(2) The county surveyor or [~~his~~] designee shall:

(a) reconstruct or rehabilitate the monument for the corner by lowering and witnessing the corner or placing another monument and witness over the existing monument so that the monument:

(i) is left in a physical condition to remain as permanent a monument as is reasonably possible; and

(ii) may be reasonably located at all times in the future; and

(b) file the record [~~the proceedings in the record~~] of [~~permanent surveys~~] each reconstruction or rehabilitation under Subsection (2)(a).

Section 22. Section 17-23-15 is amended to read:

17-23-15. Removal, destruction, or defacement of monuments or corners as misdemeanor -- Costs.

(1) No person shall willfully or negligently remove, destroy, or deface any government survey monument, corner, or witness corner [~~that is recorded in the office of the county surveyor~~].

(2) Any person who violates this section is guilty of a class C misdemeanor and is additionally responsible for:

(a) the costs of any necessary legal action; and

(b) the costs of reestablishing the survey monument, corner, or witness corner.

Section 23. Section 17-23-16 is amended to read:

17-23-16. Resurveys.

In the resurvey of lands surveyed under the authority of the United States, the county surveyor or his designee shall observe the following rules:

(1) Section and quarter-section corners, and all other corners established by the government survey, shall stand as the true corner.

(2) Missing corners shall be reestablished at the point where existing evidence would indicate the original corner was located by the government survey.

(3) In all cases, missing corners must be reestablished with reference to the [~~current~~] United States Manual of Surveying Instructions.

Section 24. Section 17-23-17 is amended to read:

17-23-17. Map of boundary survey -- Procedure for filing -- Contents -- Marking of monuments -- Record of corner changes.

(1) (a) [~~Any registered~~] Each licensed professional land surveyor making a boundary survey of lands within this state to establish or reestablish a boundary line [~~on the ground by setting a monument~~] or to obtain data for constructing a map or plat showing a [~~monumented~~] boundary line shall file a map of the survey that meets the requirements of this section with the county surveyor or designated office within 90 days of the establishment or reestablishment of a boundary [~~monument or boundary line. Resurveys of filed surveys or subdivision lots are not required to be refiled if no monuments are set~~].

(b) The county surveyor or designated office shall file and index the map of the survey.

(c) The map shall be a public record in the office of the county surveyor or designated office.

(2) This type of map shall show:

(a) the location of survey by quarter section and township and range;

(b) the date of survey;

(c) the scale of drawing and north point;

(d) the distance and course of all lines traced or established, giving the basis of bearing and the distance and course to [~~a~~] two or more section [~~corner~~] corners or quarter [~~corner~~] corners, including township and range, or [~~an~~] to identified [~~monument~~] monuments within a recorded subdivision;

(e) all measured bearings, angles, and distances separately indicated from those of record;

(f) a written boundary description of property surveyed;

(g) all monuments set and their relation to older monuments found;

(h) a detailed description of monuments found and monuments set, indicated separately;

(i) the surveyor's seal or stamp; and

(j) the surveyor's business name and address.

(3) (a) The map shall contain a written narrative that explains and identifies:

(i) the purpose of the survey;

(ii) the basis on which the lines were established; and

(iii) the found monuments and deed elements that controlled the established or reestablished lines.

(b) If the narrative is a separate document, it shall contain:

(i) the location of the survey by quarter section and by township and range;

(ii) the date of the survey;

(iii) the surveyor's stamp or seal; and

(iv) the surveyor's business name and address.

(c) The map and narrative shall be referenced to each other if they are separate documents.

(4) The map and narrative shall be created on material of a permanent nature on stable base reproducible material in the sizes required by the county surveyor.

(5) (a) Any monument set by a [~~registered~~] licensed professional land surveyor to mark or reference a point on a property or land line shall be durably and visibly marked or tagged with the registered business name or the letters "L.S." followed by the registration number of the surveyor in charge.

(b) If the monument is set by a [~~registered~~] licensed land surveyor who is a public officer, it shall be marked with the official title of the office.

(6) (a) If, in the performance of a survey, [~~the~~] a surveyor finds or makes any changes [~~in~~] to the section corner or quarter-section corner, or their accessories [~~as they are described in an existing corner record or survey map in the office of the county surveyor or designated office~~], the surveyor shall complete and submit to the county surveyor or designated office a record of the changes [~~needed to be~~] made [~~to any corner or accessories to the corner~~].

(b) The record shall be submitted within 45 days of the corner visits and shall include the surveyor's seal, business name, and address.

(c) The Utah State Board of Engineers and Land Surveyors Examiners may revoke the license of any [~~registered~~] licensed professional land surveyor who fails to comply with the requirements of this section, according to the procedures set forth in Title 58, Chapter 1, Division of Occupational and Professional Licensing Act.

(7) [~~Any~~] Each federal or state agency, board, or commission, special district, or municipal corporation that makes a boundary survey of lands within this state shall comply with this section.

Section 25. Section 17-23-17.5 is amended to read:

17-23-17.5. Corner perpetuation and filing -- Definitions -- Establishment of corner file -- Preservation of map records -- Filing fees -- Exemptions.

(1) As used in this section:

(a) "Accessory to a corner" means any exclusively identifiable physical object whose spatial relationship to the corner is recorded. Accessories may be bearing trees, bearing objects, monuments, reference monuments, line trees, pits, mounds, charcoal-filled bottles, steel or wooden stakes, or other objects.

(b) "Corner," unless otherwise qualified, means a property corner, a property controlling corner, a public land survey corner, or any combination of these.

(c) "Geographic coordinates" means mathematical values that designate a position on the earth relative to a given reference system. Coordinates shall be established pursuant to Title 57, Chapter 10, Utah Coordinate System.

(d) "Land surveyor" means a surveyor who is [~~registered~~] licensed to practice land surveying in this state in accordance with Title 58, Chapter 22, Professional Engineers and Land Surveyors Licensing Act.

(e) "Monument" means an accessory that is presumed to occupy the exact position of a corner.

(f) "Property controlling corner" means a public land survey corner or any property corner which does not lie on a property line of the property in question, but which controls the location of one or more of the property corners of the property in question.

(g) "Property corner" means a geographic point of known geographic coordinates on the surface of the earth, and is on, a part of, and controls a property line.

(h) "Public land survey corner" means any corner actually established and monumented in an original survey or resurvey used as a basis of legal descriptions for issuing a patent for the land to a private person from the United States government.

(i) "Reference monument" means a special monument that does not occupy the same geographical position as the corner itself, but whose spatial relationship to the corner is recorded and which serves to witness the corner.

(2) (a) Any land surveyor making a boundary survey of lands within this state and utilizing a corner shall, within 90 days, complete, sign, and file with the county surveyor of the county where the corner is situated, a written record to be known as a corner file for every public land survey corner and accessory to the corner which is used as control in any survey by the surveyor, unless the corner and its accessories are already a matter of record in the county.

(b) Where reasonably possible, the corner file shall include the geographic coordinates of the corner.

(c) A surveyor may file a corner record as to any property corner, reference monument, or accessory to a corner.

(d) Corner records may be filed concerning corners used before the effective date of this section.

(3) The county surveyor of the county containing the corners shall have on record as part of the official files maps of each township within the county, the bearings and lengths of the connecting lines to government corners, and government corners looked for and not found.

(4) The county surveyor shall make these records available for public inspection at the county facilities during normal business hours.

(5) Filing fees for corner records shall be established by the [~~county executive or~~] county legislative body consistent with existing fees for similar services. All corners, monuments, and their accessories used prior to the effective date of this section shall be accepted and filed with the county surveyor without requiring the payment of the fees.

(6) When a corner record of a public land survey corner is required to be filed under the provisions of this section and the monument needs to be reconstructed or rehabilitated, the land surveyor shall contact the county surveyor in accordance with Section 17-23-14.

(7) A corner record may not be filed unless it is signed by a land surveyor.

(8) All filings relative to official cadastral surveys of the Bureau of Land Management of the United States of America performed by authorized personnel shall be exempt from filing fees.

Section 26. Section 17-23-18 is amended to read:

17-23-18. Amendment of survey maps or narratives by affidavit of corrections.

(1) Any survey map or narrative filed and recorded under the provisions of this chapter may be amended by an affidavit of corrections:

(a) to show any courses or distances omitted from the map or narrative;

(b) to correct an error in the description of the real property shown on the map or narrative; or

(c) to correct any other errors or omissions where the error or omission is ascertainable from the data shown on the map or narrative as recorded.

(2) (a) The affidavit of correction shall be prepared by the [~~registered~~] licensed professional land surveyor who filed the map or narrative.

(b) In the event of the death, disability, or retirement from practice of the surveyor who filed the map or narrative, the county surveyor or designated office may prepare the affidavit of correction.

(c) The affidavit shall set forth in detail the corrections made.

(d) The seal and signature of the [~~registered~~] licensed professional land surveyor filing the affidavit of correction shall be affixed to the affidavit.

(3) The county surveyor or designated office having jurisdiction of the map or narrative shall certify that the affidavit of correction has been examined and that the changes shown on the map or narrative are changes permitted under this section.

(4) Nothing in this section permits changes in courses or distances for the purpose of redesigning parcel configurations.

Section 27. Section 17-24-1 is amended to read:

17-24-1. General duties of treasurer.

The county treasurer shall:

(1) receive all money belonging to the county and all other money by law directed to be paid to the treasurer, [~~safely keep the same, and apply and pay it out and render an account thereof as required by law~~] including proceeds of bonds, notes, or other evidences of indebtedness issued under Title 11, Chapter 14, Utah Municipal Bond Act;

(2) deposit and invest all money received under Title 51, Chapter 7, State Money Management Act;

[~~(2)~~] (3) keep a record of the receipts and expenditures of all such money;

[~~(3)~~] (4) disburse county money:

(a) on a county warrant issued by the county auditor; or

(b) subject to Sections 17-19-1, 17-19-3, and 17-19-5, by a county check or such other payment mechanism as may be adopted pursuant to Chapter 36, Uniform Fiscal Procedures Act for Counties;

(5) perform the duties assigned to the treasurer under Title 59, Chapter 2, Part 13, Collection of Taxes;

[~~(4)~~] (6) perform the duties under Title 59, Chapter 2, Part 13, Collection of Taxes, that have been reassigned to the treasurer in an ordinance adopted under Section 17-16-5.5; and

[~~(5)~~] (7) perform [~~such~~] other duties [~~as~~] that are [~~or may be~~] required by law or ordinance.

Section 28. Section 17-24-4 is amended to read:

17-24-4. Payment of warrants, checks, or other instruments.

(1) When a warrant is presented for payment and there is money in the treasury [~~for that purpose~~], the treasurer shall pay it.

(2) Upon receiving the notice from the county auditor under Subsection 17-19-3(3)(b) and if there is adequate money in the treasury, the treasurer shall, by check or other payment mechanism, make any payment not already paid by warrant.

(3) Notwithstanding Subsections (1) and (2), the treasurer has no obligation to pay any warrant or to issue any check or other payment instrument before receiving the certified list under Subsection 17-20-1.7(4).

Section 29. Section 17-24-12 is amended to read:

17-24-12. Reports to county executive or legislative body.

Each county treasurer [~~must~~] shall make a detailed report whenever required so to do by the county executive or by the legislative body at any of their regular or special [~~meeting of them~~] meetings of all money received by [~~him~~] the treasurer, and of disbursements thereof, and of all other proceedings in [~~his~~] the treasurer's office so that the receipts into the treasury and the amount of disbursements shall clearly and distinctly appear.

Section 30. Section 17-27-103 is amended to read:

17-27-103. Definitions -- Notice.

(1) As used in this chapter:

(a) "Billboard" means a freestanding ground sign located on industrial, commercial, or residential property if the sign is designed or intended to direct attention to a business, product, or service that is not sold, offered, or existing on the property where the sign is located.

(b) "Chief executive officer" means the [~~county executive, or if the county has adopted an alternative form of government, the official who~~] person or body that exercises the executive powers of the county.

(c) "Conditional use" means a land use that, because of its unique characteristics or potential impact on the county, surrounding neighbors, or adjacent land uses, may not be compatible in some areas or may be compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts.

(d) "Constitutional taking" has the meaning as defined in Section 63-34-13.

(e) "County" means the unincorporated area of the county.

(f) "Elderly person" means a person who is 60 years old or older, who desires or needs to live with other elderly persons in a group setting, but who is capable of living independently.

(g) "Gas corporation" has the same meaning as defined in Section 54-2-1.

(h) (i) "General plan" means a document that a county adopts that sets forth general guidelines for proposed future development of the land within the county, as set forth in Sections 17-27-301 and 17-27-302.

(ii) "General plan" includes what is also commonly referred to as a "master plan."

(i) "Interstate pipeline company" means a person or entity engaged in natural gas transportation subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act, 15 U.S.C. Sec. 717 et seq.

(j) "Intrastate pipeline company" means a person or entity engaged in natural gas transportation that is not subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act, 15 U.S.C. Sec. 717 et seq.

(k) "Legislative body" means the county legislative body, or for a county that has adopted an alternative form of government, the body exercising legislative powers.

(l) "Lot line adjustment" means the relocation of the property boundary line between two adjoining lots with the consent of the owners of record.

(m) "Municipality" means a city or town.

(n) "Nonconforming structure" means a structure that:

(i) legally existed before its current zoning designation; and

(ii) because of subsequent zoning changes, does not conform with the zoning regulation's setback, height restrictions, or other regulations that govern the structure.

(o) "Nonconforming use" means a use of land that:

(i) legally existed before its current zoning designation;

(ii) has been maintained continuously since the time the zoning regulation governing the land changed; and

(iii) because of subsequent zoning changes, does not conform with the zoning regulations that now govern the land.

(p) "Official map" has the same meaning as provided in Section 72-5-401.

(q) "Person" means an individual, corporation, partnership, organization, association, trust, governmental agency, or any other legal entity.

(r) "Plat" means a map or other graphical representation of lands being laid out and prepared in accordance with Section 17-27-804.

(s) "Record of survey map" means a map of a survey of land prepared in accordance with Section 17-23-17.

(t) (i) "Residential facility for elderly persons" means a single-family or multiple-family dwelling unit that meets the requirements of Part 5 and any ordinance adopted under authority of that part.

(ii) "Residential facility for elderly persons" does not include a health care facility as defined by Section 26-21-2.

(u) "Special district" means all entities established under the authority of Title 17A, Special Districts, and any other governmental or quasi-governmental entity that is not a county, municipality, school district, or unit of the state.

(v) "Street" means public rights-of-way, including highways, avenues, boulevards, parkways, roads, lanes, walks, alleys, viaducts, subways, tunnels, bridges, public easements, and other ways.

(w) (i) "Subdivision" means any land that is divided, resubdivided or proposed to be divided into two or more lots, parcels, sites, units, plots, or other division of land for the purpose, whether immediate or future, for offer, sale, lease, or development either on the installment plan or upon any and all other plans, terms, and conditions.

(ii) "Subdivision" includes the division or development of land whether by deed, metes and bounds description, devise and testacy, lease, map, plat, or other recorded instrument.

(iii) "Subdivision" does not include:

(A) a bona fide division or partition of agricultural land for agricultural purposes;

(B) a recorded agreement between owners of adjoining properties adjusting their mutual boundary if:

(I) no new lot is created; and

(II) the adjustment does not result in a violation of applicable zoning ordinances;

(C) a recorded document, executed by the owner of record, revising the legal description of more than one contiguous parcel of property into one legal description encompassing all such parcels of property; or

(D) a bona fide division or partition of land in a county other than a first class county for the

purpose of siting, on one or more of the resulting separate parcels, an unmanned facility appurtenant to a pipeline owned or operated by a gas corporation, interstate pipeline company, or intrastate pipeline company.

(iv) The joining of a subdivided parcel of property to another parcel of property that has not been subdivided does not constitute a "subdivision" under this Subsection (1) (w) as to the unsubdivided parcel of property or subject the unsubdivided parcel to the county's subdivision ordinance.

(x) "Unincorporated" means the area outside of the incorporated boundaries of cities and towns.

(2) (a) A county meets the requirements of reasonable notice required by this chapter if it:

(i) posts notice of the hearing or meeting in at least three public places within the jurisdiction and publishes notice of the hearing or meeting in a newspaper of general circulation in the jurisdiction, if one is available; or

(ii) gives actual notice of the hearing or meeting.

(b) A county legislative body may enact an ordinance establishing stricter notice requirements than those required by this Subsection (2).

(c) (i) Proof that one of the two forms of notice authorized by this subsection was given is prima facie evidence that notice was properly given.

(ii) If notice given under authority of this section is not challenged as provided in Section 17-27-1001 within 30 days from the date of the meeting for which the notice was given, the notice is considered adequate and proper.

Section 31. Section 17-27-406 is amended to read:

17-27-406. Conditional uses -- Appeals.

(1) A zoning ordinance may contain provisions for administrative decisions relating to conditional uses that may be allowed, allowed with conditions, or denied in designated zoning districts, based on compliance with standards and criteria set forth in the zoning ordinance for those uses.

(2) Appeals of the approval or denial of a conditional use permit shall be decided by the board of adjustment, unless the county legislative body by ordinance designates itself or another body to decide those appeals.

Section 32. Section 17-27-702 is amended to read:

17-27-702. Organization -- Procedures.

(1) The board of adjustment shall:

(a) organize and elect a chairperson; and

(b) adopt rules that comply with any ordinance adopted by the legislative body.

(2) The board of adjustment shall meet at the call of the chairperson and at any other times that the board of adjustment determines.

(3) The chairperson, or in the absence of the chairperson, the acting chairperson, may administer oaths and compel the attendance of witnesses.

(4) (a) All meetings of the board of adjustment shall comply with the requirements of Title 52, Chapter 4, Open and Public Meetings.

(b) The board of adjustment shall:

(i) keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating that fact; and

(ii) keep records of its examinations and other official actions.

(c) The board of adjustment may, but is not required to, have its proceedings contemporaneously transcribed by a court reporter or a tape recorder.

(d) The board of adjustment shall file its records in the office of the board of adjustment.

(e) All records in the office of the board of adjustment are public records.

(5) The [~~concurring~~] vote of [~~at least three~~] a majority of the members of the board of adjustment present at a meeting at which a quorum is present is necessary to reverse any order, requirement, decision, or determination of any administrative official or agency or to decide in favor of the appellant.

(6) Decisions of the board of adjustment become effective at the meeting in which the decision is made, unless a different time is designated in the board's rules or at the time the decision is made.

(7) The legislative body may fix per diem compensation for the members of the board of adjustment, based on necessary and reasonable expenses and on meetings actually attended.

Section 33. Section 17-27-703 is amended to read:

17-27-703. Powers and duties.

(1) The board of adjustment shall hear and decide:

(a) appeals from [~~zoning~~] administrative decisions applying [~~the~~] a zoning or subdivision ordinance[~~;~~], including appeals from:

(i) building permit denials based upon a failure to comply with a zoning or subdivision ordinance; and

(ii) administrative decisions related to subdivision plats;

(b) special exceptions to the terms of the zoning ordinance; [~~and~~]

(c) variances from the terms of the zoning ordinance[~~.~~] ; and

(d) appeals from a decision approving or denying a conditional use permit, unless the county legislative body has by ordinance designated itself or another body to hear and decide those appeals.

(2) The board of adjustments may make determinations regarding the existence, expansion,

or modification of nonconforming uses if that authority is delegated to them by the legislative body.

(3) If authorized by the legislative body, the board of adjustment may interpret the zoning maps and pass upon disputed questions of lot lines, district boundary lines, or similar questions as they arise in the administration of the zoning regulations.

Section 34. Section 17-27-704 is amended to read:

17-27-704. Appeals.

(1) (a) [~~(i)~~] The applicant or any other person or entity adversely affected by [~~a~~] an administrative decision [~~administering or interpreting~~] applying a zoning or subdivision ordinance may appeal that decision [~~applying the zoning ordinance~~] by alleging that there is error in any order, requirement, decision, or determination made by an official [~~in the administration or interpretation of the zoning ordinance~~].

[~~(ii)~~] (b) The legislative body shall enact an ordinance establishing a reasonable time for appeal to the board of adjustment of administrative decisions [~~administering or interpreting a zoning ordinance~~] under Subsection (1)(a).

[~~(b) Any officer, department, board, or bureau of a county affected by the grant or refusal of a building permit or by any other decisions of the administrative officer in the administration or interpretation of the zoning ordinance may appeal any decision to the board of adjustment.~~]

(2) The person or entity making the appeal has the burden of proving that an error has been made.

(3) (a) Only decisions applying [~~the~~] a zoning or subdivision ordinance may be appealed to the board of adjustment.

(b) A person may not appeal, and the board of adjustment may not consider, any zoning or subdivision ordinance amendments.

(4) Appeals may not be used to waive or modify the terms or requirements of the zoning or subdivision ordinance.

Section 35. Section 17-27-708 is amended to read:

17-27-708. District court review of board of adjustment decision.

(1) Any person adversely affected by any decision of a board of adjustment may petition the district court for a review of the decision.

(2) (a) [~~In the petition, the plaintiff may only allege that~~] The district court's review is limited to a determination of whether the board of adjustment's decision [~~was~~] is arbitrary, capricious, or illegal.

(b) A determination of illegality requires a determination that the board of adjustment's decision violates a statute, ordinance, or existing law.

(3) (a) The petition is barred unless it is filed within 30 days after the board of adjustment's decision is final.

(b) (i) The time under Subsection (3)(a) to file a petition is tolled from the date a property owner files a request for arbitration of a constitutional taking issue with the private property ombudsman under Section 63-34-13 until 30 days after:

(A) the arbitrator issues a final award; or

(B) the private property ombudsman issues a written statement under Subsection 63-34-13(4)(b) declining to arbitrate or to appoint an arbitrator.

(ii) A tolling under Subsection (3)(b)(i) operates only as to the specific constitutional taking issues that are the subject of the request for arbitration filed with the private property ombudsman by a property owner.

(iii) A request for arbitration filed with the private property ombudsman after the time under Subsection (3)(a) to file a petition has expired does not affect the time to file a petition.

(4) (a) The board of adjustment shall transmit to the reviewing court the record of its proceedings including its minutes, findings, orders and, if available, a true and correct transcript of its proceedings.

(b) If the proceeding was tape recorded, a transcript of that tape recording is a true and correct transcript for purposes of this Subsection (4).

(5) (a) (i) If there is a record, the district court's review is limited to the record provided by the board of adjustment.

(ii) The court may not accept or consider any evidence outside the board of adjustment's record unless that evidence was offered to the board of adjustment and the court determines that it was improperly excluded by the board of adjustment.

(b) If there is no record, the court may call witnesses and take evidence.

(6) The court shall affirm the decision of the board of adjustment if the decision is supported by substantial evidence in the record.

(7) (a) The filing of a petition does not stay the decision of the board of adjustment.

(b) (i) Before filing a petition under this section or a request for mediation or arbitration of a constitutional taking issue under Section 63-34-13, the aggrieved party may petition the board of adjustment to stay its decision.

(ii) Upon receipt of a petition to stay, the board of adjustment may order its decision stayed pending district court review if the board of adjustment finds it to be in the best interest of the county.

(iii) After a petition is filed under this section or a request for mediation or arbitration of a constitutional taking issue is filed under Section 63-34-13, the petitioner may seek an injunction staying the board of adjustment's decision.

Section 36. Section 17-27-804 is amended to read:

17-27-804. Plats required.

(1) Unless exempt under Section 17-27-806 or not included in the definition of a subdivision under Subsection 17-27-103(1), whenever any lands are divided, the owner of those lands shall have an accurate plat made of them that sets forth and describes:

(a) all the parcels of ground divided, by their boundaries, course, and extent, and whether they are intended for streets or other public uses, together with any areas that are reserved for public purposes; and

(b) the lot or unit reference, the block or building reference, the street or site address, the street name or coordinate address, the acreage or square footage for all parcels, units, or lots, and the length and width of the blocks and lots intended for sale.

(2) (a) The owner of the land shall acknowledge the plat before an officer authorized by law to take the acknowledgement of conveyances of real estate.

(b) The surveyor making the plat shall certify it.

(c) The county [~~legislative body~~] executive shall approve the plat as provided in this part. Before the [~~legislative body~~] county executive may approve a plat, the owner of the land shall provide the [~~legislative body~~] county executive with a tax clearance indicating that all taxes, interest, and penalties owing on the land have been paid.

(3) After the plat has been acknowledged, certified, and approved, the owner of the land shall [~~file and~~] record it in the county recorder's office in the county in which the lands platted and [~~divided~~] laid out are situated.

Section 37. Section 17-27-805 is amended to read:

17-27-805. Subdivision approval procedure.

(1) A person may not submit a plat of a subdivision to the county recorder's office for recording unless a recommendation has been received from the planning commission and:

[~~(1)~~] (a) the plat has been approved by:

[~~(a)~~] (i) the [~~legislative body~~] executive of the county in whose unincorporated area the subdivision is located; or

[~~(b)~~] (ii) other officers that the county legislative body designates in an ordinance; and

[~~(2)~~] (b) the [~~approvals are~~] approval is entered in writing on the plat by the [~~chief~~] county executive [~~officer or chairperson of the legislative body~~] or by the other officers designated in the ordinance.

(2) A subdivision plat recorded without the approval required under this section is void.

Section 38. Section 17-27-806 is amended to read:

17-27-806. Exemptions from plat requirement.

(1) (a) Notwithstanding Sections 17-27-804 and 17-27-805, a person may submit to the county recorder's office for recording a document that subdivides property by metes and bounds into less than ten lots, without the necessity of recording a plat, if:

(i) the planning commission, if required by county ordinance, has given the county [~~legislative body~~] executive its recommendation, whether favorable or not; and

(ii) the document contains a certificate or written approval from:

(A) the [~~legislative body~~] executive of the county in whose unincorporated area the property is located; or

(B) other officers that the county legislative body designates in an ordinance.

(b) By indicating its approval on a document under Subsection (1)(a), the county [~~legislative body~~] executive or other officer designated by the county legislative [~~officer~~] body certifies that:

(i) the planning commission:

(A) has given its recommendation to the county [~~legislative body~~] executive; or

(B) is not required by county ordinance to give its recommendation;

(ii) the subdivision is not traversed by the mapped lines of a proposed street as shown in the general plan and does not require the dedication of any land for street or other public purposes; and

(iii) if the subdivision is located in a zoned area, each lot in the subdivision meets the frontage, width, and area requirements of the zoning ordinance or has been granted a variance from those requirements by the board of adjustment.

(2) (a) Subject to Subsection (2)(b), a lot or parcel resulting from a division of agricultural land is exempt from the plat requirements of Section 17-27-804 if the lot or parcel:

(i) qualifies as land in agricultural use under Title 59, Chapter 2, Part 5, Farmland Assessment Act;

(ii) meets the minimum size requirement of applicable zoning ordinances; and

(iii) is not used and will not be used for any nonagricultural purpose.

(b) The boundaries of each lot or parcel exempted under Subsection (2)(a) shall be graphically illustrated on a record of survey map that, after receiving the same approvals as are required for a plat under Section 17-27-805, shall be recorded with the county recorder.

(c) If a lot or parcel exempted under Subsection (2)(a) is used for a nonagricultural purpose, the county in whose unincorporated area the lot or

parcel is located may require the lot or parcel to comply with the requirements of Section 17-27-804.

(3) (a) A person may not submit to the county recorder's office for recording a document that subdivides property by metes and bounds unless it contains the certificate or written approval required by this section.

(b) The recording of a document that subdivides property by metes and bounds and does not contain the certificate or written approval required by this section:

(i) does not affect the validity of the document; and

(ii) does not affect whether the subdivided property complies with applicable county ordinances on land use and development.

Section 39. Section 17-27-806.5 is enacted to read:

17-27-806.5. Common area parcels on a plat -- No separate ownership -- Ownership interest equally divided among other parcels on a plat and included in description of other parcels.

(1) A parcel designated as common area on a plat recorded in compliance with this part may not be separately owned or conveyed independent of the other parcels created by the plat.

(2) The ownership interest in a parcel described in Subsection (1) shall:

(a) for purposes of assessment, be divided equally among all parcels created by the plat, unless a different division of interest for assessment purposes is indicated on the plat or an accompanying document; and

(b) be considered to be included in the description of each instrument describing a parcel on the plat by its identifying plat number, even if the common area interest is not explicitly stated in the instrument.

Section 40. Section 17-27-808 is amended to read:

17-27-808. Vacating or changing a subdivision plat.

(1) (a) Subject to Subsection (2), the county [~~legislative body~~] executive or any other officer that the county legislative body designates by ordinance may, with or without a petition, consider any proposed vacation, alteration, or amendment of a subdivision plat, any portion of a subdivision plat, or any street, lot, or alley contained in a subdivision plat at a public hearing.

(b) If a petition is filed, the responsible [~~body or~~] officer shall hold the public hearing within 45 days after receipt of the planning commission's recommendation under Subsection (2) if:

(i) the plat change includes the vacation of a public street or alley;

(ii) any owner within the plat notifies the municipality of their objection in writing within ten days of mailed notification; or

(iii) a public hearing is required because all of the owners in the subdivision have not signed the revised plat.

(2) (a) Before the county legislative body or officer designated by the county legislative body may consider a proposed vacation, alteration, or amendment under Subsection (1)(a) or (6), the county legislative body or officer shall refer the proposal to the planning commission for its recommendation.

(b) The planning commission shall give its recommendation within 30 days after the proposed vacation, alteration, or amendment is referred to it.

(3) Any fee owner, as shown on the last county assessment rolls, of land within the subdivision that has been laid out and platted as provided in this part may, in writing, petition the [~~legislative body~~] county executive to have the plat, any portion of it, or any street or lot contained in it, vacated, altered, or amended as provided in this section.

(4) Each petition to vacate, alter, or amend an entire plat, a portion of a plat, or a street or lot contained in a plat shall include:

(a) the name and address of all owners of record of the land contained in the entire plat;

(b) the name and address of all owners of record of land adjacent to any street that is proposed to be vacated, altered, or amended; and

(c) the signature of each of these owners who consents to the petition.

(5) (a) A petition that lacks the consent of all owners referred to in Subsection (4) may not be scheduled for consideration at a public hearing before the responsible [~~body or~~] officer until the notice required by this part is given.

(b) The petitioner shall pay the cost of the notice.

(6) Subject to Subsection (2), if the responsible body or officer proposes to vacate, alter, or amend a subdivision plat, or any street or lot contained in a subdivision plat, they shall consider the issue at a public hearing after giving the notice required by this part.

(7) Petitions to adjust lot lines between adjacent properties may be executed upon the recordation of an appropriate deed if:

(a) no new dwelling lot or housing unit results from the lot line adjustment;

(b) the adjoining property owners consent to the lot line adjustment;

(c) the lot line adjustment does not result in remnant land that did not previously exist; and

(d) the adjustment does not result in violation of applicable zoning requirements.

(8) (a) The name of a recorded subdivision may be changed by recording an amended plat making that change, as provided in this section.

(b) Except as provided in Subsection (8)(a), the recording of a declaration or other document that purports to change the name of a recorded plat is void.

Section 41. Section 17-27-809 is amended to read:

17-27-809. Notice of hearing for plat change.

(1) (a) The responsible [~~body or~~] officer shall give notice of the proposed plat change by mailing the notice to each owner of property located within 300 feet of the property that is the subject of the proposed plat change, addressed to the owner's mailing address appearing on the rolls of the county assessor of the county in which the land is located.

(b) The responsible [~~body or~~] officer shall ensure that the notice includes:

(i) a statement that anyone objecting to the proposed plat change must file a written objection to the change within ten days of the date of the notice;

(ii) a statement that if no written objections are received by the [~~legislative body~~] county executive within the time limit, no public hearing will be held; and

(iii) the date, place, and time when a hearing will be held, if one is required, to consider a vacation, alteration, or amendment without a petition when written objections are received or to consider any petition that does not include the consent of all land owners as required by Section 17-27-808.

(2) If the proposed change involves the vacation, alteration, or amendment of a street, the responsible [~~body or~~] officer shall give notice of the date, place, and time of the hearing by:

(a) mailing notice as required in Subsection (1); and

(b) (i) publishing the notice once a week for four consecutive weeks before the hearing in a newspaper of general circulation in the county in which the land subject to the petition is located; or

(ii) if there is no newspaper of general circulation in the county, posting the notice for four consecutive weeks before the hearing in three public places in that county.

Section 42. Section 17-27-810 is amended to read:

17-27-810. Grounds for vacating or changing a plat.

(1) (a) Within 30 days after the public hearing required by this part, the responsible [~~body or~~] officer shall consider the petition.

(b) If the responsible [~~body or~~] officer is satisfied that [~~neither~~] the public [~~nor any person~~] will not be materially injured by the proposed vacation, alteration, or amendment, and that there is good cause for the vacation, alteration, or amendment, the [~~legislative body, by ordinance,~~] county executive may vacate, alter, or amend the plat, any portion of the plat, or any street or lot.

(c) The responsible [~~body or~~] officer may approve the vacation, alteration, or amendment by [~~ordinance,~~] amended plat, administrative order, or deed containing a stamp or mark indicating approval by the responsible [~~body or~~] officer.

(d) The responsible [~~body or~~] officer shall ensure that the vacation, alteration, or amendment is recorded in the office of the county recorder in which the land is located.

(2) An aggrieved party may appeal the responsible [~~body's or~~] officer's decision to [~~district court as provided in Section 17-27-1001~~] the board of adjustment.

Section 43. Section 17-27-811 is amended to read:

17-27-811. Owner may not sell land before plat recorded -- Improper recording does not affect validity of document or compliance with ordinances -- Action by county.

[~~(1) (a) A county recorder may not record a subdivision plat that has not been approved by the legislative body of the county in whose unincorporated area the subdivision is located.~~]

[~~(b) A plat of a subdivision recorded without the approval of the county legislative body is void.~~]

[~~(2)~~] (1) (a) An owner of any land located in a subdivision, as defined in this chapter, who transfers or sells any land in that subdivision before a plat of the subdivision has been approved and recorded as required in this part violates this part for each lot or parcel transferred or sold.

(b) The description by metes and bounds in the instrument of transfer or other documents used in the process of selling or transferring does not exempt the transaction from a violation of Subsection (2)(a) or from the penalties or remedies provided in this chapter.

(c) Notwithstanding any other provision of this Subsection [~~(2)~~] (1), the recording of an instrument of transfer or other document used in the process of selling or transferring real property that violates this part:

(i) does not affect the validity of the instrument or other document; and

(ii) does not affect whether the property that is the subject of the instrument or other document complies with applicable municipal ordinances on land use and development.

[~~(3)~~] (2) (a) A county may bring an action against an owner to require the property to conform to the provisions of this part or an ordinance enacted under the authority of this part.

(b) An action under this Subsection [~~(3)~~] (2) may include an injunction, abatement, merger of title, or any other appropriate action or proceedings to prevent, enjoin, or abate the violation.

(c) A county need only establish the violation to obtain the injunction.

Section 44. Section 17-27-901 is amended to read:

17-27-901. Restrictions for solar and other energy devices.

(1) The legislative body, in order to protect and ensure access to sunlight for solar energy devices, may adopt regulations governing legislative subdivision development plans that relate to the use of restrictive covenants or solar easements, height restrictions, side yard and setback requirements, street and building orientation and width requirements, height and location of vegetation with respect to property boundary lines, and other permissible forms of land use controls.

(2) The [~~legislative body~~] county executive may refuse to approve or renew any plat or subdivision plan, or dedication of any street or other ground, if the deed restrictions, covenants, or similar binding agreements running with the land for the lots or parcels covered by the plat or subdivision prohibit or have the effect of prohibiting reasonably sited and designed solar collectors, clotheslines, or other energy devices based on renewable resources from being installed on buildings erected on lots or parcels covered by the plat or subdivision.

Section 45. Section 17-27-1001 is amended to read:

17-27-1001. Appeals.

(1) No person may challenge in district court a county's land use decisions made under this chapter or under the regulation made under authority of this chapter until that person has exhausted all administrative remedies.

(2) (a) Any person adversely affected by any decision made in the exercise of the provisions of this chapter may file a petition for review of the decision with the district court within 30 days after the local decision is rendered.

(b) (i) The time under Subsection (2)(a) to file a petition is tolled from the date a property owner files a request for arbitration of a constitutional taking issue with the private property ombudsman under Section 63-34-13 until 30 days after:

(A) the arbitrator issues a final award; or

(B) the private property ombudsman issues a written statement under Subsection 63-34-13(4)(b) declining to arbitrate or to appoint an arbitrator.

(ii) A tolling under Subsection (2)(b)(i) operates only as to the specific constitutional taking issues that are the subject of the request for arbitration filed with the private property ombudsman by a property owner.

(iii) A request for arbitration filed with the private property ombudsman after the time under Subsection (2)(a) to file a petition has expired does not affect the time to file a petition.

(3) (a) The courts shall:

[~~(a)~~] (i) presume that land use decisions and regulations are valid; and

[~~(b)~~] (ii) determine only whether or not the decision is arbitrary, capricious, or illegal.

(b) A determination of illegality requires a determination that the decision violates a statute, ordinance, or existing law.

Section 46. Section 17-33-1 is amended to read:

17-33-1. Title -- Establishment of merit system -- Separate systems for peace officers and firemen recognized -- Options of small counties.

(1) This chapter shall be known and may be cited as the "County Personnel Management Act."

(2) A merit system of personnel administration for the counties of the state of Utah, their departments, offices, and agencies, except as otherwise specifically provided, is established.

(3) This chapter recognizes the existence of the merit systems for peace officers of the several counties as provided for in [~~Title 17,~~] Chapter 30, Deputy Sheriffs - Merit System, and for firemen of the several counties as provided for in [~~Title 17,~~] Chapter 28, Firemen's Civil Service Commission, and is intended to give county commissions the option of using the provisions of this chapter as a single merit system for all county employees or in combination with these existing systems for firemen and peace officers.

(4) This chapter [~~shall be~~] is optional with counties having fewer than 130 full-time, part-time, and seasonal employees and elected officials not covered by other merit systems.

Section 47. Section 17-33-4 is amended to read:

17-33-4. Career service council -- Members and alternate members -- Powers and duties -- Appeals -- Time limit -- Qualifications, appointment, terms, and compensation of council members.

(1) (a) (i) There shall be in each county establishing a system a three-member bipartisan career service council appointed by the county [~~legislative body~~] executive. The members of the council shall be persons in sympathy with the application of merit principles to public employment.

(ii) (A) The county executive may appoint alternate members of the career service council to hear appeals that one or more regular career service council members are unable to hear.

(B) The term of an alternate member of the career service council may not exceed one year.

(b) The council shall hear appeals not resolved at lower levels in the cases of career service employees suspended, transferred, demoted, or dismissed as well in the cases of other grievances not resolved by the grievance procedure at the division or departmental level.

(c) The career service council:

(i) may make an initial determination in each appeal whether the appeal is one of the types of matters under Subsection (1)(b) over which the council has jurisdiction;

(ii) shall review written appeals in cases of applicants rejected for examination and report final binding appeals decisions, in writing, to the county legislative body; [~~and~~]

(iii) may not hear any other personnel matter[~~,~~]; and

(iv) may affirm, modify, vacate, or set aside an order for disciplinary action.

[~~(d) Notwithstanding the other provisions of this Subsection (1), a right of~~]

(d) (i) A person adversely affected by a decision of the career service council may appeal the decision to the district court [~~under the provisions of the Utah Rules of Civil Procedure shall not be abridged~~].

(ii) An appeal to the district court under this Subsection (1)(d) is barred unless it is filed within 30 days after the career service council issues its decision.

(iii) If there is a record of the career service council proceedings, the district court review shall be limited to the record provided by the career service council.

(iv) In reviewing a decision of the career service council, the district court shall presume that the decision is valid and may determine only whether the decision is arbitrary or capricious.

(2) Each council member shall serve a term of three years to expire on June 30, three years after the date of his or her appointment, except that original appointees shall be chosen as follows: one member for a term expiring June 30, 1982; one member for a term expiring June 30, 1983; and one member for a term expiring June 30, 1984. Successors of original council members shall be chosen for three-year terms. An appointment to fill a vacancy on the council shall be for only the unexpired term of the appointee's successor. Each member of the board shall hold office until his successor is appointed and confirmed. A member of the council may be removed by the [~~governing body~~] county executive for cause, after having been given a copy of the charges against him or her and an opportunity to be heard publicly on the charges before the county legislative body. Adequate annual appropriations shall be made available to enable the council effectively to carry out its duties under this law.

(3) Members and alternates of the council shall be United States citizens and be actual and bona fide residents of the state of Utah and the county from which appointed for a period of not less than one year preceding the date of appointment and a member may not hold another government office or be employed by the county.

(4) The council shall elect one of its members as chairperson, and two or more members of the council shall constitute a quorum necessary for carrying on the business and activity of the council.

(5) The council shall have subpoena power to compel attendance of witnesses, and to authorize witness fees where it deems appropriate, to be paid at the same rate as in justice courts.

(6) (a) (i) Council members shall receive compensation for each day or partial day they are in session at a per diem rate determined by the county legislative body.

(ii) An alternate member shall receive compensation for each day or partial day that the alternate member is required to replace a regular council member, at a per diem rate determined by the county legislative body.

(b) The county legislative body may periodically adjust the compensation rate for inflation.

Section 48. Section 17-33-4.5 is enacted to read:

17-33-4.5. Council may refer an appeal to an administrative law judge for a recommendation -- Council action on recommendation.

(1) (a) A county legislative body may appoint one or more administrative law judges to hear appeals referred by a career service council under this section.

(b) Each administrative law judge shall be trained and experienced in personnel matters.

(2) (a) If a career service council determines that it is in the county's best interest, it may initially refer an appeal to an administrative law judge who has been appointed under Subsection (1).

(b) After holding a hearing, the administrative law judge shall make findings of fact and a recommendation to the career service council.

(c) After receiving the administrative law judge's recommendation, a career service council may request the administrative law judge to hold a further factual hearing before the career service council's decision.

(d) A career service council may adopt or reject an administrative law judge's recommendation, whether before or after a further hearing under Subsection (2)(c).

Section 49. Section 17-33-5 is amended to read:

17-33-5. Office of personnel management -- Director -- Appointment and responsibilities -- Personnel rules.

(1) (a) Each county [~~legislative body~~] executive shall:

(i) create an office of personnel management, administered by a director of personnel management; and

(ii) ensure that the director is a person with proven experience in personnel management.

[~~(b) (i) Beginning July 1, 1993, the county legislative body shall appoint a director of personnel management to serve a four-year term.~~]

[~~(ii) At the expiration of any four-year term, the county legislative body may reappoint that director to another four-year term or may appoint a new director.~~]

[~~(iii) If the position of director of personnel management becomes vacant for any reason before the four-year term expires, the county legislative body shall appoint a person to complete the unexpired term by following the procedures and requirements of this section.~~]

(b) The position of director of personnel management shall be:

(i) a merit position; and

(ii) filled as provided in Subsection (1)(c).

(c) The career service council shall:

(i) advertise and recruit for the director position in the same manner as for merit positions;

(ii) select three names from a register; and

(iii) submit those names as recommendations to the county legislative body.

(d) The county legislative body shall select a person to serve as director of the office of personnel management from the names submitted to it by the career service council.

(2) The director of personnel management shall:

(a) encourage and exercise leadership in the development of expertise in personnel administration within the several departments, offices, and agencies in the county service and make available the facilities of the office of personnel management to this end;

(b) advise the county legislative and executive bodies on the use of human resources;

(c) develop and implement programs for the improvement of employee effectiveness, such as training, safety, health, counseling, and welfare;

(d) investigate periodically the operation and effect of this law and of the policies made under it and report findings and recommendations to the county legislative body;

(e) establish and maintain records of all employees in the county service, setting forth as to each employee class, title, pay or status, and other relevant data;

(f) make an annual report to the county legislative body and county executive regarding the work of the department; and

(g) apply and carry out this law and the policies under it and perform any other lawful acts that are necessary to carry out the provisions of this law.

(3) (a) (i) The director shall [~~issue~~] recommend personnel rules for the county.

(ii) The county legislative body may approve, amend, or reject those rules before they are [~~implemented~~] adopted.

(b) The rules shall provide for:

(i) recruiting efforts to be planned and carried out in a manner that assures open competition, with special emphasis to be placed on recruiting efforts to attract minorities, women, handicapped, or other groups that are substantially underrepresented in the county work force to help assure they will be among the candidates from whom appointments are made;

(ii) the establishment of job related minimum requirements wherever practical, which all successful candidates shall be required to meet in order to be eligible for consideration for appointment or promotion;

(iii) selection procedures that include consideration of the relative merit of each applicant for employment, a job related method of determining the eligibility or ineligibility of each applicant, and a valid, reliable, and objective system of ranking [~~eligibles~~] eligible applicants according to their qualifications and merit;

(iv) certification procedures that insure equitable consideration of an appropriate number of the most qualified [~~eligibles~~] eligible applicants based on the ranking system;

(v) appointments to positions in the career service by selection from the most qualified [~~eligibles~~] eligible applicants certified on eligible lists established in accordance with Subsections (3)(b)(iii) and (iv);

(vi) noncompetitive appointments in the occasional instance where there is evidence that open or limited competition is not practical, such as for unskilled positions for which there are no minimum job requirements;

(vii) limitation of competitions at the discretion of the director for appropriate positions to facilitate employment of qualified applicants with a substantial physical or mental impairment, or other groups protected by Title VII of the Civil Rights Act;

(viii) permanent appointment for entry to the career service which shall be contingent upon satisfactory performance by the employee during a period of six months, with the probationary period extendable for a period not to exceed six months for good cause, but with the condition that the probationary employee may appeal directly to the council any undue prolongation of the period designed to thwart merit principles;

(ix) temporary, provisional, or other noncareer service appointments, which may not be used as a way of defeating the purpose of the career service and may not exceed 90 days, with the period extendable for a period not to exceed an additional 90 days for good cause;

(x) lists of [~~eligibles~~] eligible applicants normally to be used, if available, for filling temporary positions, and short term emergency appointments

to be made without regard to the other provisions of law to provide for maintenance of essential services in an emergency situation where normal procedures are not practical, these emergency appointments not to exceed 90 days, with that period extendable for a period not to exceed an additional 90 days for good cause;

(xi) promotion and career ladder advancement of employees to higher level positions and assurance that all persons promoted are qualified for the position;

(xii) recognition of the equivalency of other merit processes by waiving, at the discretion of the director, the open competitive examination for placement in the career service positions of those who were originally selected through a competitive examination process in another governmental entity, the individual in those cases, to serve a probationary period;

(xiii) preparation, maintenance, and revision of a position classification plan for all positions in the career service, based upon similarity of duties performed and responsibilities assumed, so that the same qualifications may reasonably be required for, and the same schedule of pay may be equitably applied to, all positions in the same class, the compensation plan, in order to maintain a high quality public work force, to take into account the responsibility and difficulty of the work, the comparative pay and benefits needed to compete in the labor market and to stay in proper alignment with other similar governmental units, and other factors;

(xiv) keeping records of performance on all employees in the career service and requiring consideration of performance records in determining salary increases, any benefits for meritorious service, promotions, the order of layoffs and reinstatements, demotions, discharges, and transfers;

(xv) establishment of a plan governing layoffs resulting from lack of funds or work, abolition of positions, or material changes in duties or organization, and governing reemployment of persons so laid off, taking into account with regard to layoffs and reemployment the relative ability, seniority, and merit of each employee;

(xvi) establishment of a plan for resolving employee grievances and complaints with final and binding decisions;

(xvii) establishment of disciplinary measures such as suspension, demotion in rank or grade, or discharge, such measures to provide for presentation of charges, hearing rights, and appeals for all permanent employees in the career service to the career service council;

(xviii) establishment of a procedure for employee development and improvement of poor performance;

(xix) establishment of hours of work, holidays, and attendance requirements in various classes of positions in the career service;

(xx) establishment and publicizing of fringe benefits such as insurance, retirement, and leave programs; and

(xxi) any other requirements not inconsistent with this law that are proper for its enforcement.

Section 50. Section 17-33-7 is amended to read:

17-33-7. Functions of county office of personnel management -- Personnel functions of county agencies, departments, or offices.

(1) (a) The county office of personnel management shall perform the functions required by this Subsection (1).

(b) The county executive, county legislative body, and county office of personnel management may not delegate those functions to a separate county agency, office, or department.

(c) The county office of personnel management shall:

(i) design and administer a county pay plan that includes salaries, wages, incentives, bonuses, leave, insurance, retirement, and other benefits;

(ii) design and administer the county classification plan and grade allocation system, including final decisions on position classification and grade allocation;

(iii) conduct position classification studies, including periodic desk audits, except that an agency, department, or office may submit classification recommendations to the county office of personnel management;

(iv) maintain registers of publicly recruited applicants and certification of top-ranking eligible applicants;

(v) monitor county agency, department, or office personnel practices to determine compliance with equal opportunity and affirmative action guidelines; and

(vi) maintain central personnel records.

(d) The county legislative body may approve, amend, or reject the pay plan.

(2) County agencies, departments, or offices shall:

(a) establish initial job descriptions;

(b) recommend position classifications and grade allocations;

(c) make final selections for appointments and promotions to vacant positions;

(d) conduct performance evaluations;

(e) discipline employees; and

(f) perform other functions approved by the [~~legislative body~~] county executive, and agreed to by the county agency, office, or department.

Section 51. Section 17-33-8 is amended to read:

17-33-8. Career service -- Exempt positions.

The career service shall be a permanent service to which this law shall apply and shall comprise all tenured positions in the public service now existing or hereafter established, except the following:

(1) The county executive, members of the county legislative body, other elected officials, and major department heads charged directly by the county legislative body, or by a board appointed by the county legislative body, with the responsibility of assisting in the formulation and carrying out of matters of policy; and if it is sought that any position which differs from its present status be exempted or tenured after the effective date of this act, a public hearing on the proposed exemption or tenure shall be held upon due notice and the concurrence of the council.

(2) One confidential secretary for each elected county officer and major department head if one is assigned.

(3) An administrative assistant to the county executive, each member of the county legislative body, and to each elected official, if one is assigned.

(4) The duly appointed chief deputy [~~or~~] of any elected county officer who would take over and discharge the duties of the elected county officer in the absence or disability of the originally responsible officer.

(5) Persons employed to make or conduct a temporary and special inquiry, investigation, or examination on behalf of the county legislative body or one of its [~~committee~~] committees.

(6) Noncareer employees compensated for their services on a seasonal or contractual basis who are hired on emergency or seasonal appointment basis, as approved by the council, and provisional or part-time employees as defined by the county's policies and procedures or its rules and regulations.

(7) Positions which by their nature -- confidential or key policy-determining or both -- cannot or should not be appropriately included in the career service. All positions designated as being exempt under this subsection shall be listed in the rules and regulations promulgated under this act by job title and department, office or agency, and any change in exempt status shall constitute an amendment to the rules and regulations.

Section 52. Section 17-36-3 is amended to read:

17-36-3. Definitions.

As used in this chapter:

(1) "Accrual basis of accounting" means a method where revenues are recorded when earned and expenditures recorded when they become liabilities notwithstanding that the receipt of the revenue or payment of the expenditure may take place in another accounting period.

(2) "Appropriation" means an allocation of money for a specific purpose.

(3) (a) "Budget" means a plan for financial operations for a fiscal period, embodying estimates for proposed expenditures for given purposes and the means of financing the expenditures.

(b) "Budget" may refer to the budget of a fund for which a budget is required by law, or collectively to the budgets for all those funds.

(4) "Budgetary fund" means a fund for which a budget is required, such as those described in Section 17-36-8.

(5) "Budget officer" means the county auditor, county clerk, or county executive as provided in [~~Section~~] Subsection 17-19-19(1).

(6) "Budget period" means the fiscal period for which a budget is prepared.

(7) "Check" means an order in a specific amount drawn upon the depositary by any authorized officer in accordance with Section 17-19-3 or 17-24-1.

(8) "Countywide service" means a service provided in both incorporated and unincorporated areas of a county.

(9) "Current period" means the fiscal period in which a budget is prepared and adopted.

(10) "Department" means any functional unit within a fund which carries on a specific activity.

(11) "Encumbrance system" means a method of budgetary control where part of an appropriation is reserved to cover a specific expenditure by charging obligations, such as purchase orders, contracts, or salary commitments to an appropriation account. An expenditure ceases to be an encumbrance when paid or when the actual liability is entered in the books of account.

(12) "Estimated revenue" means any revenue estimated to be received during the budget period in any fund for which a budget is prepared.

(13) "Fiscal period" means the annual or biennial period for recording county fiscal operations.

(14) "Fund" means an independent fiscal and accounting entity comprised of a sum of money or other resources segregated for a specific purpose or objective.

(15) "Fund balance" means the excess of the assets over liabilities, reserves, and contributions, as reflected by its books of account.

(16) "Fund deficit" means the excess of liabilities, reserves, and contributions over its assets, as reflected by its books of account.

(17) "General Fund" means the fund used to account for all receipts, disbursements, assets, liabilities, reserves, fund balances, revenues, and expenditures not required to be accounted for in other funds.

(18) "Interfund loan" means a loan of cash from one fund to another, subject to future repayment; but it does not constitute an expenditure or a use of retained earnings, fund balance, or unappropriated surplus of the lending fund.

(19) "Last completed fiscal period" means the fiscal period next preceding the current period.

(20) "Modified accrual basis of accounting" means a method under which expenditures other than accrued interest on general long-term debt are recorded at the time liabilities are incurred and revenues are recorded when they become measurable and available to finance expenditures of the current period.

(21) "Municipal capital project" means the acquisition, construction, or improvement of capital assets that facilitate providing municipal service.

(22) "Municipal service" means a service not provided on a countywide basis and not accounted for in an enterprise fund, and includes police patrol, fire protection, culinary or irrigation water retail service, water conservation, local parks, sewers, sewage treatment and disposal, cemeteries, garbage and refuse collection, street lighting, airports, planning and zoning, local streets and roads, curb, gutter, and sidewalk maintenance, and ambulance service.

(23) "Retained earnings" means that part of the net earnings retained by an enterprise or internal service fund which is not segregated or reserved for any specific purpose.

(24) "Special fund" means any fund other than the General Fund, such as those described in Section 17-36-6.

(25) "Unappropriated surplus" means that part of a fund which is not appropriated for an ensuing budget period.

(26) "Warrant" means an order in a specific amount drawn upon the treasurer by the auditor.

Section 53. Section 17-50-402 is amended to read:

17-50-402. Payment or rejection of claims.

(1) If the county executive finds that any claim presented is not payable by the county or is not a proper county charge, the county executive shall reject the claim.

(2) (a) If the claim is found to be a proper county charge, but greater in amount than is justly due, the county executive may allow the claim in part and may order a warrant drawn for the portion allowed.

(b) If the claimant is unwilling to receive the amount in full payment, the county executive may again consider the claim.

(3) No claim may be paid if paying the claim would exceed the current unencumbered funds.

Section 54. Section 17-52-101 is amended to read:

17-52-101. Definitions.

As used in this chapter:

(1) "Appointment council" means a group of persons consisting of:

[~~(a) the governor or the governor's designee;~~]

[~~(b) the speaker of the House of Representatives or the speaker's designee;~~]

[~~(c) the president of the Senate or the president's designee;~~]

(a) a resident of the county in which the optional plan is proposed, designated by a majority of all state senators and representatives whose districts include any part of the county in which the optional plan is proposed;

[~~(d)~~] (b) a resident of the county in which the optional plan is proposed, designated by the county legislative body;

[~~(e)~~] (c) a resident of the county in which the optional plan is proposed, designated by [~~majority vote of the mayors of all cities and towns in the county in which the optional plan is proposed~~] the petition sponsors; and

[~~(f) four~~] (d) two other residents of the county in which the optional plan is proposed, designated by majority vote of the [~~five~~] three other members of the appointment council.

(2) "Optional plan" means a plan establishing an alternate form of government for a county as provided in Section 17-52-401.

(3) "Reasonable notice" means, at a minimum:

(a) (i) publication in a newspaper of general circulation within the county at least once a week for at least two consecutive weeks ending no more than ten and no fewer than three days before the event that is the subject of the notice; or

(ii) if there is no newspaper of general circulation within the county, posting at least one notice per 1,000 population within the county, for at least a week ending no more than three days before the event that is the subject of the notice, at locations throughout the county that are most likely to give actual notice to county residents; and

(b) if the county has an Internet home page, posting an electronic notice on the Internet for at least seven days immediately before the event that is the subject of the notice.

(4) "Study committee" means a group of persons:

[~~(a) (i) elected pursuant to a resolution adopted under Subsection 17-52-202(3)(a) or 17-52-203(3)(d)(i)(B) in which the county legislative body specifies that the members should be elected; or~~]

[~~(ii)~~] (a) appointed under Section 17-52-301; and

(b) charged with the duties provided in Section 17-52-303.

Section 55. Section 17-52-102 is amended to read:

17-52-102. Forms of county government -- County commission form required unless another is adopted.

(1) Each county shall operate under one of the following forms of county government:

(a) the county commission form under Section 17-52-501;

(b) the expanded county commission form under Section 17-52-502;

[~~(c) the executive and chief administrative officer-council form under Section 17-52-503;~~]

[~~(d)~~] (c) the county executive and council form under Section 17-52-504; or

[~~(e)~~] (d) the council-manager form under Section 17-52-505[~~; or~~].

[~~(f) the council and county administrative officer form under Section 17-52-506.~~]

(2) Unless it adopts another form of government as provided in this chapter, each county shall operate under the county commission form of government under Section 17-52-501.

Section 56. Section 17-52-201 is amended to read:

17-52-201. Procedure for initiating adoption of optional plan -- Limitations -- Pending proceedings.

(1) An optional plan proposing an alternate form of government for a county may be adopted as provided in this chapter.

(2) The process to adopt an optional plan establishing an alternate form of county government may be initiated by:

(a) the county legislative body as provided in Section 17-52-202; or

(b) registered voters of the county as provided in Section 17-52-203.

(3) (a) If the process to adopt an optional plan has been initiated under Chapter 26, Laws of Utah 1973, Section 3, 4, or 5, or Section 17-52-202 or 17-52-203, the county legislative body may not initiate the process again under Section 17-52-202 unless the earlier proceeding:

[~~(i) has been concluded by the county legislative body rejecting the optional plan;~~]

[~~(ii)~~] (i) has been concluded by an affirmative or negative vote of registered voters; or

[~~(iii)~~] (ii) has not been concluded but has been pending for at least two years.

(b) A county legislative body may not initiate the process to adopt an optional plan under Section 17-52-202 within four years of an election at which voters approved or rejected an optional plan proposed as a result of a process initiated by the county legislative body.

(c) Registered voters of a county may not initiate the process to adopt an optional plan under Section 17-52-203 within four years of an election at which voters approved or rejected an optional plan proposed as a result of a process initiated by registered voters.

Section 57. Section 17-52-202 is amended to read:

17-52-202. County legislative body initiation of adoption of optional plan -- Procedure.

(1) A county legislative body may initiate the process of adopting an optional plan by[~~: (a) adopting a resolution of intent as provided in Subsection (2)(a); (b)~~] adopting a resolution to submit to the voters the question of whether a study committee should be established as provided in [~~Subsection (3)(a); or~~] Section 17-52-301.

[~~(c) adopting a resolution to approve the establishment of a study committee as provided in Subsection (4)(a).~~]

[~~(2) (a) A county legislative body may adopt a resolution indicating its intent to propose the adoption of an optional plan.~~]

[~~(b) Each resolution under Subsection (2)(a) shall:~~]

[~~(i) contain a general description of the proposed optional plan;~~]

[~~(ii) set a public hearing or series of public hearings on the proposed optional plan; and~~]

[~~(iii) require that reasonable notice be given of the public hearing or series of public hearings.~~]

[~~(c) A county legislative body may appoint an advisory committee to assist it in preparing the optional plan that the county legislative body intends to propose for adoption.~~]

[~~(d) Each county legislative body adopting a resolution under Subsection (2)(a) shall:~~]

[~~(i) hold a public hearing or series of public hearings, as the county legislative body determines, on the proposed optional plan beginning no less than 15 days after adoption of the resolution;~~]

[~~(ii) beginning the day after the resolution is adopted, maintain at least three complete copies of the proposed optional plan at the office of the county clerk for inspection and copying by the public; and~~]

[~~(iii) in each notice or publication of the public hearing or series of public hearings, refer to the complete proposed optional plan and its availability for inspection and copying in the county clerk's office.~~]

[~~(e) (i) At the conclusion of the public hearing or series of hearings required under Subsection (2)(d)(i), a county legislative body may adopt a resolution recommending the adoption of the proposed optional plan by registered voters.~~]

[~~(ii) Before adopting a resolution under Subsection (2)(e)(i), a county legislative body may modify the proposed optional plan.~~]

[~~(iii) Each resolution under Subsection (2)(e)(i) shall provide for submitting the proposed optional plan to the voters at an election held under Section 17-52-206.~~]

[~~(f) Failure to adopt a resolution under Subsection (2)(e)(i) within six months of the adoption of a resolution under Subsection (2)(a) shall be considered a rejection of the proposed optional plan.~~]

[~~(g) A county legislative body may reconsider its action in proposing an optional plan under this Subsection (2) and terminate the process to adopt the optional plan if the reconsideration and termination occur:~~]

[~~(i) within six months after the adoption of a resolution under Subsection (2)(e)(i); and~~]

[~~(ii) no later than six months before the date on which an election under Section 17-52-206 is scheduled.~~]

[~~(3) (a) As an alternative to the procedure under Subsection (2), a county legislative body may adopt a resolution to submit to the registered voters of the county the question of whether a study committee should be established.~~]

[~~(b)~~] (2) Each resolution adopted under Subsection [~~(3)(a)~~] (1) shall[~~: (i)~~] require the question to be submitted to the registered voters of the county [~~at a general or special~~] on one of the election dates specified in Subsection 20A-1-204(1)(a), as the county legislative body determines, no less than 90 days and no more than 180 days after adoption of the resolution under Subsection [~~(3)(a);~~] (1).

[~~(ii) specify the number of members of the proposed study committee, subject to Subsection 17-52-303(1)(a), and whether the members are to be elected or appointed; and~~]

[~~(iii) if the members are to be elected, provide procedures for the nonpartisan nomination of the members of the proposed study committee and their nonpartisan election at the same election at which the question of the establishment of the study committee is submitted.~~]

[~~(c) If the members of the proposed study committee are to be appointed, their appointment shall be governed by Section 17-52-301.~~]

[~~(4) (a) As an alternative to the procedures under Subsections (2) and (3), a county legislative body may adopt a resolution approving the establishment of a study committee with appointed members.~~]

[~~(b) Each resolution under Subsection (4)(a) shall:~~]

[~~(i) specify the number of members of the study committee, subject to Subsection 17-52-303(1)(a); and~~]

[~~(ii) provide for the appointment of the members as provided in Section 17-52-301.~~]

Section 58. Section 17-52-203 is amended to read:

17-52-203. Registered voter initiation of adoption of optional plan -- Procedure.

(1) Registered voters of a county may initiate the process of adopting an optional plan by[~~:~~] filing a petition for the establishment of a study committee as provided in Section 17-52-301.

[~~(a) filing copies of a proposed optional plan, as provided in Subsection (2)(c), in anticipation of filing a petition under Subsection (2)(a); or~~]

[~~(b) filing a petition under Subsection (3).~~]

[~~(2) (a) Registered voters of a county may file a petition requiring the county legislative body to submit a proposed optional plan to the registered voters of the county.~~]

[~~(b) Each petition under Subsection (2)(a) shall:~~]

[~~(i) be signed by registered voters residing in the county equal in number to at least 15% of the total number of votes cast in the county at the most recent election for governor;~~]

[~~(ii) contain a general description of the proposed optional plan;~~]

[~~(iii) indicate that a complete copy of the proposed optional plan is available for inspection and copying at the county clerk's office;~~]

[~~(iv) designate up to five of the petition signers as sponsors, one of whom shall be designated as the contact sponsor, with the mailing address and telephone number of each; and~~]

[~~(v) be filed in the office of the clerk of the county in which the petition signers reside.~~]

[~~(c) Before circulating a petition under Subsection (2)(a) for signature, the petition sponsors shall file with the county clerk at least three complete copies of the proposed optional plan that is the subject of the petition.~~]

[~~(d) A county legislative body may not alter an optional plan proposed under this Subsection (2).~~]

[~~(e) Within 30 days after the county clerk's receipt of the attorney general statement under Section 17-52-204 with respect to a petition certified under Subsection (4)(a)(ii)(A), each county legislative body shall establish the date for an election to be held as provided under Section 17-52-206.~~]

[~~(3) (a) Registered voters of a county may file a petition requiring the county legislative body to adopt a resolution for the establishment of a study committee.~~]

[~~(b)~~] (2) Each petition under Subsection [~~(3)(a)~~] (1) shall:

[~~(i) request the county legislative body to choose between:~~]

[~~(A) adopting a resolution that establishes a study committee with members appointed under Section 17-52-301; or~~]

[~~(B) adopting a resolution submitting to the county's registered voters the question of whether a study committee should be established;~~]

[~~(ii)~~] (a) be signed by registered voters residing in the county equal in number to at least 10% of the total number of votes cast in the county at the most recent election for governor;

[~~(iii)~~] (b) designate up to five of the petition signers as sponsors, one of whom shall be designated as the contact sponsor, with the mailing address and telephone number of each; and

[~~(iv)~~] (c) be filed in the office of the clerk of the county in which the petition signers reside.

[~~(c) (i) Within 90 days of the certification of the petition under Subsection (4)(a)(ii)(A), the county legislative body shall hold a public hearing or series of public hearings, as the county legislative body determines, on the petition.~~]

[~~(ii) The county legislative body shall give reasonable notice of the public hearing or series of public hearings under Subsection (3)(c)(i).~~]

[~~(d) (i) At the conclusion of the public hearing or series of public hearings required under Subsection (3)(c)(i), the county legislative body shall:~~]

[~~(A) adopt a resolution approving the establishment of a study committee with members appointed under Section 17-52-301 and specifying the number of members to be appointed, subject to Subsection 17-52-303(1)(a); or~~]

[~~(B) adopt a resolution submitting to the county's registered voters the question of whether a study committee under Section 17-52-301 should be established.~~]

[~~(ii) Each resolution under Subsection (3)(d)(i)(B) shall comply with the requirements of Subsection 17-52-202(3)(b).~~]

[~~(4)~~] (3) (a) Within 30 days of the filing of a petition under Subsection [~~(2)(a) or (3)(a)~~] (1) or an amended or supplemental petition under Subsection [~~(4)~~] (2)(b), the county clerk shall:

(i) determine whether the petition or amended or supplemental petition has been signed by the required number of registered voters; and

(ii) (A) if so:

(I) certify the petition or amended or supplemental petition and deliver it to the county legislative body; and

(II) notify in writing the contact sponsor of the certification; or

(B) if not, reject the petition or the amended or supplemental petition and notify in writing the county legislative body and the contact sponsor of the rejection and the reasons for the rejection.

(b) If a county clerk rejects a petition or an amended or supplemental petition under Subsection [~~(4)~~] (2)(a)(ii)(B), the petition may be amended or supplemented or an amended or supplemental petition may be further amended or supplemented with additional signatures and refiled within 20 days of the date of rejection.

[~~(5)~~] (4) With the unanimous approval of petition sponsors, a petition filed under Subsection [~~(2)(a) or (3)~~] (1) may be withdrawn at any time within 90 days after petition certification but no later than 45 days before an election under Section 17-52-206 [~~or Subsection (3)(d)(i)(B)~~] if:

(a) the petition notified signers in conspicuous language that the petition sponsors are authorized to withdraw the petition; and

(b) there are at least three sponsors of the petition.

Section 59. Section 17-52-203.5 is enacted to read:

17-52-203.5. Election to determine whether study committee should be established.

(1) The county legislative body shall hold an election under this section if:

(a) the county legislative body adopts a resolution under Subsection 17-52-202(1); or

(b) a petition filed under Subsection 17-52-203(1) is certified by the county clerk under Subsection 17-52-203(3).

(2) Each election under Subsection (1) shall be held on one of the election dates specified in Subsection 20A-1-204(1)(a), as the county legislative body determines, no less than 90 days and no more than 180 days after, as the case may be:

(a) adoption of a resolution under Subsection 17-52-202(1); or

(b) certification of a petition under Subsection 17-52-203(3).

(3) The county clerk shall prepare the ballot for each election under Subsection (1) with a question that asks substantially as follows:

"Shall a study committee be appointed to consider and possibly recommend a change in the form of government of _____ County?"

Section 60. Section 17-52-204 is amended to read:

17-52-204. County or district attorney review of proposed optional plan -- Conflict with statutory or constitutional provisions -- Processing of optional plan after attorney review.

(1) [~~The~~] Within ten days after the study committee submits its report under Subsection 17-52-303(3)(d) to the county legislative body recommending a change in the form of county government, the county clerk shall send to the county attorney [~~general~~] of the county in which the optional plan is proposed or, if the county does not have a county attorney, to the district attorney a copy of each [~~proposed~~] optional plan [~~within ten days after:~~] recommended by the study committee in its report under Subsection 17-52-303(3)(d).

[~~(a) for an optional plan proposed in a resolution adopted under Subsection 17-52-202(2)(c), adoption of the resolution;~~]

[~~(b) for an optional plan proposed by registered voters under Section 17-52-203:~~]

[~~(i) the filing of a request for attorney general review under Subsection (6); or~~]

[~~(ii) if the optional plan has not already been reviewed by the attorney general pursuant to a request under Subsection (6), certification of a petition under Subsection 17-52-203(4)(a)(ii)(A).~~]

(2) Within 45 days after receipt of the [~~proposed~~] recommended optional plan from the county clerk under Subsection (1), the county or district attorney [~~general~~] shall send a written report to the county clerk containing the information required under Subsection (3).

(3) Each report from the county or district attorney [~~general~~] under Subsection (2) shall:

(a) state the [~~attorney general's~~] attorney's opinion as to whether implementation of the optional plan as [~~proposed~~] prepared by the study committee would result in a violation of any applicable statutory or constitutional provision;

(b) if the attorney [~~general~~] concludes that a violation would result:

(i) identify specifically each statutory or constitutional provision that would be violated by implementation of the optional plan as [~~proposed~~] prepared by the study committee;

(ii) identify specifically each provision or feature of the proposed optional plan that would result in a statutory or constitutional violation if the plan is implemented as [~~proposed~~] prepared by the study committee;

(iii) state whether, in the [~~attorney general's~~] attorney's opinion, any of the provisions or features identified in Subsection (3)(b)(ii) are so integral to the proposed optional plan that having previously changed the specified provision or feature to avoid the violation would have affected the decision of a [~~legislative body member or~~] study committee member who favored the proposed optional plan [~~or a reasonable petitioner who signed a petition proposing the optional plan~~]; and

(iv) if all the provisions or features identified in Subsection (3)(b)(ii) do not meet the standard of Subsection (3)(b)(iii), recommend how the proposed optional plan may be [~~amended~~] modified to avoid the statutory or constitutional violation.

(4) (a) If the [~~attorney general's~~] attorney's statement under Subsection (3) identifies provisions or features under Subsection (3)(b)(ii) that meet the standard of Subsection (3)(b)(iii), the proposed optional plan may not be [~~presented to the voters under Section 17-52-206~~] the subject of a resolution or petition under Subsection 17-52-206(1), except that[~~: (i) for an optional plan proposed by a resolution under Subsection 17-52-202(2)(e), the county legislative body may amend the optional plan to avoid the violation and then adopt a new resolution under Subsection 17-52-202(2)(e) that shall be treated as any other resolution under that subsection; and (ii) for an optional plan proposed in a study committee report under Subsection 17-52-303(3)(d),~~] the study committee may [~~amend~~] modify the optional plan to avoid the violation and then [~~adopt~~] file a new report under Subsection 17-52-303(3)(d) that will be treated as any other report under that subsection.

(b) [~~(i)~~] If the [~~attorney general's~~] attorney's statement under Subsection (3) identifies provisions or features under Subsection (3)(b)(ii) that do not meet the standard of Subsection (3)(b)(iii), the optional plan may be [~~amended~~] modified by the study committee to avoid the statutory or constitutional violations and then[~~:~~] be the subject of a resolution or petition under Subsection 17-52-206(1).

[~~(A) submitted to the voters at an election under Section 17-52-206, if the optional plan is proposed in a resolution adopted under Subsection 17-52-202(2)(e), a petition that has been certified under Subsection 17-52-203(4)(a)(ii)(A), or a study committee report filed under Subsection 17-52-303(3)(d); or~~]

[~~(B) the subject of a petition that is circulated for signatures under Subsection 17-52-203(2), if the attorney general's statement results from a request under Subsection (6).~~]

[~~(ii) Each amendment to an optional plan under Subsection (4)(b)(i) shall be made by:~~]

[~~(A) for an optional plan proposed in a resolution adopted under Subsection 17-52-202(2)(e), the county legislative body;~~]

[~~(B) for an optional plan proposed in a petition under Section 17-52-203, the petition sponsors; and~~]

[~~(C) for an optional plan proposed in a study committee report filed under Subsection 17-52-303(3)(d), the study committee.~~]

(5) If the [~~attorney general's~~] attorney's statement under Subsection (3) does not identify any provisions or features of the proposed optional plan that, if implemented, would violate a statutory or constitutional provision, the proposed optional plan may be[~~:~~] the subject of a resolution or petition under Subsection 17-52-206(1).

[~~(a) submitted to the voters at an election under Section 17-52-206, if the optional plan is proposed in a resolution adopted under Subsection 17-52-202(2)(e), a petition that has been certified under Subsection 17-52-203(4)(a)(ii)(A), or a study committee report filed under Subsection 17-52-303(3)(d); or~~]

[~~(b) the subject of a petition that is circulated for signatures under Subsection 17-52-203(2), if the attorney general's statement results from a request under Subsection (6).~~]

[~~(6) The attorney general review required under this section for each proposed optional plan may be obtained in conjunction with the filing of a proposed optional plan under Subsection 17-52-203(1)(a) by filing a request for attorney general review signed by at least 100 registered voters residing in the county.~~]

Section 61. Section 17-52-205 is amended to read:

17-52-205. Voter information pamphlet.

(1) In anticipation of an election under Section 17-52-206, the county [~~legislative body~~] clerk may prepare a voter information pamphlet to inform the public of the proposed optional plan.

(2) In preparing a voter information pamphlet under this section, the county [~~legislative body~~] clerk may:

(a) allow proponents and opponents of the proposed optional plan to provide written statements to be included in the pamphlet; and

(b) use as a guideline the provisions of Title 20A, Chapter 7, Part 7, Voter Information Pamphlet.

(3) Each county [~~legislative body~~] clerk preparing a voter information pamphlet under this section shall cause the publication and distribution of the pamphlet in a manner determined by the county [~~legislative body~~] clerk to be adequate.

Section 62. Section 17-52-206 is amended to read:

17-52-206. Election on recommended optional plan -- Resolution or petition to submit plan to voters.

(1) (a) [~~Subject to Section 17-52-204, the~~] The county legislative body shall hold an election [~~if~~] on an optional plan [~~is proposed: (a) by a resolution adopted under Subsection 17-52-202(2)(c); (b) in a petition filed under Subsection 17-52-203(2)(a) that is certified under Subsection 17-52-203(4)(a)(ii)(A); or (c)~~] recommended in a study committee report filed under Subsection 17-52-303(3)(d)[~~.~~] if:

(i) the county or district attorney has completed the review of the recommended optional plan and has submitted the attorney's report to the county clerk as provided in Section 17-52-204;

(ii) the recommended optional plan may, under Subsection 17-52-204(3), be the subject of a resolution or petition under this Subsection (1); and

(iii) after the county or district attorney has submitted the attorney's report under Section 17-52-204:

(A) the county legislative body adopts a resolution to submit the recommended optional plan to voters; or

(B) a petition is filed with the county clerk that:

(I) is signed by registered voters residing in the county equal in number to at least 10% of the total number of votes cast in the county at the most recent election for governor;

(II) designates up to five of the petition signers as sponsors, one of whom shall be designated as the contact sponsor, with the mailing address and telephone number of each; and

(III) requests that the recommended optional plan be submitted to voters.

(b) The process for certifying a petition filed under Subsection (1)(a)(iii)(B) shall be the same as that provided in Subsection 17-52-203(3).

(2) Each election under Subsection (1) shall be held at the next regular general or municipal general election date that is no less than two months after:

(a) the county [~~clerk's receipt of the attorney general statement under Section 17-52-204.~~] legislative body's adoption of a resolution under Subsection (1)(a)(iii)(A); or

(b) certification of a petition filed under Subsection (1)(a)(iii)(B).

(3) The county [~~legislative body~~] clerk shall prepare the ballot for each election under Subsection (1) so that the question on the ballot[~~: (a) clearly, accurately, and impartially presents the proposition to be voted on; and (b) does not constitute an argument or create prejudice for or against the proposition.~~] states substantially as follows:

"Shall _____ County adopt the alternate form of government known as the __(insert the proposed form of government)___ that has been recommended by the study committee?"

(4) The county [~~legislative body~~] clerk shall:

(a) cause the complete text of the proposed optional plan to be published in a newspaper of general circulation within the county at least once during two different calendar weeks within the 30-day period immediately before the date of the election under Subsection (1); and

(b) make a complete copy of the optional plan and the study committee report available free of charge to any member of the public who requests a copy[~~; and~~].

[~~(c) if the optional plan is proposed by a study committee report filed under Subsection 17-52-303(3)(d), make a complete copy of the study committee's report available free of charge to any member of the public who requests a copy.~~]

[~~(5) If an optional plan proposed as a result of a process initiated by the county legislative body and an optional plan proposed as a result of a process initiated by registered voters are both scheduled for the same election:~~]

[~~(a) both proposals shall appear on the same ballot;~~]

[~~(b) a voter may vote for or against each proposal; and~~]

[~~(c) if both proposals receive a majority vote of those voting, the proposal with more votes shall prevail and the other shall be considered rejected.~~]

Section 63. Section 17-52-207 is amended to read:

17-52-207. Election of officers under optional plan.

If an optional plan is adopted by voters at an election under Section 17-52-206, the elected

county officers specified in the plan shall be elected at the next regular general election following the election under Section 17-52-206, according to the procedure and schedule established under Title 20A, Election Code, for the election of county officers.

Section 64. Section 17-52-301 is amended to read:

17-52-301. Procedure for appointing members to study committee.

(1) Each [~~appointed~~] member of a study committee shall be appointed by an appointment council as provided in this section.

(2) (a) The county [~~legislative body~~] executive shall convene a meeting of the [~~five~~] three members of the appointment council referred to in Subsections 17-52-101(1)(a), (b), and (c)[~~, (d), and (e),~~] within ten days after[~~: (i) the adoption of a resolution under Subsection 17-52-202(4)(a) or 17-52-203(3)(d)(i)(A); or (ii)~~] the canvass of an election [~~pursuant to a resolution adopted~~] under [~~Subsection 17-52-202(3)(a) or 17-52-203(3)(d)(i)(B)~~] Section 17-52-203.5 if[~~: (A) the resolution specified that study committee members would be appointed; and (B)~~] a majority of those voting voted in favor of establishing a study committee.

(b) Within ten days of the convening of the first meeting under Subsection (2)(a), the [~~five~~] three members of the appointment council shall designate the remaining [~~four~~] two members referred to in Subsection 17-52-101(1)[~~(f)~~](d).

(3) (a) Within 30 days of the designation of the remaining [~~four~~] two members under Subsection (2)(b), the appointment council shall:

(i) appoint the members to the study committee; and

(ii) notify in writing the appointees, the county executive, and the county legislative body of the appointments.

(b) In making appointments to the study committee, the appointment council shall work to achieve a broadly representative membership.

(c) The appointment council may not appoint a person to the study committee unless that person:

(i) is a registered voter in the county whose form of government will be studied by the study committee; and

(ii) does not hold any public office or employment other than membership on the appointment council.

Section 65. Section 17-52-302 is amended to read:

17-52-302. Convening of first meeting of study committee.

The county [~~legislative body~~] executive shall convene the first meeting of the study committee within ten days [~~of: (1)~~] after receipt of notification of the study committee members' appointment under Subsection 17-52-301(3)(a)[~~; or~~].

[~~(2) the canvass of an election at which study committee members were elected pursuant to a resolution adopted under Subsection 17-52-202(3)(a) or 17-52-203(3)(d)(i)(B).~~]

Section 66. Section 17-52-303 is amended to read:

17-52-303. Study committee -- Members -- Powers and duties -- Report -- Services provided by county.

(1) (a) Each study committee shall consist of at least seven but no more than 11 members.

(b) A member of a study committee may not receive compensation for service on the committee.

(c) The county legislative body shall reimburse each member of a study committee for necessary expenses incurred in performing the member's duties on the study committee.

(2) A study committee may:

(a) adopt rules for its own organization and procedure and to fill a vacancy in its membership;

(b) establish advisory boards or committees and include on them persons who are not members of the study committee; and

(c) request the assistance and advice of any officers or employees of any agency of state or local government.

(3) Each study committee shall:

(a) study the form of government within the county and compare it with other forms available under this chapter;

(b) determine whether the administration of local government in the county could be strengthened, made more clearly responsive or accountable to the people, or significantly improved in the interest of economy and efficiency by a change in the form of county government;

(c) hold public hearings and community forums and other means the committee considers appropriate to disseminate information and stimulate public discussion of the committee's purposes, progress, and conclusions; and

(d) file a written report of its findings and recommendations with the county executive and the county legislative body no later than one year after the convening of its first meeting under Section 17-52-302.

(4) Each study committee report under Subsection (3)(d) shall include:

(a) the study committee's recommendation as to whether the form of county government should be changed to [~~an optional~~] another form authorized under this chapter;

(b) if the study committee recommends changing the form of government, a complete detailed draft of a proposed plan to change the form of county

government, including all necessary implementing provisions; and

(c) any additional recommendations the study committee considers appropriate to improve the efficiency and economy of the administration of local government within the county.

(5) (a) If the study committee's report recommends a change in the form of county government, the study committee may conduct additional public hearings after filing the report under Subsection (3)(d) and, following the hearings and subject to Subsection (5)(b), alter the report.

(b) Notwithstanding Subsection (5)(a), the study committee may not make an alteration to the report:

(i) that would recommend the adoption of an optional form different from that recommended in the original report; or

(ii) within the 120-day period before the election under Section 17-52-206.

(6) Each meeting held by the study committee shall be open to the public.

(7) The county legislative body shall provide for the study committee:

(a) suitable meeting facilities;

(b) necessary secretarial services;

(c) necessary printing and photocopying services;

(d) necessary clerical and staff assistance; and

(e) adequate funds for the employment of independent legal counsel and professional consultants that the study committee reasonably determines to be necessary to help the study committee fulfill its duties.

Section 67. Section 17-52-401 is amended to read:

17-52-401. Contents of proposed optional plan.

(1) Each optional plan proposed under this chapter [~~shall~~]:

(a) shall propose the adoption of one of the forms of county government listed in Subsection 17-52-402(1)(a);

(b) shall contain detailed provisions relating to the transition from the existing form of county government to the form proposed in the optional plan, including provisions relating to the:

(i) election or appointment of officers specified in the optional plan for the new form of county government;

(ii) [~~continuity~~] retention, elimination, or combining of existing offices and [~~officers~~], if an office is eliminated, the division or department of county government responsible for performing the duties of the eliminated office;

(iii) continuity of existing ordinances and regulations;

(iv) continuation of pending legislative, administrative, or judicial proceedings;

(v) making of interim and temporary appointments; and

(vi) preparation, approval, and adjustment of necessary budget appropriations; [~~and~~]

(c) shall specify the date it is to become effective if adopted, which shall not be earlier than the first day of January next following the election of officers under the new plan; and

[~~(c)~~] (d) notwithstanding any other provision of this title and except with respect to an optional plan that proposes the adoption of the county commission or expanded county commission form of government, [~~provide that,~~] with respect to the county budget[~~,~~]:

(i) may provide that the county auditor's role is to be the budget officer [~~and~~], to project county revenues, and to prepare a tentative budget to present to the county executive; and

(ii) shall provide that the county executive's role is to [~~propose the~~] prepare and present a proposed budget to the county legislative body, and the county legislative body's role is to adopt [~~the~~] a final budget.

(2) Subject to Subsection (3), an optional plan may include provisions that are considered necessary or advisable to the effective operation of the proposed optional plan.

(3) An optional plan may not include any provision that is inconsistent with or prohibited by the Utah Constitution or any statute.

(4) Each optional plan proposing to change the form of government to a form under Section 17-52-503, 17-52-504, 17-52-505, or 17-52-506 shall:

(a) provide for the same executive and legislative officers as are specified in the applicable section for the form of government being proposed by the optional plan;

(b) provide for the election of the county council;

(c) specify the number of county council members, which shall be an odd number from three to nine;

(d) specify whether the members of the county council are to be elected from districts, at large, or by a combination of at large and by district;

(e) specify county council members' qualifications and terms and whether the terms are to be staggered;

(f) contain procedures for filling vacancies on the county council, consistent with the provisions of Section 20A-1-508; and

(g) state the initial compensation, if any, of county council members and procedures for prescribing and changing compensation.

(5) Each optional plan proposing to change the form of government to the county commission form under Section 17-52-501 or the expanded county

commission form under Section 17-52-502 shall specify:

(a) (i) for the county commission form of government, that the county commission shall have three members; or

(ii) for the expanded county commission form of government, whether the county commission shall have five or seven members;

(b) the terms of office for county commission members and whether the terms are to be staggered;

(c) whether members of the county commission are to be elected from districts, at large, or by a combination of at large and from districts; and

(d) if any members of the county commission are to be elected from districts, the district residency requirements for those commission members.

Section 68. Section 17-52-402 is amended to read:

17-52-402. Plan may propose changing forms of county government -- Plan may propose change of structural form.

(1) (a) Each optional plan shall propose changing the form of county government to:

(i) the county commission form under Section 17-52-501;

(ii) the expanded county commission form under Section 17-52-502;

[~~(iii) the executive and chief administrative officer-council form under Section 17-52-503;~~]

[~~(iv)~~] (iii) the county executive and council form under Section 17-52-504; or

[~~(v)~~] (iv) the council-manager form under Section 17-52-505[~~; or~~].

[~~(vi) the council and county administrative officer form under Section 17-52-506.~~]

(b) An optional plan adopted after May 1, 2000 may not:

(i) propose changing the form of government to a form not included in Subsection (1)(a);

(ii) provide for the nonpartisan election of elected officers;

(iii) impose a limit on the number of terms or years that an elected officer may serve; or

(iv) provide for elected officers to be subject to a recall election.

[~~(2) (a) If an optional plan proposes changing the form of county government to a form that has a separate county executive, the county executive may be:~~]

[~~(i) an individual elected at large in the county; or~~]

[~~(ii) a county executive body consisting of at least three members, elected at large or by district or a combination of both, as provided in the optional plan.~~]

[~~(b) An optional plan that proposes changing to a form of government with an executive body, as provided in Subsection (2)(a)(ii), may divide the executive duties among the members of the executive body.~~]

[~~(3)~~] (2) In addition to proposing the adoption of any one of the optional forms of county government under Subsection (1)(a), an optional plan may also propose the adoption of any one of the structural forms of county government provided under Chapter 35b, Part 3, Structural Forms of County Government.

Section 69. Section 17-52-403 is amended to read:

17-52-403. Adoption of optional plan -- Effect of adoption.

(1) If a proposed optional plan is approved at an election held under Section 17-52-206:

(a) the proposed optional plan becomes effective according to its terms and, subject to Subsection 17-52-401(1)(c), at the time specified in it, is public record open to inspection by the public, and is judicially noticeable by all courts;

(b) the county clerk shall, within ten days of the canvass of the election, file with the lieutenant governor a copy of the optional plan, certified by the clerk to be a true and correct copy;

(c) all public officers and employees shall cooperate fully in making the transition between forms of county government; and

(d) the county legislative body may enact and enforce necessary ordinances to bring about an orderly transition to the new form of government, including any transfer of power, records, documents, properties, assets, funds, liabilities, or personnel that are consistent with the approved optional plan and necessary or convenient to place it into full effect.

(2) Adoption of an optional plan changing only the form of county government without adopting one of the structural forms under Chapter 35b, Part 3, Structural Forms of County Government, does not alter or affect the boundaries, organization, powers, duties, or functions of any:

(a) school district;

(b) justice court;

(c) independent special district established under Title 17A, Chapter 2, Independent Special Districts;

(d) city or town; or

(e) entity created by an interlocal agreement under Title 11, Chapter 13, Interlocal Cooperation Act.

(3) After the adoption of an optional plan, the county remains vested with all powers and duties vested generally in counties by statute.

Section 70. Section 17-53-106 is enacted to read:

17-53-106. Supervision of county elected officers -- Legislative body and executive may examine and audit accounts and conduct investigation.

(1) For purposes of this section, "professional duties" means a county elected officer's functions, duties, and responsibilities specifically provided for by law and includes:

(a) the exercise of professional judgment and discretion reasonably related to the officer's required functions, duties, and responsibilities; and

(b) the management of deputies and other employees under the supervision of the elected officer under statute or county ordinance, policy, or regulation.

(2) (a) A county legislative body and a county executive each:

(i) may generally direct and supervise all elected county officers and employees to ensure compliance with general county administrative ordinances, rules, or policies;

(ii) may not direct or supervise other elected county officers or their sworn deputies with respect to the performance of the professional duties of the officers or deputies;

(iii) may examine and audit the accounts of all county officers having the care, management, collection, or distribution of monies belonging to the county, appropriated to the county, or otherwise available for the county's use and benefit; and

(iv) may investigate any matter pertaining to a county officer or to the county or its business or affairs, and may require the attendance of witnesses and take evidence in any such investigation.

(b) In an investigation under Subsection (2)(a)(iv):

(i) the county executive or any member of the county legislative body may issue subpoenas and administer oaths to witnesses; and

(ii) if the county legislative body issues subpoenas and appoints members of the legislative body as a committee and confers on the committee power to hear or take evidence, the committee shall have the same power as the full county legislative body.

(3) Nothing in this section may be construed to prohibit the county executive or county legislative body from initiating an action for removal or prosecution of an elected county officer as provided by statute.

Section 71. Section 17-53-201 is amended to read:

17-53-201. General powers, duties, and functions of county legislative body.

(1) Except as expressly provided otherwise in statute, each county legislative body shall exercise all legislative powers, have all legislative duties, and perform all legislative functions of the county, including those enumerated in this part.

(2) A county legislative body may take any action required by law and necessary to the full discharge of its duties, even though the action is not expressly authorized by statute.

Section 72. Section 17-53-301 is amended to read:

17-53-301. General powers, duties, and functions of county executive.

(1) The elected county executive is the chief executive [~~office~~] officer of the county.

(2) Except as expressly provided otherwise in statute and except as contrary to the powers, duties, and functions of other county officers expressly provided for in Chapters 16, 17, 18, 19, 20, 21, 22, 23, and 24, each county executive shall exercise all executive powers, have all executive duties, and perform all executive functions of the county, including those enumerated in this part.

(3) A county executive may take any action required by law and necessary to the full discharge of the executive's duties, even though the action is not expressly authorized in statute.

Section 73. Section 17-53-302 is amended to read:

17-53-302. County executive duties.

Each county executive shall:

(1) exercise supervisory control over all functions of the executive branch of county government;

(2) direct and organize the management of the county in a manner consistent with state law, county ordinance, and the county's optional plan of county government;

(3) carry out programs and policies established by the county legislative body;

(4) faithfully ensure compliance with all applicable laws and county ordinances;

(5) exercise supervisory and coordinating control over all departments of county government;

(6) except as otherwise vested in the county legislative body by state law or by the optional plan of county government, appoint, suspend, and remove the directors of all county departments and all appointive officers of boards and commissions;

(7) except as otherwise delegated by statute to another county officer, exercise administrative and auditing control over all funds and assets, tangible and intangible, of the county;

(8) except as otherwise delegated by statute to another county officer, supervise and direct centralized budgeting, accounting, personnel management, purchasing, and other service functions of the county;

(9) conduct planning studies and make recommendations to the county legislative body relating to financial, administrative, procedural,

and operational plans, programs, and improvements in county government;

(10) maintain a continuing review of expenditures and of the effectiveness of departmental budgetary controls;

(11) develop systems and procedures, not inconsistent with statute, for planning, programming, budgeting, and accounting for all activities of the county;

(12) if the county executive is an elected county executive, exercise a power of veto over ordinances enacted by the county legislative body, including an item veto upon budget appropriations, in the manner provided by the optional plan of county government; [~~and~~]

(13) review, negotiate, approve, and execute contracts for the county, unless otherwise provided by statute; and

[~~(13)~~] (14) perform all other functions and duties required of the executive by state law, county ordinance, and the optional plan of county government.

Section 74. Section 17-53-315 is amended to read:

17-53-315. Actions -- Control and direction.

(1) (a) A county executive may control and direct the prosecution [~~and~~], defense, and settlement of all lawsuits and other actions:

(i) to which the county is a party[~~, and, when~~];

(ii) as to which the county may be required to pay the judgment or the costs of prosecution or defense; or

(iii) as further provided by county ordinance.

(b) If necessary, the county executive may, upon the recommendation of the county or district attorney or if required by court order, employ counsel to represent the county in the lawsuit or other action or assist the county attorney or, in a county that does not have a county attorney, the district attorney in conducting those [~~actions~~] lawsuits or any other [~~cases~~] actions where the county attorney or district attorney, as the case may be, is authorized by law to act.

(2) If a lawsuit or other action is brought or prosecuted by another elected official or a board or other entity of the county under a statutory duty, that other elected official, board, or other entity may control and direct the lawsuit or other action, consistent with applicable law.

Section 75. Section 17-53-316 is enacted to read:

17-53-316. Executive orders.

(1) The county executive may issue an executive order to:

(a) establish an executive policy;

(b) implement an executive practice; or

(c) execute a legislative policy or ordinance, as provided by statute.

(2) An executive order may not:

(a) be inconsistent with county ordinances addressing or with policies established by the county legislative body addressing the same subject as the executive order; or

(b) expand or narrow legislative action taken or legislative policy issued by the county legislative body.

(3) Each executive order exercising supervisory power over other elected county officers shall be consistent with the authority given the county executive under Section 17-53-106.

Section 76. Section 17-53-317 is enacted to read:

17-53-317. Executive appointment with advice and consent of county legislative body.

The appointment of a person to fill a position on a board, committee, or similar body whose membership is appointed by the county shall be by the county executive, with the advice and consent of the county legislative body.

Section 77. Section 20A-1-102 is amended to read:

20A-1-102. Definitions.

As used in this title:

(1) "Active voter" means a registered voter who has not been classified as an inactive voter by the county clerk.

(2) "Automatic tabulating equipment" means apparatus that automatically examines and counts votes recorded on paper ballots or ballot cards and tabulates the results.

(3) "Ballot" means the cardboard, paper, or other material upon which a voter records his votes and includes ballot cards, paper ballots, and secrecy envelopes.

(4) "Ballot card" means a ballot that can be counted using automatic tabulating equipment.

(5) "Ballot label" means the cards, papers, booklet, pages, or other materials that contain the names of offices and candidates and statements of ballot propositions to be voted on and which are used in conjunction with ballot cards.

(6) "Ballot proposition" means opinion questions specifically authorized by the Legislature, constitutional amendments, initiatives, referenda, and judicial retention questions that are submitted to the voters for their approval or rejection.

(7) "Board of canvassers" means the entities established by Sections 20A-4-301 and 20A-4-306 to canvass election returns.

(8) "Bond election" means an election held for the sole purpose of approving or rejecting the proposed issuance of bonds by a government entity.

(9) "Book voter registration form" means voter registration forms contained in a bound book that are used by election officers and registration agents to register persons to vote.

(10) "By-mail voter registration form" means a voter registration form designed to be completed by the voter and mailed to the election officer.

(11) "Canvass" means the review of election returns and the official declaration of election results by the board of canvassers.

(12) "Canvassing judge" means an election judge designated to assist in counting ballots at the canvass.

(13) "Convention" means the political party convention at which party officers and delegates are selected.

(14) "Counting center" means one or more locations selected by the election officer in charge of the election for the automatic counting of ballots.

(15) "Counting judge" means a judge designated to count the ballots during election day.

(16) "Counting poll watcher" means a person selected as provided in Section 20A-3-201 to witness the counting of ballots.

(17) "Counting room" means a suitable and convenient private place or room, immediately adjoining the place where the election is being held, for use by the counting judges to count ballots during election day.

(18) "County executive" [~~means:~~] has the meaning as provided in Subsection 68-3-12(2).

[~~(a) the county commission in the county commission or expanded county commission form of government established under Title 17, Chapter 52, Forms of County Government;~~]

[~~(b) the county executive in the county executive and chief administrative officer-council optional form of government authorized by Section 17-52-503;~~]

[~~(c) the county executive in the county executive-council optional form of government authorized by Section 17-52-504;~~]

[~~(d) the county council in the council-manager optional form of government authorized by Section 17-52-505; and~~]

[~~(e) the county council in the council-county administrative officer optional form of government authorized by Section 17-52-506.~~]

(19) "County legislative body" [~~means:~~] has the meaning as provided in Subsection 68-3-12(2).

[~~(a) the county commission in the county commission or expanded county commission form of government established under Title 17, Chapter 52, Forms of County Government;~~]

[~~(b) the county council in the county executive and chief administrative officer-council optional form of government authorized by Section 17-52-503;~~]

[~~(c) the county council in the county executive-council optional form of government authorized by Section 17-52-504;~~]

[~~(d) the county council in the council-manager optional form of government authorized by Section 17-52-505; and~~]

[~~(e) the county council in the council-county administrative officer optional form of government authorized by Section 17-52-506.~~]

(20) "County officers" means those county officers that are required by law to be elected.

(21) "Election" means a regular general election, a municipal general election, a statewide special election, a local special election, a regular primary election, a municipal primary election, and a special district election.

(22) "Election cycle" means the period beginning on the first day persons are eligible to file declarations of candidacy and ending when the canvass is completed.

(23) "Election judge" means each canvassing judge, counting judge, and receiving judge.

(24) "Election officer" means:

(a) the lieutenant governor, for all statewide ballots;

(b) the county clerk or clerks for all county ballots and for certain special district and school district ballots as provided in Section 20A-5-400.5;

(c) the municipal clerk for all municipal ballots and for certain special district and school district ballots as provided in Section 20A-5-400.5; and

(d) the special district clerk or chief executive officer for all special district ballots that are not part of a statewide, county, or municipal ballot.

(25) "Election official" means any election officer, election judge, or satellite registrar.

(26) "Election returns" includes the pollbook, all affidavits of registration, the military and overseas absentee voter registration and voting certificates, one of the tally sheets, any unprocessed absentee ballots, all counted ballots, all excess ballots, all unused ballots, all spoiled ballots, the ballot disposition form, and the total votes cast form.

(27) "Electronic voting system" means a system in which a voting device is used in conjunction with ballots so that votes recorded by the voter are counted and tabulated by automatic tabulating equipment.

(28) "Inactive voter" means a registered voter who has been sent the notice required by Section 20A-2-306 and who has failed to respond to that notice.

(29) "Inspecting poll watcher" means a person selected as provided in this title to witness the receipt and safe deposit of voted and counted ballots.

(30) "Judicial office" means the office filled by any judicial officer.

(31) "Judicial officer" means any justice or judge of a court of record or any county court judge.

(32) "Local election" means a regular municipal election, a local special election, a special district election, and a bond election.

(33) "Local political subdivision" means a county, a municipality, a special district, or a local school district.

(34) "Local special election" means a special election called by the governing body of a local political subdivision in which all registered voters of the local political subdivision may vote.

(35) "Municipal executive" means:

(a) the city commission, city council, or town council in the traditional management arrangement established by Title 10, Chapter 3, Part 1, Governing Body;

(b) the mayor in the council-mayor optional form of government defined in Section 10-3-1209; and

(c) the manager in the council-manager optional form of government defined in Section 10-3-1209.

(36) "Municipal general election" means the election held in municipalities and special districts on the first Tuesday after the first Monday in November of each odd-numbered year for the purposes established in Section 20A-1-202.

(37) "Municipal legislative body" means:

(a) the city commission, city council, or town council in the traditional management arrangement established by Title 10, Chapter 3, Part 1, Governing Body;

(b) the municipal council in the council-mayor optional form of government defined in Section 10-3-1209; and

(c) the municipal council in the council-manager optional form of government defined in Section 10-3-1209.

(38) "Municipal officers" means those municipal officers that are required by law to be elected.

(39) "Municipal primary election" means an election held to nominate candidates for municipal office.

(40) "Official ballot" means the ballots distributed by the election officer to the election judges to be given to voters to record their votes.

(41) "Official endorsement" means:

(a) the information on the ballot that identifies:

(i) the ballot as an official ballot;

(ii) the date of the election; and

(iii) the facsimile signature of the election officer; and

(b) the information on the ballot stub that identifies:

(i) the election judge's initials; and

(ii) the ballot number.

(42) "Official register" means the book furnished election officials by the election officer that contains the information required by Section 20A-5-401.

(43) "Paper ballot" means a paper that contains:

(a) the names of offices and candidates and statements of ballot propositions to be voted on; and

(b) spaces for the voter to record his vote for each office and for or against each ballot proposition.

(44) "Political party" means an organization of registered voters that has qualified to participate in an election by meeting the requirements of Title 20A, Chapter 8, Political Party Formation and Procedures.

(45) "Polling place" means the building where residents of a voting precinct vote.

(46) "Position" means a square, circle, rectangle, or other geometric shape on a ballot in which the voter marks his choice.

(47) "Posting list" means a list of registered voters within a voting precinct.

(48) "Primary convention" means the political party conventions at which nominees for the regular primary election are selected.

(49) "Protective counter" means a separate counter, which cannot be reset, that is built into a voting machine and records the total number of movements of the operating lever.

(50) "Qualify" or "qualified" means to take the oath of office and begin performing the duties of the position for which the person was elected.

(51) "Receiving judge" means the election judge that checks the voter's name in the official register, provides the voter with a ballot, and removes the ballot stub from the ballot after the voter has voted.

(52) "Registration days" means the days designated in Section 20A-2-203 when a voter may register to vote with a satellite registrar.

(53) "Registration form" means a book voter registration form and a by-mail voter registration form.

(54) "Regular general election" means the election held throughout the state on the first Tuesday after the first Monday in November of each even-numbered year for the purposes established in Section 20A-1-201.

(55) "Regular primary election" means the election on the fourth Tuesday of June of each even-numbered year, at which candidates of political parties and nonpolitical groups are voted for nomination.

(56) "Resident" means a person who resides within a specific voting precinct in Utah.

(57) "Sample ballot" means a mock ballot similar in form to the official ballot printed and distributed as provided in Section 20A-5-405.

(58) "Satellite registrar" means a person appointed under Section 20A-5-201 to register voters and perform other duties.

(59) "Scratch vote" means to mark or punch the straight party ticket and then mark or punch the ballot for one or more candidates who are members of different political parties.

(60) "Secrecy envelope" means the envelope given to a voter along with the ballot into which the voter places the ballot after he has voted it in order to preserve the secrecy of the voter's vote.

(61) "Special district" means those local government entities created under the authority of Title 17A.

(62) "Special district officers" means those special district officers that are required by law to be elected.

(63) "Special election" means an election held as authorized by Section 20A-1-204.

(64) "Spoiled ballot" means each ballot that:

(a) is spoiled by the voter;

(b) is unable to be voted because it was spoiled by the printer or the election judge; or

(c) lacks the official endorsement.

(65) "Statewide special election" means a special election called by the governor or the Legislature in which all registered voters in Utah may vote.

(66) "Stub" means the detachable part of each ballot.

(67) "Substitute ballots" means replacement ballots provided by an election officer to the election judges when the official ballots are lost or stolen.

(68) "Ticket" means each list of candidates for each political party or for each group of petitioners.

(69) "Transfer case" means the sealed box used to transport voted ballots to the counting center.

(70) "Vacancy" means the absence of a person to serve in any position created by statute, whether that absence occurs because of death, disability, disqualification, resignation, or other cause.

(71) "Valid write-in candidate" means a candidate who has qualified as a write-in candidate by following the procedures and requirements of this title.

(72) "Voter" means a person who meets the requirements for voting in an election, meets the requirements of election registration, is registered to vote, and is listed in the official register book.

(73) "Voting area" means the area within six feet of the voting booths, voting machines, and ballot box.

(74) "Voting booth" means the space or compartment within a polling place that is provided for the preparation of ballots and includes the voting machine enclosure or curtain.

(75) "Voting device" means:

(a) an apparatus in which ballot cards are used in connection with a punch device for piercing the ballots by the voter;

(b) a device for marking the ballots with ink or another substance; or

(c) any other method for recording votes on ballots so that the ballot may be tabulated by means of automatic tabulating equipment.

(76) "Voting machine" means a machine designed for the sole purpose of recording and tabulating votes cast by voters at an election.

(77) "Voting poll watcher" means a person appointed as provided in this title to witness the distribution of ballots and the voting process.

(78) "Voting precinct" means the smallest voting unit established as provided by law within which qualified voters vote at one polling place.

(79) "Watcher" means a voting poll watcher, a counting poll watcher, and an inspecting poll watcher.

(80) "Western States Presidential Primary" means the election established in Title 20A, Chapter 9, Part 8.

(81) "Write-in ballot" means a ballot containing any write-in votes.

(82) "Write-in vote" means a vote cast for a person whose name is not printed on the ballot according to the procedures established in this title.

Section 78. Section 20A-6-302 is amended to read:

20A-6-302. Placement of candidates' names on paper ballots.

(1) Each election officer shall ensure, for paper ballots in regular general elections, that:

(a) except for candidates for state school board and local school boards:

(i) each candidate is listed by party; and

(ii) candidates' surnames are listed in alphabetical order on the ballots when two or more candidates' names are required to be listed on a ticket under the title of an office;

(b) the names of candidates for the State Board of Education are placed on the ballot as certified by the lieutenant governor under Section 20A-14-105;

(c) if candidates for membership on a local board of education were selected in a regular primary election, the name of the candidate who received the most votes in the regular primary election is listed first on the ballot; and

(d) if candidates for membership on a local board of education were not selected in the regular

primary election, the names of the candidates are listed on the ballot in the order determined by a lottery conducted by the county clerk.

(2) (a) The election officer may not allow the name of a candidate who dies or withdraws before election day to be printed upon the ballots.

(b) If the ballots have already been printed, the election officer:

(i) shall, if possible, cancel the name of the dead or withdrawn candidate by drawing a line through the candidate's name before the ballots are delivered to voters; and

(ii) may not count any votes for that dead or withdrawn candidate.

(3) (a) When there is only one candidate for county attorney at the regular general election in counties that have three or fewer registered voters of the county who are licensed active members in good standing of the Utah State Bar, the county clerk shall cause that candidate's name and party affiliation, if any, to be placed on a separate section of the ballot with the following question: "Shall (name of candidate) be elected to the office of county attorney? Yes ____ No ____."

(b) If the number of "Yes" votes exceeds the number of "No" votes, the candidate is elected to the office of county attorney.

(c) If the number of "No" votes exceeds the number of "Yes" votes, the candidate is not elected and may not take office, nor may he continue in the office past the end of the term resulting from any prior election or appointment.

(d) When the name of only one candidate for county attorney is printed on the ballot under authority of Subsection (3), the county clerk may not count any write-in votes received for the office of county attorney.

(e) If no qualified person files for the office of county attorney or if the candidate is not elected by the voters, the county legislative body shall appoint the county attorney as provided in Section 20A-1-509.2.

(f) If the candidate whose name would, except for this Subsection (3)(f), be placed on the ballot under Subsection (3)(a) has been elected on a ballot under Subsection (3)(a) to the two consecutive terms immediately preceding the term for which the candidate is seeking election, Subsection (3)(a) shall not apply and that candidate shall be considered to be an unopposed candidate the same as any other unopposed candidate for another office, unless a petition is filed with the county clerk before the date of that year's primary election that:

(i) requests the procedure set forth in Subsection (3)(a) to be followed; and

(ii) contains the signatures of registered voters in the county representing in number at least 25% of all votes cast in the county for all candidates for governor at the last election at which a governor was elected.

(4) (a) When there is only one candidate for district attorney at the regular general election in a prosecution district that has three or fewer registered voters of the district who are licensed active members in good standing of the Utah State Bar, the county clerk shall cause that candidate's name and party affiliation, if any, to be placed on a separate section of the ballot with the following question: "Shall (name of candidate) be elected to the office of district attorney? Yes ____ No ____."

(b) If the number of "Yes" votes exceeds the number of "No" votes, the candidate is elected to the office of district attorney.

(c) If the number of "No" votes exceeds the number of "Yes" votes, the candidate is not elected and may not take office, nor may he continue in the office past the end of the term resulting from any prior election or appointment.

(d) When the name of only one candidate for district attorney is printed on the ballot under authority of Subsection (4), the county clerk may not count any write-in votes received for the office of district attorney.

(e) If no qualified person files for the office of district attorney, or if the only candidate is not elected by the voters under this subsection, the county legislative body shall appoint a new district attorney for a four-year term as provided in Section 20A-1-509.2.

(f) If the candidate whose name would, except for this Subsection (4)(f), be placed on the ballot under Subsection (4)(a) has been elected on a ballot under Subsection (4)(a) to the two consecutive terms immediately preceding the term for which the candidate is seeking election, Subsection (4)(a) shall not apply and that candidate shall be considered to be an unopposed candidate the same as any other unopposed candidate for another office, unless a petition is filed with the county clerk before the date of that year's primary election that:

(i) requests the procedure set forth in Subsection (4)(a) to be followed; and

(ii) contains the signatures of registered voters in the county representing in number at least 25% of all votes cast in the county for all candidates for governor at the last election at which a governor was elected.

Section 79. Section 21-2-3 is amended to read:

21-2-3. Fees of county recorder.

(1) The county recorder shall receive the following fees:

(a) for receiving, entering, and filing any instrument, paper, or notice, not otherwise provided for, other than bonds of public officers, $10;

(b) for recording any instrument, paper, or notice, including those provided for under Title 70A, Uniform Commercial Code, other than bonds of public officers, and not otherwise provided for, $10 for the first page, if the page is not larger than 8 1/2

inches x 14 inches in size, and $2 for each additional page, and if any instrument, paper, or notice contains more than one description, $1 for each additional description;

(c) for recording any instrument in which a right-of-way is described, which is connected with or is appurtenant to any tract of land described in the instrument, $1, but if the instrument contains a description of more than one right-of-way, $1 for each additional right-of-way, and if any instrument contains more than two names for either first or second party, or plaintiffs or defendants, for each additional name, $1;

(d) for recording, indexing, and abstracting mining location notices, and recording, indexing, and abstracting affidavits of labor affecting mining claims, $10 for the first page if that page is not larger than 8 1/2 inches by 14 inches in size, and $2 for each additional page; and

(e) for a location notice, affidavit, or proof of labor which contains names of more than two signers, $1 for each additional name, and for an affidavit or proof of labor which contains more than one mining claim, $1 for each additional mining claim.

(2) (a) Each county recorder shall record the mining rules of the several mining districts in each county without fee.

(b) Certified copies of these records shall be received in all tribunals and before all officers of this state as prima facie evidence of the rules.

(3) The county recorder shall receive the following fees:

(a) for copies of any record or [~~paper~~] document, a reasonable fee as determined [~~and set~~] by the county legislative body;

(b) for each certificate under seal, [~~$2~~] $5;

(c) for recording any plat of a subdivision into lots and blocks, $1 for each lot, and $30 for each sheet;

(d) for recording any other plat or map, $30 for each sheet and $1 for each lot or unit designation;

(e) for taking and certifying acknowledgments, including seal, $5 for one name and $2 for each additional name;

(f) for recording any license issued by the Division of Occupational and Professional Licensing, $10;

(g) for filing of federal tax lien, $10, and for the discharge of the lien, $10; and

[~~(h) for copies of microfilm, a charge per lineal foot as fixed by the county governing body, not to exceed the cost of reproduction of the film plus 10%; and~~]

[~~(i)~~] (h) for all services not enumerated in this section, a reasonable compensation.

Section 80. Section 57-1-45 is enacted to read:

57-1-45. Boundary line agreements.

(1) If properly executed and acknowledged as required under this chapter, an agreement between property owners designating the boundary line between their properties, when recorded in the office of the recorder of the county in which the property is located, shall act as a quitclaim deed and convey all of each party's right, title, interest, and estate in property outside the agreed boundary line that had been the subject of the boundary dispute that led to the boundary line agreement.

(2) Each boundary line agreement under Subsection (1) shall contain a description of the land conveyed and the address of each grantee.

Section 81. Section 57-3-106 is amended to read:

57-3-106. Original documents required -- Captions -- Legibility.

(1) (a) Unless otherwise provided, documents presented for recording in the office of the county recorder shall:

(i) be originals; and

(ii) contain a brief caption stating the nature of the document.

(b) If a document is a master form, as defined in Section 57-3-201, the caption required by Subsection (1)(a)(ii) shall state that the document is a master form.

(2) Documents presented for recording shall also be sufficiently legible for the recorder to make certified copies.

(3) (a) A document which is of record in the office of the appropriate county recorder in compliance with this chapter may not be recorded again in that same county recorder's office unless the original document has been reexecuted by all parties who executed the document. Unless exempt by statute, original documents which are reexecuted must also contain the appropriate acknowledgment, proof of execution, jurat or other notarial certification for all parties who are reexecuting the document as required by Title 46, Chapter 1, Notaries Public Reform Act, and Title 57, Chapter 2, Acknowledgments. Documents submitted for rerecording shall contain a brief statement explaining the reason for rerecording.

(b) A county recorder may refuse to accept a document for rerecording if that document does not conform to the requirements of this section.

(c) Subsection (3) of this section applies only to documents executed after July 1, 1998.

(4) Minor typographical or clerical errors in a document of record may be corrected by the recording of an affidavit or other appropriate instrument.

Section 82. Section 59-2-502 is amended to read:

59-2-502. Definitions.

As used in this part:

(1) "Land in agricultural use" means:

(a) land devoted to the raising of useful plants and animals with a reasonable expectation of profit, including:

(i) forages and sod crops;

(ii) grains and feed crops;

(iii) livestock as defined in Section 59-2-102;

(iv) trees and fruits; or

(v) vegetables, nursery, floral, and ornamental stock; or

(b) land devoted to and meeting the requirements and qualifications for payments or other compensation under a crop-land retirement program with an agency of the state or federal government.

(2) "Platted" means land in which:

(a) parcels of ground are laid out and mapped by their boundaries, course, and extent; and

(b) the [~~governing body of the city, town, or county~~] plat has been approved [~~the plat~~] as provided in Section 10-9-805 or 17-27-805.

(3) "Rollback" means the period preceding the withdrawal of the land from the provisions of this part or the change in use of the land, not to exceed five years, during which the land is valued, assessed, and taxed under this part.

Section 83. Section 59-2-1366 is amended to read:

59-2-1366. Apportionment of redemption or assignment money.

[~~Whenever~~] (1) If property sold to the county under this title is redeemed, or the certificate of sale is assigned, the moneys received on account of the redemption or assignment shall be distributed as follows: the original and subsequent taxes, and 40% of interest, penalty, and costs of sale received shall be apportioned to the taxing entities interested, in proportion to their respective taxes, and the balance shall be paid to the county. [~~In all cases where~~]

(2) If a sum less than the taxes, interest, penalty, and costs is accepted in settlement, the proceeds of the settlement shall be applied, first to the payment of the original and subsequent taxes, and the remainder, if any, to the payment of interest, penalty, and costs. [~~The county treasurer shall keep an accurate account of all moneys paid in redemption of property sold to the county and for assignments of certificates of sale, and shall, on the first Monday of March of each year, or at any other times the state auditor may direct, make a detailed report, verified by affidavit, of each account year to the state auditor, in a form required by the state auditor.~~]

Section 84. Section 68-3-12 is amended to read:

68-3-12. Rules of construction.

(1) In the construction of these statutes, the following general rules shall be observed, unless such construction would be inconsistent with the manifest intent of the Legislature or repugnant to the context of the statute:

(a) The singular number includes the plural, and the plural the singular.

(b) Words used in one gender comprehend the other.

(c) Words used in the present tense include the future.

(2) In the construction of these statutes, the following definitions shall be observed, unless the definition would be inconsistent with the manifest intent of the Legislature, or repugnant to the context of the statute:

(a) "Adjudicative proceeding" means:

(i) all actions by a board, commission, department, officer, or other administrative unit of the state that determine the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including all actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license; and

(ii) judicial review of all such actions.

(b) "Advisory board," "advisory commission," and "advisory council" means a board, commission, or council that:

(i) provides advice and makes recommendations to another person or entity who makes policy for the benefit of the general public;

(ii) is created by and whose duties are provided by statute or by executive order; and

(iii) performs its duties only under the supervision of another person as provided by statute.

(c) "Councilman" includes a town trustee or a city commissioner, and "city commissioner" includes a councilman.

(d) "County executive" means:

(i) the county commission in the county commission or expanded county commission form of government established under Title 17, Chapter 52, Forms of County Government;

[~~(ii) the county executive in the "county executive and chief administrative officer-council" optional form of government authorized by Section 17-52-503;~~]

[~~(iii)~~] (ii) the county executive in the "county executive-council" optional form of government authorized by Section 17-52-504; and

[~~(iv)~~] (iii) the county manager in the "council-manager" optional form of government authorized by Section 17-52-505[~~; and~~].

[~~(v) the county council in the "council-county administrative officer" optional form of government authorized by Section 17-52-506.~~]

(e) "County legislative body" means:

(i) the county commission in the county commission or expanded county commission form of government established under Title 17, Chapter 52, Forms of County Government;

[~~(ii) the county council in the "county executive and chief administrative officer council" optional form of government authorized by Section 17-52-503;~~]

[~~(iii)~~] (ii) the county council in the "county executive-council" optional form of government authorized by Section 17-52-504; and

[~~(iv)~~] (iii) the county council in the "council-manager" optional form of government authorized by Section 17-52-505; [~~and~~].

[~~(v) the county council in the "council-county administrative officer" optional form of government authorized by Section 17-52-506.~~]

(f) "Executor" includes administrator, and the term "administrator" includes executor, when the subject matter justifies such use.

(g) "Guardian" includes a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment and a person who is appointed by a court to manage the estate of a minor or incapacitated person.

(h) "Highway" and "road" include public bridges and may be held equivalent to the words "county way," "county road," "common road," and "state road."

(i) "Him," "his," and other masculine pronouns include "her," "hers," and similar feminine pronouns unless the context clearly indicates a contrary intent or the subject matter relates clearly and necessarily to the male sex only.

(j) "Insane person" include idiots, lunatics, distracted persons, and persons of unsound mind.

(k) "Land," "real estate," and "real property" include land, tenements, hereditaments, water rights, possessory rights, and claims.

(l) "Man" or "men" when used alone or in conjunction with other syllables as in "workman," includes "woman" or "women" unless the context clearly indicates a contrary intent or the subject matter relates clearly and necessarily to the male sex only.

(m) "Month" means a calendar month, unless otherwise expressed, and the word "year," or the abbreviation "A.D." is equivalent to the expression "year of our Lord."

(n) "Oath" includes "affirmation," and the word "swear" includes "affirm." Every oral statement under oath or affirmation is embraced in the term "testify," and every written one, in the term "depose."

(o) "Person" includes individuals, bodies politic and corporate, partnerships, associations, and companies.

(p) "Personal property" includes every description of money, goods, chattels, effects, evidences of rights in action, and all written instruments by which any pecuniary obligation, right, or title to property is created, acknowledged, transferred, increased, defeated, discharged, or diminished, and every right or interest therein.

(q) "Personal representative," "executor," and "administrator" includes an executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status.

(r) "Policy board," "policy commission," or "policy council" means a board, commission, or council that:

(i) possesses a portion of the sovereign power of the state to enable it to make policy for the benefit of the general public;

(ii) is created by and whose duties are provided by the constitution or by statute;

(iii) performs its duties according to its own rules without supervision other than under the general control of another person as provided by statute; and

(iv) is permanent and continuous and not temporary and occasional.

(s) "Population" shall be as shown by the last preceding state or national census, unless otherwise specially provided.

(t) "Property" includes both real and personal property.

(u) "Review board," "review commission," or "review council" means a board, commission, or council that:

(i) possesses a portion of the sovereign power of the state only to the extent to enable it to approve policy made for the benefit of the general public by another body or person;

(ii) is created by and whose duties are provided by statute;

(iii) performs its duties according to its own rules without supervision other than under the general control of another person as provided by statute; and

(iv) is permanent and continuous and not temporary and occasional.

(v) "Sheriff," "county attorney," "district attorney," "clerk," or other words used to denote an executive or ministerial officer, may include any deputy, or other person performing the duties of such officer, either generally or in special cases; and the words "county clerk" may be held to include "clerk of the district court."

(w) "Signature" includes any name, mark, or sign written with the intent to authenticate any instrument or writing.

(x) "State," when applied to the different parts of the United States, includes the District of Columbia and the territories; and the words "United States" may include the District and the territories.

(y) "Town" may mean incorporated town and may include city, and the word "city" may mean incorporated town.

(z) "Vessel," when used with reference to shipping, includes steamboats, canal boats, and every structure adapted to be navigated from place to place.

(aa) "Will" includes codicils.

(bb) "Writ" means an order or precept in writing, issued in the name of the state or of a court or judicial officer; and "process" means a writ or summons issued in the course of judicial proceedings.

(cc) "Writing" includes printing, handwriting, and typewriting.

Section 85. Section 73-1-10 is amended to read:

73-1-10. Conveyance of water rights -- Deed -- Exceptions -- Filing and recording of deed -- Report of water right conveyance.

(1) (a) A water right, whether evidenced by a decree, a certificate of appropriation, a diligence claim to the use of surface or underground water, or a water user's claim filed in general determination proceedings, shall be transferred by deed in substantially the same manner as is real estate.

(b) The deed must be recorded in the office of the recorder of the county where the point of diversion of the water is located and in the county where the water is used.

[~~(c) (i) A copy of the deed or other conveyance which contains a reference to a water right number for a water right evidenced by any document listed in Subsection 73-1-11(5) shall be promptly transmitted by the county recorder to the state engineer for filing.~~]

[~~(ii) The state engineer may designate regional offices to receive copies of deeds or other conveyances transmitted pursuant to Subsection (1)(c)(i). A county recorder may not be required to transmit documents to more than one regional office.~~]

[~~(d)~~] (c) A recorded deed of a water right shall from the time of its [~~filing~~] recording in the office of the county recorder constitute notice of its contents to all persons.

(2) The right to the use of water evidenced by shares of stock in a corporation shall be transferred in accordance with the procedures applicable to securities set forth in Title 70A, Chapter 8, Uniform Commercial Code - Investment Securities.

(3) (a) To update water right ownership on the records of the state engineer, a water right owner shall submit a report of water right conveyance to the state engineer.

(b) The report of water right conveyance shall be on forms provided by the state engineer.

(c) The report shall be prepared by:

(i) or prepared under the direction of and certified by, any of the following persons licensed in Utah:

(A) an attorney;

(B) a professional engineer;

(C) a title insurance agent; or

(D) a professional land surveyor; or

(ii) the water right owner as authorized by rule of the state engineer.

(d) The filing and processing of a report of water right conveyance with the state engineer is neither an adjudication of water right ownership nor an opinion as to title or validity of the water right.

(e) The state engineer shall adopt rules that specify:

(i) the information required in a report of water right conveyance; and

(ii) the procedures for processing the reports.

Section 86. Section 78-12-29 is amended to read:

78-12-29. Within one year.

An action may be brought within one year:

(1) for liability created by the statutes of a foreign state;

(2) upon a statute for a penalty or forfeiture where the action is given to an individual, or to an individual and the state, except when the statute imposing it prescribes a different limitation;

(3) upon a statute, or upon an undertaking in a criminal action, for a forfeiture or penalty to the state;

(4) for libel, slander, assault, battery, false imprisonment, or seduction;

(5) against a sheriff or other officer for the escape of a prisoner arrested or imprisoned upon either civil or criminal process;

(6) against a municipal corporation for damages or injuries to property caused by a mob or riot;

(7) on a claim for relief or a cause of action under the following sections of Title 25, Chapter 6, Uniform Fraudulent Transfer Act:

(a) Subsection 25-6-5(1)(a), which in specific situations limits the time for action to four years, under Section 25-6-10; or

(b) Subsection 25-6-6(2)[~~.~~]; or

(8) except as otherwise expressly provided by statute, against a county legislative body or a county executive to challenge a decision of the county legislative body or county executive, respectively.

Section 87. Repealer.

This act repeals:

Section 17-5-213, Powers of legislative body -- Supervision of other officers.

Section 17-23-4, Duty respecting maps filed for record.

Section 17-24-17, Suspension of treasurer.

Section 17-52-503, County executive and chief administrative officer-council form of county government.

Section 17-52-506, Council-county administrative officer form of county government.

Section 59-2-1367, Duty of county treasurer.

Section 59-2-1368, Delict of county treasurer -- Penalty.

Section 59-2-1369, Duty of county auditor -- Report to state treasurer.

Section 59-2-1370, State auditor and state treasurer to receive duplicate copies.

Section 59-2-1371, Delict of county auditor -- Penalty.

CHAPTER 242
S. B. 108
Passed February 23, 2001
Approved March 19, 2001
Effective April 30, 2001

LICENSURE OF MOTOR VEHICLES

Sponsor: Ed P. Mayne

This act modifies the Motor Vehicle Code by requiring applicants for new vehicle registration to show a valid driver license.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:
41-1a-210.5, Utah Code Annotated 1953

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

Section 1. Section 41-1a-210.5 is enacted to read:

41-1a-210.5. Driver license required on new registrations.

The division, before issuing any new registration on the sale of a vehicle not sold by a vehicle dealer, shall require the applicant or person making the application to show proof that the applicant or person making the application has a valid driver license.

CHAPTER 243
S. B. 114
Passed February 23, 2001
Approved March 19, 2001
Effective July 1, 2001

SALES AND USE TAX ON PUBLIC ACCOMMODATIONS AND SERVICES TAXED BY TRIBES

Sponsor: Mike Dmitrich

This act modifies the Revenue and Taxation Code to provide an exemption from state sales and use tax on public accommodations and services taxed by the Navajo Nation and to make technical changes. This act provides for a study. This act takes effect on July 1, 2001.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
59-12-104, as last amended by Chapter 325, Laws of Utah 2000

ENACTS:
59-12-104.2, Utah Code Annotated 1953

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

Section 1. Section 59-12-104 is amended to read:

59-12-104. Exemptions.

The following sales and uses are exempt from the taxes imposed by this chapter:

(1) sales of aviation fuel, motor fuel, and special fuel subject to a Utah state excise tax under Title 59, Chapter 13, Motor and Special Fuel Tax Act;

(2) sales to the state, its institutions, and its political subdivisions; however, this exemption does not apply to sales of construction materials except:

(a) construction materials purchased by or on behalf of institutions of the public education system as defined in Utah Constitution Article X, Section 2, provided the construction materials are clearly identified and segregated and installed or converted to real property which is owned by institutions of the public education system; and

(b) construction materials purchased by the state, its institutions, or its political subdivisions which are installed or converted to real property by employees of the state, its institutions, or its political subdivisions;

(3) sales of food, beverage, and dairy products from vending machines in which the proceeds of each sale do not exceed $1 if the vendor or operator of the vending machine reports an amount equal to 150% of the cost of items as goods consumed;

(4) sales of food, beverage, dairy products, similar confections, and related services to commercial airline carriers for in-flight consumption;

(5) sales of parts and equipment installed in aircraft operated by common carriers in interstate or foreign commerce;

(6) sales of commercials, motion picture films, prerecorded audio program tapes or records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture exhibitor, distributor, or commercial television or radio broadcaster;

(7) sales of cleaning or washing of tangible personal property by a coin-operated laundry or dry cleaning machine;

(8) (a) except as provided in Subsection (8)(b), sales made to or by religious or charitable institutions in the conduct of their regular religious or charitable functions and activities, if the requirements of Section 59-12-104.1 are fulfilled;

(b) the exemption provided for in Subsection (8)(a) does not apply to the following sales, uses, leases, or rentals relating to the Olympic Winter Games of 2002 made to or by an organization exempt from federal income taxation under Section 501(c)(3), Internal Revenue Code:

(i) retail sales of Olympic merchandise;

(ii) except as provided in Subsection (51), admissions or user fees described in Subsection 59-12-103(1)(f);

(iii) sales of accommodations and services as provided in Subsection 59-12-103(1)(i), except for accommodations and services:

(A) paid for in full by the Salt Lake Organizing Committee for the Olympic Winter Games of 2002;

(B) exclusively used by:

(I) an officer, a trustee, or an employee of the Salt Lake Organizing Committee for the Olympic Winter Games of 2002; or

(II) a volunteer supervised by the Salt Lake Organizing Committee for the Olympic Winter Games of 2002; and

(C) for which the Salt Lake Organizing Committee for the Olympic Winter Games of 2002 does not receive reimbursement; or

(iv) a lease or rental of a vehicle as defined in Section 41-1a-102, except for a lease or rental of a vehicle:

(A) paid for in full by the Salt Lake Organizing Committee for the Olympic Winter Games of 2002;

(B) exclusively used by:

(I) an officer, a trustee, or an employee of the Salt Lake Organizing Committee for the Olympic Winter Games of 2002; or

(II) a volunteer supervised by the Salt Lake Organizing Committee for the Olympic Winter Games of 2002; and

(C) for which the Salt Lake Organizing Committee for the Olympic Winter Games of 2002 does not receive reimbursement;

(9) sales of vehicles of a type required to be registered under the motor vehicle laws of this state

which are made to bona fide nonresidents of this state and are not afterwards registered or used in this state except as necessary to transport them to the borders of this state;

(10) sales of medicine;

(11) sales or use of property, materials, or services used in the construction of or incorporated in pollution control facilities allowed by Sections 19-2-123 through 19-2-127;

(12) sales of meals served by:

(a) churches, charitable institutions, and institutions of higher education, if the meals are not available to the general public; and

(b) inpatient meals provided at medical or nursing facilities;

(13) isolated or occasional sales by persons not regularly engaged in business, except the sale of vehicles or vessels required to be titled or registered under the laws of this state in which case the tax is based upon:

(a) the bill of sale or other written evidence of value of the vehicle or vessel being sold; or

(b) in the absence of a bill of sale or other written evidence of value, the then existing fair market value of the vehicle or vessel being sold as determined by the commission;

(14) (a) the following purchases or leases by a manufacturer on or after July 1, 1995:

(i) machinery and equipment:

(A) used in the manufacturing process;

(B) having an economic life of three or more years; and

(C) used:

(I) to manufacture an item sold as tangible personal property; and

(II) in new or expanding operations in a manufacturing facility in the state; and

(ii) subject to the provisions of Subsection (14)(b), normal operating replacements that:

(A) have an economic life of three or more years;

(B) are used in the manufacturing process in a manufacturing facility in the state;

(C) are used to replace or adapt an existing machine to extend the normal estimated useful life of the machine; and

(D) do not include repairs and maintenance;

(b) the rates for the exemption under Subsection (14)(a)(ii) are as follows:

(i) beginning July 1, 1996, through June 30, 1997, 30% of the sale or lease described in Subsection (14)(a)(ii) is exempt;

(ii) beginning July 1, 1997, through June 30, 1998, 60% of the sale or lease described in Subsection (14)(a)(ii) is exempt; and

(iii) beginning July 1, 1998, 100% of the sale or lease described in Subsection (14)(a)(ii) is exempt;

(c) for purposes of this Subsection (14), the commission shall by rule define the terms "new or expanding operations" and "establishment"; and

(d) on or before October 1, 1991, and every five years after October 1, 1991, the commission shall:

(i) review the exemptions described in Subsection (14)(a) and make recommendations to the Revenue and Taxation Interim Committee concerning whether the exemptions should be continued, modified, or repealed; and

(ii) include in its report:

(A) the cost of the exemptions;

(B) the purpose and effectiveness of the exemptions; and

(C) the benefits of the exemptions to the state;

(15) sales of tooling, special tooling, support equipment, and special test equipment used or consumed exclusively in the performance of any aerospace or electronics industry contract with the United States government or any subcontract under that contract, but only if, under the terms of that contract or subcontract, title to the tooling and equipment is vested in the United States government as evidenced by a government identification tag placed on the tooling and equipment or by listing on a government-approved property record if a tag is impractical;

(16) intrastate movements of:

(a) freight by common carriers; and

(b) passengers:

(i) by taxicabs as described in SIC Code 4121 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget; or

(ii) transported by an establishment described in SIC Code 4111 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget, if the transportation originates and terminates within a county of the first, second, or third class;

(17) sales of newspapers or newspaper subscriptions;

(18) tangible personal property, other than money, traded in as full or part payment of the purchase price, except that for purposes of calculating sales or use tax upon vehicles not sold by a vehicle dealer, trade-ins are limited to other vehicles only, and the tax is based upon:

(a) the bill of sale or other written evidence of value of the vehicle being sold and the vehicle being traded in; or

(b) in the absence of a bill of sale or other written evidence of value, the then existing fair market value of the vehicle being sold and the vehicle being traded in, as determined by the commission;

(19) sprays and insecticides used to control insects, diseases, and weeds for commercial production of fruits, vegetables, feeds, seeds, and animal products, but not those sprays and insecticides used in the processing of the products;

(20) (a) sales of tangible personal property used or consumed primarily and directly in farming operations, including sales of irrigation equipment and supplies used for agricultural production purposes, whether or not they become part of real estate and whether or not installed by farmer, contractor, or subcontractor, but not sales of:

(i) machinery, equipment, materials, and supplies used in a manner that is incidental to farming, such as hand tools with a unit purchase price not in excess of $250, and maintenance and janitorial equipment and supplies;

(ii) tangible personal property used in any activities other than farming, such as office equipment and supplies, equipment and supplies used in sales or distribution of farm products, in research, or in transportation; or

(iii) any vehicle required to be registered by the laws of this state, without regard to the use to which the vehicle is put;

(b) sales of hay;

(21) exclusive sale of locally grown seasonal crops, seedling plants, or garden, farm, or other agricultural produce if sold by a producer during the harvest season;

(22) purchases of food as defined in 7 U.S.C. Sec. 2012(g) under the Food Stamp Program, 7 U.S.C. Sec. 2011 et seq.;

(23) sales of nonreturnable containers, nonreturnable labels, nonreturnable bags, nonreturnable shipping cases, and nonreturnable casings to a manufacturer, processor, wholesaler, or retailer for use in packaging tangible personal property to be sold by that manufacturer, processor, wholesaler, or retailer;

(24) property stored in the state for resale;

(25) property brought into the state by a nonresident for his or her own personal use or enjoyment while within the state, except property purchased for use in Utah by a nonresident living and working in Utah at the time of purchase;

(26) property purchased for resale in this state, in the regular course of business, either in its original form or as an ingredient or component part of a manufactured or compounded product;

(27) property upon which a sales or use tax was paid to some other state, or one of its subdivisions, except that the state shall be paid any difference between the tax paid and the tax imposed by this part and Part 2, Local Sales and Use Tax Act, and no adjustment is allowed if the tax paid was greater than the tax imposed by this part and Part 2, Local Sales and Use Tax Act;

(28) any sale of a service described in Subsections 59-12-103(1)(b), (c), and (d) to a person for use in compounding a service taxable under the subsections;

(29) purchases of supplemental foods as defined in 42 U.S.C. Sec. 1786(b)(14) under the special supplemental nutrition program for women, infants, and children established in 42 U.S.C. Sec. 1786;

(30) beginning on July 1, 1999, through June 30, 2004, sales or leases of rolls, rollers, refractory brick, electric motors, or other replacement parts used in the furnaces, mills, or ovens of a steel mill described in SIC Code 3312 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget;

(31) sales of boats of a type required to be registered under Title 73, Chapter 18, State Boating Act, boat trailers, and outboard motors which are made to bona fide nonresidents of this state and are not thereafter registered or used in this state except as necessary to transport them to the borders of this state;

(32) sales of tangible personal property to persons within this state that is subsequently shipped outside the state and incorporated pursuant to contract into and becomes a part of real property located outside of this state, except to the extent that the other state or political entity imposes a sales, use, gross receipts, or other similar transaction excise tax on it against which the other state or political entity allows a credit for taxes imposed by this chapter;

(33) sales of aircraft manufactured in Utah if sold for delivery and use outside Utah where a sales or use tax is not imposed, even if the title is passed in Utah;

(34) amounts paid for the purchase of telephone service for purposes of providing telephone service;

(35) fares charged to persons transported directly by a public transit district created under the authority of Title 17A, Chapter 2, Part 10, Utah Public Transit District Act;

(36) sales or leases of vehicles to, or use of vehicles by an authorized carrier;

(37) (a) 45% of the sales price of any new manufactured home; and

(b) 100% of the sales price of any used manufactured home;

(38) sales relating to schools and fundraising sales;

(39) sales or rentals of home medical equipment and supplies;

(40) (a) sales to a ski resort of electricity to operate a passenger ropeway as defined in Section 72-11-102; and

(b) the commission shall by rule determine the method for calculating sales exempt under Subsection (40)(a) that are not separately metered and accounted for in utility billings;

(41) sales to a ski resort of:

(a) snowmaking equipment;

(b) ski slope grooming equipment; and

(c) passenger ropeways as defined in Section 72-11-102;

(42) sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for industrial use;

(43) sales or rentals of the right to use or operate for amusement, entertainment, or recreation a coin-operated amusement device as defined in Section 59-12-102;

(44) sales of cleaning or washing of tangible personal property by a coin-operated car wash machine;

(45) sales by the state or a political subdivision of the state, except state institutions of higher education as defined in Section 53B-3-102, of:

(a) photocopies; or

(b) other copies of records held or maintained by the state or a political subdivision of the state; and

(46) (a) amounts paid:

(i) to a person providing intrastate transportation to an employer's employee to or from the employee's primary place of employment;

(ii) by an:

(A) employee; or

(B) employer; and

(iii) pursuant to a written contract between:

(A) the employer; and

(B) (I) the employee; or

(II) a person providing transportation to the employer's employee; and

(b) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may for purposes of Subsection (46)(a) make rules defining what constitutes an employee's primary place of employment;

(47) amounts paid for admission to an athletic event at an institution of higher education that is subject to the provisions of Title IX of the Education Amendments of 1972, 20 U.S.C. Sec. 1681 et seq.;

(48) sales of telephone service charged to a prepaid telephone calling card;

(49) (a) sales of hearing aids; and

(b) sales of hearing aid accessories;

(50) (a) sales made to or by:

(i) an area agency on aging; or

(ii) a senior citizen center owned by a county, city, or town; or

(b) sales made by a senior citizen center that contracts with an area agency on aging; [~~and~~]

(51) (a) beginning on July 1, 2000, through June 30, 2002, amounts paid or charged as admission or user fees described in Subsection 59-12-103(1)(f) relating to the Olympic Winter Games of 2002 if the amounts paid or charged are established by the Salt Lake Organizing Committee for the Olympic Winter Games of 2002 in accordance with requirements of the International Olympic Committee; and

(b) the State Olympic Officer and the Salt Lake Organizing Committee for the Olympic Winter Games of 2002 shall make at least two reports during the 2000 interim:

(i) to the:

(A) Olympic Coordination Committee; and

(B) Revenue and Taxation Interim Committee; and

(ii) regarding the status of:

(A) agreements relating to the funding of public safety services for the Olympic Winter Games of 2002;

(B) agreements relating to the funding of services, other than public safety services, for the Olympic Winter Games of 2002;

(C) other agreements relating to the Olympic Winter Games of 2002 as requested by the Olympic Coordination Committee or the Revenue and Taxation Interim Committee;

(D) other issues as requested by the Olympic Coordination Committee or the Revenue and Taxation Interim Committee; or

(E) a combination of Subsections (51)(b)(ii)(A) through (D)[~~.~~]; and

(52) an amount paid by or charged to a purchaser for accommodations and services described in Subsection 59-12-103(1)(i) to the extent the amount is exempt under Section 59-12-104.2.

Section 2. Section 59-12-104.2 is enacted to read:

59-12-104.2. Exemption for accommodations and services taxed by the Navajo Nation.

(1) As used in this section "tribal taxing area" means the geographical area that:

(a) is subject to the taxing authority of the Navajo Nation; and

(b) consists of:

(i) notwithstanding the issuance of a patent, all land:

(A) within the limits of an Indian reservation under the jurisdiction of the federal government; and

(B) including any rights-of-way running through the reservation; and

(ii) all Indian allotments the Indian titles to which have not been extinguished, including any rights-of-way running through an Indian allotment.

(2) (a) Beginning July 1, 2001, amounts paid by or charged to a purchaser for accommodations and services described in Subsection 59-12-103(1)(i) are exempt from the tax imposed by Subsection 59-12-103(2)(a)(i) to the extent permitted under Subsection (2)(b) if:

(i) the accommodations and services described in Subsection 59-12-103(1)(i) are provided within:

(A) the state; and

(B) a tribal taxing area;

(ii) the Navajo Nation imposes and collects a tax on the amounts paid by or charged to the purchaser for the accommodations and services described in Subsection 59-12-103(1)(i);

(iii) the Navajo Nation imposes the tax described in Subsection (2)(a)(ii) without regard to whether or not the purchaser that pays or is charged for the accommodations and services is an enrolled member of the Navajo Nation; and

(iv) the requirements of Subsection (4) are met.

(b) If but for Subsection (2)(a) the amounts paid by or charged to a purchaser for accommodations and services described in Subsection (2)(a) are subject to a tax imposed by Subsection 59-12-103(2)(a)(i):

(i) the vendor shall collect and pay to the state the difference described in Subsection (3) if that difference is greater than $0; and

(ii) a person may not require the state to provide a refund, a credit, or similar tax relief if the difference described in Subsection (3) is equal to or less than $0.

(3) The difference described in Subsection (2)(b) is equal to the difference between:

(a) the amount of tax imposed by Subsection 59-12-103(2)(a)(i) on the amounts paid by or charged to a purchaser for accommodations and services described in Subsection 59-12-103(1)(i); less

(b) the tax imposed and collected by the Navajo Nation on the amounts paid by or charged to a purchaser for the accommodations and services described in Subsection 59-12-103(1)(i).

(4) (a) If, on or after July 1, 2001, the Navajo Nation changes the tax rate of a tax imposed on amounts paid by or charged to a purchaser for accommodations and services described in Subsection 59-12-103(1)(i), any change in the amount of the exemption under Subsection (2) as a result of the change in the tax rate is not effective until the first day of the calender quarter after a 90-day period beginning on the date the commission receives notice meeting the requirements of Subsection (4)(b) from the Navajo Nation.

(b) The notice described in Subsection (4)(a) shall state:

(i) that the Navajo Nation has changed or will change the tax rate of a tax imposed on amounts paid by or charged to a purchaser for accommodations and services described in Subsection 59-12-103(1)(i);

(ii) the effective date of the rate change on the tax described in Subsection (4)(b)(i); and

(iii) the new rate of the tax described in Subsection (4)(b)(i).

(5) Beginning with the 2006 interim, the Revenue and Taxation Interim Committee:

(a) shall review the exemption provided for in this section one or more times every five years;

(b) shall determine on or before the November interim meeting of the year in which the Revenue and Taxation Interim Committee reviews the exemption provided for in this section whether the exemption should be:

(i) continued;

(ii) modified; or

(iii) repealed; and

(c) may review any other issue related to the exemption provided for in this section as determined by the Revenue and Taxation Interim Committee.

Section 3. Effective date.

This act takes effect on July 1, 2001.

CHAPTER 244
S. B. 117
Passed February 22, 2001
Approved March 19, 2001
Effective April 30, 2001

GUARDIAN AD LITEM AMENDMENTS

Sponsor: Lyle W. Hillyard

This act modifies the Judicial Code by amending provisions related to guardians ad litem. The act modifies the duties of the guardian ad litem director. The act gives the court discretion to appoint a private attorney guardian ad litem in visitation and custody cases. The act authorizes the courts to recover costs of guardians ad litem from defendants convicted of crimes or from the parties in visitation and custody cases. The act provides exceptions to recovery of costs for impecunious persons. The act defines the duties of private attorney guardians ad litem and grants limited immunity to guardians ad litem. The act implements the guardian ad litem program for certain judicial districts.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
78-3a-911, as last amended by Chapter 13, Laws of Utah 1998
78-3a-912, as last amended by Chapter 194, Laws of Utah 1997
78-7-9, as last amended by Chapter 194, Laws of Utah 1997

ENACTS:
78-7-36, Utah Code Annotated 1953

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

Section 1. Section 78-3a-911 is amended to read:

78-3a-911. Office of Guardian Ad Litem Director.

(1) There is hereby created the Office of Guardian Ad Litem Director under the direct supervision of the Judicial Council in accordance with Subsection 78-3-21(13).

(2) (a) The Judicial Council shall appoint one person to serve full time as the guardian ad litem director for the state.

(b) The director shall be an attorney licensed to practice law in this state and selected on the basis of:

(i) professional ability;

(ii) experience in abuse, neglect, and dependency proceedings;

(iii) familiarity with the role, purpose, and function of guardians ad litem in both juvenile and district courts; and

(iv) ability to develop training curricula and reliable methods for data collection and evaluation.

(c) The director shall be trained in the United States Department of Justice National Court Appointed Special Advocate program prior to or immediately after his appointment.

(3) The guardian ad litem director shall:

(a) establish policy and procedure for the management of a statewide guardian ad litem program;

(b) manage the guardian ad litem program to assure that minors receive qualified guardian ad litem services in abuse, neglect, and dependency proceedings in accordance with state and federal law and policy;

(c) develop standards for contracts of employment and contracts with independent contractors, and employ or contract with attorneys licensed to practice law in this state, to act as attorney guardians ad litem in accordance with Section 78-3a-912;

(d) develop and provide training programs for attorney guardians ad litem and volunteers in accordance with the United States Department of Justice National Court Appointed Special Advocates Association standards;

(e) update and develop the guardian ad litem manual, combining elements of the National Court Appointed Special Advocates Association manual with specific information about the law and policy of this state;

(f) develop and provide a library of materials for the continuing education of attorney guardians ad litem and volunteers;

(g) educate court personnel regarding the role and function of guardians ad litem;

(h) develop needs assessment strategies, perform needs assessment surveys, and ensure that guardian ad litem training programs correspond with actual and perceived needs for training;

(i) design and implement evaluation tools based on specific objectives targeted in the needs assessments described in Subsection (3)(h); [~~and~~]

(j) prepare and submit an annual report to the Judicial Council and the Health and Human Services Interim Committee regarding the development, policy, and management of the statewide guardian ad litem program, and the training and evaluation of attorney guardians ad litem and volunteers[~~.~~];

(k) hire, train, and supervise investigators; and

(l) administer the program of private guardians ad litem established by Section 78-7-36.

(4) A contract of employment or independent contract described under Subsection (3)(c) shall provide that attorney guardians ad litem in the second, third, and fourth judicial districts devote their full time and attention to the role of attorney guardian ad litem, having no clients other than the children whose interest they represent within the guardian ad litem program.

Section 2. Section 78-3a-912 is amended to read:

78-3a-912. Appointment of attorney guardian ad litem -- Duties and

responsibilities -- Training -- Trained staff and court appointed special advocate volunteers -- Costs -- Immunity.

(1) The court may appoint an attorney guardian ad litem to represent the best interest of a minor involved in any case before the court and shall consider only the best interest of a minor in determining whether to appoint a guardian ad litem.

(2) An attorney guardian ad litem shall represent the best interest of each minor who may become the subject of a petition alleging abuse, neglect, or dependency, from the date the minor is removed from his home by the Division of Child and Family Services, or the date the petition is filed, whichever occurs earlier.

(3) The Office of the Guardian Ad Litem Director, through an attorney guardian ad litem, shall:

(a) represent the best interest of the minor in all proceedings;

(b) be trained in applicable statutory, regulatory, and case law, and in accordance with the United States Department of Justice National Court Appointed Special Advocate Association guidelines, prior to representing any minor before the court;

(c) conduct or supervise an independent investigation in order to obtain first-hand, a clear understanding of the situation and needs of the child;

(d) personally or through a trained volunteer, paralegal, or other trained staff, determine the extent of contact the minor or his family has had with the Division of Child and Family Services;

(e) personally or through a trained volunteer, paralegal, or other trained staff, assess whether kinship placements have been adequately explored and investigated by the Division of Child and Family Services, and make recommendations to the court regarding the best interests of a child in kinship placements;

(f) personally or through a trained volunteer, paralegal, or other trained staff, assess whether there are alternatives to continued removal of the minor, including in-home services or removal of the perpetrator;

(g) personally or through a trained volunteer, paralegal, or other trained staff, review the Division of Child and Family Services' records regarding the minor and his family, and all other necessary and relevant records pertaining to the minor, including medical, psychological, and school records;

(h) personally meet with the minor, personally interview the minor if the minor is old enough to communicate, determine the minor's goals and concerns regarding placement, and personally assess or supervise an assessment of the appropriateness and safety of the minor's environment in each placement;

(i) file written motions, responses, or objections at all stages of a proceeding when necessary to protect the best interest of a minor;

(j) either personally or through a trained volunteer, paralegal, or other trained staff, conduct interviews, if appropriate and permitted by the Rules of Professional Conduct, with the minor's parents, foster parents, caseworkers, therapists, counselors, school personnel, mental health professionals, where applicable and, if any injuries or abuse have occurred or are alleged, review photographs, available video or audio tape of interviews with the minor, and contact appropriate health care facilities and health care providers;

(k) either personally or through a trained volunteer, paralegal, or other trained staff, identify appropriate community resources and advocate for those resources, when appropriate, to protect the best interest of the minor;

(l) personally attend all court hearings, and participate in all telephone conferences with the court unless the court waives that appearance or participation;

(m) personally or through a trained volunteer, paralegal, or other trained staff, attend all administrative and foster care citizen review board hearings pertaining to the minor's case;

(n) prepare for hearings;

(o) present witnesses and exhibits when necessary to protect the best interest of the minor;

(p) participate in all appeals unless excused by order of the court;

(q) calculate the schedule for administrative or foster care citizen review board hearings and other hearings required by state and federal law and regulation, and notify the Division of Child and Family Services if those hearings are not held in accordance with those requirements;

(r) conduct interviews with potential witnesses and review relevant exhibits and reports;

(s) make clear and specific recommendations to the court concerning the best interest of the minor at every stage of the proceeding, including all placement decisions, and ask that clear and specific orders be entered for the provision of services, treatment provided, and for the evaluation, assessment, and protection of the minor and his family;

(t) be familiar with local experts who can provide consultation and testimony regarding the reasonableness and appropriateness of efforts made by the Division of Child and Family Services to maintain a minor in his home or to reunify a minor with his parent;

(u) to the extent possible, and unless it would be detrimental to the minor, personally or through a trained volunteer, paralegal, or other trained staff, keep the minor advised of the status of his case, all court and administrative proceedings, discussions, and proposals made by other parties, court action,

and psychiatric, medical, or other treatment or diagnostic services that are to be provided to the minor;

(v) review proposed orders for, and as requested by the court, prepare proposed orders with clear and specific directions regarding services, treatment, and evaluation, assessment, and protection of the minor and his family;

(w) personally or through a trained volunteer, paralegal, or other trained staff, monitor implementation of a minor's treatment plan and any dispositional orders to determine whether services ordered by the court are actually provided, are provided in a timely manner, and attempt to assess whether they are accomplishing their intended goal; and

(x) inform the court promptly, orally or in writing, if:

(i) court-ordered services are not being made available to the minor and his family;

(ii) the minor's family fails to take advantage of court-ordered services;

(iii) court-ordered services are not achieving their purpose;

(iv) the division fails to hold administrative hearings or reviews as required by state and federal law and regulation; or

(v) any violation of orders, new developments, or changes have occurred that justify a review of the case.

(4) (a) An attorney guardian ad litem may use trained volunteers, in accordance with Title 67, Chapter 20, Volunteer Government Workers Act, trained paralegals, and other trained staff to assist in investigation and preparation of information regarding the cases of individual minors before the court. An attorney guardian ad litem may not, however, delegate his responsibilities described in Subsection (3).

(b) All volunteers, paralegals, and staff utilized pursuant to this section shall be trained in and follow, at a minimum, the guidelines established by the United States Department of Justice Court Appointed Special Advocate Association.

(c) The court may use volunteers trained in accordance with the requirements of Subsection (4)(b) to assist in investigation and preparation of information regarding the cases of individual minors within the jurisdiction.

(d) When possible and appropriate, the court may use a volunteer who is a peer of the minor appearing before the court, in order to provide assistance to that minor, under the supervision of an attorney guardian ad litem or trained volunteer, paralegal, or other trained staff.

(5) The attorney guardian ad litem shall continue to represent the best interest of the minor until released from his duties by the court.

(6) (a) The juvenile court is responsible for all costs resulting from the appointment of an attorney guardian ad litem and the costs of volunteer, paralegal, and other staff appointment and training, and shall use funds appropriated by the Legislature for the guardian ad litem program to cover those costs.

(b) (i) When the court appoints an attorney guardian ad litem under this section [~~or Section 78-7-9~~], the court may assess all or part of the attorney's fees, court costs, and paralegal, staff, and volunteer expenses against the minor's parents [~~or~~], parent, or legal guardian in a proportion that the court determines to be just and appropriate.

(ii) The court may not assess those fees or costs against a legal guardian, when that guardian is the state, or against a parent who is found to be impecunious. If a person claims to be impecunious, the court shall require of that person an affidavit of impecuniosity as provided in Section 21-7-3 and the court shall follow the procedures and make the determinations as provided in Section 21-7-4.

(7) An attorney guardian ad litem appointed under this section, when serving in the scope of his duties as guardian ad litem is considered an employee of the state for purposes of indemnification under Title 63, Chapter 30, Utah Governmental Immunity Act.

(8) (a) An attorney guardian ad litem shall represent the best interest of a minor. If the minor's wishes differ from the attorney's determination of the minor's best interest, the attorney guardian ad litem shall communicate the minor's wishes to the court in addition to presenting his determination of the minor's best interest. A difference between the minor's wishes and the attorney's determination of best interest may not be considered a conflict of interest for the attorney.

(b) The court may appoint one attorney guardian ad litem to represent the best interests of more than one minor child of a marriage.

[~~(b)~~] (c) An attorney guardian ad litem shall formulate an independent position, after considering all relevant evidence, in accordance with the requirements of Subsection (3). His recommendations to the court shall be a result of his independent investigation.

(9) An attorney guardian ad litem shall be provided access to all Division of Child and Family Services records regarding the minor at issue and his family.

(10) An attorney guardian ad litem shall maintain current and accurate records regarding the number of times he has had contact with each minor and the actions he has taken in representation of the minor's best interest.

(11) (a) Except as provided in Subsection (11)(b), all records of an attorney guardian ad litem are confidential and may not be released or made public upon subpoena, search warrant, discovery proceedings, or otherwise. This subsection supersedes Title 63, Chapter 2, Government Records Access and Management Act.

(b) All records of an attorney guardian ad litem are subject to legislative subpoena, under Title 36, Chapter 14, Legislative Subpoena Powers, and shall be released to the Legislature.

(c) Records released in accordance with Subsection (11)(b) shall be maintained as confidential by the Legislature. The Office of the Legislative Auditor General may, however, include summary data and nonidentifying information in its audits and reports to the Legislature.

(d) Because of the unique role of an attorney guardian ad litem described in Subsection (8), and the state's role and responsibility to provide a guardian ad litem program and, as parens patriae, to protect minors, Subsection (11)(b) constitutes an exception to Rules of Professional Conduct, Rule 1.6, as provided by Rule 1.6(b)(4). A claim of attorney-client privilege does not bar access to the records of an attorney guardian ad litem by the Legislature, through legislative subpoena.

Section 3. Section 78-7-9 is amended to read:

78-7-9. Appointment of attorney guardian ad litem in child abuse and neglect proceedings.

(1) If child abuse, child sexual abuse, or neglect is alleged in any proceeding in any state court, the court may upon its own motion or shall upon the motion of any party to the proceeding appoint an attorney guardian ad litem to represent the best interest of the child, in accordance with Sections 78-3a-911 and 78-3a-912.

(2) The court may appoint an attorney guardian ad litem, when it considers it necessary and appropriate, to represent the best interest of the child in all related proceedings conducted in any state court involving the alleged abuse, child sexual abuse, or neglect.

(3) The attorney guardian ad litem shall be appointed in accordance with and meet the requirements of Sections 78-3a-911 and 78-3a-912.

(4) If an attorney guardian ad litem has been appointed for the child by any court in the state in any prior proceeding or related matter, the court may continue that appointment or may reappoint that attorney guardian ad litem, if still available, to act on behalf of the child.

(5) The court is responsible for all costs resulting from the appointment of an attorney guardian ad litem and shall use funds appropriated by the Legislature for the guardian ad litem program to cover those costs.

(6) (a) If the court appoints [~~a guardian ad litem attorney~~] the Office of the Guardian Ad Litem in a civil case pursuant to this section [~~or Section 78-3a-912~~], the court may assess all or part of those attorney's fees, court costs, paralegal, staff, and volunteer expenses against the minor's parent [~~or~~], parents, or legal guardian in an amount that the court determines to be just and appropriate.

(b) The court may not assess those fees or costs against a legal guardian, when that guardian is the state, or against a parent, parents, or legal guardian who is found to be impecunious. If a person claims to be impecunious, the court shall require of that person an affidavit of impecuniosity as provided in Section 21-7-3 and the court shall follow the procedures and make the determinations as provided in Section 21-7-4.

(c) If the court appoints the Office of the Guardian Ad Litem in a criminal case pursuant to this section and if the defendant is convicted of a crime which includes child abuse or neglect, the court shall include as part of the defendant's sentence all or part of the attorney's fees, court costs, and paralegal, staff, and volunteer expenses of the Office of the Guardian Ad Litem.

(7) An attorney guardian ad litem appointed in accordance with the requirements of this section and Sections 78-3a-911 and 78-3a-912 is, when serving in the scope of duties of an attorney guardian ad litem, considered an employee of this state for purposes of indemnification under the Governmental Immunity Act.

Section 4. Section 78-7-36 is enacted to read:

78-7-36. (Codified as 78-7-45) Private attorney guardian ad litem -- Appointment -- Costs and fees -- Duties -- Conflicts of interest -- Pro bono obligation -- Indemnification -- Minimum qualifications.

(1) (a) The court may appoint a private attorney as guardian ad litem to represent the best interests of the minor in any district court action in which the custody of or visitation with a minor is at issue. The attorney guardian ad litem shall be certified by the Director of the Office of the Guardian Ad Litem as having met the minimum qualifications for appointment, but shall not be employed by or under contract with the Office of the Guardian Ad Litem.

(b) If an attorney guardian ad litem has been appointed for the minor in any prior or concurrent action and that attorney guardian ad litem is available, the court shall appoint that attorney guardian ad litem, unless good cause is shown why another attorney guardian ad litem should be appointed.

(c) If, after appointment of the attorney guardian ad litem, an allegation of abuse or neglect of the minor is made the court shall:

(i) determine whether it is in the best interests of the minor to continue the appointment; or

(ii) order the withdrawal of the attorney guardian ad litem and appoint the Office of the Guardian Ad Litem.

(2) (a) The court shall assess all or part of the attorney guardian ad litem fees, courts costs, and paralegal, staff, and volunteer expenses against the parties in a proportion the court determines to be just.

(b) If the court finds a party to be impecunious, under the provisions of Sections 21-7-3 and

21-7-4, the court may direct the impecunious party's share of the assessment to be covered by the attorney guardian ad litem pro bono obligation established in Subsection (6)(b).

(3) The attorney guardian ad litem appointed under the provisions of this section shall:

(a) represent the best interests of the minor from the date of the appointment until released by the court;

(b) conduct or supervise an independent investigation in order to obtain a clear understanding of the situation and needs of the minor;

(c) formulate an independent opinion of the best interests of the minor after considering all relevant evidence and make recommendations to the court concerning the best interest of the minor;

(d) interview witnesses and review relevant records pertaining to the minor and the minor's family, including medical, psychological, and school records;

(e) if the minor is old enough to communicate and unless it would be detrimental to the minor:

(i) meet with and interview the minor;

(ii) determine the minor's goals and concerns regarding custody or visitation; and

(iii) counsel the minor regarding the nature, purpose, status, and implications of the case, of hearings, of recommendations, and proposals by parties and of court orders;

(f) conduct discovery, file pleadings and other papers, prepare and review orders, and otherwise comply with the Utah Rules of Civil Procedure as necessary to protect the best interest of the minor;

(g) unless excused by the court, prepare for and attend all mediation hearings and all court conferences and hearings, and present witnesses and exhibits as necessary to protect the best interests of the minor;

(h) identify community resources to protect the best interests of the minor and advocate for those resources; and

(i) participate in all appeals unless excused by the court.

(4) (a) The attorney guardian ad litem shall represent the best interests of a minor. If the minor's wishes differ from the attorney's determination of the minor's best interests, the attorney guardian ad litem shall communicate to the court the minor's wishes and the attorney's determination of the minor's best interests. A difference between the minor's wishes and the attorney's determination of best interests is not sufficient to create a conflict of interest.

(b) The court may appoint one attorney guardian ad litem to represent the best interests of more than one minor child of a marriage.

(5) An attorney guardian ad litem appointed under this section is immune from any civil liability that might result by reason of acts performed within the scope of duties of the attorney guardian ad litem.

(6) (a) Upon the advice of the Director of the Office of the Guardian Ad Litem, the Judicial Council shall by rule establish the minimum qualifications and requirements for appointment by the court as an attorney guardian ad litem.

(b) An attorney guardian ad litem may be required to appear pro bono in one case for every five cases in which the attorney is appointed with compensation.

(7) This section shall be effective in the Second, Third, and Fourth Judicial Districts on July 1, 2001, and in the remaining judicial districts of the state on July 1, 2002.

CHAPTER 245
S. B. 127
Passed February 21, 2001
Approved March 19, 2001
Effective April 30, 2001

BAIL BOND AMENDMENTS

Sponsor: Terry R. Spencer

This act modifies the Code of Criminal Procedure and the Insurance Code regarding bail bond surety companies by providing procedures for actions against bail bond surety companies for failure to pay bail bond forfeitures. This act also amends provisions regarding the surety's and the prosecutor's functions if a defendant fails to appear, procedures for exoneration of the bond, and procedures for transportation of the defendant.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
77-20-8.5, as last amended by Chapters 1 and 259, Laws of Utah 2000
77-20b-101, as last amended by Chapter 259, Laws of Utah 2000
77-20b-104, as last amended by Chapter 259, Laws of Utah 2000

ENACTS:
31A-35-504, Utah Code Annotated 1953

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

Section 1. Section 31A-35-504 is enacted to read:

31A-35-504. Failure to pay bail bond forfeiture - Grounds for suspension and revocation of bail bond surety license.

(1) As used in this section:

(a) "Company" means a bail bond surety company.

(b) "Judgment" means a judgment of bond forfeiture issued under Section 77-20b-104.

(2) (a) A company shall pay a judgment not later than 15 days following service of notice upon the company from a prosecutor of the entry of the judgment.

(b) A prosecutor who does not receive proof of or notice of payment of the judgment within 15 days after the service of notice to the company of a judgment shall notify the commissioner of the failure to pay the judgment.

(c) If notice of entry of judgment is served upon the company by mail, three additional days are added to the 15 days provided in Subsections (2)(a) and (2)(b).

(d) A prosecutor shall not proceed under Subsection (2)(b) if a company provides notice of a motion to set aside judgment or notice of an application for an extraordinary writ prior to the end of the payment period.

(3) (a) The commissioner shall suspend the license of the company not later than five days following receipt of notice from a prosecutor of the company's failure to pay the judgment.

(b) The suspension shall be for 60 days and shall be in accordance with Section 31A-35-502.

(4) (a) If the prosecutor receives proof of or notice of payment of the judgment during the suspension period under Subsection (3), the prosecutor shall immediately notify the commissioner of the payment. The notice shall be in writing and by the most expeditious means possible, which may be via facsimile or any other electronic means, followed by the prosecutor's mailing of the original written notification to the commissioner.

(b) The commissioner shall vacate any suspension of the company's license due solely to the failure to pay a judgment, which is then paid under Subsection (4)(a), not later than five days after the commissioner receives the original written notification from the prosecutor, regardless of whether the prosecutor also sent the notification via facsimile or other electronic means. However, any suspension under this Subsection (4) may not be for fewer than 14 days.

(c) The commissioner may not vacate any suspension under this section for fewer than 14 days after receiving notification under Subsection (2) of failure to pay a judgment, even if the suspension for 14 days causes the total suspension of a company's license to extend beyond 60 days because the company had failed to pay a prior judgment and the commissioner had suspended the company's license based on that prior failure to pay.

(5) The commissioner may not vacate a suspension under Subsection (3) if at the time the commissioner receives notification under Subsection (4)(a) of payment of a judgment:

(a) at least one other unpaid judgment against the company exists;

(b) the commissioner has received notice under Subsection (2) of the company's failure to pay that judgment; and

(c) the commissioner has not received notice under Subsection (4)(a) of the company's payment of that outstanding judgment.

(6) The commissioner shall commence an administrative proceeding to revoke the license of a company that fails to pay a judgment of bond forfeiture before the expiration date of the suspension period.

(7) This section does not restrict or otherwise affect the rights of a prosecutor to commence collection proceedings under Subsection 77-20b-104(5).

Section 2. Section 77-20-8.5 is amended to read:

77-20-8.5. Sureties -- Surrender of defendant -- Arrest of defendant.

(1) (a) Sureties may at any time prior to a [~~forfeiture of their bail~~] defendant's failure to

appear surrender the defendant and obtain exoneration of bail, by notifying the clerk of the court in which the bail was posted of the defendant's surrender and requesting exoneration. Notification [~~will~~] shall be [~~done~~] made immediately following the surrender by surface mail, electronic mail, or fax.

(b) To effect surrender, a certified copy of the surety's undertaking from the court in which it was posted[~~,~~] or[~~,~~] a copy of the bail agreement with the defendant shall be delivered to the on-duty jailer, who [~~will~~] shall detain the defendant in the on-duty jailer's custody as upon a commitment, and shall in writing acknowledge the surrender upon the copy of the undertaking or bail agreement. The certified copy of the undertaking or copy of the bail agreement upon which the acknowledgment of surrender is endorsed shall be filed with the court. The court may then, upon proper application, order the undertaking exonerated and may order a refund of any paid premium, or part of a premium, as it finds just.

(2) For the purpose of surrendering the defendant, the sureties may:

(a) arrest the defendant:

(i) at any time before the defendant is finally exonerated; and

(ii) at any place within the state; and

(b) surrender the defendant to any [~~correctional facility~~] county jail booking facility in Utah.

(3) An arrest under this section is not a basis for exoneration of the bond under Section 77-20b-101.

[~~(3)~~] (4) A surety acting under this section is subject to Title 53, Chapter 11, Bail Bond Recovery Act.

Section 3. Section 77-20b-101 is amended to read:

77-20b-101. Entry of nonappearance -- Notice to surety -- Release of surety on failure of timely notice.

(1) If a defendant who has posted bail fails to appear before the appropriate court when required and the court issues a bench warrant or directs that the surety be given notice of the nonappearance, the clerk of the court shall:

(a) mail notice of nonappearance by certified mail, return receipt requested, within 30 days to the address of the surety who posted the bond; [~~and~~]

(b) notify the surety of the name, address, telephone number, and fax number of the prosecutor;

[~~(b)~~] (c) deliver a copy of the notice sent under Subsection (1)(a) to the prosecutor's office at the same time notice is sent under Subsection (1)(a)[~~,~~]; and

(d) ensure that the name, address, and telephone number of the surety is stated on the bench warrant.

(2) [~~If notice is not provided in accordance with Subsection (1)(a), the~~] The prosecutor may mail notice of nonappearance by certified mail, return receipt requested, to the address of the surety within [~~seven~~] 37 days after the [~~end of the 30-day period under Subsection (1)(a)~~] date of the defendant's failure to appear.

(3) If notice of nonappearance is not mailed to a surety, other than the defendant, in accordance with Subsection (1) or (2), the surety is relieved of further obligation under the bond if the surety's current name and address are on the bail bond in the court's file.

(4) (a) A bond ordered forfeited by the court may not be reinstated without the mutual agreement of the surety and the court.

(b) If the defendant is arrested and booked into a county jail booking facility pursuant to a warrant for failure to appear on the original charges [~~and then released for any reason, the original bond shall be exonerated.~~], the surety may file a motion with the court to exonerate the bond. The surety shall deliver a copy of the motion to the prosecutor.

(c) Unless the court makes a finding of good cause why the bond should not be exonerated, it shall exonerate the bond if:

(i) the surety has delivered the defendant to the county jail booking facility in the county where the original charge is pending;

(ii) the defendant has been released on a bond secured from a subsequent surety for the original charge and the failure to appear;

(iii) after an arrest, the defendant has escaped from jail or has been released on the defendant's own recognizance, pursuant to a pretrial release, under a court order regulating jail capacity, or by a sheriff's release under Section 17-22-5.5; or

(iv) the surety has transported or agreed to pay for the transportation of the defendant from a location outside of the county back to the county where the original charge is pending, and the payment is in an amount equal to government transportation expenses listed in Section 76-3-201.

(d) Under circumstances not otherwise provided for in this section, the court may exonerate the bond if it finds that the prosecutor has been given reasonable notice of a surety's motion and there is good cause for the bond to be exonerated.

(e) If a surety's bond has been exonerated under this section and the surety remains liable for the cost of transportation of the defendant, the surety may take custody of the defendant for the purpose of transporting the defendant to the jurisdiction where the charge is pending.

Section 4. Section 77-20b-104 is amended to read:

77-20b-104. Forfeiture of bail.

(1) If a surety fails to bring the defendant before the court within the time provided in Section 77-20b-102, the prosecuting attorney may request the forfeiture of the bail by:

(a) filing a motion for bail forfeiture with the court, supported by proof of notice to the surety of the defendant's nonappearance; and

(b) mailing a copy of the motion to the surety.

(2) A court shall enter judgment of bail forfeiture without further notice if it finds by a preponderance of the evidence:

(a) the defendant failed to appear as required;

(b) the surety was given notice of the defendant's nonappearance in accordance with Section 77-20b-101;

(c) the surety failed to bring the defendant to the court within the six-month period under Section 77-20b-102; and

(d) the prosecutor has complied with the notice requirements under Subsection (1).

(3) If the surety shows by a preponderance of the evidence that it has failed to bring the defendant before the court because the defendant is deceased through no act of the surety, the court may not enter judgment of bail forfeiture.

(4) The amount of bail forfeited is the face amount of the bail bond, but if the defendant is in the custody of another jurisdiction and the state extradites or intends to extradite the defendant, the court may reduce the amount forfeited to the actual or estimated costs of returning the defendant to the court's jurisdiction. A judgment under this Subsection (4) shall:

(a) identify the surety against whom judgment is granted;

(b) specify the amount of bail forfeited;

(c) grant the [~~forfeited bail to the prosecuting entity~~] forfeiture of the bail; and

(d) be docketed by the clerk of the court in the civil judgment docket.

(5) A prosecutor may immediately commence collection proceedings to execute a judgment of bond forfeiture against the assets of the surety.

CHAPTER 246
S. B. 129
Passed February 15, 2001
Approved March 19, 2001
Effective July 1, 2001

MEDICAL MALPRACTICE - MONETARY CAP

Sponsor: Michael G. Waddoups

This act modifies the Judicial Code. This act increases the limit on the recovery of noneconomic damages in malpractice actions against health care providers. The act provides for an annual adjustment to the limit based on inflation, with this adjustment applying only to a cause of action that arises after the adjustment is made. This act requires rulemaking and provides an effective date.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
78-14-7.1, as enacted by Chapter 205, Laws of Utah 1986

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

Section 1. Section 78-14-7.1 is amended to read:

78-14-7.1. Limitation of award of noneconomic damages in malpractice actions.

(1) In a malpractice action against a health care provider, an injured plaintiff may recover noneconomic losses to compensate for pain, suffering, and inconvenience. [~~In no case shall the~~] The amount of damages awarded for [~~such~~] noneconomic loss may not exceed [~~$250,000. This limitation~~]:

(a) for a cause of action arising before July 1, 2001, $250,000;

(b) for a cause of action arising on or after July 1, 2001 and before July 1, 2002, the limitation is adjusted for inflation to $400,000; and

(c) for a cause of action arising on or after July 1, 2002, the $400,000 limitation described in Subsection (1)(b) shall be adjusted for inflation as provided in Subsection (2).

(2) (a) Beginning July 1, 2002 and each July 1 thereafter, the limit for damages under Subsection (1)(c) shall be adjusted for inflation by the state treasurer.

(b) By July 15 of each year, the state treasurer shall:

(i) certify the inflation-adjusted limit calculated under this Subsection (2); and

(ii) inform the Administrative Office of the Courts of the certified limit.

(c) The amount resulting from Subsection (2)(a) shall:

(i) be rounded to the nearest $10,000; and

(ii) apply to a cause of action arising on or after the date the annual adjustment is made.

(3) As used in this section, "inflation" means the seasonally adjusted consumer price index for all urban consumers as published by the Bureau of Labor Statistics of the United States Department of Labor.

(4) The limit under Subsection (1) does not [~~affect~~] apply to awards of punitive damages.

Section 2. Transition clause.

This act has prospective effect only and any changes to the law caused by this act do not apply to any claims based upon injuries or losses that occurred before July 1, 2001.

Section 3. Effective date.

This act takes effect on July 1, 2001.

CHAPTER 247
S. B. 134
Passed February 22, 2001
Approved March 19, 2001
Effective April 30, 2001

PROTECTIVE ORDER AMENDMENTS

Sponsor: Terry R. Spencer

This act modifies provisions regarding protective orders to allow either party to a hearing to object to an order recommended by a commissioner and have the matter heard by a judge.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
30-6-4.3, as last amended by Chapter 83, Laws of Utah 1998

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

Section 1. Section 30-6-4.3 is amended to read:

30-6-4.3. Hearings on ex parte orders.

(1) (a) When a court issues an ex parte protective order the court shall set a date for a hearing on the petition within 20 days after the ex parte order is issued.

(b) If at that hearing the court does not issue a protective order, the ex parte protective order shall expire, unless it is otherwise [~~modified~~] extended by the court.

(c) If at that hearing the court issues a protective order, the ex parte protective order remains in effect until service of process of the protective order is completed.

(d) A protective order issued after notice and a hearing is effective until further order of the court.

(e) If the hearing on the petition is heard by a commissioner, either the petitioner or respondent may file an objection within ten days of the entry of the recommended order and the assigned judge shall hold a hearing within 20 days of the filing of the objection.

(2) Upon a hearing under this section, the court may grant any of the relief described in Section 30-6-4.2.

(3) When a court denies a petition for an ex parte protective order or a petition to modify an order for protection ex parte, the court shall set the matter for hearing upon notice to the respondent.

(4) A respondent who has been served with an ex parte protective order may seek to vacate the ex parte protective order prior to the hearing scheduled pursuant to Subsection (1)(a) by filing a verified motion to vacate. The respondent's verified motion to vacate and a notice of hearing on that motion shall be personally served on the petitioner at least two days prior to the hearing on the motion to vacate.

CHAPTER 248
S. B. 138
Passed February 26, 2001
Approved March 19, 2001
Effective April 30, 2001

MINIMUM WAGE APPLICABILITY

Sponsor: Howard A. Stephenson

This act modifies the Utah Minimum Wage Act to prohibit cities, towns, and counties from establishing a minimum wage rate that exceeds the federal minimum wage rate. The act prohibits cities, towns, and counties from requiring that a person contracting with the city, town, or county pay its employees a minimum wage that exceeds the federal minimum wage.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:
34-30-106, Utah Code Annotated 1953

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

Section 1. Section 34-30-106 is enacted to read:

34-30-106. (Codified as 34-40-106) Limitations on minimum wage imposed by cities, towns, or counties.

(1) A city, town, or county may not establish, mandate, or require a minimum wage that exceeds the federal minimum wage as provided in 29 U.S.C. Sec. 201 et seq., Fair Labor Standards Act of 1938.

(2) (a) A city, town, or county may not require that a person who contracts with the city, town, or county pay that person's employees a wage that exceeds the federal minimum wage as provided in 29 U.S.C. Sec. 201 et seq., Fair Labor Standards Act of 1938.

(b) Subsection (2)(a) does not apply when federal law requires the payment of a prevailing or minimum wage to persons working on projects funded in whole or in part by federal funds.

(c) Subsection (2)(a) applies to contracts executed on or after April 30, 2001.

CHAPTER 249
S. B. 152
Passed February 27, 2001
Approved March 19, 2001
Effective April 30, 2001

MEDICAL EXPENSES OF COUNTY INMATES

Sponsor: Michael G. Waddoups

This act modifies provisions relating to Counties to include inmate medical expenses provided at the request of a county sheriff as county expenses for certain counties. The act specifies the basis for costs of medical services in the absence of a contract between the county and a medical service facility. The act also makes technical changes.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
17-50-319, as renumbered and amended by Chapter 133, Laws of Utah 2000

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

Section 1. Section 17-50-319 is amended to read:

17-50-319. County charges enumerated.

(1) County charges are:

[~~(1)~~] (a) those incurred against the county by any law;

[~~(2)~~] (b) the necessary expenses of the county attorney or district attorney incurred in criminal cases arising in the county, and all other expenses necessarily incurred by the county or district attorney in the prosecution of criminal cases, except jury and witness fees;

[~~(3)~~] (c) the expenses necessarily incurred in the support of persons charged with or convicted of a criminal offense and committed to the county jail;

[~~(4)~~] (d) for a county not within the state district court administrative system, the sum required by law to be paid jurors in civil cases;

[~~(5)~~] (e) all charges and accounts for services rendered by any justice court judge for services in the trial and examination of persons charged with a criminal offense not otherwise provided for by law;

[~~(6)~~] (f) the contingent expenses necessarily incurred for the use and benefit of the county;

[~~(7)~~] (g) every other sum directed by law to be raised for any county purposes under the direction of the county legislative body or declared a county charge;

[~~(8)~~] (h) the fees of constables for services rendered in criminal cases;

[~~(9)~~] (i) the necessary expenses of the sheriff and deputies incurred in civil and criminal cases arising in the county, and all other expenses necessarily incurred by the sheriff and deputies performing the duties imposed upon them by law; [~~and~~]

[~~(10)~~] (j) the sums required by law to be paid by the county to jurors and witnesses serving at inquests and in criminal cases in justice courts[~~.~~]; and

(k) for a county of the first or second class and subject to Subsection (2), expenses incurred by a health care facility in providing medical services at the request of a county sheriff for existing conditions of:

(i) persons booked into a county jail on a charge of a criminal offense; or

(ii) persons convicted of a criminal offense and committed to a county jail.

(2) (a) Expenses described in Subsection (1)(k) are a county charge only to the extent that they exceed any private insurance in effect that covers those expenses.

(b) If there is no contract between a county jail and a health care facility that establishes a fee schedule for medical services rendered, expenses under Subsection (1)(k) shall be commensurate with the current noncapitated state Medicaid rates.

(c) Subsection (1)(k) does not apply to expenses of a person held at the jail at the request of an agency of the United States.

CHAPTER 250
S. B. 153
Passed February 28, 2001
Approved March 19, 2001
Effective April 30, 2001

KINSHIP PLACEMENT FOR FOSTER CHILDREN

Sponsor: Bill Wright

This act amends the Judicial Code and the Human Services Code to authorize the Division of Child and Family Services to place a child in an emergency kinship placement rather than shelter care prior to a shelter hearing. The act requires a shelter hearing after an emergency kinship placement, or after a parent has entered a domestic violence shelter at the request of the division. The act expands the circumstances in which the division must conduct a postremoval investigation.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
62A-4a-202.3, as last amended by Chapters 274 and 321, Laws of Utah 2000
78-3a-301, as last amended by Chapter 274, Laws of Utah 2000
78-3a-306, as last amended by Chapter 274, Laws of Utah 2000

ENACTS:
62A-4a-209, Utah Code Annotated 1953

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

Section 1. Section 62A-4a-202.3 is amended to read:

62A-4a-202.3. Investigation -- Substantiation of reports -- Child in protective custody.

(1) When a child is taken into protective custody in accordance with Sections 62A-4a-202.1 and 78-3a-301, or when the division takes any other action which would require a shelter hearing under Subsection 78-3a-306(1), the Division of Child and Family Services shall immediately initiate a postremoval investigation of the circumstances of the minor and the facts surrounding his being taken into protective custody.

(2) The division's postremoval investigation shall include, among other actions necessary to meet reasonable professional standards:

(a) a search for and review of any records of past reports of abuse or neglect involving the same child, any sibling or other child residing in that household, and the alleged perpetrator;

(b) with regard to a child who is five years of age or older, a personal interview with the child outside of the presence of the alleged perpetrator, conducted in accordance with the requirements of Subsection (7);

(c) an interview with the child's natural parents or other guardian, unless their whereabouts are unknown;

(d) an interview with the person who reported the abuse, unless anonymous;

(e) where possible and appropriate, interviews with other third parties who have had direct contact with the child, including school personnel and the child's health care provider;

(f) an unscheduled visit to the child's home, unless the division has reasonable cause to believe that the reported abuse was committed by a person who does not:

(i) live in the child's home; or

(ii) have access to the child; and

(g) if appropriate and indicated in any case alleging physical injury, sexual abuse, or failure to meet the child's medical needs, a medical examination. That examination shall be obtained no later than 24 hours after the child was placed in protective custody.

(3) The division may rely on a written report of a prior interview rather than conducting an additional interview, if:

(a) law enforcement has previously conducted a timely and thorough investigation regarding the alleged abuse or neglect and has produced a written report;

(b) that investigation included one or more of the interviews required by Subsection (2); and

(c) the division finds that an additional interview is not in the best interest of the child.

(4) (a) With regard to both pre and postremoval, the division's determination of whether a report is substantiated or unsubstantiated may be based on the child's statements alone.

(b) Inability to identify or locate the perpetrator may not be used by the division as a basis for determining that a report is unsubstantiated, or for closing the case.

(c) The division may not determine a case to be unsubstantiated or identify a case as unsubstantiated solely because the perpetrator was an out-of-home perpetrator.

(d) Decisions regarding whether a report is substantiated, unsubstantiated, or without merit shall be based on the facts of the case at the time the report was made.

(5) The division should maintain protective custody of the child if it finds that one or more of the following conditions exist:

(a) the minor has no natural parent, guardian, or responsible relative who is able and willing to provide safe and appropriate care for the minor;

(b) shelter of the minor is a matter of necessity for the protection of the minor and there are no reasonable means by which the minor can be protected in his home or the home of a responsible relative;

(c) there is substantial evidence that the parent or guardian is likely to flee the jurisdiction of the court; or

(d) the minor has left a previously court ordered placement.

(6) (a) Within 24 hours after receipt of a child into protective custody, excluding weekends and holidays, the Division of Child and Family Services shall convene a child protection team to review the circumstances regarding removal of the child from his home, and prepare the testimony and evidence that will be required of the division at the shelter hearing, in accordance with Section 78-3a-306.

(b) Members of that team shall include:

(i) the caseworker assigned to the case and the caseworker who made the decision to remove the child;

(ii) a representative of the school or school district in which the child attends school;

(iii) the peace officer who removed the child from the home;

(iv) a representative of the appropriate Children's Justice Center, if one is established within the county where the child resides;

(v) if appropriate, and known to the division, a therapist or counselor who is familiar with the child's circumstances; and

(vi) any other individuals as determined to be appropriate and necessary by the team coordinator and chair.

(c) At that 24-hour meeting, the division shall have available for review and consideration, the complete child protective services and foster care history of the child and the child's parents and siblings.

(7) After receipt of a child into protective custody and prior to the adjudication hearing, all investigative interviews with the child that are initiated by the division shall be audio or video taped, and the child shall be allowed to have a support person of the child's choice present. That support person may not be an alleged perpetrator.

(8) The division shall cooperate with law enforcement investigations regarding the alleged perpetrator.

(9) The division may not close an investigation solely on the grounds that the division investigator is unable to locate the child, until all reasonable efforts have been made to locate the child and family members. Those efforts include:

(a) visiting the home at times other than normal work hours;

(b) contacting local schools;

(c) contacting local, county, and state law enforcement agencies; and

(d) checking public assistance records.

Section 2. Section 62A-4a-209 is enacted to read:

62A-4a-209. Emergency kinship placement.

(1) The division may use an emergency kinship placement under Subsection 78-3a-301(4) when:

(a) the case worker has made the determination that:

(i) the child's home is unsafe;

(ii) removal is necessary under the provisions of Section 78-3a-301; and

(iii) the child's custodial parent or guardian will agree to not remove the child from the relative's home who serves as the kinship placement and not have any contact with the child until after the shelter hearing required by Section 78-3a-306;

(b) a relative, with preference being given to a noncustodial parent in accordance with Section 78-3a-307, can be identified who has the ability and is willing to provide care for the child who would otherwise be placed in shelter care, including:

(i) taking the child to medical, mental health, dental, and educational appointments at the request of the division; and

(ii) the relative has the ability to make the child available to division services and the guardian ad litem; and

(c) the relative agrees to care for the child on an emergency basis under the following conditions:

(i) the relative meets the criteria for an emergency kinship placement under Subsection (2);

(ii) the relative agrees to not allow the custodial parent or guardian to have any contact with the child until after the shelter hearing unless authorized by the division in writing;

(iii) the relative agrees to contact law enforcement and the division if the custodial parent or guardian attempts to make unauthorized contact with the child;

(iv) the relative agrees to allow the division and the child's guardian ad litem to have access to the child;

(v) the relative has been informed and understands that the division may continue to search for other possible kinship placements for long-term care, if needed;

(vi) the relative is willing to assist the custodial parent or guardian in reunification efforts at the request of the division, and to follow all court orders; and

(vii) the child is comfortable with the relative.

(2) Before the division places a child in an emergency kinship placement, the division must:

(a) request the name of a reference and when possible, contact the reference and determine the answer to the following questions:

(i) would the person identified as a reference place a child in the home of the emergency kinship placement; and

(ii) are there any other relatives to consider as a possible emergency or long-term placement for the child;

(b) have the custodial parent or guardian sign an emergency kinship placement agreement form during the investigation;

(c) complete a criminal background check described in Sections 62A-4a-202.4 and 78-3a-307.1 on all persons living in the relative's household;

(d) complete a home inspection of the relative's home; and

(e) have the emergency kinship placement approved by a family service specialist.

(3) As soon as possible after the emergency placement and prior to the shelter hearing required by Section 78-3a-306, the division shall convene a family unity meeting.

(4) After an emergency kinship placement, the division caseworker must:

(a) respond to the emergency kinship placement's calls within one hour if the custodial parents or guardians attempt to make unauthorized contact with the child or attempt to remove the child;

(b) complete all removal paperwork, including the notice provided to the custodial parents and guardians under Section 78-3a-306;

(c) contact the attorney general to schedule a shelter hearing;

(d) complete the kinship procedures required in Section 78-3a-307, including, within five days after placement, the criminal history record check described in Subsection (5); and

(e) continue to search for other relatives as a possible long-term placement, if needed.

(5) (a) In order to determine the suitability of the kinship placement and to conduct a background screening and investigation of individuals living in the household in which a child is placed, each individual living in the household in which the child is placed shall be fingerprinted. If no disqualifying record is identified at the state level, the fingerprints shall be forwarded by the division to the Federal Bureau of Investigation for a national criminal history record check.

(b) The cost of those investigations shall be borne by whomever received placement of the child, except that the division may pay all or part of the cost of those investigations if the person with whom the child is placed is unable to pay.

Section 3. Section 78-3a-301 is amended to read:

78-3a-301. Removing a child from his home -- Grounds for removal.

(1) The Division of Child and Family Services may not remove a child from the custody of his natural parent unless there is substantial cause to believe that any one of the following exist:

(a) there is a substantial danger to the physical health or safety of the minor and the minor's physical health or safety may not be protected without removing him from his parent's custody. If a minor has previously been adjudicated as abused, neglected, or dependent, and a subsequent incident of abuse, neglect, or dependency occurs, that fact constitutes prima facie evidence that the child cannot safely remain in the custody of his parent;

(b) the minor is suffering emotional damage, as may be indicated by, but not limited to, extreme anxiety, depression, withdrawal, or negative aggressive behavior toward self or others, and there are no reasonable means available by which the minor's emotional health may be protected without removing the minor from the custody of his parent;

(c) the minor or another minor residing in the same household has been physically or sexually abused, or is deemed to be at substantial risk of being physically or sexually abused, by a parent, a member of the parent's household, or other person known to the parent. If a parent has received actual notice that physical or sexual abuse by a person known to the parent has occurred, and there is evidence that the parent has allowed the child to be in the physical presence of the alleged abuser, that fact constitutes prima facie evidence that the child is at substantial risk of being physically or sexually abused;

(d) the parent is unwilling to have physical custody of the child;

(e) the minor has been left without any provision for his support;

(f) a parent who has been incarcerated or institutionalized has not or cannot arrange for safe and appropriate care for the minor;

(g) a relative or other adult custodian with whom the minor has been left by the parent is unwilling or unable to provide care or support for the minor, the whereabouts of the parent are unknown, and reasonable efforts to locate him have been unsuccessful;

(h) the minor is in immediate need of medical care;

(i) the physical environment or the fact that the child is left unattended poses a threat to the child's health or safety;

(j) the minor or another minor residing in the same household has been neglected;

(k) an infant has been abandoned, as defined in Section 78-3a-313.5;

(l) the parent, or an adult residing in the same household as the parent, has been charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act, and any clandestine laboratory operation, as defined in Section

58-37d-3, was located in the residence or on the property where the child resided; or

(m) the child's welfare is otherwise endangered, as documented by the caseworker.

(2) The Division of Child and Family Services may not remove a minor from the custody of his natural parent solely on the basis of educational neglect.

(3) The Division of Child and Family Services shall comply with the provisions of Section 62A-4a-202.1 in effecting removal of a child pursuant to this section.

(4) (a) A minor removed from the custody of his natural parent under this section may not be placed or kept in a secure detention facility pending court proceedings unless the minor is detainable based on guidelines promulgated by the Division of Youth Corrections.

(b) A minor removed from the custody of his natural parent but who does not require physical restriction shall be given temporary care in:

(i) a shelter facility[.]; or

(ii) an emergency kinship placement in accordance with Section 62A-4a-209.

Section 4. Section 78-3a-306 is amended to read:

78-3a-306. Shelter hearing.

(1) [~~With regard to a child who has been removed by the Division of Child and Family Services, or who is in the protective custody of the division, a~~] A shelter hearing shall be held within 72 hours [~~after removal of the child from his home,~~] excluding weekends and holidays[.] after any one or all of the following occur:

(a) removal of the child from his home by the Division of Child and Family Services;

(b) placement of the child in the protective custody of the Division of Child and Family Services;

(c) emergency kinship placement under Subsection 78-3a-301(4)(b)(ii); or

(d) as an alternative to removal of the child, a parent has entered a domestic violence shelter at the request of the Division of Child and Family Services.

(2) Upon [~~removal of a child from his home and receipt of that child into protective custody~~] the occurrence of any of the circumstances described in Subsections (1)(a) through (1)(d), the division shall issue a notice that contains all of the following:

(a) the name and address of the person to whom the notice is directed;

(b) the date, time, and place of the shelter hearing;

(c) the name of the minor on whose behalf a petition is being brought;

(d) a concise statement regarding:

(i) the reasons for removal[,] or other action of the division under Subsection (1); and [~~of~~]

(ii) the allegations and code sections under which the proceeding has been instituted;

(e) a statement that the parent or guardian to whom notice is given, and the minor, are entitled to have an attorney present at the shelter hearing, and that if the parent or guardian is indigent and cannot afford an attorney, and desires to be represented by an attorney, one will be provided; and

(f) a statement that the parent or guardian is liable for the cost of support of the minor in the protective custody, temporary custody, and custody of the division, and the cost for legal counsel appointed for the parent or guardian under Subsection (2)(e), according to his financial ability.

(3) That notice shall be personally served as soon as possible, but no later than one business day after removal of a child from his home, on:

(a) the appropriate guardian ad litem; and

(b) both parents and any guardian of the minor, unless they cannot be located.

(4) The following persons shall be present at the shelter hearing:

(a) the child, unless it would be detrimental for the child;

(b) the child's parents or guardian, unless they cannot be located, or fail to appear in response to the notice;

(c) counsel for the parents, if one has been requested;

(d) the child's guardian ad litem;

(e) the caseworker from the Division of Child and Family Services who has been assigned to the case; and

(f) the attorney from the attorney general's office who is representing the division.

(5) (a) At the shelter hearing, the court shall provide an opportunity for the minor's parent or guardian, if present, and any other person having relevant knowledge, to provide relevant testimony. The court may also provide an opportunity for the minor to testify.

(b) The court may consider all relevant evidence, in accordance with the Utah Rules of Juvenile Procedure. The court shall hear relevant evidence presented by the minor, his parent or guardian, the requesting party, or their counsel, but may in its discretion limit testimony and evidence to only that which goes to the issues of removal and the child's need for continued protection.

(6) If the child is in the protective custody of the division, the division shall report to the court:

(a) the reasons why the minor was removed from the parent's or guardian's custody;

(b) any services provided to the child and his family in an effort to prevent removal;

(c) the need, if any, for continued shelter;

(d) the available services that could facilitate the return of the minor to the custody of his parent or guardian; and

(e) whether the child has any relatives who may be able and willing to take temporary custody.

(7) The court shall consider all relevant evidence provided by persons or entities authorized to present relevant evidence pursuant to this section.

(8) If necessary to protect the child, preserve the rights of a party, or for other good cause shown, the court may grant no more than one time-limited continuance, not to exceed five judicial days.

(9) [~~The~~] If the child is in the protective custody of the division, the court shall order that the minor be released from the protective custody of the division unless it finds, by a preponderance of the evidence, that any one of the following exist:

(a) there is a substantial danger to the physical health or safety of the minor and the minor's physical health or safety may not be protected without removing him from his parent's custody. If a minor has previously been adjudicated as abused, neglected, or dependent and a subsequent incident of abuse, neglect, or dependency occurs, that fact constitutes prima facie evidence that the child cannot safely remain in the custody of his parent;

(b) the minor is suffering emotional damage, as may be indicated by, but is not limited to, extreme anxiety, depression, withdrawal, or negative aggressive behavior toward self or others, and there are no reasonable means available by which the minor's emotional health may be protected without removing the minor from the custody of his parent;

(c) the minor or another minor residing in the same household has been physically or sexually abused, or is deemed to be at substantial risk of being physically or sexually abused, by a parent, a member of the parent's household, or other person known to the parent. If a parent has received actual notice that physical or sexual abuse by a person known to the parent has occurred, and there is evidence that the parent has allowed the child to be in the physical presence of the alleged abuser, that fact constitutes prima facie evidence that the child is at substantial risk of being physically or sexually abused;

(d) the parent is unwilling to have physical custody of the child;

(e) the minor has been left without any provision for his support;

(f) a parent who has been incarcerated or institutionalized has not or cannot arrange for safe and appropriate care for the minor;

(g) a relative or other adult custodian with whom the minor has been left by the parent is unwilling or unable to provide care or support for the minor, the whereabouts of the parent are unknown, and reasonable efforts to locate him have been unsuccessful;

(h) the minor is in immediate need of medical care;

(i) the physical environment or the fact that the child is left unattended poses a threat to the child's health or safety;

(j) the minor or another minor residing in the same household has been neglected;

(k) the parent, or an adult residing in the same household as the parent, has been charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act, and any clandestine laboratory operation, as defined in Section 58-37d-3, was located in the residence or on the property where the child resided; or

(l) the child's welfare is otherwise endangered.

(10) (a) The court shall also make a determination on the record as to whether reasonable efforts were made to prevent or eliminate the need for removal of the minor from his home and whether there are available services that would prevent the need for continued removal. If the court finds that the minor can be safely returned to the custody of his parent or guardian through the provision of those services, it shall place the minor with his parent or guardian and order that those services be provided by the division.

(b) In making that determination, and in ordering and providing services, the child's health, safety, and welfare shall be the paramount concern, in accordance with federal law.

(11) Where the division's first contact with the family occurred during an emergency situation in which the child could not safely remain at home, the court shall make a finding that any lack of preplacement preventive efforts was appropriate.

(12) In cases where actual sexual abuse or abandonment, or serious physical abuse or neglect are involved, neither the division nor the court has any duty to make "reasonable efforts" or to, in any other way, attempt to maintain a child in his home, return a child to his home, provide reunification services, or attempt to rehabilitate the offending parent or parents.

(13) The court may not order continued removal of a minor solely on the basis of educational neglect as described in Subsection 78-3a-103(1)(r)(ii).

(14) (a) Whenever a court orders continued removal of a minor under this section, it shall state the facts on which that decision is based.

(b) If no continued removal is ordered and the minor is returned home, the court shall state the facts on which that decision is based.

(15) If the court finds that continued removal and temporary custody are necessary for the protection of a child because harm may result to the child if he were returned home, it shall order continued removal regardless of any error in the initial removal of the child, or the failure of a party to

comply with notice provisions, or any other procedural requirement of this chapter or Title 62A, Chapter 4a, Child and Family Services.

CHAPTER 251
S. B. 154
Passed February 26, 2001
Approved March 19, 2001
Effective April 30, 2001

INDIGENT DEFENDANT LEGAL SERVICES

Sponsor: David L. Gladwell

This act amends the Indigent Defense Act in the Code of Criminal Procedure, regarding providing defense for indigent persons. The act requires that if a county or municipality has contracted for legal defense or defense resources, indigent representation shall be assigned to those contracted, unless there is a compelling reason to assign representation to a noncontracting party. The act also provides definitions of compelling reason and defense resources.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
77-32-201, as enacted by Chapter 354, Laws of Utah 1997
77-32-302, as renumbered and amended by Chapter 354, Laws of Utah 1997
77-32-303, as renumbered and amended by Chapter 354, Laws of Utah 1997
77-32-306, as last amended by Chapter 307 and renumbered and amended by Chapter 354, Laws of Utah 1997

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

Section 1. Section 77-32-201 is amended to read:

77-32-201. Definitions.

For the purposes of this chapter:

(1) "Board" means the Indigent Defense Funds Board created in Section 77-32-401.

(2) "Compelling reason" may include the following circumstances:

(a) a conflict of interest;

(b) the contracting attorney does not have sufficient expertise to provide an effective defense of the indigent; or

(c) the defense resource is insufficient or lacks expertise to provide a complete defense.

(3) "Defense resources" means a competent investigator, expert witness, or other appropriate means necessary, for an effective defense of an indigent, but does not include legal counsel.

[~~(2)~~] (4) "Indigent" means a person qualifying as an indigent under indigency standards established in Part 3, Counsel for Indigents.

(5) "Legal aid association" means a nonprofit defense association that provides counsel and defense resources for indigent defendants.

[~~(3)~~] (6) "Participating county" means a county which has complied with the provisions of this chapter for participation in the Indigent Capital Defense Trust Fund as provided in Sections 77-32-602 and 77-32-603 or the Indigent Felony Defense Trust Fund as provided in Sections 77-32-702 and 77-32-703.

[~~(4)~~] (7) "Serious offense" means a felony or capital offense.

Section 2. Section 77-32-302 is amended to read:

77-32-302. Assignment of counsel on request of indigent or order of court.

(1) [~~Counsel~~] Legal counsel shall be assigned to represent each indigent [~~who~~] and the indigent shall also be provided access to defense resources necessary for an effective defense, if the indigent is under arrest for or charged with a crime in which there is a substantial probability that the penalty to be imposed is confinement in either jail or prison if:

(a) the indigent requests [~~it~~] counsel or defense resources, or both; or

(b) the court on its own motion or otherwise [~~so~~] orders counsel, defense resources, or both and the defendant does not affirmatively waive or reject on the record the opportunity to be represented and provided defense resources.

(2) (a) If the county or municipality responsible to provide for the legal defense of an indigent, including defense resources and counsel, has arranged by contract to provide those services through a legal aid association, and the court has received notice or a copy of [~~such~~] the contract, the court shall assign the [~~contracting attorney as legal counsel to represent that indigent~~] legal aid association named in the contract to defend the indigent and provide defense resources.

(b) If the county or municipality responsible for providing indigent legal defense, including counsel and defense resources, has contracted to provide those services through individual attorneys, individual defense resources, or associations providing defense resources, and the court has received notice or a copy of the contracts, the court shall assign a contracting attorney as the legal counsel to represent an indigent and a contracted defense resource to provide defense-related services.

[~~(b)~~] (c) The court shall select and assign an attorney or defense resource if:

(i) the contract for indigent legal services is with multiple attorneys or resources; or

(ii) the contract is with another attorney in the event of a conflict of interest.

[~~(c)~~] (d) If the court considers the assignment of a noncontracting attorney or defense resource to provide legal services to an indigent defendant despite the existence of an indigent legal services contract and the court has a copy or notice of the contract, before the court may make the assignment, it shall:

(i) set the matter for a hearing;

(ii) give proper notice of the hearing to the attorney of the responsible county or municipality; and

(iii) make findings that there is a compelling reason to appoint a noncontracting attorney or defense resource.

[~~(d)~~] (e) The indigent's [~~mere~~] preference for other counsel or defense resources may not be considered a compelling reason justifying the appointment of a noncontracting attorney or defense resource.

(3) The court may make a determination of indigency at any time.

Section 3. Section 77-32-303 is amended to read:

77-32-303. Standard for court to appoint noncontracting attorney or defense resource -- Hearing.

[~~(1) For purposes of this section, "resources" means a competent investigator or other appropriate means necessary for a complete defense of an indigent.~~]

[~~(2)~~] If a county or municipality has contracted for, or otherwise made arrangements for, the legal defense of indigents, including a competent attorney and defense resources, the court may not appoint a noncontracting attorney or [~~other~~] resource either under this part, Section 21-5-14.5, or Rule 15, Utah Rules of Criminal Procedure, unless the court:

[~~(a)~~] (1) conducts a hearing with proper notice to the responsible entity to consider the authorization or designation of a noncontract attorney or resource; and

[~~(b)~~] (2) makes a finding that there is a compelling reason to authorize or designate a noncontracting attorney or resources for the indigent defendant.

Section 4. Section 77-32-306 is amended to read:

77-32-306. County or municipal legislative body to appoint counsel or defense resources or provide these services through legal aid associations.

(1) The county or municipal legislative body shall either:

[~~(1)~~] (a) contract to provide the [~~services~~] legal defense, including counsel, defense resources, or both, as prescribed by this chapter, and as available, through [~~nonprofit~~]:

(i) a legal aid[~~, other associations,~~] association; or

(ii) one or more defense associations or attorneys and qualified defense resources; or

[~~(2)~~] (b) authorize the court to provide the services prescribed by this chapter by assigning a qualified attorney in each case.

(2) When a county or municipality has contracted under Subsection (1)(a) to provide the legal counsel and defense resources required by this chapter, the contracted legal aid association or attorneys and contracted defense resources are the exclusive source from which the legal defense may be provided, unless the court finds a compelling reason for the appointment of noncontracting attorneys and defense resources, in which case the judge shall state the compelling reason on the record.

CHAPTER 252
S. B. 156
Passed February 21, 2001
Approved March 19, 2001
Effective April 30, 2001

OVERSIZE PERMIT AMENDMENTS

Sponsor: John W. Hickman

This act modifies the Transportation Code by amending certain length limitations for oversize permits.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
72-7-406, as renumbered and amended by Chapter 270, Laws of Utah 1998

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

Section 1. Section 72-7-406 is amended to read:

72-7-406. Oversize permits and oversize and overweight permits for vehicles of excessive size or weight -- Applications -- Restrictions -- Fees -- Rulemaking provisions -- Penalty.

(1) (a) The department may, upon receipt of an application and good cause shown, issue in writing an oversize permit or an oversize and overweight permit. The oversize permit or oversize and overweight permit may authorize the applicant to operate or move upon a highway:

(i) a vehicle or combination of vehicles, unladen or with a load weighing more than the maximum weight specified in Section 72-7-404 for any wheel, axle, group of axles, or total gross weight; or

(ii) a vehicle or combination of vehicles that exceeds the vehicle width, height, or length provisions under Section 72-7-402.

(b) Except as provided under Subsection (8), an oversize and overweight permit may not be issued under this section to allow the transportation of a load that is reasonably divisible.

(c) The maximum size or weight authorized by a permit under this section shall be within limits that do not impair the state's ability to qualify for federal-aid highway funds.

(d) The department may deny or issue a permit under this section to protect the safety of the traveling public and to protect highway foundation, surfaces, or structures from undue damage by one or more of the following:

(i) limiting the number of trips the vehicle may make;

(ii) establishing seasonal or other time limits within which the vehicle may operate or move on the highway indicated;

(iii) requiring security in addition to the permit to compensate for any potential damage by the vehicle to any highway; and

(iv) otherwise limiting the conditions of operation or movement of the vehicle.

(e) Prior to granting a permit under this section, the department shall approve the route of any vehicle or combination of vehicles.

(2) An application for a permit under this section shall state:

(a) the proposed maximum wheel loads, maximum axle loads, all axle spacings of each vehicle or combination of vehicles;

(b) the proposed maximum load size and maximum size of each vehicle or combination of vehicles;

(c) the specific roads requested to be used under authority of the permit; and

(d) if the permit is requested for a single trip or if other seasonal limits or time limits apply.

(3) Each oversize permit or oversize and overweight permit shall be carried in the vehicle or combination of vehicles to which it refers and shall be available for inspection by any peace officer, special function officer, port of entry agent, or other personnel authorized by the department.

(4) A permit under this section may not be issued or is not valid unless the vehicle or combination of vehicles is:

(a) properly registered for the weight authorized by the permit; or

(b) registered for a gross laden weight of 78,001 pounds or over, if the gross laden weight authorized by the permit exceeds 80,000 pounds.

(5) (a) (i) An oversize permit may be issued under this section for a vehicle or combination of vehicles that exceeds one or more of the maximum width, height, or length provisions under Section 72-7-402.

(ii) Except for an annual oversize permit for an implement of husbandry under Section 72-7-407, only a single trip oversize permit may be issued for a vehicle or combination of vehicles that is more than 14 feet six inches wide, 14 feet high, or 105 feet long.

(b) The fee is $25 for a single trip oversize permit under this Subsection (5). This permit is valid for not more than 96 continuous hours.

(c) The fee is $60 for a semiannual oversize permit under this Subsection (5). This permit is valid for not more than 180 continuous days.

(d) The fee is $75 for an annual oversize permit under this Subsection (5). This permit is valid for not more than 365 continuous days.

(6) (a) An oversize and overweight permit may be issued under this section for a vehicle or combination of vehicles carrying a nondivisible load that exceeds one or more of the maximum weight provisions of Section 72-7-404 by not more than 25%, except that the gross weight may not exceed 125,000 pounds.

(b) The fee is $50 for a single trip oversize and overweight permit under this Subsection (6). This

permit is valid for not more than 96 continuous hours.

(c) A semiannual oversize and overweight permit under this Subsection (6) is valid for not more than 180 continuous days. The fee for this permit is:

(i) $150 for a vehicle or combination of vehicles with gross vehicle weight of more than 80,000 pounds, but not exceeding 84,000 pounds;

(ii) $260 for a vehicle or combination of vehicles with gross vehicle weight of more than 84,000 pounds, but not exceeding 112,000 pounds; and

(iii) $350 for a vehicle or combination of vehicles with gross vehicle weight of more than 112,000 pounds, but not exceeding 125,000 pounds.

(d) An annual oversize and overweight permit under this Subsection (6) is valid for not more than 365 continuous days. The fee for this permit is:

(i) $200 for a vehicle or combination of vehicles with gross vehicle weight of more than 80,000 pounds, but not exceeding 84,000 pounds;

(ii) $400 for a vehicle or combination of vehicles with gross vehicle weight of more than 84,000 pounds, but not exceeding 112,000 pounds; and

(iii) $450 for a vehicle or combination of vehicles with gross vehicle weight of more than 112,000 pounds, but not exceeding 125,000 pounds.

(7) (a) A single trip oversize and overweight permit may be issued under this section for a vehicle or combination of vehicles carrying a nondivisible load that exceeds one or more of the maximum weight provisions of Section 72-7-404 by more than 25% or that exceeds a gross weight of 125,000 pounds.

(b) (i) The fee for a single trip oversize and overweight permit under this Subsection (7), which is valid for not more than 96 continuous hours, is $.01 per mile for each 1,000 pounds above 80,000 pounds subject to the rounding described in Subsection (7)(c).

(ii) The minimum fee that may be charged under this Subsection (7) is $65.

(iii) The maximum fee that may be charged under this Subsection (7) is $450.

(c) (i) The miles used to calculate the fee under this Subsection (7) shall be rounded up to the nearest 50 mile increment.

(ii) The pounds used to calculate the fee under this Subsection (7) shall be rounded up to the nearest 25,000 pound increment.

(8) (a) An oversize and overweight permit may be issued under this section for a vehicle or combination of vehicles carrying a divisible load if:

(i) the bridge formula under Subsection 72-7-404(3) is not exceeded; and

(ii) the length of the vehicle or combination of vehicles is:

(A) more than [~~65 feet~~] the limitations specified under Subsections 72-7-402(4)(c) and (d) but not exceeding [~~92~~] 81 feet in cargo carrying length and the application is for a single trip [~~or~~], semiannual trip, or annual trip permit; or

(B) more than [~~92~~] 81 feet in cargo carrying length but not exceeding [~~105~~] 95 feet in cargo carrying length and the application is for an annual trip permit.

(b) The fee is $50 for a single trip oversize and overweight permit under this Subsection (8). The permit is valid for not more than 96 continuous hours.

(c) The fee for a semiannual oversize and overweight permit under this Subsection (8), which permit is valid for not more than 180 continuous days is:

(i) $150 for a vehicle or combination of vehicles with gross vehicle weight of more than 80,000 pounds, but not exceeding 84,000 pounds;

(ii) $260 for a vehicle or combination of vehicles with gross vehicle weight of more than 84,000 pounds, but not exceeding 112,000 pounds; and

(iii) $350 for a vehicle or combination of vehicles with gross vehicle weight of more than 112,000 pounds, but not exceeding 129,000 pounds.

(d) The fee for an annual oversize and overweight permit under this Subsection (8), which permit is valid for not more than 365 continuous days is:

(i) $200 for a vehicle or combination of vehicles with gross vehicle weight of more than 80,000 pounds, but not exceeding 84,000 pounds;

(ii) $400 for a vehicle or combination of vehicles with gross vehicle weight of more than 84,000 pounds, but not exceeding 112,000 pounds; and

(iii) $450 for a vehicle or combination of vehicles with gross vehicle weight of more than 112,000 pounds, but not exceeding 129,000 pounds.

(9) Permits under Subsections (7) and (8) may be issued only upon authorization of the commission.

(10) Permit fees collected under this section shall be credited monthly to the Transportation Fund.

(11) The department shall prepare maps, drawings, and instructions as guidance when issuing permits under this section.

(12) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the department shall make rules governing the issuance and revocation of all permits under this section and Section 72-7-407.

(13) Any person who violates any of the terms or conditions of a permit issued under this section:

(a) may have his permit revoked; and

(b) is guilty of a class B misdemeanor.

CHAPTER 253
S. B. 158
Passed February 21, 2001
Approved March 19, 2001
Effective April 30, 2001

MANUFACTURED HOUSING DEVELOPMENT EQUAL TREATMENT

Sponsor: D. Chris Buttars

This act modifies the Utah Municipal Code and provisions relating to Counties to require municipalities and counties to treat developments that include manufactured homes the same as developments that do not include manufactured homes. The act prohibits municipalities and counties from rejecting development plans solely because they include manufactured homes.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
10-9-106.5, as enacted by Chapter 55, Laws of Utah 1996
17-27-105.5, as enacted by Chapter 55, Laws of Utah 1996

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

Section 1. Section 10-9-106.5 is amended to read:

10-9-106.5. Manufactured homes.

(1) For purposes of this section, a manufactured home is the same as defined in Section 58-56-3, except that the manufactured home must be attached to a permanent foundation in accordance with plans providing for vertical loads, uplift, and lateral forces and frost protection in compliance with the applicable building code. All appendages, including carports, garages, storage buildings, additions, or alterations must be built in compliance with the applicable building code.

(2) A manufactured home may not be excluded from any zone or area in which a single-family residence would be permitted, provided the manufactured home complies with all local zoning, building code, and subdivision requirements, including any restrictive covenants, applicable to single family residence within that zone or area.

(3) A municipality may not:

(a) adopt or enforce an ordinance or regulation that treats a proposed development that includes manufactured homes differently than one that does not include manufactured homes; or

(b) reject a development plan based on the fact that the development is expected to contain manufactured homes.

Section 2. Section 17-27-105.5 is amended to read:

17-27-105.5. Manufactured homes.

(1) For purposes of this section, a manufactured home is the same as defined in Section 58-56-3, except that the manufactured home must be attached to a permanent foundation in accordance with plans providing for vertical loads, uplift, and lateral forces and frost protection in compliance with the applicable building code. All appendages, including carports, garages, storage buildings, additions, or alterations must be built in compliance with the applicable building code.

(2) A manufactured home may not be excluded from any zone or area in which a single-family residence would be permitted, provided the manufactured home complies with all local zoning, building code, and subdivision requirements, including any restrictive covenants, applicable to single-family residence within that zone or area.

(3) A county may not:

(a) adopt or enforce an ordinance or regulation that treats a proposed development that includes manufactured homes differently than one that does not include manufactured homes; or

(b) reject a development plan based on the fact that the development is expected to contain manufactured homes.

CHAPTER 254
S. B. 159
Passed February 28, 2001
Approved March 19, 2001
Effective April 30, 2001

PUBLIC ACCESS TO BUDGETS AND FINANCIAL STATEMENTS OF TAXPAYER FUNDED ENTITIES

Sponsor: Howard A. Stephenson

This act modifies the Government Records Access and Management Act by defining public associations and making their budget documents and financial statements accessible to the public.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:
63-2-1001, Utah Code Annotated 1953

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

Section 1. Section 63-2-1001 is enacted to read:

Part 10. Public Associations

63-2-1001. Definitions -- Public associations subject to act.

(1) As used in this section:

(a) "Public association" means any association, organization, or society whose members include elected or appointed public officials and for which public funds are used or paid to the public association for membership dues or for other support for the official's participation in the public association.

(b) (i) "Public funds" means any monies received by a public entity from appropriations, taxes, fees, interest, or other returns on investment.

(ii) "Public funds" does not include monies donated to a public entity by a person or entity.

(2) The budget documents and financial statements of a public association shall be released pursuant to a written request if 50% or more of the public association's:

(a) members are elected or appointed public officials from this state; and

(b) membership dues or other financial support come from public funds from this state.

CHAPTER 255
S. B. 165
Passed February 15, 2001
Approved March 19, 2001
Effective April 30, 2001

NONCUSTODIAL VISITATION

Sponsor: Parley Hellewell

This act changes the term "visitation" to "parent-time" throughout the code as it applies to the right of a noncustodial parent to spend time with their child.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
26-2-22, as last amended by Chapter 84, Laws of Utah 1998
30-1-17.2, as last amended by Chapter 245, Laws of Utah 1990
30-3-3, as repealed and reenacted by Chapter 137, Laws of Utah 1993
30-3-5, as last amended by Chapters 168 and 277, Laws of Utah 1999
30-3-5.2, as last amended by Chapter 164, Laws of Utah 1999
30-3-10, as last amended by Chapter 6, Laws of Utah 1999
30-3-10.4, as last amended by Chapter 112, Laws of Utah 1990
30-3-32, as enacted by Chapter 131, Laws of Utah 1993
30-3-33, as last amended by Chapter 80, Laws of Utah 1997
30-3-34, as last amended by Chapter 80, Laws of Utah 1997
30-3-35, as last amended by Chapter 97, Laws of Utah 2000
30-3-35.5, as last amended by Chapter 13, Laws of Utah 1998
30-3-36, as enacted by Chapter 131, Laws of Utah 1993
30-3-37, as enacted by Chapter 131, Laws of Utah 1993
30-3-38, as last amended by Chapters 1 and 245, Laws of Utah 2000
30-6-4.2, as last amended by Chapter 10, Laws of Utah 1997
62A-4a-205, as last amended by Chapter 274, Laws of Utah 2000
63-63a-8, as last amended by Chapter 133, Laws of Utah 2000
76-5-303, as last amended by Chapter 18, Laws of Utah 1984
78-2a-3, as last amended by Chapters 159 and 198, Laws of Utah 1996
78-3a-103, as last amended by Chapter 99, Laws of Utah 1999
78-3a-104, as last amended by Chapter 149, Laws of Utah 2000
78-3a-105, as last amended by Chapter 149, Laws of Utah 2000
78-3a-118, as last amended by Chapter 149, Laws of Utah 2000
78-3a-307, as last amended by Chapter 285, Laws of Utah 2000
78-3a-409, as last amended by Chapter 329, Laws of Utah 1997
78-7-32, as enacted by Chapter 47, Laws of Utah 1997
78-30-4.16, as enacted by Chapter 168, Laws of Utah 1995
78-32-12.1, as last amended by Chapter 94, Laws of Utah 1998
78-32-12.2, as last amended by Chapter 94, Laws of Utah 1998
78-32-17, as last amended by Chapter 161, Laws of Utah 2000
78-45-7.7, as last amended by Chapter 161, Laws of Utah 2000
78-45-7.11, as last amended by Chapter 186, Laws of Utah 2000
78-45-7.17, as last amended by Chapter 118, Laws of Utah 1994
78-45a-10.5, as enacted by Chapter 29, Laws of Utah 1994
78-45c-102, as enacted by Chapter 247, Laws of Utah 2000
78-45c-209, as enacted by Chapter 247, Laws of Utah 2000
78-45c-304, as enacted by Chapter 247, Laws of Utah 2000
78-45c-305, as enacted by Chapter 247, Laws of Utah 2000
78-45f-305, as renumbered and amended by Chapter 232, Laws of Utah 1997

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

Section 1. Section 26-2-22 is amended to read:

26-2-22. Inspection of vital records.

(1) (a) The vital records shall be open to inspection, but only in compliance with the provisions of this chapter, department rules, and Section 78-30-18. It is unlawful for any state or local officer or employee to disclose data contained in vital records contrary to this chapter or department rule.

(b) A custodian of vital records may permit inspection of a vital record or issue a certified copy of a record or a part of it when the custodian is satisfied the applicant has demonstrated a direct, tangible, and legitimate interest.

(2) A direct, tangible, and legitimate interest in a vital record is present only if:

(a) the request is from the subject, a member of the subject's immediate family, the guardian of the subject, or a designated legal representative;

(b) the request involves a personal or property right of the subject of the record;

(c) the request is for official purposes of a state, local, or federal governmental agency;

(d) the request is for a statistical or medical research program and prior consent has been obtained from the state registrar; or

(e) the request is a certified copy of an order of a court of record specifying the record to be examined or copied.

(3) For purposes of Subsection (2):

(a) "immediate family member" means a spouse, child, parent, sibling, grandparent, or grandchild;

(b) a designated legal representative means an attorney, physician, funeral director, genealogist, or other agent of the subject or the subject's immediate family who has been delegated the authority to access vital records;

(c) except as provided in Title 78, Chapter 30, Adoption, a parent, or the immediate family member of a parent, who does not have legal or physical custody of or visitation or parent-time rights for a child because of the termination of parental rights pursuant to Title 78, Chapter 3a, Juvenile Courts, or by virtue of consenting to or relinquishing a child for adoption pursuant to Title 78, Chapter 30, Adoption, may not be considered as having a direct, tangible, and legitimate interest; and

(d) a commercial firm or agency requesting names, addresses, or similar information may not be considered as having a direct, tangible, and legitimate interest.

(4) Upon payment of a fee established in accordance with Section 63-38-3.2, the following records shall be available to the public:

(a) except as provided in Subsection 26-2-10(4)(b), a birth record, excluding confidential information collected for medical and health use, if 100 years or more have passed since the date of birth;

(b) a death record if 50 years or more have passed since the date of death; and

(c) a vital record not subject to Subsection (4)(a) or (b) if 75 years or more have passed since the date of the event upon which the record is based.

Section 2. Section 30-1-17.2 is amended to read:

30-1-17.2. Action to determine validity of marriage -- Orders relating to parties, property, and children -- Legitimacy of children.

(1) If the parties have accumulated any property or acquired any obligations subsequent to the marriage, if there is a genuine need arising from an economic change of circumstances due to the marriage, or if there are children born or expected, the court may make temporary and final orders, and subsequently modify the orders, relating to the parties, their property and obligations, the children and their custody and [~~visitation~~] parent-time, and the support and maintenance of the parties and children, as may be equitable.

(2) Except as provided in Section 78-45a-1, children born to the parties after the date of their marriage shall be deemed the legitimate children of both of the parties.

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

30-3-3. Award of costs, attorney and witness fees -- Temporary alimony.

(1) In any action filed under Title 30, Chapter 3, 4, or 6, and in any action to establish an order of custody, [~~visitation~~] parent-time, child support, alimony, or division of property in a domestic case, the court may order a party to pay the costs, attorney fees, and witness fees, including expert witness fees, of the other party to enable the other party to prosecute or defend the action. The order may include provision for costs of the action.

(2) In any action to enforce an order of custody, [~~visitation~~] parent-time, child support, alimony, or division of property in a domestic case, the court may award costs and attorney fees upon determining that the party substantially prevailed upon the claim or defense. The court, in its discretion, may award no fees or limited fees against a party if the court finds the party is impecunious or enters in the record the reason for not awarding fees.

(3) In any action listed in Subsection (1), the court may order a party to provide money, during the pendency of the action, for the separate support and maintenance of the other party and of any children in the custody of the other party.

(4) Orders entered under this section prior to entry of the final order or judgment may be amended during the course of the action or in the final order or judgment.

Section 4. Section 30-3-5 is amended to read:

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

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

(a) an order assigning responsibility for the payment of reasonable and necessary medical and dental expenses of the dependent children;

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

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

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

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

(iii) provisions for the enforcement of these orders; and

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

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

(3) The court has continuing jurisdiction to make subsequent changes or new orders for the custody of the children and their support, maintenance, health, and dental care, and for distribution of the property and obligations for debts as is reasonable and necessary.

(4) (a) In determining [~~visitation~~] parent-time rights of parents[,] and visitation rights of grandparents[,] and other members of the immediate family, the court shall consider the best interest of the child.

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

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

(6) If a petition alleges substantial noncompliance with a [~~visitation~~] parent-time order by a parent, or a visitation order by a grandparent[,] or other member of the immediate family pursuant to Section 78-32-12.2 where a visitation or parent-time right has been previously granted by the court, the court may award to the prevailing party costs, including actual attorney fees and court costs incurred by the prevailing party because of the other party's failure to provide or exercise court-ordered visitation or parent-time.

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

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

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

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

(iv) the length of the marriage;

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

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

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

(b) The court may consider the fault of the parties in determining alimony.

(c) As a general rule, the court should look to the standard of living, existing at the time of separation, in determining alimony in accordance with Subsection (7)(a). However, the court shall consider all relevant facts and equitable principles and may, in its discretion, base alimony on the standard of living that existed at the time of trial. In marriages of short duration, when no children have been conceived or born during the marriage, the court may consider the standard of living that existed at the time of the marriage.

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

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

(f) In determining alimony when a marriage of short duration dissolves, and no children have been conceived or born during the marriage, the court may consider restoring each party to the condition which existed at the time of the marriage.

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

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

(iii) In determining alimony, the income of any subsequent spouse of the payor may not be considered, except as provided in this Subsection (7).

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

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

(h) Alimony may not be ordered for a duration longer than the number of years that the marriage

existed unless, at any time prior to termination of alimony, the court finds extenuating circumstances that justify the payment of alimony for a longer period of time.

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

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

Section 5. Section 30-3-5.2 is amended to read:

30-3-5.2. Allegations of child abuse or child sexual abuse -- Investigation.

When, in any divorce proceeding or upon a request for modification of a divorce decree, an allegation of child abuse or child sexual abuse is made, implicating either party, the court, after making an inquiry, may order that an investigation be conducted by the Division of Child and Family Services within the Department of Human Services in accordance with Title 62A, Chapter 4a. A final award of custody or [~~visitation~~] parent-time may not be rendered until a report on that investigation, consistent with Section 62A-4a-412, is received by the court. That investigation shall be conducted by the Division of Child and Family Services within 30 days of the court's notice and request for an investigation. In reviewing this report, the court shall comply with Section 78-7-9.

Section 6. Section 30-3-10 is amended to read:

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

(1) If a husband and wife having minor children are separated, or their marriage is declared void or dissolved, the court shall make an order for the future care and custody of the minor children as it considers appropriate. In determining custody, the court shall consider the best interests of the child and the past conduct and demonstrated moral standards of each of the parties. The court may inquire of the children and take into consideration the children's desires regarding future custody or [~~visitation~~] parent-time schedules, but the expressed desires are not controlling and the court may determine the children's custody or [~~visitation~~] parent-time otherwise. Interviews with the children may be conducted by the judge in camera only with the prior consent of the parties.

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

(3) If the court finds that one parent does not desire custody of the child, or has attempted to permanently relinquish custody to a third party, it shall take that evidence into consideration in determining whether to award custody to the other parent.

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

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

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

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

(c) Nothing in this section may be construed to apply to:

(i) abuse, neglect, or dependency proceedings under Title 62A, Chapter 4a, Child and Family Services, or Title 78, Chapter 3a, Juvenile Courts; or

(ii) adoption proceedings under Title 78, Chapter 30, Adoption.

Section 7. Section 30-3-10.4 is amended to read:

30-3-10.4. Modification or termination of order.

(1) On the motion of one or both of the joint legal custodians the court may, after a hearing, modify an order that established joint legal custody if:

(a) the circumstances of the child or one or both custodians have materially and substantially changed since the entry of the order to be modified, or the order has become unworkable or inappropriate under existing circumstances; and

(b) a modification of the terms and conditions of the decree would be an improvement for and in the best interest of the child.

(2) The order of joint legal custody shall be terminated by order of the court if both parents file a motion for termination. At the time of entry of an order terminating joint legal custody, the court shall enter an order of sole legal custody under Section 30-3-10. All related issues, including [~~visitation~~] parent-time and child support, shall also be determined and ordered by the court.

(3) If the court finds that an action under this section is filed or answered frivolously and in a

manner designed to harass the other party, the court shall assess attorney's fees as costs against the offending party.

Section 8. Section 30-3-32 is amended to read:

30-3-32. Parent-time -- Intent -- Policy -- Definitions.

(1) It is the intent of the Legislature to promote [~~visitation~~] parent-time at a level consistent with all parties' interests.

(2) Absent a showing by a preponderance of evidence of real harm or substantiated potential harm to the child:

(a) it is in the best interests of the child of divorcing, divorced, or adjudicated parents to have frequent, meaningful, and continuing access to each parent following separation or divorce;

(b) each divorcing, separating, or adjudicated parent is entitled to and responsible for frequent, meaningful, and continuing access with his child consistent with the child's best interests; and

(c) it is in the best interests of the child to have both parents actively involved in parenting the child.

(3) For purposes of Sections 30-3-32 through 30-3-37:

(a) "Child" means the child or children of divorcing, separating, or adjudicated parents.

(b) "Christmas school vacation" means the time period beginning on the evening the child gets out of school for the Christmas or winter school break until the evening before the child returns to school, except for Christmas Eve, Christmas Day, and New Year's Day.

(c) "Extended [~~visitation~~] parent-time" means a period of [~~visitation~~] parent-time other than a weekend, holiday as provided in Subsections 30-3-35(2)(f) and (2)(g), religious holidays as provided in Subsections 30-3-33(4) and (16), and "Christmas school vacation."

Section 9. Section 30-3-33 is amended to read:

30-3-33. Advisory guidelines.

In addition to the [~~visitation~~] parent-time schedules provided in [~~Section~~] Sections 30-3-35 and [~~Section~~] 30-3-35.5, advisory guidelines are suggested to govern all [~~visitation~~] parent-time arrangements between parents. These advisory guidelines include:

(1) [~~visitation~~] parent-time schedules mutually agreed upon by both parents are preferable to a court-imposed solution;

(2) the [~~visitation~~] parent-time schedule shall be utilized to maximize the continuity and stability of the child's life;

(3) special consideration shall be given by each parent to make the child available to attend family functions including funerals, weddings, family reunions, religious holidays, important ceremonies, and other significant events in the life of the child or in the life of either parent which may inadvertently conflict with the [~~visitation~~] parent-time schedule;

(4) the noncustodial parent shall pick up the child at the times specified and return the child at the times specified, and the child's regular school hours shall not be interrupted;

(5) the custodial parent shall have the child ready for [~~visitation~~] parent-time at the time he is to be picked up and shall be present at the custodial home or shall make reasonable alternate arrangements to receive the child at the time he is returned;

(6) the court may make alterations in the [~~visitation~~] parent-time schedule to reasonably accommodate the work schedule of both parents and may increase the [~~visitation~~] parent-time allowed to the noncustodial parent but shall not diminish the standardized [~~visitation~~] parent-time provided in [~~Section~~] Sections 30-3-35 and [~~Section~~] 30-3-35.5;

(7) the court may make alterations in the [~~visitation~~] parent-time schedule to reasonably accommodate the distance between the parties and the expense of exercising [~~visitation~~] parent-time;

(8) neither [~~visitation~~] parent-time nor child support is to be withheld due to either parent's failure to comply with a court-ordered [~~visitation~~] parent-time schedule;

(9) the custodial parent shall notify the noncustodial parent within 24 hours of receiving notice of all significant school, social, sports, and community functions in which the child is participating or being honored, and the noncustodial parent shall be entitled to attend and participate fully;

(10) the noncustodial parent shall have access directly to all school reports including preschool and daycare reports and medical records and shall be notified immediately by the custodial parent in the event of a medical emergency;

(11) each parent shall provide the other with his current address and telephone number within 24 hours of any change;

(12) each parent shall permit and encourage liberal telephone contact during reasonable hours and uncensored mail privileges with the child;

(13) parental care shall be presumed to be better care for the child than surrogate care and the court shall encourage the parties to cooperate in allowing the noncustodial parent, if willing and able, to provide child care;

(14) each parent shall provide all surrogate care providers with the name, current address, and telephone number of the other parent and shall provide the noncustodial parent with the name, current address, and telephone number of all surrogate care providers unless the court for good cause orders otherwise; and

(15) each parent shall be entitled to an equal division of major religious holidays celebrated by

the parents, and the parent who celebrates a religious holiday that the other parent does not celebrate shall have the right to be together with the child on the religious holiday.

Section 10. Section 30-3-34 is amended to read:

30-3-34. Best interests -- Rebuttable presumption.

(1) If the parties are unable to agree on a [~~visitation~~] parent-time schedule, the court may establish a [~~visitation~~] parent-time schedule consistent with the best interests of the child.

(2) The advisory guidelines as provided in Section 30-3-33 and the [~~visitation~~] parent-time schedule as provided in [~~Section~~] Sections 30-3-35 and [~~Section~~] 30-3-35.5 shall be presumed to be in the best interests of the child. The [~~visitation~~] parent-time schedule shall be considered the minimum [~~visitation~~] parent-time to which the noncustodial parent and the child shall be entitled unless a parent can establish otherwise by a preponderance of the evidence that more or less [~~visitation~~] parent-time should be awarded based upon any of the following criteria:

(a) [~~visitation~~] parent-time would endanger the child's physical health or significantly impair the child's emotional development;

(b) the distance between the residency of the child and the noncustodial parent;

(c) a substantiated or unfounded allegation of child abuse has been made;

(d) the lack of demonstrated parenting skills without safeguards to ensure the child's well-being during [~~visitation~~] parent-time;

(e) the financial inability of the noncustodial parent to provide adequate food and shelter for the child during periods of [~~visitation~~] parent-time;

(f) the preference of the child if the court determines the child to be of sufficient maturity;

(g) the incarceration of the noncustodial parent in a county jail, secure youth corrections facility, or an adult corrections facility;

(h) shared interests between the child and the noncustodial parent;

(i) the involvement of the noncustodial parent in the school, community, religious, or other related activities of the child;

(j) the availability of the noncustodial parent to care for the child when the custodial parent is unavailable to do so because of work or other circumstances;

(k) a substantial and chronic pattern of missing, canceling, or denying regularly scheduled [~~visitation~~] parent-time;

(l) the minimal duration of and lack of significant bonding in the parents' relationship prior to the conception of the child;

(m) the [~~visitation~~] parent-time schedule of siblings;

(n) the lack of reasonable alternatives to the needs of a nursing child; and

(o) any other criteria the court determines relevant to the best interests of the child.

(3) The court shall enter the reasons underlying its order for [~~visitation~~] parent-time that:

(a) incorporates a [~~visitation~~] parent-time schedule provided in Section 30-3-35 or [~~Section~~] 30-3-35.5; or

(b) provides more or less [~~visitation~~] parent-time than a [~~visitation~~] parent-time schedule provided in Section 30-3-35 or [~~Section~~] 30-3-35.5.

(4) Once the [~~visitation~~] parent-time schedule has been established, the parties may not alter the schedule except by mutual consent of the parties or a court order.

Section 11. Section 30-3-35 is amended to read:

30-3-35. Minimum schedule for parent-time for children 5 to 18 years of age.

(1) The [~~visitation~~] parent-time schedule in this section applies to children 5 to 18 years of age.

(2) If the parties do not agree to a [~~visitation~~] parent-time schedule, the following schedule shall be considered the minimum [~~visitation~~] parent-time to which the noncustodial parent and the child shall be entitled:

(a) (i) one weekday evening to be specified by the noncustodial parent or the court from 5:30 p.m. until 8:30 p.m.; or

(ii) at the election of the noncustodial parent, one weekday from the time the child's school is regularly dismissed until 8:30 p.m., unless the court directs the application of Subsection (2)(a)(i);

(b) (i) alternating weekends beginning on the first weekend after the entry of the decree from 6 p.m. on Friday until 7 p.m. on Sunday continuing each year; or

(ii) at the election of the noncustodial parent, from the time the child's school is regularly dismissed on Friday until 7 p.m. on Sunday, unless the court directs the application of Subsection (2)(b)(i);

(c) holidays take precedence over the weekend [~~visitation~~] parent-time, and changes shall not be made to the regular rotation of the alternating weekend [~~visitation~~] parent-time schedule;

(d) if a holiday falls on a regularly scheduled school day, the noncustodial parent shall be responsible for the child's attendance at school for that school day;

(e) (i) if a holiday falls on a weekend or on a Friday or Monday and the total holiday period extends beyond that time so that the child is free from school and the parent is free from work, the noncustodial

parent shall be entitled to this lengthier holiday period; or

(ii) at the election of the noncustodial parent, [~~visitation~~] parent-time over a scheduled holiday weekend may begin from the time the child's school is regularly dismissed at the beginning of the holiday weekend until 7 p.m. on the last day of the holiday weekend;

(f) in years ending in an odd number, the noncustodial parent is entitled to the following holidays:

(i) child's birthday on the day before or after the actual birthdate beginning at 3 p.m. until 9 p.m.; at the discretion of the noncustodial parent, he may take other siblings along for the birthday;

(ii) Human Rights Day beginning 6 p.m. on Friday until Monday at 7 p.m. unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled;

(iii) spring break or Easter holiday beginning at 6 p.m. on the day school lets out for the holiday until 7 p.m. on the Sunday before school resumes;

(iv) Memorial Day beginning 6 p.m. on Friday until Monday at 7 p.m., unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled;

(v) July 24th beginning 6 p.m. on the day before the holiday until 11 p.m. on the holiday;

(vi) Veteran's Day holiday beginning 6 p.m. the day before the holiday until 7 p.m. on the holiday; and

(vii) the first portion of the Christmas school vacation as defined in Subsection 30-3-32(3)(b) plus Christmas Eve and Christmas Day until 1 p.m., so long as the entire holiday is equally divided;

(g) in years ending in an even number, the noncustodial parent is entitled to the following holidays:

(i) child's birthday on actual birthdate beginning at 3 p.m. until 9 p.m.; at the discretion of the noncustodial parent, he may take other siblings along for the birthday;

(ii) President's Day beginning at 6 p.m. on Friday until 7 p.m. on Monday unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled;

(iii) July 4th beginning at 6 p.m. the day before the holiday until 11 p.m. on the holiday;

(iv) Labor Day beginning at 6 p.m. on Friday until Monday at 7 p.m. unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled;

(v) the fall school break, if applicable, commonly known as U.E.A. weekend beginning at 6 p.m. on Wednesday until Sunday at 7 p.m. unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled;

(vi) Columbus Day beginning at 6 p.m. the day before the holiday until 7 p.m. on the holiday;

(vii) Thanksgiving holiday beginning Wednesday at 7 p.m. until Sunday at 7 p.m; and

(viii) the second portion of the Christmas school vacation as defined in Subsection 30-3-32(3)(b) plus Christmas day beginning at 1 p.m. until 9 p.m., so long as the entire Christmas holiday is equally divided;

(h) Father's Day shall be spent with the natural or adoptive father every year beginning at 9 a.m. until 7 p.m. on the holiday;

(i) Mother's Day shall be spent with the natural or adoptive mother every year beginning at 9 a.m. until 7 p.m. on the holiday;

(j) extended [~~visitation~~] parent-time with the noncustodial parent may be:

(i) up to four weeks consecutive at the option of the noncustodial parent;

(ii) two weeks shall be uninterrupted time for the noncustodial parent; and

(iii) the remaining two weeks shall be subject to [~~visitation~~] parent-time for the custodial parent consistent with these guidelines;

(k) the custodial parent shall have an identical two-week period of uninterrupted time during the children's summer vacation from school for purposes of vacation;

(l) if the child is enrolled in year-round school, the noncustodial parent's extended [~~visitation~~] parent-time shall be 1/2 of the vacation time for year-round school breaks, provided the custodial parent has holiday and phone visits;

(m) notification of extended [~~visitation~~] parent-time or vacation weeks with the child shall be provided at least 30 days in advance to the other parent; and

(n) telephone contact shall be at reasonable hours and for reasonable duration.

(3) Any elections required to be made in accordance with this section by either parent concerning [~~visitation~~] parent-time shall be made a part of the decree and made a part of the [~~visitation~~] parent-time order.

Section 12. Section 30-3-35.5 is amended to read:

30-3-35.5. Minimum schedule for parent-time for children under five years of age.

(1) The [~~visitation~~] parent-time schedule in this section applies to children under five years old.

(2) If the parties do not agree to a [~~visitation~~] parent-time schedule, the following schedule shall be considered the minimum [~~visitation~~] parent-time to which the noncustodial parent and the child shall be entitled:

(a) for children under five months of age:

(i) six hours of [~~visitation~~] parent-time per week to be specified by the court or the noncustodial parent preferably:

(A) divided into three [~~visitation~~] parent-time periods; and

(B) in the custodial home, established child care setting, or other environment familiar to the child;

(ii) two hours on holidays and in the years specified in Subsections 30-3-35(2)(f) through (i) preferably in the custodial home, the established child care setting, or other environment familiar to the child;

(b) for children five months of age or older, but younger than [~~10~~] ten months of age:

(i) nine hours of [~~visitation~~] parent-time per week to be specified by the court or the noncustodial parent preferably:

(A) divided into three [~~visitation~~] parent-time periods; and

(B) in the custodial home, established child care setting, or other environment familiar to the child;

(ii) two hours on the holidays and in the years specified in Subsections 30-3-35(2)(f) through (i) preferably in the custodial home, the established child care setting, or other environment familiar to the child;

(c) for children [~~10~~] ten months of age or older, but younger than 18 months of age:

(i) one eight-hour visit per week to be specified by the noncustodial parent or court;

(ii) one three-hour visit per week to be specified by the noncustodial parent or court;

(iii) eight hours on the holidays and in the years specified in Subsections 30-3-5(2)(f) through (i); and

(iv) brief phone contact with the noncustodial parent at least two times per week;

(d) for children 18 months of age or older, but younger than three years of age:

(i) one weekday evening for two hours between 5:30 p.m. and 8:30 p.m. to be specified by the noncustodial parent or court;

(ii) alternative weekends beginning on the first weekend after the entry of the decree from [~~6:00~~] 6 p.m. on Friday until [~~7:00~~] 7 p.m. on Sunday continuing each year;

(iii) [~~visitation~~] parent-time on holidays as specified in Subsections 30-3-35(2)(c) through (i);

(iv) extended [~~visitation~~] parent-time may be:

(A) two one-week periods, separated by at least four weeks, at the option of the noncustodial parent;

(B) one week shall be uninterrupted time for the noncustodial parent;

(C) the remaining week shall be subject to [~~visitation~~] parent-time for the custodial parent consistent with these guidelines; and

(D) the custodial parent shall have an identical one-week period of uninterrupted time for vacation; and

(v) brief phone contact with the noncustodial parent at least two times per week;

(e) for children three years of age or older, but younger than five years of age:

(i) one weekday evening between 5:30 p.m. and 8:30 p.m. to be specified by the noncustodial parent or court;

(ii) alternative weekends beginning on the first weekend after the entry of the decree from [~~6:00~~] 6 p.m. on Friday until [~~7:00~~] 7 p.m. on Sunday continuing each year;

(iii) [~~visitation~~] parent-time on holidays as specified in Subsections 30-3-35(2)(c) through (i);

(iv) extended [~~visitation~~] parent-time with the noncustodial parent may be:

(A) two two-week periods, separated by at least four weeks, at the option of the noncustodial parent;

(B) one two-week period shall be uninterrupted time for the noncustodial parent;

(C) the remaining two-week period shall be subject to [~~visitation~~] parent-time for the custodial parent consistent with these guidelines; and

(D) the custodial parent shall have an identical two-week period of uninterrupted time for vacation; and

(v) brief phone contact with the noncustodial parent at least two times per week.

(3) A parent shall notify the other parent at least 30 days in advance of extended [~~visitation~~] parent-time or vacation weeks.

(4) Telephone contact shall be at reasonable hours and for reasonable duration.

Section 13. Section 30-3-36 is amended to read:

30-3-36. Special circumstances.

(1) When [~~visitation~~] parent-time has not taken place for an extended period of time and the child lacks an appropriate bond with the noncustodial parent, both parents shall consider the possible adverse effects upon the child and gradually reintroduce an appropriate [~~visitation~~] parent-time plan for the noncustodial parent.

(2) For emergency purposes, whenever the child travels with either parent, all of the following will be provided to the other parent:

(a) an itinerary of travel dates;

(b) destinations;

(c) places where the child or traveling parent can be reached; and

(d) the name and telephone number of an available third person who would be knowledgeable of the child's location.

(3) Unchaperoned travel of a child under the age of five years is not recommended.

Section 14. Section 30-3-37 is amended to read:

30-3-37. Relocation.

(1) When either parent decides to move from the state of Utah or 150 miles or more from the residence specified in the court's decree, that parent shall provide reasonable advance written notice of the intended relocation to the other parent.

(2) The court may, upon motion of any party or upon the court's own motion, schedule a hearing with notice to review the [~~visitation~~] parent-time schedule as provided in Section 30-3-35 and make appropriate orders regarding the [~~visitation~~] parent-time and costs for [~~visitation~~] parent-time transportation.

(3) In determining the [~~visitation~~] parent-time schedule and allocating the transportation costs, the court shall consider:

(a) the reason for the parent's relocation;

(b) the additional costs or difficulty to both parents in exercising [~~visitation~~] parent-time;

(c) the economic resources of both parents; and

(d) other factors the court considers necessary and relevant.

(4) Upon the motion of any party, the court may order the parent intending to move to pay the costs of transportation for:

(a) at least one visit per year with the other parent; and

(b) any number of additional visits as determined equitable by the court.

(5) Upon the motion of any party, the court may order uninterrupted [~~visitation~~] parent-time with the noncustodial parent for a minimum of 30 days during extended [~~visitation~~] parent-time, except if the court finds it is not in the best interests of the child.

Section 15. Section 30-3-38 is amended to read:

30-3-38. Pilot Program for Expedited Parent-time Enforcement.

(1) There is established an Expedited [~~Visitation~~] Parent-time Enforcement Pilot Program in the third judicial district to be administered by the Administrative Office of the Courts from July 1, 1996, to July 1, 2003.

(2) As used in this section:

(a) "Mediator" means a person who:

(i) is qualified to mediate [~~visitation~~] parent-time disputes under criteria established by the Administrative Office of the Courts; and

(ii) agrees to follow billing guidelines established by the Administrative Office of the Courts and this section.

(b) "Services to facilitate [~~visitation~~] parent-time" or "services" means services designed to assist families in resolving [~~visitation~~] parent-time problems through:

(i) counseling;

(ii) supervised [~~visitation~~] parent-time;

(iii) neutral drop-off and pick-up;

(iv) educational classes; and

(v) other related activities.

(3) (a) Under this pilot program, if a parent files a motion in the third district court alleging that court-ordered [~~visitation~~] parent-time rights are being violated, the clerk of the court, after assigning the case to a judge, shall refer the case to the administrator of this pilot program for assignment to a mediator.

(b) Upon receipt of a case, the mediator shall:

(i) meet with the parents to address [~~visitation~~] parent-time issues within 15 days of the motion being filed;

(ii) assess the situation;

(iii) facilitate an agreement on [~~visitation~~] parent-time between the parents; and

(iv) determine whether a referral to a service provider under Subsection (3)(c) is warranted.

(c) While a case is in mediation, a mediator may refer the parents to a service provider designated by the Department of Human Services for services to facilitate [~~visitation~~] parent-time if:

(i) the services may be of significant benefit to the parents; or

(ii) (A) a mediated agreement between the parents is unlikely; and

(B) the services may facilitate an agreement.

(d) At any time during mediation, a mediator shall terminate mediation and transfer the case to the administrator of the pilot program for referral to the judge or court commissioner to whom the case was assigned under Subsection (3)(a) if:

(i) a written agreement between the parents is reached; or

(ii) the parents are unable to reach an agreement through mediation[~~;~~] and:

(A) the parents have received services to facilitate [~~visitation~~] parent-time;

(B) both parents object to receiving services to facilitate [~~visitation~~] parent-time; or

(C) the parents are unlikely to benefit from receiving services to facilitate [~~visitation~~] parent-time.

(e) Upon receiving a case from the administrator of the pilot program, a judge or court commissioner may:

(i) review the agreement of the parents and, if acceptable, sign it as an order;

(ii) order the parents to receive services to facilitate [~~visitation~~] parent-time;

(iii) proceed with the case; or

(iv) take other appropriate action.

(4) (a) If a parent makes a particularized allegation of physical or sexual abuse of a child who is the subject of a [~~visitation~~] parent-time order against the other parent or a member of the other parent's household to a mediator or service provider, the mediator or service provider shall immediately report that information to:

(i) the judge assigned to the case who may immediately issue orders and take other appropriate action to resolve the allegation and protect the child; and

(ii) the Division of Child and Family Services within the Department of Human Services in the manner required by Title 62A, Chapter 4a, Part 4, Child Abuse or Neglect Reporting Requirements.

(b) If an allegation under Subsection (4)(a) is made against a parent with [~~visitation~~] parent-time rights or a member of that parent's household, [~~visitation~~] parent-time by that parent shall, pursuant to an order of the court, be supervised until:

(i) the allegation has been resolved; or

(ii) a court orders otherwise.

(c) Notwithstanding an allegation under Subsection (4)(a), a mediator may continue to mediate [~~visitation~~] parent-time problems and a service provider may continue to provide services to facilitate [~~visitation~~] parent-time unless otherwise ordered by a court.

(5) (a) The Department of Human Services may contract with one or more entities in accordance with Title 63, Chapter 56, Utah Procurement Code, to provide:

(i) services to facilitate [~~visitation~~] parent-time;

(ii) case management services; and

(iii) administrative services.

(b) An entity who contracts with the Department of Human Services under Subsection (5)(a) shall:

(i) be qualified to provide one or more of the services listed in Subsection (5)(a); and

(ii) agree to follow billing guidelines established by the Department of Human Services and this section.

(6) (a) Except as provided in Subsection (6)(b), the cost of mediation shall be:

(i) reduced to a sum certain;

(ii) divided equally between the parents; and

(iii) charged against each parent taking into account the ability of that parent to pay under billing guidelines adopted in accordance with this section.

(b) A judge may order a parent to pay an amount in excess of that provided for in Subsection (6)(a) if the parent:

(i) failed to participate in good faith in mediation or services to facilitate [~~visitation~~] parent-time; or

(ii) made an unfounded assertion or claim of physical or sexual abuse of a child.

(c) (i) The cost of mediation and services to facilitate [~~visitation~~] parent-time may be charged to parents at periodic intervals.

(ii) Mediation and services to facilitate [~~visitation~~] parent-time may only be terminated on the ground of nonpayment if both parents are delinquent.

(7) If a parent fails to cooperate in good faith in mediation or services to facilitate [~~visitation~~] parent-time, a court may order, in subsequent proceedings, a temporary change in custody or [~~visitation~~] parent-time.

(8) (a) The Judicial Council may make rules to implement and administer the provisions of this pilot program related to mediation.

(b) The Department of Human Services may make rules to implement and administer the provisions of this pilot program related to services to facilitate [~~visitation~~] parent-time.

(9) (a) The Administrative Office of the Courts shall adopt outcome measures to evaluate the effectiveness of the mediation component of this pilot program. Progress reports shall be provided to the Judiciary Interim Committee as requested by the committee. At least once during this pilot program, the Administrative Office of the Courts shall present to the committee the results of a survey that measures the effectiveness of the program in terms of increased compliance with [~~visitation~~] parent-time orders and the responses of interested persons.

(b) The Department of Human Services shall adopt outcome measures to evaluate the effectiveness of the services component of this pilot program. Progress reports shall be provided to the Judiciary Interim Committee as requested by the committee.

(c) The Administrative Office of the Courts and the Department of Human Services may adopt joint outcome measures and file joint reports to satisfy the requirements of Subsections (8)(a) and (b).

(10) (a) The Department of Human Services shall apply for federal funds as available.

(b) This pilot program shall be funded through funds received under Subsection (10)(a).

Section 16. Section 30-6-4.2 is amended to read:

30-6-4.2. Protective orders -- Ex parte protective orders -- Modification of orders -- Service of process -- Duties of the court.

(1) If it appears from a petition for an order for protection or a petition to modify an order for protection that domestic violence or abuse has occurred or a modification of an order for protection is required, a court may:

(a) without notice, immediately issue an order for protection ex parte or modify an order for protection ex parte as it considers necessary to protect the petitioner and all parties named to be protected in the petition; or

(b) upon notice, issue an order for protection or modify an order after a hearing, whether or not the respondent appears.

(2) A court may grant the following relief without notice in an order for protection or a modification issued ex parte:

(a) enjoin the respondent from threatening to commit or committing domestic violence or abuse against the petitioner and any designated family or household member;

(b) prohibit the respondent from harassing, telephoning, contacting, or otherwise communicating with the petitioner, directly or indirectly;

(c) order that the respondent is excluded from the petitioner's residence and its premises, and order the respondent to stay away from the residence, school, or place of employment of the petitioner, and the premises of any of these, or any specified place frequented by the petitioner and any designated family or household member;

(d) upon finding that the respondent's use or possession of a weapon may pose a serious threat of harm to the petitioner, prohibit the respondent from purchasing, using, or possessing a firearm or other weapon specified by the court;

(e) order possession and use of an automobile and other essential personal effects, and direct the appropriate law enforcement officer to accompany the petitioner to the residence of the parties to ensure that the petitioner is safely restored to possession of the residence, automobile, and other essential personal effects, or to supervise the petitioner's or respondent's removal of personal belongings;

(f) grant temporary custody of any minor children to the petitioner;

(g) order any further relief that the court considers necessary to provide for the safety and welfare of the petitioner and any designated family or household member; and

(h) if the petition requests child support or spousal support, at the hearing on the petition order both parties to provide verification of current income, including year-to-date pay stubs or employer statements of year-to-date or other period of earnings, as specified by the court, and complete copies of tax returns from at least the most recent year.

(3) A court may grant the following relief in an order for protection or a modification of an order after notice and hearing, whether or not the respondent appears:

(a) grant the relief described in Subsection (2); and

(b) specify arrangements for [~~visitation~~] parent-time of any minor child by the respondent and require supervision of that [~~visitation~~] parent-time by a third party or deny [~~visitation~~] parent-time if necessary to protect the safety of the petitioner or child.

(4) Following the protective order hearing, the court shall:

(a) as soon as possible, deliver the order to the county sheriff for service of process;

(b) make reasonable efforts to ensure that the order for protection is understood by the petitioner, and the respondent, if present;

(c) transmit, by the end of the next business day after the order is issued, a copy of the order for protection to the local law enforcement agency or agencies designated by the petitioner; and

(d) transmit a copy of the order to the statewide domestic violence network described in Section 30-6-8.

(5) (a) Each protective order shall include two separate portions, one for provisions, the violation of which are criminal offenses, and one for provisions, the violation of which are civil violations, as follows:

(i) criminal offenses are those under Subsections 30-6-4.2(2)(a) through (e), and under Subsection 30-6-4.2(3)(a) as it refers to Subsections 30-6-4.2(2)(a) through (e); and

(ii) civil offenses are those under Subsections 30-6-4.2(2)(f) through (h), and Subsection 30-6-4.2(3)(a) as it refers to Subsections 30-6-4.2(2)(f) through (h).

(b) The criminal provision portion shall include a statement that violation of any criminal provision is a class A misdemeanor.

(c) The civil provision portion shall include a notice that violation of or failure to comply with a civil provision is subject to contempt proceedings.

(6) The protective order shall include:

(a) a designation of a specific date, determined by the court, when the civil portion of the protective order either expires or is scheduled for review by the court, which date may not exceed 150 days after the date the order is issued, unless the court indicates on the record the reason for setting a date beyond 150 days;

(b) information the petitioner is able to provide to facilitate identification of the respondent, such as social security number, driver license number, date of birth, address, telephone number, and physical description; and

(c) a statement advising the petitioner that:

(i) after three years from the date of issuance of the protective order, a hearing may be held to dismiss the criminal portion of the protective order;

(ii) the petitioner should, within the 30 days prior to the end of the three-year period, advise the court of the petitioner's current address for notice of any hearing; and

(iii) the address provided by the petitioner will not be made available to the respondent.

(7) Child support and spouse support orders issued as part of a protective order are subject to mandatory income withholding under Title 62A, Chapter 11, Part 4, Income Withholding in IV-D Cases, and Title 62A, Chapter 11, Part 5, [~~Universal~~] Income Withholding [~~-~~] in Non IV-D [~~Obligees~~] Cases, except when the protective order is issued ex parte.

(8) (a) The county sheriff that receives the order from the court, pursuant to Subsection (5)(a), shall provide expedited service for orders for protection issued in accordance with this chapter, and shall transmit verification of service of process, when the order has been served, to the statewide domestic violence network described in Section 30-6-8.

(b) This section does not prohibit any law enforcement agency from providing service of process if that law enforcement agency:

(i) has contact with the respondent and service by that law enforcement agency is possible; or

(ii) determines that under the circumstances, providing service of process on the respondent is in the best interests of the petitioner.

(9) (a) When an order is served on a respondent in a jail or other holding facility, the law enforcement agency managing the facility shall make a reasonable effort to provide notice to the petitioner at the time the respondent is released from incarceration.

(b) Notification of the petitioner shall consist of a good faith reasonable effort to provide notification, including mailing a copy of the notification to the last-known address of the victim.

(10) (a) A court may modify or vacate an order of protection or any provisions in the order after notice and hearing, except as limited under Subsection (10)(b).

(b) Criminal provisions of a protective order may not be vacated within three years of issuance unless the petitioner:

(i) is personally served with notice of the hearing as provided in Rules 4 and 5, Utah Rules of Civil Procedure, and the petitioner personally appears before the court and gives specific consent to the vacation of the criminal provisions of the protective order; or

(ii) submits a verified affidavit, stating agreement to the vacation of the criminal provisions of the protective order.

(11) A protective order may be modified without a showing of substantial and material change in circumstances.

(12) Insofar as the provisions of this chapter are more specific than the Utah Rules of Civil Procedure, regarding protective orders, the provisions of this chapter govern.

Section 17. Section 62A-4a-205 is amended to read:

62A-4a-205. Treatment plans.

(1) No more than 45 days after a child enters the temporary custody of the division, the child's treatment plan shall be finalized.

(2) The division shall use an interdisciplinary team approach in developing each treatment plan. An interdisciplinary team shall include, but is not limited to, representatives from mental health, education, and, where appropriate, a representative of law enforcement.

(3) (a) The division shall involve all of the following in the development of a child's treatment plan:

(i) both of the child's natural parents, unless the whereabouts of a parent are unknown;

(ii) the child;

(iii) the child's foster parents; and

(iv) where appropriate, the child's stepparent.

(b) In relation to all information considered by the division in developing a treatment plan, additional weight and attention shall be given to the input of the child's natural and foster parents upon their involvement pursuant to Subsections (3)(a)(i) and (iii).

(4) A copy of the treatment plan shall be provided to the guardian ad litem, and to the child's natural parents and foster parents immediately upon completion, or as soon as is reasonably possible thereafter.

(5) Each treatment plan shall specifically provide for the safety of the child, in accordance with federal law, and clearly define what actions or precautions will, or may be, necessary to provide for the health, safety, protection, and welfare of the child.

(6) The plan shall set forth, with specificity, at least the following:

(a) the reason the child entered Division of Child and Family Services custody, and documentation of the reasonable efforts made to prevent placement, or documentation of the emergency situation that existed and that prevented reasonable efforts;

(b) the primary permanency goal for the child and the reason for selection of that goal;

(c) the concurrent permanency goal for the child and the reason for the selection of that goal;

(d) if the plan is for the child to return to his family, specifically what the parents must do in order to enable the child to be returned home, specifically how those requirements may be

accomplished, and how those requirements will be measured;

(e) the specific services needed to reduce the problems that necessitated placement in the division's custody, and who will provide for and be responsible for case management;

(f) a [~~visitation~~] parent-time schedule between the natural parent and the child;

(g) the health care to be provided to the child, and the mental health care to be provided to address any known or diagnosed mental health needs of the child. If residential treatment, rather than a foster home, is the proposed placement, a specialized assessment of the child's health needs shall be conducted, including an assessment of mental illness and behavior and conduct disorders; and

(h) social summaries that include case history information pertinent to case planning.

(7) (a) Each treatment plan shall be specific to each child and his family, rather than general. The division shall train its workers to develop treatment plans that comply with federal mandates and the specific needs of the particular child and his family.

(b) All treatment plans and expectations shall be individualized and contain specific time frames.

(c) Treatment plans shall address problems that keep children in placement and keep them from achieving permanence in their lives.

(d) The child's natural parents, foster parents, and where appropriate, stepparents, shall be kept informed of and supported to participate in important meetings and procedures related to the child's placement.

(8) With regard to a child who is three years of age or younger, if the goal is not to return the child home, the permanency plan for that child shall be adoption unless there are documented extenuating circumstances that justify long-term foster care or guardianship.

Section 18. Section 63-63a-8 is amended to read:

63-63a-8. Children's Legal Defense Account.

(1) There is created a restricted account within the General Fund known as the Children's Legal Defense Account.

(2) The purpose of the Children's Legal Defense Account is to provide for programs that protect and defend the rights, safety, and quality of life of children.

(3) The Legislature shall appropriate money from the account for the administrative and related costs of the following programs:

(a) implementing the Mandatory Educational Course on Children's Needs for Divorcing Parents relating to the effects of divorce on children as provided in Sections 30-3-4, 30-3-7, 30-3-10.3, 30-3-11.3, 30-3-15.3, and 30-3-18, and the Mediation Pilot Program - Child Custody or [~~Visitation~~] Parent-time as provided in Sections 30-3-15.3 and 30-3-18;

(b) implementing the use of guardians ad litem as provided in Sections 30-3-5.2, 78-3a-318, 78-3a-912, 78-11-6, and 78-7-9; the training of guardian ad litems and volunteers as provided in Section 78-3a-912; and termination of parental rights as provided in Sections 78-3a-118, 78-3a-119, 78-3a-903, and Title 78, Chapter 3a, Part 4, Termination of Parental Rights Act. This account may not be used to supplant funding for the guardian ad litem program in the juvenile court as provided in Section 78-3a-912; and

(c) implementing and administering the Expedited [~~Visitation~~] Parent-time Enforcement Pilot Program as provided in Section 30-3-38.

(4) The following withheld fees shall be allocated only to the Children's Legal Defense Account and used only for the purposes provided in Subsections (3)(a) through (c):

(a) the additional $10 fee withheld on every marriage license issued in the state of Utah as provided in Section 21-2-8; and

(b) a fee of $2 shall be withheld from the existing civil filing fee collected on any complaint, affidavit, or petition in a civil, probate, or adoption matter in every court of record.

(5) The Division of Finance shall allocate the monies described in Subsection (4) from the General Fund to the Children's Legal Defense Account.

(6) Any funds in excess of $200,000 remaining in the restricted account as of June 30 of any fiscal year shall lapse into the General Fund.

Section 19. Section 76-5-303 is amended to read:

76-5-303. Custodial interference.

(1) A person, whether a parent or other, is guilty of custodial interference if, without good cause, the actor takes, entices, conceals, or detains a child under the age of 16 from its parent, guardian, or other lawful custodian:

(a) knowing the actor has no legal right to do so; and

(b) with intent to hold the child for a period substantially longer than the [~~visitation~~] parent-time or custody period previously awarded by a court of competent jurisdiction.

(2) A person, whether a parent or other, is guilty of custodial interference if, having actual physical custody of a child under the age of 16 pursuant to a judicial award of any court of competent jurisdiction which grants to another person parent-time, visitation, or custody rights, and without good cause the actor conceals or detains the child with intent to deprive the other person of lawful parent-time, visitation, or custody rights.

(3) Custodial interference is a class A misdemeanor unless the child is removed and taken from one state to another, in which case it is a felony of the third degree.

Section 20. Section 78-2a-3 is amended to read:

78-2a-3. Court of Appeals jurisdiction.

(1) The Court of Appeals has jurisdiction to issue all extraordinary writs and to issue all writs and process necessary:

(a) to carry into effect its judgments, orders, and decrees; or

(b) in aid of its jurisdiction.

(2) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

(a) the final orders and decrees resulting from formal adjudicative proceedings of state agencies or appeals from the district court review of informal adjudicative proceedings of the agencies, except the Public Service Commission, State Tax Commission, School and Institutional Trust Lands Board of Trustees, Division of Forestry, Fire and State Lands actions reviewed by the executive director of the Department of Natural Resources, Board of Oil, Gas, and Mining, and the state engineer;

(b) appeals from the district court review of:

(i) adjudicative proceedings of agencies of political subdivisions of the state or other local agencies; and

(ii) a challenge to agency action under Section 63-46a-12.1;

(c) appeals from the juvenile courts;

(d) interlocutory appeals from any court of record in criminal cases, except those involving a charge of a first degree or capital felony;

(e) appeals from a court of record in criminal cases, except those involving a conviction of a first degree or capital felony;

(f) appeals from orders on petitions for extraordinary writs sought by persons who are incarcerated or serving any other criminal sentence, except petitions constituting a challenge to a conviction of or the sentence for a first degree or capital felony;

(g) appeals from the orders on petitions for extraordinary writs challenging the decisions of the Board of Pardons and Parole except in cases involving a first degree or capital felony;

(h) appeals from district court involving domestic relations cases, including, but not limited to, divorce, annulment, property division, child custody, support, visitation, parent-time, adoption, and paternity;

(i) appeals from the Utah Military Court; and

(j) cases transferred to the Court of Appeals from the Supreme Court.

(3) The Court of Appeals upon its own motion only and by the vote of four judges of the court may certify to the Supreme Court for original appellate review and determination any matter over which the Court of Appeals has original appellate jurisdiction.

(4) The Court of Appeals shall comply with the requirements of Title 63, Chapter 46b, Administrative Procedures Act, in its review of agency adjudicative proceedings.

Section 21. Section 78-3a-103 is amended to read:

78-3a-103. Definitions.

(1) As used in this chapter:

(a) "Abused child" includes a minor less than 18 years of age who:

(i) has suffered or been threatened with nonaccidental physical or mental harm, negligent treatment, or sexual exploitation; or

(ii) has been the victim of any sexual abuse.

(b) "Adjudication" means a finding by the court, incorporated in a decree, that the facts alleged in the petition have been proved.

(c) "Adult" means a person 18 years of age or over, except that persons 18 years or over under the continuing jurisdiction of the juvenile court pursuant to Section 78-3a-121 shall be referred to as minors.

(d) "Board" means the Board of Juvenile Court Judges.

(e) "Child placement agency" means:

(i) a private agency licensed to receive minors for placement or adoption under this code; or

(ii) a private agency receiving minors for placement or adoption in another state, which agency is licensed or approved where such license or approval is required by law.

(f) "Commit" means to transfer legal custody.

(g) "Court" means the juvenile court.

(h) "Dependent child" includes a minor who is homeless or without proper care through no fault of his parent, guardian, or custodian.

(i) "Deprivation of custody" means transfer of legal custody by the court from a parent or the parents or a previous legal custodian to another person, agency, or institution.

(j) "Detention" means home detention and secure detention as defined in Section 62A-7-101 for the temporary care of minors who require secure custody in physically restricting facilities:

(i) pending court disposition or transfer to another jurisdiction; or

(ii) while under the continuing jurisdiction of the court.

(k) "Formal referral" means a written report from a peace officer or other person informing the court that a minor is or appears to be within the court's jurisdiction and that a petition may be filed.

(l) "Group rehabilitation therapy" means psychological and social counseling of one or more persons in the group, depending upon the recommendation of the therapist.

(m) "Guardianship of the person" includes the authority to consent to marriage, to enlistment in the armed forces, to major medical, surgical, or psychiatric treatment, and to legal custody, if legal custody is not vested in another person, agency, or institution.

(n) "Habitual truant" is a school-age minor who has received more than two truancy citations within one school year from the school in which the minor is or should be enrolled and eight absences without a legitimate or valid excuse or who, in defiance of efforts on the part of school authorities as required under Section 53A-11-103, refuses to regularly attend school or any scheduled period of the school day.

(o) "Legal custody" means a relationship embodying the following rights and duties:

(i) the right to physical custody of the minor;

(ii) the right and duty to protect, train, and discipline the minor;

(iii) the duty to provide the minor with food, clothing, shelter, education, and ordinary medical care;

(iv) the right to determine where and with whom the minor shall live; and

(v) the right, in an emergency, to authorize surgery or other extraordinary care.

(p) "Minor" means a person under the age of 18 years. It includes the term "child" as used in other parts of this chapter.

(q) "Natural parent" means a minor's biological or adoptive parent, and includes the minor's noncustodial parent.

(r) (i) "Neglected child" means a minor:

(A) whose parent, guardian, or custodian has abandoned or subjected the minor to mistreatment or abuse;

(B) who lacks proper parental care by reason of the fault or habits of the parent, guardian, or custodian;

(C) whose parent, guardian, or custodian fails or refuses to provide proper or necessary subsistence, education, or medical care, including surgery or psychiatric services when required, or any other care necessary for health, safety, morals, or well-being; or

(D) who is at risk of being a neglected or abused child as defined in this chapter because another minor in the same home is a neglected or abused child as defined in this chapter.

(ii) The aspect of neglect related to education, described in Subsection (1)(r)(i)(C), means that, after receiving notice that a minor has been frequently absent from school without good cause, or that the minor has failed to cooperate with school authorities in a reasonable manner, a parent or guardian fails to make a good faith effort to ensure that the minor receives an appropriate education.

(iii) A parent or guardian legitimately practicing religious beliefs and who, for that reason, does not provide specified medical treatment for a minor, is not guilty of neglect.

(s) "Nonjudicial adjustment" means closure of the case by the assigned probation officer without judicial determination upon the consent in writing of the minor, the parent, legal guardian or custodian, and the assigned probation officer.

(t) "Probation" means a legal status created by court order following an adjudication on the ground of a violation of law or under Section 78-3a-104, whereby the minor is permitted to remain in his home under prescribed conditions and under supervision by the probation department or other agency designated by the court, subject to return to the court for violation of any of the conditions prescribed.

(u) "Protective supervision" means a legal status created by court order following an adjudication on the ground of abuse, neglect, or dependency, whereby the minor is permitted to remain in his home, and supervision and assistance to correct the abuse, neglect, or dependency is provided by the probation department or other agency designated by the court.

(v) "Residual parental rights and duties" means those rights and duties remaining with the parent after legal custody or guardianship, or both, have been vested in another person or agency, including the responsibility for support, the right to consent to adoption, the right to determine the child's religious affiliation, and the right to reasonable [~~visitation~~] parent-time unless restricted by the court. If no guardian has been appointed, "residual parental rights and duties" also include the right to consent to marriage, to enlistment, and to major medical, surgical, or psychiatric treatment.

(w) "Secure facility" means any facility operated by or under contract with the Division of Youth Corrections, that provides 24-hour supervision and confinement for youth offenders committed to the division for custody and rehabilitation.

(x) "Shelter" means the temporary care of minors in physically unrestricted facilities pending court disposition or transfer to another jurisdiction.

(y) "State supervision" means a disposition which provides a more intensive level of intervention than standard probation but is less intensive or restrictive than a community placement with the Division of Youth Corrections.

(z) "Termination of parental rights" means the permanent elimination of all parental rights and duties, including residual parental rights and duties, by court order.

(aa) "Therapist" means a person employed by a state division or agency for the purpose of conducting psychological treatment and counseling

of a minor in its custody, or any other person licensed or approved by the state for the purpose of conducting psychological treatment and counseling.

(2) As used in Part 3, Abuse, Neglect, and Dependency Proceedings, with regard to the Division of Child and Family Services:

(a) "Custody" means the custody of a minor in the Division of Child and Family Services as of the date of disposition.

(b) "Protective custody" means the shelter of a minor by the Division of Child and Family Services from the time the minor is removed from home until the shelter hearing, or the minor's return home, whichever occurs earlier.

(c) "Temporary custody" means the custody of a minor in the Division of Child and Family Services from the date of the shelter hearing until disposition.

Section 22. Section 78-3a-104 is amended to read:

78-3a-104. Jurisdiction of juvenile court -- Original -- Exclusive.

(1) Except as otherwise provided by law, the juvenile court has exclusive original jurisdiction in proceedings concerning:

(a) a minor who has violated any federal, state, or local law or municipal ordinance or a person younger than 21 years of age who has violated any law or ordinance before becoming 18 years of age, regardless of where the violation occurred, excluding traffic laws and ordinances;

(b) a person 21 years of age or older who has failed or refused to comply with an order of the juvenile court to pay a fine or restitution, if the order was imposed prior to the person's 21st birthday; however, the continuing jurisdiction is limited to causing compliance with existing orders;

(c) a minor who is an abused child, neglected child, or dependent child, as those terms are defined in Section 78-3a-103;

(d) a protective order for a minor who is alleged to be an abused child or neglected child, except as provided in Section 78-3a-105, and unless the petition is filed by a natural parent or stepparent of the minor against a natural parent or stepparent of the minor;

(e) the determination of the custody of a minor or to appoint a guardian of the person or other guardian of a minor who comes within the court's jurisdiction under other provisions of this section;

(f) the termination of the legal parent-child relationship in accordance with Part 4, Termination of Parental Rights Act, including termination of residual parental rights and duties;

(g) the treatment or commitment of a mentally retarded minor;

(h) a minor who is a habitual truant from school;

(i) the judicial consent to the marriage of a minor under age 16 upon a determination of voluntariness or where otherwise required by law, employment, or enlistment of a minor when consent is required by law;

(j) any parent or parents of a minor committed to a secure youth corrections facility, to order, at the discretion of the court and on the recommendation of a secure youth corrections facility, the parent or parents of a minor committed to a secure youth corrections facility for a custodial term, to undergo group rehabilitation therapy under the direction of a secure youth corrections facility therapist, who has supervision of that parent's or parents' minor, or any other therapist the court may direct, for a period directed by the court as recommended by a secure youth corrections facility;

(k) a minor under Title 55, Chapter 12, Interstate Compact on Juveniles;

(l) the treatment or commitment of a mentally ill child. The court may commit a child to the physical custody of a local mental health authority or to the legal custody of the Division of Mental Health in accordance with the procedures and requirements of Title 62A, Chapter 12, Part 2A, Commitment of Persons Under Age 18 to Division of Mental Health. The court may not commit a child directly to the Utah State Hospital;

(m) the commitment of a minor in accordance with Section 62A-8-501; and

(n) de novo review of final agency actions resulting from an informal adjudicative proceeding as provided in Section 63-46b-15.

(2) In addition to the provisions of Subsection (1)(a) the juvenile court has exclusive jurisdiction over any traffic offense committed by a minor under 16 years of age and concurrent jurisdiction over all other traffic offenses committed by a minor 16 years of age or older, except that the court shall have exclusive jurisdiction over the following traffic offenses committed by a minor under 18 years of age:

(a) Section 76-5-207, automobile homicide;

(b) Section 41-6-44, operating a vehicle while under the influence of alcohol or drugs;

(c) Section 41-6-45, reckless driving;

(d) Section 41-1a-1314, unauthorized control over a motor vehicle, trailer, or semitrailer for an extended period of time; and

(e) Section 41-6-13.5, fleeing a peace officer.

(3) The court also has jurisdiction over traffic offenses that are part of a single criminal episode filed in a petition that contains an offense over which the court has jurisdiction.

(4) The juvenile court has jurisdiction over questions of custody, support, parent-time, and visitation certified to it by the district court pursuant to Section 78-3a-105.

(5) The juvenile court has jurisdiction over an ungovernable or runaway minor who is referred to

it by the Division of Child and Family Services or by public or private agencies that contract with the division to provide services to that minor where, despite earnest and persistent efforts by the division or agency, the minor has demonstrated that he:

(a) is beyond the control of his parent, guardian, lawful custodian, or school authorities to the extent that his behavior or condition endangers his own welfare or the welfare of others; or

(b) has run away from home.

(6) This section does not restrict the right of access to the juvenile court by private agencies or other persons.

(7) The juvenile court has jurisdiction of all magistrate functions relative to cases arising under Section 78-3a-602.

Section 23. Section 78-3a-105 is amended to read:

78-3a-105. Concurrent jurisdiction -- District court and juvenile court.

(1) The district court or other court has concurrent jurisdiction with the juvenile court as follows:

(a) when a person who is 18 years of age or older and who is under the continuing jurisdiction of the juvenile court under Section 78-3a-118 violates any federal, state, or local law or municipal ordinance;

(b) in adoption proceedings, when the juvenile court has previously entered an order terminating the rights of a parent, and finds that adoption is in the best interest of the minor; adoption proceedings under this section shall be conducted in accordance with the procedures described in Title 78, Chapter 30, Adoption;

(c) in establishing paternity and ordering testing for the purposes of establishing paternity, in accordance with Title 78, Chapter 45a, Uniform Act on Paternity, with regard to proceedings initiated under Part 3, Abuse, Neglect, and Dependency Proceedings, or Part 4, Termination of Parental Rights Act; and

(d) in proceedings brought on behalf of a minor pursuant to Title 30, Chapter 6, Cohabitant Abuse Act, unless the petition is filed by a natural parent or stepparent of the minor against a natural parent or stepparent of the minor.

(2) The juvenile court has jurisdiction over petitions to modify a minor's birth certificate if the court otherwise has jurisdiction over the minor.

(3) (a) This section does not deprive the district court of jurisdiction to appoint a guardian for a minor, or to determine the support, custody, and [~~visitation~~] parent-time of a minor upon writ of habeas corpus or when the question of support, custody, and [~~visitation~~] parent-time is incidental to the determination of a cause in the district court.

(b) However, if a petition involving the same minor is pending in the juvenile court or the juvenile court has previously acquired continuing jurisdiction over the same minor, the district court shall certify the question of support, custody, and [~~visitation~~] parent-time to the juvenile court for determination.

(4) When a question is certified to the juvenile court under Subsection (3), the findings and order of the juvenile court judge are the order of the district court.

(5) (a) Where a support, custody, or [~~visitation~~] parent-time award has been made by a district court in a divorce action or other proceeding, and the jurisdiction of the district court in the case is continuing, the juvenile court may acquire jurisdiction in a case involving the same minor if the minor is dependent, abused, neglected, or otherwise comes within the jurisdiction of the juvenile court under Section 78-3a-104.

(b) The juvenile court may, by order, change the custody, support, parent-time, and visitation rights previously ordered in the district court as necessary to implement the order of the juvenile court for the safety and welfare of the minor. The juvenile court order remains in effect so long as the jurisdiction of the juvenile court continues.

(6) When a copy of the findings and order of the juvenile court has been filed with the district court, the findings and order of the juvenile court are binding on the parties to the divorce action as though entered in the district court.

Section 24. Section 78-3a-118 is amended to read:

78-3a-118. Adjudication of jurisdiction of juvenile court -- Disposition of cases -- Enumeration of possible court orders -- Considerations of court.

(1) (a) When a minor is found to come within the provisions of Section 78-3a-104, the court shall so adjudicate. The court shall make a finding of the facts upon which it bases its jurisdiction over the minor. However, in cases within the provisions of Subsection 78-3a-104(1), findings of fact are not necessary.

(b) If the court adjudicates a minor for a crime of violence or an offense in violation of Title 76, Chapter 10, Part 5, Weapons, it shall order that notice of the adjudication be provided to the school superintendent of the district in which the minor resides or attends school. Notice shall be made to the district superintendent within three days and shall include the specific offenses for which the minor was adjudicated.

(2) Upon adjudication the court may make the following dispositions by court order:

(a) (i) The court may place the minor on probation or under protective supervision in the minor's own home and upon conditions determined by the court, including compensatory service as provided in Section 78-11-20.7.

(ii) The court may place the minor in state supervision with the probation department of the

court, under the legal custody of his parent or guardian, the Division of Youth Corrections, or the Division of Child and Family Services.

(iii) If the court orders probation or state supervision, the court shall direct that notice of its order be provided to designated persons in the local law enforcement agency and the school or transferee school, if applicable, which the minor attends. The designated persons may receive the information for purposes of the minor's supervision and student safety.

(iv) Any employee of the local law enforcement agency and the school which the minor attends who discloses the court's order of probation is not:

(A) civilly liable except when the disclosure constitutes fraud or malice as provided in Section 63-30-4; and

(B) civilly or criminally liable except when the disclosure constitutes a knowing violation of Section 63-2-801.

(b) The court may place the minor in the legal custody of a relative or other suitable person, with or without probation or protective supervision, but the juvenile court may not assume the function of developing foster home services.

(c) (i) The court may vest legal custody of the minor in the Division of Child and Family Services, Division of Youth Corrections, or the Division of Mental Health, and may order the Department of Human Services to provide dispositional recommendations and services.

(ii) For minors who may qualify for services from two or more divisions within the Department of Human Services, the court may vest legal custody with the department.

(iii) Minors who are committed to the custody of the Division of Child and Family Services on grounds other than abuse or neglect are subject to the provisions of Title 78, Chapter 3a, Part 3A, Minors in Custody on Grounds Other Than Abuse or Neglect, and Title 62A, Chapter 4a, Part 2A, Minors in Custody on Grounds Other Than Abuse or Neglect. Prior to making a recommendation that the court place a minor in the custody of the Division of Child and Family Services on grounds other than abuse or neglect, the probation department shall provide the division adequate with notice for the division to attend the hearing.

(d) (i) The court may commit the minor to the Division of Youth Corrections for secure confinement.

(ii) A minor under the jurisdiction of the court solely on the ground of abuse, neglect, or dependency under Subsection 78-3a-104(1)(c) may not be committed to the Division of Youth Corrections.

(e) The court may commit the minor, subject to the court retaining continuing jurisdiction over him, to the temporary custody of the Division of Youth Corrections for observation and evaluation for a period not to exceed 45 days, which may be extended up to 15 days at the request of the director.

(f) (i) The court may commit the minor to a place of detention or an alternative to detention for a period not to exceed 30 days subject to the court retaining continuing jurisdiction over the minor.

(ii) Subsection (2)(f) applies only to those minors adjudicated for an act which if committed by an adult would be a criminal offense or for contempt of court under Section 78-3a-901. This commitment may be stayed or suspended upon conditions ordered by the court.

(g) The court may vest legal custody of an abused, neglected, or dependent minor in the Division of Child and Family Services or any other appropriate person in accordance with the requirements and procedures of Title 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency Proceedings.

(h) The court may place the minor on a ranch or forestry camp, or similar facility for care and also for work, if possible, if the person, agency, or association operating the facility has been approved or has otherwise complied with all applicable state and local laws. A minor placed in a forestry camp or similar facility may be required to work on fire prevention, forestation and reforestation, recreational works, forest roads, and on other works on or off the grounds of the facility and may be paid wages, subject to the approval of and under conditions set by the court.

(i) The court may order that the minor be required to repair, replace, or otherwise make restitution for damage or loss caused by the minor's wrongful act, including costs of treatment as stated in Section 78-3a-318, and may impose fines in limited amounts.

(j) The court may issue orders necessary for the collection of restitution and fines ordered by the court, including garnishments, wage withholdings, and executions.

(k) (i) The court may through its probation department encourage the development of employment or work programs to enable minors to fulfill their obligations under Subsection (2)(i) and for other purposes considered desirable by the court.

(ii) Consistent with the order of the court, the probation officer may permit the minor found to be within the jurisdiction of the court to participate in a program of work restitution or compensatory service in lieu of paying part or all of the fine imposed by the court.

(l) In violations of traffic laws within the court's jurisdiction, the court may, in addition to any other disposition, restrain the minor from driving for periods of time the court considers necessary and take possession of the minor's driver license. However, proceedings involving an offense under Section 78-3a-506 are governed by that section regarding suspension of driving privileges.

(m) (i) When a minor is found within the jurisdiction of the juvenile court under Section

78-3a-104 because of violating Section 58-37-8, Title 58, Chapter 37a, Utah Drug Paraphernalia Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, the court shall, in addition to any fines or fees otherwise imposed, order that the minor perform a minimum of 20 hours, but no more than 100 hours, of compensatory service. Satisfactory completion of an approved substance abuse prevention or treatment program may be credited by the court as compensatory service hours.

(ii) When a minor is found within the jurisdiction of the juvenile court under Section 78-3a-104 because of a violation of Section 32A-12-209 or Subsection 76-9-701(1), the court may, upon the first adjudication, and shall, upon a second or subsequent adjudication, order that the minor perform a minimum of 20 hours, but no more than 100 hours of compensatory service, in addition to any fines or fees otherwise imposed. Satisfactory completion of an approved substance abuse prevention or treatment program may be credited by the court as compensatory service hours.

(n) The court may order that the minor be examined or treated by a physician, surgeon, psychiatrist, or psychologist or that he receive other special care. For these purposes the court may place the minor in a hospital or other suitable facility.

(o) (i) The court may appoint a guardian for the minor if it appears necessary in the interest of the minor, and may appoint a public or private institution or agency as guardian in which legal custody of the minor is vested.

(ii) In placing a minor under the guardianship or legal custody of an individual or of a private agency or institution, the court shall give primary consideration to the welfare of the minor. When practicable, the court may take into consideration the religious preferences of the minor and of the minor's parents.

(p) (i) In support of a decree under Section 78-3a-104, the court may order reasonable conditions to be complied with by the parents or guardian, the minor, the minor's custodian, or any other person who has been made a party to the proceedings. Conditions may include:

(A) [~~visitation~~] parent-time by the parents or one parent;

(B) restrictions on the minor's associates;

(C) restrictions on the minor's occupation and other activities; and

(D) requirements to be observed by the parents or custodian.

(ii) A minor whose parents or guardians successfully complete a family or other counseling program may be credited by the court for detention, confinement, or probation time.

(q) The court may order the minor to be placed in the legal custody of the Division of Mental Health or committed to the physical custody of a local mental health authority, in accordance with the procedures and requirements of Title 62A, Chapter 12, Part 2A, Commitment of Persons Under Age 18 to Division of Mental Health.

(r) The court may make an order committing a minor within its jurisdiction to the Utah State Developmental Center if the minor has been found mentally retarded in accordance with the provisions of Title 62A, Chapter 5, Part 3, Admission to Mental Retardation Facility. The procedure applicable in the district courts with respect to judicial commitments to the Utah State Developmental Center shall be followed by the juvenile court in these cases.

(s) The court may terminate all parental rights upon a finding of compliance with the provisions of Title 78, Chapter 3a, Part 4, Termination of Parental Rights Act.

(t) The court may make any other reasonable orders for the best interest of the minor or as required for the protection of the public, except that a person younger than 18 years of age may not be committed to jail or prison, and offenses under Section 78-3a-506 are governed by that section regarding suspension of driving privileges.

(u) The court may combine several of the above-listed modes of disposition if they are compatible.

(v) Before depriving any parent of custody, the court shall give due consideration to the rights of parents concerning their minors. The court may transfer custody of a minor to another person, agency, or institution in accordance with the requirements and procedures of Title 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency Proceedings.

(w) Except as provided in Subsection (2)(y)(i), an order under this section for probation or placement of a minor with an individual or an agency shall include a date certain for a review of the case by the court. A new date shall be set upon each review.

(x) In reviewing foster home placements, special attention shall be given to making adoptable minors available for adoption without delay.

(y) (i) The juvenile court may enter an order of permanent custody and guardianship with a relative or individual of a minor where the court has previously acquired jurisdiction as a result of an adjudication of abuse, neglect, or dependency, excluding cases arising under Subsection 78-3a-105(4).

(ii) Such orders remain in effect until the minor reaches majority and are not subject to review under Section 78-3a-119, but may be modified by petition or motion as provided in Section 78-3a-903.

(iii) Orders permanently terminating the rights of a parent, guardian, or custodian and permanent orders of custody and guardianship do not expire with a termination of jurisdiction of the juvenile court.

(3) In addition to the dispositions described above, when a minor comes within the court's

jurisdiction he may be given a choice by the judge to serve in the National Guard in lieu of other sanctions, provided:

(a) the minor meets the current entrance qualifications for service in the National Guard as determined by a recruiter, whose determination is final;

(b) the minor is not under the jurisdiction of the court for any act that:

(i) would be a felony if committed by an adult;

(ii) is a violation of Title 58, Chapter 37, Controlled Substances; or

(iii) was committed with a weapon; and

(c) the court retains jurisdiction over the minor under conditions set by the juvenile court judge and agreed upon by the recruiter or the unit the minor is eventually assigned to.

Section 25. Section 78-3a-307 is amended to read:

78-3a-307. Shelter hearing -- Placement with a noncustodial parent or relative -- DCFS custody.

(1) (a) At the shelter hearing, when the court orders that a child be removed from the custody of his parent in accordance with the requirements of Section 78-3a-306, the court shall first determine whether there is another natural parent as defined in Subsection (1)(b), with whom the child was not residing at the time the events or conditions that brought him within the court's jurisdiction occurred, who desires to assume custody of the child. If that parent requests custody, the court shall place the minor with that parent unless it finds that the placement would be unsafe or otherwise detrimental to the child. The provisions of this Subsection (1) are limited by the provisions of Subsection (8)(b).

(b) Notwithstanding the provisions of Section 78-3a-103, for purposes of this section "natural parent" includes only a biological or adoptive mother, an adoptive father, or a biological father who was married to the child's biological mother at the time the child was conceived or born, or who has strictly complied with the provisions of Section 78-30-4.14 prior to removal of the child or voluntary surrender of the child by the custodial parent. This definition applies regardless of whether the child has been or will be placed with adoptive parents or whether adoption has been or will be considered as a long-term goal for the child.

(c) (i) The court shall make a specific finding regarding the fitness of that parent to assume custody, and the safety and appropriateness of the placement.

(ii) The court shall, at a minimum, order the division to visit the parent's home, perform criminal background checks described in Sections 78-3a-307.1 and 62A-4a-202.4, and check the division's management information system for any previous reports of abuse or neglect received by the division regarding the parent at issue.

(iii) The court may order the Division of Child and Family Services to conduct any further investigation regarding the safety and appropriateness of the placement.

(iv) The division shall report its findings in writing to the court.

(v) The court may place the child in the temporary custody of the division, pending its determination regarding that placement.

(2) If the court orders placement with a parent under Subsection (1), the child and the parent are under the continuing jurisdiction of the court. The court may order that the parent assume custody subject to the supervision of the court, and order that services be provided to the parent from whose custody the child was removed, the parent who has assumed custody, or both. The court may also provide for reasonable [~~visitation~~] parent-time with the parent from whose custody the child was removed, if that is in the best interest of the child. The court's order shall be periodically reviewed to determine whether:

(a) placement with the parent continues to be in the child's best interest;

(b) the child should be returned to the original custodial parent;

(c) the child should be placed with a relative, pursuant to Subsection (5); or

(d) the child should be placed in the custody of the division.

(3) The time limitations described in Section 78-3a-311 with regard to reunification efforts, apply to children placed with a previously noncustodial parent in accordance with Subsection (1).

(4) Legal custody of the child is not affected by an order entered under Subsection (1) or (2). In order to affect a previous court order regarding legal custody, the party must petition that court for modification of the order.

(5) (a) If, at the time of the shelter hearing, a child is removed from the custody of his parent and is not placed in the custody of his other parent, the court shall, at that time, determine whether there is a relative who is able and willing to care for the child. The court may order the Division of Child and Family Services to conduct a reasonable search to determine whether there are relatives of the child who are willing and appropriate, in accordance with the requirements of this part and Title 62A, Chapter 4a, Part 2, Child Welfare Services, for placement of the child. The court shall order the parents to cooperate with the division, within five working days, to provide information regarding relatives who may be able and willing to care for the child. The child may be placed in the temporary custody of the division pending that determination. This section may not be construed as a guarantee that an identified relative will receive custody of the child. However, preferential consideration may be

given to a relative's request for placement of the child, if it is in the best interest of the child, and the provisions of this section are satisfied.

(b) (i) If a willing relative is identified pursuant to Subsection (5)(a), the court shall make a specific finding regarding the fitness of that relative to assume custody, and the safety and appropriateness of placement with that relative. In order to be considered a "willing relative" under this section, the relative shall be willing to cooperate if the child's permanency goal is reunification with his parent or parents, and be willing to adopt or take permanent custody of the child if that is determined to be in the best interest of the child.

(ii) The court shall, at a minimum, order the division to conduct criminal background checks described in Sections 78-3a-307.1 and 62A-4a-202.4, visit the relative's home, check the division's management information system for any previous reports of abuse or neglect regarding the relative at issue, report its findings in writing to the court, and provide sufficient information so that the court may determine whether:

(A) the relative has any history of abusive or neglectful behavior toward other children that may indicate or present a danger to this child;

(B) the child is comfortable with the relative;

(C) the relative recognizes the parent's history of abuse and is determined to protect the child;

(D) the relative is strong enough to resist inappropriate requests by the parent for access to the child, in accordance with court orders;

(E) the relative is committed to caring for the child as long as necessary; and

(F) the relative can provide a secure and stable environment for the child.

(iii) The court may order the Division of Child and Family Services to conduct any further investigation regarding the safety and appropriateness of the placement.

(iv) The division shall complete and file its assessment regarding placement with a relative as soon as practicable, in an effort to facilitate placement of the child with a relative.

(c) The court may place the child in the temporary custody of the division, pending the division's investigation pursuant to Subsection (5)(b), and the court's determination regarding that placement. The court shall ultimately base its determination regarding placement with a relative on the best interest of the child.

(d) For purposes of this section, "relative" means an adult who is a grandparent, great grandparent, aunt, great aunt, uncle, great uncle, brother-in-law, sister-in-law, stepparent, first cousin, stepsibling, or sibling of the child. In the case of a child defined as an "Indian" under the Indian Child Welfare Act, 25 U.S.C. Section 1903, "relative" also means an "extended family member" as defined by that statute.

(6) (a) When the court vests physical custody of a child with a relative pursuant to Subsection (5), it shall order that the relative assume custody subject to the continuing supervision of the court, and shall order that any necessary services be provided to the minor and the relative. That child is not within the temporary custody or custody of the Division of Child and Family Services. The child and any relative with whom the child is placed are under the continuing jurisdiction of the court. The court may enter any order that it considers necessary for the protection and best interest of the child.

(b) (i) Placement with a relative pursuant to Subsection (5) shall be periodically reviewed by the court, no less often than every six months, to determine whether:

(A) placement with the relative continues to be in the child's best interest;

(B) the child should be returned home; or

(C) the child should be placed in the custody of the division.

(ii) No later than 12 months after placement with a relative the court shall schedule a hearing for the purpose of entering a permanent order in accordance with the best interest of the child.

(iii) The time limitations described in Section 78-3a-311, with regard to reunification efforts, apply to children placed with a relative pursuant to Subsection (5).

(7) When the court orders that a child be removed from the custody of his parent and does not vest custody in another parent or relative under this section, the court shall order that the child be placed in the temporary custody of the Division of Child and Family Services, to proceed to adjudication and disposition and to be provided with care and services in accordance with this chapter and Title 62A, Chapter 4a, Child and Family Services.

(8) (a) Any preferential consideration that a relative may be initially granted pursuant to Subsection (5) expires 120 days from the date of the shelter hearing. After that time period has expired, a relative who has not obtained custody or asserted an interest in a child, may not be granted preferential consideration by the division or the court.

(b) When the time period described in Subsection (8)(a) has expired, the preferential consideration which may initially be granted to a natural parent in accordance with Subsection (1), is limited. After that time the court shall base its custody decision on the best interest of the child.

Section 26. Section 78-3a-409 is amended to read:

78-3a-409. Specific considerations where child is not in physical custody of parent.

(1) If a child is not in the physical custody of the parent or parents, the court, in determining whether parental rights should be terminated shall consider, but is not limited to, the following:

(a) the physical, mental, or emotional condition and needs of the child and his desires regarding the

termination, if the court determines he is of sufficient capacity to express his desires; and

(b) the effort the parent or parents have made to adjust their circumstances, conduct, or conditions to make it in the child's best interest to return him to his home after a reasonable length of time, including but not limited to:

(i) payment of a reasonable portion of substitute physical care and maintenance, if financially able;

(ii) maintenance of regular [~~visitation~~] parent-time or other contact with the child that was designed and carried out in a plan to reunite the child with the parent or parents; and

(iii) maintenance of regular contact and communication with the custodian of the child.

(2) For purposes of this section, the court shall disregard incidental conduct, contributions, contacts, and communications.

Section 27. Section 78-7-32 is amended to read:

78-7-32. Domestic relations cases -- Party designation.

Parties in domestic relations cases, including divorce, annulment, property division, child custody, support, [~~visitation~~] parent-time, adoption, and paternity, shall be designated as petitioner and respondent.

Section 28. Section 78-30-4.16 is amended to read:

78-30-4.16. Contested adoptions -- Rights of parties -- Determination of custody.

(1) Whenever any party contests an adoption, the court shall first determine whether the provisions of this chapter have been complied with. If a party who was entitled to notice and consent under the provisions of this chapter, was denied that right, and did not otherwise waive or forfeit that right under the terms of this chapter, the court may:

(a) enjoin the adoption, or dismiss the adoption petition, and proceed in accordance with Subsection (2); or

(b) determine whether proper grounds for termination of that parent's rights exist and, if so, order that the parent's rights be terminated in accordance with the provisions of this chapter or Title 78, Chapter 3a, Part 4, Termination of Parental Rights Act.

(2) (a) In any case, and under any circumstance, if a court determines that a petition for adoption may not be granted, the court may not automatically grant custody of a child to a challenging biological parent, but shall conduct an evidentiary hearing in each case, in order to determine who should have custody of the child, in accordance with the child's best interest.

(b) Evidence considered at that hearing may include, but is not limited to, evidence of psychological or emotional bonds that the child had formed with third parties and any detriment that a change in custody may cause to the child. The fact that a person relinquished a child to a licensed child placing agency or executed a consent for adoption may not be considered by the court as evidence of neglect or abandonment.

(c) Any custody order entered pursuant to this section may also include provisions for [~~visitation~~] parent-time by a biological parent or visitation by an interested third party, and provide for the financial support of the child.

(3) An adoption may not be contested after the final decree of adoption is entered.

Section 29. Section 78-32-12.1 is amended to read:

78-32-12.1. Compensatory service for violation of parent-time order or failure to pay child support.

(1) If a court finds by a preponderance of the evidence that a parent has refused to comply with the minimum amount of [~~visitation~~] parent-time ordered in a decree of divorce, the court shall order the parent to:

(a) perform a minimum of ten hours of compensatory service; and

(b) participate in workshops, classes, or individual counseling to educate the parent about the importance of complying with the court order and providing a child a continuing relationship with both parents.

(2) If a custodial parent is ordered to perform compensatory service or undergo court-ordered education, there is a rebuttable presumption that the noncustodial parent be granted [~~visitation~~] parent-time by the court to provide child care during the time the custodial parent is complying with compensatory service or education in order to recompense him for [~~visitation time~~] parent-time wrongfully denied by the custodial parent under the divorce decree.

(3) If a noncustodial parent is ordered to perform compensatory service or undergo court-ordered education, the court shall attempt to schedule the compensatory service or education at times that will not interfere with the noncustodial parent's [~~visitation~~] parent-time with the child.

(4) The person ordered to participate in court-ordered education is responsible for expenses of workshops, classes, and individual counseling.

(5) If a court finds by a preponderance of the evidence that an obligor, as defined in Section 78-45-2, has refused to pay child support as ordered by a court in accordance with Title 78, Chapter 45, Uniform Civil Liability for Support Act, the court shall order the obligor to:

(a) perform a minimum of ten hours of compensatory service; and

(b) participate in workshops, classes, or individual counseling to educate the obligor about the importance of complying with the court order

and providing the children with a regular and stable source of support.

(6) The obligor is responsible for the expenses of workshops, classes, and individual counseling ordered by the court.

(7) If a court orders an obligor to perform compensatory service or undergo court-ordered education, the court shall attempt to schedule the compensatory service or education at times that will not interfere with the obligor's [~~visitation~~] parent-time with the child.

(8) The sanctions that the court shall impose under this section do not prevent the court from imposing other sanctions as provided in Section 78-32-12.2 or other provisions in this chapter, or prevent any person from bringing a cause of action allowed under state or federal law.

(9) The Legislature shall allocate the money from the Children's Legal Defense Account to the judiciary to defray the cost of enforcing and administering this section.

Section 30. Section 78-32-12.2 is amended to read:

78-32-12.2. Definitions -- Sanctions.

(1) For purposes of this section:

(a) "Make up [~~visitation~~] parent-time" means [~~visitation~~] parent-time which is:

(i) of the same type and duration of [~~visitation~~] parent-time as that which was denied, including [~~visitation~~] parent-time during weekdays, weekends, holidays, and during extended [~~visitation~~] parent-time periods;

(ii) to be made up within one year after the court has entered its order of make up [~~visitation~~] parent-time; and

(iii) in the manner chosen by the aggrieved parent if it is in the best interest of the child.

[~~(d)~~] (b) "[~~Visitation~~] Parent-time enforcement order" means an order to enforce compliance with an original [~~visitation~~] parent-time order through the use of sanctions.

[~~(b)~~] (c) "Petition" means a petition brought by a parent, a grandparent as provided in Section 30-5-2, by other immediate family members, or upon the court's own motion alleging that a parent is not complying with a [~~visitation~~] parent-time order in a decree of divorce or a subsequent [~~visitation~~] parent-time enforcement order which may be brought at different stages in the alleged pattern of noncompliance:

(i) a first petition is a petition to enforce an original order of [~~visitation~~] parent-time or a petition filed after three years from the last [~~visitation~~] parent-time enforcement order;

(ii) a second petition is a petition filed within three years following entry of the first [~~visitation~~] parent-time enforcement order; and

(iii) a third petition is a petition filed within three years following entry of the second [~~visitation~~] parent-time enforcement order.

[~~(c)~~] (d) "Substantial noncompliance" means conduct which:

(i) substantially interferes with a court-ordered [~~visitation~~] parent-time schedule; or

(ii) interferes with parent's right to frequent, meaningful, and continuing access with his child and which substantially impairs that parent-child relationship.

(2) Upon a first petition, the court shall order:

(a) if the first petition is uncontested, by default:

(i) a permanent injunction enjoining the noncompliance with the court's [~~visitation~~] parent-time order;

(ii) make up [~~visitation~~] parent-time for the aggrieved parent and child; and

(iii) participation in workshops, classes, or individual counseling to educate the parent about the importance of complying with the court order and providing the child with a continuing relationship with both parents as provided in Subsection 78-32-12.1(1)(b); or

(b) if the first petition is contested, the court shall hold a hearing to determine by a preponderance of the evidence whether there has been a substantial noncompliance with the [~~visitation~~] parent-time order.

(3) Upon a finding of substantial noncompliance, the court shall order:

(a) actual costs including actual attorney fees and court costs to the prevailing party;

(b) make up [~~visitation~~] parent-time for the aggrieved parent and child;

(c) a minimum of ten hours of compensatory service as provided in Subsection 78-32-12.1(1)(a); and

(d) a permanent injunction enjoining the noncompliance with the court's [~~visitation~~] parent-time order.

(4) Upon a finding of substantial noncompliance, the court may order:

(a) mediation with the requirement to report back to the court on the results of mediation within 30 days;

(b) participation in workshops, classes, or individual counseling to educate the parent about the importance of complying with the court order and providing the child with a continuing relationship with both parents as provided in Subsection 78-32-12.1(1)(b); or

(c) a fine or jail sentence or other appropriate sanctions as provided under contempt of court in Section 78-32-10.

(5) Upon a second petition, the court shall order:

(a) if the second petition is uncontested, by default:

(i) actual costs including actual attorney fees and court costs;

(ii) make up [~~visitation~~] parent-time to be provided for the aggrieved parent and child;

(iii) a minimum of ten hours of compensatory service as provided in Subsection 78-32-12.1(1)(a); and

(iv) impose a fine or jail sentence or other appropriate sanctions as provided under contempt of court in Section 78-32-10; or

(b) if the second petition is contested, the court shall hold a hearing to determine by a preponderance of the evidence whether there has been a substantial noncompliance with the [~~visitation~~] parent-time orders.

(6) Upon a finding of a substantial noncompliance, the court shall order:

(a) actual costs including actual attorney fees and court costs to the prevailing party;

(b) make up [~~visitation~~] parent-time to be provided for the aggrieved party and child at twice the amount of time previously wrongfully denied and under the same conditions as provided in Subsections 78-32-12.2(3)(a) through (c);

(c) a minimum of 20 hours of compensatory service as provided in Subsection 78-32-12.1(1)(a);

(d) a contempt order which imposes a fine or jail sentence as provided in Section 78-32-10; and

(e) the violator to post bond or security in the amount determined by the court to insure future compliance.

(7) The court may impose additional sanctions which may include any additional remedies, terms, or conditions which are consistent with the court's previous order.

(8) Upon a third petition, the court shall order:

(a) if the third petition is uncontested, by default:

(i) actual costs including actual attorney fees and court costs;

(ii) make up [~~visitation~~] parent-time to be provided for the aggrieved party and child at twice the amount of time previously denied and under the same conditions as provided in Subsections 78-32-12.2(3)(a) through (c);

(iii) a minimum of ten hours of compensatory service as provided in Subsection 78-32-12.1(1)(a); and

(iv) impose a fine or jail sentence or other appropriate sanctions as provided under contempt of court in Section 78-32-10; or

(b) if the third petition is contested, the court shall hold a hearing to determine by a preponderance of the evidence whether there has been a substantial noncompliance with the [~~visitation~~] parent-time orders.

(9) Upon a finding of substantial noncompliance, the court shall order:

(a) actual costs including actual attorney fees and court costs to the prevailing party;

(b) a finding that there has been a prima facie showing of a substantial change of circumstances which is against the best interest of the child for purposes of modification of custody and order a temporary change of custody for a duration to be determined by the court; and

(c) a finding that there has been a probable cause showing of custodial interference as provided in Section 76-5-303 and order the case to be referred to the county attorney for prosecution.

(10) The court may decline to issue an order with the alternative sanctions as provided in Subsections 78-32-12.2(2) through (9) although the petitioner has met his burden of proof if the court provides findings on the record explaining why a sanction or sanctions were not imposed.

(11) The noncustodial parent shall give the court and the custodial parent written notice of his intention to exercise the make up [~~visitation~~] parent-time at least seven days before the proposed visit if it is to be on a weekday or weekend, and at least 30 days before the proposed visit if it is to be on a holiday or an extended [~~visitation~~] parent-time period.

(12) The court shall suspend any proceedings under Section 78-32-12.2 if substantial allegations of child abuse or child sexual abuse are under investigation or a case is pending in the courts on the allegations.

(13) The filing of any petition under this section which is found to be without merit and not asserted or defended against in good faith shall be subject to sanctions as determined by the court.

(14) This section shall be implemented only as a pilot program in the first judicial district as provided in Section 78-32-12.3.

Section 31. Section 78-32-17 is amended to read:

78-32-17. Noncompliance with child support order.

(1) When a court of competent jurisdiction, or the Office of Recovery Services pursuant to an action under Title 63, Chapter 46b, Administrative Procedures Act, makes an order requiring a parent to furnish support or necessary food, clothing, shelter, medical care, or other remedial care for his child, and the parent fails to do so, proof of noncompliance shall be prima facie evidence of contempt of court.

(2) Proof of noncompliance may be demonstrated by showing that:

(a) the order was made, and filed with the district court; and

(b) the parent knew of the order because:

(i) the order was mailed to the parent at his last-known address as shown on the court records;

(ii) the parent was present in court at the time the order was pronounced;

(iii) the parent entered into a written stipulation and the parent or counsel for the parent was sent a copy of the order;

(iv) counsel was present in court and entered into a stipulation which was accepted and the order based upon the stipulation was then sent to counsel for the parent; or

(v) the parent was properly served and failed to answer.

(3) Upon establishment of a prima facie case of contempt under Subsection (2), the obligor under the child support order has the burden of proving inability to comply with the child support order.

(4) A court may, in addition to other available sanctions, withhold, suspend, or restrict the use of driver's licenses, professional and occupational licenses, and recreational licenses and impose conditions for reinstatement upon a finding that:

(a) an obligor has:

(i) made no payment for 60 days on a current obligation of support as set forth in an administrative or court order and, thereafter, has failed to make a good faith effort under the circumstances to make payment on the support obligation in accordance with the order; or

(ii) made no payment for 60 days on an arrearage obligation of support as set forth in a payment schedule, written agreement with the Office of Recovery Services, or an administrative or judicial order and, thereafter, has failed to make a good faith effort under the circumstances to make payment on the arrearage obligation in accordance with the payment schedule, agreement, or order; and

(iii) not obtained a judicial order staying enforcement of the support or arrearage obligation for which the obligor would be otherwise delinquent;

(b) a custodial parent has:

(i) violated a [~~child visitation~~] parent-time order by denying contact for 60 days between a noncustodial parent and a child and, thereafter, has failed to make a good faith effort under the circumstances to comply with a [~~visitation~~] parent-time order; and

(ii) not obtained a judicial order staying enforcement of the [~~visitation~~] parent-time order; or

(c) an obligor or obligee, after receiving appropriate notice, has failed to comply with a subpoena or order relating to a paternity or child support proceeding.

Section 32. Section 78-45-7.7 is amended to read:

78-45-7.7. Calculation of obligations.

(1) Each parent's child support obligation shall be established in proportion to their adjusted gross incomes, unless the low income table is applicable. Except during periods of court-ordered [~~visitation~~] parent-time as set forth in Section 78-45-7.11, the parents are obligated to pay their proportionate shares of the base combined child support obligation. If physical custody of the child changes from that assumed in the original order, modification of the order is not necessary, even if only one parent is specifically ordered to pay in the order.

(2) Except in cases of joint physical custody and split custody as defined in Section 78-45-2 and in cases where the obligor's adjusted gross income is $1,050 or less monthly, the base child support award shall be determined as follows:

(a) combine the adjusted gross incomes of the parents and determine the base combined child support obligation using the base combined child support obligation table; and

(b) calculate each parent's proportionate share of the base combined child support obligation by multiplying the combined child support obligation by each parent's percentage of combined adjusted gross income.

(3) In the case of an incapacitated adult child, any amount that the incapacitated adult child can contribute to his or her support may be considered in the determination of child support and may be used to justify a reduction in the amount of support ordered, except that in the case of orders involving multiple children, the reduction shall not be greater than the effect of reducing the total number of children by one in the child support table calculation.

(4) In cases where the monthly adjusted gross income of the obligor is between $650 and $1,050, the base child support award shall be the lesser of the amount calculated in accordance with Subsection (2) and the amount calculated using the low income table. If the income and number of children is found in an area of the low income table in which no amount is shown, the base combined child support obligation table is to be used.

(5) The base combined child support obligation table provides combined child support obligations for up to six children. For more than six children, additional amounts may be added to the base child support obligation shown. Unless rebutted by Subsection 78-45-7.2(3), the amount ordered shall not be less than the amount which would be ordered for up to six children.

(6) If the monthly adjusted gross income of the obligor is $649 or less, the tribunal shall determine the amount of the child support obligation on a case-by-case basis, but the base child support award shall not be less than $20.

(7) The amount shown on the table is the support amount for the total number of children, not an amount per child.

Section 33. Section 78-45-7.11 is amended to read:

78-45-7.11. Reduction for extended parent-time.

(1) The child support order shall provide that the base child support award be reduced by 50% for each child for time periods during which the child is with the noncustodial parent by order of the court or by written agreement of the parties for at least 25 of any 30 consecutive days. If the dependent child is a client of cash assistance provided under Title 35A, Chapter 3, Part 3, Family Employment Program, any agreement by the parties for reduction of child support during extended [~~visitation~~] parent-time shall be approved by the administrative agency. However, normal [~~visitation~~] parent-time and holiday visits to the custodial parent shall not be considered an interruption of the consecutive day requirement.

(2) For purposes of this section the per child amount to which the abatement applies shall be calculated by dividing the base child support award by the number of children included in the award.

(3) The reduction in this section does not apply to parents with joint physical custody obligations calculated in accordance with Section 78-45-7.9.

Section 34. Section 78-45-7.17 is amended to read:

78-45-7.17. Child care costs.

(1) The need to include child care costs in the child support order is presumed, if the custodial parent or the noncustodial parent, during extended [~~visitation~~] parent-time, is working and actually incurring the child care costs.

(2) The need to include child care costs is not presumed, but may be awarded on a case-by-case basis, if the costs are related to the career or occupational training of the custodial parent, or if otherwise ordered by the court in the interest of justice.

Section 35. Section 78-45a-10.5 is amended to read:

78-45a-10.5. Parent-time rights of father.

(1) If the court determines that the alleged father is the father, it may upon its own motion or upon motion of the father, order [~~visitation~~] parent-time rights in accordance with Sections 30-3-32 through 30-3-37 as it considers appropriate under the circumstances.

(2) [~~Visitation~~] Parent-time rights may not be granted to a father if the child has been subsequently adopted.

Section 36. Section 78-45c-102 is amended to read:

78-45c-102. Definitions.

As used in this chapter:

(1) "Abandoned" means left without provision for reasonable and necessary care or supervision.

(2) "Child" means an individual under 18 years of age and not married.

(3) "Child custody determination" means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or [~~visitation~~] parent-time with respect to a child. The term includes a permanent, temporary, initial, and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.

(4) "Child custody proceeding" means a proceeding in which legal custody, physical custody, or [~~visitation~~] parent-time with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under Part 3, Enforcement.

(5) "Commencement" means the filing of the first pleading in a proceeding.

(6) "Court" means an entity authorized under the law of a state to establish, enforce, or modify a child custody determination.

(7) "Home state" means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding. In the case of a child less than six months of age, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period.

(8) "Initial determination" means the first child custody determination concerning a particular child.

(9) "Issuing court" means the court that makes a child custody determination for which enforcement is sought under this chapter.

(10) "Issuing state" means the state in which a child custody determination is made.

(11) "Modification" means a child custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.

(12) "Person" includes government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(13) "Person acting as a parent" means a person, other than a parent, who:

(a) has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child custody proceeding; and

(b) has been awarded legal custody by a court or claims a right to legal custody under the law of this state.

(14) "Physical custody" means the physical care and supervision of a child.

(15) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(16) "Tribe" means an Indian tribe, or band, or Alaskan Native village which is recognized by federal law or formally acknowledged by a state.

(17) "Writ of assistance" means an order issued by a court authorizing law enforcement officers to take physical custody of a child.

Section 37. Section 78-45c-209 is amended to read:

78-45c-209. Information to be submitted to court.

(1) In a child custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present address, the places where the child has lived during the last five years, and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit shall state whether the party:

(a) has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or [~~visitation~~] parent-time with the child and, if so, identify the court, the case number of the proceeding, and the date of the child custody determination, if any;

(b) knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court and the case number and the nature of the proceeding; and

(c) knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or [~~visitation~~] parent-time with, the child and, if so, the names and addresses of those persons.

(2) If the information required by Subsection (1) is not furnished, the court, upon its own motion or that of a party, may stay the proceeding until the information is furnished.

(3) If the declaration as to any of the items described in Subsection (1) is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and other matters pertinent to the court's jurisdiction and the disposition of the case.

(4) Each party has a continuing duty to inform the court of any proceeding in this or any other state that could affect the current proceeding.

(5) If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be put at risk by the disclosure of identifying information, that information shall be sealed and not disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety, or liberty of the party or child and determines that the disclosure is in the interest of justice.

Section 38. Section 78-45c-304 is amended to read:

78-45c-304. Temporary parent-time.

(1) A court of this state which does not have jurisdiction to modify a child custody determination may issue a temporary order enforcing:

(a) a [~~visitation~~] parent-time schedule made by a court of another state; or

(b) the [~~visitation~~] parent-time provisions of a child custody determination of another state that does not provide for a specific [~~visitation~~] parent-time schedule.

(2) If a court of this state makes an order under Subsection (1)(b), it shall specify in the order a period that it considers adequate to allow the petitioner to obtain an order from a court having jurisdiction under the criteria specified in Part 2, Jurisdiction. The order remains in effect until an order is obtained from the other court or the period expires.

Section 39. Section 78-45c-305 is amended to read:

78-45c-305. Registration of child custody determination.

(1) A child custody determination issued by a court of another state may be registered in this state, with or without a simultaneous request for enforcement, by sending to the district court in this state:

(a) a letter or other document requesting registration;

(b) two copies, including one certified copy, of the determination sought to be registered, and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified; and

(c) except as otherwise provided in Section 78-45c-209, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or [~~visitation~~] parent-time in the child custody determination sought to be registered.

(2) On receipt of the documents required by Subsection (1), the registering court shall:

(a) cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form; and

(b) serve notice upon the persons named pursuant to Subsection (1)(c) and provide them with

an opportunity to contest the registration in accordance with this section.

(3) The notice required by Subsection (2)(b) shall state:

(a) that a registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this state;

(b) that a hearing to contest the validity of the registered determination shall be requested within 20 days after service of notice; and

(c) that failure to contest the registration will result in confirmation of the child custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.

(4) A person seeking to contest the validity of a registered order shall request a hearing within 20 days after service of the notice. At that hearing, the court shall confirm the registered order unless the person contesting registration establishes that:

(a) the issuing court did not have jurisdiction under Part 2, Jurisdiction;

(b) the child custody determination sought to be registered has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Part 2, Jurisdiction; or

(c) the person contesting registration was entitled to notice, but notice was not given in accordance with the standards of Section 78-45c-108 in the proceedings before the court that issued the order for which registration is sought.

(5) If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law and the person requesting registration and all persons served shall be notified of the confirmation.

(6) Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter which could have been asserted at the time of registration.

Section 40. Section 78-45f-305 is amended to read:

78-45f-305. Duties and powers of responding tribunal.

(1) When a responding tribunal of this state receives a petition or comparable pleading from an initiating tribunal or directly pursuant to Subsection 78-45f-301(2)(c), it shall cause the petition or pleading to be filed and notify the petitioner where and when it was filed.

(2) A responding tribunal of this state, to the extent otherwise authorized by law, may do one or more of the following:

(a) issue or enforce a support order, modify a child support order, or render a judgment to determine parentage;

(b) order an obligor to comply with a support order, specifying the amount and the manner of compliance;

(c) order income withholding;

(d) determine the amount of any arrearages and specify a method of payment;

(e) enforce orders by civil or criminal contempt, or both;

(f) set aside property for satisfaction of the support order;

(g) place liens and order execution on the obligor's property;

(h) order an obligor to keep the tribunal informed of the obligor's current residential address, telephone number, employer, address of employment, and telephone number at the place of employment;

(i) issue a bench warrant for an obligor who has failed after proper notice to appear at a hearing ordered by the tribunal and enter the bench warrant in any local and state computer systems for criminal warrants;

(j) order the obligor to seek appropriate employment by specified methods;

(k) award reasonable attorneys' fees and other fees and costs; and

(l) grant any other available remedy.

(3) A responding tribunal of this state shall include in a support order issued under this chapter, or in the documents accompanying the order, the calculations on which the support order is based.

(4) A responding tribunal of this state may not condition the payment of a support order issued under this chapter upon compliance by a party with provisions for [~~visitation~~] parent-time.

(5) If a responding tribunal of this state issues an order under this chapter, the tribunal shall send a copy of the order to the petitioner and the respondent and to the initiating tribunal, if any.

CHAPTER 256
S. B. 166
Passed February 27, 2001
Approved March 19, 2001
Effective April 30, 2001
(Exception clause in Section 11)

MOBILE HOME PARK RESIDENCY AMENDMENTS

Sponsor: Dan R. Eastman

This act modifies the Mobile Home Park Residency Act, the Motor Vehicle Act, and the Government Records Access and Management Act. The act provides specific criteria by which the Motor Vehicle Division may disclose the name and address of the lienholder or mobile home owner of an abandoned mobile home to the owner of a mobile home park. The act modifies provisions related to changes in service charges to residents of mobile home parks. The act modifies provisions related to eviction proceedings. The act amends provisions related to lienholder and owner of a mobile home's rights and liabilities after receipt of a notice of abandonment or issuance of a writ or restitution. The act defines abandonment of a mobile home space or mobile home, and designates park procedure in the event of abandonment. The act amends the procedure after an eviction judgment has been entered by a court. The act allows mobile home park residents to form associations and outlines the requirements of those associations. The act also makes technical revisions. This act provides an effective date.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
41-1a-116, as last amended by Chapters 86 and 255, Laws of Utah 2000
57-16-4, as last amended by Chapter 1, Laws of Utah 1997, First Special Session
57-16-5, as last amended by Chapter 1, Laws of Utah 1997, First Special Session
57-16-6, as last amended by Chapter 1, Laws of Utah 1997, First Special Session
57-16-9 (Effective 07/01/01), as last amended by Chapter 252, Laws of Utah 2000
57-16-15.1, as last amended by Chapters 92 and 225, Laws of Utah 1994
63-2-202, as last amended by Chapter 312, Laws of Utah 1994

ENACTS:
57-16-13, Utah Code Annotated 1953
57-16-14, Utah Code Annotated 1953
57-16-16, Utah Code Annotated 1953

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

Section 1. Section 41-1a-116 is amended to read:

41-1a-116. Records -- Telephone requests for records.

(1) (a) All motor vehicle title and registration records of the division are protected unless the division determines based upon a written request by the subject of the record that the record is public.

(b) In addition to the provisions of this section, access to all division records shall be in accordance with the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. Chapter 123.

(2) (a) Access to public records is determined by Section 63-2-201.

(b) A record designated as public under Subsection (1)(a) may be used for advertising or solicitation purposes.

(3) Access to protected records, except as provided in Subsection (4), is determined by Section 63-2-202.

(4) In addition to those persons granted access to protected records under Section 63-2-202, the division may disclose a protected record to a licensed private investigator with a legitimate business need, a person with a bona fide security interest, the owner of a mobile home park subject to Subsection (5), or for purposes of safety, product recall, advisory notices, or statistical reports only upon receipt of a signed acknowledgment that the person receiving that protected record may not:

(a) disclose information from that record to any other person; or

(b) use information from that record for advertising or solicitation purposes.

(5) The division may disclose the name or address, or both, of the lienholder or mobile home owner of record, or both of them, to the owner of a mobile home park, if all of the following conditions are met:

(a) a mobile home located within the mobile home park owner's park has been abandoned under Section 57-16-13 or the resident is in default under the resident's lease;

(b) the mobile home park owner has conducted a reasonable search, but is unable to determine the name or address, or both, of the lienholder or mobile home owner of record; and

(c) the mobile home park owner has submitted a written statement to the division explaining the mobile home park owner's efforts to determine the name or address, or both, of the lienholder or mobile home owner of record before the mobile home park owner contacted the division.

[~~(5)~~] (6) The division may provide protected information to a statistic gathering entity under Subsection (4) only in summary form.

[~~(6)~~] (7) A person allowed access to protected records under Subsection (4) may request motor vehicle title or registration information from the division regarding any person, entity, or motor vehicle by submitting a written application on a form provided by the division.

[~~(7)~~] (8) If a person regularly requests information for business purposes, the division may

by rule allow the information requests to be made by telephone and fees as required under Subsection [~~(8)~~] (9) charged to a division billing account to facilitate division service. The rules shall require that the:

(a) division determine if the nature of the business and the volume of requests merit the dissemination of the information by telephone;

(b) division determine if the credit rating of the requesting party justifies providing a billing account; and

(c) the requestor submit to the division an application that includes names and signatures of persons authorized to request information by telephone and charge the fees to the billing account.

[~~(8)~~] (9) (a) The division shall charge a reasonable search fee determined under Section 63-38-3.2 for the research of each record requested.

(b) Fees may not be charged for furnishing information to persons necessary for their compliance with this chapter.

(c) Law enforcement agencies have access to division records free of charge.

Section 2. Section 57-16-4 is amended to read:

57-16-4. Termination of lease or rental agreement -- Required contents of lease -- Increases in rents or fees -- Sale of homes.

(1) A mobile home park or its agents may not terminate a lease or rental agreement upon any ground other than as specified in this chapter.

(2) Each agreement for the lease of mobile home space shall be written and signed by the parties. Each lease shall contain at least the following information:

(a) the name and address of the mobile home park owner and any persons authorized to act for the owner, upon whom notice and service of process may be served;

(b) the type of the leasehold, and whether it be term or periodic;

(c) a full disclosure of all rent, service charges, and other fees presently being charged on a periodic basis;

(d) the date or dates on which the payment of rent, fees, and service charges are due; and

(e) all rules that pertain to the mobile home park which, if broken, may constitute grounds for eviction.

(3) (a) Increases in rent or fees for periodic tenancies shall be unenforceable until 60 days after notice of the increase is mailed to the resident. If service charges are not included in the rent, service charges may be increased during the leasehold period after notice to the resident is given, and increases or decreases in electricity rates shall be passed through to the resident. [~~Increases or decreases in the total cost of other service charges shall be passed through to the resident.~~] Annual income to the park for service charges may not exceed the actual cost to the park of providing the services on an annual basis. In determining the costs of the services, the park may include maintenance costs related to those utilities which are part of the service charges.

(b) The mobile home park may not alter the date or dates on which rent, fees, and service charges are due unless a 60-day written notice precedes the alteration.

(4) Any rule or condition of a lease purporting to prevent or unreasonably limit the sale of a mobile home belonging to a resident is void and unenforceable. The mobile home park may, however, reserve the right to approve the prospective purchaser of a mobile home who intends to become a resident, but the approval may not be unreasonably withheld. The mobile home park may require proof of ownership as a condition of approval. The mobile home park may unconditionally refuse to approve any purchaser of a mobile home who does not register prior to purchase.

(5) If all of the conditions of Section 41-1a-116 are met, a mobile home park may request from the Motor Vehicle Division the names and addresses of the lienholder or owner of any mobile home located in the park.

[~~(5)~~] (6) A mobile home park may not restrict a resident's right to advertise for sale or to sell his mobile home. However, the park may limit the size of a "for sale" sign affixed to the mobile home to not more than 144 square inches.

[~~(6)~~] (7) A mobile home park may not compel a resident who desires to sell his mobile home, either directly or indirectly, to sell it through an agent designated by the mobile home park.

[~~(7)~~] (8) In order to upgrade the quality of a mobile home park, it may require that a mobile home be removed from the park upon sale if:

(a) the mobile home does not meet minimum size specifications; or

(b) the mobile home is in rundown condition or in disrepair.

Section 3. Section 57-16-5 is amended to read:

57-16-5. Cause required for terminating lease -- Causes -- Cure periods -- Notice.

(1) An agreement for the lease of mobile home space in a mobile home park may be terminated by mutual agreement or for any one or more of the following causes:

(a) failure of a resident to comply with a mobile home park rule:

(i) relating to repair, maintenance, or construction of awnings, skirting, decks, or sheds for a period of 60 days after receipt of a notice of noncompliance from the mobile home park; or

(ii) relating to any other park rule for a period of seven days after receipt of notice of noncompliance from the mobile home park, except relating to maintenance of a resident's yard and space, the mobile home park may elect not to proceed with the seven-day cure period and may provide the resident with written notice as provided in Subsection (2);

(b) repeated failure of a resident to abide by a mobile home park rule, if the original notice of noncompliance states that another violation of the same or a different rule might result in forfeiture without any further period of cure;

(c) behavior by a resident [~~which~~], any other person who resides with a resident, or who is an invited guest or visitor of a resident, that threatens or substantially endangers the security [~~and~~], safety, well-being, or health of [~~the~~] other [~~residents~~] persons in the park or threatens [~~the~~] or damages property in the park;

(d) nonpayment of rent, fees, or service charges; or

(e) a change in the land use or condemnation of the mobile home park or any part of it.

(2) If the mobile home park elects not to proceed with the seven-day cure period in Subsection (1)(a)(ii), a 15-day notice shall:

(a) state that if the resident does not perform [~~his~~] the resident's duties or obligations under the lease agreement or rules of the mobile home park within 15 days, the mobile home park may enter onto the resident's space and cure any default;

(b) state the expected reasonable cost of curing the default;

(c) require the resident to pay all costs incurred by the mobile home park to cure the default by the first day of the month following receipt of a billing statement from the mobile home park;

(d) state that the payment required under Subsection (2)(b) shall be considered additional rent; and

(e) state that the resident's failure to make the payment required by Subsection (2)(b) in a timely manner shall be a default of the resident's lease and shall subject the resident to all other remedies available to the mobile home park for a default, including remedies available for failure to pay rent.

Section 4. Section 57-16-6 is amended to read:

57-16-6. Action for lease termination -- Prerequisite procedure.

A legal action to terminate a lease based upon a cause set forth in Section 57-16-5 may not be commenced except in accordance with the following procedure:

(1) Before issuance of any summons and complaint, the mobile home park shall send or serve written notice to the resident or [~~subtenant~~] person:

(a) by delivering a copy of the notice personally;

(b) by sending a copy of the notice through registered or certified mail addressed to the resident or [~~subtenant~~] person at [~~his~~] the person's place of residence;

(c) if the resident or [~~subtenant~~] person is absent from [~~his~~] the person's place of residence, by leaving a copy of the notice with some person of suitable age and discretion at [~~his~~] the individual's residence and sending a copy through [~~the~~] registered or certified mail addressed to the resident or [~~subtenant~~] person at [~~his~~] the person's place of residence; or

(d) if a person of suitable age or discretion cannot be found, by affixing a copy of the notice in a conspicuous place on the resident's or [~~subtenant's~~] person's mobile home and also sending a copy through [~~the~~] registered or certified mail addressed to the resident or [~~subtenant~~] person at [~~his~~] the person's place of residence.

(2) The notice shall set forth the cause for the notice and, if the cause is one which can be cured, the time within which the resident or person has to cure. The notice shall also set forth the time after which the mobile home park may commence legal action against the resident or person if cure is not effected, as follows:

(a) In the event of failure to abide by a mobile home park rule, the notice shall provide for a cure period as provided in Subsections 57-16-5(1)(a) and (2), except in the case of repeated violations and, shall state that if a cure is not timely effected, or a written agreement made between the mobile home park and the resident allowing for a variation in the rule or cure period, eviction proceedings may be initiated immediately.

(b) If [~~the~~] a resident, a member, or invited guest or visitor of the resident's household commits repeated violations of a rule, a summons and complaint may be issued three days after a notice is served.

(c) If a resident, a member, or invited guest or visitor of the resident's household behaves in a manner that threatens or substantially endangers the well-being, security, safety, or health of other persons in the park or threatens or damages property [~~of other residents~~] in the park, eviction proceedings may commence immediately.

(d) If a resident does not pay rent, fees, or service charges, the notice shall provide a five-day cure period and, that if cure is not timely effected, or a written agreement made between the mobile home park and the resident allowing for a variation in the rule or cure period, eviction proceedings may be initiated immediately.

(e) If there is a planned change in land use or condemnation of the park, the notice shall provide that the resident has 90 days after receipt of the notice to vacate the mobile home park if no governmental approval or permits incident to the planned change are required, and if governmental approval and permits are required, that the resident has 90 days to vacate the mobile home park after all permits or approvals incident to the planned change are obtained.

(3) If the planned change in land use or condemnation requires the approval of a governmental agency, the mobile home park, in addition to the notice required by Subsection (2)(e), shall send written notice of the date set for the initial hearing to each resident at least seven days before the date scheduled for the initial hearing.

(4) Regardless of whether the change of use requires the approval of any governmental agency, if the resident was not a resident of the mobile home park at the time the initial change of use notice was issued to residents the owner shall give notice of the change of use to the resident before he occupies the mobile home space.

(5) (a) Eviction proceedings commenced under this chapter and based on causes set forth in Subsections 57-16-5(1)(a), (b), and (e) shall be brought in accordance with the Utah Rules of Civil Procedure and shall not be treated as unlawful detainer actions under Title 78, Chapter 36, Forcible Entry and Detainer. Eviction proceedings commenced under this chapter and based on causes of action set forth in Subsections 57-16-5(1)(c) and (d) may, at the election of the mobile home park, be treated as actions brought under this chapter and the unlawful detainer provisions of Title 78, Chapter 36, Forcible Entry and Detainer.

(b) If unlawful detainer is charged, the court shall endorse on the summons the number of days within which the defendant is required to appear and defend the action, which shall not be less than five days or more than 20 days from the date of service.

Section 5. Section 57-16-9 (Effective 07/01/01) is amended to read:

57-16-9 (Effective 07/01/01). Lienholder's liability for rent and fees.

(1) Notwithstanding [~~Section~~] Sections 38-3-2 and [~~Section~~] 70A-9a-402, the lienholder of record of a mobile home, or if there is no lienholder, the owner of a mobile home, is primarily liable to the mobile home park owner or operator for rent and service charges if a mobile home is not removed within ten days after receipt of written notice that a mobile home has been abandoned, as defined in Section 57-16-13, or that a writ of restitution has been issued. The lienholder[~~,~~] or owner of a mobile home, however, is only liable for rent that accrues [~~after receipt of such~~] from the day the lienholder or owner of a mobile home receives notice. Rent shall be paid on a monthly basis on the due date established in the lease agreement. The lienholder or owner of a mobile home is not responsible for any rent if the mobile home is removed within ten days after receipt of the notice.

(2) If the lienholder pays rent and service charges as provided by this section, the lienholder shall have the unconditional right to resell the mobile home within the park, subject to the purchaser being approved for residency by the park, which approval cannot be unreasonably withheld, and subject to Subsection (4). If the lienholder or owner of a mobile home does not commence paying rent and service charges to the mobile home park within 30 days after receipt of a written notice provided by Subsection (1), the mobile home park may require the lienholder or owner of a mobile home to remove the mobile home from the park and the lienholder or owner of a mobile home shall be liable for all rent which accrues from the date of the notice to the date the mobile home is removed from the park.

(3) The notice required under Subsection (1) shall be sent to the lienholder or owner of a mobile home by certified mail, return receipt requested, and shall inform the lienholder or owner of a mobile home that the mobile home park may require the lienholder or owner of a mobile home to remove the mobile home from the park if the lienholder or owner of a mobile home has not commenced paying rent and service charges to the park within 30 days after receipt of the notice.

(4) The mobile home park may require the lienholder to remove a mobile home covered by this section from the park if the mobile home, at the time of sale, is in rundown condition or disrepair, if the mobile home does not meet the park's minimum size specifications, or if the mobile home does not comply with reasonable park rules. The lienholder shall have 60 days to make repairs and comply with park rules after notice of required repairs and rule violations is given to the lienholder by the park owner or its agent.

(5) If a lienholder or owner of a mobile home does not commence paying rent and service charges to the park within 30 days after receipt of a written notice provided under Subsection (1), and if the lienholder or owner of a mobile home does not remove the mobile home from the park within the 30-day period, the park has the right to immediately remove the mobile home from the park and store it on behalf of the lienholder or owner of a mobile home. The mobile home park has the right to recover moving and storage costs from the lienholder or owner of a mobile home.

(6) The prevailing party is entitled to court costs and reasonable attorney fees for any action commenced to enforce any rights under this section.

(7) If a lienholder pays rent and service charges as provided in Subsection (2), the mobile home is not considered abandoned under Section 57-16-13; however, the personal property in the mobile home is considered abandoned.

Section 6. Section 57-16-13 is enacted to read:

57-16-13. Abandonment.

Abandonment of a mobile home space and a mobile home within a mobile home park is presumed in either of the following situations:

(1) The resident or occupant of the mobile home has:

(a) not notified the park that the resident or occupant will be absent from the mobile home space or mobile home, and the resident or occupant fails to pay rent within 45 days after the due date; and

(b) there is no reasonable evidence, other than the presence of the resident's or occupant's personal

property, that the resident or occupant is continuing to occupy the mobile home space and the mobile home.

(2) The resident or occupant of the mobile home has:

(a) not notified the park that the resident or occupant will be absent from the mobile home space where the mobile home is located, and the resident or occupant fails to pay rent when due; and

(b) the resident's or occupant's personal property has been removed from the mobile home, and there is no reasonable evidence that the resident or occupant is occupying the mobile home space or mobile home.

Section 7. Section 57-16-14 is enacted to read:

57-16-14. Abandoned premises -- Retaking by owner -- Liability of resident or occupant -- Personal property of resident or occupant left on mobile home space.

(1) In the event of abandonment under Section 57-16-13, the park may retake the mobile home space and attempt to relet the space at a fair rental value. The resident or occupant who abandoned the premises is liable:

(a) for the entire rent, service charges, and fees that would otherwise be due until the premise is relet or for a period not to exceed 90 days, whichever comes first; and

(b) any costs incurred by the park necessary to relet the mobile home space at fair market value, including the costs of:

(i) moving the mobile home from the mobile home space;

(ii) storing the mobile home; and

(iii) restoring the mobile home space to a reasonable condition, including the cost of replacing or repairing landscaping that was damaged by the resident or occupant.

(2) (a) If the resident or occupant has abandoned the mobile home space, the mobile home, or both, and has left personal property, including the mobile home, on the mobile home space, the park is entitled to remove the property from the mobile home space, store it for the resident or occupant, and recover actual moving and storage costs from the resident, the occupant, or both. With respect to the mobile home, however, the park may elect to contact the lienholder under Section 57-16-9, or to store the mobile home on the mobile home space, while attempting to notify the resident or occupant under Subsection (2)(b)(i).

(b) (i) The park shall make reasonable efforts to notify the resident or occupant of the location of the personal property, and that the personal property will be sold at the expiration of 30 days if not redeemed and removed by the resident or occupant. Reasonable efforts require that the park send written notice by regular mail to the resident or occupant at the last-known address within the park if the park is unaware of any subsequent address. To redeem the personal property, the resident or occupant is required to pay the reasonable storage and moving charges.

(ii) If the personal property has been in storage for over 30 days, notice has been given as required by Subsection (2)(b)(i), and the resident or occupant has made no reasonable effort to recover the personal property, the park may:

(A) sell the personal property and apply the proceeds toward any amount the resident or occupant owes; or

(B) donate the personal property to charity or dispose of the property.

(c) Any excess money from the sale of the personal property, including the mobile home, shall be handled as specified in Title 67, Chapter 4a, Part 2, Standards for Determining When Property is Abandoned or Unclaimed.

(d) Nothing contained in this chapter shall be in derogation of or alter the owner's rights under Title 38, Chapter 3, Lessors' Liens.

Section 8. Section 57-16-15.1 is amended to read:

57-16-15.1. Eviction proceeding.

(1) Eviction proceedings commenced under this chapter and based on causes of action set forth in Subsections 57-16-5(1)[~~, (2), and (5)~~] (a), (b), and (e), and eviction proceedings commenced under this chapter based on causes of action set forth in Subsections 57-16-5[~~(3) and (4), where~~] (1)(c) and (d), in which a landlord elects to bring an action under this chapter and not under the unlawful detainer provisions of Title 78, Chapter 36, Forcible Entry and Detainer, shall comply with the following:

(a) A judgment may be entered upon the merits or upon default. A judgment entered in favor of the plaintiff may:

(i) include an order of restitution of the premises; and

(ii) declare the forfeiture of the lease or agreement.

(b) The jury, or the court if the proceedings are tried without a jury or upon the defendant's default, shall assess the damages resulting to the plaintiff from any of the following:

(i) waste of the premises during the resident's tenancy, if waste is alleged in the complaint and proved; and

(ii) the amount of rent due.

(c) If the lease or agreement provides for reasonable attorneys' fees, the court shall order reasonable attorneys' fees to the prevailing party.

(d) Whether or not the lease or agreement provides for court costs and attorneys' fees, if the proceeding is contested, the court shall order court costs and attorneys' fees to the prevailing party.

(e) Except as provided in Subsection (1)(f), after judgment has been entered under this section,

judgment and restitution may be enforced no sooner than 15 days from the date the judgment is entered. The person who commences the action shall mail through registered or certified mail a copy of the judgment to the [~~lease premises by registered mail within five days of the date the judgment is entered~~] resident or the resident's agent or attorney as required by the Utah Rules of Civil Procedure.

(f) If a resident tenders to the mobile home park postjudgment rent, in the form of cash, cashier's check, or certified funds, then restitution may be delayed for the period of time covered by the postjudgment rent, which time period shall not exceed 15 days from the date of the judgment unless a longer period is agreed to in writing by the mobile home park.

(2) Eviction proceedings commenced under this chapter and based on causes of action set forth in Subsections 57-16-5[~~(3) and (4)~~] (1)(c) and (d), in which the mobile home park has elected to treat as actions also brought under the unlawful detainer provisions of Title 78, Chapter 36, Forcible Entry and Detainer, shall be governed by Sections 78-36-10 and 78-36-10.5 with respect to judgment for restitution, damages, rent, enforcement of the judgment and restitution.

(3) The provisions in Section 78-36-10.5 shall apply to this section except the enforcement time limits in Subsections (1)(e) and (f) shall govern.

Section 9. Section 57-16-16 is enacted to read:

57-16-16. Mobile home park residents' associations.

(1) Residents in mobile home parks shall have the right to form associations comprised of residents of the mobile home park in which they reside.

(2) The membership of the resident association may elect officers of the association at a meeting where a majority of the members are present.

(3) Except in emergency situations, there shall be seven days' notice of an association meeting to all residents of the park. All residents of the park, even if not members of the association, may attend association meetings. The park operator and non-resident employees shall not:

(a) be members of the association;

(b) attend meetings unless invited by the association;

(c) unlawfully interfere with the operation of the association; or

(d) interfere with a resident's right to contact a state or local heath department, a municipality, or other group to complain about the health and safety conditions of the mobile home park.

(4) A resident association may not impose fees, dues, or assessments, upon its members unless a majority of the members agree to the assessment of fees, dues, or assessments.

(5) The park operator shall permit meetings by any resident association located within the park relating to manufactured home living or social or education purposes, including forums for or speeches by public officials or candidates for public office.

(6) Resident associations may schedule with the park operator the use of the common facilities of the park, if any, free of charge. However, the resident association shall be responsible for any damage to the common facilities caused by a member of the resident association while a common facility is in use by the resident association.

Section 10. Section 63-2-202 is amended to read:

63-2-202. Access to private, controlled, and protected documents.

(1) Upon request, a governmental entity shall disclose a private record to:

(a) the subject of the record;

(b) the parent or legal guardian of an unemancipated minor who is the subject of the record;

(c) the legal guardian of a legally incapacitated individual who is the subject of the record;

(d) any other individual who:

(i) has a power of attorney from the subject of the record;

(ii) submits a notarized release from the subject of the record or his legal representative dated no more than 90 days before the date the request is made; or

(iii) if the record is a medical record described in Subsection 63-2-302(1)(b), is a health care provider, as defined in [~~Subsection~~] Section 26-33a-102[~~(7)~~], if releasing the record or information in the record is consistent with normal professional practice and medical ethics; or

(e) any person to whom the record must be provided pursuant to court order as provided in Subsection (7) or a legislative subpoena as provided in Title 36, Chapter 14.

(2) (a) Upon request, a governmental entity shall disclose a controlled record to:

(i) a physician, psychologist, certified social worker, insurance provider or agent, or a government public health agency upon submission of a release from the subject of the record that is dated no more than 90 days prior to the date the request is made and a signed acknowledgment of the terms of disclosure of controlled information as provided by Subsection (2)(b); and

(ii) any person to whom the record must be disclosed pursuant to court order as provided in Subsection (7) or a legislative subpoena as provided in Title 36, Chapter 14.

(b) A person who receives a record from a governmental entity in accordance with Subsection (2)(a)(i) may not disclose controlled information from that record to any person, including the subject of the record.

(3) If there is more than one subject of a private or controlled record, the portion of the record that pertains to another subject shall be segregated from the portion that the requester is entitled to inspect.

(4) Upon request, a governmental entity shall disclose a protected record to:

(a) the person who submitted the record;

(b) any other individual who:

(i) has a power of attorney from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification; or

(ii) submits a notarized release from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification or from their legal representatives dated no more than 90 days prior to the date the request is made; [~~or~~]

(c) any person to whom the record must be provided pursuant to a court order as provided in Subsection (7) or a legislative subpoena as provided in Title 36, Chapter 14[~~.~~]; or

(d) the owner of a mobile home park, subject to the conditions of Subsection 41-1a-116(5).

(5) A governmental entity may disclose a private, controlled, or protected record to another governmental entity, political subdivision, another state, the United States, or a foreign government only as provided by Section 63-2-206.

(6) Before releasing a private, controlled, or protected record, the governmental entity shall obtain evidence of the requester's identity.

(7) A governmental entity shall disclose a record pursuant to the terms of a court order signed by a judge from a court of competent jurisdiction, provided that:

(a) the record deals with a matter in controversy over which the court has jurisdiction;

(b) the court has considered the merits of the request for access to the record; and

(c) the court has considered and, where appropriate, limited the requester's use and further disclosure of the record in order to protect privacy interests in the case of private or controlled records, business confidentiality interests in the case of records protected under Subsections 63-2-304(1) and (2), and privacy interests or the public interest in the case of other protected records;

(d) to the extent the record is properly classified private, controlled, or protected, the interests favoring access, considering limitations thereon, outweigh the interests favoring restriction of access; and

(e) where access is restricted by a rule, statute, or regulation referred to in Subsection 63-2-201(3)(b), the court has authority independent of this chapter to order disclosure.

(8) (a) A governmental entity may disclose or authorize disclosure of private or controlled records for research purposes if the governmental entity:

(i) determines that the research purpose cannot reasonably be accomplished without use or disclosure of the information to the researcher in individually identifiable form;

(ii) determines that the proposed research is bona fide, and that the value of the research outweighs the infringement upon personal privacy;

(iii) requires the researcher to assure the integrity, confidentiality, and security of the records and requires the removal or destruction of the individual identifiers associated with the records as soon as the purpose of the research project has been accomplished;

(iv) prohibits the researcher from disclosing the record in individually identifiable form, except as provided in Subsection (8)(b), or from using the record for purposes other than the research approved by the governmental entity; and

(v) secures from the researcher a written statement of his understanding of and agreement to the conditions of this subsection and his understanding that violation of the terms of this subsection may subject him to criminal prosecution under Section 63-2-801.

(b) A researcher may disclose a record in individually identifiable form if the record is disclosed for the purpose of auditing or evaluating the research program and no subsequent use or disclosure of the record in individually identifiable form will be made by the auditor or evaluator except as provided by this section.

(c) A governmental entity may require indemnification as a condition of permitting research under this Subsection (8).

(9) (a) Under Subsections 63-2-201(5)(b) and 63-2-401(6) a governmental entity may disclose records that are private under Section 63-2-302, or protected under Section 63-2-304 to persons other than those specified in this section.

(b) Under Subsection 63-2-403(11)(b) the Records Committee may require the disclosure of records that are private under Section 63-2-302, controlled under Section 63-2-303, or protected under Section 63-2-304 to persons other than those specified in this section.

(c) Under Subsection 63-2-404(8) the court may require the disclosure of records that are private under Section 63-2-302, controlled under Section 63-2-303, or protected under Section 63-2-304 to persons other than those specified in this section.

Section 11. Effective date.

This act takes effect on April 30, 2001, except that Section 57-16-9 takes effect on July 1, 2001.

CHAPTER 257
S. B. 167
Passed February 23, 2001
Approved March 19, 2001
Effective April 30, 2001

PENALTY FOR WRONGFUL MECHANICS' LIEN

Sponsor: L. Steven Poulton

This act modifies the Mechanics' Lien Code and Utah Construction Trades Licensing Act. The act prohibits the recovery of attorneys' fees by a person who has filed a wrongful mechanics' lien. The act provides for civil penalties for filing a mechanics' lien in an amount greater than the actual sum due. The act provides for costs and attorneys' fees in cases where an offer of judgment is unreasonably rejected. The act provides for action against a construction trades license held by a person or entity filing a wrongful mechanics' lien.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
38-1-18, as last amended by Chapter 172, Laws of Utah 1995
38-1-25, as last amended by Chapter 125, Laws of Utah 1997
58-55-501, as last amended by Chapters 233 and 317, Laws of Utah 2000

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

Section 1. Section 38-1-18 is amended to read:

38-1-18. Attorneys' fees -- Offer of judgment.

(1) Except as provided in Section 38-11-107 and in Subsection (2), in any action brought to enforce any lien under this chapter the successful party shall be entitled to recover a reasonable attorneys' fee, to be fixed by the court, which shall be taxed as costs in the action.

(2) A person who files a wrongful lien as provided in Section 38-1-25 is not entitled to recover attorneys' fees under Subsection (1).

(3) A party against whom any action is brought to enforce a lien under this chapter may make an offer of judgment pursuant to Rule 68 of the Utah Rules of Civil Procedure. If the offer is not accepted and the judgment finally obtained by the offeree is not more favorable than the offer, the offeree shall pay the costs and attorneys' fees incurred by the offeror after the offer was made.

Section 2. Section 38-1-25 is amended to read:

38-1-25. Abuse of lien right -- Penalty.

(1) Any person entitled to record or file a lien under Section 38-1-3 is guilty of a class B misdemeanor who intentionally causes a claim of lien against any property, which contains a greater demand than the sum due to be recorded or filed:

[~~(1)~~] (a) with the intent to cloud the title;

[~~(2)~~] (b) to exact from the owner or person liable by means of the excessive claim of lien more than is due; or

[~~(3)~~] (c) to procure any unjustified advantage or benefit.

(2) In addition to any criminal penalties under Subsection (1), a person who violates Subsection (1) is liable to the owner of the property or an original contractor or subcontractor who is affected by the lien for the greater of:

(a) twice the amount by which the wrongful lien exceeds the amount actually due; or

(b) the actual damages incurred by the owner of the property.

Section 3. Section 58-55-501 is amended to read:

58-55-501. Unlawful conduct.

Unlawful conduct includes:

(1) engaging in a construction trade, acting as a contractor, an alarm business or company, or an alarm company agent, or representing oneself to be engaged in a construction trade or to be acting as a contractor in a construction trade requiring licensure, unless the person doing any of these is appropriately licensed or exempted from licensure under this chapter;

(2) acting in a construction trade, as an alarm business or company, or as an alarm company agent beyond the scope of the license held;

(3) hiring or employing in any manner an unlicensed person, other than an employee for wages who is not required to be licensed under this chapter, to engage in a construction trade for which licensure is required or to act as a contractor or subcontractor in a construction trade requiring licensure;

(4) applying for or obtaining a building permit either for oneself or another when not licensed or exempted from licensure as a contractor under this chapter;

(5) issuing a building permit to any person for whom there is no evidence of a current license or exemption from licensure as a contractor under this chapter;

(6) applying for or obtaining a building permit for the benefit of or on behalf of any other person who is required to be licensed under this chapter but who is not licensed or is otherwise not entitled to obtain or receive the benefit of the building permit;

(7) failing to obtain a building permit when required by law or rule;

(8) submitting a bid for any work for which a license is required under this chapter by a person not licensed or exempted from licensure as a contractor under this chapter;

(9) willfully or deliberately misrepresenting or omitting a material fact in connection with an application to obtain or renew a license under this chapter;

(10) allowing one's license to be used by another except as provided by statute or rule;

(11) doing business under a name other than the name appearing on the license, except as permitted by statute or rule;

(12) if licensed as a specialty contractor in the electrical trade or plumbing trade, journeyman plumber, residential journeyman plumber, journeyman electrician, master electrician, or residential electrician, failing to directly supervise an apprentice under one's supervision or exceeding the number of apprentices one is allowed to have under his supervision;

(13) if licensed as a contractor or representing oneself to be a contractor, receiving any funds in payment for a specific project from an owner or any other person, which funds are to pay for work performed or materials and services furnished for that specific project, and after receiving the funds to exercise unauthorized control over the funds by failing to pay the full amounts due and payable to persons who performed work or furnished materials or services within a reasonable period of time;

(14) employing as an alarm company an unlicensed individual as an alarm company agent, except as permitted under the exemption from licensure provisions under Section 58-1-307;

(15) if licensed as an alarm company or alarm company agent, filing with the division fingerprint cards for an applicant which are not those of the applicant, or are in any other way false or fraudulent and intended to mislead the division in its consideration of the applicant for licensure;

(16) if licensed under this chapter, willfully or deliberately disregarding or violating:

(a) the building or construction laws of this state or any political subdivision;

(b) the safety and labor laws applicable to a project;

(c) any provision of the health laws applicable to a project;

(d) the workers' compensation insurance laws of the state applicable to a project;

(e) the laws governing withholdings for employee state and federal income taxes, unemployment taxes, FICA, or other required withholdings; or

(f) reporting, notification, and filing laws of this state or the federal government;

(17) aiding or abetting any person in evading the provisions of this chapter or rules established under the authority of the division to govern this chapter; [~~or~~]

(18) engaging in the construction trade or as a contractor for the construction of residences of up to two units when not currently registered or exempt from registration as a qualified beneficiary under Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act[~~.~~]; or

(19) wrongfully filing a mechanics' lien in violation of Section 38-1-25.

CHAPTER 258
S. B. 168
Passed February 28, 2001
Approved March 19, 2001
Effective April 30, 2001

CERTAIN MUNICIPAL SERVICES IN FIRST CLASS COUNTIES

Sponsor: Leonard M. Blackham

This act modifies provisions relating to Counties and to Revenue and Taxation to require counties of the first class to provide detective investigative services in their unincorporated area. The act requires those counties to decrease their countywide tax levy by a specified amount. The act authorizes cities and towns located within those counties to increase their tax levy to generate within the city or town the same amount of revenue as the county would have collected from within the city or town. The act modifies notice and hearing requirements for cities and towns that increase their levy and expands an exemption from notice and hearing requirements for cities and towns that increase their tax rate to offset a countywide reduction relating to advanced life support and paramedic services. The act also makes technical changes.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
17-34-1, as repealed and reenacted by Chapter 199, Laws of Utah 2000
17-34-3, as last amended by Chapter 199, Laws of Utah 2000
59-2-924, as last amended by Chapters 22, 61, 141 and 199, Laws of Utah 2000

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

Section 1. Section 17-34-1 is amended to read:

17-34-1. Counties may provide municipal services -- First class counties required to provide paramedic and detective investigative services.

(1) For purposes of this chapter, "municipal-type services" means:

(a) fire protection service;

(b) waste and garbage collection and disposal;

(c) planning and zoning;

(d) street lighting;

(e) in a county of the first class[~~,~~]:

(i) advanced life support and paramedic services; and

(ii) detective investigative services; and

(f) all other services and functions that are required by law to be budgeted, appropriated, and accounted for from a municipal services fund or a municipal capital projects fund as defined under Chapter 36, Uniform Fiscal Procedures Act for Counties.

(2) A county may:

(a) provide municipal-type services to areas of the county outside the limits of cities and towns without providing the same services to cities or towns;

(b) fund those services by:

(i) levying a tax on taxable property in the county outside the limits of cities and towns; or

(ii) charging a service charge or fee to persons benefitting from the municipal-type services.

(3) Each county of the first class shall provide [~~advanced life support and paramedic services~~] to the area of the county outside the limits of cities and towns[~~.~~]:

(a) advanced life support and paramedic services; and

(b) detective investigative services.

Section 2. Section 17-34-3 is amended to read:

17-34-3. Taxes or service charges.

(1) (a) If a county furnishes the municipal-type services and functions described in Section 17-34-1 to areas of the county outside the limits of incorporated cities or towns, the entire cost of the services or functions so furnished shall be defrayed from funds that the county has derived from [~~either~~]:

(i) taxes [~~which~~] that the county may lawfully levy or impose outside the limits of incorporated towns or cities;

(ii) service charges or fees the county may impose upon the persons benefited in any way by the services or functions; or

(iii) a combination of these sources.

(b) As the taxes or service charges or fees are levied and collected, they shall be placed in a special revenue fund of the county and shall be disbursed only for the rendering of the services or functions established in Section 17-34-1 within the unincorporated areas of the county.

(2) For the purpose of levying taxes, service charges, or fees provided in this section, the county legislative body may establish a district or districts in the unincorporated areas of the county.

(3) Nothing contained in this chapter may be construed to authorize counties to impose or levy taxes not otherwise allowed by law.

(4) (a) A county required under Subsection 17-34-1(3) to provide advanced life support and paramedic services to the unincorporated area of the county and that previously paid for those services through a countywide levy may increase its levy under Subsection (1)(a)(i) to generate in the unincorporated area of the county the same amount of revenue as the county loses from that area due to

the required decrease in the countywide certified tax rate under Subsection 59-2-924(2)[~~(h)~~](k)(i).

(b) An increase in tax rate under Subsection (4)(a) is exempt from the notice and hearing requirements of Sections 59-2-918 and 59-2-919.

Section 3. Section 59-2-924 is amended to read:

59-2-924. Report of valuation of property to county auditor and commission -- Transmittal by auditor to governing bodies -- Certified tax rate -- Adoption of tentative budget.

(1) (a) Before June 1 of each year, the county assessor of each county shall deliver to the county auditor and the commission the following statements:

(i) a statement containing the aggregate valuation of all taxable property in each taxing entity; and

(ii) a statement containing the taxable value of any additional personal property estimated by the county assessor to be subject to taxation in the current year.

(b) The county auditor shall, on or before June 8, transmit to the governing body of each taxing entity:

(i) the statements described in Subsections (1)(a)(i) and (ii);

(ii) an estimate of the revenue from personal property;

(iii) the certified tax rate; and

(iv) all forms necessary to submit a tax levy request.

(2) (a) (i) The "certified tax rate" means a tax rate that will provide the same ad valorem property tax revenues for a taxing entity as were collected by that taxing entity for the prior year.

(ii) For purposes of this Subsection (2), "ad valorem property tax revenues" do not include:

(A) collections from redemptions;

(B) interest; and

(C) penalties.

(iii) Except as provided in Subsection (2)(a)(iv), the certified tax rate shall be calculated by dividing the ad valorem property tax revenues collected for the prior year by the taxing entity by the taxable value established in accordance with Section 59-2-913.

(iv) The certified tax rates for the taxing entities described in this Subsection (2)(a)(iv) shall be calculated as follows:

(A) except as provided in Subsection (2)(a)(iv)(B), for new taxing entities the certified tax rate is zero;

(B) for each municipality incorporated on or after July 1, 1996, the certified tax rate is:

(I) in a county of the first, second, or third class, the levy imposed for municipal-type services under Sections 17-34-1 and 17-36-9; and

(II) in a county of the fourth, fifth, or sixth class, the levy imposed for general county purposes and such other levies imposed solely for the municipal-type services identified in Section 17-34-1 and Subsection 17-36-3(22);

(C) for debt service voted on by the public, the certified tax rate shall be the actual levy imposed by that section, except that the certified tax rates for the following levies shall be calculated in accordance with Section 59-2-913 and this section:

(I) school leeways provided for under Sections 11-2-7, 53A-16-110, 53A-17a-125, 53A-17a-127, 53A-17a-134, 53A-17a-143, 53A-17a-145, and 53A-21-103; and

(II) levies to pay for the costs of state legislative mandates or judicial or administrative orders under Section 59-2-906.3.

(v) (A) A judgment levy imposed under Section 59-2-1328 or Section 59-2-1330 shall be established at that rate which is sufficient to generate only the revenue required to satisfy one or more eligible judgments, as defined in Section 59-2-102.

(B) The ad valorem property tax revenue generated by the judgment levy shall not be considered in establishing the taxing entity's aggregate certified tax rate.

(b) (i) For the purpose of calculating the certified tax rate, the county auditor shall use the taxable value of property on the assessment roll.

(ii) For purposes of Subsection (2)(b)(i), the taxable value of property on the assessment roll does not include new growth as defined in Subsection (2)(b)(iii).

(iii) "New growth" means:

(A) the difference between the increase in taxable value of the taxing entity from the previous calendar year to the current year; minus

(B) the amount of an increase in taxable value described in Subsection (2)(b)(iv).

(iv) Subsection (2)(b)(iii)(B) applies to the following increases in taxable value:

(A) the amount of increase to locally assessed real property taxable values resulting from factoring, reappraisal, or any other adjustments; or

(B) the amount of an increase in the taxable value of property assessed by the commission under Section 59-2-201 resulting from a change in the method of apportioning the taxable value prescribed by:

(I) the Legislature;

(II) a court;

(III) the commission in an administrative rule; or

(IV) the commission in an administrative order.

(c) Beginning January 1, 1997, if a taxing entity receives increased revenues from uniform fees on tangible personal property under Section 59-2-404, 59-2-405, or 59-2-405.1 as a result of any county imposing a sales and use tax under Chapter 12, Part 11, County Option Sales and Use Tax, the taxing entity shall decrease its certified tax rate to offset the increased revenues.

(d) (i) Beginning July 1, 1997, if a county has imposed a sales and use tax under Chapter 12, Part 11, County Option Sales and Use Tax, the county's certified tax rate shall be:

(A) decreased on a one-time basis by the amount of the estimated sales tax revenue to be distributed to the county under Subsection 59-12-1102(3); and

(B) increased by the amount necessary to offset the county's reduction in revenue from uniform fees on tangible personal property under Section 59-2-404, 59-2-405, or 59-2-405.1 as a result of the decrease in the certified tax rate under Subsection (2)(d)(i)(A).

(ii) The commission shall determine estimates of sales tax distributions for purposes of Subsection (2)(d)(i).

(e) Beginning January 1, 1998, if a municipality has imposed an additional resort communities sales tax under Section 59-12-402, the municipality's certified tax rate shall be decreased on a one-time basis by the amount necessary to offset the first 12 months of estimated revenue from the additional resort communities sales tax imposed under Section 59-12-402.

(f) For the calendar year beginning on January 1, 1999, and ending on December 31, 1999, a taxing entity's certified tax rate shall be adjusted by the amount necessary to offset the adjustment in revenues from uniform fees on tangible personal property under Section 59-2-405.1 as a result of the adjustment in uniform fees on tangible personal property under Section 59-2-405.1 enacted by the Legislature during the 1998 Annual General Session.

(g) For purposes of Subsections (2)(h) through (j):

(i) "1998 actual collections" means the amount of revenues a taxing entity actually collected for the calendar year beginning on January 1, 1998, under Section 59-2-405 for:

(A) motor vehicles required to be registered with the state that weigh 12,000 pounds or less; and

(B) state-assessed commercial vehicles required to be registered with the state that weigh 12,000 pounds or less.

(ii) "1999 actual collections" means the amount of revenues a taxing entity actually collected for the calendar year beginning on January 1, 1999, under Section 59-2-405.1.

(h) For the calendar year beginning on January 1, 2000, the commission shall make the following adjustments:

(i) the commission shall make the adjustment described in Subsection (2)(i)(i) if, for the calendar year beginning on January 1, 1999, a taxing entity's 1998 actual collections were greater than the sum of:

(A) the taxing entity's 1999 actual collections; and

(B) any adjustments the commission made under Subsection (2)(f);

(ii) the commission shall make the adjustment described in Subsection (2)(i)(ii) if, for the calendar year beginning on January 1, 1999, a taxing entity's 1998 actual collections were greater than the taxing entity's 1999 actual collections, but the taxing entity's 1998 actual collections were less than the sum of:

(A) the taxing entity's 1999 actual collections; and

(B) any adjustments the commission made under Subsection (2)(f); and

(iii) the commission shall make the adjustment described in Subsection (2)(i)(iii) if, for the calendar year beginning on January 1, 1999, a taxing entity's 1998 actual collections were less than the taxing entity's 1999 actual collections.

(i) (i) For purposes of Subsection (2)(h)(i), the commission shall increase a taxing entity's certified tax rate under this section and a taxing entity's certified revenue levy under Section 59-2-906.1 by the amount necessary to offset the difference between:

(A) the taxing entity's 1998 actual collections; and

(B) the sum of:

(I) the taxing entity's 1999 actual collections; and

(II) any adjustments the commission made under Subsection (2)(f).

(ii) For purposes of Subsection (2)(h)(ii), the commission shall decrease a taxing entity's certified tax rate under this section and a taxing entity's certified revenue levy under Section 59-2-906.1 by the amount necessary to offset the difference between:

(A) the sum of:

(I) the taxing entity's 1999 actual collections; and

(II) any adjustments the commission made under Subsection (2)(f); and

(B) the taxing entity's 1998 actual collections.

(iii) For purposes of Subsection (2)(h)(iii), the commission shall decrease a taxing entity's certified tax rate under this section and a taxing entity's certified revenue levy under Section 59-2-906.1 by the amount of any adjustments the commission made under Subsection (2)(f).

(j) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, for purposes of Subsections (2)(f) through (i), the commission may

make rules establishing the method for determining a taxing entity's 1998 actual collections and 1999 actual collections.

(k) (i) (A) For fiscal year 2000, the certified tax rate of each county [~~to which~~] required under Subsection [~~17-34-3(4)(a) applies~~] 17-34-1(3)(a) to provide advanced life support and paramedic services to the unincorporated area of the county shall be decreased by the amount necessary to reduce revenues in that fiscal year by an amount equal to the difference between the amount the county budgeted in its 2000 fiscal year budget for advanced life support and paramedic services countywide and the amount the county spent during fiscal year 2000 for those services, excluding amounts spent from a municipal services fund for those services.

(B) For fiscal year 2001, the certified tax rate of each county to which Subsection [~~17-34-3(4)(a)~~] (2)(k)(i)(A) applies shall be decreased by the amount necessary to reduce revenues in that fiscal year by the amount that the county spent during fiscal year 2000 for advanced life support and paramedic services countywide, excluding amounts spent from a municipal services fund for those services.

(ii) (A) [~~For fiscal year 2001, a~~] A city or town located within a county of the first class to which Subsection [~~17-34-3(4)(a)~~] (2)(k)(i) applies may increase its certified tax rate by the amount necessary to generate within the city or town the same amount of revenues as the county would collect from that city or town if the decrease under Subsection (2)(k)(i) did not occur.

(B) An increase under Subsection (2)(k)(ii)(A), whether occurring in a single fiscal year or spread over multiple fiscal years, is not subject to the notice and hearing requirements of Sections 59-2-918 and 59-2-919.

(l) (i) The certified tax rate of each county required under Subsection 17-34-1(3)(b) to provide detective investigative services to the unincorporated area of the county shall be decreased:

(A) in fiscal year 2001 by the amount necessary to reduce revenues in that fiscal year by at least $4,400,000; and

(B) in fiscal year 2002 by the amount necessary to reduce revenues in that fiscal year by an amount equal to the difference between $9,258,412 and the amount of the reduction in revenues under Subsection (2)(l)(i)(A).

(ii) (A) (I) Beginning with municipal fiscal year 2002, a city or town located within a county to which Subsection (2)(l)(i) applies may increase its certified tax rate to generate within the city or town the same amount of revenue as the county would have collected during county fiscal year 2001 from within the city or town except for Subsection (2)(l)(i)(A).

(II) Beginning with municipal fiscal year 2003, a city or town located within a county to which Subsection (2)(l)(i) applies may increase its certified tax rate to generate within the city or town the same amount of revenue as the county would have collected during county fiscal year 2002 from within the city or town except for Subsection (2)(l)(i)(B).

(B) (I) Except as provided in Subsection (2)(l)(ii)(B)(II), an increase in the city or town's certified tax rate under Subsection (2)(l)(ii)(A), whether occurring in a single fiscal year or spread over multiple fiscal years, is subject to the notice and hearing requirements of Sections 59-2-918 and 59-2-919.

(II) For an increase under this Subsection (2)(l)(ii) that generates revenue that does not exceed the same amount of revenue as the county would have collected except for Subsection (2)(l)(i), the requirements of Sections 59-2-918 and 59-2-919 do not apply if the city or town:

(aa) publishes a notice that meets the size, type, placement, and frequency requirements of Section 59-2-919, reflects that the increase is a shift of a tax from one imposed by the county to one imposed by the city or town, and explains how the revenues from the tax increase will be used; and

(bb) holds a public hearing on the tax shift that may be held in conjunction with the city or town's regular budget hearing.

(3) (a) On or before June 22, each taxing entity shall annually adopt a tentative budget.

(b) If the taxing entity intends to exceed the certified tax rate, it shall notify the county auditor of:

(i) its intent to exceed the certified tax rate; and

(ii) the amount by which it proposes to exceed the certified tax rate.

(c) The county auditor shall notify all property owners of any intent to exceed the certified tax rate in accordance with Subsection 59-2-919(2).

(4) (a) The taxable value for the base year under Subsection 17A-2-1247(2)(a) or 17A-2-1202(2), as the case may be, shall be reduced for any year to the extent necessary to provide a redevelopment agency established under Title 17A, Chapter 2, Part 12, Utah Neighborhood Development Act, with approximately the same amount of money the agency would have received without a reduction in the county's certified tax rate if:

(i) in that year there is a decrease in the certified tax rate under Subsection (2)(c) or (2)(d)(i);

(ii) the amount of the decrease is more than 20% of the county's certified tax rate of the previous year; and

(iii) the decrease results in a reduction of the amount to be paid to the agency under Section 17A-2-1247 or 17A-2-1247.5.

(b) The taxable value of the base year under Subsection 17A-2-1247(2)(a) or 17A-2-1202(2), as the case may be, shall be increased in any year to the extent necessary to provide a redevelopment agency with approximately the same amount of

money as the agency would have received without an increase in the certified tax rate that year if:

(i) in that year the taxable value for the base year under Subsection 17A-2-1247(2) or 17A-2-1202(2) is reduced due to a decrease in the certified tax rate under Subsection (2)(c) or (2)(d)(i); and

(ii) The certified tax rate of a city, school district, or special district increases independent of the adjustment to the taxable value of the base year.

(c) Notwithstanding a decrease in the certified tax rate under Subsection (2)(c) or (2)(d)(i), the amount of money allocated and, when collected, paid each year to a redevelopment agency established under Title 17A, Chapter 2, Part 12, Utah Neighborhood Development Act, for the payment of bonds or other contract indebtedness, but not for administrative costs, may not be less than that amount would have been without a decrease in the certified tax rate under Subsection (2)(c) or (2)(d)(i).

CHAPTER 259
S. B. 169
Passed February 23, 2001
Approved March 19, 2001
Effective July 1, 2001

CHARTER SCHOOL AMENDMENTS

Sponsor: Howard A. Stephenson

This act modifies provisions related to the State System of Public Education to amend the Utah Charter Schools Act. The act removes the pilot program status of charter schools. It authorizes the creation of an additional four charter schools under the sponsorship of the State Board of Education for the 2001-02 school year and an increase of up to four per year for the following school year. The act provides a procedure to remedy noncompliance with the Utah Charter Schools Act by a charter school and allows for termination of the school's charter if the school does not come into compliance within an established timeline. The act modifies the funding formula to provide additional monies for charter schools. The act provides for sponsoring of charter schools by local school boards. The act takes effect July 1, 2001.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
53A-1a-502, as enacted by Chapter 231, Laws of Utah 1998
53A-1a-505, as enacted by Chapter 231, Laws of Utah 1998
53A-1a-506, as enacted by Chapter 231, Laws of Utah 1998
53A-1a-508, as enacted by Chapter 231, Laws of Utah 1998
53A-1a-509, as enacted by Chapter 231, Laws of Utah 1998
53A-1a-513, as enacted by Chapter 231, Laws of Utah 1998

ENACTS:
53A-1a-515, Utah Code Annotated 1953

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

Section 1. Section 53A-1a-502 is amended to read:

53A-1a-502. Authorization - Creation of charter schools.

(1) (a) [~~As a second part of the Schools for the 21st Century initiative the~~] The Legislature authorizes the creation of up to [~~eight~~] 12 charter schools for [~~a three-year pilot program~~] the 2001-02 school year.

(b) The number of charter schools authorized under this section shall be increased by up to four for the 2002-03 school year, with no further increases in the number authorized under this Subsection (1) until the program has been thoroughly evaluated by the State Board of Education and a recommendation made to the Legislature as to whether the program should be expanded further.

(c) (i) The additional charter schools authorized under Subsections (1)(a) and (b) may be established only after an applicant:

(A) has sought and been denied sponsorship by a local school board under Section 53A-1a-515; and

(B) subsequently seeks and is granted sponsorship by the State Board of Education under Section 53A-1a-505.

(ii) (A) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the State Board of Education shall make a rule providing a timeline that would allow an applicant denied sponsorship by a local school board to apply for and receive sponsorship approval by the State Board of Education and begin operating in the same school year as anticipated in its original application to the local school board.

(B) The timeline shall be consistent with the application and approval process set out in Section 53A-1a-515.

(2) Charter schools are considered to be part of the state's public education system.

(3) A charter school may be established by creating a new school or converting an existing public school to charter status.

Section 2. Section 53A-1a-505 is amended to read:

53A-1a-505. Sponsors of charter schools -- Application process.

(1) An applicant for a charter school shall seek sponsorship of its charter from the State Board of Education, except as otherwise provided in Section 53A-1a-515.

(2) (a) (i) The applicant shall also provide a copy of the application to the local school board of the school district in which the proposed charter school shall be located either before or at the same time it files its application with the state board.

(ii) The local board shall review the application and may offer suggestions or recommendations to the applicant or the state board prior to its acting on the application.

(iii) The state board shall give due consideration to suggestions or recommendations made by the local school board under Subsection (2)(a)(ii).

(b) The State Board of Education shall review and, by majority vote, either approve or deny the application within 60 days after the application is received by the board.

(c) The state board's action under Subsection (2)(b) is final action subject to judicial review.

(3) (a) The applicant and the state board shall set forth the terms and conditions for the operation of the charter school in a written contractual agreement.

(b) The contract is the school's charter.

(4) The State Office of Education and the school district in which the school is to be located may provide technical assistance to an applicant upon written request.

Section 3. Section 53A-1a-506 is amended to read:

53A-1a-506. Eligible students.

(1) All resident students of the state qualify for admission to a charter school, subject to the limitations set forth in this section.

(2) (a) A charter school shall enroll an eligible student who submits a timely application, unless the number of applications exceeds the capacity of a program, class, grade level, or the school.

(b) (i) If the number of applications exceeds the capacity of a program, class, grade level, or the school, then students shall be selected on a random basis except that the school may give preference to a student of a parent who has actively participated in the development of the school and to siblings of students presently enrolled in the school[~~, not to exceed 20% of the student population for preferential selection~~].

(ii) The school may give preference to students who reside within the school district in which the school is located.

(c) When a public school converts to charter status, the school shall give enrollment preference to students who would have otherwise attended it as a regular public school.

(3) A charter school may not discriminate in its admission policies or practices on the same basis as other public schools may not discriminate in their admission policies and practices.

Section 4. Section 53A-1a-508 is amended to read:

53A-1a-508. Content of a charter -- Term -- Renewal.

(1) The major issues involving the operation of a charter school shall be considered in advance by the applicant for a charter school and written into the school's charter.

(2) The governing body of the charter school and the State Board of Education shall sign the charter, except as otherwise provided under Section 53A-1a-515.

(3) The charter shall include:

(a) the age or grade levels to be served by the school;

(b) the governance structure of the [~~charter~~] school;

(c) the financial plan for the school and the provisions which will be made for auditing the school under Subsection 53A-1a-507(4)(a);

(d) the mission and education goals of the school, the curriculum offered, and the methods of assessing whether students are meeting educational goals, to include at a minimum participation in the [~~state's public education statewide assessment program and end-of-level core curriculum assessments~~] Utah Performance Assessment System for Students under Chapter 1, Part 6, Achievement Tests;

(e) admission and dismissal procedures, including suspension procedures;

(f) procedures to review complaints of parents regarding the operation of the school;

(g) the opportunity for parental involvement at the school;

(h) how the school will provide adequate liability and other appropriate insurance for the school, its governing body, and its employees, including its ability to participate in the state's risk management insurance program;

(i) the proposed school calendar, including the length of the school day and school year;

(j) whether any agreements have been entered into or plans developed with school districts regarding participation of charter school students in extracurricular activities within the school districts;

(k) the physical facility in which the school will be located, if known at the time of application, and its address;

(l) the qualifications to be required of the teachers; and

(m) in the case of an existing public school converting to charter status, alternative arrangements for current students who choose not to attend the charter school and for current teachers who choose not to teach at the school after its conversion to charter status.

(4) A charter is for three years and may be modified during the three-year term by mutual agreement of the [~~state~~] board and the governing body of the school.

Section 5. Section 53A-1a-509 is amended to read:

53A-1a-509. Accountability report -- Noncompliance.

(1) The governing body of a charter school shall make annual progress reports to the State Board of Education, the local school board of the district in which the school is located, and the Legislature through its Education Interim Committee.

(2) The report shall contain at least the following information:

(a) the school's progress toward achieving its goals as set out in the charter; and

(b) financial records of the school, including revenues, expenditures, and employee salary and benefit levels.

(3) (a) If a charter school is found to be out of compliance with the requirements of Section 53A-1a-507 or Subsections 53A-1a-509(1) and (2), then the State Board of Education shall notify the

school's governing board in writing that the school has a reasonable time to remedy the deficiency, except as otherwise provided in Subsection 53A-1a-510(3)(a).

(b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the State Board of Education shall make a rule regarding the timeline for remedying deficiencies under Subsection (3)(a).

(c) (i) If the school does not remedy the deficiency within the established timeline, then the State Board of Education may terminate the school's charter.

(ii) Subsections 53A-1a-510(2)(a) and (b) do not apply to an action taken under this Subsection (3).

Section 6. Section 53A-1a-513 is amended to read:

53A-1a-513. Funding for charter schools.

(1) (a) A student enrolled in a charter school is considered a resident student of the school district in which the school is located for purposes of state funding, including, but not limited to, [~~moneys~~] monies the student would generate as a result of qualifying for such programs as special education, students at risk, and gifted and talented.

(b) (i) The State Board of Education shall adopt rules to provide:

(A) that the school district in which a charter school student resides shall pay to the school district in which the charter school is located 1/2 of the amount by which the resident district's per student expenditure exceeds the value of the state funding under Subsection (1)(a); and

(B) for the distribution of [~~moneys~~] monies to charter schools under this section.

(ii) The rules adopted pursuant to Subsection (1)(b)(i)(A) that require 1/2 rather than all of the amount take into account state school funding laws that require certain local moneys to remain within the resident district.

(c) The Legislature shall provide an appropriation for charter schools for each of their students equal to the lesser of 1/2 of the statewide school district average per student expenditure in excess of state funding under Subsection (1)(a) or 1/2 of the amount by which the resident district's per student expenditure exceeds the value of the state funding under Subsection (1)(a) to supplement the local monies received by a charter school under Subsection (1)(b)(i)(A).

[~~(c)~~] (d) If a charter school is providing eligible programs or services to eligible students funded by federal [~~moneys~~] monies, any eligible student enrolled in a charter school in the school district shall receive federal [~~moneys~~] monies for the same level of service provided students in the schools operated by the local school board.

(2) (a) The board shall also adopt rules relating to the transportation of students to and from charter schools, taking into account Sections 53A-2-210 and 53A-17a-127.

(b) The governing body of the charter school may provide transportation through an agreement or contract with the local school board, a private provider, or with parents.

(3) (a) (i) The state superintendent of public instruction may allocate grants for both start-up and ongoing costs to eligible charter school applicants from monies appropriated for the implementation of this [~~act~~] part.

[~~(b)~~] (ii) Applications for the grants shall be filed on a form determined by the state superintendent and in conjunction with the application for a charter.

[~~(c)~~] (iii) The amount of a grant may vary based upon the size, scope, and special circumstances of the charter school.

[~~(d)~~] (iv) The governing board of the charter school shall use the grant to meet the expenses of the school as established in the school's charter.

(b) The State Board of Education shall coordinate the distribution of federal monies appropriated to help fund costs for establishing and maintaining charter schools within the state.

(4) (a) A charter school may receive, hold, manage and use any devise, bequest, grant, endowment, gift, or donation of any property made to the school for any of the purposes of this part[~~, except that federal grants targeted specifically for charter schools may not be used to fund charter schools under the pilot program if the State Board of Education or the charter school determines that conditions attached to using the grant would compromise the integrity of the pilot program~~].

(b) It is unlawful for any person affiliated with a charter school to demand or request any gift, donation, or contribution from a parent, teacher, employee, or other person affiliated with the charter school as a condition for employment or enrollment at the school or continued attendance at the school.

(5) (a) The State Office of Education shall publish and make available to charter school applicants a list of vacant and unused portions of buildings that are owned by the state or by school districts in the state and that may be suitable for the operation of a charter school.

(b) The locally elected school board of the district in which a district owned building is located must give its approval before the building can be placed on the list under Subsection (5)(a).

(c) The list shall include the address and owner of each building and a short description of the building.

(d) Nothing in this Subsection (5) requires the owner of a building on the list to sell or lease the building or a portion of the building to a charter school.

Section 7. Section 53A-1a-515 is enacted to read:

53A-1a-515. Charters sponsored by local school boards.

(1) Individuals and entities identified in Section 53A-1a-505 may enter into an agreement with a local school board to establish and operate a charter school within the geographical boundaries of the school district administered by the board, subject to the same requirements established in Sections 53A-1a-504 through 53A-1a-514, except as otherwise provided in this section.

(2) These schools are in addition to the limited number of charter schools authorized under the sponsorship of the State Board of Education in Section 53a-1a-502.

(3) (a) An existing public school that converts to charter status may:

(i) continue to receive the same services from the school district that it received prior to its conversion; or

(ii) contract out for some or all of those services with other public or private providers.

(b) Any other charter school sponsored by a local school board may contract with the board to receive some or all of the services referred to in Subsection (3)(a).

(4) (a) (i) A public school that converts to a charter school under Subsection (3)(a) shall receive funding on the same basis as it did prior to its conversion to a charter school.

(ii) The school may also receive federal monies designated for charter schools under any federal program.

(b) (i) Any other charter school sponsored by a local school board shall receive funding as provided under Subsection (4)(a), except as otherwise provided in Subsection (4)(b)(ii).

(ii) If the charter school is not operating out of a facility owned by the school district, then the funding provisions of Section 53A-1a-513 apply.

(5) (a) A local school board that receives an application for a charter school under this section shall, within 45 days, either accept or reject the application.

(b) If the board rejects the application, it shall notify the applicant in writing of the reason for the rejection.

(c) The applicant may submit a revised application for reconsideration by the board.

(d) If the local school board refuses to sponsor the applicant, then the applicant may seek a charter from the State Board of Education under Section 53A-1a-505.

(e) The local board's action under Subsection (5)(d) is final action subject to judicial review.

(6) A local school board is limited in the number of charter schools it may sponsor under this section as follows:

(a) there is no limitation on the number of existing public schools within a school district that may convert to charter status under this section; and

(b) the number of charter schools not converted from existing public schools is limited to an enrollment equal to 4% of the school district's student population as reported in the most recent annual statistical report required under Section 53A-3-403.

(7) A local school board may terminate a charter school it sponsors under this section for the same reasons and under the same procedures followed by the State Board of Education under Subsection 53A-1a-509(3).

Section 8. Effective date.

This act takes effect on July 1, 2001.

CHAPTER 260
S. B. 170
Passed February 23, 2001
Approved March 19, 2001
Effective July 1, 2001

UTAH REVISED LIMITED LIABILITY COMPANY ACT

Sponsor: John L. Valentine

This act modifies the Utah Limited Liability Company Act by repealing the current act and replacing it with the Utah Revised Limited Liability Company Act. The act provides for definitions and authorizes the formation of limited liability companies within the state. The act sets forth the structure, characteristics, and powers of limited liability companies. The act sets forth the filing requirements with the Division of Corporations and Commercial Code. The act provides for the service of process on limited liability companies. The act outlines the process for formation of a limited liability company. The act provides for operating agreements and sets forth the standards for the adoption of operating agreements. The act grants limited liability to members and managers of limited liability companies and defines the exceptions to limited liability. The act sets forth the standards required of members and managers of a limited liability company. The act provides for the management of limited liability companies. The act provides standards for the treatment of contributions, capital accounts, and profits and losses. The act sets standards for distributions. The act provides for the assignment of interests. The act sets forth the procedures and standards for dissolution. The act sets forth the procedures and standards for winding up a limited liability company. The act provides for conversions and mergers. The act allows for the provision of professional services through a limited liability company. The act provides for the treatment and domestication of foreign limited liability companies. The act provides for derivative actions. The act provides for indemnification. The act amends the Utah Revised Uniform Limited Partnership Act to allow for conversions. The act corrects cross references to the Limited Liability Company Act. The act provides an effective date.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
48-2a-101, as last amended by Chapter 189, Laws of Utah 1991
53B-5-114 (Effective 04/30/01), as last amended by Chapter 300, Laws of Utah 2000
53C-1-201, as last amended by Chapter 237, Laws of Utah 2000

ENACTS:
48-2a-108, Utah Code Annotated 1953
48-2a-109, Utah Code Annotated 1953
48-2a-110, Utah Code Annotated 1953
48-2a-111, Utah Code Annotated 1953
48-2a-112, Utah Code Annotated 1953
48-2a-113, Utah Code Annotated 1953
48-2c-101, Utah Code Annotated 1953
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48-2c-1808, Utah Code Annotated 1953
48-2c-1809, Utah Code Annotated 1953
48-2c-1901, Utah Code Annotated 1953
48-2c-1902, Utah Code Annotated 1953

REPEALS:

48-2b-101, as enacted by Chapter 258, Laws of Utah 1991
48-2b-102, as last amended by Chapter 21, Laws of Utah 1999
48-2b-103, as last amended by Chapter 56, Laws of Utah 1998
48-2b-104, as last amended by Chapter 56, Laws of

Utah 1998
48-2b-105, as last amended by Chapter 261, Laws of Utah 2000
48-2b-106 (Effective 04/30/01), as last amended by Chapters 131 and 300, Laws of Utah 2000
48-2b-106 (Superseded 04/30/01), as last amended by Chapter 131, Laws of Utah 2000
48-2b-107, as enacted by Chapter 258, Laws of Utah 1991
48-2b-108, as last amended by Chapter 61, Laws of Utah 1994
48-2b-109, as last amended by Chapter 176, Laws of Utah 1996
48-2b-110, as enacted by Chapter 258, Laws of Utah 1991
48-2b-111, as enacted by Chapter 258, Laws of Utah 1991
48-2b-112, as enacted by Chapter 258, Laws of Utah 1991
48-2b-113, as last amended by Chapter 176, Laws of Utah 1996
48-2b-114, as enacted by Chapter 258, Laws of Utah 1991
48-2b-115, as enacted by Chapter 258, Laws of Utah 1991
48-2b-116, as last amended by Chapter 56, Laws of Utah 1998
48-2b-117, as last amended by Chapter 176, Laws of Utah 1996
48-2b-118, as last amended by Chapter 176, Laws of Utah 1996
48-2b-119, as last amended by Chapter 168, Laws of Utah 1992
48-2b-120, as last amended by Chapter 131, Laws of Utah 2000
48-2b-121, as last amended by Chapter 131, Laws of Utah 2000
48-2b-122, as last amended by Chapter 159, Laws of Utah 1997
48-2b-123, as last amended by Chapter 176, Laws of Utah 1996
48-2b-124, as enacted by Chapter 258, Laws of Utah 1991
48-2b-125, as last amended by Chapter 176, Laws of Utah 1996
48-2b-126, as last amended by Chapter 56, Laws of Utah 1998
48-2b-127, as enacted by Chapter 258, Laws of Utah 1991
48-2b-128, as enacted by Chapter 258, Laws of Utah 1991
48-2b-129, as enacted by Chapter 258, Laws of Utah 1991
48-2b-130, as enacted by Chapter 258, Laws of Utah 1991
48-2b-131, as last amended by Chapter 159, Laws of Utah 1997
48-2b-132, as last amended by Chapter 56, Laws of Utah 1998
48-2b-133, as enacted by Chapter 258, Laws of Utah 1991
48-2b-134, as last amended by Chapter 176, Laws of Utah 1996
48-2b-135, as enacted by Chapter 258, Laws of Utah 1991
48-2b-136, as enacted by Chapter 258, Laws of Utah 1991
48-2b-137, as last amended by Chapter 159, Laws of Utah 1997
48-2b-138, as enacted by Chapter 258, Laws of Utah 1991
48-2b-139, as enacted by Chapter 258, Laws of Utah 1991
48-2b-140, as enacted by Chapter 258, Laws of Utah 1991
48-2b-141, as enacted by Chapter 258, Laws of Utah 1991
48-2b-142, as last amended by Chapter 131, Laws of Utah 2000
48-2b-143, as enacted by Chapter 258, Laws of Utah 1991
48-2b-144, as last amended by Chapter 176, Laws of Utah 1996
48-2b-145, as enacted by Chapter 258, Laws of Utah 1991
48-2b-146, as last amended by Chapter 30, Laws of Utah 1992
48-2b-147, as enacted by Chapter 258, Laws of Utah 1991
48-2b-148, as enacted by Chapter 258, Laws of Utah 1991
48-2b-149, as last amended by Chapter 168, Laws of Utah 1992
48-2b-150, as enacted by Chapter 258, Laws of Utah 1991
48-2b-151, as enacted by Chapter 258, Laws of Utah 1991
48-2b-152, as enacted by Chapter 258, Laws of Utah 1991
48-2b-153, as enacted by Chapter 258, Laws of Utah 1991
48-2b-154, as enacted by Chapter 258, Laws of Utah 1991
48-2b-155, as enacted by Chapter 258, Laws of Utah 1991
48-2b-156, as enacted by Chapter 258, Laws of Utah 1991
48-2b-157, as enacted by Chapter 168, Laws of Utah 1992
48-2b-158, as enacted by Chapter 83, Laws of Utah 1994

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

Section 1. Section 48-2a-101 is amended to read:

48-2a-101. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Certificate of limited partnership" means the certificate referred to in Section 48-2a-201, and the certificate as amended or restated.

(2) "Contribution" means any cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services, which a partner contributes to a limited partnership in his capacity as a partner.

(3) "Division" means the Division of Corporations and Commercial Code of the Utah Department of Commerce.

(4) "Event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in Section 48-2a-402.

(5) "Foreign limited partnership" means a partnership formed under the laws of any state other than this state and having as partners one or more general partners and one or more limited partners.

(6) "General partner" means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and named in the certificate of limited partnership as a general partner.

(7) "Limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement.

(8) "Limited partnership" and "domestic limited partnership" mean a partnership formed by two or more persons under the laws of this state and having one or more general partners and one or more limited partners.

(9) "Partner" means a limited or a general partner.

(10) "Partnership agreement" means any valid agreement, written or oral, of the partners as to the affairs of a limited partnership and the conduct of its business.

(11) "Partnership interest" means a partner's share of the profits and losses of a limited partnership and the right to receive distributions of partnership assets.

(12) "Person" means an individual, general partnership, limited partnership, limited association, domestic or foreign trust, estate, association, or corporation.

(13) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(14) "Subject entity" means a corporation, business trust or association, a real estate investment trust, a common-law trust, or any other unincorporated business, including a limited liability company, a general partnership, a registered limited liability partnership, or a foreign limited partnership.

Section 2. Section 48-2a-108 is enacted to read:

48-2a-108. Conversion of certain entities to a limited partnership.

Any subject entity may convert to a limited partnership under this chapter by complying with Section 48-2a-111 and filing with the division:

(1) articles of conversion that satisfy the requirements of Section 48-2a-109; and

(2) a certificate of limited partnership that satisfies the requirements of Section 48-2a-201.

Section 3. Section 48-2a-109 is enacted to read:

48-2a-109. Articles of conversion.

The articles of conversion shall state:

(1) the date on which and jurisdiction where the subject entity was first created, formed, incorporated, or otherwise came into being and, if it has changed, its jurisdiction immediately prior to its conversion to a domestic limited partnership;

(2) the name of the subject entity immediately prior to the filing of the articles of conversion;

(3) the name of the domestic limited partnership as set forth in its certificate of limited partnership filed in accordance with Section 48-2a-201;

(4) the future effective date or time, which shall be a date or time certain, of the conversion to a domestic limited partnership if it is not to be effective upon the filing of the articles of conversion and the certificate of limited partnership; and

(5) that the conversion has been duly approved by the owners of the subject entity.

Section 4. Section 48-2a-110 is enacted to read:

48-2a-110. Effect of conversion.

(1) Upon the filing with the division of the articles of conversion and the certificate of limited partnership or, if applicable, upon the future effective date or time of the articles of conversion and the certificate of limited partnership, the subject entity shall be converted into a domestic limited partnership and the limited partnership shall thereafter be subject to all of the provisions of this chapter, except that, notwithstanding Section 48-2a-201, the existence of the limited partnership shall be considered to have commenced on the date the subject entity commenced its existence in the jurisdiction in which the subject entity was first created, formed, incorporated, or otherwise came into being.

(2) The conversion of any subject entity into a domestic limited partnership shall not affect any obligations or liabilities of the subject entity incurred prior to its conversion to a domestic limited partnership or the personal liability of any person incurred prior to the conversion.

(3) When a conversion becomes effective under this section, for all purposes of the laws of this state, all of the rights, privileges, and powers of the subject entity that has converted, and all property, real, personal, and mixed, and all debts due to the subject entity, as well as all other things and causes of action belonging to the subject entity remain vested in the domestic limited partnership to which the subject entity has converted and shall be the property of the domestic limited partnership and the title to any real property vested by deed or otherwise in the subject entity shall not revert or be in any way impaired by reason of this chapter or of the conversion, but all rights of creditors and all liens upon any property of the subject entity shall be preserved unimpaired, and all debts, liabilities, and duties of the subject entity that has converted shall remain attached to the domestic limited partnership to which the subject entity has converted and may be enforced against it to the same extent as if those debts, liabilities, and duties had been incurred or contracted by it in its capacity as a domestic limited partnership.

(4) Unless otherwise agreed, or as required under applicable law of another jurisdiction, the converting subject entity shall not be required to wind up its affairs or pay its liabilities or distribute its assets, and the conversion shall not constitute a dissolution of the subject entity but shall constitute a continuation of the existence of the converting subject entity in the form of a domestic limited partnership. When any subject entity has been converted to a domestic limited partnership pursuant to this part, the domestic limited partnership shall thereafter, for all purposes of the laws of this state, be considered to be the same entity as the converting subject entity.

Section 5. Section 48-2a-111 is enacted to read:

48-2a-111. Approval of conversion.

Prior to filing articles of conversion with the division, the conversion must first be approved in the manner provided for by applicable law or by the document, instrument, agreement, or other writing, as the case may be, that governs the internal affairs of the subject entity, as appropriate, and the new partnership agreement, if any, for the domestic limited partnership must be approved by the same authorization required to approve the conversion. If applicable law, or the document, instrument, agreement, or other writing, as the case may be, that governs the internal affairs of the subject entity, does not provide for the manner of approving such conversion, then unanimous consent of the owners of the subject entity shall be required to approve the conversion and the new partnership agreement.

Section 6. Section 48-2a-112 is enacted to read:

48-2a-112. No limitation on other changes.

The provisions of Sections 48-2a-108 and 48-2a-111 shall not be construed to limit the accomplishment of a change in the law governing, or the domicile of, any other entity in this state by any other means provided for in a partnership agreement or other agreement or as otherwise permitted by law.

Section 7. Section 48-2a-113 is enacted to read:

48-2a-113. Approval of limited partnership conversion to subject entity.

(1) A domestic limited partnership may convert to any subject entity upon the authorization of the conversion in accordance with this section.

(a) If the partnership agreement specifies the manner of authorizing a conversion of the limited partnership, the conversion shall be authorized as specified in the partnership agreement.

(b) If the partnership agreement does not specify the manner of authorizing a conversion of the limited partnership and does not prohibit a conversion of the limited partnership, the conversion shall be authorized in the same manner as specified in the partnership agreement for authorizing a merger that involves the partnership as a constituent party to the merger.

(c) If the partnership agreement does not specify the manner of authorizing a conversion of the limited partnership or a merger that involves the limited partnership as a constituent party and does not prohibit a conversion of the limited partnership, the conversion must be authorized by unanimous consent of all partners.

(2) A converted domestic limited partnership shall, upon conversion to a subject entity, be considered the same entity as the subject entity and the rights, privileges, powers, and interests in property of the domestic limited partnership, as well as the debts, liabilities, and duties of the domestic limited partnership, shall not, for any purpose of the laws of this state, be considered, as a consequence of the conversion, to have been transferred to the subject entity to which the domestic limited partnership has converted.

(3) Unless otherwise agreed, the conversion of a domestic limited partnership to another entity, pursuant to this section, shall not require the domestic limited partnership to wind up its affairs or to pay its liabilities or distribute its assets under this chapter. In connection with conversion of a domestic limited partnership to a subject entity under this section, all interests in, or securities of or rights in the domestic limited partnership which is to be converted may be exchanged for or converted into cash, property, interests in, or securities of or rights in the entity into which the domestic limited partnership is converted or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, interests in, or securities of or rights in another entity.

Section 8. Section 48-2c-101 is enacted to read:

CHAPTER 2c. UTAH REVISED LIMITED LIABILITY COMPANY ACT

Part 1. General Provisions

48-2c-101. Title.

This chapter is known as the "Utah Revised Limited Liability Company Act."

Section 9. Section 48-2c-102 is enacted to read:

48-2c-102. Definitions.

As used in this chapter:

(1) "Bankruptcy" includes bankruptcy under federal bankruptcy law or under Utah insolvency law.

(2) "Business" includes any lawful trade, occupation, profession, business, investment, or other purpose or activity, whether or not that trade, occupation, profession, business, investment, purpose, or activity is carried on for profit.

(3) "Capital account," unless otherwise provided in the operating agreement, means the account, as adjusted from time to time, maintained by the company for each member to reflect the value of all

contributions by that member, the amount of all distributions to that member or the member's assignee, the member's share of profits, gains, and losses of the company, and the member's share of the net assets of the company upon dissolution and winding up that are distributable to the member or the member's assignee.

(4) "Company," "limited liability company," or "domestic company" means a limited liability company organized under or subject to this chapter.

(5) "Designated office" means the street address in this state where the records required to be maintained by Section 48-2c-112 are kept.

(6) (a) "Distribution" means a direct or indirect transfer by a company of money or other property, except an interest in the company, or incurrence of indebtedness by a company, to or for the benefit of members in the company in respect of any interest in the company.

(b) "Distribution" does not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits program.

(7) "Division" means the Division of Corporations and Commercial Code of the Utah Department of Commerce.

(8) "Entity" includes:

(a) a domestic or foreign corporation;

(b) a domestic or foreign nonprofit corporation;

(c) a company or foreign company;

(d) a profit or nonprofit unincorporated association;

(e) a business trust;

(f) an estate;

(g) a general partnership or a domestic or foreign limited partnership;

(h) a trust;

(i) a state;

(j) the United States; or

(k) a foreign government.

(9) "Filed with the division" means that a statement, document, or report complies with the requirements of Section 48-2c-207 and has been accepted for filing by the division and includes filing by electronic means approved by the division.

(10) "Foreign company" means a limited liability company organized under a law other than the laws of this state.

(11) "Interest in the company" means a member's economic rights in the company including the right to receive distributions from the company and the right to receive a portion of the net assets of the company upon dissolution and winding up of the company.

(12) "Manager" means a person elected or otherwise designated by the members to manage a manager-managed company pursuant to Part 8.

(13) "Manager-managed company" means a company whose management is vested in managers pursuant to Part 8.

(14) "Member" means a person with an ownership interest in a company and with the rights and obligations specified under this chapter.

(15) "Member-managed company" means a company whose management is vested in its members pursuant to Part 8.

(16) "Operating agreement" means any written agreement of the members concerning the business or purpose of the company and the conduct of its affairs, and which complies with Part 5. An operating agreement includes any written amendments agreed to by all members or other writing adopted in any other manner as may be provided in the operating agreement.

(17) "Person" means an individual or entity.

(18) "Proceeding" means any administrative, judicial or other trial, hearing, or other action, whether civil, criminal, or investigative, the result of which may be that a court, arbitrator, or governmental agency may enter a judgment, order, decree, or other determination which, if not appealed or reversed, would be binding upon any person subject to the jurisdiction of that court, arbitrator, or governmental agency.

(19) "Professional services" is as defined in Part 15.

(20) "Signed," "signs," or "signature" means a manual signature or authorized facsimile thereof and any electronic or digital signature approved by the division.

(21) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

Section 10. Section 48-2c-103 is enacted to read:

48-2c-103. Application of partnership provisions.

"Partnership" and "limited partnership," when used in any chapter or title other than this chapter or Title 48, Chapter 1, General and Limited Liability Partnership, and Title 48, Chapter 2a, Utah Revised Uniform Limited Partnership Act, are considered to include a company organized under this chapter, unless the context requires otherwise.

Section 11. Section 48-2c-104 is enacted to read:

48-2c-104. Separate legal entity.

A company formed under this chapter is a legal entity distinct from its members.

Section 12. Section 48-2c-105 is enacted to read:

48-2c-105. Purpose.

Except as provided in Subsection 48-2c-102(2) or in Part 15 of this chapter, each company formed under this chapter has the purpose of engaging in any business unless a more limited purpose is set forth in its articles of organization.

Section 13. Section 48-2c-106 is enacted to read:

48-2c-106. Name -- Exclusive right.

(1) The name of each company as set forth in the articles of organization:

(a) shall contain the terms:

(i) "limited company";

(ii) "limited liability company";

(iii) "L.C." or "LC"; or

(iv) "L.L.C." or "LLC";

(b) may not contain:

(i) the terms:

(A) "association";

(B) "corporation";

(C) "incorporated";

(D) "limited partnership";

(E) "limited";

(F) "L.P."; or

(G) "Ltd."; or

(ii) words or any abbreviation with a similar meaning in any other language;

(c) without the written consent of the United States Olympic Committee, may not contain the words:

(i) "Olympic";

(ii) "Olympiad"; or

(iii) "Citius Altius Fortius"; and

(d) without the written consent of the State Board of Regents in accordance with Section 53B-5-114, may not contain the words:

(i) "university";

(ii) "college"; or

(iii) "institute".

(2) (a) A person, other than a company formed under this chapter or a foreign company authorized to transact business in this state, may not use in its name in this state any of the terms:

(i) "limited liability company";

(ii) "limited company";

(iii) "L.L.C.";

(iv) "L.C.";

(v) "LLC"; or

(vi) "LC".

(b) Notwithstanding Subsection (2)(a):

(i) a foreign corporation whose actual name includes the word "limited" or "Ltd." may use its actual name in this state if it also uses:

(A) "corporation" or "corp."; or

(B) "incorporated" or "inc."; and

(ii) a limited liability partnership may use in its name the terms:

(A) "limited liability partnership";

(B) "L.L.P."; or

(C) "LLP".

(3) Except as authorized by Subsection (4), the name of a company must be distinguishable as defined in Subsection (5) upon the records of the division from:

(a) the actual name, reserved name, or fictitious or assumed name of any entity registered with the division; or

(b) any tradename, trademark, or service mark registered with the division.

(4) (a) A company may apply to the division for approval to file its articles of organization under or to reserve a name that is not distinguishable upon the division's records from one or more of the names described in Subsection (3).

(b) The division shall approve the name for which the company applies under Subsection (4)(a) if:

(i) the other person whose name is not distinguishable from the name under which the applicant desires to file:

(A) consents to the filing in writing; and

(B) submits an undertaking in a form satisfactory to the division to change its name to a name that is distinguishable from the name of the applicant; or

(ii) the applicant delivers to the division a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name in this state.

(5) A name is distinguishable from other names, trademarks, and service marks registered with the division if it contains one or more different words, letters, or numerals from other names upon the division's records.

(6) The following differences are not distinguishing:

(a) the terms:

(i) "corporation";

(ii) "incorporated";

(iii) "company";

(iv) "limited partnership";

(v) "limited";

(vi) "L.P." or "LP";

(vii) "Ltd.";

(viii) "limited liability company";

(ix) "limited company";

(x) "L.C." or "LC"; or

(xi) "L.L.C." or "LLC";

(b) an abbreviation of a word listed in Subsection (6)(a);

(c) the presence or absence of the words or symbols of the words "the," "and," "a," or "plus";

(d) differences in punctuation and special characters;

(e) differences in capitalization; or

(f) for a company that is formed in this state on or after May 4, 1998, or registered as a foreign company in this state on or after May 4, 1998, differences between singular and plural forms of words.

(7) A name that implies that a company is an agency of this state or any of its political subdivisions, if it is not actually a legally established agency or political subdivision, may not be approved for filing by the division.

Section 14. Section 48-2c-107 is enacted to read:

48-2c-107. Limited liability company name -- Limited rights.

The authorization to file articles of organization under this chapter or to reserve or register a company name as granted by the division does not:

(1) abrogate or limit the law governing unfair competition or unfair trade practices;

(2) derogate from the common law, the principles of equity, or the statutes of this state or of the United States with respect to the right to acquire and protect names and trademarks; or

(3) create an exclusive right in geographic or generic terms contained within a name.

Section 15. Section 48-2c-108 is enacted to read:

48-2c-108. Reservation of name.

(1) The exclusive right to register a name for use by a company may be reserved by any person.

(2) (a) The reservation described in Subsection (1)(a) shall be made by filing with the division an application signed under penalty of perjury.

(b) If the division finds that the name is available for use by a company, it shall reserve the name exclusively for the applicant for a period of 120 days. The name reservation may be renewed for any number of subsequent periods of 120 days.

(c) The reserved name may be transferred to any other person by filing with the division a notice of the transfer signed under penalty of perjury by the applicant for whom the name was reserved and specifying the name and address of the transferee.

Section 16. Section 48-2c-109 is enacted to read:

48-2c-109. Transaction of business outside state.

It is the intention of the Utah Legislature by the enactment of this chapter that the legal existence of companies formed under this chapter be recognized beyond the boundaries of this state and that, subject to any reasonable registration or filing requirements, any such company transacting business outside this state be recognized as a limited liability company and be granted full faith and credit under Section 1 of Article IV of the Constitution of the United States.

Section 17. Section 48-2c-110 is enacted to read:

48-2c-110. Powers.

Each company organized and existing under this chapter may:

(1) sue or be sued, institute or defend any action, or participate in any proceeding in its own name;

(2) purchase, take, receive, lease, or otherwise acquire, own, hold, improve, use, or otherwise deal in or with real or personal property or an interest in real or personal property, wherever situated;

(3) sell, convey, assign, encumber, mortgage, pledge, create a security interest in, lease, exchange or transfer, or otherwise dispose of all or any part of its property or assets;

(4) lend money to and otherwise assist its members, managers, and employees;

(5) purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, or otherwise use or deal in or with:

(a) shares or other interests in any entity or obligations of any person; or

(b) direct or indirect obligations of the United States or any other government, state, territory, governmental district, or municipality or of any instrumentality of any of them;

(6) make contracts or guarantees or incur liabilities, borrow money at such rates of interest as the company may determine, issue its notes, bonds, or other obligations, or secure any of its obligations by mortgage or pledge of all or any part of its property, franchises, and income;

(7) lend money for any lawful purpose, invest or reinvest its funds, or take and hold real or personal property as security for the payment of funds so loaned or invested;

(8) conduct its business and maintain offices and exercise the powers granted by this chapter within this state, and in any state, territory, district, or possession of the United States, or in any foreign country;

(9) elect or appoint managers and agents of the company, define their duties, and fix their compensation;

(10) make and alter an operating agreement as allowed by Part 5 of this chapter;

(11) make donations for the public welfare or for charitable, scientific, religious, or educational purposes;

(12) indemnify or hold harmless any person;

(13) cease its activities and cancel its certificate of organization;

(14) transact any lawful business which the members or the managers find to be in aid of governmental policy;

(15) pay pensions and establish pension plans, profit-sharing plans, and other incentive plans for any or all of its members, managers, and employees;

(16) be a promoter, incorporator, organizer, general partner, limited partner, member, associate, or manager of any corporation, partnership, limited partnership, limited liability company, joint venture, trust, or other enterprise or entity;

(17) render professional services, if each member of a company who renders professional services in Utah is licensed or registered to render those professional services pursuant to applicable Utah law; and

(18) have and exercise the same powers as an individual, and all powers necessary or convenient to effect or carry out any or all of the purposes for which the company is organized.

Section 18. Section 48-2c-111 is enacted to read:

48-2c-111. Designated office.

Each domestic company shall continuously maintain in this state a designated office where the records required by Section 48-2c-112 shall be maintained. The designated office may, but need not be, a place of business in this state. The designated office shall be at a specific geographical location in this state and be identified by number, if any, and street or building address or rural route or other geographical address. The designated office shall not be identified only by post office box number or other nongeographic address. However, for purposes of communication by mail, the division may permit the use of a post office address in conjunction with the geographic address. In all cases where a domestic company fails to identify or designate its designated office, the designated office for that company shall be its registered office in this state.

Section 19. Section 48-2c-112 is enacted to read:

48-2c-112. Records.

Each company shall keep the following records at its designated office in this state:

(1) a current list in alphabetical order of the full name and last-known business, residence, or mailing address of each member and each manager;

(2) a copy of the stamped articles of organization and all certificates of amendment thereto, together with a copy of all signed powers of attorney pursuant to which the articles of organization or any amendment has been signed;

(3) a copy of the writing required of an organizer under Subsection 48-2c-401(2);

(4) a copy of the company's federal, state, and local income tax returns and reports, if any, for the three most recent years;

(5) a copy of any financial statements of the company, if any, for the three most recent years;

(6) a copy of the company's operating agreement, if any, and all amendments thereto;

(7) a copy of the minutes, if any, of each meeting of members and of any written consents obtained from members; and

(8) unless otherwise set forth in the articles of organization or the operating agreement, a written statement setting forth:

(a) the amount of cash and a description and statement of the agreed value of the other property or services contributed and agreed to be contributed by each member;

(b) the times at which, or events on the happening of which, any additional contributions agreed to be made by each member are to be made;

(c) any right of a member to receive distributions;

(d) any date or event upon the happening of which a member is entitled to payment in redemption of the member's interest in the company; and

(e) any date or event upon the happening of which the company is to be dissolved and its affairs wound up.

Section 20. Section 48-2c-113 is enacted to read:

48-2c-113. Inspection of records by members and managers.

(1) A current or former member or manager of a company is entitled to inspect and copy, during regular business hours at the company's designated office, any of the records described in Section 48-2c-112 after first giving the company written notice of the demand at least five business days before the inspection is to occur.

(2) This section does not affect:

(a) the right of a member or manager to inspect records if the member or manager is in litigation with the company, to the same extent as any other litigant; or

(b) the power of a court, independent of this chapter, to compel the production of records for examination.

(3) A current or former member or manager may not use any information obtained through the inspection or copying of records permitted by Subsection (1) for any improper purpose.

(4) The division may subpoena any of the records described in Section 48-2c-112 if a company denies any current or former member or manager access to the records.

Section 21. Section 48-2c-114 is enacted to read:

48-2c-114. Scope of inspection right.

(1) An agent or attorney of a current or former member or manager has the same inspection and copying rights as the person represented by the agent or attorney.

(2) The right to copy records under Section 48-2c-113 includes, if reasonable, the right to receive copies made by photographic, xerographic, electronic, or other means.

(3) The company may impose a reasonable charge, payable in advance, to cover the costs of labor and material, for copies of any documents to be provided. The charge may not exceed the estimated cost of production or reproduction of the records.

Section 22. Section 48-2c-115 is enacted to read:

48-2c-115. Court-ordered inspection.

(1) If a company does not allow a current or former member or manager or their agent or attorney who complies with Subsection 48-2c-113(1) to inspect or copy any records required by that subsection to be available for inspection, the district court of the county in this state in which the company's designated office is located may summarily order inspection and copying of the records demanded at the company's expense, on application of the person denied access to the records. The court shall dispose of an application under this Subsection (1) on an expedited basis.

(2) If a court orders inspection or copying of records demanded, it shall also order the company to pay the costs incurred by the person requesting the order, including reasonable attorney's fees unless the company proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the person to inspect the records demanded.

(3) If a court orders inspection or copying of records demanded, it may:

(a) impose reasonable restrictions on the use or distribution of the records by the person demanding inspection;

(b) order the company to pay the member or manager for reasonable attorney's fees and costs incurred and for any damages incurred as a result of the company's denial if the court determines that the company did not act in good faith in refusing to allow the inspection or copying; and

(c) grant the person demanding inspection or copying any other available legal remedy.

Section 23. Section 48-2c-116 is enacted to read:

48-2c-116. Member or manager as a party to proceedings.

A member or manager of a company is not a proper party to proceedings by or against a company, except when the object is to enforce a member's or manager's right against, or liability to, the company.

Section 24. Section 48-2c-117 is enacted to read:

48-2c-117. Taxation of limited liability companies.

A company established under this chapter or a foreign company transacting business in this state shall be taxed as provided in Section 59-10-801.

Section 25. Section 48-2c-118 is enacted to read:

48-2c-118. Waiver of notice.

If, under the provisions of this chapter, the articles of organization, or the operating agreement of a company, notice is required to be given to a member or manager of a company, a waiver in writing signed by the person entitled to the notice, whether made before or after the time for notice to be given, is equivalent to the giving of notice.

Section 26. Section 48-2c-119 is enacted to read:

48-2c-119. Transaction of members or managers with company.

Except as provided in the articles of organization or operating agreement of the company, a member or manager may transact business with the company including, sell or lease property to, buy or lease property from, lend money to, and borrow money from the company, and act as a surety, guarantor or endorser for, or guarantee or assume one or more specific obligations of, or provide collateral for, the company, and transact any other business with the company and, subject to applicable law, shall have the same rights and obligations with respect to any such matter as a person who is not a member or manager, except that this section shall not be construed to relieve a member or manager of the duties specified in Section 48-2c-807.

Section 27. Section 48-2c-120 is enacted to read:

48-2c-120. Articles of organization and operating agreement.

(1) A company's articles of organization or operating agreement may not:

(a) restrict a right to inspect and copy records under Section 48-2c-113;

(b) reduce the duties of members or managers under Section 48-2c-807;

(c) eliminate the obligation of good faith and fair dealing, except that the members by written agreement may determine the standards by which

the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;

(d) vary any filing requirement under this chapter;

(e) vary any requirement under this chapter that a particular action or provision be reflected in a writing;

(f) vary the right to expel a member based on any event specified in Subsection 48-2c-710(3);

(g) vary the remedies under Section 48-2c-1210 for judicial dissolution of a company;

(h) except as allowed by Section 48-2c-1103 or any other provision of law, restrict rights of, or impose duties on, persons other than the members, their assignees and transferees, the managers, and the company, without the consent of those persons; or

(i) eliminate or limit the personal liability of a manager to the company or its members for damages for any breach of duty in the capacity where a judgment or other final adjudication adverse to the manager establishes that the manager's acts or omissions were in bad faith or involved gross negligence or willful misconduct or that the manager personally gained a financial profit or other advantage to which the manager was not legally entitled.

(2) The articles of organization and operating agreement may:

(a) vary the requirement under Section 48-2c-1104 that, if all of the other members of the company other than the member proposing to dispose of the member's interest do not approve of the proposed transfer or assignment by unanimous written consent, the transferee of the member's interest shall have no right to participate in the management of the business or affairs of the company or to become a member; and

(b) vary the requirement under Section 48-2c-703 that, after the filing of the original articles of organization, a person may be admitted as an additional member only upon the written consent of all members.

Section 28. Section 48-2c-121 is enacted to read:

48-2c-121. Scope of notice.

(1) Articles of organization that have been filed with the division constitute notice to third persons, as well as to members and managers of the company:

(a) that the company is a limited liability company formed under the laws of this state; and

(b) of all statements set forth in the articles of organization which are:

(i) required by Subsection 48-2c-403(1) to be set forth in articles of organization; and

(ii) expressly permitted to be set forth in the articles of organization by Subsection 48-2c-403(4).

(2) The filing with the division of any annual report required by Section 48-2c-203 constitutes notice to third persons, as well as to members and managers of the company, of the information set forth in the annual report which is required by Section 48-2c-203 to be set forth in an annual report.

(3) The filing with the division of any statement allowed by Section 48-2c-122 is notice to third persons, as well as to members and managers of the company, of the information set forth in that statement which is expressly permitted to be set forth in that statement by Section 48-2c-122.

Section 29. Section 48-2c-122 is enacted to read:

48-2c-122. Statement of person named as manager or member.

(1) Any person named as a manager or member of a domestic company or foreign company in an annual report or other document on file with the division may, if that person does not hold the position of manager or member, deliver to the division for filing a written statement setting forth:

(a) the person's name;

(b) the name of the company;

(c) information sufficient to identify the report or other document in which that person is named as a manager or member; and

(d) the date on which he ceased to be a manager or member of the company, or a statement that the person did not hold the position for which that person was named in the report or other document.

Section 30. Section 48-2c-201 is enacted to read:

Part 2. Filing Requirements

48-2c-201. Place for filings.

Filings required by this chapter to be made with the division shall be made at the division's offices in Salt Lake City, Utah, or at any other place within the state as the division director may designate.

Section 31. Section 48-2c-202 is enacted to read:

48-2c-202. Record of filings.

The division shall maintain a record of all filings required by this chapter to be made with the division and shall make those records available for inspection and copying by any person upon request and payment of a reasonable fee determined by the division.

Section 32. Section 48-2c-203 is enacted to read:

48-2c-203. Annual report.

(1) (a) Each company and each foreign company authorized to transact business in this state shall file an annual report with the division:

(i) during the month of its anniversary date of formation, in the case of domestic companies; or

(ii) during the month of the anniversary date of being granted authority to transact business in this state, in the case of foreign companies authorized to transact business in this state.

(b) The annual report required by Subsection (1)(a) shall set forth the name of the company and the state or country under the laws of which it is formed and shall set forth any change in:

(i) for a domestic company only, the street address of its designated office;

(ii) for a foreign company only, the street address of its principal office;

(iii) the street address of its registered office in this state;

(iv) the name of the agent for service of process at the address listed in Subsection (1)(b)(iii);

(v) if the street address or legal name of any manager in a manager-managed company or any member in a member-managed company or any person with management authority of a foreign company, has changed, the new street address or legal name of the manager, member, or other person; and

(vi) the identity of the persons constituting the managers in a manager-managed company or members in a member-managed company or other person with management authority of a foreign company.

(2) (a) The annual report required by Subsection (1) shall:

(i) be made on forms prescribed and furnished by the division; and

(ii) contain information that is given as of the date of signing the annual report.

(b) The annual report forms shall include a statement notifying the company that failure to file the annual report will result in:

(i) the dissolution of the organization, in the case of a domestic company; or

(ii) the revocation of authority to transact business in this state in the case of a foreign company.

(3) The annual report shall be signed by:

(a) any manager in a manager-managed company or members in a member-managed company or other person with management authority; and

(b) if the registered agent has changed since the filing of the articles of organization or last annual report, by the new registered agent.

(4) (a) If the annual report conforms to the requirements of this chapter, the division shall file the report.

(b) If the annual report does not conform to the requirements of this chapter, the division shall mail the report, first class postage prepaid, to the registered agent of the company for any necessary corrections at the street address for the registered agent most recently furnished to the division by notice, annual report, or other document.

(c) If the division returns an annual report in accordance with Subsection (4)(b), the penalties for failure to file the report within the time prescribed in this section do not apply, as long as the annual report is corrected and returned to the division within 30 days from the date the nonconforming report was mailed to the registered agent of the company.

Section 33. Section 48-2c-204 is enacted to read:

48-2c-204. Signing of documents filed with division.

(1) Unless otherwise specified in this chapter, each document or report required by this chapter to be filed with the division shall be signed in the following manner:

(a) articles of organization for a domestic company shall be signed by at least one organizer or one manager or, if the company is member-managed, by at least one member; and

(b) each other document or report shall be signed by at least one manager for a manager-managed company or one member for a member-managed company or a person with management authority for a foreign company, subject in the case of a domestic company, to any restriction or requirement in the articles of organization or operating agreement.

(2) Any person may sign any document or report by an attorney-in-fact, but a power of attorney to sign a certificate of amendment relating to the admission of a member shall specify the member to be admitted. Powers of attorney need not be filed with the division but shall be retained with the records of the company required under Section 48-2c-112.

(3) Each document or report required to be filed with the division shall state beneath or opposite the signature of the person signing the document or report, in printed or hand-printed letters, the signer's name and the capacity in which the document or report was signed.

(4) The signature of each person signing any document or report required to be filed with the division constitutes an oath or affirmation by the person signing, under penalties of perjury, that the facts stated therein are true and that any power of attorney used in connection with such signing is proper in form and substance.

Section 34. Section 48-2c-205 is enacted to read:

48-2c-205. Penalty for signing false documents.

A person who signs a document or report knowing it to be false in any material respect, with the intent

that the document or report be delivered to the division for filing, is guilty of a class A misdemeanor.

Section 35. Section 48-2c-206 is enacted to read:

48-2c-206. Powers of the division.

The division and the division director shall have the powers and authority reasonably necessary to interpret and administer the provisions of this chapter applicable to them and to perform the duties required of the division and the division director under this chapter.

Section 36. Section 48-2c-207 is enacted to read:

48-2c-207. Filing requirements.

(1) A document must satisfy the requirements of this section, and of any other section of this chapter that adds to or varies these requirements, to be entitled to be filed with the division.

(2) This chapter must require or permit filing the document with the division.

(3) The document must contain the information required by this chapter. It may contain other information as well.

(4) The document must be typewritten or machine printed.

(5) The document must be in the English language. A company name need not be in English if written in English letters, Arabic or Roman numerals, and the certificate of existence required of foreign companies need not be in English if accompanied by a reasonably authenticated English translation.

(6) The document must be signed, or must be a true copy made by a photographic, xerographic, electronic, or other process that provides similar copy accuracy of a document that has been signed:

(a) as required by Section 48-2c-204;

(b) if the company is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary; or

(c) if the document is that of a registered agent, by the registered agent, if the person is an individual, or by a person authorized by the registered agent to execute the document, if the registered agent is an entity.

(7) If the division has prescribed a mandatory form or cover sheet for the document, the document must be in or on the prescribed form or must have the required cover sheet.

(8) The document must be delivered to the division for filing and must be accompanied by the correct filing fee and any franchise tax, license fee, or penalty required by this chapter or other law.

(9) If the person filing a document with the division desires to receive back a copy of the filed document, that person must submit with the filed document an exact copy of the filed document along with a return-addressed envelope with adequate first-class postage thereon.

Section 37. Section 48-2c-208 is enacted to read:

48-2c-208. Effective time and date of filed documents.

(1) Except as provided in Subsection (2) and in Subsection 48-2c-209(4), a document submitted to the division for filing under this chapter shall be considered effective at the time of filing on the date it is filed with the division, as evidenced by the division's stamp or endorsement on the document as described in Subsection 48-2c-210(2).

(2) Unless otherwise provided in this chapter, a document, other than an application to reserve the right to register a name, may specify conspicuously on its face a delayed effective time or date, or both an effective time and date, and if it does so, the document becomes effective as specified.

(a) If a delayed effective time but no date is specified, the document is effective on the date it is filed with the division, as that date is specified in the division's time and date stamp or endorsement on the document, at the later of the time specified on the document as its effective time or the time specified in the time and date stamp or endorsement.

(b) If a delayed effective date but no time is specified, the document is effective at the close of business on that date.

(c) A delayed effective date for a document may not be later than the 90th day after the date it is filed with the division. If a document specifies a delayed effective date that is later than the 90th day after the document is filed with the division, the document is effective on the 90th day after it is filed with the division.

(3) If a document specified a delayed effective date pursuant to Subsection (2), the document may be prevented from becoming effective by delivering to the division, prior to the specified effective date of the document, a certificate of withdrawal, signed in the same manner as the document being withdrawn, stating that the document has been revoked by appropriate action and is void.

Section 38. Section 48-2c-209 is enacted to read:

48-2c-209. Correcting filed documents.

(1) A domestic or foreign company may correct a document filed with the division if the document:

(a) contains an incorrect statement, misspelling, or other technical error or defect; or

(b) was defectively signed, attested, sealed, verified, or acknowledged.

(2) A document is corrected by delivering to the division for filing articles of correction that:

(a) describe the document, including its filing date, or have a copy of it attached to the articles of correction;

(b) specify the incorrect statement and the reason it is incorrect or the manner in which the signing, attestation, sealing, verification, or acknowledgment was defective; and

(c) correct the incorrect statement, misspelling, or other technical error or defect, or defective signing, attestation, sealing, verification, or acknowledgment.

(3) Articles of correction may be signed by any person designated in Section 48-2c-204, or by any person who signed the document that is corrected.

(4) Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed with the division.

Section 39. Section 48-2c-210 is enacted to read:

48-2c-210. Filing duty of division.

(1) If a document delivered to the division for filing satisfies the requirements of Section 48-2c-207, the division shall file it.

(2) The division files a document by stamping or otherwise endorsing "Filed" together with the name of the division and the date and time of acceptance for filing on the document. The division shall evidence on the document any filing fees paid.

(3) If the division refuses to accept a document for filing, it shall return the document to the person requesting the filing within ten days after the document was delivered to the division, together with a written notice providing a brief explanation of the reason for the refusal.

(4) The division's duty to file documents under this section is ministerial. Except as otherwise specifically provided in this chapter, the division's filing or refusal to file a document does not:

(a) affect the validity or invalidity of the document in whole or part;

(b) relate to the correctness or incorrectness of information contained in the document; or

(c) create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

Section 40. Section 48-2c-211 is enacted to read:

48-2c-211. Appeal from division's refusal to file document.

(1) If the division refuses to accept a document delivered to it for filing, the domestic or foreign company for which the filing was requested, or its representative, within 30 days after the effective date of the notice of refusal given by the division pursuant to Subsection 48-2c-210(3), may appeal the refusal to the district court of the county where the company's designated office is or will be located, or if there is none in this state, the county where its registered office is or will be located. The appeal is commenced by petitioning the court to compel the filing of the document and by attaching to the petition a copy of the document and the division's notice of refusal.

(2) The court may summarily order the division to file the document or take other action the court considers appropriate.

(3) The court's final decision may be appealed as in any other civil proceedings.

Section 41. Section 48-2c-212 is enacted to read:

48-2c-212. Evidentiary effect of copy of filed document.

A certificate attached to a copy of a document filed by the division, or an endorsement, seal, or stamp placed on the copy, which certificate, endorsement, seal, or stamp bears the signature of the director of the division, or a facsimile of the director's signature, and the seal of the division, is conclusive evidence that the original document has been filed with the division.

Section 42. Section 48-2c-213 is enacted to read:

48-2c-213. Certificates issued by the division.

(1) Anyone may apply to the division for a certificate of existence for a domestic company, a certificate of authorization for a foreign company, or a certificate that sets forth any facts of record in the office of the division.

(2) A certificate of existence or authorization shall state:

(a) the domestic company's name or the foreign company's name as registered in this state;

(b) (i) that the domestic company is duly formed under the law of this state and the date of its formation; or

(ii) that the foreign company is authorized to transact business in this state;

(c) that all fees, taxes, and penalties owed to this state have been paid, if:

(i) payment is reflected in the records of the division; and

(ii) nonpayment affects the existence or authorization of the domestic or foreign company;

(d) that its most recent annual report required by Section 48-2c-203 has been filed with the division;

(e) that articles of dissolution have not been filed with the division; and

(f) other facts of record in the office of the division that may be requested by the applicant.

(3) Subject to any qualification stated in the certificate, a certificate issued by the division may be relied upon as conclusive evidence of the facts set forth in the certificate.

Section 43. Section 48-2c-214 is enacted to read:

48-2c-214. Fees.

Unless otherwise provided by statute, the division shall collect fees for its services in amounts determined by the department in accordance with the provisions of Section 63-38-3.2.

Section 44. Section 48-2c-301 is enacted to read:

Part 3. Service of Process

48-2c-301. Registered office.

(1) Each domestic company and each foreign company authorized to do business in this state shall continuously maintain a registered office in this state.

(2) Failure to maintain a registered office in this state shall be grounds for administrative dissolution of a domestic company under Section 48-2c-1206 and for revocation of authority to transact business in this state in the case of a foreign company.

Section 45. Section 48-2c-302 is enacted to read:

48-2c-302. Registered agent.

(1) (a) Each domestic company and each foreign company authorized to do business in this state shall continuously maintain an agent in this state for service of process on that company.

(b) The street address of the registered agent shall be the same as the registered office of the company in this state.

(2) The registered agent must be:

(a) an individual who resides in this state and whose business office is identical with the registered office;

(b) a domestic company or domestic corporation or domestic nonprofit corporation whose business office is identical with the registered office; or

(c) a foreign company or foreign corporation or foreign nonprofit corporation authorized to transact business in this state whose business office is identical with the registered office.

(3) A company or foreign company may not serve as its own registered agent.

(4) Failure to maintain a registered agent in this state shall be grounds for administrative dissolution of a domestic company under Section 48-2c-1206 and for revocation of authority to transact business in this state in the case of a foreign company.

(5) The registered agent of a domestic company or foreign company may resign by delivery to the division for filing an original and one copy of a signed written notice of resignation together with a declaration that notice of the resignation has been given to the company or foreign company. The division shall then mail a copy of the notice of resignation:

(a) in the case of a domestic company, to the managers of the company, or if the articles of organization provide that the company is member-managed, to the members of the company; or

(b) in the case of a foreign company, to the principal office of the foreign company.

(6) The addresses for the mailing required by Subsection (5) shall be the street addresses set forth in the notice, annual report, or document most recently filed with the division. The appointment of the registered agent ends on the 31st day after the division receives notice of the resignation.

Section 46. Section 48-2c-303 is enacted to read:

48-2c-303. Change of registered office or registered agent.

(1) A domestic company or a foreign company may change its registered office or its registered agent in this state by delivery to the division for filing a statement of change that sets forth:

(a) its name;

(b) the street address of its current registered office;

(c) the street address of the new registered office if the registered office is to be changed;

(d) the name of its current registered agent;

(e) the name of the new registered agent if the registered agent is to be changed and the new registered agent's written consent to the appointment, either on the statement of change or in an accompanying document; and

(f) a statement that the street addresses of its registered office and the business office of its registered agent will be identical after the change or changes reflected in the statement are made.

(2) If the street address of a registered agent's business office is changed, the registered agent may change the street address of the registered office of any domestic company or foreign company for which that person is the registered agent by giving written notice to the domestic company or foreign company of the change and by signing, either manually or in facsimile, and delivering to the division for filing a statement of change that complies with the requirements of Subsection (1), and that recites that the domestic company or foreign company has been given notice of the change.

(3) Within 30 days after any change described in Subsection (1), the domestic company or the foreign company, or for a change described in Subsection (2), the registered agent shall cause the statement of change to be delivered to the division for filing.

Section 47. Section 48-2c-304 is enacted to read:

48-2c-304. Change of designated office.

(1) A company may change its designated office by delivery to the division for filing a statement of change that sets forth:

(a) its name;

(b) the street address of its current designated office; and

(c) the street address of its new designated office.

(2) Within 30 days after a change of its designated office, the company shall cause the statement of change to be delivered to the division for filing.

Section 48. Section 48-2c-305 is enacted to read:

48-2c-305. Director of division as agent for service of process -- Records of process served.

The director of the division shall keep a record of each process served upon the director under this chapter, including the date process was served on the director and the action of the director with reference thereto.

Section 49. Section 48-2c-306 is enacted to read:

48-2c-306. Service on domestic company.

(1) Service of process on a domestic company may be made:

(a) by delivery to:

(i) the registered agent of the company;

(ii) a manager of the company if the company is manager-managed; or

(iii) any member of the company if the company is member-managed; or

(b) by a writing, which shall be mailed by registered or certified mail to the registered office of the company in this state or, if the company has no registered office, then to the designated office listed in the notice, annual report, or document most recently filed with the division.

(2) Service of process is perfected under Subsection (1)(b) on the earliest of:

(a) the date the company receives the process;

(b) the date shown on the return receipt, if signed on behalf of the company; or

(c) five days after mailing.

(3) This section does not limit or affect the right to serve, in any other manner permitted by law, any process, notice, or demand required or permitted by law to be served upon a company.

Section 50. Section 48-2c-307 is enacted to read:

48-2c-307. Service on foreign company.

(1) Except as provided in Subsection (3), the division may serve a foreign company that is authorized to transact business in this state by first-class, postage prepaid, United States mail.

(2) The registered agent of a foreign company authorized to transact business in this state is the foreign company's agent for service of process, notice, or demand required or permitted by law to be served on the foreign company.

(3) (a) If a foreign company authorized to transact business in this state has no registered agent or if the registered agent cannot with reasonable diligence be served, the foreign company may be served by mail that is:

(i) registered or certified;

(ii) return receipt requested; and

(iii) addressed to the foreign company at its principal office as listed in the notice, annual report, or document most recently filed with the division.

(b) Service of process is perfected under this Subsection (3) at the earliest of:

(i) the date the foreign company receives the process, notice, or demand;

(ii) the date shown on the return receipt, if signed on behalf of the foreign company; or

(iii) five days after mailing.

(4) This section does not limit or affect the right to serve, in any other manner permitted by law, any process, notice, or demand required or permitted by law to be served upon a foreign company.

Section 51. Section 48-2c-308 is enacted to read:

48-2c-308. Service on dissolved company.

(1) A dissolved company shall either:

(a) maintain a registered agent and registered office in this state to accept service of process on its behalf; or

(b) be considered to have authorized service of process on it by registered or certified mail, return receipt requested:

(i) to the address of its designated office, if any, as set forth in the notice, annual report, or document most recently filed with the division;

(ii) to the address for service of process that is listed in its articles of dissolution or as listed in the notice, annual report, or document most recently filed with the division;

(iii) to the address for any manager of a company that is manager-managed, with such address being the address listed in the notice, annual report, or document most recently filed with the division; or

(iv) to the address for any member of a company that is member-managed, with such address being the address listed in the notice, annual report, or document most recently filed with the division.

(2) Service of process effected pursuant to Subsection (1)(b) is perfected at the earliest of:

(a) the date the dissolved company receives the process, notice, or demand;

(b) the date shown on the return receipt, if signed on behalf of the dissolved company; or

(c) five days after mailing.

(3) This section does not limit or affect the right to serve, in any other manner permitted by law, any process, notice, or demand required or permitted by law to be served upon a dissolved company.

Section 52. Section 48-2c-309 is enacted to read:

48-2c-309. Service on withdrawn foreign company.

(1) A foreign company that has withdrawn from this state pursuant to Section 48-2c-1611 shall either:

(a) maintain a registered agent in this state to accept service of process on its behalf in any proceeding based on a cause of action arising during the time it was transacting business in this state, in which case the continued authority of the registered agent shall be specified in the application for withdrawal and any change shall be governed by the procedure set forth in Section 48-2c-303 which applies to foreign companies authorized to transact business in this state; or

(b) be considered to have authorized service of process on it, in connection with any cause of action arising during the time it was transacting business in this state, by registered or certified mail, return receipt requested, to:

(i) the address of its principal office, if any, set forth in its application for withdrawal or as listed in the notice, annual report, or document most recently filed with the division; or

(ii) the address for service of process that is stated in its application for withdrawal or as listed in the notice, annual report, or document most recently filed with the division.

(2) Service effected pursuant to Subsection (1)(b) is perfected at the earliest of:

(a) the date the withdrawn foreign company receives the process, notice, or demand;

(b) the date shown on the return receipt, if signed on behalf of the withdrawn foreign company; or

(c) five days after mailing.

(3) This section does not limit or affect the right to serve, in any other manner permitted by law, any process, notice, or demand required or permitted by law to be served upon a withdrawn foreign company.

Section 53. Section 48-2c-310 is enacted to read:

48-2c-310. Service on foreign companies not authorized to do business.

(1) Any foreign company which does business in this state without authority shall be considered to have thereby appointed and constituted the director of the division its agent for service of process in any proceeding against it in any state or federal court in this state arising or growing out of any business transacted by it within this state. Transacting business in this state by such foreign company shall be a signification of the agreement of that foreign company that any such process when so served shall be of the same legal force and validity as if served upon an authorized person or agent personally within this state.

(2) Whenever the words "transacting business", "the doing of business", or "business done in this state", by any such foreign company are used in this section, they shall mean the course or practice of carrying on any business activities in this state, including, without limiting the generality of the foregoing, the solicitation of business or orders in this state.

(3) In the event of service upon the director of the division in accordance with Subsection (1), the director of the division shall forthwith notify the foreign company thereof by letter, certified mail, return receipt requested, directed to the foreign company at the address furnished to the director of the division by the plaintiff in such action, suit, or proceeding. The letter must enclose a copy of the process and any other papers served upon the director of the division. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the director of the division that service is being made pursuant to this Subsection (3), and to pay to the director of the division the sum of $100 for the use of this state, which sum shall be taxed as part of the costs in the proceeding, if the plaintiff shall prevail therein. The director of the division shall maintain an alphabetical record of any such process setting forth the name of the plaintiff and defendant, the title, docket number, and nature of the proceeding in which process has been served upon the director, the return date thereof, and the day and hour when the service was made. The director of the division shall not be required to retain such information for a period longer than five years from receipt of the service of process by the director of the division.

Section 54. Section 48-2c-311 is enacted to read:

48-2c-311. Venue for action against foreign company.

Any person who has a cause of action against any foreign company, whether or not the company is authorized to transact business in this state, may file suit against the company in the district court of any county in which there is proper venue if the cause of action arose in Utah out of the company's transacting business in Utah or while the company was transacting business in Utah.

Section 55. Section 48-2c-401 is enacted to read:

Part 4. Formation

48-2c-401. Organizer.

(1) One or more individuals 18 years of age or older may form a company under this chapter by signing and filing with the division articles of organization that meet the requirements of Section 48-2c-403. The individuals acting as organizer may, but need not, be members or managers of the company at the time of formation or after formation has occurred.

(2) The signing of the articles of organization constitutes an affirmation by the organizers, under penalty of perjury, that the company has one or more members and, if the company is manager-managed, the person or persons named as managers in the articles of organization have consented to serve as managers of the company. At or prior to filing articles of organization for a company, the organizer or organizers shall prepare a writing to be held with the records of the company which sets forth:

(a) the name and street address of each initial member of the company; and

(b) if the articles of organization provide that the company is manager-managed, the name and street address of each initial manager.

Section 56. Section 48-2c-402 is enacted to read:

48-2c-402. Formation of company.

(1) A company may be formed by delivering to the division for filing articles of organization for the company meeting the requirements of Sections 48-2c-207 and 48-2c-403.

(2) (a) A company shall have at least one member:

(i) at the time of formation; and

(ii) at all times after its formation.

(b) Any person may be a member of a company.

(c) Failure to maintain at least one member shall be an event of dissolution subject to Section 48-2c-1201.

(3) The company shall be considered formed as of the time, day, month, and year indicated by the division's stamp or seal on the articles of organization.

(4) Except as against this state in a proceeding for administrative dissolution or in a proceeding for judicial dissolution of the company, the filed articles shall be conclusive evidence that all conditions precedent required to be performed by the members and managers have been complied with and that the company has been legally formed under this chapter.

Section 57. Section 48-2c-403 is enacted to read:

48-2c-403. Articles of organization.

(1) The articles of organization of a company shall set forth:

(a) the name of the company;

(b) the business purpose for which the company is organized;

(c) the name and street address of its initial registered agent as required by Section 48-2c-302;

(d) the signature of its initial registered agent;

(e) a statement that the director of the division is appointed the agent of the company for service of process if the agent has resigned, the agent's authority has been revoked, or the agent cannot be found or served with the exercise of reasonable diligence;

(f) the street address of the company's designated office or a statement that the company's registered office shall be its designated office;

(g) the name and street address of each organizer who is not a member or manager;

(h) if the company is to be manager-managed:

(i) a statement that the company is to be managed by a manager or managers; and

(ii) the names and street addresses of the initial managers; and

(i) if the company is to be member-managed:

(i) a statement that the company is to be managed by its members; and

(ii) the names and street addresses of the initial members.

(2) If the company is to be manager-managed, the articles of organization do not need to state the name or address of any member, except as required by Part 15.

(3) It is not necessary to include in the articles of organization any of the powers enumerated in this chapter.

(4) The articles of organization may contain any other provision not inconsistent with law, including, but not limited to:

(a) a provision limiting or restricting the business in which the company may engage or the powers that the company may exercise, or both;

(b) a statement of whether there are limitations on the authority of managers or members to bind the company and, if so, what the limitations are, set out in detail and not with reference to any other document; or

(c) a statement of the period of duration of the company, which may be as long as 99 years from the date the articles of organization were filed with the division.

(5) If the articles of organization of a company do not specify a period of duration, the period of duration for that company is 99 years from the date the articles of organization were filed with the division.

Section 58. Section 48-2c-404 is enacted to read:

48-2c-404. Prefiling activities.

A company may not transact business or incur indebtedness, except that which is incidental to its organization or to obtaining subscriptions for or payment of contributions, until its articles of organization have been filed with the division. Nevertheless, this section may not be interpreted to invalidate any debts, contracts, or liabilities of the company incurred on behalf of the company prior to the filing of its articles of organization with the division.

Section 59. Section 48-2c-405 is enacted to read:

48-2c-405. When amendment to articles of organization required.

The articles of organization of a company shall be amended when:

(1) there is a change in the name of the company;

(2) there is a change in the character of the business of the company specified in the articles of organization;

(3) there is a false or erroneous statement in the articles of organization;

(4) there is a change in the period of duration of the company that is:

(a) stated in the articles of organization; or

(b) provided for in Section 48-2c-403;

(5) there is a change in:

(a) the management structure of the company from a manager-managed company to a member-managed company or from a member-managed company to a manager-managed company;

(b) if the company is manager-managed, who is a manager of the company; or

(c) if the company is member-managed, who is a member of the company; or

(6) the members desire to make a change in any other statement in the articles of organization in order for the articles to accurately represent the agreement among the members.

Section 60. Section 48-2c-406 is enacted to read:

48-2c-406. Actions not requiring amendment.

A company is not required to amend its articles of organization to report a change in:

(1) the street or mailing address of a manager in a manager-managed company or member in a member-managed company;

(2) the legal name of a manager in a manager-managed company or a member in a member-managed company;

(3) the addresses of its registered office or designated office; or

(4) the name of its registered agent.

Section 61. Section 48-2c-407 is enacted to read:

48-2c-407. Authority to amend articles of organization.

(1) (a) A company may amend its articles of organization at any time to add or change a provision that is required or permitted in the articles of organization or to delete a provision not required in the articles of organization.

(b) Whether a provision is required or permitted in the articles of organization is determined as of the effective date of the amendment.

(2) Except as may otherwise be expressly provided in the articles of organization or operating agreement, a member has no vested property right resulting from any provision in the articles of organization, including any provision relating to management, control, capital structure, purpose, duration of the company, or entitlement to distributions.

Section 62. Section 48-2c-408 is enacted to read:

48-2c-408. Certificate of amendment to articles of organization.

(1) A company amending its articles of organization shall deliver to the division for filing a certificate of amendment which includes:

(a) the name of the company;

(b) the text of each amendment adopted;

(c) if the amendment provides for restructuring the ownership of the company or an exchange or reclassification of the members' interests in the company, provisions for implementing the amendment if not contained in the text of the amendment itself;

(d) the date each amendment was adopted by the members;

(e) a statement that each amendment was adopted by the members as required by Section 48-2c-802 or as otherwise required by the articles of organization or operating agreement; and

(f) the signature required by Section 48-2c-204.

(2) Unless otherwise provided in the articles of organization or operating agreement, each amendment to the articles of organization of a company must be approved by all of the members and, if there are classes of members, by all of the members of each class.

(3) Each company shall deliver a certificate of amendment to the division for filing within 60 days after adoption of the amendment.

(4) Upon filing with the division a certificate of amendment, the articles of organization shall be amended as set forth in the certificate of amendment.

Section 63. Section 48-2c-409 is enacted to read:

48-2c-409. Restated articles of organization.

(1) A company may integrate into a single document all of the provisions of its articles of organization and amendments thereto, and it may at the same time also further amend its articles of organization, by adopting restated or amended and restated articles of organization.

(2) If the restated articles of organization merely restate and integrate but do not further amend the initial articles of organization, as previously amended or supplemented by any certificate or document that was signed and filed pursuant to this chapter, they shall be specifically designated in their heading as "Restated Articles of Organization", together with other words that the company considers appropriate, and shall be filed with the division.

(3) If the restated articles restate and integrate and also further amend in any respect the articles of organization, as previously amended or supplemented, they shall be specifically designated in their heading as "Amended and Restated Articles of Organization", together with other words that the company considers appropriate, and shall be filed with the division.

(4) (a) Restated articles of organization shall state, either in their heading or in an introductory paragraph, the company's present name, and, if it has been changed, the name under which it was originally filed and the date of filing of its original articles of organization with the division. Restated articles shall also state that they were duly signed and filed in accordance with this section.

(b) If the restated articles only restate and integrate and do not further amend the provisions of the articles of organization as previously amended or supplemented and there is no discrepancy between those provisions and the provisions of the restated articles, they shall so state.

(5) Upon the filing of restated articles of organization with the division, the initial articles, as previously amended or supplemented, shall be superseded. Thereafter, the restated articles of organization, including any further amendment or changes made by the restated articles, shall be the articles of organization, but the original effective date of formation shall remain unchanged.

(6) Any amendment or change made in connection with the restatement and integration of the articles of organization shall be subject to any other provision of this chapter not inconsistent with this section, that would apply if a separate certificate of amendment were filed to make the amendment or change.

Section 64. Section 48-2c-410 is enacted to read:

48-2c-410. Transfer to other jurisdiction.

(1) Any domestic company may transfer to or domesticate in any jurisdiction besides this state that permits the transfer to or domestication in such jurisdiction of a limited liability company by delivering to the division for filing articles of transfer meeting the requirements of Subsection (2) if such transfer is approved by the members as provided in the company's operating agreement or, if the operating agreement does not so provide, by all of the members.

(2) The articles of transfer shall state:

(a) the name of the company;

(b) the date of filing of the company's original articles of organization with the division;

(c) the jurisdiction to which the company shall be transferred or in which it shall be domesticated;

(d) the future effective date, which shall be a date certain, of the transfer or domestication if it is not to be effective upon the filing of the articles of transfer;

(e) that the transfer or domestication has been approved by the members;

(f) that the existence of the company as a domestic company of this state shall cease when the articles of transfer become effective;

(g) the agreement of the company that it may be served with process in this state in any proceeding for enforcement of any obligation of the company arising while it was a company under the laws of this state;

(h) that it irrevocably appoints the director of the division as its agent to accept service for process in any proceeding; and

(i) if the company does not apply for authority to transact business in this state as a foreign company pursuant to Section 48-2c-1604, then the address to which a copy of service of process referred to in Subsection (2)(h) shall be mailed to it by the division in the event of service upon the director of the division and the agreement of the company to give the division written notice of any change in the address.

(3) When the articles of transfer are filed with the division, or upon the future, delayed effective date of the articles of transfer, and payment to the division of all fees prescribed under this chapter, the company shall cease to exist as a domestic company of this state. Thereafter, any certificate of the division as to the transfer shall be prima facia evidence of the transfer or domestication by the company out of this state.

(4) Transfer or domestication of a company out of this state in accordance with this section and the resulting cessation of its existence as a domestic company of this state shall not be considered to affect any obligations or liabilities of the company incurred prior to the transfer or domestication or the personal liability of any person incurred prior to the transfer or domestication, including, but not limited to, any taxes owing to this state, nor shall it be considered to affect the choice of law applicable to the company with respect to matters arising prior to such transfer or domestication.

Section 65. Section 48-2c-411 is enacted to read:

48-2c-411. Domestication of foreign company.

(1) Where the laws of another state, country, or jurisdiction allow a foreign company subject to those laws to transfer or domesticate to this state, the foreign company may become a domestic company by delivering to the division for filing articles of domestication meeting the requirements of Subsection (2) if its members approve the domestication.

(2) (a) The articles of domestication shall meet the requirements applicable to articles of organization set forth in Section 48-2c-403, except that:

(i) the articles of domestication need not name, or be signed by, the organizers of the foreign company;

(ii) any reference to the company's registered office, registered agent, or managers shall be to the registered office and agent in this state, and the managers then in office at the time of filing the articles of domestication; and

(iii) any reference to the company's members shall be to the members at the time of filing the articles of domestication.

(b) The articles of domestication shall set forth:

(i) the date on which and jurisdiction where the foreign company was first formed, organized, or otherwise came into being;

(ii) the name of the foreign company immediately prior to the filing of the articles of domestication;

(iii) any jurisdiction that constituted the seat, location of formation, principal place of business, or central administration of the foreign company immediately prior to the filing of the articles of domestication; and

(iv) a statement that the articles of domestication were approved by its members.

(3) Upon the filing of articles of domestication with the division:

(a) the foreign company shall be domesticated in this state, shall thereafter be subject to all of the provisions of this chapter as a domestic company, and shall continue as if it had been organized under this chapter; and

(b) notwithstanding any other provisions of this chapter, the existence of the domesticated company shall be considered to have commenced on the date the foreign company commenced its existence in the jurisdiction in which the foreign company was first formed, organized, or otherwise came into being.

(4) The articles of domestication, upon filing with the division, shall become the articles of organization of the company, and shall be subject to amendments or restatement the same as any other articles of organization under this chapter.

(5) The domestication of any foreign company in this state shall not be considered to affect any obligation or liability of the foreign company incurred prior to its domestication.

Section 66. Section 48-2c-501 is enacted to read:

Part 5. Operating Agreements

48-2c-501. Initial agreement.

The initial operating agreement of a company shall be adopted by unanimous consent of the members.

Section 67. Section 48-2c-502 is enacted to read:

48-2c-502. General rules for operating agreements.

(1) Except as provided in Subsection 48-2c-120(1), or in the articles of organization, an operating agreement may modify the rules of any provision of this chapter that relates to:

(a) the management of the company;

(b) the business or purpose of the company;

(c) the conduct of the company's affairs; or

(d) the rights, duties, powers, and qualifications of, and relations between and among, the members, the managers, the members' assignees and transferees, and the company.

(2) Where the provisions of an operating agreement conflict with the provisions of this chapter, the provisions of this chapter shall control. Where the provisions of an operating agreement conflict with the articles of organization, the articles of organization shall control except to the extent the articles of organization conflict with the provisions of this chapter.

Section 68. Section 48-2c-503 is enacted to read:

48-2c-503. Timing.

An operating agreement may be entered into before, at the time of, or after the filing of the articles of organization. Regardless of the timing, the agreement may, by its own terms, be effective upon formation of the company or at a later designated time or date, provided, however, that the operating agreement may not become effective prior to formation of the company.

Section 69. Section 48-2c-504 is enacted to read:

48-2c-504. Operating agreement for a one-member company.

(1) A written declaration or written guidelines signed by the sole member of a company constitutes an operating agreement for purposes of this chapter if the member designates in the declaration or guidelines that the written declaration or guidelines constitutes the operating agreement.

(2) The operating agreement of a company having only one member shall not be unenforceable by reason of there being only one person who is a party to the agreement.

Section 70. Section 48-2c-505 is enacted to read:

48-2c-505. Interpretation and enforcement.

Any action to interpret, apply, or enforce the provisions of a company's articles of organization or operating agreement, or the duties, obligations, or liabilities between and among a company, its members and managers, or the rights or powers of, or restrictions on, the company, the members or managers, may be brought in the district court where the designated office of the company is located or, if the company fails to maintain a designated office, then in the district court of Salt Lake County.

Section 71. Section 48-2c-506 is enacted to read:

48-2c-506. Amendment.

An operating agreement may be altered, amended, or repealed as provided in the operating agreement. If an operating agreement does not provide for a procedure for altering, amending, or repealing the operating agreement, the operating agreement may be altered, amended, or repealed only by the written consent of all members.

Section 72. Section 48-2c-601 is enacted to read:

Part 6. Limited Liability

48-2c-601. General rule.

Except as provided in Section 48-2c-602, no organizer, member, manager, or employee of a company is personally liable under a judgment, decree, or order of a court, or in any other manner, for a debt, obligation, or liability of the company or for the acts or omissions of the company or of any other organizer, member, manager, or employee of the company.

Section 73. Section 48-2c-602 is enacted to read:

48-2c-602. Exceptions to limited liability.

The following exceptions to limited liability under Section 48-2c-601 shall apply:

(1) All persons who assume to act as a company without complying with this chapter are jointly and severally liable for all debts and liabilities so incurred, except for debts incurred in the course of prefiling activities authorized under Section 48-2c-404.

(2) A member of a company is liable to the company:

(a) for the difference between the amount of the member's contributions to the company which have been actually made and the amount which is stated in the operating agreement or other contract as having been made; and

(b) for any unpaid contribution to the company which the member, in the operating agreement or other contract, agreed to make in the future at the time and on the conditions stated in the operating agreement or other contract.

(3) A member holds as trustee for the company:

(a) specific property which is stated in the operating agreement or other contract as having been contributed by the member, if the property was not contributed or it has been wrongfully or erroneously returned; and

(b) money or other property wrongfully or erroneously paid or conveyed to the member.

(4) Persons engaged in prefiling activities other than those authorized by Section 48-2c-404 shall be jointly and severally liable for any debts or liabilities incurred in the course of those activities.

(5) (a) This chapter does not alter any law applicable to the relationship between a person rendering professional services and a person receiving those services, including liability arising out of those professional services.

(b) All persons rendering professional services shall remain personally liable for any results of that person's acts or omissions.

(6) When a member has rightfully received a distribution, in whole or in part, of the member's capital account, the member remains liable to the company for any sum, not in excess of the amount of distribution, with interest, necessary to discharge the company's obligations to all creditors of the company who extended credit in reliance on any representation as to the financial condition of the company that included the amount so distributed or whose claims arose prior to the distribution.

Section 74. Section 48-2c-603 is enacted to read:

48-2c-603. Waiver of exceptions to limited liability.

The liabilities of a member described in Subsection 48-2c-602(2), (3), or (6) may be waived or compromised upon the consent of all other members. Any such waiver or compromise does not affect the rights of a creditor of the company:

(1) who extended credit in reliance on any representation as to the financial condition of the company prior to a distribution described in Subsection 48-2c-602(6) and without notice of such waiver or compromise; or

(2) whose claim arose prior to, and without notice of, such waiver or compromise.

Section 75. Section 48-2c-604 is enacted to read:

48-2c-604. Waiver of protection of limited liability.

(1) A member of a company may waive the protection against personal liability of Section 48-2c-601 for any debt, obligation, or liability of a company by signing a waiver in the articles of organization or certificate of amendment to the articles of organization.

(2) The extent or scope of the waiver is determined by the signed waiver in the articles of organization or certificate of amendment.

Section 76. Section 48-2c-605 is enacted to read:

48-2c-605. No formalities required to maintain limited liability.

The failure of a company to maintain records, to hold meetings, or to observe any formalities or requirements imposed by this chapter or by the articles of organization or the operating agreement is not a ground for imposing personal liability on any member, manager, or employee for any debt, obligation, or liability of the company.

Section 77. Section 48-2c-701 is enacted to read:

Part 7. Members

48-2c-701. Nature of member interest.

(1) A member's interest in a company is personal property regardless of the nature of the property owned by the company.

(2) A member has no interest in specific property of a company.

Section 78. Section 48-2c-702 is enacted to read:

48-2c-702. Initial members.

(1) In connection with the formation of a company, a person becomes a member of the company upon the earliest to occur of the following:

(a) when the person signs the articles of organization;

(b) when the person signs the operating agreement; or

(c) when:

(i) the person evidences the intent to become a member, either orally, in writing, or by other action such as transferring property or paying money to the company for an interest in the company; and

(ii) the person's admission as a member is reflected in the records of the company or is otherwise acknowledged by the company.

(2) Notwithstanding the provisions of Subsection (1), a person shall not become a member of a company prior to formation of the company.

Section 79. Section 48-2c-703 is enacted to read:

48-2c-703. Additional members.

After the formation of a company, a person is admitted as an additional member of the company as provided in the operating agreement or, if the operating agreement does not provide for additional members, then:

(1) in the case of a person who is not an assignee of an interest in the company, including a person acquiring an interest directly from the company, upon the person's signing the operating agreement or other writing by which the person agrees to be bound by the operating agreement, and upon consent of all members;

(2) in the case of a person who is an assignee of an interest in the company, upon the person's signing the operating agreement or other writing by which the person agrees to be bound by the operating agreement, and upon consent of all members and upon the effective date of the person's admission as reflected in the records of the company;

(3) unless otherwise provided in a plan of merger, in the case of a person acquiring an interest in a surviving company pursuant to a merger approved under Section 48-2c-1407, at the time provided in and upon compliance with the operating agreement of the surviving company; or

(4) unless otherwise provided in articles of conversion, in the case of a person acquiring an interest in a company pursuant to a conversion approved under Section 48-2c-1404, at the time provided in and upon compliance with the operating agreement of the company resulting from the conversion.

Section 80. Section 48-2c-704 is enacted to read:

48-2c-704. Meetings of members.

Unless otherwise provided in the articles of organization or operating agreement, no meetings need be held for actions taken by members. If meetings of members are allowed or required under the articles of organization or operating agreement, then, unless otherwise provided in the articles of organization or operating agreement:

(1) a meeting of members may be called by any manager in a manager-managed company or by members in any company holding at least 25% interest in profits of the company;

(2) any business may be transacted at any meeting of members which is properly called;

(3) notice of a meeting of members must be given to each member at least five days prior to the meeting and shall give the date, place, and time of the meeting;

(4) notice of a meeting of members may be given orally or in writing or by electronic means;

(5) the person calling the meeting may designate any place within or without the state as the place for the meeting. If no place is designated, the place of the meeting shall be the designated office of the company or, if there is no designated office in this state, at the registered office of the company in this state;

(6) only persons who are members of record at the time notice of a meeting is given shall be entitled to notice or to vote at the meeting, except that a fiduciary, such as a trustee, personal representative, or guardian, shall be entitled to act in such capacity on behalf of a member of record if evidence of such status is presented to the company and except that a surviving joint tenant shall be entitled to receive notice and act where evidence of the other joint tenant's death is presented to the company;

(7) a quorum must be present in person or by proxy at a meeting of members for any business to be transacted and a quorum shall consist of members holding at least 51% interest in profits of the company;

(8) the members present at any meeting at which a quorum is present may continue to transact business notwithstanding the withdrawal of members from the meeting in such numbers that less than a quorum remains;

(9) a member may participate in and be considered present at a meeting by, or the meeting may be conducted through the use of, any means of communication by which all persons participating in the meeting may hear each other, or otherwise communicate with each other during the meeting;

(10) voting at a meeting shall be determined by percentage interests in the profits of the company; and

(11) a proxy, to be effective, must be in writing and signed by the member and must be filed with the secretary of the meeting before or at the time of the meeting and shall be valid for no more than 11 months after it was signed unless otherwise provided in the proxy.

Section 81. Section 48-2c-705 is enacted to read:

48-2c-705. Voting.

(1) Subject to the provisions of Section 48-2c-803, the articles of organization or operating agreement may grant to all or a specified class or group of members the right to consent, vote, or agree, on a percentage interest basis or a per capita basis or other basis, upon any matter.

(2) Any member may vote in person or by proxy.

Section 82. Section 48-2c-706 is enacted to read:

48-2c-706. Action by members without a meeting.

(1) Unless otherwise provided in the articles of organization or operating agreement, and subject to the limitations of Subsection (5), any action which may be taken by the members may be taken without any meeting and without prior notice, if one or more consents in writing, setting forth the action so taken, shall be signed by the members holding interests in the company not less than the minimum percentage that would be necessary to authorize or take that action.

(2) (a) Unless the written consents of all members entitled to vote have been obtained, notice of any member approval without a meeting shall be given at least five days before the consummation of the transaction, action, or event authorized by the member action to those entitled to vote who have not consented in writing.

(b) The notice must contain or be accompanied by a description of the transaction, action, or event.

(3) Provided the notice described in Subsection (2) is given, action taken by the members pursuant to this section is effective as of the date the last written consent necessary to authorize or take the action is received by the company, unless all of the written consents specify a later date as the effective date of the action, in which case the later date shall be the effective date of the action. If the company has received written consents as contemplated by Subsection (1), signed by all members entitled to vote with respect to the action, the effective date of the action may be any date that is specified in all of the written consents.

(4) Unless otherwise provided in the operating agreement, any consent or writing may be received by the company by any electronically transmitted or other form of communication that provides the company with a complete copy thereof, including the signature thereto.

(5) Any member or an authorized representative of that member may revoke a consent by a signed writing describing the action and stating that the member's prior consent is revoked, if the writing is received by the company prior to the effective date and time of the action.

(6) A member action taken pursuant to this section is not effective unless all written consents on which the company relies for taking an action pursuant to Subsection (1) are received by the company within a 60-day period and not revoked pursuant to Subsection (5).

(7) Written consent of the members entitled to vote constitutes approval of the members and may be described as such in any document.

Section 83. Section 48-2c-707 is enacted to read:

48-2c-707. Classes of members.

The articles of organization or operating agreement of a company may provide for classes or groups of members having such relative rights, powers, and duties as prescribed therein, and may make provision for the future creation of any such classes or groups. The articles of organization or operating agreement may provide for the taking of an action, including the amendment of the operating agreement, without the vote or approval of any member or class or group of members and may provide that any particular class or group shall have no voting rights.

Section 84. Section 48-2c-708 is enacted to read:

48-2c-708. Cessation of membership.

(1) A person who is a member of a company ceases to be a member of the company and the person or the person's successor in interest attains the status of an assignee as set forth in Section 48-2c-1102, upon the occurrence of one or more of the following events:

(a) the death of the member, except that the member's personal representative, executor, or administrator may exercise all of the member's rights for the purpose of settling the member's estate, including any power of an assignee and any power the member had under the articles of organization or operating agreement;

(b) the incapacity of the member, as defined in Subsection 75-1-201(22), except that the member's guardian or conservator or other legal

representative may exercise all of the member's rights for the purpose of administering the member's property, including any power of an assignee and any power the member had under the articles of organization or operating agreement;

(c) the member withdraws by voluntary act from the company as provided in Section 48-2c-709;

(d) upon the assignment of the member's entire interest in the company;

(e) the member is expelled as a member pursuant to Section 48-2c-710; or

(f) unless otherwise provided in the operating agreement, or with the written consent of all other members:

(i) at the time the member:

(A) makes a general assignment for the benefit of creditors;

(B) files a voluntary petition in bankruptcy;

(C) becomes the subject of an order for relief in bankruptcy proceedings;

(D) files a petition or answer seeking for the member any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation;

(E) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the member in any proceeding of the nature described in Subsections (1)(f)(i)(A) through (D); or

(F) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the member or of all or any substantial part of the member's properties;

(ii) 120 days after the commencement of any proceeding against the member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, the proceeding has not been dismissed, or if within 90 days after the appointment without his or her consent or acquiescence of a trustee, receiver, or liquidator of the member or of all or any substantial part of the member's properties, the appointment is not vacated or stayed, or within 90 days after the expiration of any stay, the appointment is not vacated;

(iii) in the case of a member that is another limited liability company, the filing of articles of dissolution or the equivalent for that company or the judicial dissolution of that company or the administrative dissolution of that company and the lapse of any period allowed for reinstatement;

(iv) in the case of a member that is a corporation, the filing of articles of dissolution or the equivalent for the corporation or the administrative dissolution of the corporation and the lapse of any period allowed for reinstatement; or

(v) in the case of a member that is a limited partnership, the dissolution and commencement of winding up of the limited partnership.

(2) The articles of organization or operating agreement may provide for other events the occurrence of which result in a person's ceasing to be a member of the company.

Section 85. Section 48-2c-709 is enacted to read:

48-2c-709. Withdrawal of a member.

A member may withdraw from a company at the time or upon the happening of events specified in and in accordance with the articles of organization or operating agreement. If the articles of organization or operating agreement do not specify the time or the events upon the happening of which a member may withdraw, a member may not withdraw prior to the dissolution and completion of winding up of the company, without the written consent of all other members at the time.

Section 86. Section 48-2c-710 is enacted to read:

48-2c-710. Expulsion of a member.

A member of a company may be expelled:

(1) as provided in the company's operating agreement;

(2) by unanimous vote of the other members if it is unlawful to carry on the company's business with the member; or

(3) on application by the company or another member, by judicial determination that the member:

(a) has engaged in wrongful conduct that adversely and materially affected the company's business;

(b) has willfully or persistently committed a material breach of the articles of organization or operating agreement or of a duty owed to the company or to the other members under Section 48-2c-807; or

(c) has engaged in conduct relating to the company's business which makes it not reasonably practicable to carry on the business with the member.

Section 87. Section 48-2c-801 is enacted to read:

Part 8. Management

48-2c-801. Management structure.

A company may be managed either by one or more managers, in which case it shall be considered to be a "manager-managed company," or it may be managed by all of its members, in which case it shall be considered to be a "member-managed company."

(1) The choice of management structure shall be designated in the articles of organization for the company. If the articles of organization fail to designate the management structure or do not clearly designate the management structure, management of the company shall be vested in its members.

(2) Unless the operating agreement provides otherwise, a manager-managed company shall become a member-managed company upon the death, withdrawal, or removal of the sole remaining manager, or if one of the events described in Subsection 48-2c-708(4), (5), or (6) occurs with regard to the sole remaining manager, unless another manager is appointed by the members within 90 days after the occurrence of any such event.

(3) The dissolution of a company does not alter the authority of the managers or members, as the case may be, to wind up the business and affairs of the company.

Section 88. Section 48-2c-802 is enacted to read:

48-2c-802. Agency authority of members and managers.

(1) Except as provided in Subsection (3), in a member-managed company:

(a) each member is an agent of the company for the purpose of its business;

(b) an act of a member, including the signing of a document in the company name, for apparently carrying on in the ordinary course of the company business, or business of the kind carried on by the company, binds the company, unless the member had no authority to act for the company in the particular matter and the lack of authority was expressly described in the articles of organization or the person with whom the member was dealing knew or otherwise had notice that the member lacked authority; and

(c) an act of a member which is not apparently for carrying on in the ordinary course of the company business, or business of the kind carried on by the company, binds the company only if the act was authorized by the other members in accordance with Section 48-2c-803.

(2) Except as provided in Subsection (3), in a manager-managed company:

(a) each manager is an agent of the company for the purpose of its business;

(b) a member is not an agent of the company for the purpose of its business solely by reason of being a member;

(c) an act of a manager, including the signing of a document in the company name, for apparently carrying on in the ordinary course of the company business, or business of the kind carried on by the company, binds the company unless the manager had no authority to act for the company in the particular matter and the lack of authority was expressly described in the articles of organization or the person with whom the manager was dealing knew or otherwise had notice that the manager lacked authority; and

(d) an act of a manager which is not apparently for carrying on in the ordinary course of the company business, or business of the kind carried on by the company, binds the company only if the act was authorized by the members in accordance with Subsection 48-2c-803(2) or (3).

(3) Notwithstanding the provisions of Subsections (1) and (2), unless the articles of organization expressly limit their authority, any member in a member-managed company, or any manager in a manager-managed company, may sign, acknowledge, and deliver any document transferring or affecting the company's interest in real or personal property, and if the authority is not so limited, the document shall be conclusive in favor of a person who gives value without knowledge of the lack of authority of the person who signs and delivers the document.

Section 89. Section 48-2c-803 is enacted to read:

48-2c-803. Management by members.

In a member-managed company, each member shall be subject to the duties described in Section 48-2c-807 and, unless otherwise provided in this chapter or in the articles of organization or an operating agreement:

(1) the affirmative vote, approval, or consent of members holding a majority of profits interests in the company shall be required to decide any matter connected with the business of the company;

(2) the affirmative vote, approval, or consent of all members shall be required to:

(a) amend the articles of organization, except to make ministerial amendments or to change an address;

(b) amend the operating agreement, except to make ministerial amendments or to change an address; or

(c) authorize a member or any other person to do any act on behalf of the company that contravenes the articles of organization or operating agreement and thereafter to terminate the authority so granted; and

(3) the affirmative vote, approval, or consent of members holding 2/3 of the profits interests in the company shall be required to bind the company to any of the following actions:

(a) authorizing a member or any other person to do any act on behalf of the company that is not in the ordinary course of the company's business, or business of the kind carried on by the company, and thereafter to terminate the authority so granted;

(b) making a current distribution to members;

(c) resolving any dispute connected with carrying on in the usual way the business of the company;

(d) making a substantial change in the business purpose of the company;

(e) a conversion of the company to another entity;

(f) a merger in which the company is a party to the merger;

(g) any sale, lease, exchange, or other disposition of all or substantially all of the company's property

other than in the usual and regular course of the company's business;

(h) any mortgage, pledge, dedication to the repayment of indebtedness, whether with or without recourse, or other encumbering of all or substantially all of the company's property whether or not in the usual and regular course of the company's business; or

(i) any waiver of a liability of a member under Section 48-2c-603.

Section 90. Section 48-2c-804 is enacted to read:

48-2c-804. Management by managers.

In a manager-managed company, each manager and each member shall be subject to the provisions of Section 48-2c-807 and:

(1) the initial managers shall be designated in the articles of organization; thereafter, the managers shall be those persons identified in documents filed with the division including amendments to the articles of organization as well as the annual reports required under Section 48-2c-203 and the statements required or permitted under Section 48-2c-122;

(2) when there is a change in the management structure from a member-managed company to a manager-managed company, the managers shall be those persons identified in the certificate of amendment to the articles of organization that makes the change;

(3) each manager who is a natural person must have attained the age of majority under the laws of this state;

(4) no manager shall have authority to do any act in contravention of the articles of organization or the operating agreement, except as provided in Subsection (6)(g);

(5) a manager who is also a member shall have all of the rights of a member;

(6) unless otherwise provided in the articles of organization or operating agreement of the company:

(a) except for the initial managers, each manager shall be elected at any time by the members holding at least a majority of the profits interests in the company, and any vacancy occurring in the position of manager shall be filled in the same manner;

(b) the number of managers shall be fixed by the members in the operating agreement or if the operating agreement fails to designate the number of managers, the number of managers shall be the number designated by members holding at least a majority of the profits interests in the company;

(c) each manager shall serve until the earliest to occur of the manager's death, withdrawal, or removal or an event described in Subsection 48-2c-708(6) or, if membership in the company is a condition to being a manager, an event described in Subsection 48-2c-708(4) or (5);

(d) a manager need not be a member of the company or a resident of this state;

(e) any manager may be removed with or without cause by the members, at any time, by the decision of members owning a majority of the profits interests in the company;

(f) there shall be only one class of managers; and

(g) approval by the requisite number of members, as well as all of the managers, shall be required as to all matters described in Subsections 48-2c-803(2) and (3).

Section 91. Section 48-2c-805 is enacted to read:

48-2c-805. Delegation of authority and power to manage.

Unless otherwise provided in the articles of organization or operating agreement, a member or manager of a company may not delegate to one or more other persons the member's or manager's, as the case may be, authority and power to manage the business and affairs of the company, except that an entity may designate an authorized representative to act for it. However, if a delegation is permitted in the articles of organization or operating agreement, then the delegation must comply with the following:

(1) any such delegation must be in writing including, but not limited to, a management agreement or another agreement;

(2) the scope and duration of the authority delegated shall be specified in the writing;

(3) the power to revoke the delegation at any time for any or no reason shall be retained by the member or manager;

(4) any such delegation shall not include any power of substitution without the written consent of the member or manager; and

(5) any such delegation by a member or manager shall not cause the member or manager to cease to be a member or manager, as the case may be.

Section 92. Section 48-2c-806 is enacted to read:

48-2c-806. Reliance by member or manager on reports and information.

Unless a member or manager has knowledge concerning the matter in question that makes reliance unwarranted, the member or manager shall be fully protected in relying in good faith upon:

(1) the records of the company; and

(2) the information, opinions, reports, or statements presented to the company by any of its other managers, members, employees or committees, or by any other person, as to matters the member or manager reasonably believes are within the other person's professional or expert competence, including, but not limited to, information, opinions, reports, or statements as to the value and amount of assets, liabilities, profits or losses of the company, or any other facts pertinent to the existence and amount of assets from which distributions to members might properly be paid.

Section 93. Section 48-2c-807 is enacted to read:

48-2c-807. Duties of managers and members.

(1) Unless otherwise provided in the articles of organization or an operating agreement, a member or manager shall not be liable or accountable in damages or otherwise to the company or the members for any action taken or failure to act on behalf of the company unless the act or omission constitutes gross negligence or willful misconduct.

(2) Unless otherwise provided in an operating agreement, each member and manager must account to the company and hold as trustee for it any profit or benefit derived by that person without the consent of members holding a majority interest in profits in the company, from:

(a) any transaction connected with the conduct of the company's business or winding up of the company; or

(b) any use by the member or manager of company property, including, but not limited to, confidential or proprietary information of the company or other matters entrusted to the person in the capacity of a member or manager.

(3) A member of a manager-managed company who is not also a manager owes no fiduciary duties to the company or to the other members solely by reason of acting in the capacity of a member.

Section 94. Section 48-2c-808 is enacted to read:

48-2c-808. Actions by multiple managers.

Unless otherwise provided in the articles of organization or operating agreement, where there are multiple managers, on any matter that is to be voted on by the managers:

(1) the managers may take action without a meeting, without prior notice, and without a vote, if a consent in writing, setting forth the action so taken, is signed by all of the managers; and

(2) the managers may not vote by proxy.

Section 95. Section 48-2c-809 is enacted to read:

48-2c-809. Removal by judicial proceeding.

(1) The district court of the county in this state where a company's designated office is located, or if it has no designated office in this state, its registered office is located, may remove a manager of a manager-managed company in a proceeding commenced either by the company or by its members holding at least 25% of the interests in profits of the company if the court finds that:

(a) the manager engaged in fraudulent or dishonest conduct or gross abuse of authority or discretion with respect to the company; and

(b) removal is in the best interests of the company.

(2) The court that removes a manager may bar the manager from reelection for a period prescribed by the court.

(3) If members commence a proceeding under Subsection (1) above, they shall make the company a party defendant.

(4) Subsections (1), (2), and (3) shall also apply to enable the removal of a member in a member-managed company from having any management authority or powers on behalf of the company.

(5) If the court orders removal of a manager or member under this section, the clerk of the court shall deliver a certified copy of the order to the division for filing.

Section 96. Section 48-2c-901 is enacted to read:

Part 9. Contributions Profits and Losses

48-2c-901. Form of contribution.

The contribution of a member to the company may consist of cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services, or any combination of the foregoing.

Section 97. Section 48-2c-902 is enacted to read:

48-2c-902. Assessments for additional contributions.

Except as otherwise provided in the articles of organization, operating agreement, or other writing binding on the members, no additional contributions shall be required of any member and no member shall be subject to assessment for additional contributions to the company. Nevertheless, where an assessment obligation is provided for, the obligation shall not be construed as conferring any rights upon any creditor or upon any person not a party to the operating agreement.

Section 98. Section 48-2c-903 is enacted to read:

48-2c-903. Capital accounts.

(1) A capital account shall be maintained for each member. The capital account of each member represents that member's share of the net assets of the company. Except as otherwise provided in the articles of organization or operating agreement, the capital accounts of all members shall be adjusted, either increased or decreased, to reflect the revaluation of company assets, including intangible assets such as goodwill, on the company's books in connection with any of the following events:

(a) a capital contribution, other than a de minimis contribution, made by or on behalf of a new member or an additional capital contribution, other than a de minimis contribution, made by or on behalf of an existing member;

(b) a distribution, other than a de minimis amount, made in partial or complete redemption of a member's interest in the company; or

(c) the dissolution and winding up of the company.

(2) Upon any such revaluation event, the book value of company assets shall be adjusted to fair market value and unrealized income, gain, loss, or deduction inherent in such company assets that have not been previously reflected in the members' capital accounts shall be allocated to the members' capital accounts.

Section 99. Section 48-2c-904 is enacted to read:

48-2c-904. Valuation of member's interest in the company.

Except as otherwise provided in the operating agreement, the fair market value of a member's interest in the company at any given time shall be the value at which the interest would change hands in an arms-length transaction between an informed and willing buyer and an informed and willing seller, neither being under any compulsion to buy or to sell, taking into consideration all relevant facts and circumstances, including the provisions of the articles of organization and operating agreement and all relevant discounts or premiums.

Section 100. Section 48-2c-905 is enacted to read:

48-2c-905. Redemption of interest.

(1) Subject to Section 48-2c-1005, a member may rightfully demand payment from the company of the fair market value of the member's interest in the company only:

(a) upon the dissolution and completion of winding up of the company; or

(b) upon the date or occurrence of an event specified in the articles of organization or operating agreement for redemption of the member's interest.

(2) Except as otherwise provided in the articles of organization or operating agreement or with consent of all members, a member, regardless of the nature of the member's contribution, has only the right to receive cash in redemption of the member's interest in the company.

Section 101. Section 48-2c-906 is enacted to read:

48-2c-906. Allocation of profits and losses.

The profits and losses of a company shall be allocated among the members in the manner provided in the operating agreement. If the operating agreement does not otherwise provide, profits and losses shall be allocated in proportion to the members' capital account balances as of the beginning of the company's current fiscal year.

Section 102. Section 48-2c-1001 is enacted to read:

Part 10. Distributions

48-2c-1001. Allocation of current distributions.

Except as otherwise provided in the operating agreement, current distributions of profits and gains of a company shall be in the form of cash. Current distributions shall be allocated among the members in the manner provided in the operating agreement. If the operating agreement does not otherwise provide, current distributions shall be allocated among the members in proportion to the members' capital account balances as of the beginning of the company's current fiscal year.

Section 103. Section 48-2c-1002 is enacted to read:

48-2c-1002. Timing of distributions.

Distributions to members shall be made at the times or upon the happening of the events specified in the operating agreement. If the operating agreement does not otherwise provide, each current distribution shall be made to all members concurrently, or at other times determined by the members in a member-managed company, or by the managers in a manager-managed company.

Section 104. Section 48-2c-1003 is enacted to read:

48-2c-1003. Liquidating distributions.

Distributions to the members in connection with the dissolution and winding up of a company shall be made in accordance with Section 48-2c-1308.

Section 105. Section 48-2c-1004 is enacted to read:

48-2c-1004. Right to distributions.

At the time a member becomes entitled to receive a distribution from the company, the member has the status of, and is entitled to all remedies available to, a creditor of the company with respect to the distribution.

Section 106. Section 48-2c-1005 is enacted to read:

48-2c-1005. Limitations on distributions.

(1) No distribution may be made by a company if, after giving effect to the distribution:

(a) the company would not be able to pay its debts as they become due in the usual and regular course of its business; or

(b) the value of the company's total assets would be less than the sum of its total liabilities plus, unless the articles of organization or the operating agreement permits otherwise, the amount that would be needed, if the company were to be dissolved and wound up at the time of the distribution, to satisfy the preferential rights upon dissolution and winding up of members whose preferential rights are superior to the rights of members receiving the distribution.

(2) The company may base a determination that a distribution is not prohibited under Subsection (1) either on:

(a) financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances; or

(b) a fair valuation or other method that is reasonable in the circumstances.

(3) The effect of a distribution under Subsection (1) is measured as of:

(a) the date the distribution is authorized if the payment occurs within 30 days after the date of authorization; or

(b) the date the payment is made if it occurs more than 30 days after the date of authorization.

Section 107. Section 48-2c-1006 is enacted to read:

48-2c-1006. Duty to return wrongful distributions.

If a member receives a distribution by mistake or in violation of the articles of organization, the operating agreement, or Section 48-2c-1005, that member is obligated to return the wrongful distribution to the company and shall remain liable to the company for a period of five years thereafter for the amount of the distribution wrongfully made provided a proceeding to recover the distribution from the member is commenced prior to the expiration of the five-year period.

Section 108. Section 48-2c-1007 is enacted to read:

48-2c-1007. Distribution in kind.

(1) Except as otherwise provided in the articles of organization or operating agreement, a member, regardless of the nature of the member's contribution, has no right to demand and receive any distribution from the company in any form other than cash.

(2) Except for an asset contributed by the member or as otherwise provided in the articles or organization or operating agreement, a member may not be compelled to accept a distribution of any asset in kind from a company to the extent that the percentage of the asset distributed to the member exceeds a percentage of that asset which is equal to the percentage in which the member shares in distributions from the company.

Section 109. Section 48-2c-1008 is enacted to read:

48-2c-1008. Unclaimed distributions.

If a company has mailed three successive distributions to a member addressed to the member's address shown on the company's current record of members and the distributions have been returned as undeliverable, no further attempt to deliver distributions to that member need be made until another address for the member is made known to the company, at which time all distributions accumulated by reason of this section shall, except as otherwise provided by law, be mailed to the member at the other address.

Section 110. Section 48-2c-1101 is enacted to read:

Part 11. Assignment of Interests

48-2c-1101. Assignment of interests.

Unless otherwise provided in the articles of organization or operating agreement, a member's interest in a company is assignable in whole or in part. An assignment of an interest in a company does not of itself dissolve the company.

Section 111. Section 48-2c-1102 is enacted to read:

48-2c-1102. Rights of assignee.

An assignment of an interest in a company does not entitle the assignee to participate in the management and affairs of the company or to vote or to become a member or to exercise any rights of a member or manager. An assignment only entitles the assignee to receive, to the extent assigned, any share of profits and losses and distributions to which the assignor would be entitled.

Section 112. Section 48-2c-1103 is enacted to read:

48-2c-1103. Rights of creditor of member.

(1) On application to a court of competent jurisdiction by any judgment creditor of a member or of a member's assignee, the court may charge the interest in the company of the member or assignee with payment of the unsatisfied amount of the judgment plus interest. The court may then or later appoint a receiver of the share of distributions due or to become due to the judgment debtor in respect of the interest in the company. The judgment creditor and receiver shall have only the rights of an assignee. The court may make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require.

(2) A charging order constitutes a lien on the judgment debtor's interest in the company. The court may order a foreclosure of the interest subject to the charging order at any time. The purchaser at the foreclosure sale has only the rights of an assignee.

(3) Unless otherwise provided in the articles or organization or operating agreement for the company, at any time before foreclosure an interest charged may be redeemed:

(a) by the judgment debtor;

(b) with property other than company property, by one or more of the other members; or

(c) by the company with the consent of all of the members whose interests are not so charged.

(4) This section does not deprive a member of a right under exemption laws with respect to the member's interest in a company.

(5) This section provides the exclusive remedy by which a judgment creditor of a member or a member's assignee may satisfy a judgment out of the judgment debtor's interest in a company.

(6) No creditor of a member shall have any right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of the company.

Section 113. Section 48-2c-1104 is enacted to read:

48-2c-1104. Right of assignee to become member.

(1) Except as otherwise provided in the articles of organization or operating agreement, an assignee of an interest in a company may become a member only upon the consent of all members and upon signing the operating agreement or other writing by which the assignee agrees to be bound by the operating agreement.

(2) An assignee who has become a member has, with respect to the interest assigned, the rights and powers, and is subject to the restrictions and liabilities, of a member under the articles of organization, the operating agreement, and this chapter.

(3) An assignee who becomes a member is liable for any obligations of his assignor to make contributions and to return distributions as provided in this chapter. However, an assignee who becomes a member is not obligated for liabilities of the assignor unknown to the assignee at the time the assignee became a member but has constructive notice of any obligations described in the articles of organization or operating agreement of the company.

Section 114. Section 48-2c-1105 is enacted to read:

48-2c-1105. Liability of assignor continues.

An assignor of an interest in a company is not released from liability to the company by reason of the assignment or by reason of the assignee's becoming a member.

Section 115. Section 48-2c-1106 is enacted to read:

48-2c-1106. Invalid transfers.

Any transfer or assignment of a member's interest in a company in violation of this part is void.

Section 116. Section 48-2c-1201 is enacted to read:

Part 12. Dissolution

48-2c-1201. Events of dissolution.

A company organized under this chapter shall be dissolved upon the occurrence of any of the following events:

(1) when the period fixed for the duration of the company, pursuant to Subsection 48-2c-403(4)(c), expires;

(2) at such times as the company fails to have at least one member;

(3) by written agreement signed by all members;

(4) upon the occurrence of a dissolution event specified in the articles of organization or operating agreement;

(5) when the company is not the successor company in the merger or consolidation of two or more companies;

(6) upon administrative dissolution under Section 48-2c-1207, subject to right of reinstatement under Section 48-2c-1208; or

(7) upon entry of a decree of judicial dissolution under Section 48-2c-1213.

Section 117. Section 48-2c-1202 is enacted to read:

48-2c-1202. Voluntary cancellation of certificate.

Articles of organization may be canceled voluntarily at any time by consent of all members or their successors in interest by submitting to the division for filing a certificate of cancellation that sets forth:

(1) the name of the company;

(2) the date of filing of its articles of organization;

(3) the effective date of cancellation, which shall be a date certain, if the cancellation is not to be effective upon the filing of the certificate; and

(4) any other information the person filing the certificate determines to be appropriate.

Section 118. Section 48-2c-1203 is enacted to read:

48-2c-1203. Effect of dissolution.

(1) A dissolved company continues its existence but may not carry on any business or activities except as appropriate to wind up and liquidate its business and affairs, as provided in Part 13 of this chapter.

(2) Dissolution of a company does not:

(a) transfer title to the company's property;

(b) prevent transfer of an interest in the company;

(c) subject its members or managers to standards of conduct different from those prescribed in Part 8;

(d) change:

(i) limited liability provided under Part 6 of this chapter;

(ii) voting requirements for its members or managers;

(iii) provisions for selection, resignation, or removal of its managers; or

(iv) provisions for amending its articles of organization or operating agreement;

(e) prevent commencement of a proceeding by or against the company in its company name;

(f) abate or suspend a proceeding pending by or against the company on the effective date of dissolution; or

(g) terminate the authority of the registered agent of the company.

Section 119. Section 48-2c-1204 is enacted to read:

48-2c-1204. Articles of dissolution.

(1) After any event of dissolution, other than the events described in Subsection 48-2c-1201(6) or (7), the company, or a person acting for the company, shall deliver to the division for filing articles of dissolution setting forth:

(a) the name of the company;

(b) the address of the company's designated office or, if none is to be maintained, a statement that the company will not maintain a designated office, and, if different from the address of the designated office or if no designated office is to be maintained, the address to which service of process may be mailed pursuant to Section 48-2c-308;

(c) the effective date of the dissolution;

(d) the event causing the dissolution;

(e) if dissolution occurred by written agreement of the members, a statement to that effect; and

(f) any additional information the division determines is necessary or appropriate.

(2) A company is dissolved upon the effective date of dissolution set forth in its articles of dissolution.

Section 120. Section 48-2c-1205 is enacted to read:

48-2c-1205. Revocation of voluntary dissolution.

(1) Where the event of dissolution is the written agreement of the members, a company may revoke its dissolution within 120 days after the effective date of the dissolution.

(2) Revocation of the voluntary dissolution must be approved by all of the members.

(3) After the revocation of voluntary dissolution is approved by all of the members, the company may revoke the dissolution by delivering to the division for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

(a) the name of the company;

(b) the effective date of the dissolution that was revoked; and

(c) the date that the revocation of dissolution was authorized by the members.

(4) Revocation of the voluntary dissolution is effective when the articles of revocation of dissolution are filed with the division. A provision may not be made for a delayed effective date for revocation of voluntary dissolution.

(5) When the revocation of voluntary dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the company may carry on its business as if the dissolution had never occurred.

Section 121. Section 48-2c-1206 is enacted to read:

48-2c-1206. Grounds for administrative dissolution.

The division may dissolve a company under Section 48-2c-1207 if:

(1) the company does not pay when due, any taxes, fees, or penalties imposed by this chapter or other applicable laws of this state;

(2) the company does not file its annual report with the division when it is due;

(3) the company is without a registered agent or registered office in this state; or

(4) the company fails to give notice to the division that:

(a) its registered agent or registered office has been changed;

(b) its registered agent has resigned;

(c) its registered office has been discontinued; or

(d) the company's period of duration has expired.

Section 122. Section 48-2c-1207 is enacted to read:

48-2c-1207. Procedure for and effect of administrative dissolution.

(1) If the division determines that one or more grounds exist under Section 48-2c-1206 for dissolving a company, it shall mail to the company written notice of:

(a) the division's determination that one or more grounds exist for dissolving the company; and

(b) the grounds for dissolving the company.

(2) (a) If the company does not correct each ground for dissolution, or demonstrate to the reasonable satisfaction of the division that each ground does not exist, within 60 days after mailing the notice provided in Subsection (1), the division shall administratively dissolve the company.

(b) If a company is dissolved under Subsection (2)(a), the division shall mail written notice of the administrative dissolution to the dissolved company at its designated office, stating the date of dissolution specified in Subsection (2)(d).

(c) The division shall mail a copy of the notice of administrative dissolution including a statement of the grounds therefor, to:

(i) the registered agent of the dissolved company; or

(ii) if there is no registered agent of record, or if the mailing to the registered agent is returned as undeliverable, at least one member if the company is member-managed or one manager of the company if the company is manager-managed, at their addresses as reflected on the notice, annual report, or document most recently filed with the division.

(d) A company's effective date of administrative dissolution is five days after the date the division mails the written notice of dissolution under Subsection (2)(b).

(e) On the effective date of dissolution, any assumed names filed on behalf of the dissolved company under Title 42, Chapter 2, Conducting Business Under Assumed Name, are canceled.

(f) Notwithstanding Subsection (2)(e), the name of the company that is dissolved and any assumed names filed on its behalf are not available for two years from the effective date of dissolution for use by any other person:

(i) transacting business in this state; or

(ii) doing business under an assumed name under Title 42, Chapter 2, Conducting Business Under Assumed Name.

(g) Notwithstanding Subsection (2)(e), if the company that is dissolved is reinstated in accordance with Section 48-2c-1208, the registration of the name of the company and any assumed names filed on its behalf are reinstated back to the effective date of dissolution.

(3) (a) Except as provided in Subsection (3)(b), a company administratively dissolved under this section continues its existence but may not carry on any business except:

(i) the business necessary to wind up and liquidate its business and affairs under Part 13 of this chapter; and

(ii) to give notice to claimants in the manner provided in Sections 48-2c-1305 and 48-2c-1306.

(b) If the company is reinstated in accordance with Section 48-2c-1208, business conducted by the company during a period of administrative dissolution is unaffected by the dissolution.

(4) The administrative dissolution of a company does not terminate the authority of its registered agent.

(5) (a) Upon the administrative dissolution of a company, the division shall be an additional agent of the dissolved company for purposes of service of process.

(b) Service of process on the division under this Subsection (5) is service on the dissolved company.

(c) Upon receipt of process under this Subsection (5), the division shall send a copy of the process to the dissolved company at its designated office and a copy of the process to the registered agent of the dissolved company.

(6) A notice mailed under this section shall be:

(a) mailed first-class, postage prepaid; and

(b) addressed to the most current mailing address appearing on the records of the division for:

(i) the designated office of the company, if the notice is required to be mailed to the company;

(ii) the registered agent of the company, if the notice is required to be mailed to the registered agent; or

(iii) any member if the company is member-managed, or to any manager of the company if the company is manager-managed, if the notice is required to be mailed to a member or manager of the company.

Section 123. Section 48-2c-1208 is enacted to read:

48-2c-1208. Reinstatement following administrative dissolution.

(1) A company dissolved under Section 48-2c-1207 may apply to the division for reinstatement within two years after the effective date of dissolution by delivering to the division for filing an application for reinstatement that states:

(a) the effective date of the company's dissolution;

(b) the company name as of the effective date of dissolution;

(c) that the ground for dissolution either did not exist or has been eliminated;

(d) the name under which the company is being reinstated, if different than the name stated in Subsection (1)(b);

(e) that the name stated in Subsection (1)(d) satisfies the requirements of Section 48-2c-106;

(f) that all fees or penalties imposed pursuant to this chapter or otherwise owed by the company to the state have been paid;

(g) the address of the designated office of the company;

(h) the address of its registered office in this state; and

(i) the name of its registered agent at the office stated in Subsection (1)(h) and any additional information the division determines to be necessary or appropriate.

(2) The company shall include in or with the application for reinstatement the written consent to appointment by the designated registered agent.

(3) If the division determines that the application for reinstatement contains the information required by Subsections (1) and (2) and that the information is correct, the division shall revoke the administrative dissolution. The division shall mail to the company in the manner provided in Subsection 48-2c-1207(6) written notice of:

(a) the revocation; and

(b) the effective date of the revocation.

(4) When the reinstatement is effective, it relates back to the effective date of the administrative dissolution. Upon reinstatement:

(a) an act of the company during the period of dissolution is effective and enforceable as if the administrative dissolution had never occurred; and

(b) the company may carry on its business, under the name stated pursuant to Subsection (1)(b) or (1)(d), as if the administrative dissolution had never occurred.

Section 124. Section 48-2c-1209 is enacted to read:

48-2c-1209. Appeal from denial of reinstatement.

If the division denies a company's application for reinstatement under Section 48-2c-1208 following administrative dissolution, the division shall mail to the company in the manner provided in Subsection 48-2c-1207(6) written notice:

(1) setting forth the reasons for denying the application; and

(2) stating that the company has the right to appeal the division's determination to the executive director of the Department of Commerce in accordance with Title 63, Chapter 46b, Administrative Procedures Act.

Section 125. Section 48-2c-1210 is enacted to read:

48-2c-1210. Grounds for judicial dissolution.

(1) A company may be dissolved in a proceeding filed by the attorney general or the director of the division if it is established that the company:

(a) obtained the filing of its articles of organization through fraud;

(b) continually exceeded or abused the authority conferred upon it by law;

(c) committed a violation of any provision of law whereby it has forfeited its charter;

(d) carried on, conducted, or transacted its business in a persistently fraudulent or illegal manner;

(e) abused its powers contrary to the public policy of this state; or

(f) failed to amend its articles of organization as required by Section 48-2c-405.

(2) A company may be dissolved in a proceeding filed by any member if it is established that:

(a) the managers are deadlocked in management of company affairs and the members are unable to break the deadlock, irreparable injury to the company is threatened or being suffered, or the business and affairs of the company can no longer be conducted to the advantage of the members generally, because of the deadlock;

(b) the managers or those in control of the company have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;

(c) the members are deadlocked in voting power and the deadlock has continued for a period of at least six months;

(d) the company assets are being misapplied or wasted; or

(e) it is not reasonably practical to carry on the business of the company in conformity with its articles of organization and operating agreement.

(3) A company may be dissolved in a proceeding filed by a creditor of the company if it is established that:

(a) the creditor's claim has been reduced to judgment, the execution on the judgment has been returned unsatisfied, and the company is insolvent; or

(b) the company is insolvent and the company has admitted in writing that the creditor's claim is due and owing.

(4) A company may commence a proceeding under this section when the company seeks to have its voluntary dissolution continued under court supervision.

Section 126. Section 48-2c-1211 is enacted to read:

48-2c-1211. Procedure for judicial dissolution.

(1) A proceeding by the attorney general or director of the division to dissolve a company shall be brought in either the district court of the county in this state in which the designated office or, if it has no designated office in this state, its registered office is or was last located, or the district court of Salt Lake County. A proceeding brought by any other party named in Section 48-2c-1210 shall be brought in the district court of the county in this state where the company's designated office or, if it has no designated office in this state, its registered office is or was last located.

(2) It is not necessary to make any member or manager a party to a proceeding to dissolve a company unless relief is sought against them individually.

(3) A court in a proceeding brought to dissolve a company may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the company's assets wherever located, and carry on the business of the company until a full hearing can be held.

Section 127. Section 48-2c-1212 is enacted to read:

48-2c-1212. Receivership or custodianship.

(1) A court in a judicial proceeding brought to dissolve a company may, at any time before entering a decree of dissolution, appoint one or more custodians to manage the business and affairs of the company until further order of the court and may, upon or after entering a decree dissolving the company, appoint one or more receivers to wind up and liquidate the business and affairs of the company. The court shall hold a hearing, after giving notice to all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or a custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the company and all of its property wherever located.

(2) The court may appoint any person or the court may require the receiver or custodian to post bond,

with or without sureties, in an amount the court directs.

(3) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

(a) the receiver:

(i) may dispose of all or any part of the assets of the company wherever located, at a public or private sale, if authorized by the court; and

(ii) may sue and defend in its own name as receiver of the company in all courts of this state; or

(b) the custodian may exercise all of the powers of the company, through or in place of its members or managers, to the extent necessary to manage the affairs of the company in the best interests of its members and creditors.

(4) The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the company, its members, and its creditors.

(5) The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and the custodian's or receiver's counsel from the assets of the company or proceeds from the sale of the assets.

Section 128. Section 48-2c-1213 is enacted to read:

48-2c-1213. Decree of dissolution.

(1) If after a hearing the court determines that one or more grounds for judicial dissolution described in Section 48-2c-1210 exist, it may enter a decree dissolving the company and specifying the effective date of the dissolution. The clerk of the court shall deliver a certified copy of the decree to the division for filing and shall mail a copy of the decree to the registered agent of the company or to the division if it has no registered agent of record.

(2) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the company's business and affairs in accordance with Part 13.

(3) The court's order may be appealed as in other civil proceedings.

Section 129. Section 48-2c-1214 is enacted to read:

48-2c-1214. Election to purchase in lieu of dissolution.

(1) In a proceeding under Subsection 48-2c-1210(2) to dissolve a company, the company may elect, or if it fails to elect, one of more members may elect to purchase the interest in the company owned by the petitioning member at the fair market value of the interest, determined as provided in this section. An election pursuant to this section is irrevocable unless the court determines that it is equitable to set aside or modify the election.

(2) (a) An election to purchase pursuant to this section may be filed with the court at any time within 90 days after the filing of the petition in a proceeding under Subsection 48-2c-1210(2) or at any later time as the court in its discretion may allow. If the company files an election with the court within the 90-day period, or at any later time allowed by the court, to purchase the interest in the company owned by the petitioning member, the company shall purchase the interest in the manner provided in this section.

(b) If the company does not file an election with the court within the time period, but an election to purchase the interest in the company owned by the petitioning member is filed by one or more members within the time period, the company shall, within ten days after the later of the end of the time period allowed for the filing of elections to purchase under this section or notification from the court of an election by members to purchase the interest in the company owned by the petitioning member as provided in this section, give written notice of the election to purchase to all members of the company, other than the petitioning member. The notice shall state the name and the percentage interest in the company owned by the petitioning member and the name and the percentage interest in the company owned by each electing member. The notice shall advise any recipients who have not participated in the election of their right to join in the election to purchase the interest in the company in accordance with this section, and of the date by which any notice of intent to participate must be filed with the court.

(c) Members who wish to participate in the purchase of the interest in the company of the petitioning member must file notice of their intention to join in the purchase by electing members, no later than 30 days after the effective date of the company's notice of their right to join in the election to purchase.

(d) All members who have filed with the court an election or notice of their intention to participate in the election to purchase the interest in the company of the petitioning member thereby become irrevocably obligated to participate in the purchase of the interest from the petitioning member upon the terms and conditions of this section, unless the court otherwise directs.

(e) After an election has been filed by the company or one or more members, the proceedings under Subsection 48-2c-1210(2) may not be discontinued or settled, nor may the petitioning member sell or otherwise dispose of his interest in the company, unless the court determines that it would be equitable to the company and the members, other than the petitioning member, to permit any discontinuance, settlement, sale, or other disposition.

(3) If, within 60 days after the earlier of the company filing of an election to purchase the interest in the company of the petitioning member or the company's mailing of a notice to its members

of the filing of an election by the members to purchase the interest in the company of the petitioning member, the petitioning member and electing company or members reach agreement as to the fair market value and terms of the purchase of the petitioning member's interest, the court shall enter an order directing the purchase of the petitioning member's interest, upon the terms and conditions agreed to by the parties.

(4) If the parties are unable to reach an agreement as provided for in Subsection (3), upon application of any party, the court shall stay the proceedings under Subsection 48-2c-1210(2) and determine the fair market value of the petitioning member's interest in the company as of the day before the date on which the petition under Subsection 48-2c-1210(2) was filed or as of any other date the court determines to be appropriate under the circumstances and based on the factors the court determines to be appropriate.

(5) (a) Upon determining the fair market value of the interest in the company of the petitioning member, the court shall enter an order directing the purchase of the interest in the company upon terms and conditions the court determines to be appropriate. The terms and conditions may include payment of the purchase price in installments, where necessary in the interest of equity, provision for security to assure payment of the purchase price and any additional costs, fees, and expenses awarded by the court, and an allocation of the interest in the company among members if the interest in the company is to be purchased by members.

(b) In allocating the petitioning member's interest in the company among holders of different classes of members, the court shall attempt to preserve the existing distribution of voting rights among member classes to the extent practicable. The court may direct that holders of a specific class or classes shall not participate in the purchase. The court may not require any electing member to purchase more of the interest in the company owned by the petitioning member than the percentage interest that the purchasing member may have set forth in his election or notice of intent to participate filed with the court.

(c) Interest may be allowed at the rate and from the date determined by the court to be equitable. However, if the court finds that the refusal of the petitioning member to accept an offer of payment was arbitrary or otherwise not in good faith, interest may not be allowed.

(d) If the court finds that the petitioning member had probable ground for relief under Subsection 48-2c-1210(2)(b) or (2)(d), it may award to the petitioning member reasonable fees and expenses of counsel and experts employed by the petitioning member.

(6) Upon entry of an order under Subsection (3) or (5), the court shall dismiss the petition to dissolve the company under Subsection 48-2c-1210(2) and the petitioning member shall no longer have any rights or status as a member of the company, except the right to receive the amounts awarded to him by the court. The award is enforceable in the same manner as any other judgment.

(7) (a) The purchase ordered pursuant to Subsection (5) shall be made within ten days after the date the order becomes final, unless before that time the company files with the court a notice of its intention to adopt articles of dissolution pursuant to Section 48-2c-1204. The articles of dissolution must then be adopted and filed within 60 days after notice.

(b) Upon filing of articles of dissolution, the company is dissolved and shall be wound up pursuant to Part 13 of this chapter, and the order entered pursuant to Subsection (5) is no longer of any force or effect. However, the court may award the petitioning member reasonable fees and expenses in accordance with the provisions of Subsection (5)(d). The petitioning member may continue to pursue any claims previously asserted on behalf of the company.

(8) Any payment by the company pursuant to an order under Subsection (3) or (5), other than an award of fees and expenses pursuant to Subsection (5)(d), is subject to the provisions of Sections 48-2c-1005 and 48-2c-1006.

Section 130. Section 48-2c-1301 is enacted to read:

Part 13. Winding Up

48-2c-1301. Winding up defined.

The winding up of a dissolved company is the process consisting of collecting all amounts owed to the company, selling or otherwise disposing of the company's assets and property, paying or discharging the taxes, debts and liabilities of the company or making provision for the payment or discharge, and distributing all remaining company assets and property among the members of the company according to their interests. There is no fixed time period for completion of winding up a dissolved company except that the winding up should be completed within a reasonable time under the circumstances.

Section 131. Section 48-2c-1302 is enacted to read:

48-2c-1302. Powers of company in winding up.

A dissolved company in winding up has all powers of a company that is not dissolved but those powers may be used only for the purpose of winding up and not for the carrying on of any business or activity other than that necessary for winding up. Those powers include, but are not limited to, the power to:

(1) continue the business of the company for the time reasonably necessary to obtain appropriate financial results for the members and creditors of the company;

(2) hire and fire employees, agents, and service providers;

(3) settle or compromise claims or debts owed to the company or claims brought against, or debts owed by, the company;

(4) sell, exchange, or otherwise dispose of property of the company whether for cash or on terms;

(5) convey and transfer property of the company;

(6) sue to collect amounts owed to the company and to recover property or rights belonging to the company;

(7) initiate and defend claims in any proceeding;

(8) settle disputes by mediation, arbitration, or court action; and

(9) perform every other act necessary to wind up and liquidate the business and affairs of the company.

Section 132. Section 48-2c-1303 is enacted to read:

48-2c-1303. Persons authorized to wind up.

(1) Unless otherwise provided in the operating agreement and except for persons appointed by the court in a judicial dissolution under Sections 48-2c-1211 through 48-2c-1213, the following persons, in the order of priority indicated, shall have the right to wind up the business of a dissolved company:

(a) if the company is manager-managed, first, the existing managers or, second, an agent designated by the existing managers or, third, the existing members, or fourth, an agent designated by the existing members;

(b) if the company is member-managed, first, the existing members or, second, an agent designated by the existing members;

(c) if there are no existing managers or members, first, an agent designated by the last surviving member or, second, an agent designated by the successors in interest of the last surviving member; or

(d) in any situation not covered by Subsection (1)(a), (b), or (c), a person appointed by a court of competent jurisdiction upon application of any interested person.

(2) The person who winds up the business and affairs of a dissolved company in conformity with this part:

(a) shall, unless otherwise directed by a court of competent jurisdiction, become a trustee for the members and creditors of the company and, in that capacity, may sell or distribute any company property discovered after dissolution, convey real estate, and take any other necessary action on behalf of and in the name of the company; and

(b) shall not be personally liable to anyone by reason of that person's actions in winding up the company except for damages resulting from the person's gross negligence or willful misconduct.

Section 133. Section 48-2c-1304 is enacted to read:

48-2c-1304. Payment of claims and obligations.

(1) A dissolved company in winding up shall pay or make reasonable provision to pay all claims and obligations, including all contingent, conditional, or unmatured claims and obligations, known to the company and all claims and obligations which are known to the company but for which the identity of the claimant is unknown. If there are sufficient assets, the claims and obligations shall be paid in full and any such provision for payment shall be made in full. If there are insufficient assets, the claims and obligations shall be paid or provided for according to their priority under law and, among claims and obligations of equal priority, ratably to the extent of assets available therefor.

(2) Unless otherwise provided in the articles of organization or operating agreement of the dissolved company, any remaining assets shall be distributed as provided in Section 48-2c-1308.

Section 134. Section 48-2c-1305 is enacted to read:

48-2c-1305. Disposition of known claims by notification.

(1) A dissolved company in winding up may dispose of the known claims against it by following the procedures described in this section.

(2) A company in winding up electing to dispose of known claims pursuant to this section may give written notice of the company's dissolution to known claimants at any time after the effective date of the dissolution. The written notice must:

(a) describe the information that must be included in a claim;

(b) provide an address to which written notice of any claim must be given to the company;

(c) state the deadline, which may not be fewer than 120 days after the effective date of the notice, by which the dissolved company must receive the claim; and

(d) state that, unless sooner barred by another state statute limiting actions, the claim will be barred if not received by the deadline.

(3) Unless sooner barred by another statute limiting actions, a claim against the dissolved company is barred if:

(a) a claimant was given notice under Subsection (2) and the claim is not received by the dissolved company by the deadline; or

(b) the dissolved company delivers to the claimant written notice of rejection of the claim within 90 days after receipt of the claim and the claimant whose claim was rejected by the dissolved company does not commence a proceeding to enforce the claim within 90 days after the effective date of the rejection notice.

(4) Claims which are not rejected by the dissolved company in writing within 90 days after receipt of the claim by the dissolved company shall be considered approved.

(5) The failure of the dissolved company to give notice to any known claimant pursuant to Subsection (2) does not affect the disposition under this section of any claim held by any other known claimant.

(6) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

Section 135. Section 48-2c-1306 is enacted to read:

48-2c-1306. Disposition of claims by publication.

(1) A dissolved company in winding up may publish notice of its dissolution and request that persons with claims against the company present them in accordance with the notice.

(2) The notice contemplated in Subsection (1) must:

(a) be published once a week for three successive weeks in a newspaper of general circulation in the county where the dissolved company's designated office or, if it has no designated office in this state, its registered office, is or was last located;

(b) describe the information that must be included in a claim and provide an address to which written notice of any claim must be given to the company;

(c) state the deadline, which may not be fewer than 120 days after the first date of publication of the notice, by which the dissolved company must receive the claim; and

(d) state that, unless sooner barred by another statute limiting actions, the claim will be barred if not received by the deadline.

(3) If the dissolved company publishes a newspaper notice in accordance with Subsection (2), then unless sooner barred under Section 48-2c-1305 or under another statute limiting actions, the claim of any claimant against the dissolved company is barred if:

(a) the claim is not received by the dissolved company by the deadline; or

(b) the dissolved company delivers to the claimant written notice of rejection of the claim within 90 days after receipt of the claim and the claimant whose claim was rejected by the dissolved company does not commence a proceeding to enforce the claim within 90 days after the effective date of the rejection notice.

(4) Claims which are not rejected by the dissolved company in writing within 90 days after receipt of the claim by the dissolved company shall be considered approved.

(5) (a) For purposes of this section, "claim" means any claim, including claims of this state whether known or unknown, due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, or otherwise.

(b) For purposes of this section and Section 48-2c-1305, a proceeding to enforce a claim means a civil action or an arbitration under an agreement for binding arbitration between the dissolved company and the claimant.

Section 136. Section 48-2c-1307 is enacted to read:

48-2c-1307. Enforcement of claims against dissolved company in winding up.

(1) A claim may be enforced:

(a) under Section 48-2c-1305 or 48-2c-1306 against a dissolved company in winding up to the extent of its undistributed assets; or

(b) against one or more members of the dissolved company to the extent the assets have been distributed to the members in winding up.

(2) The total liability for all claims under this section may not exceed the total value of assets distributed to the members during winding up as that value is determined at the time of distribution.

(3) Any member required to return any portion of the value of assets received by that member during winding up shall be entitled to contribution from all other members. The contributions shall be in accordance with the respective rights and interests of the members and may not exceed the value of the assets received in winding up.

Section 137. Section 48-2c-1308 is enacted to read:

48-2c-1308. Distribution of assets on winding up.

(1) After dissolution, and during winding up, the assets of the company shall be applied to pay or satisfy:

(a) first, the liabilities to creditors other than members, in the order of priority as provided by law;

(b) second, the liabilities to members in their capacities as creditors, in the order of priority as provided by law; and

(c) third, the expenses and cost of winding up.

(2) Company assets remaining after application under Subsection (1) shall be allocated and distributed to the members as provided in the articles of organization or operating agreement, or if not so provided, in accordance with the members' final capital account balances after allocation of all profits and losses including profits and losses accrued or incurred during winding up.

Section 138. Section 48-2c-1309 is enacted to read:

48-2c-1309. Deposit with state treasurer.

Assets of a dissolved company that should be transferred to a creditor, claimant, or member of the company who cannot be found shall be reduced to cash and deposited with the state treasurer in accordance with Title 67, Chapter 4a, Unclaimed Property Act.

Section 139. Section 48-2c-1401 is enacted to read:

Part 14. Conversions and Mergers

48-2c-1401. Conversion of certain entities to a domestic company.

(1) As used in this part, the term "subject entity" means and includes a corporation, business trust or association, a real estate investment trust, a common-law trust, or any other unincorporated business, including a general partnership, a registered limited liability partnership, a limited partnership, or a foreign company.

(2) Any subject entity may convert to a domestic company by complying with Section 48-2c-1404 and filing with the division:

(a) articles of conversion that satisfy the requirements of Section 48-2c-1402; and

(b) articles of organization that satisfy the requirements of Part 4.

Section 140. Section 48-2c-1402 is enacted to read:

48-2c-1402. Articles of conversion.

The articles of conversion shall state:

(1) the date on which and jurisdiction where the subject entity was first created, formed, incorporated, or otherwise came into being and, if it has changed, its jurisdiction immediately prior to its conversion to a domestic company;

(2) the name of the subject entity immediately prior to the filing of the articles of conversion;

(3) the name of the company as set forth in its articles of organization filed in accordance with Subsection 48-2c-1401(2)(b);

(4) the future effective date or time, which shall be a date or time certain, of the conversion to a domestic company if it is not to be effective upon the filing of the articles of conversion and the articles of organization; and

(5) that the conversion has been duly approved by the owners of the subject entity.

Section 141. Section 48-2c-1403 is enacted to read:

48-2c-1403. Effect of conversion.

(1) Upon filing with the division of the articles of conversion and the articles of organization or, if applicable, upon the future effective date or time of the articles of conversion and the articles of organization, the subject entity shall be converted into a domestic company and the company shall thereafter be subject to all of the provisions of this chapter, except that, notwithstanding Section 48-2c-402, the existence of the company shall be considered to have commenced on the date the subject entity commenced its existence in the jurisdiction in which the subject entity was first created, formed, incorporated, or otherwise came into being.

(2) The conversion of any subject entity into a domestic company shall not be considered to affect any obligations or liabilities of the subject entity incurred prior to its conversion to a domestic company or the personal liability of any person incurred prior to the conversion.

(3) When any conversion shall have become effective under this section, for all purposes of the laws of this state, all of the rights, privileges, and powers of the subject entity that has converted, and all property, real, personal, and mixed, and all debts due to the subject entity, as well as all other things and causes of action belonging to the subject entity, shall remain vested in the domestic company to which the subject entity has converted and shall be the property of the domestic company, and the title to any real property vested by deed or otherwise in the subject entity shall not revert or be in any way impaired by reason of this chapter or of the conversion, but all rights of creditors and all liens upon any property of the subject entity shall be preserved unimpaired, and all debts, liabilities, and duties of the subject entity that has converted shall remain attached to the domestic company to which the subject entity has converted and may be enforced against it to the same extent as if the debts, liabilities, and duties had been incurred or contracted by it in its capacity as a domestic company.

(4) A converted subject entity shall, upon conversion to a domestic company pursuant to this part, be considered the same entity as the domestic company and the rights, privileges, powers, and interests in property of the subject entity, as well as the debts, liabilities, and duties of the subject entity, shall not, for any purpose of the laws of this state, be considered, as a consequence of the conversion, to have been transferred to the domestic company to which the subject entity has converted.

(5) In connection with conversion of a subject entity to a domestic company under this part, all interests in, or securities of or rights in the subject entity which is to be converted may be exchanged for or converted into cash, property, interests in, or securities of or rights in the domestic company to which it is converted or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, interests in, or securities of or rights in another entity.

(6) Unless otherwise agreed, or as required under applicable non-Utah law of another jurisdiction, the converting subject entity shall not be required to wind up its affairs or pay its liabilities or distribute its assets, and the conversion shall not be considered to constitute a dissolution of the other entity but shall constitute a continuation of the existence of the converting other entity in the form of a domestic company.

Section 142. Section 48-2c-1404 is enacted to read:

48-2c-1404. Approval of conversion.

Prior to filing articles of conversion with the division, the conversion must first be approved in the manner provided for by applicable law or by the document, instrument, agreement, or other writing, as the case may be, that governs the internal affairs of the subject entity, as appropriate,

and the new operating agreement, if any, for the domestic company must be approved by the same authorization required to approve the conversion. If applicable law, or the document, instrument, agreement, or other writing, as the case may be, that governs the internal affairs of the subject entity, does not provide for the manner of approving the conversion, then unanimous consent of the owners of the subject entity shall be required to approve the conversion and the new operating agreement.

Section 143. Section 48-2c-1405 is enacted to read:

48-2c-1405. No limitation on other changes.

The provisions of Sections 48-2c-1401 and 48-2c-1404 shall not be construed to limit the accomplishment of a change in the law governing, or the domicile of, any entity to this state by any other means provided for in an operating agreement or other agreement or as otherwise permitted by law.

Section 144. Section 48-2c-1406 is enacted to read:

48-2c-1406. Approval of company conversion to other entity.

(1) A domestic company may convert to any subject entity upon the authorization of the conversion in accordance with this section. If the operating agreement specifies the manner of authorizing a conversion of the company, the conversion shall be authorized as specified in the operating agreement. If the operating agreement does not specify the manner of authorizing a conversion of the company and does not prohibit a conversion of the company, the conversion shall be authorized in the same manner as specified in the operating agreement for authorizing a merger that involves the company as a constituent party to the merger. If the operating agreement does not specify the manner of authorizing a conversion of the company or a merger that involves the company as a constituent party and does not prohibit a conversion of the company, the conversion must be authorized by unanimous consent of all members.

(2) A converted domestic company shall, upon conversion to a subject entity, be considered the same entity as the subject entity and the rights, privileges, powers, and interests in property of the domestic company, as well as the debts, liabilities, and duties of the domestic company, shall not, for any purpose of the laws of this state, be considered, as a consequence of the conversion, to have been transferred to the subject entity to which the domestic company has converted.

(3) Unless otherwise agreed, the conversion of a domestic company to another entity, pursuant to this section, shall not require the domestic company to wind up its affairs or to pay its liabilities or distribute its assets under this chapter. In connection with conversion of a domestic company to another entity under this section, all interests in, or securities of or rights in the domestic company which is to be converted may be exchanged for or converted into cash, property, interests in, or securities of or rights in the entity into which the domestic company is converted or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, interests in, or securities of or rights in another entity.

Section 145. Section 48-2c-1407 is enacted to read:

48-2c-1407. Merger.

(1) One or more limited liability companies may merge with one or more other entities, pursuant to this section, if each company and entity that is a party to the merger approves a plan of merger and if the merger is permitted by the statutes governing each entity. The entity that survives may be a limited liability company or other entity.

(2) The plan of merger shall set forth:

(a) the name and type of each entity planning to merge;

(b) the name and type of the entity that will survive;

(c) the terms and conditions of the merger;

(d) the manner and basis of converting the ownership interests of each owner into ownership interests or obligations of the surviving entity, or any other entity, or into cash or other property in whole or in part; and

(e) if any party to the merger is an entity other than a limited liability company, any additional information required for a merger by the statutes governing that entity.

(3) The plan of merger may set forth:

(a) amendments to the articles of organization of a limited liability company, if that company is the surviving entity; and

(b) other provisions relating to the merger.

Section 146. Section 48-2c-1408 is enacted to read:

48-2c-1408. Approval of merger.

(1) A plan of merger shall be approved by each entity that is a party to the merger, as follows:

(a) In the case of a domestic company, by members holding the interest in profits required by Section 48-2c-803, or by a greater vote if required by its articles of organization or operating agreement.

(b) In the case of an entity other than a domestic company, as provided by the statutes governing that entity.

(2) After a merger is authorized, and at any time before articles of merger are filed, the planned merger may be abandoned, subject to any contractual rights:

(a) By a domestic company, in accordance with the procedure set forth in the plan of merger or, if none is set forth, by vote of members holding 2/3 of the profit interests in the domestic company.

(b) By a party to the merger that is not a domestic company, in accordance with the procedure set forth

in the plan of merger or, if none is set forth, in the manner permitted by the statutes governing that entity.

Section 147. Section 48-2c-1409 is enacted to read:

48-2c-1409. Articles of merger.

(1) After a plan of merger is approved by each entity that is a party to the merger, the surviving entity shall deliver to the division, for filing, articles of merger setting forth:

(a) the plan of merger; and

(b) a statement that the plan of merger was duly authorized and approved by each entity that is a party to the merger in accordance with Section 48-2c-1408.

(2) The merger takes effect on the date of filing the articles of merger with the division, unless otherwise set forth in the plan of merger or the articles of merger, provided the effective date is later than the date of filing the articles of merger.

Section 148. Section 48-2c-1410 is enacted to read:

48-2c-1410. Effect of merger.

(1) When a merger involving a limited liability company takes effect:

(a) every other entity that is a party to the merger merges into the surviving entity, and the separate existence of every other party ceases;

(b) title to all real estate and other property owned by each of the entities that were parties to the merger is vested in the surviving entity without reversion or impairment;

(c) all obligations of each of the entities that were parties to the merger, including, without limitation, contractual, tort, statutory, and administrative obligations, are obligations of the surviving entity;

(d) an action or proceeding pending against each of the entities or its owners that were parties to the merger may be continued as if the merger had not occurred, or the surviving entity may be substituted as a party to the action or proceeding;

(e) if a domestic company is the surviving entity, its articles of organization are amended to the extent provided in the plan of merger;

(f) the ownership interests of each owner that are to be converted into ownership interests or obligations of the surviving entity or any other entity, or into cash or other property, are converted as provided in the plan of merger;

(g) liability of an owner for obligations of an entity that is a party to the merger shall be determined:

(i) as to liabilities incurred by the entity prior to the merger, according to the laws applicable prior to the merger; and

(ii) as to liabilities incurred by the entity after the merger, according to the laws applicable after the merger, except as provided in Subsection (1)(h);

(h) if prior to the merger an owner of an entity was a partner of a partnership or general partner of a limited partnership and was personally liable for the entity's liabilities, and after the merger is an owner normally protected from personal liability, then the owner shall continue to be personally liable for the entity's liabilities incurred during the 12 months following the merger, if the other party or parties to the transaction reasonably believed that the owner would be personally liable and had not received notice of the merger; and

(i) the registration of an assumed business name of an entity under Title 42, Chapter 2, Conducting Business Under Assumed Name, shall not be affected by the merger.

(2) Owners of the entities that are parties to the merger are entitled to:

(a) in the case of members of a domestic company, only the rights described in the articles of merger; and

(b) in the case of owners of entities other than a domestic company, the rights provided in the statutes applicable to the entity prior to the merger, including, without limitation, any rights to dissent, to dissociate, to withdraw, to recover for breach of any duty or obligation owed by the other owners, and to obtain an appraisal or payment for the value of an owner's interest.

Section 149. Section 48-2c-1501 is enacted to read:

Part 15. Professions

48-2c-1501. Purpose of Part 15.

This part shall be so construed as to effectuate its general purpose of making available to professional persons the benefits of the limited liability company form for the business aspects of their practices while preserving the established professional relationships between the professional person and those receiving the professional services.

Section 150. Section 48-2c-1502 is enacted to read:

48-2c-1502. Definitions.

As used in this part:

(1) "Professional services company" means a limited liability company organized under this part to render professional services.

(2) "Professional services" means the personal services rendered by:

(a) an architect holding a license under Title 58, Chapter 3a, Architects Licensing Act, and any subsequent laws regulating the practice of architecture;

(b) an attorney granted the authority to practice law by the:

(i) Supreme Court of Utah as provided in Title 78, Chapter 51, Part 6, Attorneys and Counselors; or

(ii) the Supreme Court, other court, agency, instrumentality, or regulating board that licenses or regulates the authority to practice law in any

state or territory of the United States other than Utah;

(c) a chiropractor holding a license under Title 58, Chapter 73, Chiropractic Physician Practice Act, and any subsequent laws regulating the practice of chiropractic;

(d) a doctor of dentistry holding a license under Title 58, Chapter 69, Dentists and Dental Hygienists Practice Act, and any subsequent laws, regulating the practice of dentistry;

(e) a professional engineer registered under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act;

(f) a naturopath holding a license under Title 58, Chapter 71, Naturopathic Physician Practice Act, and any subsequent laws regulating the practice of naturopathy;

(g) a nurse licensed under Title 58, Chapter 31b, Nurse Practice Act, or Title 58, Chapter 44a, Nurse Midwife Practice Act;

(h) an optometrist holding a license under Title 58, Chapter 16a, Utah Optometry Practice Act, and any subsequent laws regulating the practice of optometry;

(i) an osteopathic physician or surgeon holding a license under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, and any subsequent laws regulating the practice of osteopathy;

(j) a pharmacist holding a license under Title 58, Chapter 17a, Pharmacy Practice Act, and any subsequent laws regulating the practice of pharmacy;

(k) a physician, surgeon, or doctor of medicine holding a license under Title 58, Chapter 67, Utah Medical Practice Act, and any subsequent laws regulating the practice of medicine;

(l) a physical therapist holding a license under Title 58, Chapter 24a, Physical Therapist Practice Act, and any subsequent laws regulating the practice of physical therapy;

(m) a podiatric physician holding a license under Title 58, Chapter 5a, Podiatric Physician Licensing Act, and any subsequent laws regulating the practice of podiatry;

(n) a psychologist holding a license under Title 58, Chapter 61, Psychologist Licensing Act, and any subsequent laws regulating the practice of psychology;

(o) a public accountant holding a license under Title 58, Chapter 26a, Certified Public Accountant Licensing Act, and any subsequent laws regulating the practice of public accounting;

(p) a real estate broker or real estate agent holding a license under Title 61, Chapter 2, Division of Real Estate, and any subsequent laws regulating the sale, exchange, purchase, rental, or leasing of real estate;

(q) a clinical or certified social worker holding a license under Title 58, Chapter 60, Part 2, Social Worker Licensing Act, and any subsequent laws regulating the practice of social work;

(r) a mental health therapist holding a license under Title 58, Chapter 60, Mental Health Professional Practice Act, and any subsequent laws regulating the practice of mental health therapy; and

(s) a veterinarian holding a license under Title 58, Chapter 28, Veterinary Practice Act, and any subsequent laws regulating the practice of veterinary medicine.

(3) "Regulating board" means the board or agency organized pursuant to state law that is charged with the licensing and regulation of the practice of the profession that a company is organized to render.

Section 151. Section 48-2c-1503 is enacted to read:

48-2c-1503. Rendering professional services.

(1) A professional services company may render professional services in this state only through individuals licensed or otherwise authorized in this state to render those services.

(2) Subsection (1) does not:

(a) require an individual employed by a professional services company to be licensed to perform services for the company if a license is not otherwise required;

(b) prohibit a licensed individual from rendering professional services in his capacity although he is a member, manager, employee, or agent of a professional services company; or

(c) prohibit an individual licensed in another state from rendering professional services for a professional services company in this state if not prohibited by the regulating board.

(3) A professional services company may not render any professional service other than the professional service authorized by its articles of organization.

Section 152. Section 48-2c-1504 is enacted to read:

48-2c-1504. No limits on regulating board.

Nothing in this chapter restricts or limits in any manner the authority and duty of the regulating board to license individuals rendering professional services or the practice of the profession that is within the jurisdiction of the regulating board, notwithstanding that the individual is a member, manager, or employee of a company and rendering the professional services or engaging in the practice of the profession through the company.

Section 153. Section 48-2c-1505 is enacted to read:

48-2c-1505. Name limitations.

(1) The name of a domestic professional services company and of a foreign professional services

company authorized to transact business in this state, in addition to satisfying the requirements of Sections 48-2c-106, 48-2c-1602, and 48-2c-1606:

(a) may not contain language stating or implying that it is formed for a purpose other than that authorized by its articles of organization or by Section 48-2c-1503;

(b) must conform with any rule promulgated by the regulating board having jurisdiction over a professional service described in the company's articles of organization; and

(c) must contain, in its articles of organization and in all reports and documents filed with the division, the words "professional limited liability company" or the abbreviations "P.L.L.C." or "PLLC" in lieu of the requirements of Subsection 48-2c-106(1)(a).

(2) Notwithstanding the provisions of Subsection (1)(c), a professional services company may hold itself out to the public under a name that does not contain the words "professional limited liability company" or the abbreviations "P.L.L.C." or "PLLC" so long as that name meets the requirements of Subsection 48-2c-106(1)(a).

(3) Sections 48-2c-106, 48-2c-1607, and 48-2c-1608 do not prevent the use of a name otherwise prohibited by those sections if it is the personal name of an individual member or individual former member of the professional services company or the name of an individual who was associated with a predecessor of the professional services company.

Section 154. Section 48-2c-1506 is enacted to read:

48-2c-1506. Activity limitations.

No professional services company may do anything that is prohibited to be done by individuals licensed to practice the profession that the company is organized to render.

Section 155. Section 48-2c-1507 is enacted to read:

48-2c-1507. Limit of one profession.

A company organized to render professional services under this chapter may render only one specific type of professional services, and services ancillary to them, and may not engage in any business other than rendering the professional services which it was organized to render, and services ancillary to them; provided, however, that a professional services company may own real and personal property necessary or appropriate for rendering the type of professional service it was organized to render and may invest its funds in real estate, mortgages, stocks, bonds, and any other type of investments.

Section 156. Section 48-2c-1508 is enacted to read:

48-2c-1508. Members and managers restricted to professionals.

A company organized to render professional services:

(1) may include members, managers, and employees authorized under the laws of the jurisdiction where they reside to provide similar services;

(2) may include members who are not licensed or registered by the state to render those professional services to the extent allowed by the applicable licensing act relating to those professional services;

(3) may render professional services in this state only through its members, managers, and employees who are licensed or registered by this state to render those professional services; and

(4) shall have all of the other powers provided under Section 48-2c-110.

Section 157. Section 48-2c-1509 is enacted to read:

48-2c-1509. Additional requirements for articles of organization.

The articles of organization of a professional services company shall satisfy the requirements of Section 48-2c-403 and, in addition thereto, shall contain the following:

(1) a name consistent with Section 48-2c-1505;

(2) a description of the profession to be practiced through the company; and

(3) notwithstanding Subsection 48-2c-403(2), the names and street addresses of all members and managers of the company.

Section 158. Section 48-2c-1510 is enacted to read:

48-2c-1510. Restrictions on transfers by members.

(1) Except as provided in Subsection (2), a member of a professional services company may sell or transfer the member's interest in the company only to the company or to an individual who is licensed or registered by this state to render the same type of professional services as those for which the company was organized.

(2) Upon the death or incapacity of a member of a professional services company, the member's interest in the company may be transferred to the personal representative or estate of the deceased or incapacitated member who may continue to hold that interest for a reasonable period but shall not be authorized to participate in any decision concerning the rendering of professional services.

Section 159. Section 48-2c-1511 is enacted to read:

48-2c-1511. Purchase of interest upon death, incapacity, or disqualification of members.

The articles of organization may provide for the purchase of any member's interest in a professional services company subject to this part upon the death, incapacity, or disqualification of that member, or the same may be provided in the

operating agreement or by other private agreement. In the absence of such a provision in the articles of organization, the operating agreement, or other private agreement, the professional services company shall purchase the interest of a deceased member or an incapacitated member or a member no longer qualified to own an interest in that professional services company within 90 days after the company is notified of the death, incapacity, or disqualification, as the case may be. The price for the interest shall be its reasonable fair market value as of the date of death, incapacity, or disqualification. If the professional services company fails to purchase said interest by the end of said 90 days, then the personal representative of a deceased member or the guardian or conservator of an incapacitated member or the disqualified member may bring an action in the district court of the county in which the designated office or place of practice of the professional services company is located for the enforcement of this provision. The court shall have power to award the plaintiff the reasonable fair market value of the interest, or within its jurisdiction, may order the liquidation of the professional services company. Further, if the plaintiff is successful in the action, the plaintiff shall be entitled to recover a reasonable attorney's fee and costs.

Section 160. Section 48-2c-1512 is enacted to read:

48-2c-1512. Conversion to nonprofessional company.

Whenever all members of a professional services company subject to this part cease at any one time and for any reason to be licensed for the professional services for which the company was organized, or by vote of members holding at least 2/3 interest in the profits of the company, the company shall thereupon be treated as converted into, and shall operate thereafter solely as, a company subject to this chapter but not subject to this part, but may be reconverted to a professional services company upon removal of the disability or by the vote of members holding at least 2/3 interests in the profits of the company. Upon any such conversion or reconversion, a certificate of amendment to the articles of organization shall be filed with the division within a reasonable time thereafter to reflect the changes.

Section 161. Section 48-2c-1513 is enacted to read:

48-2c-1513. Application of Part 15.

Where a conflict arises between the provisions of this part and the other provisions of this chapter, the provisions of this part shall control.

Section 162. Section 48-2c-1601 is enacted to read:

Part 16. Foreign Limited Liability Companies.

48-2c-1601. Law governing foreign companies.

(1) This chapter does not authorize this state to regulate the organization or internal affairs of a foreign company. The laws of the state or other jurisdiction under which a foreign company is organized govern its organization and internal affairs and the liability of its managers, members, and assignees of members.

(2) A foreign company may not be denied authority to transact business in this state by reason of any difference between the laws of another jurisdiction under which the foreign company is organized and the laws of this state.

Section 163. Section 48-2c-1602 is enacted to read:

48-2c-1602. Authority to transact business required.

(1) A foreign company may not transact business in this state until its application for authority to transact business is filed with the division. This applies to foreign companies that conduct a business governed by other statutes of this state only to the extent this part is not inconsistent with those other statutes.

(2) The following is a nonexhaustive list of activities that do not constitute "transacting business" within the meaning of Subsection (1):

(a) maintaining, defending, or settling in its own behalf any proceeding;

(b) holding meetings of the managers or members or otherwise carrying on activities concerning internal company affairs;

(c) maintaining bank accounts;

(d) selling through independent contractors;

(e) soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

(f) creating as borrower or lender or acquiring indebtedness, mortgages, or security interests in real or personal property;

(g) securing or collecting debts in its own behalf or enforcing mortgages or security interests in property securing those debts;

(h) owning, without more, real or personal property;

(i) conducting an isolated transaction that is completed within 30 days and that is not one in the course of repeated transactions of a like nature;

(j) transacting business in interstate commerce;

(k) acquiring, in transactions outside this state or in interstate commerce, of conditional sales contracts or of debts secured by mortgages or liens on real or personal property in this state, collecting or adjusting of principal or interest payments on the contracts, mortgages, or liens, enforcing or adjusting any rights provided for in conditional sales contracts or securing the described debts, taking any actions necessary to preserve and protect the interest of the conditional vendor in the property covered by a conditional sales contract or the interest of the mortgagee or holder of the lien in

the security, or any combination of such transactions; and

(l) any other activities not considered to constitute transacting business in this state as determined in the discretion of the director of the division.

(3) Nothing in this section limits or affects the right to subject a foreign company which does not, or is not required to, have authority to transact business in this state to the jurisdiction of the courts of this state or to serve upon any foreign company any process, notice, or demand required or permitted by law to be served upon a company pursuant to any applicable provision of law or pursuant to any applicable rules of civil procedure.

Section 164. Section 48-2c-1603 is enacted to read:

48-2c-1603. Consequences of transacting business without authority.

(1) A foreign company transacting business in this state without authority, or anyone in its behalf, may not maintain a proceeding in any court in this state until an application for authority to transact business is filed with the division.

(2) The successor to a foreign company that transacted business in this state without authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in this state until an application for authority to transact business is filed on behalf of the foreign company or its successor.

(3) A court may stay a proceeding commenced by a foreign company, its successor, or assignee until it determines whether the foreign company, its successor, or assignee is required to file an application for authority to transact business. If it so determines, the court may further stay the proceeding until the required application for authority to transact business has been filed with the division.

(4) A foreign company that transacts business in this state without authority is subject to a civil penalty, payable to this state, of $100 for each day in which it transacts business in this state without authority. However, the penalty may not exceed a total of $5,000 for each year. Each manager or member of a foreign company who authorizes, directs, or participates in the transaction of business in this state without authority and each agent of a foreign company who transacts business in this state on behalf of a foreign company that is not authorized is subject to a civil penalty, payable to this state, not exceeding $1,000 for each year.

(5) The civil penalties set forth in Subsection (4) may be recovered in an action brought in the district court for Salt Lake County or in any other county in this state in which the foreign company has a registered office or in which it has transacted business. Upon a finding by the court that a foreign company or any of its managers, members, or agents has transacted business in this state in violation of this part, the court shall issue, in addition to or instead of a civil penalty, an injunction restraining the further transaction of the business of the foreign company and the further exercise of any rights and privileges in this state. Upon issuance of the injunction, the foreign company shall be enjoined from transacting business in this state until all civil penalties have been paid, plus any interest and court costs assessed by the court, and until the foreign company has otherwise complied with the provisions of this part.

(6) Notwithstanding Subsections (1) and (2), the failure of a foreign company to have authority to transact business in this state does not impair the validity of its acts, nor does the failure prevent the foreign company from defending any proceeding in this state.

Section 165. Section 48-2c-1604 is enacted to read:

48-2c-1604. Application for authority to transact business.

(1) A foreign company may apply for authority to transact business in this state by delivering to the division for filing an application for authority to transact business setting forth:

(a) its name and its assumed name, if any;

(b) the name of the state or country under whose law it is formed or organized;

(c) the nature of the business or purposes to be conducted or promoted in this state;

(d) its date of formation or organization and period of its duration;

(e) the street address of its principal office;

(f) the address of its registered office in this state and the name of its registered agent at that office;

(g) the names and street addresses of its current managers, if it is a manager-managed company, or of its members, if it is a member-managed company;

(h) the date it commenced or expects to commence transacting business in this state; and

(i) any additional information the division may determine is necessary or appropriate to determine whether the application for authority to transact business should be filed.

(2) The foreign company shall deliver with the completed application for authority to transact business a certificate of existence, or a document of similar import, duly authorized by the secretary of state or other official having custody of records in the state or country under whose law it is formed or organized. The certificate of existence shall be dated within 90 days prior to the filing of the application for authority to transact business by the division.

(3) The foreign company shall include in the application for authority to transact business, or in an accompanying document, the written consent to

appointment by the designated registered agent in this state.

Section 166. Section 48-2c-1605 is enacted to read:

48-2c-1605. Amended application for authority to transact business.

(1) A foreign company authorized to transact business in this state shall deliver an amended application for authority to transact business to the division for filing if the foreign company changes:

(a) its name or its assumed name;

(b) the period of its duration; or

(c) the state or country of its formation or organization.

(2) The requirements of Section 48-2c-1604 for obtaining an original application for authority to transact business apply to filing an amended application for authority to transact business under this section.

Section 167. Section 48-2c-1606 is enacted to read:

48-2c-1606. Effect of filing an application for authority to transact business.

(1) Filing an application for authority to transact business authorizes the foreign company to transact business in this state subject, however, to the right of this state to revoke the certificate as provided in this part.

(2) A foreign company authorized to transact business in this state has the same rights and privileges as, but no greater rights or privileges than, a domestic company of like character. Except as otherwise provided by this chapter, a foreign company authorized to transact business in this state is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on a domestic company of like character.

Section 168. Section 48-2c-1607 is enacted to read:

48-2c-1607. Company name and assumed company name of foreign company.

(1) Except as provided in Subsection (2), if the name of a foreign company does not satisfy the requirements of Section 48-2c-106 which applies to domestic companies, the foreign company in order to obtain authority to transact business in this state, must assume for use in this state a name that satisfies the requirements of Section 48-2c-106.

(2) A foreign company may obtain authority to transact business in this state with a name that does not meet the requirements of Subsection (1) because it is not distinguishable as required under Subsection 48-2c-106(2), if the foreign company delivers to the division for filing either:

(a) a written consent to the foreign company's use of the name, given and signed by the other person entitled to the use of the name together with a written undertaking by the other person, in a form satisfactory to the division, to change its name to a name that is distinguishable from the name of the applicant; or

(b) a certified copy of a final judgment of a court of competent jurisdiction establishing the prior right of the foreign company to use the requested name in this state.

(3) A foreign company may use in this state the name, including the assumed name, of another domestic or foreign company or other entity that is used or registered in this state if the other company is formed or organized or authorized to transact business in this state and the foreign company:

(a) has merged with the other company; or

(b) has been formed by conversion of the other entity.

(4) If a foreign company authorized to transact business in this state, whether under its name or an assumed name, changes its name to one that does not satisfy the requirements of Subsections (1) through (3), or the requirements of Section 48-2c-106, it may not transact business in this state under the changed name but must use an assumed name that does meet the requirements of this section and must deliver to the division for filing an amended application for authority to transact business pursuant to Section 48-2c-1605.

Section 169. Section 48-2c-1608 is enacted to read:

48-2c-1608. Registered name of foreign company.

(1) A foreign company may register its name as provided in this section if the name would be available for use as a name for a domestic company under Section 48-2c-106. If the foreign company's name would not be available for such use, then the foreign company may register its name modified by the addition of any of the following words or abbreviations, if the modified name would be available for use under Section 48-2c-106: "limited liability company", "limited company", "L.L.C.", "L.C.", "LLC", or "LC".

(2) A foreign company registers its name, or its name with any addition permitted by Subsection (1), by delivering to the division for filing an application for registration:

(a) setting forth its name, the name to be registered which must meet the requirements of Section 48-2c-106 that apply to domestic companies, the state or country and date of formation or organization, and a brief description of the nature of the business in which it is engaged; and

(b) accompanied by a certificate of existence, or a document of similar import from the state or country of formation or organization as evidence that the foreign company is in existence or has authority to transact business under the laws of the state or country in which it is formed or organized.

(3) The name is registered for the applicant upon the effective date of the application, and the initial

registration is effective until the end of the calendar year in which it became effective.

(4) A foreign company that has in effect a registration of its name as permitted by Subsection (1) may renew the registration for the following year by delivering to the division for filing a renewal application for registration, which complies with the requirements of Subsection (2) between October 1 and December 31 of the preceding year. When filed, the renewal application for registration renews the registration for the following calendar year.

(5) A foreign company that has in effect registration of its name may apply for authority to transact business in this state under the registered name in accordance with the procedure set forth in this part or it may assign the registration to another foreign company by delivering to the division for filing an assignment of the registration that states the registered name, the name of the assigning foreign corporation, and the name of the assignee, concurrently with the delivery to the division for filing of the assignee's application for registration of the name. The assignee's application must meet the requirements of this part.

(6) (a) A foreign company that has in effect registration of its name may terminate the registration at any time by delivering to the division for filing a statement of termination setting forth the name and stating that the registration is terminated.

(b) A registration of name automatically terminates upon the filing of an application for authority to transact business in this state under the registered name.

(7) The registration of a name under Subsection (1) constitutes authority by the division to file an application meeting the requirements of this part for authority to transact business in this state under the registered name, but the authorization is subject to the limitations applicable to company names as set forth in Section 48-2c-106.

Section 170. Section 48-2c-1609 is enacted to read:

48-2c-1609. Amendment of articles of organization of foreign company.

Whenever the articles of organization of a foreign company authorized to transact business in this state are amended, it shall not be necessary for the foreign company to file a copy of the amendments with the division; but amending the articles of organization shall not of itself enlarge or alter the purpose or purposes which the foreign company is authorized to pursue in transacting its business in this state, nor authorize the foreign company to transact business in this state under any other name than the name set forth in its application for authority filed with the division.

Section 171. Section 48-2c-1610 is enacted to read:

48-2c-1610. Merger of foreign company authorized to transact business in this state.

Whenever a foreign company authorized to transact business in this state shall be a party to a merger permitted by the laws of the state or jurisdiction under the laws of which it is organized, and such company shall be the surviving company, it shall, within 30 days after the merger becomes effective, file with the division a copy of the articles of merger duly authenticated by the proper officer of the state or country under the laws of which the merger was effected; and it shall not be necessary for the foreign company to procure either new or amended authority to transact business in this state unless the name of the company be changed thereby or unless the foreign company desires to pursue in this state other or additional purposes than those which it is then authorized to pursue in this state.

Section 172. Section 48-2c-1611 is enacted to read:

48-2c-1611. Withdrawal of foreign company.

(1) A foreign company authorized to transact business in this state may not withdraw from this state until its application for withdrawal has been filed with the division.

(2) A foreign company authorized to transact business in this state may apply for withdrawal by delivering to the division for filing an application for withdrawal setting forth:

(a) its company name and its assumed name, if any;

(b) the name of the state or country under whose law it is formed or organized;

(c) the address of its principal office, or if none is to be maintained, a statement that the foreign company will not maintain a principal office, and if different from the address of the principal office or if no principal office is to be maintained, the address to which service of process may be mailed pursuant to Section 48-2c-309;

(d) that the foreign company is not transacting business in this state and that it surrenders its authority to transact business in this state;

(e) whether its registered agent will continue to be authorized to accept service on its behalf in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state; and

(f) any additional information that the division determines is necessary or appropriate to determine whether the foreign company is entitled to withdraw, and to determine and assess any unpaid taxes, fees, and penalties payable by it as prescribed by this chapter.

(3) A foreign company's application for withdrawal may not be filed by the division until all outstanding fees and state tax obligations of the foreign company have been paid and the division has received a tax clearance certificate from the State Tax Commission.

Section 173. Section 48-2c-1612 is enacted to read:

48-2c-1612. Grounds for revocation.

The division may commence a proceeding under Section 48-2c-1613 to revoke the authority of a foreign company to transact business in this state if:

(1) the foreign company does not deliver its annual report to the division when it is due;

(2) the foreign company does not pay when they are due any taxes, fees, or penalties imposed by this chapter or other applicable laws of this state;

(3) the foreign company is without a registered agent or registered office in this state;

(4) the foreign company does not inform the division under Section 48-2c-303 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued;

(5) an organizer, member, manager, or agent of the foreign company signs a document knowing it is false in any material respect with intent that the document be delivered to the division for filing; or

(6) the division receives a duly authenticated certificate from the secretary of state or other official having custody of limited liability company records in the state or country under whose law the foreign company is formed or organized stating that the foreign company has dissolved or disappeared as the result of a merger.

Section 174. Section 48-2c-1613 is enacted to read:

48-2c-1613. Procedure for and effect of revocation.

(1) If the division determines that one or more grounds exist under Section 48-2c-1612 for revoking the authority of a foreign company to transact business in this state, the division shall mail to the foreign company written notice of:

(a) the division's determination that one or more grounds exist for revocation; and

(b) the grounds for revocation.

(2) (a) If the foreign company does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the division that each ground determined by the division does not exist, within 60 days after mailing the notice under Subsection (1), the division shall revoke the foreign company's authority to transact business in this state.

(b) If a foreign company's authority to transact business in this state is revoked under Subsection (2)(a), the division shall mail to the foreign company written notice of:

(i) revocation; and

(ii) the effective date of the revocation.

(c) The division shall mail a copy of the notice to:

(i) the last registered agent of the foreign company; or

(ii) if there is no registered agent of record, at least one member or manager of the foreign company.

(3) The authority of a foreign company to transact business in this state ceases on the date shown on the division's certificate revoking the company's certificate of authority.

(4) Revocation of a foreign company's authority to transact business in this state does not terminate the authority of the registered agent of the foreign company.

(5) (a) Upon the revocation of a foreign company's authority to transact business in this state, the division becomes an agent for the foreign company for service of process in any proceeding based on a cause of action that arose during the time the foreign company:

(i) transacted business in this state; or

(ii) was authorized to transact business in this state.

(b) Service of process on the division under this Subsection (5) is service on the foreign company.

(c) Upon receipt of process under this Subsection (5), the division shall mail a copy of the process to the foreign company at its principal office.

(6) A notice mailed under this section shall be:

(a) mailed first-class, postage prepaid; and

(b) addressed to the most current mailing address appearing on the records of the division for:

(i) the registered agent of the foreign company, if the notice is required to be mailed to the registered agent; or

(ii) the member or manager of the foreign company that is mailed the notice, if the notice is required to be mailed to a member or manager of the foreign company.

Section 175. Section 48-2c-1614 is enacted to read:

48-2c-1614. Appeal from revocation.

(1) A foreign company may appeal the division's revocation of its authority to transact business in this state to the district court of the county in this state where the last registered office of the company was located or in Salt Lake County, within 30 days after the notice of revocation is mailed under Section 48-2c-1613. The foreign company appeals by petitioning the court to set aside the revocation and attaching to the petition a copy of the company's application for authority to transact business, and any amended applications, each as filed with the division, and the division's notice of revocation.

(2) The court may summarily order the division to reinstate the authority of the foreign company to transact business in this state or it may take any other action it considers appropriate.

(3) The court's final decision may be appealed as in other civil proceedings.

Section 176. Section 48-2c-1615 is enacted to read:

48-2c-1615. Actions to restrain transaction of business in state.

The division may order any foreign company, or any agent of a foreign company, to cease doing any business in this state if the foreign company has failed to register under this chapter.

Section 177. Section 48-2c-1701 is enacted to read:

Part 17. Derivative Actions

48-2c-1701. Right of action.

A member may bring an action in the right of a company to recover a judgment in its favor:

(1) if the managers or, if no managers, the members with authority to do so have refused to bring the action and the decision of the managers or members not to sue constitutes an abuse of discretion or involves a conflict of interest that prevents an unbiased exercise of judgment; or

(2) if an effort to cause those managers or members to bring the action is not likely to succeed.

Section 178. Section 48-2c-1702 is enacted to read:

48-2c-1702. Proper plaintiff.

In an action under Section 48-2c-1701, the plaintiff must be a member at the time of bringing the action and:

(1) must have been a member at the time of the transaction of which the member complains; or

(2) the member's status as a member must have devolved upon him by transfer or by operation of law or pursuant to the terms of the operating agreement from a person who was a member at the time of the transaction.

Section 179. Section 48-2c-1703 is enacted to read:

48-2c-1703. Pleading.

In a derivative action, the complaint shall set forth with particularity the effort of the plaintiff to secure the initiation of the action by the managers or members or the reasons for not making the effort.

Section 180. Section 48-2c-1704 is enacted to read:

48-2c-1704. Stay of proceedings.

Whether or not a demand for action was made, if the company promptly commences an investigation of the allegations made in the demand or complaint, the court may stay the action for such reasonable period as the court considers appropriate but, in any event, the stay shall expire at the earlier of 30 days or when the company's investigation is completed.

Section 181. Section 48-2c-1705 is enacted to read:

48-2c-1705. Expenses.

If an action under Section 48-2c-1701 is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise, or settlement of any such action or claim, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees. The court shall order that any such award be paid out of the proceeds received by the plaintiff, if any, in which case the plaintiff shall remit to the company the remainder of the proceeds. If those proceeds are insufficient to reimburse the plaintiff's reasonable expenses, the court may direct that any such award of the plaintiff's expenses or a portion of the expenses be paid by the company.

Section 182. Section 48-2c-1706 is enacted to read:

48-2c-1706. Security and costs.

(1) In any action instituted in the right of any company or foreign company, unless the fair market value of the plaintiff's interest in the company as a member exceeds the greater of $25,000 or 5% of the fair market value of the company, the company in whose right the action is brought shall be entitled, at any time before final judgment, to require the plaintiff to give security for the costs and reasonable expenses which may be directly attributable to and incurred by it in the defense of the action or may be incurred by other parties named as defendant for which the company may become legally liable, but not including attorney's fees.

(2) Fair market value shall be determined as of the date that the plaintiff institutes the action, or, in the case of an intervener as of the date that he becomes a party to the action.

(3) The amount and nature of the security shall be determined by the court, and the amount of the security may from time to time be increased or decreased by the court, upon showing that the security provided has or may become inadequate or is excessive.

(4) The company shall have recourse to the security in the amount as the court having jurisdiction shall determine upon the termination of the action if the court finds the action was brought without reasonable cause.

Section 183. Section 48-2c-1801 is enacted to read:

Part 18. Indemnification

48-2c-1801. Definitions.

As used in this part:

(1) "Company" includes any domestic company and any domestic or foreign entity that is a predecessor of a company by reason of a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

(2) "Manager" means an individual who is or was a manager of a company or an individual who, while

a manager of a company, is or was serving at the company's request as a manager, member, director, officer, partner, trustee, employee, fiduciary, or agent of another domestic or foreign company or other person or of an employee benefit plan. A manager is considered to be serving an employee benefit plan at the company's request if his duties to the company also impose duties on, or otherwise involve services by him to the plan or to participants in or beneficiaries of the plan. "Manager" includes, unless the context requires otherwise, the estate or personal representative of a manager.

(3) "Expenses" include attorney's fees.

(4) "Liability" means the obligation incurred with respect to a proceeding to pay a judgment, settlement, penalty, fine, including an excise tax assessed with respect to an employee benefit plan, or reasonable expenses.

(5) "Member," "employee," "fiduciary," and "agent" include any person who, while serving the indicated relationship to the company, is or was serving at the company's request as a manager, member, director, officer, partner, trustee, employee, fiduciary, or agent of another domestic or foreign company or other person or of an employee benefit plan. A member, employee, fiduciary, or agent is considered to be serving an employee benefit plan at the company's request if that person's duties to the company also impose duties on, or otherwise involve services by, that person to the plan or participants in, or beneficiaries of the plan. Unless the context requires otherwise, the terms include the estates or personal representatives of such persons.

(6) (a) "Official capacity" means:

(i) when used with respect to a manager, the office of manager in a manager-managed company;

(ii) when used with respect to a member, the position of member in a member-managed company; and

(iii) when used with respect to a person other than a manager under Subsection (6)(a)(i) or a member under Subsection (6)(a)(ii), as contemplated in Section 48-2c-1807, the office in a company held by the person, or the employment, fiduciary, or agency relationship undertaken by the person on behalf of the company.

(b) "Official capacity" does not include service for any other foreign or domestic limited liability company, other person, or employee benefit plan.

(7) "Party" includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

(8) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal.

Section 184. Section 48-2c-1802 is enacted to read:

48-2c-1802. Authority to indemnify.

(1) Except as provided in Subsection (4), a company may indemnify an individual made a party to a proceeding because he is or was a manager, against liability incurred in the proceeding if:

(a) his conduct was in good faith;

(b) he reasonably believed that his conduct was in, or not opposed to, the company's best interests; and

(c) in the case of any criminal proceeding, he had no reasonable cause to believe his conduct was unlawful.

(2) A manager's conduct with respect to any employee benefit plan for a purpose he reasonably believed to be in, or not opposed to, the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of Subsection (1)(b).

(3) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the manager did not meet the standard of conduct described in this section.

(4) A company may not indemnify a manager under this section:

(a) in connection with a proceeding by or in the right of the company in which the manager was adjudged liable to the company; or

(b) in connection with any other proceeding charging that the manager derived an improper personal benefit, whether or not involving action in his official capacity, in which proceeding he was adjudged liable on the basis that he derived an improper personal benefit.

Section 185. Section 48-2c-1803 is enacted to read:

48-2c-1803. Mandatory indemnification of managers.

Unless limited by its articles of organization, a company shall indemnify a manager who was successful, on the merits or otherwise, in the defense of any proceeding, or in the defense of any claim, issue, or matter in the proceeding, to which he was a party because he is or was a manager of the company, against reasonable expenses, including attorney's fees, incurred by him in connection with the proceeding or claim with respect to which he has been successful.

Section 186. Section 48-2c-1804 is enacted to read:

48-2c-1804. Advancement of expenses.

(1) A company may pay for or reimburse the reasonable expenses incurred by a manager who is a party to a proceeding in advance of final disposition of the proceeding if:

(a) the manager furnishes the company a written affirmation of his good faith belief that he has met the applicable standard of conduct described in Section 48-2c-1802;

(b) the manager furnishes to the company a written undertaking, executed personally or on his behalf, to repay the advance if it is ultimately determined that he did not meet the standard of conduct; and

(c) a determination is made that the facts then known to those making the determination would not preclude indemnification under this part.

(2) The undertaking required by Subsection (1)(b) must be an unlimited general obligation of the manager but need not be secured and may be accepted without reference to financial ability to make repayment.

(3) Determinations and authorizations of payments under this section shall be made in the manner specified in Section 48-2c-1806.

Section 187. Section 48-2c-1805 is enacted to read:

48-2c-1805. Court-ordered indemnification.

Unless a company's articles of organization provide otherwise, a manager of the company who is or was a party to a proceeding may apply for indemnification to the court or other decision-maker conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court, after giving any notice the court considers necessary, may order indemnification in the following manner:

(1) if the court determines that the manager is entitled to mandatory indemnification under Section 48-2c-1803, the court shall order indemnification, in which case the court shall also order the company to pay the manager's reasonable expenses, including attorney's fees, incurred to obtain court-ordered indemnification; and

(2) if the court determines that the manager is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the manager met the applicable standard of conduct set forth in Section 48-2c-1802 or was adjudged liable as described in Subsection 48-2c-1802(4), the court may order indemnification as the court determines to be proper, except that the indemnification with respect to any proceeding in which liability has been adjudged in the circumstances described in Subsection 48-2c-1802(4) is limited to reasonable expenses incurred.

Section 188. Section 48-2c-1806 is enacted to read:

48-2c-1806. Determination and authorization of indemnification.

(1) A company may not indemnify a manager under Section 48-2c-1802 unless authorized and a determination has been made in the specific case that indemnification of the manager is permissible in the circumstances because the manager has met the applicable standard of conduct set forth in Section 48-2c-1802. A company may not advance expenses to a manager under Section 48-2c-1804 unless authorized in the specific case after the written affirmation and undertaking required by Subsections 48-2c-1804(1)(a) and (b) are received and the determination required by Subsection 48-2c-1804(1)(c) has been made.

(2) The determinations required by Subsection (1) shall be made:

(a) by the managers by a majority vote and only those managers not parties to the proceeding shall be counted;

(b) by special legal counsel selected by a majority vote of the managers of the company who are not parties to the proceeding or, if none, by members holding a majority interest in the profits of the company not counting any interest held by the manager who is a party to the proceeding; or

(c) by the members holding more than 50% interest in the profits of the company not counting any interest held by the manager who is a party to the proceeding.

(3) Unless authorization is required by the operating agreement, authorization of indemnification and advance of expenses shall be made in the same manner as the determination that indemnification or advance of expenses is permissible. However, if the determination that indemnification or advance of expenses is permissible is made by special legal counsel, authorization of indemnification and advance of expenses shall be made by those entitled under Subsection (2)(b) to select legal counsel.

Section 189. Section 48-2c-1807 is enacted to read:

48-2c-1807. Indemnification of members, employees, fiduciaries, and agents.

Unless a company's articles of organization provide otherwise:

(1) a member of a company is entitled to mandatory indemnification under Section 48-2c-1803 and is entitled to apply for court-ordered indemnification under Section 48-2c-1805 in each case to the same extent as a manager;

(2) the company may indemnify and advance expenses to a member, employee, fiduciary, or agent of the company to the same extent as to a manager; and

(3) a company may also indemnify and advance expenses to a member, employee, fiduciary, or agent who is not a manager to a greater extent, if not inconsistent with public policy, and if provided for by its articles of organization, operating agreement, general or specific action of its managers or members, or contract.

Section 190. Section 48-2c-1808 is enacted to read:

48-2c-1808. Insurance.

A company may purchase and maintain liability insurance on behalf of a person who is or was a manager, member, employee, fiduciary, or agent of the company, or who, while serving as a manager,

member, employee, fiduciary, or agent of the company, is or was serving at the request of the company as a manager, member, director, officer, partner, trustee, employee, fiduciary, or agent of another foreign or domestic limited liability company or other person, or of an employee benefit plan, against liability asserted against or incurred by him in that capacity or arising from his status as a manager, member, employee, fiduciary, or agent, whether or not the company would have power to indemnify him against the same liability under Sections 48-2c-1802, 48-2c-1803, and 48-2c-1807. Insurance may be procured from any insurance company designated by the company, whether the insurance company is formed under the laws of this state or any other jurisdiction of the United States or elsewhere, including any insurance company in which the company has an equity or any other interest through stock ownership or otherwise.

Section 191. Section 48-2c-1809 is enacted to read:

48-2c-1809. Limitations on indemnification.

(1) A provision treating a company's indemnification of, or advance for expenses to, managers or members that is contained in its articles of organization or operating agreement or in a resolution of its members or in a contract, except an insurance policy, or otherwise, is valid only if and to the extent the provision is not inconsistent with this part. If the articles of organization limit indemnification or advancement of expenses, indemnification and advancement of expenses are valid only to the extent not inconsistent with the articles of organization.

(2) This part does not limit a company's power to pay or reimburse expenses incurred by a manager or member in connection with the manager's or member's appearance as a witness in a proceeding at a time when the manager or member has not been made a named defendant or respondent in the proceeding.

Section 192. Section 48-2c-1901 is enacted to read:

Part 19. Miscellaneous

48-2c-1901. Legislative intent -- Freedom of contract.

It is the intent of the Legislature that this chapter be interpreted so as to give the maximum effect to the principle of freedom of contract and to the enforceability of operating agreements of companies.

Section 193. Section 48-2c-1902 is enacted to read:

48-2c-1902. Transitional provisions.

(1) Each limited liability company formed prior to July 1, 2001, under the laws of this state, and existing on July 1, 2001:

(a) shall continue in existence with all rights and privileges applicable to limited liability companies formed under this chapter;

(b) need not amend its articles of organization to include the address of its designated office if it includes the information in its first annual report filed with the division after July 1, 2001, and in all subsequent annual reports; and

(c) that provides professional services as defined in Part 15 of this chapter, need not amend its articles of organization to comply with Section 48-2c-1509 if it includes the information in its first annual report filed with the division after July 1, 2001, and in all subsequent annual reports.

(2) All domestic companies formed prior to July 1, 2001, under the laws this state, as well as their managers, members, and assignees of members, as applicable, shall have all the rights and privileges and shall be subject to all the requirements, restrictions, duties, liabilities, and remedies prescribed in this chapter.

(3) Each foreign limited liability company authorized to transact business in this state as of July 1, 2001, is subject to the provisions of this chapter, but is not required by reason of enactment of this chapter to obtain a new certificate of authority to transact business in this state.

Section 194. Section 53B-5-114 (Effective 04/30/01) is amended to read:

53B-5-114 (Effective 04/30/01). Consent to use of educational terms in business names.

(1) For purposes of this section:

(a) "Business name" means a name filed with the Division of Corporations and Commercial Code under:

(i) Section 16-6a-401;

(ii) Section 16-10a-401;

(iii) Section 42-2-6.6;

(iv) Section 48-2a-102; or

(v) Section [~~48-2b-106~~] 48-2c-106.

(b) "Educational term" means the term:

(i) "university";

(ii) "college"; or

(iii) "institution."

(2) If a statute listed in Subsection (1)(a) requires the written consent of the board to file a business name with the Division of Corporations and Commercial Code that includes an educational term, the board may consent to the use of an educational term in accordance with this statute.

(3) The board shall consent to the use of an educational term in a business name if the person seeking to file the name:

(a) is registered under this chapter;

(b) is exempt from the chapter under Section 53B-5-105; or

(c) (i) is not engaged in educational activities; and

(ii) does not represent that it is engaged in educational activities.

(4) The board may withhold consent to use of an educational term in a business name if the person seeking to file the name:

(a) offers, sells, or awards a degree or any other type of educational credential; and

(b) fails to provide bona fide instruction through student-faculty interaction according to the standards and criteria established by the board under Subsection 53B-5-104(5).

Section 195. Section 53C-1-201 is amended to read:

53C-1-201. Creation of administration -- Purpose -- Director.

(1) (a) There is established within state government the School and Institutional Trust Lands Administration.

(b) The administration shall manage all school and institutional trust lands and assets within the state, except as otherwise provided in Chapter 3 of this title and Section 51-7-12.

(2) The administration is an independent state agency and not a division of any other department.

(3) (a) It is subject to the usual legislative and executive department controls except as follows:

(i) (A) the director may make rules as approved by the board that allow the administration to classify a business proposal submitted to the administration as protected under Section 63-2-304, for as long as is necessary to evaluate the proposals;

(B) the administration shall return the proposal to the party who submitted the proposal, and incur no further duties under Title 63, Chapter 2, Government Records Access and Management Act, if the administration determines not to proceed with the proposal;

(C) the administration shall classify the proposal pursuant to law if it decides to proceed with the proposal; and

(D) Section 63-2-403 does not apply during the review period;

(ii) the director shall make rules in compliance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, except that the director, with the board's approval, may establish a procedure for the expedited approval of rules, based on written findings by the director showing:

(A) the changes in business opportunities affecting the assets of the trust;

(B) the specific business opportunity arising out of those changes which may be lost without the rule or changes to the rule;

(C) the reasons the normal procedures under Section 63-46a-4 cannot be met without causing the loss of the specific opportunity;

(D) approval by at least five board members; and

(E) that the director has filed a copy of the rule and a rule analysis, stating the specific reasons and justifications for its findings, with the Division of Administrative Rules and notified interested parties as provided in Subsection 63-46a-4(7); and

(iii) the administration shall comply with Title 67, Chapter 19, Utah State Personnel Management Act, except as follows:

(A) the board may approve, upon recommendation of the director, that exemption for specific positions under Subsections 67-19-12(2) and 67-19-15(1) is required in order to enable the administration to efficiently fulfill its responsibilities under the law. The director shall consult with the director of the Department of Human Resource Management prior to making such a recommendation. The positions of director, deputy director, assistant director, legal counsel appointed under Subsection 53C-1-305(2), administrative assistant, and public affairs officer are exempt under Subsections 67-19-12(2) and 67-19-15(1);

(B) salary for exempted positions, except for the director, shall be set by the director, after consultation with the director of the Department of Human Resource Management, within ranges approved by the board. The board and director shall consider salaries for similar positions in private enterprise and other public employment when setting salary ranges; and

(C) the board may create an annual incentive and bonus plan for the director and other administration employees designated by the board, based upon the attainment of financial performance goals and other measurable criteria defined and budgeted in advance by the board; and

(iv) the administration shall comply with Title 63, Chapter 56, Utah Procurement Code, except where the board approves, upon recommendation of the director, exemption from the Utah Procurement Code, and simultaneous adoption of policies for procurement, which enable the administration to efficiently fulfill its responsibilities under the law.

(b) (i) The board and director shall review the exceptions under Subsection (3)(a) and make recommendations for any modification, if required, which the Legislature would be asked to consider during its annual General Session.

(ii) The board and director may include in their recommendations any other proposed exceptions from the usual executive and legislative controls the board and director consider necessary to accomplish the purpose of this title.

(4) The administration is managed by a director of school and institutional trust lands appointed by a majority vote of the board of trustees with the consent of the governor.

(5) (a) The board of trustees shall provide policies for the management of the administration and for the management of trust lands and assets.

(b) The board shall provide policies for the ownership and control of Native American remains that are discovered or excavated on school and institutional trust lands in consultation with the Division of Indian Affairs and giving due consideration to Title 9, Chapter 9, Part 4, Native American Grave Protection and Repatriation Act.

(6) In connection with joint ventures for the development of trust lands and minerals approved by the board under Subsection 53C-1-303(4)(c), the administration may become a member of a limited liability company under Title 48, Chapter 2b, Utah Limited Liability Company Act, and is considered a person under [~~Subsection 48-2b-102(6)~~] Section 48-2c-102 for such purposes.

Section 196. Repealer.

This act repeals:

Section 48-2b-101, Short title.

Section 48-2b-102, Definitions.

Section 48-2b-103, Formation.

Section 48-2b-104, Scope -- Definitions.

Section 48-2b-105, Powers.

Section 48-2b-106 (Effective 04/30/01), Name -- Exclusive right.

Section 48-2b-106 (Superseded 04/30/01), Name -- Exclusive right.

Section 48-2b-107, Limited liability company name - Limited rights.

Section 48-2b-108, Name -- Omission.

Section 48-2b-109, Liability of members, managers, and employees -- Waiver.

Section 48-2b-110, Liability for acting without authority.

Section 48-2b-111, Professional relationship -- Personal liability.

Section 48-2b-112, Member as a party to proceedings.

Section 48-2b-113, Service of process, notice, or demand.

Section 48-2b-114, Waiver of notice.

Section 48-2b-115, Regulating board authority -- Prohibitions on individuals apply.

Section 48-2b-116, Articles of organization.

Section 48-2b-117, Filing of articles.

Section 48-2b-118, Effect of filing -- Prefiling activities.

Section 48-2b-119, Records.

Section 48-2b-120, Annual report.

Section 48-2b-121, When amendments to the articles of organization are required.

Section 48-2b-122, Additional members.

Section 48-2b-123, Registered agent.

Section 48-2b-124, Capital contributions.

Section 48-2b-125, Management.

Section 48-2b-126, Operating agreements.

Section 48-2b-127, Ownership and disposition of property.

Section 48-2b-128, Conditions for property distribution.

Section 48-2b-129, Assets distribution.

Section 48-2b-130, Profits and losses.

Section 48-2b-131, Character, transfer, adjustment, and assignment of member interests -- Effect -- Charge order.

Section 48-2b-132, Conditions for distribution of property -- Return of contribution.

Section 48-2b-133, Member liabilities.

Section 48-2b-134, Execution of documents.

Section 48-2b-135, Penalty for false execution.

Section 48-2b-136, Restated articles of organization.

Section 48-2b-137, Dissolution.

Section 48-2b-138, Settlement upon dissolution.

Section 48-2b-139, Articles of dissolution.

Section 48-2b-140, Filing of articles of dissolution -- Effect.

Section 48-2b-141, Cancellation of articles of organization.

Section 48-2b-142, Involuntary dissolution.

Section 48-2b-143, Foreign limited liability companies.

Section 48-2b-144, Registration of foreign limited liability companies.

Section 48-2b-145, Cancellation of foreign limited liability companies' registration.

Section 48-2b-146, Effect of registration.

Section 48-2b-147, Effect of failure to register by foreign limited liability companies.

Section 48-2b-148, Foreign limited liability companies -- Service of process -- Cause of action.

Section 48-2b-149, Merger and consolidation.

Section 48-2b-150, Right of action.

Section 48-2b-151, Proper plaintiff.

Section 48-2b-152, Pleading.

Section 48-2b-153, Expenses.

Section 48-2b-154, Security and costs.

Section 48-2b-155, Indemnification of a manager.

Section 48-2b-156, Correction of technical errors in instruments.

Section 48-2b-157, Application of partnership provisions to limited liability companies.

Section 48-2b-158, Taxation of limited liability companies.

Section 197. Effective date.

This act takes effect on July 1, 2001.

CHAPTER 261
S. B. 172
Passed February 22, 2001
Approved March 19, 2001
Effective April 30, 2001

POSTCONVICTION DNA TESTING

Sponsor: Lyle W. Hillyard

This act amends the Judicial Code to provide for postconviction DNA testing of a person, and provides for procedures, if the test is favorable, to declare the person actually innocent. The act also provides procedures if the result is unfavorable.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:
78-35a-301, Utah Code Annotated 1953
78-35a-302, Utah Code Annotated 1953
78-35a-303, Utah Code Annotated 1953
78-35a-304, Utah Code Annotated 1953

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

Section 1. Section 78-35a-301 is enacted to read:
Part 3. Postconviction Testing of DNA

78-35a-301. Postconviction testing of DNA -- Petition -- Sufficient allegations -- Notification of victim.

(1) As used in this part, "DNA" means deoxyribonucleic acid.

(2) A person convicted of a felony offense may at any time file a petition for postconviction DNA testing in the trial court that entered the judgment of conviction against him if the person asserts his actual innocence under oath and the petition alleges:

(a) evidence has been obtained regarding the person's case which is still in existence and is in a condition that allows DNA testing to be conducted;

(b) the chain of custody is sufficient to establish that the evidence has not been altered in any material aspect;

(c) the person identifies the specific evidence to be tested and states a theory of defense, not inconsistent with theories previously asserted at trial, that the requested DNA testing would support;

(d) the evidence was not previously subjected to DNA testing, or if the evidence was tested previously, the evidence was not subjected to the testing that is now requested, and the new testing may resolve an issue not resolved by the prior testing;

(e) the evidence that is the subject of the request for testing has the potential to produce new, noncumulative evidence that will establish the person's actual innocence; and

(f) the person is aware of the consequences of filing the petition, including those specified in Sections 78-35a-302 and 78-35a-304, and that the person is waiving any statute of limitations in all jurisdictions as to any felony offense he has committed which is identified through DNA database comparison.

(3) The petition under Subsection (2) shall be in compliance with Rule 65C, Utah Rules of Civil Procedure, including providing the underlying criminal case number.

(4) The court may not order DNA testing in cases in which DNA testing was available at the time of trial and the person did not request DNA testing or present DNA evidence for tactical reasons.

(5) After a petition is filed under this section, prosecutors, law enforcement officers, and crime laboratory personnel have a duty to cooperate in preserving evidence and in determining the sufficiency of the chain of custody of the evidence which may be subject to DNA testing.

(6) (a) A person who files a petition under this section shall serve notice upon the office of the prosecutor who obtained the conviction, and upon the state attorney general. The attorney general shall, within 30 days after receipt of service of a copy of the petition, or within any additional period of time the court allows, answer or otherwise respond to all proceedings initiated under this part.

(b) After the attorney general is given an opportunity to respond to a petition for postconviction DNA testing, the court shall order DNA testing if it finds by a preponderance of the evidence that all criteria of Subsection (2) have been met.

(7) (a) If the court grants the petition for testing, the DNA test shall be performed by the Utah State Crime Laboratory within the Criminal Investigations and Technical Services Division created in Section 53-10-103, unless the person establishes that the state crime laboratory has a conflict of interest or does not have the capability to perform the necessary testing.

(b) If the court orders that the testing be conducted by any laboratory other than the state crime laboratory, the court shall require that the testing be performed under reasonable conditions designed to protect the state's interests in the integrity of the evidence, and that the testing be performed according to accepted scientific standards and procedures.

(8) If the person is serving a sentence of imprisonment and is indigent, the state shall pay for the costs of the testing under this part, but if the result is not favorable to the person the court may order the person to reimburse the state for the costs of the testing, pursuant to the provisions of Subsections 78-35a-302(4) and 78-35a-304(1)(b).

(9) Any victim of the crime regarding which the person petitions for DNA testing, who has elected to receive notice under Section 77-38-3 shall be notified by the state's attorney of any hearing regarding the petition and testing, even though the hearing is a civil proceeding.

Section 2. Section 78-35a-302 is enacted to read:

78-35a-302. Effect of petition for postconviction DNA testing -- Requests for appointment of counsel -- Appeals -- Subsequent postconviction petitions.

(1) The filing of a petition for DNA testing constitutes the person's consent to provide samples of body fluids for use in the DNA testing.

(2) The data from any DNA samples or test results obtained as a result of the petition may be entered into law enforcement DNA databases.

(3) The filing of a petition for DNA testing constitutes the person's waiver of any statute of limitations in all jurisdictions as to any felony offense the person has committed which is identified through DNA database comparison.

(4) The person filing the petition for postconviction DNA testing bears the cost of the testing unless:

(a) the person is serving a sentence of imprisonment;

(b) the person is indigent; and

(c) the DNA test is favorable to the petitioner.

(5) (a) Subsections 78-35a-109(1) and (2), regarding the appointment of pro bono counsel, apply to any request for the appointment of counsel under this part.

(b) Subsection 78-35a-109(3), regarding effectiveness of counsel, applies to subsequent postconviction petitions and to appeals under this part.

Section 3. Section 78-35a-303 is enacted to read:

78-35a-303. Consequences of postconviction DNA testing when result is favorable to person -- Procedures.

(1) (a) If the result of postconviction DNA testing is favorable to the person, the person may file a motion to vacate his conviction. The court shall give the state 30 days to respond in writing, to present evidence, and to be heard in oral argument prior to issuing an order to vacate the conviction. The state may by motion request an extension of the 30 days, which the court may grant upon good cause shown.

(b) The state may stipulate to the conviction being vacated, or may request a hearing and attempt to demonstrate through evidence and argument that, despite the DNA test results, the state possesses sufficient evidence of the person's guilt so that he is unable to demonstrate by clear and convincing evidence that he is actually innocent of one or more offenses of which he was convicted, and all the lesser included offenses related to those offenses.

(2) (a) If the result of postconviction DNA testing is favorable to the person and the state opposes vacating the conviction, the court shall consider all the evidence presented at the original trial and at the hearing under Subsection (1)(b), including the new DNA test result. Evidence that would otherwise have been suppressed at criminal trial is admissible, unless the evidence is an unconstitutionally coerced statement from the person.

(b) If the court, after considering all the evidence, determines that the DNA test result demonstrates by clear and convincing evidence that the person is actually innocent of one or more offenses of which the person was convicted and all lesser included offenses relating to those offenses, the court shall order that those convictions be vacated with prejudice and those convictions be expunged from the person's record.

(c) If the court, after considering all the evidence presented at the original trial and at the hearing under Subsection (1)(b), including the new DNA test result, finds by clear and convincing evidence that the person is actually innocent of one or more offenses of which the person was convicted, but the court does not find by clear and convincing evidence that the person is actually innocent of all lesser included offenses relating to those offenses, the court shall modify the original conviction and sentence of the person as appropriate for the lesser included offense, whether or not the lesser included offense was originally submitted to the trier of fact.

(d) If the court, after considering all the evidence presented at the original trial and at the hearing under Subsection (1)(b), including the new DNA test result, does not find by clear and convincing evidence that the person is actually innocent of the offense or offenses the person is challenging, the court shall deny the person's petition regarding the offense or offenses.

(e) Any party may appeal from the trial court's final ruling on the petition under this part.

Section 4. Section 78-35a-304 is enacted to read:

78-35a-304. Consequences of postconviction DNA testing when result is unfavorable to person -- Procedures.

(1) If the result of postconviction DNA testing is not favorable to the person, the court shall deny the person's petition, and the court shall:

(a) report the unfavorable result to the Board of Pardons and Parole; and

(b) order the person to pay for the costs of the DNA testing unless the petitioner has already paid that cost.

(2) This section does not apply if the DNA test is inconclusive.

CHAPTER 262
S. B. 174
Passed February 28, 2001
Approved March 19, 2001
Effective July 1, 2001

SALES AND USE TAX - EXEMPTION FOR SEMICONDUCTOR FABRICATING OR PROCESSING MATERIALS

Sponsor: Curtis S. Bramble

This act amends the Sales and Use Tax Act to provide for an exemption for a three-year period beginning on July 1, 2001, through June 30, 2004, for semiconductor fabricating or processing materials. The act provides that the exemption is phased in over the three-year period. The act requires amounts of the exemption to be reported to the State Tax Commission, and requires the State Tax Commission to provide to the Legislature upon request the amounts of the exemption reported to the State Tax Commission. The act requires the Revenue and Taxation Interim Committee to conduct an annual study of the exemption. The act defines terms and makes technical changes. This act provides a July 1, 2001 effective date.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
59-1-403, as last amended by Chapters 190 and 229, Laws of Utah 2000
59-12-102 (Effective 07/01/01), as last amended by Chapter 253, Laws of Utah 2000
59-12-104, as last amended by Chapter 325, Laws of Utah 2000
59-12-105, as last amended by Chapter 147, Laws of Utah 1999

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

Section 1. Section 59-1-403 is amended to read:

59-1-403. Confidentiality -- Exceptions -- Penalty -- Application to property tax.

(1) Any tax commissioner, agent, clerk, or other officer or employee of the commission or any representative, agent, clerk, or other officer or employee of any county, city, or town may not divulge or make known in any manner any information gained by him from any return filed with the commission. The officials charged with the custody of such returns are not required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except:

(a) in accordance with judicial order;

(b) on behalf of the commission in any action or proceeding under this title or other law under which persons are required to file returns with the commission;

(c) on behalf of the commission in any action or proceeding to which the commission is a party; or

(d) on behalf of any party to any action or proceeding under this title when the report or facts shown thereby are directly involved in such action or proceeding. In any event, the court may require the production of, and may admit in evidence, any portion of reports or of the facts shown by them, as are specifically pertinent to the action or proceeding.

(2) This section does not prohibit:

(a) a person or his duly authorized representative from receiving a copy of any return or report filed in connection with that person's own tax;

(b) the publication of statistics as long as they are classified to prevent the identification of particular reports or returns; and

(c) the inspection by the attorney general or other legal representative of the state of the report or return of any taxpayer:

(i) who brings action to set aside or review the tax based on such report or return;

(ii) against whom an action or proceeding is contemplated or has been instituted under this title; or

(iii) against whom the state has an unsatisfied money judgment.

(3) (a) Notwithstanding Subsection (1) and for purposes of administration, the commission may, by rule, provide for a reciprocal exchange of information with the United States Internal Revenue Service or the revenue service of any other state.

(b) Notwithstanding Subsection (1) and for all taxes except individual income tax and corporate franchise tax, the commission may, by rule, share information gathered from returns and other written statements with the federal government, any other state, any of their political subdivisions, or any political subdivision of this state, except as limited by Sections 59-12-209 and 59-12-210, if these political subdivisions or the federal government grant substantially similar privileges to this state.

(c) Notwithstanding Subsection (1) and for all taxes except individual income tax and corporate franchise tax, the commission may, by rule, provide for the issuance of information concerning the identity and other information of taxpayers who have failed to file tax returns or to pay any tax due.

(d) Notwithstanding Subsection (1), the commission shall provide to the Solid and Hazardous Waste Control Board executive secretary, as defined in Section 19-6-102, any records, returns, and other information filed with the commission under Title 59, Chapter 13, Motor and Special Fuel Tax Act, or Section 19-6-410.5 regarding the environmental assurance program participation fee, as requested by the executive secretary.

(e) Notwithstanding Subsection (1), upon request from a tobacco product manufacturer, as defined in Section 59-22-202, the commission shall report to the manufacturer:

(i) the quantity of cigarettes, as defined in Section 59-22-202, produced by the manufacturer and reported to the commission for the previous calendar year under Section 59-14-407; and

(ii) the quantity of cigarettes, as defined in Section 59-22-202, produced by the manufacturer for which a tax refund was granted during the previous calendar year under Section 59-14-401 and reported to the commission under Subsection 59-14-401(1)(a)(v).

(f) Notwithstanding Subsection (1), the commission may:

(i) provide to the Division of Consumer Protection within the Department of Commerce and the attorney general data:

(A) reported to the commission under Section 59-14-212; or

(B) related to a violation under Section 59-14-211; and

(ii) upon request provide to any person data reported to the commission under Subsections 59-14-212(1)(a) through (1)(c) and Subsection 59-14-212(1)(g).

(g) Notwithstanding Subsection (1), the commission shall at the request of the Legislature provide to the Legislature the total amount of sales or uses exempt under Subsection 59-12-104(52) reported to the commission in accordance with Section 59-12-105.

(4) Reports and returns shall be preserved for at least three years and then the commission may destroy them.

(5) Any person who violates this section is guilty of a class A misdemeanor. If the offender is an officer or employee of the state, he shall be dismissed from office and be disqualified from holding public office in this state for a period of five years thereafter.

(6) This part does not apply to the property tax.

Section 2. Section 59-12-102 (Effective 07/01/01) is amended to read:

59-12-102 (Effective 07/01/01). Definitions.

As used in this chapter:

(1) (a) "Admission or user fees" includes season passes.

(b) "Admission or user fees" does not include annual membership dues to private organizations.

(2) "Area agency on aging" is as defined in Section 62A-3-101.

(3) "Authorized carrier" means:

(a) in the case of vehicles operated over public highways, the holder of credentials indicating that the vehicle is or will be operated pursuant to both the International Registration Plan (IRP) and the International Fuel Tax Agreement (IFTA);

(b) in the case of aircraft, the holder of a Federal Aviation Administration (FAA) operating certificate or air carrier's operating certificate; or

(c) in the case of locomotives, freight cars, railroad work equipment, or other rolling stock, the holder of a certificate issued by the United States Interstate Commerce Commission.

(4) (a) For purposes of Subsection 59-12-104(43), "coin-operated amusement device" means:

(i) a coin-operated amusement, skill, or ride device;

(ii) that is not controlled through vendor-assisted, over-the-counter, sales of tokens; and

(iii) includes a music machine, pinball machine, billiard machine, video game machine, arcade machine, and a mechanical or electronic skill game or ride.

(b) For purposes of Subsection 59-12-104(43), "coin-operated amusement device" does not mean a coin-operated amusement device possessing a coinage mechanism that:

(i) accepts and registers multiple denominations of coins; and

(ii) allows the vendor to collect the sales and use tax at the time an amusement device is activated and operated by a person inserting coins into the device.

(5) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other fuels that does not constitute industrial use under Subsection (13) or residential use under Subsection (21).

(6) (a) "Common carrier" means a person engaged in or transacting the business of transporting passengers, freight, merchandise, or other property for hire within this state.

(b) (i) "Common carrier" does not include a person who, at the time the person is traveling to or from that person's place of employment, transports a passenger to or from the passenger's place of employment.

(ii) For purposes of Subsection (6)(b)(i), in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may make rules defining what constitutes a person's place of employment.

(7) "Component part" includes:

(a) poultry, dairy, and other livestock feed, and their components;

(b) baling ties and twine used in the baling of hay and straw;

(c) fuel used for providing temperature control of orchards and commercial greenhouses doing a majority of their business in wholesale sales, and for providing power for off-highway type farm machinery; and

(d) feed, seeds, and seedlings.

(8) "Construction materials" means any tangible personal property that will be converted into real property.

(9) (a) "Fundraising sales" means sales:

(i) (A) made by a public or private elementary or secondary school; or

(B) made by a public or private elementary or secondary school student, grades kindergarten through 12;

(ii) that are for the purpose of raising funds for the school to purchase equipment, materials, or provide transportation; and

(iii) that are part of an officially sanctioned school activity.

(b) For purposes of Subsection (9)(a)(iii), "officially sanctioned school activity" means a school activity:

(i) that is conducted in accordance with a formal policy adopted by the school or school district governing the authorization and supervision of fundraising activities;

(ii) that does not directly or indirectly compensate an individual teacher or other educational personnel by direct payment, commissions, or payment in kind; and

(iii) the net or gross revenues from which are deposited in a dedicated account controlled by the school or school district.

(10) (a) "Hearing aid" means:

(i) an instrument or device having an electronic component that is designed to:

(A) (I) improve impaired human hearing; or

(II) correct impaired human hearing; and

(B) (I) be worn in the human ear; or

(II) affixed behind the human ear;

(ii) an instrument or device that is surgically implanted into the cochlea; or

(iii) a telephone amplifying device.

(b) "Hearing aid" does not include:

(i) except as provided in Subsection (10)(a)(i)(B) or (10)(a)(ii), an instrument or device having an electronic component that is designed to be worn on the body;

(ii) except as provided in Subsection (10)(a)(iii), an assistive listening device or system designed to be used by one individual, including:

(A) a personal amplifying system;

(B) a personal FM system;

(C) a television listening system; or

(D) a device or system similar to a device or system described in Subsections (10)(b)(ii)(A) through (C); or

(iii) an assistive listening device or system designed to be used by more than one individual, including:

(A) a device or system installed in:

(I) an auditorium;

(II) a church;

(III) a conference room;

(IV) a synagogue; or

(V) a theater; or

(B) a device or system similar to a device or system described in Subsections (10)(b)(iii)(A)(I) through (V).

(11) (a) "Hearing aid accessory" means a hearing aid:

(i) component;

(ii) attachment; or

(iii) accessory.

(b) "Hearing aid accessory" includes:

(i) a hearing aid neck loop;

(ii) a hearing aid cord;

(iii) a hearing aid ear mold;

(iv) hearing aid tubing;

(v) a hearing aid ear hook; or

(vi) a hearing aid remote control.

(c) "Hearing aid accessory" does not include:

(i) a component, attachment, or accessory designed to be used only with an:

(A) instrument or device described in Subsection (10)(b)(i); or

(B) assistive listening device or system described in Subsection (10)(b)(ii) or (iii); or

(ii) a hearing aid battery.

(12) (a) "Home medical equipment and supplies" means equipment and supplies that:

(i) a licensed physician prescribes or authorizes in writing as necessary for the treatment of a medical illness or injury or as necessary to mitigate an impairment resulting from illness or injury;

(ii) are used exclusively by the person for whom they are prescribed to serve a medical purpose; and

(iii) are listed as eligible for payment under Title 18 of the federal Social Security Act or under the state plan for medical assistance under Title 19 of the federal Social Security Act.

(b) "Home medical equipment and supplies" does not include:

(i) equipment and supplies purchased by, for, or on behalf of any health care facility, as defined in Subsection (12)(c), doctor, nurse, or other health care provider for use in their professional practice;

(ii) eyeglasses, contact lenses, or equipment to correct impaired vision; or

(iii) hearing aids or hearing aid accessories.

(c) For purposes of Subsection (12)(b)(i), "health care facility" includes:

(i) a clinic;

(ii) a doctor's office; and

(iii) a health care facility as defined in Section 26-21-2.

(13) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil, or other fuels in:

(a) mining or extraction of minerals;

(b) agricultural operations to produce an agricultural product up to the time of harvest or placing the agricultural product into a storage facility, including:

(i) commercial greenhouses;

(ii) irrigation pumps;

(iii) farm machinery;

(iv) implements of husbandry as defined in Subsection 41-1a-102(23) that are not registered under Title 41, Chapter 1a, Part 2, Registration; and

(v) other farming activities; and

(c) manufacturing tangible personal property at an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget.

(14) "Manufactured home" means any manufactured home or mobile home as defined in Title 58, Chapter 56, Utah Uniform Building Standards Act.

(15) For purposes of Subsection 59-12-104(14), "manufacturing facility" means:

(a) an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget; or

(b) a scrap recycler if:

(i) from a fixed location, the scrap recycler utilizes machinery or equipment to process one or more of the following items into prepared grades of processed materials for use in new products:

(A) iron;

(B) steel;

(C) nonferrous metal;

(D) paper;

(E) glass;

(F) plastic;

(G) textile; or

(H) rubber; and

(ii) the new products under Subsection (15)(b)(i) would otherwise be made with nonrecycled materials.

(16) (a) "Medicine" means:

(i) insulin, syringes, and any medicine prescribed for the treatment of human ailments by a person authorized to prescribe treatments and dispensed on prescription filled by a registered pharmacist, or supplied to patients by a physician, surgeon, or podiatric physician;

(ii) any medicine dispensed to patients in a county or other licensed hospital if prescribed for that patient and dispensed by a registered pharmacist or administered under the direction of a physician; and

(iii) any oxygen or stoma supplies prescribed by a physician or administered under the direction of a physician or paramedic.

(b) "Medicine" does not include:

(i) any auditory, prosthetic, ophthalmic, or ocular device or appliance; or

(ii) any alcoholic beverage.

(17) "Olympic merchandise" means tangible personal property bearing an Olympic designation, emblem, insignia, mark, logo, service mark, symbol, terminology, trademark, or other copyrighted or protected material, including:

(a) one or more of the following terms:

(i) "Olympic";

(ii) "Olympiad"; or

(iii) "Citius Altius Fortius";

(b) the symbol of the International Olympic Committee, consisting of five interlocking rings;

(c) the emblem of the International Olympic Committee Corporation;

(d) a United States Olympic Committee designation, emblem, insignia, mark, logo, service mark, symbol, terminology, trademark, or other copyrighted or protected material;

(e) any emblem of the Olympic Winter Games of 2002 that is officially designated by the Salt Lake Organizing Committee of the Olympic Winter Games of 2002; or

(f) the mascot of the Olympic Winter Games of 2002.

(18) (a) "Other fuels" means products that burn independently to produce heat or energy.

(b) "Other fuels" includes oxygen when it is used in the manufacturing of tangible personal property.

(19) "Person" includes any individual, firm, partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city, municipality, district, or other local governmental entity of the state, or any group or combination acting as a unit.

(20) "Purchase price" means the amount paid or charged for tangible personal property or any other

taxable transaction under Subsection 59-12-103(1), excluding only cash discounts taken or any excise tax imposed on the purchase price by the federal government.

(21) "Residential use" means the use in or around a home, apartment building, sleeping quarters, and similar facilities or accommodations.

(22) (a) "Retail sale" means any sale within the state of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), other than resale of such property, item, or service by a retailer or wholesaler to a user or consumer.

(b) "Retail sale" includes sales by any farmer or other agricultural producer of poultry, eggs, or dairy products to consumers if the sales have an average monthly sales value of $125 or more.

(c) "Retail sale" does not include, and no additional sales or use tax shall be assessed against, those transactions where a purchaser of tangible personal property pays applicable sales or use taxes on its initial nonexempt purchases of property and then enters into a sale-leaseback transaction by which title to such property is transferred by the purchaser-lessee to a lessor for consideration, provided:

(i) the transaction is intended as a form of financing for the property to the purchaser-lessee; and

(ii) pursuant to generally accepted accounting principles, the purchaser-lessee is required to capitalize the subject property for financial reporting purposes, and account for the lease payments as payments made under a financing arrangement.

(23) (a) "Retailer" means any person engaged in a regularly organized retail business in tangible personal property or any other taxable transaction under Subsection 59-12-103(1), and who is selling to the user or consumer and not for resale.

(b) "Retailer" includes commission merchants, auctioneers, and any person regularly engaged in the business of selling to users or consumers within the state.

(c) "Retailer" does not include farmers, gardeners, stockmen, poultrymen, or other growers or agricultural producers producing and doing business on their own premises, except those who are regularly engaged in the business of buying or selling for a profit.

(d) For purposes of this chapter the commission may regard as retailers the following if they determine it is necessary for the efficient administration of this chapter: salesmen, representatives, peddlers, or canvassers as the agents of the dealers, distributors, supervisors, or employers under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of these dealers, distributors, supervisors, or employers, except that:

(i) a printer's facility with which a retailer has contracted for printing shall not be considered to be a salesman, representative, peddler, canvasser, or agent of the retailer; and

(ii) the ownership of property that is located at the premises of a printer's facility with which the retailer has contracted for printing and that consists of the final printed product, property that becomes a part of the final printed product, or copy from which the printed product is produced, shall not result in the retailer being deemed to have or maintain an office, distribution house, sales house, warehouse, service enterprise, or other place of business, or to maintain a stock of goods, within this state.

(24) "Sale" means any transfer of title, exchange, or barter, conditional or otherwise, in any manner, of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), for consideration. It includes:

(a) installment and credit sales;

(b) any closed transaction constituting a sale;

(c) any sale of electrical energy, gas, services, or entertainment taxable under this chapter;

(d) any transaction if the possession of property is transferred but the seller retains the title as security for the payment of the price; and

(e) any transaction under which right to possession, operation, or use of any article of tangible personal property is granted under a lease or contract and the transfer of possession would be taxable if an outright sale were made.

(25) (a) "Sales relating to schools" means sales by a public school district or public or private elementary or secondary school, grades kindergarten through 12, that are directly related to the school's or school district's educational functions or activities and include:

(i) the sale of textbooks, textbook fees, laboratory fees, laboratory supplies, and safety equipment;

(ii) the sale of clothing that:

(A) a student is specifically required to wear as a condition of participation in a school-related event or activity; and

(B) is not readily adaptable to general or continued usage to the extent that it takes the place of ordinary clothing;

(iii) sales of food if the net or gross revenues generated by the food sales are deposited into a school district fund or school fund dedicated to school meals; and

(iv) transportation charges for official school activities.

(b) "Sales relating to schools" does not include:

(i) gate receipts;

(ii) special event admission fees;

(iii) bookstore sales of items that are not educational materials or supplies; and

(iv) except as provided in Subsection (25)(a)(ii), clothing.

(26) (a) "Semiconductor fabricating or processing materials" means tangible personal property:

(i) used primarily in the process of:

(A) (I) manufacturing a semiconductor; or

(II) fabricating a semiconductor; or

(B) maintaining an environment suitable for a semiconductor; or

(ii) consumed primarily in the process of:

(A) (I) manufacturing a semiconductor; or

(II) fabricating a semiconductor; or

(B) maintaining an environment suitable for a semiconductor.

(b) "Semiconductor fabricating or processing materials" includes a chemical, catalyst, or other material used to:

(i) produce or induce in a semiconductor a:

(A) chemical change; or

(B) physical change;

(ii) remove impurities from a semiconductor; or

(iii) improve the marketable condition of a semiconductor.

[~~(26)~~] (27) "Senior citizen center" means a facility having the primary purpose of providing services to the aged as defined in Section 62A-3-101.

[~~(27)~~] (28) "State" means the state of Utah, its departments, and agencies.

[~~(28)~~] (29) "Storage" means any keeping or retention of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), in this state for any purpose except sale in the regular course of business.

[~~(29)~~] (30) (a) "Tangible personal property" means:

(i) all goods, wares, merchandise, produce, and commodities;

(ii) all tangible or corporeal things and substances which are dealt in or capable of being possessed or exchanged;

(iii) water in bottles, tanks, or other containers; and

(iv) all other physically existing articles or things, including property severed from real estate.

(b) "Tangible personal property" does not include:

(i) real estate or any interest or improvements in real estate;

(ii) bank accounts, stocks, bonds, mortgages, notes, and other evidence of debt;

(iii) insurance certificates or policies;

(iv) personal or governmental licenses;

(v) water in pipes, conduits, ditches, or reservoirs;

(vi) currency and coinage constituting legal tender of the United States or of a foreign nation; and

(vii) all gold, silver, or platinum ingots, bars, medallions, or decorative coins, not constituting legal tender of any nation, with a gold, silver, or platinum content of not less than 80%.

[~~(30)~~] (31) (a) "Use" means the exercise of any right or power over tangible personal property under Subsection 59-12-103(1), incident to the ownership or the leasing of that property, item, or service.

(b) "Use" does not include the sale, display, demonstration, or trial of that property in the regular course of business and held for resale.

[~~(31)~~] (32) "Vehicle" means any aircraft, as defined in Section 72-10-102; any vehicle, as defined in Section 41-1a-102; any off-highway vehicle, as defined in Section 41-22-2; and any vessel, as defined in Section 41-1a-102; that is required to be titled, registered, or both. "Vehicle" for purposes of Subsection 59-12-104(36) only, also includes any locomotive, freight car, railroad work equipment, or other railroad rolling stock.

[~~(32)~~] (33) "Vehicle dealer" means a person engaged in the business of buying, selling, or exchanging vehicles as defined in Subsection [~~(31)~~] (32).

[~~(33)~~] (34) (a) "Vendor" means any person receiving any payment or consideration upon a sale of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), or to whom the payment or consideration is payable.

(b) "Vendor" does not mean a printer's facility described in Subsection (23)(d).

Section 3. Section 59-12-104 is amended to read:

59-12-104. Exemptions.

The following sales and uses are exempt from the taxes imposed by this chapter:

(1) sales of aviation fuel, motor fuel, and special fuel subject to a Utah state excise tax under [~~Title 59,~~] Chapter 13, Motor and Special Fuel Tax Act;

(2) sales to the state, its institutions, and its political subdivisions; however, this exemption does not apply to sales of construction materials except:

(a) construction materials purchased by or on behalf of institutions of the public education system as defined in Utah Constitution Article X, Section 2, provided the construction materials are clearly identified and segregated and installed or converted to real property which is owned by institutions of the public education system; and

(b) construction materials purchased by the state, its institutions, or its political subdivisions which are installed or converted to real property by employees of the state, its institutions, or its political subdivisions;

(3) sales of food, beverage, and dairy products from vending machines in which the proceeds of each sale do not exceed $1 if the vendor or operator of the vending machine reports an amount equal to 150% of the cost of items as goods consumed;

(4) sales of food, beverage, dairy products, similar confections, and related services to commercial airline carriers for in-flight consumption;

(5) sales of parts and equipment installed in aircraft operated by common carriers in interstate or foreign commerce;

(6) sales of commercials, motion picture films, prerecorded audio program tapes or records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture exhibitor, distributor, or commercial television or radio broadcaster;

(7) sales of cleaning or washing of tangible personal property by a coin-operated laundry or dry cleaning machine;

(8) (a) except as provided in Subsection (8)(b), sales made to or by religious or charitable institutions in the conduct of their regular religious or charitable functions and activities, if the requirements of Section 59-12-104.1 are fulfilled;

(b) the exemption provided for in Subsection (8)(a) does not apply to the following sales, uses, leases, or rentals relating to the Olympic Winter Games of 2002 made to or by an organization exempt from federal income taxation under Section 501(c)(3), Internal Revenue Code:

(i) retail sales of Olympic merchandise;

(ii) except as provided in Subsection (51), admissions or user fees described in Subsection 59-12-103(1)(f);

(iii) sales of accommodations and services as provided in Subsection 59-12-103(1)(i), except for accommodations and services:

(A) paid for in full by the Salt Lake Organizing Committee for the Olympic Winter Games of 2002;

(B) exclusively used by:

(I) an officer, a trustee, or an employee of the Salt Lake Organizing Committee for the Olympic Winter Games of 2002; or

(II) a volunteer supervised by the Salt Lake Organizing Committee for the Olympic Winter Games of 2002; and

(C) for which the Salt Lake Organizing Committee for the Olympic Winter Games of 2002 does not receive reimbursement; or

(iv) a lease or rental of a vehicle as defined in Section 41-1a-102, except for a lease or rental of a vehicle:

(A) paid for in full by the Salt Lake Organizing Committee for the Olympic Winter Games of 2002;

(B) exclusively used by:

(I) an officer, a trustee, or an employee of the Salt Lake Organizing Committee for the Olympic Winter Games of 2002; or

(II) a volunteer supervised by the Salt Lake Organizing Committee for the Olympic Winter Games of 2002; and

(C) for which the Salt Lake Organizing Committee for the Olympic Winter Games of 2002 does not receive reimbursement;

(9) sales of vehicles of a type required to be registered under the motor vehicle laws of this state which are made to bona fide nonresidents of this state and are not afterwards registered or used in this state except as necessary to transport them to the borders of this state;

(10) sales of medicine;

(11) sales or use of property, materials, or services used in the construction of or incorporated in pollution control facilities allowed by Sections 19-2-123 through 19-2-127;

(12) sales of meals served by:

(a) churches, charitable institutions, and institutions of higher education, if the meals are not available to the general public; and

(b) inpatient meals provided at medical or nursing facilities;

(13) isolated or occasional sales by persons not regularly engaged in business, except the sale of vehicles or vessels required to be titled or registered under the laws of this state in which case the tax is based upon:

(a) the bill of sale or other written evidence of value of the vehicle or vessel being sold; or

(b) in the absence of a bill of sale or other written evidence of value, the then existing fair market value of the vehicle or vessel being sold as determined by the commission;

(14) (a) the following purchases or leases by a manufacturer on or after July 1, 1995:

(i) machinery and equipment:

(A) used in the manufacturing process;

(B) having an economic life of three or more years; and

(C) used:

(I) to manufacture an item sold as tangible personal property; and

(II) in new or expanding operations in a manufacturing facility in the state; and

(ii) subject to the provisions of Subsection (14)(b), normal operating replacements that:

(A) have an economic life of three or more years;

(B) are used in the manufacturing process in a manufacturing facility in the state;

(C) are used to replace or adapt an existing machine to extend the normal estimated useful life of the machine; and

(D) do not include repairs and maintenance;

(b) the rates for the exemption under Subsection (14)(a)(ii) are as follows:

(i) beginning July 1, 1996, through June 30, 1997, 30% of the sale or lease described in Subsection (14)(a)(ii) is exempt;

(ii) beginning July 1, 1997, through June 30, 1998, 60% of the sale or lease described in Subsection (14)(a)(ii) is exempt; and

(iii) beginning July 1, 1998, 100% of the sale or lease described in Subsection (14)(a)(ii) is exempt;

(c) for purposes of this Subsection (14), the commission shall by rule define the terms "new or expanding operations" and "establishment"; and

(d) on or before October 1, 1991, and every five years after October 1, 1991, the commission shall:

(i) review the exemptions described in Subsection (14)(a) and make recommendations to the Revenue and Taxation Interim Committee concerning whether the exemptions should be continued, modified, or repealed; and

(ii) include in its report:

(A) the cost of the exemptions;

(B) the purpose and effectiveness of the exemptions; and

(C) the benefits of the exemptions to the state;

(15) sales of tooling, special tooling, support equipment, and special test equipment used or consumed exclusively in the performance of any aerospace or electronics industry contract with the United States government or any subcontract under that contract, but only if, under the terms of that contract or subcontract, title to the tooling and equipment is vested in the United States government as evidenced by a government identification tag placed on the tooling and equipment or by listing on a government-approved property record if a tag is impractical;

(16) intrastate movements of:

(a) freight by common carriers; and

(b) passengers:

(i) by taxicabs as described in SIC Code 4121 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget; or

(ii) transported by an establishment described in SIC Code 4111 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget, if the transportation originates and terminates within a county of the first, second, or third class;

(17) sales of newspapers or newspaper subscriptions;

(18) tangible personal property, other than money, traded in as full or part payment of the purchase price, except that for purposes of calculating sales or use tax upon vehicles not sold by a vehicle dealer, trade-ins are limited to other vehicles only, and the tax is based upon:

(a) the bill of sale or other written evidence of value of the vehicle being sold and the vehicle being traded in; or

(b) in the absence of a bill of sale or other written evidence of value, the then existing fair market value of the vehicle being sold and the vehicle being traded in, as determined by the commission;

(19) sprays and insecticides used to control insects, diseases, and weeds for commercial production of fruits, vegetables, feeds, seeds, and animal products, but not those sprays and insecticides used in the processing of the products;

(20) (a) sales of tangible personal property used or consumed primarily and directly in farming operations, including sales of irrigation equipment and supplies used for agricultural production purposes, whether or not they become part of real estate and whether or not installed by farmer, contractor, or subcontractor, but not sales of:

(i) machinery, equipment, materials, and supplies used in a manner that is incidental to farming, such as hand tools with a unit purchase price not in excess of $250, and maintenance and janitorial equipment and supplies;

(ii) tangible personal property used in any activities other than farming, such as office equipment and supplies, equipment and supplies used in sales or distribution of farm products, in research, or in transportation; or

(iii) any vehicle required to be registered by the laws of this state, without regard to the use to which the vehicle is put;

(b) sales of hay;

(21) exclusive sale of locally grown seasonal crops, seedling plants, or garden, farm, or other agricultural produce if sold by a producer during the harvest season;

(22) purchases of food as defined in 7 U.S.C. Sec. 2012(g) under the Food Stamp Program, 7 U.S.C. Sec. 2011 et seq.;

(23) sales of nonreturnable containers, nonreturnable labels, nonreturnable bags, nonreturnable shipping cases, and nonreturnable casings to a manufacturer, processor, wholesaler, or retailer for use in packaging tangible personal property to be sold by that manufacturer, processor, wholesaler, or retailer;

(24) property stored in the state for resale;

(25) property brought into the state by a nonresident for his or her own personal use or enjoyment while within the state, except property purchased for use in Utah by a nonresident living and working in Utah at the time of purchase;

(26) property purchased for resale in this state, in the regular course of business, either in its original form or as an ingredient or component part of a manufactured or compounded product;

(27) property upon which a sales or use tax was paid to some other state, or one of its subdivisions, except that the state shall be paid any difference between the tax paid and the tax imposed by this part and Part 2, Local Sales and Use Tax Act, and no adjustment is allowed if the tax paid was greater than the tax imposed by this part and Part 2, Local Sales and Use Tax Act;

(28) any sale of a service described in Subsections 59-12-103(1)(b), (c), and (d) to a person for use in compounding a service taxable under the subsections;

(29) purchases of supplemental foods as defined in 42 U.S.C. Sec. 1786(b)(14) under the special supplemental nutrition program for women, infants, and children established in 42 U.S.C. Sec. 1786;

(30) beginning on July 1, 1999, through June 30, 2004, sales or leases of rolls, rollers, refractory brick, electric motors, or other replacement parts used in the furnaces, mills, or ovens of a steel mill described in SIC Code 3312 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget;

(31) sales of boats of a type required to be registered under Title 73, Chapter 18, State Boating Act, boat trailers, and outboard motors which are made to bona fide nonresidents of this state and are not thereafter registered or used in this state except as necessary to transport them to the borders of this state;

(32) sales of tangible personal property to persons within this state that is subsequently shipped outside the state and incorporated pursuant to contract into and becomes a part of real property located outside of this state, except to the extent that the other state or political entity imposes a sales, use, gross receipts, or other similar transaction excise tax on it against which the other state or political entity allows a credit for taxes imposed by this chapter;

(33) sales of aircraft manufactured in Utah if sold for delivery and use outside Utah where a sales or use tax is not imposed, even if the title is passed in Utah;

(34) amounts paid for the purchase of telephone service for purposes of providing telephone service;

(35) fares charged to persons transported directly by a public transit district created under the authority of Title 17A, Chapter 2, Part 10, Utah Public Transit District Act;

(36) sales or leases of vehicles to, or use of vehicles by an authorized carrier;

(37) (a) 45% of the sales price of any new manufactured home; and

(b) 100% of the sales price of any used manufactured home;

(38) sales relating to schools and fundraising sales;

(39) sales or rentals of home medical equipment and supplies;

(40) (a) sales to a ski resort of electricity to operate a passenger ropeway as defined in Section 72-11-102; and

(b) the commission shall by rule determine the method for calculating sales exempt under Subsection (40)(a) that are not separately metered and accounted for in utility billings;

(41) sales to a ski resort of:

(a) snowmaking equipment;

(b) ski slope grooming equipment; and

(c) passenger ropeways as defined in Section 72-11-102;

(42) sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for industrial use;

(43) sales or rentals of the right to use or operate for amusement, entertainment, or recreation a coin-operated amusement device as defined in Section 59-12-102;

(44) sales of cleaning or washing of tangible personal property by a coin-operated car wash machine;

(45) sales by the state or a political subdivision of the state, except state institutions of higher education as defined in Section 53B-3-102, of:

(a) photocopies; or

(b) other copies of records held or maintained by the state or a political subdivision of the state; and

(46) (a) amounts paid:

(i) to a person providing intrastate transportation to an employer's employee to or from the employee's primary place of employment;

(ii) by an:

(A) employee; or

(B) employer; and

(iii) pursuant to a written contract between:

(A) the employer; and

(B) (I) the employee; or

(II) a person providing transportation to the employer's employee; and

(b) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may for purposes of Subsection (46)(a) make rules defining what constitutes an employee's primary place of employment;

(47) amounts paid for admission to an athletic event at an institution of higher education that is subject to the provisions of Title IX of the Education Amendments of 1972, 20 U.S.C. Sec. 1681 et seq.;

(48) sales of telephone service charged to a prepaid telephone calling card;

(49) (a) sales of hearing aids; and

(b) sales of hearing aid accessories;

(50) (a) sales made to or by:

(i) an area agency on aging; or

(ii) a senior citizen center owned by a county, city, or town; or

(b) sales made by a senior citizen center that contracts with an area agency on aging; [~~and~~]

(51) (a) beginning on July 1, 2000, through June 30, 2002, amounts paid or charged as admission or user fees described in Subsection 59-12-103(1)(f) relating to the Olympic Winter Games of 2002 if the amounts paid or charged are established by the Salt Lake Organizing Committee for the Olympic Winter Games of 2002 in accordance with requirements of the International Olympic Committee; and

(b) the State Olympic Officer and the Salt Lake Organizing Committee for the Olympic Winter Games of 2002 shall make at least two reports during the 2000 interim:

(i) to the:

(A) Olympic Coordination Committee; and

(B) Revenue and Taxation Interim Committee; and

(ii) regarding the status of:

(A) agreements relating to the funding of public safety services for the Olympic Winter Games of 2002;

(B) agreements relating to the funding of services, other than public safety services, for the Olympic Winter Games of 2002;

(C) other agreements relating to the Olympic Winter Games of 2002 as requested by the Olympic Coordination Committee or the Revenue and Taxation Interim Committee;

(D) other issues as requested by the Olympic Coordination Committee or the Revenue and Taxation Interim Committee; or

(E) a combination of Subsections (51)(b)(ii)(A) through (D)[~~.~~]; or

(52) (a) beginning on July 1, 2001, through June 30, 2004, and subject to Subsection (52)(b), a sale or lease of semiconductor fabricating or processing materials regardless of whether the semiconductor fabricating or processing materials:

(i) actually come into contact with a semiconductor; or

(ii) ultimately become incorporated into real property;

(b) (i) beginning on July 1, 2001, through June 30, 2002, 10% of the sale or lease described in Subsection (52)(a) is exempt;

(ii) beginning on July 1, 2002, through June 30, 2003, 50% of the sale or lease described in Subsection (52)(a) is exempt; and

(iii) beginning on July 1, 2003, through June 30, 2004, the entire amount of the sale or lease described in Subsection (52)(a) is exempt; and

(c) each year on or before the November interim meeting, the Revenue and Taxation Interim Committee shall:

(i) review the exemption described in this Subsection (52) and make recommendations concerning whether the exemption should be continued, modified, or repealed; and

(ii) include in the review under this Subsection (52)(c):

(A) the cost of the exemption;

(B) the purpose and effectiveness of the exemption; and

(C) the benefits of the exemption to the state.

Section 4. Section 59-12-105 is amended to read:

59-12-105. Certain exempt sales to be reported -- Penalties.

(1) An owner, vendor, or purchaser shall report to the commission the amount of sales or uses exempt under Subsection 59-12-104(14), (20), (40), [~~or~~] (41), or (52).

(2) Except as provided in Subsections (3) and (4), if the owner, vendor, or purchaser fails to report the full amount of the exemptions granted under Subsection 59-12-104(14), (20), (40), [~~or~~] (41), or (52) on the owner's, vendor's, or purchaser's original filed return, the commission shall impose a penalty equal to the lesser of:

(a) 10% of the sales and use tax that would have been imposed if the exemption had not applied; or

(b) $1,000.

(3) Notwithstanding Subsection (2), the commission may not impose a penalty under Subsection (2) if the owner, vendor, or purchaser files an amended return containing the amount of the exemption prior to the owner, vendor, or purchaser receiving a notice of audit from the commission.

(4) (a) Notwithstanding Subsection (2), the commission may waive, reduce, or compromise a penalty imposed under this section if the commission finds there are reasonable grounds for the waiver, reduction, or compromise.

(b) If the commission waives, reduces, or compromises a penalty under Subsection (4)(a), the commission shall make a record of the grounds for waiving, reducing, or compromising the penalty.

Section 5. Effective date.

This act takes effect on July 1, 2001.

CHAPTER 263
S. B. 175
Passed February 26, 2001
Approved March 19, 2001
Effective July 1, 2001

RURAL ACCESS TO HEALTH CARE PROVIDERS

Sponsor: Leonard M. Blackham
John W. Hickman
Paula F. Julander

This act modifies the Insurance Code by amending provisions related to access to rural health care providers. The act amends the population density which qualifies as a rural designation. The act grandfathers existing independent hospitals. The act takes effect July 1, 2001.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
31A-8-501 (Effective 07/01/01), as last amended by Chapters 68 and 122, Laws of Utah 2000

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

Section 1. Section 31A-8-501 (Effective 07/01/01) is amended to read:

31A-8-501 (Effective 07/01/01). Access to health care providers.

(1) As used in this section:

(a) "Class of health care provider" means a health care provider or a health care facility regulated by the state within the same professional, trade, occupational, or certification category established under Title 58, Occupations and Professions, or within the same facility licensure category established under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

(b) "Covered health care services" or "covered services" means health care services for which an enrollee is entitled to receive under the terms of a health maintenance organization contract.

(c) "Credentialed staff member" means a health care provider with active staff privileges at an independent hospital or federally qualified health center.

(d) "Federally qualified health center" means as defined in the Social Security Act, 42 U.S.C. Sec. 1395(x).

(e) "Independent hospital" means a general acute hospital that:

(i) is licensed pursuant to Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act; and

(ii) is controlled by a board of directors of which 51% or more reside in the county where the hospital is located and:

(A) the board of directors is ultimately responsible for the policy and financial decisions of the hospital; or

(B) the hospital is licensed for 60 or fewer beds and is not owned, in whole or in part, by an entity that owns or controls a health maintenance organization if the hospital is a contracting facility of the organization.

(f) "Noncontracting provider" means an independent hospital, federally qualified health center, or credentialed staff member who has not contracted with a health maintenance organization to provide health care services to enrollees of the organization.

(2) [~~A~~] Except for a health maintenance organization which is under the common ownership or control of an entity with a hospital located within ten paved road miles of an independent hospital, a health maintenance organization shall pay for covered health care services rendered to an enrollee by an independent hospital, a credentialed staff member at an independent hospital, or a credentialed staff member at his local practice location if:

(a) the enrollee:

(i) lives or resides within 30 paved road miles of the independent hospital; or

(ii) if Subsection (2)(a)(i) does not apply, lives or resides in closer proximity to the independent hospital than a contracting hospital;

(b) the independent hospital is located prior to December 31, 2000 in a county with a population density of less than 100 people per square mile, or the independent hospital is located in a county with a population density of less than 30 people per square mile; and

(c) the enrollee has complied with the prior authorization and utilization review requirements otherwise required by the health maintenance organization contract.

(3) A health maintenance organization shall pay for covered health care services rendered to an enrollee at a federally qualified health center if:

(a) the enrollee:

(i) lives or resides within 30 paved road miles of the federally qualified health center; or

(ii) if Subsection (3)(a)(i) does not apply, lives or resides in closer proximity to the federally qualified health center than a contracting provider;

(b) the federally qualified health center is located in a county with a population density of less than [~~100~~] 30 people per square mile; and

(c) the enrollee has complied with the prior authorization and utilization review requirements otherwise required by the health maintenance organization contract.

(4) (a) A health maintenance organization shall reimburse a noncontracting provider or the enrollee

for covered services rendered pursuant to Subsection (2) a like dollar amount as it pays to contracting providers under a noncapitated arrangement for comparable services.

(b) A health maintenance organization shall reimburse a federally qualified health center or the enrollee for covered services rendered pursuant to Subsection (3) a like amount as paid by the health maintenance organization under a noncapitated arrangement for comparable services to a contracting provider in the same class of health care providers as the provider who rendered the service.

(5) A noncontracting provider may only refer an enrollee to another noncontracting provider so as to obligate the enrollee's health maintenance organization to pay for the resulting services if:

(a) the noncontracting provider making the referral or the enrollee has received prior authorization from the organization for the referral; or

(b) the practice location of the noncontracting provider to whom the referral is made:

(i) is located in a county with a population density of less than [~~100~~] 25 people per square mile; and

(ii) is within 30 paved road miles of:

(A) the place where the enrollee lives or resides; or

(B) the independent hospital or federally qualified health center at which the enrollee may receive covered services pursuant to Subsection (2) or (3).

(6) Notwithstanding this section, a health maintenance organization may contract directly with an independent hospital, federally qualified health center, or credentialed staff member.

Section 2. Effective date.

This act takes effect on July 1, 2001.

CHAPTER 264
S. B. 176
Passed February 27, 2001
Approved March 19, 2001
Effective June 23, 2001

EXECUTIVE COMPENSATION

Sponsor: L. Steven Poulton

This act modifies provisions related to State Officers and Employees to provide a salary increase for certain state officers and employees and to make technical changes. This act takes effect June 23, 2001.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
67-22-1, as last amended by Chapter 117, Laws of Utah 2000
67-22-2, as last amended by Chapter 117, Laws of Utah 2000

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

Section 1. Section 67-22-1 is amended to read:

67-22-1. Compensation -- Constitutional offices.

(1) The Legislature fixes salaries for the constitutional offices as follows:

(a) Governor	[~~$96,700~~] $100,600
(b) Lieutenant Governor	[~~$75,200~~] $78,200
(c) Attorney General	[~~$81,300~~] $84,600
(d) State Auditor	[~~$77,600~~] $80,700
(e) State Treasurer	[~~$75,200~~] $78,200

(2) The Legislature fixes benefits for the constitutional offices as follows:

(a) Governor:

(i) a vehicle for official and personal use;

(ii) housing;

(iii) household and security staff;

(iv) household expenses;

(v) retirement benefits as provided in Title 49;

(vi) health insurance;

(vii) dental insurance;

(viii) basic life insurance;

(ix) workers' compensation;

(x) required employer contribution to Social Security;

(xi) long-term disability insurance; and

(xii) the same additional state paid life insurance available to other noncareer service employees.

(b) Lieutenant governor, attorney general, state auditor, and state treasurer:

(i) a vehicle for official and personal use;

(ii) the option of participating in a state retirement system established by Title 49, Chapter 2, Public Employees' Retirement Act, or Chapter 3, Public Employees' Noncontributory Retirement Act, or in a deferred compensation plan administered by the State Retirement Office, in accordance with the Internal Revenue Code and its accompanying rules and regulations;

(iii) health insurance;

(iv) dental insurance;

(v) basic life insurance;

(vi) workers' compensation;

(vii) required employer contribution to social security;

(viii) long-term disability insurance; and

(ix) the same additional state paid life insurance available to other noncareer service employees.

(c) Each constitutional office shall pay the cost of the additional state-paid life insurance for its constitutional officer from its existing budget.

Section 2. Section 67-22-2 is amended to read:

67-22-2. Compensation -- Other state officers.

(1) The governor shall establish salaries for the following state officers within the following salary ranges fixed by the Legislature:

State Officer	Salary Range
[~~Director, Health Policy Commission~~]	[~~$57,900 - $78,400~~]
Commissioner of Agriculture and Food	[~~$62,100 - $84,100~~] $64,600 - $87,500
Commissioner of Insurance	[~~$62,100 - $84,100~~] $64,600 - $87,500
Commissioner of the Labor Commission	[~~$62,100 - $84,100~~] $64,600 - $87,500
Director, Alcoholic Beverage Control Commission	[~~$62,100 - $84,100~~] $64,600 - $87,500
Commissioner, Department of Financial Institutions	[~~$62,100 - $84,100~~] $64,600 - $87,500
Members, Board of Pardons and Parole	[~~$62,100 - $84,100~~] $64,600 - $87,500
Executive Director, Department of Commerce	[~~$62,100 - $84,100~~] $64,600 - $87,500
Executive Director, Commission on Criminal and Juvenile Justice	[~~$62,100 - $84,100~~] $64,600 - $87,500
Adjutant General	[~~$62,100 - $84,100~~] $64,600 - $87,500
Chair, Tax Commission	[~~$67,200 - $90,700~~] $69,900 - $94,300
Commissioners, Tax Commission	[~~$67,200 - $90,700~~] $69,900 - $94,300
Executive Director, Department of Community and Economic Development	[~~$67,200 - $90,700~~] $69,900 - $94,300
Executive Director, Tax Commission	[~~$67,200 - $90,700~~] $69,900 - $94,300

Chair, Public Service Commission
[~~$67,200 – $90,700~~] $69,900 – $94,300
Commissioner, Public Service Commission
[~~$67,200 – $90,700~~] $69,900 – $94,300
Executive Director, Department of Corrections
[~~$73,100 – $98,700~~] $76,000 – $102,600
Commissioner, Department of Public Safety
[~~$73,100 – $98,700~~] $76,000 – $102,600
Executive Director, Department of Natural Resources
[~~$73,100 – $98,700~~] $76,000 – $102,600
Director, Office of Planning and Budget
[~~$73,100 – $98,700~~] $76,000 – $102,600
Executive Director, Department of Administrative Services
[~~$73,100 – $98,700~~] $76,000 – $102,600
Executive Director, Department of Human Resource Management
[~~$73,100 – $98,700~~] $76,000 – $102,600
Executive Director, Department of Environmental Quality
[~~$73,100 – $98,700~~] $76,000 – $102,600
State Olympic Officer
[~~$79,600 – $107,500~~] $82,800 – $111,800
Executive Director, Department of Workforce Services
[~~$79,600 – $107,500~~] $82,800 – $111,800
Executive Director, Department of Health
[~~$79,600 – $107,500~~] $82,800 – $111,800
Executive Director, Department of Human Services
[~~$79,600 – $107,500~~] $82,800 – $111,800
Executive Director, Department of Transportation
[~~$79,600 – $107,500~~] $82,800 – $111,800
Chief Information Officer
[~~$79,600 – $107,500~~] $82,800 – $111,800

(2) (a) The Legislature fixes benefits for the state offices outlined in Subsection (1) as follows:

(i) the option of participating in a state retirement system established by Title 49, Utah State Retirement Act, or in a deferred compensation plan administered by the State Retirement Office in accordance with the Internal Revenue Code and its accompanying rules and regulations;

(ii) health insurance;

(iii) dental insurance;

(iv) basic life insurance;

(v) unemployment compensation;

(vi) workers' compensation;

(vii) required employer contribution to Social Security;

(viii) long-term disability insurance;

(ix) the same additional state-paid life insurance available to other noncareer service employees;

(x) the same severance pay available to other noncareer service employees;

(xi) the same sick leave, converted sick leave, educational allowances, and holidays granted to Schedule B state employees, and the same annual leave granted to Schedule B state employees with more than ten years of state service;

(xii) the option to convert accumulated sick leave to cash or insurance benefits as provided by law or rule upon resignation or retirement according to the same criteria and procedures applied to Schedule B state employees;

(xiii) the option to purchase additional life insurance at group insurance rates according to the same criteria and procedures applied to Schedule B state employees; and

(xiv) professional memberships if being a member of the professional organization is a requirement of the position.

(b) Each department shall pay the cost of additional state-paid life insurance for its executive director from its existing budget.

(3) The Legislature fixes the following additional benefits:

(a) for the executive director of the State Tax Commission a vehicle for official and personal use;

(b) for the executive director of the Department of Transportation a vehicle for official and personal use;

(c) for the executive director of the Department of Natural Resources a vehicle for commute and official use;

(d) for the Commissioner of Public Safety:

(i) an accidental death insurance policy if POST certified; and

(ii) a public safety vehicle for official and personal use;

(e) for the executive director of the Department of Corrections:

(i) an accidental death insurance policy if POST certified; and

(ii) a public safety vehicle for official and personal use;

(f) for the Adjutant General a vehicle for official and personal use; and

(g) for each member of the Board of Pardons and Parole a vehicle for commute and official use.

(4) (a) The governor has the discretion to establish a specific salary for each office listed in Subsection (1), and, within that discretion, may provide salary increases within the range fixed by the Legislature.

(b) The governor shall apply the same overtime regulations applicable to other FLSA exempt positions.

(c) The governor may develop standards and criteria for reviewing the performance of the state officers listed in Subsection (1).

(5) Salaries for other Schedule A employees, as defined in Section 67-19-15, which are not provided for in this chapter, or in Title 67, Chapter

8, Utah Executive and Judicial Salary Act, shall be established as provided in Section 67-19-15.

Section 3. Effective date.

This act takes effect on June 23, 2001.

CHAPTER 265
S. B. 179
Passed February 26, 2001
Approved March 19, 2001
Effective April 30, 2001
(Retrospective operation to December 21, 2000)

UNEMPLOYMENT INSURANCE - NATIVE AMERICAN TRIBAL UNITS

Sponsor: Ed P. Mayne

This act modifies the Workforce Services Code to reflect federal law exempting American Indian tribes and tribal units from the Federal Unemployment Tax Act. This act provides that services performed in the employ of tribes are covered under state unemployment compensation, and provides for retrospective operation.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
35A-4-201, as last amended by Chapter 375, Laws of Utah 1997
35A-4-202, as last amended by Chapter 375, Laws of Utah 1997
35A-4-204, as last amended by Chapter 375, Laws of Utah 1997
35A-4-311, as renumbered and amended by Chapter 240, Laws of Utah 1996

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

Section 1. Section 35A-4-201 is amended to read:

35A-4-201. General definitions.

As used in this chapter:

(1) "Base-period" means the first four of the last five completed calendar quarters next preceding the first day of the individual's benefit year with respect to any individual whose benefit year commences on or after January 5, 1986.

(2) "Benefit year" means the 52 consecutive week period beginning with the first week with respect to which an individual files for benefits and is found to have an insured status.

(3) "Benefits" means the money payments payable to an individual as provided in this chapter with respect to the individual's unemployment.

(4) "Calendar quarter" means the period of three consecutive months ending on March 31, June 30, September 30, or December 31, or the equivalent, as the department may by rule prescribe.

(5) "Contribution" means the money payments required by this chapter to be made into the Unemployment Compensation Fund by any employing unit on account of having individuals in its employ.

(6) "Division" means the Division of Workforce Information and Payment Services.

(7) "Employment office" means a free public employment office or branch operated by this or any other state as a part of a state-controlled system of public employment offices or by a federal agency charged with the administration of an unemployment compensation program or free public employment offices.

(8) "Employment Security Administration Fund" means the fund established by Section 35A-4-505, and from which administrative expenses under this chapter shall be paid.

(9) "Extended benefits" has the meaning specified in Subsection 35A-4-402(7)(f).

(10) "Fund" means the Unemployment Compensation Fund established by this chapter.

(11) "Insured average annual wage" means on or before the 15th day of May of each year, the total wages of insured workers for the preceding calendar year, divided by the average monthly number of insured workers, determined by dividing by 12 the total insured workers for the preceding calendar year as determined under the rules of the department calculated to two decimal places, disregarding any fraction of one cent.

(12) "Insured average fiscal year wage" means on or before the 15th day of November of each year, the total wages of insured workers for the preceding fiscal year, divided by the average monthly number of insured workers, determined by dividing by 12 the total insured workers for the preceding fiscal year as determined under the rules of the department calculated to two decimal places, disregarding any fraction of one cent.

(13) "Insured average fiscal year weekly wage" means the insured average fiscal year wage determined in Subsection (12), divided by 52, calculated to two decimal places, disregarding any fraction of one cent.

(14) "Insured average weekly wage" means the insured average annual wage determined in Subsection (11), divided by 52, calculated to two decimal places, disregarding any fraction of one cent.

(15) "Insured status" means that an individual has, during the individual's base-period, performed services and earned wages in employment sufficient to qualify for benefits under Section 35A-4-403.

(16) "Insured work" means employment for an employer, as defined in Section 35A-4-203.

(17) "Monetary base period wage requirement" means 8% of the insured average fiscal year wage for the preceding fiscal year, for example, fiscal year 1990 for individuals establishing benefit years in 1991, rounded up to the next higher multiple of $100.

(18) "State" includes the Commonwealth of Puerto Rico, the Virgin Islands, and the District of Columbia.

(19) "Tribal unit" means a subdivision, subsidiary, or business enterprise wholly owned by an American Indian tribe.

[~~(19)~~] (20) "Week" means the period or periods of seven consecutive calendar days as the department may prescribe by rule.

Section 2. Section 35A-4-202 is amended to read:

35A-4-202. Employing units.

As used in this chapter:

(1) (a) "Employing unit" means:

(i) any individual or type of organization that has or subsequent to January 1, 1935, had one or more individuals performing services for it within the state including any:

(A) partnership;

(B) association;

(C) trust;

(D) estate;

(E) joint stock company;

(F) insurance company;

(G) limited liability company;

(H) limited liability partnership;

(I) joint venture;

(J) corporation, whether domestic or foreign;

(K) the receiver, trustee in bankruptcy, trustee or successor of any entity listed in Subsections (1)(a)(i)(A) through (J); [~~or~~]

(L) the legal representative of a deceased person; or

(M) a tribal unit; or

(ii) any properly and legally licensed employee leasing company as defined by Section 58-59-102.

(b) The department may adopt rules specific to employee leasing companies pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(c) All individuals performing services within this state for any employing unit that maintains two or more separate establishments within this state are considered to be performing services for a single employing unit for all the purposes of this chapter.

(d) Each individual employed to perform or to assist in performing the work of any person in the service of an employing unit is considered to be engaged by the employing unit for all the purposes of this chapter whether the individual was hired or paid directly by the employing unit or by the person, provided the employing unit had actual or constructive knowledge of the work.

(2) "Hospital" means an institution that is licensed, certified, or approved by the Department of Health as a hospital.

(3) "Institution of higher education," for the purposes of this section, means an educational institution that:

(a) (i) admits, as regular students only, individuals having a certificate of graduation from a high school or the recognized equivalent of a certificate;

(ii) is legally authorized in this state to provide a program of education beyond high school;

(iii) provides:

(A) an educational program for which it awards a bachelor's or higher degree;

(B) a program that is acceptable for full credit toward a bachelor's or higher degree;

(C) a program of postgraduate or postdoctoral studies; or

(D) a program of training to prepare students for gainful employment in a recognized occupation; and

(iv) is a public or other nonprofit institution.

(b) All colleges and universities in this state are institutions of higher education for purposes of this section.

Section 3. Section 35A-4-204 is amended to read:

35A-4-204. Definition of employment.

(1) Subject to the other provisions of this section, "employment" means any service performed for wages or under any contract of hire, whether written or oral, express or implied, including service in interstate commerce, and service as an officer of a corporation.

(2) "Employment" includes an individual's entire service performed within or both within and without this state if one of Subsections (2)(a) through (k) is satisfied.

(a) The service is localized in this state. Service is localized within this state if:

(i) the service is performed entirely within the state; or

(ii) the service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions.

(b) (i) The service is not localized in any state but some of the service is performed in this state and the individual's base of operations, or, if there is no base of operations, the place from which the service is directed or controlled, is in this state; or

(ii) the individual's base of operations or place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(c) (i) (A) The service is performed entirely outside this state and is not localized in any state;

(B) the worker is one of a class of employees who are required to travel outside this state in performance of their duties; and

(C) (I) the base of operations is in this state; or

(II) if there is no base of operations, the place from which the service is directed or controlled is in this state.

(ii) Services covered by an election under Subsection 35A-4-310(3), and services covered by an arrangement under Section 35A-4-106 between the division and the agency charged with the administration of any other state or federal unemployment compensation law, under which all services performed by an individual for an employing unit are considered to be performed entirely within this state, are considered to be employment if the division has approved an election of the employing unit for whom the services are performed, under which the entire service of the individual during the period covered by the election is considered to be insured work.

(d) (i) The service is performed after December 31, 1977, in the employ of this state or any of its instrumentalities or any county, city, town, school district, or any political subdivision thereof or any of its instrumentalities or any instrumentality or more than one of the foregoing or any instrumentality of any of the foregoing and one or more other states or political subdivisions or Indian tribes or tribal units if:

(A) the service is excluded from employment as defined in the Federal Unemployment Tax Act, 26 U.S.C. 3306(c)(7);

(B) the service is not excluded from employment by Section 35A-4-205; and

(C) as to any county, city, town, school district, or political subdivision of this state, or any instrumentality of the same or Indian tribes or tribal units, that service is either:

(I) required to be treated as covered employment as a condition of eligibility of employers in this state for Federal Unemployment Tax Act employer tax credit;

(II) required to be treated as covered employment by any other requirement of the Federal Unemployment Tax Act, as amended; or

(III) not required to be treated as covered employment by any requirement of the Federal Unemployment Tax Act, but coverage of the service is elected by a majority of the members of the governing body of the political subdivision or instrumentality or tribal unit in accordance with Section 35A-4-310.

(ii) Benefits paid on the basis of service performed in the employ of this state shall be financed by payments to the division instead of contributions in the manner and amounts prescribed by Subsections 35A-4-311(2)(a) and (4).

(iii) Benefits paid on the basis of service performed in the employ of any other governmental entity or tribal unit described in this Subsection (2) shall be financed by payments to the division in the manner and amount prescribed by the applicable provisions of Section 35A-4-311.

(e) The service is performed by an individual in the employ of a religious, charitable, educational, or other organization, but only if:

(i) the service is excluded from employment as defined in the Federal Unemployment Tax Act, 26 U.S.C. 3306(c)(8), solely by reason of Section 3306 (c)(8) of that act; and

(ii) the organization had four or more individuals in employment for some portion of a day in each of 20 different weeks, whether or not the weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time.

(f) (i) The service is performed outside the United States after December 31, 1971, except in Canada, in the employ of an American employer, other than service that is considered employment under the provisions of Subsection (2) or the parallel provisions of another state's law if:

(A) the employer's principal place of business in the United States is located in this state;

(B) the employer has no place of business in the United States but is:

(I) an individual who is a resident of this state;

(II) a corporation that is organized under the laws of this state; or

(III) a partnership or trust in which the number of partners or trustees who are residents of this state is greater than the number who are residents of any one other state; or

(C) none of the criteria of Subsections (2)(f)(i)(A) and (B) is met but:

(I) the employer has elected coverage in this state; or

(II) the employer fails to elect coverage in any state and the individual has filed a claim for benefits based on that service under the law of this state.

(ii) "American employer" for purposes of this Subsection (2) means a person who is:

(A) an individual who is a resident of the United States;

(B) a partnership if [~~two-thirds~~] 2/3 or more of the partners are residents of the United States;

(C) a trust if all of the trustees are residents of the United States;

(D) a corporation organized under the laws of the United States or of any state;

(E) a limited liability company organized under the laws of the United States or of any state;

(F) a limited liability partnership organized under the laws of the United States or of any state; or

(G) a joint venture if [~~two-thirds~~] 2/3 or more of the members are individuals, partnerships, corporations, limited liability companies, or limited

liability partnerships that qualify as American employers.

(g) The service is performed after December 31, 1971:

(i) by an officer or member of the crew of an American vessel on or in connection with the vessel; and

(ii) the operating office from which the operations of the vessel, operating on navigable waters within, or within and without, the United States, is ordinarily and regularly supervised, managed, directed, and controlled within this state.

(h) A tax with respect to the service in this state is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund or that, as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required to be covered under this chapter.

(i) (i) Notwithstanding Subsection 35A-4-205(1)(t), the service is performed:

(A) as an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages other than milk, or laundry or dry cleaning services, for the driver's principal; or

(B) as a traveling or city salesman, other than as an agent-driver or commission-driver, engaged on a full-time basis in the solicitation on behalf of and the transmission to the salesman's principal, except for sideline sales activities on behalf of some other person, of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations.

(ii) The term "employment" as used in this Subsection (2) includes services described in Subsection (2)(i)(i) performed after December 31, 1971, only if:

(A) the contract of service contemplates that substantially all of the services are to be performed personally by the individual;

(B) the individual does not have a substantial investment in facilities used in connection with the performance of the services other than in facilities for transportation; and

(C) the services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are performed.

(j) The service is performed after December 31, 1977, by an individual in agricultural labor as defined in Section 35A-4-206.

(k) The service is domestic service performed after December 31, 1977, in a private home, local college club, or local chapter of a college fraternity or sorority performed for a person who paid cash remuneration of $1,000 or more during any calendar quarter in either the current calendar year or the preceding calendar year to individuals employed in the domestic service.

(3) Services performed by an individual for wages or under any contract of hire, written or oral, express or implied, are considered to be employment subject to this chapter, unless it is shown to the satisfaction of the division that:

(a) the individual is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the contract of hire for services; and

(b) the individual has been and will continue to be free from control or direction over the means of performance of those services, both under the individual's contract of hire and in fact.

(4) If an employer, consistent with a prior declaratory ruling or other formal determination by the division, has treated an individual as independently established and it is later determined that the individual is in fact an employee, the department may by rule provide for waiver of the employer's retroactive liability for contributions with respect to wages paid to the individual prior to the date of the division's later determination, except to the extent the individual has filed a claim for benefits.

(5) Notwithstanding any other provisions of this chapter, and in accordance with rules made by the department, if two or more related corporations concurrently employ the same individual and compensate the individual through a common paymaster that is one of the corporations, each corporation:

(a) is considered to have paid as remuneration to the individual only the amounts actually disbursed by it to the individual; and

(b) is not be considered to have paid as remuneration to the individual amounts actually disbursed to the individual by another of the other related corporations.

Section 4. Section 35A-4-311 is amended to read:

35A-4-311. Coverage and liability of governmental units or Indian tribal units -- Payments in lieu of contributions -- Delinquencies -- Payments to division.

(1) Notwithstanding any other provisions of this chapter, benefits paid to employees of counties, cities, towns, school districts, political subdivisions, or their instrumentalities or Indian tribes or tribal units shall be financed in accordance with the following provisions:

(a) Any county, city, town, school district, political subdivision, or instrumentality thereof or Indian tribes or tribal units that is or becomes subject to this chapter may pay contributions under the provisions of Section 35A-4-302, or may elect to pay to the division for the unemployment fund an amount equal to the amount of regular benefits and, as provided in Subsection (4), the extended benefits attributable to service in the employ of such

organization, and paid to individuals for weeks of unemployment that begin during the effective period of such election.

(b) Any county, city, town, school district, political subdivision, or instrumentality thereof or Indian tribes or tribal units of the state, or combination of the foregoing, that is or becomes subject to this chapter may elect to become liable for payments in lieu of contributions for a period of not less than one contribution year beginning with the date on which the organization becomes subject to this chapter by filing a written notice of its election with the division not later than 30 days immediately following the date that the division gives notice to the organization that it is subject to this chapter.

(c) Any county, city, town, school district, political subdivision, or instrumentality thereof, or Indian tribes or tribal units, or combination of the foregoing, that makes an election in accordance with Subsections (1)(a) and (b) shall continue to be liable for payments in lieu of contributions until it files with the division a written notice terminating its election. A notice terminating such election must be filed by January 31 of the year in which the termination is to be effective.

(d) Any county, city, town, school district, political subdivision, or instrumentality thereof of the state, or Indian tribes or tribal units, or combination of the foregoing which have been paying contributions under this chapter may change to a reimbursable basis by filing with the division, no later than 30 days prior to the beginning of any contribution year, a written notice of election to become liable for payments in lieu of contributions; the organization may not terminate such election for a period of two contribution years.

(e) The division may, for good cause, extend the period within which a notice of election or a notice of termination must be filed and may permit an election to be retroactive.

(f) The division, in accordance with department rules, shall notify each county, city, town, school district, political subdivision, or Indian tribes or tribal units, or their instrumentalities of any determination that it may make of its status as an employer, or the effective date of any election which it makes, and of any termination of such election. The determinations shall be subject to reconsideration, appeal, and review in accordance with the provisions of Section 35A-4-508.

(2) Payments in lieu of contributions shall be made in accordance with the provisions of this Subsection (2).

(a) At the end of each calendar month, or at the end of any other period as determined by the division, the division shall bill each county, city, town, school district, political subdivision, or instrumentality thereof, or combination of the foregoing, that has elected to make payments in lieu of contributions for an amount equal to the full amount of regular benefits and, as provided in Subsection (4), the amount of extended benefits paid during such month or other prescribed period that is attributable to service in the employ of such county, city, town, school district, political subdivision, or instrumentality thereof.

(b) Payment of any bill rendered under Subsection (2)(a) shall be made not later than 30 days after such bill was mailed to the governmental unit or tribal unit or was otherwise delivered to it, unless there has been an application for review and redetermination in accordance with Subsection (2)(c).

(c) (i) The amount due specified in any bill from the division shall be conclusive on the governmental unit or tribal unit unless, no later than 15 days after the bill was mailed or otherwise delivered to it, the governmental unit or tribal unit files an application for redetermination by the division or an appeal, setting forth the grounds for such application or appeal.

(ii) Upon an application for redetermination the division shall promptly review and reconsider the amount due specified in the bill and shall thereafter issue a redetermination.

(iii) Any such redetermination shall be conclusive on the governmental unit or tribal unit unless, no later than 15 days after the redetermination was mailed to its last known address or otherwise delivered to it, the governmental unit or tribal unit files an appeal, setting forth the grounds for the appeal.

(iv) Proceedings on appeal from the amount of a bill rendered under this Subsection (2) or a redetermination of the amount shall be in accordance with the provisions of Section 35A-4-508.

(d) Past due payments of amounts in lieu of contributions shall be subject to the same interest and penalties that, under Subsection 35A-4-305(1), attach to past due contributions.

(3) (a) If any governmental unit or tribal unit is delinquent in making payments in lieu of contributions as required under Subsection (2), the division may terminate the governmental unit's or tribal unit's election to make payment in lieu of contributions as of the beginning of the next contribution year, and the termination shall be effective for that and the next contribution year.

(b) (i) Failure of the Indian tribe or tribal unit to make required payments, including assessments of interest and penalty, within 90 days of receipt of a billing notice will cause the Indian tribe to lose the option to make payments in lieu of contributions, as described in Subsection 35A-4-311(1), for the following tax year unless payment in full is received before contribution rates for the next tax year are computed.

(ii) Any Indian tribe that loses the option to make payments in lieu of contributions due to late payment or nonpayment, as described in Subsection (3)(b)(i), shall have the option reinstated if, after a period of one year:

(A) all contributions have been made timely; and

(B) no contributions, payments in lieu of contributions for benefits paid, penalties, or interest remain outstanding.

(iii) Notices of payment and reporting delinquency to Indian tribes or their tribal units shall include information that failure to make full payment within the prescribed time frame:

(A) will cause the Indian tribe to be liable for taxes under the Federal Unemployment Tax Act; and

(B) will cause the Indian tribe to lose the option to make payments in lieu of contributions.

(4) Each governmental unit or tribal unit liable for payments in lieu of contributions shall pay to the division for the fund the amount of regular benefits plus the amount of extended benefits paid that are attributable to service in the employ of such governmental unit or tribal unit. Provided, that governmental units or tribal units electing payments in lieu of contributions shall, with respect to extended benefit costs for weeks of unemployment beginning prior to January 1, 1979, pay an amount equal to 50% of such costs and with respect to extended benefit costs for weeks of unemployment beginning on or after January 1, 1979, shall pay 100% of such costs. If benefits paid to an individual are based on wages paid by more than one employer and one or more of such employers are liable for payments in lieu of contributions, the amount payable to the fund by each employer liable for the payments shall be determined in accordance with Subsection (4)(a) or (4)(b).

(a) If benefits paid to an individual are based on wages paid by one or more employers who are liable for payments in lieu of contributions and on wages paid by one or more employers who are liable for contributions, the amount of benefits payable by each employer that is liable for payments in lieu of contributions shall be an amount that bears the same ratio to the total benefits paid to the individual as the total base-period wages paid to the individual by such employer bear to the total base-period wages paid to the individual by all of his base-period employers.

(b) If benefits paid to an individual are based on wages paid by two or more employers who are liable for payments in lieu of contributions, the amount of benefits payable by each such employer shall be an amount that bears the same ratio to the total benefits paid to the individual as the total base-period wages paid to the individual by such employer bear to the total base-period wages paid to the individual by all of his base-period employers.

(5) (a) Two or more Indian tribe or tribal unit employers who have become liable for payments in lieu of contributions, in accordance with the provisions of this section and Subsection 35A-4-204(2)(d), may file a joint application to the division for the establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employ of these employers. Each application shall identify and authorize a group representative to act as the group's agent for the purpose of this Subsection (5).

(b) Upon approval of the application, the division shall establish a group account for these employers effective as of the beginning of the calendar quarter in which it receives the application and shall notify the group's representative of the effective date of the account. This account shall remain in effect for not less than one contribution year and thereafter until terminated at the discretion of the division or upon application by the group.

(c) Upon establishment of the account, each member of the group shall be liable for payments in lieu of contributions with respect to each calendar quarter in the amount that bears the same ratio to the total benefits paid in the quarter attributable to service performed in the employ of all members of the group as the total wages paid for service in employment by such member in the quarter bear to the total wages paid during the quarter for service performed in the employ of all members of the group.

Section 5. Retrospective operation.

This act has retrospective operation to December 21, 2000.

CHAPTER 266
S. B. 182
Passed February 27, 2001
Approved March 19, 2001
Effective April 30, 2001

LIABILITY COVERAGE FOR SCHOOL DISTRICT AND SCHOOL EMPLOYEES

Sponsor: David L. Gladwell

This act modifies provisions related to Administrative Services to address issues of providing information to school or school district employees regarding state coverage of liability.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
63A-4-204, as last amended by Chapter 225, Laws of Utah 1999
63A-4-204.5, as enacted by Chapter 231, Laws of Utah 1998

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

Section 1. Section 63A-4-204 is amended to read:

63A-4-204. School district participation in Risk Management Fund.

(1) (a) For the purpose of this section, action by a public school district shall be taken upon resolution by a majority of the members of [~~its~~] the school district's board of education.

(b) (i) Upon approval by the state risk manager and the board of education of the school district, a public school district may participate in the Risk Management Fund and may permit a foundation established under Section 53A-4-205 to participate in the Risk Management Fund.

(ii) Upon approval by the state risk manager and the State Board of Education, a state public education foundation may participate in the Risk Management Fund.

(c) Subject to any cancellation or other applicable coverage provisions, either the state risk manager or the public school district may terminate participation in the fund.

(2) The state risk manager shall contract for all insurance, legal, loss adjustment, consulting, loss control, safety, and other related services necessary to support the insurance program provided to a participating public school district, except that all supporting legal services are subject to the prior approval of the state attorney general.

(3) (a) The state risk manager shall treat each participating public school district as a state agency when participating in the Risk Management Fund.

(b) Each public school district participating in the fund shall comply with the provisions of this part that affect state agencies.

[~~(4) (a) The risk manager shall at least annually:~~]

[~~(i) prepare information summarizing the coverage provided to school teachers by the Risk Management Fund; and~~]

[~~(ii) provide that information to participating school districts.~~]

[~~(b) Each participating school district shall provide the coverage information to each school teacher.~~]

(4) (a) By no later than March 31 of each year, the risk manager shall prepare, in writing, the information required by Subsection (4)(b) regarding the coverage against legal liability provided a school district employee of this state:

(i) by the Risk Management Fund;

(ii) under Title 63, Chapter 30, Utah Governmental Immunity Act; and

(iii) under Title 63, Chapter 30a, Reimbursement of Legal Fees and Costs to Officers and Employees.

(b) (i) The information described in Subsection (4)(a) shall include:

(A) the eligibility requirements, if any, to receive the coverage;

(B) the basic nature of the coverage for a school district employee; and

(C) whether the coverage is primary or in excess of any other coverage the risk manager knows is commonly available to a school district employee in this state.

(ii) The information described in Subsection (4)(a) may include:

(A) comparisons the risk manager considers beneficial to a school district employee between:

(I) the coverage described in Subsection (4)(a); and

(II) other coverage the risk manager knows is commonly available to a school district employee in this state; and

(B) any other information the risk manager considers appropriate.

(c) The risk manager shall provide the information prepared under this Subsection (4) to each school district that participates in the Risk Management Fund.

(d) A school district that participates in the Risk Management Fund shall provide a copy of the information described in Subsection (4)(c) to each school district employee within the school district:

(i) within 30 days of the day the school district employee is hired by the school district; and

(ii) by no later than April 15 of each calendar year.

Section 2. Section 63A-4-204.5 is amended to read:

63A-4-204.5. Charter school participation in Risk Management Fund.

(1) A charter school established under the authority of Title 53A, Chapter 1a, Part 5, The Utah

Charter Schools Act, may participate in the Risk Management Fund upon the approval of the state risk manager and the governing body of the charter school.

(2) (a) For purposes of administration, the state risk manager shall treat each charter school participating in the fund as a state agency.

(b) Each charter school participating in the fund shall comply with the provisions of this part that affect state agencies.

[~~(3) (a) The risk manager shall at least annually:~~]

[~~(i) prepare information summarizing the coverage provided to school teachers by the Risk Management Fund; and~~]

[~~(ii) provide that information to participating charter schools.~~]

[~~(b) Each participating charter school shall provide the coverage information to each school teacher.~~]

(3) (a) By no later than March 31 of each year, the risk manager shall prepare, in writing, the information required by Subsection (3)(b) regarding the coverage against legal liability provided a charter school employee of this state:

(i) by the Risk Management Fund;

(ii) under Title 63, Chapter 30, Utah Governmental Immunity Act; and

(iii) under Title 63, Chapter 30a, Reimbursement of Legal Fees and Costs to Officers and Employees.

(b) (i) The information described in Subsection (3)(a) shall include:

(A) the eligibility requirements, if any, to receive the coverage;

(B) the basic nature of the coverage for a charter school employee; and

(C) whether the coverage is primary or in excess of any other coverage the risk manager knows is commonly available to a charter school employee in this state.

(ii) The information described in Subsection (3)(a) may include:

(A) comparisons the risk manager considers beneficial to a charter school employee between:

(I) the coverage described in Subsection (3)(a); and

(II) other coverage the risk manager knows is commonly available to a charter school employee in this state; and

(B) any other information the risk manager considers appropriate.

(c) The risk manager shall provide the information prepared under this Subsection (3) to each charter school that participates in the Risk Management Fund.

(d) A charter school that participates in the Risk Management Fund shall provide a copy of the information described in Subsection (3)(c) to each charter school employee within the charter school:

(i) within 30 days of the day the charter school employee is hired by the charter school; and

(ii) by no later than April 15 of each calendar year.

CHAPTER 267
S. B. 187
Passed February 28, 2001
Approved March 19, 2001
Effective April 30, 2001

PROHIBITING STATE DEPARTMENTS AND ENTITIES FROM EMPLOYING CONTRACT LOBBYISTS

Sponsor: Beverly Ann Evans

This act modifies the Budgetary Procedures Act by prohibiting state agencies from spending monies on lobbyists.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:
63-38-3.1, Utah Code Annotated 1953

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

Section 1. Section 63-38-3.1 is enacted to read:

63-38-3.1. Restrictions on agency expenditures of monies -- Lobbyists.

(1) As used in this section:

(a) (i) "Agency" means each department, commission, board, council, agency, institution, officer, corporation, fund, division, office, committee, authority, laboratory, library, unit, bureau, panel, or other administrative unit of the state.

(ii) "Agency" includes the legislative branch, the judicial branch, the Board of Regents, the board of trustees of each higher education institution, each higher education institution, or a public education entity.

(b) "Executive action" means action undertaken by the governor, including signing or vetoing legislation, and action undertaken by any official in the executive branch of government.

(c) "Legislative action" means action undertaken by the Utah Legislature or any part of it.

(d) "Lobbyist" means a person who is not an employee of an agency who is hired as an independent contractor by the agency to communicate with legislators or the governor for the purpose of influencing the passage, defeat, amendment, or postponement of legislative or executive action.

(2) A state agency or entity to which monies are appropriated by the Legislature may not expend any monies to pay a lobbyist.

CHAPTER 268
S. B. 197
Passed February 21, 2001
Approved March 19, 2001
Effective April 30, 2001

DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSURE - REPEAL OF QUALITY REVIEW REQUIREMENTS

Sponsor: David L. Gladwell

This act modifies the Occupations and Professions Code to repeal peer review, quality review, quality assurance, and quality improvement programs.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
58-16a-302, as renumbered and amended by Chapter 13, Laws of Utah 1997
58-16a-303, as renumbered and amended by Chapter 13, Laws of Utah 1997
58-16a-702, as enacted by Chapter 13, Laws of Utah 1997
58-31b-305, as last amended by Chapter 314, Laws of Utah 2000
58-44a-303, as last amended by Chapter 314, Laws of Utah 2000
58-46a-303, as enacted by Chapter 28, Laws of Utah 1994
58-67-303, as enacted by Chapter 248, Laws of Utah 1996
58-67-304, as enacted by Chapter 248, Laws of Utah 1996
58-68-303, as enacted by Chapter 248, Laws of Utah 1996
58-68-304, as enacted by Chapter 248, Laws of Utah 1996
58-69-303, as enacted by Chapter 116, Laws of Utah 1996
58-70a-303, as enacted by Chapter 229, Laws of Utah 1997
58-70a-304, as enacted by Chapter 229, Laws of Utah 1997
58-71-303, as enacted by Chapter 282, Laws of Utah 1996
58-71-304, as enacted by Chapter 282, Laws of Utah 1996

REPEALS:
58-46a-308, as enacted by Chapter 28, Laws of Utah 1994
58-69-305, as last amended by Chapter 10, Laws of Utah 1997

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

Section 1. Section 58-16a-302 is amended to read:

58-16a-302. Qualifications for licensure.

(1) Each applicant for licensure as an optometrist shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee as determined by the division under Section 63-38-3.2;

(c) be of good moral character;

(d) (i) be a doctoral graduate of a recognized school of optometry accredited by:

(A) a regional accrediting body recognized by the Council on Post-Secondary Education; and

(B) the American Optometric Association's Council on Optometric Education; or

(ii) be a graduate of a school of optometry located outside the United States that meets the criteria that would qualify the school for accreditation under Subsection (1)(d)(i), as demonstrated by the applicant for licensure;

(e) if the applicant graduated from a recognized school of optometry prior to July 1, 1996, have successfully completed a course of study satisfactory to the division, in consultation with the board, in general and ocular pharmacology and emergency medical care;

(f) have passed examinations approved by the division in consultation with the board that include:

(i) a standardized national optometry examination;

(ii) a standardized clinical examination;

(iii) a standardized national therapeutics examination; and

(iv) the Utah Optometry Law Examination; and

[~~(g) show evidence of membership in a peer review program approved by the division in collaboration with the board and agree in writing to maintain membership while licensed as an optometrist in this state; and~~]

[~~(h)~~] (g) meet with the board and representatives of the division, if requested by either party, for the purpose of evaluating the applicant's qualifications for licensure.

(2) An applicant for licensure as an optometrist qualifying under the endorsement provision of Section 58-1-302 shall:

(a) be currently licensed in good standing in any state of the United States; and

(b) have been actively engaged in the legal practice of optometry for not less than 3,200 hours in the immediately preceding two years, in a manner that is consistent with the legal practice of optometry in this state.

Section 2. Section 58-16a-303 is amended to read:

58-16a-303. Term of license -- Expiration -- Renewal.

(1) (a) Each license issued under this part shall be issued in accordance with a two-year renewal cycle established by rule.

(b) A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.

(2) At the time of renewal the licensee shall show satisfactory evidence of [~~each of the following~~

~~renewal requirements: (a) current membership in a peer review organization; and (b)~~] completion of continuing education as required under Section 58-16a-304.

(3) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

Section 3. Section 58-16a-702 is amended to read:

58-16a-702. Medical records -- Electronic records.

(1) Medical records maintained by a licensee shall[~~: (a)~~] meet the standards and ethics of the profession[~~; and~~].

[~~(b) be maintained in accordance with standards developed by the peer review organization for optometry.~~]

(2) Medical records under this section may be maintained by any electronic means if the records comply with Subsection (1).

Section 4. Section 58-31b-305 is amended to read:

58-31b-305. Term of license -- Expiration -- Renewal.

(1) The division shall issue each license under this chapter in accordance with a two-year renewal cycle established by rule. The division may by rule extend or shorten a renewal period by as much as one year to stagger the renewal cycles it administers.

(2) At the time of renewal, the licensee shall show satisfactory evidence of each of the following renewal requirements:

(a) complete and submit an application for renewal in a form prescribed by the division and pay the renewal fee determined under Section 63-38-3.2; and

(b) meet continuing competency requirements as established by rule.

(3) In addition to the renewal requirements under Subsection (2), a person licensed as a advanced practice registered nurse shall[~~: (a)~~] be currently certified by a program approved by the division in collaboration with the board and submit evidence satisfactory to the division of that qualification or if licensed prior to July 1, 1992, meet the requirements established by rule[~~; and~~].

[~~(b) as a condition precedent for license renewal commencing on and after July 1, 1999, actively participate on a continuing basis in a quality review program based on criteria established by the division by rule in collaboration with the board.~~]

(4) In addition to the renewal requirements under Subsection (2), a person licensed as a certified registered nurse anesthetist shall[~~: (a) actively participate on a continuing regular basis in an anesthesia quality assurance program approved by the division in collaboration with the board and submit evidence satisfactory to the division of the participation; and (b)~~] be currently certified in anesthesia by a program approved by the division in collaboration with the board and submit evidence satisfactory to the division of the certification.

(5) Each license automatically expires on the expiration date shown on the license unless renewed in accordance with Section 58-1-308.

Section 5. Section 58-44a-303 is amended to read:

58-44a-303. Term of license -- Expiration -- Renewal.

(1) (a) Each license issued under this chapter shall be issued in accordance with a two-year renewal cycle established by rule.

(b) A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.

(2) At the time of renewal, the licensee shall:

(a) hold a valid certification from the American College of Nurse Midwives Certification Council, Inc.; and

(b) have met continuing competency requirements defined by the division rule in collaboration with the board[~~; and~~].

[~~(c) as a condition precedent for license renewal commencing on and after July 1, 1999, actively participate on a continuing basis in a quality review program based on criteria established by the division by rule in collaboration with the board.~~]

Section 6. Section 58-46a-303 is amended to read:

58-46a-303. Term of license -- Expiration -- Renewal of specialist license -- Limitation on renewal of intern license.

(1) The division shall issue each license for a hearing instrument specialist in accordance with a two-year renewal cycle established by rule. The division may by rule extend or shorten a renewal period by as much as one year to stagger the renewal cycles it administers.

(2) Each license as a hearing instrument intern shall be issued for a term of three years and may not be renewed.

(3) At the time of renewal, the licensed hearing instrument specialist shall demonstrate satisfactory evidence of each of the following:

(a) current certification by the National Board for Certification Hearing Instrument Sciences, or other acceptable certification approved by the division in collaboration with the board;

[~~(b) participation in a hearing instrument dealer quality assurance program required in Section 58-46a-308;~~]

[~~(c)~~] (b) calibration of all appropriate technical instruments used in practice; and

[~~(d)~~] (c) completion of continuing professional education required in Section 58-46a-304.

(4) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with the provisions of Section 58-1-308, or unless surrendered in accordance with the provisions of Section 58-1-306.

Section 7. Section 58-67-303 is amended to read:

58-67-303. Term of license -- Expiration -- Renewal.

(1) (a) The division shall issue each license under this chapter in accordance with a two-year renewal cycle established by division rule.

(b) The division may by rule extend or shorten a renewal period by as much as one year to stagger the renewal cycles it administers.

(2) At the time of renewal, the licensee shall show compliance with continuing education renewal requirements [~~of:~~].

[~~(a) continuing education; and~~]

[~~(b) quality review program participation.~~]

(3) Each license issued under this chapter expires on the expiration date shown on the license unless renewed in accordance with Section 58-1-308.

Section 8. Section 58-67-304 is amended to read:

58-67-304. License renewal requirements.

(1) [~~(a)~~] As a condition precedent for license renewal, each licensee shall, during each two-year licensure cycle or other cycle defined by division rule, complete qualified continuing professional education requirements in accordance with the number of hours and standards defined by division rule made in collaboration with the board.

[~~(b)~~] (2) If a renewal period is extended or shortened under Section 58-67-303, the continuing education hours required for license renewal under this section are increased or decreased proportionally.

[~~(2) (a) As a condition precedent for license renewal commencing on and after July 1, 2000, each licensee shall participate in a quality review program approved by the division in collaboration with the board. The division, in collaboration with the board, shall by rule establish criteria for the programs.~~]

[~~(b) A quality review program shall be:~~]

[~~(i) based in a hospital or other licensed health care facility, as defined in Section 26-21-2, at which the licensee regularly engages in practice; or~~]

[~~(ii) conducted by or under the direction of:~~]

[~~(A) a professional association approved by the division in collaboration with the board; or~~]

[~~(B) a managed care provider, preferred provider organization, health maintenance organization, liability insurance carrier, or other organization approved by the division in collaboration with the board; and~~]

[~~(c) shall meet criteria established by division rule made in collaboration with the board.~~]

[~~(3) A quality review program applying for approval shall:~~]

[~~(a) submit an application in a form prescribed by the division;~~]

[~~(b) pay a fee as determined by the department pursuant to Section 63-38-3.2; and~~]

[~~(c) demonstrate the program meets criteria established by rule in accordance with Subsection (2).~~]

Section 9. Section 58-68-303 is amended to read:

58-68-303. Term of license -- Expiration -- Renewal.

(1) (a) The division shall issue each license under this chapter in accordance with a two-year renewal cycle established by division rule.

(b) The division may by rule extend or shorten a renewal period by as much as one year to stagger the renewal cycles it administers.

(2) At the time of renewal, the licensee shall show compliance with continuing education renewal requirements [~~of:~~].

[~~(a) continuing education; and~~]

[~~(b) quality review program participation.~~]

(3) Each license issued under this chapter expires on the expiration date shown on the license unless renewed in accordance with Section 58-1-308.

Section 10. Section 58-68-304 is amended to read:

58-68-304. License renewal requirements.

(1) [~~(a)~~] As a condition precedent for license renewal, each licensee shall, during each two-year licensure cycle or other cycle defined by division rule, complete qualified continuing professional education requirements in accordance with the number of hours and standards defined by division rule in collaboration with the board.

[~~(b)~~] (2) If a renewal period is extended or shortened under Section 58-68-303, the continuing education hours required for license renewal under this section are increased or decreased proportionally.

[~~(2) (a) As a condition precedent for license renewal on and after July 1, 2000, each licensee shall participate in a quality review program approved by the division in collaboration with the board. The division, in collaboration with the board, shall by rule establish criteria for the programs.~~]

[~~(b) A quality review program shall:~~]

[~~(i) be based in a hospital or other licensed health care facility, as defined in Section 26-21-2, at which the licensee regularly engages in practice; or~~]

[~~(ii) be conducted by or under the direction of:~~]

[~~(A) a professional association approved by the division in collaboration with the board; or~~]

[~~(B) a managed care provider, preferred provider organization, health maintenance organization, liability insurance carrier, or other organization approved by the division in collaboration with the board; and~~]

[~~(c) shall meet criteria established by division rule made in collaboration with the board.~~]

[~~(3) A quality review program applying for approval shall:~~]

[~~(a) submit an application in a form prescribed by the division;~~]

[~~(b) pay a fee as determined by the department pursuant to Section 63-38-3.2; and~~]

[~~(c) demonstrate the program meets criteria established by rule in accordance with Subsection (2).~~]

Section 11. Section 58-69-303 is amended to read:

58-69-303. Term of license -- Expiration -- Renewal.

(1) (a) The division shall issue each license and permit under this chapter in accordance with a two-year renewal cycle established by division rule.

(b) The division may by rule extend or shorten a renewal period by as much as one year to stagger the renewal cycles it administers.

(2) At the time of renewal, the licensee shall show compliance with continuing education renewal requirements [~~of:~~].

[~~(a) continuing education; and~~]

[~~(b) continuous quality improvement.~~]

(3) Each license expires on the expiration date shown on the license unless renewed in accordance with Section 58-1-308.

Section 12. Section 58-70a-303 is amended to read:

58-70a-303. Term of license -- Expiration -- Renewal.

(1) (a) The division shall issue each license under this chapter in accordance with a two-year renewal cycle established by division rule.

(b) The division may by rule extend or shorten a renewal period by as much as one year to stagger the renewal cycles it administers.

(2) At the time of renewal, the licensee shall show compliance with continuing education renewal requirements [~~of:~~].

[~~(a) continuing education; and~~]

[~~(b) quality review program participation.~~]

(3) Each license issued under this chapter expires on the expiration date shown on the license unless renewed in accordance with Section 58-1-308.

Section 13. Section 58-70a-304 is amended to read:

58-70a-304. License renewal -- Continuing education.

(1) [~~(a)~~] Prior to license renewal, each licensee shall, during each two-year licensure cycle or other cycle defined by division rule, complete qualified continuing professional education requirements as defined by division rule made in collaboration with the board.

[~~(b)~~] (2) If a renewal period is extended or shortened under Section 58-70a-303, the continuing education hours required for license renewal under this section are increased or decreased proportionally.

[~~(2) As a condition precedent for license renewal on and after July 1, 2000, each licensee shall participate in the quality review program in which his or her supervising physician is participating under Section 58-67-304 or 58-68-304.~~]

Section 14. Section 58-71-303 is amended to read:

58-71-303. Term of license -- Expiration -- Renewal.

(1) (a) The division shall issue each license under this chapter in accordance with a two-year renewal cycle established by division rule.

(b) The division may by rule extend or shorten a renewal period by as much as one year to stagger the renewal cycles it administers.

(2) At the time of renewal, the licensee shall show compliance with continuing education renewal requirements [~~of:~~].

[~~(a) continuing education; and~~]

[~~(b) quality assurance program participation.~~]

(3) Each license issued under this chapter expires on the expiration date shown on the license unless renewed in accordance with Section 58-1-308.

Section 15. Section 58-71-304 is amended to read:

58-71-304. License renewal requirements.

(1) [~~(a)~~] As a condition precedent for license renewal, each licensee shall, during each two-year licensure cycle or other cycle defined by division rule, complete qualified continuing professional education requirements in accordance with the number of hours and standards defined by division rule made in collaboration with the board.

[~~(b)~~] (2) If a renewal period is extended or shortened under Section 58-71-303, the continuing education hours required for license renewal under this section are increased or decreased proportionally.

[~~(2) (a) As a condition precedent for license renewal commencing on and after July 1, 2000, each~~

~~licensee shall participate in a quality assurance program approved by the division in collaboration with the board.~~]

[~~(b) A quality assurance program shall be conducted by or under the direction of:~~]

[~~(i) a professional association approved by the division in collaboration with the board; or~~]

[~~(ii) a managed care provider, preferred provider organization, health maintenance organization, liability insurance carrier, or other organization approved by the division in collaboration with the board; and~~]

[~~(c) shall meet criteria established by division rule made in collaboration with the board.~~]

[~~(3) A quality assurance program applying for approval shall:~~]

[~~(a) submit an application in a form prescribed by the division;~~]

[~~(b) pay a fee as determined by the department pursuant to Subsection 63-38-3.2; and~~]

[~~(c) demonstrate the program meets criteria established by rule in accordance with Subsection (2).~~]

Section 16. Repealer.

This act repeals:

Section 58-46a-308, Quality assurance program participation.

Section 58-69-305, Continuous quality improvement program -- Licensee participation -- Division approval of programs.

CHAPTER 269
S. B. 198
Passed February 28, 2001
Approved March 19, 2001
Effective April 30, 2001

HIGH-LEVEL NUCLEAR WASTE PREVENTION STUDY

Sponsor: Terry R. Spencer

This act modifies the Environmental Quality Code to require the Department of Environmental Quality to include, in its efforts to prevent siting of a nuclear waste facility within the state, a study of means of economic development on Native American reservation lands within the state, and provide a plan based on this study.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:
19–3–319, Utah Code Annotated 1953

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

Section 1. Section 19-3-319 is enacted to read:

19-3-319. (Codified as 19-3-320) Efforts to prevent siting of any nuclear waste facility to include economic development study regarding Native American reservation lands within the state.

(1) It is the intent of the Legislature that the department, in its efforts to prevent the siting of a nuclear waste facility within the exterior borders of the state, include in its work the study under Subsection (2) and the report under Subsection (3).

(2) It is the intent of the Legislature that the Department of Environmental Quality, in coordination with the office of the governor, and in cooperation with the Departments of Community and Economic Development, Human Services, Health, Workforce Services, Agriculture and Food, Natural Resources, and Transportation, the state Office of Education, and the Board of Regents:

(a) study the needs and requirements for economic development on the Native American reservations within the state; and

(b) prepare, on or before November 30, 2001, a long-term strategic plan for economic development on the reservations.

(3) It is the intent of the Legislature that this plan, prepared under Subsection (2)(b), shall be distributed to the governor and the members of the Legislature on or before December 31, 2001.

CHAPTER 270
S. B. 202
Passed February 27, 2001
Approved March 19, 2001
Effective April 30, 2001

CONFIDENTIALITY OF TAX INFORMATION

Sponsor: Karen Hale

This act modifies the Revenue and Taxation Code to permit disclosure of information in certain circumstances particularly those related to motor fuel and aviation fuel taxation. This act makes technical changes.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
59-1-403, as last amended by Chapters 190 and 229, Laws of Utah 2000
59-14-212, as enacted by Chapter 190, Laws of Utah 2000

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

Section 1. Section 59-1-403 is amended to read:

59-1-403. Confidentiality -- Exceptions -- Penalty -- Application to property tax.

(1) (a) [~~Any tax commissioner, agent, clerk, or other officer or employee of the commission or any representative, agent, clerk, or other officer or employee of any county, city, or town~~] Except as provided in this section, any of the following may not divulge or make known in any manner any information gained by [~~him~~] that person from any return filed with the commission[~~. The officials~~]:

(i) a tax commissioner;

(ii) an agent, clerk, or other officer or employee of the commission; or

(iii) a representative, agent, clerk, or other officer or employee of any county, city, or town.

(b) Except as provided in Subsection (1)(c), an official charged with the custody of [~~such returns are~~] a return filed with the commission is not required to produce [~~any of them~~] the return or evidence of anything contained in [~~them~~] the return in any action or proceeding in any court, except:

[~~(a)~~] (i) in accordance with judicial order;

[~~(b)~~] (ii) on behalf of the commission in any action or proceeding under:

(A) this title; or

(B) other law under which persons are required to file returns with the commission;

[~~(c)~~] (iii) on behalf of the commission in any action or proceeding to which the commission is a party; or

[~~(d)~~] (iv) on behalf of any party to any action or proceeding under this title [~~when~~] if the report or facts shown [~~thereby~~] by the return are directly involved in [~~such~~] the action or proceeding. [~~In any event, the~~]

(c) Notwithstanding Subsection (1)(b), a court may require the production of, and may admit in evidence, any portion of [~~reports~~] a return or of the facts shown by [~~them~~] the return, as are specifically pertinent to the action or proceeding.

(2) This section does not prohibit:

(a) a person or [~~his~~] that person's duly authorized representative from receiving a copy of any return or report filed in connection with that person's own tax;

(b) the publication of statistics as long as [~~they~~] the statistics are classified to prevent the identification of particular reports or returns; and

(c) the inspection by the attorney general or other legal representative of the state of the report or return of any taxpayer:

(i) who brings action to set aside or review [~~the~~] a tax based on [~~such~~] the report or return;

(ii) against whom an action or proceeding is contemplated or has been instituted under this title; or

(iii) against whom the state has an unsatisfied money judgment.

(3) (a) Notwithstanding Subsection (1) and for purposes of administration, the commission may[~~,~~] by rule, made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, provide for a reciprocal exchange of information with:

(i) the United States Internal Revenue Service; or

(ii) the revenue service of any other state.

(b) Notwithstanding Subsection (1) and for all taxes except individual income tax and corporate franchise tax, the commission may[~~,~~] by rule, made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, share information gathered from returns and other written statements with the federal government, any other state, any of [~~their~~] the political subdivisions of another state, or any political subdivision of this state, except as limited by Sections 59-12-209 and 59-12-210, if these political subdivisions or the federal government grant substantially similar privileges to this state.

(c) Notwithstanding Subsection (1) and for all taxes except individual income tax and corporate franchise tax, the commission may[~~,~~] by rule, in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, provide for the issuance of information concerning the identity and other information of taxpayers who have failed to file tax returns or to pay any tax due.

(d) Notwithstanding Subsection (1), the commission shall provide to the Solid and Hazardous Waste Control Board executive secretary, as defined in Section 19-6-102, as requested by the executive secretary, any records, returns, [~~and~~] or other information filed with the commission under [~~Title 59,~~] Chapter 13, Motor and Special Fuel Tax Act, or Section 19-6-410.5 regarding the environmental assurance program

participation fee[~~, as requested by the executive secretary~~].

(e) Notwithstanding Subsection (1), at the request of any person the commission shall provide that person sales and purchase volume data reported to the commission on a report, return, or other information filed with the commission under:

(i) Chapter 13, Part 2, Motor Fuel; or

(ii) Chapter 13, Part 4, Aviation Fuel.

[~~(e)~~] (f) Notwithstanding Subsection (1), upon request from a tobacco product manufacturer, as defined in Section 59-22-202, the commission shall report to the manufacturer:

(i) the quantity of cigarettes, as defined in Section 59-22-202, produced by the manufacturer and reported to the commission for the previous calendar year under Section 59-14-407; and

(ii) the quantity of cigarettes, as defined in Section 59-22-202, produced by the manufacturer for which a tax refund was granted during the previous calendar year under Section 59-14-401 and reported to the commission under Subsection 59-14-401(1)(a)(v).

[~~(f)~~] (g) Notwithstanding Subsection (1), the commission may:

(i) provide to the Division of Consumer Protection within the Department of Commerce and the attorney general data:

(A) reported to the commission under Section 59-14-212; or

(B) related to a violation under Section 59-14-211; and

(ii) upon request provide to any person data reported to the commission under Subsections 59-14-212(1)(a) through (1)(c) and Subsection 59-14-212(1)(g).

(4) (a) Reports and returns shall be preserved for at least three years [~~and then~~].

(b) After the three-year period provided in Subsection (4)(a) the commission may destroy [~~them~~] a report or return.

(5) (a) Any person who violates this section is guilty of a class A misdemeanor.

(b) If the [~~offender~~] person described in Subsection (5)(a) is an officer or employee of the state, [~~he~~] the person shall be dismissed from office and be disqualified from holding public office in this state for a period of five years thereafter.

(6) This part does not apply to the property tax.

Section 2. Section 59-14-212 is amended to read:

59-14-212. Reporting of imported cigarettes -- Penalty.

(1) Except as provided under Subsection (2), any manufacturer, distributor, wholesaler, or retail dealer who under Section 59-14-205 affixes a stamp to an individual package or container of cigarettes imported to the United States shall provide to the commission the following as they pertain to the imported cigarettes:

(a) a copy of the importer's federal import permit;

(b) the customs form showing the tax information required by federal law;

(c) a statement signed under penalty of perjury by the manufacturer or importer that the manufacturer or importer has complied with:

(i) 15 U.S.C. 1333 of the Federal Cigarette Labeling and Advertising Act, regarding warning labels and other package information; and

(ii) 15 U.S.C. 1335a of the Federal Cigarette Labeling and Advertising Act, regarding reporting of added ingredients;

(d) the name of the person from whom the person affixing the stamp received the cigarettes;

(e) the name of the person to whom the person affixing the stamp delivered the cigarettes, unless the person receiving the cigarettes was the ultimate consumer;

(f) the quantity of cigarettes in the package or container; and

(g) the brand and brand style of the cigarettes.

(2) Subsection (1) does not apply to cigarettes sold or intended to be sold as duty-free merchandise by a duty-free sales enterprise in accordance with the provisions of 19 U.S.C. 1555(b) and any implementing regulations unless the cigarettes are brought back into the customs territory for resale within the customs territory.

(3) The information under Subsection (1) shall be provided on a quarterly basis pursuant to rules established by the commission in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(4) A person who fails to comply with the reporting requirement or provides false or misleading information under Subsection (1):

(a) is guilty of a class B misdemeanor; and

(b) may be subject to:

(i) revocation or suspension of a license issued under Section 59-14-202; and

(ii) a civil penalty imposed by the commission in an amount not to exceed the greater of:

(A) 500% of the retail value of the cigarettes for which a report was not properly made; or

(B) $5,000.

(5) The information under Subsection (1) may be disclosed by the commission as provided under Subsection 59-1-403(3)[~~(f)~~](g).

CHAPTER 271
S. B. 204
Passed February 22, 2001
Approved March 19, 2001
Effective April 30, 2001

REPEAL OF LICENSING ALARM RESPONSE RUNNERS

Sponsor: Dan R. Eastman

This act modifies the Security Personnel Licensing Act by repealing the licensure requirement for alarm response runners. The act makes other technical changes to correct references to alarm response runners.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
58-63-102, as last amended by Chapters 79 and 228, Laws of Utah 1996
58-63-301, as last amended by Chapter 228, Laws of Utah 1996
58-63-302, as last amended by Chapter 375, Laws of Utah 1997
58-63-305, as enacted by Chapter 215, Laws of Utah 1995
58-63-308, as enacted by Chapter 215, Laws of Utah 1995
58-63-310, as enacted by Chapter 228, Laws of Utah 1996
58-63-501, as last amended by Chapter 228, Laws of Utah 1996
58-63-502, as last amended by Chapter 228, Laws of Utah 1996

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

Section 1. Section 58-63-102 is amended to read:

58-63-102. Definitions.

In addition to the definitions in Section 58-1-102, as used in this chapter:

[~~(1) "Alarm response runner" means an individual:~~]

[~~(a) employed by a contract security company;~~]

[~~(b) whose primary responsibility is to respond to security system signals of that company; and~~]

[~~(c) whose sole function is not to maintain or repair security systems.~~]

[~~(2)~~] (1) "Armed courier service" means a person engaged in business as a contract security company who transports or offers to transport tangible personal property from one place or point to another under the control of an armed security officer employed by that service.

[~~(3)~~] (2) "Armed private security officer" means an individual:

(a) employed by a contract security company;

(b) whose primary duty is that of guarding personal or real property, or providing protection or security to the life and well being of humans or animals; and

(c) who wears, carries, possesses, or has immediate access to a firearm at any time in the performance of the individual's duties.

[~~(4)~~] (3) "Armored car service" means a person engaged in business as a contract security company who transports or offers to transport tangible personal property from one place or point to another under the control of an armed or unarmed private security officer employed by the company using a specially equipped motor vehicle offering a high degree of security.

[~~(5)~~] (4) "Board" means the Security Services Licensing Board created in Section 58-63-201.

[~~(6)~~] (5) "Contract security company" means a person engaged in business to provide security or guard services to another person for the purpose of protecting tangible personal property, real property, or the life and well being of human or animal life by assignment of security officers employed by the company and the use of specialized resources, motor vehicles, or equipment.

[~~(7)~~] (6) "Identification card" means a personal pocket or wallet size card issued by the division to each security officer licensed under this chapter.

[~~(8)~~] (7) "Officer" means a president, vice president, secretary, treasurer, or other officer of a corporation or limited liability company listed as an officer in the files with the Division of Corporations and Commercial Code.

[~~(9)~~] (8) "Owner" means a proprietor or general partner of a proprietorship or partnership.

[~~(10)~~] (9) "Peace officer" means a person who:

(a) is a certified peace officer as defined in Title 53, Chapter 6, Peace Officer Standards and Training Act; and

(b) derives total or special law enforcement powers from, and is an employee of the federal government, the state, or any political subdivision, agency, department, branch, or service of either, of any municipality, or of any other unit of local government.

[~~(11)~~] (10) "Regular basis" means 20 or more hours per month.

[~~(12)~~] (11) (a) "Security officer" means an individual who:

(i) is employed by a contract security company securing, guarding, or otherwise protecting tangible personal property, real property, or the life and well being of human or animal life against:

(A) trespass or other unlawful intrusion or entry;

(B) larceny;

(C) vandalism or other abuse;

(D) arson or any other criminal activity; or

(E) personal injury caused by another person or as a result of acts or omissions by another person;

(ii) is controlling, regulating, or directing the flow of movements of individuals or vehicles; or

(iii) providing street patrol service.

(b) "Security officer" does not include an individual whose duties are limited to custodial or other services even though the presence of that individual may act to provide some of the services set forth under Subsection [~~(12)~~] (11)(a).

[~~(13)~~] (12) "Security system" means equipment, devices, or instruments installed for the purpose of:

(a) detecting and signaling entry or intrusion by some individual into or onto, or exit from the premises protected by the system; or

(b) signaling the commission of a robbery or other criminal activity at the election of an individual having control of the features of the security system.

[~~(14)~~] (13) "Street patrol service" means a person engaged in business as a contract security company who provides patrols by means of foot, vehicle, or other method of transportation using public streets, thoroughfares, or property in the performance of their duties and responsibilities.

[~~(15)~~] (14) "Unarmed private security officer" means an individual:

(a) employed by a contract security company;

(b) whose primary duty is that of guarding personal or real property, or providing protection or security to the life and well being of humans or animals;

(c) who never wears, carries, possesses, or has immediate access to a firearm at any time in the performance of his duties; and

(d) who wears clothing of distinctive design or fashion bearing any symbol, badge, emblem, insignia, or other device that identifies or tends to identify the wearer as a security officer.

[~~(16)~~] (15) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-63-501.

[~~(17)~~] (16) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-63-502 and as may be further defined by rule.

Section 2. Section 58-63-301 is amended to read:

58-63-301. Licensure required -- License classifications.

(1) A license is required to engage in the practice [~~as~~] of a contract security company, [~~alarm response runner,~~] armed private security officer, or unarmed private security officer, except as specifically provided in Section 58-63-304, 58-63-310, or 58-1-307.

(2) The division shall issue to a person who qualifies under this chapter a license in the classifications:

(a) contract security company;

(b) armed private security officer; or

(c) unarmed private security officer[~~; or~~].

[~~(d) alarm response runner.~~]

Section 3. Section 58-63-302 is amended to read:

58-63-302. Qualifications for licensure.

(1) Each applicant for licensure as a contract security company shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63-38-3.2;

(c) have a qualifying agent who is a resident of the state and an officer, director, partner, proprietor, or manager of the applicant who:

(i) passes an examination component established by rule by the division in collaboration with the board; and

(ii) (A) demonstrates 6,000 hours of experience as a manager, supervisor, or administrator of a contract security company; or

(B) demonstrates 6,000 hours of supervisory experience acceptable to the division in collaboration with the board with a federal, United States military, state, county, or municipal law enforcement agency;

(d) if a corporation, provide:

(i) the names, addresses, dates of birth, and social security numbers of all corporate officers, directors, and those responsible management personnel employed within the state or having direct responsibility for managing operations of the applicant within the state; and

(ii) the names, addresses, dates of birth, and social security numbers, of all shareholders owning 5% or more of the outstanding shares of the corporation, except this may not be required if the stock is publicly listed and traded;

(e) if a limited liability company, provide:

(i) the names, addresses, dates of birth, and social security numbers of all company officers, and those responsible management personnel employed within the state or having direct responsibility for managing operations of the applicant within the state; and

(ii) the names, addresses, dates of birth, and social security numbers of all individuals owning 5% or more of the equity of the company;

(f) if a partnership, the names, addresses, dates of birth, and social security numbers of all general partners, and those responsible management personnel employed within the state or having direct responsibility for managing operations of the applicant within the state;

(g) if a proprietorship, the names, addresses, dates of birth, and social security numbers of the proprietor, and those responsible management

personnel employed within the state or having direct responsibility for managing operations of the applicant within the state;

(h) be of good moral character in that officers, directors, shareholders described in Subsection (1)(d)(ii), partners, proprietors, and responsible management personnel have not been convicted of a felony, a misdemeanor involving moral turpitude, or any other crime that when considered with the duties and responsibilities of a contract security company is considered by the division and the board to indicate that the best interests of the public are not served by granting the applicant a license;

(i) document that none of the applicant's officers, directors, shareholders described in Subsection (1)(d)(ii), partners, proprietors, and responsible management personnel:

(i) have been declared by any court of competent jurisdiction incompetent by reason of mental defect or disease and not been restored; and

(ii) currently suffer from habitual drunkenness or from drug addiction or dependence;

(j) file and maintain with the division evidence of:

(i) comprehensive general liability insurance in form and in amounts to be established by rule by the division in collaboration with the board;

(ii) workers' compensation insurance that covers employees of the applicant in accordance with applicable Utah law;

(iii) registration with the Division of Corporations and Commercial Code; and

(iv) registration as required by applicable law with the:

(A) Division of Workforce Information and Payment Services in the Department of Workforce Services, for purposes of Title 35A, Chapter 4, Employment Security Act;

(B) State Tax Commission; and

(C) Internal Revenue Service; and

(k) meet with the division and board if requested by the division or board.

(2) Each applicant for licensure as an armed private security officer shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63-38-3.2;

(c) be of good moral character in that the applicant has not been convicted of a felony, a misdemeanor involving moral turpitude, or any other crime that when considered with the duties and responsibilities of an armed private security officer is considered by the division and the board to indicate that the best interests of the public are not served by granting the applicant a license;

(d) not have been declared by any court of competent jurisdiction incompetent by reason of mental defect or disease and not been restored;

(e) not be currently suffering from habitual drunkenness or from drug addiction or dependence;

(f) successfully complete basic education and training requirements established by rule by the division in collaboration with the board;

(g) successfully complete firearms training requirements established by rule by the division in collaboration with the board;

(h) pass the examination requirement established by rule by the division in collaboration with the board; and

(i) meet with the division and board if requested by the division or the board.

(3) Each applicant for licensure as an unarmed private security officer shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63-38-3.2;

(c) be of good moral character in that the applicant has not been convicted of a felony, a misdemeanor involving moral turpitude, or any other crime that when considered with the duties and responsibilities of an unarmed private security officer is considered by the division and the board to indicate that the best interests of the public are not served by granting the applicant a license;

(d) not have been declared by any court of competent jurisdiction incompetent by reason of mental defect or disease and not been restored;

(e) not be currently suffering from habitual drunkenness or from drug addiction or dependence;

(f) successfully complete basic education and training requirements established by rule by the division in collaboration with the board;

(g) pass the examination requirement established by rule by the division in collaboration with the board; and

(h) meet with the division and board if requested by the division or board.

[~~(4) Each applicant for licensure as an alarm response runner shall:~~]

[~~(a) submit an application in a form prescribed by the division;~~]

[~~(b) pay a fee determined by the department under Section 63-38-3.2;~~]

[~~(c) be of good moral character in that the applicant has not been convicted of a felony, a misdemeanor involving moral turpitude, or any other crime that when considered with the duties and responsibilities of an alarm response runner is considered by the division and board to indicate that the best interests of the public are not served by granting the applicant a license;~~]

[~~(d) not have been declared by any court of competent jurisdiction incompetent by reason of mental defect or disease and not been restored;~~]

[~~(e) not be currently suffering from habitual drunkenness or from drug addiction or dependence; and~~]

[~~(f) meet with the division and board if requested by the division or board.~~]

[~~(5)~~] (4) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the division may make rules establishing when Federal Bureau of Investigation records shall be checked for applicants.

[~~(6)~~] (5) To determine if an applicant meets the qualifications of Subsections (1)(h), (2)(c), and (3)(c), [~~and (4)(e),~~] the division shall provide an appropriate number of copies of fingerprint cards to the Department of Public Safety with the division's request to:

(a) conduct a search of records of the Department of Public Safety for criminal history information relating to each applicant for licensure under this chapter and each applicant's officers, directors, shareholders described in Subsection (1)(d)(ii), partners, proprietors, and responsible management personnel; and

(b) forward to the Federal Bureau of Investigation a fingerprint card of each applicant requiring a check of records of the F.B.I. for criminal history information under this section.

[~~(7)~~] (6) The Department of Public Safety shall send to the division:

(a) a written record of criminal history, or certification of no criminal history record, as contained in the records of the Department of Public Safety in a timely manner after receipt of a fingerprint card from the division and a request for review of Department of Public Safety records; and

(b) the results of the F.B.I. review concerning an applicant in a timely manner after receipt of information from the F.B.I.

[~~(8)~~] (7) (a) The division shall charge each applicant a fee, in accordance with Section 63-38-3.2, equal to the cost of performing the records reviews under this section.

(b) The division shall pay the Department of Public Safety the costs of all records reviews, and the Department of Public Safety shall pay the F.B.I. the costs of records reviews under this chapter.

[~~(9)~~] (8) Information obtained by the division from the reviews of criminal history records of the Department of Public Safety and the F.B.I. shall be used or disseminated by the division only for the purpose of determining if an applicant for licensure under this chapter is qualified for licensure.

Section 4. Section 58-63-305 is amended to read:

58-63-305. Status of licenses held on the effective date of this chapter.

An individual holding a valid Utah license as a contract security company, armed private security officer, or unarmed private security officer[~~, or alarm response runner~~] under Title 53, Chapter 5, Part 4, Security Personnel Licensing and Regulation Act, on July 1, 1995, is:

(1) on or after July 1, 1995, considered to hold a current license under this chapter in the comparable classification of contract security company, armed private security officer, or unarmed private security officer[~~, or alarm response runner~~]; and

(2) subject to this chapter.

Section 5. Section 58-63-308 is amended to read:

58-63-308. Evidence of licensure.

An individual licensed as an armed private security officer[~~,~~] or unarmed private security officer[~~, and alarm response runner~~] shall:

(1) carry a copy of the individual's license on the individual's person at all times while acting as a licensee; and

(2) display the license upon the request of a peace officer, a representative of the division, or a member of the public.

Section 6. Section 58-63-310 is amended to read:

58-63-310. Interim permits.

(1) Upon receipt of a complete application for licensure in accordance with Section 58-63-302, an applicant for licensure as an armed private security officer[~~,~~] or unarmed private security officer[~~, or alarm response runner~~] may be issued an interim permit.

(2) (a) Each interim permit shall expire 90 days after it is issued or on the date on which the applicant is issued a license, whichever is earlier.

(b) The division may reissue an interim permit if the delay in approving a license is beyond the control or influence of the interim permit holder.

(3) An interim permit holder may engage in the scope of practice defined for the license classification that the interim permit holder is seeking.

Section 7. Section 58-63-501 is amended to read:

58-63-501. Unlawful conduct.

"Unlawful conduct" includes:

(1) employing as a contract security company the services of an unlicensed armed private security officer[~~,~~] or unarmed private security officer, [~~or alarm response runner,~~] except as provided under Section 58-63-304 or 58-63-310; and

(2) filing with the division fingerprint cards for an applicant which are not those of the applicant, or are in any other way false or fraudulent and intended to mislead the division in its consideration of the qualifications of the applicant for licensure.

Section 8. Section 58-63-502 is amended to read:

58-63-502. Unprofessional conduct.

"Unprofessional conduct" includes:

(1) failing as a contract security company to notify the division of the cessation of performance of its qualifying agent or failing to replace its qualifying agent, as required under Section 58-63-306;

(2) failing as an armed private security officer[~~,~~] or unarmed private security officer, [~~or alarm response runner,~~] to carry or display a copy of the licensee's license as required under Section 58-63-308;

(3) employment by a contract security company of a qualifying agent, armed private security officer, or unarmed private security officer[~~, or alarm response runner~~] knowing that the individual has engaged in conduct that is inconsistent with the duties and responsibilities of a licensee under this chapter; and

(4) failing to comply with operating standards established by rule.

CHAPTER 272
S. B. 206
Passed February 28, 2001
Approved March 19, 2001
Effective April 30, 2001
(Exception clause in Section 5)

TASK FORCE ON IMPLEMENTATION OF WATER FLUORIDATION

Sponsor: L. Steven Poulton

This act creates the Task Force on Implementation of Water Fluoridation. The act provides for task force membership, task force chairs, and compensation of task force members. The act outlines the duties of the task force and reporting requirements. The act provides for staff support to the task force. The act appropriates a total of $22,000 from the General Fund for fiscal year 2000-01 to the Senate, House of Representatives, and the Office of Legislative Research and General Counsel to fund the task force. The act clarifies the effect of the task force on counties and local health departments. This act is repealed November 30, 2001.

This act enacts uncodified material.

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

Section 1. Task Force on Implementation of Water Fluoridation -- Creation -- Membership -- Quorum -- Compensation -- Staff.

(1) There is created the Task Force on Implementation of Water Fluoridation consisting of the following 15 members:

(a) three members of the Senate appointed by the president of the Senate, no more than two of whom may be from the same political party;

(b) three members of the House of Representatives appointed by the speaker of the House of Representatives, no more than two of whom may be from the same political party;

(c) the executive director of the Department of Environmental Quality or the director's designee;

(d) the executive director of the Department of Health or the director's designee;

(e) the chair of the Drinking Water Board created in Section 19-1-106 or the chair's designee; and

(f) the following six members, appointed by the speaker of the House of Representatives and the president of the Senate:

(i) one dentist practicing in this state recommended by the Utah Dental Association;

(ii) two directors of local health districts;

(iii) one representative of a public water system which primarily uses surface water;

(iv) one representative of a public water system which primarily uses ground water; and

(v) one representative of a small public water system.

(2) (a) The president of the Senate shall designate a member of the Senate appointed under Subsection (1)(a) as a cochair of the task force.

(b) The speaker of the House of Representatives shall designate a member of the House of Representatives appointed under Subsection (1)(b) as a cochair of the task force.

(3) A majority of the members of the task force constitute a quorum. The action of a majority of a quorum constitutes the action of the task force.

(4) (a) Salaries and expenses of the members of the task force who are legislators shall be paid in accordance with Section 36-2-2 and Legislative Joint Rule 15.03.

(b) A member of the task force who is not a legislator may not receive compensation for their work associated with the task force, but may receive per diem and reimbursement for travel expenses incurred as a member of the task force at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(5) The Office of Legislative Research and General Counsel shall provide staff support to the task force.

Section 2. Duties -- Interim report.

(1) The task force shall review and make recommendations on the following issues:

(a) statewide standards for the fluoridation of public water supplies, including standards for treated water and well water and safety standards for the public and the operators of the water system;

(b) the cost of fluoridating public water supplies;

(c) funding sources for the fluoridation of public water supplies;

(d) liability issues associated with the fluoridation of public water supplies, including governmental immunity;

(e) possible exemptions from a countywide fluoridation mandate, including functionally separate systems and systems which cross county lines;

(f) variances for standards, if any, for different types of sources and seasonal variations;

(g) monitoring, compliance, and enforcement issues;

(h) the regulatory process for the review and approval of fluoridation construction or equipment installation;

(i) definition of chemical standards, including the NSF approval process;

(j) clarifying the relationships between the state Department of Environmental Quality, the state Department of Health, the county Boards of Health, and the operators of the public water systems; and

(k) regulatory authorization for the Drinking Water Board to regulate fluoridation of public water systems.

(2) An interim report regarding the task force recommendations on the items listed in Subsections (1)(a), (e), (f), (g), (h), and (i) shall be submitted to the Drinking Water Board by July 1, 2001.

(3) A final report, including any proposed legislation shall be presented to the Natural Resources, Agriculture, and Environment Interim Committee before November 30, 2001.

Section 3. Appropriation.

There is appropriated from the General Fund for fiscal year 2000-01:

(1) $3,500 to the Senate to pay for the compensation and expenses of senators on the task force;

(2) $3,500 to the House of Representatives to pay for the compensation and expenses of representatives on the task force; and

(3) $15,000 to the Office of Legislative Research and General Counsel to pay for staffing the task force.

Section 4. Effect on counties and local health departments.

Notwithstanding any other provision of this act, counties and local health departments which are required by Subsection 19-4-111(2) to fluoridate public water supplies may proceed with the process of fluoridation before the task force makes any report or recommendation.

Section 5. Repeal date.

This act is repealed November 30, 2001.

CHAPTER 273
S. B. 217
Passed February 23, 2001
Approved March 19, 2001
Effective April 30, 2001

DOMESTIC VIOLENCE SHELTERS-RESPONSIBILITY AND FUNDING

Sponsor: Mike Dmitrich

This act modifies the Domestic Violence Shelters Act. The act provides that the Division of Community Development coordinate with the Division of Child and Family Services to provide for the construction of domestic violence services. The act appropriates $100,000 for fiscal year 2001-02 only, to the Division of Community Development for construction of a battered women's shelter in San Juan County.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
9-4-1301, as enacted by Chapter 145, Laws of Utah 1999

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

Section 1. Section 9-4-1301 is amended to read:

9-4-1301. Assistance to domestic violence shelters -- Rulemaking authority.

(1) The Division of Child and Family Services within the Department of Human Services has statutory responsibility to provide violence services, including temporary shelter, to victims of domestic violence pursuant to the provisions of Sections 62A-4a-101 and 62A-4a-105. The division may assist [~~in~~] the Division of Child and Family Services by providing for the development, construction, and improvement of shelters for victims of domestic violence, as described in Section 77-36-1, through loans and grants to nonprofit and governmental entities.

(2) [~~In~~] No later than July 1, 2001, the division shall, in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, [~~the division shall~~] make rules establishing:

(a) procedures for applying for loans and grants;

(b) criteria for awarding loans and grants; and

(c) requirements for the repayment of loans.

(3) The division may appoint an advisory panel to:

(a) assist the division in developing rules under Subsection (2); and

(b) recommend how available funds should be disbursed.

(4) The division shall make loans and grants with monies specifically appropriated for that purpose.

(5) The division shall coordinate with the Division of Child and Family Services in complying with the provisions of this section.

Section 2. Appropriation.

(1) For fiscal year 2001-02 only, there is appropriated from the General Fund to the Division of Community Development within the Department of Community and Economic Development $100,000 for the construction of a battered women's shelter in San Juan County.

(2) The appropriation under Subsection (1) is nonlapsing.

CHAPTER 274
H. B. 14
Passed February 26, 2001
Approved March 19, 2001
Effective July 1, 2001

UNDERGROUND WASTEWATER DISPOSAL SYSTEMS

Sponsor: Thomas V. Hatch

This act modifies the Water Quality Act to require certification for individuals who design, inspect, maintain, or conduct percolation tests or soils tests for underground wastewater disposal systems. This act directs the Water Quality Board to make rules to implement the certification program. A fee is imposed on new underground wastewater disposal systems, and the Underground Wastewater Disposal System Restricted Account is created. This act takes effect on July 1, 2001.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
19-5-102, as last amended by Chapter 114, Laws of Utah 1995
19-5-104, as last amended by Chapter 282, Laws of Utah 2000

ENACTS:
19-5-121, Utah Code Annotated 1953
19-5-122, Utah Code Annotated 1953
19-5-123, Utah Code Annotated 1953

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

Section 1. Section 19-5-102 is amended to read:

19-5-102. Definitions.

As used in this chapter:

(1) "Board" means the Water Quality Board created in Section 19-1-106.

(2) "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.

(3) "Discharge" means the addition of any pollutant to any waters of the state.

(4) "Discharge permit" means a permit issued to a person who:

(a) discharges or whose activities would probably result in a discharge of pollutants into the waters of the state; or

(b) generates or manages sewage sludge.

(5) "Disposal system" means a system for disposing of wastes, and includes sewerage systems and treatment works.

(6) "Effluent limitations" means any restrictions, requirements, or prohibitions, including schedules of compliance established under this chapter which apply to discharges.

(7) "Executive secretary" means the executive secretary of the board.

[~~(9)~~] (8) "Point source":

(a) means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged; and

(b) does not include return flows from irrigated agriculture.

[~~(10)~~] (9) "Pollution" means any man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of any waters of the state, unless the alteration is necessary for the public health and safety.

[~~(11)~~] (10) "Publicly owned treatment works" means any facility for the treatment of pollutants owned by the state, its political subdivisions, or other public entity.

[~~(12)~~] (11) "Schedule of compliance" means a schedule of remedial measures, including an enforceable sequence of actions or operations leading to compliance with this chapter.

[~~(13)~~] (12) "Sewage sludge" means any solid, semisolid, or liquid residue removed during the treatment of municipal wastewater or domestic sewage.

[~~(14)~~] (13) "Sewerage system" means pipelines or conduits, pumping stations, and all other constructions, devices, appurtenances, and facilities used for collecting or conducting wastes to a point of ultimate disposal.

[~~(15)~~] (14) "Treatment works" means any plant, disposal field, lagoon, dam, pumping station, incinerator, or other works used for the purpose of treating, stabilizing, or holding wastes.

[~~(16)~~] (15) "Underground injection" means the subsurface emplacement of fluids by well injection.

[~~(8)~~] (16) "[~~Individual~~] Underground wastewater disposal system" means a system for disposing of domestic wastewater discharges as defined by the board and the executive director.

(17) "Waste" or "pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water.

(18) "Waters of the state":

(a) means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion of the state; and

(b) does not include bodies of water confined to and retained within the limits of private property,

and which do not develop into or constitute a nuisance, a public health hazard, or a menace to fish or wildlife.

Section 2. Section 19-5-104 is amended to read:

19-5-104. Powers and duties of board.

(1) The board has the following powers and duties, but the board shall give priority to pollution that results in hazards to the public health:

(a) develop programs for the prevention, control, and abatement of new or existing pollution of the waters of the state;

(b) advise, consult, and cooperate with other agencies of the state, the federal government, other states, and interstate agencies, and with affected groups, political subdivisions, and industries to further the purposes of this chapter;

(c) encourage, participate in, or conduct studies, investigations, research, and demonstrations relating to water pollution and causes of water pollution as the board finds necessary to discharge its duties;

(d) collect and disseminate information relating to water pollution and the prevention, control, and abatement of water pollution;

(e) adopt, modify, or repeal standards of quality of the waters of the state and classify those waters according to their reasonable uses in the interest of the public under conditions the board may prescribe for the prevention, control, and abatement of pollution;

(f) make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, taking into account Subsection (2), to:

(i) implement the awarding of construction loans to political subdivisions and municipal authorities under Section 11-8-2, including:

(A) requirements pertaining to applications for loans;

(B) requirements for determination of eligible projects;

(C) requirements for determination of the costs upon which loans are based, which costs may include engineering, financial, legal, and administrative expenses necessary for the construction, reconstruction, and improvement of sewage treatment plants, including major interceptors, collection systems, and other facilities appurtenant to the plant;

(D) a priority schedule for awarding loans, in which the board may consider in addition to water pollution control needs any financial needs relevant, including per capita cost, in making a determination of priority; and

(E) requirements for determination of the amount of the loan;

(ii) implement the awarding of loans for nonpoint source projects pursuant to Section 73-10c-4.5;

(iii) set effluent limitations and standards subject to Section 19-5-116;

(iv) implement or effectuate the powers and duties of the board; and

(v) protect the public health for the design, construction, operation, and maintenance of [~~individual~~] underground wastewater disposal systems, liquid scavenger operations, and vault and earthen pit privies;

(g) issue, modify, or revoke orders:

(i) prohibiting or abating discharges;

(ii) requiring the construction of new treatment works or any parts of them, or requiring the modification, extension, or alteration of existing treatment works as specified by board rule or any parts of them, or the adoption of other remedial measures to prevent, control, or abate pollution;

(iii) setting standards of water quality, classifying waters or evidencing any other determination by the board under this chapter; and

(iv) requiring compliance with this chapter and with rules made under this chapter;

(h) review plans, specifications, or other data relative to disposal systems or any part of disposal systems, and issue construction permits for the installation or modification of treatment works or any parts of them;

(i) after public notice and opportunity for a public hearing, issue, continue in effect, revoke, modify, or deny discharge permits under reasonable conditions the board may prescribe to control the management of sewage sludge or to prevent or control the discharge of pollutants, including effluent limitations for the discharge of wastes into the waters of the state;

(j) give reasonable consideration in the exercise of its powers and duties to the economic impact of water pollution control on industry and agriculture;

(k) exercise all incidental powers necessary to carry out the purposes of this chapter, including delegation to the department of its duties as appropriate to improve administrative efficiency;

(l) meet the requirements of federal law related to water pollution;

(m) establish and conduct a continuing planning process for control of water pollution including the specification and implementation of maximum daily loads of pollutants;

(n) make rules governing inspection, monitoring, recordkeeping, and reporting requirements for underground injections and require permits for them, to protect drinking water sources, except for wells, pits, and ponds covered by Section 40-6-5 regarding gas and oil, recognizing that underground injection endangers drinking water sources if:

(i) injection may result in the presence of any contaminant in underground water which supplies or can reasonably be expected to supply any public water system, as defined in Section 19-4-102; and

(ii) the presence of the contaminant may result in the public water system not complying with any national primary drinking water standards or may otherwise adversely affect the health of persons;

(o) make rules governing sewage sludge management, including permitting, inspecting, monitoring, recordkeeping, and reporting requirements;

(p) adopt and enforce rules and establish fees to cover the costs of testing for certification of operators of treatment works and sewerage systems operated by political subdivisions; and

(q) notwithstanding the provisions of Section 19-4-112, make rules governing design and construction of irrigation systems which convey sewage treatment facility effluent of human origin in pipelines under pressure, unless contained in surface pipes wholly on private property and for agricultural purposes, and which are constructed after May 4, 1998.

(2) In determining eligible project costs and in establishing priorities pursuant to Subsection (1)(f)(i), the board shall take into consideration the availability of federal grants.

(3) In establishing certification rules under Subsection (1)(p), the board shall:

(a) base the requirements for certification on the size, treatment process type, and complexity of the treatment works and sewerage systems operated by political subdivisions;

(b) allow operators until three years after the date of adoption of the rules to obtain initial certification;

(c) allow new operators one year from the date they are hired by a treatment plant or sewerage system or three years after the date of adoption of the rules, whichever occurs later, to obtain certification;

(d) issue certification upon application and without testing, at a grade level comparable to the grade of current certification to operators who are currently certified under the voluntary certification plan for wastewater works operators as recognized by the board; and

(e) issue a certification upon application and without testing that is valid only at the treatment works or sewerage system where that operator is currently employed if the operator:

(i) is in charge of and responsible for the treatment works or sewerage system on March 16, 1991;

(ii) has been employed at least ten years in the operation of that treatment works or sewerage system prior to March 16, 1991; and

(iii) demonstrates to the board his capability to operate the treatment works or sewerage system at which he is currently employed by providing employment history and references as required by the board.

Section 3. Section 19-5-121 is enacted to read:

19-5-121. Underground wastewater disposal systems -- Certification required to design, inspect, maintain, or conduct percolation or soil tests -- Exemptions -- Rules -- Fees.

(1) As used in this section, "maintain" does not include the pumping of an underground wastewater disposal system.

(2) (a) Except as provided in Subsections (2)(b) and (2)(c), beginning January 1, 2002, a person may not design, inspect, maintain, or conduct percolation or soil tests for an underground wastewater disposal system, without first obtaining certification from the board.

(b) An individual is not required to obtain certification from the board to maintain an underground wastewater disposal system that serves a noncommercial, private residence owned by the individual or a member of the individual's family and in which the individual or a member of the individual's family resides or an employee of the individual resides without payment of rent.

(c) The board shall make rules allowing an uncertified individual to conduct percolation or soil tests for an underground wastewater disposal system that serves a noncommercial, private residence owned by the individual and in which the individual resides or intends to reside, or which is intended for use by an employee of the individual without payment of rent, if the individual:

(i) has the capability of properly conducting the tests; and

(ii) is supervised by a certified individual when conducting the tests.

(3) (a) The board shall adopt and enforce rules for the certification and recertification of individuals who design, inspect, maintain, or conduct percolation or soil tests for underground wastewater disposal systems.

(b) (i) The rules shall specify requirements for education and training and the type and duration of experience necessary to obtain certification.

(ii) The rules shall recognize the following in meeting the requirements for certification:

(A) the experience of a contractor licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, who has five or more years of experience installing underground wastewater disposal systems;

(B) the experience of an environmental health scientist licensed under Title 58, Chapter 20a, Environmental Health Scientist Act; or

(C) the educational background of a professional engineer licensed under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act.

(iii) If eligibility for certification is based on experience, the applicant for certification must show proof of experience.

(4) The department may establish fees in accordance with Section 63-38-3.2 for the testing and certification of individuals who design, inspect, maintain, or conduct percolation or soil tests for underground wastewater disposal systems.

Section 4. Section 19-5-122 is enacted to read:

19-5-122. Underground wastewater disposal systems -- Fee imposed on new systems.

(1) Beginning July 1, 2001, a one-time fee is imposed on each new underground wastewater disposal system installed.

(2) (a) From July 1, 2001 through June 30, 2002, the fee shall be $25.

(b) Beginning July 1, 2002, the fee shall be established by the department in accordance with Section 63-38-3.2.

(3) (a) The fee shall be paid when plans and specifications for the construction of a new underground wastewater disposal system are approved by the local health department or the Department of Environmental Quality.

(b) A local health department shall remit the fee revenue to the Division of Finance quarterly.

(4) The fee revenue shall be:

(a) deposited into the Underground Wastewater Disposal Restricted Account created in Section 19-5-123; and

(b) used to pay for costs of underground wastewater disposal system training programs.

Section 5. Section 19-5-123 is enacted to read:

19-5-123. Underground Wastewater Disposal System Restricted Account created -- Contents -- Use of account monies.

(1) The Underground Wastewater Disposal System Restricted Account is created within the General Fund.

(2) The contents of the account shall consist of:

(a) revenue from fees collected under Sections 19-5-121 and 19-5-122; and

(b) interest and earnings on account monies.

(3) Monies in the account shall be appropriated by the Legislature to the department for costs of training, testing, and certifying individuals who design, inspect, maintain, or conduct percolation or soils tests for underground wastewater disposal systems.

Section 6. Effective date.

This act takes effect on July 1, 2001.

CHAPTER 275
H. B. 16
Passed January 25, 2001
Approved March 19, 2001
Effective April 30, 2001

ELECTRONIC GOVERNMENT SERVICES AMENDMENTS - ENVIRONMENTAL QUALITY

Sponsor: Richard M. Siddoway

This act modifies the Environmental Quality Code. The act makes technical changes to facilitate the provision of government services electronically.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
19-2-103, as last amended by Chapter 243, Laws of Utah 1996
19-2-124, as last amended by Chapter 314, Laws of Utah 1999
19-4-103, as last amended by Chapters 27 and 243, Laws of Utah 1996
19-5-103, as last amended by Chapter 243, Laws of Utah 1996
19-6-320, as renumbered and amended by Chapter 112, Laws of Utah 1991
19-6-813, as renumbered and amended by Chapter 51, Laws of Utah 2000

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

Section 1. Section 19-2-103 is amended to read:

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

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

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

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

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

(c) a representative from municipal government;

(d) a representative from county government;

(e) a representative from agriculture;

(f) a representative from the mining industry;

(g) a representative from manufacturing;

(h) a representative from the fuel industry; and

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

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

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

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

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

(b) Notwithstanding the requirements of Subsection (6)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.

(7) Members may serve more than one term.

(8) Members shall hold office until the expiration of their terms and until their successors are appointed, but not more than 90 days after the expiration of their terms.

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

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

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

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

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

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

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

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

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

(c) (i) Local government members who do not receive salary, per diem, or expenses from the entity

that they represent for their service may receive per diem and expenses incurred in the performance of their official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

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

Section 2. Section 19-2-124 is amended to read:

19-2-124. Application for certification of pollution control facility -- Refunds -- Interest.

(1) (a) A person who qualifies under Subsection (2) may apply to the board for certification of a pollution control facility or facilities erected, constructed, or installed, or to be erected, constructed, or installed in the state on or after July 1, 1986, but on or before June 30, 2004.

(b) An application may be filed at any time after a firm construction contract has been entered or construction has commenced.

(2) (a) (i) A person who applies under Subsection (1) shall be the owner of a trade or business that uses property in the state requiring a pollution control facility to prevent or minimize pollution or a person who, as a lessee or pursuant to an agreement, conducts the trade or business that operates or uses the property.

(ii) For purposes of this Subsection (2), "owner" includes a contract purchaser.

(b) The facility shall be owned, operated, or leased during a part of the tax year in which the exemption is claimed.

(c) A person who obtains certification for a pollution control facility may claim an exemption from sales and use taxes as provided in Sections 19-2-123 and 59-12-104 only during the time period beginning on or after July 1, 1986, and ending on or before June 30, 2004.

(d) A person who pays a tax under Title 59, Chapter 12, Sales and Use Tax Act, on a purchase of tangible personal property or services used in the construction of or incorporated into a pollution control facility that:

(i) is not certified under Section 19-2-125, may obtain a refund of the tax if:

(A) the board subsequently certifies the pollution control facility;

(B) the tangible personal property or services meet the requirements for exemption provided in Subsections 19-2-123(2) and 59-12-104(11), except for the certification requirement; and

(C) the person files a claim for the refund with the State Tax Commission within the lesser of:

(I) three years after the day on which the pollution control facility is certified under Section 19-2-125; or

(II) six years after the day on which the person pays the tax under Title 59, Chapter 12, Sales and Use Tax Act; or

(ii) is certified under Section 19-2-125, may obtain a refund of the tax if:

(A) the tangible personal property or services meet the requirements for exemption provided in Subsections 19-2-123(2) and 59-12-104(11); and

(B) the person files a claim for the refund with the State Tax Commission within three years after the day on which the person pays the tax under Title 59, Chapter 12, Sales and Use Tax Act.

(e) (i) If a person files a claim for a refund of taxes under Subsection (2)(d)(i) paid on a purchase of tangible personal property or services used in the construction of or incorporated into a pollution control facility that was not certified under Section 19-2-125 at the time of the purchase:

(A) within 180 days after the day on which the board certifies the pollution control facility, interest shall accrue to the amount of the refund granted by the State Tax Commission:

(I) at the rate prescribed in Section 59-1-402; and

(II) beginning on the day on which the person pays the tax under Title 59, Chapter 12, Sales and Use Tax Act, for which the person is claiming a refund; or

(B) more than 180 days after the day on which the board certifies the pollution control facility, interest shall be added to the amount of the refund granted by the State Tax Commission:

(I) at the rate prescribed in Section 59-1-402; and

(II) beginning 30 days after the day on which the person files the claim for a refund under Subsection (2)(d).

(ii) If a person files a claim for a refund of taxes under Subsection (2)(d)(ii) paid on a purchase of tangible personal property or services used in the construction of or incorporated into a pollution control facility that was certified under Section 19-2-125 at the time of the purchase, interest shall accrue to the amount of the refund granted by the State Tax Commission:

(A) at the rate prescribed in Section 59-1-402; and

(B) beginning 30 days after the day on which the person files a claim for a refund under Subsection (2)(d).

(3) (a) Each application shall be in [~~writing on a form~~] a format prescribed by the board, contain a description of the facilities and materials incorporated in them, the machinery and equipment, the existing or proposed operational procedure, and a statement of the purpose of pollution prevention, control, or reduction served or to be served by the facility.

(b) The board may require any further information it finds necessary before issuance of a certificate.

Section 3. Section 19-4-103 is amended to read:

19-4-103. Drinking Water Board -- Members -- Organization -- Meetings -- Per diem and expenses.

(1) The board created under Section 19-1-106 comprises 11 members, one of whom is the executive director and the remainder of whom shall be appointed by the governor, with the advice and consent of the Senate.

(2) No more than five appointed members shall be from the same political party.

(3) The appointed members shall be knowledgeable about drinking water and public water systems and shall represent different geographical areas within the state insofar as practicable.

(4) The ten appointed members shall be appointed from the following areas:

(a) two elected officials of municipal government or their representatives involved in management or operation of public water systems;

(b) two representatives of improvement districts, water conservancy districts, or metropolitan water districts;

(c) one representative from an industry which manages or operates a public water system;

(d) one registered professional engineer with expertise in civil or sanitary engineering;

(e) one representative from the state water research community or from an institution of higher education which has comparable expertise in water research;

(f) two representatives of the public who do not represent other interests named in this section and who do not receive, and have not received during the past two years, a significant portion of their income, directly or indirectly, from suppliers; and

(g) one representative from a local health department.

(5) (a) Members of the Utah Safe Drinking Water Committee created by Chapter 126, Laws of Utah 1981, shall serve as members of the board throughout the terms for which they were appointed.

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

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

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

(7) Each member holds office until the expiration of the member's term, and until a successor is appointed, but not for more than 90 days after the expiration of the term.

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

(9) (a) The board shall meet at least quarterly.

(b) Special meetings may be called by the chair upon his own initiative, upon the request of the executive secretary, or upon the [~~written~~] request of three members of the board.

(c) Reasonable notice shall be given each member of the board prior to any meeting.

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

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

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

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

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

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

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

Section 4. Section 19-5-103 is amended to read:

19-5-103. Water Quality Board -- Members of board -- Appointment -- Terms -- Organization -- Meetings -- Per diem and expenses.

(1) Committee members currently serving on the Water Pollution Control Committee created under Chapter 126, Laws of Utah 1981, shall serve on the board throughout the terms for which they were appointed.

(2) The board comprises the executive director and ten members appointed by the governor, with the advice and consent of the Senate.

(3) No more than five of the appointed members may be from the same political party.

(4) The appointed members, insofar as practicable, shall include the following:

(a) one member representing the mineral industries;

(b) one member representing the food processing industries;

(c) one member representing other manufacturing industries;

(d) two members who are officials of municipal government or their representatives involved in the management or operation of wastewater treatment facilities;

(e) one member representing agricultural and livestock interests;

(f) one member representing fish, wildlife, and recreation interests;

(g) one member representing improvement and service districts; and

(h) two members at large, one of whom represents organized environmental interests, selected with due consideration of the areas of the state affected by water pollution and not representing other interests named in this Subsection (4).

(5) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term with the advice and consent of the Senate.

(6) (a) Except as required by Subsection (6)(b), members shall be appointed for terms of four years and are eligible for reappointment.

(b) Notwithstanding the requirements of Subsection (6)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.

(7) Members shall hold office until the expiration of their terms and until their successors are appointed, not to exceed 90 days after the formal expiration of their terms.

(8) The board shall:

(a) organize and annually select one of its members as chair and one of its members as vice chair;

(b) hold at least four regular meetings each calendar year; and

(c) keep minutes of its proceedings which shall be open to the public for inspection.

(9) Special meetings may be called by the chair and must be called by him upon [~~receipt of a written~~] the request [~~for a special meeting signed by~~] of three or more members of the board.

(10) Each member of the board and the executive secretary shall be notified [~~in writing~~] of the time and place of each meeting.

(11) Six members of the board constitute a quorum for the transaction of business, and the action of a majority of members present is the action of the board.

(12) (a) Members shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

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

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

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

Section 5. Section 19-6-320 is amended to read:

19-6-320. Remedial action completion procedures -- Legal remedies.

(1) A party who has entered an agreement or who has been issued a final order under the authority of Sections 19-6-317 through this section shall send [~~written~~] notice to the executive director when the remedial action for the facility is completed.

(2) Upon notice that remedial action at a facility is complete, the executive director shall inspect the facility to determine if the remedial action plan as implemented meets the substantive requirements of CERCLA.

(3) If the executive director determines that the remedial action plan as implemented meets the substantive requirements of CERCLA, except for any ongoing activities at the facility, including operation, maintenance, or monitoring, he shall issue a notice of agency action declaring that remedial action at the facility is complete and removing the facility from the hazardous substances priority list.

(4) (a) If the executive director determines that the remedial action plan for a national priority list site, as implemented, does not meet the substantive requirements of CERCLA, he may issue an order directing the responsible parties to take additional actions to implement the remedial action plan.

(b) If the responsible parties refuse to comply with the order the executive director may take enforcement action.

(5) (a) If the executive director determines that the remedial action plan for a proposed national priority list site or a scored site has not been properly and completely implemented according to the agreement between the executive director and the responsible parties, or is not consistent with the substantive requirements of CERCLA, he shall request that the responsible parties take additional

actions to fulfill the agreement to implement the remedial action plan.

(b) If the responsible parties refuse to comply with the request, the executive director may take action to enforce the agreement.

Section 6. Section 19-6-813 is amended to read:

19-6-813. Application for partial reimbursement -- Penalty.

(1) An application for partial reimbursement shall be [~~on the form~~] in the format prescribed by the local health department or the executive secretary, as is appropriate under Section 19-6-809, and shall include:

(a) the recycler's name and a brief description of the recycler's business;

(b) the quantity, in tons, of waste tires recycled or used in a beneficial use;

(c) originals or copies of log books, receipts, bills of lading, or other similar documents to establish the tonnage of waste tires recycled or used in a beneficial use;

(d) a description of how the waste tires were recycled;

(e) proof that is satisfactory to the local health department or the executive secretary, as is appropriate under Section 19-6-809, that the waste tires were recycled or used in a beneficial use; and

(f) the affidavit of the recycler warranting that the recycled waste tires or waste tires used for a beneficial use for which reimbursement is sought meet requirements of Subsection 19-6-809(4).

(2) In addition to any other penalty imposed under Section 19-6-821 or 19-6-822 or by any other law, any person who knowingly or intentionally provides false information to the local health department or to the executive secretary under Subsection (1):

(a) is ineligible to receive any further reimbursement under this part; and

(b) shall return to the Division of Finance any reimbursement previously received for deposit in the trust fund.

CHAPTER 276
H. B. 25
Passed February 23, 2001
Approved March 19, 2001
Effective July 1, 2001

CIVIL STALKING AMENDMENTS

Sponsor: LaWanna Shurtliff
Katherine M. Bryson
Ty McCartney
Gary F. Cox
Patrice M. Arent

This act modifies the Code of Criminal Procedure to create a civil stalking injunction and a procedure for having one issued by a court. This act provides for a petition, hearing requirements for both parties, and allows for renewal of the injunction under certain conditions. This act takes effect on July 1, 2001.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
76-5-106.5, as last amended by Chapter 49, Laws of Utah 2000
77-3-1, as enacted by Chapter 15, Laws of Utah 1980

ENACTS:
77-3a-101, Utah Code Annotated 1953
77-3a-102, Utah Code Annotated 1953
77-3a-103, Utah Code Annotated 1953

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

Section 1. Section 76-5-106.5 is amended to read:

76-5-106.5. Definitions -- Stalking -- Injunction -- Hearing.

(1) As used in this section:

(a) "Course of conduct" means repeatedly maintaining a visual or physical proximity to a person or repeatedly conveying verbal or written threats or threats implied by conduct or a combination thereof directed at or toward a person.

(b) "Immediate family" means a spouse, parent, child, sibling, or any other person who regularly resides in the household or who regularly resided in the household within the prior six months.

(c) "Repeatedly" means on two or more occasions.

(2) A person is guilty of stalking who:

(a) intentionally or knowingly engages in a course of conduct directed at a specific person that would cause a reasonable person:

(i) to fear bodily injury to himself or a member of his immediate family; or

(ii) to suffer emotional distress to himself or a member of his immediate family;

(b) has knowledge or should have knowledge that the specific person:

(i) will be placed in reasonable fear of bodily injury to himself or a member of his immediate family; or

(ii) will suffer emotional distress or a member of his immediate family will suffer emotional distress; and

(c) whose conduct:

(i) induces fear in the specific person of bodily injury to himself or a member of his immediate family; or

(ii) causes emotional distress in the specific person or a member of his immediate family.

(3) A person is also guilty of stalking who intentionally or knowingly violates a stalking injunction issued pursuant to Title 77, Chapter 3a, Stalking Injunctions, or intentionally or knowingly violates a permanent criminal stalking injunction issued pursuant to this section.

(4) Stalking is a class A misdemeanor:

(a) upon the offender's first violation of Subsection (2); or

(b) if the offender violated a stalking injunction issued pursuant to Title 77, Chapter 3a, Stalking Injunctions.

(5) Stalking is a third degree felony if the offender:

(a) has been previously convicted of an offense of stalking;

(b) has been convicted in another jurisdiction of an offense that is substantially similar to the offense of stalking;

(c) has been previously convicted of any felony offense in Utah or of any crime in another jurisdiction which if committed in Utah would be a felony, in which the victim of the stalking or a member of the victim's immediate family was also a victim of the previous felony offense; or

(d) violated a permanent criminal stalking injunction issued pursuant to Subsection (7).

(6) Stalking is a felony of the second degree if the offender:

(a) used a dangerous weapon as defined in Section 76-1-601 or used other means or force likely to produce death or serious bodily injury, in the commission of the crime of stalking;

(b) has been previously convicted two or more times of the offense of stalking;

(c) has been convicted two or more times in another jurisdiction or jurisdictions of offenses that are substantially similar to the offense of stalking;

(d) has been convicted two or more times, in any combination, of offenses under Subsection (5); or

(e) has been previously convicted two or more times of felony offenses in Utah or of crimes in another jurisdiction or jurisdictions which, if committed in Utah, would be felonies, in which the

victim of the stalking was also a victim of the previous felony offenses.

(7) A conviction for stalking or a plea accepted by the court and held in abeyance for a period of time shall operate as an application for a permanent criminal stalking injunction limiting the contact of the defendant and the victim.

(a) A permanent criminal stalking injunction shall be issued without a hearing unless the defendant requests a hearing at the time of the verdict, finding, or plea of guilty, guilty and mentally ill, plea of no contest, or acceptance of plea in abeyance. The court shall give the defendant notice of his right to request a hearing.

(i) If the defendant requests a hearing, it shall be held at the time of the verdict, finding, or plea of guilty, guilty and mentally ill, plea of no contest, or acceptance of plea in abeyance unless the victim requests otherwise, or for good cause.

(ii) If the verdict, finding, or plea of guilty, guilty and mentally ill, plea of no contest, or acceptance of plea in abeyance was entered in a justice court, a certified copy of the judgment and conviction or a certified copy of the court's order holding the plea in abeyance must be filed by the victim in the district court as an application and request for hearing for a permanent criminal stalking injunction.

(b) A permanent criminal stalking injunction may grant the following relief:

(i) an order restraining the defendant from entering the residence, property, school, or place of employment of the victim and requiring the defendant to stay away from the victim and members of the victim's immediate family or household and to stay away from any specified place that is named in the order and is frequented regularly by the victim; and

(ii) an order restraining the defendant from making contact with the victim, including an order forbidding the defendant from personally or through an agent initiating any communication likely to cause annoyance or alarm, including personal, written, or telephone contact with the victim, the victim's employers, employees, fellow workers, or others with whom communication would be likely to cause annoyance or alarm to the victim.

(c) A permanent criminal stalking injunction may be dissolved upon application of the victim to the court which granted the order.

(d) Notice of permanent criminal stalking injunctions issued pursuant to this section shall be sent by the court to the statewide warrants network or similar system.

(e) A permanent criminal stalking injunction issued pursuant to this section shall be effective statewide.

(f) Violation of an injunction issued pursuant to this section shall constitute an offense of stalking. Violations may be enforced in a civil action initiated by the stalking victim, a criminal action initiated by a prosecuting attorney, or both.

(g) Nothing in this section shall preclude the filing of a criminal information for stalking based on the same act which is the basis for the violation of the stalking injunction issued pursuant to Title 77, Chapter 3a, Stalking Injunctions, or permanent criminal stalking injunction.

Section 2. Section 77-3-1 is amended to read:

77-3-1. Threatened offense -- Complaint.

A complaint that a person has threatened to commit an offense against the person or property of another, except in the case of stalking, may be made before any magistrate. Petitions alleging the commission of stalking shall be handled pursuant to Title 77, Chapter 3a, Stalking Injunctions.

Section 3. Section 77-3a-101 is enacted to read:

CHAPTER 3A. STALKING INJUNCTIONS

77-3a-101. Civil stalking injunction -- Petition -- Ex parte injunction.

(1) As used in this chapter, "stalking" means the crime of stalking as defined in Section 76-5-106.5. Stalking injunctions may not be obtained against law enforcement officers, governmental investigators, or licensed private investigators, acting in their official capacity.

(2) Any person who believes that he or she is the victim of stalking may file a verified written petition for a civil stalking injunction against the alleged stalker with the district court in the district in which the petitioner or respondent resides or in which any of the events occurred. A minor with his or her parent or guardian may file a petition on his or her own behalf, or a parent, guardian, or custodian may file a petition on the minor's behalf.

(3) The Administrative Office of the Courts shall develop and adopt uniform forms for petitions, ex parte civil stalking injunctions, civil stalking injunctions, service and any other necessary forms in accordance with the provisions of this chapter on or before July 1, 2001. The office shall provide the forms to the clerk of each district court.

(a) All petitions, injunctions, ex parte injunctions, and any other necessary forms shall be issued in the form adopted by the Administrative Office of the Courts.

(b) The offices of the court clerk shall provide the forms to persons seeking to proceed under this chapter.

(4) The petition for a civil stalking injunction shall include:

(a) the name of the petitioner; however, the petitioner's address shall be disclosed to the court for purposes of service, but, on request of the petitioner, the address may not be listed on the petition, and shall be protected and maintained in a separate document or automated database, not subject to release, disclosure, or any form of public

access except as ordered by the court for good cause shown;

(b) the name and address, if known, of the respondent;

(c) specific events and dates of the actions constituting the alleged stalking;

(d) if there is a prior court order concerning the same conduct, the name of the court in which the order was rendered; and

(e) corroborating evidence of stalking, which may be in the form of a police report, affidavit, record, statement, item, letter, or any other evidence which tends to prove the allegation of stalking.

(5) If the court determines that there is reason to believe that an offense of stalking has occurred, an ex parte civil stalking injunction may be issued by the court that includes any of the following:

(a) respondent may be enjoined from committing stalking;

(b) respondent may be restrained from coming near the residence, place of employment, or school of the other party or specifically designated locations or persons;

(c) respondent may be restrained from contacting, directly or indirectly, the other party, including personal, written or telephone contact with the other party, the other party's employers, employees, fellow workers or others with whom communication would be likely to cause annoyance or alarm to the other party; or

(d) any other relief necessary or convenient for the protection of the petitioner and other specifically designated persons under the circumstances.

(6) Within ten days of service of the ex parte civil stalking injunction, the respondent is entitled to request, in writing, an evidentiary hearing on the civil stalking injunction.

(a) A hearing requested by the respondent shall be held within ten days from the date the request is filed with the court unless the court finds compelling reasons to continue the hearing. The hearing shall then be held at the earliest possible time. The burden is on the petitioner to show by a preponderance of the evidence that stalking of the petitioner by the respondent has occurred.

(b) An ex parte civil stalking injunction issued under this section shall state on its face:

(i) that the respondent is entitled to a hearing, upon written request within ten days of the service of the order;

(ii) the name and address of the district court where the request may be filed;

(iii) that if the respondent fails to request a hearing within ten days of service, the ex parte civil stalking injunction is automatically modified to a civil stalking injunction without further notice to the respondent and that the civil stalking injunction expires three years after service of the ex parte civil stalking injunction; and

(iv) that if the respondent requests, in writing, a hearing after the ten-day period after service, the court shall set a hearing within a reasonable time from the date requested.

(7) At the hearing, the court may modify, revoke, or continue the injunction. The burden is on the petitioner to show by a preponderance of the evidence that stalking of the petitioner by the respondent has occurred.

(8) The ex parte civil stalking injunction and civil stalking injunction shall include the following statement: "Attention. This is an official court order. If you disobey this order, the court may find you in contempt. You may also be arrested and prosecuted for the crime of stalking and any other crime you may have committed in disobeying this order."

(9) The ex parte civil stalking injunction shall be served on the respondent within 90 days from the date it is signed. An ex parte civil stalking injunction is effective upon service. If no hearing is requested in writing by the respondent within ten days of service of the ex parte civil stalking injunction, the ex parte civil stalking injunction automatically becomes a civil stalking injunction without further notice to the respondent and expires three years from the date of service of the ex parte civil stalking injunction.

(10) If the respondent requests a hearing after the ten-day period after service, the court shall set a hearing within a reasonable time from the date requested. At the hearing, the burden is on the respondent to show good cause why the civil stalking injunction should be dissolved or modified.

(11) Within 24 hours after the affidavit or acceptance of service has been returned, excluding weekends and holidays, the clerk of the court from which the ex parte civil stalking injunction was issued shall enter a copy of the ex parte civil stalking injunction and proof of service or acceptance of service in the statewide network for warrants or a similar system.

(a) The effectiveness of an ex parte civil stalking injunction or civil stalking injunction shall not depend upon its entry in the statewide system and, for enforcement purposes, a certified copy of an ex parte civil stalking injunction or civil stalking injunction is presumed to be a valid existing order of the court for a period of three years from the date of service of the ex parte civil stalking injunction on the respondent.

(b) Any changes or modifications of the ex parte civil stalking injunction are effective upon service on the respondent. The original ex parte civil stalking injunction continues in effect until service of the changed or modified civil stalking injunction on the respondent.

(12) Within 24 hours after the affidavit or acceptance of service has been returned, excluding weekends and holidays, the clerk of the court shall enter a copy of the changed or modified civil

stalking injunction and proof of service or acceptance of service in the statewide network for warrants or a similar system.

(13) The ex parte civil stalking injunction or civil stalking injunction may be dissolved at any time upon application of the petitioner to the court which granted it.

(14) The court clerk shall provide, without charge, to the petitioner one certified copy of the injunction issued by the court and one certified copy of the proof of service of the injunction on the respondent. Charges may be imposed by the clerk's office for any additional copies, certified or not certified in accordance with Rule 4-202.08 of the Code of Judicial Administration.

(15) The remedies provided in this chapter for enforcement of the orders of the court are in addition to any other civil and criminal remedies available. The district court shall hear and decide all matters arising pursuant to this section.

(16) After a hearing with notice to the affected party, the court may enter an order requiring any party to pay the costs of the action, including reasonable attorney's fees.

(17) This chapter does not apply to protective orders or ex parte protective orders issued pursuant to Title 30, Chapter 6, Cohabitant Abuse Act, or to preliminary injunctions issued pursuant to an action for dissolution of marriage or legal separation.

Section 4. Section 77-3a-102 is enacted to read:

77-3a-102. Fees -- Service of process.

(1) Ex parte civil stalking injunctions and civil stalking injunctions shall be served by a sheriff or constable.

(2) All service shall be in accordance with applicable law.

(3) Fees may not be imposed by a court clerk, constable, or law enforcement agency for:

(a) filing a petition under this chapter;

(b) obtaining an ex parte civil stalking injunction; or

(c) service of a civil stalking injunction, ex parte or otherwise.

Section 5. Section 77-3a-103 is enacted to read:

77-3a-103. Enforcement.

(1) A peace or law enforcement officer shall, without a warrant, arrest a person if the peace or law enforcement officer has probable cause to believe that the person has violated an ex parte civil stalking injunction or civil stalking injunction issued pursuant to this chapter or has violated a permanent criminal stalking injunction issued pursuant to Section 76-5-106.5, whether or not the violation occurred in the presence of the officer.

(2) A violation of an ex parte civil stalking injunction or of a civil stalking injunction issued pursuant to this chapter constitutes the criminal offense of stalking as defined in Section 76-5-106.5 and is also a violation of the civil stalking injunction. Violations may be enforced by a civil action initiated by the petitioner, a criminal action initiated by a prosecuting attorney, or both.

Section 6. Effective date.

This act takes effect on July 1, 2001.

CHAPTER 277
H. B. 44
Passed February 23, 2001
Approved March 19, 2001
Effective April 30, 2001

INSURANCE DEPARTMENT -
HEALTH POLICY RESPONSIBILITIES

Sponsor: Rebecca D. Lockhart

This act modifies the Insurance Code to require the insurance commissioner to prepare an annual evaluation of the state's health insurance industry.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
31A-2-201, as last amended by Chapter 316, Laws of Utah 1994

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

Section 1. Section 31A-2-201 is amended to read:

31A-2-201. General duties and powers.

(1) The commissioner shall administer and enforce this title.

(2) The commissioner has all powers specifically granted, and all further powers that are reasonable and necessary to enable him to perform the duties imposed by this title.

(3) (a) The commissioner may make rules to implement the provisions of this title according to the procedures and requirements of Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(b) In addition to the notice requirements of Section 63-46a-4, the commissioner shall provide notice under Section 31A-2-303 of hearings concerning insurance department rules.

(4) (a) The commissioner shall issue prohibitory, mandatory, and other orders as necessary to secure compliance with this title. An order by the commissioner is not effective unless the order:

(i) is in writing; and

(ii) is signed by the commissioner or under the commissioner's authority.

(b) On request of any person who would be affected by an order under Subsection (4)(a), the commissioner may issue a declaratory order to clarify the person's rights or duties.

(5) (a) The commissioner may hold informal adjudicative proceedings and public meetings, for the purpose of investigation, ascertainment of public sentiment, or informing the public.

(b) No effective rule or order may result from informal hearings and meetings unless the requirement of a hearing under Section 31A-2-301 is satisfied.

(6) The commissioner shall inquire into violations of this title and may conduct any examinations and investigations of insurance matters, in addition to examinations and investigations expressly authorized, that he considers proper to determine:

(a) whether or not any person has violated any provision of this title; or

(b) to secure information useful in the lawful administration of any provision of this title.

(7) (a) Each year, the commissioner shall:

(i) conduct an evaluation of the state's health insurance market;

(ii) report the findings of the evaluation to the Health and Human Services Interim Committee before July 31; and

(iii) publish the findings of the evaluation of the department website.

(b) The evaluation shall:

(i) analyze the effectiveness of the insurance regulations and statutes in promoting a healthy, competitive health insurance market that meets the needs of Utahns by assessing such things as the availability and marketing of individual and group products, rate charges, coverage and demographic changes, benefit trends, market share changes, and accessibility;

(ii) assess complaint ratios and trends within the health insurance market, which assessment shall integrate complaint data from the Office of Consumer Health Assistance within the department;

(iii) contain recommendations for action to improve the overall effectiveness of the health insurance market, administrative rules, and statutes; and

(iv) include claims loss ratio data for each insurance company doing business in the state.

(c) When preparing the evaluation required by this section, the commissioner may seek the input of insurers, employers, insured persons, providers, and others with an interest in the health insurance market.

CHAPTER 278
H. B. 61
Passed February 22, 2001
Approved March 19, 2001
Effective July 1, 2001

MEDICAL EXAMINER AUTHORITY

Sponsor: Gary F. Cox

This act modifies the Medical Examiner Act. This act requires the medical examiner to assume custody of a body involved in a highway accident in certain circumstances. The act sets forth the conditions under which an autopsy of the body may be performed. This act makes technical and conforming amendments. This act takes effect on July 1, 2001.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
26-4-7, as last amended by Chapter 289, Laws of Utah 1999
26-4-13, as enacted by Chapter 126, Laws of Utah 1981

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

Section 1. Section 26-4-7 is amended to read:

26-4-7. Custody by medical examiner.

Upon notification under Section 26-4-8 or investigation by the medical examiner's office, the medical examiner shall assume custody of [~~the~~] a deceased body [~~in all deaths that appear to be~~] if it appears that death was:

(1) [~~deaths~~] by violence, gunshot, suicide, or accident[~~, except~~] unless the accident is a highway [~~accidents~~] accident. If the death was from a highway accident, custody shall only be assumed if an autopsy is required or permitted under the provisions of Section 26-4-13 or if requested by the law enforcement agency with jurisdiction over the highway accident;

(2) sudden death while in apparent good health;

(3) unattended deaths, except that an autopsy may only be performed in accordance with the provisions of Subsection 26-4-9(3);

(4) [~~deaths~~] under suspicious or unusual circumstances;

(5) [~~deaths~~] resulting from poisoning or overdose of drugs;

(6) [~~deaths~~] resulting from diseases that may constitute a threat to the public health;

(7) [~~deaths~~] resulting from disease, injury, toxic effect, or unusual exertion incurred within the scope of the [~~deceased's~~] decedent's employment;

(8) [~~deaths~~] due to sudden infant death syndrome;

(9) [~~deaths~~] resulting while the [~~deceased~~] decedent was in prison, jail, [~~in~~] police custody, [~~in~~] the state hospital, or in a detention or medical facility operated for the treatment of the mentally ill [~~or~~], emotionally disturbed, or delinquent persons;

(10) [~~deaths~~] associated with diagnostic [~~and~~] or therapeutic procedures; [~~and~~] or

(11) [~~deaths~~] described in this section when request is made to assume custody by a county or district attorney or law enforcement agency in connection with a potential homicide investigation or prosecution.

Section 2. Section 26-4-13 is amended to read:

26-4-13. Autopsies -- When authorized.

(1) [~~Autopsies shall be performed~~] The medical examiner shall perform an autopsy to:

(a) aid in the discovery and prosecution of [~~crimes, to~~] a crime;

(b) protect an innocent [~~persons~~] person accused of a crime[~~, to~~]; and

(c) disclose hazards to public health [~~by communicable diseases, occupational diseases, or by dangerous drugs, chemicals, or foods~~]. [~~Autopsies may also be performed~~]

(2) The medical examiner may perform an autopsy:

(a) to aid in the administration of civil justice in life and accident insurance problems in accordance with [~~the provisions of the Workmen's~~] Title 34A, Chapter 2, Workers' Compensation Act [~~and~~];

(b) in other cases involving questions of civil liability.

Section 3. Effective date.

This act takes effect on July 1, 2001.

CHAPTER 279
H. B. 64
Passed February 27, 2001
Approved March 19, 2001
Effective April 30, 2001

TUITION WAIVERS FOR WARDS OF THE STATE

Sponsor: Richard M. Siddoway

This act modifies provisions related to the State System of Higher Education by extending tuition waivers to wards of the state. The act provides for reimbursement of those waivers by the Division of Child and Family Services.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:
53B-8d-101, Utah Code Annotated 1953
53B-8d-102, Utah Code Annotated 1953
53B-8d-103, Utah Code Annotated 1953
53B-8d-104, Utah Code Annotated 1953

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

Section 1. Section 53B-8d-101 is enacted to read:

CHAPTER 8d. TUITION WAIVERS FOR WARDS OF THE STATE ACT

53B-8d-101. Title.

This chapter is known as the "Tuition Waivers for Wards of the State Act."

Section 2. Section 53B-8d-102 is enacted to read:

53B-8d-102. Definitions.

As used in this chapter:

(1) "Division" means the Division of Child and Family Services.

(2) "Long-term foster care" means an individual who remains in the custody of the division, whether or not the individual resides with licensed foster parents or in independent living arrangements under the supervision of the division.

(3) "State institution of higher education" means those institutions designated in Section 53B-1-102 and any public institution that offers postsecondary education in consideration of the payment of tuition or fees for the attainment of educational or vocational objectives leading to a degree or certificate, including business schools, technical schools, applied technology centers, trade schools, and institutions offering related apprenticeship programs.

(4) "Tuition" means tuition at the rate for residents of the state.

(5) "Ward of the state" means an individual:

(a) who is at least 17 years of age and not older than 26 years of age;

(b) who had a permanency goal in the individual's treatment plan, as defined in Sections 62A-4a-205 and 78-3a-312, of long-term foster care while in the custody of the division; and

(c) for whom the custody of the division was not terminated as a result of adoption.

Section 3. Section 53B-8d-103 is enacted to read:

53B-8d-103. Tuition waivers for wards of the state.

(1) Beginning in the 2001-02 academic year, and subject to the limitations in Subsections (2), (3), and (4), a state institution of higher education shall waive tuition for each ward of the state who meets the following requirements:

(a) applies, qualifies, and is admitted as a full-time, part-time, or summer school student in a program of study leading to a degree or certificate;

(b) is a resident student of the state as determined under Section 53B-8-102;

(c) applies to the division for a waiver of tuition under this chapter and provides evidence satisfactory to the division that:

(i) the applicant was in the custody of the division for an aggregate period of not less than 24 months; and

(ii) the course or courses for which the applicant is seeking a tuition waiver meet the requirements of Subsection (2);

(d) applies under Subsection (1)(c) for the first time before the age of 22;

(e) is certified by the financial aid officer at the higher education institution as needing the tuition waiver in order to meet recognized educational expenses;

(f) maintains satisfactory academic progress, as defined by the institution of higher education, for each term or semester in which the individual is enrolled, which may be measured by the definition used for federal student assistance programs under Title IV of the Higher Education Act of 1965; and

(g) has not achieved a bachelor's degree and has received tuition reimbursement under this chapter for less than 124 semester credits or 180 quarter credits at an institution of higher education.

(2) A ward of the state is eligible for a tuition waiver under this section of not more than nine semesters.

(3) Tuition shall be waived:

(a) after the individual has applied for financial assistance, including scholarships and Pell Grants; and

(b) only to the extent that the tuition is not covered or paid by any scholarship, trust fund, statutory benefit, Pell Grant, or any other source of tuition coverage available for a waiver under this chapter.

(4) An institution of higher education shall waive tuition under this chapter only for courses that are applicable toward the degree or certificate requirements of the program in which the student is enrolled.

Section 4. Section 53B-8d-104 is enacted to read:

53B-8d-104. Notice of tuition waiver approval -- Annual appropriation.

(1) Upon receiving an application under Section 53B-8d-103, the division shall determine whether the applicant and the courses for which tuition waiver is sought meet the requirements of Section 53B-8d-103 and, if so, shall approve the application and notify the higher education institution that the application has been approved.

(2) The division shall provide the necessary forms and applications and cooperate with the state's institutions of higher education in developing efficient procedures for the implementation of this chapter.

(3) The division shall reimburse the state's institutions of higher education for any tuition waived under this chapter.

(4) The division shall annually report to the Legislature's Higher Education Appropriations Subcommittee on the number of individuals for whom tuition has been waived at each institution and the total amounts reimbursed by the division under this chapter for the fiscal year.

(5) The Legislature may annually appropriate the funds necessary to implement this chapter, including moneys to offset the reimbursement of tuition waivers.

CHAPTER 280
H. B. 69
Passed February 23, 2001
Approved March 19, 2001
Effective July 1, 2001

SEXUAL VIOLENCE PREVENTION AND COMMUNITY AWARENESS

Sponsor: Trisha S. Beck

This act appropriates $70,000 from the General Fund to the Department of Health for fiscal year 2001-02 only, to fund community awareness in schools concerning sexual violence prevention. This act takes effect July 1, 2001.

This act enacts uncodified material.

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

Section 1. Appropriation.

(1) There is appropriated from the General Fund for fiscal year 2001-02 only, $70,000 to the Department of Health.

(2) It is the intent of the Legislature that this appropriation shall be used for community awareness in schools concerning sexual violence prevention.

(3) The money appropriated in Subsection (1) is nonlapsing.

Section 2. Effective date.

This act takes effect on July 1, 2001.

CHAPTER 281
H. B. 73
Passed February 27, 2001
Approved March 19, 2001
Effective April 30, 2001

MENTAL HEALTH THERAPIST LICENSING ACT AMENDMENTS

Sponsor: Judy Ann Buffmire

This act amends the Division of Occupational and Professional Licensing Act to place mental health professionals who are undergoing clinical training under the supervision of the division. The act authorizes the division to issue certifications of mental health interns and residents. The act establishes requirements for certification as a marriage and family therapy intern, a professional counselor intern and a psychology resident. The act limits a certified resident or intern practice to supervised employed practice, and limits the certification to the period of time necessary to complete training. The act clarifies the elements of unprofessional conduct by specifically including practice by a certified intern or resident without supervision or employment. The act amends the definition of unlawful conduct to include false representations of certification as a mental health professional intern or resident. This act makes technical amendments.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
58-60-103, as last amended by Chapters 21 and 81, Laws of Utah 1999
58-60-107, as last amended by Chapters 21 and 81, Laws of Utah 1999
58-60-109, as last amended by Chapter 248, Laws of Utah 1997
58-60-110, as last amended by Chapter 248, Laws of Utah 1997
58-60-304, as enacted by Chapter 32, Laws of Utah 1994
58-60-305, as last amended by Chapter 159, Laws of Utah 2000
58-60-404, as enacted by Chapter 32, Laws of Utah 1994
58-60-405, as last amended by Chapter 28, Laws of Utah 1995
58-61-301, as enacted by Chapter 32, Laws of Utah 1994
58-61-304, as last amended by Chapter 4, Laws of Utah 2000
58-61-307, as last amended by Chapter 224, Laws of Utah 2000
58-61-501, as enacted by Chapter 32, Laws of Utah 1994
58-61-502, as enacted by Chapter 32, Laws of Utah 1994

ENACTS:
58-60-308, Utah Code Annotated 1953
58-60-407, Utah Code Annotated 1953
58-61-308, Utah Code Annotated 1953

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

Section 1. Section 58-60-103 is amended to read:

58-60-103. Licensure required.

(1) An individual shall be licensed under this chapter; Chapter 67, Utah Medical Practice Act, or Chapter 68, Utah Osteopathic Medical Practice Act; Chapter 31b, Nurse Practice Act; Chapter 61, Psychologist Licensing Act; or exempted from licensure under this chapter in order to:

(a) engage in or represent he will engage in the practice of mental health therapy, clinical social work, certified social work, marriage and family therapy, or professional counseling; or

(b) practice as or represent himself as a mental health therapist, clinical social worker, certified social worker, marriage and family therapist, professional counselor, psychiatrist, psychologist, or registered psychiatric mental health nurse specialist.

(2) An individual shall be licensed under this chapter or exempted from licensure under this chapter in order to:

(a) engage in or represent that he is engaged in practice as a social service worker; or

(b) represent himself as or use the title of social service worker.

(3) An individual shall be licensed under this chapter or exempted from licensure under this chapter in order to:

(a) engage in or represent that he is engaged in practice as a licensed substance abuse counselor; or

(b) represent himself as or use the title of licensed substance abuse counselor.

(4) Notwithstanding the provisions of Subsection 58-1-307(1)(c), an individual shall be certified under this chapter, or otherwise exempted from licensure under this chapter in order to engage in an internship or residency program of supervised clinical training necessary to meet the requirements for licensure as:

(a) a marriage and family therapist under Part 3; or

(b) a professional counselor under Part 4.

Section 2. Section 58-60-107 is amended to read:

58-60-107. Exemptions from licensure.

(1) Except as modified in Section 58-60-103, the exemptions from licensure in Section 58-1-307 apply to this chapter.

(2) (a) In addition to the exemptions from licensure in Section 58-1-307, the following may engage in acts included within the definition of practice as a mental health therapist, subject to the stated circumstances and limitations, without being licensed under this chapter:

[~~(1)~~] (b) the following when practicing within the scope of the license held:

[~~(a)~~] (i) a physician and surgeon or osteopathic physician and surgeon licensed under [~~Title 58,~~] Chapter 67, Utah Medical Practice Act, or [~~Title 58,~~] Chapter 68, Utah Osteopathic Medical Practice Act;

[~~(b)~~] (ii) an advanced practice registered nurse, specializing in psychiatric mental health nursing, licensed under [~~Title 58,~~] Chapter 31b, Nurse Practice Act; and

[~~(c)~~] (iii) a psychologist licensed under [~~Title 58,~~] Chapter 61, Psychologist Licensing Act;

[~~(2)~~] (3) a recognized member of the clergy while functioning in his ministerial capacity as long as he does not represent himself as or use the title of a license classification in Subsection 58-60-102(5);

[~~(3)~~] (4) an individual who is offering expert testimony in any proceeding before a court, administrative hearing, deposition upon the order of any court or other body having power to order the deposition, or proceedings before any master, referee, or alternative dispute resolution provider;

[~~(4)~~] (5) an individual engaged in performing hypnosis who is not licensed under [~~Title 58, Occupations and Professions,~~] this title in a profession which includes hypnosis in its scope of practice, and who:

(a) (i) induces a hypnotic state in a client for the purpose of increasing motivation or altering lifestyles or habits, such as eating or smoking, through hypnosis;

(ii) consults with a client to determine current motivation and behavior patterns;

(iii) prepares the client to enter hypnotic states by explaining how hypnosis works and what the client will experience;

(iv) tests clients to determine degrees of suggestibility;

(v) applies hypnotic techniques based on interpretation of consultation results and analysis of client's motivation and behavior patterns; and

(vi) trains clients in self-hypnosis conditioning;

(b) may not:

(i) engage in the practice of mental health therapy;

(ii) represent himself using the title of a license classification in Subsection 58-60-102(5); or

(iii) use hypnosis with or treat a medical, psychological, or dental condition defined in generally recognized diagnostic and statistical manuals of medical, psychological, or dental disorders;

[~~(5)~~] (6) an individual's exemption from licensure under Subsection 58-1-307(1)(b) [~~or (c) while completing any supervised clinical training requirement for licensure extends not more than one year from the date the minimum requirement for training is completed, unless the individual presents satisfactory evidence to the division and the appropriate board that the individual is making reasonable progress toward passing of the qualifying examination for that profession or is otherwise on a course reasonably expected to lead to licensure, but any exemption under this subsection may not exceed two years past the date the minimum supervised clinical training requirement has been completed~~] terminates when the student's training is no longer supervised by qualified faculty or staff and the activities are no longer a defined part of the degree program;

[~~(6)~~] (7) an individual holding an earned doctoral degree or master's degree in social work, marriage and family therapy, or professional counseling, who is employed by an accredited institution of higher education and who conducts research and teaches in that individual's professional field, but only if the individual does not engage in providing or supervising professional services regulated under this chapter to individuals or groups regardless of whether there is compensation for the services;

[~~(7)~~] (8) an individual in an on-the-job training program approved by the division while under the supervision of qualified persons;

[~~(8)~~] (9) an individual providing general education in the subjects of alcohol or drug use or abuse, including prevention; and

[~~(9)~~] (10) an individual providing advice or counsel to another individual in a setting of their association as friends or relatives and in a nonprofessional and noncommercial relationship, if there is no compensation paid for the advice or counsel.

Section 3. Section 58-60-109 is amended to read:

58-60-109. Unlawful conduct.

As used in this chapter, "unlawful conduct" includes:

(1) practice of the following unless licensed in the appropriate classification or exempted from licensure under this title:

(a) mental health therapy;

(b) clinical social work;

(c) certified social work;

(d) marriage and family therapy;

(e) professional counseling;

(f) practice as a social service worker; or

(g) licensed substance abuse counselor;

(2) practice of mental health therapy by a licensed psychologist who has not acceptably documented to the division his completion of the supervised training in mental health therapy required under Subsection 58-61-304(1)(f); or

(3) representing oneself as or using the title of any of the following unless currently licensed in a license classification under this title:

(a) psychiatrist;

(b) psychotherapist;

(c) registered psychiatric mental health nurse specialist;

(d) mental health therapist;

(e) clinical social worker;

(f) certified social worker;

(g) marriage and family therapist;

(h) professional counselor;

(i) clinical hypnotist;

(j) social service worker; [~~or~~]

(k) licensed substance abuse counselor[~~.~~];

(l) certified professional counselor intern; or

(m) certified marriage and family therapist intern.

Section 4. Section 58-60-110 is amended to read:

58-60-110. Unprofessional conduct.

(1) As used in this chapter, "unprofessional conduct" includes:

(a) using or employing the services of any individual to assist a licensee in any manner not in accordance with the generally recognized practices, standards, or ethics of the profession for which the individual is licensed, or the laws of the state;

(b) failure to confine practice conduct to those acts or practices:

(i) in which the individual is competent by education, training, and experience within limits of education, training, and experience; and

(ii) which are within applicable scope of practice laws of this chapter; and

(c) disclosing or refusing to disclose any confidential communication under Section 58-60-114 or 58-60-509.

(2) "Unprofessional conduct" under this chapter may be further defined by division rule.

Section 5. Section 58-60-304 is amended to read:

58-60-304. License classification.

The division shall issue licenses to individuals qualified under this part in the classification of:

(1) marriage and family therapist[~~.~~]; or

(2) certified marriage and family therapist intern.

Section 6. Section 58-60-305 is amended to read:

58-60-305. Qualifications for licensure.

(1) All applicants for licensure as marriage and family therapists shall:

[~~(1)~~] (a) submit an application on a form provided by the division;

[~~(2)~~] (b) pay a fee determined by the department under Section 63-38-3.2;

[~~(3)~~] (c) be of good moral character;

[~~(4)~~] (d) produce certified transcripts evidencing completion of a masters or doctorate degree in marriage and family therapy from:

[~~(a)~~] (i) a program accredited by the Commission on Accreditation for Marriage and Family Therapy Education; or

[~~(b)~~] (ii) an accredited institution meeting criteria for approval established by rule under Section 58-1-203;

[~~(5)~~] (e) have completed a minimum of 4,000 hours of marriage and family therapy training as defined by division rule under Section 58-1-203, in not less than two years, under the supervision of a marriage and family therapist supervisor who meets the requirements of Section 58-60-307, and obtained after completion of the education requirement in Subsection [~~(4)~~] (1)(d);

[~~(6)~~] (f) document successful completion of not less than 1,000 hours of supervised training in mental health therapy obtained after completion of the education requirement described in Subsection [~~(4)(a) or (b)~~] (1)(d)(i) or (1)(d)(ii), which training may be included as part of the 4,000 hours of training described in Subsection [~~(5)~~] (1)(e), and of which documented evidence demonstrates not less than 100 of the supervised hours were obtained during direct, personal, face-to-face supervision by a marriage and family therapist supervisor qualified under Section 58-60-307; and

[~~(7)~~] (g) pass the examination requirement established by division rule under Section 58-1-203.

(2) (a) All applicants for certification as a marriage and family therapist intern shall comply with the provisions of Subsections (1)(a), (b), (c), and (d).

(b) An individual's certification as a marriage and family therapist intern is limited to the period of time necessary to complete clinical training as described in Subsections (1)(e) and (f) and extends not more than one year from the date the minimum requirement for training is completed, unless the individual presents satisfactory evidence to the division and the appropriate board that the individual is making reasonable progress toward passing of the qualifying examination for that profession or is otherwise on a course reasonably expected to lead to licensure, but the period of time under this Subsection (2)(b) may not exceed two years past the date the minimum supervised clinical training requirement has been completed.

Section 7. Section 58-60-308 is enacted to read:

58-60-308. Scope of practice -- Limitations.

(1) A licensed marriage and family therapist may engage in all acts and practices defined as the

practice of marriage and family therapy without supervision, in private and independent practice, or as an employee of another person, limited only by the licensee's education, training, and competence.

(2) (a) To the extent an individual has completed the educational requirements of Subsections 58-60-305(1)(a) through (1)(d) a certified marriage and family therapist intern may engage in all acts and practices defined as the practice of marriage and family therapy if the practice is:

(i) within the scope of employment as a certified marriage and family therapist intern with a public agency or a private clinic as defined by division rule; and

(ii) under the supervision of a licensed marriage and family therapist who is qualified as a supervisor under Section 58-60-307.

(b) A certified marriage and family therapy intern may not engage in the independent practice of marriage and family therapy.

Section 8. Section 58-60-404 is amended to read:

58-60-404. License classification.

The division shall issue licenses to individuals qualified under the provisions of this part in the classification of:

(1) a professional counselor[~~.~~]; or

(2) a certified professional counselor intern.

Section 9. Section 58-60-405 is amended to read:

58-60-405. Qualifications for licensure.

(1) All applicants for licensure as a professional counselor shall:

[~~(1)~~] (a) submit an application on a form provided by the division;

[~~(2)~~] (b) pay a fee determined by the department under Section 63-38-3.2;

[~~(3)~~] (c) be of good moral character;

[~~(4)~~] (d) produce certified transcripts from an accredited institution of higher education recognized by the division in collaboration with the board verifying satisfactory completion of:

[~~(a)~~] (i) an education and degree in an education program in counseling with a core curriculum defined by division rule under Section 58-1-203 preparing one to competently engage in mental health therapy; and

[~~(b)~~] (ii) an earned doctoral or master's degree resulting from that education program;

[~~(5)~~] (e) have completed a minimum of 4,000 hours of professional counselor training as defined by division rule under Section 58-1-203, in not less than two years, under the supervision of a professional counselor, psychiatrist, psychologist, clinical social worker, registered psychiatric mental health nurse specialist, or marriage and family therapist supervisor approved by the division in collaboration with the board, and obtained after completion of the education requirement in Subsection [~~(4)~~] (1)(d);

[~~(6)~~] (f) document successful completion of not less than 1,000 hours of supervised training in mental health therapy obtained after completion of the education requirement in Subsection [~~(4)~~] (1)(d), which training may be included as part of the 4,000 hours of training in Subsection [~~(5)~~] (1)(e), and of which documented evidence demonstrates not less than 100 of the hours were obtained under the direct personal face to face supervision of a mental health therapist approved by the division in collaboration with the board; and

[~~(7)~~] (g) pass the examination requirement established by division rule under Section 58-1-203.

(2) (a) All applicants for certification as a professional counselor intern shall comply with the provisions of Subsections (1)(a), (b), (c), and (d).

(b) An individual's certification as a professional counselor intern is limited to the period of time necessary to complete clinical training as described in Subsections (1)(e) and (f) and extends not more than one year from the date the minimum requirement for training is completed, unless the individual presents satisfactory evidence to the division and the appropriate board that the individual is making reasonable progress toward passing of the qualifying examination for that profession or is otherwise on a course reasonably expected to lead to licensure, but the period of time under this Subsection (2)(b) may not exceed two years past the date the minimum supervised clinical training requirement has been completed.

Section 10. Section 58-60-407 is enacted to read:

58-60-407. Scope of practice -- Limitations.

(1) A licensed professional counselor may engage in all acts and practices defined as the practice of professional counseling without supervision, in private and independent practice, or as an employee of another person, limited only by the licensee's education, training, and competence.

(2) (a) To the extent an individual has completed the educational requirements of Subsections 58-60-308(1)(a) through (1)(d), a certified professional counseling intern may engage in all acts and practices defined as the practice of professional counseling if the practice is:

(i) within the scope of employment as a certified professional counselor with a public agency or private clinic as defined by division rule; and

(ii) under supervision of a qualified licensed mental health therapist as defined in Subsection 58-60-405(5).

(b) A certified professional counselor intern may not engage in the independent practice of professional counseling.

Section 11. Section 58-61-301 is amended to read:

58-61-301. Licensure required.

(1) (a) A license is required to engage in the practice of psychology, except as specifically provided in Section 58-1-307.

(b) Notwithstanding the provisions of Subsection 58-1-307(1)(c) an individual shall be certified under this chapter as a psychology resident in order to engage in a residency program of supervised clinical training necessary to meet licensing requirements as a psychologist under this chapter.

(2) The division shall issue to a person who qualifies under this chapter a license in the classification of:

(a) psychologist; or

(b) certified psychology resident.

Section 12. Section 58-61-304 is amended to read:

58-61-304. Qualifications for licensure by examination or endorsement.

(1) All applicants for licensure as a psychologist based upon education, clinical training, and examination shall:

(a) submit an application on a form provided by the division;

(b) pay a fee determined by the department under Section 63-38-3.2;

(c) be of good moral character;

(d) produce certified transcripts of credit verifying satisfactory completion of a doctoral degree in psychology that includes specific core course work established by division rule under Section 58-1-203, from an institution of higher education whose doctoral program, at the time the applicant received the doctoral degree, met approval criteria established by division rule made in consultation with the board;

(e) have completed a minimum of 4,000 hours of psychology training as defined by division rule under Section 58-1-203 in not less than two years and under the supervision of a psychologist supervisor approved by the division in collaboration with the board, 2,000 hours of which are obtained after completion of a master's level of education in psychology and 2,000 hours of which shall be obtained after completion of the requirements for a doctoral degree in psychology;

(f) to be qualified to engage in mental health therapy, document successful completion of not less than 1,000 hours of supervised training in mental health therapy obtained after completion of a master's level of education in psychology, which training may be included as part of the 4,000 hours of training required in Subsection (1)(e), and for which documented evidence demonstrates not less than one hour of supervision for each 40 hours of supervised training was obtained under the direct personal face to face supervision of a psychologist approved by the division in collaboration with the board;

(g) pass the examination requirement established by division rule under Section 58-1-203; and

(h) meet with the board, upon request for good cause, for the purpose of evaluating the applicant's qualifications for licensure.

(2) All applicants for licensure as a psychologist by endorsement based upon licensure in another jurisdiction shall:

(a) submit an application on a form provided by the division;

(b) pay a fee determined by the department under Section 63-38-3.2;

(c) be of good moral character and professional standing, and not have any disciplinary action pending or in effect against the applicant's psychologist license in any jurisdiction;

(d) have passed the Utah Psychologist Law and Ethics Examination established by division rule;

(e) provide satisfactory evidence the applicant is currently licensed in another state, district, or territory of the United States, or in any other jurisdiction approved by the division in collaboration with the board;

(f) provide satisfactory evidence the applicant has actively practiced psychology in that jurisdiction for not less than 2,000 hours or one year, whichever is greater; and

(g) provide satisfactory evidence that:

(i) the education, supervised experience, examination, and all other requirements for licensure in that jurisdiction at the time the applicant obtained licensure were substantially equivalent to the licensure requirements for a psychologist in Utah at the time the applicant obtained licensure in the other jurisdiction; or

(ii) the applicant is a current holder of diplomate status in good standing from the American Board of Professional Psychology; and

(h) meet with the board, upon request for good cause, for the purpose of evaluating the applicant's qualifications for licensure.

(3) (a) All applicants for certification as a psychology resident shall comply with the provisions of Subsections (1)(a), (b), (c), (d), and (h).

(b) An individual's certification as a psychology resident is limited to the period of time necessary to complete clinical training as described in Subsections (1)(e) and (f) and extends not more than one year from the date the minimum requirement for training is completed, unless the individual presents satisfactory evidence to the division and the Psychologist Licensing Board that the individual is making reasonable progress toward passing the qualifying examination or is otherwise on a course reasonably expected to lead to licensure as a psychologist, but the period of time under this

Subsection (3)(b) may not exceed two years past the date the minimum supervised clinical training requirement has been completed.

Section 13. Section 58-61-307 is amended to read:

58-61-307. Exemptions from licensure.

(1) Except as modified in Section 58-61-301, the exemptions from licensure in Section 58-1-307 apply to this chapter.

(2) In addition to the exemptions from licensure in Section 58-1-307, the following when practicing within the scope of the license held, may engage in acts included within the definition of practice as a psychologist, subject to the stated circumstances and limitations, without being licensed under this chapter:

[~~(1) the following when practicing within the scope of the license held:~~]

(a) a physician and surgeon or osteopathic physician licensed under Chapter 67, Utah Medical Practice Act, or Chapter 68, Utah Osteopathic Medical Practice Act; and

(b) a registered psychiatric mental health nurse specialist licensed under Chapter 31b, Nurse Practice Act;

[~~(2)~~] (3) a recognized member of the clergy while functioning in his ministerial capacity as long as he does not represent himself as or use the title of psychologist;

[~~(3)~~] (4) an individual who is offering expert testimony in any proceeding before a court, administrative hearing, deposition upon the order of any court or other body having power to order the deposition, or proceedings before any master, referee, or alternative dispute resolution provider;

[~~(4)~~] (5) an individual engaged in performing hypnosis who is not licensed under [~~Title 58, Occupations and Professions,~~] this title in a profession which includes hypnosis in its scope of practice, and who:

(a) (i) induces a hypnotic state in a client for the purpose of increasing motivation or altering lifestyles or habits, such as eating or smoking, through hypnosis;

(ii) consults with a client to determine current motivation and behavior patterns;

(iii) prepares the client to enter hypnotic states by explaining how hypnosis works and what the client will experience;

(iv) tests clients to determine degrees of suggestibility;

(v) applies hypnotic techniques based on interpretation of consultation results and analysis of client's motivation and behavior patterns; and

(vi) trains clients in self-hypnosis conditioning;

(b) may not:

(i) engage in the practice of mental health therapy;

(ii) represent himself using the title of a license classification in Subsection 58-60-102(5); or

(iii) use hypnosis with or treat a medical, psychological, or dental condition defined in generally recognized diagnostic and statistical manuals of medical, psychological, or dental disorders;

[~~(5)~~] (6) an individual's exemption from licensure under Subsection 58-1-307(1)(b) [~~or (c) while completing any supervised clinical training requirement for licensure as a psychologist extends not more than one year from the date the minimum requirement for training is completed, unless the individual presents satisfactory evidence to the division and the Psychologist Licensing Board that the individual is making reasonable progress toward passing the qualifying examination or is otherwise on a course reasonably expected to lead to licensure as a psychologist, but any exemption under this subsection may not exceed two years past the date the minimum supervised clinical training requirement has been completed~~] terminates when the student's training is no longer supervised by qualified faculty or staff and the activities are no longer a defined part of the degree program;

[~~(6)~~] (7) an individual holding an earned doctoral degree in psychology who is employed by an accredited institution of higher education and who conducts research and teaches in that individual's professional field, but only if the individual does not engage in providing delivery or supervision of professional services regulated under this chapter to individuals or groups regardless of whether there is compensation for the services;

[~~(7)~~] (8) any individual who was employed as a psychologist by a state, county, or municipal agency or other political subdivision of the state prior to July 1, 1981, and who subsequently has maintained employment as a psychologist in the same state, county, or municipal agency or other political subdivision while engaged in the performance of his official duties for that agency or political subdivision; [~~and~~]

[~~(8)~~] (9) an individual licensed as a school psychologist under Section 53A-6-104:

(a) may represent himself as and use the terms "school psychologist" or " licensed school psychologist"; and

(b) is restricted in his practice to employment within settings authorized by the State Board of Education; and

[~~(9)~~] (10) an individual providing advice or counsel to another individual in a setting of their association as friends or relatives and in a nonprofessional and noncommercial relationship, if there is no compensation paid for the advice or counsel.

Section 14. Section 58-61-308 is enacted to read:

58-61-308. Scope of practice -- Limitations.

(1) A psychologist may engage in all acts and practices defined as the practice of psychology without supervision, in private and independent practice, or as an employee of another person, limited only by the licensee's education, training, and competence.

(2) An individual certified as a psychology resident may engage in all acts and practices defined as the practice of psychology only under conditions of employment as a psychology resident and under the supervision of a licensed psychologist who is an approved psychology training supervisor as defined by division rule. A certified psychology resident shall not engage in the independent practice of psychology.

Section 15. Section 58-61-501 is amended to read:

58-61-501. Unlawful conduct.

As used in this chapter, "unlawful conduct" includes:

(1) practice of psychology unless licensed as a psychologist or certified psychology resident under this chapter or exempted from licensure under this title;

(2) practice of mental health therapy by a licensed psychologist who has not acceptably documented to the division his completion of the supervised training in psychotherapy required under Subsection 58-61-304(1)(f); or

(3) representing oneself as or using the title of psychologist, or certified psychology resident unless currently licensed under this chapter.

Section 16. Section 58-61-502 is amended to read:

58-61-502. Unprofessional conduct.

(1) As used in this chapter, "unprofessional conduct" includes:

(a) using or employing the services of any individual to assist a licensee in any manner not in accordance with the generally recognized practices, standards, or ethics of the profession for which the individual is licensed, or the laws of the state;

(b) failure to confine practice conduct to those acts or practices:

(i) in which the individual is competent by education, training, and experience within limits of education, training, and experience; and

(ii) which are within applicable scope of practice laws of this chapter; and

(c) disclosing or refusing to disclose any confidential communication under Section 58-61-602.

(2) "Unprofessional conduct" under this chapter may be further defined by division rule.

CHAPTER 282
H. B. 86
Passed February 28, 2001
Approved March 19, 2001
Effective April 30, 2001
(Exception clause in Section 4)

GOVERNMENT REVENUE AND TAX SYSTEM TASK FORCE

Sponsor: Chad E. Bennion
Martin R. Stephens
Kevin S. Garn
David Ure
Greg J. Curtis
Wayne A. Harper
Ben C. Ferry
James A. Ferrin

This act creates the Government Revenue and Tax System Task Force. This act provides for the membership of the task force, task force chairs, compensation of task force members, task force duties and responsibilities, the task force meeting schedule, task force reporting requirements, and staff support. The act requires the task force to follow interim rules. The act authorizes the task force to establish one or more subcommittees and addresses the membership of a subcommittee. The act appropriates a total of $108,000 from the General Fund for fiscal year 2000-01 to the Senate, the House of Representatives, and the Office of Legislative Research and General Counsel to fund the two-year task force. This act is repealed November 30, 2002.

This act enacts uncodified material.

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

Section 1. Government Revenue and Tax System Task Force -- Creation -- Membership -- Chairs -- Subcommittees -- Interim rules followed -- Compensation.

(1) There is created the Government Revenue and Tax System Task Force consisting of the following 12 members:

(a) five members of the Senate appointed by the president of the Senate, no more than three of whom may be from the same political party; and

(b) seven members of the House of Representatives appointed by the speaker of the House of Representatives, no more than four of whom may be from the same political party.

(2) (a) The president of the Senate shall designate a member of the Senate appointed under Subsection (1)(a) as a cochair of the Government Revenue and Tax System Task Force.

(b) The speaker of the House of Representatives shall designate a member of the House of Representatives appointed under Subsection (1)(b) as a cochair of the Government Revenue and Tax System Task Force.

(3) (a) The Government Revenue and Tax System Task Force may establish one or more subcommittees.

(b) If the Government Revenue and Tax System Task Force establishes a subcommittee, the cochairs of the Government Revenue and Tax System Task Force may appoint legislators or persons who are not legislators to the subcommittee.

(4) In conducting its business, the Government Revenue and Tax System Task Force shall comply with the rules of legislative interim committees.

(5) (a) Legislators on the Government Revenue and Tax System Task Force shall receive compensation and expenses in accordance with Section 36-2-2 and Legislative Joint Rule 15.03.

(b) (i) A member of a subcommittee of the Government Revenue and Tax System Task Force who is not a legislator or a government employee may not receive compensation or benefits for the member's services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) A member of a subcommittee of the Government Revenue and Tax System Task Force may decline to receive per diem and expenses for their services.

Section 2. Duties and responsibilities -- Meeting schedule -- Task force reporting requirements -- Staff support.

(1) The Government Revenue and Tax System Task Force shall:

(a) study the tax system of the state and its political subdivisions;

(b) study state and local revenue sources, including:

(i) property taxes;

(ii) individual income taxes;

(iii) corporate franchise and income taxes;

(iv) sales and use taxes; and

(v) other taxes or fees as determined by the Government Revenue and Tax System Task Force;

(c) study the tax policy of the state;

(d) study short-term and long-term impacts of any proposed changes to the tax system of the state or a political subdivision of the state; and

(e) study any other issue as determined by the Government Revenue and Tax System Task Force relating to:

(i) the tax system of the state or its political subdivisions; or

(ii) state or local revenue sources.

(2) The Government Revenue and Tax System Task Force shall meet at least eight times but no more than 12 times per year during the:

(a) 2001 interim; and

(b) 2002 interim.

(3) (a) The Government Revenue and Tax System Task Force shall make the following reports during the 2001 interim:

(i) the Government Revenue and Tax System Task Force shall make reports on its studies to the Utah Tax Review Commission and the Utah Advisory Council on Intergovernmental Relations:

(A) on or before the July interim meeting; and

(B) on or before the November interim meeting; and

(ii) the Government Revenue and Tax System Task Force shall make a report on its study to the Revenue and Taxation Interim Committee on or before the October interim meeting.

(b) The Government Revenue and Tax System Task Force shall make the following reports during the 2002 interim:

(i) the Government Revenue and Tax System Task Force shall make reports on its studies to the Utah Tax Review Commission and the Utah Advisory Council on Intergovernmental Relations:

(A) on or before the June interim meeting;

(B) on or before the September interim meeting; and

(C) on or before the November interim meeting; and

(ii) the Government Revenue and Tax System Task Force shall make a report on its study to the Revenue and Taxation Interim Committee on or before the October interim meeting.

(4) The Office of Legislative Research and General Counsel shall provide staff support to the Government Revenue and Tax System Task Force.

(5) The Government Revenue and Tax System Task Force may request information from the Governor's Office of Planning and Budget in conducting the study required by this section.

Section 3. Appropriation.

There is appropriated from the General Fund for fiscal year 2000-01 to pay for the two-year Government Revenue and Tax System Task Force:

(1) $20,000 to the Senate to pay for the compensation and expenses of senators on the Government Revenue and Tax System Task Force;

(2) $28,000 to the House of Representatives to pay for the compensation and expenses of representatives on the Government Revenue and Tax System Task Force; and

(3) $60,000 to the Office of Legislative Research and General Counsel to pay for staffing the Government Revenue and Tax System Task Force.

Section 4. Repeal date.

This act is repealed November 30, 2002.

CHAPTER 283
H. B. 162
Passed February 28, 2001
Approved March 19, 2001
Effective April 30, 2001

MOTOR FUEL MARKETING ACT

Sponsor: David Ure

This act modifies the Motor Fuel Marketing Act. The act amends definitions. The act addresses the requirement to establish and disclose certain prices. The act amends provisions against unlawful sales. The act addresses sales not considered violations. The act transfers civil enforcement authority from the Division of Consumer Protection to the attorney general. The act repeals the rebuttable presumption and the right of a purchaser to obtain price and cost information. The act sets standards for the confidentiality and use of information. The act provides a sunset date.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
13-2-1, as last amended by Chapters 150 and 324, Laws of Utah 1998
13-16-2, as last amended by Chapter 260, Laws of Utah 1991
13-16-3, as last amended by Chapter 189, Laws of Utah 1987
13-16-4, as last amended by Chapter 300, Laws of Utah 1992
13-16-6, as last amended by Chapter 279, Laws of Utah 1994
13-16-7, as last amended by Chapter 260, Laws of Utah 1991
13-16-10, as last amended by Chapter 300, Laws of Utah 1992
13-16-11, as enacted by Chapter 260, Laws of Utah 1991

ENACTS:
13-16-13, Utah Code Annotated 1953
63-55-213, Utah Code Annotated 1953

REPEALS:
13-16-5, as last amended by Chapter 189, Laws of Utah 1987
13-16-8, as last amended by Chapter 189, Laws of Utah 1987
13-16-9, as last amended by Chapter 189, Laws of Utah 1987
13-16-12, as enacted by Chapter 279, Laws of Utah 1994

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

Section 1. Section 13-2-1 is amended to read:

13-2-1. Consumer protection division established -- Functions.

There is established within the Department of Commerce the Division of Consumer Protection. The division shall administer and enforce the following:

(1) Chapter 5, Unfair Practices Act;

(2) Chapter 10a, Music Licensing Practices Act;

(3) Chapter 11, Consumer Sales Practices Act;

(4) Chapter 15, Business Opportunity Disclosure Act;

[~~(5) Chapter 16, Motor Fuel Marketing Act;~~]

[~~(6)~~] (5) Chapter 20, New Motor Vehicle Warranties Act;

[~~(7)~~] (6) Chapter 21, Credit Services Organizations Act;

[~~(8)~~] (7) Chapter 22, Charitable Solicitations Act;

[~~(9)~~] (8) Chapter 23, Health Spa Services Protection Act;

[~~(10)~~] (9) Chapter 25a, Telephone and Facsimile Solicitation Act;

[~~(11)~~] (10) Chapter 26, Telephone Fraud Prevention Act; [~~and~~]

[~~(12)~~] (11) Chapter 28, Prize Notices Regulation Act[~~.~~]; and

[~~(13)~~] (12) Chapter 30, Utah Personal Introduction Services Protection Act.

Section 2. Section 13-16-2 is amended to read:

13-16-2. Definitions.

As used in this chapter:

(1) "Affiliate" means [~~an entity~~] a person that owns or controls, or is owned or controlled by, another person, whether through stock ownership or otherwise.

(2) "Cost" means an amount calculated as follows:

(a) (i) if motor fuel is not purchased from an affiliate:

(A) the lowest invoice cost that the seller charged to the purchaser for motor fuel of like grade and quality within five days prior to the date of any alleged unlawful resale by the purchaser; or

(B) if there was no sale to the purchaser within the preceding five days, the purchaser's last invoice cost for motor fuel of like grade and quality; or

(ii) if motor fuel is purchased or received from an affiliate:

(A) the lowest transfer price that the affiliate charged to the purchaser or receiver for motor fuel of like grade and quality within five days prior to the date of any alleged unlawful resale by the purchaser or receiver; or

(B) if there was no purchase or receipt within the preceding five days, the last transfer price for motor fuel of like grade and quality; [~~less~~]

(b) [~~trade discounts, allowances, or rebates~~] less each of the following that the purchaser receives on the particular invoice or transfer:

(i) a trade discount;

(ii) an allowance; or

(iii) a rebate; [~~plus~~] and

(c) [~~the reasonable cost of doing business as determined by generally accepted accounting principles, which, with respect to retail sales and in the absence of proof of a lesser cost, is presumed to be a margin of 6% of the posted retail price;~~] plus the following if not included in the invoice cost or transfer price:

[~~(d)~~] (i) freight charges [~~and~~];

(ii) all applicable federal, state, and local taxes [~~not already included in the invoice cost or transfer price~~]; and

(iii) charges imposed by a federal, state, or local government that are not taxes.

(3) "Motor fuel" means gasoline, diesel fuel, gasohol, and all other fuels of a type designated for use as a motor fuel in self-propelled vehicles designated primarily for use on public streets, roads, and highways.

(4) "Person" means any individual, partnership, corporation, or legal entity.

(5) (a) "Posted rack price" means the price at which a refiner or other person offers a grade of motor fuel for sale at the rack before:

(i) a reduction for:

(A) a trade discount;

(B) an allowance; or

(C) a rebate; or

(ii) the addition of:

(A) a charge for freight;

(B) a federal, state, or local tax; or

(C) a charge imposed by a federal, state, or local government that is not a tax.

(b) Notwithstanding Subsection (5)(a), the posted rack price for a refiner or other person offering motor fuel for sale at the rack who does not establish a posted rack price shall be the lowest posted rack price of any person for motor fuel of like grade or quality in the geographic area served by the refiner or other person.

(6) "Purchase," "purchases," or "purchased" means the acquisition of motor fuel as a result of a sale or resale.

(7) "Rack" means a deck, platform, or open bay that consists of a series of metered pipes and hoses for the delivery or removal of motor fuel from the refinery or terminal into:

(a) a motor vehicle;

(b) a rail car; or

(c) a vessel.

(8) "Receipt" or "received" has the same meaning as purchase under Subsection (6).

(9) "Resale" or "resales" has the same meaning as sale under Subsection (11).

[~~(5)~~] (10) "Retail sale" means any sale of motor fuel to a member of the motoring public for consumption.

[~~(6)~~] (11) (a) "Sale," "sales," "sell," "sells," or "sold" means [~~any~~] the transfer of, [~~gift, sale,~~] or offer [~~for sale, or advertisement for sale in any manner or by any means, including any transfer of motor fuel by a person to himself or his affiliate.~~] to transfer:

(i) ownership, title to, or possession of, motor fuel from one person to another; and

(ii) with or without consideration.

(b) "Sale," "sales," "sell," "sells," or "sold" includes any method by which any person transfers or offers to transfer ownership, title to, or possession of, motor fuel to itself or an affiliate for resale at another marketing level.

(12) "Terminal" means a facility:

(a) for the storage of motor fuel that is:

(i) part of a refinery; or

(ii) supplied by:

(A) a motor vehicle;

(B) a pipeline; or

(C) a vessel; and

(b) from which motor fuel is removed for distribution at a rack.

[~~(7)~~] (13) "Transfer price" means the price used by a refiner [~~in transferring~~] in connection with any sale of motor fuel to itself or an affiliate for resale at another marketing level.

Section 3. Section 13-16-3 is amended to read:

13-16-3. Requirement to establish and disclose "transfer prices" and "posted rack prices."

[~~Each~~] A refiner engaged in commerce in this state is required to:

(1) establish [~~and publicly disclose upon request~~]:

(a) its transfer price on all grades of motor fuel [~~transferred or~~] sold to itself or an affiliate for resale in this state at a different marketing level of distribution[~~.~~]; and

(b) a posted rack price on all grades of motor fuel the refiner or other person sells at the rack in this state; and

(2) at the request of the attorney general, disclose to the attorney general:

(a) any transfer price described in Subsection (1)(a); or

(b) any posted rack price described in Subsection (1)(b).

Section 4. Section 13-16-4 is amended to read:

13-16-4. Unlawful sale by persons engaged in commerce.

(1) It is unlawful for any person engaged in commerce within this state to sell [~~or offer to sell~~] motor fuel in this state below cost as defined in Subsection 13-16-2(2) if[~~: (a)~~] the intent or effect of the sale [~~or offer~~] is to:

(a) injure competition; [~~or~~]

(b) [~~the intent and purpose of the sale or offer is to~~] induce the [~~purchase~~] buying of other merchandise[~~, to~~];

(c) unfairly divert trade from a competitor[~~,~~]; or

(d) otherwise [~~to~~] injure a competitor.

(2) It is unlawful for any person engaged in commerce [~~within~~] in this state, in the course of such commerce, either directly or indirectly, to:

(a) sell motor fuel through an affiliate for retail sale in this state on a different marketing level of distribution at a price lower than the price it charges a person who purchases motor fuel of like grade and quality at reasonably the same time for retail sale in this state on the same level of distribution, if the intent or effect of the sale is to injure competition; or

(b) sell [~~or offer to sell~~] motor fuel for resale in this state at a price lower than the seller charges other persons [~~at the same time and~~] purchasing motor fuel of like grade and quality at reasonably the same time for resale in this state on the same level of distribution, if the intent or effect of the sale [~~or offer~~] is to injure competition.

Section 5. Section 13-16-6 is amended to read:

13-16-6. Sales not considered violations.

(1) It is not a violation of [~~Section~~] Subsection 13-16-4(2) [~~or 13-16-5~~] if:

(a) a difference exists at the same level of distribution between the transfer price or sales price of motor fuel of like grade and quality and the price charged to a person who purchases for resale, including any discount, rebate, allowance, service, or facility granted to any person, including any of a supplier's own marketing operations, who purchases for resale, in excess of those provided to [~~a~~] any other person who purchases for resale if the difference [~~is~~] makes only due [~~to a difference~~] allowance for differences in the cost of:

(i) manufacturing;

(ii) transportation, shipping, or other delivery method[~~, transportation,~~]; or

(iii) marketing[~~,~~] or sale[~~, or~~] resulting from the method or quantity in which the motor fuel is sold[~~.~~] or delivered; or

[~~(2)~~] (b) [~~It is not a violation of Section 13-16-4 or 13-16-5 if~~] a difference exists in transfer price and sales price or between sales prices at the same marketing level if the difference exists because of a good faith effort to meet the equally low price of a competitor or if the sale is exempt under Section 13-5-12.

[~~(3)(a)~~] (2) It is not a violation of Subsection 13-16-4(1) if [~~the~~] a sale below cost is:

(a) the result of a good faith effort to meet the equally low price of a competitor [~~or if the~~]; or

(b) a sale [~~is~~] exempt under Section 13-5-12.

[~~(b) In determining whether a person has set the price at which motor fuel is sold or offered for sale to meet the price of a competitor, the court shall consider only whether the seller or offeror has set the price of motor fuel to match the price at which a competitor has sold or offered motor fuel without regard to any other items sold or offered in conjunction with the sale or offer for sale of the motor fuel.~~]

Section 6. Section 13-16-7 is amended to read:

13-16-7. Investigations and civil actions authorized -- Expenses -- Jurisdiction and venue.

(1) (a) The attorney general may conduct investigations of violations of this chapter and may issue civil investigative demands as provided in Subsections 76-10-917(1) through (7), and (9), stating the nature of the activities under investigation constituting the alleged violation of this chapter and the applicable provision of law and that any information provided in response to the demand may be used in a civil proceeding. If the [~~Division of Consumer Protection~~] attorney general has reason to believe that a person has engaged in acts or practices that violate Section 13-16-4 [~~or 13-16-5~~], the [~~division~~] attorney general may [~~request the attorney general or a county attorney to~~] commence a civil action to enjoin the acts or practices, seek civil penalties as provided in Subsection (1)(b), and upon a proper showing, a temporary restraining order, preliminary injunction, or permanent injunction shall issue without the necessity of a bond.

(b) Any person who violates Section 13-16-4 [~~or 13-16-5~~] is liable to the state for a civil penalty, assessed by a court, not to exceed $5,000 per day for each business location where a violation occurred.

(2) (a) Any person injured as a result of an act or practice that violates Section 13-16-4 [~~or 13-16-5~~] may bring a civil action for appropriate relief, including an action for a declaratory judgment, injunctive relief, a treble award of actual damages, and exemplary damages.

(b) Any action under this Subsection (2) shall be brought within two years after the alleged violation occurred.

(3) The court, in making an award under Subsection (1) or (2), may award court costs and a reasonable attorney's fee to the prevailing party, except that the court may not award attorney's fees or court costs against the state, a state agency, or a political subdivision of the state.

(4) If the state, a state agency, or a political subdivision of the state prevails in an action under this chapter, it is entitled to an award for reasonable investigative expenses in addition to any other relief granted.

(5) (a) The district courts of this state may hear and determine all cases brought under this section.

(b) Venue lies in any county where the defendant is doing business or in the county where the plaintiff resides.

Section 7. Section 13-16-10 is amended to read:

13-16-10. Recordkeeping -- Civil penalty.

(1) Persons engaged in commerce within this state who sell [~~or offer to sell~~] motor fuel in this state shall maintain records accurately indicating the date and the time of day of each change in the sale price of motor fuel and the identity of the person who recorded the price change. In the event the change in price is to meet a lower price of a competitor, the record shall set forth the competitor by name and address, specifying the price which was met. These records shall be maintained for a period of two years.

(2) The records shall be made available to [~~the Division of Consumer Protection and~~] the attorney general on request.

(3) A person who fails to comply with Subsection (1) is liable to the state for a civil penalty, assessed by a court, of $500 per day for each business location where a violation occurred.

Section 8. Section 13-16-11 is amended to read:

13-16-11. Applicability.

[~~(1)~~] Section 13-16-4 applies equally to all persons engaged in commerce in the marketing of motor fuel, regardless of the size of a marketing operation.

[~~(2) Section 13-16-5 applies equally to all refiners engaged in commerce in the marketing of motor fuel, regardless of the size of a marketing operation.~~]

Section 9. Section 13-16-13 is enacted to read:

13-16-13. Confidentiality and use of information.

(1) Any transfer price or posted rack price disclosed to the attorney general pursuant to Subsection 13-16-3(2), any records disclosed to the attorney general pursuant to Section 13-16-10, and any testimony, responses to interrogatories, documents or materials provided to the attorney general pursuant to a civil investigative demand shall be kept confidential by the attorney general unless confidentiality is waived in writing by the person who has:

(a) provided the transfer price, posted rack price, or records; or

(b) testified, answered interrogatories, provided documents or materials.

(2) Notwithstanding any other provision of this section, the attorney general may disclose any records, testimony, documents, materials, or other information obtained under this section, without either the consent of the person from whom it was received or the person being investigated, to:

(a) any court; and

(b) officers and employees of federal or state law enforcement agencies, provided the person from whom the information, documents, or objects were obtained is notified 20 days prior to disclosure, and the federal or state law enforcement agency certifies that the information will be:

(i) maintained in confidence, as required by Subsection 13-16-13(1); and

(ii) used only for official law enforcement purposes.

Section 10. Section 63-55-213 is enacted to read:

63-55-213. Repeal dates, Title 13.

Title 13, Chapter 16, Motor Fuel Marketing Act, is repealed July 1, 2006.

Section 11. Repealer.

This act repeals:

Section 13-16-5, Unlawful sale by refiner.

Section 13-16-8, Burden of proof in civil action.

Section 13-16-9, Right of purchaser to obtain price and cost information from marketer.

Section 13-16-12, Rulemaking authority.

CHAPTER 284
H. B. 173
Passed February 19, 2001
Approved March 19, 2001
Effective April 30, 2001

SPECIAL SERVICE DISTRICT - QUALIFIED ELECTORS

Sponsor: DeMar Bud Bowman

This act modifies provisions relating to Special Districts to provide an exception to the requirement that members of a special service district administrative control board be qualified electors of the special service district. The act also makes technical changes.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
17A-2-1326, as last amended by Chapter 254, Laws of Utah 2000

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

Section 1. Section 17A-2-1326 is amended to read:

17A-2-1326. Administrative control board -- Powers -- Compensation.

(1) (a) The [~~governing authority~~] legislative body of a municipality or [~~the~~] county [~~legislative body~~] that has established a service district may, by resolution adopted at the time of the establishment or at any time afterwards, create an administrative control board for the service district.

(b) (i) The administrative control board shall consist of at least three and no more than seven persons[~~, each of whom is a qualified elector of the service district~~].

(ii) (A) If a county establishes a service district that includes all or part of one or more municipalities or one or more improvement districts organized under Title 17A, Chapter 2, Part 3, County Improvement Districts for Water, Sewerage, Flood Control, Electric and Gas, to provide the same service as the service district, the municipality or improvement district may appoint one member to represent it on any administrative control board created.

[~~(iii) That member~~] (B) A member appointed under Subsection (1)(b)(ii)(A) may, but need not, be a qualified elector of the service district.

(c) (i) If a service district is providing commodities, services, or facilities to an institution of higher education, that institution may appoint the number of members necessary to assure that it has at least 1/3 of the total of the board members to represent it on the board.

(ii) [~~Those members~~] Members appointed under Subsection (1)(c)(i) may, but need not, be qualified electors of the service district.

(d) The number of members of the administrative control board shall be increased by the number of improvement district, municipal, or institution of higher education members appointed.

(e) (i) Except as provided in Subsections (1)(b)(ii)(B), (c)(ii), and (e)(ii), each member of an administrative control board shall be a qualified elector of the service district.

(ii) A member of an administrative control board may be other than a qualified elector of the service district if at least 90% of the owners of property located within the service district are not qualified electors of the service district.

(2) Members of the administrative control board other than improvement district, municipal, or institution of higher education members shall be either appointed or elected as provided in Title 17A, Chapter 1, Part 3, Special District Board Selection Procedures.

(3) (a) If a service district was established to provide either water or sewerage service or both, the governing authority may by resolution adopted at or after the time of establishment, or if the service district was established before March 29, 1983, or within 90 days after that date, create an administrative control board according to Subsection (1).

(b) A resolution creating a service district for water or sewerage purposes adopted under Section 17A-2-1305 after March 29, 1983, shall identify all existing water and sewerage districts within the area of the proposed service district.

(4) (a) One-half of the members initially elected or appointed shall serve two-year terms and 1/2 shall serve four year terms.

(b) The initial terms shall be determined by lot.

(5) (a) The [~~governing authority~~] legislative body of the municipality or [~~the~~] county [~~legislative body~~] that established the service district may, by resolution, delegate any of its powers to the administrative control board, including the power to act as the governing authority of the service district and to exercise all or any of the powers provided for in Sections 17A-2-1314, 17A-2-1316, 17A-2-1320, and 17A-2-1321.

(b) Notwithstanding anything to the contrary in this part, the [~~governing authority~~] legislative body of the municipality or [~~the~~] county [~~legislative body~~] may not delegate the power to:

(i) levy a tax on the taxable property of the service district;

(ii) issue bonds payable from taxes;

(iii) call or hold an election for the authorization of the tax or bonds;

(iv) levy assessments for improvements in an improvement district created under Title 17A, Chapter 3, Part 3, Municipal Improvement Districts, or Title 17A, Chapter 3, Part 2, County Improvement Districts;

(v) issue interim warrants or bonds payable from those assessments; or

(vi) appoint a board of equalization under Section 17A-3-217 or Section 17A-3-317.

(c) The administrative control board may not hold an election, levy a tax or assessment, or issue bonds or interim warrants unless the county or municipal legislative body that created the district has approved.

(d) The county or municipal legislative body that created the district may revoke in whole or in part any power or authority delegated to an administrative control board or other officers or employees.

(6) Administrative control board members may receive compensation and reimbursement of expenses as provided in Section 17B-2-404 to the same extent as if they were members of a board of trustees of a local district.

CHAPTER 285
H. B. 179
Passed February 15, 2001
Approved March 19, 2001
Effective April 30, 2001

VOLUNTARY CONTRIBUTIONS ACT

Sponsor: Chad E. Bennion

This act modifies labor law and election law to address issues related to labor organizations' participation in campaigning and elections. This act requires labor organizations to establish a separate fund for political purposes and establishes registration and disclosure requirements for the fund. This act establishes criminal penalties. This act prohibits public employees from authorizing payroll deductions to a labor organization's political fund. This act makes technical changes.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:
20A-11-1401, Utah Code Annotated 1953
20A-11-1402, Utah Code Annotated 1953
20A-11-1403, Utah Code Annotated 1953
20A-11-1404, Utah Code Annotated 1953
20A-11-1405, Utah Code Annotated 1953

REPEALS AND REENACTS:
34-32-1, as last amended by Chapter 86, Laws of Utah 2000

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

Section 1. Section 20A-11-1401 is enacted to read:

Part 14. Voluntary Contributions Act

20A-11-1401. Title.

This part is known as the "Voluntary Contributions Act."

Section 2. Section 20A-11-1402 is enacted to read:

20A-11-1402. Definitions.

(1) As used in this part:

(a) "Ballot proposition" includes initiatives, referenda, proposed constitutional amendments, and any other items submitted to the voters for their approval or rejection.

(b) "Filing entity" means a candidate, officeholder, political action committee, political issues committee, political party, and each other entity required to report contributions under Title 20A, Chapter 11, Campaign and Financial Reporting Requirements.

(c) "Fund" means the separate segregated fund established by a labor organization for political purposes according to the procedures and requirements of this part.

(d) (i) "Labor organization" means any association or organization of employees, and any agency, employee representation committee, or plan in which employees participate that exists, in whole or in part, to advocate on behalf of employees about grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of employment.

(ii) Except as provided in Subsection (1)(d)(iii), "labor organization" includes each employee association and union for employees of public and private sector employers.

(iii) "Labor organization" does not include organizations governed by the National Labor Relations Act, 29 U.S.C. Sec. 151 et seq. or the Railroad Labor Act, 45 U.S.C. Sec 151 et seq.

(e) "Political activities" means electoral activities, independent expenditures, or expenditures made to any candidate, political party, political action committee, political issues committee, voter registration campaign, or any other political or legislative cause, including ballot propositions.

(f) "Union dues" means dues, fees, or other monies required as a condition of membership in a labor organization or as a condition of employment.

(2) Other terms defined in Section 20A-11-101 apply to this part.

Section 3. Section 20A-11-1403 is enacted to read:

20A-11-1403. Limits on labor organization contributions.

(1) Except as provided in Subsection (2), a labor organization may not expend union dues for political activities.

(2) (a) A labor organization may only make expenditures for political activities if the labor organization establishes a separate segregated fund that meets the requirements of this part.

(b) The labor organization shall ensure that:

(i) in soliciting contributions for the fund, the solicitor discloses, in clear and unambiguous language on the face of the solicitation, that contributions are voluntary and that the fund is a political fund and will be expended for political activities;

(ii) union dues are not used for political activities, transferred to the fund, or intermingled in any way with fund monies;

(iii) the cost of administering the fund is paid from fund contributions and not from union dues; and

(iv) each contribution is voluntary.

(3) At the time the labor organization is soliciting contributions for the fund from an employee, the labor organization shall:

(a) affirmatively inform the employee, in writing, of the fund's political purpose; and

(b) affirmatively inform the employee, in writing, of the employee's right to refuse to contribute

without fear of reprisal or loss of membership in the labor organization.

(4) The labor organization has the burden of proof to establish that the requirements of Subsections (2)(b) and (3) are met.

(5) Notwithstanding the requirements of Subsection (2)(b)(ii), a labor organization may use union dues to communicate directly with its own members about political candidates, ballot propositions, and other political issues.

Section 4. Section 20A-11-1404 is enacted to read:

20A-11-1404. Criminal acts -- Penalties.

(1) (a) It is unlawful for a labor organization to make expenditures for political activities by using contributions:

(i) secured by physical force or threat of force, job discrimination or threat of job discrimination, membership discrimination or threat of membership discrimination, or economic reprisals or threat of economic reprisals; or

(ii) from union dues except as provided in Subsection 20A-11-1403(5).

(b) When a labor organization is soliciting contributions for a fund from an employee, it is unlawful for a labor organization to fail to:

(i) affirmatively inform the employee in writing of the fund's political purpose; and

(ii) affirmatively inform the employee in writing of the employee's right to refuse to contribute without fear of reprisal or loss of membership in the labor organization.

(c) It is unlawful for a labor organization to solicit contributions for the fund from any person other than its members and their families.

(d) It is unlawful for a labor organization to pay a member for contributing to the fund by providing a bonus, expense account, rebate of union dues, or by any other form of direct or indirect compensation.

(2) Any person or entity violating this section is guilty of a class A misdemeanor.

Section 5. Section 20A-11-1405 is enacted to read:

20A-11-1405. Registration -- Disclosure.

Each fund established by a labor organization under this part shall:

(1) register as a political action committee as required by this chapter; and

(2) file the financial reports for political action committees required by this chapter.

Section 6. Section 34-32-1 is repealed and reenacted to read:

34-32-1. Voluntary contributions act -- Assignments to labor unions -- Effect.

(1) As used in this section:

(a) "Employee" means a person employed by any person, partnership, public, private, or municipal corporation, school district, the state, or any political subdivision of the state.

(b) "Employer" means the person or entity employing an employee.

(c) (i) "Labor organization" means any association or organization of employees, and any agency, employee representation committee, or plan in which employees participate that exists, in whole or in part, to advocate on behalf of employees about grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of employment.

(ii) Except as provided in Subsection (1)(c)(iii), "labor organization" includes each employee association and union for employees of public and private sector employers.

(iii) "Labor organization" does not include organizations governed by the National Labor Relations Act, 29 U.S.C. Sec. 151 et seq. or the Railroad Labor Act, 45 U.S.C. Sec. 151 et seq.

(d) "Public employee" means a person employed by the state, a municipal corporation, a county, a municipality, a school district, a special district, or any other political subdivision of the state.

(e) "Union dues" means dues, fees, or other monies required as a condition of membership in a labor organization or as a condition of employment.

(2) Except as prohibited by Subsection (6), an employee may elect to direct his employer to:

(a) deduct a specified sum of up to 3% per month from his wages; and

(b) pay the amount deducted to a labor organization as assignee.

(3) If the employee elects to direct the employer to make the deduction authorized by Subsection (2), the employee shall sign a statement that:

(a) directs the employer to make the deduction;

(b) identifies the amount of the deduction;

(c) identifies the person or entity to whom the deduction is to be paid; and

(d) directs the employer to pay the deduction to that person or entity.

(4) An employer who receives a signed statement shall:

(a) keep the statement on file;

(b) deduct the specified sum from the employee's salary; and

(c) pay the deducted amount to the labor organization designated by the employee.

(5) The employer shall continue to make and pay the deduction as directed by the employee until the employee revokes or modifies the deduction in writing.

(6) A public employee may not direct an employer to deduct monies from his wages and pay them to:

(a) a registered political action committee;

(b) a fund as defined by Section 20A-11-1402; or

(c) any intermediary that contributes to a fund as defined in Section 20A-11-1402.

(7) Nothing in this section prohibits an individual from making personal contributions to a registered political action committee or to a fund as defined by Section 20A-11-1402.

CHAPTER 286
H. B. 185
Passed February 15, 2001
Approved March 19, 2001
Effective April 30, 2001

REPEAL OF MAMMOGRAPHY QUALITY ASSURANCE ADVISORY COMMITTEE

Sponsor: Loraine T. Pace

This act modifies the Health Code. This act repeals the mammography quality assurance committee, makes conforming changes, and makes technical changes.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
26-21a-203, as last amended by Chapter 297, Laws of Utah 1993
26-21a-204, as last amended by Chapter 30, Laws of Utah 1992

REPEALS:
26-21a-202, as last amended by Chapter 243, Laws of Utah 1996

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

Section 1. Section 26-21a-203 is amended to read:

26-21a-203. Department rulemaking authority.

[~~(1) The department, in consultation with the advisory committee created under this part, shall prior to July 1, 1992, make recommendations to the Division of Occupational and Professional Licensing regarding rules the division shall make under Section 58-1-106 prior to January 1, 1993, relating to:~~]

[~~(a) establishing minimum qualifications for the following personnel involved in breast cancer screening or diagnostic mammography services:~~]

[~~(i) physician supervisors;~~]

[~~(ii) physicians who interpret results of mammography procedures;~~]

[~~(iii) radiologic technologists; and~~]

[~~(b) establishing quality assurance standards for:~~]

[~~(i) supervision by the physician supervisor; and~~]

[~~(ii) methods of reporting interpretations.~~]

[~~(2)~~] The department[~~, in consultation with the advisory committee created under this part,~~] shall [~~prior to July 1, 1992,~~] make rules under Title 63, Chapter 46a, Utah Administrative Rulemaking Act:

[~~(a)~~] (1) establishing quality assurance standards for all facilities performing screening or diagnostic mammography and developing mammogram x-ray films, including procedures for clinical follow-up of abnormal mammograms; and

[~~(b)~~] (2) providing for:

[~~(i)~~] (a) collection and periodic reporting of mammography examinations and clinical follow-up data to the department;

[~~(ii)~~] (b) certification and revocation of certification of mammogram facilities;

[~~(iii)~~] (c) inspection of mammogram facilities, including entry of agents of the department into the facilities for inspections;

[~~(iv)~~] (d) setting fees for certification; and

[~~(v)~~] (e) an appeal process regarding department certification decisions.

[~~(3) The department shall review and revise as necessary the quality assurance standard rules using current scientific knowledge, but at least every two years.~~]

[~~(4) The department shall coordinate its activities under this part with the registration, licensing, and inspection of radiation machines used to perform mammograms under Section 26-21a-202.~~]

Section 2. Section 26-21a-204 is amended to read:

26-21a-204. Mammogram provider certification.

(1) [~~On and after July 1, 1992, a~~] A mammogram may only be performed in a facility the department certifies as meeting:

(a) the qualifications and standards under Section 26-21a-203; and

(b) the registration, licensing, and inspection requirements for radiation sources under Section 19-3-104.

(2) Facilities desiring to perform mammograms shall request certification as a mammogram provider by the department under procedures established by department rule.

Section 3. Repealer.

This act repeals:

Section 26-21a-202, Advisory committee -- Membership -- Expenses.

CHAPTER 287
H. B. 189
Passed February 21, 2001
Approved March 19, 2001
Effective April 30, 2001

FEDERAL GOVERNMENT ACQUISITION OF REAL PROPERTY IN THE STATE

Sponsor: Bradley T. Johnson

This act enacts provisions that prohibit the federal government from acquiring land in the state from any state agency without the approval of the Legislature. The act expands the duties of the Constitutional Defense Council. The act creates a policy for the use or disposition of public lands within the state.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:
63-34b-101, Utah Code Annotated 1953
63C-4-105, Utah Code Annotated 1953

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

Section 1. Section 63-34b-101 is enacted to read:

63-34b-101. Federal government acquisition of real property in the state.

(1) As used in this section:

(a) "Agency" is defined in Section 63-38b-101.

(b) "Agency" includes:

(i) the School and Institutional Trust Lands Administration created in Section 53C-1-201; and

(ii) the School and Institutional Trust Lands Board of Trustees created in Section 53C-1-202.

(2) (a) Before legally binding the state by executing an agreement to sell or transfer to the United States government 10,000 or more acres of any state lands or school and institutional trust lands, an agency shall submit the agreement or proposal:

(i) to the Legislature for its approval or rejection; or

(ii) in the interim, to the Legislative Management Committee for review of the agreement or proposal.

(b) The Legislative Management Committee may:

(i) recommend that the agency execute the agreement or proposal;

(ii) recommend that the agency reject the agreement or proposal; or

(iii) recommend to the governor that he call a special session of the Legislature to review and approve or reject the agreement or proposal.

(3) Before legally binding the state by executing an agreement to sell or transfer to the United States government less than 10,000 acres of any state lands or school and institutional trust lands, an agency shall report to the Natural Resources, Agriculture, and Environment Interim Committee.

(4) Notwithstanding Subsections (2) and (3), the Legislature approves all conveyances of school trust lands to the United States government made for the purpose of completing the Red Cliffs Desert Reserve in Washington County.

Section 2. Section 63C-4-105 is enacted to read:

63C-4-105. Policy for public lands within the state.

(1) It is the policy of the state to claim and preserve by lawful means the rights of the state and its citizens to determine and affect the disposition and use of federal lands within the state as those rights are granted by the United States Constitution, the Utah Enabling Act, and other applicable law.

(2) The Constitutional Defense Council shall study, formulate, and recommend appropriate legal strategies and arguments to further this policy.

CHAPTER 288
H. B. 197
Passed February 15, 2001
Approved March 19, 2001
Effective July 1, 2001

WAIVER OF TUITION BY STATE COLLEGE OR UNIVERSITY

Sponsor: Katherine M. Bryson

This act modifies provisions related to the State System of Higher Education by increasing the number of tuition waivers of the resident portion of tuition granted to meritorious nonresident students. This act takes effect on July 1, 2001.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
53B-8-101, as last amended by Chapter 7, Laws of Utah 2000

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

Section 1. Section 53B-8-101 is amended to read:

53B-8-101. Waiver of tuition.

(1) The president of each institution may waive all or part of the tuition in behalf of meritorious or impecunious resident students to an amount not exceeding 10% of the total amount of tuition which, in the absence of the waivers, would have been collected from all Utah resident students at the institution.

(2) (a) Each academic year the president of each of the following institutions may waive all or part of the resident portion of the tuition in behalf of the additional number of meritorious nonresident students set forth below who are not current recipients of the waiver:

Institution	Number of Nonresident Students
the University of Utah	190
Utah State University	165
Weber State University	135
Southern Utah University	68
Snow College	18
Dixie State College of Utah	[~~18~~] 30
the College of Eastern Utah	18
Utah Valley State College	[~~22~~] 114
Salt Lake Community College	[~~22~~] 43

(b) (i) The president may continue to waive the resident portion of the tuition during the entire time the affected meritorious nonresident student remains an undergraduate student in good standing at the institution.

(ii) The resident portion of the tuition for each nonresident student is equal to the tuition for resident students at the institution.

[~~(b)~~] (c) The president may waive the nonresident portion of tuition for a meritorious nonresident student receiving a waiver under Subsection (2)(a) after completion of the student's first year of full-time study at the institution.

[~~(c)~~] (d) (i) In addition to the waivers authorized by Subsections (2)(a) and [~~(b)~~] (c), the president may waive all or part of the nonresident portion of tuition for a meritorious nonresident student during the student's first year of full-time study at the institution.

(ii) The number of these nonresident waivers for each institution is limited to the percentage of nonresident students at each institution times the nonresident student number allowed under Subsection (2)(a).

(3) Upon recommendation of the board, the president may grant additional full or partial tuition waivers to encourage students to enroll for instruction in occupations critical to the state for which trained personnel are in short supply.

(4) The president may waive all or part of the difference between resident and nonresident tuition in the case of meritorious graduate students and nonresident summer school students.

(5) The board shall submit annual budget appropriation requests for each institution which include requests for funds sufficient in amount to equal the estimated loss of dedicated credits that would be realized if all of the tuition waivers authorized by Subsection (2) were granted.

Section 2. Effective date.

This act takes effect on July 1, 2001.

CHAPTER 289
H. B. 201
Passed February 22, 2001
Approved March 19, 2001
Effective April 30, 2001

REVISIONS TO DRIVING UNDER THE INFLUENCE

Sponsor: A. Lamont Tyler

This act modifies the Motor Vehicles Code by expanding the felony driving while intoxicated violations. This act expands the time frame for counting prior DUI convictions. This act restricts public access to Driver License Division records to a six-year period.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
41-6-44, as last amended by Chapters 333 and 334, Laws of Utah 2000
41-6-44.7, as last amended by Chapter 334, Laws of Utah 2000
53-3-109, as enacted by Chapter 255, Laws of Utah 2000

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

Section 1. Section 41-6-44 is amended to read:

41-6-44. Driving under the influence of alcohol, drugs, or with specified or unsafe blood alcohol concentration -- Measurement of blood or breath alcohol -- Criminal punishment -- Arrest without warrant -- Penalties -- Suspension or revocation of license.

(1) As used in this section:

(a) "educational series" means an educational series obtained at a substance abuse program that is approved by the Board of Substance Abuse in accordance with Section 62A-8-107;

(b) "prior conviction" means any conviction for a violation of:

(i) this section;

(ii) alcohol-related reckless driving under Subsections (9) and (10);

(iii) local ordinances similar to this section or alcohol-related reckless driving adopted in compliance with Section 41-6-43;

(iv) automobile homicide under Section 76-5-207; or

(v) statutes or ordinances in effect in any other state, the United States, or any district, possession, or territory of the United States which would constitute a violation of this section or alcohol-related reckless driving if committed in this state, including punishments administered under 10 U.S.C. Sec. 815;

(c) "screening and assessment" means a substance abuse addiction and dependency screening and assessment obtained at a substance abuse program that is approved by the Board of Substance Abuse in accordance with Section 62A-8-107;

(d) "serious bodily injury" means bodily injury that creates or causes serious permanent disfigurement, protracted loss or impairment of the function of any bodily member or organ, or creates a substantial risk of death;

(e) "substance abuse treatment" means treatment obtained at a substance abuse program that is approved by the Board of Substance Abuse in accordance with Section 62A-8-107;

(f) "substance abuse treatment program" means a state licensed substance abuse program;

(g) a violation of this section includes a violation under a local ordinance similar to this section adopted in compliance with Section 41-6-43; and

(h) the standard of negligence is that of simple negligence, the failure to exercise that degree of care that an ordinarily reasonable and prudent person exercises under like or similar circumstances.

(2) (a) A person may not operate or be in actual physical control of a vehicle within this state if the person:

(i) has sufficient alcohol in his body that a chemical test given within two hours of the alleged operation or physical control shows that the person has a blood or breath alcohol concentration of .08 grams or greater; or

(ii) is under the influence of alcohol, any drug, or the combined influence of alcohol and any drug to a degree that renders the person incapable of safely operating a vehicle.

(b) The fact that a person charged with violating this section is or has been legally entitled to use alcohol or a drug is not a defense against any charge of violating this section.

(c) Alcohol concentration in the blood shall be based upon grams of alcohol per 100 milliliters of blood, and alcohol concentration in the breath shall be based upon grams of alcohol per 210 liters of breath.

(3) (a) A person convicted the first or second time of a violation of Subsection (2) is guilty of a:

(i) class B misdemeanor; or

(ii) class A misdemeanor if the person:

(A) has also inflicted bodily injury upon another as a proximate result of having operated the vehicle in a negligent manner; or

(B) had a passenger under 16 years of age in the vehicle at the time of the offense.

(b) A person convicted of a violation of Subsection (2) is guilty of a third degree felony if the person has also inflicted serious bodily injury upon another as a proximate result of having operated the vehicle in a negligent manner.

(4) (a) As part of any sentence imposed the court shall, upon a first conviction, impose a mandatory jail sentence of not less than 48 consecutive hours.

(b) The court may, as an alternative to all or part of a jail sentence, require the person to:

(i) work in a compensatory-service work program for not less than 24 hours; or

(ii) participate in home confinement through the use of electronic monitoring in accordance with Subsection (13).

(c) In addition to the jail sentence, compensatory-service work program, or home confinement, the court shall:

(i) order the person to participate in a screening and assessment;

(ii) order the person to participate in an educational series if the court does not order substance abuse treatment as described under Subsection (4)(d); and

(iii) impose a fine of not less than $700.

(d) The court may order the person to obtain substance abuse treatment if the substance abuse treatment program determines that substance abuse treatment is appropriate.

(e) The court may order probation for the person in accordance with Subsection (14).

(5) (a) If a person is convicted under Subsection (2) within [~~six~~] ten years of a prior conviction under this section, the court shall as part of any sentence impose a mandatory jail sentence of not less than 240 consecutive hours.

(b) The court may, as an alternative to all or part of a jail sentence, require the person to:

(i) work in a compensatory-service work program for not less than 240 hours; or

(ii) participate in home confinement through the use of electronic monitoring in accordance with Subsection (13).

(c) In addition to the jail sentence, compensatory-service work program, or home confinement, the court shall:

(i) order the person to participate in a screening and assessment;

(ii) order the person to participate in an educational series if the court does not order substance abuse treatment as described under Subsection (5)(d); and

(iii) impose a fine of not less than $800.

(d) The court may order the person to obtain substance abuse treatment if the substance abuse treatment program determines that substance abuse treatment is appropriate.

(e) The court may order probation for the person in accordance with Subsection (14).

(6) (a) A [~~third or subsequent~~] conviction for a violation of Subsection (2) is a third degree felony if it is committed:

(i) within [~~six~~] ten years of two or more prior convictions under this section [~~is a third degree felony.~~]; or

(ii) at any time after a conviction of:

(A) automobile homicide under Section 76-5-207 that is committed after July 1, 2001; or

(B) a felony violation under this section that is committed after July 1, 2001.

(b) Under Subsection (3)(b) or (6)(a), if the court suspends the execution of a prison sentence and places the defendant on probation the court shall impose:

(i) a fine of not less than $1,500; and

(ii) a mandatory jail sentence of not less than 1,500 hours.

(c) For Subsection (6)(a) or (b), the court shall impose an order requiring the person to obtain a screening and assessment and substance abuse treatment at a substance abuse treatment program providing intensive care or inpatient treatment and long-term closely supervised follow-through after treatment for not less than 240 hours.

(d) In addition to the penalties required under Subsection (6)(b), the court may require the person to participate in home confinement through the use of electronic monitoring in accordance with Subsection (13).

(7) The mandatory portion of any sentence required under this section may not be suspended and the convicted person is not eligible for parole or probation until any sentence imposed under this section has been served. Probation or parole resulting from a conviction for a violation under this section may not be terminated.

(8) (a) (i) The provisions in Subsections (4), (5), and (6) that require a sentencing court to order a convicted person to: participate in a screening and assessment; and an educational series; obtain, in the discretion of the court, substance abuse treatment; obtain, mandatorily, substance abuse treatment; or do a combination of those things, apply to a conviction for a violation of Section 41-6-44.6 or 41-6-45 under Subsection (9).

(ii) The court shall render the same order regarding screening and assessment, an educational series, or substance abuse treatment in connection with a first, second, or subsequent conviction under Section 41-6-44.6 or 41-6-45 under Subsection (9), as the court would render in connection with applying respectively, the first, second, or subsequent conviction requirements of Subsections (4), (5), and (6).

(b) If a person fails to complete all court ordered screening and assessment, educational series, and substance abuse treatment, or fails to pay all fines and fees, including fees for restitution and treatment costs, the court shall notify the Driver

License Division of a failure to comply. Upon receiving the notification, the division shall suspend the person's driving privilege in accordance with Subsections 53-3-221(2) and (3).

(9) (a) (i) When the prosecution agrees to a plea of guilty or no contest to a charge of a violation of Section 41-6-45, of an ordinance enacted under Section 41-6-43, or of Section 41-6-44.6 in satisfaction of, or as a substitute for, an original charge of a violation of this section, the prosecution shall state for the record a factual basis for the plea, including whether or not there had been consumption of alcohol, drugs, or a combination of both, by the defendant in connection with the violation.

(ii) The statement is an offer of proof of the facts that shows whether there was consumption of alcohol, drugs, or a combination of both, by the defendant, in connection with the violation.

(b) The court shall advise the defendant before accepting the plea offered under this Subsection (9)(b) of the consequences of a violation of Section 41-6-44.6 or of Section 41-6-45.

(c) The court shall notify the Driver License Division of each conviction of Section 41-6-44.6 or 41-6-45 entered under this Subsection (9).

(10) A peace officer may, without a warrant, arrest a person for a violation of this section when the officer has probable cause to believe the violation has occurred, although not in his presence, and if the officer has probable cause to believe that the violation was committed by the person.

(11) (a) The Driver License Division shall:

(i) suspend for 90 days the operator's license of a person convicted for the first time under Subsection (2);

(ii) revoke for one year the license of a person convicted of any subsequent offense under Subsection (2) if the violation is committed within a period of [~~six~~] ten years from the date of the prior violation; and

(iii) suspend or revoke the license of a person as ordered by the court under Subsection (12).

(b) The Driver License Division shall subtract from any suspension or revocation period the number of days for which a license was previously suspended under Section 53-3-223 or 53-3-231, if the previous suspension was based on the same occurrence upon which the record of conviction is based.

(12) (a) In addition to any other penalties provided in this section, a court may order the operator's license of a person who is convicted of a violation of Subsection (2) to be suspended or revoked for an additional period of 90 days, 180 days, or one year to remove from the highways those persons who have shown they are safety hazards.

(b) If the court suspends or revokes the person's license under this Subsection (12)(b), the court shall prepare and send to the Driver License Division an order to suspend or revoke that person's driving privileges for a specified period of time.

(13) (a) If the court orders a person to participate in home confinement through the use of electronic monitoring, the electronic monitoring shall alert the appropriate corrections, probation monitoring agency, law enforcement units, or contract provider of the defendant's whereabouts.

(b) The electronic monitoring device shall be used under conditions which require:

(i) the person to wear an electronic monitoring device at all times;

(ii) that a device be placed in the home or other specified location of the person, so that the person's compliance with the court's order may be monitored; and

(iii) the person to pay the costs of the electronic monitoring.

(c) The court shall order the appropriate entity described in Subsection (13)(e) to place an electronic monitoring device on the person and install electronic monitoring equipment in the residence of the person or other specified location.

(d) The court may:

(i) require the person's electronic home monitoring device to include a substance abuse testing instrument;

(ii) restrict the amount of alcohol the person may consume during the time the person is subject to home confinement;

(iii) set specific time and location conditions that allow the person to attend school educational classes, or employment and to travel directly between those activities and the person's home; and

(iv) waive all or part of the costs associated with home confinement if the person is determined to be indigent by the court.

(e) The electronic monitoring described in this section may either be administered directly by the appropriate corrections agency, probation monitoring agency, or by contract with a private provider.

(f) The electronic monitoring provider shall cover the costs of waivers by the court under Subsection (13)(c)(iv).

(14) (a) If supervised probation is ordered under Subsection (4)(e) or (5)(e):

(i) the court shall specify the period of the probation;

(ii) the person shall pay all of the costs of the probation; and

(iii) the court may order any other conditions of the probation.

(b) The court shall provide the probation described in this section by contract with a probation monitoring agency or a private probation provider.

(c) The probation provider described in Subsection (14)(b) shall monitor the person's compliance with all conditions of the person's sentence, conditions of probation, and court orders received under this article and shall notify the court of any failure to comply with or complete that sentence or those conditions or orders.

(d) (i) The court may waive all or part of the costs associated with probation if the person is determined to be indigent by the court.

(ii) The probation provider described in Subsection (14)(b) shall cover the costs of waivers by the court under Subsection (14)(d)(i).

(15) If a person is convicted of a violation of Subsection (2) and there is admissible evidence that the person had a blood alcohol level of .16 or higher, then if the court does not order:

(a) treatment as described under Subsection (4)(d), (5)(d), or (6)(b)(iii), then the court shall enter the reasons on the record; and

(b) the following penalties, the court shall enter the reasons on the record:

(i) the installation of an ignition interlock system as a condition of probation for the person in accordance with Section 41-6-44.7; or

(ii) the imposition of home confinement through the use of electronic monitoring in accordance with Subsection (13).

Section 2. Section 41-6-44.7 is amended to read:

41-6-44.7. Ignition interlock devices -- Use -- Probationer to pay cost -- Impecuniosity -- Fee.

(1) As used in this section:

(a) "Commissioner" means the commissioner of the Department of Public Safety.

(b) "Ignition interlock system" or "system" means a constant monitoring device or any similar device certified by the commissioner that prevents a motor vehicle from being started without first determining the driver's breath alcohol concentration.

(c) "Probation provider" means the supervisor and monitor of the ignition interlock system required as a condition of probation or as otherwise ordered by the court who contracts with the court in accordance with Subsections 41-6-44(14)(b) and (c).

(2) (a) In addition to any other penalties imposed under Section 41-6-44, and in addition to any requirements imposed as a condition of probation, the court may require that any person who is convicted of violating Section 41-6-44 and who is granted probation may not operate a motor vehicle during the period of probation unless that motor vehicle is equipped with a functioning, certified ignition interlock system installed and calibrated so that the motor vehicle will not start if the operator's blood alcohol concentration exceeds a level ordered by the court.

(b) If a person convicted of violating Section 41-6-44 was under the age of 21 when the violation occurred, the court shall order the installation of the ignition interlock system as a condition of probation.

(c) (i) If a person is convicted of a violation of Section 41-6-44 within [~~six~~] ten years of a prior conviction of that section, the court shall order the installation of the ignition interlock system, at the person's expense, for all motor vehicles registered to that person and all motor vehicles operated by that person for three years from the date of conviction.

(ii) The division shall post the ignition interlock restriction on the electronic record available to law enforcement.

(3) Except as provided in Subsection (2)(c), if the court imposes the use of an ignition interlock system as a condition of probation, the court shall:

(a) stipulate on the record the requirement for and the period of the use of an ignition interlock system;

(b) order that an ignition interlock system be installed on each motor vehicle owned or operated by the probationer, at the probationer's expense;

(c) order the probationer to submit his driver license to the Driver License Division in accordance with Subsection (5);

(d) immediately notify the Driver License Division and the person's probation provider of the order; and

(e) require the probationer to provide proof of compliance with the court's order to the probation provider within 30 days of the order.

(4) (a) The probationer shall provide timely proof of installation within 30 days of an order imposing the use of a system or show cause why the order was not complied with to the court or to the probationer's probation provider.

(b) The probation provider shall notify the court of failure to comply under Subsection (4)(a).

(c) For failure to comply under Subsection (4)(a) or upon receiving the notification under Subsection (4)(b), the court shall order the Driver License Division to suspend the probationer's driving privileges for the remaining period during which the compliance was imposed.

(d) Cause for failure to comply means any reason the court finds sufficiently justifiable to excuse the probationer's failure to comply with the court's order.

(5) (a) If use of an ignition interlock system is required under this section, the division may not issue, reinstate, or renew the driver license of that person unless that requirement is coded on the person's driver license.

(b) (i) If the division receives a notice that a person with a valid driver license that does not

require a driver license withdrawal is required to use an ignition interlock system, the division shall notify the person that he has ten calendar days to apply to the division for an ignition interlock system requirement coded on the license.

(ii) The division shall suspend the driver license of the person after the ten-day period until the person applies to the division for an ignition interlock system requirement coded on the license.

(6) (a) Any probationer required to install an ignition interlock system shall have the system monitored by the manufacturer or dealer of the system for proper use and accuracy at least semiannually and more frequently as the court may order.

(b) (i) A report of the monitoring shall be issued by the manufacturer or dealer to the court or the person's probation provider.

(ii) The report shall be issued within 14 days following each monitoring.

(7) (a) If an ignition interlock system is ordered installed, the probationer shall pay the reasonable costs of leasing or buying and installing and maintaining the system.

(b) A probationer may not be excluded from this section for inability to pay the costs, unless:

(i) the probationer files an affidavit of impecuniosity; and

(ii) the court enters a finding that the probationer is impecunious.

(c) In lieu of waiver of the entire amount of the cost, the court may direct the probationer to make partial or installment payments of costs when appropriate.

(d) Subject to appropriation, the department shall lease or purchase the ignition interlock system and reimburse each installer maintaining the system provided to probationers for whom payment of costs has been waived or deferred on the grounds of indigency.

(8) (a) An additional fee of $100 shall be paid to the court by each probationer ordered to purchase, install, use, and maintain an ignition interlock system under this section.

(b) The fee shall be deposited with the department as a dedicated credit for the support costs incurred for indigent individuals under Subsection (7)(d).

(c) Failure to pay the fees required under this section shall, unless excused, constitute sufficient basis for a finding by the court at a hearing that the probationer has failed to comply with the terms of probation.

(9) (a) If a probationer is required in the course and scope of employment to operate a motor vehicle owned by the probationer's employer, the probationer may operate that motor vehicle in the course and scope of employment without installation of an ignition interlock system only if the employer has been notified that the employee is restricted and the employee has proof of the notification in his possession while operating the employer's motor vehicle.

(b) (i) To the extent that an employer-owned motor vehicle is made available to a probationer subject to this section for personal use, no exemption under this section shall apply.

(ii) A probationer intending to operate an employer-owned motor vehicle for personal use and who is restricted to the operation of a motor vehicle equipped with an ignition interlock system shall notify the employer and obtain consent in writing from the employer to install a system in the employer-owned motor vehicle.

(c) A motor vehicle owned by a business entity that is all or partly owned or controlled by a probationer subject to this section is not a motor vehicle owned by the employer and does not qualify for an exemption under this Subsection (9).

(10) Upon conviction for violation of this section, the court shall notify the Driver License Division to immediately suspend the probationer's license to operate a motor vehicle for the remainder of the period of probation.

(11) (a) It is a class B misdemeanor for a person to:

(i) circumvent or tamper with the operation of an ignition interlock system;

(ii) knowingly furnish a motor vehicle without an ignition interlock system to someone who is not authorized to drive a motor vehicle unless the motor vehicle is equipped with an ignition interlock system that is in working order;

(iii) rent, lease, or borrow a motor vehicle without an ignition interlock system if a driving restriction is imposed under this section;

(iv) request another person to blow into an ignition interlock system, if the person is required to have a system and the person requests or solicits another to blow into the system to start the motor vehicle in order to circumvent the system;

(v) blow into an ignition interlock system or start a motor vehicle equipped with an ignition interlock system for the purpose of providing an operable motor vehicle to another person required to have a system; and

(vi) advertise for sale, offer for sale, sell, or lease an ignition interlock system unless the system has been certified by the commissioner and the manufacturer of the system has affixed a warning label, as approved by the commissioner on the system, stating that the tampering, circumventing, or other misuse of the system is a class B misdemeanor.

(b) This Subsection (11) does not apply if the starting of a motor vehicle, or the request to start a motor vehicle, equipped with an ignition interlock system is done for the purpose of safety or mechanical repair of the system or the motor vehicle and the person subject to the court order does not drive the motor vehicle.

(12) (a) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commissioner shall make rules setting standards for the certification of ignition interlock systems.

(b) The standards shall require that the system:

(i) not impede the safe operation of the motor vehicle;

(ii) have features that make circumventing difficult and that do not interfere with the normal use of the motor vehicle;

(iii) require a deep lung breath sample as a measure of breath alcohol concentration;

(iv) prevent the motor vehicle from being started if the driver's breath alcohol concentration exceeds an ordered level;

(v) work accurately and reliably in an unsupervised environment;

(vi) resist tampering and give evidence if tampering is attempted;

(vii) operate reliably over the range of motor vehicle environments; and

(viii) be manufactured by a party who will provide liability insurance.

(c) The commissioner may adopt in whole or in part, the guidelines, rules, studies, or independent laboratory tests relied upon in certification of ignition interlock systems by other states.

(d) A list of certified systems shall be published by the commissioner and the cost of certification shall be borne by the manufacturers or dealers of ignition interlock systems seeking to sell, offer for sale, or lease the systems.

(e) In accordance with Section 63-38-3.2, the commissioner may establish an annual dollar assessment against the manufacturers of ignition interlock systems distributed in the state for the costs incurred in certifying. The assessment shall be apportioned among the manufacturers on a fair and reasonable basis.

(13) There shall be no liability on the part of, and no cause of action of any nature shall arise against, the state or its employees in connection with the installation, use, operation, maintenance, or supervision of an interlock ignition system as required under this section.

Section 3. Section 53-3-109 is amended to read:

53-3-109. Records -- Access -- Fees -- Rulemaking.

(1) (a) Except as provided in this section, all records of the division shall be classified and disclosed in accordance with Title 63, Chapter 2, Government Records Access and Management Act.

(b) The division may only disclose personal identifying information:

(i) when the division determines it is in the interest of the public safety to disclose the information; and

(ii) in accordance with the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. Chapter 123.

(2) A person who receives personal identifying information shall be advised by the division that the person may not:

(a) disclose the personal identifying information from that record to any other person; or

(b) use the personal identifying information from that record for advertising or solicitation purposes.

(3) The division may:

(a) collect fees in accordance with Section 53-3-105 for searching and compiling its files or furnishing a report on the driving record of a person; and

(b) prepare under the seal of the division and deliver upon request, a certified copy of any record of the division, and charge a fee under Section 63-38-3.2 for each document authenticated.

(4) Each certified copy of a driving record furnished in accordance with this section is admissible in any court proceeding in the same manner as the original.

(5) (a) A driving record furnished under this section may only report on the driving record of a person for a period of six years.

(b) Subsection (5)(a) does not apply to court or law enforcement reports and to reports of commercial driver license violations.

[~~(5)~~] (6) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the division may make rules to designate what information shall be included in a report on the driving record of a person.

CHAPTER 290
H. B. 205
Passed February 1, 2001
Approved March 19, 2001
Effective April 30, 2001

EMPLOYERS' REINSURANCE FUND SPECIAL ASSESSMENT

Sponsor: Gerry A. Adair

This act modifies the Revenue and Tax Code to reinstate the Employers' Reinsurance Fund Special Assessment beginning in the 2002 calendar year. This act has a repeal date for the special assessment of January 1, 2005.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
63-55b-159, as renumbered and amended by Chapter 21, Laws of Utah 1999

ENACTS:
59-9-101.3, Utah Code Annotated 1953

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

Section 1. Section 59-9-101.3 is enacted to read:

59-9-101.3. Employers' Reinsurance Fund special assessment.

(1) For purposes of this section:

(a) "Calendar year" means a time period beginning January 1 and ending December 31 during which an assessment is imposed.

(b) "Total workers' compensation premium income" has the same meaning as under Subsection 59-9-101(2).

(2) (a) For calendar years beginning on January 1, 2002, through December 31, 2004, the following shall pay to the commission, on or before March 31 of each year, an assessment imposed by the Labor Commission under Subsection (3):

(i) an admitted insurer writing workers' compensation insurance in this state, including the Workers' Compensation Fund created under Title 31A, Chapter 33, Workers' Compensation Fund; and

(ii) an employer authorized under Section 34A-2-201 to pay workers' compensation direct.

(b) The assessment imposed under Subsection (3) shall be in addition to:

(i) the premium assessment imposed under Subsection 59-9-101(2); and

(ii) the assessment imposed under Section 34A-2-202.

(3) (a) If the conditions described in Subsection (3)(b) are met, the Labor Commission may impose an assessment in accordance with Subsections (3)(c) and (d) of up to 2% of:

(i) the total workers' compensation premium income received by the insurer from workers' compensation insurance in this state during the preceding calendar year; or

(ii) if authorized under Section 34A-2-201 to pay workers' compensation direct, the amount calculated under Section 34A-2-202 for a self-insured employer that is equivalent to the total workers' compensation premium income.

(b) The Labor Commission may impose the assessment described in Subsection (3)(a) if:

(i) the Labor Commission determines that:

(A) all admitted insurers writing workers' compensation insurance in this state shall pay the maximum 7.25% of the premium income under Subsection 59-9-101(2)(c)(i); and

(B) all employers authorized to pay compensation direct shall pay the maximum 7.25% assessment under Section 34A-2-202; and

(ii) the maximum 7.25% of the premium income is insufficient to:

(A) provide payment of benefits and expenses from the Employers' Reinsurance Fund to project a funded condition of the Employers' Reinsurance Fund with assets greater than liabilities by no later than June 30, 2025; or

(B) maintain the minimum approximate assets required in Subsection 59-9-101(2)(d)(iv).

(c) On or before each October 15 of the preceding year and following a public hearing, the Labor Commission shall determine:

(i) whether an assessment will be imposed under this section for a calendar year; and

(ii) if the assessment will be imposed, the percentage of the assessment applicable for the calendar year.

(d) The Labor Commission shall:

(i) base its determination on the recommendations of the qualified actuary required in Subsection 59-9-101(2)(d)(i); and

(ii) take into consideration the recommended premium assessment rate recommended by the actuary under Subsection 59-9-101(2)(d)(ii).

(4) An employer shall aggregate all assessments imposed under this section and Section 34A-2-202 or 59-9-101 to determine whether the total assessment obligation shall be paid in quarterly installments in accordance with Sections 34A-2-202 and 59-9-104.

(5) The commission shall promptly remit the assessment collected under Subsection (2) to the state treasurer for credit to the Employers' Reinsurance Fund created under Section 34A-2-702.

Section 2. Section 63-55b-159 is amended to read:

63-55b-159. Repeal dates -- Title 59.

(1) Section 59-7-604 is repealed January 1, 2002.

(2) Section 59-7-611 and Sections 59-10-601 through 59-10-604 are repealed January 1, 2001.

(3) Section [~~59-9-101.1~~] 59-9-101.3 is repealed January 1, [~~2001~~] 2005, and the [~~department~~] Labor Commission may not impose an assessment under Section [~~59-9-101.1~~] 59-9-101.3 after December 31, [~~2000~~] 2004.

CHAPTER 291
H. B. 207
Passed February 1, 2001
Approved March 19, 2001
Effective April 30, 2001

COAL MINE REGULATION BY LABOR COMMISSION

Sponsor: Gerry A. Adair

This act modifies provisions related to the Labor Code and Mines and Mining by addressing the Labor Commission's obligation to regulate mining activities and making technical changes.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
34A-1-407, as renumbered and amended by Chapter 375, Laws of Utah 1997

REPEALS:
40-2-1, as last amended by Chapter 375, Laws of Utah 1997
40-2-1.5, as last amended by Chapter 375, Laws of Utah 1997
40-2-2, as last amended by Chapter 375, Laws of Utah 1997
40-2-3, as last amended by Chapter 375, Laws of Utah 1997

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

Section 1. Section 34A-1-407 is amended to read:

34A-1-407. Investigation of places of employment -- Violations of rules or orders -- Temporary injunction.

(1) (a) Upon complaint by any person that any employment or place of employment, regardless of the number of persons employed, is not safe for any employee or is in violation of state law, the commission shall refer the complaint for investigation and administrative action under:

(i) Chapter 2, Workers' Compensation Act;

(ii) Chapter 3, Utah Occupational Disease Act;

(iii) Chapter 5, Utah Antidiscrimination Act;

(iv) Chapter 6, Utah Occupational Safety and Health Act;

(v) Chapter 7, Safety; or

(vi) any combination of Subsections (1)(a)(i) through (v).

(b) [~~For~~] Notwithstanding Subsection (1)(a) and Title 40, Chapter 2, Coal Mines, for any Utah mine subject to the Federal Mine Safety and Health Act, the sole duty of the commission is to notify the appropriate federal agency of the complaint.

(2) Notwithstanding any other penalty provided in this title, if any employer, after receiving notice, fails or refuses to obey the rules or order of the commission relative to the protection of the life, health, or safety of any employee, the district court of Utah is empowered, upon petition of the commission to issue, ex parte and without bond, a temporary injunction restraining the further operation of the employer's business.

Section 2. Repealer.

This act repeals:

Section 40-2-1, Inspection of mines.

Section 40-2-1.5, Labor Commission to adopt federal safety and health standards for coal mining.

Section 40-2-2, Right of examination and inspection.

Section 40-2-3, Coal mine operators to submit reports and emergency preparedness plans.

CHAPTER 292
H. B. 211
Passed February 27, 2001
Approved March 19, 2001
Effective July 1, 2001

TUITION WAIVERS FOR TEACHERS

Sponsor: Wayne A. Harper

This act modifies provisions related to the State System of Public Education by granting tuition waivers to educators for courses taken at higher education institutions that satisfy professional development requirements for retaining a license to teach. The act takes effect July 1, 2001.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
53A-6-104, as last amended by Chapter 331, Laws of Utah 2000

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

Section 1. Section 53A-6-104 is amended to read:

53A-6-104. Board licensure.

(1) (a) The board may issue licenses for educators.

(b) (i) A person employed in a position that requires licensure by the board shall hold the appropriate license.

(ii) The board shall issue a letter of authorization permitting a person to be employed as a classroom teacher if requested by a local school board which has determined that:

(A) the person has outstanding professional qualifications; and

(B) employment of the person would permit the school district to better meet the educational goals of students.

(2) (a) The board may by rule rank, endorse, or otherwise classify licenses and establish the criteria for obtaining and retaining licenses.

(b) (i) The board shall make rules requiring participation in professional development activities in order for educators to retain their licenses.

(ii) An educator who is enrolling in a course of study at an institution of higher education within the state system to satisfy the professional development requirements of Subsection (2)(b)(i) is exempt from tuition, except for a semester registration fee established by the State Board of Regents, if:

(A) the educator is enrolled on the basis of surplus space in the class after regularly enrolled students have been assigned and admitted to available classroom space in accordance with regular procedures and normal teaching loads in that space within the institution's approved budget; and

(B) enrollments are determined by each institution under rules and guidelines established by the State Board of Regents in accordance with findings of fact that space is available for the educator's enrollment.

(3) Unless suspended or revoked by the board, or surrendered by the educator, a license is valid for the following period:

(a) a letter of authorization is valid for one year, or a shorter period as specified by the board, subject to renewal by the board for a total of not more than four years of full-time equivalent employment;

(b) a level 1 license is valid for three years, subject to renewal by the board for a total of not more than six years;

(c) a level 2 license is valid for five years, subject to renewal by the board; and

(d) a level 3 license is valid for seven years, subject to renewal by the board.

Section 2. Effective date.

This act takes effect on July 1, 2001.

CHAPTER 293
H. B. 224
Passed February 15, 2001
Approved March 19, 2001
Effective April 30, 2001

NOTICE AND REASONABLE EFFORTS FOR CHILDREN IN CUSTODY ON GROUNDS OTHER THAN ABUSE OR NEGLECT

Sponsor: Matt Throckmorton

This act modifies the Judicial Code by amending provisions related to court orders placing a minor into the custody of the Division of Child and Family Services on grounds other than abuse or neglect. The act requires five days notice of hearing to the division. The act requires the court to make certain findings of fact to comply with federal regulations. The act makes technical corrections.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
78-3a-118, as last amended by Chapter 149, Laws of Utah 2000

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

Section 1. Section 78-3a-118 is amended to read:

78-3a-118. Adjudication of jurisdiction of juvenile court -- Disposition of cases -- Enumeration of possible court orders -- Considerations of court.

(1) (a) When a minor is found to come within the provisions of Section 78-3a-104, the court shall so adjudicate. The court shall make a finding of the facts upon which it bases its jurisdiction over the minor. However, in cases within the provisions of Subsection 78-3a-104(1), findings of fact are not necessary.

(b) If the court adjudicates a minor for a crime of violence or an offense in violation of Title 76, Chapter 10, Part 5, Weapons, it shall order that notice of the adjudication be provided to the school superintendent of the district in which the minor resides or attends school. Notice shall be made to the district superintendent within three days of the adjudication and shall include the specific offenses for which the minor was adjudicated.

(2) Upon adjudication the court may make the following dispositions by court order:

(a) (i) The court may place the minor on probation or under protective supervision in the minor's own home and upon conditions determined by the court, including compensatory service as provided in Section 78-11-20.7.

(ii) The court may place the minor in state supervision with the probation department of the court, under the legal custody of:

(A) his parent or guardian[~~,~~];

(B) the Division of Youth Corrections[~~,~~]; or

(C) the Division of Child and Family Services.

(iii) If the court orders probation or state supervision, the court shall direct that notice of its order be provided to designated persons in the local law enforcement agency and the school or transferee school, if applicable, which the minor attends. The designated persons may receive the information for purposes of the minor's supervision and student safety.

(iv) Any employee of the local law enforcement agency and the school which the minor attends who discloses the court's order of probation is not:

(A) civilly liable except when the disclosure constitutes fraud or malice as provided in Section 63-30-4; and

(B) civilly or criminally liable except when the disclosure constitutes a knowing violation of Section 63-2-801.

(b) The court may place the minor in the legal custody of a relative or other suitable person, with or without probation or protective supervision, but the juvenile court may not assume the function of developing foster home services.

(c) (i) The court may:

(A) vest legal custody of the minor in the Division of Child and Family Services, Division of Youth Corrections, or the Division of Mental Health[~~, and may~~]; and

(B) order the Department of Human Services to provide dispositional recommendations and services.

(ii) For minors who may qualify for services from two or more divisions within the Department of Human Services, the court may vest legal custody with the department.

(iii) (A) Minors who are committed to the custody of the Division of Child and Family Services on grounds other than abuse or neglect are subject to the provisions of Title 78, Chapter 3a, Part 3A, Minors in Custody on Grounds Other Than Abuse or Neglect, and Title 62A, Chapter 4a, Part 2A, Minors in Custody on Grounds Other Than Abuse or Neglect.

(B) Prior to [~~making a recommendation that~~] the court entering an order to place a minor in the custody of the Division of Child and Family Services on grounds other than abuse or neglect, [~~the probation department~~] the court shall provide the division [~~adequate~~] with notice [~~for~~] of the hearing no later than five days before the time specified for the hearing so the division [~~to~~] may attend the hearing.

(C) Prior to committing a minor to the custody of the Division of Child and Family Services, the court shall make a finding as to what reasonable efforts have been attempted to prevent the minor's removal from his home.

(d) (i) The court may commit the minor to the Division of Youth Corrections for secure confinement.

(ii) A minor under the jurisdiction of the court solely on the ground of abuse, neglect, or dependency under Subsection 78-3a-104(1)(c) may not be committed to the Division of Youth Corrections.

(e) The court may commit the minor, subject to the court retaining continuing jurisdiction over him, to the temporary custody of the Division of Youth Corrections for observation and evaluation for a period not to exceed 45 days, which period may be extended up to 15 days at the request of the director of the Division of Youth Corrections.

(f) (i) The court may commit the minor to a place of detention or an alternative to detention for a period not to exceed 30 days subject to the court retaining continuing jurisdiction over the minor. This commitment may be stayed or suspended upon conditions ordered by the court.

(ii) Subsection (2)(f) applies only to those minors adjudicated for:

(A) an act which if committed by an adult would be a criminal offense; or [~~for~~]

(B) contempt of court under Section 78-3a-901. [~~This commitment may be stayed or suspended upon conditions ordered by the court.~~]

(g) The court may vest legal custody of an abused, neglected, or dependent minor in the Division of Child and Family Services or any other appropriate person in accordance with the requirements and procedures of Title 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency Proceedings.

(h) The court may place the minor on a ranch or forestry camp, or similar facility for care and also for work, if possible, if the person, agency, or association operating the facility has been approved or has otherwise complied with all applicable state and local laws. A minor placed in a forestry camp or similar facility may be required to work on fire prevention, forestation and reforestation, recreational works, forest roads, and on other works on or off the grounds of the facility and may be paid wages, subject to the approval of and under conditions set by the court.

(i) The court may:

(i) order [~~that~~] the minor [~~be required~~] to repair, replace, or otherwise make restitution for damage or loss caused by the minor's wrongful act, including costs of treatment as stated in Section 78-3a-318[~~,~~]; and [~~may~~]

(ii) impose fines in limited amounts.

(j) The court may issue orders necessary for the collection of restitution and fines ordered by the court, including garnishments, wage withholdings, and executions.

(k) (i) The court may through its probation department encourage the development of employment or work programs to enable minors to fulfill their obligations under Subsection (2)(i) and for other purposes considered desirable by the court.

(ii) Consistent with the order of the court, the probation officer may permit the minor found to be within the jurisdiction of the court to participate in a program of work restitution or compensatory service in lieu of paying part or all of the fine imposed by the court.

(l) (i) In violations of traffic laws within the court's jurisdiction, the court may, in addition to any other disposition [~~,~~] authorized by this section:

(A) restrain the minor from driving for periods of time the court considers necessary; and

(B) take possession of the minor's driver license. [~~However, proceedings involving~~]

(ii) The court may enter any other disposition under Subsection (2)(l)(i), however, the suspension of driving privileges for an offense under Section 78-3a-506 are governed only by [~~that section regarding suspension of driving privileges~~] Section 78-3a-506.

(m) (i) When a minor is found within the jurisdiction of the juvenile court under Section 78-3a-104 because of violating Section 58-37-8, Title 58, Chapter 37a, Utah Drug Paraphernalia Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, the court shall, in addition to any fines or fees otherwise imposed, order that the minor perform a minimum of 20 hours, but no more than 100 hours, of compensatory service. Satisfactory completion of an approved substance abuse prevention or treatment program may be credited by the court as compensatory service hours.

(ii) When a minor is found within the jurisdiction of the juvenile court under Section 78-3a-104 because of a violation of Section 32A-12-209 or Subsection 76-9-701(1), the court may, upon the first adjudication, and shall, upon a second or subsequent adjudication, order that the minor perform a minimum of 20 hours, but no more than 100 hours of compensatory service, in addition to any fines or fees otherwise imposed. Satisfactory completion of an approved substance abuse prevention or treatment program may be credited by the court as compensatory service hours.

(n) The court may order that the minor be examined or treated by a physician, surgeon, psychiatrist, or psychologist or that he receive other special care. For these purposes the court may place the minor in a hospital or other suitable facility.

(o) (i) The court may appoint a guardian for the minor if it appears necessary in the interest of the minor, and may appoint as guardian a public or private institution or agency [~~as guardian~~] in which legal custody of the minor is vested.

(ii) In placing a minor under the guardianship or legal custody of an individual or of a private agency or institution, the court shall give primary consideration to the welfare of the minor. When practicable, the court may take into consideration the religious preferences of the minor and of the minor's parents.

(p) (i) In support of a decree under Section 78-3a-104, the court may order reasonable

conditions to be complied with by the parents or guardian, the minor, the minor's custodian, or any other person who has been made a party to the proceedings. Conditions may include:

(A) visitation by the parents or one parent;

(B) restrictions on the minor's associates;

(C) restrictions on the minor's occupation and other activities; and

(D) requirements to be observed by the parents or custodian.

(ii) A minor whose parents or guardians successfully complete a family or other counseling program may be credited by the court for detention, confinement, or probation time.

(q) The court may order the minor to be placed in the legal custody of the Division of Mental Health or committed to the physical custody of a local mental health authority, in accordance with the procedures and requirements of Title 62A, Chapter 12, Part 2A, Commitment of Persons Under Age 18 to Division of Mental Health.

(r) (i) The court may make an order committing a minor within its jurisdiction to the Utah State Developmental Center if the minor has [~~been found mentally retarded~~] mental retardation in accordance with the provisions of Title 62A, Chapter 5, Part 3, Admission to Mental Retardation Facility.

(ii) The court shall follow the procedure applicable in the district courts with respect to judicial commitments to the Utah State Developmental Center [~~shall be followed by the juvenile court in these cases~~] when ordering a commitment under Subsection (2)(r)(i).

(s) The court may terminate all parental rights upon a finding of compliance with the provisions of Title 78, Chapter 3a, Part 4, Termination of Parental Rights Act.

(t) The court may make any other reasonable orders for the best interest of the minor or as required for the protection of the public, except that a person younger than 18 years of age may not be committed to jail or prison[~~, and offenses under Section 78-3a-506 are governed by that section regarding suspension of driving privileges~~].

(u) The court may combine [~~several of the above-listed modes of disposition~~] the dispositions listed in this section if they are compatible.

(v) Before depriving any parent of custody, the court shall give due consideration to the rights of parents concerning their [~~minors~~] minor. The court may transfer custody of a minor to another person, agency, or institution in accordance with the requirements and procedures of Title 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency Proceedings.

(w) Except as provided in Subsection (2)(y)(i), an order under this section for probation or placement of a minor with an individual or an agency shall include a date certain for a review of the case by the court. A new date shall be set upon each review.

(x) In reviewing foster home placements, special attention shall be given to making adoptable minors available for adoption without delay.

(y) (i) The juvenile court may enter an order of permanent custody and guardianship with a relative or individual of a minor where the court has previously acquired jurisdiction as a result of an adjudication of abuse, neglect, or dependency, excluding cases arising under Subsection 78-3a-105(4).

(ii) [~~Such orders~~] Orders under Subsection (2)(y)(i):

(A) shall remain in effect until the minor reaches majority [~~and~~];

(B) are not subject to review under Section 78-3a-119[~~, but~~];

(C) may be modified by petition or motion as provided in Section 78-3a-903.

(iii) Orders permanently terminating the rights of a parent, guardian, or custodian and permanent orders of custody and guardianship do not expire with a termination of jurisdiction of the juvenile court.

(3) In addition to the dispositions described [~~above~~] in Subsection (2), when a minor comes within the court's jurisdiction he may be given a choice by the [~~judge~~] court to serve in the National Guard in lieu of other sanctions, provided:

(a) the minor meets the current entrance qualifications for service in the National Guard as determined by a recruiter, whose determination is final;

(b) the minor is not under the jurisdiction of the court for any act that:

(i) would be a felony if committed by an adult;

(ii) is a violation of Title 58, Chapter 37, Controlled Substances; or

(iii) was committed with a weapon; and

(c) the court retains jurisdiction over the minor under conditions set by the [~~juvenile~~] court [~~judge~~] and agreed upon by the recruiter or the unit commander to which the minor is eventually assigned [~~to~~].

CHAPTER 294
H. B. 227
Passed February 15, 2001
Approved March 19, 2001
Effective April 30, 2001

HUNTER SAFETY AMENDMENTS

Sponsor: Michael R. Styler

This act modifies the Wildlife Code to provide exceptions to the requirement of wearing hunter orange material while hunting.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
23-20-31, as enacted by Chapter 178, Laws of Utah 1993

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

Section 1. Section 23-20-31 is amended to read:

23-20-31. Requirement to wear hunter orange.

(1) As used in this section:

(a) (i) "Centerfire rifle hunt" means a hunt for which a hunter may use a centerfire rifle, except as provided in Subsection (1)(a)(ii).

(ii) "Centerfire rifle hunt" does not include:

(A) a bighorn sheep hunt;

(B) a mountain goat hunt;

(C) a hunt requiring the hunter to possess a statewide conservation permit; or

(D) a hunt requiring the hunter to possess a statewide sportsman permit.

(b) "Statewide conservation permit" means a permit:

(i) issued by the division;

(ii) distributed through a nonprofit organization founded for the purpose of promoting wildlife conservation; and

(iii) valid:

(A) on open hunting units statewide; and

(B) for the species of big game and time period designated by the Wildlife Board.

(c) "Statewide sportsman permit" means a permit:

(i) issued by the division through a public draw; and

(ii) valid:

(A) on open hunting units statewide; and

(B) for the species of big game and time period designated by the Wildlife Board.

[~~(1)~~] (2) (a) A person shall wear a minimum of 400 square inches of hunter orange material while hunting any species of big game, except as provided in Subsection [~~(2)~~] (3).

(b) Hunter orange material must be worn on the head, chest, and back.

(c) A camouflage pattern in hunter orange does not meet the requirements of Subsection [~~(1)~~] (2)(a).

[~~(2)~~] (3) A person is not required to wear hunter orange material during an archery, muzzle-loader, mountain goat, or bighorn sheep hunt, unless a centerfire rifle hunt is in progress in the same area.

CHAPTER 295
H. B. 230
Passed February 15, 2001
Approved March 19, 2001
Effective April 30, 2001

SEARCH WARRANT AMENDMENT

Sponsor: DeMar Bud Bowman

This act modifies the Code of Criminal Procedure regarding search warrants by providing a specific definition of the term "daytime."

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
77-23-201, as renumbered and amended by Chapter 142, Laws of Utah 1994

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

Section 1. Section 77-23-201 is amended to read:

77-23-201. "Search warrant" defined.

[~~A search~~] As used in this part:

(1) "Daytime" means the hours beginning at 6 a.m. and ending at 10 p.m. local time.

(2) "Search warrant" is an order issued by a magistrate in the name of the state and directed to a peace officer, describing with particularity the thing, place, or person to be searched and the property or evidence to be seized by him and brought before the magistrate.

CHAPTER 296
H. B. 234
Passed February 15, 2001
Approved March 19, 2001
Effective April 30, 2001

LAW ENFORCEMENT AND SPECIAL FUNCTION OFFICER AMENDMENTS

Sponsor: Brent H. Goodfellow

This act modifies the Public Safety Code by clarifying that duties of a law enforcement officer do not include the prosecution of cases against violators, and providing that special agents, process servers, and investigators for city attorneys are special function officers. The act includes federal postal inspectors as federal officers. The act also makes some technical corrections.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
53-13-103, as renumbered and amended by Chapter 282, Laws of Utah 1998
53-13-105, as last amended by Chapter 92, Laws of Utah 1999
53-13-106, as renumbered and amended by Chapter 282, Laws of Utah 1998

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

Section 1. Section 53-13-103 is amended to read:

53-13-103. Law enforcement officer.

(1) (a) "Law enforcement officer" means a sworn and certified peace officer who is an employee of a law enforcement agency that is part of or administered by the state or any of its political subdivisions, and whose primary and principal duties consist of the prevention and detection of crime and the enforcement of criminal statutes or ordinances of this state or any of its political subdivisions.

(b) "Law enforcement officer" specifically includes the following:

(i) any sheriff or deputy sheriff, chief of police, police officer, or marshal of any county, city, or town;

(ii) the commissioner of public safety and any member of the Department of Public Safety certified as a peace officer;

(iii) all persons specified in Sections 23-20-1.5 and 63-11-17.2;

(iv) any police officer employed by any college or university;

(v) investigators for the Motor Vehicle Enforcement Division;

(vi) special agents or investigators [~~for~~] employed by the attorney general, district attorneys, and county attorneys;

(vii) employees of the Department of Natural Resources designated as peace officers by law;

(viii) school district police officers as designated by the board of education for the school district;

(ix) the executive director of the Department of Corrections and any correctional enforcement or investigative officer designated by the executive director and approved by the commissioner of public safety and certified by the division;

(x) correctional enforcement, investigative, or adult probation and parole officers employed by the Department of Corrections serving on or before July 1, 1993;

(xi) members of a law enforcement agency established by a private college or university provided that the college or university has been certified by the commissioner of public safety according to rules of the Department of Public Safety; and

(xii) airport police officers of any airport owned or operated by the state or any of its political subdivisions.

(2) Law enforcement officers may serve criminal process and arrest [~~and prosecute~~] violators of any law of this state and have the right to require aid in executing their lawful duties.

(3) (a) A law enforcement officer has statewide full-spectrum peace officer authority, but the authority extends to other counties, cities, or towns only when the officer is acting under Title 77, Chapter 9, Uniform Act on Fresh Pursuit, unless the law enforcement officer is employed by the state.

(b) (i) A local law enforcement agency may limit the jurisdiction in which its law enforcement officers may exercise their peace officer authority to a certain geographic area.

(ii) Notwithstanding Subsection (3)(b)(i), a law enforcement officer may exercise his authority outside of the limited geographic area, pursuant to Title 77, Chapter 9, Uniform Act on Fresh Pursuit, if the officer is pursuing an offender for an offense that occurred within the limited geographic area.

(c) The authority of law enforcement officers employed by the Department of Corrections is regulated by Title 64, Chapter 13, Department of Corrections -- State Prison.

(4) A law enforcement officer shall, prior to exercising peace officer authority, satisfactorily complete:

(a) the basic course at a certified law enforcement officer training academy or pass a certification examination as provided in Section 53-6-206, and be certified; and

(b) annual certified training of at least 40 hours per year as directed by the director of the division, with the advice and consent of the council.

Section 2. Section 53-13-105 is amended to read:

53-13-105. Special function officer.

(1) (a) "Special function officer" means a sworn and certified peace officer performing specialized

investigations, service of legal process, security functions, or specialized ordinance, rule, or regulatory functions.

(b) "Special function officer" includes:

(i) state military police;

(ii) constables;

(iii) port-of-entry agents as defined in Section 72-1-102;

(iv) authorized employees or agents of the Department of Transportation assigned to administer and enforce the provisions of Title 72, Chapter 9, Motor Carrier Safety Act;

(v) school district security officers;

(vi) Utah State Hospital security officers designated pursuant to Section 62A-12-203;

(vii) Utah State Developmental Center security officers designated pursuant to Subsection 62A-5-206(9);

(viii) fire arson investigators for any political subdivision of the state;

(ix) ordinance enforcement officers employed by municipalities or counties may be special function officers;

(x) employees of the Department of Natural Resources who have been designated to conduct supplemental enforcement functions as a collateral duty [~~shall be special function officers~~];

(xi) railroad special agents deputized by a county sheriff under Section 17-30-2, or appointed pursuant to Section 56-1-21.5;

(xii) auxiliary [~~officer~~] officers, as described by Section 53-13-112; [~~and~~]

(xiii) special agents, process servers, and investigators employed by city attorneys; and

[~~(xiii)~~] (xiv) all other persons designated by statute as having special function officer authority or limited peace officer authority.

(2) (a) A special function officer may exercise that spectrum of peace officer authority that has been designated by statute to the employing agency, and only while on duty, and not for the purpose of general law enforcement.

(b) If the special function officer is charged with security functions respecting facilities or property, the powers may be exercised only in connection with acts occurring on the property where the officer is employed or when required for the protection of the employer's interest, property, or employees.

(c) A special function officer may carry firearms only while on duty, and only if authorized and under conditions specified by the officer's employer or chief administrator.

(3) (a) A special function officer may not exercise the authority of a peace officer until:

(i) the officer has satisfactorily completed an approved basic training program for special function officers as provided under Subsection (4); and

(ii) the chief law enforcement officer or administrator has certified this fact to the director of the division.

(b) City and county constables and their deputies shall certify their completion of training to the legislative governing body of the city or county they serve.

(4) (a) The agency that the special function officer serves may establish and maintain a basic special function course and in-service training programs as approved by the director of the division with the advice and consent of the council.

(b) The in-service training shall consist of no fewer than 40 hours per year and may be conducted by the agency's own staff or by other agencies.

Section 3. Section 53-13-106 is amended to read:

53-13-106. Federal officers -- State law enforcement authority.

(1) (a) "Federal officer" includes:

(i) a special agent of the Federal Bureau of Investigation;

(ii) a special agent of the United States Secret Service;

(iii) a special agent of the United States Customs Service, excluding a customs inspector;

(iv) a special agent of the Bureau of Alcohol, Tobacco and Firearms;

(v) a special agent of the Federal Drug Enforcement Agency; [~~and~~]

(vi) a United States marshal, deputy marshal, and special deputy United States marshal[~~.~~]; and

(vii) a U.S. Postal Inspector of the United States Postal Inspection Service.

(b) Notwithstanding Subsection (2), federal officers listed in Subsection (1)(a) have statewide law enforcement authority relating to felony offenses under the laws of this state.

(c) The council may designate other federal peace officers, as necessary, if the officers:

(i) are persons employed full-time by the United States government as federally recognized law enforcement officers primarily responsible for the investigation and enforcement of the federal laws;

(ii) have successfully completed formal law enforcement training offered by an agency of the federal government consisting of not less than 400 hours; and

(iii) maintain in-service training in accordance with the standards set forth in Section 53-13-103.

(2) Except as otherwise provided under Title 63, Chapter 8, Federal Jurisdiction, and Title 77,

Chapter 9, Uniform Act on Fresh Pursuit, a federal officer may exercise state law enforcement authority only if:

(a) the state law enforcement agencies and county sheriffs with jurisdiction enter into an agreement with the federal agency to be given authority; and

(b) except as provided in Subsection (3) of this section, each federal officer employed by the federal agency meets the waiver requirements set forth in Section 53-6-206.

(3) A federal officer working as such in the state on or before July 1, 1995, may exercise state law enforcement authority without meeting the waiver requirement.

(4) At any time, consistent with any contract with a federal agency, a state or local law enforcement authority may withdraw state law enforcement authority from any individual federal officer by sending written notice to the federal agency and to the division.

(5) The authority of a federal officer under this section is limited to the jurisdiction of the authorizing state or local agency, and may be further limited by the state or local agency to enforcing specific statutes, codes, or ordinances.

CHAPTER 297
H. B. 235
Passed February 27, 2001
Approved March 19, 2001
Effective April 30, 2001

PUBLICATION OF SCHOOL DISTRICT EXPENSES

Sponsor: Paul Ray

This act modifies provisions relating to the State System of Public Education by requiring the State Board of Education to publish on the Internet each Utah school district's annual financial report and the annual report on teachers' salaries within each district.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
53A-3-404, as last amended by Chapter 264, Laws of Utah 1990
53A-3-416, as enacted by Chapter 249, Laws of Utah 1988

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

Section 1. Section 53A-3-404 is amended to read:

53A-3-404. Annual financial report -- Audit report.

(1) The annual financial report of each school district, containing items required by law or by the State Board of Education and attested to by independent auditors, shall be prepared as required by Section 51-2-1.

(2) The auditors employed under Section 51-2-1 shall complete their field work in sufficient time to allow them to verify necessary audit adjustments included in the annual financial report to the state superintendent.

(3) (a) (i) The district shall forward the annual financial report to the state superintendent not later than October 1.

(ii) The report shall include information to enable the state superintendent to complete the statement required under Subsection 53A-1-301(2)(d)(v).

(b) (i) The State Board of Education shall publish electronically a copy of the report on the Internet not later than December 15.

(ii) The report may be combined with the report required to be published under Subsection 53A-3-416(3)(b).

(4) The completed audit report shall be delivered to the school district board of education and the state superintendent of public instruction not later than November 30 of each year.

Section 2. Section 53A-3-416 is amended to read:

53A-3-416. Annual report on teachers' salaries.

(1) Each local school board shall prepare an annual report on teachers' salaries within the district.

(2) The salary information shall include benefits and career ladder monies.

(3) (a) The board shall file a copy of the report with the State Board of Education by October 1.

(b) The State board of Education shall publish electronically a copy of the report on the Internet not later than December 15.

(4) The State Board of Education shall prepare a summary of each district's salary report and present the summary to the Legislature prior to its annual general session.

CHAPTER 298
H. B. 237
Passed February 16, 2001
Approved March 19, 2001
Effective April 30, 2001

SEX OFFENDER REGISTRY

Sponsor: DeMar Bud Bowman

This act modifies the Criminal Code by amending the provisions regarding sex offender registration. The act modifies the definition of sex offender, the registration of sex offenders living in the state but convicted in another state, and offenders in a state mental hospital. The act also clarifies certain procedures of registration.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
77-27-21.5, as last amended by Chapter 201, Laws of Utah 2000

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

Section 1. Section 77-27-21.5 is amended to read:

77-27-21.5. Sex offender registration -- Information system -- Law enforcement and courts to report -- Registration -- Penalty -- Effect of expungement.

(1) As used in this section:

(a) "Department" means the Department of Corrections.

(b) "Notification" means a person's acquisition of information from the department about a sex offender, including his place of habitation, physical description, [~~and methodology of the offense,~~] and other information as provided in Subsections [~~(10)~~] (11) and [~~(11)~~] (12).

(c) "Register" means to comply with the rules of the department made under this section.

(d) "Sex offender" means any person [~~convicted by this state or who enters a plea in abeyance for violating Section 76-7-102, 76-9-702.5, 76-5a-3, 76-10-1306, or 76-5-301.1 or of committing or attempting, soliciting, or conspiring to commit a felony, under Title 76, Chapter 5, Part 4, Sexual Offenses, and any person convicted by any other state or the United States government of an offense which if committed or attempted in this state would be punishable as one or more of these offenses. "Sex offender" also means all persons committed to a state mental hospital by reason of their mental incapacity and their commission or alleged commission of one or more offenses listed in this Subsection (1)(d).~~]:

(i) convicted by this state of:

(A) Section 76-5-301.1, kidnapping of a child;

(B) a felony violation of Section 76-5-401, unlawful sexual activity with a minor;

(C) Section 76-5-401.1, sexual abuse of a minor;

(D) Section 76-5-401.2, unlawful sexual conduct with a 16 or 17 year old;

(E) Section 76-5-402, rape;

(F) Section 76-5-402.1, rape of a child;

(G) Section 76-5-402.2, object rape;

(H) Section 76-5-402.3, object rape of a child;

(I) a felony violation of Section 76-5-403, forcible sodomy;

(J) Section 76-5-403.1, sodomy on a child;

(K) Section 76-5-404, forcible sexual abuse;

(L) Section 76-5-404.1, sexual abuse of a child or aggravated sexual abuse of a child;

(M) Section 76-5-405, aggravated sexual assault;

(N) Section 76-5a-3, sexual exploitation of a minor;

(O) Section 76-7-102, incest;

(P) Section 76-9-702.5, lewdness involving a child;

(Q) Section 76-10-1306, aggravated exploitation of prostitution; or

(R) attempting, soliciting, or conspiring to commit any offense listed in Subsections (1)(d)(i)(A),(B), (D) through (O), or (Q);

(ii) convicted by any other state or the United States government of an offense which if committed in this state would be punishable as one or more of the offenses listed in Subsection (1)(d)(i) and who is:

(A) a Utah resident; or

(B) not a Utah resident, but who is in the state for a period exceeding 14 consecutive days, or for an aggregate period exceeding 30 days, during any calendar year; or

(iii) who is found not guilty by reason of insanity of one or more offenses listed in Subsection (1)(d)(i).

(2) The department, to assist in investigating sex-related crimes and in apprehending offenders, shall:

(a) develop and operate a system to collect, analyze, maintain, and disseminate information on sex offenders and sex offenses; and

(b) make information collected and developed under this section available to the public.

(3) Any law enforcement agency shall, in the manner prescribed by the department, inform the department of:

(a) the receipt of a report or complaint of an offense listed in Subsection (1)(d), within three working days; and

(b) the arrest of a person suspected of any of the offenses listed in Subsection (1)(d), within five working days.

(4) Upon convicting a person of any of the offenses listed in Subsection (1)(d), [~~or any lesser included~~

~~offense,~~] the convicting court shall within three working days forward a copy of the judgment and sentence to the department.

(5) A sex offender in the custody of the department shall be registered by agents of the department upon:

(a) being placed on probation;

(b) commitment to a secure correctional facility operated by or under contract to the department;

(c) release from confinement to parole status, termination or expiration of sentence, or escape;

(d) entrance to and release from any community-based residential program operated by or under contract to the department; or

(e) termination of probation or parole.

(6) A sex offender not in the custody of the department and who is confined in a correctional facility not operated by or under contract to the department shall[~~, upon release from confinement,~~] be registered with the department by the sheriff of the county in which the offender is confined[~~.~~] upon:

(a) commitment to the correctional facility; and

(b) release from confinement.

(7) [~~A sex offender confined in a state mental hospital shall be registered with the department by the hospital.~~] A sex offender committed to a state mental hospital shall be registered with the department by the hospital upon admission and upon discharge.

(8) A sex offender convicted by any other state or by the United States government is required to register under Subsection (1)(d)(ii) and shall register with the department within ten days after entering the state.

[~~(8)~~] (9) (a) A sex offender shall, for the duration of the sentence and for ten years after termination of sentence, register annually and again within ten days of every change of his place of habitation.

(b) Notwithstanding Subsection (9)(a), a sex offender who is confined in a secure facility or in a state mental hospital is not required to register annually.

[~~(9)~~] (10) An agency in the state that registers a sex offender on [~~parole~~] probation, a sex offender who has been released from confinement to parole status or termination, or a sex offender whose sentence has expired shall inform [~~him~~] the offender of [~~his~~] the duty to comply with the continuing registration requirements of this section during the period of registration required in Subsection (9), including:

[~~(a) notification to an out-of-state agency of moving across state lines;~~]

[~~(b)~~] (a) notification to the state agencies in the states where the registrant presently resides and plans to reside when moving across state lines; [~~and~~]

[~~(c)~~] (b) verification of address at least every 60 days pursuant to a parole agreement for lifetime parolees[~~.~~]; and

(c) notification to the out-of-state agency where the offender is living, whether or not the offender is a resident of that state.

[~~(10)~~] (11) A sex offender shall provide the department with the following information:

(a) all names or aliases the sex offender is or has been known by;

(b) the sex offender's name and residential address;

(c) a physical description, including the sex offender's age, height, weight, eye and hair color;

(d) the type of vehicle or vehicles the sex offender drives; and

(e) a current photograph of the sex offender.

[~~(11)~~] (12) The department shall provide the following additional information when available:

(a) the crimes the sex offender was [~~charged with and~~] convicted of; and

(b) a description of the sex offender's primary and secondary targets[~~; and~~].

[~~(c) a description of the sex offender's method of offense.~~]

[~~(12)~~] (13) (a) A sex offender who knowingly fails to register under this section is guilty of a class A misdemeanor and shall be sentenced to serve a term of incarceration for not fewer than 90 days and also at least one year of probation.

(b) Neither the court nor the Board of Pardons and Parole may release a person who violates this section from serving a term of at least 90 days and of completing probation of at least one year. This Subsection [~~(12)~~] (13)(b) supersedes any other provision of the law contrary to this section.

[~~(13)~~] (14) Notwithstanding Title 63, Chapter 2, Government Records Access and Management Act, information in Subsections [~~(10)~~] (11) and [~~(11)~~] (12) collected and released under this section is public information.

[~~(14)~~] (15) (a) If a sex offender is to be temporarily sent outside a secure facility in which he is confined on any assignment, including, without limitation, firefighting or disaster control, the official who has custody of the offender shall, within a reasonable time prior to removal from the secure facility, notify the local law enforcement agencies where the assignment is to be filled.

(b) This Subsection [~~(14)~~] (15) does not apply to any person temporarily released under guard from the institution in which he is confined.

[~~(15)~~] (16) Notwithstanding Sections 77-18-9 through 77-18-14 regarding expungement, a person convicted of any offense listed in Subsection (1)(d) is not relieved from the responsibility to register under this section.

[~~(16)~~] (17) Notwithstanding Section 42-1-1, a sex offender may not change his name:

(a) while under the jurisdiction of the department; and

(b) until the registration requirements of this statute have expired.

[~~(17)~~] (18) The department may make rules necessary to implement this section, including:

(a) the method for dissemination of the information; and

(b) instructions to the public regarding the use of the information.

[~~(18)~~] (19) Any information regarding the identity or location of a victim shall be redacted by the department from information provided under Subsections [~~(10)~~] (11) and [~~(11)~~] (12).

[~~(19)~~] (20) Nothing in this section shall be construed to create or impose any duty on any person to request or obtain information regarding any sex offender from the department.

[~~(20)~~] (21) If the department chooses to post registry information on the Internet, the website shall contain a disclaimer informing the public of the following:

(a) the information contained on the site is obtained from sex offenders and the department does not guarantee its accuracy;

(b) members of the public are not allowed to publicize the information or use it to harass or threaten sex offenders or members of their families; and

(c) harassment, stalking, or threats against sex offenders or their families are prohibited and doing so may violate Utah criminal laws.

[~~(21)~~] (22) The department shall construct the website so that users, before accessing registry information, must indicate that they have read the disclaimer, understand it, and agree to comply with its terms.

[~~(22)~~] (23) The department, its personnel, and any individual or entity acting at the request or upon the direction of the department are immune from civil liability for damages for good faith compliance with this section and will be presumed to have acted in good faith by reporting information.

[~~(23)~~] (24) The department shall redact information that, if disclosed, could reasonably identify a victim.

[~~(24) The website may also include information about sex offenders ordered to accept notification of their registry information as part of a condition of probation or parole.~~]

CHAPTER 299
H. B. 238
Passed February 27, 2001
Approved March 19, 2001
Effective April 30, 2001

CRIMINAL PENALTY FOR COMMITTING OFFENSE WHEN USING BODY ARMOR

Sponsor: Duane E. Bourdeaux

This act modifies the Criminal Code to provide an increased sentence for a person convicted of a violent felony if the person used a dangerous weapon and body armor in commission of the felony.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:
76-3-203.7, Utah Code Annotated 1953

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

Section 1. Section 76-3-203.7 is enacted to read:

76-3-203.7. Increase of sentence for violent felony if body armor used.

(1) As used in this section:

(a) "Body armor" means any material designed or intended to provide bullet penetration resistance or protection from bodily injury caused by a dangerous weapon.

(b) "Dangerous weapon" has the same definition as in Section 76-1-601.

(c) "Violent felony" has the same definition as in Section 76-3-203.5.

(2) A person convicted of a violent felony may be sentenced to imprisonment for an indeterminate term, as provided in Section 76-3-203, but if the trier of fact finds beyond a reasonable doubt that the defendant used, carried, or possessed a dangerous weapon and also used or wore body armor, with the intent to facilitate the commission of the violent felony, and the violent felony is:

(a) a first degree felony, the court shall sentence the person convicted for a term of not less than six years, and which may be for life;

(b) a second degree felony, the court shall sentence the person convicted for a term of not less than two years nor more than 15 years, and the court may sentence the person convicted for a term of not less than two years nor more than 20 years; and

(c) a third degree felony, the court shall sentence the person convicted for a term of not less than one year nor more than five years, and the court may sentence the person convicted for a term of not less than one year nor more than ten years.

CHAPTER 300
H. B. 239
Passed February 21, 2001
Approved March 19, 2001
Effective April 30, 2001

SUPPORT FOR CHILDREN IN STATE CUSTODY

Sponsor: Eli H. Anderson

This act modifies the Juvenile Court Act by clarifying when child support is to be paid to the state or a third party if the state takes custody of a minor. The act also sets out requirements to be followed by the parents or obligated person to insure that the support is paid.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
78-3a-906, as last amended by Chapters 161 and 207, Laws of Utah 2000

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

Section 1. Section 78-3a-906 is amended to read:

78-3a-906. Child support obligation when custody of a minor is vested in an individual or institution.

(1) When legal custody of a minor is vested by the court in [~~an individual,~~] a secure youth corrections facility[~~,~~] or any other state department, division, or agency other than his parents, the court shall [~~in~~] order the parents, a parent, or any other obligated person to pay child support for each month the child is in custody. In the same proceeding the court shall inform the parents, a parent, or any other obligated person [~~who may be obligated~~], verbally and in writing, of the requirement [~~of paying~~] to pay child support in accordance with Title 78, Chapter 45, Uniform Civil Liability for Support Act[~~, and, if Subsection (2) applies, the requirement of meeting with the Office of Recovery Services within 30 days to establish a child support order and the penalty in Subsection (4) for failing to do so. If there is no existing child support in favor of the state for the minor, the liability for support shall accrue beginning on the 61st day following the proceeding~~].

(2) [~~The~~] If legal custody of a minor is vested by the court in a secure youth corrections facility, or any other state department, division, or agency, the court may refer the establishment of a child support order to the Office of Recovery Services. The referral shall be sent to the Office of Recovery Services within three working days of the hearing. Support obligation amounts shall be set by the Office of Recovery Services in accordance with Title 78, Chapter 45, Uniform Civil Liability for Support Act.

[~~(3) (a) At the time that a child support order is established and a specific child support amount is set, the order may not require the payment of support arrears that occurred more than two months prior to the setting of the child support amount.~~]

(3) If Subsection (2) applies, the court shall also inform the parties that they are required to contact the Office of Recovery Services within 30 days of the date of the hearing to establish a child support order and the penalty in Subsection (5) for failing to do so. If there is no existing child support order for the child, the liability for support shall accrue beginning on the 61st day following the hearing that occurs the first time the court vests custody of the child in a secure youth corrections facility, or any other state department, division, or agency other than his parents.

(4) If a child is returned home and legal custody is subsequently vested by the court in a secure youth corrections facility or any other state department, division, or agency other than his parents, the liability for support shall accrue from the date the minor is subsequently removed from the home, including time spent in detention or sheltered care.

(5) (a) If the parents, parent, or other obligated person meets with the Office of Recovery Services within 30 days of the date of the hearing, the child support order may not include a judgment for past due support for more than two months.

(b) Notwithstanding Subsection [~~(3)~~] (5)(a), the court may order the liability of support to begin to accrue from the date of the proceeding referenced in Subsection (1) if:

(i) the parents, parent, or any other person obligated fails to meet with the Office of Recovery Services within 30 days after being informed orally and in writing by the court of that requirement; and

(ii) the Office of Recovery Services took reasonable steps under the circumstances to contact the parents, parent, or other person obligated within the subsequent 30-day period to facilitate the establishment of the child support order.

(c) For purposes of Subsection [~~(3)~~] (5)(b)(ii), the Office of Recovery Services shall be presumed to have taken reasonable steps if the office:

(i) has a signed, returned receipt for a certified letter mailed to the address of the parents, parent, or other obligated person regarding the requirement that a child support order be established; or

(ii) has had a documented conversation, whether by telephone or in person, with the parents, parent, or other obligated person regarding the requirement that a child support order be established.

[~~(4)~~] (6) In collecting arrears, the Office of Recovery Services shall comply with Section 62A-11-320 in setting a payment schedule or demanding payment in full.

[~~(5)~~] (7) Unless otherwise ordered, the parents or other person shall pay the child support to the Office of Recovery Services [~~for transmission to the person or agency having legal custody of the minor or to whom compensation is due~~]. The clerk of the

court [~~or~~], the Office of Recovery Services, or the Department of Human Services and its divisions shall have authority to receive periodic payments for the care and maintenance of the minor, such as Social Security payments or railroad retirement payments made in the name of or for the benefit of the minor.

[~~(6)~~] (8) No court order under this section against a parent or other person shall be entered, unless [~~summons~~] notice of hearing has been served within the state, a voluntary appearance is made, or a waiver of service given. The [~~summons~~] notice shall specify that a hearing with respect to the financial support of the minor will be held.

[~~(7) An order entered under this section against a parent or other person may be enforced by contempt proceedings and shall also have the effect of a judgment. Upon request of the court, the county attorney shall enforce orders of the court issued under this section.~~]

[~~(8)~~] (9) An existing child support order payable to a parent or other obligated person shall be assigned to the [~~division~~] Department of Human Services as provided in Section 62A-1-117.

[~~(9) If the court vests legal custody of a minor to a nongovernmental agency, the agency shall make periodic reports to the court concerning the care and treatment the minor is receiving and his response to such treatment. Such reports shall be made at such intervals as the court may direct and shall be made with respect to each minor at least every six months. The agency shall also afford an opportunity for a representative of the court to visit the minor as frequently as the court considers necessary.~~]

(10) (a) Subsections (2) through (9) shall not apply if legal custody of a minor is vested by the court in an individual.

(b) If legal custody of a minor is vested by the court in an individual, the court may order the parents, a parent, or any other obligated person to pay child support to the individual. In the same proceeding the court shall inform the parents, a parent, or any other obligated person, verbally and in writing, of the requirement to pay child support in accordance with Title 78, Chapter 45, Uniform Civil Liability for Support Act.

CHAPTER 301
H. B. 240
Passed February 16, 2001
Approved March 19, 2001
Effective April 30, 2001

KIDNAPPING AMENDMENTS

Sponsor: Glenn L. Way

This act modifies the Criminal Code regarding kidnapping offenses, by amending the elements of the offenses, stating the defenses, and specifying lesser included offenses. This act also includes cross reference amendments.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
76-3-202, as last amended by Chapter 69, Laws of Utah 1998
76-5-301, as last amended by Chapter 88, Laws of Utah 1983
76-5-301.1, as last amended by Chapter 40, Laws of Utah 1996
76-5-302, as last amended by Chapter 69, Laws of Utah 1998
76-5-304, as enacted by Chapter 196, Laws of Utah 1973
77-27-7, as last amended by Chapter 69, Laws of Utah 1998

ENACTS:
76-5-305, Utah Code Annotated 1953
76-5-306, Utah Code Annotated 1953

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

Section 1. Section 76-3-202 is amended to read:

76-3-202. Paroled persons -- Termination or discharge from sentence -- Time served on parole -- Discretion of Board of Pardons and Parole.

(1) Except as otherwise provided in this section, every person committed to the state prison to serve an indeterminate term and later released on parole shall, upon completion of three years on parole outside of confinement and without violation, be terminated from his sentence unless the person is earlier terminated by the Board of Pardons and Parole. Any person who violates the terms of his parole, while serving parole, shall at the discretion of the Board of Pardons and Parole be recommitted to prison to serve the portion of the balance of his term as determined by the Board of Pardons and Parole, but not to exceed the maximum term.

(2) Every person convicted of a second degree felony for violating Section 76-5-404 or 76-5-404.1, or attempting to violate any of those sections, upon completion of ten years parole outside of confinement and without violation, shall be terminated from his sentence unless the person is earlier terminated by the Board of Pardons and Parole. Any person who violates the terms of his parole, while serving parole, shall at the discretion of the Board of Pardons and Parole be recommitted to prison to serve the portion of the balance of his term as determined by the Board of Pardons and Parole, but not to exceed the maximum term.

(3) Every person convicted of a first degree felony for violating Section 76-5-301.1, Subsection 76-5-302(1)(b)[~~(v)~~](vi), Section 76-5-402, 76-5-402.1, 76-5-402.2, 76-5-402.3, 76-5-403, 76-5-403.1, 76-5-404.1, or 76-5-405, or attempting to violate any of those sections, shall complete a term of lifetime parole outside of confinement and without violation unless the person is earlier terminated by the Board of Pardons and Parole. Any person who violates the terms of his parole, while serving parole, shall at the discretion of the Board of Pardons and Parole be recommitted to prison to serve the portion of the balance of his term as determined by the Board of Pardons and Parole, but not to exceed the maximum term.

(4) In order for a parolee convicted on or after May 5, 1997, to be eligible for early termination from parole, the parolee must provide:

(a) evidence to the Board of Pardons and Parole that the parolee has completed high school classwork and has obtained a high school graduation diploma, a GED certificate, or a vocational certificate; or

(b) documentation of the inability to obtain one of the items listed in Subsection (4)(a) because of:

(i) a diagnosed learning disability; or

(ii) other justified cause.

(5) Any person paroled following a former parole revocation may not be discharged from his sentence until either:

(a) he has served three years or ten years as provided in Subsection (2) on parole outside of confinement and without violation, or in the case of a person convicted of a first degree felony violation of Section 76-5-301.1, Subsection 76-5-302(1)(b)[~~(v)~~](vi), Section 76-5-402, 76-5-402.1, 76-5-402.2, 76-5-402.3, 76-5-403, 76-5-403.1, 76-5-404.1, or 76-5-405, or attempting to violate any of those sections, lifetime parole outside of confinement and without violation;

(b) his maximum sentence has expired; or

(c) the Board of Pardons and Parole so orders.

(6) (a) All time served on parole, outside of confinement and without violation constitutes service of the total sentence but does not preclude the requirement of serving a three-year, ten-year, or lifetime parole term, as the case may be, outside of confinement and without violation.

(b) Any time a person spends outside of confinement after commission of a parole violation does not constitute service of the total sentence unless the person is exonerated at a hearing to revoke the parole.

(c) Any time spent in confinement awaiting a hearing before the Board of Pardons and Parole or a

decision by the board concerning revocation of parole constitutes service of the sentence. In the case of exoneration by the board, the time spent shall be included in computing the total parole term.

(7) When any parolee without authority from the Board of Pardons and Parole absents himself from the state or avoids or evades parole supervision, the period of absence, avoidance, or evasion tolls the parole period.

(8) While on parole, time spent in confinement outside the state may not be credited toward the service of any Utah sentence. Time in confinement outside the state for a conviction obtained in another jurisdiction shall toll the expiration of the Utah sentence.

(9) This section does not preclude the Board of Pardons and Parole from paroling or discharging an inmate at any time within the discretion of the Board of Pardons and Parole unless otherwise specifically provided by law.

(10) The parolee may petition the Board of Pardons and Parole for termination of lifetime parole as provided by this section [~~76-3-202~~] in the case of a person convicted of a first degree felony violation Section 76-5-301.1, Subsection 76-5-302(1)(b)[~~(v)~~](vi), Section 76-5-402, 76-5-402.1, 76-5-402.2, 76-5-402.3, 76-5-403, 76-5-403.1, 76-5-404.1, or 76-5-405, or attempting to violate any of those sections.

Section 2. Section 76-5-301 is amended to read:

76-5-301. Kidnapping.

(1) [~~A person~~] An actor commits [~~kidnaping when he~~] kidnapping if the actor intentionally or knowingly [~~and~~], without authority of law, and against the will of the victim:

(a) detains or restrains [~~another~~] the victim for any substantial period of time; [~~or~~]

(b) detains or restrains [~~another~~] the victim in circumstances exposing [~~him~~] the victim to risk of [~~serious~~] bodily injury; [~~or~~]

(c) holds [~~another~~] the victim in involuntary servitude; [~~or~~]

(d) detains or restrains a minor without the consent of [~~its~~] the minor's parent or legal guardian or the consent of a person acting in loco parentis, if the minor is 14 years of age or older but younger than 18 years of age; or

(e) moves the victim any substantial distance or across a state line.

(2) As used in this section, acting "against the will of the victim" includes acting without the consent of the legal guardian or custodian of a victim who is a mentally incompetent person.

[~~(2) Kidnaping~~] (3) Kidnapping is a second degree felony [~~of the second degree~~].

Section 3. Section 76-5-301.1 is amended to read:

76-5-301.1. Child kidnapping.

(1) [~~A person~~] An actor commits child [~~kidnaping when~~] kidnapping if the [~~person~~] actor intentionally or knowingly, without authority of law, and [~~against the will of the victim,~~] by any means and in any manner, seizes, confines, detains, or transports a child under the age of 14 [~~with intent to keep or conceal the child from its parent, guardian, or other person having lawful custody or control of the child. (2) A seizure, confinement, detention, or transportation is deemed to be against the will of the victim if the victim is younger than 14 years of age at the time of the offense, and the seizure, confinement, detention, or transportation, is~~] without the [~~effective~~] consent of the victim's [~~custodial~~] parent[~~,~~] or guardian, or the consent of a person acting in loco parentis.

[~~(3)~~] (2) Violation of Section 76-5-303 is not a violation of this section.

[~~(4)~~] (3) Child [~~kidnaping~~] kidnapping is a first degree felony punishable by imprisonment for an indeterminate term of not less than 6, 10, or 15 years and which may be for life. Imprisonment is mandatory in accordance with Section 76-3-406.

Section 4. Section 76-5-302 is amended to read:

76-5-302. Aggravated kidnapping.

(1) [~~A person~~] An actor commits aggravated [~~kidnaping~~] kidnapping if the [~~person intentionally or knowingly, without authority of law and against the will of the victim, by any means and in any manner, seizes, confines, detains, or transports the victim~~] actor, in the course of committing unlawful detention or kidnapping:

(a) [~~and in committing, attempting to commit, or in the immediate flight after the attempt or commission of the kidnaping, the actor~~] possesses, uses, or threatens to use a dangerous weapon as defined in Section 76-1-601; or

(b) acts with intent:

(i) to hold the victim for ransom or reward, or as a shield or hostage, or to compel a third person to engage in particular conduct or to forbear from engaging in particular conduct;

(ii) to facilitate the commission, attempted commission, or flight after commission or attempted commission of a felony;

(iii) to hinder or delay the discovery of or reporting of a felony;

[~~(iii)~~] (iv) to inflict bodily injury on or to terrorize the victim or another;

[~~(iv)~~] (v) to interfere with the performance of any governmental or political function; or

[~~(v)~~] (vi) to commit a sexual offense as described in Title 76, Chapter 5, Part 4 [~~of this chapter~~], Sexual Offenses.

[~~(2) A detention or moving is deemed to be the result of force, threat, or deceit if the victim is~~

~~mentally incompetent or younger than 16 years and the detention or moving is accomplished without the effective consent of the victim's custodial parent, guardian, or person acting in loco parentis to the victim.~~]

(2) As used in this section, "in the course of committing unlawful detention or kidnapping" means in the course of committing, attempting to commit, or in the immediate flight after the attempt or commission of a violation of:

(a) Section 76-5-301, kidnapping; or

(b) Section 76-5-304, unlawful detention.

(3) Aggravated [~~kidnaping~~] kidnapping is a first degree felony punishable by imprisonment for an indeterminate term of not less than 6, 10, or 15 years and which may be for life. Imprisonment is mandatory in accordance with Section 76-3-406.

Section 5. Section 76-5-304 is amended to read:

76-5-304. Unlawful detention.

(1) [~~A person~~] An actor commits unlawful detention if [~~he~~] the actor intentionally or knowingly, without authority of law, and against the will of the victim, detains or restrains [~~another unlawfully so as to interfere substantially with his liberty~~] the victim under circumstances not constituting a violation of:

(a) kidnapping, Section 76-5-301;

(b) child kidnapping, Section 76-5-301.1; or

(c) aggravated kidnapping, Section 76-5-302.

(2) As used in this section, acting "against the will of the victim" includes acting without the consent of the legal guardian or custodian of a victim who is a mentally incompetent person.

[~~(2)~~] (3) Unlawful detention is a class B misdemeanor.

Section 6. Section 76-5-305 is enacted to read:

76-5-305. Defenses.

It is a defense under this part that:

(1) the actor was acting under a reasonable belief that:

(a) the conduct was necessary to protect any person from imminent bodily injury or death; or

(b) the detention or restraint was authorized by law; or

(2) the alleged victim is younger than 18 years of age or is mentally incompetent, and the actor was acting under a reasonable belief that the custodian, guardian, legal guardian, custodial parent, or person acting in loco parentis to the victim would, if present, have consented to the actor's conduct.

Section 7. Section 76-5-306 is enacted to read:

76-5-306. Lesser included offenses.

In this part, the following offenses are lesser included offenses of Section 76-5-302, aggravated kidnapping:

(1) Section 76-5-301, kidnapping; and

(2) Section 76-5-304, unlawful detention.

Section 8. Section 77-27-7 is amended to read:

77-27-7. Parole or hearing dates -- Interview -- Hearings -- Report of alienists -- Mental competency.

(1) The Board of Pardons and Parole shall determine within six months after the date of an offender's commitment to the custody of the Department of Corrections, for serving a sentence upon conviction of a felony or class A misdemeanor offense, a date upon which the offender shall be afforded a hearing to establish a date of release or a date for a rehearing, and shall promptly notify the offender of the date.

(2) Before reaching a final decision to release any offender under this chapter, the chair shall cause the offender to appear before the board, its panel, or any appointed hearing officer, who shall personally interview the offender to consider his fitness for release and verify as far as possible information furnished from other sources. Any offender may waive a personal appearance before the board. Any offender outside of the state shall, if ordered by the board, submit to a courtesy hearing to be held by the appropriate authority in the jurisdiction in which the offender is housed in lieu of an appearance before the board. The offender shall be promptly notified in writing of the board's decision.

(3) In the case of an offender convicted of violating or attempting to violate any of the provisions of Section 76-5-301.1, Subsection 76-5-302(1)(b)[~~(v)~~](vi), [~~Sections~~] Section 76-5-402, 76-5-402.1, 76-5-402.2, 76-5-402.3, 76-5-403, 76-5-403.1, 76-5-404, 76-5-404.1, [~~and~~] or 76-5-405, the chair shall appoint one or more alienists who shall examine the offender within six months prior to a hearing at which an original parole date is granted on any offense listed in this Subsection (3). The alienists shall report in writing the results of the examination to the board prior to the hearing. The report of the appointed alienists shall specifically address the question of the offender's current mental condition and attitudes as they relate to any danger the offender may pose to children or others if the offender is released on parole.

(4) The parolee may petition the board for termination of lifetime parole as provided in Section 76-3-202 in the case of a person convicted of a first degree felony violation or convicted of attempting to violate Section 76-5-301.1, Subsection 76-5-302(1)(b)[~~(v)~~](vi), [~~Sections~~] Section 76-5-402, 76-5-402.1, 76-5-402.2, 76-5-402.3, 76-5-403, 76-5-403.1, 76-5-404.1, [~~and~~] or 76-5-405.

(5) In any case where an offender's mental competency is questioned by the board, the chair shall appoint one or more alienists to examine the

offender and report in writing to the board, specifically addressing the issue of competency.

(6) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the board shall make rules governing:

(a) the hearing process;

(b) alienist examination; and

(c) parolee petitions for termination of parole.

CHAPTER 302
H. B. 241
Passed February 16, 2001
Approved March 19, 2001
Effective April 30, 2001

JURISDICTION AMENDMENTS

Sponsor: Scott Daniels

This act modifies the Judicial Code to clarify that the Supreme Court and Court of Appeals have jurisdiction to hear appeals involving a charge of a first degree felony or capital felony.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
78-2-2, as last amended by Chapter 159, Laws of Utah 1996
78-2a-3, as last amended by Chapters 159 and 198, Laws of Utah 1996

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

Section 1. Section 78-2-2 is amended to read:

78-2-2. Supreme Court jurisdiction.

(1) The Supreme Court has original jurisdiction to answer questions of state law certified by a court of the United States.

(2) The Supreme Court has original jurisdiction to issue all extraordinary writs and authority to issue all writs and process necessary to carry into effect its orders, judgments, and decrees or in aid of its jurisdiction.

(3) The Supreme Court has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

(a) a judgment of the Court of Appeals;

(b) cases certified to the Supreme Court by the Court of Appeals prior to final judgment by the Court of Appeals;

(c) discipline of lawyers;

(d) final orders of the Judicial Conduct Commission;

(e) final orders and decrees in formal adjudicative proceedings originating with:

(i) the Public Service Commission;

(ii) the State Tax Commission;

(iii) the School and Institutional Trust Lands Board of Trustees;

(iv) the Board of Oil, Gas, and Mining;

(v) the state engineer; or

(vi) the executive director of the Department of Natural Resources reviewing actions of the Division of Forestry, Fire and State Lands;

(f) final orders and decrees of the district court review of informal adjudicative proceedings of agencies under Subsection (3)(e);

(g) a final judgment or decree of any court of record holding a statute of the United States or this state unconstitutional on its face under the Constitution of the United States or the Utah Constitution;

(h) interlocutory appeals from any court of record involving a charge of a first degree or capital felony;

(i) appeals from the district court involving a conviction or charge of a first degree felony or capital felony;

(j) orders, judgments, and decrees of any court of record over which the Court of Appeals does not have original appellate jurisdiction; and

(k) appeals from the district court of orders, judgments, or decrees ruling on legislative subpoenas.

(4) The Supreme Court may transfer to the Court of Appeals any of the matters over which the Supreme Court has original appellate jurisdiction, except:

(a) capital felony convictions or an appeal of an interlocutory order of a court of record involving a charge of a capital felony;

(b) election and voting contests;

(c) reapportionment of election districts;

(d) retention or removal of public officers;

(e) matters involving legislative subpoenas; and

(f) those matters described in Subsections (3)(a) through (d).

(5) The Supreme Court has sole discretion in granting or denying a petition for writ of certiorari for the review of a Court of Appeals adjudication, but the Supreme Court shall review those cases certified to it by the Court of Appeals under Subsection (3)(b).

(6) The Supreme Court shall comply with the requirements of Title 63, Chapter 46b, Administrative Procedures Act, in its review of agency adjudicative proceedings.

Section 2. Section 78-2a-3 is amended to read:

78-2a-3. Court of Appeals jurisdiction.

(1) The Court of Appeals has jurisdiction to issue all extraordinary writs and to issue all writs and process necessary:

(a) to carry into effect its judgments, orders, and decrees; or

(b) in aid of its jurisdiction.

(2) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

(a) the final orders and decrees resulting from formal adjudicative proceedings of state agencies or

appeals from the district court review of informal adjudicative proceedings of the agencies, except the Public Service Commission, State Tax Commission, School and Institutional Trust Lands Board of Trustees, Division of Forestry, Fire and State Lands actions reviewed by the executive director of the Department of Natural Resources, Board of Oil, Gas, and Mining, and the state engineer;

(b) appeals from the district court review of:

(i) adjudicative proceedings of agencies of political subdivisions of the state or other local agencies; and

(ii) a challenge to agency action under Section 63-46a-12.1;

(c) appeals from the juvenile courts;

(d) interlocutory appeals from any court of record in criminal cases, except those involving a charge of a first degree or capital felony;

(e) appeals from a court of record in criminal cases, except those involving a conviction or charge of a first degree felony or capital felony;

(f) appeals from orders on petitions for extraordinary writs sought by persons who are incarcerated or serving any other criminal sentence, except petitions constituting a challenge to a conviction of or the sentence for a first degree or capital felony;

(g) appeals from the orders on petitions for extraordinary writs challenging the decisions of the Board of Pardons and Parole except in cases involving a first degree or capital felony;

(h) appeals from district court involving domestic relations cases, including, but not limited to, divorce, annulment, property division, child custody, support, visitation, adoption, and paternity;

(i) appeals from the Utah Military Court; and

(j) cases transferred to the Court of Appeals from the Supreme Court.

(3) The Court of Appeals upon its own motion only and by the vote of four judges of the court may certify to the Supreme Court for original appellate review and determination any matter over which the Court of Appeals has original appellate jurisdiction.

(4) The Court of Appeals shall comply with the requirements of Title 63, Chapter 46b, Administrative Procedures Act, in its review of agency adjudicative proceedings.

CHAPTER 303
H. B. 242
Passed February 9, 2001
Approved March 19, 2001
Effective April 30, 2001

REVIEW OF SALES AND USE TAX EXEMPTIONS

Sponsor: Greg J. Curtis
Judy Ann Buffmire

This act modifies the Sales and Use Tax Act by amending the Utah Tax Review Commission's study of sales and use tax exemptions. This act repeals obsolete language and makes technical changes.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
59-12-104.5, as last amended by Chapters 126, 272, 288, 289, 290, 341 and 342, Laws of Utah 1996

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

Section 1. Section 59-12-104.5 is amended to read:

59-12-104.5. Review of sales tax exemptions.

(1) [~~The~~] Beginning with the 2001 interim, the Utah Tax Review Commission, in cooperation with the governor's office and the [~~State Tax Commission~~] tax commission, shall conduct a review of the [~~following~~] sales and use tax exemptions [~~and related issues created in Section 59-12-104 within the following period of time:~~] created by Section 59-12-104 as provided in this section.

[~~(a) Subsections 59-12-104(4), (7), (8), (12), (15), (17), (24), (31), (37), (40) and (43) before October 1, 1993, and every eight years thereafter;~~]

[~~(b) Subsections 59-12-104(5), (6), (16), (18), (20), (21), (22), (34), and (35) before October 1, 1994, and every eight years thereafter;~~]

[~~(c) except as provided in Subsections (1)(e) and (f), Subsections 59-12-104(1), (2), (9), (13), (23), (29), (30), (39), (44), and (45) before October 1, 1995, and every eight years thereafter;~~]

[~~(d) Subsections 59-12-104(10), (11), (14), (19), (25), (26), (27), (28), (32), and (33) before October 1, 1996, and every eight years thereafter;~~]

(2) The Utah Tax Review Commission shall:

(a) review each of the sales and use tax exemptions created by Section 59-12-104 one or more times every eight years; and

(b) subject to Subsection (2)(a) and except as provided in Subsection (3), for each year select the exemptions that the Utah Tax Review Commission will review for that year.

[~~(e)~~] (3) [~~notwithstanding Subsection (1)(e),~~] Notwithstanding Subsection (2):

(a) the Utah Tax Review Commission shall review Subsection 59-12-104[~~(30)~~] (29) before October 1 of the year after the year in which Congress permits a state to participate in the special supplemental nutrition program under 42 U.S.C. Sec. 1786 even if state or local sales taxes are collected within the state on purchases of food under that program; and

[~~(f) notwithstanding Subsection (1)(e),~~] (b) the Utah Tax Review Commission shall review Subsection 59-12-104[~~(23)~~](22) before October 1 of the year after the year in which Congress permits a state to participate in the food stamp program under the Food Stamp Act, 7 U.S.C. Sec. 2011 et seq., even if state or local sales taxes are collected within the state on purchases of food under that program.

[~~(2) (a)~~] (4) The Utah Tax Review Commission [~~and the Revenue and Taxation Interim Committee~~] shall for each sales and use tax exemption the Utah Tax Review Commission reviews make [~~recommendations~~] a report to the governor and the [~~Legislature,~~] Revenue and Taxation Interim Committee:

(a) on or before the [~~October~~] November interim meeting in the year [~~the study is required to be completed under this section, concerning whether the exemption listed in Subsection (1) should be continued, modified, or repealed.~~] in which the Utah Tax Review Commission reviews the sales and use tax exemption;

(b) [~~In its report to the governor and the Revenue and Taxation Interim Committee, the commission review shall include at least:~~] including:

(i) a review of the cost of the sales and use tax exemption;

(ii) a review of the following criteria for granting or extending incentives for businesses:

(A) whether the business [~~must be~~] is willing to make a substantial capital investment in [~~Utah, signaling~~] the state indicating that it will be a long-term member of the community in which the business is or will be located;

(B) whether the business [~~must bring~~] brings new dollars into the state, which generally means the business must export goods or services outside of [~~Utah~~] the state, not just recirculate existing dollars;

(C) subject to Subsection (5), whether the business [~~must pay~~] pays higher than average wages in the area [~~where it~~] in which the business is or will be located, increasing [~~Utah's~~] the state's overall household income [~~(average wage calculations are not to include local, state, or federal government or school district employees)~~];

(D) whether the same incentives offered [~~the outside~~] to a new business [~~must be~~] locating in the state from another state are available to existing in-state businesses so as not to discriminate against [~~home-grown~~] the in-state businesses; and

(E) whether the incentives [~~must~~] clearly produce a positive return on investment as determined by state economic modeling formulas;

(iii) a determination of whether the sales and use tax exemption is consistent with the Legislature's sales and use tax policy positions adopted in [~~H.J.R. 32 of the~~] 1990 General Session H.J.R. 32;

(iv) a review of the purpose [~~and effectiveness~~] of the sales and use tax exemption; [~~and~~]

(v) a review of the effectiveness of the sales and use tax exemption; and

[~~(v)~~] (vi) a review of the benefits of the sales and use tax exemption to the state[~~.~~];

(c) recommending whether the sales and use tax exemption should be:

(i) continued;

(ii) modified; or

(iii) repealed; and

(d) reviewing any other issue the Utah Tax Review Commission determines to study.

[~~(3) Item 43, in H.B. 337, enacted during the 1993 General Session, is transferred from the Tax Commission to the Tax Review Commission to implement this section.~~]

(5) For purposes of Subsection (4)(b)(ii)(C), in determining whether a business pays higher than average wages in the area in which the business is or will be located, the Utah Tax Review Commission may not include wages of the following in making average wage calculations:

(a) wages of school district employees;

(b) wages of county, city, or town employees;

(c) wages of state employees; or

(d) wages of federal government employees.

CHAPTER 304
H. B. 244
Passed February 19, 2001
Approved March 19, 2001
Effective April 30, 2001

MODIFYING THE ELECTRIC DEREGULATION AND CUSTOMER CHOICE TASK FORCE

Sponsor: Thomas V. Hatch

This act modifies the Public Utilities Code to make modifications to the Electric Deregulation and Customer Choice Task Force. The act modifies the name and duties of the task force. The act modifies the relationship between the task force and the Public Service Commission.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
54-7-12.5, as last amended by Chapter 196, Laws of Utah 2000
54-7-12.7, as enacted by Chapter 62, Laws of Utah 1999

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

Section 1. Section 54-7-12.5 is amended to read:

54-7-12.5. Energy Policy Task Force.

(1) (a) There is [~~reauthorized~~] created the [~~Electric Deregulation and Customer Choice~~] Energy Policy Task Force [~~created by Chapter 176, Laws of Utah 1997,~~] consisting of the following members:

(i) five members of the Senate appointed by the president of the Senate, no more than three of whom may be from the same political party; and

(ii) seven members of the House of Representatives appointed by the speaker of the House of Representatives, no more than five of whom may be from the same political party.

(b) (i) The president of the Senate shall designate a member of the Senate appointed under Subsection (1)(a)(i) as a cochair of the task force.

(ii) The speaker of the House of Representatives shall designate a member of the House of Representatives appointed under Subsection (1)(a)(ii) as a cochair of the task force.

(c) In conducting its business, the task force shall comply with the rules of legislative interim committees.

(d) The task force may meet as often as twice a month, if the chairs determine that the meetings are needed.

(e) Salaries and expenses of the members of the task force shall be paid in accordance with Section 36-2-2 and Legislative Joint Rule 15.03.

(f) The Office of Legislative Research and General Counsel shall provide staff support to the task force.

(2) The task force shall:

[~~(a) prepare legislation that intends to implement an electrical restructuring plan to be presented to the Legislature for consideration during the 2001 Annual General Session, unless it is not in Utah's best interest;~~]

[~~(b) monitor the implementation of the legislation described in Subsection (2)(a), if passed by the Legislature;~~]

[~~(c) study electrical restructuring in and its effects on Utah;~~]

[~~(d) remain informed about developments in electrical restructuring on the federal level and in other states; and~~]

[~~(e) monitor states that have implemented an electrical restructuring plan to learn from the experiences of those states.~~]

(a) study energy needs of the state;

(b) monitor federal and other states' efforts to address energy needs;

(c) study potential Utah, federal, and other states:

(i) conservation efforts; or

(ii) demand side management activities;

(d) study potential ways the state could develop, facilitate, or promote generation, exploration, or transportation of new energy to serve the needs of the state; and

(e) make recommendations to the Legislature regarding what legislation, if any, is needed to ensure that the energy needs of the state are met.

(3) In addition to the assistance of the Public Service Commission under Section 54-7-12.7, the task force may request assistance from public and private resources as part of its [~~study~~] activities.

(4) The task force shall report at least annually to the Public Utilities and Technology Interim Committee.

Section 2. Section 54-7-12.7 is amended to read:

54-7-12.7. Commission work with task force.

To assist the [~~Electric Deregulation and Customer Choice~~] Energy Policy Task Force in [~~its study~~] the Energy Policy Task Force's duties under Section 54-7-12.5, the Public Service Commission shall[~~: (1) study electrical restructuring, including developments on the federal level and in other states; and (2)~~], as directed by the [~~Electric Deregulation and Customer Choice~~] Energy Policy Task Force, work with that task force including providing the task force with reports.

CHAPTER 305
H. B. 245
Passed February 22, 2001
Approved March 19, 2001
Effective April 30, 2001

UTAH PROCUREMENT CODE - REVERSE AUCTIONS

Sponsor: Martin R. Stephens

This act modifies the procurement code by authorizing the use of reverse auctions to award contracts. The act requires the Procurement Policy Board to make rules to govern the reverse auction process.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:
63-56-20.1, Utah Code Annotated 1953

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

Section 1. Section 63-56-20.1 is enacted to read:

63-56-20.1. Contracts awarded by reverse auction.

(1) As used in this section, "reverse auction" means a process where:

(a) contracts are awarded in an open and interactive environment, which may include the use of electronic media; and

(b) bids are opened and made public immediately, and bidders given opportunity to submit revised, lower bids, until the bidding process is complete.

(2) (a) Notwithstanding the requirements of this chapter, contracts may be awarded through a reverse auction.

(b) The policy board shall make rules, consistent with this chapter, governing a reverse auction process.

CHAPTER 306
H. B. 247
Passed February 27, 2001
Approved March 19, 2001
Effective April 30, 2001

FILING WRONGFUL LIENS OR JUDGEMENTS

Sponsor: Margaret Dayton

This act provides a cross reference to the wrongful lien statute for guidance in correcting a wrongful lien or judgment lien.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
78-22-1.5, as last amended by Chapter 327, Laws of Utah 1998

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

Section 1. Section 78-22-1.5 is amended to read:

78-22-1.5. Definitions -- Judgment recorded in Registry of Judgments -- Wrongful liens.

(1) For purposes of this section, "Registry of Judgments" means the index where a judgment shall be recorded and searchable by the name of the judgment debtor through electronic means or by tangible document.

(2) On or after July 1, 1997, a judgment rendered or recorded in a district court does not create a lien upon or affect the title to real property unless the judgment is recorded in the Registry of Judgments of the office of the clerk of the district court of the county in which the property is located.

(3) In addition to the requirement of Subsection (2), any judgment that is recorded in the Registry of Judgments on or after September 1, 1998, shall include a separate information statement of the judgment creditor that contains:

(a) the correct name and last-known address of each judgment debtor and the address at which each judgment debtor received service of process;

(b) the name and address of the judgment creditor;

(c) the amount of the judgment as entered in the Registry of Judgments;

(d) if known, the judgment debtor's social security number, date of birth, and driver's license number if a natural person; and

(e) whether or not a stay of enforcement has been ordered by the court and the date the stay expires.

(4) For the information required in Subsection (3), the judgment creditor shall:

(a) provide the information on the separate information statement if known or available to the judgment creditor from its records, its attorney's records, or the court records in the action in which the judgement was entered; or

(b) state on the separate information statement that the information is unknown or unavailable.

(5) (a) Any judgment that requires payment of money and is recorded on or after September 1, 1998, and is not accompanied by the separate information statement as required in Subsections (3) and (4) may be amended by recording a document entitled "Amendment to Recorded Judgment" in the Registry of Judgments in compliance with Subsections (3) and (4).

(b) The amendment to the recorded judgment shall state the date of recording the original judgment in the Registry of Judgments.

(c) Recording an amendment to a recorded judgment has no effect on the computation of time as provided in Section 78-22-1.

(6) A judgment that requires payment of money recorded on or after September 1, 1998, has as its priority the date of compliance with Subsections (3) and (4), except as to parties with actual or constructive knowledge of the judgment.

(7) A judgment or notice of judgment wrongfully filed against real property is subject to Title 38, Chapter 9, Wrongful Liens.

CHAPTER 307
H. B. 250
Passed February 19, 2001
Approved March 19, 2001
Effective April 30, 2001

OBSTRUCTION OF JUSTICE AMENDMENTS

Sponsor: Scott Daniels

This act repeals and reenacts a provision of the Criminal Code regarding the offense of obstruction of justice. This act provides penalties in relation to the level of offense regarding which judicial action is obstructed and in relation to the type of action taken to cause the obstruction. This act also repeals the code section regarding tampering with evidence, as the reenacted statute includes that offense.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
76-3-203.3, as enacted by Chapter 102, Laws of Utah 1992
76-10-1602, as last amended by Chapters 97 and 247, Laws of Utah 1999
77-23a-8, as last amended by Chapter 97, Laws of Utah 1999

REPEALS AND REENACTS:
76-8-306, as last amended by Chapter 203, Laws of Utah 2000

REPEALS:
76-8-510, as enacted by Chapter 196, Laws of Utah 1973

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

Section 1. Section 76-3-203.3 is amended to read:

76-3-203.3. Penalty for hate crimes -- Civil rights violation.

As used in this section:

(1) "Primary offense" means those offenses provided in Subsection (5).

(2) A person who commits any primary offense with the intent to intimidate or terrorize another person or with reason to believe that his action would intimidate or terrorize that person is guilty of a third degree felony.

(3) "Intimidate or terrorize" means an act which causes the person to fear for his physical safety or damages the property of that person or another. The act must be accompanied with the intent to cause a person to fear to freely exercise or enjoy any right secured by the Constitution or laws of the state or by the Constitution or laws of the United States.

(4) (a) The prosecuting attorney, or grand jury if an indictment is returned, shall provide notice on the complaint in misdemeanor cases that the defendant is subject to a third degree felony provided under this section. The notice shall be in a clause separate from and in addition to the substantive offense charged.

(b) If the notice is not included initially, the court may subsequently allow the prosecutor to amend the charging document to include the notice if the court finds:

(i) that the amended charging documents, including any statement of probable cause, provide notice that the defendant is subject to a third degree felony provided under this section; and

(ii) that the defendant has not otherwise been substantially prejudiced by the amendment.

(5) Primary offenses referred to in Subsection (2) are the misdemeanor offenses for:

(a) assault and related offenses under Sections 76-5-102, 76-5-102.4, 76-5-106, 76-5-107, and 76-5-108;

(b) any misdemeanor property destruction offense under Sections 76-6-102, 76-6-104, and 76-8-714, and Subsection 76-6-106(1)(b);

(c) any criminal trespass offense under Sections 76-6-204 and 76-6-206;

(d) any misdemeanor theft offense under Section 76-6-412;

(e) any offense of obstructing government operations under Sections 76-8-301, 76-8-302, 76-8-304, 76-8-305, 76-8-306, 76-8-307, 76-8-308, and 76-8-313 and [~~Subsections 76-8-306 (1)(a) through (f) and~~] Subsection 76-8-310(1);

(f) any offense of interfering or intending to interfere with activities of colleges and universities under Title 76, Chapter 8, Part 7;

(g) any misdemeanor offense against public order and decency as defined in Title 76, Chapter 9, Part 1;

(h) any telephone abuse offense under Title 76, Chapter 9, Part 2;

(i) any cruelty to animals offense under Section 76-9-301; and

(j) any weapons offense under Section 76-10-506.

Section 2. Section 76-8-306 is repealed and reenacted to read:

76-8-306. Obstruction of justice -- Elements -- Penalties -- Exceptions.

(1) An actor commits obstruction of justice if the actor, with intent to hinder, delay, or prevent the investigation, apprehension, prosecution, conviction, or punishment of any person regarding conduct that constitutes a criminal offense:

(a) provides any person with a weapon;

(b) prevents by force, intimidation, or deception, any person from performing any act that might aid in the discovery, apprehension, prosecution, conviction, or punishment of any person;

(c) alters, destroys, conceals, or removes any item or other thing;

(d) makes, presents, or uses any item or thing known by the actor to be false;

(e) harbors or conceals a person;

(f) provides a person with transportation, disguise, or other means of avoiding discovery or apprehension;

(g) warns any person of impending discovery or apprehension;

(h) conceals information that is not privileged and that concerns the offense, after a judge or magistrate has ordered the actor to provide the information; or

(i) provides false information regarding a suspect, a witness, the conduct constituting an offense, or any other material aspect of the investigation.

(2) (a) As used in this section, "conduct that constitutes a criminal offense" means conduct that would be punishable as a crime and is separate from a violation of this section, and includes:

(i) any violation of a criminal statute or ordinance of this state, its political subdivisions, any other state, or any district, possession, or territory of the United States; and

(ii) conduct committed by a juvenile which would be a crime if committed by an adult.

(b) A violation of a criminal statute that is committed in another state, or any district, possession, or territory of the United States, is a:

(i) capital felony if the penalty provided includes death or life imprisonment without parole;

(ii) a first degree felony if the penalty provided includes life imprisonment with parole or a maximum term of imprisonment exceeding 15 years;

(iii) a second degree felony if the penalty provided exceeds five years;

(iv) a third degree felony if the penalty provided includes imprisonment for any period exceeding one year; and

(v) a misdemeanor if the penalty provided includes imprisonment for any period of one year or less.

(3) The penalties for obstruction of justice are:

(a) a second degree felony if the conduct which constitutes an offense would be a capital felony or first degree felony;

(b) a third degree felony if:

(i) the conduct that constitutes an offense would be a second or third degree felony and the actor violates Subsection (1)(b), (c), (d), (e), or (f); or

(ii) the conduct that constitutes an offense would be any offense other than a capital or first degree felony and the actor violates Subsection (1)(a);

(c) a class A misdemeanor if:

(i) the conduct that constitutes an offense would be a second or third degree felony and the actor violates Subsection (1)(g), (h), or (i); or

(ii) the conduct that constitutes an offense would be a misdemeanor and the actor violates Subsection (1)(b); or

(d) a class B misdemeanor if the conduct that constitutes the offense is a misdemeanor and the actor violates Subsection (1)(c), (d), (e), (f), (g), (h), or (i).

(4) It is not a defense that the actor was unaware of the level of penalty for the conduct constituting an offense.

(5) Subsection (1)(e) does not apply to harboring a youth offender, which is governed by Section 62A-7-106.

(6) Subsection (1)(b) does not apply to:

(a) tampering with a juror, which is governed by Section 76-8-508.5;

(b) influencing, impeding, or retaliating against a judge or member of the Board of Pardons and Parole, which is governed by Section 76-8-508;

(c) tampering with a witness, which is governed by Section 76-8-508; or

(d) extortion or bribery to dismiss a criminal proceeding, which is governed by Section 76-8-509.

(7) Notwithstanding Subsection (1), (2), or (3), an actor commits a third degree felony if the actor harbors or conceals an offender who has:

(a) absconded from a facility or from supervision as those offenses are defined in Section 76-8-309.5; or

(b) escaped from official custody as defined in Section 76-8-309.

Section 3. Section 76-10-1602 is amended to read:

76-10-1602. Definitions.

As used in this part:

(1) "Enterprise" means any individual, sole proprietorship, partnership, corporation, business trust, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity, and includes illicit as well as licit entities.

(2) "Pattern of unlawful activity" means engaging in conduct which constitutes the commission of at least three episodes of unlawful activity, which episodes are not isolated, but have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics. Taken together, the episodes shall demonstrate continuing unlawful conduct and be related either to each other or to the enterprise. At least one of the episodes comprising a pattern of unlawful activity shall have occurred after July 31, 1981. The most recent act constituting part of a pattern of unlawful activity as defined by this part shall have occurred

within five years of the commission of the next preceding act alleged as part of the pattern.

(3) "Person" includes any individual or entity capable of holding a legal or beneficial interest in property, including state, county, and local governmental entities.

(4) "Unlawful activity" means to directly engage in conduct or to solicit, request, command, encourage, or intentionally aid another person to engage in conduct which would constitute any offense described by the following crimes or categories of crimes, or to attempt or conspire to engage in an act which would constitute any of those offenses, regardless of whether the act is in fact charged or indicted by any authority or is classified as a misdemeanor or a felony:

(a) any act prohibited by the criminal provisions of Title 13, Chapter 10, Unauthorized Recording Practices Act;

(b) any act prohibited by the criminal provisions of Title 19, Environmental Quality Code, Sections 19-1-101 through 19-7-109;

(c) taking, destroying, or possessing wildlife or parts of wildlife for the primary purpose of sale, trade, or other pecuniary gain, in violation of Title 23, Chapter 13, Wildlife Resources Code of Utah, or Section 23-20-4;

(d) false claims for medical benefits, kickbacks, and any other act prohibited by False Claims Act, Sections 26-20-1 through 26-20-12;

(e) any act prohibited by the criminal provisions of Title 32A, Chapter 12, Criminal Offenses;

(f) any act prohibited by the criminal provisions of Title 57, Chapter 11, Utah Uniform Land Sales Practices Act;

(g) any act prohibited by the criminal provisions of Title 58, Chapter 37, Utah Controlled Substances Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, or Title 58, Chapter 37c, Utah Controlled Substance Precursor Act;

(h) any act prohibited by the criminal provisions of Title 61, Chapter 1, Utah Uniform Securities Act;

(i) any act prohibited by the criminal provisions of Title 63, Chapter 56, Utah Procurement Code;

(j) assault or aggravated assault, Sections 76-5-102 and 76-5-103;

(k) a threat against life or property, Section 76-5-107;

(l) criminal homicide, Sections 76-5-201, 76-5-202, and 76-5-203;

(m) kidnapping or aggravated kidnapping, Sections 76-5-301 and 76-5-302;

(n) sexual exploitation of a minor, Section 76-5a-3;

(o) arson or aggravated arson, Sections 76-6-102 and 76-6-103;

(p) causing a catastrophe, Section 76-6-105;

(q) burglary or aggravated burglary, Sections 76-6-202 and 76-6-203;

(r) burglary of a vehicle, Section 76-6-204;

(s) manufacture or possession of an instrument for burglary or theft, Section 76-6-205;

(t) robbery or aggravated robbery, Sections 76-6-301 and 76-6-302;

(u) theft, Section 76-6-404;

(v) theft by deception, Section 76-6-405;

(w) theft by extortion, Section 76-6-406;

(x) receiving stolen property, Section 76-6-408;

(y) theft of services, Section 76-6-409;

(z) forgery, Section 76-6-501;

(aa) fraudulent use of a credit card, Sections 76-6-506.1, 76-6-506.2, and 76-6-506.4;

(bb) deceptive business practices, Section 76-6-507;

(cc) bribery or receiving bribe by person in the business of selection, appraisal, or criticism of goods, Section 76-6-508;

(dd) bribery of a labor official, Section 76-6-509;

(ee) defrauding creditors, Section 76-6-511;

(ff) acceptance of deposit by insolvent financial institution, Section 76-6-512;

(gg) unlawful dealing with property by fiduciary, Section 76-6-513;

(hh) bribery or threat to influence contest, Section 76-6-514;

(ii) making a false credit report, Section 76-6-517;

(jj) criminal simulation, Section 76-6-518;

(kk) criminal usury, Section 76-6-520;

(ll) false or fraudulent insurance claim, Section 76-6-521;

(mm) computer crimes, Section 76-6-703;

(nn) sale of a child, Section 76-7-203;

(oo) bribery to influence official or political actions, Section 76-8-103;

(pp) threats to influence official or political action, Section 76-8-104;

(qq) receiving bribe or bribery by public servant, Section 76-8-105;

(rr) receiving bribe or bribery for endorsement of person as public servant, Section 76-8-106;

(ss) official misconduct, Sections 76-8-201 and 76-8-202;

(tt) [~~obstructing~~] obstruction of justice, Section 76-8-306;

(uu) acceptance of bribe or bribery to prevent criminal prosecution, Section 76-8-308;

(vv) false or inconsistent material statements, Section 76-8-502;

(ww) false or inconsistent statements, Section 76-8-503;

(xx) written false statements, Section 76-8-504;

(yy) tampering with a witness, retaliation against a witness or informant, or bribery, Section 76-8-508;

(zz) extortion or bribery to dismiss criminal proceeding, Section 76-8-509;

[~~(aaa) tampering with evidence, Section 76-8-510;~~]

[~~(bbb)~~] (aaa) public assistance fraud in violation of Section 76-8-1203, 76-8-1204, or 76-8-1205;

[~~(ccc)~~] (bbb) intentionally or knowingly causing one animal to fight with another, Subsection 76-9-301(1)(f);

[~~(ddd)~~] (ccc) possession, use, or removal of explosives, chemical, or incendiary devices or parts, Section 76-10-306;

[~~(eee)~~] (ddd) delivery to common carrier, mailing, or placement on premises of an incendiary device, Section 76-10-307;

[~~(fff)~~] (eee) possession of a deadly weapon with intent to assault, Section 76-10-507;

[~~(ggg)~~] (fff) unlawful marking of pistol or revolver, Section 76-10-521;

[~~(hhh)~~] (ggg) alteration of number or mark on pistol or revolver, Section 76-10-522;

[~~(iii)~~] (hhh) forging or counterfeiting trademarks, trade name, or trade device, Section 76-10-1002;

[~~(jjj)~~] (iii) selling goods under counterfeited trademark, trade name, or trade devices, Section 76-10-1003;

[~~(kkk)~~] (jjj) sales in containers bearing registered trademark of substituted articles, Section 76-10-1004;

[~~(lll)~~] (kkk) selling or dealing with article bearing registered trademark or service mark with intent to defraud, Section 76-10-1006;

[~~(mmm)~~] (lll) gambling, Section 76-10-1102;

[~~(nnn)~~] (mmm) gambling fraud, Section 76-10-1103;

[~~(ooo)~~] (nnn) gambling promotion, Section 76-10-1104;

[~~(ppp)~~] (ooo) possessing a gambling device or record, Section 76-10-1105;

[~~(qqq)~~] (ppp) confidence game, Section 76-10-1109;

[~~(rrr)~~] (qqq) distributing pornographic material, Section 76-10-1204;

[~~(sss)~~] (rrr) inducing acceptance of pornographic material, Section 76-10-1205;

[~~(ttt)~~] (sss) dealing in harmful material to a minor, Section 76-10-1206;

[~~(uuu)~~] (ttt) distribution of pornographic films, Section 76-10-1222;

[~~(vvv)~~] (uuu) indecent public displays, Section 76-10-1228;

[~~(www)~~] (vvv) prostitution, Section 76-10-1302;

[~~(xxx)~~] (www) aiding prostitution, Section 76-10-1304;

[~~(yyy)~~] (xxx) exploiting prostitution, Section 76-10-1305;

[~~(zzz)~~] (yyy) aggravated exploitation of prostitution, Section 76-10-1306;

[~~(aaaa)~~] (zzz) communications fraud, Section 76-10-1801;

[~~(bbbb)~~] (aaaa) any act prohibited by the criminal provisions of Title 76, Chapter 10, Part 19, Money Laundering and Currency Transaction Reporting Act;

[~~(cccc)~~] (bbbb) any act prohibited by the criminal provisions of the laws governing taxation in this state; and

[~~(dddd)~~] (cccc) any act illegal under the laws of the United States and enumerated in Title 18, Section 1961 (1)(B), (C), and (D) of the United States Code.

Section 4. Section 77-23a-8 is amended to read:

77-23a-8. Court order to authorize or approve interception -- Procedure.

(1) The attorney general of the state, any assistant attorney general specially designated by the attorney general, any county attorney, district attorney, deputy county attorney, or deputy district attorney specially designated by the county attorney or by the district attorney, may authorize an application to a judge of competent jurisdiction for an order for an interception of wire, electronic, or oral communications by any law enforcement agency of the state, the federal government or of any political subdivision of the state that is responsible for investigating the type of offense for which the application is made.

(2) The judge may grant the order in conformity with the required procedures when the interception sought may provide or has provided evidence of the commission of:

(a) any act prohibited by the criminal provisions of Title 58, Chapter 37, Utah Controlled Substances Act; Title 58, Chapter 37c, Utah Controlled Substances Precursor Act; Title 58, Chapter 37d, Clandestine Drug Lab Act; punishable by a term of imprisonment of more than one year;

(b) any act prohibited by the criminal provisions of the Utah Uniform Securities Act and punishable by a term of imprisonment of more than one year, Title 61, Chapter 1;

(c) attempt, Section 76-4-101; conspiracy, Section 76-4-201; solicitation, Section 76-4-203; to commit any of the offenses enumerated above so long as the attempt, conspiracy or solicitation offense is punishable by a term of imprisonment of more than one year;

(d) threat against life or property offense punishable by a maximum term of imprisonment of more than one year, Section 76-5-107;

(e) aggravated murder, Section 76-5-202; murder, Section 76-5-203; manslaughter, Section 76-5-205;

(f) [~~kidnaping~~] kidnapping, Section 76-5-301; child [~~kidnaping~~] kidnapping, Section 76-5-301.1; aggravated kidnapping, Section 76-5-302;

(g) arson, Section 76-6-102; aggravated arson, Section 76-6-103;

(h) burglary, Section 76-6-202; aggravated burglary, Section 76-6-203;

(i) robbery, Section 76-6-301; aggravated robbery, Section 76-6-302;

(j) theft, Section 76-6-404; theft by deception, Section 76-6-405; theft by extortion, Section 76-6-406; when the theft, theft by deception or theft by extortion, is punishable by a maximum term of imprisonment of more than one year;

(k) receiving stolen property offense punishable by a maximum term of imprisonment of more than one year, Section 76-6-408;

(l) financial card transaction offenses punishable by a maximum term of imprisonment of more than one year, Section 76-6-506.1, 76-6-506.2, 76-6-506.3, 76-6-506.4, 76-6-506.5, or 76-6-506.6;

(m) bribery of a labor official, Section 76-6-509;

(n) bribery or threat to influence a publicly exhibited contest, Section 76-6-514;

(o) criminal simulation offenses punishable by a maximum term of imprisonment of more than one year, Section 76-6-518;

(p) criminal usury, Section 76-6-520;

(q) false or fraudulent insurance claim offenses punishable by a maximum term of imprisonment of more than one year, Section 76-6-521;

(r) violations of the Computer Crimes Act punishable by a maximum term of imprisonment of more than one year, Section 76-6-703;

(s) bribery to influence official or political actions, Section 76-8-103;

(t) misusing public moneys, Section 76-8-402;

(u) tampering with a witness, retaliation against a witness or informant, or bribery, communicating a threat, Section 76-8-508;

(v) tampering with a juror, retaliation against a juror, Section 76-8-508.5;

(w) extortion or bribery to dismiss criminal proceeding, Section 76-8-509;

[~~(x) tampering with evidence, Section 76-8-510;~~]

(x) obstruction of justice, Section 76-8-306;

(y) destruction of property to interfere with preparation for defense or war, Section 76-8-802;

(z) attempts to commit crimes of sabotage, Section 76-8-804;

(aa) conspiracy to commit crimes of sabotage, Section 76-8-805;

(bb) advocating criminal syndicalism or sabotage, Section 76-8-902;

(cc) assembly for advocating criminal syndicalism or sabotage, Section 76-8-903;

(dd) riot punishable by a maximum term of imprisonment of more than one year, Section 76-9-101;

(ee) dog fighting, training dogs for fighting, dog fighting exhibitions punishable by a maximum term of imprisonment of more than one year, Section 76-9-301.1;

(ff) explosive, chemical, or incendiary device and parts, possession, use, or removal, Section 76-10-306;

(gg) explosive, chemical, or incendiary device, delivery to a common carrier or mailing, Section 76-10-307;

(hh) exploiting prostitution, Section 76-10-1305;

(ii) aggravated exploitation of prostitution, Section 76-10-1306;

(jj) bus hijacking, assault with intent to commit hijacking, dangerous weapon or firearm, Section 76-10-1504;

(kk) discharging firearms and hurling missiles, Section 76-10-1505;

(ll) violations of the Pattern of Unlawful Activity Act and the offenses listed under the definition of unlawful activity in the act, including the offenses not punishable by a maximum term of imprisonment of more than one year when those offenses are investigated as predicates for the offenses prohibited by the act, Section 76-10-1602;

(mm) communications fraud, Section 76-10-1801;

(nn) money laundering, Sections 76-10-1903 and 76-10-1904; or

(oo) reporting by financial institutions when the offense is punishable by a maximum term of imprisonment of more than one year, Section 76-10-1906.

Section 5. Repealer.

This act repeals:

Section 76-8-510, Tampering with evidence.

CHAPTER 308
H. B. 252
Passed February 21, 2001
Approved March 19, 2001
Effective April 30, 2001

JUDICIARY AMENDMENTS

Sponsor: A. Lamont Tyler

This act modifies provisions relating to the Judiciary. The act changes the way judges declare their intent to stand for retention election. The act also changes who should file the declaration of intent from only judges of courts of record, to all judges and justices. This act clarifies conflicting provisions regarding the depositing of public funds from justice courts and changes the jury service requirement from five days every two years to one day, with exceptions.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
20A-12-201, as last amended by Chapter 183, Laws of Utah 1997
78-5-135, as last amended by Chapter 7, Laws of Utah 1991, Second Special Session
78-46-12, as last amended by Chapter 219, Laws of Utah 1992
78-46-15, as last amended by Chapter 219, Laws of Utah 1992
78-46-19, as last amended by Chapter 159, Laws of Utah 1993

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

Section 1. Section 20A-12-201 is amended to read:

20A-12-201. Judicial appointees -- Retention elections.

(1) (a) Each appointee to a court of record is subject to an unopposed retention election at the first general election held more than three years after the judge or justice was appointed.

(b) After the first retention election:

(i) each Supreme Court justice shall be on the regular general election ballot for an unopposed retention election every tenth year; and

(ii) each judge of other courts of record shall be on the regular general election ballot for an unopposed retention election every sixth year.

(2) (a) Each justice or judge of a court of record who wishes to retain office shall, in the year the justice or judge is subject to a retention election:

(i) file a declaration of candidacy as if a candidate for multi-county office in accordance with Section 20A-9-202; and

(ii) pay a filing fee of $50.

(b) Each county justice judge who wishes to retain office shall, in the year the justice or judge is subject to a retention election:

(i) file a declaration of candidacy as if a candidate for county office in accordance with Section 20A-9-202; and

(ii) pay a filing fee of $25.

(3) (a) The lieutenant governor shall, by September 1 of each regular general election year:

(i) transmit a certified list containing the names of the justices of the Supreme Court and judges of the Court of Appeals declaring their candidacy to the county clerk of each county; and

(ii) transmit a certified list containing the names of judges of other courts [~~of record~~] declaring their candidacy to the county clerk of each county in the geographic division in which the judge filing the declaration holds office.

(b) Each county clerk shall place the names of justices and judges standing for retention election in the nonpartisan section of the ballot.

(4) At the general election, the ballots shall contain, as to each justice or judge of any court [~~of record~~] to be voted on in the county, the following question:

"Shall _____(name of justice or judge) be retained in the office of _____?" (name of office, such as "Justice of the Supreme Court of Utah"; "Judge of the Court of Appeals of Utah"; "Judge of the District Court of the Third Judicial District;" "Judge of the Juvenile Court of the Fourth Juvenile Court District"; "County Justice Court Judge of (name of county) County")

Yes ()

No ()."

(5) (a) If the justice or judge receives more yes votes than no votes, the justice or judge is retained for the term of office provided by law.

(b) If the justice or judge [~~receives~~] does not receive more [~~no~~] yes votes than [~~yes~~] no votes, the justice or judge is not retained, and a vacancy exists in the office on the first Monday in January after the regular general election.

(6) A justice or judge not retained is ineligible for appointment to the office for which the justice or judge was defeated until after the expiration of that term of office.

Section 2. Section 78-5-135 is amended to read:

78-5-135. Fines, fees, and forfeitures collected -- Deposits and reports -- Special account -- Accounting.

(1) (a) Municipal justice courts shall deposit [~~within seven days, or more often if required by the governing body, all fines, fees, costs, and forfeitures collected in an account controlled by the treasurer of the municipality in which the court is located~~] public funds in accordance with Section 51-4-2.

(b) The treasurer shall report to the city recorder the sums collected and deposited. The recorder shall then apportion and remit the collected proceeds as provided in Section 78-5-116.

(c) The municipality shall retain all small claims filing fees including the governmental filing fee for actions filed by the municipality as provided in Section 78-6-14.

(2) (a) County justice courts shall deposit [~~within seven days, or more often if required by the governing body, all fines, fees, costs, and forfeitures collected to an account controlled by the treasurer of the county in which the court is located~~] public funds in accordance with Section 51-4-2.

(b) The treasurer shall report to the county auditor the sums collected and deposited. The auditor shall then apportion and remit the collected proceeds as provided in Section 78-5-116.

(c) The county shall retain all small claims filing fees including the governmental filing fee for actions filed by the county as provided in Section 78-6-14.

(3) Money received or collected on any civil process or order issued from a justice court shall be paid within seven days to the party entitled or authorized to receive it.

(4) (a) With the approval of the governing body a trust or revolving account may be established in the name of the justice court and the treasurer for the deposit of money collected including bail, restitution, unidentified receipts, and other money that requires special accounting.

(b) Disbursements from this account do not require the approval of the auditor, recorder, or governing body.

(c) The account shall be reconciled at least quarterly by the auditor of the governing body.

Section 3. Section 78-46-12 is amended to read:

78-46-12. Qualified jury list -- Term of availability -- Juror qualification form -- Content -- Completion -- Penalties for failure to complete or misrepresentation -- Joint jury list for court authorized.

(1) Prospective jurors shall be selected at random from the master jury list and, if qualified, placed on the qualified jury list. A prospective juror shall remain on the qualified jury list for no longer than six months or for such shorter period established by rule of the Judicial Council. The qualified jury list may be used by all courts within the county, but no person shall be summoned to serve as a juror in more than one court.

(2) The Judicial Council shall by rule govern the process for the qualification of jurors and the selection of qualified jurors for voir dire.

(3) The state court administrator shall develop a standard form for the qualification of jurors. The form shall include:

(a) the name, address, and daytime telephone number of the prospective juror;

(b) questions suitable for determining whether the prospective juror is competent under statute to serve as a juror; and

(c) the person's declaration that the responses to questions on the qualification form are true to the best of the person's knowledge[~~; and~~].

[~~(d) a statement that a willful misrepresentation of a material fact is punishable as a class C misdemeanor.~~]

(4) Any prospective juror who fails to return a completed form as instructed shall be directed by the court to appear before the clerk to complete the form. A person who fails to appear is subject to the procedures and penalties in Section 78-46-20.

(5) Any person who willfully misrepresents a material fact on a juror qualification form for the purpose of avoiding or securing service as a juror is guilty of a class C misdemeanor.

Section 4. Section 78-46-15 is amended to read:

78-46-15. Excuse from jury service.

(1) The court, upon request of a prospective juror or on its own initiative, shall determine on the basis of information provided on the juror qualification form or by interview with the prospective juror, or by other competent evidence, whether the prospective juror should be excused from jury service. The clerk shall enter this determination in the records of the court.

(2) A person may be excused from jury service by the court, at its discretion, upon a showing of [~~a physical or mental disability rendering the person incapable of jury service,~~] undue hardship, extreme inconvenience, [~~or~~] public necessity, or that the person is incapable of jury service. The excused period may be for any period the court [~~deems~~] considers necessary.

Section 5. Section 78-46-19 is amended to read:

78-46-19. Limitations on jury service.

In any two-year period, a person shall not be required:

(1) to serve on more than one grand jury;

(2) to serve as both a grand and trial juror; or

(3) to attend court for prospective jury service as a trial juror more than [~~five~~] one court [~~days~~] day, except if necessary to complete service in a particular case.

CHAPTER 309
H. B. 353
Passed February 27, 2001
Approved March 19, 2001
Effective July 1, 2001

DRIVING UNDER THE INFLUENCE AMENDMENTS

Sponsor: Paul Ray

This act modifies the Motor Vehicles Code by amending DUI penalty provisions, including an enhancement provision and driver license suspension and revocation provisions. This act takes effect on July 1, 2001.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
41-6-44, as last amended by Chapters 333 and 334, Laws of Utah 2000

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

Section 1. Section 41-6-44 is amended to read:

41-6-44. Driving under the influence of alcohol, drugs, or with specified or unsafe blood alcohol concentration -- Measurement of blood or breath alcohol -- Criminal punishment -- Arrest without warrant -- Penalties -- Suspension or revocation of license.

(1) As used in this section:

(a) "educational series" means an educational series obtained at a substance abuse program that is approved by the Board of Substance Abuse in accordance with Section 62A-8-107;

(b) "prior conviction" means any conviction for a violation of:

(i) this section;

(ii) alcohol-related reckless driving under Subsections (9) and (10);

(iii) local ordinances similar to this section or alcohol-related reckless driving adopted in compliance with Section 41-6-43;

(iv) automobile homicide under Section 76-5-207; or

(v) statutes or ordinances in effect in any other state, the United States, or any district, possession, or territory of the United States which would constitute a violation of this section or alcohol-related reckless driving if committed in this state, including punishments administered under 10 U.S.C. Sec. 815;

(c) "screening and assessment" means a substance abuse addiction and dependency screening and assessment obtained at a substance abuse program that is approved by the Board of Substance Abuse in accordance with Section 62A-8-107;

(d) "serious bodily injury" means bodily injury that creates or causes serious permanent disfigurement, protracted loss or impairment of the function of any bodily member or organ, or creates a substantial risk of death;

(e) "substance abuse treatment" means treatment obtained at a substance abuse program that is approved by the Board of Substance Abuse in accordance with Section 62A-8-107;

(f) "substance abuse treatment program" means a state licensed substance abuse program;

(g) a violation of this section includes a violation under a local ordinance similar to this section adopted in compliance with Section 41-6-43; and

(h) the standard of negligence is that of simple negligence, the failure to exercise that degree of care that an ordinarily reasonable and prudent person exercises under like or similar circumstances.

(2) (a) A person may not operate or be in actual physical control of a vehicle within this state if the person:

(i) has sufficient alcohol in his body that a chemical test given within two hours of the alleged operation or physical control shows that the person has a blood or breath alcohol concentration of .08 grams or greater; or

(ii) is under the influence of alcohol, any drug, or the combined influence of alcohol and any drug to a degree that renders the person incapable of safely operating a vehicle.

(b) The fact that a person charged with violating this section is or has been legally entitled to use alcohol or a drug is not a defense against any charge of violating this section.

(c) Alcohol concentration in the blood shall be based upon grams of alcohol per 100 milliliters of blood, and alcohol concentration in the breath shall be based upon grams of alcohol per 210 liters of breath.

(3) (a) A person convicted the first or second time of a violation of Subsection (2) is guilty of a:

(i) class B misdemeanor; or

(ii) class A misdemeanor if the person:

(A) has also inflicted bodily injury upon another as a proximate result of having operated the vehicle in a negligent manner; [~~or~~]

(B) had a passenger under 16 years of age in the vehicle at the time of the offense[~~.~~]; or

(C) was 21 years of age or older and had a passenger under 18 years of age in the vehicle at the time of the offense.

(b) A person convicted of a violation of Subsection (2) is guilty of a third degree felony if the person has also inflicted serious bodily injury upon another as a proximate result of having operated the vehicle in a negligent manner.

(4) (a) As part of any sentence imposed the court shall, upon a first conviction, impose a mandatory jail sentence of not less than 48 consecutive hours.

(b) The court may, as an alternative to all or part of a jail sentence, require the person to:

(i) work in a compensatory-service work program for not less than 24 hours; or

(ii) participate in home confinement through the use of electronic monitoring in accordance with Subsection (13).

(c) In addition to the jail sentence, compensatory-service work program, or home confinement, the court shall:

(i) order the person to participate in a screening and assessment;

(ii) order the person to participate in an educational series if the court does not order substance abuse treatment as described under Subsection (4)(d); and

(iii) impose a fine of not less than $700.

(d) The court may order the person to obtain substance abuse treatment if the substance abuse treatment program determines that substance abuse treatment is appropriate.

(e) The court may order probation for the person in accordance with Subsection (14).

(5) (a) If a person is convicted under Subsection (2) within six years of a prior conviction under this section, the court shall as part of any sentence impose a mandatory jail sentence of not less than 240 consecutive hours.

(b) The court may, as an alternative to all or part of a jail sentence, require the person to:

(i) work in a compensatory-service work program for not less than 240 hours; or

(ii) participate in home confinement through the use of electronic monitoring in accordance with Subsection (13).

(c) In addition to the jail sentence, compensatory-service work program, or home confinement, the court shall:

(i) order the person to participate in a screening and assessment;

(ii) order the person to participate in an educational series if the court does not order substance abuse treatment as described under Subsection (5)(d); and

(iii) impose a fine of not less than $800.

(d) The court may order the person to obtain substance abuse treatment if the substance abuse treatment program determines that substance abuse treatment is appropriate.

(e) The court may order probation for the person in accordance with Subsection (14).

(6) (a) A third or subsequent conviction for a violation committed within six years of two or more prior convictions under this section is a third degree felony.

(b) Under Subsection (3)(b) or (6)(a), if the court suspends the execution of a prison sentence and places the defendant on probation the court shall impose:

(i) a fine of not less than $1,500; and

(ii) a mandatory jail sentence of not less than 1,500 hours.

(c) For Subsection (6)(a) or (b), the court shall impose an order requiring the person to obtain a screening and assessment and substance abuse treatment at a substance abuse treatment program providing intensive care or inpatient treatment and long-term closely supervised follow-through after treatment for not less than 240 hours.

(d) In addition to the penalties required under Subsection (6)(b), the court may require the person to participate in home confinement through the use of electronic monitoring in accordance with Subsection (13).

(7) The mandatory portion of any sentence required under this section may not be suspended and the convicted person is not eligible for parole or probation until any sentence imposed under this section has been served. Probation or parole resulting from a conviction for a violation under this section may not be terminated.

(8) (a) (i) The provisions in Subsections (4), (5), and (6) that require a sentencing court to order a convicted person to: participate in a screening and assessment; and an educational series; obtain, in the discretion of the court, substance abuse treatment; obtain, mandatorily, substance abuse treatment; or do a combination of those things, apply to a conviction for a violation of Section 41-6-44.6 or 41-6-45 under Subsection (9).

(ii) The court shall render the same order regarding screening and assessment, an educational series, or substance abuse treatment in connection with a first, second, or subsequent conviction under Section 41-6-44.6 or 41-6-45 under Subsection (9), as the court would render in connection with applying respectively, the first, second, or subsequent conviction requirements of Subsections (4), (5), and (6).

(b) If a person fails to complete all court ordered screening and assessment, educational series, and substance abuse treatment, or fails to pay all fines and fees, including fees for restitution and treatment costs, the court shall notify the Driver License Division of a failure to comply. Upon receiving the notification, the division shall suspend the person's driving privilege in accordance with Subsections 53-3-221(2) and (3).

(9) (a) (i) When the prosecution agrees to a plea of guilty or no contest to a charge of a violation of Section 41-6-45, of an ordinance enacted under Section 41-6-43, or of Section 41-6-44.6 in satisfaction of, or as a substitute for, an original charge of a violation of this section, the prosecution shall state for the record a factual basis for the plea, including whether or not there had been consumption of alcohol, drugs, or a combination of

both, by the defendant in connection with the violation.

(ii) The statement is an offer of proof of the facts that shows whether there was consumption of alcohol, drugs, or a combination of both, by the defendant, in connection with the violation.

(b) The court shall advise the defendant before accepting the plea offered under this Subsection (9)(b) of the consequences of a violation of Section 41-6-44.6 or of Section 41-6-45.

(c) The court shall notify the Driver License Division of each conviction of Section 41-6-44.6 or 41-6-45 entered under this Subsection (9).

(10) A peace officer may, without a warrant, arrest a person for a violation of this section when the officer has probable cause to believe the violation has occurred, although not in his presence, and if the officer has probable cause to believe that the violation was committed by the person.

(11) (a) The Driver License Division shall:

(i) suspend for 90 days the operator's license of a person convicted for the first time under Subsection (2);

(ii) revoke for one year the license of a person convicted of any subsequent offense under Subsection (2) if the violation is committed within a period of six years from the date of the prior violation; and

(iii) suspend or revoke the license of a person as ordered by the court under Subsection (12).

(b) The Driver License Division shall subtract from any suspension or revocation period the number of days for which a license was previously suspended under Section 53-3-223 or 53-3-231, if the previous suspension was based on the same occurrence upon which the record of conviction is based.

(12) (a) In addition to any other penalties provided in this section, a court may order the operator's license of a person who is convicted of a violation of Subsection (2) to be suspended or revoked for an additional period of 90 days, 180 days, [~~or~~] one year, or two years to remove from the highways those persons who have shown they are safety hazards.

(b) If the court suspends or revokes the person's license under this Subsection (12)(b), the court shall prepare and send to the Driver License Division an order to suspend or revoke that person's driving privileges for a specified period of time.

(13) (a) If the court orders a person to participate in home confinement through the use of electronic monitoring, the electronic monitoring shall alert the appropriate corrections, probation monitoring agency, law enforcement units, or contract provider of the defendant's whereabouts.

(b) The electronic monitoring device shall be used under conditions which require:

(i) the person to wear an electronic monitoring device at all times;

(ii) that a device be placed in the home or other specified location of the person, so that the person's compliance with the court's order may be monitored; and

(iii) the person to pay the costs of the electronic monitoring.

(c) The court shall order the appropriate entity described in Subsection (13)(e) to place an electronic monitoring device on the person and install electronic monitoring equipment in the residence of the person or other specified location.

(d) The court may:

(i) require the person's electronic home monitoring device to include a substance abuse testing instrument;

(ii) restrict the amount of alcohol the person may consume during the time the person is subject to home confinement;

(iii) set specific time and location conditions that allow the person to attend school educational classes, or employment and to travel directly between those activities and the person's home; and

(iv) waive all or part of the costs associated with home confinement if the person is determined to be indigent by the court.

(e) The electronic monitoring described in this section may either be administered directly by the appropriate corrections agency, probation monitoring agency, or by contract with a private provider.

(f) The electronic monitoring provider shall cover the costs of waivers by the court under Subsection (13)(c)(iv).

(14) (a) If supervised probation is ordered under Subsection (4)(e) or (5)(e):

(i) the court shall specify the period of the probation;

(ii) the person shall pay all of the costs of the probation; and

(iii) the court may order any other conditions of the probation.

(b) The court shall provide the probation described in this section by contract with a probation monitoring agency or a private probation provider.

(c) The probation provider described in Subsection (14)(b) shall monitor the person's compliance with all conditions of the person's sentence, conditions of probation, and court orders received under this article and shall notify the court of any failure to comply with or complete that sentence or those conditions or orders.

(d) (i) The court may waive all or part of the costs associated with probation if the person is determined to be indigent by the court.

(ii) The probation provider described in Subsection (14)(b) shall cover the costs of waivers by the court under Subsection (14)(d)(i).

(15) If a person is convicted of a violation of Subsection (2) and there is admissible evidence that the person had a blood alcohol level of .16 or higher, then if the court does not order:

(a) treatment as described under Subsection (4)(d), (5)(d), or (6)(b)(iii), then the court shall enter the reasons on the record; and

(b) the following penalties, the court shall enter the reasons on the record:

(i) the installation of an ignition interlock system as a condition of probation for the person in accordance with Section 41-6-44.7; or

(ii) the imposition of home confinement through the use of electronic monitoring in accordance with Subsection (13).

Section 2. Effective date.

This act takes effect on July 1, 2001.

CHAPTER 310
H. B. 354
Passed February 28, 2001
Approved March 19, 2001
Effective April 30, 2001

PROPERTY TAX RELIEF AMENDMENTS

Sponsor: Bradley A. Winn

This act modifies the Property Tax Act to address property tax exemptions, abatements, and other tax relief. This act gives to the county legislative body the authority to determine who performs functions given to the county. The act requires a county under certain circumstances to make refunds to persons granted property tax relief. This act addresses extensions of filing deadlines. This act addresses tax relief claimed for disabled veterans or related persons, tax relief claimed by blind persons or related persons, and tax relief for indigent persons. This act clarifies the relationship between different property tax relief. This act addresses the process of applying for the homeowner's credit. The act makes technical changes.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
59-2-1101, as last amended by Chapter 86, Laws of Utah 2000
59-2-1104, as last amended by Chapter 354, Laws of Utah 1999
59-2-1105, as last amended by Chapter 354, Laws of Utah 1999
59-2-1106, as last amended by Chapter 87, Laws of Utah 1996
59-2-1107, as last amended by Chapter 195, Laws of Utah 1998
59-2-1108, as last amended by Chapter 227, Laws of Utah 1993
59-2-1109, as last amended by Chapter 86, Laws of Utah 2000
59-2-1203, as renumbered and amended by Chapter 4, Laws of Utah 1987
59-2-1206, as last amended by Chapters 20 and 309, Laws of Utah 1998
59-2-1207, as last amended by Chapter 20, Laws of Utah 1998
59-2-1211, as renumbered and amended by Chapter 4, Laws of Utah 1987
59-2-1214, as last amended by Chapter 227, Laws of Utah 1993
59-2-1215, as last amended by Chapter 227, Laws of Utah 1993
59-2-1219, as last amended by Chapter 227, Laws of Utah 1993
59-2-1220, as last amended by Chapter 20, Laws of Utah 1998

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

Section 1. Section 59-2-1101 is amended to read:

59-2-1101. Exemption of property devoted to public, religious, or charitable uses -- Proportional payments for government-owned property -- Intangibles exempt -- Signed statement required -- County legislative body authority to adopt rules or ordinances.

(1) The exemptions, deferrals, and abatements authorized by this part may be allowed only if the claimant is the owner of the property as of January 1 of the year the exemption is claimed, unless the claimant is a federal, state, or political subdivision entity under Subsection (2)(a), (b), or (c), in which case the entity shall collect and pay a proportional tax based upon the length of time that the property was not owned by the entity.

(2) The following property is exempt from taxation:

(a) property exempt under the laws of the United States;

(b) property of the state, school districts, and public libraries;

(c) property of counties, cities, towns, special districts, and all other political subdivisions of the state, except as provided in Title 11, Chapter 13, [~~the~~] Interlocal Cooperation Act;

(d) property owned by a nonprofit entity which is used exclusively for religious, charitable, or educational purposes;

(e) places of burial not held or used for private or corporate benefit;

(f) farm equipment and machinery; and

(g) intangible property.

(3) (a) The owner who receives exempt status for property, if required by the commission, shall file a signed statement, on or before March 1 each year, certifying the use to which the property has been placed during the past year. The signed statement shall contain the following information in summary form:

(i) identity of the individual who signed the statement;

(ii) the basis of the signer's knowledge of the use of the property;

(iii) authority to make the signed statement on behalf of the owner;

(iv) county where property is located; and

(v) nature of use of the property.

(b) If the signed statement is not filed within the time limits prescribed by the county [~~board of equalization~~], the exempt status may, after notice and hearing, be revoked and the property then placed on the tax rolls.

(4) The county legislative body may adopt rules or ordinances to:

(a) effectuate the exemptions, deferrals, abatements, or other relief from taxation provided in this part[~~,~~]; and

(b) designate one or more persons to perform the functions given the county under this part.

Section 2. Section 59-2-1104 is amended to read:

59-2-1104. Exemption of property owned by disabled veterans or their unmarried surviving spouses and minor orphans -- Amount of exemption.

(1) As used in this section, "residence" is as defined in Section 59-2-1202, except that a rented dwelling is not considered to be a residence.

(2) (a) Subject to Section 59-2-1105, including the reduction provided for in Subsection 59-2-1105(5)(b), the first $82,500 of taxable value of the property described in Subsection (2)(b) is exempt from taxation if the residence is owned by:

(i) a person who:

(A) is less than 100% disabled; and

(B) was disabled in the line of duty during any war, international conflict, or military training in the military service of the United States or of this state; or

(ii) the [~~unremarried~~] unmarried surviving spouse and minor orphans of any person described in Subsection (2)(a)(i), or of a person who, during any war, international conflict, or military training in the military service of the United States or of this state, was killed in action or died in the line of duty as a result of the military service.

(b) Subsection (2)(a) applies to the following property:

(i) a residence;

(ii) tangible personal property; or

(iii) a combination of Subsections (2)(b)(i) and (ii).

(3) (a) Subject to Section 59-2-1105, the first $82,500 of the total taxable value of property described in Subsection (3)(b) is exempt from taxation if the property is owned by:

(i) a person who:

(A) is 100% disabled; and

(B) was disabled in the line of duty during any war, international conflict, or military training in the military service of the United States or of this state; or

(ii) the [~~unremarried~~] unmarried surviving spouse and minor orphans of any person described in Subsection (3)(a)(i), or of a person who, during any war, international conflict, or military training in the military service of the United States or of this state, was killed in action or died in the line of duty as a result of the military service.

(b) Subsection (3)(a) applies to the following property:

(i) real property, including a residence;

(ii) tangible personal property; or

(iii) a combination of Subsections (3)(b)(i) and (ii).

Section 3. Section 59-2-1105 is amended to read:

59-2-1105. Application for disabled veteran's exemption -- Proof requirements -- Limitations on exemption -- County authority to make refunds.

(1) (a) The exemptions authorized by Section 59-2-1104 may be allowed only if the interest of the claimant is on record on January 1 of the year the exemption is claimed.

(b) If the claimant has an interest in real property under a contract, the exemption under Section 59-2-1104 may be allowed if it is proved to the satisfaction of the county [~~legislative body~~] that the claimant is:

(i) the purchaser under the contract; and [~~is~~]

(ii) obligated to pay the taxes on the property beginning January 1 of [~~that~~] the year the exemption is claimed.

(2) (a) On or before September 1 each year, any person applying for a veteran's exemption shall file an application with the county [~~legislative body of the county~~] in which that person resides.

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

[~~(b) A~~] (c) The following shall accompany the initial application for exemption:

(i) a copy of the veteran's certificate of discharge from the military service of:

(A) the United States; or [~~of~~]

(B) this state[~~,~~]; or

(ii) other satisfactory evidence of eligible military service[~~, shall accompany the initial application for exemption~~].

(3) If the application is made by a veteran who served in the military of the United States or of this state prior to January 1, 1921, or by the [~~unremarried~~] unmarried surviving spouse or minor orphan of that veteran, a certificate from the Department of Veterans Affairs, or from any other source required by the county [~~legislative body~~], showing the percentage of disability of the veteran shall accompany the application.

(4) Any application made by a veteran who served in the military service of the United States or of this state on or after January 1, 1921, or by the [~~unremarried~~] unmarried surviving spouse or minor orphan of that veteran, shall be accompanied by a certificate from the Department of Veterans Affairs, or from any other source required by the county [~~legislative body~~], showing the percentage of disability incurred or aggravated in the line of duty during any war, international conflict, or military training in the military service of the United States or of this state.

(5) (a) If the veteran is 100% disabled, the veteran's property tax exemption is as provided in Subsection 59-2-1104(3).

(b) If the certificate under this section shows a lesser percentage of disability, the exemption allowed under Subsection 59-2-1104(2) is that percentage of $82,500, except that [~~no~~] an exemption [~~is~~] may not be allowed for any disability below 10%.

(6) The [~~unremarried~~] unmarried surviving spouse and minor orphans of a deceased veteran are entitled to the greater of:

(a) the full exemption if the veteran's disability was 10% or more and the veteran served prior to January 1, 1921; or

(b) the same exemption to which the disabled veteran would have been entitled, if the veteran served on or after January 1, 1921.

[~~(7) The county legislative body may adopt rules to effectuate the exemptions from taxation under Section 59-2-1104.~~]

(7) (a) For purposes of this Subsection (7):

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

(A) for which an exemption is granted by a county under Section 59-2-1104; and

(B) for the calendar year for which the exemption is granted.

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

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

(B) the amount of tax the county exempts under Section 59-2-1104.

(b) A county granting an exemption to a person under Section 59-2-1104 shall refund to that person an amount equal to the amount by which the person's property taxes paid exceed the person's property taxes due, if that amount is $1 or more.

Section 4. Section 59-2-1106 is amended to read:

59-2-1106. Exemption of property owned by blind persons or their unmarried surviving spouses or minor orphans -- Amount -- Application -- County authority to make refunds.

(1) [~~The~~] Subject to Subsections (2) and (3), the first $11,500 of taxable value of real and tangible personal property in this state owned by the following is exempt from taxation:

(a) a blind [~~persons, their unremarried~~] person;

(b) the unmarried surviving [~~spouses,~~] spouse of a blind person; or [~~their~~]

(c) a minor [~~orphans is exempt from taxation, subject to Subsections (2) and (3)~~] orphan of a blind person.

(2) (a) Every person [~~applying for~~] claiming the exemption [~~for the blind~~] under Subsection (1) shall[~~, on or before September 1 in each year,~~] file an application:

(i) on or before September 1 in each year; and

(ii) with the county [~~executive of the county~~] in which the person resides.

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

(3) The first year's application shall be accompanied by a statement signed by a licensed ophthalmologist verifying that the person:

(a) has no more than 20/200 visual acuity in the better eye when corrected; or

(b) has, in the case of better than 20/200 central vision, a restriction of the field of vision in the better eye which subtends an angle of vision no greater than 20 degrees.

(4) (a) For purposes of this Subsection (4):

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

(A) for which an exemption is granted by a county under this section; and

(B) for the calendar year for which the exemption is granted.

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

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

(B) the amount of tax the county exempts under this section.

(b) A county granting an exemption to a person under this section shall refund to that person an amount equal to the amount by which the person's property taxes paid exceed the person's property taxes due, if that amount is $1 or more.

Section 5. Section 59-2-1107 is amended to read:

59-2-1107. Indigent persons -- Amount of abatement.

The county [~~executive~~] may remit or abate the taxes of any poor person meeting the requirements of Section 59-2-1109 in an amount not exceeding the lesser of:

(1) the amount provided as a homeowner's credit for the lowest household income bracket under Section 59-2-1208; or

(2) 50% of the total tax [~~assessed~~] levied for the current year.

Section 6. Section 59-2-1108 is amended to read:

59-2-1108. Indigent persons -- Deferral of taxes -- Treatment of deferred taxes.

(1) (a) The county [~~board of equalization~~] may, after giving notice, defer any tax levied on residential property, subject to the conditions of Section 59-2-1109.

(b) If the owner of [~~that~~] the property described in Subsection (1)(a) is poor, the property may not be subjected to a tax sale during the period of deferment.

(2) (a) Taxes deferred by the [~~board of equalization~~] county accumulate with interest as a lien against the property until the property is sold or otherwise disposed of.

(b) Deferred taxes bear interest at the rate of 6% per year and have the same status as a lien under Sections 59-2-1301 and 59-2-1325.

(3) Deferral may be granted by the county [~~legislative body~~] at any time if:

(a) the holder of any mortgage or trust deed outstanding on the property gives written approval of the application; and

(b) the applicant is not the owner of income producing assets [~~which~~] that could be liquidated to pay the tax.

(4) Any assets transferred to relatives in the prior three-year period shall be considered by the county [~~legislative body~~] in making [~~its~~] the county's determination.

Section 7. Section 59-2-1109 is amended to read:

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

(1) [~~No~~] A person under the age of 65 years is not eligible for [~~tax relief,~~] a deferral[~~,~~] or abatement provided for poor people under Sections 59-2-1107 and 59-2-1108 unless:

(a) the county [~~legislative body~~] finds that extreme hardship would prevail if the grants were not made; or

(b) the person is disabled.

(2) (a) An application for the [~~exemption~~] deferral or abatement shall be filed on or before September 1 with the county [~~legislative body of the county~~] in which the property is located. [~~The application shall set forth adequate facts to support the person's eligibility to receive the exemption.~~]

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

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

(i) in which they both reside; and

(ii) which they own as joint tenants.

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

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

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

(A) for which an abatement is granted by a county under Section 59-2-1107; and

(B) for the calendar year for which the abatement is granted.

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

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

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

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

[~~(3)~~] (4) For purposes of this section:

(a) [~~A~~] a poor person is any person:

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

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

(iii) who is unable to meet the tax assessed on the person's residential property as the tax becomes due[~~,~~]; and

(b) [~~"Residence"~~] "residence" includes a mobile home as defined under Section 59-2-601.

[~~(4)~~] (5) The commission shall adopt rules to implement this section.

[~~(5)~~] (6) Any poor person may qualify for:

(a) the deferral of taxes under Section 59-2-1108[~~, or~~];

(b) if the person meets the requisites of this section, for the abatement of taxes under Section 59-2-1107[~~,~~]; or

(c) both[~~,~~]:

(i) the deferral described in Subsection (6)(a); and

(ii) the abatement described in Subsection (6)(b).

Section 8. Section 59-2-1203 is amended to read:

59-2-1203. Right to file claim -- Death of claimant.

(1) (a) The right to file a claim under this part is personal to the claimant [~~and~~].

(b) The right to file a claim does not survive the claimant's death[~~, but this~~].

(c) The right to file a claim may be exercised on behalf of a claimant by:

(i) a legal guardian of the claimant; or

(ii) an attorney-in-fact of the claimant.

(2) (a) If a claimant dies after having filed a timely claim, the amount of the claim shall be disbursed to another member of the household as determined by the commission by rule.

(b) If the claimant described in Subsection (2)(a) was the only member of the household, the claim may be paid to the executor or administrator, [~~but~~] except that if neither an executor or administrator is appointed and qualified within two years of the filing of the claim, the amount of the claim shall escheat to the state.

(3) The amount described in Subsection 59-2-1202(7)(b)(i) is in addition to any other exemption or reduction for which a homeowner may be eligible, including the homeowner's credit provided for in Section 59-2-1206.

Section 9. Section 59-2-1206 is amended to read:

59-2-1206. Application for homeowner's credit -- Time for filing -- Payment from General Fund.

(1) (a) [~~Except as provided in Subsection (1)(d), a~~] A claimant applying for a homeowner's credit shall annually file an application for the credit with the county [~~legislative body~~] before September 1.

(b) The application under this section shall:

(i) be on forms provided by:

(A) the commission; or

(B) the county in which the applicant resides; and

(ii) include a household income statement signed by the claimant stating that:

(A) the income statement is correct; and

(B) the claimant qualifies for the credit.

(c) (i) Subject to [~~the provisions of Subsections~~] Subsection (1)(c)(ii) [~~and (1)(c)(iii)~~], a county [~~or the commission~~] shall [~~reduce a claimant's property tax liability~~] apply the credit in accordance with this section and Section 59-2-1207 for the year in which the claimant applies for a homeowner's credit if the claimant meets the criteria for obtaining a homeowner's credit as provided in this part.

(ii) A homeowner's credit under this part may not exceed the claimant's property tax liability for the year in which the claimant applies for a homeowner's credit under this part.

[~~(iii) Except as provided in Section 59-2-1220, a county or the commission may not apply a homeowner's credit under this part against a property tax liability that is more than 90 days delinquent.~~]

[~~(d) An eligible claimant who fails to submit an application before the September 1 deadline may request reimbursement for allowable credit by filing the application form directly with the commission on or before December 31.~~]

[~~(e)~~] (d) A claimant may qualify for a homeowner's credit under this part regardless of whether the claimant owes delinquent property taxes.

(2) (a) (i) The county [~~legislative body~~] shall compile a list of claimants and the homeowner's credits granted to the claimants for purposes of obtaining payment from the General Fund for the amount of credits granted.

(ii) A county [~~legislative body~~] may not obtain payment from the General Fund for the [~~reduction in fair market value provided for~~] amount described in Subsection 59-2-1202(7).

(b) Upon certification by the commission the payment for the credits under this Subsection (2) shall be made to the county on or before January 1 if the list of claimants and the credits granted are received by the commission on or before November 30 of the year in which the credits under this part are granted.

(c) If the commission does not receive the list under this Subsection (2) on or before November 30, payment shall be made within 30 days of receipt of the list of claimants and credits from the county.

Section 10. Section 59-2-1207 is amended to read:

59-2-1207. Claim applied against tax liability -- One claimant per household per year.

(1) [~~The commission or a~~] A county [~~may~~] shall apply as provided in Subsection 59-2-1206(1)(c) the amount of a credit under this part against:

(a) a claimant's property tax liability; or

(b) [~~against~~] the property tax liability of a spouse who was a member of the claimant's household in the year in which the claimant applies for a homeowner's credit under this part.

(2) Only one claimant per household per year is entitled to payment under this part.

Section 11. Section 59-2-1211 is amended to read:

59-2-1211. Commission to provide forms and instructions -- County may prepare forms and instructions -- County legislative body authority to adopt rules or ordinances.

(1) The commission shall prescribe and make available suitable forms and instructions for:

(a) claimants; and [~~county governing bodies.~~]

(b) counties.

(2) A county is not required to use the forms and instructions prescribed by the commission under

Subsection (1) if the county prepares suitable forms and instructions for a claimant consistent with:

(a) this chapter; and

(b) rules adopted by the commission.

(3) The county legislative body may adopt rules or ordinances to:

(a) effectuate the property tax relief under this part; and

(b) designate one or more persons to perform the functions given the county under this part.

Section 12. Section 59-2-1214 is amended to read:

59-2-1214. Redetermination of claim by commission or county.

(1) If, on the audit of any claim filed under this part, the commission or the county [~~legislative body~~] determines the amount has been incorrectly determined, the commission or the county [~~legislative body~~] shall:

(a) redetermine the claim; and

(b) notify the claimant of the redetermination and its reason for the redetermination.

(2) The redetermination provided in Subsection (1)(a) shall be final unless appealed within 30 days after [~~this~~] the notice required by Subsection (1)(b).

Section 13. Section 59-2-1215 is amended to read:

59-2-1215. Fraudulent or negligently prepared claim -- Penalties and interest -- Procedure.

(1) (a) If the commission or the county [~~legislative body~~] determines that a claim is excessive and was filed with fraudulent intent[~~,~~]:

(i) the claim shall be disallowed in full[~~,~~];

(ii) the credit shall be cancelled[~~, and~~];

(iii) the amount paid or claimed [~~may~~] shall be recovered by assessment[~~,~~]; and

(iv) the assessment provided for in Subsection (1)(a)(iii) shall bear interest:

(A) from the date of the claim[~~,~~];

(B) until refunded or paid[~~,~~]; and

(C) at the rate of 1% per month.

(b) The claimant, and any person who assists in the preparation or filing of an excessive claim or supplies information upon which an excessive claim was prepared, with fraudulent intent, is guilty of a class A misdemeanor.

(2) If the commission or the county [~~legislative body~~] determines that a claim is excessive and negligently prepared[~~,~~]:

(a) 10% of the corrected claim shall be disallowed[~~,~~];

(b) the proper portion of any amount paid shall be similarly recovered by assessment[~~,~~]; and

(c) the assessment provided for in Subsection (2)(b) shall bear interest at 1% per month from the date of payment until refunded or paid.

Section 14. Section 59-2-1219 is amended to read:

59-2-1219. Claim disallowed if residence obtained for purpose of receiving benefits.

A claim shall be disallowed if the commission or county [~~legislative body~~] finds that the claimant received title to a residence primarily for the purpose of receiving benefits under this part.

Section 15. Section 59-2-1220 is amended to read:

59-2-1220. Extension of time for filing claim -- County authority to make refunds.

(1) [~~In case of sickness, absence, or other disability, or if, in its judgment, good cause exists, the~~] The commission or a county [~~legislative body~~] may extend the time for filing a claim [~~for a period not to exceed six months~~] until December 31 of the year the claim is required to be filed, if the commission or county finds that good cause exists to extend the deadline.

[~~(2) Notwithstanding Subsection 59-2-1206(1)(c)(iii), if the commission or a county legislative body extends the time for filing a claim under Subsection (1), the commission or the county legislative body may apply a homeowner's credit under this part against a property tax liability that is more than 90 days delinquent.~~]

(2) (a) For purposes of this Subsection (2):

(i) "Abatement" means the amount of property taxes accrued that constitutes a tax abatement for the poor in accordance with Subsection 59-2-1202(7).

(ii) "Credit" means a homeowner's credit or renter's credit authorized by this part.

(iii) "Property taxes due" means the taxes due on a claimant's property:

(A) for which an abatement or a credit is granted by a county or the commission; and

(B) for the calendar year for which the abatement or credit is granted.

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

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

(B) the amount of the abatement or credit the county or the commission grants.

(b) A county or the commission granting an abatement or a credit to a claimant shall refund to that claimant an amount equal to the amount by which the claimant's property taxes paid exceed the

claimant's property taxes due, if that amount is $1 or more.

CHAPTER 311
H. B. 356
Passed February 28, 2001
Approved March 19, 2001
Effective April 30, 2001

STATE INSPECTIONS OF HOSPITALS AND HEALTH CLINICS

Sponsor: Gordon E. Snow

This act modifies the Radiation Control Act by providing statutory authority and requiring the Radiation Control Board to by rule allow x-ray facilities to use qualified independent experts to conduct inspections required by state law. This act also requires the board to establish qualifications for independent experts.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
19-3-104, as last amended by Chapters 28 and 90, Laws of Utah 1995

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

Section 1. Section 19-3-104 is amended to read:

19-3-104. Registration and licensing of radiation sources by department -- Assessment of fees -- Rulemaking authority and procedure -- Siting criteria.

(1) The board may require the registration or licensing of radiation sources that constitute a significant health hazard.

(2) All sources of ionizing radiation, including ionizing radiation producing machines, shall be registered or licensed by the department.

(3) The board may make rules:

(a) necessary for controlling exposure to sources of radiation that constitute a significant health hazard;

(b) to meet the requirements of federal law relating to radiation control to ensure the radiation control program under this part is qualified to maintain primacy from the federal government; and

(c) to establish:

(i) board accreditation requirements and procedures for mammography facilities; and

(ii) certification procedure and qualifications for persons who survey mammography equipment and oversee quality assurance practices at mammography facilities.

(4) (a) The department shall assess fees for registration, licensing, and inspection of radiation sources under this section.

(b) The department shall comply with the requirements of Section 63-38-3.2 in assessing fees for licensure and registration.

(5) The department shall coordinate its activities with the Department of Health rules made under Section 26-21a-203.

(6) (a) Except as provided in Subsection (7), the board may not adopt rules, for the purpose of the state assuming responsibilities from the United States Nuclear Regulatory Commission with respect to regulation of sources of ionizing radiation, that are more stringent than the corresponding federal regulations which address the same circumstances.

(b) In adopting those rules, the board may incorporate corresponding federal regulations by reference.

(7) (a) The board may adopt rules more stringent than corresponding federal regulations for the purpose described in Subsection (6) only if it makes a written finding after public comment and hearing and based on evidence in the record that corresponding federal regulations are not adequate to protect public health and the environment of the state.

(b) Those findings shall be accompanied by an opinion referring to and evaluating the public health and environmental information and studies contained in the record which form the basis for the board's conclusion.

(8) (a) The board shall by rule:

(i) authorize independent qualified experts to conduct inspections required under this chapter of x-ray facilities registered with the division; and

(ii) establish qualifications and certification procedures necessary for independent experts to conduct these inspections.

(b) Independent experts under this Subsection (8) are not considered employees or representatives of the division or the state when conducting the inspections.

[~~(8)~~] (9) (a) The board may by rule establish criteria for siting commercial low-level radioactive waste treatment or disposal facilities.

(b) Any facility for which a radioactive material license is required by this section shall comply with those criteria.

(c) A facility may not receive a radioactive material license until siting criteria have been established by the board. The criteria also apply to facilities that have applied for but not received a radioactive material license.

[~~(9)~~] (10) The board shall by rule establish financial assurance requirements for closure and postclosure care of radioactive waste land disposal facilities, taking into account existing financial assurance requirements.

CHAPTER 312
H. B. 365
Passed February 28, 2001
Approved March 19, 2001
Effective July 1, 2001

INSTITUTIONAL TRUST LANDS AMENDMENTS

Sponsor: Thomas V. Hatch

This act establishes an Educational Enrichment Program for Hearing and Visually Impaired Students, funded by the interest and dividends from the permanent trust funds of the Schools for the Deaf and the Blind. The act takes effect on July 1, 2001.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:
53A-25-306, Utah Code Annotated 1953

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

Section 1. Section 53A-25-306 is enacted to read:

53A-25-306. Educational Enrichment Program for Hearing and Visually Impaired Students -- Funding for the program.

(1) There is established an Educational Enrichment Program for Hearing and Visually Impaired Students.

(2) The purpose of the program is to provide opportunities that will, in a family friendly environment, enhance the educational services required for hearing impaired, visually impaired, or dual sensory impaired students.

(3) The Institutional Council for the Schools for the Deaf and the Blind shall design and implement the program, subject to approval by the State Board of Education.

(4) The program shall be funded from the interest and dividends derived from the permanent funds created for the Schools for the Deaf and the Blind pursuant to Section 12 of the Utah Enabling Act and distributed by the director of the School and Institutional Trust Lands Administration under Section 53C-3-103 in accordance with Title 51, Chapter 7, State Money Management Act.

Section 2. Effective date.

This act takes effect on July 1, 2001.

CHAPTER 313
H. B. 369
Passed February 28, 2001
Approved March 19, 2001
Effective April 30, 2001

COUNTY ELECTION AMENDMENTS

Sponsor: Jeff Alexander

This act modifies provisions of the Election Code relating to ballot form by allowing counties to develop and implement systems that allow voters to cast their votes electronically.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:
20A-6-104, Utah Code Annotated 1953

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

Section 1. Section 20A-6-104 is enacted to read:

20A-6-104. Electronic ballots and electronic voting.

Under the direction of the lieutenant governor as chief election officer, a county may develop and implement a voting system meeting the requirements of the Utah Constitution that allows a voter to cast the voter's vote electronically.

CHAPTER 314
H. B. 370
Passed February 28, 2001
Approved March 19, 2001
Effective April 30, 2001

HAZARDOUS WASTE AMENDMENT

Sponsor: Jeff Alexander

This act modifies the Environmental Quality Code by imposing regulations, fees, and taxes that apply to the reprocessing, treatment, or disposal of certain types of radioactive waste. The act requires generators or brokers of radioactive waste to obtain a permit to transfer the waste to a commercial radioactive waste treatment or disposal facility, and the Board of Radiation Control is authorized to make rules governing a generator site access permit program. The act imposes fees for generator site access permits and modifies the regulatory fee for a commercial radioactive waste treatment or disposal facility. The act imposes an annual fee on a commercial radioactive waste treatment or disposal facility, which is deposited in the Radioactive Waste Perpetual Care and Maintenance Fund, and used for the perpetual care and maintenance of the facility after closure of the facility. The act imposes a tax on radioactive waste disposed of or reprocessed at a radioactive waste facility. The act provides for the study of issues relating to radioactive waste and makes technical changes. This act includes a coordination clause.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
19-1-108, as last amended by Chapter 417, Laws of Utah 1998
19-3-102, as last amended by Chapter 188, Laws of Utah 1994
19-3-106, as last amended by Chapter 324, Laws of Utah 1995
59-1-403, as last amended by Chapters 190 and 229, Laws of Utah 2000

ENACTS:
19-3-106.2, Utah Code Annotated 1953
19-3-106.4, Utah Code Annotated 1953
19-3-201.1, Utah Code Annotated 1953
59-24-101, Utah Code Annotated 1953
59-24-102, Utah Code Annotated 1953
59-24-103, Utah Code Annotated 1953
59-24-104, Utah Code Annotated 1953
59-24-105, Utah Code Annotated 1953
59-24-106, Utah Code Annotated 1953
59-24-107, Utah Code Annotated 1953
59-24-108, Utah Code Annotated 1953
59-24-109, Utah Code Annotated 1953

This act enacts uncodified material.

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

Section 1. Section 19-1-108 is amended to read:

19-1-108. Creation of Environmental Quality Restricted Account -- Purpose of restricted account -- Sources of funds -- Uses of funds.

(1) There is created the Environmental Quality Restricted Account.

(2) The sources of monies for the restricted account are:

(a) radioactive waste disposal fees collected under [~~Section~~] Sections 19-3-106 and 19-3-106.4;

(b) hazardous waste disposal fees collected under Section 19-6-118;

(c) PCB waste disposal fees collected under Section 19-6-118.5;

(d) nonhazardous solid waste disposal fees collected under Section 19-6-119; and

(e) all investment income derived from money in the restricted account created in this section.

(3) In each fiscal year, the first $500,000 collected from all waste disposal fees listed in Subsection (2), collectively, shall be deposited in the General Fund as free revenue. The balance shall be deposited in the restricted account created in this section.

(4) The Legislature may annually appropriate monies from the Environmental Quality Restricted Account to:

(a) the department for the costs of administering radiation control programs;

(b) the department for the costs of administering solid and hazardous waste programs; and

(c) the Hazardous Substances Mitigation Fund, up to $400,000, for purposes set forth in Title 19, Chapter 6, Part 3, Hazardous Substances Mitigation Act.

(5) In order to stabilize funding for the radiation control program and the solid and hazardous waste program, the Legislature shall in years of excess revenues reserve in the restricted account sufficient monies to meet departmental needs in years of projected shortages.

(6) The Legislature may not appropriate money from the General Fund to the department as a supplemental appropriation to cover the costs of the radiation control program and the solid and hazardous waste program in an amount exceeding 25% of the amount of waste disposal fees collected during the most recent prior fiscal year.

(7) The Legislature may annually appropriate not more than $200,000 from this account to the Department of Public Safety, created in Section 53-1-103, to be used by that department solely for hazardous materials:

(a) management training; and

(b) response preparation and emergency response training.

(8) All funds appropriated under this part that are not expended at the end of the fiscal year lapse into the account created in Subsection (1).

(9) For fiscal year 1998-99, up to $537,000 in the Environmental Quality Restricted Account may be appropriated by the Legislature to fund legislative priorities.

Section 2. Section 19-3-102 is amended to read:

19-3-102. Definitions.

As used in this chapter:

(1) "Board" means the Radiation Control Board created under Section 19-1-106.

(2) (a) "Broker" means a person who performs one or more of the following functions for a generator:

(i) arranges for transportation of the radioactive waste;

(ii) collects or consolidates shipments of radioactive waste; or

(iii) processes radioactive waste in some manner.

(b) "Broker" does not include a carrier whose sole function is to transport the radioactive waste.

(3) "Byproduct material" has the same meaning as in 42 U.S.C. Sec. 2014(e)(2).

[~~(2)~~] (4) "Class B and class C low-level radioactive waste" has the same meaning as in 10 CFR 61.55.

[~~(3)~~] (5) "Executive secretary" means the executive secretary of the board.

[~~(4) "Facility" in Sections 19-3-201 through 19-3-205 means any site, location, structure, or property used or to be used for the storage, treatment, or disposal of low-level waste, excluding federal waste facilities.~~]

[~~(5) "Generator" means any~~ a person, partnership, association, corporation, or any other entity whatsoever that, as a part of its activities, produces low-level radioactive waste.]

(6) "Generator" means a person who:

(a) possesses any material or component:

(i) that contains radioactivity or is radioactively contaminated; and

(ii) for which the person foresees no further use; and

(b) transfers the material or component to:

(i) a commercial radioactive waste treatment or disposal facility; or

(ii) a broker.

[~~(6)~~] (7) (a) "High-level nuclear waste" means spent reactor fuel assemblies, dismantled nuclear reactor components, and solid and liquid wastes from fuel reprocessing and defense-related wastes.

(b) "High-level nuclear waste" does not include medical or institutional wastes, naturally-occurring radioactive materials, or uranium mill tailings.

[~~(7) "Host state" means a state in which a facility is located.~~]

(8) (a) "Low-level radioactive waste" [~~in Sections 19-3-201 through 19-3-205~~] means waste material which contains radioactive nuclides emitting primarily beta or gamma radiation, or both, in concentrations or quantities which exceed applicable federal or state standards for unrestricted release.

(b) "Low-level radioactive waste" does not include waste containing more than [~~ten~~] 100 nanocuries of transuranic contaminants per gram of material, nor spent reactor fuel, nor material classified as either high-level waste or waste which is unsuited for disposal by near-surface burial under any applicable federal regulations.

[~~(9) "Mixed waste" means any material that is a radioactive waste as defined in this chapter and is also a hazardous waste as defined in Section 19-6-102.~~]

[~~(10)~~] (9) "Radiation" means ionizing and nonionizing radiation, including gamma rays, X-rays, alpha and beta particles, high speed electrons, and other nuclear particles.

[~~(11)~~] (10) "Radioactive" means any solid, liquid, or gas which emits radiation spontaneously from decay of unstable nuclei.

Section 3. Section 19-3-106 is amended to read:

19-3-106. Fee for commercial radioactive waste disposal or treatment.

(1) (a) An owner or operator of [~~any~~] a commercial radioactive waste treatment or disposal facility that [~~primarily receives waste generated by off-site sources not owned, controlled, or operated by the facility or site owner or operator that is subject to the requirements of this chapter~~] receives radioactive waste shall collect a fee from the generator of the waste[~~:~~] as provided in Subsection (1)(b).

(b) (i) On and after July 1, 1994 through June 30, 2001, the fee is $2.50 per ton, or fraction of a ton, of radioactive waste, other than byproduct material, received at the facility for disposal or treatment.

[~~(a) on~~] (ii) On and after July 1, [~~1992~~] 2001, [~~through June 30, 1993, a fee of $2.00 per ton or fraction of a ton on all radioactive waste received at the facility or site~~] the fee is equal to the sum of the following amounts:

(A) 10 cents per cubic foot, or fraction of a cubic foot, of radioactive waste, other than byproduct material, received at the facility for disposal or treatment; and

[~~(b)~~] (B) [~~on and after July 1, 1993, through June 30, 1994, a fee of $2.25 per ton or fraction of a ton on all radioactive waste received at the facility or site~~] $1 per curie, or fraction of a curie, of radioactive waste, other than byproduct material, received at the facility for disposal or treatment[~~; and~~].

[~~(c) on and after July 1, 1994, a fee of $2.50 per ton or fraction of a ton on all radioactive waste received at the facility or site for disposal or treatment.~~]

(2) (a) The owner or operator shall [~~pay~~] remit the fees imposed under this section to the department on or before the 15th day of the month following the month in which the fee accrued.

(b) The department shall deposit all fees received under this section into the [~~restricted account~~] Environmental Quality Restricted Account created in Section 19-1-108.

(c) The owner or operator shall submit to the department with the payment of the fee under this subsection a completed form as prescribed by the department that provides information the department requires to verify the amount of waste received and the fee amount for which the owner or operator is liable.

(3) The Legislature shall appropriate to the department funds to cover the cost of radioactive waste disposal supervision.

Section 4. Section 19-3-106.2 is enacted to read:

19-3-106.2. Fee for perpetual care and maintenance of commercial radioactive waste disposal facilities -- Radioactive Waste Perpetual Care and Maintenance Fund created --Contents -- Use of fund monies.

(1) As used in this section, "perpetual care and maintenance" means perpetual care and maintenance of a commercial radioactive waste treatment or disposal facility, excluding sites within the facility used for the disposal of byproduct material, as required by applicable laws, rules, and license requirements beginning 100 years after the date of final closure of the facility.

(2) (a) On and after July 1, 2002, the owner or operator of an active commercial radioactive waste treatment or disposal facility shall pay an annual fee of $400,000 to provide for the perpetual care and maintenance of the facility.

(b) The owner or operator shall remit the fee to the department on or before July 1.

(3) The department shall deposit fees received under Subsection (2) into the Radioactive Waste Perpetual Care and Maintenance Fund created in Subsection (4).

(4) (a) There is created the Radioactive Waste Perpetual Care and Maintenance Fund to finance perpetual care and maintenance of commercial radioactive waste treatment or disposal facilities, excluding sites within those facilities used for the disposal of byproduct material.

(b) The sources of revenue for the fund are:

(i) the fee imposed under this section; and

(ii) investment income derived from money in the fund.

(c) (i) The revenues for the fund shall be segregated into subaccounts for each commercial radioactive waste treatment or disposal facility covered by the fund.

(ii) Each subaccount shall contain:

(A) the fees paid by each owner or operator of a commercial radioactive waste treatment or disposal facility; and

(B) the associated investment income.

(5) The Legislature may appropriate money from the Radioactive Waste Perpetual Care and Maintenance Fund for:

(a) perpetual care and maintenance of a commercial radioactive waste treatment or disposal facility, excluding sites within the facility used for the disposal of byproduct material, beginning 100 years after the date of final closure of the facility; or

(b) maintenance or monitoring of, or implementing corrective action at, a commercial radioactive waste treatment or disposal facility, excluding sites within the facility used for the disposal of byproduct material, before the end of 100 years after the date of final closure of the facility, if:

(i) the owner or operator is unwilling or unable to carry out postclosure maintenance, monitoring, or corrective action; and

(ii) the financial surety arrangements made by the owner or operator, including any required under applicable law, are insufficient to cover the costs of postclosure maintenance, monitoring, or corrective action.

(6) The money appropriated from the Radioactive Waste Perpetual Care and Maintenance Fund for the purposes specified in Subsection (5)(a) or (5)(b) at a particular commercial radioactive waste treatment or disposal facility may be appropriated only from the subaccount established under Subsection (4)(c) for the facility.

(7) The attorney general shall bring legal action against the owner or operator or take other steps to secure the recovery or reimbursement of the costs of maintenance, monitoring, or corrective action, including legal costs, incurred pursuant to Subsection (5)(b).

(8) (a) The board shall direct an evaluation of the adequacy of the Radioactive Waste Perpetual Care and Maintenance Fund every five years, beginning in 2006. The evaluation shall determine whether the fund is adequate to provide for perpetual care and maintenance of commercial radioactive waste treatment or disposal facilities.

(b) The board shall submit a report on the evaluation to the Legislative Management Committee on or before October 1 of the year in which the report is due.

(9) This section does not apply to a uranium mill licensed under 10 C.F.R. Part 40, Domestic Licensing of Source Material.

Section 5. Section 19-3-106.4 is enacted to read:

19-3-106.4. Generator site access permits.

(1) A generator or broker may not transfer radioactive waste to a commercial radioactive waste treatment or disposal facility in the state without first obtaining a generator site access permit from the executive secretary.

(2) The board may make rules pursuant to Section 19-3-104 governing a generator site access permit program.

(3) (a) Except as provided in Subsection (3)(b), the department shall establish fees for generator site access permits in accordance with Section 63-38-3.2.

(b) On and after July 1, 2001 through June 30, 2002, the fees are:

(i) $1,300 for generators transferring 1,000 or more cubic feet of radioactive waste per year;

(ii) $500 for generators transferring less than 1,000 cubic feet of radioactive waste per year; and

(iii) $5,000 for brokers.

(c) The department shall deposit fees received under this section into the Environmental Quality Restricted Account created in Section 19-1-108.

(4) This section does not apply to a generator or broker transferring radioactive waste to a uranium mill licensed under 10 C.F.R. Part 40, Domestic Licensing of Source Material.

Section 6. Section 19-3-201.1 is enacted to read:

19-3-201.1. Definitions.

As used in this compact:

(1) "Facility" means any site, location, structure, or property used or to be used for the storage, treatment, or disposal of low-level waste, excluding federal waste facilities.

(2) "Generator" means any person, partnership, association, corporation, or any other entity whatsoever which, as a part of its activities, produces low-level radioactive waste.

(3) "Host state" means a state in which a facility is located.

(4) (a) "Low-level waste" means waste material which contains radioactive nuclides emitting primarily beta or gamma radiation, or both, in concentrations or quantities which exceed applicable federal or state standards for unrestricted release.

(b) "Low-level waste" does not include waste containing more than ten nanocuries of transuranic contaminants per gram of material, nor spent reactor fuel, nor material classified as either high-level waste or waste which is unsuited for disposal by near-surface burial under any applicable federal regulations.

Section 7. Section 59-1-403 is amended to read:

59-1-403. Confidentiality -- Penalty -- Application to property tax.

(1) Any tax commissioner, agent, clerk, or other officer or employee of the commission or any representative, agent, clerk, or other officer or employee of any county, city, or town may not divulge or make known in any manner any information gained by him from any return filed with the commission. The officials charged with the custody of such returns are not required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except:

(a) in accordance with judicial order;

(b) on behalf of the commission in any action or proceeding under this title or other law under which persons are required to file returns with the commission;

(c) on behalf of the commission in any action or proceeding to which the commission is a party; or

(d) on behalf of any party to any action or proceeding under this title when the report or facts shown thereby are directly involved in such action or proceeding. In any event, the court may require the production of, and may admit in evidence, any portion of reports or of the facts shown by them, as are specifically pertinent to the action or proceeding.

(2) This section does not prohibit:

(a) a person or his duly authorized representative from receiving a copy of any return or report filed in connection with that person's own tax;

(b) the publication of statistics as long as they are classified to prevent the identification of particular reports or returns; and

(c) the inspection by the attorney general or other legal representative of the state of the report or return of any taxpayer:

(i) who brings action to set aside or review the tax based on such report or return;

(ii) against whom an action or proceeding is contemplated or has been instituted under this title; or

(iii) against whom the state has an unsatisfied money judgment.

(3) (a) Notwithstanding Subsection (1) and for purposes of administration, the commission may, by rule, provide for a reciprocal exchange of information with the United States Internal Revenue Service or the revenue service of any other state.

(b) Notwithstanding Subsection (1) and for all taxes except individual income tax and corporate franchise tax, the commission may, by rule, share information gathered from returns and other written statements with the federal government, any other state, any of their political subdivisions,

or any political subdivision of this state, except as limited by Sections 59-12-209 and 59-12-210, if these political subdivisions or the federal government grant substantially similar privileges to this state.

(c) Notwithstanding Subsection (1) and for all taxes except individual income tax and corporate franchise tax, the commission may, by rule, provide for the issuance of information concerning the identity and other information of taxpayers who have failed to file tax returns or to pay any tax due.

(d) Notwithstanding Subsection (1), the commission shall provide to the Solid and Hazardous Waste Control Board executive secretary, as defined in Section 19-6-102, any records, returns, and other information filed with the commission under Title 59, Chapter 13, Motor and Special Fuel Tax Act, or Section 19-6-410.5 regarding the environmental assurance program participation fee, as requested by the executive secretary.

(e) Notwithstanding Subsection (1), upon request from a tobacco product manufacturer, as defined in Section 59-22-202, the commission shall report to the manufacturer:

(i) the quantity of cigarettes, as defined in Section 59-22-202, produced by the manufacturer and reported to the commission for the previous calendar year under Section 59-14-407; and

(ii) the quantity of cigarettes, as defined in Section 59-22-202, produced by the manufacturer for which a tax refund was granted during the previous calendar year under Section 59-14-401 and reported to the commission under Subsection 59-14-401(1)(a)(v).

(f) Notwithstanding Subsection (1), the commission may:

(i) provide to the Division of Consumer Protection within the Department of Commerce and the attorney general data:

(A) reported to the commission under Section 59-14-212; or

(B) related to a violation under Section 59-14-211; and

(ii) upon request provide to any person data reported to the commission under Subsections 59-14-212(1)(a) through (1)(c) and Subsection 59-14-212(1)(g).

(g) Notwithstanding Subsection (1), the commission shall, at the request of a committee of the Legislature, Office of the Legislative Fiscal Analyst, or Governor's Office of Planning and Budget, provide to the committee or office the total amount of revenues collected by the commission under Chapter 24, Radioactive Waste Tax Act, for the time period specified by the committee or office.

(4) Reports and returns shall be preserved for at least three years and then the commission may destroy them.

(5) Any person who violates this section is guilty of a class A misdemeanor. If the offender is an officer or employee of the state, he shall be dismissed from office and be disqualified from holding public office in this state for a period of five years thereafter.

(6) This part does not apply to the property tax.

Section 8. Section 59-24-101 is enacted to read:

CHAPTER 24. RADIOACTIVE WASTE TAX ACT

59-24-101. Title.

This chapter is known as the "Radioactive Waste Tax Act."

Section 9. Section 59-24-102 is enacted to read:

59-24-102. Definitions.

As used in this chapter:

(1) (a) "Alternate feed material" means a natural or native material:

(i) mined for the extraction of its constituents or other matter from which source material may be extracted in a licensed uranium or thorium mill; and

(ii) may be reprocessed for its source material content.

(b) "Alternate feed material" does not include:

(i) material containing hazardous waste listed under 40 C.F.R. Part 261, Subpart D;

(ii) natural or unprocessed ore; or

(iii) naturally occurring radioactive materials containing greater than 15 picocuries per gram of radium-226.

(2) "Byproduct material" is as defined in 42 U.S.C. Sec. 2014(e)(2).

(3) "Class A low-level radioactive waste" means radioactive waste that is classified as class A waste under 10 C.F.R. 61.55.

(4) "Containerized class A waste" means class A low-level radioactive waste that is placed in the portion of a radioactive waste facility that is licensed to receive containerized class A waste.

(5) (a) "Gross receipts" means all consideration an owner or operator of a radioactive waste facility receives for the disposal of radioactive waste in the state, without any deduction or expense paid or accrued related to the disposal of the radioactive waste.

(b) "Gross receipts" do not include fees collected under Section 19-3-106.

(6) (a) "Processed class A waste" means waste that:

(i) is class A low-level radioactive waste; and

(ii) has been concentrated by a processor.

(b) "Processed class A waste" does not include containerized class A waste.

(7) "Radioactive waste" means:

(a) alternate feed material;

(b) byproduct material;

(c) containerized class A waste;

(d) processed class A waste; or

(e) uncontainerized, unprocessed class A waste.

(8) "Radioactive waste facility" or "facility" means:

(a) a facility licensed under Section 19-3-105; or

(b) a uranium mill licensed under 10 C.F.R. Part 40, Domestic Licensing of Source Material.

(9) (a) "Uncontainerized, unprocessed class A waste" means class A low-level radioactive waste that:

(i) is neither containerized class A waste, nor processed class A waste; and

(ii) must be disposed of under rules of the Nuclear Regulatory Commission in a licensed low-level radioactive waste disposal facility.

(b) "Uncontainerized, unprocessed class A waste" does not include alternate feed material.

Section 10. Section 59-24-103 is enacted to read:

59-24-103. Tax imposed on radioactive waste.

(1) Beginning on April 1, 2001, there is imposed a tax on radioactive waste received at a radioactive waste facility, as provided in this chapter.

(2) The tax is equal to the sum of the following amounts:

(a) 12% of the gross receipts received from the disposal of containerized class A waste;

(b) 10% of the gross receipts received from the disposal of processed class A waste;

(c) 5% of the gross receipts received from the disposal of uncontainerized, unprocessed class A waste;

(d) 10 cents per cubic foot of alternate feed material received at a radioactive waste facility for disposal or reprocessing; and

(e) 10 cents per cubic foot of byproduct material received at a radioactive waste facility for disposal.

(3) For purposes of the tax imposed by this section, a fraction of a cubic foot is considered to be a full cubic foot.

(4) The tax imposed by this section applies to:

(a) gross receipts received:

(i) pursuant to a contract entered into on or after the effective date of this act;

(ii) pursuant to a contract substantially modified on or after the effective date of this act;

(iii) pursuant to a contract renewed or extended on or after the effective date of this act;

(iv) not pursuant to a contract; or

(v) for the disposal of containerized class A waste; and

(b) alternate feed material or byproduct material received:

(i) pursuant to a contract entered into on or after the effective date of this act;

(ii) pursuant to a contract substantially modified on or after the effective date of this act;

(iii) pursuant to a contract renewed or extended on or after the effective date of this act; or

(iv) not pursuant to a contract.

(5) The tax imposed by this section does not apply to radioactive waste containing material classified as hazardous waste under 40 C.F.R. Part 261.

Section 11. Section 59-24-104 is enacted to read:

59-24-104. Payment of tax.

(1) The tax imposed by Section 59-24-103 shall be paid by the owner or operator of a radioactive waste facility that receives radioactive waste for disposal or reprocessing.

(2) The payment shall be accompanied by the form prescribed by the commission.

(3) The payment shall be paid quarterly on or before the last day of the month next succeeding each calendar quarterly period.

Section 12. Section 59-24-105 is enacted to read:

59-24-105. Deposit of tax revenue.

The commission shall deposit the tax revenue collected under this chapter into the General Fund.

Section 13. Section 59-24-106 is enacted to read:

59-24-106. Records.

(1) An owner or operator of a radioactive waste facility shall maintain records, statements, books, or accounts necessary to determine the amount of tax for which the owner or operator is liable to pay under this chapter.

(2) The commission may require an owner or operator of a radioactive waste facility, by notice served upon the person, or by rule, to make or keep the records, statements, books, or accounts the commission considers sufficient to show the amount of tax for which the owner or operator is liable to pay under this chapter.

(3) After notice by the commission, the owner or operator of a radioactive waste facility shall open the records, statements, books, or accounts specified in Subsection (2) for examination by the commission or its duly authorized agent.

Section 14. Section 59-24-107 is enacted to read:

59-24-107. Action for collection of tax -- Action for refund or credit of tax.

(1) (a) Except as provided in Subsections (2) through (5), the commission shall assess a tax under this chapter within three years after a taxpayer files a return.

(b) Except as provided in Subsections (2) through (5), if the commission does not assess a tax under this chapter within the three-year period provided in Subsection (1)(a), the commission may not commence a proceeding to collect the tax.

(2) The commission may assess a tax at any time if a taxpayer:

(a) files a false or fraudulent return with intent to evade; or

(b) does not file a return.

(3) The commission may extend the period to make an assessment or to commence a proceeding to collect the tax under this chapter if:

(a) the three-year period under Subsection (1) has not expired; and

(b) the commission and the taxpayer sign a written agreement:

(i) authorizing the extension; and

(ii) providing for the length of the extension.

(4) If the commission delays an audit at the request of a taxpayer, the commission may make an assessment as provided in Subsection (5) if:

(a) the taxpayer subsequently refuses to agree to an extension request by the commission; and

(b) the three-year period under Subsection (1) expires before the commission completes the audit.

(5) An assessment under Subsection (4) shall be:

(a) for the time period for which the commission could not make an assessment because of the expiration of the three-year period; and

(b) in an amount equal to the difference between:

(i) the commission's estimate of the amount of tax the taxpayer would have been assessed for the time period described in Subsection (5)(a); and

(ii) the amount of tax the taxpayer actually paid for the time period described in Subsection (5)(a).

(6) (a) Except as provided in Subsection (6)(b), the commission may not make a credit or refund unless the taxpayer files a claim with the commission within three years of the date of overpayment.

(b) The commission shall extend the period for a taxpayer to file a claim under Subsection (6)(a) if:

(i) the three-year period under Subsection (6)(a) has not expired; and

(ii) the commission and the taxpayer sign a written agreement:

(A) authorizing the extension; and

(B) providing for the length of the extension.

Section 15. Section 59-24-108 is enacted to read:

59-24-108. Rulemaking authority.

The commission may make rules under Title 63, Chapter 46a, Utah Administrative Rulemaking Act, to implement and enforce this chapter.

Section 16. Section 59-24-109 is enacted to read:

59-24-109. Penalties and interest.

An owner or operator of a radioactive waste facility who fails to comply with this chapter is subject to penalties and interest as provided in Sections 59-1-401 and 59-1-402.

Section 17. Interim study.

The Legislative Management Committee shall direct one or more interim committees to study issues relating to the disposal, storage, or transportation of radioactive waste in the state.

Section 18. Coordination clause.

It is the intent of the Legislature that in preparing the Utah Code database for publication, the Office of Legislative Research and General Counsel is directed to replace the language, "the effective date of this act," in Section 59-24-103 with the actual effective date of the act.

CHAPTER 315
H. B. 373
Passed February 28, 2001
Approved March 19, 2001
Effective April 30, 2001

AMENDMENTS TO STATE PROCESSES - PORNOGRAPHY OMBUDSMAN

Sponsor: Glenn L. Way

This act modifies provisions relating to the Pornography Complaints Ombudsman. The act modifies the duties of the Pornography Complaints Ombudsman to require creation of a program to combat Internet pornography.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
67-5-18, as enacted by Chapter 340, Laws of Utah 2000

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

Section 1. Section 67-5-18 is amended to read:

67-5-18. Pornography Complaints Ombudsman -- Powers.

(1) As used in this section, "pornography" means material or a performance that meets the requirements of Subsection 76-10-1203(1).

(2) (a) There is created an Obscenity and Pornography Complaints Ombudsman in the Office of the Attorney General.

(b) The attorney general shall hire an attorney licensed to practice law in Utah who has knowledge of obscenity and pornography law and, if possible, who has a background or expertise in investigating and prosecuting obscenity and pornography law violations to fill the position.

(c) The person hired to fill the position is an exempt employee.

(d) The attorney general may hire clerks, interns, or other personnel to assist the pornography complaints ombudsman.

(3) The Obscenity and Pornography Complaints Ombudsman shall:

(a) develop and maintain expertise in and understanding of laws designed to control or eliminate obscenity and pornography and the legal standards governing the regulation or elimination of obscenity and pornography;

(b) advise citizens and local governments about remedies to address instances of obscenity and pornography in their communities;

(c) advise local governments about ways to strengthen local laws and ordinances addressing obscenity and pornography;

(d) advise local governments about strategies to restrict, suppress, or eliminate obscenity and pornography in their communities;

(e) at the request of the attorney general or a local government, assist a local government in investigating and prosecuting state and local laws and ordinances addressing obscenity or pornography;

(f) advise citizens about their options to address specific complaints about obscenity or pornography in their communities;

(g) when requested by a citizen or local government official, arbitrate between citizens and businesses to resolve complaints about obscenity or pornography;

(h) provide information to private citizens, civic groups, government entities, and other interested parties about the dangers of obscenity and pornography, the current laws to restrict, suppress, or eliminate pornography, and their rights and responsibilities under those laws; [~~and~~]

(i) in conjunction with Utah's county and municipal prosecuting attorneys:

(i) review Utah's and Idaho's moral nuisance law;

(ii) draft a comprehensive moral nuisance law for Utah and a model ordinance for municipalities and counties to provide an effective mechanism to abate and discourage obscenity and pornography; and

(iii) present the draft to the Legislature's Judiciary Interim Committee before October 25, 2001[~~.~~]; and

(j) establish a program to combat Internet pornography and to assist parents in protecting their children from Internet pornography.

CHAPTER 316
H. B. 376
Passed February 28, 2001
Approved March 19, 2001
Effective April 30, 2001

CONCEALED WEAPON PERMIT HOLDERS - RECOGNITION

Sponsor: Glenn A. Donnelson

This act modifies provisions related to concealed carry permit holders. The act modifies provisions allowing a person authorized to carry a concealed firearm in another state to carry a concealed firearm in this state.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
76-10-523, as last amended by Chapters 57 and 144, Laws of Utah 1997

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

Section 1. Section 76-10-523 is amended to read:

76-10-523. Persons exempt from weapons laws.

(1) This part and Title 53, Chapter 5, Part 7, Concealed Weapon Act, do not apply to any of the following:

(a) a United States marshal [~~while engaged in the performance of his official duties~~];

(b) a federal official required to carry a firearm [~~while engaged in the performance of his official duties~~];

(c) a peace officer of this or any other jurisdiction [~~while engaged in the performance of his official duties~~];

(d) a law enforcement official as defined and qualified under Section 53-5-711;

(e) a judge as defined and qualified in Section 53-5-711;

(f) a common carrier while engaged in the regular and ordinary transport of firearms as merchandise; or

(g) a nonresident traveling in or through the state, provided that any firearm is:

(i) unloaded; and

(ii) securely encased as defined in Section 76-10-501.

(2) The provisions of Subsections 76-10-504(1)(a), (1)(b), and Section 76-10-505 do not apply to any person to whom a permit to carry a concealed firearm has been issued:

(a) pursuant to Section 53-5-704; or

[~~(b) by another state whose requirements for issuance of a concealed firearm permit have been determined annually by the Department of Public Safety to meet or exceed the requirements for issuance of a concealed firearm permit in this state.~~]

(b) by another state or county.

(3) (a) Notwithstanding Subsection (2) a concealed firearm permit issued by another state or county is only valid in this state for 60 consecutive days.

(b) In order to carry a concealed firearm, a person that remains in the state for longer than 60 consecutive days shall obtain a permit pursuant to Section 53-5-704.

CHAPTER 317
H. B. 379
Passed February 28, 2001
Approved March 19, 2001
Effective April 30, 2001

HOMEOWNERS' ASSOCIATION FINE AUTHORIZATION

Sponsor: Judy Ann Buffmire

This act modifies the Condominium Ownership Act. The act grants fine authority to the management committee of a residential condominium project for violations of the association's rules and regulations where authorized in the condominium declaration or bylaws. The act sets limits on the fines and provides for interest and late fees. The act requires that notice of a violation and a period to remedy the violation be given prior to the assessment of a fine. The act provides for informal hearings and the initiation of a civil action to contest a fine. The act creates a lien for unpaid fines.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:
57-8-37, Utah Code Annotated 1953

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

Section 1. Section 57-8-37 is enacted to read:

57-8-37. Fines.

(1) (a) If authorized in the declaration, bylaws, or association rules, the management committee of a residential condominium project may assess a fine against a unit owner after the requirements of Subsection (2) have been met for a violation of the rules and regulations of the association of unit owners which have been promulgated in accordance with this chapter and the declaration and bylaws.

(b) The management committee of a nonresidential condominium project may not assess a fine against a unit owner.

(2) Before assessing a fine under Subsection (1), the management committee shall give notice to the unit owner of the violation and inform the owner that a fine will be imposed if the violation is not cured within the time provided in the declaration, bylaws, or association rules, which shall be at least 48 hours.

(3) (a) A fine assessed under Subsection (1) shall:

(i) be made only for a violation of a rule or regulation which is specifically listed in the declaration, bylaws, or association rules as an offense which is subject to a fine;

(ii) be in the amount specifically provided for in the declaration, bylaws, or association rules for that specific type of violation, not to exceed $500; and

(iii) accrue interest and late fees as provided in the declaration, bylaws, or association rules.

(b) Cumulative fines for a continuing violation may not exceed $500 per month.

(4) A unit owner who is assessed a fine under Subsection (1) may request an informal hearing to protest or dispute the fine within 30 days from the date the fine is assessed. The hearing shall be conducted in accordance with the standards provided in the declaration, bylaws, or association rules. No interest or late fees may accrue until after the hearing has been conducted and a final decision has been rendered.

(5) A unit owner may appeal a fine issued under Subsection (1) by initiating a civil action within 180 days after:

(a) a hearing has been held and a final decision has been rendered by the management committee under Subsection (4); or

(b) the time to request an informal hearing under Subsection (4) has expired without the unit owner making such a request.

(6) A fine assessed under Subsection (1) which remains unpaid after the time for appeal under Subsection (5) has expired becomes a lien against the unit owner's interest in the property in accordance with the same standards as a lien for the nonpayment of common expenses under Section 57-8-20.

CHAPTER 318
H. B. 384
Passed February 28, 2001
Approved March 19, 2001
Effective April 30, 2001

UTAH OLYMPIC LAW ENFORCEMENT COMMANDER AMENDMENTS

Sponsor: David Ure

This act modifies the Medical Examiner Act. The act modifies the duties of the medical examiner during a period around the 2002 Olympic Winter Games. The act is repealed on April 1, 2002.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:
26-4-7.1, Utah Code Annotated 1953
63-55b-126, Utah Code Annotated 1953

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

Section 1. Section 26-4-7.1 is enacted to read:

26-4-7.1. Special medical examiner jurisdiction during Olympics.

Notwithstanding Section 26-4-7, between January 25, 2002 and April 1, 2002, the Olympic law enforcement commander, appointed under Section 53-12-301, or the commander's designee, may request that the medical examiner assume custody of a deceased body if it appears that death was caused by a highway accident.

Section 2. Section 63-55b-126 is enacted to read:

63-55b-126. Repeal dates -- Title 26.

Section 26-4-7.1 is repealed April 1, 2002.

CHAPTER 319
H. B. 386
Passed February 28, 2001
Approved March 19, 2001
Effective July 1, 2001

UTAH HOUSING FINANCE AGENCY AMENDMENTS

Sponsor: Ron Bigelow

This act modifies the Community and Economic Development Code by amending the Utah Housing Finance Agency Act to authorize the agency's status as a public corporation. This act amends the corporation's exemptions from and compliance with certain acts. This act amends audit, immunity, and contracting provisions for the corporation. This act also makes technical corrections to this code. This act repeals authorization for state grants to the agency. This act takes effect on July 1, 2001.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
9-4-901, as renumbered and amended by Chapter 241, Laws of Utah 1992
9-4-902, as last amended by Chapter 250, Laws of Utah 1993
9-4-903, as last amended by Chapter 250, Laws of Utah 1993
9-4-904, as last amended by Chapter 243, Laws of Utah 1996
9-4-905, as renumbered and amended by Chapter 241, Laws of Utah 1992
9-4-906, as last amended by Chapter 20, Laws of Utah 1995
9-4-907, as renumbered and amended by Chapter 241, Laws of Utah 1992
9-4-908, as renumbered and amended by Chapter 241, Laws of Utah 1992
9-4-909, as last amended by Chapter 250, Laws of Utah 1993
9-4-910, as last amended by Chapter 250, Laws of Utah 1993
9-4-911, as last amended by Chapter 250, Laws of Utah 1993
9-4-912, as last amended by Chapter 4, Laws of Utah 1993
9-4-913, as renumbered and amended by Chapter 241, Laws of Utah 1992
9-4-914, as last amended by Chapter 4, Laws of Utah 1993
9-4-915, as renumbered and amended by Chapter 241, Laws of Utah 1992
9-4-916, as renumbered and amended by Chapter 241, Laws of Utah 1992
9-4-917, as last amended by Chapter 4, Laws of Utah 1993
9-4-918, as renumbered and amended by Chapter 241, Laws of Utah 1992
9-4-919, as renumbered and amended by Chapter 241, Laws of Utah 1992
9-4-920, as renumbered and amended by Chapter 241, Laws of Utah 1992
9-4-922, as renumbered and amended by Chapter 241, Laws of Utah 1992
9-4-923, as last amended by Chapter 20, Laws of Utah 1995
9-4-924, as renumbered and amended by Chapter 241, Laws of Utah 1992
9-4-925, as enacted by Chapter 250, Laws of Utah 1993

ENACTS:
9-4-904.5, Utah Code Annotated 1953
9-4-926, Utah Code Annotated 1953

REPEALS:
9-4-921, as renumbered and amended by Chapter 241, Laws of Utah 1992

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

Section 1. Section 9-4-901 is amended to read:

Part 9. Utah Housing Corporation Act

9-4-901. Title.

This part is known as the "Utah Housing [~~Finance Agency~~] Corporation Act."

Section 2. Section 9-4-902 is amended to read:

9-4-902. Policy -- Finding and declaration.

(1) It is declared that the policy of the state of Utah is to assure the health, safety, and welfare of its citizens, that an adequate supply of decent, safe, and sanitary housing is essential to the well-being of the citizens of the state, and that an adequate supply of mortgage funds for housing at reasonable interest rates is in the public interest.

(2) It is found and declared that:

(a) there continues to exist throughout the state a seriously inadequate supply of safe and sanitary dwelling accommodations within the financial means of persons and families of low or moderate income who wish to purchase or rent residential housing[~~. From~~]; and

(b) from time to time the high rates of interest charged by mortgage lenders seriously restrict the transfer of existing housing and new housing starts.

(3) It is found and declared that the reduction in residential construction starts associated with the high rates causes a condition of substantial unemployment and underemployment in the construction industry which impedes the economy of the state and affects the welfare and prosperity of all the people of the state.

(4) It is found and declared that:

(a) these conditions associated with the recurrent shortages of residential mortgage funds contribute to slums and blight in the cities and rural areas of the state and ultimately to the deterioration of the quality of living conditions within the state [~~of Utah. In~~]; and

(b) in accordance with the purpose of this part to assist in providing housing for low and moderate income persons who otherwise could not achieve decent, safe, and sanitary housing, the agency shall

make every effort to make housing available in rural, inner city, and other areas experiencing difficulty in securing construction and mortgage loans, and to make decent, safe, and sanitary housing available to low income persons and families.

(5) It is found and declared that in order to assure an adequate fund of private capital into this housing, the cooperation between private enterprise and state government is essential and is in the public interest.

(6) It is found and declared that low and moderate income persons in Utah have a wide range of housing needs, which necessitates the development of many different kinds of programs to address those needs, including programs providing mortgage loans, nontraditional loans, grants, and other forms of financial assistance, and combinations of these forms.

(7) It is found and declared that there are private organizations and governmental entities throughout Utah that are endeavoring to improve the availability of housing for low and moderate income, but many [~~such~~] of these organizations and entities lack expertise and financial resources to act efficiently and expeditiously in [~~such~~] these efforts.

(8) It is found and declared that innovative programs that bring together resources from the public, nonprofit, and private sector are necessary in order to increase the supply of housing for low and moderate individuals, but these programs usually need advice and financial assistance to become established.

(9) It is declared that all of the foregoing are public purposes and uses for which moneys may be borrowed, expended, advanced, loaned, or granted, and that these activities serve a public purpose in improving or otherwise benefiting the people of this state, and that the necessity of enacting the provisions [~~set forth~~] in this part is in the public interest and is [~~hereby~~] so declared as a matter of express legislative determination.

(10) It is found and declared that the compelling need within the state for the creation of an adequate supply of mortgage funds at reasonable interest rates and for other kinds of financial assistance to help provide affordable housing for low and moderate income individuals can be best met by the establishment of an independent [~~state agency and a~~] body corporate and politic, constituting a public corporation, vested with the powers and duties specified in this part.

(11) It is declared that the corporation is intended to operate:

(a) with the power to issue tax exempt bonds to finance the purchase of mortgage loans to qualified buyers;

(b) as a financially independent body; and

(c) so that its debts shall be payable solely from payments received by the corporation from mortgage borrowers and other revenues generated internally by the corporation.

Section 3. Section 9-4-903 is amended to read:

9-4-903. Definitions.

As used in this part the following words and terms have the following meanings, unless a different meaning clearly appears from the context:

[~~(1) "Agency" means the Utah Housing Finance Agency created by Section 9-4-904.~~]

[~~(2)~~] (1) "Bonds," "notes," and "other obligations" mean any bonds, notes, debentures, interim certificates, or other evidences of financial indebtedness of the [~~agency~~] corporation authorized to be issued under the provisions of this part.

[~~(3)~~] (2) "Construction loan" means a short-term advance of monies for the purpose of constructing residential housing for low and moderate income persons.

(3) "Corporation" means the Utah Housing Corporation created by Section 9-4-904, which, prior to July 1, 2001, was named the Utah Housing Finance Agency.

(4) "Employee of the [~~agency~~] corporation" means any individual who is employed by the [~~agency~~] corporation but who is not a [~~member~~] trustee of the [~~agency~~] corporation.

(5) "Financial assistance" includes:

(a) a loan, whether interest or noninterest bearing, secured or unsecured;

(b) a loan that converts to a grant upon the occurrence of specified conditions;

(c) a development loan;

(d) a grant;

(e) an award;

(f) a subsidy;

(g) a guarantee;

(h) a warranty;

(i) a lease;

(j) a payment on behalf of a borrower of an amount usually paid by a borrower, including a down payment;

(k) any other form of financial assistance that helps provide affordable housing for low and moderate income persons; or

(l) any combination of the foregoing.

(6) "Housing development" means a residential housing project, which includes residential housing for low and moderate income persons.

(7) "Housing sponsor" includes a person who constructs, develops, rehabilitates, purchases, or owns a housing development that is or will be subject to legally enforceable restrictive covenants that require the housing development to provide, at

least in part, residential housing to low and moderate income persons, including a local public body, a nonprofit, limited profit, or for profit corporation, a limited partnership, a limited liability company, a joint venture, a subsidiary of the [~~agency~~] corporation, or any subsidiary of the subsidiary, a cooperative, a mutual housing organization, or any other type of entity or arrangement that helps provide affordable housing for low and moderate income persons.

(8) "Interest rate contract" means interest rate exchange contracts, interest rate floor contracts, interest rate ceiling contracts, and other similar contracts authorized in a resolution or policy adopted or approved by the trustees.

[~~(8)~~] (9) "Local public body" means the state, any municipality, county, district, or other subdivision or instrumentality of the state, including redevelopment agencies and housing authorities created under Part 6.

[~~(9)~~] (10) "Low and moderate income persons" means persons, irrespective of race, religion, creed, national origin, or sex, as determined by the [~~agency~~] corporation to require such assistance as is made available by this part on account of insufficient personal or family income taking into consideration [~~without limiting the generality thereof, such~~] factors [~~as follows~~], including:

(a) the amount of income [~~of such~~] that persons and families have available for housing needs;

(b) the size of family;

(c) whether or not a person is a single head of household;

(d) the cost and condition of residential housing available; and

(e) the ability of [~~such~~] persons and families to compete successfully in the normal private housing market and to pay the amounts at which private enterprise is providing decent, safe, and sanitary housing.

[~~(10)~~] (11) "Mortgage lender" means any bank, trust company, savings and loan association, credit union, mortgage banker, or other financial institution authorized to transact business in the state, any local public body, or any other entity, profit or nonprofit, that makes mortgage loans.

[~~(11)~~] (12) "Mortgage loan" means a loan secured by a mortgage, which loan may bear interest at either a fixed or variable rate or which may be noninterest bearing, the proceeds of which are used for the purpose of financing the construction, development, rehabilitation, or purchase of residential housing for low and moderate income persons, including low and moderate income persons who are first-time homebuyers, single heads of household, elderly, homeless, or disabled.

[~~(12)~~] (13) "Mortgage" means a mortgage, deed of trust, or other instrument securing a mortgage loan and constituting a lien on real property (the property being held in fee simple or on a leasehold under a lease having a remaining term, at the time the mortgage is acquired, of not less than the term for repayment of the mortgage loan secured by the mortgage) improved or to be improved by residential housing, creating a lien which may be first priority or subordinate.

[~~(13)~~] (14) "Rehabilitation" includes the reconstruction, rehabilitation, improvement, and repair of residential housing.

[~~(14)~~] (15) "Residential housing" means a specific work or improvement within this state undertaken primarily to provide dwelling accommodations, including land, buildings, and improvements to land and buildings, whether in one to four family units or multifamily units, and [~~such~~] other incidental or appurtenant nonhousing facilities [~~as may be incidental or appurtenant thereto~~], or as otherwise specified by the agency.

[~~(15)~~] (16) "State" means the state of Utah.

[~~(16)~~] (17) "State housing credit ceiling" means the amount specified in Subsection 42(h)(3)(C) of the Internal Revenue Code for each calendar year.

Section 4. Section 9-4-904 is amended to read:

9-4-904. Creation -- Trustees -- Terms -- Vacancies -- Chair -- Powers -- Quorum -- Per diem and expenses.

(1) (a) There is created an independent [~~state agency and a~~] body politic and corporate, constituting a public corporation, known as the "Utah Housing [~~Finance Agency~~] Corporation."

(b) The corporation may also be known and do business as the:

(i) Utah Housing Finance Association; and

(ii) Utah Housing Finance Agency in connection with any contract entered into when that was the corporation's legal name.

(c) Any other entity may not use the names described in Subsections (1)(a) and (b) without the express approval of the corporation.

(2) The [~~agency~~] corporation shall be governed by a board of trustees composed of the following nine [~~members as follows~~] trustees:

(a) three ex officio [~~members~~] trustees who shall be:

(i) the executive director of the Department of Community and Economic Development;

(ii) the commissioner of the Department of Financial Institutions or his designee; and

(iii) the state treasurer or his designee; and

(b) six public [~~members~~] trustees, being private citizens of the state, as follows:

(i) two people representing the mortgage lending industry;

(ii) two people representing the home building and real estate industry; and

(iii) two people representing the public at large.

(3) The governor shall:

(a) appoint the six public [~~members~~] trustees of the [~~agency~~] corporation with the advice and consent of the Senate; and

(b) ensure that:

(i) the six public [~~members~~] trustees are from different counties and are residents of Utah; and

(ii) not more than three of the public [~~members~~] trustees belong to the same political party[~~; and~~].

[~~(iii) none of the public members reside in the same county.~~]

(4) (a) Except as required by Subsection (4)(b), the six public [~~members~~] trustees shall be appointed to terms of office of four years each.

(b) Notwithstanding the requirements of Subsection (4)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of [~~agency members~~] corporation trustees are staggered so that approximately half of the [~~agency~~] board is appointed every two years.

(5) (a) Any of the six public [~~members~~] trustees of the [~~agency~~] corporation may be removed from office for cause either by the governor or [~~for cause~~] by an affirmative vote of any six [~~members~~] trustees of the [~~agency~~] corporation.

(b) When a vacancy occurs in the [~~membership~~] board of trustees for any reason, the replacement shall be appointed for the unexpired term.

(c) Each public [~~member~~] trustee shall hold office for the term of his appointment and until his successor has been appointed and qualified.

(d) Any public [~~member~~] trustee is eligible for reappointment but may not serve more than two full consecutive terms.

(6) (a) The governor shall select the chair of the [~~agency~~] corporation.

(b) The [~~members~~] trustees shall elect from among their number a vice chair and other officers they may determine.

(7) [~~The powers of the agency shall be vested in the members thereof from time to time.~~] Five [~~members of the agency~~] trustees of the corporation constitute a quorum for transaction of [~~agency~~] business. An affirmative vote of at least five [~~members~~] trustees is necessary for any action to be taken by the [~~agency~~] corporation. [~~No~~] A vacancy in the [~~membership of the agency~~] board of trustees may not impair the right of a quorum to exercise all rights and perform all duties of the [~~agency~~] corporation.

(8) (a) (i) [~~Members~~] Trustees who are not government employees [~~shall~~] may not receive [~~no~~] compensation or benefits for their services, but may receive a reasonable per diem and reimbursement expenses incurred in the performance of the [~~member's~~] trustee's official duties at the rates established by the [~~Division of Finance under Sections 63A-3-106 and 63A-3-107~~] board of trustees.

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

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

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

Section 5. Section 9-4-904.5 is enacted to read:

9-4-904.5. Corporation as continuation of agency.

(1) Beginning July 1, 2001, the Utah Housing Finance Agency shall become known as the Utah Housing Corporation.

(2) The corporation is a continuation of the Utah Housing Finance Agency and shall:

(a) possess all rights, title, privileges, powers, immunities, property, and claims of the agency; and

(b) fulfill and perform all obligations of the agency, including all agency obligations relating to outstanding bonds and notes.

Section 6. Section 9-4-905 is amended to read:

9-4-905. President and chief executive officer -- Secretary-treasurer -- Powers and duties -- Power to employ experts -- Power to employ independent legal counsel.

(1) (a) The [~~members~~] trustees shall appoint [~~an executive director~~] a president who shall be [~~an employee~~] the chief executive officer of the [~~agency~~] corporation, but who may not be a [~~member~~] trustee of the [~~agency~~] corporation, and who shall serve at the pleasure of the [~~members~~] trustees and receive compensation as set by the [~~members and approved by the governor~~] trustees.

(b) The [~~executive director~~] president, who shall also be the secretary-treasurer, shall administer, manage, and direct the affairs and activities of the [~~agency~~] corporation in accordance with the policies, control, and direction of the [~~members~~] trustees.

(c) The [~~executive director~~] president shall approve all accounts for salaries, allowable expenses of the [~~agency~~] corporation, or of any corporation employee or consultant [~~thereof~~], and expenses incidental to the operation of the [~~agency~~] corporation. [~~He~~]

(d) The president shall perform [~~such~~] any other duties as may be directed by the [~~members~~] trustees in carrying out the purposes of this part.

(2) (a) The [~~executive director~~] president shall:

(i) attend the meetings of the [~~agency, shall~~] corporation;

(ii) keep a record of the proceedings of the [~~agency,~~] corporation; and [~~shall~~]

(iii) maintain and be custodian of all:

(A) books, documents, and papers filed with the [~~agency and of~~] corporation;

(B) the minute book or journal of the [~~agency~~] corporation; and [~~of~~]

(C) its official seal. [~~He~~]

(b) The president may cause copies to be made of all minutes and other records and documents of the [~~agency~~] corporation and may give certificates under seal of the [~~agency~~] corporation to the effect that [~~such~~] those copies are true copies, and all persons dealing with the [~~agency~~] corporation may rely upon [~~such~~] those certificates.

(3) (a) The [~~agency~~] corporation may employ or engage technical experts, independent professionals and consultants, and [~~such~~] any other officers, agents, or employees, permanent or temporary, as it [~~deems~~] considers necessary to carry out the efficient operation of the [~~agency~~] corporation, and shall determine their qualifications, duties, and compensation.

(b) The [~~members~~] trustees may delegate to one or more of the [~~agency's~~] corporation's agents, representatives, or employees [~~such~~] any administrative duties as they [~~deem~~] consider proper.

(4) The [~~agency~~] corporation may employ and retain independent legal counsel.

Section 7. Section 9-4-906 is amended to read:

9-4-906. Relation to certain acts.

(1) The [~~agency~~] corporation is exempt from:

[~~(4)~~] (a) Title 51, Chapter 5, Funds Consolidation Act;

[~~(2)~~] (b) Title 51, Chapter 7, State Money Management Act of 1974;

[~~(1)~~] (c) Title 63, Chapter 38, Budgetary Procedures Act;

(d) Title 63, Chapter 38a, Revenue Procedures and Control Act;

[~~(5)~~] (e) Title 63, Chapter 56, Utah Procurement Code; [~~and~~]

[~~(3)~~] (f) Title 63A, Utah Administrative Services Code; and

[~~(6)~~] (g) Title 67, Chapter 19, Utah State Personnel Management Act.

(2) The corporation shall comply with:

(a) Title 52, Chapter 4, Open and Public Meetings; and

(b) Title 63, Chapter 2, Government Records Access and Management Act.

Section 8. Section 9-4-907 is amended to read:

9-4-907. Disclosure of interest.

(1) Any [~~member~~] trustee, officer, or employee of the [~~agency~~] corporation who has, will have, or later acquires an interest, direct or indirect, in any transaction with the [~~agency~~] corporation shall immediately disclose the nature and extent of that interest in writing to the [~~agency~~] corporation as soon as he has knowledge of the actual or prospective interest.

(2) (a) This disclosure shall be entered upon the minutes of the [~~agency~~] corporation.

(b) Upon [~~such~~] the disclosure, that [~~member~~] trustee, officer, or employee may participate in any action by the [~~agency~~] corporation authorizing [~~such~~] the transaction.

Section 9. Section 9-4-908 is amended to read:

9-4-908. Officer or employee -- No forfeiture of office or employment.

Notwithstanding the provisions of any other law, no officer or employee of this state shall be deemed to have forfeited or shall forfeit his office or employment by reason of his acceptance of [~~membership on~~] appointment as a trustee of the [~~agency~~] corporation or his service thereon.

Section 10. Section 9-4-909 is amended to read:

9-4-909. Surety bond required.

(1) The [~~agency~~] corporation shall maintain:

(a) for each [~~member~~] trustee a surety bond in the penal sum of $25,000[~~,~~]; and

(b) for the [~~executive director~~] president of the [~~agency~~] corporation a surety bond in the penal sum of $50,000.

(2) Each surety bond is to be conditioned upon the faithful performance of the duties of the office of the [~~member~~] trustee or [~~executive director~~] president, as the case may be, and is to be issued by a surety company authorized to transact business in the state [~~of Utah~~] as surety[~~, and is to be filed in the office of the state treasurer~~].

(3) Each [~~member~~] trustee and the [~~executive director~~] president shall maintain these bonds in full force and effect.

(4) The [~~agency~~] corporation shall bear all costs of the surety bonds.

Section 11. Section 9-4-910 is amended to read:

9-4-910. Corporation -- Powers.

The [~~agency~~] corporation has and may exercise all powers necessary or appropriate to carry out [~~and effectuate~~] the purposes of this part, including [~~without limiting the generality thereof,~~] the following:

(1) to have perpetual succession as a body politic and corporate, constituting a public corporation, and to adopt, amend, and repeal rules, policies, and procedures for the regulation of its affairs and the conduct of its business;

(2) to sue and be sued in its own name;

(3) to have an official seal and power to alter that seal at will;

(4) to maintain an office at any place or places within this state it may designate;

(5) to adopt, amend, and repeal bylaws and rules, not inconsistent with this part, to carry into effect the powers and purposes of the [~~agency~~] corporation and the conduct of its business;

(6) to make and execute contracts and all other instruments necessary or convenient for the performance of its duties and the exercise of its powers and functions under this part, including contracts or agreements for the servicing and originating of mortgage loans;

(7) to employ advisers, consultants, and agents, including[~~, but not limited to,~~] financial experts, independent legal counsel, and [~~such~~] any advisers, consultants, and agents as may be necessary in its judgment and to fix their compensation;

(8) to procure insurance against any loss in connection with its property and other assets, including mortgage loans, in amounts and from insurers it [~~deems~~] considers desirable;

(9) to borrow money and to issue bonds and notes or other evidences of indebtedness as provided in this part;

(10) to receive and accept aid or contributions from any source of money, property, labor, or other things of value to be held, used, loaned, granted, and applied to carry out the purposes of this part subject to the conditions, if any, upon which the grants and contributions are made, including[~~, but not limited to,~~] gifts or grants from any department, agency, or instrumentality of the United States or of this state for any purpose consistent with this part;

(11) to enter into agreements with any local public body, any housing sponsor, any department, agency, or instrumentality of the United States or this state, or with mortgagors and mortgage lenders for the purpose of planning and regulating and providing for the financing and refinancing, construction, rehabilitation, leasing, management, maintenance, operation, sale, or other disposition of, any residential housing undertaken with the assistance of the [~~agency~~] corporation under this part;

(12) to exercise all of its remedies following the default under any mortgage loan, including:

(a) proceeding with a foreclosure action or private sale to obtain title to the real and personal property held as collateral and taking assignments of leases and rentals;

(b) to own, lease, clear, reconstruct, rehabilitate, repair, maintain, manage, and operate this property in preparation for its disposition; and

(c) to assign, encumber, sell, or otherwise dispose of [~~any such~~] this property;

(13) to invest any funds not required for immediate disbursement, including funds held in reserve, in [~~accordance~~] a manner consistent with applicable provisions of Title 51, Chapter 7, State Money Management Act of 1974;

(14) to provide technical and financial assistance to housing sponsors and advisory committees in the development or operation of housing for low and moderate income persons;

(15) to gather and distribute data and information concerning the housing needs of low and moderate income families within the various communities of this state;

(16) to the extent permitted under any contract with the holders of bonds, notes, and other obligations of the [~~agency~~] corporation, to consent to any modification with respect to rate of interest, time and payment of any installment of principal or interest security, or any other term of any contract, mortgage, mortgage loan, mortgage loan commitment, contract, or agreement of any kind to which the [~~agency~~] corporation is a party;

(17) to the extent permitted under any contract with the holders of bonds, notes, and other obligations of the [~~agency~~] corporation, to enter into contracts with any mortgagor or housing sponsor containing provisions enabling the mortgagor to reduce the rental or carrying charges to persons unable to pay the regular schedule of charges where, by reason of other income or payment by any department, agency, or instrumentality of the United States or of this state, the reduction can be made without jeopardizing the economic stability of residential housing being financed;

(18) to acquire property within this state for the purpose of holding it for subsequent disposition to a housing sponsor or other entity that can use it for residential housing for low and moderate income persons, except that if no person can be found to use it in [~~such a~~] this manner, the [~~agency~~] corporation may dispose of the property to any person;

(19) to purchase, own and operate residential housing for the benefit, in whole or in part, of low and moderate income persons, so long as the [~~agency~~] corporation makes reasonable efforts to sell that residential housing to a housing sponsor;

(20) to incorporate or form one or more subsidiaries of the [~~agency~~] corporation for the purpose of carrying out any of the powers of the [~~agency~~] corporation and accomplishing any of the purposes of the [~~agency~~] corporation, to invest in and provide financial assistance to these subsidiaries, to borrow from these subsidiaries, to guarantee the obligations of these subsidiaries, and to enter into agreements with these subsidiaries to carry out any of the [~~agency's~~] corporation's powers under this part;

(21) to enter into partnership and limited liability company agreements, to purchase and sell interests

in housing sponsors, to serve as general partner of a partnership, and to serve as a manager of a limited liability company to carry out any of the [~~agency's~~] corporation's powers under this part;

(22) to require that persons receiving a mortgage loan or financial assistance from the [~~agency~~] corporation subject the property involved to restrictive covenants that shall be considered to be running with the land, regardless of whether or not the [~~agency~~] corporation enjoys privity of estate or whether or not the covenant touches and concerns the burdened property;

(23) to enter into management agreements with any person or entity for the performance by the person or entity for the [~~agency~~] corporation of any of its functions or powers, [~~upon such~~] with terms and conditions as may be mutually agreeable;

(24) to sell, at public or private sale, with or without public bidding, any mortgage loan or other obligation held by the [~~agency~~] corporation;

(25) to sell or convey real property owned by the [~~agency~~] corporation to low or moderate income persons and housing sponsors, without consideration if the sale or conveyance will inure primarily to the benefit of low or moderate income persons living in a housing development;

(26) upon making a determination that the financial status of a housing development [~~is such as to~~] will jeopardize any economic interest of the [~~agency~~] corporation in the housing development, to assume managerial and financial control of the property or the owner and to supervise and prescribe the activities of the property or the owner in [~~such~~] a manner and under [~~such~~] terms and conditions as the [~~agency~~] corporation may stipulate in any contract;

(27) to supervise housing sponsors of housing developments;

(28) to service mortgage loans; and

(29) to do any act necessary or convenient to the exercise of the powers granted [~~by~~] in or reasonably implied from this part [~~or reasonably implied therefrom~~].

Section 12. Section 9-4-911 is amended to read:

9-4-911. Corporation -- Additional powers.

(1) To accomplish the declared purposes of this part, the [~~agency~~] corporation has the following powers in addition to others granted in this part:

(a) to purchase mortgage loans originated by mortgage lenders or local public bodies made for the purpose of financing the construction, development, rehabilitation, or purchase of residential housing for low and moderate income persons;

(b) to make mortgage loans and to provide financial assistance to housing sponsors for the purpose of financing the construction, development, rehabilitation, or purchase of residential housing for low and moderate income persons;

(c) to make mortgage loans and provide financial assistance to housing sponsors for the purpose of financing the operations of a housing development that are necessary or desirable to enable the housing development to remain available as residential housing for low and moderate income persons, whether or not the housing development has been financed by the [~~agency~~] corporation;

(d) to provide financial assistance to any housing authority created under Part 6, which housing authorities may enter into commitments for and accept loans for a housing project or projects as defined in Section 9-4-602; and

(e) to make mortgage loans and to provide financial assistance to low and moderate income persons for the construction, rehabilitation, or purchase of residential housing.

(2) Bonds to purchase loans pursuant to Subsection (1)(a) shall be issued only after a determination by the [~~agency~~] corporation that the loans are not otherwise available upon reasonably equivalent terms and conditions from private lenders.

(3) Loans for owner-occupied housing made pursuant to Subsection (1)(a) may not include a penalty for prepayment.

[~~(4) No mortgage loan is eligible for purchase by the agency if the loan was made more than two years prior to the date of purchase.~~]

[~~(5)~~] (4) The [~~agency~~] corporation shall make rules [~~governing~~] or adopt policies and procedures to govern the activities authorized under this section including rules, policies, and procedures as to any or all of the following:

(a) procedures for the submission of requests or the invitation of proposals for the purchase and sale of mortgage loans and the making of mortgage loans;

(b) rates, fees, charges, and other terms and conditions of originating or servicing mortgage loans in order to protect against a realization of an excessive financial return or benefit by the originator or servicer;

[~~(c) the type and amount of collateral or security to be provided by housing authorities to assure repayment of loans from the agency;~~]

[~~(d)~~] (c) the type and amount of collateral, payment bonds, performance bonds, or other security to be provided for construction loans made by the corporation;

[~~(e)~~] (d) the nature and amounts of fees to be charged by the [~~agency~~] corporation to provide for expenses and reserves of the [~~agency~~] corporation;

[~~(f)~~] (e) procedures allowing the [~~agency~~] corporation to prohibit persons who fail to comply with the rules of the [~~agency~~] corporation with respect to the operations of any program of the [~~agency~~] corporation from participating, either

directly or indirectly, in the programs of the [~~agency~~] corporation;

[~~(g)~~] (f) the terms and conditions under which the [~~agency~~] corporation may purchase and make mortgage loans under each program of the [~~agency~~] corporation;

[~~(h)~~] (g) the terms and conditions under which the [~~agency~~] corporation may provide financial assistance under each program of the [~~agency~~] corporation;

[~~(i)~~] (h) the terms and conditions under which the [~~agency~~] corporation may guarantee mortgage loans under each program of the [~~agency~~] corporation; and

[~~(j)~~] (i) any other matters related to the duties or exercise of powers under this section.

[~~(6)~~] (5) (a) The [~~members~~] trustees of the [~~agency~~] corporation shall [~~appoint~~] elect the directors, trustees, members, [~~and managers~~] if any, of each subsidiary. Service by a [~~member~~] trustee of the [~~agency~~] corporation in any such capacity does not constitute a conflict of interest for any purpose. The [~~agency~~] corporation may delegate any of its powers and duties under this part to any subsidiary. Subsidiaries shall constitute legal entities separate and distinct from each other, the [~~agency~~] corporation, and the state.

(b) Each note, bond, and other obligation of a subsidiary shall contain on its face a statement to the effect that:

(i) the subsidiary is obligated to pay the same solely from the revenues or other funds of the subsidiary;

(ii) neither the [~~agency~~] corporation nor the state nor any of its political subdivisions is obligated to pay the same; and

(iii) neither the faith and credit nor the taxing power of the state or any of its political subdivisions is pledged to the payment of principal, or redemption price of, or the interest on the note, bond, or other obligation.

(c) Upon dissolution of any subsidiary of the [~~agency~~] corporation, any assets shall revert to the [~~agency~~] corporation or to any successor to the [~~agency~~] corporation or, failing this succession, to the state.

(6) (a) The corporation may:

(i) enter into interest rate contracts that its trustees determine are necessary, convenient, or appropriate for the control or management of debt or for the cost of servicing debt; and

(ii) use corporation funds to satisfy its payment obligations under those contracts.

(b) Interest rate contracts may contain payment, security, default, termination, remedy, and other terms and conditions that the trustees consider appropriate.

(c) Neither interest rate contracts nor funds used in connection with interest rate contracts may be considered a deposit or investment.

Section 13. Section 9-4-912 is amended to read:

9-4-912. Power to issue mortgage credit certificates -- Impact of federal legislation on tax exempt status of corporation bond.

(1) In order to accomplish the purposes of this part the [~~agency~~] corporation may issue mortgage credit certificates pursuant to 26 U.S.C., Section 143, as amended, and the regulations issued under the code and has the sole responsibility for issuing or approving the issuance of mortgage credit certificates allowable to the state.

(2) None of the powers granted to the [~~agency~~] corporation by this part shall in any way be diminished by the enactment of any federal legislation which would cause the interest on any bonds, notes, or other obligations of the [~~agency~~] corporation to be subject to taxation under federal law, nor shall the exemption from state taxation granted in this part be affected by any such federal legislation.

Section 14. Section 9-4-913 is amended to read:

9-4-913. Power to borrow money and make loans -- Issuance of notes and bonds.

(1) The [~~agency~~] corporation has the power and is [~~hereby~~] authorized to borrow money and to issue from time to time its notes, bonds, and other obligations in such principal amounts as the [~~agency~~] corporation determines is necessary to provide sufficient funds for:

(a) the purchase of mortgage loans from mortgage lenders;

(b) the making of construction loans;

(c) the making of loans to housing authorities;

(d) the payment of interest on bonds, notes, and other obligations of the [~~agency~~] corporation;

(e) the establishment of reserves to secure the bonds, notes, and other obligations;

(f) the making of mortgage loans;

(g) the making of loans to mortgage lenders or other lending institutions with respect to multifamily residential rental housing under terms and conditions requiring the proceeds of these loans to be used by these mortgage lenders or other lending institutions for the making of loans for new multifamily residential rental housing or the acquisition or rehabilitation of existing multifamily residential rental housing;

(h) the making of loans for the rehabilitation of residential housing; and

(i) all other expenditures of the [~~agency~~] corporation incident to and necessary or convenient to carry out its purposes and powers.

(2) (a) The [~~agency~~] corporation shall have the power to issue notes to renew notes and bonds to

pay notes, including the interest thereon, and whenever it considers refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and to issue bonds partly to refund bonds then outstanding and partly for any of its corporate purposes.

(b) The refunding bonds may be [~~(a)~~]:

(i) sold and the proceeds applied to the purchase, redemption, or payment of the bonds to be refunded[~~,~~]; or [~~(b)~~]

(ii) exchanged for the bonds to be refunded.

(3) (a) Except as may otherwise be expressly provided by the [~~agency~~] corporation, every issue of its notes or bonds shall be general obligations of the [~~agency~~] corporation payable solely out of any revenues or monies of the [~~agency~~] corporation, subject only to any agreements with the holders of particular notes or bonds pledging any particular monies or revenues.

(b) These bonds or notes may be additionally secured by a pledge of any grant or contribution from the federal government or any corporation, association, institution, or person or a pledge of any monies, income, or revenues of the [~~agency~~] corporation from any source.

(4) (a) The notes and bonds shall be authorized by resolution or resolutions of the [~~agency~~] corporation, shall bear [~~such~~] the date or dates, and shall mature at [~~such~~] the time or times as [~~such~~] the resolution or resolutions may provide, except that no note, including any renewals thereof, shall mature more than five years from the date of its original issue, and no bond shall mature more than 50 years from the date of its issue, as the resolution may provide.

(b) The notes and bonds shall bear interest at [~~such~~] the rate or rates, including variations in [~~such~~] the rates, be in [~~such~~] denominations, be in [~~such~~] a form, either coupon or registered, carry [~~such~~] the registration privileges, be executed in [~~such~~] the manner, be payable in [~~such~~] a medium of payment, at [~~such~~] the place or places, and be subject to [~~such~~] the terms of redemption, including redemption prior to maturity, as [~~such~~] the resolution or resolutions may provide.

(c) The notes and bonds of the [~~agency~~] corporation may be sold by the [~~agency~~] corporation at public or private sale, and at the price or prices as the [~~agency~~] corporation shall determine.

(d) (i) The notes and bonds may bear interest at a variable interest rate as [~~such~~] the resolution may provide. [~~Such~~]

(ii) The resolution may establish a method, formula, or index pursuant to which the interest rate on the notes and bonds may be determined from time to time.

(e) In connection with the notes and bonds the [~~agency~~] corporation may authorize and enter into agreements or other arrangements with financial, banking, and other institutions for letters of credit, standby letters of credit, surety bonds, reimbursement agreements, remarketing agreements, indexing agreements, tender agent agreements, and other agreements with respect to securing the notes and bonds, with respect to enhancing the marketability and credit worthiness of the notes and bonds, with respect to determining a variable interest rate on the notes and bonds, and with respect to the payment from any legally available source (which may include the proceeds of the notes and bonds) of fees, charges, and other amounts coming due with respect to any such agreements.

(5) Any resolution or resolutions authorizing any notes or bonds or [~~any~~] their issue [~~thereof~~] may contain provisions, which shall be a part of the contract or contracts with [~~the~~] their holders [~~thereof~~], as to:

(a) pledging all or any part of the revenues to secure the payment of the notes or bonds or of any issue thereof, subject to [~~such~~] the agreements with noteholders or bondholders as may then exist;

(b) pledging all or any part of the assets of the [~~agency~~] corporation, including mortgages and obligations securing the same, to secure the payment of the notes or bonds or of any issue of notes or bonds, subject to the agreements with noteholders or bondholders as may then exist;

(c) the use and disposition of the gross income from mortgages owned by the [~~agency~~] corporation and payment of principal of mortgages owned by the [~~agency~~] corporation;

(d) the setting aside of reserves or sinking funds and [~~the~~] their regulation and disposition [~~thereof~~];

(e) limitations on the purpose to which the proceeds of sale of notes or bonds may be applied and pledging the proceeds to secure the payment of the notes or bonds or of [~~any~~] their issue [~~thereof~~];

(f) limitations on the issuance of additional notes or bonds[~~;~~], including:

(i) the terms upon which additional notes or bonds may be issued and secured; and

(ii) the refunding of outstanding or other notes or bonds;

(g) the procedure, if any, by which the terms of any contract with noteholders or bondholders may be amended or abrogated, the amount of notes or bonds to which the holders [~~of which~~] must consent [~~thereto~~], and the manner in which the consent may be given;

(h) limitations on the amount of monies to be expended by the [~~agency~~] corporation for operating expenses of the [~~agency~~] corporation;

(i) vesting in a trustee or trustees [~~such~~] the property, rights, powers, and duties in trust as the [~~agency~~] corporation may determine, which may include any or all of the rights, powers, and duties of the trustee appointed by the noteholders or bondholders pursuant to this act and limiting or abrogating the right of noteholders or bondholders to appoint a trustee under this act or limiting the rights, powers, and duties of the trustee;

(j) defining the acts or omissions to act which shall constitute a default in the obligations and duties of the [~~agency~~] corporation to the holders of the notes or bonds and providing for the rights and remedies of the holders of the notes or bonds in the event of default, including as a matter of right the appointment of a receiver; but the rights and remedies [~~shall~~] may not be inconsistent with the general laws of the state and other provisions of this part; or

(k) any other matters, of like or different character, which in any way affect the security or protection of the holders of the notes or bonds.

(6) (a) Any pledge made by the [~~agency~~] corporation shall be valid, enforceable, and binding from the time when the pledge is made and shall have a lien priority based on the time of grant or, if more than one lien is granted at a given time, as set forth in the resolution or instrument pursuant to which the pledge is made.

(b) The revenues, monies, or property so pledged and thereafter received by the [~~agency~~] corporation shall immediately be subject to the lien of [~~such~~] the pledge and shall constitute a perfected lien without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the [~~agency~~] corporation, irrespective of whether the parties have notice thereof.

(c) Neither the resolution nor any other instrument by which a pledge is created need be recorded.

(7) The [~~agency~~] corporation, subject to [~~such~~] the agreements with noteholders or bondholders as may then exist, shall have power out of any funds available for it to purchase notes or bonds of the [~~agency~~] corporation, which shall [~~thereupon~~] immediately be cancelled, at a price not exceeding:

(a) if the notes or bonds are then redeemable, the redemption price then applicable plus accrued interest to the next interest payment thereon; or

(b) if the notes or bonds are not then redeemable, the redemption price applicable on the first date after [~~such~~] the purchase upon which the notes or bonds become subject to redemption plus accrued interest to [~~such~~] the date.

(8) (a) The notes and bonds shall be secured by a trust indenture by and between the [~~agency~~] corporation and a corporate trustee, which may be any bank having the power of a trust company or any trust company within or without the state. [~~Such~~]

(b) The trust indenture may contain [~~such~~] provisions for protecting and enforcing the rights and remedies of the noteholders or bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the [~~agency~~] corporation in relation to the exercise of its corporate powers and the custody, safeguarding, and application of all monies.

(c) The [~~agency~~] corporation may provide by the trust indenture for the payment of the proceeds of the notes or bonds and the revenues to the trustee under the trust indenture or other depository, and for the method of their disbursement [~~thereof~~], with [~~such~~] any safeguards and restrictions as it may determine.

(d) All expenses incurred in carrying out the trust indenture may be treated as a part of the operating expenses of the [~~agency~~] corporation.

(e) If the notes or bonds shall be secured by a trust indenture, the noteholders or bondholders [~~shall~~] may not have [~~no~~] authority to appoint a separate trustee to represent them.

(9) Whether or not the notes and bonds are of the form and character as to be negotiable instruments under the terms of the Uniform Commercial Code, the notes and bonds are [~~hereby made~~] negotiable instruments within the meaning of and for all the purposes of the Uniform Commercial Code, subject only to the provisions of the notes and bonds relating to registration.

(10) In the event that any of the [~~members~~] trustees or officers of the [~~agency~~] corporation shall cease to be [~~members~~] trustees or officers of the [~~agency~~] corporation prior to the delivery of any notes or bonds or coupons signed by them, their signatures or facsimiles [~~thereof~~] of their signatures shall nevertheless be valid and sufficient for all purposes, the same as if [~~such members~~] the trustees or officers had remained in office until [~~such~~] the delivery.

(11) Neither the [~~members~~] trustees of the [~~agency~~] corporation nor any other person executing the notes or bonds issued under this chapter are subject to personal liability or accountability by reason of the issuance thereof.

(12) The [~~agency~~] corporation shall have the power to provide for the replacement of lost, destroyed, or mutilated bonds or notes.

Section 15. Section 9-4-914 is amended to read:

9-4-914. Capital reserve funds -- Capital reserve fund requirement -- Establishment of other funds.

(1) (a) (i) The [~~agency~~] corporation may create and establish one or more reserve funds, herein referred to as "capital reserve funds", from: [~~(i)~~]

(A) any proceeds of sale of notes or bonds, to the extent provided in the resolution or resolutions of the [~~agency~~] corporation authorizing the issuance thereof; [~~(ii)~~]

(B) any monies appropriated and made available by the state for the purpose of the funds; [~~(iii)~~]

(C) any monies directed by the [~~agency~~] corporation to be transferred to the funds; and [~~(iv)~~]

(D) any other monies which may be made available to the [~~agency~~] corporation for the purpose of the funds from any other source or sources.

(ii) All monies held in any capital reserve fund shall be used, as required, solely for the payment of the principal of bonds or of the sinking fund payments [~~hereinafter mentioned~~] with respect to the bonds, the purchase or redemption of bonds, the payment of interest on bonds, or the payment of any redemption premium required to be paid when the bonds are redeemed prior to maturity.

(b) (i) Monies in any [~~such~~] capital reserve fund [~~shall~~] may not be withdrawn [~~therefrom~~] from the fund at any time in an amount as would reduce the level of monies in [~~such~~] the fund to less than the capital reserve fund requirement [~~hereinafter defined~~], except for the purpose of paying principal and redemption price of and interest on bonds and the sinking fund payments [~~hereinafter mentioned~~], as the [~~same~~] payments become due and for the payment of which other monies of the [~~agency~~] corporation are not available.

(ii) Any income or interest earned by the investment of monies held in any [~~such~~] fund may be transferred by the [~~agency~~] corporation to other funds or accounts of the [~~agency~~] corporation to the extent that the transfer does not reduce the amount of the fund to below the [~~said~~] capital reserve fund requirement.

(c) The [~~agency~~] corporation may provide by resolution or resolutions that it [~~shall~~] may not issue bonds under a resolution or resolutions at any time if upon issuance the amount in the capital reserve fund which will secure the bonds shall be less than [~~said~~] the capital reserve fund requirement, unless the [~~agency~~] corporation at the time of issuance of the bonds shall deposit in the fund from the proceeds of the bonds to be so issued, or other sources, an amount which, together with the amount then in the fund, shall not be less than [~~said~~] the capital reserve fund requirement.

(d) In computing the amount of the capital reserve funds for the purpose of this part, securities in which all or a portion of the funds shall be invested shall be valued at par, cost, or by other method of valuation as the [~~agency~~] corporation may provide by resolution.

(e) (i) "Capital reserve fund requirement" means, as of any particular date of computation, and with respect to any particular issue of bonds, [~~such~~] an amount as the [~~agency~~] corporation may provide, or may have [~~heretofore~~] previously provided, by resolution, which amount may be in the form of a sum certain or a formula.

(ii) In establishing reserves and setting capital reserve fund requirements, the [~~agency~~] corporation shall consider the following:

[~~(i)~~] (A) the qualifications for obtaining an investment grade rating from one or more nationally recognized bond rating agencies;

[~~(ii)~~] (B) the economic feasibility and marketability of the bonds being issued, taking into account all security for the bonds, including the capital reserve fund; and

[~~(iii)~~] (C) applicable requirements pertaining to reserve funds under federal and state income tax laws and regulations.

(f) (i) To assure the continued operation and solvency of the [~~agency~~] corporation for [~~the~~] carrying out of its corporate purposes, provision is made in Subsection (1)(b) for the accumulation in the capital reserve funds of an amount equal to the maximum capital reserve fund requirement.

(ii) The [~~chairman~~] president of the [~~agency~~] corporation shall annually, on or before December first, certify to the governor and to the director of finance the amount, if any, required to restore the capital reserve funds to the capital reserve fund requirement.

(iii) The governor may request from the Legislature an appropriation of the certified amount [~~so certified~~] to restore the capital reserve funds to the capital reserve fund requirement.

(g) Amounts appropriated, if any, shall be repaid to the General Fund of the state, from any monies in excess of the amounts which the [~~agency~~] corporation determines will keep it self-supporting.

(2) The [~~agency~~] corporation may create and establish any other funds as may be necessary or desirable for its corporate purposes.

Section 16. Section 9-4-915 is amended to read:

9-4-915. Corporation moneys -- Depositing and paying out -- Power to contract with holders of notes and bonds -- Moneys held in trust.

(1) (a) All moneys of the [~~agency~~] corporation, except as otherwise authorized or provided in this part, shall be deposited as soon as practicable in a separate account or accounts in banks or trust companies organized under the laws of the state or national banking association.

(b) The moneys in these accounts shall be paid out on checks signed by the [~~executive director~~] president or other officers or employees of the [~~agency~~] corporation as the [~~agency~~] corporation shall authorize.

(c) All deposits of moneys shall, if required by the [~~agency~~] corporation, be secured in a manner as the [~~agency~~] corporation determines to be prudent, and all banks and trust companies are authorized to give security for the deposits.

(2) (a) Notwithstanding the provisions of this section, the [~~agency~~] corporation shall have power to contract with the holders of any of its notes or bonds as to the custody, collection, securing, investment, and payment of any moneys of the [~~agency~~] corporation and of any moneys held in trust or otherwise for the payment of notes or bonds, and to carry out [~~such~~] that contract.

(b) Moneys held in trust or otherwise for the payment of notes or bonds or in any way to secure notes or bonds and deposits of moneys may be secured in the same manner as moneys of the

[~~agency~~] corporation, and all banks and trust companies are authorized to give security for the deposits.

Section 17. Section 9-4-916 is amended to read:

9-4-916. State pledge to holders of notes or bonds.

(1) The state does hereby pledge to and agree with the holders of any notes or bonds issued under this act that the state will not limit or alter the rights hereby vested in the [~~agency~~] corporation to fulfill the terms of any agreements made with the holders thereof or in any way impair the rights and remedies of the holders until the notes and bonds, together with [~~the~~] their interest [~~thereon~~], with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of the holders, are fully met and discharged.

(2) The [~~agency~~] corporation is authorized to include this pledge and agreement of the state in any agreement with the holders of the notes or bonds.

Section 18. Section 9-4-917 is amended to read:

9-4-917. Notes, bonds, other obligations -- Not debt liability -- Expenses payable from funds provided -- Corporation without authority to incur liability on behalf of state -- Relationship to Governmental Immunity Act.

(1) (a) Notes, bonds, and other obligations issued under this part [~~shall~~] do not constitute a debt or liability of this state or of any county, city, town, village, school district, or any other political subdivision of the state, nor shall the notes, bonds, or other obligations constitute the loaning of credit of the state or of any county, city, town, township, district, or any other political subdivision of the state, nor [~~shall~~] may the notes, bonds, or other obligations be payable from funds other than those of the [~~agency~~] corporation.

(b) All notes, bonds, or other obligations shall contain on [~~the~~] their face [~~thereof~~] a statement to the effect that:

(i) the [~~agency~~] corporation is obligated to pay the [~~same~~] note, bond, or obligation solely from the revenues or other funds of the [~~agency and that~~] corporation;

(ii) neither this state nor any political subdivision of it is obligated to pay the [~~same~~] note, bond, or obligation; and [~~that~~]

(iii) neither the faith and credit nor the taxing power of this state or any political subdivision of it is pledged to the payment of principal, or redemption price of, or the interest on [~~such~~] the notes, bonds, or other obligations.

(2) All expenses incurred in carrying out this act shall be payable solely from funds provided under this part, and nothing in this part shall be construed to authorize the [~~agency~~] corporation to incur indebtedness or liability on behalf of or payable by this state or any political subdivision of it.

(3) (a) Title 63, Chapter 30, the Utah Governmental Immunity Act, shall apply to the corporation.

(b) Notwithstanding Subsection (3)(a), no claim may be brought against the state, any public official or employee of the state, another public entity, or any public official or employee of another public entity, based on or arising from:

(i) any failure or alleged failure to fulfill a contractual obligation of the corporation;

(ii) any act or failure to act of the corporation or any of its trustees, officers, employees, agents, or representatives; or

(iii) any failure of the corporation to comply with the requirements of any law or regulation.

(c) The provisions of Subsection (3)(b) do not apply to a claim of a current or former officer or employee of the corporation for the retirement or insurance benefits.

Section 19. Section 9-4-918 is amended to read:

9-4-918. Corporation property, notes, and bonds -- Tax exemption except corporate franchise tax.

All property acquired or held by the [~~agency~~] corporation under this part is declared to be public property used for essential public and governmental purposes, and all the property, its income [~~therefrom~~], and notes and bonds issued under this part, the interest payable [~~thereon~~] on the notes and bonds, and income derived [~~therefrom~~] from the notes and bonds, shall at all times be exempt from all taxation of every kind and nature whatsoever imposed by the state [~~of Utah~~], any county, any municipality, or any other political subdivision of the state, except for the corporate franchise tax.

Section 20. Section 9-4-919 is amended to read:

9-4-919. Corporation notes, bonds, obligations -- Legal investments.

(1) The notes, bonds, and other obligations issued under the authority of this part are declared to be securities in which all public officers and public bodies of the state and its political subdivisions, all banks, bankers, savings banks, trust companies, credit unions, savings and loan associations, building and loan associations, investment companies, and other persons carrying on a banking business, all insurance companies and insurance associations, and others carrying on an insurance business, and all administrators, executors, guardians, trustees, and other fiduciaries, pension, profit-sharing and retirement funds, and all other persons [~~whosoever~~] who may now or may [~~hereafter~~] later be authorized to invest in notes, bonds, or other obligations of the state, may properly and legally invest any funds, including capital belonging to them or within their control.

(2) These notes, bonds, and other obligations are declared securities which may properly and legally be deposited with and received by any state, county, or municipal officer, or agency of the state for any purpose for which the deposit of notes, bonds, or other obligations of the state is now or may [~~hereafter~~] later be authorized by law.

Section 21. Section 9-4-920 is amended to read:

9-4-920. Annual report to governor and Legislature -- Contents -- Audits.

(1) (a) The [~~agency~~] corporation shall, following the close of each fiscal year, submit an annual report of its activities for the preceding year to the governor and the Legislature.

(b) Each report shall set forth a complete operating and financial statement of the [~~agency~~] corporation during the fiscal year it covers. [~~The state auditor shall at~~]

(c) At least once [~~in~~] each year, an independent certified public accountant shall audit the books and accounts of the [~~agency or, if he elects, he shall contract with a nationally recognized independent certified public accountant for this audit~~] corporation. [~~The agency shall reimburse the state auditor from available monies of the agency for the actual and necessary costs of that audit.~~]

(d) A complete copy of each annual audit report shall be:

(i) included in the report to the governor and the Legislature under Subsection (2); and

(ii) available for public inspection at the corporation's office.

(2) The [~~agency~~] corporation shall, each fiscal year, submit a budget of its operations to the Legislature and the governor.

(3) (a) The corporation shall form an audit committee consisting of no less than three trustees.

(b) The audit committee shall have exclusive authority to select and engage the independent certified public accountant to audit the corporation and to supervise the audit.

(4) The corporation shall provide additional information when requested by the governor, the Legislature, a legislative committee, the legislative auditor general, or the state auditor.

Section 22. Section 9-4-922 is amended to read:

9-4-922. Act not restriction on powers of corporation -- Construed as alternative -- Bonds, notes, obligations issued need not comply with other laws.

[~~Neither this~~] (1) This part [~~nor anything contained herein~~] and its contents is not or [~~shall~~] may not be construed as a restriction or limitation upon any other powers which the [~~agency~~] corporation might otherwise have under any other law of this state, and this part is cumulative to [~~such~~] those powers.

(2) This part does and shall be construed to provide a complete, additional, and alternative method for the doing of the things authorized [~~thereby~~] in this part and shall be regarded as supplemental and additional to powers conferred by other laws. [~~However, the~~]

(3) The issuance of bonds, notes, and other obligations under the provisions of this part need not comply with the requirements of any other state law applicable to the issuance of bonds, notes, and other obligations. [~~No proceedings~~]

(4) Proceedings, notice, or approval [~~shall be~~] are not required for the issuance of any bonds, notes, and other obligations or any instrument as security therefor, except as provided in this part.

Section 23. Section 9-4-923 is amended to read:

9-4-923. Allocation to corporation of mortgage bonds qualified under Internal Revenue Code.

(1) The entire amount of qualified mortgage bonds allowable to Utah pursuant to 26 U.S.C., Section 143, and the regulations issued under the code, is allocated to the Utah Housing [~~Finance Agency~~] Corporation which, for purposes of 26 U.S.C., Section 143 and the regulations under that section, has sole responsibility for issuing or approving the issuance of qualified mortgage bonds allowable to Utah.

(2) The [~~agency~~] corporation is not required to issue or approve the issuance of qualified mortgage bonds equal in amount to the amount allowed Utah.

(3) Housing authorities in counties, cities, and towns in Utah may apply under 26 U.S.C., Section 143 to the [~~agency~~] corporation for funding of housing programs within their respective jurisdictions.

Section 24. Section 9-4-924 is amended to read:

9-4-924. Allocation of qualified mortgage bonds to counties, cities, and towns.

(1) (a) The [~~agency~~] corporation is authorized to allocate all or part of the amount to one or more counties, cities, and towns within the state or to any authority or agency of any such entities that is authorized to issue qualified mortgage bonds. [~~No~~]

(b) An allocation may not be made under this section[~~, however,~~] unless the entity applies to the [~~agency~~] corporation for an allocation and the [~~agency~~] corporation finds that the proposed allocation would be in the best interest of [~~Utah~~] the state.

(c) The [~~agency~~] corporation shall take the following factors into consideration before making its finding:

[~~(a)~~] (i) the number of "low and moderate income persons," within the meaning of the Utah Housing [~~Finance Agency~~] Corporation Act, within a given area;

[~~(b)~~] (ii) the likelihood that the proposed issuing entity would use the allocation to issue qualified mortgage bonds in a timely manner;

[~~(c)~~] (iii) the cost to the proposed issuing entity to issue the bonds relative to the cost to the [~~agency~~] corporation to issue [~~such~~] the bonds;

[~~(d)~~] (iv) any special costs or benefits which would result from the issuance of such bonds by the proposed issuing entity;

[~~(e)~~] (v) the capability of the proposed issuing entity to administer an issuance of qualified mortgage bonds;

[~~(f)~~] (vi) the needs of the proposed issuing entity relative to the needs of other counties, cities, and towns;

[~~(g)~~] (vii) the effects of the proposed allocation on counties, cities, and towns which are not served by the proposed issuing entity; and

[~~(h)~~] (viii) any other factors the [~~agency deems~~] corporation considers relevant to a determination of what is in the best interest of Utah with regard to single family housing.

(2) (a) The [~~agency~~] corporation shall specify the time within which an issuing entity must use the allocation.

(b) Any part of the allocation which is not used within the time prescribed automatically terminates.

(c) The [~~agency from time to time~~] corporation may[~~, however,~~] extend the time initially prescribed for use of the allocation.

Section 25. Section 9-4-925 is amended to read:

9-4-925. Low-income housing tax credits.

(1) The [~~agency~~] corporation is designated the "Housing Credit Agency" for the state within the meaning of 26 U.S.C. Sec. 42(h) and for the purposes of carrying out 26 U.S.C. Sec. 42 and any regulations promulgated under that section.

(2) The entire state housing credit ceiling for each calendar year is allocated to the [~~agency~~] corporation.

(3) The allocation of the state housing credit ceiling shall be made under the state's[~~"~~]qualified allocation plan[~~"~~] within the meaning of 26 U.S.C. Sec. 42(m), as amended, and as provided in Subsection (4).

(4) The [~~agency~~] corporation may amend the state's qualified allocation plan as necessary to comply with revisions to the low-income housing tax credit program under 26 U.S.C. Sec. 42, or as may be necessary to further the goals and purposes of the low-income housing tax credit program for the state.

(5) The [~~agency~~] corporation, or a subsidiary of the [~~agency~~] corporation, may have a direct or indirect ownership interest in, and may materially participate in the operation and management of, a housing development or program that has received an allocation of the state housing credit ceiling.

Section 26. Section 9-4-926 is enacted to read:

9-4-926. Asset disposition upon dissolution of corporation.

Upon dissolution of the corporation:

(1) all liabilities and obligations of the corporation, including obligations to bondholders, shall be paid, satisfied, discharged, or adequately provided for; and

(2) all remaining funds, property, rights, claims, and interests of the corporation shall revert or be conveyed to the state.

Section 27. Repealer.

This act repeals:

Section 9-4-921, State grants.

Section 28. Effective date.

This act takes effect on July 1, 2001.

CHAPTER 320
S. B. 1
Passed February 26, 2001
Approved March 20, 2001
Effective March 20, 2001

SUPPLEMENTAL APPROPRIATIONS ACT

Sponsor: Leonard M. Blackham

this act relates to appropriations. the act provides appropriations for the operation of state government for the fiscal year beginning july 1, 2000 and ending june 30, 2001. the act provides appropriations for the use and support of certain state departments and agencies of state government and for other purposes as provided in this act. this act provides an effective date.

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

Section 1. Under the terms and conditions of Section 63-38-3, the following sums of money are appropriated out of money not otherwise appropriated from the funds or fund accounts indicated for the use and support of certain State departments and agencies for the fiscal year beginning July 1, 2000 and ending June 30, 2001. This is in addition to amounts appropriated by Chapter 344, Laws of Utah 2000.

EXECUTIVE OFFICES & CRIMINAL JUSTICE SUBCOMMITTEE
GOVERNOR'S OFFICE

ITEM 1
To Governor's Office
From General Fund 2,100
Schedule of Programs:
Governor's Residence 2,100

ITEM 2
To Governor's Office - Elections
From General Fund 65,000
Schedule of Programs:
Elections 65,000

ITEM 3
To Governor's Office - Emergency Fund
From General Fund 60,000
Schedule of Programs:
Governor's Emergency Fund 60,000

ITEM 4
To Governor's Office - RS-2477 Rights of Way
From General Fund Restricted -
Constitutional Defense 496,800
Schedule of Programs:
RS-2477 Rights of Way 496,800

It is the intent of the Legislature that funding for R.S. 2477 Rights of Way be nonlapsing

ITEM 5
To Governor's Office - Office of
Planning and Budget
From General Fund 6,550,000
From Olympic Special Revenue 106,500
Schedule of Programs:
Administration 6,606,500
Demographic and Economic Analysis ... 50,000

ITEM 6
To Governor's Office - Commission on
Criminal and Juvenile Justice
From General Fund 36,000
Schedule of Programs:
Extraditions 36,000

STATE TREASURER

ITEM 7
To State Treasurer
From General Fund 100,000
Schedule of Programs:
Treasury and Investment 100,000

ATTORNEY GENERAL

ITEM 8
To Attorney General
From General Fund ..... (14,000)
From Dedicated Credits Revenue ..... (15,200)
From General Fund Restricted -
Tobacco Settlement Account 107,400
Schedule of Programs:
State Counsel 78,200

CORRECTIONS

ITEM 9
To Utah Department of Corrections -
Corrections Administration
From General Fund 48,100
From Dedicated Credits Revenue ..... (100)
Schedule of Programs:
Executive Director ..... (4,100)
Administrative Services 52,800
Training ..... (700)

It is the intent of the Legislature that O-Track systems development shall take priority over all other projects for allocation of carry-forward balances authorized in the Division of Administration

ITEM 10
To Utah Department of Corrections -
Field Operations
From General Fund 79,000
From Dedicated Credits Revenue ..... (6,400)
Schedule of Programs:
Administration 15,200
Adult Probation and Parole 57,400

ITEM 11
To Utah Department of Corrections -
Institutional Operations
From General Fund 18,164,600
From Federal Funds 103,000
From Dedicated Credits Revenue ..... (200)
Schedule of Programs:
DIO Administration 573,400
Draper Facility 603,100
Central Utah/Gunnison ..... (13,200)
Southern Utah/Iron County ..... (100)
Jail Contracting 17,104,200

ITEM 12
To Utah Department of Corrections –
Draper Medical Services
From General Fund 92,700
From Federal Funds ..... (100)
Schedule of Programs:
Medical Services 92,600

ITEM 13
To Utah Department of Corrections –
Utah Correctional Industries
From Dedicated Credits Revenue ..... (3,200)
Schedule of Programs:
Utah Correctional Industries ..... (3,200)

ITEM 14
To Utah Department of Corrections –
Jail Reimbursement
From General Fund ..... (3,600)
Schedule of Programs:
Jail Reimbursement ..... (3,600)

ITEM 15
To Utah Department of Corrections –
Jail Contracting
From General Fund ..... (15,101,200)
From Federal Funds ..... (100,000)
From Dedicated Credits Revenue ..... (3,000)
Schedule of Programs:
Jail Contracting ..... (15,204,200)

BOARD OF PARDONS AND PAROLE

ITEM 16
To Board of Pardons and Parole
From General Fund 10,700
Schedule of Programs:
Board Of Pardons and Parole 10,700

YOUTH CORRECTIONS

ITEM 17
To Department of Human Services –
Division of Youth Corrections –
Services 2,171,800
From Federal Funds ..... (1,000)
From Revenue Transfers – Medicaid ..... (1,600)
Schedule of Programs:
Administration/Case Management .. 1,362,600
Community Alternatives 702,000
Institutional Care 111,100
Alternatives to Institutional Care ..... (5,300)
Youth Receiving Centers ..... (1,200)

ITEM 18
To Department of Human Services –
Division of Youth Corrections –
Youth Parole Authority
From General Fund ..... (2,100)
From Federal Funds ..... (100)
Schedule of Programs:
Youth Parole Authority ..... (2,200)

COURTS

ITEM 19
To Judicial Council/State Court
Administrator – Administration
From General Fund 373,300
From General Fund Restricted –
Court Trust Interest 19,500
From General Fund Restricted –
Online Court Assistance 35,000
From General Fund Restricted –
Transcriptions 50,000
From Revenue Transfers – Human
Services 152,800
Schedule of Programs:
Supreme Court ..... (100)
Court of Appeals ..... (300)
Trial Courts 384,500
Juvenile Courts 196,800
Administrative Office 14,400
Data Processing 35,000
Grants Program 300

ITEM 20
To Judicial Council/State Court
Administrator – Jury and Witness Fees
From General Fund 600,000
Schedule of Programs:
Jury, Witness, and Interpreter 600,000

ITEM 21
To Judicial Council/State Court
Administrator – Guardian ad Litem
From General Fund ..... (2,600)
Schedule of Programs:
Guardian Ad Litem ..... (2,600)

PUBLIC SAFETY

ITEM 22
To Department of Public Safety –
Commissioner's Office
From General Fund 338,900
From Federal Funds ..... (1,300)
From Dedicated Credits Revenue ..... (200)
Schedule of Programs:
Commissioner's Office 144,000
Aero Bureau 194,700
Grants ..... (1,200)
Administrative Services ..... (100)

ITEM 23
To Department of Public Safety –
Comprehensive Emergency Management
From General Fund ..... (100)
From Federal Funds ..... (1,800)
From Dedicated Credits Revenue ..... (100)
Schedule of Programs:
Comprehensive Emergency Management (2,000)

ITEM 24
To Department of Public Safety –
Peace Officers' Standards and Training
From Dedicated Credits Revenue ..... (400)
From General Fund Restricted –
Public Safety Support 20,000
Schedule of Programs:
Basic Training ..... (300)
Post Administration 19,900

ITEM 25
To Department of Public Safety –
Investigative and Technical Services
From General Fund 84,000
From Federal Funds ..... (10,300)
From Dedicated Credits Revenue ..... (2,900)
Schedule of Programs:

Administration 54,700
Criminal Identification Bureau ..... (5,300)
Communications 66,700
State Crime Labs ..... (5,700)
Investigative Services ..... (39,600)

ITEM 26
To Department of Public Safety – Liquor Law Enforcement
From General Fund ..... (11,000)
Schedule of Programs:
Liquor Law Enforcement ..... (11,000)

ITEM 27
To Department of Public Safety – Driver License
From Transportation Fund Restricted – Motorcycle Education 30,000
Schedule of Programs:
Motorcycle Safety 30,000

ITEM 28
To Department of Public Safety – Utah Highway Patrol Division
From General Fund 146,700
From Transportation Fund ..... (8,200)
From Federal Funds ..... (800)
From Dedicated Credits Revenue ..... (4,900)
Schedule of Programs:
UHP Administration ..... (600)
Field Operations 149,100
Commercial Vehicle ..... (1,500)
Safety Inspections ..... (10,800)
Special Enforcement ..... (1,000)
Protective Services ..... (100)
Special Services ..... (1,500)
Federal Projects ..... (100)
Highway Safety ..... (700)

It is the intent of the Legislature that all troopers working for the Department of Public Safety have a fully equipped vehicle assigned to them. In order to satisfy this intent, The Department of Public Safety is authorized to increase the size of its fleet by up to 13 vehicles to be paid from existing funds. DPS will work with the Division of Fleet Operations to purchase the vehicles and related equipment.

ITEM 29
To Department of Public Safety – Information Management
From General Fund ..... (100)
Schedule of Programs:
Operations ..... (100)

ITEM 30
To Department of Public Safety – Fire Marshal
From General Fund ..... (10,600)
From Dedicated Credits Revenue ..... (2,000)
From General Fund Restricted – Fire Academy Support 725,000
Schedule of Programs:
Fire Operations 7,400
Fire Fighter Training 705,000

CAPITAL FACILITIES & ADMINISTRATIVE SERVICES SUBCOMMITTEE
CAPITOL PRESERVATION BOARD

ITEM 31
To Capitol Preservation Board
From General Fund ..... (30,000)
Schedule of Programs:
Capitol Preservation Board ..... (30,000)

ADMINISTRATIVE SERVICES

ITEM 32
To Department of Administrative Services – Executive Director
From General Fund ..... (200)
Schedule of Programs:
Executive Director ..... (200)

ITEM 33
To Department of Administrative Services – DFCM Administration
From General Fund ..... (3,000)
Schedule of Programs:
DFCM Administration ..... (3,000)

Under the terms of UCA 38–8–8.1, the Legislature intends not to lapse Item 57, Chapter 344, Laws of Utah 2000. Expenditure of these funds is limited to computer equipment and software in the amount of $40,000.

ITEM 34
To Department of Administrative Services – DFCM Facilities Management
From General Fund 30,000
Schedule of Programs:
Green House 30,000

ITEM 35
To Department of Administrative Services – State Archives
From General Fund 300
Schedule of Programs:
Archives Administration 300

It is the intent of the Legislature that funds for the State Division of Archives not lapse and that those funds be used to catalog documents generated by former Governors.

ITEM 36
To Department of Administrative Services – Finance Administration
From General Fund ..... (82,500)
From Dedicated Credits Revenue ..... (3,200)
From General Fund Restricted – Internal Service Fund Overhead ..... (15,400)
Schedule of Programs:
FIN Director's Office ..... (1,400)
Payroll ..... (54,600)
Payables/Disbursing ..... (1,400)
Technical Services ..... (4,500)
Financial Reporting ..... (200)
Financial Information Systems ..... (39,000)

It is the intent of the Legislature that funds for the Division of Finance not lapse.

It is the intent of the Legislature that funds for the Division of Finance which do not lapse

are to be used for maintenance, operation and development of statewide accounting systems.

ITEM 37

To Department of Administrative Services - Finance - Mandated

It is the intent of the Legislature that funds for the Post Conviction Indigent Defense Fund shall not lapse.

It is the intent of the Legislature that funds in the LeRay McAllister Critical Land fund shall not lapse.

It is the intent of the Legislature that funds provided to the Division of Finance for 800 MHz Conversion in Item 62, Chapter 344, Laws of Utah 2000 not lapse and that those funds not used to pay service charges be used to purchase radio equipment.

ITEM 38

To Department of Administrative Services - Judicial Conduct Commission
From General Fund ..... (200)
Schedule of Programs:
Judicial Conduct Commission ..... (200)

It is the intent of the Legislature that funds for the Judicial Conduct Commission not lapse.

ITEM 39

To Department of Administrative Services - Purchasing
From General Fund ..... (900)
From Dedicated Credits Revenue ..... (100)
Schedule of Programs:
Purchasing and General Services ..... (1,000)

It is the intent of the legislature that funds for the Division of Purchasing and General Services are non-lapsing and that those funds be used to further the Division's E-commerce program.

INTRAGOVERNMENTAL SERVICES

ITEM 40

To Department of Administrative Services - Office of State Debt Collection
FromDedicatedCredts -
Intragovernmental Revenue 179,400
Schedule of Programs:
ISF - Debt Collection 179,400

In accordance with Section 63-38-3.5(3)(b), the following fees are approved for the services of the Office of State Debt Collection for FY 2001.

These fees are in addition to those approved in Chapter 344 Section 2, Laws of Utah 2000.

Collection Penalty - 5.00%

Collection Interest - 8.00%

Administrative Collection Fee - 17.00%

CAPITAL BUDGET

ITEM 41

To Capital Budget - DFCM Capital Program
From Income Tax 134,113,000
Schedule of Programs:
Capital Development 134,113,000
Funded Projects
USU Heating Plant - 29,713,400
Dixie College Graff Bldg. - 14,088,800
Snow Performing Arts Bldg. - 16,086,800
U of U Engineering Building - 2,315,000
Bridgerland ATC - 652,000
Higher Education Classroom Package - 71,257,000
CEU Main Building
WSU Davis Campus
USU Engineering Building
UVSC Classroom Building

It is the intent of the Legislature that no state funds shall be expended nor shall bonds be issued for the National Guard American Fork project until Federal Funds are formally appropriated.

It is the intent of the Legislature that DFCM shall use up to $585,000 from the Project Reserve Fund to hire or contract for employees to assist in the management of construction projects approved during the 2001 General Session. This funding shall not be used to hire additional permanent staff.

It is the intent of the Legislature that Youth Corrections provide rogrammatic exercise space at the lowest cost possible both for construction and ongoing operations when constructing new facilities.

It is the intent of the Legislature that interest earnings from tax funds set aside as escrow for construction projects shall accrue to the benefit of the State.

It is the intent of the Legislature that DFCM create a bid package to design and construct new classroom/laboratory facilities at the College of Eastern Utah, Utah Valley State College, Utah State University and Weber State University (Davis Campus).

It is the intent of the Legislature that the state funds appropriated for capital projects not include funding for art.

DEBT SERVICE

ITEM 42

To State Board of Bonding Commissioners - Debt Service
From Centennial Highway Fund 3,079,000
Schedule of Programs:
Debt Service 3,079,000

COMMERCE & REVENUE SUBCOMMITTEE TAX COMMISSION

ITEM 43

To Utah State Tax Commission - Tax Administration
From General Fund ..... (24,900)
From Uniform School Fund 22,500
From Federal Funds ..... (100)
From Dedicated Credits Revenue ..... (1,800)
From General Fund Restricted - Sales and Use Tax Administration Fees 3,300
Schedule of Programs:

Administration Division ..... (3,000)
Auditing Division ..... (2,100)
Technology Management ..... (29,300)
Tax Processing Division 52,700
Tax Payer Services ..... (9,900)
Property Tax Division ..... (3,400)
Motor Vehicles ..... (3,700)
Motor Vehicle Enforcement Division ... (2,300)

It is the intent of the Legislature that the Utah State Tax Commission carry forward unexpended year-end balances for costs directly related to the modernization of tax and motor vehicle systems and processes.

WORKFORCE SERVICES

ITEM 44
To Department of Workforce Services
From General Fund ..... (50,500)
From Federal Funds 6,856,700
From Dedicated Credits Revenue ..... (1,800)
From Revenue Transfers - Department of Health - Medical Assistance ..... (8,200)
Schedule of Programs:
Executive Director ..... (2,000)
Employment Development ..... (162,400)
Administration and Service Delivery Support ..... (4,300)
Regional Administration 6,964,900

ALCOHOLIC BEVERAGE CONTROL

ITEM 45
To Department of Alcoholic Beverage Control
From Liquor Control Fund 347,400
Schedule of Programs:
Warehouse and Distribution 2,000
Stores and Agencies 345,400

LABOR COMMISSION

ITEM 46
To Labor Commission
From General Fund 21,400
From Federal Funds ..... (4,200)
From General Fund Restricted - Workplace Safety 99,600
From Employers' Reinsurance Fund ..... (400)
From Uninsured Employers' Fund ..... (100)
Schedule of Programs:
Administration ..... (500)
Industrial Accidents ..... (1,200)
Adjudication ..... (200)
Division of Safety 23,700
Workplace Safety 99,600
Anti-Discrimination ..... (2,200)
Utah Occupational Safety and Health .. (2,900)

It is the intent of the Legislature that fees collected from sponsoring and holding seminars be made nonlapsing, allowing the agency to continue to offer yearly training seminars using funds collected from fees.

Under the terms of UCA 63-38-8.1, the Legislature makes nonlapsing Item 81, Chapter 344, Laws of Utah 2000. Expenditure of these funds is limited to: Computer Equipment and Software - $50,000.

COMMERCE

ITEM 47
To Department of Commerce - Commerce General Regulation
From Dedicated Credits Revenue ..... (10,300)
From General Fund Restricted - Commerce Service Fund 52,500
Schedule of Programs:
Administration 12,000
Occupational & Professional Licensing (10,300)
Securities ..... (2,700)
Consumer Protection ..... (1,900)
Corporations and Commercial Code 48,800
Real Estate ..... (1,700)
Public Utilities ..... (1,400)
Committee of Consumer Services ..... (600)

It is the intent of the Legislature that unexpended balances of Item 82, Chapter 344, Laws of Utah 2000, the Committee of Consumer Services be transferred from its Administrative Budget for FY 2001 to its Professional and Technical Services budget for the same year and that the transferred funds be made nonlapsing.

Under the terms of UCA 63-38-8.1, the Legislature makes nonlapsing Item 82, Chapter 344, Laws of Utah 2000. Expenditure of these funds is limited to: Capital equipment, improvements and computer system development -- $735,000.

INSURANCE

ITEM 48
To Insurance Departent - Insurance Department Administration

Under the terms of UCA 63-38-8.1, the Legislature makes nonlapsing Item 88, Chapter 344, Laws of Utah 2000. Expenditure of these funds is limited to: Computer systems, including hardware, software and training - $90,000.

PUBLIC SERVICE COMMISSION

ITEM 49
To Public Service Commission
From General Fund 50,000
Schedule of Programs:
Public Service Commission 50,000

ECONOMIC DEVELOPMENT & HUMAN RESOURCES SUBCOMMITTEE COMMUNITY & ECONOMIC DEVELOPMENT

ITEM 50
To Department of Community & Economic Development - Incentive Funds
From General Fund 11,764,600
From General Fund Restricted - Industrial Assistance ..... (10,764,600)
Schedule of Programs:
Custom Fit 1,000,000

It is the intent of the Legislature that $2,000,000 of these funds be used for the relocation of the Kuhni Rendering Plant. It is further the intent of the Legislature that

these funds be matched with non-state funds on a two-to-one basis for every dollar of state funds.

ITEM 51
To Department of Community & Economic Development - Business and Economic Development
From General Fund 180,800
From Dedicated Credits Revenue ..... (5,000)
From Beginning Nonlapsing Appropriation Balances ..... (24,600)
Schedule of Programs:
Administration 350,000
Office of Veteran's Affairs ..... (198,800)

The Legislature intends that $350,000 of appropriated funds be used for Hill Air Force Base easements.

ITEM 52
To Department of Community & Economic Development - Fine Arts
From General Fund 43,000
Schedule of Programs:
Administration 43,000

ITEM 53
To Department of Community & Economic Development - State Library
From General Fund ..... (880,000)
From Federal Funds 55,700
From Dedicated Credits Revenue 264,300
From Library Donation Expendable Trust ..... (320,000)
Schedule of Programs
Library Development ..... (880,000)

ITEM 54
To Department of Community & Economic Development - Community Development
From Dedicated Credits Revenue 1,040,000
Schedule of Programs:
Weatherization Assistance 550,000
Community Services 65,000
Commission on Volunteers 425,000

ITEM 55
To Department of Community & Economic Development - Community Development Capital Budget
From General Fund Restricted - Mineral Lease ..... (844,600)
From General Fund Restricted - Mineral Bonus 844,600

UTAH TECHNOLOGY FINANCE CORPORATION

ITEM 56
To Utah Technology Finance Corporation

The Legislature intends to deposit in the Industrial Assistance Fund any proceeds in excess of $4,000,000 paid to the state from the liquidation of Utah Technology Finance Corporation, whether these proceeds come from cash, sale of real property, or collection of accounts receivable.

HEALTH & HUMAN SERVICES SUBCOMMITTEE HEALTH

ITEM 57
To Department of Health - Executive Director's Operations
From General Fund 185,700
From Federal Funds ..... (600)
From Dedicated Credits Revenue ..... (1,000)
From Revenue Transfers ..... (400)
Schedule of Programs:
Executive Director 87,700
Program Operations ..... (600)
Medical Examiner 99,800
Center for Health Data ..... (3,200)

It is the intent of the Legislature that supplemental funds appropriated for the Medical Examiner be considered nonlapsing.

ITEM 58
To Department of Health - Veterans' Nursing Home
From Dedicated Credits Revenue ..... (300)
Schedule of Programs:
Veterans' Nursing Home ..... (300)

ITEM 59
To Department of Health - Health Systems Improvement
From General Fund ..... (4,200)
From Federal Funds ..... (2,400)
From Dedicated Credits Revenue ..... (100)
From General Fund Restricted - Medicaid Restricted Account ..... (200)
From Revenue Transfers ..... (1,700)
Schedule of Programs:
Director's Office 100
Emergency Medical Services ..... (1,000)
Licensing ..... (4,300)
Program Certification and Resident Assessment ..... (2,900)
Primary Care, Rural, and Ethnic Health . (500)

Under the terms of UCA 63-38-8.l, the Legislature intends not to lapse Item 120, Chapter 344, Laws of Utah, 2000. Expenditures of these funds is limited to the following:
Computer Equipment/Software - $10,000
Employee Training/Incentives - $40,000
Special Projects/Studies - $30,000

ITEM 60
To Department of Health - Epidemiology and Laboratory Services
From General Fund 328,900
From Federal Funds ..... (800)
From Dedicated Credits Revenue ..... (300)
Schedule of Programs:
Director's Office 13,600
Environmental Chemistry and Toxicology . 100
Laboratory Improvement 339,800
Microbiology ..... (300)
HIV/AIDS/TB Control/Refugee Health ... (600)
Food Safety and Environmental Health .. (100)
Epidemiology ..... (24,700)

It is the intent of the Legislature that supplemental funds appropriated for the

purchase of laboratory equipment be considered nonlapsing.

Under the terms of UCA 63-38-8.l, the Legislature intends not to lapse Item 124, Chapter 344, Laws of Utah, 2000. Expenditures of these funds is limited to the following:
GC Spectrometer - $70,000
Replacement glassware washer - $20,000
Computer upgrades - $10,000

ITEM 61
To Department of Health - Community and Family Health Services
From General Fund 89,100
From Federal Funds ..... (8,300)
From Dedicated Credits Revenue ..... (2,000)
From General Fund Restricted - Tobacco Settlement Account ..... (1,100)
From Revenue Transfers ..... (800)
Schedule of Programs:
Director's Office ..... (9,400)
Health Education 96,300
Maternal and Child Health ..... (7,200)
Children with Special Health Care Needs ..... (2,800)

It is the intent of the Legislature that funds appropriated from the Tobacco Settlement Restricted Account be considered nonlapsing.

It is the intent of the Legislature that supplemental funds for Youth Suicide Prevention be considered nonlapsing.

ITEM 62
To Department of Health - Health Care Financing
From General Fund ..... (78,000)
From Federal Funds ..... (10,600)
From General Fund Restricted - Nursing Facility Account 1,600,000
Schedule of Programs:
Director's Office 1,542,400
Financial Services ..... (13,800)
Managed Health Care ..... (800)
Medicaid Operations ..... (1,100)
Eligibility Services ..... (2,400)
Coverage and Reimbursement ..... (900)
Contracts ..... (10,700)
Utah Medical Assistance ..... (1,300)

It is the intent of the Legislature that the Department of Health contract with the Department of Human Services in FY 2002 to fund $1.6 million worth of services provided by the Division of Services for People with Disabilities to people with disabilities whose names are on the critical needs waiting list.

It is the intent of the Legislature that funds from the Nursing Facility Restricted Account are considered nonlapsing.

ITEM 63
To Department of Health - Medical Assistance
From General Fund ..... (200)
From General Fund Restricted - Medicaid Restricted Account 1,400,000
From Revenue Transfers ..... (100)
Schedule of Programs:
Utah Medical Assistance Program 1,399,700

It is the intent of the Legislature that supplemental funds appropriated for the Utah Medical Assistance Program be considered nonlapsing.

It is the intent of the Legislature that all pharmacy rebate monies received by the Medical Assistance Program be used to fund the Medical Assistance Program and the Utah Medical Assistance Program, and be considered nonlapsing.

ITEM 64
To Department of Health - Children's Health Insurance Program
From Federal Funds ..... (100)
Schedule of Programs:
Children's Health Insurance Program .... (100)

HUMAN SERVICES

ITEM 65
To Department of Human Services - Executive Director Operations
From General Fund 62,900
From Federal Funds ..... (6,100)
Schedule of Programs:
Executive Director's Office ..... (900)
Legal Affairs ..... (900)
Information Technology ..... (3,600)
Fiscal Operations ..... (800)
Human Resources ..... (5,600)
Special Projects 69,800
Children's Ombudsman ..... (100)
Developmental Disabilities Council ..... (300)
Foster Care Citizens Review Boards ..... (800)

Under terms of UCA 63-38-8.1, the Legislature intends not to lapse Item 130, Chapter 344, Laws of Utah 2000. Expenditures of these funds are limited to the following:
Computer Equipment / Software $30,000
Special Projects: Web Development ... 70,000

ITEM 66
To Department of Human Services - Division of Mental Health
From General Fund 401,300
From Federal Funds ..... (200)
From Dedicated Credits Revenue 35,700
From Revenue Transfers - Department of Health - Medical Assistance 115,200
Schedule of Programs:
Administration ..... (1,400)
State Hospital 553,400

Under terms of UCA 63-38-8.1, the Legislature intends not to lapse Item 131, Chapter 344, Laws of Utah 2000. Expenditures of these funds are limited to the following:

Equipment / Supplies $25,000

ITEM 67
To Department of Human Services - Division of Substance Abuse
From General Fund ..... (300)
From Federal Funds ..... (300)
Schedule of Programs:
Administration ..... (600)

Under terms of UCA 63-38-8.1, the Legislature intends not to lapse Item 132, Chapter 344, Laws of Utah 2000. Expenditures of these funds are limited to the following:
Computer Equipment / Software $12,500

ITEM 68
To Department of Human Services - Division of Services for People with Disabilities
From General Fund 65,100
From Dedicated Credits Revenue 11,400
From General Fund Restricted - Trust for People with Disabilities ..... (200,000)
From Revenue Transfers - Department of Health - Medical Assistance 203,700
Schedule of Programs:
Administration ..... (152,100)
Service Delivery ..... (6,700)
State Developmental Center 239,000

It is the intent of the Legislature that funds appropriated for the Division of Services for People with Disabilities for FY 2001 be non-lapsing.

It is the intent of the Legislature that the Division of Services for People with Disabilities, through the Attorney General's Office, continue to seek dismissal of the Lisa P. Settlement agreement at the earliest possible date. It is also the intent of the Legislature that the Division and the Attorney General's Office provide a written report on the status of the Lisa P. agreemen t during each 2001 interim meeting of the Health and Human Services Interim Committee, beginning in April, until the settlement agreement is finally dismissed. It is also the intent of the Legislature that the Division and the Attorney General's Office report on the status of the Lisa P. Settlement agreement to the 2002 Health and Human Services Appropriations Subcommittee.

ITEM 69
To Department of Human Services - Office of Recovery Services
From General Fund ..... (28,800)
From Federal Funds ..... (45,200)
From Dedicated Credits Revenue ..... (1,100)
From Revenue Transfers - Department of Health - Medical Assistance ..... (4,500)
Schedule of Programs:
Financial Services ..... (10,000)
Electronic Technology ..... (54,300)
Child Support Services ..... (15,400)
Investigations and Collections 100

ITEM 70
To Department of Human Services - Division of Child and Family Services
From General Fund 911,400
From Federal Funds 1,269,500
From Revenue Transfers - Department of Health - Medical Assistance 600
Schedule of Programs:
Administration 10,800
Service Delivery ..... (53,700)
Adoption Assistance 2,224,400

Under terms of UCA 63-38-8.1, the Legislature intends not to lapse Item 135 Chapter 344, Laws of Utah 2000. Expenditures of these funds are limited to the following:
Computer Equipment / Software $50,000

It is the intent of the Legislature that the FY 2001 supplemental appropriation for adoption assistance be nonlapsing.

ITEM 71
To Department of Human Services - Division of Aging and Adult Services
From General Fund ..... (2,500)
From Federal Funds ..... (300)
Schedule of Programs:
Administration ..... (800)
Adult Protective Services ..... (2,000)

HIGHER EDUCATION SUBCOMMITTEE
UNIVERSITY OF UTAH

ITEM 72
To University of Utah - Education and General
From General Fund 800
From Income Tax 1,629,500
Schedule of Programs:
Education and General 1,630,300

ITEM 73
To University of Utah - Area Health Education Centers
From General Fund 900
Schedule of Programs:
Area Health Education Centers 900

UTAH STATE UNIVERSITY

ITEM 74
To Utah State University - Education and General
From General Fund ..... (200)
From Income Tax 1,179,300
Schedule of Programs:
Education and General 1,179,100

ITEM 75
To Utah State University - Coopertive Extension Division
From General Fund ..... (200)
Schedule of Programs:
Cooperative Extension Services ..... (200)

WEBER STATE UNIVERSITY

ITEM 76
To Weber State University - Education and General
From General Fund ..... (1,100)
From Income Tax 355,100
Schedule of Programs:
Education and General 354,000

SOUTHERN UTAH UNIVERSITY

ITEM 77
To Southern Utah University - Education and General
From General Fund ..... (12,000)
Schedule of Programs:
Education and General ..... (12,000)

SNOW COLLEGE

ITEM 78
To Snow College - Education and General
From General Fund ..... (1,900)
Schedule of Programs:
Education and General ..... (1,900)

ITEM 79
To Snow College - Snow College South
From General Fund ..... (1,700)
Schedule of Programs:
Snow South Education and General ... (1,700)

DIXIE STATE COLLEGE

ITEM 80
To Dixie State College of Utah - Education and General
From General Fund ..... (500)
Schedule of Programs:
Education and General ..... (500)

COLLEGE OF EASTERN UTAH

ITEM 81
To College of Eastern Utah - Education and General
From General Fund ..... (100)
From Income Tax 20,800
Schedule of Programs:
Education and General 20,700

ITEM 82
To Utah Valley State College - Education and General
From General Fund ..... (1,800)
Schedule of Programs:
Education and General ..... (1,800)

SALT LAKE COMMUNITY COLLEGE

ITEM 83
To Salt Lake Community College - Education and General
From General Fund 100
From Income Tax 97,200
Schedule of Programs:
Education and General 97,300

STATE BOARD OF REGENTS

ITEM 84
To State Board of Regents - Student Aid
From Income Tax 40,000
Schedule of Programs:
New Century Scholarships 40,000

UTAH EDUCATION NETWORK

ITEM 85
To Utah Education Network - UtahLINK
From General Fund ..... (200)
Schedule of Programs:
UtahLINK ..... (200)

NATURAL RESOURCES SUBCOMMITTEE
NATURAL RESOURCES

ITEM 86
To Department of Natural Resources - Administration
From General Fund ..... (1,100)
Schedule of Programs:
Administrative Services ..... (1,100)

Under the terms of UCA 63-38-8.1, the Legislature intends not to lapse Item 201, Chapter 344, Laws of Utah 2000. Expenditure of these funds is limited to:
Computer Equipment/Software: $30,000
Employee Training/Incentives: $10,000
Equipment/Supplies: $30,000
Special Projects/Studies: $30,000

ITEM 87
To Department of Natural Resources - Species Protection
From General Fund Restricted - Species Protection 400,000
Schedule of Programs:
Species Protection 400,000

ITEM 88
To Department of Natural Resources - Building Operations

Under the terms of UCA 63-38-8.1, the Legislature intends not to lapse Item 203, Chapter 344, Laws of Utah 2000. Expenditure of these funds is limited to:
Capital Equipment or Improvements: $10,000
Equipment/Supplies: $5,000
Special Projects/Studies: $10,000

ITEM 89
To Department of Natural Resources - Forestry, Fire and State Lands
From General Fund 5,500,300
From Federal Funds ..... (800)
From Dedicated Credits Revenue ..... (300)
From General Fund Restricted - Sovereign Land Management 9,000
Schedule of Programs:
Administrative Services ..... (1,400)
Fire Suppression 5,500,000
Program Delivery Cooperators 9,600

It is the intent of the Legislature that any unexpended balances from the $5,500,000 FY 2001 supplemental General Fund appropriation for wildland fire suppression be transferred to the Wildland Fire Suppression Fund created in UCA 65A-8-6.1.

ITEM 90
To Department of Natural Resources - Oil, Gas and Mining
From General Fund ..... (600)
From Federal Funds ..... (1,500)
From General Fund Restricted - Oil & Gas Conservation Account 1,373,000
From Fixed Collections ..... (1,373,600)
Schedule of Programs:
Administration ..... (2,700)

Under the terms of UCA 63-38-8.1, the Legislature intends not to lapse Item 206,

Chapter 344, Laws of Utah 2000. Expenditure of these funds is limited to:
Computer Equipment/Software: $45,000
Employee Training/Incentives: $30,000
Equipment/Supplies: $20,000
Special Projects/Studies: $5,000

ITEM 91
To Department of Natural Resources – Wildlife Resources
From General Fund 1,100
From Federal Funds 4,800
From General Fund Restricted – Wildlife Habitat ..... (600)
From General Fund Restricted – Wildlife Resources 9,600
Schedule of Programs:
Administration 10,700
Public Services 4,800
Habitat Council ..... (600)

ITEM 92
To Department of Natural Resources – Parks and Recreation
From General Fund 15,300
From Federal Funds 100
From Dedicated Credits Revenue 11,300
From General Fund Restricted – Boating . 21,900
From General Fund Restricted – Off-highway Vehicle ..... (1,000)
Schedule of Programs:
Park Operations 32,600
Boating 15,000

Under the terms of UCA 63-38-8.1, the Legislature intends not to lapse Item 213, Chapter 344, Laws of Utah 2000. Expenditure of these funds is limited to:
Computer Equipment/Software: $21,000
Employee Training/Incentives: $39,000
Equipment/Supplies: $55,000
Planning Projects: $25,000
Interns: $10,000

ITEM 93
To Department of Natural Resources – Parks and Recreation Capital Budget
From General Fund 10,000,000
Schedule of Programs:
Facilities Acquisition and Development 10,000,000

It is the intent of the Legislature that $2,000,000 of the $10,000,000 appropriated for Parks improvements be expended at Green River State Park.

ITEM 94
To Department of Natural Resources – Utah Geological Survey
From General Fund ..... (500)
From Federal Funds ..... (400)
From General Fund Restricted – Mineral Lease ..... (100)
Schedule of Programs:
Administration ..... (500)
Applied Geology ..... (500)

Under the terms of UCA 63-38-8.1, the Legislature intends not to lapse Item 215, Chapter 344, Laws of Utah 2000. Expenditure of these funds is limited to:
Computer Equipment/Software: $20,000
Employee Training/Incentives: $5,000

ITEM 95
To Department of Natural Resources – Water Resources
From General Fund ..... (300)
From Water Resources Conservation and Development Fund ..... (500)
Schedule of Programs:
Administration ..... (300)
Construction ..... (500)

Under the terms of UCA 63-38-8.1, the Legislature intends not to lapse Item 216, Chapter 344, Laws of Utah 2000. Expenditure of these funds is limited to:
Capital Equipment or Improvements: $10,000
Computer Equipment/Software: $25,000
Employee Training/Incentives: $4,000
Equipment/Supplies: $5,000
Printing/Binding: $10,000
Office Equipment/Furnishings: $6,000

ITEM 96
To Department of Natural Resources – Water Rights
From General Fund ..... (2,800)
Schedule of Programs:
Administration ..... (2,800)

Under the terms of UCA 63-38-8.1, the Legislature intends not to lapse Item 221, Chapter 344, Laws of Utah 2000. Expenditure of these funds is limited to:
Computer Equipment/Software: $25,000
GIS Equipment: $25,000

AGRICULTURE

ITEM 97
To Department of Agriculture and Food – Administration
From General Fund ..... (4,900)
From Federal Funds ..... (1,100)
From Revenue Transfers ..... (100)
Schedule of Programs:
General Administration ..... (5,400)
Environmental Quality ..... (300)
Marketing and Development ..... (400)

It is the intent of the Legislature that the Department of Agriculture and Food transfer any lapsing unrestricted balances from FY 2001 appropriations to the FY 2001 Grain Inspection Program.

Under the terms of UCA 63-38-8.1, the Legislature intends not to lapse Item 222, Chapter 344, Laws of Utah 2000. Expenditure of these funds is limited to:
Capital Equipment or Improvements: $294,000
Laboratory Equipment/Supplies: $350,000
Computer Equipment/Software: $215,000
Employee Training/Incentives: $85,000
Equipment/Supplies: $95,000
Special Projects/Studies: $93,000
Hazardous Waste Disposal: $10,000
Brucellosis Vaccine: $10,000
Small Tools: $1,000

Under the terms of UCA 63-38-8.1, the Legislature intends not to lapse Item 223, Chapter 344, Laws of Utah 2000. Expenditure of these funds is limited to:
Capital Equipment or Improvements: $21,000
Computer Equipment/Software: $13,000
Employee Training/Incentives: $12,000
Equipment/Supplies: $16,000
Special Projects/Studies: $10,000

Under the terms of UCA 63-38-8.1, the Legislature intends not to lapse Item 225, Chapter 344, Laws of Utah 2000. Expenditure of these funds is limited to:
Computer Equipment/Software: $30,000
Employee Training/Incentives: $10,000
Equipment/Supplies: $5,000
Uniforms: $5,000
Workshops: $5,000
Printing: $5,000

Under the terms of UCA 63-38-8.1, the Legislature intends not to lapse Item 229, Chapter 344, Laws of Utah 2000. Expenditure of these funds is limited to:
Capital Equipment or Improvements: $5,500
Computer Equipment/Software: $2,200
Employee Training/Incentives: $5,000
Equipment/Supplies: $12,800

Under the terms of UCA 63-38-8.1, the Legislature intends not to lapse Item 232, Chapter 344, Laws of Utah 2000. Expenditure of these funds is limited to:
Capital Equipment or Improvements: $10,000
Employee Training/Incentives: $5,000
Equipment/Supplies: $10,000
Special Projects/Studies: $5,000

ITEM 98
To Department of Agriculture and Food - Resource Conservation
From General Fund ..... (300)
Schedule of Programs:
Resource Conservation ..... (300)

PUBLIC EDUCATION

ITEM 99
To State Board of Education - State Office of Education
From Uniform School Fund ..... (13,100)
From Federal Funds ..... (3,100)
From Dedicated Credits Revenue ..... (200)
From General Fund Restricted - Mineral Lease ..... (300)
Schedule of Programs:
Board of Education ..... (500)
Instructional Services ..... (5,000)
Agency Support ..... (6,600)
Planning and Project Services ..... (1,700)
Applied Technology Education ..... (2,900)

ITEM 100
To State Board of Education - State Office of Rehabilitation
From Uniform School Fund ..... (394,000)
From Federal Funds ..... (5,200)
From Dedicated Credits Revenue 100
Schedule of Programs:
Rehabilitation Administration 5,800
Blind and Visually Impaired ..... (390,600)
Rehabilitation Services ..... (11,500)
Disability Determination ..... (3,000)
Deaf and Hard of Hearing 200

ITEM 101
To State Board of Education - School for the Deaf and Blind
From Uniform School Fund 215,100
From Dedicated Credits Revenue ..... (300)
From Revenue Transfers - Interagency .... (700)
Schedule of Programs:
Instruction 217,700
Support Services ..... (3,600)

ITEM 102
To State Board of Education - State Office of Education - Child Nutrition
From Federal Funds ..... (400)
From Dedicated Credits Revenue ..... (100)
Schedule of Programs:
Child Nutrition ..... (500)

ITEM 103
To State Board of Education - State Office of Education - Educational Contracts
From Uniform School Fund 55,100
Schedule of Programs:
State Developmental Center 55,100

ITEM 104
To State Board of Education - State Office of Education - Electronic High School
From Uniform School Fund 200,000
Schedule of Programs:
Electronic High School 200,000

ITEM 105
To State Board of Education - Minimum School Program - Concurrent Enrollment
From Uniform School Fund 650,000
Schedule of Programs:
Concurrent Enrollment 650,000

ITEM 106
To State Board of Education - Minimum School Program - School Trust Lands
From Uniform School Fund 125,000
Schedule of Programs:
School Trust Lands 125,000

ISF - PUBLIC EDUCATION

ITEM 107
To State Board of Education - Internal Service Fund
From Revenue Transfers ..... (1,800)
Schedule of Programs:
ISF - State Board ISF ..... (1,800)

ITEM 108
To State Board of Education - Indirect Cost Pool
From Revenue Transfers ..... (100)
Schedule of Programs:
ISF - USOE Indirect Cost Pool ..... (100)

TRANSPORTATION & ENVIRONMENTAL QUALITY SUBCOMMITTEE
NATIONAL GUARD

ITEM 109
To Utah National Guard - Utah National Guard
From General Fund 169,200
From Dedicated Credits Revenue 5,000
From Beginning Nonlapsing Appropriation Balances 36,900
From Closing Nonlapsing Appropriation Balances ..... (36,900)
Schedule of Programs:
Veterans' Affairs 174,200

ENVIRONMENTAL QUALITY

ITEM 110
To Department of Environmental Quality
From General Fund 295,200
From Federal Funds ..... (4,800)
From Dedicated Credits Revenue ..... (4,000)
From General Fund Restricted - Environmental Quality 199,100
From General Fund Restricted - Voluntary Cleanup 32,500
From Revenue Transfers - Within Agency . (100)
Schedule of Programs:
Director's Office 281,800
Environmental Response/Remediation .. 32,500
Radiation Control 203,600

In accordance with Section 63-38-3.2, the following fees are approved for the services of the Department of Environmental Quality for FY 2001. These fees are in addition to those approved in Chapter 344 Section 2, Laws of Utah 2000.

Annual Generator Site Access License
1-100 cubic feet - 500.00
> 100 cubic feet - 1,300.00
Broker/Collector - 5,000.00

It is the intent of the Legislature that the $125,000 appropriated to the Department of Environmental Quality from the Environmental Quality Restricted Account for the development of a Generator Site Access license data base and electronic license system be nonlapsing until the design and implementation of the system is completed. At the end of the fiscal year in which the system is completed, any funds remaining from the appropriation will lapse into the Environmental Quality Restricted Account.

It is the intent of the Legislature that funds appropriated for the purpose of addressing high level nuclear waste be non-lapsing.

It is the intent of the Legislature that the Executive Director of the Department of Environmental Quality may accept and expend funds under the provision of UCA 19-1-202 (2) (c) for review of Radioactive Waste license amendments for disposal of Containerized Class A Low Level Radioactive Waste. Any funding received by the Executive Director for review of radioactive waste license amendments for disposal of Containerized A Low Level Radioactive Waste shall be nonlapsing.

TRANSPORTATION

ITEM 111
To Department of Transportation - Support Services
From Transportation Fund 315,800
Schedule of Programs:
Administrative Services 87,400
Loss Management 154,600
Data Processing 73,800

Under the terms of Section 68-38-8.1 Utah Code Annotated, Item 256 of Chapter 344 Laws of Utah 2000 is made nonlapsing with the use of any nonlapsing funds limited to the following:
Computer Equipment - $350,000
Training/Incentives - $100,000
Performance Audits - $80,000

ITEM 112
To Department of Transportation - Engineering Services
From Transportation Fund 149,000
Schedule of Programs:
Safety Operations ..... (24,300)
Program Development ..... (56,800)
Engineering Services 230,100

ITEM 113
To Department of Transportation - Maintenance Management
From Transportation Fund ..... (21,800)
From Federal Funds 18,000
Schedule of Programs:
District 2 33,400
District 3 ..... (37,200)

Under the terms of Section 68-38-8.1 Utah Code Annotated, Item 258 of Chapter 344 Laws of Utah 2000 is made nonlapsing with the use of any nonlapsing funds limited to the following:
Contractual Maintenance - $800,000

ITEM 114
To Department of Transportation - Construction Management
From Transportation Fund ..... (912,700)
From Federal Funds ..... (35,400)
Schedule of Programs:
Construction Management 109,000
Field Crews ..... (271,900)
Federal Construction - New 102,700
State Construction - New ..... (554,700)
I-15 Team ..... (333,200)

ITEM 115
To Department of Transportation - District Management
From Transportation Fund 469,700
From Federal Funds 17,400
Schedule of Programs:
Region 1 122,400
Region 2 94,500
Region 3 213,400
Region 4 56,800

ITEM 116
To Department of Transportation –
Equipment Management

Under the terms of Section 68–38–8.1 Utah Code Annotated, Item 261 of Chapter 344 Laws of Utah 2000 is made nonlapsing with the use of any nonlapsing funds limited to the following:
Equipment Purchases – $477,900

ITEM 117
To Department of Transportation – Aeronautics

Under the terms of Section 68–38–8.1 Utah Code Annotated, Item 262 of Chapter 344 Laws of Utah 2000 is made nonlapsing with the use of any nonlapsing funds limited to the following:
Airport Construction – $100,000

ITEM 118
To Department of Transportation –
Centennial Highway Program

From General Fund	3,079,000
From Centennial Highway Fund	(3,079,000)

Section 2. Section 1 takes effect upon approval by the Governor, or the day following the constitutional time limit of Article VII, Section 8 without the Governor's signature, or in the case of a veto, the date of override.

CHAPTER 321
S. B. 2
Passed February 28, 2001
Approved March 20, 2001
Effective April 30, 2001

2001 GENERAL OBLIGATION BOND AND CAPITAL FACILITIES AUTHORIZATIONS

Sponsor: Beverly Ann Evans

This act authorizes issuance of state of Utah general obligation bonds and bond anticipation notes by the State Bonding Commission for highways. This act defines the process and requirements for issuing the bonds and notes and specifies the use of the proceeds. This act imposes a statewide property tax and abates it. This act creates a sinking fund to pay debt service on the bonds. This act authorizes the issuance of other debt obligations by the State Building Ownership Authority. This act authorizes other capital facility expenditures. This act modifies previously adopted intent language. This act exempts the bonds and notes authorized by this section from the statutory debt limit. This act provides for related matters and makes technical corrections.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
63-9a-6, as last amended by Chapter 21, Laws of Utah 1999
63-38c-402, as last amended by Chapter 354, Laws of Utah 2000
63B-6-502, as enacted by Chapter 391, Laws of Utah 1997

ENACTS:
63B-10-101, Utah Code Annotated 1953
63B-10-102, Utah Code Annotated 1953
63B-10-103, Utah Code Annotated 1953
63B-10-104, Utah Code Annotated 1953
63B-10-105, Utah Code Annotated 1953
63B-10-106, Utah Code Annotated 1953
63B-10-107, Utah Code Annotated 1953
63B-10-108, Utah Code Annotated 1953
63B-10-109, Utah Code Annotated 1953
63B-10-110, Utah Code Annotated 1953
63B-10-111, Utah Code Annotated 1953
63B-10-112, Utah Code Annotated 1953
63B-10-113, Utah Code Annotated 1953
63B-10-114, Utah Code Annotated 1953
63B-10-115, Utah Code Annotated 1953
63B-10-116, Utah Code Annotated 1953
63B-10-117, Utah Code Annotated 1953
63B-10-201, Utah Code Annotated 1953
63B-10-202, Utah Code Annotated 1953
63B-10-203, Utah Code Annotated 1953
63B-10-204, Utah Code Annotated 1953
63B-10-501, Utah Code Annotated 1953
63B-10-601, Utah Code Annotated 1953

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

Section 1. Section 63-9a-6 is amended to read:

63-9a-6. Obligations issued by authority -- Limitation of liability on obligations -- Limitation on amount of obligations issued.

(1) (a) All obligations issued by the authority under this chapter shall be limited obligations of the authority and shall not constitute, nor give rise to, a general obligation or liability of, nor a charge against the general credit or taxing power of, this state or any of its political subdivisions.

(b) This limitation shall be plainly stated upon all obligations.

(2) (a) No authority obligations incurred under this section may be issued in an amount exceeding the difference between the total indebtedness of the state and an amount equal to 1 1/2% of the value of the taxable property of the state.

(b) Debt issued under authority of [~~Title 63B, Chapter 6, Part 2, 1997 Highway General Obligation Bond Authorization, and Title 63B, Chapter 6, Part 3, 1997 Highway Bond Anticipation Note Authorization,~~] the following parts may not be included as part of the total indebtedness of the state of Utah in determining the debt limit established by this Subsection (2)[~~,~~]:

(i) Title 63B, Chapter 6, Part 2, 1997 Highway General Obligation Bond Authorization;

(ii) Title 63B, Chapter 6, Part 3, 1997 Highway Bond Anticipation Note Authorization;

(iii) Title 63B, Chapter 7, Part 2, 1998 Highway General Obligation Bond Authorization;

(iv) Title 63B, Chapter 7, Part 3, 1998 Highway Bond Anticipation Note Authorization;

(v) Title 63B, Chapter 8, Part 2, 1999 Highway General Obligation Bond Authorization;

(vi) Title 63B, Chapter 8, Part 3, 1999 Highway Bond Anticipation Note Authorization;

(vii) Title 63B, Chapter 9, Part 2, 2000 Highway General Obligation Bond;

(viii) Title 63B, Chapter 10, Part 1, 2001 Highway General Obligation Bond; and

(ix) Title 63B, Chapter 10, Part 2, 2001 Highway General Obligation Bond Anticipation Notes Authorization.

(c) Debt issued under authority of Section 63B-7-503 may not be included as part of the total indebtedness of the state in determining the debt limit established by this Subsection (2).

(3) The obligations shall be authorized by resolution of the authority, following approval of the Legislature, and may:

(a) be executed and delivered at any time, and from time to time, as the authority may determine;

(b) be sold at public or private sale in the manner and at the prices, either at, in excess of, or below their face value and at such times as the authority may determine;

(c) be in the form and denominations as the authority may determine;

(d) be of the tenor as the authority may determine;

(e) be in registered or bearer form either as to principal or interest or both;

(f) be payable in those installments and at the times as the authority may determine;

(g) be payable at the places, either within or without this state, as the authority may determine;

(h) bear interest at the rate or rates, payable at the place or places, and evidenced in the manner, as the authority may determine;

(i) be redeemable prior to maturity, with or without premium;

(j) contain such other provisions not inconsistent with this chapter as shall be deemed for the best interests of the authority and provided for in the proceedings of the authority under which the bonds shall be authorized to be issued; and

(k) bear facsimile signatures and seals.

(4) The authority may pay any expenses, premiums or commissions, which it deems necessary or advantageous in connection with the authorization, sale, and issuance of these obligations, from the proceeds of the sale of the obligations or from the revenues of the projects involved.

Section 2. Section 63-38c-402 is amended to read:

63-38c-402. Debt limitation -- Vote requirement needed to exceed limitation -- Exceptions.

(1) (a) Except as provided in Subsection (1)(b), the outstanding general obligation debt of the state may not exceed 20% of the maximum allowable appropriations limit unless approved by more than a two-thirds vote of both houses of the Legislature.

(b) Notwithstanding the limitation contained in Subsection (1)(a), debt issued under the authority of the following parts is not subject to the debt limitation established by this section:

(i) Title 63B, Chapter 6, Part 2, 1997 Highway General Obligation Bond Authorization[~~,~~];

(ii) Title 63B, Chapter 6, Part 3, 1997 Highway Bond Anticipation Note Authorization[~~,~~];

(iii) Title 63B, Chapter 7, Part 2, 1998 Highway General Obligation Bond Authorization[~~,~~];

(iv) Title 63B, Chapter 7, Part 3, 1998 Highway Bond Anticipation Note Authorization[~~,~~];

(v) Title 63B, Chapter 8, Part 2, 1999 Highway General Obligation Bond Authorization[~~,~~];

(vi) Title 63B, Chapter 8, Part 3, 1999 Highway Bond Anticipation Note Authorization[~~,~~];

(vii) Title 63B, Chapter 9, Part 2, 2000 Highway General Obligation Bond[~~, is not subject to the debt limitation established by this section.~~];

(viii) Title 63B, Chapter 10, Part 1, 2001 Highway General Obligation Bond; and

(ix) Title 63B, Chapter 10, Part 2, 2001 Highway General Obligation Bond Anticipation Notes Authorization.

(2) This section does not apply if contractual rights will be impaired.

Section 3. Section 63B-6-502 is amended to read:

63B-6-502. Other capital facility authorizations and intent language.

(1) It is the intent of the Legislature that the University of Utah use institutional funds to plan, design, and construct:

(a) the Health Science Lab Building under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by the director; and

(b) the gymnastics facility under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by the director.

(2) It is the intent of the Legislature that Southern Utah University use institutional funds to plan, design, and construct a science center addition under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by the director.

(3) It is the intent of the Legislature that Utah Valley State College use institutional funds to plan, design, and construct a student center addition under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by the director.

(4) (a) It is the intent of the Legislature that the Division of Facilities Construction and Management lease property at the Draper Prison to [~~a private~~] an entity for the purpose of constructing [~~a waste sorting~~] recycling and transfer [~~facility~~] facilities to employ inmates if the following conditions are satisfactorily met:

(i) the [~~private~~] entity assures continuous employment of state inmates;

(ii) the lease with the [~~private~~] entity provides an appropriate return to the state;

(iii) the lease has an initial term of not to exceed 20 years;

(iv) the lease protects the state from all liability;

(v) the [~~private~~] entity guarantees that no adverse environmental impact will occur;

(vi) the state retains the right to:

(A) monitor the types of wastes that are processed; and

(B) prohibit the processing of types of wastes that are considered to be a risk to the state or surrounding property uses;

(vii) the lease provides for adequate security arrangements;

(viii) the [~~private~~] entity assumes responsibility for any taxes or fees associated with the facility; and

(ix) the [~~private~~] entity assumes responsibility for bringing utilities to the site and any state expenditures for roads, etc. are considered in establishing the return to the state.

(b) Except as provided in Subsections (4)(c) and (d), the facility may be constructed without direct supervision by the Division of Facilities Construction and Management.

(c) Notwithstanding Subsection (4)(b), the Division of Facilities Construction and Management shall:

(i) review the design, plans, and specifications of the project; and

(ii) approve them if they are appropriate.

(d) Notwithstanding Subsection (4)(b), the Division of Facilities Construction and Management may:

(i) require that the project be submitted to the local building official for plan review and inspection; and

(ii) inspect the project.

(5) It is the intent of the Legislature that:

(a) the $221,497.86 authorized for the Capitol Hill Day Care Center in Subsection (4) of Section 56, Chapter 304, Laws of Utah 1992, be used for general capital improvements; and

(b) the Building Board should, in allocating the $221,497.86, if appropriate under the Board's normal allocation and prioritization process, give preference to projects for the Division of Parks and Recreation.

Section 4. Section 63B-10-101 is enacted to read:

CHAPTER 10. 2001 BONDING

Part 1. 2001 Highway General Obligation Bonds

63B-10-101. State Bonding Commission authorized to issue general obligation bonds.

The commission created under Section 63B-1-201 may issue and sell general obligation bonds of the state pledging the full faith, credit, and resources of the state for the payment of the principal of and interest on the bonds, to provide funds to the Department of Transportation.

Section 5. Section 63B-10-102 is enacted to read:

63B-10-102. Maximum amount -- Projects authorized.

(1) The total amount of bonds issued under this part may not exceed $126,250,000.

(2) (a) Proceeds from the issuance of bonds shall be provided to the Department of Transportation to provide funds to pay all or part of the costs of state highway construction or reconstruction projects.

(b) These costs may include the cost of acquiring land, interests in land, easements and rights-of-way, improving sites, and making all improvements necessary, incidental, or convenient to the facilities, interest estimated to accrue on these bonds during the period to be covered by construction of the projects plus a period of six months after the end of the construction period, interest estimated to accrue on any bond anticipation notes issued under the authority of Chapter 10, Part 2, 2001 Highway General Obligation Bond Anticipation Notes Authorization, and all related engineering, architectural, and legal fees.

(3) The commission or the state treasurer may make any statement of intent relating to a reimbursement that is necessary or desirable to comply with federal tax law.

(4) The Department of Transportation may enter into agreements related to that project before the receipt of proceeds of bonds issued under this chapter.

Section 6. Section 63B-10-103 is enacted to read:

63B-10-103. Bond proceeds may be used to pay costs of issuance and sale.

The proceeds of bonds issued under this chapter shall be used for the purposes described in Section 63B-10-102 and to pay all or part of any cost incident to the issuance and sale of the bonds including, without limitation, printing, registration and transfer costs, legal fees, trustees' fees, financial advisors' fees, and underwriters' discount.

Section 7. Section 63B-10-104 is enacted to read:

63B-10-104. Manner of issuance -- Amounts, interest, and maturity.

(1) Bonds issued under this chapter may be authorized, sold, and issued at times and in a manner determined by the commission by resolution.

(2) Bonds may be issued in one or more series, in amounts, and shall bear dates, interest rates, including a variable rate, and maturity dates as the commission determines by resolution.

(3) A bond issued may not mature later than 15 years after the date of final passage of this chapter.

Section 8. Section 63B-10-105 is enacted to read:

63B-10-105. Terms and conditions of sale -- Plan of financing -- Signatures -- Replacement -- Registration -- Federal rebate.

(1) In the issuance of bonds, the commission may determine by resolution:

(a) the manner of sale, including public or private sale;

(b) the terms and conditions of sale, including price, whether at, below, or above face value;

(c) denominations;

(d) form;

(e) manner of execution;

(f) manner of authentication;

(g) place and medium of purchase;

(h) redemption terms; and

(i) other provisions and details it considers appropriate.

(2) The commission may, by resolution, adopt a plan of financing, which may include terms and conditions of arrangements entered into by the commission on behalf of the state with financial and other institutions for letters of credit, standby letters of credit, reimbursement agreements, and remarketing, indexing, and tender agent agreements to secure the bonds, including payment from any legally available source of fees, charges, or other amounts coming due under the agreements entered into by the commission.

(3) (a) Any signature of a public official authorized by resolution of the commission to sign the bonds may be a facsimile signature of that official imprinted, engraved, stamped, or otherwise placed on the bonds.

(b) If all signatures of public officials on the bonds are facsimile signatures, provision shall be made for a manual authenticating signature on the bonds by or on behalf of a designated authentication agent.

(c) If an official ceases to hold office before delivery of the bonds signed by that official, the signature or facsimile signature of the official is nevertheless valid for all purposes.

(d) A facsimile of the state seal may be imprinted, engraved, stamped, or otherwise placed on the bonds.

(4) (a) The commission may enact resolutions providing for the replacement of lost, destroyed, or mutilated bonds, or for the exchange of bonds after issuance for bonds of smaller or larger denominations.

(b) Bonds in changed denominations shall:

(i) be exchanged for the original bonds in like aggregate principal amounts and in a manner that prevents the duplication of interest; and

(ii) bear interest at the same rate, mature on the same date, and be as nearly as practicable in the form of the original bonds.

(5) (a) Bonds may be registered as to both principal and interest or may be in a book entry form under which the right to principal and interest may be transferred only through a book entry.

(b) The commission may provide for the services and payment for the services of one or more financial institutions or other entities or persons, or nominees, within or outside the state, for the authentication, registration, transfer, including record, bookkeeping, or book entry functions, exchange, and payment of the bonds.

(c) The records of ownership, registration, transfer, and exchange of the bonds, and of persons to whom payment with respect to the obligations is made, are private records as provided in Section 63-2-302, or protected records as provided in Section 63-2-304.

(d) The bonds and any evidences of participation interest in the bonds may be issued, executed, authenticated, registered, transferred, exchanged, and otherwise made to comply with Title 15, Chapter 7, Registered Public Obligations Act, or any other act of the Legislature relating to the registration of obligations enacted to meet the requirements of Section 149 of the Internal Revenue Code of 1986, as amended, or any successor to it, and applicable regulations.

(6) The commission may:

(a) by resolution, provide for payment to the United States of whatever amounts are necessary to comply with Section 148 (f) of the Internal Revenue Code of 1986, as amended; and

(b) enter into agreements with financial and other institutions and attorneys to provide for:

(i) the calculation, holding, and payment of those amounts; and

(ii) payment from any legally available source of fees, charges, or other amounts coming due under any agreements entered into by the commission.

Section 9. Section 63B-10-106 is enacted to read:

63B-10-106. Constitutional debt limitation.

(1) The commission may not issue bonds under this chapter in an amount that violates the limitation described in Utah Constitution Article XIV, Section 1.

(2) For purposes of applying the debt limitation contained in Utah Constitution Article XIV, Section 1, the value of the taxable property in Utah is considered to be 100% of the fair market value of the taxable property of the state, including fee-in-lieu property, as computed from the last assessment for state purposes previous to the issuance of the bonds.

Section 10. Section 63B-10-107 is enacted to read:

63B-10-107. Tax levy -- Abatement of tax.

(1) Each year after issuance of the bonds and until all outstanding bonds are retired, there is levied a direct annual tax on all real and personal property within the state subject to state taxation, sufficient to pay:

(a) applicable bond redemption premiums, if any;

(b) interest on the bonds as it becomes due; and

(c) principal of the bonds as it becomes due.

(2) (a) The State Tax Commission shall fix the rate of the direct annual tax levy each year.

(b) The tax shall be collected and the proceeds applied as provided in this chapter.

(3) The direct annual tax imposed under this section is abated to the extent money is available from sources, other than ad valorem taxes in the sinking fund, for the payment of bond interest, principal, and redemption premiums.

Section 11. Section 63B-10-108 is enacted to read:

63B-10-108. Creation of sinking fund.

(1) There is created a sinking fund, to be administered by the state treasurer, entitled the "2001 Highway General Obligation Bonds Sinking Fund."

(2) All monies deposited in the sinking fund, from whatever source, shall be used to pay debt service on the bonds.

(3) The proceeds of all taxes levied under this chapter are appropriated to this fund.

(4) The state treasurer may create separate accounts within the sinking fund for each series of bonds issued.

Section 12. Section 63B-10-109 is enacted to read:

63B-10-109. Payment of interest, principal, and redemption premiums.

(1) The Division of Finance shall draw warrants on the state treasury before any interest, principal, or redemption premiums become due on the bonds.

(2) After receipt of the warrants, the state treasurer shall:

(a) promptly pay the warrants from funds within the sinking fund; and

(b) immediately transmit the amount paid to the paying agent for the bonds.

Section 13. Section 63B-10-110 is enacted to read:

63B-10-110. Investment of sinking fund money.

(1) The state treasurer may, by following the procedures and requirements of Title 51, Chapter 7, State Money Management Act, invest any money contained in the sinking fund until it is needed for the purposes for which the fund is created.

(2) Unless otherwise provided in the resolution of the commission authorizing the issuance of bonds under this chapter, the treasurer shall retain all income from the investment of any money contained in the sinking fund in the sinking fund and use it for the payment of debt service on the bonds.

Section 14. Section 63B-10-111 is enacted to read:

63B-10-111. Bond proceeds -- Deposits -- Investment -- Disposition of investment income and unexpended proceeds.

(1) (a) Proceeds from the sale of bonds issued under this chapter shall be deposited within one or more accounts as determined by resolution of the commission.

(b) The state treasurer shall administer and maintain these accounts unless otherwise provided by the commission by resolution.

(c) The commission, by resolution, may provide for the deposit of these monies with a trustee and the administration, disposition, or investment of these monies by this trustee.

(2) (a) The commission, by resolution, shall provide for the kinds of investments in which the proceeds of bonds issued under this chapter may be invested.

(b) Income from the investment of proceeds of bonds issued under this chapter shall be applied as provided by resolution of the commission.

(3) Any unexpended bond proceeds issued under this chapter shall be deposited, upon completion of the purposes for which the bonds were issued, in the sinking fund, unless otherwise provided in the resolution of the commission authorizing the issuance of bonds under this chapter.

Section 15. Section 63B-10-112 is enacted to read:

63B-10-112. Refunding of bonds.

(1) The commission may provide for the refunding of any of the bonds in accordance with Title 11, Chapter 27, Utah Refunding Bond Act.

(2) For purposes of Title 11, Chapter 27, Utah Refunding Bond Act, the state of Utah is considered the public body and the commission its governing body.

Section 16. Section 63B-10-113 is enacted to read:

63B-10-113. Certification of satisfaction of conditions precedent -- Conclusiveness.

(1) The commission may not issue any bond under this chapter until it finds and certifies that all conditions precedent to issuance of the bonds have been satisfied.

(2) A recital on any bond of this finding and certification conclusively establishes the completion and satisfaction of all these conditions.

Section 17. Section 63B-10-114 is enacted to read:

63B-10-114. Tax exemption.

The bonds issued under this chapter, any interest paid on the bonds, and any income from the bonds are not taxable in this state for any purpose, except for the corporate franchise tax.

Section 18. Section 63B-10-115 is enacted to read:

63B-10-115. Legal investment status.

Bonds issued under this chapter are legal investments for all state trust funds, insurance companies, banks, trust companies, and the State School Fund and may be used as collateral to secure legal obligations.

Section 19. Section 63B-10-116 is enacted to read:

63B-10-116. Publication of resolution or notice -- Limitation on actions to contest legality.

(1) The commission may:

(a) publish any resolution it adopts under this chapter once in a newspaper having general circulation in Utah; or

(b) in lieu of publishing the entire resolution, publish a notice of bonds to be issued, titled as such, containing the information required by Subsection 11-14-21(3).

(2) (a) Any interested person, for 30 days after the date of publication, may contest:

(i) the legality of the resolution;

(ii) any of the bonds authorized under it; or

(iii) any of the provisions made for the security and repayment of the bonds.

(b) After 30 days, a person may not contest the legality of the resolution, any of the bonds authorized under it, or any of the provisions made for the security and repayment of the bonds for any cause.

Section 20. Section 63B-10-117 is enacted to read:

63B-10-117. Report to Legislature.

The governor shall report the commission's proceedings to each annual general session of the Legislature in his budget for as long as bonds issued under this chapter remain outstanding.

Section 21. Section 63B-10-201 is enacted to read:

Part 2. 2001 Highway General Obligation Bond Anticipation Notes Authorization

63B-10-201. Definitions.

As used in this part:

(1) "Bond anticipation note" means a note issued in anticipation of the receipt of the proceeds of the sale of the bonds authorized under Part 1 of this chapter.

(2) "Flexible note" means a bond anticipation note whose interest is payable at, and on one or more dates before, maturity.

(3) (a) "Short-term series note" means a bond anticipation note that is one of a series of notes issued pursuant to a financing program under which it is expected that:

(i) each note will be paid from the proceeds of one or more renewal notes of that series; and

(ii) the final note or notes of the series will be paid from:

(A) the proceeds of bonds in anticipation of the receipt of which the note or notes were issued; or

(B) monies of the state on hand and legally available for that purpose.

(b) "Short-term series note" includes any note issued pursuant to a revolving credit agreement or other similar liquidity facility for the purpose of renewing or paying outstanding short-term series notes on their stated maturity dates when those short-term series notes are not renewed or paid from the proceeds of one or more other renewal notes of the series.

Section 22. Section 63B-10-202 is enacted to read:

63B-10-202. Authorization, terms, and procedures.

(1) The state treasurer may, by written order, issue bond anticipation notes and renewals of bond anticipation notes, including, but not limited to, flexible notes and short-term series notes, in the form and with the terms that he determines.

(2) The state treasurer may:

(a) enter into whatever agreements with other persons that he considers necessary or appropriate in connection with the issuance, sale, and resale of the notes; and

(b) resell or retire any notes purchased by the state before the stated maturity of those notes.

(3) (a) The notes and renewals of the notes shall:

(i) bear the interest rate or rates as determined by the state treasurer; and

(ii) mature within a period not to exceed five years from the date of original issuance.

(b) The notes and renewals of notes may:

(i) bear a variable interest rate; and

(ii) be redeemed prior to maturity by the state treasurer, but only in accordance with the provisions of the notes relating to redemption prior to maturity.

(4) The proceeds from the sale of the notes may be used only for:

(a) the purposes established in Section 63B-10-102;

(b) the payment of principal of and, if not otherwise provided, interest on, bond anticipation notes;

(c) the payment of costs of issuance; or

(d) any combination of Subsections (4)(a), (b), and (c).

(5) (a) All of the notes and any renewals of the notes shall be payable from the proceeds of the sale of bonds.

(b) A renewal of any note may not be issued after the sale of bonds in anticipation of which the original note was issued.

(6) If a sale of the bonds has not occurred before the maturity of the notes issued in anticipation of the sale, the state treasurer shall, in order to meet the notes then maturing:

(a) issue renewal notes for that purpose;

(b) pay the notes from state monies legally available for paying those notes; or

(c) any combination of Subsections (6)(a) and (b).

(7) Each note and any renewal of any note, with the interest on the note or renewal, constitute general obligations of the state.

(8) Each note and any renewal of any note, with the interest on the note or renewal, shall be:

(a) secured by the full faith, credit, and resources of the state in the manner provided in Part 1 of this chapter;

(b) payable from:

(i) the proceeds of the sale of the bonds and not from any other borrowing; and

(ii) monies of the state on hand and legally available for that purpose; or

(iii) any combination of Subsections (8)(b)(i) and (ii); and

(c) payable within five years from the date of original issue.

(9) (a) As used in this Subsection (9), "total amount of bonds authorized to be issued but not yet issued" includes bonds authorized to be issued only if one or more conditions are met.

(b) The total amount of notes or renewals of notes issued and outstanding at any one time may not exceed the total amount of bonds authorized to be issued but not yet issued.

(10) The state treasurer shall, in his annual report to the governor, include a detailed statement of all notes and bonds issued during the year and of his actions in relation to them.

Section 23. Section 63B-10-203 is enacted to read:

63B-10-203. Purchase and redemption requirements.

(1) The notes and renewals of notes may provide the holders of the notes or renewals of notes with the right to require the state or other persons to purchase or redeem the notes or renewal notes before the stated maturity of the notes or renewals.

(2) Notwithstanding Subsection (1), the holders of the notes and renewals of notes may not be provided with the right to require the state to repurchase or redeem the notes and renewals of the notes before their stated maturity unless the state has entered into one or more letter of credit agreements or other liquidity facility agreements:

(a) for the express purpose of those sales;

(b) that require a financially responsible party or parties to the agreement or agreements, other than the state, to purchase or redeem all or any portion of the notes and renewals of notes tendered by the holders of the notes or renewals of notes for repurchase or redemption before the stated maturity of the notes and renewals of notes; and

(c) that continue until the right of the holders of the notes and renewals of notes to require repurchase or redemption of the notes and renewals of notes before the stated maturity has ceased.

Section 24. Section 63B-10-204 is enacted to read:

63B-10-204. General provisions -- Funds and accounts.

(1) (a) Sections 63B-10-105, 63B-10-106, 63B-10-113, 63B-10-114, 63B-10-115, and 63B-10-116 apply to any notes or renewals of notes issued under this part.

(b) (i) For purposes of this part, any action that those sections require or permit the commission to take shall be considered sufficient if taken by the state treasurer.

(ii) The treasurer may take action by issuing a written order, or in some other manner that he finds necessary or convenient, to accomplish the purposes of this part.

(2) The treasurer may:

(a) in a written order, establish whatever funds and accounts are necessary or desirable to carry out the purposes of this part; and

(b) until the monies are needed for the purpose for which the fund or account was created, invest the monies held in those funds and accounts by following the procedures and requirements of Title 51, Chapter 7, State Money Management Act.

Section 25. Section 63B-10-501 is enacted to read:

Part 5. 2001 Revenue Bond Authorizations

63B-10-501. (Codified as 63B-10-301) Revenue bond authorizations.

(1) (a) It is the intent of the Legislature that the State Building Ownership Authority, under the authority of Title 63, Chapter 9a, State Building Ownership Act, may issue or execute obligations, or enter into or arrange for a lease purchase agreement in which participation interests may be created, to provide up to $8,281,000 for the construction of an expansion of the Department of Alcoholic Beverage Control warehouse together with additional amounts necessary to pay costs of issuance, pay capitalized interest, and fund any debt service reserve requirements.

(b) It is the intent of the Legislature that enhanced revenues of the Department of Alcoholic Beverage Control be used as the primary revenue source for repayment of any obligation created under authority of this Subsection (1).

(2) (a) It is the intent of the Legislature that the State Building Ownership Authority, under the authority of Title 63, Chapter 9a, State Building Ownership Act, may issue or execute obligations, or

enter into or arrange for a lease purchase agreement in which participation interests may be created, to provide up to $957,100 for the acquisition of a site and construction of a store in the western part of Salt Lake County for the Department of Alcoholic Beverage Control together with additional amounts necessary to pay costs of issuance, pay capitalized interest, and fund any debt service reserve requirements.

(b) It is the intent of the Legislature that enhanced revenues of the Department of Alcoholic Beverage Control be used as the primary revenue source for repayment of any obligation created under authority of this Subsection (2).

(3) (a) It is the intent of the Legislature that the State Building Ownership Authority, under the authority of Title 63, Chapter 9a, State Building Ownership Act, may issue or execute obligations, or enter into or arrange for a lease purchase agreement in which participation interests may be created, to provide up to $1,497,700 for the acquisition of a site and construction of a store in the southern part of Salt Lake County for the Department of Alcoholic Beverage Control together with additional amounts necessary to pay costs of issuance, pay capitalized interest, and fund any debt service reserve requirements.

(b) It is the intent of the Legislature that enhanced revenues of the Department of Alcoholic Beverage Control be used as the primary revenue source for repayment of any obligation created under authority of this Subsection (3).

(4) (a) It is the intent of the Legislature that the State Building Ownership Authority, under the authority of Title 63, Chapter 9a, State Building Ownership Act, may issue or execute obligations, or enter into or arrange for a lease purchase agreement in which participation interests may be created, to provide up to $100,000,000 for the acquisition and construction of a cancer clinical research hospital facility adjacent to the University of Utah Medical Center, together with additional amounts necessary to pay costs of issuance, pay capitalized interest, and fund any debt service reserve requirements.

(b) The State Building Ownership Authority shall work cooperatively with the Division of Facilities Construction and Management and the University of Utah to seek out the most cost effective and prudent lease purchase plan available.

(c) It is the intent of the Legislature that the University of Utah lease land to the State Building Ownership Authority for the construction of a cancer clinical research hospital facility adjacent to the University of Utah Medical Center.

(d) The anticipated revenue sources for repayment of any obligation created under authority of this section are:

(i) 60% from the Huntsman Cancer Foundation; and

(ii) 40% from institutional funds of the University of Utah, including the University's annual distribution of tobacco settlement funds from the state.

(5) It is the intent of the Legislature that:

(a) the Board of Regents, on behalf of the University of Utah, issue, sell, and deliver revenue bonds or other evidences of indebtedness of the University of Utah to borrow money on the credit, revenues, and reserves of the University of Utah, other than appropriations of the Legislature, to finance the cost of acquiring, constructing, furnishing, and equipping an expansion of the University Hospital;

(b) University Hospital revenues be used as the primary revenue source for repayment of any obligation created under authority of this section; and

(c) the bonds or other evidences of indebtedness authorized by this section may provide up to $25,000,000, together with other amounts necessary to pay costs of issuance, pay capitalized interest, and fund any debt service reserve requirements.

(6) It is the intent of the Legislature that:

(a) the Board of Regents, on behalf of Salt Lake Community College, issue, sell, and deliver revenue bonds or other evidences of indebtedness of Salt Lake Community College to borrow money on the credit, revenues, and reserves of Salt Lake Community College, other than appropriations of the Legislature, to finance the cost of acquiring, constructing, furnishing, and equipping the remodel of the cafeteria and expansion of the Student Center;

(b) student fees be used as the primary revenue source for repayment of any obligation created under authority of this section; and

(c) the bonds or other evidences of indebtedness authorized by this section may provide up to $6,000,000, together with other amounts necessary to pay costs of issuance, pay capitalized interest, and fund any debt service reserve requirements.

(7) It is the intent of the Legislature that:

(a) the Board of Regents, on behalf of Dixie College, issue, sell, and deliver revenue bonds or other evidences of indebtedness of Dixie College to borrow money on the credit, revenues, and reserves of Dixie College, other than appropriations of the Legislature, to finance the cost of acquiring, constructing, furnishing, and equipping an expansion of the Gardner Student Center;

(b) student fees be used as the primary revenue source for repayment of any obligation created under authority of this section; and

(c) the bonds or other evidences of indebtedness authorized by this section may provide up to $1,500,000, together with other amounts necessary to pay costs of issuance, pay capitalized interest, and fund any debt service reserve requirements.

Section 26. Section 63B-10-601 is enacted to read:

Part 6. Other 2001 Capital Facilities Authorizations and Intent Language

63B-10-601. (Codified as 63B-10-401) Other capital facility authorizations and intent language.

(1) It is the intent of the Legislature that:

(a) Utah State University use institutional funds to plan, design, and construct an expansion of the HPER Building under the direction of the director of the Division of Facilities Construction and Management unless supervisory authority has been delegated;

(b) no state funds be used for any portion of this project; and

(c) the university may request state funds for operations and maintenance to the extent that the university is able to demonstrate to the Board of Regents that the facility meets approved academic and training purposes under Board of Regents policy R710.

(2) It is the intent of the Legislature that:

(a) the University of Utah use institutional funds to plan, design, and construct the Moran Eye Center II project under the direction of the director of the Division of Facilities Construction and Management unless supervisory authority has been delegated;

(b) no state funds be used for any portion of this project; and

(c) the university may request state funds for operations and maintenance to the extent that the university is able to demonstrate to the Board of Regents that the facility meets approved academic and training purposes under Board of Regents policy R710.

(3) It is the intent of the Legislature that:

(a) the University of Utah use institutional funds to plan, design, and construct the E. E. Jones Medical Science Addition under the direction of the director of the Division of Facilities Construction and Management unless supervisory authority has been delegated;

(b) no state funds be used for any portion of this project; and

(c) the university may request state funds for operations and maintenance to the extent that the university is able to demonstrate to the Board of Regents that the facility meets approved academic and training purposes under Board of Regents policy R710.

(4) It is the intent of the Legislature that:

(a) the University of Utah use institutional funds to plan, design, and construct a Museum of Natural History under the direction of the director of the Division of Facilities Construction and Management unless supervisory authority has been delegated;

(b) no state funds be used for any portion of this project; and

(c) the university may request state funds for operations and maintenance to the extent that the university is able to demonstrate to the Board of Regents that the facility meets approved academic and training purposes under Board of Regents policy R710.

(5) It is the intent of the Legislature that:

(a) Dixie College use institutional funds to plan, design, and construct the Hurricane Education Center under the direction of the director of the Division of Facilities Construction and Management unless supervisory authority has been delegated;

(b) no state funds be used for any portion of this project; and

(c) the college may request state funds for operations and maintenance to the extent that the university is able to demonstrate to the Board of Regents that the facility meets approved academic and training purposes under Board of Regents policy R710.

(6) It is the intent of the Legislature that:

(a) Southern Utah University use institutional funds to plan, design, and construct the Shakespearean Festival Center under the direction of the director of the Division of Facilities Construction and Management unless supervisory authority has been delegated;

(b) no state funds be used for any portion of this project; and

(c) the college may not request state funds for operations and maintenance.

(7) It is the intent of the Legislature that:

(a) the Department of Corrections use donations to plan, design, and construct the Wasatch Family History Center under the direction of the director of the Division of Facilities Construction and Management unless supervisory authority has been delegated;

(b) no state funds be used for any portion of this project; and

(c) the department may request state funds for operations and maintenance.

(8) It is the intent of the Legislature that:

(a) the Department of Workforce Services use $1,186,700 from its Special Administrative Expense Fund to plan, design, and construct an addition to the Cedar City Employment Center under the direction of the director of the Division of Facilities Construction and Management unless supervisory authority has been delegated; and

(b) the department may request state funds for operations and maintenance.

(9) It is the intent of the Legislature that the Division of Facilities Construction and Management, acting on behalf of the Department of

Natural Resources, may enter into a lease purchase agreement with Carbon County to provide needed space for agency programs in the area if the Department of Natural Resources obtains the approval of the State Building Board by demonstrating that the lease purchase will be a benefit to the state and that the lease, including operation and maintenance costs, can be funded within existing agency budgets.

(10) It is the intent of the Legislature that:

(a) the Division of Facilities Construction and Management use $17,294,400 to erect a new Engineering lab and classroom building at Utah State University and place $5,943,500 in escrow for the renovation of the existing engineering building to be matched against $10,000,000 in non-State funds raised by the university; and

(b) no state funds be expended on the remodel of the Utah State University Engineering Building until the university has received all of the $10 million.

(11) It is the intent of the Legislature that:

(a) the Division of Facilities Construction and Management use $4,613,000 to remodel the Merrill Engineering Building at the University of Utah and place $15,000,000 in escrow for a new engineering building to be matched against $30,000,000 in non-State funds raised by the university; and

(b) no state funds be expended on the new Engineering Building until the university has received at least $13,000,000.

CHAPTER 322
S. B. 3
Passed February 28, 2001
Approved March 20, 2001
Effective March 20, 2001
(Exception clause in Section 3)

SUPPLEMENTAL APPROPRIATIONS ACT II

Sponsor: Leonard M. Blackham

This act relates to appropriations. The act provides appropriations for the support of state government for the fiscal years beginning July 1, 2001 and ending June 30, 2002 and beginning July 1, 2000 and ending June 30, 2001. This act provides appropriations for the use and support of certain state departments and agencies of state government. The act provides appropriate funds for the bills with fiscal impact passed in the 2001 General Session and for other purposes as provided in this act. The act provides intent language governing expenditures and approves fees. This act provides an effective date.

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

Section 1. Under the terms and conditions of Section 63-38-3, the following sums of money are appropriated out of money not otherwise appropriated from the funds or fund accounts indicated for the use and support of certain State departments and agencies for the fiscal year beginning July 1, 2001 and ending June 30, 2002. This is in addition to amounts appropriated by House Bill 1, 2001 General Session.

LEGISLATURE

ITEM 1
To Legislature - Senate
From General Fund 7,700
Schedule of Programs:
Administration 7,700

To implement the provisions of House Joint Resolution 7, 2001 General Session.

ITEM 2
To Legislature - Senate
From General Fund, One-time 75,000
Schedule of Programs:
Administration 75,000

ITEM 3
To Legislature - House of Representatives
From General Fund 9,800
Schedule of Programs:
Administration 9,800

To implement the provisions of House Joint Resolution 7, 2001 General Session.

ITEM 4
To Legislature - House of Representatives
From General Fund, One-time 75,000
Schedule of Programs:
Administration 75,000

ITEM 5
To Legislature - Office of the Legislative Auditor General
From General Fund 130,000
Schedule of Programs:
Administration 130,000

ITEM 6
To Legislature - Office of the Legislative Fiscal Analyst
From General Fund 150,000
Schedule of Programs:
Administration and Research 150,000

ITEM 7
To Legislature - Office of Legislative Research and General Counsel
From General Fund 811,800
Schedule of Programs:
Administration 811,800

EXECUTIVE OFFICES & CRIMINAL JUSTICE SUBCOMMITTEE
GOVERNOR'S OFFICE

ITEM 8
To Governor's Office

It is the intent of the Legislature that the discretionary component of the Fiscal Year 2002 compensation package be used by the Governor's Office to fund its most critical salary needs.

ITEM 9
To Governor's Office - RS-2477 Rights of Way
From General Fund, One-time 895,000
From General Fund Restricted - Constitutional Defense ..... (895,000)

ITEM 10
To Governor's Office - Office of Planning and Budget

It is the intent of the Legislature that planning initiatives and planning monies of the Utah Quality Growth Commission and the Governor's Rural Partnership Board be coordinated with the local Government Comprehensive Planning Project.

ITEM 11
To Governor's Office - Commission on Criminal and Juvenile Justice
From Crime Victims Reparation Trust 8,600
Schedule of Programs:
Crime Victim Reparations 8,600

STATE AUDITOR

ITEM 12
To State Auditor

It is the intent of the Legislature that the discretionary component of the Fiscal Year 2002 compensation package be used by the State Auditor's Office to fund its most critical salary needs.

STATE TREASURER

ITEM 13
To State Treasurer
From Unclaimed Property Trust 6,100

Schedule of Programs:
Unclaimed Property 6,100

It is the intent of the Legislature that the discretionary component of the Fiscal Year 2002 compensation package be used by the State Treasurer's Office to fund its most critical salary needs.

ATTORNEY GENERAL

ITEM 14
To Attorney General
From General Fund 28,300
Schedule of Programs:
Public Advocacy 28,300

To implement the provisions of Senate Bill 172, 2001 General Session

ITEM 15
To Attorney General
From General Fund 75,000
From General Fund Restricted –
Commerce Service Fund 1,300
Schedule of Programs:
State Counsel 76,300

It is the intent of the Legislature that the discretionary component of the Fiscal Year 2002 compensation package be used by the Attorney General's Office to fund its most critical salary needs.

ITEM 16
To Attorney General – Prosecution Council
From General Fund Restricted –
Public Safety Support 4,400
Schedule of Programs:
Prosecution Council 4,400

ITEM 17
To Attorney General – Domestic Violence
From General Fund Restricted –
Public Safety Support 1,000
Schedule of Programs:
Domestic Violence 1,000

CORRECTIONS

ITEM 18
To Utah Department of Corrections –
Corrections Administration

It is the intent of the Legislature that the discretionary component of the Fiscal Year 2002 compensation package be used by the Department to fund its most critical salary needs.

ITEM 19
To Utah Department of Corrections –
Field Operations
From General Fund 4,100
From Revenue Transfers – Commission
on Criminal and Juvenile Justice 12,100
Schedule of Programs:
Adult Probation and Parole 16,200

To implement the provisions of House Bill 18, 2001 General Session.

It is the intent of the Legislature that the funds for FY 2002 for the Department be nonlapsing

ITEM 20
To Utah Department of Corrections –
Field Operations
From General Fund 250,000
Schedule of Programs:
Adult Probation and Parole 250,000

ITEM 21
To Utah Department of Corrections –
Institutional Operations
From General Fund 23,000
Schedule of Programs:
Institutional Operations 23,000

To implement the provision of House Bill 181, 2001 General Session

BOARD OF PARDONS AND PAROLE

ITEM 22
To Board of Pardons and Parole

It is the intent of the Legislature that the discretionary component of the Fiscal Year 2002 compensation package be used by the Board to fund its most critical salary needs.

YOUTH CORRECTIONS

ITEM 23
To Department of Human Services –
Division of Youth Corrections – Services
From General Fund 250,000
From Revenue Transfers – Human
Services 400,000
From Beginning Nonlapsing
Appropriation Balances ..... (400,000)
Schedule of Programs:
Community Alternatives 250,000

It is the intent of the Legislature that the discretionary component of the Fiscal Year 2002 compensation package be used by the Department to fund its most critical salary needs.

COURTS

ITEM 24
To Judicial Council/State Court
Administrator – Administration
From General Fund 68,700
Schedule of Programs:
Trial Courts 68,700

To implement the provisions of House Bill 196, 2001 General Session.

ITEM 25
To Judicial Council/State Court Administrator –
Administration
From General Fund 142,500
Schedule of Programs:
Trial Courts 142,500

To implement the provisions of House Bill 25, 2001 General Session.

ITEM 26
To Judicial Council/State Court
Administrator – Administration

From General Fund 75,400
Schedule of Programs:
Trial Courts 75,400

To implement the provisions of Senate Bill 134, 2001 General Session.

ITEM 27
To Judicial Council/State Court Administrator – Administration
From General Fund 28,000
Schedule of Programs:
Trial Courts 28,000

To implement the provisions of Senate Bill 172, 2001 General Session.

ITEM 28
To Judicial Council/State Court Administrator – Guardian ad Litem
From General Fund 270,000
Schedule of Programs:
Guardian ad Litem 270,000

To implement the provisions of Senate Bill 117, 2001 General Session.

PUBLIC SAFETY

ITEM 29
To Department of Public Safety – Commissioner's Office

It is the intent of the Legislature that the discretionary component of the Fiscal Year 2002 compensation package be used by the Department to fund its most critical salary needs.

ITEM 30
To Department of Public Safety – Peace Officers' Standards and Training
From General Fund Restricted – Public Safety Support 14,900
Schedule of Programs:
Basic Training 14,900

ITEM 31
To Department of Public Safety – Investigative and Technical Services
From General Fund Restricted – Statewide Warrant Operations 3,300
Schedule of Programs:
Criminal Identification Bureau 3,300

ITEM 32
To Department of Public Safety – Driver License
From Transportation Fund Restricted – Public Safety 3,800
Schedule of Programs:
Driver Services 3,800

To implement the provisions of Senate Bill 96, 2001 General Session.

ITEM 33
To Department of Public Safety – Driver License
From Transportation Fund Restricted – Motorcycle Education 30,000
From Transportation Fund Restricted – Public Safety 97,400
Schedule of Programs:
Driver Services 97,400
Motorcycle Safety 30,000

CAPITAL FACILITIES & ADMINISTRATIVE SERVICES SUBCOMMITTEE
CAPITOL PRESERVATION BOARD

ITEM 34
To Capitol Preservation Board
From General Fund 197,800
Schedule of Programs:
Capitol Preservation Board 197,800

To implement the provisions of House Bill 91, 2001 General Session.

ITEM 35
To Capitol Preservation Board

It is the intent of the Legislature that the discretionary component of the Fiscal Year 2002 compensation package be used by the Board to fund its most critical salary needs.

ADMINISTRATIVE SERVICES

ITEM 36
To Department of Administrative Services – Executive Director

It is the intent of the Legislature that the discretionary component of the Fiscal Year 2002 compensation package be used by the Department to fund its most critical salary needs.

ITEM 37
To Department of Administrative Services – Information Technology Services
From General Fund, One-time 200,000
Schedule of Programs:
Automated Geographic Reference Center 200,000

It is the intent of the Legislature that these funds be used to support rural government efforts to locate or establish survey control corners and enable digital parcel mapping activities. This funding will go directly to rural subdivisions of the state to be used for the protection of citizens' private property rights and public benefit through inclusion in the State Geographic Information Database. Distribution of funds by the Automated Geographic Reference Center will be based on the recommendations developed after consultation with the Rural Partnership Board and the Utah Association of Counties.

ITEM 38
To Department of Administrative Services – DFCM Facilities Management
From General Fund ..... (138,800)
Schedule of Programs:
DUP Museum ..... (108,800)
Green House ..... (30,000)

To implement the provisions of House Bill 91, 2001 General Session.

ITEM 39
To Department of Administrative Services – DFCM Facilities Management
From General Fund ..... (59,000)
Council Hall ..... (59,000)

ITEM 40
To Department of Administrative Services – Finance – Mandated
From General Fund 516,300
From Uniform School Fund 57,200
From Transportation Fund 69,100
Schedule of Programs:
Annual Leave Conversion 642,600

To implement the provisions of House Bill 68, 2001 General Session.

It is the intent of the Legislature that funds for Annual Leave Conversion not lapse.

It is the intent of the Legislature that the Division of Finance use funds in the Annual Leave Conversion program to reimburse state agencies on a proportional basis as determined by the Division of Finance.

ITEM 41
To Department of Administrative Services – Finance – Mandated
From General Fund 135,300
From Uniform School Fund 506,800
From Transportation Fund 20,700
From Federal Funds 47,600
From Dedicated Credits Revenue 10,100
From General Fund Restricted – Boating ... 500
From General Fund Restricted – Children's Legal Defense 200
From General Fund Restricted – Commerce Service Fund 3,100
From General Fund Restricted – Environmental Quality 1,500
From General Fund Restricted – Financial Institutions 700
From General Fund Restricted – Industrial Assistance 100
From General Fund Restricted – Internal Service Fund Overhead 200
From General Fund Restricted – Livestock Brand 200
From General Fund Restricted – Medicaid Restricted Account 200
From General Fund Restricted – Public Safety Support 100
From General Fund Restricted – Sales and Use Tax Administration Fees 1,400
From General Fund Restricted – Substance Abuse Prevention . 100
From General Fund Restricted – Tobacco Settlement Account 200
From General Fund Restricted – Wildlife Resources 3,500
From General Fund Restricted – Workplace Safety 300
From Transportation Fund Restricted – Public Safety 2,800
From Crime Victims Reparation Trust 200
From Land Grant Management Fund 900
From Liquor Control Fund 2,300
From Unclaimed Property Trust 100
From Revenue Transfers 13,100
Schedule of Programs:
Retirement Benefits 752,200

To implement the provisions of Senate Bill 171, 2001 General Session.

ITEM 42
To Department of Administrative Services – Finance – Mandated
From General Fund, One-time ..... (435,000)
Schedule of Programs:
Information Technology
Infrastructure Innovation Program (435,000)

It is the intent of the Legislature that the Chief Information Officer consider the Department of Human Resource Management's Utah Job Match program when allocating funds provided for the Utah Technology Infrastructure Innovation Program in House Bill 1, 2001 General Session.

CAPITAL BUDGET

ITEM 43
To Capital Budget – DFCM Capital Program
From General Fund, One-time ..... (950,000)
Schedule of Programs:
Capital Development ..... (950,000)
Funded Projects:
Sandy Land Purchase – ($950,000)

COMMERCE & REVENUE SUBCOMMITTEE
TAX COMMISSION

ITEM 44
To Utah State Tax Commission – Tax Administration
From General Fund, One-time 9,000
Schedule of Programs:
Motor Vehicles 9,000

To implement the provisions of House Bill 289, 2001 General Session.

ITEM 45
To Utah State Tax Commission – Tax Administration
From General Fund 46,500
Schedule of Programs:
Motor Vehicles 46,500

To implement the provisions of Senate Bill 108, 2001 General Session.

ITEM 46
To Utah State Tax Commission – Tax Administration
From General Fund 11,600
Schedule of Programs:
Administration Division 11,600

To implement the provisions of Senate Bill 114, 2001 General Session.

ITEM 47
To Utah State Tax Commission – Tax Administration
From Uniform School Fund 23,400
Schedule of Programs:
Administration Division 23,400

To implement the provisions of Senate Bill 24, 2001 General Session.

ITEM 48
To Utah State Tax Commission – Tax Administration
From Uniform School Fund 33,400

Schedule of Programs:
Administration Division 33,400

To implement the provisions of Senate Bill 71, 2001 General Session.

ITEM 49
To Utah State Tax Commission - Tax Administration
From General Fund Restricted - Sales and Use Tax Administration Fees 69,900
Schedule of Programs:
Administration Division 69,900

It is the intent of the Legislature that the discretionary component of the Fiscal Year 2002 compensation package be used by the Department to fund its most critical salary needs.

APPLIED TECHNOLOGY EDUCATION

ITEM 50
To State Board of Applied Technology Education - Bridgerland Applied Technology Center
From Uniform School Fund 93,300
From Dedicated Credits Revenue 14,400
Schedule of Programs:
Bridgerland ATC 107,700

It is the intent of the Legislature that the discretionary component of the Fiscal Year 2002 compensation package be used by the ATC to fund its most critical salary needs.

ITEM 51
To State Board of Applied Technology Education - Davis Applied Technology Center

It is the intent of the Legislature that the discretionary component of the Fiscal Year 2002 compensation package be used by the ATC to fund its most critical salary needs.

ITEM 52
To State Board of Applied Technology Education - Ogden Weber Applied Technology Center

It is the intent of the Legislature that the discretionary component of the Fiscal Year 2002 compensation package be used by the ATC to fund its most critical salary needs.

ITEM 53
To State Board of Applied Technology Education - Uintah Basin Applied Technology Center

It is the intent of the Legislature that the discretionary component of the Fiscal Year 2002 compensation package be used by the ATC to fund its most critical salary needs.

ITEM 54
To State Board of Applied Technology Education - Wasatch Front Applied Technology Center

It is the intent of the Legislature that the discretionary component of the Fiscal Year 2002 compensation package be used by the ATC to fund its most critical salary needs.

ITEM 55
To State Board of Applied Technology Education - Applied Technology Center/Applied Technology Center Service Region Development
From Uniform School Fund, One-time ... 600,000
Schedule of Programs:
ATC/ATCSR Equipment 1,400,000
ATC/ATCSR Development ..... (1,000,000)
Administration 200,000

It is the intent of the Legislature that $1,000,000 of the Development fund be used for equipment purchases.

ITEM 56
To State Board of Applied Technology Education - Custom Fit
From Uniform School Fund, One-time ... 500,000
Schedule of Programs:
Custom Fit 500,000

BRIDGERLAND APPLIED TECHNOLOGY CENTER

ITEM 57
To Bridgerland Applied Technology Center - General
From Income Tax 290,800
From Income Tax, One-time 334,500
Schedule of Programs:
Bridgerland Applied Technology Center 625,300

OGDEN-WEBER APPLIED TECHNOLOGY CENTER

ITEM 58
To Ogden-Weber Applied Technology Center - General
From Income Tax 295,300
From Income Tax, One-time 336,300
Schedule of Programs:
Ogden-Weber Applied Technology Center 631,600

DAVIS APPLIED TECHNOLOGY CENTER

ITEM 59
To Davis Applied Technology Center - General
From Income Tax 237,900
From Income Tax, One-time 336,000
Schedule of Programs:
Davis Applied Technology Center 573,900

WASATCH FRONT SOUTH APPLIED TECHNOLOGY CENTER

ITEM 60
To Wasatch Front South Applied Technology Center - General
From Income Tax 707,400
From Income Tax, One-time 143,000
Schedule of Programs:
Wasatch Front South Applied Technology Center 850,400

MOUNTAINLANDS APPLIED TECHNOLOGY CENTER SERVICE REGION

ITEM 61
To Mountainlands Applied Technology Center Service Region - General
From Income Tax 836,400
From Income Tax, One-time 167,400
Schedule of Programs:
Mountainlands Applied Technology Center Service Region 1,003,800

UINTAH BASIN APPLIED TECHNOLOGY CENTER

ITEM 62
To Uintah Basin Applied Technology Center - General
From Income Tax 160,200
From Income Tax, One-time 202,500
Schedule of Programs:
Uintah Basin Applied Technology Center 362,700

SOUTHWEST APPLIED TECHNOLOGY CENTER SERVICE REGION

ITEM 63
To Southwest Applied Technology Center Service Region - General
From Income Tax 571,500
From Income Tax, One-time 157,300
Schedule of Programs:
Southwest Applied Technology Center Service Region 728,800

SOUTHEAST APPLIED TECHNOLOGY CENTER SERVICE REGION

ITEM 64
To Southeast Applied Technology Center Service Region - General
From Income Tax 269,400
From Income Tax, One-time 116,800
Schedule of Programs:
Southeast Applied Technology Center Service Region 386,200

SNOW COLLEGE-SOUTH

ITEM 65
To Snow College-South - General
From Income Tax 240,800
From Income Tax, One-time 206,200
Schedule of Programs:
Snow College-South 447,400

WORKFORCE SERVICES

ITEM 66
To Department of Workforce Services

It is the intent of the Legislature that the discretionary component of the Fiscal Year 2002 compensation package be used by the Department to fund its most critical salary needs.

ALCOHOLIC BEVERAGE CONTROL

ITEM 67
To Department of Alcoholic Beverage Control
From Liquor Control Fund 163,500
Schedule of Programs:
Administration 163,500

It is the intent of the Legislature that the discretionary component of the Fiscal Year 2002 compensation package be used by the Department to fund its most critical salary needs.

LABOR COMMISSION

ITEM 68
To Labor Commission
From General Fund Restricted - Workplace Safety 2,000
From Employers' Reinsurance Fund 600
From Uninsured Employers' Fund 900
Schedule of Programs:
Industrial Accidents 1,500
Workplace Safety 2,000

It is the intent of the Legislature that the discretionary component of the Fiscal Year 2002 compensation package be used by the Department to fund its most critical salary needs.

COMMERCE

ITEM 69
To Department of Commerce - Commerce General Regulation
From Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician 15,000
Education and Enforcement Fund
From General Fund Restricted - Commerce Service Fund 151,700
Schedule of Programs:
Occupational & Professional Licensing . 166,700

To implement the provisions of House Bill 105, 2001 General Session.

ITEM 70
To Department of Commerce - Commerce General Regulation
From General Fund Restricted - Commerce Service Fund 19,000
Schedule of Programs:
Occupational & Professional Licensing .. 19,000

To implement the provisions of House Bill 73, 2001 General Session.

ITEM 71
To Department of Commerce - Commerce General Regulation
From General Fund Restricted - Commerce Service Fund 2,100
Schedule of Programs:
Occupational & Professional Licensing ... 2,100

To implement the provisions of Senate Bill 59, 2001 General Session.

ITEM 72
To Department of Commerce - Commerce General Regulation

From General Fund Restricted –
Commerce Service Fund 40,000
Schedule of Programs:
Occupational & Professional Licensing .. 40,000

To implement the provisions of Senate Bill 60, 2001 General Session.

ITEM 73
To Department of Commerce –
Commerce General Regulation
From General Fund Restricted –
Commerce Service Fund 152,900
Schedule of Programs:
Administration 152,900

It is the intent of the Legislature that the discretionary component of the Fiscal Year 2002 compensation package be used by the Department to fund its most critical salary needs.

It is the intent of the Legislature that the physical location of the Committee of Consumer Services be separated from the Division of Public Utilities and the Public Service Commission. It is the intent of the Legislature that this separation be to a different building, or at least, to a different floor if remaining in the same building. This separation is to be completed by January 1, 2002.

FINANCIAL INSTITUTIONS

ITEM 74
To Financial Institutions – Financial Institutions Administration
From General Fund Restricted –
Financial Institutions 94,300
Schedule of Programs:
Administration 94,300

It is the intent of the Legislature that the discretionary component of the Fiscal Year 2002 compensation package be used by the Department to fund its most critical salary needs.

INSURANCE

ITEM 75
To Insurance Department – Insurance Department Administration
From General Fund, One-time 3,000
Schedule of Programs:
Administration 3,000

To implement the provisions of Senate Bill 122, 2001 General Session.

ITEM 76
To Insurance Department – Insurance Department Administration
From General Fund 56,400
Schedule of Programs:
Administration 56,400

To implement the provisions of Senate Bill 69, 2001 General Session.

ITEM 77
To Insurance Department – Insurance Department Administration

It is the intent of the Legislature that the discretionary component of the Fiscal Year 2002 compensation package be used by the Department to fund its most critical salary needs.

ITEM 78
To Insurance Department – Bail Bond Program
From General Fund Restricted –
Bail Bond Surety Administration 7,100
Schedule of Programs:
Bail Bond Program 7,100

To implement the provisions of Senate Bill 127, 2001 General Session.

PUBLIC SERVICE COMMISSION

ITEM 79
To Public Service Commission

It is the intent of the Legislature that the discretionary component of the Fiscal Year 2002 compensation package be used by the Department to fund its most critical salary needs.

ECONOMIC DEVELOPMENT & HUMAN RESOURCES SUBCOMMITTEE CAREER SERVICES REVIEW BOARD

ITEM 80
To Career Services Review Board –
Career Service Review Board

It is the intent of the Legislature that the discretionary component of the Fiscal Year 2002 compensation package be used by the Department to fund its most critical salary needs.

HUMAN RESOURCE MANAGEMENT

ITEM 81
To Department of Human Resources Management
From General Fund 1,000,000
Schedule of Programs:
Market Comparability –
Utah Highway Patrol 1,000,000

The Legislature intends to replace the intent statement in House Bill 1, 2001 General Session, beginning on page 37, line 1359 through 1365, with the following intent statement: It is the intent of the Legislature that the 4 percent compensation increase for state employees for FY 2002 be used first, to fund a one-step Merit increase and associated salary driven costs for all eligible employees. Second, the Legislature intends to give one-time bonuses to employees in longevity, regardless of other pay advancements, at a rate of $500 for above standard performance or $700 for exceptional performance. Third, remaining funds are for discretionary salary increases to employees based upon performance and other salary related issues according to rules and procedures established by the Department of Human Resource Management.

The Legislature intends to fund the increase in Basic Group Term-Life Coverage to $25,000.

The Legislature intends that Highway Patrol minimum monthly salary be brought to $2,500 as revenues allow.

It is the intent of the Legislature that the discretionary component of the Fiscal Year 2002 compensation package be used by the Department to fund its most critical salary needs.

It is the intent of the Legislature for the calendar year 2001, that the vacant position report due by September 1 as required by Utah Code Ann. Sec. 67-19-6(1)(l) contain the following information:

1. All positions vacant for 6 consecutive months or more during the 12 month period prior to March 1, 2001;

2. All positions which have been filled between March 1 and August 1, 2001, which were vacant longer than 6 months on March 1, 2001;

3. The reasons for the vacancies as of August 1, 2001;

4. The reasons for the inability to fill the positions;

5. Future plans for the positions;

6. Funding source for each position, taking into consideratin any reductions or employee savings in the budetary process;

7. Identification where the positions were created as part of a federally funded or mandated program for which no or reduced federal funding is available;

8. A response from each department about which positions should be eliminated, transferred, or filled, and the reasons why.

The Legislature further intends that the report be organized by department and that the Office of Legislative Fiscal Analyst present the report to the Executive Appropriations Committee in September and a summary report for each Appropriations Subcommittee for the 2002 General Session.

COMMUNITY & ECONOMIC DEVELOPMENT

ITEM 82
To Department of Community & Economic Development - Administration

It is the intent of the Legislature that the discretionary component of the Fiscal Year 2002 compensation package be used by the Department to fund its most critical salary needs.

ITEM 83
To Department of Community & Economic Development - Business and Economic Development
From General Fund 50,000
From General Fund, One-time 100,000
Schedule of Programs:
Administration 150,000

The Legislature intends that $50,000 of appropriated funds go to the Utah Summer Games.

The Legislature intends that $100,000 of appropriated funds go for Morgan Economic Development.

ITEM 84
To Department of Community & Economic Development - Travel Council
From General Fund, One-time 150,000
Schedule of Programs:
Travel Administration 150,000

Legislature intends that $150,000 of appropriated funds go for Tourism Marketing Performance.

ITEM 85
To Department of Community & Economic Development - State History
From General Fund, One-time 250,000
Schedule of Programs:
Office of Preservation 250,000

ITEM 86
To Department of Community & Economic Development - Fine Arts
From General Fund, One-time 150,000
Schedule of Programs:
Administration 100,000
Grants to Non-profits 50,000

It is the intent of the Legislature that $100,000 of the funds go to the Utah Opera Improvement Fund.

ITEM 87
To Department of Community & Economic Development - State Library
From General Fund, One-time 400,000
From State Library Donation Expendable Trust ..... (400,000)

ITEM 88
To Department of Community & Economic Development - Community Development
From General Fund, One-time 100,000
From General Fund Restricted - Constitutional Defense 100,000
Schedule of Programs:
Community Development Administration 200,000

It is the intent of the Legislature that up to $100,000 of appropriated funds go to the Utah Association of Counties to assist Utah counties in meeting their legal expenses on lawsuits filed against the Federal government regarding the Utah Wilderness Inventory and the designation of the Grand Staircase Escalante National Monument.

The Legislature intends that $100,000 of appropriated funds go to the Ogden Dinosaur Museum.

It is the intent of the Legislature that with appropriations to the Olene Walker Housing Trust Fund which exceed appropriations made to the Fund during the 2000 General

Session, priority be given to funding non-profit efforts to help finance the purchase of at-risk HUD-assisted properties.

HEALTH & HUMAN SERVICES SUBCOMMITTEE HEALTH

ITEM 89
To Department of Health - Executive Director's Operations
From General Fund 203,800
From General Fund, One-time 3,000
Schedule of Programs:
Medical Examiner 206,800

To implement the provisions of House Bill 61, 2001 General Session.

ITEM 90
To Department of Health - Executive Director's Operations

It is the intent of the Legislature that the discretionary component of the Fiscal Year 2002 compensation package be used by the Department to fund its most critical salary needs.

ITEM 91
To Department of Health - Health Systems Improvement
From General Fund, One-time 435,000
From General Fund Restricted - Medicaid Restricted Account 1,100
Schedule of Programs:
Primary Care, Rural, and Ethnic Health 436,100

It is the intent of the Legislature that funding provided for Primary Care Health Grants not be expended for inter-departmental projects except for Community Partnered Mobile Dental Services. It is the intent of the Legislature that this language replaces the language in House Bill 1, Item 123, lines 1716 and 1717.

It is the intent of the Legislature that $435,000 be used to support the Utah Telehealth Network's telemedicine and telepharmacy programs.

ITEM 92
To Department of Health - Epidemiology and Laboratory Services
From General Fund Restricted - State Lab Drug Testing Account 2,800
Schedule of Programs:
Environmental Chemistry and Toxicology 2,800

ITEM 93
To Department of Health - Community and Family Health Services
From General Fund, One-time ..... (70,000)
From General Fund Restricted - Tobacco Settlement Account 13,900
Schedule of Programs:
Health Education ..... (56,100)

To eliminate duplicate funding in Item 128 House Bill 1, 2001 General Session and House Bill 69, 2001 General Session.

ITEM 94
To Department of Health - Health Care Financing
From General Fund Restricted - Nursing Facility Account ..... (31,900)
Schedule of Programs:
Financial Services ..... (31,900)

To implement the provisions of House Bill 68, 2001 General Session.

ITEM 95
To Department of Health - Medical Assistance
From General Fund 4,400,000
From General Fund Restricted - Nursing Facility Account ..... (4,647,400)
Schedule of Programs:
Medicaid Base Program ..... (247,400)

To implement the provisions of Senate Bill 58, 2001 General Session.

ITEM 96
To Department of Health - Medical Assistance
From General Fund 100,000
From Federal Funds 1,400,000
From General Fund Restricted - Medicaid Restricted Account 500,000
Schedule of Programs:
Medicaid Base Program 2,000,000

HUMAN SERVICES

ITEM 97
To Department of Human Services - Executive Director Operations

It is the intent of the Legislature that the discretionary component of the Fiscal Year 2002 compensation package be used by the Department to fund its most critical salary needs.

ITEM 98
To Department of Human Services - Division of Mental Health
From General Fund 199,000
From General Fund, One-time 300,000
From Revenue Transfers - Department of Health - Medical Assistance 86,000
Schedule of Programs:
Mental Health Centers 300,000
State Hospital 285,000

ITEM 99
ToDepartment of Human Services - Division of Child and Family Services
From General Fund 44,100
Schedule of Programs:
Out-of-Home Care 44,100

To implement the provisions of House Bill 64, 2001 General Session.

ITEM 100
To Department of Human Services - Division of Aging and Adult Services
From General Fund 250,000
From General Fund, One-time 250,000
Schedule of Programs:

Local Government Grants 250,000
Non-Formula Funds 250,000

It is the intent of the Legislature that $250,000 be spent on Meals on Wheels programs.

It is the intent of the Legislature that $250,000 be spent on transportation equipment for services for the aging.

HIGHER EDUCATION SUBCOMMITTEE
UNIVERSITY OF UTAH

ITEM 101
To University of Utah - Education and General
From General Fund 25,600,000
From Income Tax ..... (25,600,000)

UTAH STATE UNIVERSITY

ITEM 102
To Utah State University - Education and General
From General Fund 5,600,000
From Income Tax ..... (5,600,000)

ITEM 103
To Utah State University - Cooperative Extension Division
From General Fund, One-time 100,000
Schedule of Programs:
Cooperative Extension Services 100,000

It is the intent of the Legislature that $100,000 in appropriated funds go for the Veterinarian Station in Utah County.

SOUTHERN UTAH UNIVERSITY

ITEM 104
To Southern Utah University - Education and General
From Income Tax 100,000
Schedule of Programs:
Education and General 100,000

It is the intent of the Legislature that these funds be used for the Southern Utah University Nursing Program.

SNOW COLLEGE

ITEM 105
To Snow College - Snow College South
From Income Tax 300,000
Schedule of Programs:
Snow South Education and General ... 300,000

STATE BOARD OF REGENTS

ITEM 106
To State Board of Regents - Engineering Initiative
From Income Tax ..... (1,000,000)
From Income Tax, One-time ..... (3,000,000)
Schedule of Programs:
Engineering Initiative ..... (4,000,000)

To eliminate duplicate funding in Item 190, House Bill 1, 2001 General Session.

NATURAL RESOURCES SUBCOMMITTEE
SCHOOL & INSTITUTIONAL TRUST LANDS

ITEM 107
To School and Institutional Trust Lands Administration - School & Institutional Trust Lands Administration
From Land Grant Management Fund 23,400
Schedule of Programs:
Administration 23,400

It is the intent of the Legislature that the discretionary component of the Fiscal Year 2002 compensation package be used by the Department to fund its most critical salary needs.

NATURAL RESOURCES

ITEM 108
To Department of Natural Resources - Administration
It is the intent of the Legislature that the discretionary component of the Fiscal Year 2002 compensation package be used by the Department to fund its most critical salary needs.

ITEM 109
To Department of Natural Resources - Forestry, Fire and State Lands
From General Fund Restricted - Sovereign Land Management 62,400
Schedule of Programs:
Director's Office 62,400

ITEM 110
To Department of Natural Resources - Oil, Gas and Mining
From General Fund Restricted - Oil & Gas Conservation Account 63,900
Schedule of Programs:
Administration 63,900

ITEM 111
To Department of Natural Resources - Wildlife Resources
From General Fund Restricted - Wildlife Resources 65,500
Schedule of Programs:
Administration 65,500

ITEM 112
To Department of Natural Resources - Parks and Recreation
From General Fund 10,000
From General Fund Restricted - Boating . 42,100
From General Fund Restricted - Off-highway Vehicle 20,000
Schedule of Programs:
Park Operations 72,100

ITEM 113
To Department of Natural Resources - Parks and Recreation Capital Budget
From General Fund, One-time 90,000
Schedule of Programs:
Facilities Acquisition and Development . 90,000

ITEM 114
To Department of Natural Resources - Water Resources

From Water Resources Conservation and Development Fund 22,100
Schedule of Programs:
Administration 22,100

AGRICULTURE

ITEM 115
To Department of Agriculture and Food – Administration
From General Fund, One-time ..... (80,000)
From General Fund Restricted – Livestock Brand 5,800
From General Fund Restricted – Agriculture and Wildlife Damage Prevention 3,000
Schedule of Programs:
General Administration ..... (31,200)
Animal Health ..... (40,000)

It is the intent of the Legislature that the discretionary component of the Fiscal Year 2002 compensation package be used by the Department to fund its most critical salary needs.

To eliminate duplicate funding in Item 225, House Bill 1, 2001 General Session and House Bill 111, 2001 General Session.

To eliminate duplicate funding in Item 225, House Bill 1, 2001 General Session and House Bill 172, 2001 General Session.

PUBLIC EDUCATION

ITEM 116
To State Board of Education – State Office of Education
From Uniform School Fund 240,000
From Uniform School Fund Restricted – Professional Practices 60,000
Schedule of Programs:
Planning and Project Services 60,000
Instructional Services 240,000

It is the intent of the Legislature that the State Office of Education should not apply for nor accept Federal grants specifically used to fund sexual education, including grants currently received by the State Office of Education, namely, AIDS Education and Prevention.

It is the intent of the Legislature that the discretionary component of the Fiscal Year 2002 compensation package be used by the State Office of Education to fund its most critical salary needs.

ITEM 117
To State Board of Education – State Office of Rehabilitation
From General Fund, One-time ..... (360,000)
From Uniform School Fund 54,000
Schedule of Programs:
Blind and Visually Impaired ..... (306,000)

To eliminate duplicate funding in Item 233 House Bill 1, 2001 General Session and House Bill 84, 2001 General Session.

TRANSPORTATION & ENVIRONMENTAL QUALITY SUBCOMMITTEE
NATIONAL GUARD

ITEM 118
To Utah National Guard – Utah National Guard

It is the intent of the Legislature that the discretionary component of the Fiscal Year 2002 compensation package be used by the Utah National Guard to fund its most critical salary needs.

ENVIRONMENTAL QUALITY

ITEM 119
To Department of Environmental Quality
From General Fund Restricted – Environmental Quality 156,000
From General Fund Restricted – Used Oil Collection Administration 17,000
From General Fund Restricted – WDS – Water Quality 34,600
From Expendable Trust – Petroleum Storage Tank 158,100
From Expendable Trust – Waste Tire Recycling 2,900
Schedule of Programs:
Environmental Response/Remediation . 314,100
Water Quality 34,600
Solid and Hazardous Waste 19,900

It is the intent of the Legislature that the discretionary component of the Fiscal Year 2002 compensation package be used by the Department to fund its most critical salary needs.

TRANSPORTATION

ITEM 120
To Department of Transportation – Support Services
From General Fund, One-time 100,000
From Transportation Fund 225,100
Schedule of Programs:
Administrative Services 325,100

It is the intent of the Legislature that the discretionary component of the Fiscal Year 2002 compensation package be used by the Department to fund its most critical salary needs.

It is the intent of the Legislature that the state share of the Four Corners Interpretive Center of $500,000 be spent only upon the completion of a memorandum of agreement for the Four Corners Interpretive Center for Arizona, Colorado, New Mexico, and Utah, made between the Four Corners Heritage Council which includes participating Utah counties, the Navajo Nation, the Ute Mountain Ute Tribe and the Secretary of Interior.

It is the intent of the Legislature that UTA enter into a Rail Banking/Interim Trail Use Agreement with Union Pacific Railroad for the D&RGW line between Woods Cross and Nye's Crossing for the purpose of a Rails to Trails System and to preserve the corridor and allow for its interim use for recreation

and other appropriate public purposes. It is the intent of the Legislature to direct UTA to seek Federal funding for the aforementioned purpose.

ITEM 121
To Department of Transportation – Engineering Services
From Transportation Fund 129,000
Schedule of Programs:
Safety Operations 129,000

ITEM 122
To Department of Transportation – Construction Management
From Transportation Fund ..... (839,800)
Schedule of Programs:
Construction Management 109,800
State Construction – New ..... (949,600)

ITEM 123
To Department of Transportation – District Management
From Transportation Fund 466,000
Schedule of Programs:
Region 1 466,000

ITEM 124
To Department of Transportation – Equipment Management
From Transportation Fund 19,700
Schedule of Programs:
Maintenance Planning 19,700

ITEM 125
To Department of Transportation – Aeronautics
From Transportation Fund
Restricted – Aeronautics Fund 5,000
Schedule of Programs:
Administration 5,000

Section 2. Under the terms and conditions of Section 63-38-3, the following sums of money are appropriated out of money not otherwise appropriated from the funds or fund account indicated for the use and support of certain State departments and agencies for the fiscal year beginning July 1, 2000 and ending June 30, 2001.

LEGISLATURE

ITEM 126
To Legislature – Senate
From General Fund 7,700
Schedule of Programs:
Administration 7,700

To implement the provisions of House Joint Resolution 7, 2001 General Session.

ITEM 127
To Legislature – House of Representatives
From General Fund 9,800
Schedule of Programs:
Administration 9,800

To implement the provisions of House Joint Resolution 7, 2001 General Session.

EXECUTIVE OFFICES & CRIMINAL JUSTICE SUBCOMMITTEE
GOVERNOR'S OFFICE

ITEM 128
To Governor's Office
From General Fund ..... (1,000,000)
From Olympic Special Revenue Fund .. 1,000,000

ITEM 129
To Governor's Office – Office of Planning and Budget
From General Fund 1,000,000
Schedule of Programs:
Administration 1,000,000

CORRECTIONS

ITEM 130
To Utah Department of Corrections – Institutional Operations
From General Fund 192,000
Schedule of Programs:
Jail Contracting 192,000

PUBLIC SAFETY

ITEM 131
To Department of Public Safety – Comprehensive Emergency Management
From General Fund Restricted – Environmental Quality 200,000
Schedule of Programs:
Comprehensive Emergency Management 200,000

COMMERCE & REVENUE SUBCOMMITTEE
TAX COMMISSION

ITEM 132
To Utah State Tax Commission – Tax Administration
From Dedicated Credits Revenue 9,000
Schedule of Programs:
Motor Vehicles 9,000

To implement the provisions of House Bill 92, 2001 General Session.

COMMERCE

ITEM 133
To Department of Commerce – Commerce General Regulation
From General Fund ..... (1,200,000)
From Beginning Fund Balances – Commerce Service Fund 1,220,000
<language.ScheduleofProgras:
Committee of Consumer Services 20,000

It is the intent of the Legislature that the $20,000 for the Committee of Consumer Services be nonlapsing.

It is the intent of the Legislature that the physical location of the Committee of Consumer Services be separated from the Division of Public Utilities and the Public Service Commission. It is the intent of the Legislature that this separation be to a different building, or at least, to a different floor if remaining in the same building. This separation is to be completed by January 1, 2002.

ECONOMIC DEVELOPMENT & HUMAN RESOURCES SUBCOMMITTEE
COMMUNITY & ECONOMIC DEVELOPMENT

ITEM 134
To Department of Community & Economic Development - Business and Economic Development
From General Fund Restricted - Industrial Assistance 300,000
Schedule of Programs:
National Development 300,000

The Legislature intends that $300,000 of appropriated funds be used for the Silicon Valley Initiative.

ITEM 135
To Department of Community & Economic Development - State Library
From General Fund 400,000
From State Library Donation Expendable Trust (400,000)

ITEM 136
To Department of Community & Economic Development - Community Development
From General Fund 75,000
Schedule of Programs:
Community Development Administration 75,000

The Legislature intends that $75,000 of appropriated funds go for Memory Grove Restoration.

HEALTH & HUMAN SERVICES SUBCOMMITTEE
HEALTH

ITEM 137
To Department of Health - Epidemiology and Laboratory Services
From General Fund (26,200)
Schedule of Programs:
Laboratory Improvement (26,200)

ITEM 138
To Department of Health - Medical Assistance
From General Fund 26,200
Schedule of Programs:
Utah Medical Assistance Program 26,200

It is the intent of the Legislature that supplemental funds for the Utah Medical Assistance Program be considered nonlapsing.

NATURAL RESOURCES SUBCOMMITTEE
NATURAL RESOURCES

ITEM 139
To Department of Natural Resources - Wildlife Resources

In accordance with Section 63-34-5, the following fees are approved for the services of the Division of Wildlife Resources for FY 2001:
Elk - Resident Antlerless - 60.00
Elk - Resident Control - 20.00
Elk - Nonresident Antlerless - 208.00
Elk - Nonresident Control - 83.00

PUBLIC EDUCATION

ITEM 140
To State Board of Education - State Office of Education
From Uniform School Fund Restricted - Professional Practices 30,000
Schedule of Programs:
Planning and Project Services 30,000

TRANSPORTATION & ENVIRONMENTAL QUALITY SUBCOMMITTEE
NATIONAL GUARD

ITEM 141
To Utah National Guard
From General Fund, One-time 90,600
Schedule of Programs:
Armory Maintenance 90,600

It is the intent of the Legislature that $90,600 for fuel and power is nonlapsing.

Section 3. Section 1 of this act takes effect on July 1, 2001. Section 2 of this act takes effect upon approval by the Governor, or the day following the constitutional time limit of Article VII, Section 8 without the Governor's signature, or in the case of a veto, the date of override.

CHAPTER 323
S. B. 34
Passed February 23, 2001
Approved March 20, 2001
Effective January 1, 2002

INDIVIDUAL INCOME TAX RELIEF FOR LOW-INCOME INDIVIDUALS AND RELATED STATE TAX COMMISSION AMENDMENTS

Sponsor: Lyle W. Hillyard
Millie M. Peterson

This act modifies the Individual Income Tax Act by establishing an income level below which a taxpayer is exempt from paying state individual income taxes. The act amends the authority of the State Tax Commission to prescribe tax tables. This act defines terms, repeals obsolete language, and makes technical changes. This act takes effect for taxable years beginning on or after January 1, 2002.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
59-10-104, as last amended by Chapter 333, Laws of Utah 1996
59-10-105, as last amended by Chapter 213, Laws of Utah 1988
59-10-116, as renumbered and amended by Chapter 2, Laws of Utah 1987

ENACTS:
59-10-104.1, Utah Code Annotated 1953

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

Section 1. Section 59-10-104 is amended to read:

59-10-104. Tax basis -- Rates -- Exemption.

[~~(1) For taxable years beginning on or after January 1, 1996, but beginning before January 1, 1997, a tax is imposed on the state taxable income, as defined in Section 59-10-112, of every resident individual as follows:~~]

[~~(a) For an individual, other than a husband and wife or head of household required to use the tax table under Subsection (1)(b), the tax under this section is imposed in accordance with the following table:~~]

[~~If the state taxable income is:~~	~~The tax is:~~]
[~~Less than or equal to $750~~	~~2.55% of the state taxable income~~]
[~~Greater than $750 but less than or equal to $1,500~~	~~$19, plus 3.5% of state taxable income greater than $750~~]
[~~Greater than $1,500 but less than or equal to $2,250~~	~~$45, plus 4.4% of state taxable income greater than $1,500~~]
[~~Greater than $2,250 but less than or equal to $3,000~~	~~$78, plus 5.35% of state taxable income greater than $2,250~~]
[~~Greater than $3,000 but less than or equal to $3,750~~	~~$119, plus 6% of state taxable income greater than $3,000~~]
[~~Greater than $3,750~~	~~$164, plus 7% of state taxable income greater than $3,750~~]

[~~(b) For a husband and wife filing a single return jointly, or a head of household as defined in Section 2(b), Internal Revenue Code, filing a single return, the tax under this section is imposed in accordance with the following table:~~]

[~~If the state taxable income is:~~	~~The tax is:~~]
[~~Less than or equal to $1,500~~	~~2.55% of the state taxable income~~]
[~~Greater than $1,500 but less than or equal to $3,000~~	~~$38, plus 3.5% of state taxable income greater than $1,500~~]
[~~Greater than $3,000 but less than or equal to $4,500~~	~~$91, plus 4.4% of state taxable income greater than $3,000~~]
[~~Greater than $4,500 but less than or equal to $6,000~~	~~$157, plus 5.35% of state taxable income greater than $4,500~~]
[~~Greater than $6,000 but less than or equal to $7,500~~	~~$237, plus 6% of state taxable income greater than $6,000~~]
[~~Greater than $7,500~~	~~$327, plus 7% of state taxable income greater than $7,500~~]

[~~(2) For~~] (1) Except as provided in Subsection (2), for taxable years beginning on or after January 1, 1997, a tax is imposed on the state taxable income, as defined in Section 59-10-112, of every resident individual as follows:

(a) For an individual, other than a husband and wife or head of household required to use the tax table under Subsection [~~(2)~~] (1)(b), the tax under this section is imposed in accordance with the following table:

If the state taxable income is:	The tax is:
Less than or equal to $750	2.3% of the state taxable income

Greater than $750 but less than or equal to $1,500	$17, plus 3.3% of state taxable income greater than $750
Greater than $1,500 but less than or equal to $2,250	$42, plus 4.2% of state taxable income greater than $1,500
Greater than $2,250 but less than or equal to $3,000	$74, plus 5.2% of state taxable income greater than $2,250
Greater than $3,000 but less than or equal to $3,750	$113, plus 6% of state taxable income greater than $3,000
Greater than $3,750	$158, plus 7% of state taxable income greater than $3,750

(b) For a husband and wife filing a single return jointly, or a head of household as defined in Section 2(b), Internal Revenue Code, filing a single return, the tax under this section is imposed in accordance with the following table:

If the state taxable income is:	The tax is:
Less than or equal to $1,500	2.3% of the state taxable income
Greater than $1,500 but less than or equal to $3,000	$35, plus 3.3% of state taxable income greater than $1,500
Greater than $3,000 but less than or equal to $4,500	$84, plus 4.2% of state taxable income greater than $3,000
Greater than $4,500 but less than or equal to $6,000	$147, plus 5.2% of state taxable income greater than $4,500
Greater than $6,000 but less than or equal to $7,500	$225, plus 6% of state taxable income greater than $6,000
Greater than $7,500	$315, plus 7% of state taxable income greater than $7,500

(2) Subsection (1) does not apply to a resident individual exempt from taxation under Section 59-10-104.1.

Section 2. Section 59-10-104.1 is enacted to read:

59-10-104.1. Exemption from taxation.

(1) For purposes of this section:

(a) "personal exemptions" means the total exemption amount an individual is allowed to claim for the taxable year under Section 151, Internal Revenue Code, for:

(i) the individual;

(ii) the individual's spouse; and

(iii) the individual's dependents; and

(b) "standard deduction":

(i) except as provided in Subsection (1)(b)(ii), means the standard deduction an individual is allowed to claim for the taxable year under Section 63, Internal Revenue Code; and

(ii) notwithstanding Subsection (1)(b)(i), does not include an additional amount allowed under Section 63(f), Internal Revenue Code, for an individual or an individual's spouse who is:

(A) blind; or

(B) 65 years of age or older.

(2) For taxable years beginning on or after January 1, 2002, an individual is exempt from a tax imposed by Section 59-10-104, 59-10-105, or 59-10-116 if the individual's adjusted gross income on the individual's federal individual income tax return for the taxable year is less than or equal to the sum of the individual's:

(a) personal exemptions for that taxable year; and

(b) standard deduction for that taxable year.

Section 3. Section 59-10-105 is amended to read:

59-10-105. Optional tax -- Calculation -- Commission authority to prescribed tax tables -- Exemption.

[~~In lieu of the tax imposed under Section 59-10-104 there is hereby imposed~~]

(1) (a) Except as provided in Subsection (4), for [~~each~~] taxable [~~year~~] years beginning on or after [~~December 31, 1972~~] January 1, 2002, if the commission prescribes state individual income tax tables in accordance with Subsection (2), a tax is imposed as provided in this section on the state taxable income of [~~every~~] an individual who elects to compute [~~his~~] the individual's income tax in accordance with the state individual income tax tables prescribed [~~in Section 3 of the Internal Revenue Code, a tax computed in accordance with the tax tables applicable to such taxable year as prescribed by the commission. Such an electing taxpayer~~] by the commission.

(b) An individual who pays a tax imposed by this section is not subject to the tax imposed by Section 59-10-104.

(2) The commission may prescribe state individual income tax tables:

(a) for a taxable year;

(b) for purposes of computing the tax authorized by this section; and

(c) if the state individual income tax tables are substantially in accordance with Section 3, Internal Revenue Code, except that the commission shall use:

(i) the tax rates and tax brackets provided for in Section 59-10-104;

(ii) state taxable income as defined in Section 59-10-112; and

(iii) any other provision of this chapter necessary to prescribe state individual income tax tables under this section.

(3) An individual electing to compute the individual's income tax in accordance with this section shall use the:

(a) standard deduction as provided in Section 63(c) [~~of the~~], Internal Revenue Code; and [~~the~~]

(b) number and amount of exemptions allowed by Section 151 [~~of the~~], Internal Revenue Code.

(4) This section does not apply to an individual exempt from taxation under Section 59-10-104.1.

Section 4. Section 59-10-116 is amended to read:

59-10-116. Tax on nonresident individual's state taxable income -- Calculation -- Exemption.

(1) For purposes of this section:

(a) "state income tax percentage" means a percentage equal to a nonresident individual's federal adjusted gross income for the taxable year received from Utah sources, as determined under Section 59-10-117, divided by the nonresident individual's total federal adjusted gross income for that taxable year; and

(b) "state taxable income" means the product of a nonresident individual's:

(i) federal taxable income, as defined in Section 59-10-111, with the modifications, subtractions, and adjustments provided for in Section 59-10-114; and

(ii) tax imposed under Section 59-10-104.

[~~A~~] (2) (a) Except as provided in Subsection (3), a tax is [~~hereby~~] imposed as provided in this section on the state taxable income[~~, as defined in Sections 59-10-111 and 59-10-112, of every~~] calculated under this section of a nonresident individual [~~in accordance with the schedules in Section 59-10-104, but the individual's Utah tax shall be only the portion of the resident tax so calculated as the individual's federal adjusted gross income received from Utah sources (determined under Section 59-10-117) bears to the individual's total federal adjusted gross income for the same taxable year~~].

(b) The tax under this section shall be calculated by multiplying the nonresident individual's state taxable income by the nonresident individual's state income tax percentage.

(3) This section does not apply to a nonresident individual exempt from taxation under Section 59-10-104.1.

Section 5. Effective date.

This act takes effect for taxable years beginning on or after January 1, 2002.

CHAPTER 324
S. B. 36
Passed February 26, 2001
Approved March 20, 2001
Effective April 30, 2001
(Retrospective operation to January 1, 2001)

INDIVIDUAL INCOME TAX - BRACKET ADJUSTMENTS

Sponsor: John L. Valentine
Lyle W. Hillyard
Millie M. Peterson
Howard A. Stephenson

This act modifies the Individual Income Tax Act by repealing obsolete language, making adjustments to the individual income tax brackets and amounts of tax, and making technical changes. This act has retrospective operation for taxable years beginning on or after January 1, 2001.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
59-10-104, as last amended by Chapter 333, Laws of Utah 1996

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

Section 1. Section 59-10-104 is amended to read:

59-10-104. Tax basis -- Rates.

[~~(1) For taxable years beginning on or after January 1, 1996, but beginning before January 1, 1997, a tax is imposed on the state taxable income, as defined in Section 59-10-112, of every resident individual as follows:~~]

[~~(a) For an individual, other than a husband and wife or head of household required to use the tax table under Subsection (1)(b), the tax under this section is imposed in accordance with the following table:~~]

[~~If the state taxable income is:~~	~~The tax is:~~]
[~~Less than or equal to $750~~	~~2.55% of the state taxable income~~]
[~~Greater than $750 but less than or equal to $1,500~~	~~$19, plus 3.5% of state taxable income greater than $750~~]
[~~Greater than $1,500 but less than or equal to $2,250~~	~~$45, plus 4.4% of state taxable income greater than $1,500~~]
[~~Greater than $2,250 but less than or equal to $3,000~~	~~$78, plus 5.35% of state taxable income greater than $2,250~~]
[~~Greater than $3,000 but less than or equal to $3,750~~	~~$119, plus 6% of state taxable income greater than $3,000~~]
[~~Greater than $3,750~~	~~$164, plus 7% of state taxable income greater than $3,750~~]

[~~(b) For a husband and wife filing a single return jointly, or a head of household as defined in Section 2(b), Internal Revenue Code, filing a single return, the tax under this section is imposed in accordance with the following table:~~]

[~~If the state taxable income is:~~	~~The tax is:~~]
[~~Less than or equal to $1,500~~	~~2.55% of the state taxable income~~]
[~~Greater than $1,500 but less than or equal to $3,000~~	~~$38, plus 3.5% of state taxable income greater than $1,500~~]
[~~Greater than $3,000 but less than or equal to $4,500~~	~~$91, plus 4.4% of state taxable income greater than $3,000~~]
[~~Greater than $4,500 but less than or equal to $6,000~~	~~$157, plus 5.35% of state taxable income greater than $4,500~~]
[~~Greater than $6,000 but less than or equal to $7,500~~	~~$237, plus 6% of state taxable income greater than $6,000~~]
[~~Greater than $7,500~~	~~$327, plus 7% of state taxable income greater than $7,500~~]

[~~(2)~~] (1) For taxable years beginning on or after January 1, [~~1997~~] 2001, a tax is imposed on the state taxable income, as defined in Section 59-10-112, of every resident individual as [~~follows:~~] provided in this section.

[~~(a)~~] (2) For an individual, other than a husband and wife or head of household required to use the tax table under Subsection [~~(2)(b)~~] (3), the tax under this section is imposed in accordance with the following table:

If the state taxable income is:	The tax is:
Less than or equal to [~~$750~~] $863	2.3% of the state taxable income
Greater than [~~$750~~] $863	[~~$17~~] $20, plus 3.3%

but less than or equal to [~~$1,500~~] $1,726	of state taxable income greater than [~~$750~~] $863
Greater than [~~$1,500~~] $1,726 but less than or equal to [~~$2,250~~] $2,588	[~~$42~~] $48, plus 4.2% of state taxable income greater than [~~$1,500~~] $1,726
Greater than [~~$2,250~~] $2,588 but less than or equal to [~~$3,000~~] $3,450	[~~$74~~] $85, plus 5.2% of state taxable income greater than [~~$2,250~~] $2,588
Greater than [~~$3,000~~] $3,450 but less than or equal to $[~~3,750~~] $4,313	[~~$113~~] $129, plus 6% of state taxable income greater than [~~$3,000~~] $3,450
Greater than [~~$3,750~~] $4,313	[~~$158~~] $181, plus 7% of state taxable income greater than [~~$3,750~~] $4,313

[~~(b)~~] (3) For a husband and wife filing a single return jointly, or a head of household as defined in Section 2(b), Internal Revenue Code, filing a single return, the tax under this section is imposed in accordance with the following table:

If the state taxable income is:	The tax is:
Less than or equal to [~~$1,500~~] $1,726	2.3% of the state taxable income
Greater than [~~$1,500~~] $1,726 but less than or equal to [~~$3,000~~] $3,450	[~~$35~~] $40, plus 3.3% of state taxable income greater than [~~$1,500~~] $1,726
Greater than [~~$3,000~~] $3,450 but less than or equal to [~~$4,500~~] $5,176	[~~$84~~] $97, plus 4.2% of state taxable income greater than [~~$3,000~~] $3,450
Greater than [~~$4,500~~] $5,176 but less than or equal [~~$6,000~~] $6,900	[~~$147~~] $169, plus 5.2% of state to greater than [~~$4,500~~] $5,176 taxable income
Greater than [~~$6,000~~] $6,900 but less than or equal to [~~$7,500~~] $8,626	[~~$225~~] $259, plus 6% of state taxable income greater than [~~$6,000~~] $6,900
Greater than [~~$7,500~~] $8,626	[~~$315~~] $362, plus 7% of state taxable income greater than [~~$7,500~~] $8,626

Section 2. Retrospective operation.

This act has retrospective operation for taxable years beginning on or after January 1, 2001.

CHAPTER 325
S. B. 58
Passed February 26, 2001
Approved March 20, 2001
Effective July 1, 2001

REPEAL OF NURSING FACILITIES ASSESSMENT

Sponsor: Peter C. Knudson

This act repeals the Nursing Facility Assessment Act. This act appropriates for the fiscal year 2001-02, $1,300,000 from the Nursing Facilities Account to the University of Utah Health Science Center. This act makes conforming and technical amendments. This act coordinates appropriations. The act takes effect July 1, 2001.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
26-1-30, as last amended by Chapter 229, Laws of Utah 2000

REPEALS:
26-35-101, as enacted by Chapter 170, Laws of Utah 1992
26-35-102, as enacted by Chapter 170, Laws of Utah 1992
26-35-103, as last amended by Chapter 209, Laws of Utah 1997
26-35-104, as last amended by Chapter 67, Laws of Utah 2000
26-35-105, as enacted by Chapter 170, Laws of Utah 1992
26-35-106, as enacted by Chapter 170, Laws of Utah 1992

This act enacts uncodified material.

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

Section 1. Section 26-1-30 is amended to read:

26-1-30. Powers and duties of department.

(1) The department shall:

(a) enter into cooperative agreements with the Department of Environmental Quality to delineate specific responsibilities to assure that assessment and management of risk to human health from the environment are properly administered; and

(b) consult with the Department of Environmental Quality and enter into cooperative agreements, as needed, to ensure efficient use of resources and effective response to potential health and safety threats from the environment, and to prevent gaps in protection from potential risks from the environment to specific individuals or population groups.

(2) In addition to all other powers and duties of the department, it shall have and exercise the following powers and duties:

(a) promote and protect the health and wellness of the people within the state;

(b) establish, maintain, and enforce rules necessary or desirable to carry out the provisions and purposes of this title to promote and protect the public health or to prevent disease and illness;

(c) investigate and control the causes of epidemic, infectious, communicable, and other diseases affecting the public health;

(d) provide for the detection, reporting, prevention, and control of communicable, infectious, acute, chronic, or any other disease or health hazard that the department considers to be dangerous, important, or likely to affect the public health;

(e) collect and report information on causes of injury, sickness, death, and disability and the risk factors that contribute to the causes of injury, sickness, death, and disability within the state;

(f) collect, prepare, publish, and disseminate information to inform the public concerning the health and wellness of the population, specific hazards, and risks that may affect the health and wellness of the population and specific activities which may promote and protect the health and wellness of the population;

(g) establish and operate programs necessary or desirable for the promotion or protection of the public health and the control of disease or which may be necessary to ameliorate the major causes of injury, sickness, death, and disability in the state, except that the programs shall not be established if adequate programs exist in the private sector;

(h) establish, maintain, and enforce isolation and quarantine, and for this purpose only, exercise physical control over property and individuals as the department finds necessary for the protection of the public health;

(i) close theaters, schools, and other public places and forbid gatherings of people when necessary to protect the public health;

(j) abate nuisances when necessary to eliminate sources of filth and infectious and communicable diseases affecting the public health;

(k) make necessary sanitary and health investigations and inspections in cooperation with local health departments as to any matters affecting the public health;

(l) establish laboratory services necessary to support public health programs and medical services in the state;

(m) establish and enforce standards for laboratory services which are provided by any laboratory in the state when the purpose of the services is to protect the public health;

(n) cooperate with the Labor Commission to conduct studies of occupational health hazards and occupational diseases arising in and out of employment in industry, and make recommendations for elimination or reduction of the hazards;

(o) cooperate with the local health departments, the Department of Corrections, the Administrative

Office of the Courts, the Division of Youth Corrections, and the Crime Victims Reparations Board to conduct testing for HIV infection of convicted sexual offenders and any victims of a sexual offense;

(p) investigate the cause of maternal and infant mortality;

(q) establish, maintain, and enforce a procedure requiring the blood of adult pedestrians and drivers of motor vehicles killed in highway accidents be examined for the presence and concentration of alcohol;

(r) provide the commissioner of public safety with monthly statistics reflecting the results of the examinations provided for in Subsection (2)(q) and provide safeguards so that information derived from the examinations is not used for a purpose other than the compilation of statistics authorized in this Subsection (2)(r);

(s) establish qualifications for individuals permitted to draw blood pursuant to Section 41-6-44.10, and to issue permits to individuals it finds qualified, which permits may be terminated or revoked by the department;

(t) establish a uniform public health program throughout the state which includes continuous service, employment of qualified employees, and a basic program of disease control, vital and health statistics, sanitation, public health nursing, and other preventive health programs necessary or desirable for the protection of public health;

(u) adopt rules and enforce minimum sanitary standards for the operation and maintenance of:

(i) orphanages;

(ii) boarding homes;

(iii) summer camps for children;

(iv) lodging houses;

(v) hotels;

(vi) restaurants and all other places where food is handled for commercial purposes, sold, or served to the public;

(vii) tourist and trailer camps;

(viii) service stations;

(ix) public conveyances and stations;

(x) public and private schools;

(xi) factories;

(xii) private sanatoria;

(xiii) barber shops;

(xiv) beauty shops;

(xv) physicians' offices;

(xvi) dentists' offices;

(xvii) workshops;

(xviii) industrial, labor, or construction camps;

(xix) recreational resorts and camps;

(xx) swimming pools, public baths, and bathing beaches;

(xxi) state, county, or municipal institutions, including hospitals and other buildings, centers, and places used for public gatherings; and

(xxii) of any other facilities in public buildings and on public grounds;

(v) conduct health planning for the state;

(w) monitor the costs of health care in the state and foster price competition in the health care delivery system;

(x) adopt rules for the licensure of health facilities within the state pursuant to Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act; and

[~~(y) serve as the collecting agent, on behalf of the state, for the nursing facility assessment fee imposed under Title 26, Chapter 35, Nursing Facility Assessment Act, and the provider assessment imposed under Chapter 40, Utah Children's Health Insurance Act, and adopt rules for the enforcement and administration of the assessments consistent with Chapters 35 and 40;~~]

[~~(z) monitor and report to the Health Policy Commission created in Title 63C, Chapter 3, Health Policy Commission, on the development of managed health care plans in rural areas of the state, including the effect of the managed health care plans on costs, access, and availability of providers located in the rural communities of the state; and~~]

[~~(aa)~~] (y) license the provision of child care.

Section 2. Repealer.

This act repeals:

Section 26-35-101, Short title.

Section 26-35-102, Legislative findings.

Section 26-35-103, Definitions.

Section 26-35-104, Collection, remittance, and payment of nursing facilities assessment.

Section 26-35-105, Penalties and interest.

Section 26-35-106, Restricted account -- Creation -- Deposits.

Section 3. Appropriation.

(1) There is appropriated from the Nursing Facilities Account within the General Fund for fiscal year 2001-02, $1,300,000 of the funds remaining in the restricted account on June 30, 2001 to the University of Utah Health Science Center.

(2) It is the intent of the Legislature that this appropriation shall be used for expansion of the Area Health Education Center Program established in Section 26-9-3.

(3) Any funds remaining in the Nursing Facilities Account after the disbursement under Subsection (1) on June 30, 2001 shall lapse into the General Fund.

Section 4. Directions to Division of Finance for Appropriation.

If this bill and S.B. 31, Area Health Education Center Amendments, both pass, it is the intent of the Legislature that the Division of Finance appropriate $1,300,000 from the Nursing Facilities Account to the University of Utah Health Service Center as provided in this bill and not appropriate $300,000 from the General Fund as provided in S.B. 31.

Section 5. Effective date.

This act takes effect on July 1, 2001.

CHAPTER 326
S. B. 66
Passed February 23, 2001
Approved March 20, 2001
Effective July 1, 2001

ANIMAL FEEDING OPERATION GRANTS

Sponsor: Leonard M. Blackham

This act modifies the Agriculture Code by authorizing the Soil Conservation Commission to make grants to owners or operators of animal feeding operations for plans or projects to improve manure management or control surface water runoff. The act specifies criteria to be considered in the awarding of the grants and requires the Soil Conservation Commission to make rules. This act appropriates $400,000 from the General Fund for fiscal year 2001-02 to the Department of Agriculture and Food for grants to owners or operators of animal feeding operations. This act takes effect on July 1, 2001.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
4-18-3, as last amended by Chapter 122, Laws of Utah 1992

ENACTS:
4-18-6.5, Utah Code Annotated 1953

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

Section 1. Section 4-18-3 is amended to read:

4-18-3. Definitions.

As used in this chapter:

(1) "Alternate" means a substitute for a district supervisor if the district supervisor cannot attend a meeting.

(2) "Animal feeding operation" means a facility where animals, other than aquatic animals, are stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period. Animals are not considered to be stabled or confined when they are in areas such as pastures or rangeland that sustain crops or forage growth during the entire time the animals are present.

[~~(2)~~] (3) "Commission" means the Soil Conservation Commission created by this chapter.

(4) "Comprehensive nutrient management plan" means a plan that identifies actions or priorities that will be followed to meet clearly defined nutrient management goals at an animal feeding operation.

[~~(3)~~] (5) "District" or "soil conservation district" means a governmental subdivision of this state organized under Section 17A-3-801.

Section 2. Section 4-18-6.5 is enacted to read:

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

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

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

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

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

(ii) the availability of:

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

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

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

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

(3) The commission shall make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, to implement this section.

Section 3. Appropriation.

(1) There is appropriated $400,000 from the General Fund for fiscal year 2001-02 to the Department of Agriculture and Food for grants to owners or operators of animal feeding operations to pay for costs of plans or projects to improve manure management or control surface water runoff.

(2) The money appropriated in Subsection (1) is nonlapsing.

Section 4. Effective date.

This act takes effect on July 1, 2001.

CHAPTER 327
S. B. 71
Passed February 23, 2001
Approved March 20, 2001
Effective April 30, 2001
(Retrospective operation to January 1, 2001)

TAX CREDITS FOR SPECIAL NEEDS ADOPTIONS

Sponsor: Carlene M. Walker

This act modifies provisions of the Revenue and Taxation Code and the Utah Human Services Code relating to Child and Family Services. The act provides a tax credit to any taxpayer who adopts a child who has a special need. This act has retrospective operation for taxable years beginning on or after January 1, 2001.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
62A-4a-607, as last amended by Chapters 39 and 208, Laws of Utah 2000

ENACTS:
59-10-133, Utah Code Annotated 1953

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

Section 1. Section 59-10-133 is enacted to read:

59-10-133. Tax credits for special needs adoptions.

(1) For purposes of this section, a "child who has a special need" means a child for whom permanent custody has been awarded to the Utah Division of Child and Family Services, who cannot or should not be returned to the home of the child's biological parents, and who meets at least one of the following conditions:

(a) the child is five years of age or older;

(b) the child is under the age of 18 with a physical, emotional, or mental disability; or

(c) the child is a member of a sibling group placed together for adoption.

(2) For taxable years beginning on or after January 1, 2001, a taxpayer who adopts a child who has a special need may claim on the taxpayer's individual income tax return for the taxable year a refundable credit of $1,000 against taxes otherwise due under this chapter for:

(a) adoptions for which a court issues an order granting the adoption on or after January 1, 2001;

(b) the taxable year during which a court issues an order granting the adoption; and

(c) each child who has a special need whom the taxpayer adopts.

(3) The credit provided for in this section may not be carried forward or carried back.

(4) Nothing in this section shall affect the ability of any taxpayer who adopts a child who has a special need to receive financial aid for adoption expenses under Section 62A-4a-108.

Section 2. Section 62A-4a-607 is amended to read:

62A-4a-607. Promotion of adoption -- Agency notice to potential adoptive parents.

(1) (a) The division and all child placing agencies licensed under this part shall promote adoption when that is a possible and appropriate alternative for a child. Specifically, in accordance with Section 62A-4a-205.6, the division shall actively promote the adoption of all children in its custody who have a final plan for termination of parental rights pursuant to Section 78-3a-312 or a primary permanency goal of adoption.

(b) Beginning May 1, 2000, the division may not place a child for adoption, either temporarily or permanently, with any individual or individuals who do not qualify for adoptive placement pursuant to the requirements of Sections 78-30-1, 78-30-1.5, and 78-30-9.

(2) The division shall obtain or conduct research of prior adoptive families to determine what families may do to be successful with their adoptive children and shall make this research available to potential adoptive parents.

(3) (a) A child placing agency licensed under this part shall inform each potential adoptive parent with whom it is working that:

(i) children in the custody of the state are available for adoption;

(ii) Medicaid coverage for medical, dental, and mental health services may be available for these children;

(iii) tax benefits, including the tax credit provided for in Section 59-10-133, and financial assistance may be available to defray the costs of adopting these children;

(iv) training and ongoing support may be available to the adoptive parents of these children; and

(v) information about individual children may be obtained by contacting the division's offices or its Internet site as explained by the child placing agency.

(b) A child placing agency shall:

(i) provide the notice required by Subsection (3)(a) at the earliest possible opportunity; and

(ii) simultaneously distribute a copy of the pamphlet prepared by the division in accordance with Subsection (3)(d).

(c) As a condition of licensure, the child placing agency shall certify to the Office of Licensing at the time of license renewal that it has complied with the provisions of this section.

(d) Before July 1, 2000, the division shall:

(i) prepare a pamphlet that explains the information that is required by Subsection (3)(a); and

(ii) regularly distribute copies of the pamphlet described in Subsection (3)(d)(i) to child placing agencies.

(e) The division shall respond to any inquiry made as a result of the notice provided in Subsection (3)(a).

Section 3. Retrospective operation.

This act has retrospective operation for taxable years beginning on or after January 1, 2001.

CHAPTER 328
S. B. 112
Passed February 23, 2001
Approved March 20, 2001
Effective July 1, 2001

APPROPRIATION FOR ASSISTIVE TECHNOLOGY

Sponsor: Peter C. Knudson

This act provides an ongoing appropriation of $75,000 from the Uniform School Fund for fiscal year 2001-02 to the State Board of Education to be distributed to the State Office of Rehabilitation to purchase assistive technology devices and services. This act provides an effective date.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
53A-24-110.7, as last amended by Chapter 308, Laws of Utah 2000

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

Section 1. Section 53A-24-110.7 is amended to read:

53A-24-110.7. Appropriation for assistive technology devices and services.

(1) [~~There~~] Subject to future budget constraints, there is appropriated, as an ongoing appropriation, from the Uniform School Fund for fiscal year [~~2000-01~~] 2001-02, [~~$150,000 and from the General Fund for fiscal year 2000-01, $150,000~~] $75,000 to the State Board of Education to be distributed to the State Office of Rehabilitation to purchase assistive technology devices and services in accordance with rules made by the State Board of Education.

(2) The office shall use the appropriation to provide:

(a) assistance to individuals with disabilities in acquiring, customizing, and learning to use and maintain assistive technology to facilitate their independence; and

(b) support through Independent Living Centers and other similar programs to facilitate interagency cooperation in providing assistive technology devices and services.

Section 2. Effective date.

This act takes effect on July 1, 2001.

CHAPTER 329
S. B. 120
Passed February 23, 2001
Approved March 20, 2001
Effective July 1, 2001

DISTANCE EDUCATION DOCTORATE PROGRAM

Sponsor: Beverly Ann Evans

This act provides for a Distance Education Doctorate Program to be offered by the state system of higher education through Utah State University over the UEN-EDNET system. The act has a $195,000 appropriation and an effective date of July 1, 2001.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:
53B-18-1001, Utah Code Annotated 1953

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

Section 1. Section 53B-18-1001 is enacted to read:
Part 10. Distance Education Doctorate Program

53B-18-1001. (Codified as 53B-18-901) Distance Education Doctorate Program.

(1) The Legislature finds that:

(a) many Utah public education administrators are nearing the end of their careers and will retire early in the 21st Century;

(b) Utah public schools have many mid-career faculty that could become the next wave of administrators if they were prepared with a doctorate in education degree that emphasized curriculum and instruction;

(c) each of Utah's community colleges have several faculty that need a terminal degree and further knowledge in curriculum development and state-of-the-art instructional methodology, and these individuals, being mid-career, find it difficult to relocate to a college campus for a traditional program; and

(d) the state and its students will be better served if faculty and administrators are more knowledgeable about the development of curriculum and the latest instructional methodology based on documented research.

(2) Therefore, Utah State University shall establish a Distance Education Doctorate Program to accommodate public education administrators and community college faculty and administration.

(3) The program shall include the following components:

(a) the offering of courses for a doctorate degree in education over the UEN-EDNET system established under Title 53B, Chapter 17, Part 1, Educational Telecommunications;

(b) structuring of the program to make it identical to a regular campus program in rigor and course work; and

(c) providing a support system from at least the following five departments at the university:

(i) Elementary Education;

(ii) Secondary Education;

(iii) Business Information Systems and Education;

(iv) Industrial Technology; and

(v) Agricultural Systems Technology and Education.

(4) The university shall augment the program with off-campus summer courses, with those courses eventually being offered over the UEN-EDNET system.

(5) The Legislature shall provide an annual appropriation to fund the program established under this part.

Section 2. Appropriation.

There is appropriated for fiscal year 2001-02, $195,000 in individual income tax revenues to Utah State University to fund the Distance Education Doctorate Program established in Section 53B-18-1001.

Section 3. Effective date.

This act takes effect on July 1, 2001.

CHAPTER 330
S. B. 121
Passed February 28, 2001
Approved March 20, 2001
Effective April 30, 2001
(Exception clause in Section 4)

ACCESS TO HEALTH CARE AND COVERAGE TASK FORCE

Sponsor: Peter C. Knudson

This act creates the Access to Health Care and Coverage Task Force. The act specifies membership, responsibilities, and reporting dates for the task force. The act appropriates $37,000 from the General Fund for fiscal year 2000-01 to fund the task force and repeals the task force on November 30, 2001.

This act enacts uncodified material.

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

Section 1. Access to health care and coverage -- Findings -- Creation -- Membership -- Quorum -- Compensation -- Staff.

(1) There is created the Access to Health Care and Coverage Task Force consisting of the following ten members:

(a) three members of the Senate appointed by the president of the Senate, no more than two of whom may be from the same political party;

(b) five members of the House of Representatives appointed by the speaker of the House of Representatives, no more than three of whom may be from the same political party;

(c) the executive director of the Department of Health or his designee; and

(d) the commissioner of the Department of Insurance or his designee.

(2) (a) The president of the Senate shall designate a member of the Senate appointed under Subsection (1)(a) as a cochair of the task force.

(b) The speaker of the House of Representatives shall designate a member of the House of Representatives appointed under Subsection (1)(b) as a cochair of the task force.

(3) A majority of the members of the task force constitute a quorum. The action of a majority of a quorum constitutes the action of the task force.

(4) (a) Salaries and expenses of the members of the task force who are legislators shall be paid in accordance with Section 36-2-2 and Legislative Joint Rule 15.03.

(b) A member of the task force who is not a legislator may not receive compensation for their work associated with the task force, but may receive per diem and reimbursement for travel expenses incurred as a member of the task force at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(5) The Office of Legislative Research and General Counsel shall provide staff support to the task force.

Section 2. Duties -- Interim report.

(1) The task force shall review and make recommendations on the following:

(a) options for improving access to health care coverage and access to primary care for Utah's uninsured population. Consideration shall be given to options that:

(i) focus attention on those who are most in need;

(ii) strike an appropriate and effective balance between private and public sector approaches; and

(iii) build on existing systems of proven effectiveness;

(b) the integration of information and analysis provided by the Department of Health, the United States Health Care Financing Administration, the United States Office of Disease Prevention and Health Promotion, the Health Resources and Services Administration, and other relevant agencies regarding:

(i) the number of Utahns who are currently uninsured and who could obtain coverage under each option;

(ii) federal waivers and other options available to states for expanding health coverage and increasing access to primary care;

(iii) costs and potential savings associated with each option, and mechanisms for financing each option;

(iv) the effect of each option on cost-shifting, uncompensated care, and existing programs and systems;

(v) the expected outcomes and costs to individuals and the state of not expanding health coverage and access to primary care; and

(vi) the state's progress in implementing the health care access goals of the Federal Healthy People 2010 Program.

(2) In reviewing and making its recommendations, the task force shall receive input from stake holders in the health care system. A final report, including any proposed legislation, shall be presented to the Health and Human Services Interim Committee before November 30, 2001.

Section 3. Appropriation.

There is appropriated from the General Fund for fiscal year 2000-01:

(1) $4,500 to the Senate to pay for the compensation and expenses of senators on the task force;

(2) $7,500 to the House of Representatives to pay for the compensation and expenses of representatives on the task force; and

(3) $25,000 to the Office of Legislative Research and General Counsel to pay for staffing the task force.

Section 4. Repeal date.

This act is repealed November 30, 2001.

CHAPTER 331
S. B. 123
Passed February 23, 2001
Approved March 20, 2001
Effective July 1, 2001

ASSOCIATIONS OF GOVERNMENTS APPROPRIATION

Sponsor: Mike Dmitrich

This act appropriates $160,000 from the General Fund for fiscal year 2001-02 only to the Department of Community and Economic Development for distribution in equal amounts to each of the seven associations of governments. The act takes effect on July 1, 2001.

This act enacts uncodified material.

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

Section 1. Legislative intent.

The Legislature acknowledges the valuable contributions made by the seven associations of governments within the fabric of government in the state. It is the intent of the Legislature, in making this appropriation, to assist these associations of governments in fulfilling their statewide public purpose of bringing together local government entities located within the various regions of the state, as defined by the associations of governments, for the purposes of planning and other cooperative efforts for the benefit of the citizens of the state.

Section 2. Appropriation.

There is appropriated from the General Fund for fiscal year 2001-02 only, $160,000 to the Department of Community and Economic Development to be divided evenly among and distributed to:

(1) the Bear River Association of Governments;

(2) the Wasatch Front Regional Council;

(3) the Mountainland Association of Governments;

(4) the Six County Association of Governments;

(5) the Five County Association of Governments;

(6) the Uintah Basin Association of Governments; and

(7) the Southeastern Utah Association of Governments.

Section 3. Effective date.

This act takes effect on July 1, 2001.

CHAPTER 332
S. B. 171
Passed February 27, 2001
Approved March 20, 2001
Effective July 1, 2001

STATE RETIREMENT FORMULA CHANGES

Sponsor: John L. Valentine

This act modifies the Utah State Retirement Act to authorize an additional retirement benefit to certain retirees. This act takes effect on July 1, 2001.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
49-1-617, as enacted by Chapter 353, Laws of Utah 2000

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

Section 1. Section 49-1-617 is amended to read:

49-1-617. Payment of additional retirement benefit -- Rules for implementation.

(1) (a) [~~If the Legislature in an annual appropriations act with accompanying intent language specifically authorizes this use, the~~] The board shall provide an additional benefit to retirees under Title 49, Chapters 2, Public Employees' Retirement Act, and 3, Public Employees' Noncontributory Retirement Act, whose retirement allowance, when calculated, amounts to less than the allowance provided by using at least 1.25% per year of service factor for all years of service rendered prior to July 1, 1967.

(b) The benefit provided in Subsection (1)(a) shall be calculated by the board using a formula based upon actuarial assumptions and principles that results in a benefit that is as close as reasonably possible to 1.25% per year of service for each retiree for service rendered prior to July 1, 1967.

[~~(2) Upon receipt of the legislative appropriation and after~~]

(2) After consultation with representatives of those retirees under Title 49, Chapters 2 and 3, the board shall adopt standards and rules governing the distribution of [~~the money~~] any additional retirement benefit under this section.

Section 2. Effective date.

This act takes effect on July 1, 2001.

CHAPTER 333
S. B. 225
Passed February 23, 2001
Approved March 20, 2001
Effective July 1, 2001

APPROPRIATION TO MEMORY GROVE FOUNDATION

Sponsor: Pete Suazo

This act appropriates $50,000 from the General Fund to the Department of Community and Economic Development for Memory Grove projects. This act takes effect July 1, 2001.

This act enacts uncodified material.

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

Section 1. Appropriation.

(1) Because Memory Grove is a valuable contributor to the cultural and historic enrichment of the people of Utah, there is appropriated for fiscal year 2001-02 only, $50,000 from the General Fund to the Department of Community and Economic Development.

(2) It is the intent of the Legislature that the Department of Community and Economic Development distribute the $50,000 to the Memory Grove Foundation for restoration and construction projects.

Section 2. Effective date.

This act takes effect on July 1, 2001.

CHAPTER 334
H. B. 1
Passed February 27, 2001
Approved March 20, 2001
Effective July 1, 2001

APPROPRIATIONS ACT

Sponsor: Jeff Alexander

This act relates to appropriations. The act provides appropriations for the support of state government for the fiscal year beginning July 1, 2001 and ending June 30, 2002. The act provides intent language governing expenditures, and approves fees. This act takes effect on July 1, 2001.

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

Section 1. Under the terms and conditions of Section 63-38-3, the following sums of money are appropriated out of money not otherwise appropriated from the funds or fund accounts indicated for the use and support of the government of the State of Utah for the fiscal year indicated.

LEGISLATURE

ITEM 1
To Legislature – Senate
From General Fund 1,661,900
Schedule of Programs:
Administration 1,606,200
Dues to National Conference of State Legislatures 30,800
Dues to Council of State Governments .. 24,900

ITEM 2
To Legislature – House of Representatives
From General Fund 2,721,800
Schedule of Programs:
Administration 2,610,400
Dues to National Conference of State Legislatures 61,600
Dues to Council of State Governments .. 49,800

ITEM 3
To Legislature – Office of the Legislative Auditor General
From General Fund 1,877,300
From Beginning Nonlapsing Appropriation Balances 194,700
From Closing Nonlapsing Appropriation Balances ..... (70,500)
Schedule of Programs:
Administration 2,001,500

ITEM 4
To Legislature – Office of the Legislative Fiscal Analyst
From General Fund 1,982,300
From Beginning Nonlapsing Appropriation Balances 695,200
From Closing Nonlapsing Appropriation Balances ..... (670,700)
Schedule of Programs:
Administration and Research 2,006,800

ITEM 5
To Legislature – Legislative Printing
From General Fund 532,000
From Dedicated Credits Revenue 319,600
Schedule of Programs:
Administration 851,600

ITEM 6
To Legislature – Office of Legislative Research and General Counsel
From General Fund 4,355,200
Schedule of Programs:
Administration 4,355,200

ITEM 7
To Legislature – Office of Legislative Research and General Counsel – Tax Review Commission
From General Fund 50,000
From Beginning Nonlapsing Appropriation Balances 4,700
From Closing Nonlapsing Appropriation Balances ..... (4,700)
Schedule of Programs:
Tax Review Commission 50,000

ITEM 8
To Legislature – Office of Legislative Research and General Counsel – Constitutional Revision Commission
From General Fund 55,000
From Beginning Nonlapsing Appropriation Balances 4,700
From Closing Nonlapsing Appropriation Balances ..... (4,700)
Schedule of Programs:
Constitutional Revision Commission 55,000

EXECUTIVE OFFICES & CRIMINAL JUSTICE SUBCOMMITTEE
GOVERNOR'S OFFICE

ITEM 9
To Governor's Office
From General Fund 2,306,300
From Dedicated Credits Revenue 67,900
From Revenue Transfers – Environmental Quality 4,000
From Revenue Transfers – Health 6,000
From Revenue Transfers – Human Services 6,000
From Revenue Transfers – Natural Resources 3,000
From Revenue Transfers – Workforce Services 4,000
Schedule of Programs:
Administration 1,786,000
Governor's Residence 267,900
Washington Office 232,900
Task Forces 60,900
Constitutional Defense Council 49,500

It is the intent of the Legislature that funding for the Governor's Office be nonlapsing.

ITEM 10
To Governor's Office – Elections
From General Fund 672,500
Schedule of Programs:
Elections 672,500

It is the intent of the Legislature that funding for Elections be nonlapsing.

ITEM 11
To Governor's Office - Commission for Women and Families
From General Fund 82,100
Schedule of Programs:
Commission for Women and Families ... 82,100

It is the intent of the Legislature that funding for the Commission on Women and Families be nonlapsing.

ITEM 12
To Governor's Office - Emergency Fund

It is the intent of the Legislature that funding for the Emergency Fund be nonlapsing.

ITEM 13
To Governor's Office - RS-2477 Rights of Way
From General Fund Restricted - Constitutional Defense 2,000,000
Schedule of Programs:
RS-2477 Rights of Way 2,000,000

It is the intent of the Legislature that funding for R.S. 2477 Rights of Way be nonlapsing.

It is the intent of the Legislature that funds expended from the R.S. 2477 Fund be used for litigation designed to quiet title to existing rights of way established before 1976 under R.S. 2477 guidelines. It is further the intent of the Legislature that the Governor or his designee shall present a report to the Legislature during each General Session detailing activities funded within this line item.

ITEM 14
To Governor's Office - Office of Planning and Budget
From General Fund 3,957,000
From Federal Funds 100,000
From Dedicated Credits Revenue 295,100
From Olympic Special Revenue 352,100
From Revenue Transfers - Administrative Services 11,000
From Revenue Transfers - Commerce Department 2,000
From Revenue Transfers - Commission on Criminal and Juvenile Justice 10,000
From Revenue Transfers - Comprehensive Emergency Management 25,000
From Revenue Transfers - Department of Corrections 9,000
From Revenue Transfers - Department of Community and Economic Development 302,000
From Revenue Transfers - Environmental Quality 2,000
From Revenue Transfers - Health 14,000
From Revenue Transfers - Department of Human Resource Management 1,000
From Revenue Transfers - Human Services 28,000
From Revenue Transfers - Insurance Department 2,000
From Revenue Transfers - Natural Resources 4,000
From Revenue Transfers - Public Safety .. 10,000
From Revenue Transfers - Transportation 12,000
From Revenue Transfers - Trust Lands Administration 25,000
From Revenue Transfers - Utah State Tax Commission 17,000
From Revenue Transfers - Workforce Services 38,000
Schedule of Programs:
Science and Technology 248,100
Administration 935,100
Planning and Budget Analysis 793,100
Demographic and Economic Analysis .. 832,500
Resource Planning and Legal Review .. 401,200
Information Technology 1,010,000
State and Local Planning 996,200

It is the intent of the Legislature that funding for the Office of Planning and Budget be nonlapsing.

ITEM 15
To Governor's Office - Commission on Criminal and Juvenile Justice
From General Fund 1,684,400
From Federal Funds 14,711,900
From Dedicated Credits Revenue 65,000
From Crime Victims Reparation Trust ... 802,700
Schedule of Programs:
CCJJ Commission 11,685,100
Crime Victim Reparations 4,519,500
Extraditions 294,400
Substance Abuse and Anti-violence ... 259,400
Sentencing Commission 210,600
Crime Prevention Grant 295,000

It is the intent of the Legislature that funding for the Commission on Criminal and Juvenile Justice be nonlapsing.

STATE AUDITOR

ITEM 16
To State Auditor
From General Fund 2,822,900
From Dedicated Credits Revenue 611,900
Schedule of Programs:
Administration 273,500
Auditing 2,773,000
State and Local Government 388,300

It is the intent of the Legislature that funding for the State Auditor be nonlapsing.

STATE TREASURER

ITEM 17
To State Treasurer
From General Fund 831,900
From Dedicated Credits Revenue 188,100
From Unclaimed Property Trust 1,145,100
Schedule of Programs:
Treasury and Investment 872,900
Unclaimed Property 1,145,100
Money Management Council 80,800
Financial Assistance 66,300

It is the intent of the Legislature that funding for the State Treasurer be nonlapsing.

ATTORNEY GENERAL

ITEM 18
To Attorney General
From General Fund 13,281,600
From Federal Funds 949,800
From Dedicated Credits Revenue 9,751,700
From General Fund Restricted –
Commerce Service Fund 427,700
From Revenue Transfers 55,000
From Revenue Transfers – Commission
on Criminal and Juvenile Justice 64,700
Schedule of Programs:
State Counsel 14,396,800
Public Advocacy 6,932,500
Children's Justice 928,600
Water Rights Adjudication 153,300
Contract Attorneys 300,000
Administration 1,579,100
Financial Crime 240,200

It is the intent of the Legislature that funding for the Attorney General's Office be nonlapsing.

ITEM 19
To Attorney General – Child Protection
From General Fund 2,998,900
From Dedicated Credits Revenue 1,346,400
Schedule of Programs:
Child Protection 4,345,300

It is the intent of the Legislature that funding for Child Protection be nonlapsing.

It is the intent of the Legislature that the Division of Services for People with Disabilities, through the Attorney General's Office, continue to seek dismissal of the Lisa P. Settlement agreement at the earliest possible date. It is also the intent of the Legislature that the Division and the Attorney General's Office provide a written report on the status of the Lisa P. agreemen t during each 2001 interim meeting of the Health and Human Services Interim Committee, beginning in April, until the settlement agreement is finally dismissed. It is also the intent of the Legislature that the Division and the Attorney General's Office report on status of the Lisa P. Settlement agreement to the 2002 Health and Human Services Appropriations Subcommittee and the Executive Offices and Criminal Justice Appropriations Subcommittee at their next meeting.

ITEM 20
To Attorney General – Children's Justice Centers
From General Fund 2,134,500
From Federal Funds 122,000
Schedule of Programs:
Children's Justice Centers 2,256,500

It is the intent of the Legislature that funding for Children's Justice Centers be nonlapsing.

ITEM 21
To Attorney General – Antitrust Prosecution
From Antitrust Revolving 163,300
Schedule of Programs:
Anti–Trust Prosecution 163,300

It is the intent of the Legislature that funding for Antitrust Prosecution be nonlapsing.

ITEM 22
To Attorney General – Prosecution Council
From General Fund Restricted –
Public Safety Support 485,200
From Revenue Transfers –
Commission on Criminal and
Juvenile Justice 37,200
Schedule of Programs:
Prosecution Council 522,400

It is the intent of the Legislature that funding for the Prosecution Council be nonlapsing.

ITEM 23
To Attorney General – Domestic Violence
From General Fund Restricted –
Public Safety Support 76,700
Schedule of Programs:
Domestic Violence 76,700

It is the intent of the Legislature that funding for Domestic Violence be nonlapsing.

CORRECTIONS

ITEM 24
To Utah Department of Corrections –
Corrections Administration
From General Fund 8,413,600
From Dedicated Credits Revenue 32,200
Schedule of Programs:
Executive Director 2,299,100
Administrative Services 5,389,800
Training 756,900

It is the intent of the Legislature that funds for FY 2002 for the Department be non–lapsing.

ITEM 25
To Utah Department of Corrections –
Field Operations
From General Fund 35,538,300
From Federal Funds 400
From Dedicated Credits Revenue 2,479,300
From General Fund Restricted –
Tobacco Settlement Account 81,700
Schedule of Programs:
Administration 961,000
Adult Probation and Parole 27,688,900
Community Corrections Centers 9,449,800

It is the intent of the Legislature that funds for FY 2002 for Department be non–lapsing.

ITEM 26
To Utah Department of Corrections –
Institutional Operations
From General Fund 114,394,800
From Federal Funds 2,235,200
From Dedicated Credits Revenue 890,400
Schedule of Programs:
DIO Administration 5,123,900
Draper Facility 54,683,800
Central Utah/Gunnison 26,149,200
Southern Utah/Iron County 1,596,600
Inmate Placement 1,528,800

Transition 10,929,800
Jail Contracting 15,201,200
Support Services 2,307,100

It is the intent of the Legislature that funds for the Department for FY 2002 be non-lapsing.

ITEM 27
To Utah Department of Corrections - Draper Medical Services
From General Fund 17,272,600
From Federal Funds 11,800
From Dedicated Credits Revenue 159,800
From Revenue Transfers - Commission on Criminal and Juvenile Justice 373,500
From Revenue Transfers - Other Agencies 246,000
Schedule of Programs:
Medical Services 18,063,700

It is the intent of the Legislature that funds for FY 2002 for the Department be non-lapsing.

ITEM 28
To Utah Department of Corrections - Utah Correctional Industries
From Dedicated Credits Revenue 16,127,400
From Closing Nonlapsing Appropriation Balances ..... (50,000)
Schedule of Programs:
Utah Correctional Industries 16,077,400

It is the intent of the Legislature that funds for FY 2002 for the Department be non-lapsing.

It is the intent of the Legislature that the Utah Correctional Industries Board be authorized to approve increases in FTE for the Division where such increases will positively impact employment opportunities for the state and provide benefits to other state programs.

ITEM 29
To Utah Department of Corrections Jail Reimbursement
From General Fund 7,760,600
Schedule of Programs:
Jail Reimbursement 7,760,600

It is the intent of the Legislature that funds for FY 2002 for the Department be non-lapsing.

ISF - CORRECTIONS

ITEM 30
To Utah Department of Corrections - Data Processing - Internal Service Fund
From Dedicated Credits - Intragovernmental Revenue 1,571,700
From Closing Nonlapsing Appropriation Balances 254,800
Schedule of Programs:
ISF - DOC Data Processing 1,826,500
Total FTE - 10 .....
Authorized Capital Outlay - 417,000
Billing Rate - $250 per device per month.

It is the intent of the Legislature that funds for FY 2002 for Department be non-lapsing.

BOARD OF PARDONS AND PAROLE

ITEM 31
To Board of Pardons and Parole
From General Fund 2,601,500
From Dedicated Credits Revenue 2,200
From General Fund Restricted - Tobacco Settlement Account 77,400
Schedule of Programs:
Board Of Pardons and Parole 2,681,100

It is the intent of the Legislature that funds for FY 2002 for the Board be non-lapsing.

YOUTH CORRECTIONS

ITEM 32
To Department of Human Services - Division of Youth Corrections - Services
From General Fund 72,855,800
From Federal Funds 1,873,300
From Dedicated Credits Revenue 2,337,300
From Sale of Fixed Assets 60,100
From Youth Crime Victims Restitution .. 500,000
From Revenue Transfers - Child Nutrition 594,400
From Revenue Transfers - Commission on Criminal and Juvenile Justice 366,800
From Revenue Transfers - Medicaid ... 1,983,500
From Revenue Transfers - Other Funds 10,778,700
From Beginning Nonlapsing Appropriation Balances 400,000
Schedule of Programs:
Administration/Case Management . 10,311,800
Community Alternatives 27,264,900
Institutional Care 35,478,400
Alternatives to Institutional Care .. 13,764,100
Youth Receiving Centers 2,532,000
Out of State Placements 2,398,700

It is the intent of the Legislature that funds for FY 2002 for the Division be non-lapsing.

It is the intent of the Legislature that the Division of Youth Corrections continue to, and wherever possible increase, the utilization of community based alternatives to secure incarceration of youth in the custody of the Division. The Legislature expressly directs the Division to actively pursue additional Community Alternatives and strengthen those which are currently in effect.

ITEM 33
To Department of Human Services - Division of Youth Corrections - Youth Parole Authority
From General Fund 390,800
From Federal Funds 18,200
From Beginning Nonlapsing Appropriation Balances 1,100
Schedule of Programs:
Youth Parole Authority 410,100

It is the intent of the Legislature that funds for FY 2002 for the Authority be non-lapsing.

COURTS

ITEM 34
To Judicial Council/State Court Administrator – Administration
From General Fund 73,836,700
From General Fund, One-time 88,000
From Federal Funds 122,000
From Dedicated Credits Revenue 1,022,000
From General Fund Restricted – Alternative Dispute Resolution 144,400
From General Fund Restricted – Children's Legal Defense 244,400
From General Fund Restricted – Court Reporter Technology 250,000
From General Fund Restricted – Court Trust Interest 300,000
From General Fund Restricted – Non-Judicial Assessment 753,000
From General Fund Restricted – Online Court Assistance 35,000
From General Fund Restricted – Substance Abuse Prevention 348,800
From General Fund Restricted – Tobacco Settlement Account 193,700
From Revenue Transfers – Commission on Criminal and Juvenile Justice 654,300
From Revenue Transfers – Human Services 152,800
From Beginning Nonlapsing Appropriation Balances 251,000
From Closing Nonlapsing Appropriation Balances ..... (185,000)
Schedule of Programs:
Supreme Court 1,989,200
Law Library 515,500
Court of Appeals 2,705,700
Trial Courts 34,393,000
Juvenile Courts 27,315,000
Justice Courts 170,400
Courts Security 2,216,000
Administrative Office 3,250,500
Judicial Education 451,100
Data Processing 4,333,100
Grants Program 871,600

It is the intent of the Legislature that the funds for the Courts be non-lapsing.

It is the intent of the Legislature that for every $50,000 in accumulated fiscal note driven costs to the courts in any given year, that the courts be authorized an additional clerk FTE. These FTE clerk increases are to be included in all subsequent budget submittals under the appropriate appeals, trial, or juvenile court program budget category.

It is the intent of the Legislature that the Utah Substance Abuse and Anti-Violence Council (USAAV), through its Treatment committee, initiate a statewide review and evaluation of Utah's substance abuse treatment programs for criminal justice referrals.

As appropriate, USAAV may contract with research professionals to conduct an in-depth process and outcome evaluation of drug courts and other treatment programs within the Department of Corrections, local county jails, and other treatment settings. Research should a) assess the current demand for treatment and availablility of programs and resources, b) review the programmatic and cost effectiveness of current programs, and c) make recommendations for best practices to maximize treatment availability.

Funding will be provided through current appropriations and federal grants to CCJJ/USAAV and the Division of Substance Abuse. Findings and recommendations will be reported to the Legislature through progress reports submitted to the Judiciary Interim Committee and the Law Enforcement and Criminal Justice Interim Committee during their October 2001 meetings and to the Executive Office and Criminal Justice Joint Appropriations Committee during one of its January 2002 meetings.

It is the intent of the Legislature that any funds received by the Courts pursuant to Title IV-D of the Social Security Act up to $152,800 be used to fund the creation of a domestic relations court commissioner position and related staff in the Fourth Judicial District and for other child support entities.

ITEM 35
To Judicial Council/State Court Administrator – Contracts and Leases
From General Fund 15,323,800
From Dedicated Credits Revenue 145,600
From General Fund Restricted – State Court Complex Account 3,500,000
Schedule of Programs:
Contracts and Leases 18,969,400

It is the intent of the Legislature that the funds for the Courts Contracts and Leases be non-lapsing

ITEM 36
To Judicial Council/State Court Administrator – Grand Jury
From General Fund 900
Schedule of Programs:
Grand Jury 900

It is the intent of the Legislature that the funds for the Courts Grand Jury be non-lapsing

ITEM 37
To Judicial Council/State Court Administrator – Judicial Salaries

Under provisions of Section 67-8-2, Utah Code Annotated, the following salaries are approved for judicial officials for July 1, 2001 to June 30, 2002: District Court Judge $103,700. Other judicial salaries will be calculated in accordance with the statutory formula and rounded to the nearest $50.00.

ITEM 38
To Judicial Council/State Court Administrator – Jury and Witness Fees
From General Fund 1,829,800

From Dedicated Credits Revenue 15,000
Schedule of Programs:
Jury, Witness, and Interpreter 1,844,800

ITEM 39
To Judicial Council/State Court Administrator - Guardian ad Litem
From General Fund 2,727,600
From Dedicated Credits Revenue 20,000
From General Fund Restricted - Children's Legal Defense 399,100
From General Fund Restricted - Guardian Ad Litem Services 246,700
Schedule of Programs:
Guardian Ad Litem 3,393,400

It is the intent of the Legislature that the funds for the Courts Guardian Ad Litem be non-lapsing.

PUBLIC SAFETY

ITEM 40
To Department of Public Safety - Commissioner's Office
From General Fund 2,556,700
From General Fund, One-time 150,000
From Federal Funds 19,347,300
From Dedicated Credits Revenue 16,300
From Revenue Transfers - Other Funds . 465,200
Schedule of Programs:
Commissioner's Office 1,967,900
Aero Bureau 754,000
Grants 5,299,900
Administrative Services 7,566,600
Olympics 6,947,100

It is the intent of the Legislature that the funds for FY 2002 for Public Safety be non-lapsing.

It is the intent of the Legislature that receipts above $15,000 of reimbursable flight time for the Department of Public Safety's aircraft be non-lapsing and used only to replace aircraft engines and related parts.

ITEM 41
To Department of Public Safety - Comprehensive Emergency Management
From General Fund 712,500
From Federal Funds 7,431,000
From Dedicated Credits Revenue 212,000
From General Fund Restricted - Environmental Quality 200,000
From General Fund Restricted - Nuclear Oversight 1,416,400
From Revenue Transfers - Other Agencies 24,900
Schedule of Programs:
Comprehensive Emergency Management 9,996,800

It is the intent of the Legislature that the funds for FY 2002 for Public Safety be non-lapsing

ITEM 42
To Department of Public Safety - Safety Promotion
From General Fund 146,900
From Dedicated Credits Revenue 3,000
Schedule of Programs:
Safety Promotion 149,900

It is the intent of the Legislature that the funds for FY 2002 for Public Safety be non-lapsing

ITEM 43
To Department of Public Safety - Peace Officers' Standards and Training
From General Fund 173,700
From Federal Funds 3,009,000
From Dedicated Credits Revenue 28,100
From General Fund Restricted - Public Safety Support 2,494,400
From Revenue Transfers - Commission on Criminal and Juvenile Justice 109,000
Schedule of Programs:
Basic Training 1,247,800
Regional/Inservice Training 670,200
Post Administration 778,200
Grants 109,000
Police Corps Academy 3,009,000

It is the intent of the Legislature that the funds for FY 2002 for Public Safety be non-lapsing.

ITEM 44
To Department of Public Safety - Investigative and Technical Services
From General Fund 11,315,200
From Federal Funds 404,200
From Dedicated Credits Revenue 1,894,200
From General Fund Restricted - Statewide Warrant Operations 138,600
From Revenue Transfers - Commission on Criminal and Juvenile Justice 483,900
From Revenue Transfers - Other Agencies 13,800
From Beginning Nonlapsing Appropriation Balances 250,000
Schedule of Programs:
BCI Grants 171,000
Administration 446,300
Criminal Identification Bureau 3,589,800
UDI Grants 181,600
Communications 4,240,400
State Crime Labs 1,630,500
Crime Lab Grants 581,400
Investigative Services 3,658,900

It is the intent of the Legislature that the funds for FY 2002 for Public Safety be non-lapsing.

ITEM 45
To Department of Public Safety - Liquor Law Enforcement
From General Fund 999,500
Schedule of Programs:
Liquor Law Enforcement 999,500

It is the intent of the Legislature that the funds for FY 2002 for Public Safety be non-lapsing.

ITEM 46
To Department of Public Safety - Driver License
From Dedicated Credits Revenue 200
From Transportation Fund Restricted - Motorcycle Education 176,600
From Transportation Fund Restricted - Public Safety 15,882,900
From Transportation Fund Restricted - Uninsured Motorist I.D. 1,560,100

Schedule of Programs:
Driver License Administration 1,212,400
Driver Services 10,331,400
Driver Records 4,339,300
Motorcycle Safety 176,600
Uninsured Motorist 1,560,100

It is the intent of the Legislature that the funds for FY 2002 for Public Safety be non-lapsing.

ITEM 47
To Department of Public Safety - Utah Highway Patrol Division
From General Fund 27,008,600
From Transportation Fund 5,495,500
From Federal Funds 2,119,200
From Dedicated Credits Revenue 1,635,200
From General Fund Restricted - Nuclear Oversight 376,900
From Transportation Fund Restricted - Public Safety 535,000
From Revenue Transfers - Other Agencies 1,230,000
From Beginning Nonlapsing Appropriation Balances 553,600
From Closing Nonlapsing Appropriation Balances ..... (971,900)
Schedule of Programs:
UHP Administration 773,400
Field Operations 23,888,600
Commercial Vehicle 2,741,600
Safety Inspections 1,036,500
Special Enforcement 1,273,400
Protective Services 1,170,300
Special Services 2,948,700
Federal Projects 1,721,900
UHP Technical Services 320,000
Highway Safety 2,107,700

It is the intent of the Legislature that the Office of Highway Safety, as consistant with Federal law, may transfer Federal Funds from this line item of appropriation to other items of appropriation when necessary.

It is the intent of the Legislature that the funds for FY 2002 for Public Safety be non-lapsing.

ITEM 48
To Department of Public Safety - Information Management
From General Fund 1,400,200
From General Fund Restricted - Statewide Warrant Operations 268,600
From Revenue Transfers - Commission on Criminal and Juvenile Justice 202,300
Schedule of Programs:
Operations 1,668,800
Grants 202,300

It is the intent of the Legislature that the funds for FY 2002 for Public Safety be non-lapsing.

ITEM 49
To Department of Public Safety - Fire Marshal
From General Fund 888,300
From Dedicated Credits Revenue 145,500
From General Fund Restricted - Fire Academy Support 3,236,300
Schedule of Programs:
Fire Operations 1,109,200
Fire Fighter Training 3,160,900

It is the intent of the Legislature that the funds for FY 2002 for Public Safety be non-lapsing.

CAPITAL FACILITIES & ADMINISTRATIVE SERVICES SUBCOMMITTEE
CAPITOL PRESERVATION BOARD

ITEM 50
To Capitol Preservation Board
From General Fund 2,380,900
From Dedicated Credits Revenue 228,200
Schedule of Programs:
Capitol Preservation Board 2,609,100

It is the intent of the Legislature that the Executive Director of the Capitol Preservation Board shall develop a master security plan for Capitol Hill. It is further the intent of the Legislature that this be done before the 2002 General Session.

It is the intent of the Legislature that funds for the Capitol Preservation Board shall not lapse and that those funds shall be used for the design and construction costs associated with Capitol restoration.

It is the intent of the Legislature that any person, group or organization who holds an event in the Capitol Building or on Capitol Hill grounds pay for at least the costs associated with staging the event. It is further the intent of the Legislature that any increases in Dedicated Credits over the FY 2002 approved amount shall be used to offset costs related to Capitol Restoration.

ADMINISTRATIVE SERVICES

ITEM 51
To Department of Administrative Services - Executive Director
From General Fund 819,700
From Revenue Transfers 127,300
Schedule of Programs:
Executive Director 947,000

ITEM 52
To Department of Administrative Services - Information Technology Services
From General Fund 376,600
From General Fund, One-time 300,000
Schedule of Programs:
Automated Geographic Reference Center 676,600

ITEM 53
To Department of Administrative Services - Administrative Rules
From General Fund 273,800
From Beginning Nonlapsing Appropriation Balances 5,000
From Closing Nonlapsing Appropriation Balances ..... (1,000)
Schedule of Programs:
DAR Administration 257,100

Rules Publishing 20,700

ITEM 54
To Department of Administrative Services - DFCM Administration
From General Fund 2,978,500
From Dedicated Credits Revenue 2,500
From Revenue Transfers 200,000
Schedule of Programs:
DFCM Administration 3,181,000

It is the intent of the Legislature that the Building Board develop contracting guidelines that enable the State to share in the ownership of designs and plans associated with the construction of state-owned buildings.

ITEM 55
To Department of Administrative Services - DFCM Facilities Management
From General Fund 319,100
From Dedicated Credits Revenue 141,400
Schedule of Programs:
Governor's Mansion 30,000
Preventive Maintenance 141,400
DUP Museum 108,800
Governor's Residence 91,300
Green House 30,000
Council Hall 59,000

ITEM 56
To Department of Administrative Services - State Archives
From General Fund 2,050,900
From Dedicated Credits Revenue 38,900
From Beginning Nonlapsing Appropriation Balances 49,600
Schedule of Programs:
Archives Administration 612,300
Records Analysis 337,600
Preservation Svcs 292,300
Patron Services 467,300
Reference Services 429,900

It is the intent of the Legislature that the Division of Archives use $100,000 to improve employee retention through enhanced salaries. The funds may be used for any non-exempt position within the division that is demonstrated to have high turnover or below market wages but may not be used to add additional staff.

It is the intent of the Legislature that funds for the State Division of Archives not lapse and that those funds be used to catalog documents generated by former Governors.

ITEM 57
To Department of Administrative Services - Finance Administration
From General Fund 6,242,500
From Transportation Fund 450,000
From Dedicated Credits Revenue 1,223,100
From General Fund Restricted - Internal Service Fund Overhead 1,483,100
From Beginning Nonlapsing Appropriation Balances 700,000
Schedule of Programs:
FIN Director's Office 309,200
Payroll 2,313,100
Payables/Disbursing 1,668,800
Technical Services 1,693,300
Financial Reporting 1,113,800
Financial Information Systems 3,000,500

It is the intent of the Legislature that funds for the Division of Finance not lapse.

It is the intent of the Legislature that funds for the Division of Finance which do not lapse are to be used for maintenance, operation and development of statewide accounting systems.

It is the intent of the Legislature that rules regarding reimbursement for mileage driven in a personal vehicle on state business continue as approved during FY 2001.

ITEM 58
To Department of Administrative Services - Finance - Mandated
From General Fund 3,012,400
From General Fund, One-time 2,087,500
Schedule of Programs:
Information Technology Infrastructure Innovation Program 935,000
800 MHz Conversion 1,414,900
LeRay McAllister Critical Land Conservation Fund 2,750,000

It is the intent of the Legislature that funds in the LeRay McAllister Critical Land fund shall not lapse.

It is the intent of the Legislature that funds provided for 800 MHz Conversion be allocated among State agencies by the Chief Information Officer in consultation with the Director of Information Technology Services according to the following criteria:
1. New ongoing funds shall be distributed to agencies such that total ongoing resources for each agency are sufficient to pay annual service fees on radios purchased with prior year appropriations
2. One-time and remaining new ongoing funds shall be distributed to agencies for purchase of additional radios and payment of annual service fees.

It is the intent of the Legislature that the Chief Information Officer report to the Executive Appropriations Committee specific cost and benefit measures as well as means by which to capture future benefits prior to allocating funds provided for the Utah Technology Infrastructure Innovation Program.

It is the intent of the Legislature that the Division of Finance use funds in the Annual Leave Conversion program to reimburse state agencies on a proportional basis as determined by the Division of Finance.

ITEM 59
To Department of Administrative Services - Post Conviction Indigent Defense Fund
From General Fund 120,000
From Beginning Nonlapsing Appropriation Balances 232,500

From Closing Nonlapsing Appropriation Balances ..... (155,000)
Schedule of Programs:
Post Conviction Indigent Defense Fund 197,500

It is the intent of the Legislature that funds for the Post Conviction Indigent Defense Fund shall not lapse.

ITEM 60
To Department of Administrative Services - Judicial Conduct Commission
From General Fund 228,400
From Beginning Nonlapsing Appropriation Balances 10,100
Schedule of Programs:
Judicial Conduct Commission 238,500

It is the intent of the Legislature that funds for the Judicial Conduct Commission not lapse.

ITEM 61
To Department of Administrative Services - Purchasing
From General Fund 1,325,800
From Dedicated Credits Revenue 82,300
Schedule of Programs:
Purchasing and General Services 1,408,100

It is the intent of the legislature that funds for the Division of Purchasing and General Services are non-lapsing and that those funds be used to further the Division's E-commerce program.

ITEM 62
To Department of Administrative Services - Fleet Capitalization
From General Fund 4,000,000
Schedule of Programs:
Fleet Capitalization 4,000,000

INTRAGOVERNMENTAL SERVICES

ITEM 63
To Department of Administrative Services - Office of State Debt Collection
From Licenses/Fees 123,300
From Interest Income 360,100
From Dedicated Credits - Intragovernmental Revenue 263,700
From Other Financing Sources 7,000
Schedule of Programs:
ISF - Debt Collection 754,100
Total FTE - 4

It is the intent of the Legislature that the Office of State Debt Collection be authorized to establish reasonable costs of collection to be passed onto the debtor including attorney fees, all legal costs and administrative costs unless inappropriate or prohibited by law.

ITEM 64
To Department of Administrative Services - Division of Purchasing and General Services
From Dedicated Credits - Intragovernmental Revenue 13,418,700
Schedule of Programs:
ISF - Central Mailing 7,532,800
ISF - Electronic Purchasing 268,900
ISF - Publishing 5,617,000
Total FTE - 63
Authorized Capital Outlay - 3,279,000

It is the intent of the Legislature that the Division of Purchasing and General Services consolidate Publishing operations to maximize efficiency and enhance savings opportunities with high volume copier services.

It is the intent of the Legislature that Internal Service Funds of the Department of Administrative Services be allowed to add FTEs beyond the authorized level if it represents a benefit to the State and a decrease of FTEs in the user agency. The total FTEs within state government shall not change with this shift of FTEs. Agencies transferring FTEs to Internal Service Funds shall report to the Executive Appropriations Committee decreased personal service expenditures and corresponding increased Internal Service Fund charges as a result of the transfer.

ITEM 65
To Department of Administrative Services - Division of Information Technology Services
From Federal Funds 750,000
From Dedicated Credits - Intragovernmental Revenue 51,437,600
From Revenue Transfers 676,600
Schedule of Programs:
ISF - Network Services 10,152,700
ISF - Telephone Services 16,380,100
ISF - Radio Shop 2,034,800
ISF - Computing 18,031,600
ISF - ITS Support Services 4,374,000
ISF - New Technologies 224,800
ISF - Automated Geographic Ref Ctr 1,666,200
Total FTE - 243
Authorized Capital Outlay - 5,604,700

It is the intent of the Legislature that the Information Technology Services Internal Service Fund of the Department of Administrative Services be allowed to add FTEs beyond the authorized level if it represents a benefit to the State and a decrease of FTEs in the user agency. The total FTEs within state government shall not change with this shift of FTEs. Agencies transferring FTEs to Internal Service Funds shall report to the Executive Appropriations Committee decreased personal service expe nditures and corresponding increased Internal Service Fund charges as a result of the transfer.

It is the intent of the Legislature that the Department of Administrative Services Division of Information Technology Services develop an on-line system for billing its customers. Where possible, the system should replace paper billing and include a mechanism by which customers confirm bill payment and provide feedback about ITS rates and services.

ITEM 66
To Department of Administrative Services - Division of Fleet Operations
From Dedicated Credits -
Intragovernmental Revenue 37,110,500
Schedule of Programs:
ISF - Motor Pool 21,881,800
ISF - Fuel Network 13,914,600
ISF - State Surplus Property 690,300
ISF - Federal Surplus Property 623,800
Total FTE - 52
Authorized Capital Outlay - 11,470,900

It is the intent of the Legislature that Internal Service Funds of the Department of Administrative Services be allowed to add FTEs beyond the authorized level if it represents a benefit to the State and a decrease of FTEs in the user agency. The total FTEs within state government shall not change with this shift of FTEs. Agencies transferring FTEs to Internal Service Funds shall report to the Executive Appropriations Committee decreased personal service expenditures and corresponding increased Internal Service Fund charges as a result of the transfer.

It is the intent of the Legislature that the Legislative Fiscal Analyst prepare an analysis of 4x4 usage and policy in the State Fleet.

It is the intent of the Legislature that the Legislative Fiscal Analyst prepare an analysis of Higher Education's participation in the State Fleet.

It is the intent of the Legislature that the Division of Fleet Operations and the Rate Committee establish a rate that will charge agencies that do not pick up their replacement vehicles on the day that they are deemed ready by the Division of Fleet Operations.

ITEM 67
To Department of Administrative Services - Risk Management
From Premiums 21,804,400
From Interest Income 2,900,000
From Restricted Revenue 6,544,600
Schedule of Programs:
ISF - Risk Management Administration 24,704,400
ISF - Workers' Compensation 6,544,600
Total FTE - 25
Authorized Capital Outlay - 50,000

It is the intent of the Legislature that Internal Service Funds of the Department of Administrative Services be allowed to add FTEs beyond the authorized level if it represents a benefit to the State and a decrease of FTEs in the user agency. The total FTEs within state government shall not change with this shift of FTEs. Agencies transferring FTEs to Internal Service Funds shall report to the Executive Appropriations Committee decreased personal service expenditures and corresponding increased Internal Service Fund charges as a result of the transfer.

ITEM 68
To Department of Administrative Services - Division of Facilities Construction and Management - Facilities Management
From Dedicated Credits -
Intragovernmental Revenue 15,535,800
From Restricted Revenue 2,765,000
Schedule of Programs:
ISF - Facilities Management 18,300,800
Total FTE - 122
Authorized Capital Outlay - 80,000

It is the intent of the Legislature that the Facilities Management Internal Service Fund be allowed to transfer its contributed capital balance of $171,719.80 to retained earnings. This transfer will eliminate a portion of the $256,040 deficit retained earnings balance of the Planning and Design Program.

It is the intent of the Legislature that Internal Service Funds of the Department of Administrative Services be allowed to add FTEs beyond the authorized level if it represents a benefit to the State and a decrease of FTEs in the user agency. The total FTEs within state government shall not change with this shift of FTEs. Agencies transferring FTEs to Internal Service Funds shall report to the Executive Appropriations Committee decreased personal service expenditures and corresponding increased Internal Service Fund charges as a result of the transfer.

It is the intent of the Legislature that DFCM's internal service fund may add FTEs beyond the authorized level if new facilities come on line or maintenance agreements are requested. Any added FTEs will be reviewed and approved by the Legislature in the next Legislative Session.

ITEM 69
To Department of Administrative Services - Division of Facilities Construction and Management - Roofing and Paving
From Dedicated Credits -
Intragovernmental Revenue 484,900
Schedule of Programs:
ISF - Roofing and Paving 484,900
Total FTE - 6

CAPITAL BUDGET

ITEM 70
To Capital Budget - DFCM Capital Program
From General Fund 65,099,400
From General Fund, One-time 951,000
From Income Tax 24,298,000
From Income Tax, One-time 10,000,000
From Transportation Fund, One-time . 1,399,000
From Dedicated Credits Revenue 41,000,000
From Dedicated Credits -
Revenue Bonds 10,735,800
From General Fund Restricted -
Special Administrative Expense 1,186,700

From General Fund Restricted – State Court Complex Account 700,000
From Olympic Special Revenue 28,500,000
From Revenue Transfers 387,000
Schedule of Programs:
Capital Improvements 43,994,000
Capital Planning 40,000
Capital Development 140,222,900
Funded Projects:
Capital Improvements – 43,994,000
Capitol Remodel – 40,991,600
U of U Huntsman Expansion – 5,000,000
Archives Planning – 40,000
Utah Field House of Natural History – 6,741,000
BATC Brigham City – 2,089,000
Courts – First District Court – 12,493,800
U of U Engineering Building – 47,685,000
USU Engineering Building – 10,000,000
DWS Cedar City Office – 1,186,700
DABC Warehouse Expansion – 8,281,000
DABC Magna Store – 957,100
DABC South Valley Store – 1,497,700
UDOT Richfield Warehouse – 699,000
UDOT Echo Station – 400,000
UDOT Roosevelt Station – 300,000
Courts – Sandy Land Purchase – 950,000
DYC – Blanding Youth Facility – 265,000
Uinta Basin ATC – 186,000
Ogden/Weber ATC – 500,000

It is the intent of the Legislature that the Department of Corrections present an annual report to the Legislature showing approved county contract expansions to ensure that supply does not exceed the State's need. However, these contracts in no way obligate the State for future payments if the beds are not utilized by state prisoners.

It is the intent of the Legislature that no state funds shall be expended nor shall bonds be issued for the National Guard American Fork project until Federal Funds are formally appropriated.

It is the intent of the Legislature that DFCM shall use up to $585,000 from the Project Reserve Fund to hire or contract for employees to assist in the management of construction projects approved during the 2001 General Session. This funding shall not be used to hire additional permanent staff.

It is the intent of the Legislature that the Division of Facilities Construction and Management purchase the Brigham City Education Facility, together with adjacent property, from Box Elder County and lease it to Bridgerland Applied Technology Center, Utah State University, and other state entities at a rate sufficient to cover the operations and maintenance cost of the entire facility, including vacant space. DFCM may lease vacant space to other entities at market rates until such time as it is needed for state purposes.

It is the intent of the Legislature that Youth Corrections provide programmatic exercise space at the lowest cost possible both for construction and ongoing operations when constructing new facilities.

It is the intent of the Legislature that the Building Board provide Capital Improvement funding sufficient to complete the following projects at Southern Utah University:
1. Asbestos removal from the former middle school;
2. Demolition of the former middle school;
3. Structural repair of Old Main;
4. Structural repair of the Braithwaite Building.

It is the intent of the Legislature that interest earnings from tax funds set aside as escrow for construction projects shall accrue to the benefit of the State.

It is the intent of the Legislature that the Legislative Fiscal Analyst, in preparing the FY 2003 Budget, shall consider funding for increases in capital improvements – including implementation of House Bill 62 (2001 General Session) – as part of the base budget for capital projects.

It is the intent of the Legislature that DFCM create a bid package to design and construct new classroom/laboratory facilities at the College of Eastern Utah, Utah Valley State College, Utah State University and Weber State University (Davis Campus).

It is the intent of the Legislature that the Legislative Fiscal Analyst prepare a report on the capacity and operational needs of the Department of Corrections. The report should provide an analysis of the merits of various construction methods, jail contracting, jail reimbursement, and offer recommendations for future funding for the housing of inmates. It is anticipated that this report will be presented to the Executive Appropriation Committee during the 2001 interim.

It is the intent of the Legislature that the state funds appropriated for capital projects not include funding for art.

It is the intent of the Legislature that DFCM use $265,000 approved for the Canyonlands Youth Correctional Facility to purchase property and provide money for design of the new facility.

DEBT SERVICE

ITEM 71
To State Board of Bonding Commissioners – Debt Service
From General Fund 43,629,800
From Uniform School Fund 24,670,600
From Centennial Highway Fund 82,657,500
rom Dedicated Credits Revenue 23,727,300
From Beginning Nonlapsing Appropriation Balances 5,051,200
From Closing Nonlapsing Appropriation Balances ..... (5,051,200)
Schedule of Programs:
Debt Service 174,685,200

When necessary to meet interest requirements on variable rate demand

obligations issued to finance highway construction projects, the Division of Finance may request a transfer of funds from the Department of Transportation. After receiving such a request, Transportation shall transfer monies from the Centennial Highway Fund to the Debt Service Fund to pay interest on variable rate demand obligations issued to finance highway construction.

COMMERCE & REVENUE SUBCOMMITTEE
TAX COMMISSION

ITEM 72
To Utah State Tax Commission –
Tax Administration
From General Fund 22,014,900
From Uniform School Fund 17,318,200
From Transportation Fund 4,857,400
From Federal Funds 608,000
From Dedicated Credits Revenue 4,488,900
From General Fund Restricted – Sales
and Use Tax Administration Fees ... 5,878,100
From Transportation Fund Restricted –
Uninsured Motorist I.D. 133,800
From Revenue Transfers 78,300
From Beginning Nonlapsing
Appropriation Balances 3,401,800
From Closing Nonlapsing
Appropriation Balances ..... (373,500)
Schedule of Programs:
Administration Division 8,219,700
Auditing Division 8,102,900
Multi-State Tax Compact 179,600
Technology Management 9,553,000
Tax Processing Division 7,274,600
Seasonal Employees 728,200
Tax Payer Services 7,814,800
Property Tax Division 4,212,800
Motor Vehicles 10,114,700
Motor Vehicle Enforcement Division . 2,205,600

It is the intent of the Legislature that the Utah State Tax Commission carry forward unexpended year-end balances for costs directly related to the modernization of tax and motor vehicle systems and processes.

It is the intent of the Legislature that the Utah State Tax Commission report to the Executive Appropriations Committee before expending significant additional resources in pursuit of tax systems enhancement or replacement.

It is the intent of the Legislature that the Utah State Tax Commission track additional revenues resulting from UTAX and report the results quarterly to the Legislative Fiscal Analyst, the Governor's Office of Planning and Budget, and the Division of Finance.

It is the intent of the Legislature that the Utah State Tax Commission provide to the Commerce and Revenue Appropriations Subcommittee during the FY 2001 Interim a full cost analysis of the Motor Vehicle Administration system. The analysis should include, but not be limited to, costs associated with planning, development, contracting, testing, data conversion, implementation, operation, and disposal.

It is the intent of the Legislature that the Utah State Tax Commission may outsource delinquent accounts receivable that are not in litigation, under a payment agreement, assigned to a collector for active collection, or whose outsourcing would be in violation of state or federal law, according to Utah Code 59-1-1101. It is further the intent of the Legislature that the Utah State Tax Commission report the results of its outsourcing to the Office of State Debt Collection, the Governor's Office of Planning and Budget, and the Office of the Legislative Fiscal Analyst.

ITEM 73
To Utah State Tax Commission – License
Plates Production
From Dedicated Credits Revenue 1,967,700
From Beginning Nonlapsing
Appropriation Balances 2,916,200
From Closing Nonlapsing
Appropriation Balances ..... (2,958,900)
Schedule of Programs:
License Plates Production 1,925,000

It is the intent of the Legislature that these funds be nonlapsing.

ITEM 74
To Utah State Tax Commission – Liquor
Profit Distribution
From General Fund 2,609,000
Schedule of Programs:
Liquor Profit Distribution 2,609,000

It is the intent of the Legislature that these funds be nonlapsing.

APPLIED TECHNOLOGY EDUCATION

ITEM 75
To State Board of Applied Technology Education –
Bridgerland
Applied Technology Center
From Uniform School Fund 6,883,700
From Dedicated Credits Revenue 1,029,400
From Beginning Nonlapsing
Appropriation Balances 224,008
From Closing Nonlapsing
Appropriation Balances ..... (224,008)
Schedule of Programs:
Bridgerland ATC 7,913,100

ITEM 76
To State Board of Applied Technology Education –
Davis Applied Technology Center
From Uniform School Fund 6,918,200
From Dedicated Credits Revenue 999,600
From Dedicated Credits - Investments .. 132,000
From Beginning Nonlapsing
Appropriation Balances 221,000
From Closing Nonlapsing Appropriation
Balances ..... (242,000)
Schedule of Programs:
Davis ATC 8,028,800

ITEM 77
To State Board of Applied Technology Education – Ogden Weber Applied Technology Center
From Uniform School Fund 7,633,400
From Dedicated Credits Revenue 1,052,800
Schedule of Programs:
Ogden–Weber ATC 8,686,200

ITEM 78
To State Board of Applied Technology Education – Uintah Basin Applied Technology Center
From Uniform School Fund 3,629,100
From Dedicated Credits Revenue 355,900
From Dedicated Credits – Investments .. 110,000
From Beginning Nonlapsing Appropriation Balances 165,000
From Closing Nonlapsing Appropriation Balances ..... (165,000)
Schedule of Programs:
Uintah Basin ATC 4,095,000

ITEM 79
To State Board of Applied Technology Education – Wasatch Front Applied Technology Center
From Uniform School Fund 1,133,300
From Dedicated Credits – Investments ... 67,600
From Beginning Nonlapsing Appropriation Balances 154,200
From Closing Nonlapsing Appropriation Balances ..... (1,400)
Schedule of Programs:
Wasatch Front ATC 1,353,700

It is the intent of the Legislature to provide applied technology educational opportunities for students in Salt Lake and Tooele counties comparable to those found in other areas of the State and encourage the Wasatch Front South Applied Technology Center to develop new regional applied technology education facilities by acquiring and remodeling existing public and higher education facilities that may become available. It is further the intent of the Legislature to provide operation and maintenance costs consistent with the policies of funding these costs in applied technology centers throughout the State.

ITEM 80
To State Board of Applied Technology Education – Public Education Applied Technology Center Service Regions
From Uniform School Fund 1,947,000
Schedule of Programs:
Mountainlands 771,200
Southeast 226,100
Southwest 949,700

ITEM 81
To State Board of Applied Technology Education – Applied Technology Center/Applied Technology Center Service Region Development
From Uniform School Fund 2,700,000
Schedule of Programs:
ATC/ATCSR Development 2,700,000

ITEM 82
To State Board of Applied Technology Education – Custom Fit
From Uniform School Fund 3,366,500
From Beginning Nonlapsing Appropriation Balances 112,100
From Closing Nonlapsing Appropriation Balances ..... (112,100)
Schedule of Programs:
Custom Fit 3,366,500

ITEM 83
To State Board of Applied Technology Education – Higher Education Applied Technology Center Service Regions
From General Fund 1,221,500
From Income Tax 56,100
Schedule of Programs:
Applied Technology Center Service Regions 1,277,600

It is the intent of the Legislature that any salary increases be distributed to faculty, professional and classified employees in an equitable manner.

WORKFORCE SERVICES

ITEM 84
To Department of Workforce Services
From General Fund 55,940,400
From Federal Funds 195,926,600
From Dedicated Credits Revenue 3,431,900
From Revenue Transfers – Department of Health – Medical Assistance 3,485,200
Schedule of Programs:
Executive Director 1,119,000
Employment Development 39,951,600
Administration and Service Delivery Support 25,683,100
Regional Administration 90,491,100
Temporary Assistance to Needy Families 45,401,000
Food Stamp Cash Out 2,880,000
Refugee Relocation 2,336,100
General Assistance/SSI 4,405,000
Workforce Investment Act 9,017,200
Child Care 37,500,000

It is the intent of the Legislature that these funds be nonlapsing.

It is the intent of the Legislature that the Department of Workforce Services report monthly their Food Stamp Error Rate to the Legislature through the Office of the Legislative Fiscal Analyst and to the Governor's Office of Planning and Budget. It is further the intent of the Legislature that corrective actions taken by the Department be reported at the next interim meeting of the Commerce and Revenue Joint Appropriations Subcommittee.

It is the intent of the Legislature that the Office of the Legislative Fiscal Analyst do an In–Depth Budget Review of the Office of Child Care and report it at the next interim meeting of the Commerce and Revenue Joint Appropriations Subcommittee.

It is the intent of the Legislature that the Department of Workforce Services include for consideration in its annual budget submission to the Governor's Office of Planning and Budget sufficient funding for grant adjustments based on its annual review

of the TANF grant and other funding sources and that the Department consider the availability of these funds for ongoing and one-time use.

It is the intent of the Legislature that the Department of Workforce Services do an annual review of the Family Employment Program (FEP) cash assistance grant levels. This is to determine the adequacy of those grants in helping families meet basic living expenses (housing, utilities, and food).

It is the intent of the Legislature that the Department consider the TANF grant and other funding sources while conducting this review and that the Department consider the funds available for ongoing and one-time use.

It is the intent of the Legislature that the Department of Workforce Services convene a group to explore ways to provide affordable health insurance to child care workers. The group should include home and center care providers, insurance companies, the small business association and other appropriate entities. It is further the intent of the Legislature that the Department report its results to the Commerce and Revenue Appropriations Subcommittee as part of the Department's annual presentation in 2002.

It is the intent of the Legislature that the Departments of Human Resource Management and Workforce Services coordinate their Utah Job Match and UWORKS projects such that they leverage common elements and functions. It is further the intent of the Legislature that the agencies report to the Office of the Legislative Fiscal Analyst during the 2001 Interim results of their coordination efforts.

ALCOHOLIC BEVERAGE CONTROL

ITEM 85

To Department of Alcoholic Beverage Control
From Liquor Control Fund 15,999,800
Schedule of Programs:
Executive Director 970,000
Administration 966,700
Operations 2,090,200
Warehouse and Distribution 1,033,600
Stores and Agencies 10,939,300

LABOR COMMISSION

ITEM 86

To Labor Commission
From General Fund 5,147,200
From General Fund, One-time 100,000
From Federal Funds 2,355,000
From General Fund Restricted -
Workplace Safety 997,900
From Employers' Reinsurance Fund 239,500
From Uninsured Employers' Fund 586,500
Schedule of Programs:
Administration 1,739,700
Industrial Accidents 1,048,600
Appeals Board 12,600
Adjudication 713,200
Division of Safety 1,239,900
Workplace Safety 1,084,400
Anti-Discrimination 1,337,900
Utah Occupational Safety and Health 2,103,200
Building Operations and Maintenance . 146,600

It is the intent of the Legislature that fees collected from sponsoring and holding seminars be made nonlapsing, allowing the agency to continue to offer yearly training seminars using funds collected from fees.

COMMERCE

ITEM 87

To Department of Commerce - Commerce
General Regulation
From General Fund ..... (100,000)
From Federal Funds 138,400
From Dedicated Credits Revenue 440,800
From General Fund Restricted - Certified
Nurse Midwife Education & 10,000
Enforcement Fund
From General Fund Restricted - Commerce
Service Fund 15,526,800
From General Fund Restricted - Factory
Built Housing Fees 104,400
From Real Estate Education, Research,
and Recovery Fund 2,000
From Beginning Nonlapsing
Appropriation Balances 138,800
From Beginning Fund Balances -
Commerce Service Fund 200,000
From Closing Nonlapsing
Appropriation Balances ..... (138,900)
Schedule of Programs:
Administration 1,537,700
Occupational & Professional
Licensing 5,785,200
Securities 1,240,800
Consumer Protection 733,000
Corporations and Commercial Code . 1,948,100
Real Estate 1,195,300
Public Utilities 2,988,300
Committee of Consumer Services 670,600
Building Operations and Maintenance . 223,300

It is the intent of the Legislature that unexpended balances of the Committee of Consumer Services be transferred from its Administrative Budget to its Professional and Technical Services budget for the same year and that the transferred funds be made nonlapsing.

It is the intent of the Legislature that unexpended balances of the Department up to $735,000 be carried forward for capital equipment, improvements and computer system development.

ITEM 88

To Department of Commerce -
Real Estate Education
From Real Estate Education, Research,
and Recovery Fund 152,800
From Beginning Nonlapsing
Appropriation Balances 9,000
Schedule of Programs:
Real Estate Education 161,800

It is the intent of the Legislature that these funds be nonlapsing.

ITEM 89
To Department of Commerce - Public Utilities Professional & Technical Services
From General Fund Restricted - Commerce Service Fund 100,000
From Beginning Nonlapsing Appropriation Balances 16,800
Schedule of Programs:
Professional & Technical Services 116,800

It is the intent of the Legislature that these funds be nonlapsing.

ITEM 90
To Department of Commerce - Committee of Consumer Services Professional and Technical Services
From General Fund Restricted - Commerce Service Fund 335,000
Schedule of Programs:
Professional & Technical Services 335,000

It is the intent of the Legislature that these funds be nonlapsing.

FINANCIAL INSTITUTIONS

ITEM 91
To Financial Institutions - Financial Institutions Administration
From General Fund Restricted - Financial Institutions 3,832,400
Schedule of Programs:
Administration 3,717,600
Building Operations and Maintenance . 114,800

INSURANCE

ITEM 92
To Insurance Department - Insurance Department Administration
From General Fund 4,372,100
From Dedicated Credits Revenue 1,039,700
From Beginning Nonlapsing Appropriation Balances 578,900
From Closing Nonlapsing Appropriation Balances ..... (550,700)
Schedule of Programs:
Administration 4,239,100
Relative Value Study 52,000
Insurance Fraud Program 1,015,900
Office of Consumer Health Assistance . 133,000

ITEM 93
To Insurance Department - Comprehensive Health Insurance Pool
From General Fund 3,135,000
From Dedicated Credits Revenue 5,044,000
From Beginning Nonlapsing Appropriation Balances 11,603,300
From Closing Nonlapsing Appropriation Balances ..... (11,148,700)
Schedule of Programs:
Comprehensive Health Insurance Pool 8,633,600

It is the intent of the Legislature that these funds be nonlapsing.

ITEM 94
To Insurance Department - Bail Bond Program
From General Fund Restricted - Bail Bond Surety Administration 15,000
From Lapsing Balance ..... (10,700)
Schedule of Programs:
Bail Bond Program 4,300

It is the intent of the Legislature that these funds be nonlapsing.

ITEM 95
To Insurance Department - Title Insurance Program
From Dedicated Credits Revenue 47,600
From Beginning Nonlapsing Appropriation Balances 36,400
From Closing Nonlapsing Appropriation Balances ..... (37,200)
Schedule of Programs:
Title Insurance Program 46,800

It is the intent of the Legislature that these funds be nonlapsing.

PUBLIC SERVICE COMMISSION

ITEM 96
To Public Service Commission
From General Fund 1,471,900
From Dedicated Credits Revenue 65,900
Schedule of Programs:
Public Service Commission 1,511,500
Building Operations and Maintenance .. 26,300

It is the intent of the Legislature that these funds be nonlapsing.

ITEM 97
To Public Service Commission - Research and Analysis
From Dedicated Credits Revenue 60,000
Schedule of Programs:
Research and Analysis 60,000

It is the intent of the Legislature that these funds be nonlapsing.

ITEM 98
To Public Service Commission - Speech and Hearing Impaired
From Dedicated Credits Revenue 1,619,300
From Beginning Nonlapsing Appropriation Balances 4,650,200
From Closing Nonlapsing Appropriation Balances ..... (4,450,700)
Schedule of Programs:
Speech and Hearing Impaired 1,818,800

It is the intent of the Legislature that these funds be nonlapsing.

ITEM 99
To Public Service Commission - Universal Telecommunications Support Fund
From Universal Public Telecom Service Fund 7,073,200
From Beginning Nonlapsing Appropriation Balances 9,194,400
From Closing Nonlapsing Appropriation Balances ..... (8,728,300)
Schedule of Programs:
Universal Telecom Service Fund 7,539,300

It is the intent of the Legislature that these funds be nonlapsing.

ECONOMIC DEVELOPMENT & HUMAN RESOURCES SUBCOMMITTEE
CAREER SERVICES REVIEW BOARD

ITEM 100
To Career Services Review Board - Career Service Review Board
From General Fund 169,000
Schedule of Programs:
Career Services Review Board 169,000

It is the intent of the Legislature that these funds not lapse.

HUMAN RESOURCE MANAGEMENT

ITEM 101
To Department of Human Resources Management
From General Fund 5,731,100
From General Fund, One-time 79,000
From Uniform School Fund 338,900
From Dedicated Credits Revenue 277,000
From Beginning Nonlapsing Appropriation Balances 85,400
From Closing Nonlapsing Appropriation Balances ..... (85,400)
Schedule of Programs:
Administration 635,300
Classification and Compensation 716,900
Employment Services 651,600
Flex Benefits 15,000
Management Training 260,000
Information Technology 1,196,900
Market Comparability 2,950,300

It is the intent of the Legislature that the Departments of Human Resource Management and Workforce Services coordinate their Utah Job Match and UWORKS projects such that they leverage common elements and functions. It is further the intent of the Legislature that the agencies report to the Office of the Legislative Fiscal Analyst during the 2001 Interim results of their coordination efforts.

It is the intent of the Legislature that these funds not lapse.

The Legislature intends that the Division develop performance measures for each program and where possible prepare a five-year history of those measures for the FY 2002 Annual General Session.

The Legislature intends that if the Legislature funds a general compensation pool for statewide salary inequities, the pool will be applicable to attorneys consistent with other state employees, subject to review of General Counsel.

It is the intent of the Legislature that the 4 percent compensation increase for state employees for FY 2002 be used first, to fund a one-step Merit increase and associated salary driven costs for all eligible employees. Remaining funds are for discretionary salary increases to employees based upon performance and other salary related issues according to rules and procedures established by the Department of Human Resource Management.

It is the intent of the Legislature that the FY 2002 market comparability adjustment funding be allocated to and administered by the Department of Human Resource Management.

It is the intent of the Legislature that the health benefit for state and higher education employees be funded on the basis of a 16.135 percent average health premium increase. Dental premium costs for the Group Insurance Division (PEHP) are to be computed on the basis of an average 3.0 percent increase.

It is further the intent of the Legislature that employees enrolled in the PEHP Preferred Health Care Plan will pay 7.0 percent of bi-weekly premium payments.

It is the intent of the Legislature that $79,000 of appropriated funds go towards the purchase of a Unix computer.

It is the intent of the Legislature that the FY 2002 compensation package for state employees have retrospective application to June 23, 2001, to coincide with the state payroll period.

COMMUNITY & ECONOMIC DEVELOPMENT

ITEM 102
To Department of Community & Economic Development - Administration
From General Fund 2,741,000
From Beginning Nonlapsing Appropriation Balances 30,400
From Closing Nonlapsing Appropriation Balances ..... (30,400)
Schedule of Programs:
Executive Director 577,400
Information Technology 1,010,300
Administrative Services 1,153,300

The Legislature intends that the Division develop performance measures for each program and where possible prepare a five-year history of those measures for the FY 2002 Annual General Session.

It is the intent of the Legislature that these funds not lapse.

ITEM 103
To Department of Community & Economic Development - Incentive Funds
From General Fund, One-time 500,000
From Dedicated Credits Revenue 120,900
From General Fund Restricted - Industrial Assistance 185,800
Schedule of Programs:
Incentive Funds 306,700
Custom Fit 500,000

ITEM 104
To Department of Community & Economic Development - Indian Affairs
From General Fund 229,100
From Beginning Nonlapsing Appropriation Balances 20,500

From Closing Nonlapsing
Appropriation Balances ..... (20,500)
Schedule of Programs:
Indian Affairs 229,100

The Legislature intends that the Division develop performance measures for each program and where possible prepare a five-year history of those measures for the FY 2002 Annual General Session.

ITEM 105
To Department of Community & Economic Development - Asian Affairs
From General Fund 125,800
From Beginning Nonlapsing
Appropriation Balances 15,100
From Closing Nonlapsing
Appropriation Balances ..... (15,100)
Schedule of Programs:
Asian Affairs 125,800

The Legislature intends that the Division develop performance measures for each program and where possible prepare a five-year history of those measures for the FY 2002 Annual General Session.

ITEM 106
To Department of Community & Economic Development - Black Affairs
From General Fund 125,800
From Beginning Nonlapsing
Appropriation Balances 1,200
From Closing Nonlapsing
Appropriation Balances ..... (1,200)
Schedule of Programs:
Black Affairs 125,800

The Legislature intends that the Division develop performance measures for each program and where possible prepare a five-year history of those measures for the FY 2002 Annual General Session.

ITEM 107
To Department of Community & Economic Development - Hispanic Affairs
From General Fund 127,700
From Beginning Nonlapsing
Appropriation Balances 25,100
From Closing Nonlapsing
Appropriation Balances ..... (25,100)
Schedule of Programs:
Hispanic Affairs 127,700

The Legislature intends that the Division develop performance measures for each program and where possible prepare a five-year history of those measures for the FY 2002 Annual General Session.

ITEM 108
To Department of Community & Economic Development - Pacific Islander Affairs
From General Fund 125,700
From Beginning Nonlapsing
Appropriation Balances 11,200
From Closing Nonlapsing Appropriation
Balances ..... (11,200)
Schedule of Programs:
Pacific Islander Affairs 125,700

The Legislature intends that the Division develop performance measures for each program and where possible prepare a five-year history of those measures for the FY 2002 Annual General Session.

ITEM 109
To Department of Community &
Economic Development - Business
and Economic Development
From General Fund 8,206,900
From General Fund, One-time 3,000,000
From Federal Funds 305,200
From Dedicated Credits Revenue 73,600
From Beginning Nonlapsing
Appropriation Balances 2,870,600
From Closing Nonlapsing
Appropriation Balances ..... (2,870,600)
Schedule of Programs:
Administration 4,307,900
Film Commission 739,200
International Development 1,225,700
National Development 498,400
Advertising and Promotion 237,800
Business Development 1,202,000
Procurement Technical Assistance 858,500
Technology 466,200
Centers of Excellence 2,000,000
Special Opportunities 50,000

The Legislature intends that the Division develop performance measures for each program and where possible prepare a five-year history of those measures for the FY 2002 Annual General Session.

It is the intent of the Legislature that funding for Special Opportunities be used only for economic development opportunities.

It is the intent of the Legislature that these funds not lapse.

The Legislature intends that the Division use $1,000,000 of appropriated funds for the Silicon Valley Initiative.

The Legislature intends to use $200,000 of appropriated funds for the Manufacturing Extension Program.

The Legislature intends to use $1,250,000 in appropriated funds for the Sports Incentive Fund.

The Legislature intends to use $1,000,000 in appropriated funds for the Ogden High-tech Center.

ITEM 110
To Department of Community & Economic Development - Travel Council
From General Fund 4,062,800
From General Fund, One-time 200,000
From Transportation Fund 118,000
From Dedicated Credits Revenue 266,900
From Beginning Nonlapsing
Appropriation Balances 43,100
From Closing Nonlapsing
Appropriation Balances ..... (43,100)
Schedule of Programs:
Travel Administration 1,965,800
Internal Development 1,763,800
External Development 918,100

The Legislature intends that the Division develop performance measures for each program and where possible prepare a five-year history of those measures for the FY 2002 Annual General Session.

It is the intent of the Legislature that these funds not lapse.

ITEM 111
To Department of Community & Economic Development - Energy Services
From General Fund 42,800
From Federal Funds 1,796,600
From Oil Overcharge - Exxon 2,632,000
Schedule of Programs:
State Energy Conservation 1,996,400
Energy Technology Demonstration .. 1,431,200
Alternative Fuels - Private 533,800
State Building Energy Financing 510,000

The Legislature intends that the Division develop performance measures for each program and where possible prepare a five-year history of those measures for the FY 2002 Annual General Session.

ITEM 112
To Department of Community & Economic Development - State History
From General Fund 2,046,000
From General Fund, One-time 200,000
From Federal Funds 589,900
From Dedicated Credits Revenue 500,000
From Beginning Nonlapsing Appropriation Balances 223,200
From Closing Nonlapsing Appropriation Balances ..... (723,200)
Schedule of Programs:
Administration 613,500
Collections and Education 727,900
History Publications 134,900
Office of Preservation 1,184,700
History Projects 174,900

The Legislature intends that the Division develop performance measures for each program and where possible prepare a five-year history of those measures for the FY 2002 Annual General Session.

The Legislature intends to allow the Division of State History to rent out space in their facility for the 2002 Olympics. The Legislature also intends that the Division shall not spend collected funds from this activity until after the Legislature approves a spending plan in the 2002 Annual General Sesssion.

It is the intent of the Legislature that these funds not lapse.

The Legislature intends that $200,000 of appropriated funds go for Heritage Area Corridors.

ITEM 113
To Department of Community & Economic Development - Historical Society
From Federal Funds 101,700
From Dedicated Credits Revenue 321,800
From Beginning Nonlapsing Appropriation Balances 206,600
From Closing Nonlapsing Appropriation Balances ..... (206,600)
Schedule of Programs:
State Historical Society 423,500

ITEM 114
To Department of Community & Economic Development - Fine Arts
From General Fund 2,735,800
From General Fund, One-time 257,300
From Federal Funds 531,400
From Dedicated Credits Revenue 152,000
From Beginning Nonlapsing Appropriation Balances 536,800
From Closing Nonlapsing Appropriation Balances ..... (536,800)
Schedule of Programs:
Administration 815,000
Grants to Non-profits 1,480,000
Community Arts Outreach 1,381,500

The Legislature intends that the Division develop performance measures for each program and where possible prepare a five-year history of those measures for the FY 2002 Annual General Session.

It is the intent of the Legislature that these funds not lapse.

The Legislature intends that $25,000 of appropriated funds be used for the Fine Arts Museum.

ITEM 115
To Department of Community & Economic Development - State Library
From General Fund 4,454,200
From Federal Funds 1,352,300
From Dedicated Credits Revenue 1,782,000
Schedule of Programs:
Administration 1,589,300
Blind and Physically Handicapped ... 1,322,100
Library Development 3,315,800
Information Services 1,361,300

The Legislature intends that the Division develop performance measures for each program and where possible prepare a five-year history of those measures for the FY 2002 Annual General Session.

It is the intent of the Legislature that these funds not lapse.

ITEM 116
To Department of Community & Economic Development - Community Development
From General Fund 5,443,800
From General Fund, One-time 2,400,000
From Federal Funds 27,180,200
From Dedicated Credits Revenue 1,035,000
From General Fund Restricted - Mineral Lease 630,000
From General Fund Restricted - Homeless Trust 150,000
From Permanent Community Impact 632,000
From Revenue Transfers ..... (640,800)
From Beginning Nonlapsing Appropriation Balances 238,500
From Closing Nonlapsing Appropriation Balances ..... (238,500)

Schedule of Programs:
Weatherization Assistance 3,766,300
Community Development
Administration 882,800
Museum Services 2,288,700
Community Assistance 10,938,700
Pioneer Communitites 231,400
Housing Development 941,900
Community Services 2,848,800
Homeless Committee 2,337,000
Commission on Volunteers 3,386,400
Martin Luther King Commission 67,600
HEAT 8,499,000
Emergency Food 170,000
Special Housing 471,600

It is the intent of the Legislature that these funds not lapse.

The Legislature intends that the Division develop performance measures for each program and where possible prepare a five-year history of those measures for the FY 2002 Annual General Session.

The Legislature intends that $2,000,000 of appropriated funds be used for the new Children's Museum. It is further the intent of the Legislature that funding for the Children's Museum be matched by $20,000,000 from Salt Lake County.

The Legislature intends that $200,000 of appropriated funds be used for a Homeless Youth Resource Center.

The Legislature intends that of the funds appropriated, $100,000 be a one-time increase for the Commission on Volunteers-Literacy Program.

The Legislature intends that $50,000 of appropriated funds be used for Weatherization federal match requirements.

The Legislature intends that $50,000 of appropriated funds be used to increase funding to the Emergency Food program.

ITEM 117
To Department of Community & Economic Development - Zoos
From General Fund 1,730,000
Schedule of Programs:
Zoos 1,730,000

ITEM 118
To Department of Community & Economic Development - Community Development Capital Budget
From General Fund Restricted - Mineral Lease 14,414,500
From General Fund Restricted - Mineral Bonus 4,857,100
From Permanent Community Impact . 17,663,000
From Revenue Transfers ..... (17,663,000)
From Repayments 13,301,500
Schedule of Programs:
Permanent Community Impact Board 30,964,500
Special Service Districts 1,608,600

UTAH STATE FAIR CORPORATION

ITEM 119
To Utah State Fair Corporation
From General Fund 370,000
From Dedicated Credits Revenue 3,495,100
From Beginning Nonlapsing Appropriation Balances 1,346,200
From Closing Nonlapsing Appropriation Balances ..... (1,249,800)
Schedule of Programs:
Utah State Fair Corporation 3,961,500

UTAH TECHNOLOGY FINANCE CORPORATION

ITEM 120
To Utah Technology Finance Corporation
From Federal Funds 15,000
From Dedicated Credits Revenue 6,740,000
From Beginning Nonlapsing Appropriation Balances 8,039,300
From Closing Nonlapsing Appropriation Balances ..... (7,865,300)
Schedule of Programs:
Utah Technology Finance Corporation 6,929,000

The Legislature intends to deposit in the Industrial Assistance Fund any proceeds in excess of $4,000,000 paid to the state from the liquidation of Utah Technology Finance Corporation, whether these proceeds come from cash, sale of real property, or collection of accounts receivable.

HEALTH & HUMAN SERVICES SUBCOMMITTEE
HEALTH

ITEM 121
To Department of Health - Executive Director's Operations
From General Fund 5,326,500
From General Fund, One-time 200,000
From Federal Funds 2,710,700
From Dedicated Credits Revenue 1,058,000
From General Fund Restricted - Kurt Oscarson Organ Transplant Account 100,000
From Revenue Transfers 763,600
From Beginning Nonlapsing Appropriation Balances 250,700
From Closing Nonlapsing Appropriation Balances ..... (266,700)
Schedule of Programs:
Executive Director 2,233,400
Program Operations 3,220,500
Medical Examiner 1,718,000
Center for Health Data 2,970,900

It is the intent of the Legislature that at least one of the Division budgets of the Department of Health and the Department of Human Services be presented in extensive detail at the time of presentation at the annual budget hearing. The division which is to be examined with this scrutiny is to be selected by the co-chairs of the Health and Human Services Appropriations Subcommittee by July of the preceding year.

It is the intent of the Legislature that the Department of Health present to the Office of the Legislative Fiscal Analyst, with its annual budget submission, detailed outcome measures for each budget area in each division within the department. These outcome measures shall be, whenever possible, reported in terms of outcomes achieved with the population served in addition to the report of total numbers served. The report shall include those who are statistically eligible, but did not need or accept state funded services. The Office of the Legislative Fiscal Analyst shall include the department's report including outcome measures within the Department's budget presentation on an item by item basis.

It is the intent of the Legislature that the budget analysis for the Department of Health be presented with a breakdown between costs of administration and services delivered and the number of citizens served and categorized by cost and type of service.

It is the intent of the Legislature that the Office of the Medical Examiner shall charge scheduled fees, except no fees will be charged for State criminal cases.

ITEM 122
To Department of Health - Veterans' Nursing Home
From Federal Funds 1,519,100
From Dedicated Credits Revenue 1,806,100
From Beginning Nonlapsing Appropriation Balances 32,000
From Closing Nonlapsing Appropriation Balances ..... (26,000)
Schedule of Programs:
Veterans' Nursing Home 3,331,200

ITEM 123
To Department of Health - Health Systems Improvement
From General Fund 4,777,100
From Federal Funds 3,020,100
From Dedicated Credits Revenue 2,858,800
From General Fund Restricted - Medicaid Restricted Account 4,500
From Revenue Transfers 1,313,100
From Beginning Nonlapsing Appropriation Balances 593,000
From Closing Nonlapsing Appropriation Balances ..... (200,500)
Schedule of Programs:
Director's Office 326,700
Emergency Medical Services 4,600,100
Licensing 3,171,800
Program Certification and Resident Assessment 3,272,900
Primary Care, Rural, and Ethnic Health 994,600

It is the intent of the Legislature that funding provided for Primary Care Health Grants not be expended for inter-departmental projects.

It is the intent of the Legislature that the fees collected for the purpose of plan reviews by the Bureau of Licensing be considered nonlapsing.

It is the intent of the Legislature that funds for the Primary Care Grant Program be considered nonlapsing.

ITEM 124
To Department of Health - Physician & Physician Assistants Grant & Scholarship Program
From General Fund 296,400
From Beginning Nonlapsing Appropriation Balances 616,800
From Closing Nonlapsing Appropriation Balances ..... (480,900)
Schedule of Programs:
Physician & Physician Assistants Grant & Scholarship Program 432,300

ITEM 125
To Department of Health - Nurse Education Financial Assistance Program
From General Fund 191,700
From Beginning Nonlapsing Appropriation Balances 181,200
From Closing Nonlapsing Appropriation Balances ..... (134,800)
Schedule of Programs:
Nurse Education Financial Assistance Program 238,100

ITEM 126
To Department of Health - Special Population Health Care Provider Financial Assistance Program
From General Fund 77,500
From Beginning Nonlapsing Appropriation Balances 110,000
From Closing Nonlapsing Appropriation Balances ..... (36,600)
Schedule of Programs:
Special Population Health Care Provider Financial Assistance Program 150,900

ITEM 127
To Department of Health - Epidemiology and Laboratory Services
From General Fund 4,696,800
From Federal Funds 6,027,000
From Dedicated Credits Revenue 1,747,100
From General Fund Restricted - State Lab Drug Testing Account 264,700
From Revenue Transfers 649,300
Schedule of Programs:
Director's Office 1,001,900
Environmental Chemistry and Toxicology 2,078,100
Laboratory Improvement 932,800
Microbiology 1,963,700
HIV/AIDS/TB Control/Refugee Health 4,758,300
Food Safety and Environmental Health 452,700
Epidemiology 2,197,400

It is the intent of the Legislature that the Division of Epidemiology and Laboratory Services may receive donated laboratory equipment and shall use such donated equipment for the purpose of promoting and protecting the public health.

ITEM 128
To Department of Health - Community and Family Health Services
From General Fund 11,401,200
From General Fund, One-time 70,000
From Federal Funds 53,166,800
From Dedicated Credits Revenue 13,176,900
From General Fund Restricted - Cigarette Tax Restricted Account 250,000
From General Fund Restricted - Tobacco Settlement Account 4,039,800
From Revenue Transfers 4,453,900
Schedule of Programs:
Director's Office 2,794,800
Health Education 13,894,500
Maternal and Child Health 50,736,700
Children with Special Health Care Needs 19,132,600

It is the intent of the Legislature that there be a $10.00 suggested donation for children's services in the Early Intervention program. This donation may be paid by the person responsible for the child receiving the services to help defray the costs associated with those services.

ITEM 129
To Department of Health - Health Care Financing
From General Fund 10,346,200
From Federal Funds 34,936,900
From Dedicated Credits Revenue 1,706,800
From General Fund Restricted - Nursing Facility Account 31,900
From Revenue Transfers 11,155,600
Schedule of Programs:
Director's Office 4,168,200
Financial Services 9,348,900
Managed Health Care 2,415,700
Medicaid Operations 2,899,200
Eligibility Services 12,249,100
Coverage and Reimbursement 2,763,100
Contracts 23,453,200
Utah Medical Assistance 880,000

It is the intent of the Legislature that the Department of Health contract with the Department of Human Services in FY 2002 to fund $1.6 million worth of services provided by the Division of Services for People with Disabilities to people with disabilities whose names are on the critical needs waiting list.

ITEM 130
To Department of Health - Medical Assistance
From General Fund 185,199,900
From General Fund, One-time 307,500
From Federal Funds 613,619,500
From Dedicated Credits Revenue 42,123,300
From General Fund Restricted - Medicaid Restricted Account 110,000
From General Fund Restricted - Nursing Facility Account 4,647,400
From Revenue Transfers 53,814,500
Schedule of Programs:
Medicaid Base Program 755,735,000
Title XIX for Human Services 136,211,000
Utah Medical Assistance Program ... 7,876,100

It is the intent of the Legislature that the Department of Health will review with the Executive Appropriations Committee any Medicaid Program reductions or additions.

ITEM 131
To Department of Health - Children's Health Insurance Program
From Federal Funds 19,145,300
From General Fund Restricted - Tobacco Settlement Account 5,495,800
Schedule of Programs:
Children's Health Insurance Program 24,641,100

ITEM 132
To Department of Health - Local Health Departments
From General Fund 2,132,700
Schedule of Programs:
Local Health Department Funding .. 2,132,700

It is the intent of the Legislature that if Substitute House Bill 350 passes, all savings from health insurance premiums shall be used to provide services for clients of local health departments, mental health, aging services and substance abuse authorities.

MEDICAL EDUCATION PROGRAM

ITEM 133
To Medical Education Program
From General Fund, One-time 110,000
From Federal Funds 440,000
From Beginning Nonlapsing Appropriation Balances 43,500
Schedule of Programs:
Medical Education Program 593,500

HUMAN SERVICES

ITEM 134
To Department of Human Services - Executive Director Operations
From General Fund 8,646,200
From Federal Funds 8,548,200
From Dedicated Credits Revenue 72,700
From Revenue Transfers - Department of Health - Medical Assistance 546,100
From Revenue Transfers - Other Agencies 2,076,800
Schedule of Programs:
Executive Director's Office 2,284,900
Legal Affairs 1,068,000
Information Technology 4,323,400
Administrative Support 3,355,600
Fiscal Operations 2,767,300
Human Resources 1,315,600
Local Discretionary 1,492,000
Special Projects 811,400
Children's Ombudsman 432,600
Developmental Disabilities Council 697,400
Foster Care Citizens Review Boards . 1,341,800

It is the intent of the Legislature that federal Medicaid match rate changes for the local mental health and substance abuse programs be considered by the Department of Human Services in its annual budget preparation.

It is the intent of the Legislature that the Department of Human Services present to the Office of Legislative Fiscal Analyst detailed outcome measures for each budget area in each division within the Department. These outcome measures shall be, wherever possible, reported in terms of outcomes achieved with the population served in addition to the report of total numbers served. The report shall include those who are statistically eligible but did not need or accept state-funded services. The Office of Legislative Fiscal Analyst shall include the department's report including outcome measures within their budget presentation on an item-by-item basis.

It is the intent of the Legislature that the budget analysis for the Department of Human Services be presented with a breakdown between costs of administration and services delivered and the number of citizens served and categorized by cost and type of service.

It is the intent of the Legislature that at least one of the Division budgets of the Department of Health and the Department of Human Services be presented in extensive detail at the time of presentation at the annual budget hearing. The division which is to be examined with this scrutiny is to be selected by the co-chairs of Health and Human Services Appropriations Subcommittee by July of the preceding year.

ITEM 135
To Department of Human Services - Drug Courts/Board
From General Fund 1,000,000
From General Fund Restricted - Tobacco Settlement Account 1,647,200
Schedule of Programs:
Drug Board 350,900
Drug Courts 2,296,300

ITEM 136
To Department of Human Services - Division of Mental Health
From General Fund 59,970,600
From Federal Funds 4,411,900
From Dedicated Credits Revenue 2,887,900
From Revenue Transfers - Department of Health - Medical Assistance 8,147,500
From Revenue Transfers - Other Agencies 326,800
Schedule of Programs:
Administration 1,274,800
Community Services 7,243,300
Mental Health Centers 22,303,400
Residential Services 2,967,500
State Hospital 41,955,700

It is the intent of the Legislature that if Substitute HB 350 passes, all savings from health insurance premiums shall be used to provide services for clients of local health departments, mental health, aging services and substance abuse authorities.

ITEM 137
To Department of Human Services - Division of Substance Abuse
From General Fund 10,979,300
From Federal Funds 19,184,500
From Dedicated Credits Revenue 12,000
From General Fund Restricted - Intoxicated Driver Rehabilitation 1,050,000
From Revenue Transfers - Other Agencies 22,900
Schedule of Programs:
Administration 1,508,000
State Services 6,656,500
Local Services 22,034,200
Drivers Under the Influence 1,050,000

It is the intent of the Legislature that if Substitute HB 350 passes, all savings from health insurance premiums shall be used to provide services for clients of local health departments, mental health, aging services and substance abuse authorities.

ITEM 138
To Department of Human Services - Division of Services for People with Disabilities
From General Fund 43,703,800
From General Fund, One-time ..... (1,600,000)
From Federal Funds 4,738,900
From Dedicated Credits Revenue 1,479,900
From General Fund Restricted - Trust for People with Disabilities 200,000
From Revenue Transfers - Department of Health - Medical Assistance 89,340,300
From Revenue Transfers - Other Agencies 1,351,200
Schedule of Programs:
Administration 2,983,000
Service Delivery 11,713,700
State Developmental Center 32,263,800
Residential Services 61,525,200
Day Services 15,346,300
Supported Employment 5,313,600
Family Support 7,131,300
Services for Individuals with Physical Disabilities 1,047,900
Transportation Services 1,889,300

It is the intent of the Legislature that the Division of Services for People with Disabilities place limitations on the use of one-time mini-grants to individuals and families on the waiting list. Such limitations shall restrict the use of funds to meet the most critical immediate one-time needs of those on the waiting list. It is further the intent of the Legislature that the final approval of each request shall be done exclusively by the Division after a . review to assure that each request meets the requirements of legislative intent. The Division shall provide a detailed report to the Health and Human Services Appropriations Subcommittee regarding all grants awarded.

It is the intent of the Legislature that in renewing contracts with private providers the Division of Services for People with Disabilities shall consider prevailing labor market conditions.

It is the intent of the Legislature that rent collected from individuals who occupy state owned group homes be applied to the cost of maintaining these facilities. It is also the intent of the Legislature that the Division of Services for People with Disabilities provide an accounting of state owned group home rents and costs to the Legislature or the Office of Legislative Fiscal Analyst.

It is the intent of the Legislature that the Division of Services for People with Disabilities, through the Attorney General's Office, continue to seek dismissal of the Lisa P. Settlement agreement at the earliest possible date. It is also the intent of the Legislature that the Division and the Attorney General's Office provide a written report on the status of the Lisa P. agreement during each 2001 interim meeting of the Health and Human Services Interim Committee, beginning in April, until the settlement agreement is finally dismissed. It is also the intent of the Legislature that the Division and the Attorney General's Office report on the status of the Lisa P. Settlement agreement to the 2002 Health and Human Services Appropriations Subcommittee.

It is the intent of the Legislature that the Division of Services for People with Disabilities seek to maximize its ability to serve individuals on the waiting list through reviewing existing policies, budgets, and service allocations and pursuing any appropriate additional federal waivers or funding or other creative mechanisms. It is further the intent that the Division report to the 2002 Health and Human Services Appropriations Subcommittee on its progress and that the subcommittee consider options to reward the Division employees based on the progress made and in accordance with DHRM rules.

It is the intent of the Legislature that funds appropriated for the home and community based services waiting list for people with disabilities be used exclusively for direct services and related support. It is further the intent of the Legislature that the Division report to the Office of Legislative Fiscal Analyst by December 2001, on the number of individuals served and services provided.

It is the intent of the Legislature that any TANF funds transferred to the Division of Services for People with Disabilities in excess of the amount transferred in the FY 2000 base budget be considered one-time and the Office of Legislative Fiscal Analyst, in preparing the recommendations for the FY 2003 budget, consider replacing the excess TANF transfer with sufficient General Fund to provide the equivalent amount of service.

It is the intent of the Legislature that the Department of Health contract with the Department of Human Services to fund $1.6 million worth of services provided by the Division of Services for People with Disabilities to people with disabilities whose names are on the critical needs waiting list.

ITEM 139

To Department of Human Services – Office of Recovery Services
From General Fund 12,575,600
From Federal Funds 27,117,500
From Dedicated Credits Revenue 1,477,200
From Revenue Transfers – Department of Health – Medical Assistance 1,756,300
From Revenue Transfers – Other Agencies 1,185,400
Schedule of Programs:
Administration 1,120,200
Financial Services 5,574,700
Electronic Technology 8,485,800
Child Support Services 20,423,700
Investigations and Collections 1,820,600
Children in Care Collections 1,830,800
Attorney General Contract 3,148,800
Medical Collections 1,707,400

ITEM 140

To Department of Human Services – Division of Child and Family ..... Services
From General Fund 67,268,400
From Federal Funds 38,351,400
From Dedicated Credits Revenue 2,346,600
From General Fund Restricted – Children's Trust 350,000
From General Fund Restricted – Domestic Violence 650,000
From Revenue Transfers – Department of Health – Medical Assistance 17,741,100
From Revenue Transfers – Other Agencies 606,200
Schedule of Programs:
Administration 5,094,400
Service Delivery 57,026,500
In-Home Services 1,882,700
Out-of-Home Care 32,079,400
Facility Based Services 5,455,800
Minor Grants 3,273,500
Selected Programs 2,884,000
Special Needs 1,670,400
Domestic Violence Services 4,635,700
Children's Trust Fund 350,000
Adoption Assistance 10,635,900
Child Welfare Management Information System 2,325,400

ITEM 141

To Department of Human Services – Division of Aging and Adult Services
From General Fund 12,232,500
From General Fund, One-time 550,000
From Federal Funds 7,098,800
From Dedicated Credits Revenue 10,100
From Revenue Transfers – Department of Health – Medical Assistance 720,600
Schedule of Programs:
Administration 1,333,300
Local Government Grants 13,250,600
Non-Formula Funds 2,739,200
Adult Protective Services 3,288,900

It is the intent of the Legislature that if Substitute HB 350 passes, all savings from health insurance premiums shall be used to

provide services for clients of local health departments, mental health, aging services and substance abuse authorities.

ISF - HUMAN SERVICES

ITEM 142
To Department of Human Services –
Internal Service Funds
From Dedicated Credits –
Intragovernmental Revenue 4,177,900
Schedule of Programs:
ISF – DHS General Services 1,500,900
ISF – DHS Data Processing 2,677,000
Total FTE – 36

HIGHER EDUCATION SUBCOMMITTEE
UNIVERSITY OF UTAH

ITEM 143
To University of Utah – Education and General
From General Fund 55,007,300
From General Fund, One-time 1,581,900
From Income Tax 124,146,200
From Income Tax, One-time 2,609,600
From Dedicated Credits Revenue 61,382,600
From General Fund Restricted –
Tobacco Settlement Account 4,000,000
Schedule of Programs:
Education and General 248,727,600

It is the intent of the Legislature that tuition revenue generated from tuition rate increases shall remain with the institution after compensation. However, the allocation of tuition revenue for institutional needs shall be determined by the President of each institution in consultation with the student body representives.

It is the intent of the Legislature that any salary increases be distributed to faculty, professional and classified employees in an equitable manner.

It is the intent of the Legislature that all Utah System of Higher Education institutions use facility operation and maintenance (O&M) funding consistent with State Agencies only for O&M purposes.

It is the intent of the Legislature that the Council of Presidents and representatives of the Board of Regents working in conjunction with legislators, the Legislative Fiscal Analyst and a representative of the Governor's Office review and refine the funding formula for the Utah System of Higher Education. It is the intent of the Legislature that this proposed formula reduce dependence on growth funding, link to measurable systemwide and institutional specific performance indicators, respond to c hanges in costs of instruction due to the implementation of technology or the utilization of cost saving measures and respond to market demand, student performance as well as recognized differences in institutional roles and mission.

It is the intent of the Legislature that the State Board of Regents be directed to closely supervise the fuel and power budgets with the intent of promoting greater energy efficiency on each campus. It is also the intent of the Legislature that the Board of Regents report during the interim to the Subcommittee on Higher Education on the implementation of long term plans to control and manage energy costs.

It is the intent of the Legislature that funding be designated for distance learning program development by the nine USHE institutions. The Regents are also directed to establish accountability measures and a master plan for the operation of the item in consultation with the nine institutions and the Legislative Fiscal Analyst.

It is the intent of the Legislature that the USHE complete and submit all financial reports (i.e. A-1's, R-1's, S-10's, and S-12's, etc.) to the Office of the Legislative Fiscal Analyst by October 1 of each fiscal year.

ITEM144
To University of Utah –
Educationally Disadvantaged
From General Fund 720,200
From Income Tax 26,900
Schedule of Programs:
Educationally Disadvantaged 747,100

ITEM 145
To University of Utah – School of Medicine
From General Fund 18,244,800
From Income Tax 1,313,900
From Income Tax, One-time 1,500,000
From Dedicated Credits Revenue 6,056,600
Schedule of Programs:
School of Medicine 27,115,300

It is the intent of the Legislature that any salary increases be distributed to faculty, professional and classified employees in an equitable manner.

ITEM 146
To University of Utah – University Hospital
From General Fund 4,350,900
From Income Tax 274,900
From Dedicated Credits – Land Grant ... 151,000
Schedule of Programs:
University Hospital 4,600,200
Miners' Hospital 176,600

It is the intent of the Legislature that patient fees shall be retained by the Hospital provided that they are spent in compliance with the Hospital's operating budget approved by the State Board of Regents.

It is the intent of the Legislature that any salary increases be distributed to faculty, professional and classified employees in an equitable manner.

ITEM 147
To University of Utah – Regional Dental
Education Program
From General Fund 566,100
From Income Tax 32,100
From Dedicated Credits Revenue 105,300

Schedule of Programs:
Regional Dental Education Program ... 703,500

ITEM 148
To University of Utah - Research and Training
From General Fund 5,482,800
From Income Tax 256,000
Schedule of Programs:
Research and Training 5,738,800

It is the intent of the Legislature that any salary increases be distributed to faculty, professional and classified employees in an equitable manner.

ITEM 149
To University of Utah - Public Service
From General Fund 1,070,900
From Uniform School Fund 50,000
From Income Tax 57,400
Schedule of Programs:
Seismograph Stations 420,700
Museum of Natural History 641,000
State Arboretum 116,600

It is the intent of the Legislature that any salary increases be distributed to faculty, professional and classified employees in an equitable manner.

ITEM 150
To University of Utah - Statewide TV Administration
From General Fund 2,352,500
From Income Tax 154,000
Schedule of Programs:
Public Broadcasting 2,506,500

ITEM 151
To University of Utah - Land Grant Management
From Dedicated Credits - Land Grant ... 502,100
Schedule of Programs:
Land Grant Management 502,100

ITEM 152
To University of Utah - Area Health Education Centers
From General Fund 566,900
From Income Tax 12,500
Schedule of Programs:
Area Health Education Centers 579,400

It is the intent of the Legislature that any salary increases be distributed to faculty, professional and classified employees in an equitable manner.

ITEM 153
To University of Utah - Poison Control Center
From Dedicated Credits Revenue 1,336,900
Schedule of Programs:
Poison Control Center 1,336,900

It is the intent of the Legislature that any salary increases be distributed to faculty, professional and classified employees in an equitable manner.

UTAH STATE UNIVERSITY

ITEM 154
To Utah State University - Education and General
From General Fund 68,987,700
From General Fund, One-time 1,921,700
From Income Tax 26,414,900
From Income Tax, One-time 397,500
From Dedicated Credits Revenue 35,241,800
Schedule of Programs:
Education and General 132,963,600

It is the intent of the Legislature that tuition revenue generated from tuition rate increases shall remain with the institution after compensation. However, the allocation of tuition revenue for institutional needs shall be determined by the President of each institution in consultation with the student body representatives.

It is the intent of the Legislature that any salary increases be distributed to faculty, professional and classified employees in an equitable manner.

It is the intent of the Legislature that all Utah System of Higher Education institutions use facility operation and maintenance (O&M) funding consistent with State Agencies only for O&M purposes.

It is the intent of the Legislature that the Council of Presidents and representatives of the Board of Regents working in conjunction with legislators, the Legislative Fiscal Analyst and a representative of the Governor's Office review and refine the funding formula for the Utah System of Higher Education. It is the intent of the Legislature that this proposed formula reduce dependence on growth funding, link to measurable systemwide and institutional specific performance indicators, respond to c hanges in costs of instruction due to the implementation of technology or the utilization of cost saving measures and respond to market demand, student performance as well as recognized differences in institutional roles and mission.

It is the intent of the Legislature that the State Board of Regents be directed to closely supervise the fuel and power budgets with the intent of promoting greater energy efficiency on each campus. It is also the intent of the Legislature that the Board of Regents report during the interim to the Subcommittee on Higher Education on the implementation of long term plans to control and manage energy costs.

It is the intent of the Legislature that funding be designated for distance learning program development by the nine USHE institutions. The Regents are also directed to establish accountability measures and a master plan for the operation of the item in consultation with the nine institutions and the Legislative Fiscal Analyst.

It is the intent of the Legislature that the USHE complete and submit all financial reports (i.e. A-1's, R-1's, S-10's, and S-12's, etc.) to the Office of the Legislative Fiscal Analyst by October 1 of each fiscal year.

It is the intent of the Legislature that the continuing education programs at Brigham

City and Tooele be shown as separate line items. These line items shall include program instructional costs, administrative and student support, facility operation and maintenance expenses, and building lease payments for FY 2003. It is also the intent of the Legislature that the building lease payments and the financing arrangements be reviewed to determine whether the students using these facilities are paying a reasonable amount of the cost.

It is the intent of the Legislature that Developmental Courses at Utah State University Branch Campuses and Extension Centers be converted to budget related enrollments.

It is the intent of the Legislature that the Utah System of Higher Education in submitting its budget for FY 2003 for the educationally disadvantaged shall separate their request by the main campus and by any branch campuses. It is further the intent of the Legislature that the Office of Legislative Fiscal Analyst in preparing the annual Appropriations Act for FY 2003 shall separate into line Items of appropriation those requests approved for the educationally disadvantaged by the main campus and by any branch campuses.

It is the intent of the Legislature that the Division of Facilities Construction and Management purchase the Brigham City Education Facility together with the adjacent property from Box Elder County and lease it to the Bridgerland Applied Technology Center, Utah State University, and other state entities at a rate sufficient to cover the operations and maintenance cost of the entire facility including vacant space. DFCM may l ease the vacant space to other entities at market rates until such time as it is needed for state purposes.

ITEM 155
To Utah State University - Educationally Disadvantaged
From General Fund 235,000
From Income Tax 8,200
Schedule of Programs:
Educationally Disadvantaged 243,200

It is the intent of the Legislature that the Utah System of Higher Education in submitting its budget for FY 2003 for the educationally disadvantaged shall separate their request by the main campus and by any branch campuses. It is further the intent of the Legislature that the Office of Legislative Fiscal Analyst in preparing the annual Appropriations Act for FY 2003 shall separate into line Items of appropriation those requests approved for the educationally disadvantaged by the main campus and by any branch campuses.

ITEM 156
To Utah State University - Uintah Basin Continuing Education Center
From General Fund 2,133,500
From General Fund, One-time 34,500
From Income Tax 530,400
From Dedicated Credits Revenue 1,444,500
Schedule of Programs:
Uintah Basin Continuing Ed 4,142,900

It is the intent of the Legislature that the Utah System of Higher Education in submitting its budget for FY 2003 for the educationally disadvantaged shall separate their request by the main campus and by any branch campuses. It is further the intent of the Legislature that the Office of Legislative Fiscal Analyst in preparing the annual Appropriations Act for FY 2003 shall separate into line Items of appropriation those requests approved for the educationally disadvantaged by the main campus and by any branch campuses.

It is the intent of the Legislature that any salary increases be distributed to faculty, professional and classified employees in an equitable manner.

It is the intent of the Legislature that tuition revenue generated from tuition rate increases shall remain with the institution after compensation. However, the allocation of tuition revenue for institutional needs shall be determined by the President of each institution in consultation with the student body representatives.

It is the intent of the Legislature that Developmental Courses at Utah State University Branch Campuses and Extension Centers be converted to budget related enrollments.

ITEM 157
To Utah State University - Southeastern Utah Continuing Education Center
From General Fund 668,100
From General Fund, One-time 8,000
From Income Tax 33,300
From Dedicated Credits Revenue 373,900
Schedule of Programs:
Southeastern Utah Continuing Ed ... 1,083,300

It is the intent of the Legislature that the budgets of Utah State University's Southeastern Utah Continuing Education Center, and the College of Eastern Utah at the Price and San Juan Campuses be held harmless this fiscal year because of the temporary nature of the downturn in enrollments. In addition, it is projected that the enrollments will be substantially higher than predicted by the Board of Regents in this academic year and will reach the enrollment target in the next academic year.

It is the intent of the Legislature that any salary increases be distributed to faculty, professional and classified employees in an equitable manner.

It is the intent of the Legislature that tuition revenue generated from tuition rate increases shall remain with the institution after compensation. However, the allocation

of tuition revenue for institutional needs shall be determined by the President of each institution in consultation with the student body representatives.

It is the intent of the Legislature that Developmental Courses at Utah State University Branch Campuses and Extension Centers be converted to budget related enrollments.

It is the intent of the Legislature that the Utah System of Higher Education in submitting its budget for FY 2003 for the educationally disadvantaged shall separate their request by the main campus and by any branch campuses. It is further the intent of the Legislature that the Office of Legislative Fiscal Analyst in preparing the annual Appropriations Act for FY 2003 shall separate into line Items of appropriation those requests approved for the educationally disadvantaged by the main campus and by any branch campuses.

ITEM 158
To Utah State University - Brigham City Continuing Education Center
From Income Tax 276,600
From Dedicated Credits Revenue 598,800
Schedule of Programs:
Brigham City Continuing Education Center 875,400

It is the intent of the Legislature that the Division of Facilities Construction and Management purchase the Brigham City Education Facility together with the adjacent property from Box Elder County and lease it to the Bridgerland Applied Technology Center, Utah State University, and other state entities at a rate sufficient to cover the operations and maintenance cost of the entire facility including vacant space. DFCM may lease the vacant space to other entities at market rates until such time as it is needed for state purposes.

ITEM 159
To Utah State University - Tooele Continuing Education Center
From Income Tax 812,000
From Dedicated Credits Revenue 1,062,700
Schedule of Programs:
Tooele Continuing Education Center . 1,874,700

It is the intent of the Legislature to provide applied technology educational opportunities for students in Salt Lake and Tooele counties comparable to those found in other areas of the state and encourage the Wasatch Front South Applied Technology Center to develop new regional applied technology education facilities by acquiring and remodeling existing public and higher education facilities that may become available. It is further the intent of the Legislature to provide operation and maintenance costs consistent with the policies of funding these costs in applied technology education centers throughout the state.

ITEM 160
To Utah State University - Water Research Laboratory
From General Fund 1,490,200
From Income Tax 92,500
From General Fund Restricted - Mineral Lease 839,500
Schedule of Programs:
Water Research Laboratory 2,422,200

It is the intent of the Legislature that any salary increases be distributed to faculty, professional and classified employees in an equitable manner.

ITEM 161
To Utah State University - Research and Training Grants
From General Fund 2,539,300
From Income Tax 87,500
Schedule of Programs:
Research and Training 2,626,800

It is the intent of the Legislature that any salary increases be distributed to faculty, professional and classified employees in an equitable manner.

ITEM 162
To Utah State University - Ecology Center
From General Fund 820,400
From Income Tax 46,100
Schedule of Programs:
Ecology Center 866,500

It is the intent of the Legislature that any salary increases be distributed to faculty, professional and classified employees in an equitable manner.

ITEM 163
To Utah State University - Agricultural Experiment Station
From General Fund 11,052,700
From General Fund, One-time 150,000
From Income Tax 1,123,700
From Federal Funds 1,813,800
From Dedicated Credits Revenue 709,700
Schedule of Programs:
Agriculture Experimentation Centers 14,849,900

It is the intent of the Legislature that any salary increases be distributed to faculty, professional and classified employees in an equitable manner.

ITEM 164
To Utah State University - Coopertive Extension Division
From General Fund 9,765,000
From General Fund, One-time 175,000
From Income Tax 1,305,300
From Income Tax, One-time 200,000
From Federal Funds 2,088,500
From Dedicated Credits Revenue 235,200
Schedule of Programs:
Cooperative Extension Services 13,769,000

It is the intent of the Legislature that any salary increases be distributed to faculty, professional and classified employees in an equitable manner.

It is the intent of the Legislature that developmental courses at Utah State University Branch campuses and extension centers be converted to budget related enrollments.

ITEM 165
To Utah State University – Jensen Historic Farm
From General Fund 154,400
From Income Tax 7,900
Schedule of Programs:
Jensen Historic Farm 162,300

It is the intent of the Legislature that any salary increases be distributed to faculty, professional and classified employees in an equitable manner.

ITEM 166
To Utah State University – Production Center
From General Fund 349,000
From Income Tax 18,100
Schedule of Programs:
Production Center 367,100

It is the intent of the Legislature that any salary increases be distributed to faculty, professional and classified employees in an equitable manner.

ITEM 167
To Utah State University – Land Grant Management
From Dedicated Credits – Land Grant ... 100,600
Schedule of Programs:
Land Grant Management 100,600

WEBER STATE UNIVERSITY

ITEM 168
To Weber State University – Education and General
From General Fund 45,234,400
From General Fund, One-time 1,343,400
From Income Tax 11,667,100
From Dedicated Credits Revenue 24,042,600
Schedule of Programs:
Education and General 82,287,500

It is the intent of the Legislature that tuition revenue generated from tuition rate increases shall remain with the institution after compensation. However, the allocation of tuition revenue for institutional needs shall be determined by the President of each institution in consultation with the student body representatives.

It is the intent of the Legislature that any salary increases be distributed to faculty, professional and classified employees in an equitable manner.

It is the intent of the Legislature that all Utah System of Higher Education institutions use facility operation and maintenance (O&M) funding consistent with State Agencies only for O&M purposes.

It is the intent of the Legislature that the Council of Presidents and representatives of the Board of Regents working in conjunction with legislators, the Legislative Fiscal Analyst and a representative of the Governor's Office review and refine the funding formula for the Utah System of Higher Education. It is the intent of the Legislature that this proposed formula reduce dependence on growth funding, link to measurable systemwide and institutional specific performance indicators, respond to c hanges in costs of instruction due to the implementation of technology or the utilization of cost saving measures and respond to market demand, student performance as well as recognized differences in institutional roles and mission.

It is the intent of the Legislature that the State Board of Regents be directed to closely supervise the fuel and power budgets with the intent of promoting greater energy efficiency on each campus. It is also the intent of the Legislature that the Board of Regents report during the interim to the Subcommittee on Higher Education on the implementation of long term plans to control and manage energy costs.

It is the intent of the Legislature that funding be designated for distance learning program development by the nine USHE institutions. The Regents are also directed to establish accountability measures and a master plan for the operation of the item in consultation with the nine institutions and the Legislative Fiscal Analyst.

It is the intent of the Legislature that the USHE complete and submit all financial reports (i.e. A-1's, R-1's, S-10's, and S-12's, etc.) to the Office of the Legislative Fiscal Analyst by October 1 of each fiscal year.

ITEM 169
To Weber State University – Educationally Disadvantaged
From General Fund 321,500
From Income Tax 19,600
Schedule of Programs:
Educationally Disadvantaged 341,100

SOUTHERN UTAH UNIVERSITY

ITEM 170
To Southern Utah University – Education and General
From General Fund 21,754,500
From General Fund, One-time 319,700
From Income Tax 5,223,700
From Dedicated Credits Revenue 10,012,300
Schedule of Programs:
Education and General 37,310,200

It is the intent of the Legislature that tuition revenue generated from tuition rate increases shall remain with the institution after compensation. However, the allocation of tuition revenue for institutional needs shall be determined by the President of each institution in consultation with the student body representatives.

It is the intent of the Legislature that any salary increases be distributed to faculty,

professional and classified employees in an equitable manner.

It is the intent of the Legislature that all Utah System of Higher Education institutions use facility operation and maintenance (O&M) funding consistent with State Agencies only for O&M purposes.

It is the intent of the Legislature that the Council of Presidents and representatives of the Board of Regents working in conjunction with legislators, the Legislative Fiscal Analyst and a representative of the Governor's Office review and refine the funding formula for the Utah System of Higher Education. It is the intent of the Legislature that this proposed formula reduce dependence on growth funding, link to measurable systemwide and institutional specific performance indicators, respond to c hanges in costs of instruction due to the implementation of technology or the utilization of cost saving measures and respond to market demand, student performance as well as recognized differences in institutional roles and mission

It is the intent of the Legislature that the State Board of Regents be directed to closely supervise the fuel and power budgets with the intent of promoting greater energy efficiency on each campus. It is also the intent of the Legislature that the Board of Regents report during the interim to the Subcommittee on Higher Education on the implementation of long term plans to control and manage energy costs.

It is the intent of the Legislature that the USHE complete and submit all financial reports (i.e. A-1's, R-1's, S-10's, and S-12's, etc.) to the Office of . the Legislative Fiscal Analyst by October 1 of each fiscal year.

It is the intent of the Legislature that funding be designated for distance learning program development by the nine USHE institutions. The Regents are also directed to establish accountability measures and a master plan for the operation of the item in consultation with the nine institutions and the Legislative Fiscal Analyst.

ITEM 171
To Southern Utah University - Educationally Disadvantaged
From General Fund 91,200
From Income Tax 4,000
Schedule of Programs:
Educationally Disadvantaged 95,200

ITEM 172
To Southern Utah University - Shakespeare Festival
From General Fund 13,200
Schedule of Programs:
Shakespeare Festival 13,200

SNOW COLLEGE

ITEM 173
To Snow College - Education and General
From General Fund 10,196,400
From General Fund, One-time 160,500
From Income Tax 2,026,400
From Dedicated Credits Revenue 3,435,100
Schedule of Programs:
Education and General 15,818,400

It is the intent of the Legislature that tuition revenue generated from tuition rate increases shall remain with the institution after compensation. However, the allocation of tuition revenue for institutional needs shall be determined by the President of each institution in consultation with the student body representatives.

It is the intent of the Legislature that any salary increases be distributed to faculty, professional and classified employees in an equitable manner.

It is the intent of the Legislature that all Utah System of Higher Education institutions use facility operation and maintenance (O&M) funding consistent with State Agencies only for O&M purposes.

It is the intent of the Legislature that the Council of Presidents and representatives of the Board of Regents working in conjunction with legislators, the Legislative Fiscal Analyst and a representative of the Governor's Office review and refine the funding formula for the Utah System of Higher Education. It is the intent of the Legislature that this proposed formula reduce dependence on growth funding, link to measurable systemwide and institutional specific performance indicators, respond to c hanges in costs of instruction due to the implementation of technology or the utilization of cost saving measures and respond to market demand, student performance as well as recognized differences in institutional roles and mission.

It is the intent of the Legislature that the State Board of Regents be directed to closely supervise the fuel and power budgets with the intent of promoting greater energy efficiency on each campus. It is also the intent of the Legislature that the Board of Regents report during the interim to the Subcommittee on Higher Education on the implementation of long term plans to control and manage energy costs.

It is the intent of the Legislature that funding be designated for distance learning program development by the nine USHE institutions. The Regents are also directed to establish accountability measures and a master plan for the operation of the item in consultation with the nine institutions and the Legislative Fiscal Analyst.

It is the intent of the Legislature that the USHE complete and submit all financial reports (i.e. A-1's, R-1's, S-10's, and S-12's,

etc.) to the Office of the Legislative Fiscal Analyst by October 1 of each fiscal year.

It is the intent of the Legislature that the Utah System of Higher Education in submitting its budget for FY 2003 for the educationally disadvantaged shall separate their request by the main campus and by any branch campuses. It is further the intent of the Legislature that the Office of Legislative Fiscal Analyst in preparing the annual Appropriations Act for FY 2003 shall separate into line Items of appropriation those requests approved for the educationally disadvantaged by the main campus and by any branch campuses.

ITEM 174
To Snow College - Educationally Disadvantaged
From General Fund 34,500
From Income Tax 200
Schedule of Programs:
Educationally Disadvantaged 34,700

It is the intent of the Legislature that the Utah System of Higher Education in submitting its budget for FY 2003 for the educationally disadvantaged shall separate their request by the main campus and by any branch campuses. It is further the intent of the Legislature that the Office of Legislative Fiscal Analyst in preparing the annual Appropriations Act for FY 2003 shall separate into line Items of appropriation those requests approved for the educationally disadvantaged by the main campus and by any branch campuses.

ITEM 175
To Snow College - Snow College South
From General Fund 688,600
From General Fund, One-time 25,200
From Income Tax 2,546,400
From Dedicated Credits Revenue 735,500
Schedule of Programs:
Snow South Education and General . 3,995,700

It is the intent of the Legislature that tuition revenue generated from tuition rate increases shall remain with the institution after compensation. However, the allocation of tuition revenue for institutional needs shall be determined by the President of each institution in consultation with the student body representatives.

It is the intent of the Legislature that any salary increases be distributed to faculty, professional and classified employees in an equitable manner.

It is the intent of the Legislature that all Utah System of Higher Education institutions use facility operation and maintenance (O&M) funding consistent with State Agencies only for O&M purposes.

It is the intent of the Legislature that the Council of Presidents and representatives of the Board of Regents working in conjunction with legislators, the Legislative Fiscal Analyst and a representative of the Governor's Office review and refine the funding formula for the Utah System of Higher Education. It is the intent of the Legislature that this proposed formula reduce dependence on growth funding, link to measurable systemwide and institutional specific performance indicators, respond to c hanges in costs of instruction due to the implementation of technology or the utilization of cost saving measures and respond to market demand, student performance as well as recognized differences in institutional roles and mission.

It is the intent of the Legislature that the State Board of Regents be directed to closely supervise the fuel and power budgets with the intent of promoting greater energy efficiency on each campus. It is also the intent of the Legislature that the Board of Regents report during the interim to the Subcommittee on Higher Education on the implementation of long term plans to control and manage energy costs.

It is the intent of the Legislature that funding be designated for distance learning program development by the nine USHE institutions. The Regents are also directed to establish accountability measures and a master plan for the operation of the item in consultation with the nine institutions and the Legislative Fiscal Analyst.

It is the intent of the Legislature that the USHE complete and submit all financial reports (i.e. A-1's, R-1's, S-10's, and S-12's, etc.) to the Office of the Legislative Fiscal Analyst by October 1 of each fiscal year.

It is the intent of the Legislature that the Utah System of Higher Education in submitting its budget for FY 2003 for the educationally disadvantaged shall separate their request by the main campus and by any branch campuses. It is further the intent of the Legislature that the Office of Legislative Fiscal Analyst in preparing the annual Appropriations Act for FY 2003 shall separate into line Items of appropriation those requests approved for the educationally disadvantaged by the main campus and by any branch campuses.

ITEM 176
To Snow College - Snow College South Secondary
From General Fund 103,000
From Uniform School Fund 153,300
From Income Tax 761,000
Schedule of Programs:
Snow South Secondary 1,017,300

DIXIE STATE COLLEGE

ITEM 177
To Dixie State College of Utah - Education and General
From General Fund 13,713,900
From General Fund, One-time 232,300
From Income Tax 3,051,900
From Dedicated Credits Revenue 5,384,300

Schedule of Programs:
Education and General 22,382,400

It is the intent of the Legislature that tuition revenue generated from tuition rate increases shall remain with the institution after compensation. However, the allocation of tuition revenue for institutional needs shall be determined by the President of each institution in consultation with the student body representatives.

It is the intent of the Legislature that any salary increases be distributed to faculty, professional and classified employees in an equitable manner.

It is the intent of the Legislature that all Utah System of Higher Education institutions use facility operation and maintenance (O&M) funding consistent with State Agencies only for O&M purposes.

It is the intent of the Legislature that the Council of Presidents and representatives of the Board of Regents working in conjunction with legislators, the Legislative Fiscal Analyst and a representative of the Governor's Office review and refine the funding formula for the Utah System of Higher Education. It is the intent of the Legislature that this proposed formula reduce dependence on growth funding, link to measurable systemwide and institutional specific performance indicators, respond to c hanges in costs of instruction due to the implementation of technology or the utilization of cost saving measures and respond to market demand, student performance as well as recognized differences in institutional roles and mission.

It is the intent of the Legislature that the State Board of Regents be directed to closely supervise the fuel and power budgets with the intent of promoting greater energy efficiency on each campus. It is also the intent of the Legislature that the Board of Regents report during the interim to the Subcommittee on Higher Education on the implementation of long term plans to control and manage energy costs.

It is the intent of the Legislature that funding be designated for distance learning program development by the nine USHE institutions. The Regents are also directed to establish accountability measures and a master plan for the operation of the item in consultation with the nine institutions and the Legislative Fiscal Analyst.

It is the intent of the Legislature that the USHE complete and submit all financial reports (i.e. A-1's, R-1's, S-10's, and S-12's, etc.) to the Office of the Legislative Fiscal Analyst by October 1 of each fiscal year.

ITEM 178
To Dixie State College of Utah -
Educationally Disadvantaged
From General Fund 32,900
From Income Tax 200
Schedule of Programs:
Educationally Disadvantaged 33,100

ITEM 179
To Dixie State College of Utah -
Zion Park Amphitheater
From General Fund 58,600
From Income Tax 1,500
From Dedicated Credits Revenue 31,700
Schedule of Programs:
Zion Park Amphitheater 91,800

COLLEGE OF EASTERN UTAH

ITEM 180
To College of Eastern Utah - Education and General
From General Fund 7,629,100
From General Fund, One-time 149,500
From Income Tax 2,199,600
From Dedicated Credits Revenue 1,832,300
Schedule of Programs:
Education and General 11,810,500

It is the intent of the Legislature that tuition revenue generated from tuition rate increases shall remain with the institution after compensation. However, the allocation of tuition revenue for institutional needs shall be determined by the President of each institution in consultation with the student body representatives.

It is the intent of the Legislature that any salary increases be distributed to faculty, professional and classified employees in an equitable manner.

It is the intent of the Legislature that all Utah System of Higher Education institutions use facility operation and maintenance (O&M) funding consistent with State Agencies only for O&M purposes.

It is the intent of the Legislature that the Council of Presidents and representatives of the Board of Regents working in conjunction with legislators, the Legislative Fiscal Analyst and a representative of the Governor's Office review and refine the funding formula for the Utah System of Higher Education. It is the intent of the Legislature that this proposed formula reduce dependence on growth funding, link to measurable systemwide and institutional specific performance indicators, respond to c hanges in costs of instruction due to the implementation of technology or the utilization of cost saving measures and respond to market demand, student performance as well as recognized differences in institutional roles and mission.

It is the intent of the Legislature that the State Board of Regents be directed to closely supervise the fuel and power budgets with the intent of promoting greater energy efficiency on each campus. It is also the intent of the Legislature that the Board of Regents report during the interim to the Subcommittee on Higher Education on the implementation of long term plans to control and manage energy costs.

It is the intent of the Legislature that funding be designated for distance learning program development by the nine USHE institutions. The Regents are also directed to establish accountability measures and a master plan for the operation of the item in consultation with the nine institutions and the Legislative Fiscal Analyst.

It is the intent of the Legislature that the USHE complete and submit all financial reports (i.e. A-1's, R-1's, S-10's, and S-12's, etc.) to the Office of the Legislative Fiscal Analyst by October 1 of each fiscal year.

It is the intent of the Legislature that the budgets of Utah State University's Southeastern Utah Continuing Education Center, and the College of Eastern Utah at the Price and San Juan Campuses be held harmless this fiscal year because of the temporary nature of the downturn in enrollments. In addition, it is projected that the enrollments will be substantially higher than predicted by the Board of Regents in this academic year and will reach the enrollment target in the next academic year.

It is the intent of the Legislature that the Utah System of Higher Education in submitting its budget for FY 2003 for the educationally disadvantaged shall separate their request by the main campus and by any branch campuses. It is further the intent of the Legislature that the Office of Legislative Fiscal Analyst in preparing the annual Appropriations Act for FY 2003 shall separate into line Items of appropriation those requests approved for the educationally disadvantaged by the main campus and by any branch campuses.

ITEM 181
To College of Eastern Utah -
Educationally Disadvantaged
From General Fund 122,500
From Income Tax 1,700
Schedule of Programs:
Educationally Disadvantaged 124,200

It is the intent of the Legislature that the Utah System of Higher Education in submitting its budget for FY 2003 for the educationally disadvantaged shall separate their request by the main campus and by any branch campuses. It is further the intent of the Legislature that the Office of Legislative Fiscal Analyst in preparing the annual Appropriations Act for FY 2003 shall separate into line Items of appropriation those requests approved for the educationally disadvantaged by the main campus and by any branch campuses.

ITEM 182
To College of Eastern Utah - Prehistoric Museum
From General Fund 173,300
From Income Tax 11,900
From Dedicated Credits Revenue 1,000
Schedule of Programs:
Prehistoric Museum 186,200

It is the intent of the Legislature that any salary increases be distributed to faculty, professional and classified employees in an equitable manner.

ITEM 183
To College of Eastern Utah - San Juan Center
From General Fund 1,637,100
From General Fund, One-time 22,100
From Income Tax 143,300
From Dedicated Credits Revenue 467,700
Schedule of Programs:
San Juan Center Academic 2,270,200

It is the intent of the Legislature that tuition revenue generated from tuition rate increases shall remain with the institution after compensation. However, the allocation of tuition revenue for institutional needs shall be determined by the President of each institution in consultation with the student body representatives.

It is the intent of the Legislature that any salary increases be distributed to faculty, professional and classified employees in an equitable manner.

It is the intent of the Legislature that all Utah System of Higher Education institutions use facility operation and maintenance (O&M) funding consistent with State Agencies only for O&M purposes.

It is the intent of the Legislature that the Council of Presidents and representatives of the Board of Regents working in conjunction with legislators, the Legislative Fiscal Analyst and a representative of the Governor's Office review and refine the funding formula for the Utah System of Higher Education. It is the intent of the Legislature that this proposed formula reduce dependence on growth funding, link to measurable systemwide and institutional specific performance indicators, respond to c hanges in costs of instruction due to the implementation of technology or the utilization of cost saving measures and respond to market demand, student performance as well as recognized differences in institutional roles and mission.

It is the intent of the Legislature that the State Board of Regents be directed to closely supervise the fuel and power budgets with the intent of promoting greater energy efficiency on each campus. It is also the intent of the Legislature that the Board of Regents report during the interim to the Subcommittee on Higher Education on the implementation of long term plans to control and manage energy costs.

It is the intent of the Legislature that funding be designated for distance learning program development by the nine USHE institutions. The Regents are also directed to establish accountability measures and a master plan for the operation of the item in consultation with the nine institutions and the Legislative Fiscal Analyst.

It is the intent of the Legislature that the USHE complete and submit all financial reports (i.e. A-1's, R-1's, S-10's, and S-12's, etc.) to the Office of the Legislative Fiscal Analyst by October 1 of each fiscal year.

It is the intent of the Legislature that the budgets of Utah State University's Southeastern Utah Continuing Education Center, and the College of Eastern Utah at the Price and San Juan Campuses be held harmless this fiscal year because of the temporary nature of the downturn in enrollments. In addition, it is projected that the enrollments will be substantially higher than predicted by the Board of Regents in this academic year and will reach the enrollment target in the next academic year.

It is the intent of the Legislature that the Utah System of Higher Education in submitting its budget for FY 2003 for the educationally disadvantaged shall separate their request by the main campus and by any branch campuses. It is further the intent of the Legislature that the Office of Legislative Fiscal Analyst in preparing the annual Appropriations Act for FY 2003 shall separate into line Items of appropriation those requests approved for the educationally disadvantaged by the main campus and by any branch campuses.

UTAH VALLEY STATE COLLEGE

ITEM 184
To Utah Valley State College - Education and General
From General Fund 30,871,200
From General Fund, One-time 892,200
From Income Tax 10,331,700
From Income Tax, One-time 450,000
From Dedicated Credits Revenue 24,385,800
Schedule of Programs:
Education and General 66,930,900

It is the intent of the Legislature that tuition revenue generated from tuition rate increases shall remain with the institution after compensation. However, the allocation of tuition revenue for institutional needs shall be determined by the President of each institution in consultation with the student body representatives.

It is the intent of the Legislature that any salary increases be distributed to faculty, professional and classified employees in an equitable manner.

It is the intent of the Legislature that all Utah System of Higher Education institutions use facility operation and maintenance (O&M) funding consistent with State Agencies only for O&M purposes.

It is the intent of the Legislature that the Council of Presidents and representatives of the Board of Regents working in conjunction with legislators, the Legislative Fiscal Analyst and a representative of the Governor's Office review and refine the funding formula for the Utah System of Higher Education. It is the intent of the Legislature that this proposed formula reduce dependence on growth funding, link to measurable systemwide and institutional specific performance indicators, respond to c hanges in costs of instruction due to the implementation of technology or the utilization of cost saving measures and respond to market demand, student performance as well as recognized differences in institutional roles and mission.

It is the intent of the Legislature that the State Board of Regents be directed to closely supervise the fuel and power budgets with the intent of promoting greater energy efficiency on each campus. It is also the intent of the Legislature that the Board of Regents report during the interim to the Subcommittee on Higher Education on the implementation of long term plans to control and manage energy costs.

It is the intent of the Legislature that funding be designated for distance learning program development by the nine USHE institutions. The Regents are also directed to establish accountability measures and a master plan for the operation of the item in consultation with the nine institutions and the Legislative Fiscal Analyst.

It is the intent of the Legislature that the USHE complete and submit all financial reports (i.e. A-1's, R-1's, S-10's, and S-12's, etc.) to the Office of the Legislative Fiscal Analyst by October 1 of each fiscal year.

ITEM 185
To Utah Valley State College - Educationally Disvantaged
From General Fund 130,800
From Income Tax 7,800
Schedule of Programs:
Educationally Disadvantaged 138,600

SALT LAKE COMMUNITY COLLEGE

ITEM 186
To Salt Lake Community College - Education and General
From General Fund 37,092,900
From General Fund, One-time 1,751,600
From Income Tax 13,219,700
From Dedicated Credits Revenue 21,389,000
Schedule of Programs:
Education and General 73,453,200

It is the intent of the Legislature that the Utah System of Higher Education in submitting its budget for FY 2003 for the educationally disadvantaged shall separate their request by the main campus and by any branch campuses. It is further the intent of the Legislature that the Office of Legislative Fiscal Analyst in preparing the annual Appropriations Act for FY 2003 shall separate into line Items of appropriation those requests approved for the educationally disadvantaged by the main campus and by any branch campuses.

It is the intent of the Legislature that the continuing education programs at Brigham City and Tooele be shown as separate line items. These line items shall include program instructional costs, administrative and student support, facility operation and maintenance expenses, and building lease payments for FY 2003. It is also the intent of the Legislature that the building lease payments and the financing arrangements be reviewed to determine whether the students using these facilities are paying a reasonable amount of the cost.

It is the intent of the Legislature that tuition revenue generated from tuition rate increases shall remain with the institution after compensation. However, the allocation of tuition revenue for institutional needs shall be determined by the President of each institution in consultation with the student body representatives.

It is the intent of the Legislature that any salary increases be distributed to faculty, professional and classified employees in an equitable manner.

It is the intent of the Legislature that all Utah System of Higher Education institutions use facility operation and maintenance (O&M) funding consistent with State Agencies only for O&M purposes.

It is the intent of the Legislature that the Council of Presidents and representatives of the Board of Regents working in conjunction with legislators, the Legislative Fiscal Analyst and a representative of the Governor's Office review and refine the funding formula for the Utah System of Higher Education. It is the intent of the Legislature that this proposed formula reduce dependence on growth funding, link to measurable systemwide and institutional specific performance indicators, respond to c hanges in costs of instruction due to the implementation of technology or the utilization of cost saving measures and respond to market demand, student performance as well as recognized differences in institutional roles and mission.

It is the intent of the Legislature that the State Board of Regents be directed to closely supervise the fuel and power budgets with the intent of promoting greater energy efficiency on each campus. It is also the intent of the Legislature that the Board of Regents report during the interim to the Subcommittee on Higher Education on the implementation of long term plans to control and manage energy costs.

It is the intent of the Legislature that funding be designated for distance learning program development by the nine USHE institutions. The Regents are also directed to establish accountability measures and a master plan for the operation of the item in consultation with the nine institutions and the Legislative Fiscal Analyst.

It is the intent of the Legislature that the USHE complete and submit all financial reports (i.e. A-1's, R-1's, S-10's, and S-12's, etc.) to the Office of the Legislative Fiscal Analyst by October 1 of each fiscal year.

It is the intent of the Legislature to provide applied technology educational opportunities for students in Salt Lake and Tooele counties comparable to those found in other areas of the state and encourage the Wasatch Front South Applied Technology Center to develop new regional applied technology education facilities by acquiring and remodeling existing public and higher education facilities that may become available. It is further the intent of the Legislature to provide operation and maintenance costs consistent with the policies of funding these costs in applied technology education centers throughout the state.

ITEM 187
To Salt Lake Community College -
Educationally Disadvataged
From General Fund 191,700
From Income Tax 1,200
Schedule of Programs:
Educationally Disadvantaged 192,900

It is the intent of the Legislature that the Utah System of Higher Education in submitting its budget for FY 2003 for the educationally disadvantaged shall separate their request by the main campus and by any branch campuses. It is further the intent of the Legislature that the Office of Legislative Fiscal Analyst in preparing the annual Appropriations Act for FY 2003 shall separate into line Items of appropriation those requests approved for the educationally disadvantaged by the main campus and by any branch campuses.

ITEM 188
To Salt Lake Community College - Skill Center
From General Fund 3,472,200
From Income Tax 626,000
From Dedicated Credits Revenue 847,400
Schedule of Programs:
Skills Center 4,945,600

It is the intent of the Legislature that any salary increases be distributed to faculty, professional and classified employees in an equitable manner.

STATE BOARD OF REGENTS

ITEM 189
To State Board of Regents - Administration
From General Fund 3,295,000
From Income Tax 121,300
From Dedicated Credits Revenue 130,000
Schedule of Programs:
Administration 3,136,300
Prison Recidivism 410,000

It is the intent of the Legislature that any salary increases be distributed to faculty,

professional and classified employees in an equitable manner.

It is the intent of the Legislature that the State Board of Regents in consultation with the Utah Academic Library Consortium should coordinate the acquisition of library materials for the nine USHE institutions.

It is the intent of the Legislature that all Utah System of Higher Education institutions use facility operation and maintenance (O&M) funding consistent with State Agencies only for O&M purposes.

It is the intent of the Legislature that the Council of Presidents and representatives of the Board of Regents working in conjunction with legislators, the Legislative Fiscal Analyst and a representative of the Governor's Office review and refine the funding formula for the Utah System of Higher Education. It is the intent of the Legislature that this proposed formula reduce dependence on growth funding, link to measurable systemwide and institutional specific performance indicators, respond to c hanges in costs of instruction due to the implementation of technology or the utilization of cost saving measures and respond to market demand, student performance as well as recognized differences in institutional roles and mission.

It is the intent of the Legislature that the State Board of Regents be directed to closely supervise the fuel and power budgets with the intent of promoting greater energy efficiency on each campus. It is also the intent of the Legislature that the Board of Regents report during the interim to the Subcommittee on Higher Education on the implementation of long term plans to control and manage energy costs.

It is the intent of the Legislature that the USHE complete and submit all financial reports (i.e. A-1's, R-1's, S-10's, and S-12's, etc.) to the Office of the Legislative Fiscal Analyst by October 1 of each fiscal year.

It is the intent of the Legislature that tuition revenue generated from tuition rate increases shall remain with the institution after compensation. However, the allocation of tuition revenue for institutional needs shall be determined by the President of each institution in consultation with the student body representatives.

It is the intent of the Legislature that funding be designated for distance learning program development by the nine USHE institutions. The Regents are also directed to establish accountability measures and a master plan for the operation of the item in consultation with the nine institutions and the Legislative Fiscal Analyst.

It is the intent of the Legislature that the Utah System of Higher Education in submitting its budget for FY 2003 for the educationally disadvantaged shall separate their request by the main campus and by any branch campuses. It is further the intent of the Legislature that the Office of Legislative Fiscal Analyst in preparing the annual Appropriations Act for FY 2003 shall separate into line Items of appropriation those requests approved for the educationally disadvantaged by the main campus and by any branch campuses.

It is further the intent of the Legislature that the State Board of Regents may add a tuition surcharge not greater than 4 percent of the current year tuition at the University of Utah, Utah State University - Logan Campus only, Weber State University, and Southern Utah University for the 2001-02 academic year. It is further the intent of the Legislature that the State Board of Regents may add a tuition surcharge not greater than 7 percent of the current year tuition at Utah Valley State College for the 2001-02 academic year. These tuition surcharges at each of these institutions must be based on demonstrated critical institutional needs. It is the intent of the Legislature that any tuition surcharge increase not be across the board but be based on a differential system reflecting the cost of providing for the type of degree sought by the student. These tuition surcharges shall be ongoing, collected and retained by the institution as dedicated credits and used to fund critical institutional needs. If a surcharge is imposed, the amount collected and the use of the surcharge shall be reported to the Higher Education Appropriations Subcommittee during the 2001 interim.

As required by Utah Code Ann. Section 53B-7-101, the State Board of Regents shall 'recommend to each session of the Legislature the minimum tuitions, resident and nonresident, for each institution which it considers necessary to implement the budget recommendations.' It is the intent of the Legislature that tuition increases beyond those authorized by this intent, be brought to the Higher Education Appropriations Subcommittee as part of each annual general session before they are implemented.

It is the intent of the Legislature to provide applied technology educational opportunities for students in Salt Lake and Tooele counties comparable to those found in other areas of the state and encourage the Wasatch Front South Applied Technology Center to develop new regional applied technology education facilities by acquiring and remodeling existing public and higher education facilities that may become available. It is further the intent of the Legislature to provide operation and maintenance costs consistent with the policies of funding these costs in applied technology education centers throughout the state.

It is the intent of the Legislature that the Division of Facilities Construction and Management purchase the Brigham City

Education Facility together with the adjacent property from Box Elder County and lease it to the Bridgerland Applied Technology Center, Utah State University, and other state entities at a rate sufficient to cover the operations and maintenance cost of the entire facility including vacant space. DFCM may l ease the vacant space to other entities at market rates until such time as it is needed for state purposes.

ITEM 190
To State Board of Regents - Engineering Initiative
From Income Tax 1,000,000
From Income Tax, One-time 3,000,000
Schedule of Programs:
Engineering Initiative 4,000,000

ITEM 191
To State Board of Regents - Federal Programs
From Federal Funds 301,400
Schedule of Programs:
Federal Programs 301,400

ITEM 192
To State Board of Regents - Student Aid
From General Fund 4,087,800
From Income Tax 1,732,000
From Income Tax, One-time 400,000
From Federal Funds 390,000
Schedule of Programs:
Student Aid 3,565,600
Minority Scholarships 50,000
Tuition Assistance 50,000
New Century Scholarships 78,200
Utah Centennial Opportunity Program for Education 2,866,000

ITEM 193
To State Board of Regents - Western Interstate Commission for Higher Education
From General Fund 1,055,200
From Income Tax 30,100
Schedule of Programs:
Western Interstate Commission for Higher Education 1,085,300

ITEM 194
To State Board of Regents - T.H. Bell Scholarship Program
From General Fund 654,800
From Income Tax 3,000
From Dedicated Credits Revenue 50,200
Schedule of Programs:
T.H. Bell Scholarship Program 708,000

It is the intent of the Legislature that any salary increases be distributed to faculty, professional and classified employees in an equitable manner.

ITEM 195
To State Board of Regents - Apprenticeship Training
From General Fund 310,400
From Income Tax 9,900
Schedule of Programs:
Apprenticeship Training 320,300

ITEM 196
To State Board of Regents - University Centers
From General Fund 262,600
From Income Tax 8,000
Schedule of Programs:
University Centers 270,600

It is the intent of the Legislature that any salary increases be distributed to faculty, professional and classified employees in an equitable manner.

ITEM 197
To State Board of Regents - Higher Education Technology Initiative
From General Fund 2,600,000
From General Fund, One-time 250,000
Schedule of Programs:
Higher Education Technology Initiative 2,850,000

ITEM 198
To State Board of Regents - Electronic College
From General Fund 536,200
From Income Tax 7,500
Schedule of Programs:
Electronic College 543,700

It is the intent of the Legislature that the programmatic funding for the Utah Electronic College be designated for distance learning program development by the nine USHE institutions. The Regents are also directed to establish accountability measures and a master plan for the operation of the item in consultation with the nine institutions and the Legislative Fiscal Analyst.

ITEM 199
To State Board of Regents - Utah Academic Library Consortium
From General Fund 2,274,000
From Income Tax 760,000
From Income Tax, One-time 310,000
Schedule of Programs:
Utah Academic Library Consortium . 3,344,000

It is the intent of the Legislature that the State Board of Regents in consultation with the Utah Academic Library Consortium should coordinate the acquisition of library materials for the nine USHE institutions.

UTAH EDUCATION NETWORK

ITEM 200
To Utah Education Network - UtahLINK
From General Fund 252,800
From Uniform School Fund 10,936,800
From Uniform School Fund, One-time . 3,066,800
From Income Tax 1,923,000
Schedule of Programs:
UtahLINK 16,179,400

It is the intent of the Legislature that any salary increases be distributed to faculty, professional and classified employees in an equitable manner.

ITEM 201
To Utah Education Network - Utah Education Network Technology Initiative
From General Fund 615,000
Schedule of Programs:

UEN Technology Initiative 615,000

ITEM 202
To Utah Education Network - Utah State University Satellite Telecommunication
From General Fund 1,526,300
From Income Tax 19,800
Schedule of Programs:
USU Satellite Telecommunications .. 1,546,100

It is the intent of the Legislature that any salary increases be distributed to faculty, professional and classified employees in an equitable manner.

ITEM 203
To Utah Education Network - College of Eastern Utah Distance Education
From General Fund 255,600
From Income Tax 24,700
Schedule of Programs:
CEU Distance Education 280,300

It is the intent of the Legislature that any salary increases be distributed to faculty, professional and classified employees in an equitable manner.

NATURAL RESOURCES SUBCOMMITTEE SCHOOL & INSTITUTIONAL TRUST LANDS

ITEM 204
To School and Institutional Trust Lands Administration - School & Institutional Trust Lands Administration
From Land Grant Management Fund .. 8,926,100
Schedule of Programs:
Board 187,600
Director 439,500
Administration 632,200
Accounting 309,600
Royalty 143,600
Minerals 1,220,600
Surface 1,184,600
Development - Operating 1,211,300
Legal/Contracts 407,900
Data Processing 639,700
Forestry and Grazing 549,500
Development - Capital 2,000,000

It is the intent of the Legislature that the Department of Natural Resources and the School and Institutional Trust Lands Administration join together in reaching a Memorandum of Understanding. The Memorandum should detail areas of mutual benefit arising from resolution of conflicts in respective mission statements and statutory requirements. The Memorandum should also detail conflict of mission statement and statutory requirements that cannot be resolved by mutual agreement. This Memorandum of Understanding shall be jointly presented to the Natural Resources Appropriations Subcommittee or the Natural Resources, Agriculture, and Environment Interim Committee on or before October 2001.

It is the intent of the Legislature that the School and Institutional Trust Lands Administration report on the development of management strategies and on the use of the $250,000 appropriation for blocks of trust lands during fall 2001.

NATURAL RESOURCES

ITEM 205
To Department of Natural Resources - Administration
From General Fund 3,541,700
From General Fund, One-time 25,000
From Oil Overcharge - Stripper Well Fund 500,000
Schedule of Programs:
Executive Director 921,900
Administrative Services 1,443,500
Energy Resource Planning 1,048,600
Public Affairs 301,000
Bear Lake Commission 50,000
Law Enforcement 301,700

It is the intent of the Legislature that the FY 2000 one-time General Fund appropriation of $50,000 for Wide Hollow Water Conservancy District be nonlapsing.

It is the intent of the Legislature that the FY 2000 one-time supplemental appropriation of $120,000 for Thistle water tunnel improvements be nonlapsing.

It is the intent of the Legislature that funding for the Bear Lake Regional Commission be expended only as a one-to-one match with funds from the State of Idaho.

It is the intent of the Legislature that the Department of Natural Resources organize, staff, and conduct a task force to study water rights issues, and report back to the Natural Resources, Agriculture, and Environment Interim Committee on or before their October 2001 meeting. The Water Development Commission shall be kept appraised of the progress of the task force.

It is the intent of the Legislature that the Department of Natural Resources and the School and Institutional Trust Lands Administration join together in reaching a Memorandum of Understanding. The Memorandum should detail areas of mutual benefit arising from resolution of conflicts in respective mission statements and statutory requirements. The Memorandum should also detail conflict of mission statement and statutory requirements that cannot be resolved by mutual agreement. This Memor andum of Understanding shall be jointly presented to the Natural Resources Appropriations Subcommittee or the Natural Resources, Agriculture, and Environment Interim Committee on or before October 2001.

It is the intent of the Legislature that the appropriation for RS 2477 roads defense be nonlapsing.

ITEM 206
To Department of Natural Resources - Species Protection

From General Fund 625,900
From Dedicated Credits Revenue 2,300,000
From General Fund Restricted –
Species Protection 324,100
Schedule of Programs:
Species Protection 3,250,000

It is the intent of the Legislature that the Species Protection program General Fund appropriation be nonlapsing.

ITEM 207
To Department of Natural Resources –
Building Operations
From General Fund 1,608,500
Schedule of Programs:
Building Operations 1,608,500

ITEM 208
To Department of Natural Resources –
Forestry, Fire and State Lands
From General Fund 2,990,700
From Federal Funds 1,806,900
From Dedicated Credits Revenue 1,937,000
From General Fund Restricted –
Sovereign Land Management 1,606,100
From Revenue Transfers 175,000
Schedule of Programs:
Director's Office 237,400
Administrative Services 359,900
Fire Suppression 1,730,000
Planning and Technology 213,100
Technical Assistance 728,200
Program Delivery 1,143,400
Lone Peak Center 1,935,600
Program Delivery Cooperators 2,168,100

It is the intent of the Legislature that the FY 2000 one-time supplemental appropriation of $30,000 for Thistle water tunnel improvements be nonlapsing.

ITEM 209
To Department of Natural Resources –
Oil, Gas and Mining
From General Fund 1,363,100
From Federal Funds 3,808,400
From Dedicated Credits Revenue 109,400
From General Fund Restricted –
Oil & Gas Conservation Account 1,412,600
From Revenue Transfers 124,200
From Beginning Nonlapsing
Appropriation Balances 135,000
Schedule of Programs:
Administration 1,219,000
Board 25,800
Oil and Gas Conservation 1,388,900
Minerals Reclamation 414,800
Coal Reclamation 1,469,500
Abandoned Mine 2,299,700
OGM Misc. Nonlapsing 135,000

It is the intent of the Legislature that the appropriation to the Minerals Reclamation Program be nonlapsing.

ITEM 210
To Department of Natural Resources –
Wildlife Resources
From General Fund 3,118,200
From Federal Funds 6,962,700
From Dedicated Credits Revenue 75,200
From General Fund Restricted –
Wildlife Habitat 2,383,100
From General Fund Restricted –
Wildlife Resources 22,384,800
From Beginning Nonlapsing
Appropriation Balances 300,000
Schedule of Programs:
Administration 1,573,800
Public Services 4,951,600
Conservation Outreach 1,723,400
Law Enforcement 6,395,000
Habitat Council 2,424,300
Habitat Section 2,638,500
Wildlife Section 6,929,300
Aquatic Section 8,588,100

The Legislature intends that up to $500,000 of this budget may be used for big game depredation expense. The Legislature also intends that half of these funds shall be from the General Fund Restricted – Wildlife Resources Account and half from the General Fund. This funding shall be nonlapsing.

It is the intent of the Legislature that the General Fund Restricted – Wildlife Habitat Account appropriation be nonlapsing.

It is the intent of the Legislature that the Division of Wildlife Resources transfer $200,000 General Funds to the Department of Agriculture and Food. It is further the intent of the Legislature that $100,000 of this transfer be used to match funds from local governments in the Predatory Animal Control Program, and $100,000 be used to supplement the amount required by UCA 4-23-9(2)(a). It is further the intent of the Legislature that the division spend a minimum of $265,000 to improve deer herds according to management plan objectives.

It is the intent of the Legislature that the Division of Wildlife Resources spend a minimum of $70,000 from the Wildlife Habitat Account as stated in UCA 23-19-43(5)(a), on control of predators.

It is the intent of the Legislature that the Division of Wildlife Resources emphasize as much as possible the revenue-generating activities within its mission.

ITEM 211
To Department of Natural Resources –
Predator Control
From General Fund 69,200
From Revenue Transfers ..... (69,200)

ITEM 212
To Department of Natural Resources –
Reimbursement
From General Fund 255,200
From General Fund Restricted –
Wildlife Resources ..... (255,200)

ITEM 213
To Department of Natural Resources – Contributed Research
From Dedicated Credits Revenue 336,700
Schedule of Programs:
Contrib Research 336,700

It is the intent of the Legislature that Contributed Research funds be nonlapsing.

ITEM 214

To Department of Natural Resources - Cooperative Environmental Studies
From Federal Funds 3,069,100
From Dedicated Credits Revenue 505,100
Schedule of Programs:
Cooperative Environmental Study ... 3,574,200

It is the intent of the Legislature that Cooperative Environmental Studies funds be nonlapsing.

ITEM 215

To Department of Natural Resources - Wildlife Resources Capital Budget
From General Fund 800,000
From General Fund, One-time 1,000,000
From Federal Funds 1,311,000
From General Fund Restricted - State Fish Hatchery Maintenance ... 1,000,000
From General Fund Restricted - Wildlife Resources 205,000
From Beginning Nonlapsing Appropriation Balances 500,000
Schedule of Programs:
Information and Education 9,200
Fisheries 3,800,800
Game Management 1,006,000

It is the intent of the Legislature that the Division of Wildlife Resources Capital appropriation be nonlapsing.

In making this $1 million appropriation for the acquisition of conservation easements for big game habitat on land previously owned by School and Institutional Trust Lands, the Legislature recognizes that under Utah's Enabling Act, Utah's Constitution, case law, and statute, that the state holds School and Institutional Trust Lands as trustee and is responsible for managing the trust lands for the best interests of the trust beneficiaries. It is the intent of the Legislature that the Wildlife Board use the $1 million appropriation for the acquisition of conservation easements for big game habitat on land disposed of after July 1, 2001, by the School and Institutional Trust Lands Administration. It is further the intent of the Legislature that the ownership of the real property shall be in a property tax paying, private party or parties, with the Division of Wildlife Resources owning the conservation easements for big game habitat in that real property as provided in Utah Code Ann. Sec. 57-18-4. This appropriation is nonlapsing.

ITEM 216

To Department of Natural Resources - Parks and Recreation
From General Fund 9,516,100
From Federal Funds 931,200
From Dedicated Credits Revenue 7,826,000
From General Fund Restricted - Boating 2,917,700
From General Fund Restricted - Off-highway Vehicle 1,849,500
Schedule of Programs:
Director 476,300
Board 16,700
Park Operations 17,148,800
Comprehensive Planning 393,600
Administration 564,200
Design and Construction 461,400
Reservations 341,100
Law Enforcement 350,400
Accounting and Grants 1,052,300
Boating 1,050,800
OHV and Trail Administration 1,184,900

It is the intent of the Legislature that the Director of the Division of Parks and Recreation report during the 2001 interim to the Natural Resources, Agriculture, and Environment Interim Committee and the Natural Resources Appropriations Subcommittee on the planning process for closure of existing parks or incorporation of new parks, including Sand Hollow, into the state system.

ITEM 217

To Department of Natural Resources - Parks and Recreation Capital Budget
From General Fund 1,114,800
From Federal Funds 550,000
From Dedicated Credits Revenue 175,000
From General Fund Restricted - Boating 350,000
From General Fund Restricted - Off-highway Vehicle 175,000
Schedule of Programs:
Facilities Acquisition and Development 214,800
Riverway Enhancement Grants 425,000
Trail Grants 525,000
National Recreation Trails 200,000
Donated Capital Projects 25,000
Region Roads and Renovation 100,000
Boat Access Grants 700,000
Off-highway Vehicle Grants 175,000

It is the intent of the Legislature that the Division of Parks and Recreation - Capital Budget be nonlapsing.

It is the intent of the Legislature that no portion of a golf course constructed at Soldier Hollow shall infringe upon space designated for biathlon or other Olympic winter events.

It is the intent of the Legislature that $100,000 of the Trails Grants budget be dedicated to the Bonneville Shoreline Trail pursuant to UCA 63-11A-504, if applications and matching funds are available from local governments.

ITEM 218

To Department of Natural Resources - Utah Geological Survey
From General Fund 2,388,100
From General Fund, One-time 100,000
From Federal Funds 544,700
From Dedicated Credits Revenue 382,100
From General Fund Restricted - Mineral Lease 827,100
From Revenue Transfers 181,100
From Beginning Nonlapsing Appropriation Balances 300,900

From Closing Nonlapsing
Appropriation Balances ..... (77,500)
Schedule of Programs:
Administration 550,900
Technical Services 522,800
Applied Geology 516,400
Board 10,100
Geologic Mapping 510,400
Economic Geology 1,215,600
Environmental 781,700
Geologic Extension Service 538,600

It is the intent of the Legislature that Mineral Lease funds be nonlapsing.

It is the intent of the Legislature that the Utah Geological Survey request reimbursement from the State Office of Education for inspections of proposed school sites required by the State Office of Education under rule R277-455-4.

ITEM 219
To Department of Natural Resources - Water Resources
From General Fund 2,689,800
From Federal Funds 5,000
From Water Resources Conservation and Development Fund 1,815,100
From Water Resources Construction Fund 150,000
From Beginning Nonlapsing Appropriation Balances 118,200
From Closing Nonlapsing Appropriation Balances ..... (22,200)
Schedule of Programs: .....
Administration 437,000
Board 36,000
Interstate Streams 262,200
Cloudseeding 150,000
Cities Water 116,100
Construction 1,655,100
Planning 1,820,900
West Desert Operations 11,000
Water Education 171,600
Bear River/Wasatch Front 96,000

It is the intent of the Legislature that funds for the Bear River/Wasatch Front program be nonlapsing.

ITEM 220
To Department of Natural Resources - Water Resources Education
From Dedicated Credits Revenue 23,200
From Beginning Nonlapsing Appropriation Balances 44,600
From Closing Nonlapsing Appropriation Balances ..... (42,800)
Schedule of Programs:
Water Resources Education 25,000

It is the intent of the Legislature that Water Education funds be nonlapsing.

ITEM 221
To Department of Natural Resources - Water Resources Revolving Construction Fund
From General Fund 563,000
From Water Resources Conservation and Development Fund 3,800,000
Schedule of Programs:
Construction Fund 4,363,000

ITEM 222
To Department of Natural Resources - Water Resources Conservation and Development Fund
From General Fund 1,089,500
Schedule of Programs:
Conservation and Development Fund 1,089,500

ITEM 223
To Department of Natural Resources - Water Rights
From General Fund 6,051,400
From Dedicated Credits Revenue 866,300
Schedule of Programs:
Administration 527,900
Appropriation 853,400
Dam Safety 549,500
Adjudication 667,000
Cooperative Studies 564,000
Special Investigations 586,800
Advertising 120,000
Area Offices 2,282,800
River Systems 766,300

It is the intent of the Legislature that the FY 2000 federal funds appropriation be nonlapsing.

It is the intent of the Legislature that the $120,000 General Fund appropriation increase for the State Engineer's office be used for salaries, benefits, and expenses of personnel who will provide advice and technical assistance to water corporations and their shareholders on proposed changes in the point of diversion, place of use, or purpose of use of the water corporation's water.

ISF - NATURAL RESOURCES

ITEM 224
To Department of Natural Resources - Internal Service Fund
From Dedicated Credits - Intragovernmental Revenue 5,271,900
From Sale of Fixed Assets 67,000
Schedule of Programs:
ISF - DNR Warehouse 725,000
ISF - DNR Motorpool 3,911,900
ISF - DNR Data Processing 702,000
Total FTE - 10
Authorized Capital Outlay - 100,000

AGRICULTURE

ITEM 225
To Department of Agriculture and Food - Administration
From General Fund 7,933,100
From General Fund, One-time 219,700
From Federal Funds 2,054,000
From Dedicated Credits Revenue 929,800
From General Fund Restricted - Horse Racing 50,100
From General Fund Restricted - Livestock Brand 676,100
From General Fund Restricted - TB & Bangs Control 6,800

From General Fund Restricted –
Wildlife Damage Prevention 63,500
From Revenue Transfers 535,600
Schedule of Programs:
General Administration 1,470,500
Public Affairs 83,000
Meat Inspection 1,593,500
Chemistry Laboratory 742,200
Animal Health 822,100
Sheep Promotion 50,000
Auction Market Veterinarians 72,000
Brand Inspection 1,082,300
Utah Horse Commission 50,100
Agriculture Inspection 1,637,800
Environmental Quality 1,501,100
Grain Inspection 428,700
Insect Infestation 217,900
Regulatory Services 2,102,900
Marketing and Development 443,600
Research 171,000

It is the intent of the Legislature that appropriation line items for the Department of Agriculture and Food be consolidated into a smaller number, and follow the organizational structure of the department.

It is the intent of the Legislature that the appropriation for grants to charitable organizations specified under UCA 57-18-3, or held by the Department of Agriculture and Food, be used for purchase of conservation easements for agricultural protection and that this appropriation be nonlapsing.

It is the intent of the Legislature that the FY 2001 General Fund appropriation of $100,000 for "Ag In The Classroom" be nonlapsing.

It is the intent of the Legislature that the FY 2001 one-time General Fund appropriation of $50,000 for Trichomoniasis control be nonlapsing.

It is the intent of the Legislature that any unexpended funds from the appropriation for pesticide disposal amnesty be nonlapsing.

It is the intent of the Legislature that the proceeds from fertilizer assessments authorized in UCA 4-13-3 be held as nonlapsing Dedicated Credits.

It is the intent of the Legislature that license fees collected from pesticide applicators for educational and testing materials be nonlapsing.

It is the intent of the Legislature that funds for the Pesticide Control program be nonlapsing.

It is the intent of the Legislature that the Department of Agriculture and Food use its rulemaking authority granted in UCA 4-16-3 to make rules concerning seed container labeling requirements, after consultation with the seed industry, the Utah Seed Council, and the Utah Crop Improvement Association. .....

It is the intent of the Legislature that funds collected in the Organic Certification program be nonlapsing.

It is the intent of the Legislature that the FY 2001 one-time General Fund appropriation of $90,000 for private grazing land improvements be nonlapsing.

It is the intent of the Legislature that the FY 2001 one-time General Fund appropriation of $75,000 for biological control of weeds be nonlapsing.

It is the intent of the Legislature that the appropriation of $100,000 for agribusiness development be nonlapsing.

It is the intent of the Legislature that the Research Program appropriation be nonlapsing.

It is the intent of the Legislature that the Auction Market Veterinarian . collection be nonlapsing.

It is the intent of the Legislature that Dedicated Credits received by the Grain Inspection program be nonlapsing.

ITEM 226
To Department of Agriculture and Food –
Building Operations
From General Fund 228,000
Schedule of Programs:
Building Operations 228,000

ITEM 227
To Department of Agriculture and Food –
Predatory Animal Control
From General Fund 643,200
From General Fund Restricted –
Wildlife Damage Prevention 451,500
From Revenue Transfers 69,200
Schedule of Programs:
Predatory Animal Control 1,163,900

It is the intent of the Legislature that funds appropriated to Predatory Animal Control be nonlapsing.

It is the intent of the Legislature that the Division of Wildlife Resources transfer $200,000 General Funds to the Department of Agriculture and Food. It is further the intent of the Legislature that $100,000 of this transfer be used to match funds from local governments in the Predatory Animal Control program, and $100,000 be used to supplement the amount required by UCA 4-23-9(2)(a). These funds shall be nonlapsing.

ITEM 228
To Department of Agriculture and Food – Resource Conservation
From General Fund 1,196,300
From Agriculture Resource
Development Fund 235,100
From Beginning Nonlapsing
Appropriation Balances 3,700
Schedule of Programs:
Resource Conservation Administration 130,300
Soil Conservation Commission 9,600
Resource Conservation 1,295,200

It is the intent of the Legislature that the Soil Conservation Districts submit annual reports documenting supervisory expenses to the Legislative Fiscal Analyst, the Office of Planning and Budget, and the Soil Conservation Commission. It is also the intent of the Legislature that these documents be reviewed and reported to the Governor and the 2002 Legislature.

It is the intent of the Legislature that collections for the "Ag Tag" license plate be nonlapsing.

It is the intent of the Legislature that funding approved for Soil Conservation District elections be nonlapsing and be spent only during even-numbered years when elections take place.

ITEM 229
To Department of Agriculture and Food - Loans
From Agriculture Resource Development Fund 296,100
From Utah Rural Rehabilitation Loan 18,000
Schedule of Programs:
Agriculture Loan Program 314,100

ISF - AGRICULTURE

ITEM 230
To Department of Agriculture and Food - Internal Service Fund
From Dedicated Credits - Intragovernmental Revenue 251,600
Schedule of Programs:
ISF - Agri Data Processing 251,600
Total FTE - 3
Authorized Capital Outlay - 58,000

PUBLIC EDUCATION

ITEM 231
To State Board of Education - State Office of Education
From Uniform School Fund 27,526,656
From Uniform School Fund, One-time . 1,250,000
From Federal Funds 126,484,300
From Dedicated Credits Revenue 4,975,900
From General Fund Restricted - Mineral Lease 859,300
From General Fund Restricted - Substance Abuse Prevention 400,700
From Uniform School Fund Restricted - Professional Practices 80,900
From Revenue Transfers 300
From Revenue Transfers - Interagency .. 285,000
From Beginning Nonlapsing Appropriation Balances 4,239,100
From Closing Nonlapsing Appropriation Balances ..... (4,239,100)
Schedule of Programs:
Board of Education 893,700
Instructional Services 112,469,600
Agency Support 4,715,200
Planning and Project Services 24,110,000
Applied Technology Education 16,099,000
District Services 3,575,556

It is the intent of the Legislature that sexual education courses taught in public schools must stress the importance of abstinence from all sexual activity before marriage and fidelity after marriage as methods for preventing certain communicable diseases.

It is the intent of the Legislature that the Utah State Office of Education charge out-of-state students tuition for access to Utah's electronic high school curricula.

It is the intent of the Legislature that District Computer Services may charge local school districts a fee for the use of state student and fiscal information systems. The fee shall be set by the Utah State Board of Education and shall be based upon student enrollment. Revenue from the fee may be used to either contract or hire support staff.

The USBE may transfer up to $500,000 annually (subject to availability) of Minimum School Program carry forward to determine district compliance with State law and Board rules and to evaluate program effectiveness and efficiency. The Board shall determine which programs are to be studied and shall contract with organizations and individuals not directly associated with or employed by the State Office of Education. The Board shall report annually to the Legislature the amount of money spent on, the results of, any recommendations that arise from, and any actions taken as a result of the studies.

ITEM 232
To State Board of Education - District Services Compensation - Regional Service Centers
From Uniform School Fund 58,600
Schedule of Programs:
District Services Compensation - Regional Service Centers 58,600

ITEM 233
To State Board of Education - State Office of Rehabilitation
From General Fund 254,900
From Uniform School Fund 17,530,900
From Federal Funds 30,615,900
From Dedicated Credits Revenue 452,800
From Revenue Transfers - Interagency .. 100,000
From Beginning Nonlapsing Appropriation Balances 287,400
From Closing Nonlapsing Appropriation Balances ..... (287,400)
Schedule of Programs:
Rehabilitation Administration 1,606,600
Blind and Visually Impaired 5,105,500
Rehabilitation Services 33,268,500
Disability Determination 7,293,600
Deaf and Hard of Hearing 1,680,300

ITEM 234
To State Board of Education - School for the Deaf and Blind
From Uniform School Fund 17,450,000
From Dedicated Credits Revenue 1,075,400
From Revenue Transfers - Interagency 3,122,400
From Beginning Nonlapsing Appropriation Balances 600,000

From Closing Nonlapsing
Appropriation Balances ..... (600,000)
Schedule of Programs:
Instruction 12,711,500
Support Services 8,936,300

It is the intent of the Legislature that $72,000 of the one time appropriation of $8,250,000 for the Educational Technology Initiative be transferred to the Utah Schools for the Deaf and Blind for FY 2002.

It is the intent of the Legislature that the Utah Schools for the Deaf and Blind be appropriated $42,305 per day for each additional day funded by theLegislature to the school districts. This is to be funded from the $15 million allocated for extra days.

ITEM 235
To State Board of Education - State Office of Education - Child Nutrition
From Uniform School Fund 170,500
From Federal Funds 80,327,200
From Dedicated Credits Revenue 14,506,500
Schedule of Programs:
Child Nutrition 95,004,200

ITEM 236
To State Board of Education - Fine Arts and Sciences
From Uniform School Fund 3,044,500
From Uniform School Fund, One-time ... 500,000
Schedule of Programs: .....
Request for Proposal Program 322,400
Hansen Planetarium 489,300
Ririe-Woodbury Dance Company 93,100
Repertory Dance Company 94,600
Children's Dance Theater 109,400
Utah Opera Company 226,600
Ballet West 433,200
Utah Symphony 889,600
Arts and Science Subsidy 750,000
Springville Arts Museum 136,300

It is the intent of the Legislature that Line Item funding recipients not participate in the Science and the Arts Request for Proposal Process (RFP) funding administered by the Utah State Office of Education.

It is the intent of the Legislature that the listed program groups go through a request for proposal process to reestablish their participation in the program at the level indicated during the 2001 interim. The USOE will be the supervising agent of this process.

The State Office of Education shall validate the groups' function in the planned curriculum for arts and sciences in the schools.

The State Office of Education shall report to the Legislature any problems or changes necessary to implement and maintain the validity of the arts and sciences program in the school curriculum.

It is the intent of the Legislature that $750,000 ($250,000 ongoing and $500,000 one-time) be distributed to the Utah Shakespearean Festival, Utah Museum of Natural History, Utah Festival Opera, and the Children's Museum of Utah beginning FY 2002. The distribution shall be determined during the interim by the Utah State Office of Education. The allocations shall be according to the allocation formula adopted by the State Office of Education which assures parity among the line items organizations.

ITEM 237
To State Board of Education - State Office of Education - Educational Contracts
From Uniform School Fund 3,928,300
Schedule of Programs:
Youth Center 1,160,200
Corrections Institutions 2,768,100

ISF - PUBLIC EDUCATION

ITEM 238
To State Board of Education - Internal Service Fund
From Dedicated Credits - Intragovernmental Revenue 1,157,500
Schedule of Programs:
ISF - State Board ISF 1,157,500
Total FTE - 9
Authorized Capital Outlay - 17,300
The mark-up on internal service funds are:
Printing - $17.00 per labor hour; $0.04 per copy; cost plus 35 percent on supplies
Mail Room - Cost plus 25 percent

ITEM 239
To State Board of Education - Indirect Cost Pool
From Revenue Transfers 3,700,200
From Beginning Nonlapsing
Appropriation Balances 422,600
From Closing Nonlapsing
Appropriation Balances ..... (422,600)
Schedule of Programs:
ISF - USOE Indirect Cost Pool 3,700,200
Total FTE - 47
Authorized Capital Outlay - 71,300
The indirect cost pool rate is approved at 17.5 percent for nonrestricted programs and 10 percent for restricted programs.

TRANSPORTATION & ENVIRONMENTAL QUALITY SUBCOMMITTEE
NATIONAL GUARD

ITEM 240
To Utah National Guard - Utah National Guard
From General Fund 4,090,000
From General Fund, One-time 232,000
From Federal Funds 11,676,900
From Dedicated Credits Revenue 78,000
From Revenue Transfers - Intergovernmental 40,500
From Beginning Nonlapsing
Appropriation Balances 36,900
From Closing Nonlapsing
Appropriation Balances ..... (36,900)
Schedule of Programs:
Administration 528,100
Armory Maintenance 14,991,200
Veterans' Affairs 174,200
Veterans' Cemetery 423,900

ENVIRONMENTAL QUALITY

ITEM 241

To Department of Environmental Quality
From General Fund 9,969,500
From General Fund, One-time 800,000
From Federal Funds 18,543,800
From Dedicated Credits Revenue 5,999,900
From General Fund Restricted - Environmental Quality 4,714,800
From General Fund Restricted - Used Oil Administration 668,600
From General Fund Restricted - Voluntary Cleanup 88,900
From General Fund Restricted - WDS - Drinking Water 52,000
From General Fund Restricted - WDS - Water Quality 510,300
From Expendable Trust - Petroleum Storage Tank 954,000
From Expendable Trust - Waste Tire Recycling 95,600
From Petroleum Storage Tank Account ... 50,000
From Petroleum Storage Tank Loan 130,000
From Revenue Transfers - Within Agency 174,400
From Beginning Nonlapsing Appropriation Balances 769,000
From Closing Nonlapsing Appropriation Balances ..... (1,400)
Schedule of Programs:
Director's Office 5,396,500
Air Quality 7,285,600
Environmental Response/ Remediation 10,915,600
Radiation Control 1,971,900
Water Quality 8,189,100
Drinking Water 3,255,900
Solid and Hazardous Waste 6,504,800

It is the intent of the Legislature that the $125,000 appropriated to the Department of Environmental Quality from the Environmental Quality Restricted Account for the development of a Generator Site Access license data base and electronic license system be nonlapsing until the design and implementation of the system is completed. At the end of the fiscal year in which the system is completed, any funds remaining from the appropriation will lapse into the Environmental Quality Restricted Account.

It is the intent of the Legislature that funds appropriated for the purpose of addressing high level nuclear waste be non-lapsing.

It is the intent of the Legislature that any unexpended Groundwater Permit Administration fees are non-lapsing and authorized for use in the Groundwater Permit Administration Program in the following fiscal year to reduce the fees charged.

It is the intent of the Legislature that the Executive Director of the Department of Environmental Quality may accept and expend funds under the provision of UCA 19-1-202 (2) (c) for review of Radioactive Waste license amendments for disposal of Containerized Class A Low Level Radioactive Waste. Any funding received by the Executive Director for review of radioactive waste license amendments for disposal of Containerized A Low Level Radioactive Waste shall be nonlapsing.

It is the intent of the Legislature that any unexpended funds in the Air Operating Permit Program are non-lapsing and authorized for use in the Air Operating Permit Program in FY 2002 to reduce emission fees.

It is the intent of the Legislature that funding provided to hire a full time attorney to recover Petroleum Storage Tank Trust Funds and Petroleum Storage Cleanup Funds be used exclusively for that purpose. It is the intent of the Legislature that this funding is to be considered a one time appropriation.

It is the intent of the Legislature that the Department of Environmental Quality implement an internal Performance Management Initiative that assesses efficient use of Department personnel and budgets. This plan will continue to be updated and coordinated through a Department Performance Management Team, with the approval from and implementation directed by the Department's Executive Director.

It is the intent of the Legislature that the Department make a report to the Joint Appropriations Subcommittee for Transportation and Environmental Quality prior to the General 2002 Legislative Session, indicating the efficiencies and cost reductions that have been achieved and those that are anticipated as a result of implementing these improvement actions.

It is the intent of the Legislature that the Department of Environmental Quality, in conjunction with these improvement initiatives, be given authorization to adjust the assignment of FTE positions between program items as may be necessary in order to achieve the objectives of this plan. Such reassignments of FTE positions will be included in the report to the Joint Appropriations Subcommittee for Transportation and Environmental Quality and any transfer of funding will be facilitated through a supplemental appropriations request in the 2002 Session.

ITEM 242

To Department of Environmental Quality - Water Security Devel Acct - Water Pollution
From Federal Funds 5,000,000
From Designated Sales Tax 4,646,400
From Repayments 7,900,000
Schedule of Programs:
Water Pollution 17,546,400

ITEM 243
To Department of Environmental Quality - Water Security Devel Acct - Drinking Water
From Federal Funds 6,500,000
From Designated Sales Tax 4,646,400
From Repayments 155,800
Schedule of Programs:
Drinking Water 11,302,200

ITEM 244
To Department of Environmental Quality - Hazardous Substance Mitigation Fund
From General Fund Restricted - Environmental Quality 400,000
Schedule of Programs:
Hazardous Substance Mitigation Fund . 400,000

TRANSPORTATION

ITEM 245 .....
To Department of Transportation - Support Services
From General Fund 676,400
From General Fund, One-time 10,060,000
From Transportation Fund 23,140,300
From Transportation Fund, One-time ... 167,600
From Federal Funds 507,400
Schedule of Programs:
Administrative Services 12,170,400
Loss Management 2,435,000
Motor Carriers 1,147,500
Building and Grounds 1,447,000
Human Resources Management 1,050,600
Procurement 823,100
Comptroller 2,614,300
Data Processing 7,633,100
Internal Auditor 598,700
Community Relations 520,600
Ports of Entry 4,111,400

It is the intent of the Legislature that $10,000,000 of the appropriated funds shall be immediately available to the Utah Transit Authority (UTA) to preserve essential transportation corridors upon the execution of a binding purchase and sale agreement between UTA and the Union Pacific Railroad. This appropriation is nonlapsing.

If UTA's agreement with the Union Pacific Railroad does not require the Utah Department of Transportation (UDOT) to build an overpass over the Denver and Rio Grande Western Railroad right of way as UDOT builds the Legacy Highway, it is the intent of the Legislature that UDOT shall provide another $10,000,000 toward the UTA's corridor preservation. This money shall be immediately available to UTA upon execution of a binding purchase and sale agreement between UTA and the Union Pacific Railroad that eliminates the need for UDOT to build this overpass. This appropriation is nonlapsing.

It is the further intent of the Legislature that UDOT, the Utah Transportation Commission, and UTA shall work cooperatively, and in good faith to identify and transfer selected parcels or portions of parcels of real property owned by UDOT which are contiguous to the Union Pacific mainline corridor between Payson and Brigham City, for the purposes of preserving a corridor of adequate width for future potential transportation purposes, which purposes include stations and siting and other potential passenger rail appurtenances. These parcels or portions of parcels agreed upon between UDOT and UTA shall be transferred from UDOT to UTA upon the execution of a binding purchase and sale agreement between UTA and the Union Pacific Railroad. It is the intent of the Legislature that in making this land transfer, that UDOT not transfer any land which will adversely affect the operation and maintenance of the state highway system, including any presently identified, future highway expansion.

ITEM 246
To Department of Transportation - Engineering Services
From General Fund 170,000
From Transportation Fund 12,812,200
From Transportation Fund, One-time 50,000
From Federal Funds 7,586,500
From Dedicated Credits Revenue 583,000
From Revenue Transfers - Within Agency 166,000
Schedule of Programs:
Safety Operations 2,000,400
Traffic Safety 1,926,400
Program Development 6,148,400
Preconstruction Administration 791,700
Structures 2,023,700
Materials Lab 3,367,000
Engineering Services 2,475,500
Right-of-Way 1,642,100
Research 992,500

It is the intent of the Legislature that the Department of Transportation continue to implement the adjustment improvements contained in their Performance Management Initiative Internal Plan. This plan will continue to be updated and coordinated through the Performance Management Team, with the approval from and implementation directed by the Department's Executive Director.

It is the intent of the Legislature that the Department make a report to the Interim Executive Appropriations Committee and Transportation Joint Appropriations Committee prior to the General 2002 Legislative Session, indicating the efficiencies and cost reductions that have been achieved and those that are anticipated as a result of implementing these improvement actions.

It is the intent of the Legislature that the Department of Transportation, in conjunction with these improvement initiatives, be given authorization to adjust the assignment of FTE positions between line items as may be necessary in order to achieve

the objectives of this plan. Such reassignments of FTE positions will be included in the report to the Interim Executive Appropriations Committee and Transportation Joint Appropriations Committee and any transfer of funding will be facilitated through a supplemental appropriations request in the 2002 Session.

It is the intent of the Legislature that the Department of Transportation, in conjunction with the Transportation Commission, and Wasatch Front Regional Council, prepare a Salt Lake County ten year transportation plan, which will include the environmental assessment study for the Western Transportation Corridor as part of that plan, preservation of key properties in that corridor, and funding sources and requirements.

ITEM 247
To Department of Transportation - Maintenance Management
From General Fund 12,000
From Transportation Fund 77,430,700
From Transportation Fund, One-time ... 640,000
From Federal Funds 38,200
From Dedicated Credits Revenue 450,000
Schedule of Programs:
Maintenance Administration 2,489,700
District 1 12,197,200
District 2 20,902,500
District 3 11,853,000
Richfield 8,644,100
Price 9,667,500
Cedar City 9,473,000
Seasonal Pools 901,200
Lands & Buildings 2,442,700

It is the intent of the Legislature that any and all collections or cash income from the sale or salvage of land and buildings are to be lapsed to the Transportation Fund.

ITEM 248
To Department of Transportation - Construction Management
From Transportation Fund 92,768,600
From Federal Funds 134,859,100
From Dedicated Credits Revenue 1,550,000
From Designated Sales Tax 1,000,000
Schedule of Programs:
Construction Management 2,018,900
Field Crews 17,450,900
Federal Construction - New 66,159,300
Rehabilitation/Preservation 123,601,500
State Construction - New 18,939,500
Civil Rights 390,800
I-15 Team 1,616,800

It is the intent of the Legislature that there is appropriated to the Department of Transportation from the Transportation Fund, not otherwise appropriated, a sum sufficient, but not more than the surplus of the Transportation Fund, to be used by the Department for the construction, rehabilitation, and preservation of State highways in Utah.

It is the intent of the Legislature that the appropriation fund first, a maximum participation with the federal government for the construction of federally designated highways, as provided by law; next the rehabilitation and preservation of State highways, as provided by law, and last, the construction of State highways, as funding permits

It is also the intent of the Legislature that the FTEs for field crews may be adjusted to accommodate the increase or decrease in the Federal Construction Program. No portion of the money appropriated by this item shall be used either directly or indirectly to enhance or increase the appropriations otherwise made by this act to the Department of Transportation for other purposes

ITEM 249
To Department of Transportation - District Management
From Transportation Fund 17,666,500
From Transportation Fund, One-time ... 450,000
From Federal Funds 3,083,400
From Dedicated Credits Revenue 1,054,700
Schedule of Programs:
Region 1 4,187,300
Region 2 9,533,500
Region 3 3,319,600
Region 4 3,660,700
Richfield 479,700
Price 490,200
Cedar City 583,600

ITEM 250
To Department of Transportation - Equipment Management
From General Fund 241,400
From Transportation Fund 4,381,900
From Transportation Fund, One-time . 1,277,900
From Dedicated Credits Revenue 13,175,100
Schedule of Programs:
Equipment Purchases 8,918,700
Shops 9,147,400
Maintenance Planning 1,010,200

ITEM 251
To Department of Transportation - Aeronautics
From General Fund 200,000
From General Fund, One-time 2,152,000
From Federal Funds 10,000,000
From Dedicated Credits Revenue 415,900
From Transportation Fund Restricted - Aeronautics Fund 9,487,200
Schedule of Programs:
Administration 1,060,000
Airport Construction 14,888,100
Civil Air Patrol 75,000
Aid to Local Airports 5,698,400
Airplane Operations 533,600

ITEM 252
To Department of Transportation - B and C Roads
From Transportation Fund 98,194,800
From Designated Sales Tax 19,000,000
Schedule of Programs:
B & C Roads 117,194,800

ITEM 253
To Department of Transportation - Safe Sidewalk Construction
From General Fund, One-time 50,000
From Transportation Fund 500,000
Schedule of Programs:
Sidewalk Construction 550,000

It is the intent of the Legislature that the funds appropriated from the Transportation Fund for pedestrian safety projects be used specifically to correct pedestrian hazards on State highways.

It is also the intent of the Legislature that local authorities be encouraged to participate in the construction of pedestrian safety devices. The appropriated funds are to be used according to the criteria set forth in Section 72-8-104, Utah Code Annotated, 1953. The funds appropriated for sidewalk construction shall not lapse.

If local governments cannot use their allocation of Sidewalk Safety Funds in two years, these funds will then be available for other governmental entities which are prepared to use the resources.

It is the intent of the Legislature that local participation in the Sidewalk Construction Program be on a 75/25 match basis.

ITEM 254
To Department of Transportation - Mineral Lease
From General Fund Restricted -
Mineral Lease 16,760,000
Schedule of Programs:
Mineral Lease Payments 14,000,000
Payment in Lieu 2,760,000

It is the intent of the Legislature that the funds appropriated from the Federal Mineral Lease Account shall be used for improvement or reconstruction of highways not on the State Highway System that have been heavily impacted by energy development. It is also the intent of the Legislature that private industries engaged in developing the State's natural resources be encouraged to participate in the construction of highways leading to their facilities.

The funds appropriated for improvement or reconstruction of energy impacted highways that are not on the State Highway System are nonlapsing.

ITEM 255
To Department of Transportation - Centennial Highway Program
From General Fund 146,000,000
From Transportation Fund 61,834,000
From Centennial Highway Fund 18,670,000
From Federal Funds 38,016,000
From Dedicated Credits Revenue 5,460,000
From Dedicated Credits -
Transportation Bonds 125,000,000
From Debt Service ..... (82,657,500)
From Designated Sales Tax 15,212,000
From Revenue Transfers -
Within Agency 6,000,000
From Beginning Nonlapsing
Appropriation Balances 74,667,000
From Closing Nonlapsing
Appropriation Balances ..... (558,500)
Schedule of Programs:
Centennial Highway Program 407,643,000

Section 2. Under the terms and conditions of Section 63-38-3, the following fees are approved for the use and support of the government of the State of Utah for the Fiscal Year beginning July 1, 2001 and ending June 30, 2002.

EXECUTIVE OFFICES & CRIMINAL JUSTICE SUBCOMMITTEE DEPARTMENT OF PUBLIC SAFETY INVESTIGATIVE AND TECHNICAL SERVICES

In accordance with Section 53-10-202(12) the following fees are approved for the services of the Division of Investigative and Technical Services for FY 2002.
Fingerprints Olympic/Other 10.00
Firearms Instructor Renewal 25.00

DRIVER LICENSE

In accordance with Section 53-3-105 808 and 905 the following fees are approved for the services of the Driver License Division for FY 2002.

Commercial driver school
Original license 80.00
Commercial driver school annual
renewal license 50.00
Commercial driver school
duplicate license 5.00
Commercial driver school
Instructor license 15.00
Commercial driver school annual
instructor renewal license 10.00
Commercial driver school
duplicate instructor 3.00
Commercial Driver School Branch
Office Original License 20.00
Commercial Driver School Branch
Office Annual Renewal License 20.00
Commercial Driver School
Branch Office Reinstatement Fee 25.00
Commercial Driver School
Instructor School Reinstatement Fee 25.00
CDL Intra-state Medical Waiver Fee 25.00
Certified Record (includes MVR):
first 15 pages 9.00
Certified Record (includes MVR):
16 to 30 pages 14.00
Certified Record (includes MVR):
31 to 45 pages 19.00
Certified Record (includes MVR):
46 or more pages 24.00
Per se Arrest Copies 5.00
Refusal Arrest Copies 5.00
Officer's Accident Report Copies 5.00
Court Conviction Copies 5.00
Copy of any other record or letter maintained by
Driver's License Division 5.00

Tape recording copy 5.00

UTAH HIGHWAY PATROL DIVISION

In accordance with Section 53-8-204 the following fees are approved for the services of the Utah Highway Patrol for FY 2002.

Station Approval and Set Up 100.00
Station Revocation Reinstatement 100.00
Name or Address Change 100.00
Annual Station License 25.00
Station License Reinstatement 25.00
Inspection Certification Fee
(valid three years) 10.00
Inspector Reinstatement If Suspended 10.00
Inspector Reinstatement If Revoked 25.00
Safety Inspection Manual 10.00

FIRE MARSHAL

In accordance with Section 57-7-314 the following fees are approved for the services of the State Fire Marshal for FY 2002.

Class I Liquid Petroleum Gas License 300.00
Class II Liquid Petroleum Gas License 300.00
Class III Liquid Petroleum Gas License 70.00
Class IV Liquid Petroleum Gas License ... 100.00
Branch Office Liquid Petroleum
Gas License 225.00
Liquid Petroleum Gas Certificate 30.00
Liquid Petroleum Gas
(dispenser Operator B) 10.00
Duplicate Liquid Petroleum Gas License ... 30.00
Liquid Petroleum Gas License
Examination 20.00
Liquid Petroleum Gas License
Re-examination 20.00
Liquid Petroleum Gas License
Five year examination 20.00
Plan Reviews: More than 5000
gallons of Liquid Petroleum Gas 90.00
Plan Reviews: 5000 water gallons or
less Liquid Petroleum Gas 45.00
Plan Reviews: Special inspections
(per hour) 30.00
Plan Reviews: Re-inspection
(3rd Inspection or more) 250.00
Portable Fire Extinguisher and
Automatic Fire Suppression Systems
Licenses 200.00
Portable Fire Extinguisher and
Automatic Fire Suppression
Systems Branch Office Licenses 100.00
Portable Fire Extinguisher and
Automatic Fire Suppression
Systems Certificate of Registration 30.00
Portable Fire Extinguisher and
Automatic Fire Suppression
Systems Duplicate Certificate of 30.00
Registration
Portable Fire Extinguisher and
Automatic Fire Suppression
Systems License Transfer 50.00
Portable Fire Extinguisher and
Automatic Fire Suppression
Systems Application for exemption 100.00
Portable Fire Extinguisher and
Automatic Fire Suppression
Systems Examinations 20.00
Portable Fire Extinguisher and
Automatic Fire Suppression
Systems Re-examinations 15.00
Portable Fire Extinguisher and
Automatic Fire Suppression
Systems Five year examination 20.00
Fireworks Display and Special
Effects Operator 30.00

CAPITAL FACILITIES & ADMINISTRATIVE SERVICES SUBCOMMITTEE
DEPARTMENT OF ADMINISTRATIVE SERVICES
OFFICE OF STATE DEBT COLLECTION

In accordance with Section 63-38-3.5(3)(b) the following fees are approved for the services of the Office of State Debt Collection for FY 2002.

ISF - Debt Collection Collection Penalty - 5.00%
Collection Interest - 8.00%
Administrative Collection Fee - 17.00%

DIVISION OF PURCHASING AND GENERAL SERVICES

In accordance with Section 63-38-3.5(3)(b) the following fees are approved for the services of the Division of Purchasing and General Services for FY 2002.

ISF - Central Mailing
Business Reply/Postage Due ..... .09
Special Handling/Labor Per Hour 28.35
Auto Fold ..... .01
Label Generate ..... .021
Label Apply ..... .018
Bursting ..... .012
Auto Tab ..... .016
Optical Character Reader
Rejects Manual Sort ..... .036
Meter/Seal ..... .017
Federal Meter/Seal ..... .014
Optical Character Reader ..... .017
Mail Distribution ..... .05
Accountable Mail ..... .18
Task Distribution Rate ..... .012
Auto Insert 1st insert ($17.50 Min.) ..... .013
Additional inserts ..... .004
Inserting Intelligent ($17.50) ..... .018
Minimum Charge Bursting 5.00
Minimum Charge Inserting 17.50
Minimum Charge Auto Tab 5.00
Minimum Charge Label Generate 17.50
Minimum Charge Label Apply 5.00
ISF - Electronic Purchasing
Orders - Markup 2% of cost
Purchases at service centers - Markup 40% cost
ISF - Publishing
8.5 x 11 #20 white bond or 3HD:
1 to 25 copies ..... .037
8.5 x 11 #20 white bond or 3HD:
26 to 99 copies ..... .032
8.5 x 11 #20 white bond or 3HD:
100 plus copies ..... .028

8.5 x 11 #20 colored bond or recycled white, or 8.5 x 14 #20 white bond: 1 to 25 copies . .04
8.5 x 11 #20 colored bond or recycled white, or 8.5 x 14 #20 white bond: 26 to 99 copies ..... .034
8.5 x 11 #20 colored bond or recycled white, or 8.5 x 14 #20 white bond: 100 plus copies ..... .03
8.5 x 14 #20 colored bond or 8.5 x 11 #60white offset or 8.5 x 11 #60 brites: 1 to 25 copies ..... .05
8.5 x 14 #20 colored bond or 8.5 x 11 #60 white offset or 8.5 x 11 #60 brites: 26 to 99 copies ..... .044
8.5 x 14 #20 colored bond or 8.5 x 11 #60 white offset or 8.5 x 11 #60 brites: 100 plus copies ..... .04
8.5 x 11 #20 white Mylar 3HD or 8.5 x 11 #24 writing bond or 8.5 x 11 #67 vellum bristol or 8.5 x 11 #90 index or 8.5 x 11 #65 brite cover: 1 to 25 copies . .07
8.5 x 11 #20 white Mylar 3HD or 8.5 x 11 #24 writing bond or 8.5 x 11 #67 vellum bristol or 8.5 x 11 #90 index or 8.5 x 11 #65 brite cover: 26 to 99 copies ..... .064
8.5 x 11 #20 white Mylar 3HD or 8.5 x 11 #24 writing bond or 8.5 x 11 #67 vellum bristol or 8.5 x 11 #90 index or 8.5 x 11 #65 brite cover: 100 plus copies . . .06
Full Color Copying, 8.5 x 11: 1 to 25 copies (each) ..... .85
Full Color Copying, 8.5 x 11: 26 to 100 copies (each) ..... .65
Full Color Copying, 8.5 x 11: 101 plus copies (each) ..... .50
Full Color Copying, 11x17: 1 to 25 copies (each) 1.70
Full Color Copying, 11x17: 26 to 100 copies (each) 1.25
Full Color Copying, 11x17: 101 plus copies (each) ..... .95
Full Color Copying, Transparencies (each) 1.30
8.5 x 11 black transparencies (each) 1.10
8.5 x 11 clear covers (each) ..... .50
8.5 x 11 crack and peel (each) ..... .28
Printed tabs (each) ..... .20
Blank tabs (each) ..... .15
Booklet maker Setup charge 10.00
Booklet maker 1 to 500 pages (each) ..... .10
Booklet maker 501 to 1000 pages (each) .... .08
Booklet maker 1001 plus pages (each) ..... .06
Spinal Coil/Vello/Cerlox Binds, 1 to 100 documents: 1 to 100 pages (each) . 1.50
Spinal Coil/Vello/Cerlox Binds, 1 to 100 documents: 101 to 200 pages (each) . 1.75
Spinal Coil/Vello/Cerlox Binds, 1 to 100 documents: 201 plus pages (each) ... 2.00
Spinal Coil/Vello/Cerlox Binds, 101 to 500 documents: 1 to 100 pages (each) ... 1.00
Spinal Coil/Vello/Cerlox Binds, 101 to 500 documents: 101 to 200 pages (each) . 1.25
Spinal Coil/Vello/Cerlox Binds, 101 to 500 documents: 201 to plus pages (each) . 1.50
Spinal Coil/Vello/Cerlox Binds, 501 plus documents: 1 to 100 pages (each) .... .70
Spinal Coil/Vello/Cerlox Binds, 501 plus documents: 101 to 200 pages (each) ..... .85
Spinal Coil/Vello/Cerlox Binds, 501 plus documents: 201 to plus pages (each) 1.00
Xerox Tape 20 to 125 pages only (each) ..... .50
Off-line Stapling: 2 to 49 pages (per staple) .02
Off-line Stapling: Heavy Duty (per staple) . .05
Off-line Stapling: folding collating drilling padding and cutting (per hour) . 30.00
UDOT Print Shop: Prepress Negatives - billed at cost
Plates: 360 (each) 5.00
Plates: GTO (each) 6.00
Plates: Stripping (per 8.5x11 flat) 5.00
Press Actual Time (per hour) 50.00
Press Production Standards: 1 to 10000 impressions - 4000 per hour
Press Production Standards: 10000 + impressions - 4500 per hour
Press Production Standards: Plate make ready - 20 minutes each
Press Production Standards: Press wash up - 20 minutes each
Bindery: Actual Time (per hour) 40.00
Bindery Production Standards: Collating - 600 sets per hour
Bindery Production Standards: Shrink wrapping - 100 packages/hour
Stapling drilling folding cutting padding (billed at actual time)
Paper - cost plus 25%
Outsourcing - billed at cost
Self Service cost per copy is computed using the following formula: (Depreciation + maintenance + supplies)/impressions + .002
Self Service cost per copy multiplied by impressions results in amount billed.

DIVISION OF INFORMATION TECHNOLOGY SERVICES

In accordance with Section 63-38-3.5(3)(b) the following fees are approved for the services of the Division of Information Technology Services for FY 2002.
ISF - ITS Administration and Finance
ITS Consultation and Labor Charge (per hour) 50.00
Web Application Development (per hour) . 75.00
Phone Tech Labor - Cable rate (per hour) 28.00
AGRC Staff Labor (per hour) 60.00
AGRC Intern labor (per hour) 30.00
Wide Area Network Access Charge: State Agencies (per device) 31.00
Wide Area Network Access Charge: State-contracted or Mandated Services (per device) 31.00
Internet Access to WAN (per user) 10.00
Dial-up Access to WAN (per user) 31.00
Communities Local Governments and Nonprofits Equipment Installation - ITS cost + $50 per hour labor
Monthly Access - negotiable
DSU Rental (per DSU) 45.00
Controller Connect Fee (ORC/PRC) (per device) 22.00

LAN Installation and Administration – negotiable
LAN – Workstation PC or Printer (ORC/PRC) (per device) 65.00
High Speed FEP Port (per FEP) 800.00
Protocol Converter (PCI) (per PCI) 35.00
Fiber Connection 300.00
Telecommunication Charges
AT&T 800 Service + $0.12 per minute . . . 30.00
800 Number Calls from Pay Phones – ITS cost
Voice Monthly Service (per dial tone) 27.00
Residential line for telecommuting – ITS cost + 10%
ISDN Monthly Service 120.00
Voice Mail (per mail box) 7.00
Voice Mail Additional 20 min. (per mail box) 7.00
Auto–Attendant 2–port System (per port) 77.00
Auto–Attendant 4–port System (per port) 60.00
Auto–Attendant 6–port System (per port) 44.00
Call Management System – variable
Station Equipment – variable
Refund for Used Station Equipment – 25% of used price
International and Credit Card Long Distance – ITS cost + 10%
Long Distance Service (per unit per month plus $0.06 per minute) 1.00
Local Carrier Long–Distance Service – ITS cost + 10%
Video Conferencing (per hour) 30.00
Mainframe Laser Printer Output Simplex Page (per page) 025
Mainframe Laser Printer Output–Duplex Page (per page) 02
Mainframe Line Printer Output (per 1000 Lines) 1.50
Spool Occupancy Rate (see disk storage)
Security/ID Badges (per badge) 8.00
Setup Fee (One–time per group) 10.00
Badge Holders – ITS cost
CPU Prime Time (8am to 5pm Mon–Fri) (per hour) 650.00
CPU Non–Prime Time 2 (Weekends 5 to 8am M–F) (per hour) 325.00
ADABAS Command Cnts (per 1000) 12
Beginning and ending execution times must be during non–prime time to receive this rate.
ADABAS I/O (per 1000) 20
Tape I/O (per 1000 tape excp) 60
Disk I/O (per 1000 disk excp) 20
Disk Storage – DASD (per MB) 70
Round Tape Storage (per tape) 2.50
Square Tape Storage (per tape) 1.00
Migrated Data (per MB) 02
Tape Mounts (per mount) 30
AGR Terminal/Digitizer (per hour) 30.00
AGR Materials: Regular Plots (per foot) . . . 6.00
AGR Materials: Mylar Plots (per foot) 8.00
AGR Remote Port Access (per month) 50.00
Training Room Rental (per day) 100.00
AGR GIS Training (per person per day) . 120.00
Computer–Aided Design (CAD) Conversion (per sq. foot) 025
Plot Copies: 8 22 X 11 thru 11 X 17 (each) . 3.00
Plot Copies: 17 X 22 (each) 4.00
Plot Copies: 22 X 34 (each) 5.00
3Plot Copies: 4 X 44 (each) 7.00
Check stock – ITS cost
Mobile Radio/Microwave Equipment Space Rental: 19" X 7'0" Rack or Base Station – Mountain 100.00
Top/Downtown(2.3 sq. ft.) includes (1 Antenna Coax and Power) (per month)
Mobile Radio/Microwave Equipment Space Rental: 19" X 7'0" Rack or Base Station – Control 50.00
Station–Mountain Top (Wall Mt) includes (1 Antenna Coax and Power) (per month)
Mobile Radio/Microwave Equipment Space Rental: 19" X 7'0" Rack or Base Station – Control 25.00
Station–Downtown (Wall Mt) includes (1 Antenna Coax and Power) (per month)
Antenna Arrays – negotiable
Microwave Antennas: 6 Foot (per month) . 25.00
Microwave Antennas: 8 Foot (per month) . 45.00
Microwave Antennas: 10 Foot (per month) 65.00
Microwave Antennas: 12 Foot (per month) 85.00
Mobile Radio Equipment: 45 Watt Lease (per month) 8.50
Mobile Radio Equipment: 45 Watt Maintenance (per month) 6.50
Mobile Radio Equipment: 110 Watt Lease (per month) 23.50
Mobile Radio Equipment: 110 Watt Maintenance (per month) 7.50
Mobile Radio Equipment: Portable Lease (per month) 13.33
Mobile Radio Equipment: Portable Maintenance (per month) 7.00
Mobile Radio Equipment: 800 MHZ Lease (per month) 10.00
Mobile Radio Equipment: 800 MHZ Maintenance – time and materials
Mobile Radio Equipment: Parts – vendor book price
Mobile Radio Programming: 16 Channel – T&R (per radio) 30.00
Mobile Radio Programming: 16 Channel – T&R/Alpha Numeric (per radio) 60.00
Mobile Radio Programming: 1–128 Channel – T&R (per radio) 60.00
Mobile Radio Programming: 1–128 Channel – T&R/Alpha Numeric (per radio) 60.00
Program Clones: Base Stations/ Repeater Maintenance (per clone) 10.00
Program Clones: Repeater/Duplexer (per month) 37.00
Program Clones: Base Station (per month) 37.00
Program Clones: Control (per month) 18.00
Install Labor Rate (per hour) 40.00
All Radio Shop Installs – time and materials Consoles (per channel) 17.30
Consoles Maintenance (per channel) 8.00
Consoles Other Than Centracomm II – time and materials
State Repeater/Base Station System Utilization (per unit) 3.97
Microwave Maintenance (per hour) 60.00

Microwave local loop 4-wire line (2 required) - ITS Cost + 10%
Microwave local loop 2-wire line (2 required) - ITS Cost + 10%
Microwave T1 (20 mile minimum) (per mile) 9.00
Microwave T1 Drops - ITS Cost + 10%
Microwave T1 Installation 1,000.00
Microwave Circuit Provisioning Charge (per circuit) 240.00
Channel Cards (2 required): Digital 9.6K (per month) 31.30
Channel Cards (2 required): Digital 9.6K Install 152.00
Channel Cards (2 required): Digital 56K (per month) 51.00
Channel Cards (2 required): Digital 56K Install 152.00
Channel Cards (2 required): Digital bridge (per month) 11.25
Channel Cards (2 required): Digital bridge Install 9.00
Channel Cards (2 required): 3000 Series (4ETO) (per month) 17.30
Channel Cards (2 required): 3000 Series (4ETO) Install 140.00
Channel Cards (2 required): 3000 bridge (4-wire) (per month) 7.60
Channel Cards (2 required): 3000 bridge (4-wire) Install 18.00
Interoffice Mileage: 0-8 miles + $0.72 per mile 39.25
Interoffice Mileage: 9-25 miles + $0.70 per mile 40.00
Interoffice Mileage: 26-50 miles + $0.60 per mile 42.50
Interoffice Mileage: 51+ miles + $0.56 per mile 47.00
Interoffice Mileage: Installation 55.00

DIVISION OF FLEET OPERATIONS

In accordance with Section 63-38-3.5(3)(b) the following fees are approved for the services of the Division of Fleet Operations for FY 2002.
ISF - Motor Pool
Truck single axle C & C 10-yr full: Per mile variable rate 25
Truck single axle C & C 10-yr full: Monthly fixed rate 185.87
Truck single axle C & C 10-yr full: Daily fixed rate 9.29
Truck single axle C & C 10-yr full: Hourly fixed rate 1.16
Truck tandem axle SRE: Per mile variable rate 25
Truck tandem axle SRE: Monthly fixed rate 400.03
Truck tandem axle SRE: Truck tandem axle SRE: Daily fixed rate 20.00
Truck tandem axle SRE: Truck tandem axle SRE: Hourly fixed rate 2.50
Truck tandem axle 2T C & C: Per mile variable rate 25
Truck tandem axle 2T C & C: Monthly fixed rate 219.21
Truck tandem axle 2T C & C: Daily fixed rate 10.96
Truck tandem axle 2T C & C: Hourly fixed rate 1.37
Truck tandem axle Spec UDOT 10-yr capital: Per mile variable rate 0.00
Truck tandem axle Spec UDOT 10-yr capital: Monthly fixed rate 390.00
Truck tandem axle Spec UDOT 10-yr capital: Daily fixed rate 19.50
Truck tandem axle Spec UDOT 10-yr capital: Hourly fixed rate 2.44
Truck tandem axle Spec UDOT 10-yr capital: Per mile variable rate 0.00
Truck tandem axle Spec UDOT 10-yr capital: Monthly fixed rate 434.81
Truck tandem axle Spec UDOT 10-yr capital: Daily fixed rate 21.74
Truck tandem axle Spec UDOT 10-yr capital: Hourly fixed rate 2.72
Truck tandem axle C & C capital: Per mile variable rate 0.00
Truck tandem axle C & C capital: Monthly fixed rate 298.18
Truck tandem axle C & C capital: Daily fixed rate 14.91
Truck tandem axle C & C capital: Hourly fixed rate 1.86
Truck semi capital: Per mile variable rate . 0.00
Truck semi capital: Monthly fixed rate . . 416.30
Truck semi capital: Daily fixed rate 20.82
Truck semi capital: Hourly fixed rate 2.60
Truck 1.5 T C & C capital: Per mile variable rate 0.00
Truck 1.5 T C & C capital: Monthly fixed rate 373.34
Truck 1.5 T C & C capital: Daily fixed rate 18.67
Truck 1.5 T C & C capital: Hourly fixed rate 2.33
Truck cab-over special: Per mile variable rate 25
Truck cab-over special: Monthly fixed rate 300.30
Truck cab-over special: Daily fixed rate 15.02
Truck cab-over special: Hourly fixed rate 1.88
Truck tandem axle w/ box special: Per mile variable rate 11
Truck tandem axle w/ box special: Monthly fixed rate 56.92
Truck tandem axle w/ box special: Daily fixed rate 2.85
Truck tandem axle w/ box special: Hourly fixed rate 36
Truck tandem special 14-ft box: Per mile variable rate 17
Truck tandem special 14-ft box: Monthly fixed rate 207.99
Truck tandem special 14-ft box: Daily fixed rate 10.40
Truck tandem special 14-ft box: Hourly fixed rate 1.30
Truck tandem SWAT van: Per mile variable rate 89
Truck tandem SWAT van: Monthly fixed rate 2,145.00

Truck tandem SWAT van:
Daily fixed rate 107.25
Truck tandem SWAT van:
Hourly fixed rate 13.41
Truck Intrntl C & C w/ box:
Per mile variable rate 25
Truck Intrntl C & C w/ box:
Monthly fixed rate 227.20
Truck Intrntl C & C w/ box:
Daily fixed rate 11.36
Truck Intrntl C & C w/ box:
Hourly fixed rate 1.42
Truck Intrntl C & C w/ 16-ft box:
Per mile variable rate 25
Truck Intrntl C & C w/ 16-ft box:
Monthly fixed rate 306.56
Truck Intrntl C & C w/ 16-ft box:
Daily fixed rate 15.33
Truck Intrntl C & C w/ 16-ft box:
Hourly fixed rate 1.92
Truck Intrntl C & C w/ 16-ft box:
Per mile variable rate 25
Truck Intrntl C & C w/ 16-ft box:
Monthly fixed rate 241.05
Truck Intrntl C & C w/ 16-ft box:
Daily fixed rate 12.05
Truck Intrntl C & C w/ 16-ft box:
Hourly fixed rate 1.51
Truck Intrntl C & C w/ 16-ft box:
Per mile variable rate 25
Truck Intrntl C & C w/ 16-ft box:
Monthly fixed rate 265.54
Truck Intrntl C & C w/ 16-ft box:
Daily fixed rate 13.28
Truck Intrntl C & C w/ 16-ft box:
Hourly fixed rate 1.66
Truck tandem axle w/ box special:
Per mile variable rate 12
Truck tandem axle w/ box special:
Monthly fixed rate 468.5
Truck tandem axle w/ box special:
Daily fixed rate 23.43
Truck tandem axle w/ box special:
Hourly fixed rate 2.93
Truck tandem axle w/ box special:
Per mile variable rate 12
Truck tandem axle w/ box special:
Monthly fixed rate 433.24
Truck tandem axle w/ box special:
Daily fixed rate 21.66
Truck tandem axle w/ box special:
Hourly fixed rate 2.71
Truck Intrntl C & C w/ box:
Per mile variable rate 25
Truck Intrntl C & C w/ box:
Monthly fixed rate 281.08
Truck Intrntl C & C w/ box:
Daily fixed rate 14.05
Truck Intrntl C & C w/ box:
Hourly fixed rate 1.76
Truck 1 T dual wheel C & C capital:
Per mile variable rate 0.00
Truck 1 T dual wheel C & C capital:
Monthly fixed rate 294.90
Truck 1 T dual wheel C & C capital:
Daily fixed rate 14.75
Truck 1 T dual wheel C & C capital:
Hourly fixed rate 1.84
Truck 1 T dual wheel C & C special:
Per mile variable rate 20
Truck 1 T dual wheel C & C special:
Monthly fixed rate 487.78
Truck 1 T dual wheel C & C special:
Daily fixed rate 24.39
Truck 1 T dual wheel C & C special:
Hourly fixed rate 3.05
Truck 1 T reg cab 4 X 2:
Per mile variable rate 14
Truck 1 T reg cab 4 X 2:
Monthly fixed rate 338.03
Truck 1 T reg cab 4 X 2: Daily fixed rate . 16.90
Truck 1 T reg cab 4 X 2: Hourly fixed rate . 2.11
Truck 1 T reg cab 4 X 2 10-yr full:
Per mile variable rate 14
Truck 1 T reg cab 4 X 2 10-yr full:
Monthly fixed rate 197.47
Truck 1 T reg cab 4 X 2 10-yr full:
Daily fixed rate 9.87
Truck 1 T reg cab 4 X 2 10-yr full:
Hourly fixed rate 1.23
Truck 1 T reg cab 4 X 2 capital:
Per mile variable rate 0.00
Truck 1 T reg cab 4 X 2 capital:
Monthly fixed rate 338.03
Truck 1 T reg cab 4 X 2 capital:
Daily fixed rate 16.90
Truck 1 T reg cab 4 X 2 capital:
Hourly fixed rate 2.11
Truck 1 T reg cab 4 X 2 10-yr capital:
Per mile variable rate 0.00
Truck 1 T reg cab 4 X 2 10-yr capital:
Monthly fixed rate 197.47
Truck 1 T reg cab 4 X 2 10-yr capital:
Daily fixed rate 9.87
Truck 1 T reg cab 4 X 2 10-yr capital:
Hourly fixed rate 1.23
Truck 1 T reg cab 4 X 2 10-yr capital USU:
Per mile variable rate 0.00
Truck 1 T reg cab 4 X 2 10-yr
capital USU: Monthly fixed rate 162.00
Truck 1 T reg cab 4 X 2 10-yr
capital USU: Daily fixed rate 8.10
Truck 1 T reg cab 4 X 2 10-yr
capital USU: Hourly fixed rate 1.01
Truck 1 T reg cab 4 X 2:
Per mile variable rate 14
Truck 1 T reg cab 4 X 2:
Monthly fixed rate 342.85
Truck 1 T reg cab 4 X 2: Daily fixed rate . 17.14
Truck 1 T reg cab 4 X 2: Hourly fixed rate . 2.14
Truck 1 T reg cab 4 X 2:
Per mile variable rate 14
Truck 1 T reg cab 4 X 2:
Monthly fixed rate 404.31
Truck 1 T reg cab 4 X 2: Daily fixed rate . 20.22
Truck 1 T reg cab 4 X 2: Hourly fixed rate . 2.53
Truck 1 T reg cab 4 X 4:
Per mile variable rate 17
Truck 1 T reg cab 4 X 4:
Monthly fixed rate 324.43
Truck 1 T reg cab 4 X 4: Daily fixed rate . 16.22
Truck 1 T reg cab 4 X 4: Hourly fixed rate . 2.03

Truck 1 T reg cab 4 X 4 10-yr full: Per mile variable rate 17
Truck 1 T reg cab 4 X 4 10-yr full: Monthly fixed rate 190.68
Truck 1 T reg cab 4 X 4 10-yr full: Daily fixed rate 9.53
Truck 1 T reg cab 4 X 4 10-yr full: Hourly fixed rate 1.19
Truck 1 T reg cab 4 X 4 10-yr capital USU: Per mile variable rate 0.00
Truck 1 T reg cab 4 X 4 10-yr capital USU: Monthly fixed rate 172.00
Truck 1 T reg cab 4 X 4 10-yr capital USU: Daily fixed rate 8.60
Truck 1 T reg cab 4 X 4 10-yr capital USU: Hourly fixed rate 1.08
Truck 1 T reg cab 4 X 4: Per mile variable rate 17
Truck 1 T reg cab 4 X 4: Monthly fixed rate 329.36
Truck 1 T reg cab 4 X 4: Daily fixed rate 16.47
Truck 1 T reg cab 4 X 4: Hourly fixed rate 2.06
Truck 1 T reg cab 4 X 4: Per mile variable rate 17
Truck 1 T reg cab 4 X 4: Monthly fixed rate 371.74
Truck 1 T reg cab 4 X 4: Daily fixed rate 18.59
Truck 1 T reg cab 4 X 4: Hourly fixed rate 2.32
Truck 1 T ext cab 4 X 4 10-yr capital USU: Per mile variable rate 0.00
Truck 1 T ext cab 4 X 4 10-yr capital USU: Monthly fixed rate 285.00
Truck 1 T ext cab 4 X 4 10-yr capital USU: Daily fixed rate 14.25
Truck 1 T ext cab 4 X 4 10-yr capital USU: Hourly fixed rate 1.78
Truck 1 T reg cab 4 X 2 C & C capital: Per mile variable rate 0.00
Truck 1 T reg cab 4 X 2 C & C capital: Monthly fixed rate 248.59
Truck 1 T reg cab 4 X 2 C & C capital: Daily fixed rate 12.43
Truck 1 T reg cab 4 X 2 C & C capital: Hourly fixed rate 1.55
Truck 1 T reg cab 4 X 4 C & C: Per mile variable rate 17
Truck 1 T reg cab 4 X 4 C & C: Monthly fixed rate 280.43
Truck 1 T reg cab 4 X 4 C & C: Daily fixed rate 14.02
Truck 1 T reg cab 4 X 4 C & C: Hourly fixed rate 1.75
Truck 1 T reg cab 4 X 4 C & C capital: Per mile variable rate 0.00
Truck 1 T reg cab 4 X 4 C & C capital: Monthly fixed rate 280.43
Truck 1 T reg cab 4 X 4 C & C capital: Daily fixed rate 14.02
Truck 1 T reg cab 4 X 4 C & C capital: Hourly fixed rate 1.75
Truck 1 T reg cab 4 X 2 C & C capital USU: Per mile variable rate 0.00
Truck 1 T reg cab 4 X 2 C & C capital USU: Monthly fixed rate 172.00
Truck 1 T reg cab 4 X 2 C & C capital USU: Daily fixed rate 8.60
Truck 1 T reg cab 4 X 2 C & C capital USU: Hourly fixed rate 1.08
Truck 1 T reg cab 4 X 4 C & C dsl (Fuel Network): Per mile variable rate 17
Truck 1 T reg cab 4 X 4 C & C dsl (Fuel Network): Monthly fixed rate . . . 525.00
Truck 1 T reg cab 4 X 4 C & C dsl (Fuel Network): Daily fixed rate 26.25
Truck 1 T reg cab 4 X 4 C & C dsl (Fuel Network): Hourly fixed rate 3.28
Truck 1 T crew cab 4 X 2: Per mile variable rate 18
Truck 1 T crew cab 4 X 2: Monthly fixed rate 391.53
Truck 1 T crew cab 4 X 2: Daily fixed rate 19.58
Truck 1 T crew cab 4 X 2: Hourly fixed rate 2.45
Truck 1 T crew cab 4 X 2 10-yr full: Per mile variable rate 18
Truck 1 T crew cab 4 X 2 10-yr full: Monthly fixed rate 224.23
Truck 1 T crew cab 4 X 2 10-yr full: Daily fixed rate 11.21
Truck 1 T crew cab 4 X 2 10-yr full: Hourly fixed rate 1.40
Truck 1 T crew cab 4 X 2 capital: Per mile variable rate 0.00
Truck 1 T crew cab 4 X 2 capital: Monthly fixed rate 391.53
Truck 1 T crew cab 4 X 2 capital: Daily fixed rate 19.58
Truck 1 T crew cab 4 X 2 capital: Hourly fixed rate 2.45
Truck 1 T crew cab 4 X 4: Per mile variable rate 18
Truck 1 T crew cab 4 X 4: Monthly fixed rate 294.53
Truck 1 T crew cab 4 X 4: Daily fixed rate 14.73
Truck 1 T crew cab 4 X 4: Hourly fixed rate 1.84
Truck 1 T crew cab 4 X 4 capital: Per mile variable rate 0.00
Truck 1 T crew cab 4 X 4 capital: Monthly fixed rate 294.53
Truck 1 T crew cab 4 X 4 capital: Daily fixed rate 14.73
Truck 1 T crew cab 4 X 4 capital: Hourly fixed rate 1.84
Truck 1 T crew cab 4 X 4: Per mile variable rate 18
Truck 1 T crew cab 4 X 4: Monthly fixed rate 365.30
Truck 1 T crew cab 4 X 4: Daily fixed rate 18.27
Truck 1 T crew cab 4 X 4: Hourly fixed rate 2.28
Truck 2 T reg cab 4 X 2: Per mile variable rate 14
Truck 2 T reg cab 4 X 2: Monthly fixed rate 251.65

Truck 2 T reg cab 4 X 2: Daily fixed rate . 12.58
Truck 2 T reg cab 4 X 2: Hourly fixed rate . 1.57
Truck 2 T reg cab 4 X 2 10–yr full:
Per mile variable rate 14
Truck 2 T reg cab 4 X 2 10–yr full:
Monthly fixed rate 154.28
Truck 2 T reg cab 4 X 2 10–yr full:
Daily fixed rate 7.71
Truck 2 T reg cab 4 X 2 10–yr full:
Hourly fixed rate 96
Truck 2 T reg cab 4 X 2 10–yr capital:
Per mile variable rate 0.00
Truck 2 T reg cab 4 X 2 10–yr capital:
Monthly fixed rate 154.28
Truck 2 T reg cab 4 X 2 10–yr capital:
Daily fixed rate 7.71
Truck 2 T reg cab 4 X 2 10–yr capital:
Hourly fixed rate 96
Truck 2 T reg cab 4 X 2 10–yr
capital USU: Per mile variable rate 0.00
Truck 2 T reg cab 4 X 2 10–yr
capital USU: Monthly fixed rate 145.00
Truck 2 T reg cab 4 X 2 10–yr
capital USU: Daily fixed rate 7.25
Truck 2 T reg cab 4 X 2 10–yr capital
USU: Hourly fixed rate 91
Truck 2 T reg cab 4 X 4: Per mile
variable rate 16
Truck 2 T reg cab 4 X 4:
Monthly fixed rate 268.66
Truck 2 T reg cab 4 X 4: Daily fixed rate . 13.43
Truck 2 T reg cab 4 X 4: Hourly fixed rate . 1.68
Truck 2 T reg cab 4 X 4 10–yr full:
Per mile variable rate 16
Truck 2 T reg cab 4 X 4 10–yr full:
Monthly fixed rate 162.79
Truck 2 T reg cab 4 X 4 10–yr full:
Daily fixed rate 8.14
Truck 2 T reg cab 4 X 4 10–yr full:
Hourly fixed rate 1.02
Truck 2 T reg cab 4 X 4 capital:
Per mile variable rate 0.00
Truck 2 T reg cab 4 X 4 capital:
Monthly fixed rate 268.66
Truck 2 T reg cab 4 X 4 capital:
Daily fixed rate 13.43
Truck 2 T reg cab 4 X 4 capital:
Hourly fixed rate 1.68
Truck 2 T reg cab 4 X 4 10–yr
capital USU: Per mile variable rate 0.00
Truck 2 T reg cab 4 X 4 10–yr
capital USU: Monthly fixed rate 157.00
Truck 2 T reg cab 4 X 4 10–yr
capital USU: Daily fixed rate 7.85
Truck 2 T reg cab 4 X 4 10–yr
capital USU: Hourly fixed rate 98
Truck 2 T reg cab 4 X 4 10–yr
capital USU: Per mile variable rate 0.00
Truck 2 T reg cab 4 X 4 10–yr
capital USU: Monthly fixed rate 165.00
Truck 2 T reg cab 4 X 4 10–yr
capital USU: Daily fixed rate 8.25
Truck 2 T reg cab 4 X 4 10–yr capital USU:
Hourly fixed rate 1.03
Truck 2 T ext cab 4 X 2: Per mile
variable rate 14
Truck 2 T ext cab 4 X 2: Monthly
fixed rate 296.09
Truck 2 T ext cab 4 X 2: Daily fixed rate . . 14.80
Truck 2 T ext cab 4 X 2: Hourly fixed rate . 1.85
Truck 2 T ext cab 4 X 2 10–yr
capital USU: Per mile variable rate 0.00
Truck 2 T ext cab 4 X 2 10–yr
capital USU: Monthly fixed rate 164.00
Truck 2 T ext cab 4 X 2 10–yr
capital USU: Daily fixed rate 8.20
Truck 2 T ext cab 4 X 2 10–yr
capital USU: Hourly fixed rate 1.03
Truck 2 T ext cab 4 X 4:
Per mile variable rate 16
Truck 2 T ext cab 4 X 4:
Monthly fixed rate 341.98
Truck 2 T ext cab 4 X 4: Daily fixed rate . . 17.10
Truck 2 T ext cab 4 X 4: Hourly fixed rate . 2.14
Truck 3/4 T reg cab 4 X 2:
Per mile variable rate 14
Truck 3/4 T reg cab 4 X 2:
Monthly fixed rate 273.77
Truck 3/4 T reg cab 4 X 2:
Daily fixed rate 13.69
Truck 3/4 T reg cab 4 X 2:
Hourly fixed rate 1.71
Truck 3/4 T reg cab 4 X 2 10–yr:
Per mile variable rate 14
Truck 3/4 T reg cab 4 X 2 10–yr:
Monthly fixed rate 165.35
Truck 3/4 T reg cab 4 X 2 10–yr:
Daily fixed rate 8.27
Truck 3/4 T reg cab 4 X 2 10–yr:
Hourly fixed rate 1.03
Truck 3/4 T reg cab 4 X 2 capital:
Per mile variable rate 0.00
Truck 3/4 T reg cab 4 X 2 capital:
Monthly fixed rate 273.77
Truck 3/4 T reg cab 4 X 2 capital:
Daily fixed rate 13.69
Truck 3/4 T reg cab 4 X 2 capital:
Hourly fixed rate 1.71
Truck 3/4 T reg cab 4 X 2 10–yr
capital USU: Per mile variable rate 0.00
Truck 3/4 T reg cab 4 X 2 10–yr
capital USU: Monthly fixed rate 174.00
Truck 3/4 T reg cab 4 X 2 10–yr
capital USU: Daily fixed rate 8.70
Truck 3/4 T reg cab 4 X 2 10–yr
capital USU: Hourly fixed rate 1.09
Truck 3/4 T reg cab 4 X 2:
Per mile variable rate 14
Truck 3/4 T reg cab 4 X 2:
Monthly fixed rate 319.10
Truck 3/4 T reg cab 4 X 2:
Daily fixed rate 15.96
Truck 3/4 T reg cab 4 X 2:
Hourly fixed rate 1.99
Truck 3/4 T reg cab 4 X 4:
Per mile variable rate 17
Truck 3/4 T reg cab 4 X 4:
Monthly fixed rate 338.28
Truck 3/4 T reg cab 4 X 4:
Daily fixed rate 16.91
Truck 3/4 T reg cab 4 X 4:
Hourly fixed rate 2.11

Truck 3/4 T reg cab 4 X 4 10-yr full:
Per mile variable rate 17
Truck 3/4 T reg cab 4 X 4 10-yr full:
Monthly fixed rate 197.60
Truck 3/4 T reg cab 4 X 4 10-yr full:
Daily fixed rate 9.88
Truck 3/4 T reg cab 4 X 4 10-yr full:
Hourly fixed rate 1.24
Truck 3/4 T reg cab 4 X 4 capital:
Per mile variable rate 0.00
Truck 3/4 T reg cab 4 X 4 capital:
Monthly fixed rate 338.28
Truck 3/4 T reg cab 4 X 4 capital:
Daily fixed rate 16.91
Truck 3/4 T reg cab 4 X 4 capital:
Hourly fixed rate 2.11
Truck 3/4 T reg cab 4 X 4 10-yr
capital USU: Per mile variable rate 0.00
Truck 3/4 T reg cab 4 X 4 10-yr
capital USU: Monthly fixed rate 165.00
Truck 3/4 T reg cab 4 X 4 10-yr
capital USU: Daily fixed rate 8.25
Truck 3/4 T reg cab 4 X 4 10-yr
capital USU: Hourly fixed rate 1.03
Truck 3/4 T reg cab 4 X 4 police
equipped: Per mile variable rate 17
Truck 3/4 T reg cab 4 X 4 police
equipped: Monthly fixed rate 402.94
Truck 3/4 T reg cab 4 X 4 police
equipped: Daily fixed rate 20.15
Truck 3/4 T reg cab 4 X 4 police
equipped: Hourly fixed rate 2.52
Truck 3/4 T ext cab 4 X 2: Per mile
variable rate 14
Truck 3/4 T ext cab 4 X 2:
Monthly fixed rate 257.59
Truck 3/4 T ext cab 4 X 2:
Daily fixed rate 12.88
Truck 3/4 T ext cab 4 X 2:
Hourly fixed rate 1.61
Truck 3/4 T ext cab 4 X 2
10-yr full: Per mile variable rate 14
Truck 3/4 T ext cab 4 X 2 10-yr full:
Monthly fixed rate 157.25
Truck 3/4 T ext cab 4 X 2 10-yr full:
Daily fixed rate 7.86
Truck 3/4 T ext cab 4 X 2 10-yr full:
Hourly fixed rate 98
Truck 3/4 T ext cab 4 X 2 capital:
Per mile variable rate 0.00
Truck 3/4 T ext cab 4 X 2 capital:
Monthly fixed rate 257.59
Truck 3/4 T ext cab 4 X 2 capital:
Daily fixed rate 12.88
Truck 3/4 T ext cab 4 X 2 capital:
Hourly fixed rate 1.61
Truck 3/4 T ext cab 4 X 4:
Per mile variable rate 17
Truck 3/4 T ext cab 4 X 4:
Monthly fixed rate 329.52
Truck 3/4 T ext cab 4 X 4:
Daily fixed rate 16.48
Truck 3/4 T ext cab 4 X 4:
Hourly fixed rate 2.06
Truck 3/4 T ext cab 4 X 4 capital:
Per mile variable rate 0.00
Truck 3/4 T ext cab 4 X 4 capital:
Monthly fixed rate 329.52
Truck 3/4 T ext cab 4 X 4 capital:
Daily fixed rate 16.48
Truck 3/4 T ext cab 4 X 4 capital:
Hourly fixed rate 2.06
Truck 3/4 T ext cab 4 X 4 10-yr
capital USU: Per mile variable rate 0.00
Truck 3/4 T ext cab 4 X 4 10-yr
capital USU: Monthly fixed rate 167.00
Truck 3/4 T ext cab 4 X 4 10-yr capital
USU: Daily fixed rate 8.35
Truck 3/4 T ext cab 4 X 4 10-yr
capital USU: Hourly fixed rate 1.04
Truck 3/4 T ext cab 4 X 4 police equipped:
Per mile variable rate 17
Truck 3/4 T ext cab 4 X 4 police equipped:
Monthly fixed rate 478.52
Truck 3/4 T ext cab 4 X 4 police equipped:
Daily fixed rate 23.93
Truck 3/4 T ext cab 4 X 4 police equipped:
Hourly fixed rate 2.99
Truck 3/4 T reg cab 4 X 2 C & C:
Per mile variable rate 14
Truck 3/4 T reg cab 4 X 2 C & C:
Monthly fixed rate 279.77
Truck 3/4 T reg cab 4 X 2 C & C:
Daily fixed rate 13.99
Truck 3/4 T reg cab 4 X 2 C & C:
Hourly fixed rate 1.75
Truck 3/4 T reg cab 4 X 2 C & C 10-yr full:
Per mile variable rate 14
Truck 3/4 T reg cab 4 X 2 C & C 10-yr full:
Monthly fixed rate 168.34
Truck 3/4 T reg cab 4 X 2 C & C 10-yr full:
Daily fixed rate 8.42
Truck 3/4 T reg cab 4 X 2 C & C 10-yr full:
Hourly fixed rate 1.05
Truck 3/4 T reg cab 4 X 2 C & C w/ 600
gal tank: Per mile variable rate 35
Truck 3/4 T reg cab 4 X 2 C & C w/ 600
gal tank: Monthly fixed rate 193.11
Truck 3/4 T reg cab 4 X 2 C & C w/ 600
gal tank: Daily fixed rate 9.66
Truck 3/4 T reg cab 4 X 2 C & C w/ 600
gal tank: Hourly fixed rate 1.21
Truck 3/4 T reg cab 4 X 4 C & C:
Per mile variable rate 17
Truck 3/4 T reg cab 4 X 4 C & C:
Monthly fixed rate 461.09
Truck 3/4 T reg cab 4 X 4 C & C:
Daily fixed rate 23.05
Truck 3/4 T reg cab 4 X 4 C & C:
Hourly fixed rate 2.88
Truck 3/4 T ext cab 4 X 4 C & C capital:
Per mile variable rate 0.00
Truck 3/4 T ext cab 4 X 4 C & C capital:
Monthly fixed rate 299.00
Truck 3/4 T ext cab 4 X 4 C & C capital:
Daily fixed rate 14.95
Truck 3/4 T ext cab 4 X 4 C & C capital:
Hourly fixed rate 1.87
Truck compact reg cab 4 X 2:
Per mile variable rate 12
ruck compact reg cab 4 X 2:
Monthly fixed rate 266.65

Truck compact reg cab 4 X 2:
Daily fixed rate 13.33
Truck compact reg cab 4 X 2:
Hourly fixed rate 1.67
Truck compact reg cab 4 X 2 10-yr full:
Per mile variable rate ..... .12
Truck compact reg cab 4 X 2 10-yr full:
Monthly fixed rate 161.79
Truck compact reg cab 4 X 2 10-yr full:
Daily fixed rate 8.09
Truck compact reg cab 4 X 2 10-yr full:
Hourly fixed rate 1.01
Truck compact reg cab 4 X 2 capital:
Per mile variable rate 0.00
Truck compact reg cab 4 X 2 capital:
Monthly fixed rate 266.65
Truck compact reg cab 4 X 2 capital:
Daily fixed rate 13.33
Truck compact reg cab 4 X 2 capital:
Hourly fixed rate 1.67
Truck compact reg cab 4 X 2 10-yr capital:
Per mile variable rate 0.00
Truck compact reg cab 4 X 2
10-yr capital: Monthly fixed rate 161.79
Truck compact reg cab 4 X 2
10-yr capital: Daily fixed rate 8.09
Truck compact reg cab 4 X 2
10-yr capital: Hourly fixed rate 1.01
Truck compact reg cab 4 X 2
10-yr capital USU: Per mile variable rate 0.00
Truck compact reg cab 4 X 2 10-yr capital
USU: Monthly fixed rate 128.00
Truck compact reg cab 4 X 2 10-yr capital
USU: Daily fixed rate 6.40
Truck compact reg cab 4 X 2 10-yr capital
USU: Hourly fixed rate ..... .80
Truck compact reg cab 4 X 4:
Per mile variable rate ..... .16
Truck compact reg cab 4 X 4:
Per mile variable rate ..... .16
Truck compact reg cab 4 X 4:
Monthly fixed rate 289.26
Truck compact reg cab 4 X 4:
Daily fixed rate 14.46
Truck compact reg cab 4 X 4:
Hourly fixed rate 1.81
Truck compact reg cab 4 X 4 10-yr full:
Per mile variable rate ..... .16
Truck compact reg cab 4 X 4 10-yr full:
Monthly fixed rate 173.09
Truck compact reg cab 4 X 4 10-yr full:
Daily fixed rate 8.65
Truck compact reg cab 4 X 4 10-yr full:
Hourly fixed rate 1.08
Truck compact reg cab 4 X 4 capital:
Per mile variable rate 0.00
Truck compact reg cab 4 X 4 capital:
Monthly fixed rate 289.26
Truck compact reg cab 4 X 4 capital:
Daily fixed rate 14.46
Truck compact reg cab 4 X 4 capital:
Hourly fixed rate 1.81
Truck compact reg cab 4 X 4:
Per mile variable rate ..... .16
Truck compact reg cab 4 X 4:
Monthly fixed rate 315.95
Truck compact reg cab 4 X 4:
Daily fixed rate 15.80
Truck compact reg cab 4 X 4:
Hourly fixed rate 1.97
Truck compact reg cab 4 X 4:
Per mile variable rate ..... .16
Truck compact reg cab 4 X 4:
Monthly fixed rate 378.43
Truck compact reg cab 4 X 4:
Daily fixed rate 18.92
Truck compact reg cab 4 X 4:
Hourly fixed rate 2.37
Truck compact ext cab 4 X 2:
Per mile variable rate ..... .12
Truck compact ext cab 4 X 2:
Monthly fixed rate 220.73
Truck compact ext cab 4 X 2:
Daily fixed rate 11.04
Truck compact ext cab 4 X 2:
Hourly fixed rate 1.38
Truck compact ext cab 4 X 2
10-yr capital: Per mile variable rate 0.00
Truck compact ext cab 4 X 2
10-yr capital: Monthly fixed rate 148.53
Truck compact ext cab 4 X 2 10-yr
capital: Daily fixed rate 7.43
Truck compact ext cab 4 X 2 10-yr
capital: Hourly fixed rate ..... .93
Truck compact ext cab 4 X 2 10-yr
capital USU: Per mile variable rate 0.00
Truck compact ext cab 4 X 2 10-yr
capital USU: Monthly fixed rate 128.00
Truck compact ext cab 4 X 2 10-yr
capital USU: Daily fixed rate 6.40
Truck compact ext cab 4 X 2 10-yr
capital USU: Hourly fixed rate ..... .80
Truck compact ext cab 4 X 4:
Per mile variable rate ..... .16
Truck compact ext cab 4 X 4:
Monthly fixed rate 237.50
Truck compact ext cab 4 X 4:
Monthly fixed rate 237.50
Truck compact ext cab 4 X 4:
Daily fixed rate 11.88
Truck compact ext cab 4 X 4:
Hourly fixed rate 1.48
Truck compact ext cab 4 X 4 capital:
Per mile variable rate 0.00
Truck compact ext cab 4 X 4 capital:
Monthly fixed rate 237.50
Truck compact ext cab 4 X 4 capital:
Daily fixed rate 11.88
Truck compact ext cab 4 X 4 capital:
Hourly fixed rate 1.48
Snowblower Stew/Stevenson 25-yr capital:
Per mile variable rate 0.00
Snowblower Stew/Stevenson 25-yr
capital: Monthly fixed rate 808.56
Snowblower Stew/Stevenson 25-yr capital:
Daily fixed rate 40.43
Snowblower Stew/Stevenson 25-yr
capital: Hourly fixed rate 5.05
Grader standard 20-yr capital:
Per mile variable rate 0.00
Grader standard 20-yr capital:
Monthly fixed rate 515.11
Grader standard 20-yr capital:
Daily fixed rate 25.76
Grader standard 20-yr capital:
Hourly fixed rate 3.22

Sedan Mid-size: Per mile variable rate 09
Sedan Mid-size: Monthly fixed rate 209.00
Sedan Mid-size: Daily fixed rate 10.45
Sedan Mid-size: Hourly fixed rate 1.31
Sedan Mid-size 10-yr full:
Per mile variable rate 10
Sedan Mid-size 10-yr full:
Monthly fixed rate 184.67
Sedan Mid-size 10-yr full:
Daily fixed rate 9.23
Sedan Mid-size 10-yr full:
Hourly fixed rate 1.15
Sedan Mid-size capital:
Per mile variable rate 0.00
Sedan Mid-size capital:
Monthly fixed rate 312.42
Sedan Mid-size capital:
Daily fixed rate 15.62
Sedan Mid-size capital:
Hourly fixed rate 1.95
Sedan Mid-size do not replace:
Per mile variable rate 09
Sedan Mid-size do not replace:
Monthly fixed rate 56.92
Sedan Mid-size do not replace:
Daily fixed rate 2.85
Sedan Mid-size do not replace:
Hourly fixed rate 36
Sedan Mid-size special:
Per mile variable rate 09
Sedan Mid-size special:
Monthly fixed rate 212.12
Sedan Mid-size special:
Daily fixed rate 10.61
Sedan Mid-size special:
Hourly fixed rate 1.33
Sedan Wagon:
Per mile variable rate 09
Sedan Wagon:
Monthly fixed rate 286.08
Sedan Wagon:
Daily fixed rate 14.30
Sedan Wagon:
Hourly fixed rate 1.79
Sedan Compact: Per mile variable rate 09
Sedan Compact: Monthly fixed rate 191.00
Sedan Compact: Daily fixed rate 9.55
Sedan Compact: Hourly fixed rate 1.19
Sedan Compact 10-yr full:
Per mile variable rate 07
Sedan Compact 10-yr full:
Monthly fixed rate 143.35
Sedan Compact 10-yr full:
Daily fixed rate 7.17
Sedan Compact 10-yr full:
Hourly fixed rate 90
Sedan Compact capital:
Per mile variable rate 0.00
Sedan Compact capital:
Monthly fixed rate 225.00
Sedan Compact capital:
Daily fixed rate 11.25
Sedan Compact capital:
Hourly fixed rate 1.41
Sedan Compact 10-yr capital:
Per mile variable rate 0.00
Sedan Compact 10-yr capital:
Monthly fixed rate 143.35
Sedan Compact 10-yr capital:
Daily fixed rate 7.17
Sedan Compact 10-yr capital:
Hourly fixed rate 90
Sedan Mid-size police pkg:
Per mile variable rate 09
Sedan Mid-size police pkg:
Monthly fixed rate 325.00
Sedan Mid-size police pkg:
Daily fixed rate 16.25
Sedan Mid-size police pkg:
Hourly fixed rate 2.03
Sedan Mid-size police pkg capital:
Per mile variable rate 0.00
Sedan Mid-size police pkg capital:
Monthly fixed rate 325.00
Sedan Mid-size police pkg capital:
Daily fixed rate 16.25
Sedan Mid-size police pkg capital:
Hourly fixed rate 2.03
Sedan Compact 6-cylinder:
Per mile variable rate 08
Sedan Compact 6-cylinder:
Monthly fixed rate 271.35
Sedan Compact 6-cylinder:
Daily fixed rate 13.57
Sedan Compact 6-cylinder:
Hourly fixed rate 1.70
Sedan Compact 6-cylinder 10-yr full:
Per mile variable rate 09
Sedan Compact 6-cylinder 10-yr full:
Monthly fixed rate 164.14
Sedan Compact 6-cylinder 10-yr full:
Daily fixed rate 8.21
Sedan Compact 6-cylinder 10-yr full:
Hourly fixed rate 1.03
Sedan Full-size: Per mile variable rate 12
Sedan Full-size: Monthly fixed rate 350.00
Sedan Full-size: Daily fixed rate 17.50
Sedan Full-size: Hourly fixed rate 2.19
Sedan Full-size 10-yr full:
Per mile variable rate 12
Sedan Full-size 10-yr full:
Monthly fixed rate 177.86
Sedan Full-size 10-yr full:
Daily fixed rate 8.89
Sedan Full-size 10-yr full:
Hourly fixed rate 1.11
Sedan Full-size do not replace:
Per mile variable rate 09
Sedan Full-size do not replace:
Monthly fixed rate 56.92
Sedan Full-size do not replace:
Daily fixed rate 2.85
Sedan Full-size do not replace:
Hourly fixed rate 36
Sedan Full-size police pkg:
Per mile variable rate 12
Sedan Full-size police pkg:
Monthly fixed rate 449.67
Sedan Full-size police pkg:
Daily fixed rate 22.48
Sedan Full-size police pkg:
Hourly fixed rate 2.81

Sedan Full-size Executive:
Per mile variable rate ..... .10
Sedan Full-size Executive:
Monthly fixed rate 400.70
Sedan Full-size Executive:
Daily fixed rate 20.04
Sedan Full-size Executive:
Hourly fixed rate 2.50
Sedan Full-size Executive capital:
Per mile variable rate 0.00
Sedan Full-size Executive capital:
Monthly fixed rate 400.70
Sedan Full-size Executive capital:
Daily fixed rate 20.04
Sedan Full-size Executive capital:
Hourly fixed rate 2.50
Captain: Per mile variable rate ..... .12
Captain: Monthly fixed rate 412.47
Captain: Daily fixed rate 20.62
Captain: Hourly fixed rate 2.58
Sergeants (non-technology):
Per mile variable rate ..... .12
Sergeants (non-technology):
Monthly fixed rate 431.18
Sergeants (non-technology):
Daily fixed rate 21.56
Sergeants (non-technology):
Hourly fixed rate 2.69
Sergeants (Technology):
Per mile variable rate ..... .12
Sergeants (Technology):
Monthly fixed rate 440.05
Sergeants (Technology):
Daily fixed rate 22.00
Sergeants (Technology):
Hourly fixed rate 2.75
Trooper A (Technology):
Per mile variable rate ..... .12
Trooper A (Technology):
Monthly fixed rate 449.67
Trooper A (Technology): Daily fixed rate . 22.48
Trooper A (Technology): Hourly fixed rate . 2.81
Trooper A (Non-Technology):
Per mile variable rate ..... .12
Trooper A (Non-Technology):
Monthly fixed rate 441.63
Trooper A (Non-Technology):
Daily fixed rate 22.08
Trooper A (Non-Technology):
Hourly fixed rate 2.78
Trooper B (Non-technology):
Per mile variable rate ..... .12
Trooper B (Non-technology):
Monthly fixed rate 435.34
Trooper B (Non-technology):
Daily fixed rate 21.77
Trooper B (Non-technology):
Hourly fixed rate 2.72
Loader Fe over 3 yds 12-yr capital:
Per mile variable rate 0.00
Loader Fe over 3 yds 12-yr capital:
Monthly fixed rate 659.93
Loader Fe over 3 yds 12-yr capital:
Daily fixed rate 33.00
Loader Fe over 3 yds 12-yr capital:
Hourly fixed rate 4.12
Loader Fe over 3 yds 12-yr capital:
Per mile variable rate 0.00
Loader Fe over 3 yds 12-yr capital:
Monthly fixed rate 703.30
Loader Fe over 3 yds 12-yr capital:
Daily fixed rate 35.17
Loader Fe over 3 yds 12-yr capital:
Hourly fixed rate 4.40
Trailer lab specially equipped:
Per mile variable rate 0.00
Trailer lab specially equipped:
Monthly fixed rate 173.83
Trailer lab specially equipped:
Daily fixed rate 8.69
Trailer lab specially equipped:
Hourly fixed rate 1.09
Striper Volvo 12-yr capital:
Per mile variable rate 0.00
Striper Volvo 12-yr capital:
Monthly fixed rate 1,353.87
Striper Volvo 12-yr capital:
Daily fixed rate 67.69
Striper Volvo 12-yr capital:
Hourly fixed rate 8.46
Striper Volvo 12-yr capital:
Per mile variable rate 0.00
Striper Volvo 12-yr capital:
Monthly fixed rate 1,369.89
Striper Volvo 12-yr capital:
Daily fixed rate 68.49
Striper Volvo 12-yr capital:
Hourly fixed rate 8.56
Utility compact 4 X 2:
Per mile variable rate ..... .09
Utility compact 4 X 2:
Monthly fixed rate 285.47
Utility compact 4 X 2: Daily fixed rate ... 14.27
Utility compact 4 X 2: Hourly fixed rate ... 1.78
Utility compact 4 X 4:
Per mile variable rate ..... .10
Utility compact 4 X 4:
Monthly fixed rate 350.00
Utility compact 4 X 4: Daily fixed rate ... 17.50
Utility compact 4 X 4: Hourly fixed rate ... 2.19
Utility compact 4 X 4 10-yr full:
Per mile variable rate ..... .10
Utility compact 4 X 4 10-yr full:
Monthly fixed rate 187.80
Utility compact 4 X 4 10-yr full:
Daily fixed rate 9.39
Utility compact 4 X 4 10-yr full:
Hourly fixed rate 1.17
Utility compact 4 X 4 capital:
Per mile variable rate 0.00
Utility compact 4 X 4 capital:
Monthly fixed rate 350.00
Utility compact 4 X 4 capital:
Daily fixed rate 17.50
Utility compact 4 X 4 capital:
Hourly fixed rate 2.19
Utility compact 4 X 4 capital USU:
Per mile variable rate 0.00
Utility compact 4 X 4 capital USU:
Monthly fixed rate 245.00
Utility compact 4 X 4 capital USU:
Daily fixed rate 12.25

Utility compact 4 X 4 capital USU:
Hourly fixed rate 1.53
Utility compact 4 X 4 capital USU:
Per mile variable rate 0.00
Utility compact 4 X 4 capital USU:
Monthly fixed rate 245.00
Utility compact 4 X 4 capital USU:
Daily fixed rate 12.25
Utility compact 4 X 4 capital USU:
Hourly fixed rate 1.53
Utility Full-size 4 X 4:
Per mile variable rate 12
Utility Full-size 4 X 4:
Monthly fixed rate 400.00
Utility Full-size 4 X 4:
Daily fixed rate 20.00
Utility Full-size 4 X 4:
Hourly fixed rate 2.50
Utility Full-size 4 X 4
10-yr full: Per mile variable rate 12
Utility Full-size 4 X 4 10-yr full:
Monthly fixed rate 178.03
Utility Full-size 4 X 4 10-yr full:
Daily fixed rate 8.90
Utility Full-size 4 X 4 10-yr full:
Hourly fixed rate 1.11
Utility Full-size 4 X 4 capital USU:
Per mile variable rate 0.00
Utility Full-size 4 X 4 capital USU:
Monthly fixed rate 445.00
Utility Full-size 4 X 4 capital USU:
Daily fixed rate 22.25
Utility Full-size 4 X 4 capital USU:
Hourly fixed rate 2.78
Utility Full-size 4 X 4 special:
Per mile variable rate 12
Utility Full-size 4 X 4 special:
Monthly fixed rate 447.55
Utility Full-size 4 X 4 special:
Daily fixed rate 22.38
Utility Full-size 4 X 4 special:
Hourly fixed rate 2.80
Utility Full-size 4 X 4 special
3 seats: Per mile variable rate 12
Utility Full-size 4 X 4 special
3 seats: Monthly fixed rate 530.00
Utility Full-size 4 X 4 special
3 seats: Daily fixed rate 26.50
Utility Full-size 4 X 4 special
3 seats: Hourly fixed rate 3.31
Utility Full-size 4 X 4 special
DEQ/DWQ: Per mile variable rate 12
Utility Full-size 4 X 4 special
DEQ/DWQ: Monthly fixed rate 460.00
Utility Full-size 4 X 4 special
DEQ/DWQ: Daily fixed rate 23.00
Utility Full-size 4 X 4 special
DEQ/DWQ: Hourly fixed rate 2.88
Utility Full-size 4 X 4 special
DHS/SJCC: Per mile variable rate 12
Utility Full-size 4 X 4 special
DHS/SJCC: Monthly fixed rate 525.00
Utility Full-size 4 X 4 special
DHS/SJCC: Daily fixed rate 26.25
Utility Full-size 4 X 4 special
DHS/SJCC: Hourly fixed rate 3.28
Utility compact 4 X 4 executive:
Per mile variable rate 10
Utility compact 4 X 4 executive:
Monthly fixed rate 403.59
Utility compact 4 X 4 executive:
Daily fixed rate 20.18
Utility compact 4 X 4 executive:
Hourly fixed rate 2.52
Van mini passenger fwd:
Per mile variable rate 11
Van mini passenger fwd:
Monthly fixed rate 361.45
Van mini passenger fwd:
Daily fixed rate 18.07
Van mini passenger fwd:
Hourly fixed rate 2.26
Van mini passenger fwd 10-yr full:
Per mile variable rate 11
Van mini passenger fwd 10-yr full:
Monthly fixed rate 209.19
Van mini passenger fwd 10-yr full:
Daily fixed rate 10.46
Van mini passenger fwd 10-yr full:
Hourly fixed rate 1.31
Van mini passenger fwd capital:
Per mile variable rate 0.00
Van mini passenger fwd capital:
Monthly fixed rate 361.45
Van mini passenger fwd capital:
Daily fixed rate 18.07
Van mini passenger fwd capital:
Hourly fixed rate 2.26
Van mini passenger fwd 10-yr capital:
Per mile variable rate 0.00
Van mini passenger fwd 10-yr capital:
Monthly fixed rate 209.19
Van mini passenger fwd 10-yr capital:
Daily fixed rate 10.46
Van mini passenger fwd 10-yr capital:
Hourly fixed rate 1.31
Van mini passenger fwd: Per mile
variable rate 11
Van mini passenger fwd: Monthly
fixed rate 437.96
Van mini passenger fwd:
Daily fixed rate 21.90
Van mini passenger fwd:
Hourly fixed rate 2.74
Van mini passenger fwd ADA:
Per mile variable rate 11
Van mini passenger fwd ADA:
Monthly fixed rate 436.32
Van mini passenger fwd ADA:
Daily fixed rate 21.82
Van mini passenger fwd ADA:
Hourly fixed rate 2.73
Van mini passenger rwd:
Per mile variable rate 11
Van mini passenger rwd:
Monthly fixed rate 249.22
Van mini passenger rwd:
Daily fixed rate 12.46
Van mini passenger rwd:
Hourly fixed rate 1.56
Van mini passenger rwd 10-yr full:
Per mile variable rate 11

Van mini passenger rwd 10-yr full:
Monthly fixed rate 153.07
Van mini passenger rwd 10-yr full:
Daily fixed rate 7.65
Van mini passenger rwd 10-yr full:
Hourly fixed rate ..... .96
Van mini passenger rwd capital:
Per mile variable rate ..... .11
Van mini passenger rwd capital:
Monthly fixed rate 249.22
Van mini passenger rwd capital:
Daily fixed rate 12.46
Van mini passenger rwd capital:
Hourly fixed rate 1.56
Van mini passenger awd:
Per mile variable rate ..... .12
Van mini passenger awd:
Monthly fixed rate 361.45
Van mini passenger awd:
Daily fixed rate 18.07
Van mini passenger awd:
Hourly fixed rate 2.26
Van mini cargo fwd:
Per mile variable rate ..... .15
Van mini cargo fwd: Monthly fixed rate . 233.00
Van mini cargo fwd: Daily fixed rate 11.65
Van mini cargo fwd: Hourly fixed rate 1.46
Van mini cargo fwd 10-yr capital:
Per mile variable rate 0.00
Van mini cargo fwd 10-yr capital:
Monthly fixed rate 144.96
Van mini cargo fwd 10-yr capital:
Daily fixed rate 7.25
Van mini cargo fwd 10-yr capital:
Hourly fixed rate ..... .91
Van mini cargo fwd ADA/IMS:
Per mile variable rate ..... .11
Van mini cargo fwd ADA/IMS:
Monthly fixed rate 56.92
Van mini cargo fwd ADA/IMS:
Daily fixed rate 2.85
Van mini cargo fwd ADA/IMS:
Hourly fixed rate ..... .36
Van mini cargo rwd: Per mile variable rate . .15
Van mini cargo rwd: Monthly fixed rate . 190.00
Van mini cargo rwd: Daily fixed rate 9.50
Van mini cargo rwd: Hourly fixed rate 1.19
Van mini cargo rwd capital:
Per mile variable rate 0.00
Van mini cargo rwd capital:
Monthly fixed rate 190.00
Van mini cargo rwd capital:
Daily fixed rate 9.50
Van mini cargo rwd capital:
Hourly fixed rate 1.19
Van mini cargo rwd 10-yr capital USU:
Per mile variable rate 0.00
Van mini cargo rwd 10-yr capital USU:
Monthly fixed rate 130.00
Van mini cargo rwd 10-yr capital USU:
Daily fixed rate 6.50
Van mini cargo rwd 10-yr capital USU:
Hourly fixed rate ..... .81
Van mini cargo awd: Per mile variable rate . .15
Van mini cargo awd: Monthly fixed rate . 300.00
Van mini cargo awd: Daily fixed rate 15.00
Van mini cargo awd: Hourly fixed rate 1.88

Van Full-size passenger:
Per mile variable rate ..... .15
Van Full-size passenger:
Monthly fixed rate 398.39
Van Full-size passenger:
Daily fixed rate 19.92
Van Full-size passenger:
Hourly fixed rate 2.49
Van Full-size passenger 10-yr full:
Per mile variable rate ..... .15
Van Full-size passenger 10-yr full:
Monthly fixed rate 227.66
Van Full-size passenger 10-yr full:
Daily fixed rate 11.38
Van Full-size passenger 10-yr full:
Hourly fixed rate 1.42
Van Full-size passenger capital:
Per mile variable rate 0.00
Van Full-size passenger capital:
Monthly fixed rate 398.39
Van Full-size passenger capital:
Daily fixed rate 19.92
Van Full-size passenger capital:
Hourly fixed rate 2.49
Van Full-size passenger do not replace:
Per mile variable rate ..... .15
Van Full-size passenger do not replace:
Monthly fixed rate 56.92
Van Full-size passenger do not replace:
Daily fixed rate 2.85
Van Full-size passenger do not replace:
Hourly fixed rate ..... .36
Van Full-size passenger ADA:
Per mile variable rate ..... .15
Van Full-size passenger ADA:
Per mile variable rate ..... .15
Van Full-size passenger ADA:
Monthly fixed rate 350.00
Van Full-size passenger ADA:
Daily fixed rate 17.50
Van Full-size passenger ADA:
Hourly fixed rate 2.19
Van Full-size cargo: Per mile variable rate . .13
Van Full-size cargo: Monthly fixed rate . 293.93
Van Full-size cargo: Daily fixed rate 14.70
Van Full-size cargo: Hourly fixed rate 1.84
Van Full-size cargo capital:
Per mile variable rate 0.00
Van Full-size cargo capital:
Monthly fixed rate 293.93
Van Full-size cargo capital:
Daily fixed rate 14.70
Van Full-size cargo capital:
Hourly fixed rate 1.84
Van Full-size cargo 10-yr capital:
Per mile variable rate 0.00
Van Full-size cargo 10-yr capital:
Monthly fixed rate 175.42
Van Full-size cargo 10-yr capital:
Daily fixed rate 8.77
Van Full-size cargo 10-yr capital:
Hourly fixed rate 1.10
Van Full-size cargo 10-yr capital USU:
Per mile variable rate 0.00
Van Full-size cargo 10-yr capital USU:
Monthly fixed rate 134.00
Van Full-size cargo 10-yr capital USU:
Daily fixed rate 6.70

Van Full-size cargo 10-yr capital USU:
Hourly fixed rate 84
Van Full-size cargo 10-yr full:
Per mile variable rate 13
Van Full-size cargo 10-yr full:
Monthly fixed rate 189.29
Van Full-size cargo 10-yr full:
Daily fixed rate 9.46
Van Full-size cargo 10-yr full:
Hourly fixed rate 1.18
Van Full-size cargo 10-yr full:
Per mile variable rate 13
Van Full-size cargo 10-yr full:
Monthly fixed rate 237.43
Van Full-size cargo 10-yr full:
Daily fixed rate 11.87
Van Full-size cargo 10-yr full:
Hourly fixed rate 1.48
Van Full-size cargo 10-yr full:
Per mile variable rate 13
Van Full-size cargo 10-yr full:
Monthly fixed rate 251.18
Van Full-size cargo 10-yr full:
Daily fixed rate 12.56
Van Full-size cargo 10-yr full:
Hourly fixed rate 1.57
Van Full-size cargo: Per mile variable rate . .13
Van Full-size cargo: Monthly fixed rate . 345.45
Van Full-size cargo: Daily fixed rate 17.27
Van Full-size cargo: Hourly fixed rate 2.16
Ambulance do not replace:
Per mile variable rate 25
Ambulance do not replace:
Monthly fixed rate 56.92
Ambulance do not replace:
Daily fixed rate 2.85
Ambulance do not replace:
Hourly fixed rate 36
Bus large Bluebird DNGV 10-yr capital:
Per mile variable rate 0.00
Bus large Bluebird DNGV 10-yr capital:
Monthly fixed rate 1,226.90
Bus large Bluebird DNGV 10-yr capital:
Daily fixed rate 61.35
Bus large Bluebird DNGV 10-yr capital:
Hourly fixed rate 7.67
Bus large Thomas DNGV 10-yr capital:
Per mile variable rate 0.00
Bus large Thomas DNGV 10-yr capital:
Monthly fixed rate 1,165.10
Bus large Thomas DNGV 10-yr capital:
Daily fixed rate 58.26
Bus large Thomas DNGV 10-yr capital:
Hourly fixed rate 7.28
Bus large DNGV 12-yr capital:
Per mile variable rate 0.00
Bus large DNGV 12-yr capital:
Monthly fixed rate 980.40
Bus large DNGV 12-yr capital:
Daily fixed rate 49.02
Bus large DNGV 12-yr capital:
Hourly fixed rate 6.13
Bus large Bluebird BEDB10-yr:
Per mile variable rate 50
Bus large Bluebird BEDB10-yr:
Monthly fixed rate 556.92
Bus large Bluebird BEDB10-yr:
Daily fixed rate 27.85
Bus large Bluebird BEDB10-yr:
Hourly fixed rate 3.48
Bus small: Per mile variable rate 50
Bus small: Monthly fixed rate 900.00
Bus small: Daily fixed rate 45.00
Bus small: Hourly fixed rate 5.63
Bus small do not replace:
Per mile variable rate 50
Bus small do not replace:
Monthly fixed rate 56.92
Bus small do not replace: Daily fixed rate . 2.85
Bus small do not replace: Hourly fixed rate . .36
Motorhome do not replace:
Per mile variable rate 40
Motorhome do not replace:
Monthly fixed rate 56.92
Motorhome do not replace: Daily fixed rate 2.85
Motorhome do not replace: Hourly fixed rate .36
Motorcycle Harley UHP:
Per mile variable rate 12
Motorcycle Harley UHP:
Monthly fixed rate 100.50
Motorcycle Harley UHP:Daily fixed rate . . 5.03
Motorcycle Harley UHP:Hourly fixed rate . . .63
MIS and Work Order Processing:
Monthly fixed rate 5.60
DNR – reasonable overhead:
Monthly fixed rate 6.33
MIS and AFV only: Monthly fixed rate 6.33
MIS and AFV only – yearly:
Monthly fixed rate 75.98
MIS only: Monthly fixed rate 2.70
MIS only – yearly: Monthly fixed rate 32.32
Commercial Equipment Rental –
cost plus: 12.00
Administrative Fee
Do-not-replace vehicles (monthly) 56.92
No show fee 12.00
Late return fee 12.00
Service fee 12.00
DF-61 late fee (commute miles) 20.00
General MP Information Research
Fee (per hour) 12.00
Refueling rate daily pool (per gallon) 2.00
Non-fuel network Use Processing Fee . . . 12.00
Lost or damaged fuel/maintenance
card replacement fee 2.00
Bad Odometer Research Fee
(operator fault) 50.00
Vehicle Detail Cleaning Service Fee
(operator neglect) 40.00
Vehicle Complaint Processing Fee (agency
abuse and driver neglect cases only) . . . 20.00
Annual Commute Vehicle Processing Fee 12.00
Premium Fuel Use Fee (per gallon) 20
Exclusive Agency Shuttle
Operation (per day) 275.00
Excessive Maintenance Accessory Fee – Varies
Past 30-days late fee (accounts receivable) –
5% of balance
Past 60-days late fee (accounts receivable) –
10% of balance
Past 90-days late fee (accounts receivable) –
15% of balance

MIS Monthly Fee per state vehicle (Charged to non-CMP vehicles only) 1.48
Accident deductible rate charged per accident 500.00
Operator negligence and vehicle abuse fees - Varies
MIS & AFV Monthly Fee per Higher Ed vehicles 6.33
Operator Incentive - Alternative fuel rebate (per gallon) ..... .20
ISF - Fuel Network
Fuel Network Per gallon charge ..... .065
Fuel Network Additional per gallon charge at low volume sites (,60k gal./yr.) ..... .105
Per transaction fee - 0.03 percent of transaction value
ISF - State Surplus Property
Process Fee for State Agencies Miscellaneous Property pick-up - Total Sales Proceeds (less prorated rebate of retained earnings)
Miscellaneous Property pick-up Process Fee for Exempt and Non State Agencies - $25 plus 20% of sales price or as negotiated
Seized property - $25 plus 20% of sales price
Vehicles and Heavy Equipment - 9% of sales price
Office Warehouse Labor (per hour) 21.00
Copy Rates (per copy) ..... .10
Semi Truck and Trailer Service (per mile) . 1.08
Two-ton Flat Bed Service (per mile) ..... .61
Minimum Service Charge (per day) 65.00
Forklift Service (4-6000 lb) (per hour) ... 23.00
On-site sale away from USASP yard - 10% of sale price (maximum negotiable)
Storage - building (per cubic foot per month) ..... .43
Storage - fenced lot (per square foot per month) ..... .23
ISF - Federal Surplus Property
Federal Shipping and handling charges - Generally not exceed 20% of federal acquisition cost plus freight/shipping charges
Equipment Center Membership Fee (per year) 2,500.00

RISK MANAGEMENT

In accordance with Section 63-38-3.5(3)(b) the following fees are approved for the services of the Division of Risk Management for FY 2002.
ISF - Risk Management Administration
Liability Premiums: Administrative Services 277,098.00
Liability Premiums: Agriculture 46,117.00
Liability Premiums: Alcoholic Beverage Control 19,359.00
Liability Premiums: Attorney General's Office 112,329.00
Liability Premiums: Auditor 11,029.00
Liability Premiums: Capital Preservation Board 8,442.00
Liability Premiums: Career Services 536.00
Liability Premiums: Commerce 66,189.00
Liability Premiums: Commission on Criminal and Juvenile Justice 4,549.00
Liability Premiums: Community and Economic Development 99,852.00
Liability Premiums: Corrections 953,965.00
Liability Premiums: Courts 198,952.00
Liability Premiums: Crime Victims Reparation 3,196.00
Liability Premiums: Education 123,432.00
Liability Premiums: Deaf and Blind School 38,031.00
Liability Premiums: Bridgerland ATC 16,625.00
Liability Premiums: Davis Area Vocational Center 19,046.00
Liability Premiums: Ogden Weber ATC 21,377.00
Liability Premiums: Uintah ATC 9,535.00
Liability Premiums: Wasatch Front South ATC 9,689.00
Liability Premiums: Environmental Quality 135,814.00
Liability Premiums: Fair Park 19,243.00
Liability Premiums: Financial Institutions 18,351.00
Liability Premiums: Governor 16,590.00
Liability Premiums: Governor's Office of Planning and Budget 11,246.00
Liability Premiums: Health 181,976.00
Liability Premiums: Heber Valley Railroad 20,000.00
Liability Premiums: House of Representatives 7,189.00
Liability Premiums: Human Resource Management 11,996.00
Liability Premiums: Human Services 919,977.00
Liability Premiums: Industrial Commission 29,913.00
Liability Premiums: Insurance 15,772.00
Liability Premiums: Legislative Analyst 7,216.00
Liability Premiums: Legislative Auditor 6,081.00
Liability Premiums: Legislative Printing 2,728.00
Liability Premiums: Legislative Research 12,462.00
Liability Premiums: National Guard 50,801.00
Liability Premiums: Natural Resources 405,053.00
Liability Premiums: Navajo Trust Fund 1,880.00
Liability Premiums: Public Safety .. 501,543.00
Liability Premiums: Public Service Commission 5,696.00
Liability Premiums: School and Institutional Trust Lands 26,196.00
Liability Premiums: Senate 4,008.00
Liability Premiums: Tax Commission 180,330.00
Liability Premiums: Technology Finance Corporation 1,681.00
Liability Premiums: Treasurer 6,559.00
Liability Premiums: Utah Comm Network 10,013.00
Liability Premiums: Utah Housing Finance 8,496.00
Liability Premiums: Workforce Services 186,141.00

Liability Premiums: Bear River Health 13,852.00
Liability Premiums: Central Utah Health 9,628.00
Liability Premiums: South Eastern Health 20,471.00
Liability Premiums: South Western Health 14,484.00
Liability Premiums: Tooele County Health 5,561.00
Liability Premiums: Tri County Health 8,776.00
Liability Premiums: Utah County Health 28,064.00
Liability Premiums: Wasatch County Health 2,665.00
Liability Premiums: Weber Morgan Health 17,762.00
Liability Premiums: Transportation 2,149,000.00
Liability Premiums: Board of Regents 49,525.00
Liability Premiums: College of Eastern Utah 48,541.00
Liability Premiums: Dixie College ... 63,571.00
Liability Premiums: Salt Lake Community College 191,014.00
Liability Premiums: Snow College ... 52,364.00
Liability Premiums: Southern Utah University 112,491.00
Liability Premiums: University of Utah 2,381,608.00
Liability Premiums: Utah State University 756,776.00
Liability Premiums: Utah Valley State College 185,514.00
Liability Premiums: Weber State University 218,816.00
Liability Premiums: School Districts 3,266,000.00
Property Premiums: Alcoholic Beverage Control 11,750.00
Property Premiums: Agriculture 2,243.00
Property Premiums: Attorney General .. 728.00
Property Premiums: Commission on Criminal Juvenile Justice 43.00
Property Premiums: Central Utah Health 552.00
Property Premiums: Draper Prison 86,075.00
Property Premiums: Gunnison Prison 19,915.00
Property Premiums: Corrections Department 4,629.00
Property Premiums: Courts 8,349.00
Property Premiums: Crime Victims Reparations 69.00
Property Premiums: Administrative Services Executive Director's Office 34.00
Property Premiums: Purchasing 5,080.00
Property Premiums: Archives 6,390.00
Property Premiums: Risk Management . 105.00
Information Technology Services 42,000.00
Property Premiums: Facilities Construction and Management ... 136,395.00
Property Premiums: Finance 273.00
Property Premiums: Administrative Rules 18.00
Property Premiums: Human Resource Management 101.00
Property Premiums: Arts 2,463.00
Property Premiums: Travel 1,812.00
Property Premiums: History 4,718.00
Property Premiums: Department 95.00
Property Premiums: Library 3,413.00
Property Premiums: Commerce 309.00
Property Premiums: Workforce Services 4,718.00
Property Premiums: Health 8,985.00
Property Premiums: Environmental Quality 5,710.00
Property Premiums: Natural Resources – Lands 6,985.00
Property Premiums: Natural Resources – Parks and Recreation . 74,100.00
Property Premiums: Natural Resources – Executive Director's Office 2,626.00
Property Premiums: Natural Resources – Wildlife 75,121.00
Property Premiums: Natural Resources – Water Resources 1,761.00
Property Premiums: Natural Resources – Oil Gas and Mining 532.00
Property Premiums: Natural Resources – Utah Geological Survey 157.00
Property Premiums: Natural Resources – Water Rights 549.00
Property Premiums: Transportation 158,189.00
Property Premiums: DOT Aeronautical Operations 1,890.00
Property Premiums: Davis Applied Technology Center 7,701.00
Property Premiums: School for the Deaf and Blind 4,533.00
Property Premiums: Board of Education 10,776.00
Property Premiums: Bridgerland Applied Technology Center 9,764.00
Property Premiums: Ogden/Weber Applied Technology Center 15,197.00
Property Premiums: Uintah Basin Applied Technology Center 3,939.00
Property Premiums: Wasatch Front South Applied Technology Center 263.00
Property Premiums: Financial Institutions 30.00
Property Premiums: Governor's Office .. 116.00
Property Premiums: Governor's Office of Planning and Budget 155.00
Property Premiums: Housing Finance Agency 2,278.00
Property Premiums: Human Services Department 11,873.00
Property Premiums: Youth Corrections 14,562.00
Property Premiums: Developmental Center 24,566.00
Property Premiums: State Hospital .. 24,457.00
Property Premiums: Labor Commission . 173.00
Property Premiums: Insurance 109.00
Property Premiums: Senate 135.00

Property Premiums:
House of Representatives 279.00
Property Premiums: Legislative Auditor . 59.00
Property Premiums:
Legislative Fiscal Analyst 37.00
Property Premiums: Legislative
Research/General Council 145.00
Property Premiums:
Legislative Printing 103.00
Property Premiums: National Guard . 45,962.00
Property Premiums: Public Safety 6,190.00
Property Premiums: Public
Service Commission 18.00
Property Premiums: School
and Institutional Trust Lands 317.00
Property Premiums: South
East Health Department 749.00
Property Premiums: South
West Health Department. 388.00
Property Premiums: Treasurer 40.00
Property Premiums: Utah State
Auditor 123.00
Property Premiums: Utah State
Tax Commission 6,011.00
Property Premiums: Utah Finance
Corporation 168.00
Property Premiums: Wasatch
Health District 38.00
Property Premiums: Bear River
Health District 3,288.00
Property Premiums: Utah County
Health Dept. 207.00
Property Premiums: Heber Valley
Railroad 2,836.00
Property Premiums: Navajo
Trust Fund 2,000.00
Property Premiums: Fair Park 27,912.00
Property Premiums: Board of Regents .. 580.00
Property Premiums: College of
Eastern Utah 53,330.00
Property Premiums: Dixie College ... 40,368.00
Property Premiums: Fort Douglas ... 37,023.00
Property Premiums: Salt Lake
Community College 85,002.00
Property Premiums: Snow College ... 39,526.00
Property Premiums: Snow College
South 11,859.00
Property Premiums: Southern
Utah University 67,419.00
Property Premiums: University
of Utah 797,742.00
Property Premiums: Utah State
University 482,407.00
Property Premiums: Utah Valley
State College 86,959.00
Property Premiums: Weber
State University 92,573.00
Property Premiums: Alpine
School District 192,822.00
Property Premiums: Beaver
School District 10,277.00
Property Premiums: Box Elder
School District 85,093.00
Property Premiums: Cache
School District 83,582.00
Property Premiums: Carbon
School District 43,051.00
Property Premiums: Daggett
School District 5,345.00
Property Premiums: Davis
School District 473,443.00
Property Premiums: Duchesne
School District 40,041.00
Property Premiums: Emery
School District 43,256.00
Property Premiums: Garfield
School District 13,846.00
Property Premiums: Grand
School District 15,159.00
Property Premiums: Granite
School District 203,548.00
Property Premiums: Iron
School District 59,580.00
Property Premiums: Jordan
School District 330,673.00
Property Premiums: Juab
School District 14,639.00
Property Premiums: Kane School
District 14,589.00
Property Premiums: Logan
School District 47,793.00
Property Premiums: Millard
School District 41,293.00
Property Premiums: Morgan
School District 15,088.00
Property Premiums: Murray School
District 40,634.00
Property Premiums: Nebo
School District 111,079.00
Property Premiums: North
Sanpete School District 11,830.00
Property Premiums: North
Summit School District 20,567.00
Property Premiums: Ogden
School District 85,450.00
Property Premiums: Park
City School District 24,379.00
Property Premiums: Piute
School District 10,627.00
Property Premiums: Provo
School District 84,922.00
Property Premiums: Rich School
District 10,743.00
Property Premiums: Salt Lake
City School District 118,106.00
Property Premiums: San Juan
School District 43,733.00
Property Premiums: Sevier School
District 45,986.00
Property Premiums: South
Sanpete School District 13,759.00
Property Premiums: South
Summit School District 10,139.00
Property Premiums: Tintic
School District 11,602.00
Property Premiums: Tooele
School District 65,200.00
Property Premiums: Uintah School
District 50,987.00
Property Premiums: Wasatch School
District 28,949.00
Property Premiums: Washington
School District 82,120.00

Property Premiums: Wayne School District 12,682.00
Property Premiums: Weber School District 185,853.00
Automobile/Physical Damage Premiums: State agency rate for value less than $20,000 (per vehicle) 150.00
Automobile/Physical Damage Premiums: State agency rate for value more than $20,000 (per 100 value) ..... .80
Automobile/Physical Damage Premiums: School district rate (per vehicle) 50.00
Automobile/Physical Damage Premiums: School bus rate (per vehicle) 100.00
Automobile/Physical Damage Premiums: Standard deductible (per incident) 500.00
Automobile/Physical Damage Premiums: Higher Education autos (per vehicle) ... 75.00
Workers Compensation Rates: UDOT 1.86
Workers Compensation Rates: State (except DOT) ..... .80

DIVISION OF FACILITIES CONSTRUCTION AND MANAGEMENT - FACILITIES MANAGEMENT

In accordance with Section 63-38-3.5(3)(b) the following fees are approved for the services of the Division of Facilities Construction and Management for FY 2002.
ISF - Facilities Management
Ogden Regional Center 506,048.00
Ogden Juvenile Court 143,500.00
Layton Court 80,896.00
Ogden Public Safety 66,518.00
Brigham City Court 141,400.00
Ogden Court 367,640.00
Salt Lake Court 1,649,200.00
Capitol Hill Complex 2,475,873.00
Council Hall 59,000.00
DUP Museum 108,800.00
Governor=s Residence 91,300.00
White Chapel 14,845.00
Greenhouse 0.00
Human Services North Temple 650,103.00
Glendinning Fine Arts Center 25,000.00
Agriculture 228,000.00
Cannon Health 671,658.00
Medical Drive Complex 429,382.00
Natural Resources 626,400.00
Environmental Quality 287,389.00
Utah State Tax Commission 714,567.00
Calvin Rampton Complex 1,475,944.00
Employment Security South County 161,568.00
Sandy Courts 197,800.00
Driver License West Valley 38,070.00
Murray Highway Patrol Training and Supply 22,170.00
Murray Highway Patrol 73,554.00
Taylorsville Office Building 113,431.00
Taylorsville Center for the Deaf 15,000.00
Heber M. Wells 714,721.00
WFS Administration 527,335.00
WFS Employment Security Metro .. 166,907.00
Rio Grande Depot 271,866.00
Union Pacific Depot 0.00
WFS 1385 South State 270,417.00
WFS Fremont Employee Center 113,430.00
Utah State Office of Education 319,280.00
Health Dental Clinic 28,876.00
Provo Regional Center 508,963.00
Provo Court 207,000.00
Orem Driver License 25,000.00
Human Services Richfield 50,385.00
Orem Highway Patrol 20,600.00
Richfield Court 40,472.00
Orem Region Three UDOT 48,200.00
Orem Circuit Court 56,124.00
Governor's Mansion Preservation ... 30,000.00
Vernal Regional Center 53,001.00
Moab Regional Center 236,393.00
Richfield ITS Center 29,100.00
State Library 203,714.00
State Library visually impaired 112,027.00
State Library State Mail 51,045.00
Office of Rehabilitation Services 117,264.00
WFS Temporary Placement Office ... 23,905.00
WFS Midvale 129,352.00
Statewide Roofing Program 320,940.00
Statewide Paving Program 163,959.00
Planning and Design Program 291,626.00
Workforce Services Clearfield East . 143,397.00
This is the Place Park 240,105.00
WFS Vernal 30,552.00
Human Services Vernal 31,317.00
Human Services Cedar City 53,508.00
WFS Provo 118,740.00
Navajo Trust Fund Administration . 111,518.00
WFS Cedar City 39,692.00
WFS St. George 36,360.00
Cedar City Courts 36,435.00
St. George Courts 81,512.00
WFS Clearfield West 45,275.00
WFS Ogden 151,739.00
WFS Richfield 26,840.00
WFS Logan 38,191.00
ABC Brigham City Store #22 ..... 10,797.00
ABC Layton Store #30 ..... 17,750.00
ABC Ogden Store #21 ..... 10,542.00
ABC Roy Store #23 ..... 11,796.00
Ogden Medical Center 55,925.00
Farmington 2nd District Courts 297,185.00
ABC Logan Store #6 ..... 22,356.00
ABC Ogden Store #24 (1374) 18,788.00
ABC Park City Store #34 (1388) 32,563.00
ABC Vernal Store #28 ..... 11,476.00
ABC Park City Store #37 (1398) 14,217.00
ABC SLC Store #25 (1397) 9,729.00
ABC Bountiful Store #8 (1515) 10,974.00
ABC SLC Store #13 (1525) 12,409.00
ABC Sandy Store #16 (1605) 36,588.00
ABC Taylorsville Store #26 (1635) ... 17,407.00
ABC West Valley City Store #3 (1636) 17,751.00
ABC SLC Store #35 (1703) 19,264.00
ABC SLC Store #20 (1704) 10,809.00
ABC SLC Store #14 (1705) 8,498.00
ABC Cedar City Store #18 (1808) 12,249.00
ABC St. George Store #32 (1809) 14,552.00
ABC Moab Store #27 (1813) 12,936.00
ABC Price Store #7 (1814) 10,794.00
HS Christmas Box House 10,922.00
HS Canyonland Youth Home 12,061.00
HS Central Utah Youth Facility 0.00
7th West Juvenile Courts 84,434.00
Vernal Juvenile Courts 13,784.00
Hazardous Material Abatement 95,885.00

ABC Ogden #19 Pacific Ave 21,105.00
DPS Farmington Public Safety 41,650.00
ABC SLC 205 W#1 ..... 27,232.00
ABC SLC Foothill #4 ..... 6,700.00
ABC Tooele #10 ..... 7,658.00
DAS Surplus Property 85,672.00
ABC Murray #9 ..... 23,450.00
ABC Sandy Store #15 ..... 25,795.00
ABC SLC Kentucky Store #29 ..... 13,400.00
ABC SLC Ashton #2 ..... 24,331.00
ABC Park City 524 main #36 ..... 4,623.00
ABC Provo Freedom #5 ..... 12,408.00
ABC Orem 144 State #17 ..... 19,430.00
DPS Crime Lab 23,840.00
UDOT Aeronautics 43,931.00
UDOT Civil Air Patrol 29,475.00

COMMERCE & REVENUE SUBCOMMITTEE
UTAH STATE TAX COMMISSION
TAX ADMINISTRATION

In accordance with Section 59-1-210(26) the following fees are approved for the services of the Utah State Tax Commission for FY 2002.
Administration Division
Temporary Permit 6.00
Liquor Profit Distribution Fee 6.00
Microfilm Research Fee 6.50
Data Processing Set-Up 55.00
Lien Subordination (not to exceed) 300.00
Motor Vehicle Information 2.00
Motor Vehicle Information via the Internet 1.00
Salvage Vehicle Inspection Fee 50.00
IFTA Reinstatement Fee 100.00
Special Group License Plate Fee Decal Program (plus Standard Plate fee-5.00) 2.50
Special Group License Plate Fee - Plate Program 3.50
Custom Programming Fee / Hour 85.00
Research Fee (Special Requests) / Hour .. 20.00
Photocopies (over 10 copies) / Page ..... .10
Faxed Document Processing Fee / Page ... 1.00
Dismantlers Retitling Inspection Fee 50.00
Certified Document Fee 5.00
IFTA Decal Fee / Set 4.00
Sample License Plates 5.00
Olympic Sample License Plates (including 17.00 donation) 22.00
Motor Carrier Unit Cost Report 10.00
Tax Clearance Fee 50.00
Aircraft Registration Fee 7.00
Motor Fuel Reports 55.00
Motor Vehicle Transaction Fee - Per Standard Unit 1.07
Electronic Processing Fee for select transactions 3.00
In-transit Permit fee (96-hour) 2.50
Decal Replacement Fee 1.00
Motor Fuel License 30.00
Special Fuel License 30.00
Motor Carrier Cab Card 3.00
Motor Carrier Duplicate Registration 3.00
Special Fuel Trip Permit (96 hour) 20.00
Cigarette Tax License 30.00
Motor Vehicle Manufacturer's Plates 8.00
Motor Vehicle Dealer Plates 10.00
Motor Vehicle Dismantler's Plates 8.00
Motor Vehicle Transporter's Plates 8.00
Motor Vehicle Manufacturer's/ Remanufacturer's License 100.00
Motor Vehicle Dealer License 125.00
Motor Vehicle Transporter's License 50.00
Small Trailer - Dealer License 50.00
Motor Vehicle Body Shop License 110.00
Used Motor Vehicle Dealer License 125.00
Motor Vehicle Dismantler's License 100.00
Motor Vehicle Salesman's License 30.00
Motor Vehicle Salesman's License Transfer 5.00
Motor Vehicle Crusher's License 100.00
Used Motor Cycle Dealer License 50.00
New Motor Cycle Dealer License 50.00
Representative Plate 25.00
Motor Vehicle Dealer additional place of business 25.00
Distributor's License 60.00

LABOR COMMISSION

In accordance with Section 34A-1-106 the following fees are approved for the services of the Labor Commission for FY 2002.
Administration
Certificate to Self-Insure for Workers Compensation 900.00
Certificate to Self-Insure for Workers Compensation renewal 500.00
Boiler and Pressure Vessel Inspections Original Exam for Certificate of Competency 25.00
Boiler and Pressure Vessel Inspections Renewal of Certificate of Competency . 20.00
Boiler and Pressure Vessel Inspections Owner-User Inspection Agency Certification 250.00
Jacketed Kettles and Hot Water Supply Boilers less than 250,000 BTU existing . 30.00
Jacketed Kettles and Hot Water Supply Boilers less than 250,000 BTU new 45.00
Jacketed Kettles and Hot Water Supply Boilers > 250,000 BTU but < 4,000,000 BTU existing 60.00
Jacketed Kettles and Hot Water Supply Boilers > 250,000 BTU but < 4,000,000 BTU new 90.00
Jacketed Kettles and Hot Water Supply Boilers > 4,000,001 BTU but < 20,000,000 existing 150.00
Jacketed Kettles and Hot Water Supply Boilers > 4,000,001 BTU but < 20,000,000 new 225.00
Jacketed Kettles and Hot Water Supply < 20,000,000 existing 300.00
Jacketed Kettles and Hot Water Supply < 20,000,000 new 450.00
Replacement Boiler Certificate 15.00
Consultation, witness special inspection (per hour) 60.00
Pressure Vessel Inspection 30.00
Pressure Vessel Inspection by Owner-user: 25 or less on single statement (per vessel) 5.00

Pressure Vessel Inspection by Owner-user: 26 through 100 on single statement (per statement) 100.00
Pressure Vessel Inspection by Owner-user: 101 through 500 on single statement (per statement) 200.00
Pressure Vessel Inspection by Owner-user: over 500 on single statement (per statement) 400.00
Elevator Inspections Existing Elevators: Hydraulic 85.00
Elevator Inspections Existing Elevators: Electric 85.00
Elevator Inspections Existing Elevators: Disabled Persons Lift 85.00
Elevator Inspections Existing Elevators: Other Elevators 85.00
Elevator Inspections Existing Elevators: Replacement Elevator Certificate 15.00
Elevator Inspections New Elevators: Hydraulic 300.00
Elevator Inspections New Elevators: Electric 700.00
Elevator Inspections New Elevators: Disabled Persons Lift 200.00
Elevator Inspections New Elevators: Other Elevators 200.00
Consultation, witness, special inspection (per hour) 60.00
Coal Mine Certification: Mine Foreman . . 50.00
Coal Mine Certification: Temporary Mine Foreman 35.00
Coal Mine Certification: Fire Boss 50.00
Coal Mine Certification: Surface Foreman 50.00
Coal Mine Certification: Temporary Surface Foreman 35.00
Coal Mine Certification: Hard Rock Mine Foreman 50.00
Coal Mine Certification: Temporary Hard Rock Mine Foreman 35.00
Coal Mine Certification: Electrician underground low and medium voltage . 50.00
Coal Mine Certification: Electrician surface low and medium voltage 50.00
Coal Mine Certification: Electrician surface and underground high voltage 50.00
Coal Mine Certification: Annual Electrical Recertification 35.00
Coal Mine Certification: Hoistman 50.00
Coal Mine Certification: Certification Retest (per sections) 20.00
Hard Rock Mine Certification: Hard Rock Mine Foreman 50.00
Hard Rock Mine Certification: Temporary Hard Rock Mine Foreman 35.00
Hard Rock Surface Foreman 50.00
Hard Rock Mine Certification: Temporary Hard Rock Surface Foreman 35.00
Hard Rock Mine Certification: Electrician underground low and medium voltage 50.00
Hard Rock Mine Certification: Electrician surface low and medium voltage 50.00
Hard Rock Mine Certification: Electrician surface and underground high voltage . 50.00
Hard Rock Mine Certification: Annual Electrical Recertification 35.00
Hard Rock Mine Certification: Hoistman . 50.00
Hard Rock Mine Certification: Certification Retest (per sections) 20.00
Hydrocarbon Mine Certifications: Gilsonite Mine Foreman 50.00
Hydrocarbon Mine Certifications: Gilsonite Mine Examiner 50.00
Hydrocarbon Mine Certifications: Temporary Gilsonite Mine Foreman . . . 35.00
Hydrocarbon Mine Certifications: Gilsonite Shot Firer 50.00
Hydrocarbon Mine Certifications: Hoistman 50.00
Hydrocarbon Mine Certifications: Certification Retest (per section) 20.00

DEPARTMENT OF COMMERCE
COMMERCE GENERAL REGULATION

In accordance with Section 13-1-2(3) the following fees are approved for the services of the Department of Commerce for FY 2002.
Occupational & Professional Licensing
CPA Individual Application Filing 75.00
CPA Individual License/ Certificate Renewal 50.00
CPA Firm Application for Registration . . . 80.00
CPA Firm Registration Renewal 40.00
CPA Examination Record Fee 30.00
Acupuncturist New Application 100.00
Acupuncturist Renewal 50.00
Alarm Company FBI Fingerprint File Search (cost or) 24.00
Alarm Company BCI Fingerprint File Search (cost or...) 15.00
Alarm Company Company Application Filing 300.00
Alarm Company Company Renewal 100.00
Alarm Company Agent Application Filing 40.00
Alarm Company Agent Renewal 20.00
Alternative Dispute Resolution Providers Application Filing 75.00
Alternative Dispute Resolution Providers License Renewal 50.00
Architect Application Filing 100.00
Architect License Renewal 50.00
Architect Education and Enforcement Surcharge 10.00
Boxing Commission Promoters - Application Filing 100.00
Boxing Commission Professional Contestant - License Renewal 25.00
Boxing Commission Professional Contestant - Application Filing 25.00
Boxing Commission Judges and Referees - License Renewal 25.00
Boxing Commission Judges and Referees - Application Filing 25.00
Boxing Commission Managers and Seconds - License Renewal 25.00
Boxing Commission Managers and Seconds - Application Filing 25.00
Boxing Commission Contest Registration Fee 250.00
Boxing Commission Promotions (percent of total) 05
Audiologist Application Filing 60.00
Audiologist License Renewal 35.00
Barber/Cosmetologist Teacher Certificate 40.00

Barber/Cosmetologist Application Filing . 50.00
Barber/Cosmetologist License Renewal . . 40.00
Barber/Cosmetologist School Application Filing 100.00
Barber/Cosmetologist School License Renewal 50.00
Barber/Cosmetologist Apprentice Application Filing 25.00
Esthetician – New Application Filing 50.00
Esthetician – License Renewal 40.00
Master Esthetician – New Application Filing 75.00
Master Esthetician – License Renewal . . . 55.00
Esthetician Instructor – One Time Fee . . . 50.00
Esthetician School – Application (for two years) 100.00
Nail Care Technician – New Application Filing 50.00
Nail Care Technician – License Renewal . 40.00
Nail Care Technician Schools – Application (for two years) 100.00
Building Inspector Initial License – Application Filing 75.00
Building Inspector License – Renewal . . . 50.00
Certified Nurse Midwife Application Filing 90.00
Certified Nurse Midwife License Renewal 50.00
Certified Nurse Midwife Intern Application Filing 25.00
Certified Public Accountant Quality Review CPA Firm – Offsite Review (plus $30 per employed CPA) 400.00
Certified Public Accountant Quality Review CPA Firm – On–site Review (plus $30 per employed CPA) 550.00
Certified Shorthand Reporter Application Filing 35.00
Certified Shorthand Reporter License Renewal 30.00
Chiropractic Physician Application Filing 100.00
Chiropractic Physician License Renewal 50.00
Contractor Licensing Primary Application Filing 200.00
Contractor Licensing License Renewal . . 100.00
Contractor Licensing Additional Application Filing 100.00
Contractor Licensing Change Qualifier fees 40.00
Controlled Substance Application Filing . 90.00
Controlled Substance License Renewal . . . 50.00
Controlled Substance Precursor Distributor Application Filing 200.00
Controlled Substance Precursor Distributor License Renewal 100.00
Controlled Substance Precursor Purchaser Application Filing 100.00
Controlled Substance Precursor Purchaser License Renewal 50.00
Deception Detection FBI Fingerprint File Search – cost or 24.00
Deception Detection BCI Fingerprint File Search (cost or...) 15.00
Deception Detection Examiner Application Filing 40.00
Deception Detection Examiner Renewal . . 20.00
Deception Detection Intern Application Filing 25.00
Deception Detection Intern Renewal 20.00
Dentist Application Filing 100.00
Dentist License Renewal 50.00
Dentist Anesthesia Upgrade 50.00
Dental Hygienist Application Filing 50.00
Dental Hygienist License Renewal 25.00
Dental Hygienist Anesthesia Upgrade . . . 25.00
Certified Dietician Application Filing 50.00
Certified Dietician License Renewal 25.00
Electrician Application Filing 100.00
Electrician License Renewal 50.00
Electrologist Application Filing 40.00
Electrologist License Renewal 20.00
Professional Employer Organization Initial Application Fee 2,000.00
Professional Employer Organization Annual Renewal Fee 2,000.00
Professional Engineer Application Filing 100.00
Professional Engineer – License Renewal 50.00
Professional Structural Engineer Application Filing 100.00
Professional Structural Engineer License Renewal 50.00
Professional Engineer Exam Record Fee . 30.00
Professional Engineer Education and Enforcement Surcharge 10.00
Environmental Health Scientist Application Filing 50.00
Environmental Health Scientist License Renewal 25.00
Funeral Services Director Application Filing 150.00
Funeral Services Director License Renewal 75.00
Funeral Services Apprentice Application Filing 25.00
Funeral Services Apprentice License Renewal 20.00
Funeral Services Establishment Application Filing 100.00
Funeral Services Establishment License Renewal 100.00
Health Care Assistant Application Filing 20.00
Health Care Assistant License Renewal 10.00
Health Facility Administrator Application Filing 60.00
Health Facility Administrator License Renewal 40.00
Hearing Instrument Specialist Application Filing 100.00
Hearing Instrument Specialist License Renewal 50.00
Hearing Instrument Intern Application Filing 25.00
Landscape Architects Application Filing 100.00
Landscape Architects License Renewal . . 60.00
Landscape Architects Examination Fee Record 30.00
Landscape Architects Education and Enforcement Surcharge . 10.00

Professional Land Surveyor
Application Filing 100.00
Professional Land Surveyor
License Renewal 50.00
Fundamentals of Land Surveying
Examination Record Fee 30.00
Professional Land Surveyor Education
and Enforcement Surcharge 10.00
Factory Built Housing Dealer –
Application Filing 30.00
Factory Built Housing Dealer –
License Renewal 30.00
Factory Built Housing On-site Plant
Inspection per hour plus expenses 50.00
Factory Built Housing Education
and Enforcement Fee 75.00
Marriage and Family Therapist
Application Filing 75.00
Marriage and Family Therapist License
Renewal 65.00
Marriage and Family Therapist
Coursework Review Fee 25.00
Massage Therapist – Application Filing . . 89.00
Massage Therapist – License Renewal . . . 40.00
Massage Apprentice – Application Filing . 25.00
Massage Apprentice – License Renewal . . 25.00
Naturopathic Physician
Application Filing 100.00
Naturopathic Physician License Renewal 50.00
Licensed Practical Nurse (L.P.N.)
Application Filing 50.00
Licensed Practical Nurse (L.P.N.)
License Renewal 40.00
Registered Nurse (R.N.)
Application Filing 50.00
Registered Nurse (R.N.)
License Renewal 40.00
Advanced Practice R.N.
Application Filing 90.00
Advanced Practice R.N. –
License Renewal 50.00
Advanced Practice R.N. –
Intern Application 25.00
Certified Nurse Anesthetist
Application Filing 90.00
Certified Nurse Anesthetist
License Renewal 50.00
Nurse educational program
approval/Initial site visit 500.00
Nurse educational program
approval/Follow-up site visit 250.00
Occupational Therapist –
Application Filing 60.00
Occupational Therapist –
License Renewal 35.00
Occupational Therapist Assistant
Application Filing 60.00
Occupational Therapist
Assistant License Renewal 35.00
Optometrist Application Filing 130.00
Optometrist License Renewal 80.00
Osteopathic Physician and
Surgeon Application Filing 180.00
Osteopathic Physician and Surgeon
License Renewal 120.00
Pharmacist – Application Filing 100.00
Pharmacist – License Renewal 50.00
Pharmacy Intern – Application Filing 25.00
Pharmacy – Application Filing 100.00
Pharmacy – License Renewal 50.00
Pharmaceutical Manufacturer
Application Filing 100.00
Pharmaceutical Manufacturer License
Renewal 50.00
Pharmaceutical Wholesaler/
Distributor Application Filing 100.00
Pharmaceutical Wholesaler/Distributor
License Renewal 50.00
Pharmaceutical Out-of-State
Mail Order 100.00
Pharmaceutical Out-of-State Mail
Order Renewal 50.00
Veterinary Pharmaceutical Outlet
Application Filing 100.00
Veterinary Pharmaceutical
Outlet License Renewal 50.00
Pharmaceutical Researcher Application
Filing 100.00
Pharmaceutical Researcher License
Renewal 50.00
Pharmaceutical Dog Trainer
Application Filing 100.00
Pharmaceutical Dog Trainer License
Renewal 50.00
Pharmaceutical Teaching
Organization Application Filing 100.00
Pharmaceutical Teaching Organization
License Renewal 50.00
Euthanasia Agency – Application Filing . 100.00
Euthanasia Agency – License Renewal . . . 50.00
Analytical Laboratory –
Application Filing 100.00
Analytical Laboratory – License Renewal 50.00
Pharmacy Technician – Application Fee . . 50.00
Pharmacy Technician –
License Renewal 35.00
Pharmaceutical Administration
Application Filing 100.00
Pharmaceutical Administration
License Renewal 50.00
Physical Therapist Application Filing 60.00
Physical Therapist License Renewal 35.00
Physician/Surgeon Application Filing . . . 180.00
Physician/Surgeon License Renewal 120.00
Physician Assistant Application Filing . . 130.00
Physician Assistant License Renewal 75.00
Plumber Application Filing 100.00
Plumber License Renewal 50.00
Podiatric Physician Application Filing . . 130.00
Podiatric Physician License Renewal 80.00
Pre-Need Funeral Arrangement Provider –
Application Filing 100.00
Pre-Need Funeral Arrangement Provider –
License Renewal 50.00
Pre-Need Funeral Arrangement Sales Agent –
Application Filing 40.00
Pre-Need Funeral Arrangement Sales Agent –
License Renewal 30.00
Private Probation Provider
Application Filing 75.00
Private Probation Provider License
Renewal 50.00
Professional Counselor Application
Filing 75.00

Professional Counselor License Renewal 65.00
Professional Counselor Coursework Review Fee 25.00
Psychologist – Application Filing 100.00
Psychologist – License Renewal 50.00
Radiology Technologist/Practical Technician Application Filing 60.00
Radiology Technologist/Practical Technician License Renewal 35.00
Master/Therapeutic Recreation Specialist Application Filing 60.00
Master/Therapeutic Recreation Specialist License Renewal 35.00
Therapeutic Recreation Technician Application Filing 60.00
Therapeutic Recreation Technician License Renewal 35.00
Residence Lien Recovery Fund Registrants Initial Assessment 195.00
Noncontractor Registration 25.00
Post–claim laborer assessment 20.00
Claim Application Fee – Nonlaborers 75.00
Claim Application Fee – Laborers 15.00
Reinstatement of Lapsed Registration . . 100.00
Respiratory Care Practitioner Application Filing 50.00
Respiratory Care Practitioner License Renewal 40.00
Security Services FBI Fingerprint File Search (cost or...) 24.00
Security Services BCI Fingerprint File Search (cost or) 15.00
Security Services Contract Security Company Application Filing 300.00
Security Services Contract Security Company Renewal 100.00
Security Services Replace/Change Qualifier 40.00
Security Services Education Program Approval 300.00
Security Services Education Program Approval Renewal 100.00
Security Services Alarm Response Runner Application Filing . . . 40.00
Security Services Alarm Response Runner Renewal 20.00
Security Services Armed Private Security Officer Application Filing 40.00
Security Services Armed Private Security Officer Renewal 20.00
Unarmed Private Security Officer Application Filing 40.00
Unarmed Private Security Officer Renewal 20.00
Clinical Social Worker – Application Filing 75.00
Clinical Social Worker – License Renewal 65.00
Certified Social Worker – Application Filing 75.00
Certified Social Worker – License Renewal 65.00
Social Service Worker – Application Filing 75.00
Social Service Worker – License Renewal 65.00
Speech Pathologist – Application Filing . . 60.00
Speech Pathologist – License Renewal . . . 35.00
Audiologist – Application Filing 60.00
Audiologist – License Renewal 35.00
Licensed Substance Abuse Counselor Application Filing 75.00
Licensed Substance Abuse Counselor License Renewal 65.00
Veterinarian Application Filing 100.00
Veterinarian License Renewal 50.00
Veterinarian Intern Application Filing . . . 25.00

Securities
Securities Qualification Registration 300.00
Securities Coordinated Registration 300.00
Securities Notification Registration 300.00
Securities Exemptions – Investment Companies 500.00
All other Securities Exemptions 60.00
Transactional Exemptions 60.00
No–action and Interpretative Opinions . 120.00
Securities Agent Licensing 45.00
Securities Broker/Dealer Licensing 75.00
Investment Advisor Licensing (New and Renewal) 75.00
Investment Advisor Representative Licensing (New and Renewal) 30.00
Securities Certified Dealer Licensing (New and Renewal) 500.00
Covered Securities Notice Filings – Investment Companies 500.00
All Other Covered Securities 60.00
Federal Covered Adviser New and Renewal 75.00

Consumer Protection
Charitable Solicitation Act Charity 100.00
Charitable Solicitation Act Professional Fund Raiser 250.00
Telephone Solicitation Telemarketing Registration 250.00
Health Spa 100.00
Credit Services Organization 100.00
Business Opportunity Disclosure Exempt 100.00
Business Opportunity Disclosure Approved 200.00
Personal Introduction Service 100.00

Corporations and Commercial Code
Articles of Incorporation Domestic Profit . 50.00
Articles of Incorporation Domestic Nonprofit 20.00
Articles of Incorporation Foreign Profit . . 50.00
Articles of Incorporation Foreign Nonprofit 20.00
Articles of Incorporation Corporate Sole . . 20.00
Requalification/Reinstatement Profit 50.00
Requalification/Reinstatement Nonprofit . 20.00
Changes of Corporate Status Amend/Restate/Merge – Profit . . 25.00
Changes of Corporate Status Amend/Restate/Merge – Nonprofit 15.00
Changes of Corporate Status Amendment – Foreign 35.00
Annual Report Profit 10.00
Annual Report Nonprofit 5.00
Annual Report Limited Partnership 10.00
Annual Report Limited Liability Company 10.00
Annual Report Change Form 10.00
Annual Report Late Fee 10.00

Certification Corporate Standing – In House 10.00
Certification Corporate Standing – Long Form 20.00
Corporation Search In House 10.00
Limited Partnership Certificate 50.00
Limited Partnership Reinstate/Requalify . 50.00
Limited Partnership Amend/Restate/Merge 25.00
Doing Business As Registration 20.00
Doing Business As Renewals 20.00
Trademark Registration 20.00
Trademark Assignments 5.00
Trademark Renewals 20.00
Limited Liability Company Articles of Organization 50.00
Limited Liability Company Reinstate/Requalify 50.00
Limited Liability Company Amend/Merge 35.00
Miscellaneous Transactions – Summons . 10.00
Miscellaneous Transactions – Out of State Motorist Summons 5.00
Miscellaneous Transactions – Collection Agency Bond 30.00
Miscellaneous Transactions – Foreign Name Registration 20.00
Miscellaneous Transactions – Statement of Certification 10.00
Miscellaneous Transactions – Corporation Name Reservation 20.00
Miscellaneous Transactions – Telecopier Transmittal 5.00
Miscellaneous Transactions – Telecopier Transmittal (per page) 1.00
Vehicle Franchise Act 80.00
Commercial Code Lien Filings UCC Filings with or without ID Number 10.00
Commercial Code Lien Filings Assignment/Amendment 10.00
Commercial Code Lien Filings CFS – 1 . . . 10.00
Commercial Code Lien Filings CFS – 3 . . . 10.00
Commercial Code Lien Filings CFS – 2 . . . . 5.00
Commercial Code Lien Filings CFS – 4 . . . 25.00
Lien Search 10.00
Notary Bond and Certificate 20.00
Notary Bond Rider 5.00
Notary Certificate 5.00
Notary Workshop Registration 10.00
Digital Signatures Certification Authority Licensing 500.00
Digital Signatures Recognition of Repository 250.00
Expedite Fee 75.00

Real Estate

Broker/Sales Agent New Application (2 year) 100.00
Broker/Sales Agent Finger Printing (Cost or) 39.00
Broker/Sales Agent Renewal 50.00
Appraisers Licensed and Certified – Application 200.00
Appraisers Licensed and Certified – Renewal 200.00
Registered Appraisers – License or Renewal 200.00
National Register (Pass through) (Cost or) 50.00
Appraisers Temporary Permit 100.00
Appraiser expert witness fee 200.00
Residential Mortgage Providers Entities (per 2 years) 200.00
Residential Mortgage Providers Individuals (per 2 years) 200.00
Residential Mortgage Providers Criminal Background Check (1st Reg. Only) 39.00
Miscellaneous – Activation 15.00
Miscellaneous – New Company 25.00
Miscellaneous – Branch Office 25.00
Miscellaneous – Company Broker Change 15.00
Service Fees Duplicate License 10.00
Service Fees Certifications/Histories (up to 5 years) 10.00
Service Fees Certifications/Histories (more than 5 years) 50.00
Service Fees License/Registration Reinstatement 50.00
Service Fees No Action Letter 120.00
Subdivided Land Exemption – HUD 100.00
Subdivided Land Exemption – Water Corporation 50.00
Subdivided Land Temporary Permit 100.00
Subdivided Land Application (plus $3.00 per unit charge over 30) 500.00
Subdivided Land Inspection Deposit 300.00
Subdivided Land Consolidation (plus $3.00 per unit charge) 200.00
Subdivided Land Renewal Report 200.00
Timeshare and Camp Resort Salesperson – New and Renewal 50.00
Timeshare and Camp Resort Registration (plus $3.00 per unit charge over 100) . . 500.00
Timeshare and Camp Resort Inspection Deposit 300.00
Timeshare and Camp Resort Consolidation (plus $3.00 per unit charge) 200.00
Timeshare and Camp Resort Temporary Permit 100.00
Timeshare and Camp Resort Renewal Report 200.00
Supplementary Filing Fee 200.00
Photocopies (per copy) 30
Booklets (cost or) 5.00
List of Licensees/Business Entities (cost or) 25.00
Late Renewal Fee (except corporations which is $10 by statute and consumer protections with $25 by statute) 20.00
Verification of Licensure – Hard Copy/ Custodian of Record 20.00

REAL ESTATE EDUCATION

Real Estate Education

Real Estate Education Broker/Dealer 1.00
Real Estate Education Agent 1.00
Real Estate Prelicense Course Certification 25.00
Appraiser Prelicense Course Certification 25.00
Real Estate Continuing Education Course Certification 35.00

Real Estate Prelicense Instructor Certification 15.00
Real Estate Continuing Education Instructor Certification 15.00
Appraiser Prelicense Instructor Certification 15.00

INSURANCE DEPARTMENT

INSURANCE DEPARTMENT ADMINISTRATION

In accordance with Section 31A-3-103 the following fees are approved for the services of the Insurance Department for FY 2002.
Administration
Certificate of Authority 500.00
Continuation of Certificate of Authority .. 50.00
Reinstatement of Certificate of Authority 500.00
Redomestication Filing 750.00
Amendment to Certificate of Authority .. 100.00
Filing of amendments to Articles of Incorporation Charter or Bylaws 25.00
Filing Annual Statement and Report of Utah Business 250.00
Merger acquisition of change of control form filing (Form A) 1,500.00
Material Transaction between Affiliated Companies Filing (Form B) .. 25.00
Prior Notice of Transaction Filing (Form D) 100.00
Application for Stock Solicitation Permit Public offering but not a SEC filing . 1,000.00
Application for Stock Solicitation Permit Private placement and/or SEC filing .. 250.00
Application for accredited reinsurer 500.00
Application for renewal for accredited reinsurer 250.00
Application for trusteed reinsurer 500.00
Application for renewal for trusteed reinsurer 250.00
Individual license to solicit in accordance with the Stock Solicitation Permit 50.00
Filing Annual Statement and Renewal of Fraternals 50.00
Organizational Permit for Mutual Insurer 500.00
Filing of Registered Agent 10.00
Risk Retention Group Annual Statement Filing 250.00
Application for Surplus Lines License ... 500.00
Surplus Lines Annual Statement Filing . 500.00
Rate Service Organization License 250.00
Annual Renewal of Rate Service Organization License 50.00
Risk Purchasing Group Initial Filing ... 100.00
Risk Purchasing Group Renewal 100.00
Power of Attorney 10.00
Resident and Nonresident Producer License (Initial and Renewal) 60.00
Resident and Nonresident Producer License (late renewal fee) 120.00
Resident and Nonresident Producer License (reinstatement of lapsed license fee) 170.00
Resident and Nonresident Limited Line Producer License (Initial and Renewal) 45.00
Resident and Nonresident Limited Line Agent License (Late renewal fee) 90.00
Resident and Nonresident Limited Line Agent License (Reinstatement of lapsed license fee) 140.00
Resident and Nonresident Agency License (Initial and Renewal) 60.00
Resident and Nonresident Agency License (Late renewal fee) 120.00
Resident and Nonresident Agency License (Reinstatement of lapsed license fee) . 170.00
Addition of producer classification or line of authority 25.00
Agency Designee Appointment/ Termination/Renewal 12.00
Agent Appointment/Termination/Renewal 12.00
Authorization to appoint and remove agents 10.00
Continuing education fee per individual .. 10.00
Continuing education provider application or renewal 100.00
Continuing education course post-approval - per hour with $25 maximum 5.00
Filing Policy Forms/Rates/Rules 20.00
Workers' Compensation Schedule 5.00
Life Illustration Certification Filing 30.00
Photocopy per page ..... .25
Annual Statement Copy 40.00
Affixing Commissioner's Seal 10.00
Service of legal process 10.00
Copy of Department's Annual Report to Governor 10.00
Issuance of mailing lists or computer print-outs (per page) 1.00
Electronic Format List (company agency individual) minimum fee of 50.00 ..... 50.00
Returned check charge 20.00
Relative Value Study 10.00
Bail Bond Surety License (initial or renewal) 500.00
Bail Bond Surety License (late renewal fee) 750.00
Bail Bond Surety License (reinstatement of lapsed license) 800.00

ECONOMIC DEVELOPMENT & HUMAN RESOURCES SUBCOMMITTEE
DEPARTMENT OF COMMUNITY & ECONOMIC DEVELOPMENT
STATE LIBRARY

In accordance with Section 63-38-3.2, the following fees are approved for the services of the State Library for FY 2002.
Administration
Lost Books, Bookmobile Paperback 5.00
Lost Books, Bookmobile Hardback 10.00
Lost Books, Interlibrary Loan Paperback . 15.00
Lost Books, Interlibrary Loan Hardback . 35.00

HEALTH & HUMAN SERVICES SUBCOMMITTEE
DEPARTMENT OF HUMAN SERVICES
EXECUTIVE DIRECTOR OPERATIONS

In accordance with Section 62A-1-111 the following fees are approved for the services of the Department of Human Services for FY 2002.

Executive Director's Office
Initial license (any new program except comprehensive mental health or substance abuse) 200.00
Adult Day Care (0–50 consumers per program) 50.00
Adult Day Care (More than 50 consumers per program) 100.00
Adult Day Care per consumers capacity . . . 1.25
Child Placing 150.00
Day Treatment 75.00
Outpatient Treatment 50.00
Residential Support 50.00
Residential Treatment 100.00
Residential Treatment per consumer capacity 1.50
Social Detoxification 100.00
Life Safety Pre–inspection 100.00
Outdoor Youth Program 100.00
Outdoor Youth per consumer capacity 5.00
FBI Fingerprint Check 24.00
Intermediate Secure Treatment 150.00

DEPARTMENT OF HUMAN SERVICES
INTERNAL SERVICE FUNDS

ISF – DHS General Services
Admin Building (per square foot) 13.44
ISF – DHS Data Processing
Programmers (per hour) 52.00

DEPARTMENT OF HEALTH
EXECUTIVE DIRECTOR'S OPERATIONS

In accordance with Section 26–1–6, the following fees are approved for the services of the Department of Health for FY 2001.
Health Care Statistics
Public Use Data Sets – Single Year License Fee for Public Agencies – Inpatient Public Data Set – 1,500.00
Ambulatory Surgery, and Emergency Department Encounter – File I – for one year only
Public Use Data Sets – Single Year License Fee for Public Agencies – Inpatient Public Data Set – 500.00
Ambulatory Surgery, and Emergency Department Encounter – File II – for one year only
Public Use Data Sets – Single Year License Fee for Public Agencies – Inpatient Public Data Set – 250.00
Ambulatory Surgery, and Emergency Department Encounter – File III – for one year only
Public Use Tapes – Multi–Year License Fee – Inpatient, Ambulatory Surgery, snd Emergency 1,500.00
Department Encounter Public Use – File I – multiple year data set (3 years prior to current year)
Public Use Tapes – Multi–Year License Fee – Inpatient, Ambulatory Surgery, and Emergency 500.00
Department Encounter Public Use – File II – multiple year data set (3 years prior to current year)
Public Use Tapes – Multi–Year License Fee – Inpatient, Ambulatory Surgery, and Emergency 250.00
Department Encounter Public Use – File III – multiple year data set (3 years prior to current year)
Public Use Secondary Release License, Files I – III, per year 375.00
Public Use Data Set – Single Year License Fee for Private Sector Agencies – Inpatient, Ambulatory 3,000.00
Surgery, and Emergency Department Encounter Public Use – File I
Public Use Data Set – Single Year License Fee for Private Sector Agencies – Inpatient, Ambulatory 1,500.00
Surgery, and Emergency Department Encounter Public Use – File II
Public Use Data Set – Single Year License Fee for Private Sector Agencies – Inpatient, Ambulatory 1,000.00
Surgery, and Emergency Department Encounter Public Use – File III
Public Use Tapes, Multi Year License Fee for Private Sector Agencies – Inpatient, Ambulatory 3,000.00
Surgery, and Emergency Department Encounter Public Use – File I – multiple year data set (3 years prior to current year)
Public Use Tapes, Multi Year License Fee for Private Sector Agencies – Inpatient, Ambulatory 1,500.00
Surgery, and Emergency Department Encounter Public Use – File II – multiple year data set (3 years prior to current year)
Public Use Tapes, Multi Year License Fee for Private Sector Agencies – Inpatient, Ambulatory 1,000.00
Surgery, and Emergency Department Encounter Public Use – File III – multiple year data set (3 years prior to current year)
Public Use Tapes, Multi Year License Fee for new user – File I 2,500.00
Public Use Tapes, Multi Year License Fee for new user – Ambulatory Surgical Data Sets – File 1 – 500.00
year one data set (1996)
Public Use Tapes, Multi Year License Fee for new user – Emergency Department Encounter Data 1,500.00
Set – File 1 – single year data set
Private Sector Secondary Release License, File I – III – First Year 1,000.00
Private Sector Secondary Release License, File I – III – Annual renewal fee 500.00
Private Sector Secondary Release License, File I – III – Financial Database 50.00
Research Data Set License Fee – Inpatient Research Data Set – Latest Year 1,500.00
Research Data Set License Fee – Inpatient Research Data Set – Previous Years (up to three years) . . 1,500.00

Research Data Set License Fee – Multi–Year HEDIS Data Set License Fee – Public, Educational, Non–profit Research Organizations 500.00
Research Data Set License Fee – Multi–Year HEDIS Data Set License Fee – Private Sector Agencies 1,000.00
Research Data Set License Fee – Multi–Year HMO Enrollee Satisfaction Survey – Data Set License 750.00
Fee – Public, Educational, Non–profit Research Organizations – File I
Research Data Set License Fee – Multi–Year HMO Enrollee Satisfaction Survey – Data Set License 500.00
Fee – Public, Educational, Non–profit Research Organizations – File II
Research Data Set License Fee – Multi–Year HMO Enrollee Satisfaction Survey – Data Set License 250.00
Fee – Public, Educational, Non–profit Research Organizations – File III
Research Data Set License Fee – Multi–Year HMO Enrollee Satisfaction Survey – Data Set License 1,250.00
Fee – Private Sector Agencies – File I
Research Data Set License Fee – Multi–Year HMO Enrollee Satisfaction Survey – Data Set License 1,000.00
Fee – Private Sector Agencies – File II
Research Data Set License Fee – Multi–Year HMO Enrollee Satisfaction Survey – Data Set License 500.00
Fee – Private Sector Agencies – File III
Hard Copy Reports Miscellaneous 10.00
Hard Copy Reports Miscellaneous – Standard Report – Inpatient, E 38.00
Hard Copy Reports Miscellaneous – Standard Report 1 – Ambulatory Surgery 38.00
Hard Copy Reports Miscellaneous – Hospital Financial Report 50.00
Special Reports 50.00
Health Information Internet Query System License Fee – Programming and Technical Support, per ..... hour 50.00
Health Information Internet Query System License Fee – Program/Public Sector 6,000.00
Health Information Internet Query System License Fee – Program/Private Sector 10,000.00
Special Data Request, per hour, ($70 minimum) 50.00
Other Fees – Data Management Fees for Reprocessing – Data Errors: To cover costs of processing ..... 38.00 resubmissions of data with system errors (may be waived as incentive for timely resubmission)

Medical Examiner

Autopsy – Non–Jurisdictional Case (plus cost of body transportation) ... 2,000.00
Autopsy – Non–Jurisdictional Case (plus cost of body transportation) – External Examination, Non–Jurisdictional Case (plus transportation) 500.00
Autopsy – Use of Office of Medical Examiner facilities and assistants – for autopsies 500.00
Autopsy – Use of Office of Medical Examiner facilities and assistants – for external exams 300.00
Reports – First copy to next of kin, treating physicians, and – investigative or prosecutorial agencies. 0.00
Reports – All other requestors and additional copies 25.00
Miscellaneous case papers – First copy to next of kin, treating physicians, and – investigative or prosecutorial agencies. 0.00
Miscellaneous case papers – All other requestors and additional copies 35.00
Court – Preparation, consultation, and appearance on OME cases, criminal or civil. Portal to portal expenses including travel costs and waiting time 250.00
Court – Consultation as Medical Examiner on non–OME cases, criminal or civil. Portal to portal expenses including travel costs and waiting time 250.00
Photographic and Video Services – Color negatives from slides, plus cost of film 2.00
Photographic and Video Services – Slide Duplication, plus cost of film 3.00
Photographic and Video Services – Each Video Tape 75.00
Photographic and Video Services – Black and White 8 x 10 ..... 7.00
Photographic and Video Services – Black and White 5 x 7 ..... 3.50
Photographic and Video Services – Overlays 25.00
Photographic and Video Services – Glass Slides 6.00
Photographic and Video Services – X–rays 6.00
Use of OME facilities for tissue harvesting activities – Eye acquisition . 30.00
Use of OME facilities for tissue harvesting activities – Skin Graft acquisition 115.00
Use of OME facilities for tissue harvesting activities – Bone acquisition 230.00
Use of OME facilities for tissue harvesting activities – Heart Valve acquisition 60.00
Use of OME facilities for tissue harvesting activities – Saphenous vein acquisition 60.00
Body Storage 30.00

Center for Health Data

Birth Certificate – Initial Copy 12.00
Birth Certificate – Additional Copies 5.00
Birth Certificate – Affidavit 20.00
Birth Certificate – Heritage Birth Certificate 22.00

Birth Certificate – Adoption 40.00
Birth Certificate – Expedite Fee 10.00
Death Certificate – Initial Copy 9.00
Death Certificate – Additional Copies 5.00
Paternity Search, per hour
(1 hour minimum) 9.00
Delayed Registration 40.00
Marriage and Divorce Abstracts 9.00
Legitimation 40.00
Adoption Registry 25.00
Death Research, per hour
(1 hour minimum) 9.00
Court Order Name Changes 20.00
Court Order Paternity 40.00
On-line Access to Computerized
Vital Records, per month 10.00

HEALTH SYSTEMS IMPROVEMENT

Emergency Medical Services
Registration, Certification and Testing –
Initial EMT-Basic Certification Fee ... 30.00
Registration, Certification and Testing –
All other certifications 10.00
Registration, Certification and
Testing – Recertification Fee 10.00
Registration, Certification and Testing –
Lapsed Certification Fee 15.00
Registration, Certification and Testing –
Written Test Fee – Basic EMT
Certification Written 15.00
Test/Re-test Fee
Registration, Certification and Testing –
Written Test Fee – All other written
tests, re-tests 12.00
Practical Test Fees – EMT – Basic
Certification Practical Test/Re-test 30.00
Practical Test Fees – EMT – Basic
Certification Practical Test/Re-test 80.00
Practical Test Fees – EMT – Basic
Certification Practical Test/Re-test –
Medical Scenario Practical 20.00
re-test
Practical Test Fees – EMT – Basic
Certification Practical Test/Re-test –
Trauma Scenario Practical 40.00
re-test
Practical Test Fees – Paramedic
Practical Test 90.00
Practical Test Fees – Paramedic
Practical retest per station 30.00
The fees listed above apply to the following certification levels: Emergency Medical Technician (EMT) – Basic; Emergency Medical Technician IV; Emergency Medical Technician Intermediate; Emergency Medical Technician Paramedic; Emergency Medical Technician Instructor; Emergency Medical Dispatcher (EMD); Emergency Medical Dispatcher Instructor.
Annual Quality Assurance Review Fee,
per vehicle – Ground Ambulance, Basic 50.00
Annual Quality Assurance Review Fee,
per vehicle – Ground Ambulance, IV ... 50.00
Annual Quality Assurance Review Fee,
per vehicle – Ground Ambulance,
Intermediate 75.00
Annual Quality Assurance Review Fee,
per vehicle – Interfacility Transfer
Ambulance, Basic 50.00
Annual Quality Assurance Review Fee,
per vehicle – Interfacility Transfer
Ambulance, IV 50.00
Annual Quality Assurance Review Fee,
per vehicle – Interfacility Transfer
Ambulance, ... 75.00
Intermediate
Annual Quality Assurance Review
Fee, per vehicle – Paramedic Rescue .. 100.00
Annual Quality Assurance Review Fee,
per vehicle – Paramedic Tactical
Response 100.00
Annual Quality Assurance Review
Fee, per vehicle – Paramedic
Ambulance 100.00
Annual Quality Assurance Review Fee,
per vehicle – Paramedic Interfacility
Transfer Service 100.00
Annual Quality Assurance Review Fee,
per vehicle – Quick Response Unit,
Basic 50.00
Annual Quality Assurance Review Fee,
per vehicle – Quick Response Unit, IV . 50.00
Annual Quality Assurance Review Fee,
per vehicle – Quick Response
Unit, Intermediate 50.00
Annual Quality Assurance Review Fee,
per vehicle – Advanced Air Ambulance . 75.00
Annual Quality Assurance Review Fee,
per vehicle – Specialized Air
Ambulance 100.00
Annual Quality Assurance Review Fee,
per vehicle – Emergency Medical
Dispatch Center, per center 50.00
Annual Quality Assurance Review Fee,
per vehicle – Resource Hospital, per
hospital 50.00
Quality Assurance Application Reviews –
Original Ground Ambulance/
Paramedic License Negotiated 500.00
Quality Assurance Application Reviews –
Original Ambulance/Paramedic
License Contested – up to actual cost
Quality Assurance Application Reviews –
Original Designation 100.00
Quality Assurance Application Reviews –
Renewal Ambulance/Paramedic/Air
License 100.00
Quality Assurance Application Reviews –
Renewal Designation 100.00
Quality Assurance Application Reviews –
Upgrade in Ambulance Service Level . 100.00
Quality Assurance Application Reviews –
Original Air Ambulance License 500.00
Quality Assurance Application Reviews –
Change is ownership/operator,
non-contested 500.00

Quality Assurance Application Reviews – Change is ownership/operator, contested – up to actual
Quality Assurance Application Reviews – Change is geographic service area, non–contested 500.00
Quality Assurance Application Reviews – Change is geographic service area, contested – up to actual
Trauma Centers – Level I and II – Quality Assurance Application Review (plus all costs associated ..... 500.00 with American College of Surgeons visit)
Trauma Centers – Level I and II – Site Team Verification/Quality Assurance Review 8,000.00
Trauma Centers – Level I and II – Annual Verification Quality Assurance Review Fee 500.00
Trauma Centers – Level III – Quality Assurance Application Review (includes in–state site visit)
Trauma Centers – Level III – Site Team Verification/Quality Assurance Review 3,000.00
Trauma Centers – Level III – Annual Verification Quality Assurance Review Fee 500.00
Trauma Centers – Level IV and V – Quality Assurance Application Review (includes in–state site ..... 1,500.00 visit)
Trauma Centers – Level IV and V – Site Team Verification/Quality Assurance Review 2,000.00
Trauma Centers – Level IV and V – Annual Verification Quality Assurance Review Fee 250.00
Course Quality Assurance Review Fee – Basic EMT Course 100.00
Course Quality Assurance Review Fee – Paramedic Course 100.00
Course Quality Assurance Review Fee – Basic EMT–IV 25.00
Course Quality Assurance Review Fee – EMT–Intermediate 25.00
Course Quality Assurance Review Fee – Emergency Medical Dispatch 25.00
Course Quality Assurance Review Fee – New Instructor Course Registration .. 125.00
Course Quality Assurance Review Fee – Course Coordinator Seminar Registration 25.00
Course Quality Assurance Review Fee – Course Coordinator Course Registration 25.00
Course Quality Assurance Review Fee – Paramedic Seminar 100.00
Course Quality Assurance Review Fee – Instructor Seminar Registration 125.00
Course Quality Assurance Review Fee – Instructor Conference Vendor Fee 165.00
Course Quality Assurance Review Fee – New Training Officer Course Registration 25.00
Course Quality Assurance Review Fee – Training Officer Seminar Registration . 25.00
Course Quality Assurance Review Fee – EVO Instructor Course 40.00
Course Quality Assurance Review Fee – EMSC Pediatric Prehospital Care Course 65.00
Course Quality Assurance Review Fee – Medical Director's Course 50.00
Course Quality Assurance Review Fee – PALS Instructor Course 25.00
Course Quality Assurance Review Fee – PALS Course 65.00
Course Quality Assurance Review Fee – PEPP Course 65.00
Equipment delivery fee – Salt Lake County 25.00
Equipment delivery fee – Davis, Utah, and Weber Counties 50.00
Late Fee – the department may assess a late fee for equipment at the daily fee plus 50% of the daily fee for every day the equipment is late. Training Supplies, rental of equipment, and Accessories – Charge for course supplies and accessories to be based upon most recent acquisition cost plus 20% rounded up to the nearest $.10 (computed quarterly), FOB Salt Lake City, Utah.
Background checks (name only) 10.00
Fingerprint checks in Utah only 15.00
Fingerprint checks to the FBI 24.00
Annual License Fees – A base fee for health facilities of $100.00 plus the appropriate fee as ..... 100.00 indicated below applies to any new or renewal license.
Annual License Fees – Child Care Facilities base fee 35.00
Change Fee – A fee of $75.00 is charged to health care providers making changes to their existing ..... 75.00 license.
Change Fee – Child Care Center Facilities
Change Fee – Child Care Center Facilities – Per Child fee 1.50
Change Fee – Hospitals – Fee per Licensed Bed – accredited beds 11.00
Change Fee – Hospitals – Non–accredited beds 14.00
Change Fee – Nursing Care Facilities, and Small Health Care Facilities – Licensed Bed 10.00
Change Fee – Residential Treatment Facilities – Licensed Bed 8.00
Change Fee – End Stage Renal Disease Centers (ESRDs) – Licensed Station ... 60.00
Change Fee – Freestanding Ambulatory Surgery Centers (per facility) 1,000.00
Change Fee – Birthing Centers, and Abortion Clinics: (per licensed unit) ... 200.00
Change Fee – Hospice Agencies 500.00
Change Fee – Home Health Agencies/ Personal Care Agencies 500.00
Change Fee – Mammography Screening Facilities 200.00
Change Fee – Assisted Living Facilities Type I – Licensed Bed 9.00
Change Fee – Assisted Living Facilities Type II – Licensed Bed 9.00

Change Fee – Assisted Living Facilities
Type II – The fee for each satellite and branch office of current licensed facility 75.00
Late Fee: Licensed health facility providers are responsible for submitting a completed application form, fire clearance (where applicable) and fees 15 days prior to expiration of the license. Late fee will be assessed if fees, application and fire clearance re not received by the license expiration date.
Change Fee – Late Fee – Within 14 days of expiration of license – 30% scheduled fee
Change Fee – Late Fee – Within 30 days of expiration of license – 60% scheduled fee
Change Fee – Assisted Living and Small Health Care – Type–N
Limited Capacity/Change of 250.00
Ownership Applications:
A $250.00 application fee will be assessed for services rendered to providers seeking initial licensure or change of ownership to cover the cost of processing the application, staff consultation and initial inspection. This fee will be due at the time of application.
Change Fee – New Provider/Change in Ownership Applications for Child Care facilities 200.00
A $200.00 fee will be assessed for services rendered to providers seeking initial licensure or change of ownership to cover the cost of processing the application, staff consultation and initial inspection, etc. This fee will be due at the time of application. If a health care facility application is terminated or delayed during the application process, a fee based on services rendered will be retained as follows: Policy and Procedure Review–50% of total fee; Onsite inspections–90% of the total fee. Child care program application fees of $35.00 are not refundable
Plan Review and Inspection Fees – Hospitals: – Number of Beds – Up to 16 . . . . . 1,500.00
Plan Review and Inspection Fees – Hospitals: – Number of Beds – 17 to 50 . . . . . 3,500.00
Plan Review and Inspection Fees – Hospitals: – Number of Beds – 51 to 100 . . . . . 5,000.00
Plan Review and Inspection Fees – Hospitals: – Number of Beds – 101 to 200 . . . . . 6,000.00
Plan Review and Inspection Fees – Hospitals: – Number of Beds – 201 to 300 . . . . . 7,000.00
Plan Review and Inspection Fees – Hospitals: – Number of Beds – 301 to 400 . . . . . 8,000.00
Plan Review and Inspection Fees – Hospitals: – Number of Beds – Over 400, base fee 8,000.00
Plan Review and Inspection Fees – Hospitals: – Number of Beds – Over 400, each additional bed 50.00
In the case of complex or unusual hospital plans, the Bureau of Licensuring will negotiate with the provider an appropriate plan review fee at the start of the review process based on the best estimate of the review time involved and the standard hourly review rate.
Plan Review and Inspection Fees – Hospitals: – In the case of complex or unusual hospital plans, the Bureau of Licensuring will negotiate with the provider an appropriate plan review fee at the start of the review process based on the best estimate of the
Plan Review and Inspection Fees – Nursing Care Facilities and Small Health Care Facilities – Number of Beds – Up to 5 . . . . . 650.00
Plan Review and Inspection Fees – Nursing Care Facilities and Small Health Care Facilities – Number of Beds – 6 to 16 . . . . . 1,000.00
Plan Review and Inspection Fees – Nursing Care Facilities and Small Health Care Facilities – 2,250.00
Number of Beds – 17 to 50
Plan Review and Inspection Fees – Nursing Care Facilities and Small Health Care Facilities – Number of Beds – 51 to 100 . . . . . 4,000.00
Plan Review and Inspection Fees – Nursing Care Facilities and Small Health Care Facilities – Number of Beds – 101 to 200 . . . . . 5,000.00
Plan Review and Inspection Fees – Freestanding Ambulatory Surgical Facilities, per operating room 750.00
Plan Review and Inspection Fees – Birthing Centers, Abortion Clinics, and similar facilities, Other 250.00
Freestanding Ambulatory Facilities, including per service unit
Plan Review and Inspection Fees – End Stage Renal Disease Facilities, per service unit 100.00
Plan Review and Inspection Fees – Assisted Living Type I and Type II – Number of Beds – Up to 5 . . . . . 350.00
Plan Review and Inspection Fees – Assisted Living Type I and Type II – Number of Beds – 6 to 16 . . . . . 700.00
Plan Review and Inspection Fees – Assisted Living Type I and Type II – Number of Beds – 17 to 50 . . . . . 1,600.00
Plan Review and Inspection Fees – Assisted Living Type I and Type II – Number of Beds – 51 to 100 . . . . . 3,000.00
Plan Review and Inspection Fees – Assisted Living Type I and Type II – Number of Beds – 101 to 200 . . . . . 4,200.00
Each additional inspection required (beyond the two covered by the fees listed above) or each additional inspection requested by the facility shall cost $100.00 plus mileage reimbursement at the approved state rate, for travel to and from the site by a Department representative .
Plan Review and Inspection Fees
The plan review fee for remodeling an area of a currently operating licensed facility that does not involve an addition of beds, operating room, service units, or other clinic type facilities.

Plan Review and Inspection Fees –
Plan Review and Inspection Fees
for Remodels of Licensed ..... .16
Facilities – Hospitals, Freestanding
Surgery Facilities, per square foot
Plan Review and Inspection Fees –
Plan Review and Inspection Fees for
Remodels of Licensed ..... .14
Facilities – All others excluding Home
Health Agencies, per square foot
Plan Review and Inspection Fees –
Plan Review and Inspection Fees
for Remodels of Licensed 100.00
Facilities – Each required on–site
inspection, base fee
Plan Review and Inspection Fees – Plan Review and Inspection Fees for Remodels of Licensed Facilities – Each required on–site inspection, per mile traveled according to approved state travel rates.
Plan Review and Inspection Fees – Other Plan–Review Fee Policies
If an existing facility has obtained an exemption from the requirement to submit preliminary and working drawings, or other information regarding compliance with applicable construction rules, the Department may conduct a detailed on–site inspection in lieu of the plan review. The fee for this will be $100.00, plus mileage reimbursement at the approved state rate. A facility that uses plans and specifications previously reviewed and approved by the Department will be charged 60 percent of the scheduled plan review fee. Thirty cents per square foot will be charged for review of facility additions or remodels that house special equipment such as CAT scanner or linear accelerator. If a project is terminated or delayed during the plan review process, a fee based on services rendered will be retained as follows: Preliminary drawing review–25% of the total fee. Working drawings and specifications review–80% of the total fee. If the project is delayed beyond 12 months from the date of the State's last review the applicant must re–submit plans and pay a new plan review fee in order to renew the review action.
Plan Review and Inspection Fees – Health Care Facility Licensing Rules – cost plus mailing
Plan Review and Inspection Fees – Child Care Licensing Rules – cost plus mailing
Plan Review and Inspection Fees – (Licensees receive one copy of each newly published edition of applicable Facility Rules. Additional copies of the rules will reflect the cost of printing and mailing.)
Plan Review and Inspection Fees – Certificate of Authority – Health Maintenance Organization 500.00Review of Application
Change Fee – New Provider/Change in Ownership Applications for Health Care facilities 500.00
A $500.00 fee will be assessed for services rendered providers seeking initial licensure to or change of ownership to cover the cost of processing the application, staff consultation, review of facility policies, initial inspection, etc. This fee will be due at the time of application.

EPIDEMIOLOGY AND LABORATORY SERVICES

HIV/AIDS/TB Control/Refugee Health
Notification and post–test counseling of patients involved in an emergency medical services (EMS) body fluid exposure.
Counseling of an individual with a positive HIV antibody test – cost recovery
Notification of an individual with a negative HIV antibody test by phone 6.00
Notification of an individual with a negative HIV antibody test by certified
letter and phone. 10.00
Counseling and Testing Workshops 385.00
HIV/AIDS education
presentations: – AIDS 101 ..... 40.00
HIV/AIDS education presentations
– Business Responds to AIDS 40.00
HIV/AIDS education presentations
– Emergency Medical Services 57.00
Other:
Other: The Laboratory performs a variety of tests under contract and in volume to other agencies of government. The charge for these services is determined according to the type of services and the test volume, and is based on the cost to the Laboratory and therefore may be lower than the fee schedule. Because of changing needs, the Laboratory receives requests for new tests or services that are impossible to anticipate and list fully in a standard fee schedule. Charges for these services are authorized and are to be based on costs.
Environmental Chemistry and Toxicology
Chain of Custody Sample Handling 10.00
Minimum charge Priority Handling
of Samples (Surcharge) 10.00
Expert Preparation Time (Research),
per hour 25.00
Expert Witness Fee (Portal to Portal),
per hour 50.00
Drinking Water Tests – Lead
and Copper (Metals Type 8) 28.00
Drinking Water Tests – Drinking
Water Organic Contaminants
– THMs EPA Method 502.2 ..... 75.00
Drinking Water Tests – Drinking
Water Organic Contaminants
– Maximum Total Potential THM 80.00
Method 502.2
Drinking Water Tests –
Other Drinking Water
Organic Tests: – Haloacetic
Acids Method 6251B 130.00
Drinking Water Tests –
Other Drinking Water
Organic Tests: – Haloacetonitriles
Method 551 ..... 100.00

Drinking Water Tests – Other Drinking Water Organic Tests: – TOX 100.00
Drinking Water Tests – Other Drinking Water Organic Tests: – Chlorate/Chlorite 25.00
Drinking Water Tests – Other Drinking Water Organic Tests: – Chloral Hydrate/THM 100.00
Drinking Water Tests – Other Drinking Water Organic Tests: – Bromide 25.00
Drinking Water Tests – Other Drinking Water Organic Tests: – Bromate 30.00
Drinking Water Tests – Other Drinking Water Organic Tests: – Chlorite 25.00
Drinking Water Tests – Other Drinking Water Organic Tests: – Ion Chromatography (multiple ions) 50.00
Drinking Water Tests – Other Drinking Water Organic Tests: – UV Absorption 15.00
Drinking Water Tests – Other Drinking Water Organic Tests: – TOC 20.00
Drinking Water Tests – Primary Inorganics and Heavy Metals – (Type 9 Chemistry) (18 parameters) 250.00
Drinking Water Tests – New Drinking Water Sources – (Total Inorganic Chemistry – 46 parameters) 535.00
Drinking Water Tests – Drinking Water Inorganic Tests: – Nitrate 12.00
Drinking Water Tests – Drinking Water Inorganic Tests: – Nitrite 20.00
Drinking Water Tests – VOCs (combined regulated and unregulated) 190.00
Drinking Water Tests – VOCs (Unregulated List 1 & List 3) . . . 190.00
Drinking Water Tests – Pesticides (combined regulated and unregulated) 875.00
Drinking Water Tests – 2,3,7,8–TCDD (Dioxin) Subcontract Price, plus handling fee
Drinking Water Tests – Pesticides (List II: 10 unregulated contaminants) 650.00
Drinking Water Tests – Unregulated Organics (Lists 1, 2 & 3) 825.00
Drinking Water Tests – Unregulated VOC List 1 (by itself) 190.00
Drinking Water Tests – Unregulated VOC List 3 (by itself) 190.00
Drinking Water Tests – Unregulated VOC List 1 & 3 . . . . . 190.00
Drinking Water Tests – Inorganics Tests (per sample for preconcentration) 15.00
Type 1 – Individual water chemistry parameters –Alkalinity (Total) 9.00
Type 1 – Individual water chemistry parameters – Aluminum 17.00
Type 1 – Individual water chemistry parameters – Ammonia 20.00
Type 1 – Individual water chemistry parameters – Antimony 17.00
Type 1 – Individual water chemistry parameters – Arsenic 17.00
Type 1 – Individual water chemistry parameters – Barium 12.00
Type 1 – Individual water chemistry parameters – Beryllium 12.00
Type 1 – Individual water chemistry parameters – BOD5 . . . . . 30.00
Type 1 – Individual water chemistry parameters – Boron 12.00
Type 1 – Individual water chemistry parameters – Cadmium 17.00
Type 1 – Individual water chemistry parameters – Calcium 12.00
Type 1 – Individual water chemistry parameters – Chromium 17.00
Type 1 – Individual water chemistry parameters – Chromium (Hexavelent) . 25.00
Type 1 – Individual water chemistry parameters – Chloride 8.00
Type 1 – Individual water chemistry parameters – Chloride (IC) 30.00
Type 1 – Individual water chemistry parameters – Chlorophyll A 20.00
Type 1 – Individual water chemistry parameters – COD 20.00
Type 1 – Individual water chemistry parameters – Color 20.00
Type 1 – Individual water chemistry parameters – Copper 12.00
Type 1 – Individual water chemistry parameters – Cyanide 45.00
Type 1 – Individual water chemistry parameters – Fluoride 9.00
Type 1 – Individual water chemistry parameters – Iron 12.00
Type 1 – Individual water chemistry parameters – Langlier Index (Calculation: pH, calcium, TDS, alkalinity) 5.00
Type 1 – Individual water chemistry parameters – Lead 17.00
Type 1 – Individual water chemistry parameters – Lithium 12.00
Type 1 – Individual water chemistry parameters – Magnesium 12.00
Type 1 – Individual water chemistry parameters – Manganese 12.00
Type 1 – Individual water chemistry parameters – Mercury 25.00
Type 1 – Individual water chemistry parameters – Molybdenum 12.00
Type 1 – Individual water chemistry parameters – Nickel 17.00

Type 1 – Individual water chemistry parameters – Nitrogen, Total Kjeldahl (TKN) 30.00
Type 1 – Individual water chemistry parameters – Nitrite 20.00
Type 1 – Individual water chemistry parameters – Nitrate plus Nitrite 12.00
Type 1 – Individual water chemistry parameters – Odor 25.00
Type 1 – Individual water chemistry parameters – Perchlorate ... 30.00
Type 1 – Individual water chemistry parameters – pH 10.00
Type 1 – Individual water chemistry parameters – Phosphate, ortho 20.00
Type 1 – Individual water chemistry parameters – Phosphorus, total 15.00
Type 1 – Individual water chemistry parameters – Potassium 12.00
Type 1 – Individual water chemistry parameters – Selenium 17.00
Type 1 – Individual water chemistry parameters – Silica 15.00
Type 1 – Individual water chemistry parameters – Silver 17.00
Type 1 – Individual water chemistry parameters – Sodium 12.00
Type 1 – Individual water chemistry parameters – Solids, Total Dissolved (TDS) 13.00
Type 1 – Individual water chemistry parameters – Solids, Total Suspended (TSS) 13.00
Type 1 – Individual water chemistry parameters – Solids, Settable (SS) 13.00
Type 1 – Individual water chemistry parameters – Solids, Total Volatile 15.00
Type 1 – Individual water chemistry parameters – Solids, Percent 13.00
Type 1 – Individual water chemistry parameters – Solids, Residual Suspended 25.00
Type 1 – Individual water chemistry parameters – Specific Conductance 9.00
Type 1 – Individual water chemistry parameters – Surfactants 60.00
Type 1 – Individual water chemistry parameters – Sulfate 15.00
Type 1 – Individual water chemistry parameters – Sulfide 40.00
Type 1 – Individual water chemistry parameters – Thallium 17.00
Type 1 – Individual water chemistry parameters – Tin 17.00
Type 1 – Individual water chemistry parameters – Turbidity 10.00
Type 1 – Individual water chemistry parameters – Vanadium 12.00
Type 1 – Individual water chemistry parameters – Zinc 12.00
Type 1 – Individual water chemistry parameters – Zirconium 17.00
Inorganic Chemistry Groups: – Type 2 – Partial Chemistry – (19 Major Anions/Cations) 120.00
Inorganic Chemistry Groups: – Type 4 – Total Surface Water Chemistry (33 parameters, – Metals are ..... 280.00 dissolved)
Inorganic Chemistry Groups: – Type 5 – Total Surface Water Chemistry (33 parameters – as in Type 4, ... 280.00 Metals are acid soluble)
Inorganic Chemistry Groups: – Type 6 – Total Surface Water Chemistry (33 parameters – as i Type 4, ... 290.00 Metals are totals)
Metals Tests: – Type 1 – Metals – (Tissues, Paint, Sediment, Soil) 16.00
Metals Tests: – Sample preparation 20.00
Metals Tests: – Type 2 – Acid Soluble Metals – Digestion) 145.00
Metals Tests: – Type 3 – Dissolved metals (12 Metals – No Digestion) 145.00
Metals Tests: – Type 7 – Total Metals In Water (12 Metals – Digested) 195.00
Nutrient Tests: – Type 9 – 4 parameters 62.00
Organics Tests – BTEXN (Benzene, Toluene, Ethylbenzene, Xylene, Napthalene) 75.00
Organics Tests – EPA 8020 (BETXN soil) 75.00
Organics Tests – Chlorinated Pesticides (Soil) 8082 ..... 175.00
Organics Tests – Chlorinated Acid Herbicides (Soil) 8150 ..... 250.00
Organics Tests – EPA 8270 Semi Volatiles 400.00
Organics Tests – EPA 8260 (VOCs) 200.00
Organics Tests – Ethylene Glycol in water 75.00
Organics Tests – Aldehydes (Air) TO–11 . 85.00
Organics Tests – Oil and Grease 100.00
Organics Tests – EPA 508A Total PCBs . 200.00
Organics Tests – EPA 8082 PCBs 175.00
Organics Tests – PCBs in oil 75.00
Organics Tests – PCE 75.00
Organics Tests – EPA Method 625 Base/Neutral Acids by GC/MS 400.00
Organics Tests – Total Organic Carbon (TOC) 20.00
Organics Tests – Total Petroleum Hydrocarbons (non–BTEX) 75.00
Organics Tests – Volatiles (Purgeables – EPA Method 624) 200.00
Organics Tests – EPA Method 504 EDB 90.00
Organics Tests – EPA Method 508.1 Chlorinated Pesticides 175.00

Organics Tests – EPA Method 531.1 N–Methy Carbamates and Carbamoyloximes . . . 200.00
Organics Tests – EPA Method 515.1 Chlorinated Acids and Herbicides 200.00
Organics Tests – EPA Method 525.2 Semivolatiles (A/B/Na) by GC/MS 350.00
Organics Tests – EPA Method 524.2 VOCs (Volatiles Purge and Trap) by GC/MS 190.00
Organics Tests – Miscellaneous Organic Chemistry – TCLP – Extraction procedure 100.00
Organics Tests – Miscellaneous Organic Chemistry – TCLP Zero Headspace Extraction (ZHE) 160.00
Organics Tests – Corrosivity (HW) 15.00
Organics Tests – Ignitability 60.00
Organics Tests – Reactive Sulfide 60.00
Organics Tests – Reactive Cyanide 60.00
Radiochemistry – Gross alpha or beta 60.00
Radiochemistry – Gross alpha and beta . . 60.00
Radiochemistry – Radium226, (Deemanation) 125.00
Radiochemistry – Radium228, (ppt/separation) 155.00
Radiochemistry – Uranium (Total Activity) 100.00
Radiochemistry – Uranium (ICP/MS) 50.00
Radiochemistry – Radon by Liquid Scintillation 65.00
Radiochemistry – Tritium 80.00
Radiochemistry – Gamma Spectroscopy By HPGe (water and solid samples.) Analysis includes 150.00
nuclide identification and quantitation, per nuclide
Toxicology – Alcohol in Urine 25.00
Toxicology – Alcohol in Beverage 35.00
Toxicology – Blood alcohol 50.00
Toxicology – Blood or Tissue Drug Analysis 200.00
Toxicology – Confirmation of positive blood cannabinoid screen 150.00
Toxicology – Cannabinoid Screen (Urine) . 25.00
Toxicology – Cannabinoids Screen (Blood) 40.00
Toxicology – EPIA (urine) 40.00
Toxicology – EPIA (blood) 40.00
Toxicology – Confirmation of positive drug screens by GC/MS 75.00
Toxicology – Confirmation of positive urine cannabinoid screen 60.00
Toxicology – Drug preparations (identification) 50.00
Toxicology – Drug preparations (quantitation) 50.00
Toxicology – Expert testimony (portal to portal), per hour 50.00
Toxicology – Date rape panel 220.00
Toxicology – GHB in urine 70.00
Toxicology – Copy fee (1 – 15) case file data 15.00
Toxicology – each additional copy 1.00
Laboratory Improvement
Environmental Laboratory Certification – Annual certification fee (chemistry and/or microbiology) – . 500.00
Utah laboratories
Environmental Laboratory Certification – Annual certification fee (chemistry and/or microbiology) – . . . 5,000.00
Out of state laboratories (plus travel expenses)
Environmental Laboratory Certification – Annual certification fee (chemistry and/or microbiology) – 400.00
Reciprocal certification fee
Environmental Laboratory Certification – Annual certification fee (chemistry and/or microbiology) – 50.00
Certification change fee
(Laboratories applying for certification are subject to the annual certification fee, plus the fee listed for each category in each they are to be certified.)
Environmental Laboratory Certification – Safe Drinking Water by Analyte and Method – 40.00
Microbiological – Each Method
Environmental Laboratory Certification – Safe Drinking Water by Analyte and Method – Inorganic 25.00
test procedure each method – Group I
Environmental Laboratory Certification – Safe Drinking Water by Analyte and Method – Inorganic 30.00
test procedure each method – Group II
Environmental Laboratory Certification – Safe Drinking Water by Analyte and Method – 25.00
Miscellaneous each method – Group I
Environmental Laboratory Certification – Safe Drinking Water by Analyte and Method – 30.00
Miscellaneous each method – Group II
Environmental Laboratory Certification – Safe Drinking Water by Analyte and Method – 25.00
Miscellaneous each method – Group III
Environmental Laboratory Certification – Safe Drinking Water by Analyte and Method – Organic 50.00
Compounds each method – Group I
Environmental Laboratory Certification – Safe Drinking Water by Analyte and Method – Organic 70.00
Compounds each method – Group II
Environmental Laboratory Certification – Safe Drinking Water by Analyte and Method – Organic 80.00
Compounds each method – Group III
Environmental Laboratory Certification – Safe Drinking Water by Analyte and Method – Organic 160.00
Compounds each method – Group IV
Environmental Laboratory Certification – Safe Drinking Water by Analyte and Method – 0.00
Radiological each method

Environmental Laboratory Certification – Clean Water by Analyte and Method – Microbiological ..... 40.00 each method
Environmental Laboratory Certification – Clean Water by Analyte and Method – Toxicity Testing 150.00
Environmental Laboratory Certification – Clean Water by Analyte and Method – Inorganic test ..... 25.00 procedure each method – Group I
Environmental Laboratory Certification – Clean Water by Analyte and Method – Inorganic test ..... 30.00 procedure each method – Group II
Environmental Laboratory Certification – Clean Water by Analyte and Method – Inorganic test ..... 35.00 procedure each method – Group III
Environmental Laboratory Certification – Clean Water by Analyte and Method – Organic ..... 70.00 Compounds each method – Group I
Environmental Laboratory Certification – Clean Water by Analyte and Method – Organic ..... 130.00 Compounds each method – Group II
Environmental Laboratory Certification – Clean Water by Analyte and Method – Organic ..... 160.00 Compounds each method – Group III
Environmental Laboratory Certification – Clean Water by Analyte and Method – Radiological each ..... 30.00 method
Environmental Laboratory Certification – RCRA by Analyte and Method – Microbiological each ..... 40.00 method
Environmental Laboratory Certification – RCRA by Analyte and Method – Inorganic test procedure ..... 25.00 each method – Group I
Environmental Laboratory Certification – RCRA by Analyte and Method – Inorganic test procedure ..... 30.00 each method – Group II
Environmental Laboratory Certification – RCRA by Analyte and Method – Miscellaneous Groups ..... 25.00 each method – Group I
Environmental Laboratory Certification – RCRA by Analyte and Method – Miscellaneous Groups ..... 30.00 each method – Group II
Environmental Laboratory Certification – RCRA by Analyte and Method – Miscellaneous Groups ..... 35.00 each method – Group III
Environmental Laboratory Certification – RCRA by Analyte and Method – Miscellaneous Groups ..... 40.00 each method – Group IV
Environmental Laboratory Certification – RCRA by Analyte and Method – Radiological each ..... 30.00 method
Environmental Laboratory Certification – RCRA by Analyte and Method – Hazardous Waste ..... 35.00 Characteristics each method
Environmental Laboratory Certification – RCRA by Analyte and Method – Sample Extraction ..... 30.00 Procedures each method – Group I
Environmental Laboratory Certification – RCRA by Analyte and Method – Sample Extraction ..... 25.00 Procedures each method – Group II
Environmental Laboratory Certification – RCRA by Analyte and Method – Sample Extraction ..... 70.00 Procedures each method – Group III
Environmental Laboratory Certification – RCRA by Analyte and Method – Organic Compounds ..... 70.00 each method – Group I
Environmental Laboratory Certification – RCRA by Analyte and Method – Organic Compounds ..... 80.00 each method – Group II
Environmental Laboratory Certification – RCRA by Analyte and Method – Organic Compounds ..... 130.00 each method – Group III
Environmental Laboratory Certification – RCRA by Analyte and Method – Other Programs
Analytes by Method –Travel expenses reimbursement for out of state environmental laboratory certifications (cost recovery)
Environmental Laboratory Certification – RCRA by Analyte and Method – Other Programs 300.00
Analytes by Method – Each individual analyte by each specific method
Environmental Laboratory Certification – RCRA by Analyte and Method – Permits for authorized ..... 20.00 individuals to withdraw blood for the purpose of determining alcohol or drug content – Triennial fee
Environmental Laboratory Certification – Impounded Animals Use Certification – Annual fee 300.00
Microbiology
Immunology – Hepatitis B Surface Antigen(HBsAg) 10.00
Immunology – Hepatitis B Surface Antibody (HBsAb) 15.00
Immunology – Hepatitis C 30.00
Immunology – HIV–1 – Antibody (Note: this test includes a confirmatory Western Blot if needed) .. 10.00
Immunology – HIV–1 – Confirmation (Note: this is for a Western Blot only, a reactive EIA is not ..... 30.00 required)
Immunology – HIV–1 – Orasure (includes confirmatory Western Blot) .. 20.00
Immunology – Hantavirus 40.00
Immunology – Syphilis RPR 5.00
Immunology – Syphilis FTA 7.00
Immunology – Rubella immune status ... 10.00

Immunology – HIV prostitute law – research and testimony, per hour 100.00
Immunology – Chain of Custody sample surcharge 10.00
Immunology – Samples for research 5.00
Virology – Herpes culture 10.00
Virology – Viral typing 135.00
Virology – Verotoxin bioassay 25.00
Virology – Gonorrhea (GenProbe collection kit req.) 4.50
Virology – Chlamydia (GenProbe collection kit req.) – Genprobe 6.00
Virology – GenProbe collection kit 2.50
Virology – Rabies 75.00
Virology – CMV culture 10.00
Virology – Chlamydia unpooled amplified test 15.00
Virology – Chlamydia pooled amplified test 8.50
Virology – Gonorrhea unpooled amplified test 15.00
Virology – Gonorrhea pooled amplified test 8.50
Virology – GC and CT unpooled amplified test 22.50
Bacteriology – Clinical – TB (bone marrow and blood samples only) 10.00
Bacteriology – Clinical – Direct TB test . 300.00
Environmental – Drinking water bacteriology 12.00
Environmental – Swimming pool bacteriology (MF and HPC) 25.00
Environmental – Polluted water bacteriology per parameter 12.00
Environmental – Environmental legionella (swab) 7.00
Environmental – Environmental legionella (water) 30.00
Environmental – Water Microbiology – Drinking water parasitology (Cryptosporidium and Giardia) – Method 1623 analysis 300.00
Environmental – Water Microbiology – Drinking water parasitology (Cryptosporidium and Giardia) – Filter 100.00
Environmental – Water Microbiology – Drinking water parasitology (Cryptosporidium and Giardia) – MPA 225.00
Environmental – Water Microbiology – Drinking water parasitology (Cryptosporidium and Giardia) – Bacillus subtilis 25.00
Environmental – Water Microbiology – Drinking water parasitology (Cryptosporidium and Giardia) – PFGE 30.00
Environmental – Food Microbiology – Total and fecal coliform 20.00
Environmental – Food Microbiology – Plate count, per dilution 15.00
Environmental – Food Microbiology – pH and water activity 15.00
Environmental – Food Microbiology – Clostridium perfringens, Staphylococcus aureus, and Bacillus cereus culture 75.00
Environmental – Food Microbiology – Clostridium perfringens, Staphylococcus aureus, and Bacillus cereus toxin assay 270.00
Environmental – Food Microbiology – Salmonella isolation and speciation ... 205.00
Environmental – Food Microbiology – Shigella isolation and speciation 50.00
Environmental – Food Microbiology – Campylobacter isolation and speciation 65.00
Environmental – Food Microbiology – Listeria isolation and speciation 140.00
Environmental – Food Microbiology – E. coli O157:H7 ..... 90.00
Environmental – Food Microbiology – Botulism toxin assay 125.00
Environmental – Food Microbiology – Environmental swab ... 12.00
Environmental – Food Microbiology – Coliform count 20.00
Environmental – Newborn Screening: – Routine first and follow–up screening .. 35.00
Environmental – Newborn Screening: – Diet Monitoring 7.00

COMMUNITY AND FAMILY HEALTH SERVICES

Director's Office

NOTE: This CFHS fee schedule is based on Federal Poverty Guidelines published in the Federal Register February 15, 2000, Vol. 65 No. 31, pgs. 7,555 – 7,557. When new poverty guidelines are published, the fee scale will be changed as required by federal law, Title V of the Social Security Act, and in accordance with guidelines published by the Department of Health and Human Services, Office of the Secretary.

COMMUNITY AND FAMILY HEALTH SERVICES

SLIDING FEE SCHEDULE - FY 2002

Patient's Financial Responsibility (PFR)	0%	0%	20%	40%	60%	100%
% of Federal Poverty Guide–line	100%	0% to 133%	133% to 150%	150% to 185%	185% to 225%	>225%
FAMILY SIZE		MONTHLY FAMILY INCOME				
1	$695.83	$0.00 – 925.46	$925.47 – 1,043.75	$1,043.76 – 1,287.29	$1,287.30 – 1,565.63	$1,565.64 and up
2	937.50	0.00 – 1,246.88	1,246.89 – 1,406.25	1,406.26 – 1,734.38	1,734.39 – 2,109.38	2,109.39 and up
3	1,179.17	0.00 – 1,568.29	1,568.30 – 1,768.75	1,768.76 – 2,181.46	2,181.47 – 2,653.13	2,653.14 and up
4	1,420.83	0.00 – 1,889.71	1,889.72 – 2,131.25	2,131.26 – 2,628.54	2,628.55 – 3,196.88	3,196.89 and up
5	1,662.50	0.00 – 2,211.13	2,211.14 – 2,493.75	2,493.76 – 3,075.33	3,075.64 – 3,740.63	3,740.64 and up
6	1,904.17	0.00 – 2,532.55	2,532.22 – 2,856.25	2,856.26 – 3,522.71	3,522.72 – 4,284.38	4,284.39 and up
7	2,145.83	0.00 – 2,853.96	2,853.97 – 3,218.75	3,218.76 – 3,969.79	3,969.80 – 4,828.13	4,828.14 and up
8	2,387.50	0.00 – 3,175.38	3,175.93 – 3,581.25	3,581.26 – 4,416.88	4,416.89 – 5,371.88	5,731.89 and up
Each Additional Family Member	241.67	321.42	362.50	447.08	543.75	543.75

Chronic Disease

Cardiovascular Disease
Program – Cholesterol/Hypertension
Control – Blood Pressure 5.00
Standardization protocol
Cardiovascular Disease
Program – Cholesterol/Hypertension
Control – Cholesterol Procedure 5.00
Manual
Cardiovascular Disease
Program – Cholesterol/Hypertension
Control – Relaxation Tape 5.00
Cardiovascular Disease
Program – Cholesterol/Hypertension
Control – Booklets – "So You Have 1.50
High Blood Cholesterol"
Cardiovascular Disease
Program – Cholesterol/Hypertension
Control – Booklets – "Eating to Lower .. 1.50
Your High Blood Cholesterol"
Cardiovascular Disease
Program – Cholesterol/Hypertension
Control – Total Cholesteral/HDL 10.00
Testing
Cardiovascular Disease
Program – Cholesterol/Hypertension
Control – Total Lipid Profile (special .. 15.00
audience only)
(No fees are charges to local health departments. However, private agencies are charged for class materials and instructor services.)
Cardiovascular Disease
Program – Cholesterol/Hypertension
Control – 5-A-Day – Adult White 10.00
T-shirt
Cardiovascular Disease
Program – Cholesterol/Hypertension
Control – 5-A-Day – Children's T-shirt . 8.00
Cardiovascular Disease
Program – Cholesterol/Hypertension
Control – 5-A-Day – Aprons 5.00
Cardiovascular Disease
Program – Cholesterol/Hypertension
Control – 5-A-Day – Food Pyramid 1.50
Poster
Cardiovascular Disease
Program – Cholesterol/Hypertension
Control – 5-A-Day – Puppet Show 5.00
(rental/cleaning fee)
Cardiovascular Disease
Program – Cholesterol/Hypertension
Control – 5-A-Day – Refrigerator ..... .15
Magnets (food pyramid)
Cardiovascular Disease
Program – Cholesterol/Hypertension
Control – 5-A-Day – Tool Kit 10.00
Cardiovascular Disease
Program – Cholesterol/Hypertension
Control – 5-A-Day – Costumes 5.00
(rental/cleaning fee)
Children with Special Health Care Needs
Note: The schedule of charges for Children with Special Health Care Needs services provided by the Division of Community and Family Health Services represents commonly performed procedures by CPT code and is consistent with charges by the private sector. The list is not intended to be comprehensive as the Division is mandated to assign a charge for all services performed and there is potentially an unlimited number of procedures that could be provided. If unlisted services are performed, charges consistent with the private sector will be assigned. For FY 2001, the Utah Department of Health, Division of Health Care Financing (Medicaid) is not increasing rates based on the projected Medical inflation rate for physician services. Accordingly, CFHS proposed rates are increased by 0%.
Patient Care – Office Visit,
New Patient – 99201
Problem focused, straightforward 41.00
Patient Care – Office Visit,
New Patient – 99202 Expanded
problem, straightforward 52.00
Patient Care – Office Visit,
New Patient – 99203 Detailed,
low complexity 77.00
Patient Care – Office Visit,
New Patient – 99204 Compre-
hensive, Moderate complexity 103.00
Patient Care – Office Visit,
New Patient – 99205 Compre-
hensive, high complexity 120.00
Patient Care – Office Visit, Established
Patient – 99211 Minimal Service
or non-MD 14.00
Patient Care – Office Visit, Established
Patient – 99212 Problem
focused, straightforward 37.00
Patient Care – Office Visit, Established
Patient – 99213 Expanded
problem, low complexity 51.00
Patient Care – Office Visit, Established
Patient – 99214 Detailed, moderate
complexity 62.00
Patient Care – Office Visit, Established
Patient – 99215 Comprehensive,
high complexity 94.00
Patient Care – Office Visit, Established
Patient – 99241 Consult 63.00
Patient Care – Office Visit, Established
Patient – 99242 Consult Exp. 77.00
Patient Care – Office Visit, Established
Patient – 99244 Consult
Comprehensive 124.00
Patient Care – Office Visit, Established
Patient – 99361 Med Conference
by Phys/Int Dis Team 63.00
Patient Care – Psychological
– 96100 Psychological Testing 130.00
Patient Care – Psychological
– 96110 Developmental Test 64.00
Patient Care – Psychological –
90801 Diagnostic Exam, per hour 130.00
Patient Care – Psychological
– 90801-52 Diagnostic Exam,
per hour, Reduced Procedures 63.00
Patient Care – Psychological –
90841 Individual Psychotherapy 66.00

Patient Care – Psychological –
90846 Family Med Psychotherapy,
w/o 30 minutes 60.00
Patient Care – Psychological –
90847 Family Med Psychotherapy,
conjoint 30 minutes 130.00
Patient Care – Psychological
– 90882 Environmental
Intervention w/Agencies
Employers, etc. 39.00
Patient Care – Psychological –
90882–52 Environmental
Intervention, Reduced Procedures 19.00
Patient Care – Physical and
Occupational Therapy – 97110
Therapeutic Procedure, 15 minutes 24.00
Patient Care – Physical and
Occupational Therapy – 97116
Gait training 24.00
Patient Care – Physical and
Occupational Therapy – 97530
Therapuetic activities to improve 41.00
functional performance
Patient Care – Physical and
Occupational Therapy – 97703
Check Out, Orthotic/Prosthetic Use 24.00
Patient Care – Physical and
Occupational Therapy – 97001
Physical Therapy Evaluation 36.00
Patient Care – Physical and
Occupational Therapy – 97002
Physical Therapy Re–evaluation 36.00
Patient Care – Physical and
Occupational Therapy – 97003
Occupational Therapy Evaluation 37.00
Patient Care – Physical and
Occupational Therapy – 97004
Occupational Therapy Re–evaluation . . 37.00
Patient Care – Speech – 92506
Speech Basic Assessment 75.00
Patient Care – Speech – 92506–22
Speech Assessment, unusua
procedures 108.00
Patient Care – Speech –
92506–52 Speech Assessment,
reduced procedures 39.00
Patient Care – Ophthalmologic,
New Patient – 92002
Ophthalmologic, Intermediate 55.00
Patient Care – Ophthalmologic,
New Patient – 92004
Ophthalmologic, Comprehensive 74.00
Patient Care – Ophthalmologic,
Established Patient – 92012
Ophthalmologic, Intermediate 50.00
Patient Care – Audiology – 92551
Audiometry, Pure Tone Screen 30.00
Patient Care – Audiology – 92552
Audiometry, Pure Tone Threshold 32.00
Patient Care – Audiology – 92553
Audiometry, Air and Bone 40.00
Patient Care – Audiology –
92557 Basic Comprehension,
Audiometry 72.00
Patient Care – Audiology – 92567
Tympanometry 16.00
Patient Care – Audiology – 92582
Conditioning Play Audiometry 72.00
Patient Care – Audiology – 92589
Central Auditory Function 78.00
Patient Care – Audiology – 92591
Hearing Aid Exam Binaural 98.00
Patient Care – Audiology – 92587
Evaluation of Alternate Communication
Device 38.00
Patient Care – Audiology – 92596
Ear Mold 76.00
Patient Care – Audiology –
92579 Visual Reinforcement Audio 31.00
Patient Care – Audiology – 92593
Hearing Aid Check, Binaural 88.00
The Division assigns a charge to all services performed regardless of the client's or third party insurer's financial responsibility or the likelihood of receiving payment for the services. Projected numbers of units of services are based on past experiences but are subject to significant variation determined by the actual needs of patients and changes in medical practices. Hence, it is not possible to calculate the change in revenue resulting from a change in the charge for a given service.

DEPARTMENT OF NATURAL RESOURCES
OIL, GAS AND MINING

In accordance with Section 63–34–5, the following fees are approved for the services of the Division of Oil, Gas and Mining for FY 2002.
Copy Fees
Mine Permit application 5.00
Bid Specifications 20.00
Telefax of material (per page) 25
Photocopy – Staff Copy (per page) 25
Photocopy – Self Copy (per page) 10
Prints from microfilm – Staff Copy
(per paper–foot) 55
Prints from microfilm – Self Copy
(per paper–foot) 40
Print of microfiche – Staff Copy (per page) 25
Print of microfiche – Self Copy (per page) 10
Well logs (from originals) –
Staff Copy (per paper–foot) 75
Well logs (from originals) –
Self Copy (per paper–foot) 50
Print of computer screen (per screen) 50
Fees for Compiling or Photocopying Records:
Actual time spent compiling or copying:
Current personnel rate
Data entry or records segregation:
Current personnel rate
Fees for Third Party Services:
Copying maps or charts: Actual Cost
Copying odd sized documents: Actual Cost
Fees for Specific Reports:
Monthly Production Report
Picked up 17.50
Mailed 20.00
Annual Subscription 210.00
Monthly Notice of Intent to Drill/ Well
Completion Report

Picked up ..... .50
Mailed 1.00
Annual Subscription 6.00
Mailed Notice of Board Hearings List
Annual) 20.00
Current Administrative Rules, -
Oil and Gas, Coal, Non-Coal,
Abandon Mine Lease (first copy is free)
Picked up 10.00
Mailed 13.00
Custom-tailored data reports
Diskettes/tapes: Computer time and current personnel rate
Custom Maps: Current personnel rate and cost per linear foot
Minimum Charges
Color Plot 25.00
Laser Print 5.00
Notice of Intention to Conduct:
Exploration Activities 100.00
Small Mining Operation (less than 5 acres) 100.00
Mining Operations (5 to 50 acres) 350.00
Large Mining Operations (over 50 acres) .. 750.00

WILDLIFE RESOURCES

In accordance with Section 63-34-5, the following fees are approved for the services of the Division of Wildlife Resources for FY 2002
Fishing Licenses:
Resident Fishing (Disabled) 0.00
Resident Fishing (Mentally Retarded) 0.00
Two-Pole Fishing License 14.00
Set Line 14.00
Game Licenses:
Resident Dedicated Hunter, 2 Yr. (14-17) .. 70.00
Resident Dedicated Hunter, 3 Yr. (14-17) . 105.00
Resident Dedicated Hunter, 2 Yr. (18+) ... 120.00
Resident Dedicated Hunter, 3 Yr. (18+) ... 180.00
Resident Dedicated Hunter, 2 Yr. (18+) ... 120.00
Resident Dedicated Hunter, 3 Yr. (18+) ... 180.00
Lifetime License Dedicated Hunter
2 Yr. (14-17) 25.00
Lifetime License Dedicated Hunter
3 Yr. (14-17) 37.50
Lifetime License Dedicated Hunter
2 Yr. (18+) 50.00
Lifetime License Dedicated Hunter
3 Yr. (18+) 75.00
Nonresident Dedicated Hunter,
2 Yr. (14-17) 416.00
Nonresident Dedicated Hunter,
3 Yr. (14-17) 634.00
Nonresident Dedicated Hunter,
2 Yr. (18+) 566.00
Nonresident Dedicated Hunter,
3 Yr. (18+) 867.00
Heritage Certificate:
Juvenile (Under 12) 10.00
Adult (12+) 20.00
General Season Permits:
Resident General Season Deer 35.00
Resident Anterless Deer 20.00
Resident Two Doe Antlerless 35.00
Resident Depredation 20.00
Nonresident General Season Deer 208.00
Nonresident Antlerless Deer 83.00
Nonresident Two Doe Antlerless 161.00
Landowners Depredation / Mitigation:
Deer 25.00
Elk 60.00
Pronghorn 25.00
Stamps:
Wyoming Flaming Gorge 10.00
Arizona Lake Powell 8.00
Nonresident 1-Day Fishing 6.00
Limited Entry Game Permits:
Deer:
Resident Limited Entry 48.00
Resident High Country Buck 43.00
Resident Premium Limited Entry 133.00
Resident CWMU Buck 35.00
Resident CWMU Limited Entry 48.00
Resident CWMU Premium Limited Entry . 133.00
Resident CWMU Anterless 20.00
Resident CWMU Two Doe Antlerless 35.00
Nonresident Limited Entry 408.00
Nonresident High Country Buck 258.00
Nonresident Premium Limited Entry 508.00
Nonresident CWMU Buck 208.00
Nonresident CWMU Limited Entry 408.00
Nonresident CWMU Premium
Limited Entry 508.00
Nonresident CWMU Anterless 83.00
Nonresident CWMU Two Doe Antlerless .. 161.00
Elk:
Resident Archery 60.00
Resident General Bull 60.00
Resident Limited Entry Bull 180.00
Resident Antlerless 60.00
Resident Control 20.00
Resident Depredation 60.00
Resident Muzzleloader Hunter Choice 60.00
Resident Limited Entry
Archery/Muzzleloader Bull
Auxiliary Permit 20.00
Resident CWMU Any Bull 180.00
Resident CWMU Spike Bull 60.00
Resident CWMU Anterless 60.00
Nonresident Archery 333.00
Nonresident General Bull 333.00
Nonresident Limited Entry Bull 483.00
Nonresident Antlerless 208.00
Nonresident Control 83.00
Nonresident Muzzleloader Hunter Choice . 333.00
Nonresident Archery/Muzzleloader
Bull Auxiliary Permit 20.00
Nonresident CWMU Any Bull 483.00
Nonresident CWMU Spike Bull 333.00
Nonresident CWMU Anterless 208.00
Pronghorn:
Resident Limited Buck 50.00
Resident Limited Doe 20.00
Resident CWMU Buck 50.00
Resident CWMU Doe 20.00
Resident Depredation 15.00
Resident Archery Buck 50.00
Nonresident Limited Buck 233.00
Nonresident Limited Doe 135.00
Nonresident Archery Buck 233.00
Nonresident CWMU Buck 233.00
Nonresident CWMU Doe 135.00
Moose:
Resident Bull 308.00
Resident Anterless 208.00
Resident CWMU Bull 308.00
Resident CWMU Anterless 208.00
Nonresident Bull 1,008.00

Nonresident Anterless 708.00
Nonresident CWMU Bull 1,008.00
Nonresident CWMU Anterless 708.00
Bison:
Resident 408.00
Resident Antelope Island 1,105.00
Nonresident 1,008.00
Nonresident Antelope Island 2,605.00
Bighorn Sheep:
Resident Desert 508.00
Resident Rocky Mountain 508.00
Nonresident Desert 1,008.00
Nonresident Rocky Mountain 1,008.00
Goats:
Resident Rocky Mountain 408.00
Nonresident Rocky Mountain 1,008.00
Cougar / Bear:
Resident Cougar 58.00
Resident Bear 83.00
Resident Bear Archery 83.00
Resident Cougar Pursuit 30.00
Resident Bear Pursuit 30.00
Nonresident Cougar Pursuit 30.00
Nonresident Bear Pursuit 30.00
Cougar or Bear Damage 30.00
Nonresident Cougar 258.00
Nonresident Bear 308.00
Nonresident Bear Archery 308.00
Muskrats:
Over 1000 anticipated 155.00
500–1000 anticipated 105.00
100–500 anticipated 55.00
Less than 100 anticipated 30.00
Wild Turkey:
Resident Limited Entry 30.00
Nonresident Limited Entry 55.00
Sportsman Permits:
Resident Bull Moose 308.00
Resident Hunter's Choice Bison 408.00
Resident Desert Bighorn Ram 508.00
Resident Bull Elk 180.00
Resident Buck Deer 133.00
Resident Buck Pronghorn 50.00
Other Fees:
Falconry Permits:
Resident Capture – Apprentice Class 30.00
Resident Capture – General Class 50.00
Resident Capture – Master Class 50.00
Nonresident Capture – General Class 115.00
Nonresident Capture – Master Class 115.00
Handling Fees, includes licenses and CORs (handling fees may be assessed exchanges) 5.00
Bird Bands ..... .25
Furbearer/ Trap Registration:
Resident Bobcat Temporary Possession 5.00
Nonresident Bobcat Temporary Possession .. 5.00
Resident Trap Registration 5.00
Nonresident Trap Registration 5.00
Duplicate Licenses, Permits and Tags:
Duplicates are one-half the original price of the license or 5.00 whichever is less. No duplicate b obcat temporary possession tags are issued.
Hunter education cards 10.00
Furharvester Education cards 10.00
Wood Products on Division of Wildlife Resources Lands:
Firewood (2 Cords) 10.00
Christmas Tree 5.00
Ornamental (Maximum 60.00 per permit)
Conifers (per tree) 5.00
Deciduous (per tree) 3.00
Posts (Maximum 50 per permit) – each ..... .40
Hunter Education Fees:
Hunter Education Training 6.00
Hunter Education Home Study 6.00
Furharvester Education Training 6.00
Long Distance Verification 2.00
Becoming an Outdoors Woman (Special Needs Rates Available) 150.00
Hunter Education Range Fees:
Adult 2.00
Youth (15 and Under) 1.00
Spotting Scope Rental 1.00
Sandbag Rental 1.00
Sportsmen Club Meetings 20.00
Reproduction of Records:
Self Service (per copy) ..... .10
Staff Service (per copy) ..... .25
Geographic Information System:
Personnel Time (per hour) 35.00
Processing (per hour) 40.00
Data Processing Time:
Programming (per hour) 40.00
Production (per hour) 20.00
Application Fee for License Agency: 20.00
Other Services to be reimbursed at actual time and materials
Postage: Current Rate
Return check charge 20.00
Easement and Lease Schedule:
Application fees for leases (nonrefundable) 50.00
Application fees for easements (nonrefundable):
Rights-of-way 50.00
Rights-of-entry 50.00
Amendment to lease, easement, right-of-way, right-of-entry 25.00
Certified document 5.00
Research on leases or title records (per hour) 50.00
Rights-of-way fees:
Width of Easement:
0' – 30' Initial 12.00
0' – 30' Renewal 8.00
31' – 60' Initial 18.00
31' – 60' Renewal 12.00
61' – 100' Initial 24.00
61' – 100' Renewal 16.00
101' – 200' Initial 30.00
101' – 200' Renewal 20.00
201' – 300' Initial 40.00
201' – 300' Renewal 28.00
> 300' Initial 50.00
> 300' Renewal 34.00
Outside Diameter of Pipe:
<2.0" initial 6.00
<2.0" Renewel 4.00
2.0" – 13" Initial 12.00
2.0" – 13" Renewal 8.00
13.1" – 25" Initial 18.00
13.1" – 25" Renewal 12.00
25.1" – 37" Initial 24.00
25.1" – 37" Renewal 16.00
> 37" Initial 48.00

> 37" Renewal 32.00
Roads, canals (permanent loss of habitat plus high maintenance disturbance):
Width of Easement:
1' - 33' New Construction 18.00
1' - 33' Existing 12.00
33.1' - 66' New Construction 24.00
33.1' - 66' Existing 18.00
Leases
(Resulting in a permanent loss of a block of habitat, e.g. water tanks, communication towers, reservoirs): Fee will be developed through customary practices on a case-by-case basis plus three-to-one mitigation for loss of habitat plus assessment and value of lost land.

Rights-of-Entry
Fee will be developed through customary practices on a case-by-case basis with a minimum of 500.00 plus on-site mitigation for habitat disturbance. Customary practices will follow formulas developed by School and Institutional Trust Lands Administration.
Certificates of Registration:
Initial Fee - Personal Use 50.00
Initial Fee - Commercial 100.00
Amendment 10.00
Certificates of Registration Renewal 20.00
Late fee for failure to renew Certificates of Registration when due 10.00
Required Inspections 25.00
Failure to submit required Annual Activity Report when due 10.00
Request for species reclassification 200.00
Request for variance 200.00
Commercial Fishing and Dealing Commercially in Aquatic Wildlife:
Dealer in Live / Dead Bait 75.00
Helper Cards - Live/Dead Bait 15.00
Commercial Seiner 1,000.00
Helper Cards - Commercial Seiner 100.00
Commercial Brine Shrimper 10,000.00
Helper Cards Commercial Brine Shrimper 1,500.00
Upland Game Cooperative Wildlife Management Units: .....
New Application 5.00
Renewal Application 5.00
Big Game Cooperative Wildlife Management Units:
New Application 150.00
Renewal Application 150.00
Falconry Certificates of Registration:
One year 15.00
Two year 30.00
Three year 45.00
Commercial Hunting Areas:
New Application 150.00
Renewal Application 150.00

UTAH GEOLOGICAL SURVEY

In accordance with UCA 63-34-5, the following fees are approved for the services of the Utah Geological Survey for FY 2002.
Editorial:
Color Plots, Set-Up Fee 3.00
Per Square Foot 3.00
Color Plots - Special Paper Per Square Foot 4.50
Color Scanning, Per Scan 9.00
Bluelines, Per Square Foot ..... .25
File Conversion, Per Hour 36.00
Minimum Fee 5.00
Clear/Matte Mylars from Negatives
Set-Up Fee 20.00
Per Square Foot 6.00
Clear/Matte Mylars (Division Negatives)
Set-Up Fee 20.00
Per Square Foot 11.00
Negatives
Set-Up Fee 20.00
Per Square Foot 9.00
Professional Services, Per Hour 36.00
Sample Library:
On-Site Examination
Cuttings, Per Box 2.00
Core, Per Box 3.00
Coal, Per Box 4.00
Oil/Water (Brine), Per Bottle 3.00
Core Layout Table, Per Table 15.00
Binocular/Petrographic Microscopes per day 15.00
Sat/Sun/Holiday Surcharge: 60 percent
Off-Site Examination
Cuttings, Per Box (Plus Shipping) 4.00
Core, Per Box (Plus Shipping) 6.00
Coal, Per Box (Plus Shipping) 6.00
Oil, Per Bottle (Plus Shipping & Packaging) 7.00
Oil, Hazardous Material Packing 12.00
Oil, Hazardous Material Shipping 4.00
Core Plug, Per Plug 2.00
Core Slabbing
1.8" Diameter or Smaller, Per Foot 8.00
1.8"-3.5" Diameter, Per Foot 10.00
Larger Diameter: Negotiated
Core Photographing:
Box/Closeup, Per Print (8x10 color) 20.00
Slides, Per Slide 10.00
Coal Petrography, Per Hour 36.00
Copying of Data, Per Page ..... .10
Searches and Research, Per Hour 25.00
General Building and Lab Use
Per Day 35.00
Per Week 225.00
Per Month 900.00
Applied:
School Site Reviews
Review Geologic Hazards Report for New School Sites (plus travel and $36 per hour) 450.00
Preliminary Screening of a Proposed School Site
One School 500.00
Multiple in same city (plus travel and $36 per hour) 700.00
Paleontology:
File Search Requests
Minimum Charge (up to 15 minutes) 30.00
Hourly Rate (>15 minutes) 60.00
Miscellaneous:
Copies, Self-Serve, Per Copy ..... .10
Copies, Staff, Per Copy ..... .25
Large Format Copies, Per Copy 4.00
Research Fee, Per Hour 36.00

UGS Database Searches, Per Hour 36.00
Minimum Fee 5.00
Media Charges
Compact Disk (650 MB), Per CD 3.00
Zip Disk
100 MB, Per Disk 15.00
250 MB, Per Disk 25.00
Floppy Disk (1.44 MB), Per Disk 2.00
Paper Printout, Per Page ..... .10
Custom Map Plots, Minimum Fee 15.00
Bookstore, Per Plot 5.00

WATER RIGHTS

In accordance with Section 63-34-5, the following fees are approved for the services of the Division of Water Rights for FY 2002.
1. Applications
For examining and filing applications and temporary applications to appropriate water, applications for temporary and permanent change, applications for exchange, applications for an extension of time in which to resume use of water, applications to appropriate or make permanent or temporary change for use outside the state, claims to water based on diligence, a groundwater recovery permit, and for re-publication of notice to water users after amendment of application, the State Engineer shall collect fees based upon the following schedule:
a. For a quantity of water of 0.1 second-foot or less 75.00
b. For a quantity of water over 0.1 second-foot but not exceeding 0.5 second-foot 100.00
c. For a quantity of water over 0.5 second-foot but not exceeding 1.0 second-foot 125.00
d. For a quantity of water over 1.0 second-foot but not exceeding 2.0 second-foot 150.00
e. For a quantity of water over 2.0 second-foot but not exceeding 3.0 second-foot 175.00
f. For a quantity of water over 3.0 second-foot but not exceeding 4.0 second-foot 200.00
g. For each additional second-foot, or fraction thereof, up to but not exceeding 23.0 second-feet 15.00
h. For applications in excess of 23.0 second-foot 500.00
i. For a volume of water of 20 acre-feet or less 75.00
j. For a volume of water over 20 acre-feet, but not exceeding 100 acre-feet 100.00
k. For a volume of water over 100 acre-feet, but not exceeding 500 acre-feet 125.00
l. For a volume of water over 500 acre-feet, but not exceeding 1,000 acre-feet 150.00
m. For a volume of water over 1,000 acre-feet, but not exceeding 1,500 acre-feet 175.00
n. For a volume of water over 1,500 acre-feet, but not exceeding 2,000 acre-feet 200.00
o. For each additional 500 acre-feet, or part thereof, but not exceeding 11,500 acre-feet 15.00
p. For applications in excess of 11,500 acre-feet 500.00
q. For any application that proposes to appropriate by both direct flow and storage, there shall be charged the fee for quantity or volume, whichever is greater, but not both.
2. For a well driller permit
Initial 50.00
Renewal (annual) 25.00
Late renewal (annual) 50.00
3. For filing a request for an extension of time in which to submit proof of appropriation 14 years or ..... 75.00 more after the date of approva of the application.
4. For filing a request for an extension of time in which to submit proof of appropriation less than ..... 25.00 14 years after the date of approval of the application.
5. For each certification of copies 4.00
6. A reasonable charge for preparing copies of any and all documents
7. Application to segregate a water right ... 25.00
8. Application to inject water 2,500.00
9. Report of Water Right Conveyance 25.00
10. Diligence claim investigation fee 200.00
11. Drill Rig Operator Registration
Initial 50.00
Renewal (annual) 25.00
Late Renewal (annual) 50.00

DEPARTMENT OF NATURAL RESOURCES INTERNAL SERVICE FUND

In accordance with Section 63-38-3.5, the following fees are approved for the services of the Department of Natural Resources - Internal Service Fund for FY 2002.
ISF - DNR Warehouse
Mark-up of goods: 19%
Warehouse space, per square foot, per year 4.38
Core Sample Warehouse, per year ... 40,123.00
ISF - DNR Motorpool
Motor Pool Rates - Monthly rates at 100.00 plus mileage as follows:
Sedan ..... .19
Station Wagon ..... .19
Minivan ..... .19
1/2 Ton, 2 wheel drive PU ..... .19
1/2 Ton, 4 wheel drive PU ..... .26
1/2 Ton, 4 wheel drive extended cab PU .... .30
3/4 Ton, 2 wheel drive PU ..... .21
3/4 Ton, 4 wheel drive PU ..... .28
3/4 Ton, 4 wheel drive extended cab PU .... .33
1 Ton, 2 wheel drive PU ..... .32
1 Ton, 4 wheel drive PU ..... .32
1 Ton, 4 wheel drive extended cab PU ..... .36
Sport Utility ..... .26

Large Utility ..... .28
Large Van ..... .26
Fire Truck ..... .42
1 1/2 Ton, 2 Ton, 2 1/2 Ton, 1 Axle, Duals, etc. ..... .43
5 Ton, 10 Ton Tractor, etc. ..... .46
ISF - DNR Data Processing
Hourly Rate 25.00

DEPARTMENT OF AGRICULTURE AND FOOD ADMINISTRATION

In accordance with Section 4-2-2(2) the following fees are approved for the services of the Department of Agriculture . and Food for FY 2002.

General Administration
Produce Dealers:
Produce Dealer 25.00
Dealer's Agent 10.00
Broker/Agent 25.00
Produce Broker 25.00
Livestock Dealer 25.00
Livestock Dealer/Agent 10.00
Livestock Auctions:
Livestock Auction Market 50.00
Auction Weigh Person 10.00
Registered Farms Recording fee 10.00
Citations, Maximum per violation 500.00
All Agricultural Divisions:
Administrative costs for making copies of files, per hour 10.00
Administrative costs for making copies of files, per copy ..... .07
Late Fee 25.00
Returned check fee 15.00
Mileage: State Rate
Meat Inspection
Inspection Service Fee 39.00
Meat Packing Plant 50.00
Custom Exempt 50.00
Chemistry Laboratory
Feed and Meat:
Moisture, 1 sample 15.00
Moisture, 2-5 samples per sample 10.00
Moisture, over 6 samples per sample 5.00
Fat, 1 sample 30.00
Fat, 2-5 samples, per sample 25.00
Fat, over 6 samples, per sample 20.00
Fiber, 1 sample 45.00
Fiber, 2-5 samples, per sample 40.00
Fiber, over 6 samples, per sample 35.00
Protein, 1 sample 25.00
Protein 2-5 samples per sample 20.00
Protein, over 6 samples, per sample 15.00
NPN, 1 sample 20.00
NPN, 2-5 samples, per sample 15.00
NPN, over 6 samples, per sample 10.00
Ash, 1 sample 15.00
Ash, 2-5 samples, per sample 10.00
Ash, over 6 samples, per sample 5.00
Fertilizer:
Nitrogen, 1 sample 25.00
Nitrogen, 2-5 samples, per sample 20.00
Nitrogen, over 6 samples, per sample 15.00
P2O5, 1 sample 30.00
P2O5, 2-5 samples, per sample 25.00
P2O5, over 6 samples, per sample 20.00
K2O, 1 sample 25.00
K2O, 2-5 samples, per sample 20.00
K2O, over 6 samples, per sample 15.00
Trace Elements (Atomic Absorption):
Iron 20.00
Copper 20.00
Zinc 20.00
Manganese 20.00
Molybdenum 40.00
Trace Elements (In Water):
Iron 10.00
Copper 10.00
Zinc 10.00
Manganese 10.00
Molybdenum 10.00
Vitamins:
Vitamin A, 1 sample 60.00
Vitamin A, 2-5 samples, per sample 55.00
Vitamin A, over 6 samples, per sample 50.00
Vitamin B, 1 sample 60.00
Vitamin B, 2-5 samples, per sample 55.00
Vitamin B, over 6 samples, per sample 50.00
Vitamin B2, 1 sample 60.00
Vitamin B2, 2-5 samples, per sample 55.00
Vitamin B2, over 6 samples per sample 50.00
Vitamin C, 1 sample 60.00
Vitamin C, 2-5 samples, per sample 55.00
Vitamin C, over 6 samples, per sample 50.00
Minerals:
Calcium, 1 sample 25.00
Calcium, 2-5 samples, per sample 20.00
Calcium, over 6 samples, per sample 15.00
Sodium Cloride, 1 sample 25.00
Sodium Cloride, 2-5 samples, per sample 20.00
Sodium Cloride, over 6 samples, per sample 15.00
Iodine, 1 sample 25.00
Iodine, 2-5 samples, per sample 20.00
Iodine, over 6 samples, per sample 15.00
Drugs and Antibiotics:
Sulfamethazine Screen, 1 sample 25.00
Sulfamethazine Screen, 2-5 samples, per sample 20.00
Sulfamethazine Screen, over 6 samples, per sample 15.00
Aflatoxin-Elisamethod, 1 sample 25.00
Aflatoxin-Elisamethod, 2-5 samples, per sample 20.00
Aflatoxin-Elisamethod, over 6 samples, per sample 15.00
Pesticides/Herbicides:
Chlorinated Hydrocarbon Screen, 1 sample 70.00
Chlorinated Hydrocarbon Screen, 2-5 samples, per sample 65.00
Chlorinated Hydrocarbon Screen, over 6 samples, per sample 60.00
Organo Phosphate Screen, 1 sample 70.00
Organo Phosphate Screen, 2-5 samples, per sample 65.00
Organo Phosphate Screen, over 6 samples, per sample 60.00
Chlorophenoxy Herbicide Screen - Reports for the following components:
2-4D, 1 sample 150.00
2-4D, 2-5 samples, per sample 140.00
2-4D, over 6 samples, per sample 130.00

2,4,5-T Screen, 1 sample 150.00
2,4,5-T, 2-5 samples, per sample 140.00
2,4,5-T, over 6 samples, per sample 130.00
Silvex, 1 sample 150.00
Silvex, 2-5 samples, per sample 140.00
Silvex, over 6 samples, per sample 130.00
Individual components from screens:
1 sample 75.00
2-5 samples, per sample 70.00
Over 6 samples per sample 65.00
Certification Fee - Milk Laboratory Evaluation Program
Basic Lab Fee 50.00
Number of Certified Analyst (3 x $10.00) . 30.00
Number of Approved Test (3 x $10.00) ... 30.00
Total Yearly Assessed Fee 90.00
Standard Plate count 5.00
Coliform Count 5.00
Test for Inhibitory Substances (antibiotics) 5.00
Phosphatase Test 15.00
WMT Screening Test 5.00
DMSCC (Confirmation) 10.00
DSCC (Foss Instrumentation) 5.00
Coliform Confirmation 5.00
Container Rinse Test 10.00
H2O Coli Total Count (MF Filtration) 5.00
H2O Coli Confirmation Test 5.00
Butterfat % (Babcock Method) 10.00
Added H2O in Raw Milk (Cryoscope Instr) 5.00
Reactivated Phosphatase Confirmation .. 15.00
Antibiotic Confirmation Tests 10.00
All Other Services, per hour 30.00
Animal Health
Inspection Service Fee 39.00
Commercial Aquaculture Facility 150.00
Commercial Fee Fishing Facility 30.00
Citation, per violation 100.00
Citation, per head 2.00
If not paid within 15 days 2 times citation fee ..
If not paid within 30 days 4 times citation fee ..
Feed Garbage to Swine 25.00
Hatchery .....
Hatchery Operation (Poultry) 25.00
Health Certificate Book 8.00
Coggins testing 5.00
Service fee for Veterinarians (dog food and brine shrimp, misc.), per day 250.00
Service fee for Veterinarians (dog food and brine shrimp, misc.), per mile: State Rate
Write International CVI 5.00
Agriculture Inspection
Shipping Point - Fruit
Packages, 19.lb. or less, per package ..... .02
20 to 29 lb. package, per package ..... .025
over 29 lb. package, per package ..... .03
Bulk load, per cwt. ..... .045
Shipping Point - Vegetables
Potatoes, per cwt. ..... .055
Onions, per cwt. ..... .06
Cucurbita family includes: watermelon, muskmelon, squash (summer, fall, and winter), pumpkin, ... .045
gourd and others per cwt
Shipping Point - Other vegetables
Less than 60 lb. package, per package .... .035
Over 60 lb. package, per package ..... .045
Phytosanitary Inspection, per inspection . 25.00
With grade certification 15.00
Minimum charge per certificate for one commodity (except regular rate at continuous grading 23.00
facilities)
Minimum charge per commodity for mixed loads (not to exceed $45.00 per mixed load) 23.00
Hourly charge for inspection of raw products at processing plants 23.00
Hourly charge for inspectors' time more than 40 hours per week (overtime), plus regular fees 34.50
Hourly charge for major holidays and Sundays (four-hour minimum), plus regular fees 34.50
Holidays include: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Christmas Day
All inspections shall include mileage which will be charged according to the current mileage rate of the State of Utah
Export Compliance Agreements 50.00
Nursery 50.00
Nursery Agent 25.00
Nursery Outlet 50.00
Feed
Commercial Feed 25.00
Custom Formula Permit 50.00
Pesticide
Commercial Applicator Certification
Triennial (3 year) Certification and License 45.00
Annual License 15.00
Replacement of lost or stolen certificate/license 15.00
Failed examinations may be retaken two more times at no charge
Additional re-testing (two more times). .. 15.00
Triennial (3 year) examination and educational materials fee 20.00
Product Registration 60.00
Dealer license
Annual 15.00
Triennial 45.00
Fertilizer
Blenders License 50.00
Annual Assessment, per ton ..... .15
Minimum annual assessment 20.00
Fertilizer Registration 25.00
Beekeepers
Insect Identification Fee 10.00
License 10.00
Inspection fee, per hour 30.00
Salvage Wax Registration fee 10.00
Control Atmosphere 10.00
Seed Purity
Flowers 10.00
Grains 6.00
Grasses 15.00
Legumes 6.00
Trees and Shrubs 10.00
Vegetables 6.00
Seed Germination

Flowers 10.00
Grains 6.00
Grasses 10.00
Legumes 6.00
Trees and Shrubs 10.00
Vegetables 6.00
Seed Tetrazolium Test
Flowers 20.00
Grains 12.00
Grasses 20.00
Legumes 15.00
Trees and Shrubs 20.00
Vegetables 12.00
Embryo Analysis (Loose Smut Test) 11.00
Cutting Test 8.00
Mill Check: Hourly Charge
Examination of extra quantity for other crop or weed seed: Hourly Charge
Examination for noxious weeds only: Hourly Charge
Identification: No Charge
Hourly Charges 23.00
Additional Copies of Analysis Reports 1.00
Hourly charge for any other inspection service performed on an hourly basis (one hour minimum) 23.00
Mixtures will be charged based on the sum for each individual kind in excess of 5 percent.
Samples which require excessive time, screenings, low grade, dirty, or unusually difficult sample will be charged at the hourly rate.
Charges for tests or kinds of seeds not listed will be determined by the Seed Laboratory.
Hourly charges may be made on seed treated with "Highly Toxic Substances" if special handling is necessary for the Analyst's safety.

Discount germination is a non-priority service intended for carry-over seed which is ideal for checking inventories from May through August. The discount service is available during the rest of the year, but delays in testing may result due to high test volume of priority samples.
Ten or more samples receive a 50 percent discount off normal germination fees.
Emergency service, per sample, single component only 42.00
Hay and Straw Weed Free Certification
Bulk loads of hay up to 10 loads 25.00
Hourly rate 23.00
If time involved is 1 hr or less 23.00
Charge for each hay tag ..... .10
Citations, maximum per violation 500.00
Organic Certification
Annual registration of producers, handlers, processors or combination .. 100.00
Hourly fee for inspection 23.00
Hourly charge for inspectors' time more than 40 hours per week (overtime) plus regular fees 34.50
Hourly charge for major holidays and Sundays (four hour minimum) plus regular fees 34.50
Gross Sales Fees (10.00 minimum) based on previous calendar year according to the following schedule:
$0 to $5,000: Exempt
$5,001 to $10,000 ..... 50.00
$10,001 to $15,000 ..... 75.00
$15,001 to $20,000 ..... 100.00
$20,001 to $25,000 ..... 125.00
$25,001 to $30,000 ..... 150.00
$30,001 to $35,000 ..... 175.00
$35,001 to $50,000 ..... 250.00
$50,001 to $75,000 ..... 375.00
$75,001 to $100,000 ..... 500.00
$100,001 to $150,000 ..... 690.00
$150,001 to $280,000 ..... 1,050.00
$280,001 to $375,000 ..... 1,250.00
$375,001 to $500,000 ..... 1,460.00
$500,001 and up 2,000.00
Regulatory Services
Bedding/Upholstered Furniture
Manufacturers of bedding and/or upholstered furniture 55.00
Wholesale Dealer 55.00
Supply Dealer 55.00
Manufacturers of Quilted Clothing 55.00
Upholsterer with employees 40.00
Upholsterer without employees 25.00
Dairy
Test milk for payment 25.00
Operate milk manufacturing plant 50.00
Make butter 25.00
Haul farm bulk milk 25.00
Make cheese 25.00
Operate a pasteurizer 25.00
Operate a milk processing plant 50.00
Special Inspection Fees
Food and Dairy Inspection fee, per hour .. 26.50
Food and Dairy Inspection fee, overtime rate 34.40
Certificate of Inspection 10.00
Citations, maximum per violation 500.00
Weights and Measures:
Weighing and measuring devices/individual servicemen 10.00
Weighing and measuring devices/agency . 50.00
Special Scale Inspections
Large Capacity Truck
Per man-hour 20.00
Per mile 1.50
Per hour equipment use 25.00
Pickup Truck
Per man-hour 20.00
Per mile ..... .75
Per hour equipment use 15.00
Overnight Trip: Per Diem and cost of motel
Petroleum Refinery Fee
Gasoline - Octane Rating 120.00
Gasoline - Benzene Level 80.00
Gasoline - Pensky-Martens Flash Point . 20.00
Overtime charges, per hour 30.00
Metrology services, per hour 32.00
Gasoline - Gravity 10.00
Gasoline - Distillation 25.00
Gasoline - Sulfer, X-ray 35.00

Gasoline – Reid Vapor Pressure (RVP) ... 25.00
Gasoline – Aromatics 50.00
Gasoline – Leads 20.00
Diesel – Gravity 25.00
Diesel – Distillation 25.00
Diesel – Sulfur, X–ray 20.00
Diesel – Cloud Point 20.00
Diesel – Conductivity 25.00
Diesel – Cetane 20.00
Citations, maximum per violation 500.00
Utah Horse Commission
Owner/Trainer, not to exceed 100.00
Owner, not to exceed 75.00
Organization, not to exceed 75.00
Trainer, not to exceed 75.00
Assistant trainer, not to exceed 75.00
Jockey, not to exceed 75.00
Jockey Agent, not to exceed 75.00
Veterinarian, not to exceed 75.00
Racing Official, not to exceed 75.00
Racing Organization Manager or Official, not to exceed 75.00
Authorized Agent, not to exceed 75.00
Farrier, not to exceed 75.00
Assistant to the Racing Manager or Official, not to exceed 75.00
Video Operator, not to exceed 75.00
Photo Finish Operator, not to exceed 75.00
Valet, not to exceed 50.00
Jockey Room Attendant or Custodian, not to exceed 50.00
Colors Attendant, not to exceed 50.00
Paddock Attendant, not to exceed 50.00
Pony Rider, not to exceed 50.00
Groom, not to exceed 50.00
Security Guard, not to exceed 50.00
Stable Gate Man, not to exceed 50.00
Security Investigator, not to exceed 50.00
Concessionaire, not to exceed 50.00
Application Processing Fee 25.00
Brand Inspection
Farm Custom Slaughter 50.00
Estray Animals: Varies
Beef Promotion (cattle only), per head 1.00
Citation, per violation 100.00
Citation, per head 2.00
If not paid within 15 days 2 times citation fee
If not paid within 30 days 4 times citation fee
Brand Inspection fee special sales 100.00
Brand Inspection (cattle), per head, maximum ..... .50
Brand Inspection (horse), per head ..... .65
Brand Inspection (sheep), per head ..... .05
Brand Book 25.00
Show and Seasonal Permits
Horse 10.00
Cattle 10.00
Lifetime Horse Permit 20.00
Duplicate Lifetime Horse Permit 10.00
Lifetime Transfer Horse Permit 10.00
Brand Recording 50.00
Certified copy of Recording (new Brand Card) 5.00
Minimum charge per certificate (Cattle, Sheep, Hogs, and Horses) 5.00
Brand Transfer 30.00
Brand Renewal (five–year cycle) 30.00
Elk Farming
Elk Inspection New License 300.00
Brand Inspection per elk 5.00
Service Charge (per stop per owner) 15.00
Horn Inspection per set 1.00
Elk License Renewal 300.00
Elk License Late Fee 50.00
Grain Inspection
Regular hourly rate 23.00
Overtime hourly rate 34.50
Official Inspection Services (includes sampling except where indicated):
Railcar, per car or part car 18.75
Truck or trailer, per carrier or part carrier 9.75
Submitted sample, per sample 6.50
Reinspection, basis file sample 6.50
Protein test, original or file sample retest . 4.50
Protein test, basis new sample, plus sample hourly fee 4.25
Factor only determination, per factor, plus sampler's hourly rate, if applicable 3.00
Stowage examination services, per certificate 10.00
A fee for applicant requested certification of specific factors (malting barley analysis of ..... 2.00 non–malting class barley, HVAC or DHV percentage determination in durum or hard spring wheats, etc., per request)
Extra copies of certificates, per copy 1.00
Insect damaged kernel, determination (weevil, bore) 2.50
Sampling only, same as original carrier fee, except hopper cars, 4 or more 10.00
Mailing sample handling charge (plus Actual Charge) 2.00
Request for services not covered by the above fees will be performed at the applicable hourly rate stated herein, plus mileage and travel time, if applicable. Actual travel time will be assessed outside of a 50 mile radius of Ogden.
Non–official Services
Safflower Grading 10.00
Class II weighing, per carrier 4.50
Determination of DHV percentage in Hard Red Wheat 3.50
Determination of hard kernel percentage in soft white wheat 3.50
Other requests: Hourly Rate

DEPARTMENT OF AGRICULTURE AND FOOD INTERNAL SERVICE FUND

In accordance with Section 63–38–3.5, the following fees are approved for the services of the Department of Agriculture and Food – Internal Service Fund for FY 2002.
ISF – Agri Data Processing
Programmer, per hour 50.00
Programmer, per hour overtime 75.00
LAN, monthly charge, per year/per port (connection) 2,900.00
Port Charges per year/per PC 500.00

Technical assistance/consultation, per hour 50.00
Installation: Negotiable
GIS Rate per hour 50.00
GIS Rate per hour, overtime 75.00
Portable PC daily rental 15.00

TRANSPORTATION & ENVIRONMENTAL QUALITY SUBCOMMITTEE
DEPARTMENT OF ENVIRONMENTAL QUALITY

In accordance with Section 63-38-3.2, the following fees are approved for the services of the Department of Environmental Quality for FY 2002.
All Divisions
Request for copies over 10 pages, per page . . .25
Copies made by the requestor, per page .... .05
Compiling, tailoring, searching, etc., a record in another format (at rate of lowest paid staff em ployee who has the necessary skill and training to perform the request, after the first quarter hour.) - Actual Cost
Air Quality
Utah Air Conservation Rules
Printed 8.50
Computer disk 7.50
Utah State Implementation Plan
Printed 87.00
Computer disk 15.00
Without Basic I/M Appendices
Printed 35.00
Computer disk 20.00
Basic I/M Appendices
Printed 47.00
Computer disk 10.00
Emission Limits for Salt Lake/Davis County
Printed 13.00
Computer disk 7.50
Emission Limits for Utah County
Printed 4.00
Computer disk 7.50
Utah Air Conservation Act
Printed 5.00
Computer disk 3.00
Notice of Intent Instructions-A Methodology
Printed 5.00
Computer disk 3.00
Modeling Guidelines
Printed 8.00
Computer disk 5.00
Emission Inventory Report
Printed 10.00
Computer disk 7.50
Emission Inventory Workshop (attendance) 15.00
Air Emissions Fees, per ton 31.22
Major and Minor Source Compliance Inspection - Actual Cost
Visible Emissions Evaluation Course
Full Course 175.00
Recertification 150.00
Certification for Vapor Tightness Tester 300.00
Asbestos Regulations Packet
Printed 5.00
Computer disk 3.00
Specialized Computer-Generated Information, per hour 50.00
Asbestos Certification and Asbestos Reviews
Employee Testing and Certification
Initial Year 75.00
Following Years 75.00
Card Replacement, Individual Person 10.00
Asbestos Company Certification per/year 150.00
Course Provider Certifications - Actual Cost
Demolition/Renovation fees
Notification Review, NESHAP projects . . 200.00
Notification Review, NESHAP projects over 5,000 sq. ft. or 5,000 linear ft. 500.00
Notification Review for residential units not subject to NESHAP 50.00
Annual Notifications 300.00
Alternative Work Practice Review 100.00
Lead-based paint regulations packet (printed copy) 5.00
Lead-based paint regulations packet (computer disk) 3.00
Specialized computer-generated information (per hour) 50.00
Certification of lead-based paint firm (initial year) 200.00
Certification of lead-based paint firm (subsequent years) 150.00
Certification of lead-based paint inspector, abatement worker (initial year) 100.00
Certification of lead-based paint risk assessor, supervisor, project designer, (initial year) 175.00
Certification of lead-based paint inspector, abatement worker (subsequent years) 75.00
Certification of lead-based paint risk assessor, supervisor, project designer (subsequent years) 100.00
Lead-Based Paint Certification Course Accreditation - Actual Cost
Lead-based paint certification examination 50.00
Lead-based paint lost identification card/certification replacement 10.00
Lead-based paint project notification ... 100.00
Permit Category .....
New major source or major modification to major source in non-attainment area 27,000.00
Added cost above 450 hours, per hour 60.00
New major source or major modification to major source in attainment area 18,000.00
Added cost above 300 hours, per hour 60.00
New minor source or minor modification to minor source 1,200.00
Added cost above 20 hours, per hour 60.00
Generic permit for minor source or minor modification of minor source (Sources for which 480.00engineering review/BACT standardized)

Added cost above 8 hours, per hour 60.00

Minor sources (new or modified) with less than 3 tons per year uncontrolled emissions 300.00
Added cost above 5 hours, per hour 60.00
Technical review of and assistance given for sales/use tax exemptions, soils remediations, experimental approvals, impact analyses, etc., per hour 60.00
Air Quality Training - Actual Cost
Environmental Response/Remediation
CERCLA Program Lists
CERCLIS Facility List (paper only) 7.00
NFRAP Facility List (paper only) 5.00
Postage for one or both 3.00
UST Program List
UST Facility List (paper only) 30.00
UST Facility List (computer disk) 25.00
LUST Facility List (paper only) 18.00
LUST Facility List (computer disk) 15.00
Postage for one or both 3.00
SARA Title III Program (EPCRA)
Toxic Release Inventory
Annual Report (paper only) 5.00
Facility List (paper only) 10.00
Facility List (computer disk) 8.00
Data Reports (per hour) 50.00
Chemical Inventory Data Reports (per hour) 50.00
Postage for one or both 3.00
Community Right to Know Data Reports, per hour 50.00
Technical Review of Site Assessment or Related Studies, per hour 60.00
Review/Oversite of Remedial Action Investigations, per hour 60.00
Review/Oversite of Feasibility Studies of Remedial Action, per hour ... 60.00
Review of Remedial Activities Submitted for approval, per hour 60.00
Voluntary Environmental Cleanup Program Application Fee 2,000.00
Review/Oversight/Participation in Voluntary Agreements - Actual Cost
Annual Underground Storage Tank (UST) Fee
Tanks with Certificate of Compliance 75.00
Tanks without Certificate of Compliance 150.00
Tanks Significantly out of Compliance with Leak Detection Requirements ... 150.00
Oversight for tanks failing to pay UST fee, per hour 60.00
UST Compliance Follow-up Inspection, per hour 60.00
PST Reapplication Fee for lapsed or revoked Certificates of Compliance ... 150.00
Initial Approval of Alternate UST Financial Assurance Mechanisms (Non-PST Participants) 420.00
Approval of Alternate UST Financial Assurance Mechanisms after Initial Year (with No Mechanism Changes) 240.00
Cost for Certificate of Compliance other than PST Trust Fund, per Tank 75.00
Apportionment of Liability requested by responsible parties.
Preparing, administering, and conducting the Administrative process, per hour ... 60.00
Certification or Certification Renewal for UST Consultants
UST Installers, Removers and Groundwater and Soil Samplers and non-government UST 150.00
Inspectors and Testers
Environmental Response and Remediation Program Training - Actual Cost
Specialized Computer-Generated Information, per hour 50.00
Log in and processing time to access UST database, per minute 5.00
Computer disks of location and attribute information for Utah CERCLIS sites 50.00
Plotter printing of existing computer programs, per foot 12.00
Plotter printing of specialized computer programs, per hour 50.00
Radiation Control .....
Utah Radiation Control Rules, complete set 12.00
Utah Radiation Control Rules, partial set, Machine-Generated Radiation 8.00
Utah Radiation Control Rules, partial set, Radioactive Materials 8.00
List of all radioactive material licensees .. 10.00
List of all x-ray machine registrants 10.00
Machine-Generated Radiation
Hospital/Therapy
Annual Registration Fee, per control unit and first tube, plus annual fee for each additional tube 10.00
connected to the control unit
Division Conducted Inspection, per tube 105.00
Medical
Annual Registration Fee, per control unit and first tube, plus annual fee for each additional tube 10.00
connected to the control unit
Division Conducted Inspection, per tube 105.00
Chiropractic
Annual Registration Fee, per control unit and first tube, plus annual fee for each additional tube 10.00
connected to the control unit
Division Conducted Inspection, per tube 105.00
Podiatry/Veterinary
Annual Registration Fee, per control unit and first tube, plus annual fee for each additional tube 10.00
connected to the control unit
Division Conducted Inspection, per tube . 75.00
Dental
Annual Registration Fee, per control unit and first tube, plus annual fee for each additional tube 10.00
connected to the control unit
Division Conducted Inspection, per tube
First tube on a single control unit 45.00
Additional tubes on a control unit per tube 12.50

Industrial Facility with High and/or Very High Radiation Areas Accessible to Individuals
Annual Registration Fee, per control unit and first tube, plus annual fee for each additional tube ..... 10.00 connected to the control unit
Division Conducted Inspection, per tube 105.00
Industrial Facility with Cabinet X-Ray Units or Units Designed for other Purposes
Annual Registration Fee, per control unit and first tube, plus annual fee for each additional tube ..... 10.00 connected to the control unit
Division Conducted Inspection per tube .. 75.00
Other
Annual Registration Fee, per control unit and first tube, plus annual fee for each additional tube 10.00
connected to the control unit
Division Conducted Annual or Biannual Inspection, per tube 105.00
Division Conducted Inspection, once every five years, per tube 75.00
Acceptance of work for types of facilities listed above, performed by a person meeting the ..... 15.00 qualifications in R313-16-400, that demonstrates compliance with R313 per tube
Radioactive Material
Special Nuclear Material
Possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers and neutron generators
New License/Renewal 440.00
Annual Fee 370.00
Possession and use of less than 15 grams special nuclear material in unsealed form for research and development
New License/Renewal 730.00
Annual Fee 370.00
Special nuclear material to be used as calibration and reference sources
New License/Renewal 180.00
Annual Fee 120.00
All other special nuclear material licenses
New License/Renewal 1,150.00
Annual Fee 800.00
Source Material
Licenses for concentrations of uranium from other areas (i.e. copper, phosphates, etc.) for the production of uranium yellow cake (moist, solid)
New License/Renewal 5,510.00
Annual Fee 2,110.00
Licenses for possession and use of source material for shielding
New License/Renewal 230.00
Annual Fee 160.00
All other source material licenses
New License/Renewal 1,000.00
Annual Fee 560.00
Radioactive Material other than Source Material and Special Nuclear Material Licenses of broad scope for possession and use of radioactive material for processing or manufacturing of items containing radioactive material for commercial distribution
New License/Renewal 2,320.00
Annual Fee 1,480.00
Other licenses for possession and use of radioactive material for processing or manufacturing of items containing radioactive material for commercial distribution
New License/Renewal 1,670.00
Annual Fee 1,020.00
Licenses authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, or sources or devices containing radioactive material
New License/Renewal 2,320.00
Annual Fee 1,480.00
Licenses authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits, or sources or devices not involving processing of radioactive material
New License/Renewal 860.00
Annual Fee 500.00
Licenses for possession and use of radioactive material for industrial radiography operations.
New License/Renewal 1,670.00
Annual Fee 1,280.00
Licenses for possession and use of radioactive material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units)
New License/Renewal 700.00
Annual Fee 470.00
Licenses for possession and use of less than 10,000 curies of radioactive material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes
New License/Renewal 1,670.00
Annual Fee 870.00
Licenses for possession and use of 10,000 curies or more of radioactive material in sealed sources
for irradiation of materials in which the source is exposed for irradiation purposes
New License/Renewal 3,340.00
Annual Fee 1,740.00
Licenses to distribute items containing radioactive material that require device review to persons exempt from the licensing requirements of R313-19, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of R313-19
New License/Renewal 700.00
Annual Fee 290.00
Licenses to distribute items containing radioactive material or quantities of radioactive material that do not require device evaluation to persons exempt from the licensing requirements of R313-19, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of R313-19
New License/Renewal 700.00
Annual Fee 290.00

Licenses to distribute items containing radioactive material that require sealed source and/or device review to persons generally licensed under R313-21, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under R313-21
New License/Renewal 700.00
Annual Fee 290.00
Licenses to distribute items containing radioactive material or quantities of radioactive material that do not require sealed source and/or device review to persons generally licensed under R313-21, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under R313-21
New License/Renewal 700.00
Annual Fee 290.00
Licenses of broad scope for possession and use of radioactive material for research and development which do not authorize commercial distribution
New License/Renewal 2,320.00
Annual Fee 1,480.00
Licenses for possession and use of radioactive material for research and development, which do not authorize commercial distribution
New License/Renewal 700.00
Annual Fee 470.00
All other specific radioactive material licenses
New License/Renewal 440.00
Annual Fee 260.00
Licenses that authorize services for other licensees, except licenses that authorize leak testing or waste disposal services which are subject to the fees specified for the listed services
New License/Renewal 320.00
Annual Fee 210.00
Licenses that authorize services for leak testing only
New License/Renewal 150.00
Annual Fee 80.00
Radioactive Waste Disposal
Licenses specifically authorizing the receipt of waste radioactive material from other persons for the purpose of commercial disposal by land by the licensee
New Application
(a) Siting application - Actual costs up to 100,000.00
(b) License application - Actual costs up to 500,000.00
Renewal - Actual cost up to 500,000.00
Pre-licensing and operations review and consultation on commercial low-level radioactive waste facilities, per hour 60.00
Review of commercial low-level radioactive waste disposal special projects. Applicable when the licensee and the Division agree that a review be conducted by a contractor in support of the efforts of Division staff - Actual cost
Licenses specifically authorizing the receipt of waste radioactive material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material.
New License/Renewal 3,190.00
Annual Fee 1,380.00
Licenses specifically authorizing the receipt of prepackaged waste radioactivematerial from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material
New License/Renewal 700.00
Annual Fee 550.00
Licenses authorizing packing of radioactive waste for shipment to waste disposal site where licensee does not take possession of waste material
New License/Renewal 440.00
Annual Fee 260.00
Well Logging, Well Surveys, and Tracer Studies
Licenses for possession and use of radioactive material for well logging, well surveys, and tracer studies other than field flooding tracer studies
New License/Renewal 1,670.00
Annual Fee 1,050.00
Licenses for possession and use of radioactive material for field flooding tracer studies
New License/Renewal - Actual Cost
Annual Fee 2,000.00
Nuclear Laundries
Licenses for commercial collection and laundry of items contaminated with radioactive material
New License/Renewal 1,670.00
Annual Fee 1,190.00
Human Use of Radioactive Material Licenses for human use of radioactive material in sealed sources contained in teletherapy devices
New License/Renewal 1,090.00
Annual Fee 640.00
Licenses of broad scope issued to medical institutions or two or more physicians authorizing research and development, including human use of radioactive material, except licenses for radioactive material in sealed sources contained in teletherapy devices
New License/Renewal 2,320.00
Annual Fee 1,480.00
Other licenses issued for human use of radioactive material, except licenses for use of radioactive material contained in teletherapy devices
New License/Renewal 700.00
Annual Fee 550.00
Civil Defense
Licenses for possession and use of radioactive material for civil defense activities
New License/Renewal 700.00
Annual Fee 190.00
Power Source
Licenses for the manufacture and distribution of encapsulated radioactive material wherein the decay energy of the material is used as a source for power
New License/Renewal 5,510.00
Annual Fee 1,260.00
Plan Reviews

Review of plans for decommissioning, decontamination, reclamation, waste disposal pursuant to R313-15-1002, or site restoration activities ..... 400.00+
Plus added cost above 8 hours, per hour .. 60.00
Investigation of a misadministration by a third party as defined in R313-30-5 or in R313-32-2, as applicable - Actual Cost
General License
Measuring, gauging and control devices
Initial registration/renewal for first year . 20.00
Annual fee after initial registration/renewal 20.00
In Vitro Testing
Initial registration/renewal for first year . 20.00
Annual fee after initial registration/renewal 20.00
Depleted Uranium
Initial registration/renewal for first year . 20.00
Annual fee after initial registration/renewal 20.00
Charge for Late Payment of Fees, for all fees, per 30 days late 25.00
Specialized Computer-Generated Information, per hour 50.00
Publication costs for making public notice of required actions - Actual Cost
Reciprocity Fees
Licensees who conduct the activities under the reciprocity provisions of R313-19-30
Initial Filing of Application - Full Annual for Specific Category of User Listed Above
Each Revision 200.00
Expedited application review Applicable when, by mutual consent of the applicant and affected 75.00
staff, an application request is taken out of date order and processed by staf per hour
Management and oversight of impounded radioactive material - Actual Cost
License amendment, for greater than three applications in a calendar year 200.00
Annual Generator Site Access License
1 - 100 cubic feet 500.00
> 100 cubic feet 1,300.00
Broker/collector 5,000.00
Water Quality
Water Quality Regulations, Complete set 30.00
Water Quality Regulations, R317-1, 2, 5, 6, 7; R317-4, 10 and 100 ... 2.00
Water Quality Regulations, R317-3 ..... 10.00
Water Quality Regulations, R317-8 ..... 10.00
305(b) Water Quality Report 10.00
Report Entitled: Utah's Lakes and Reservoirs-Inventory and Classification of Utah's Priority Lakes 50.00
and Reservoirs
Operator Certification
Certification Examination 35.00
Renewal of Certificate 10.00
Renewal of Lapsed Certificate -late fee (per month, 30.00 maximum) . 10.00
Duplicate Certificate 20.00
New Certificate - change in status 20.00
Certification by reciprocity with another state 20.00
Grandfather Certificate 20.00
Water Quality Data Requests
Computer Access Fee 25.00
Computer Operator Fee, per hour (minimum charge 25.00) 60.00
Individual Site/Each Year 1.00
UPDES Permits
Cement Manufacturing
Major 3,600.00
Minor 900.00
Coal Mining and Preparation
General Permit 1,800.00
Fees for general permits issued for less than 5 years will be prorated based on a 5-year permit
Individual Major 5,400.00
Individual Minor 3,600.00
Concentrated Animal Feeding Operations (CAFO)
General Permit* 500.00
Fees for general permit issued for less than 5 years will be pro-rated based on a 5 year permit

Individual permit, per hour 60.00
Construction Dewatering/Hydrostatic Testing General Permit - $100 minimum or 500.00
Fees for general permits issued for less than 5 years will be prorated based on a 5-year permit
Individual permit, per hour 60.00
Dairy Products
Major 3,600.00
Minor 1,800.00
Electric
Major 4,500.00
Minor 1,800.00
Fish Hatcheries
General Permit 500.00
Fees for general permits issued for less than 5 years will be prorated based on a 5-year permit
Individual Permit 1,800.00
Food and Kindred Products
Major 4,500.00
Minor 1,800.00
Hazardous Waste Clean-up Sites ... 10,800.00
Geothermal
Major 3,600.00
Minor 1,800.00
Inorganic Chemicals
Major 5,400.00
Minor 2,700.00
Iron and Steel Manufacturing
Major 10,800.00
Minor 2,700.00
LUST Cleanup
General Permit 1,800.00
Fees for general permits issued for less than 5 years will be prorated based on a 5-year permit
Individual Permit 3,600.00
Meat Products
Major 5,400.00

Minor 1,800.00
Metal Finishing and Products
Major 5,400.00
Minor 2,700.00
Mineral Mining and Processing
Sand and Gravel 1,000.00
Salt Extraction 1,000.00
Other Majors 3,600.00
Other Minors 1,800.00
Manufacturing
Major 7,200.00
Minor 2,700.00
Oil and Gas Extraction
flow rate 1,800.00
flow rate > 0.5 MGD 2,700.00
Ore Mining
Major 5,400.00
Minor 2,700.00
Major w/Conc. Process 10,800.00
Organic Chemicals Manufacturing
Major 9,000.00
Minor 2,700.00
Petroleum Refining
Major 7,200.00
Minor 2,700.00
Pharmaceutical Preparations
Major 7,200.00
Minor 2,700.00
Rubber and Plastic Products
Major 4,500.00
Minor 2,700.00
Space Propulsion
Major 10,000.00
Minor 2,700.00
Steam and/or Power Electric Plants
Major 3,600.00
Minor 1,800.00
Water Treatment Plants (Except Political Subdivisions)
General Permit 500.00
Fees for general permits issued for less than 5 years will be prorated based on a 5-year permit
Individual Permit 900.00
Non-contact Cooling Water
Flow rate <= 10,000 gpd 500.00
10,000 gpd < Flow rate <=100,000 gpd ..... 500,000 - 1,000.00
100,000 gpd < Flow rate <=1.0 MGD ..... 1,000.00 - 2,000.00
Flow Rate > 1.0 MGD 3,000.00
Note: Fee amt. will be prorated based on flow rate.
Stormwater (Except Political Subdivisions) 3,600.00
General Permit 500.00
Fees for general permits issued for less than 5 years will be prorated based on a 5-year permit
Individual, per hour 60.00
Industrial Users 2,700.00
Total Containment (Except Political Subdivisions) 500.00
Permit Modification (Except Political Subdivisions), per hour 60.00
Complex Facilities where the anticipated permit issuance costs will exceed the above categorical ..... 60.00 fees by 25 percent, per hour. (Permittee to be notified upon receipt of application.)
Annual Ground Water Permit Administration Fee
Tailings/Evap/Process Ponds; Heaps (per each)
0-1 Acre 350.00
1-15 Acres 700.00
15-50 Acres 1,400.00
50-300 Acres 2,100.00
Over 300 Acres 2,800.00
All Others
Base (one regulated facility) 700.00
Per each* additional regulated facility .. 700.00
*(Multi-celled pond system or grouping of facilities with common compliance point is considered one facility.)
Groundwater Discharge Permits, per hour (Except Political Subdivisions) 60.00
Permit Modifications, per hour (Except Political Subdivisions) 60.00
Underground Injection Wells Permits, per hour (Except Political Subdivisions) 60.00
Permit Modifications, per hour (Except Political Subdivisions) 60.00
Construction Permits
Review and Processing Fee, per hour (Except Political Subdivisions) 60.00
Oversight of Construction Activities, per hour 60.00
Water Quality Cleanup Activities
Corrective Action, Site Investigation/Remediation, per hour 60.00
Analytical oversight - Actual Cost
Administration of Consent Orders and Agreements, per hour 60.00
Loan Administration Fees, per hour 60.00
In lieu of fees for UPDES through Loan Administration (see preceding pages), the applicant or responsible party may voluntarily make advance payment for more than the established fee to facilitate oversight activities or permit issuance.
Technical review of and assistance given for sales/use tax exemptions 60.00
Domestic Sewage Sludge Permits (number of resident connections); annual fee
0 - 4,000 ..... 518.00
4,001 - 15,000 ..... 1,037.00
More than 15,000 ..... 1,556.00
Drinking Water
Safe Drinking Water Regulations Rules
Bound 10.00
Loose Leaf 20.00
Part I 5.00
Part II 5.00
Computer Disk 10.00
Cross Connection Surveys - Actual Cost
Special Surveys - Actual Cost
File Searches - Actual Cost

Particle Counter Rental, including set up and instruction – Actual Cost
Fluorometer Dye Studies –Actual Cost
Specialized Computer Runs, per hour 50.00
Plan Review Filing Charge (for new systems, subdivisions, and public utilities) 200.00
Well Sealing Inspection (per hour + mileage + per diem) 50.00
Special Consulting/Technical Assistance, per hour 50.00
Operator Certification Program Fees
Record application fee (one time only) 20.00
Examination fee (any level) 50.00
Renewal of certification (every 3 years if applied for during designated period) . 50.00
Reinstatement of lapsed certificate 75.00
Certificate of reciprocity with another state 50.00
Conversion Fee (Specialist to Operator–Operator to Specialist) 20.00
Cross Connection Control Program
Record application fee (one time only) 10.00
Examination fee 25.00
Certification fee 75.00
Renewal fee
Class I 75.00
Class II 100.00
Class III 100.00
All fees will be deposited in a special account to defray the costs of administering the Cross Connection Control and Certification programs.
Financial Assistance Program Fees
Application processing – Actual Cost
Construction Inspection – Actual Cost
Solid and Hazardous Waste
Utah Hazardous Waste Rules 15.00
Utah Solid Waste Rules 10.00
Solid Waste Management Plan 10.00
Utah Used Oil Rules 7.50
RCRA Facility List 7.50
Specialized Computer Runs, per hour 50.00
Computer Disks, each 5.00
Solid and Hazardous Waste Program Administration: (including Used Oil and Waste Tire Recycling Programs)
The following review fees do not apply to municipalities, counties, or special service districts seeking Division of Solid and Hazardous Waste reviews.
Professional, per hour 60.00
Technical, per hour 25.00
(This fee covers: Site Investigation and Site Remediation, Review of Plans and Plan Modifications, Review and Oversight of Consent Orders and Agreements and their related compliance activities and Review and Oversight of Construction Activities)
Solid Waste Permit Filing Fees:
The following fees apply to all solid waste facilities except municipalities, counties, or special service districts seeking Division of Solid and Hazardous Waste reviews.
New Comm. Facility – Class V Landfills 1,000.00
New Non–Commercial Facility 750.00
New Incinerator:
Commercial 5,000.00
Industrial or Private 1,000.00
Plan Renewals and Plan Modifications .. 100.00
Variance Requests 500.00
Waste Tire Recycling Fees:
Waste Tire Recycler Registration Fee, annual 100.00
Waste Tire Transporter Registration Fee, annual 100.00
Used Oil Fees:
Used Oil Collection Center Registration Fee – No Charge
Used Oil DIYer Collection Centers Registration – No Charge
Used Oil Transporter Permit Filing Fee 25.00
Used Oil Transfer Facility Permit Filing Fee 25.00
Used Oil Processor, Rerefiner Permit Filing Fee 25.00
Used Oil Fuel Marketer Registration Fee, annual 25.00
Used Oil Burner Off Spec Permit Filing Fee 25.00
Used Oil Land Application Permit Filing Fee 25.00

Section 3. This act takes effect July 1, 2001.

CHAPTER 335
H. B. 3
Passed February 28, 2001
Approved March 20, 2001
Effective July 1, 2001
(The correct citation in Section 34, Coordination clause, Subsection (3)(c) is Section 53A-17a-131.19.)

MINIMUM SCHOOL PROGRAM ACT AMENDMENTS

Sponsor: Marda Dillree

This act modifies provisions relating to the State System of Public Education in the funding of the Minimum School Program. The act provides a ceiling for the state contribution of the maintenance and operations portion of the Minimum School Program Act not to exceed $1,607,061,760. The act establishes the value of the weighted pupil unit at $2,116, establishes block grants and distribution formulas, and provides a $38,358,000 appropriation for school building aid. The act provides for $24,785,000 in one-time appropriations and has a July 1, 2001 effective date. This act provides a coordination clause.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
53A-1-702, as last amended by Chapter 4, Laws of Utah 1998
53A-17a-103, as last amended by Chapter 264, Laws of Utah 2000
53A-17a-104, as last amended by Chapter 264, Laws of Utah 2000
53A-17a-111, as last amended by Chapter 264, Laws of Utah 2000
53A-17a-112, as last amended by Chapter 264, Laws of Utah 2000
53A-17a-113, as last amended by Chapter 264, Laws of Utah 2000
53A-17a-116, as last amended by Chapter 264, Laws of Utah 2000
53A-17a-119, as last amended by Chapter 264, Laws of Utah 2000
53A-17a-120, as last amended by Chapter 264, Laws of Utah 2000
53A-17a-121, as last amended by Chapter 264, Laws of Utah 2000
53A-17a-124, as last amended by Chapter 264, Laws of Utah 2000
53A-17a-124.5, as last amended by Chapter 264, Laws of Utah 2000
53A-17a-125, as last amended by Chapter 264, Laws of Utah 2000
53A-17a-126, as last amended by Chapter 264, Laws of Utah 2000
53A-17a-131.2, as last amended by Chapter 264, Laws of Utah 2000
53A-17a-131.4, as last amended by Chapter 264, Laws of Utah 2000
53A-17a-131.9, as last amended by Chapter 264, Laws of Utah 2000
53A-17a-131.13, as enacted by Chapter 264, Laws of Utah 2000
53A-17a-131.17, as enacted by Chapter 264, Laws of Utah 2000
53A-17a-132, as last amended by Chapters 224 and 264, Laws of Utah 2000
53A-17a-133, as last amended by Chapter 8, Laws of Utah 1996, Second Special Session
53A-17a-134, as last amended by Chapter 1, Laws of Utah 1994
53A-17a-135, as last amended by Chapter 264, Laws of Utah 2000
53A-21-105, as last amended by Chapter 264, Laws of Utah 2000

ENACTS:
53A-3-701, Utah Code Annotated 1953

REPEALS AND REENACTS:
53A-17a-123, as last amended by Chapter 264, Laws of Utah 2000
53A-17a-131.15, as enacted by Chapter 264, Laws of Utah 2000
53A-17a-131.16, as enacted by Chapter 264, Laws of Utah 2000
53A-17a-131.19, as enacted by Chapter 264, Laws of Utah 2000

REPEALS:
53A-17a-124.1, as last amended by Chapter 264, Laws of Utah 2000
53A-17a-128, as last amended by Chapter 264, Laws of Utah 2000
53A-17a-129, as last amended by Chapter 264, Laws of Utah 2000
53A-17a-130, as last amended by Chapter 264, Laws of Utah 2000
53A-17a-131.1, as last amended by Chapter 264, Laws of Utah 2000
53A-17a-131.3, as last amended by Chapter 264, Laws of Utah 2000
53A-17a-131.6, as last amended by Chapter 264, Laws of Utah 2000
53A-17a-131.8, as last amended by Chapter 264, Laws of Utah 2000
53A-17a-131.11, as last amended by Chapter 264, Laws of Utah 2000
53A-17a-131.12, as last amended by Chapter 264, Laws of Utah 2000
53A-17a-131.14, as enacted by Chapter 264, Laws of Utah 2000
53A-17a-131.18, as enacted by Chapter 264, Laws of Utah 2000

This act enacts uncodified material.

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

Section 1. Section 53A-1-702 is amended to read:

53A-1-702. Appropriations -- Allocations -- Contributions from school districts, the business community, and technology vendors.

(1) (a) The Legislature shall provide annual appropriations to help fund the technology programs authorized in this part.

(b) The appropriations are nonlapsing.

(2) The appropriations are allocated as follows:

[~~(a) the State Board of Education shall receive the amount appropriated under Section~~

~~53A-17a-131.1 for allocation to the state's school districts and distribute it in two parts:~~]

[~~(i) the board shall distribute the first part, 25% of the appropriation received under Subsection (2)(a), equally among the state's school districts; and~~]

[~~(ii) the board shall distribute the second part, 75% of the appropriation, based on the ratio of a district's average daily membership to the state total average daily membership;~~]

(a) school districts shall receive monies under the local discretionary block grant program provided for in Section 53A-17a-123, which they may use to fund their technology programs;

(b) the State Board of Regents shall receive the amount appropriated to the state colleges of education as a line item in the general appropriations act and distribute it based on each state college's student teacher training enrollment FTE's as compared to the total student teacher training enrollment FTE's for all state colleges of education.

(3) (a) Neither the State Board of Education nor the State Board of Regents may establish rules that restrict school districts or colleges of education in their purchases of educational technology under this part or use any of the money appropriated for this part for administrative or overhead costs.

(b) The monies shall flow through the respective state boards directly to the school districts and colleges, subject to any qualifications established under this part.

(c) These monies are to supplement and not supplant other state appropriations to school districts and the colleges of education.

(4) (a) School districts may spend [~~as much of the~~] monies received under Subsection (2) [~~as they consider necessary and appropriate~~] for inservice training for the technology programs authorized under this part.

(b) Subsection (4)(a) does not restrict school districts from spending or using additional resources obtained under Subsections (5), (6), and (7) for inservice training.

(5) School districts and colleges shall match state appropriations for the technology programs on a one to three basis, that is one dollar in local resources for every three state dollars, either through local funding efforts or through in-kind services, which may include providing an infrastructure, planning services, training services, maintenance, or the use of technical assistance specialists.

(6) (a) School districts, individual public schools, and public institutions of higher education shall solicit contributions from and enter into partnerships with private business to obtain additional resources for the technology programs authorized under this part.

(b) The Technology Initiative Project Office established under this part within the State Office of Education shall solicit contributions for district technology programs from federal sources.

(c) The additional resources obtained under this section shall remain with the respective district, school, or institution as part of its technology program.

(d) Contributions made at the state level by private business or federal sources shall flow to selected districts, schools, or colleges of education based on specific technology projects as approved and selected by the Technology Initiative Project Office.

(7) Vendors who participate in the technology program shall make contributions to the program in terms of vendor discounts, inservice training, and continuing support services under standards established by the Technology Initiative Project Office.

(8) As used in this part, "school district" includes the School for the Deaf and the School for the Blind.

Section 2. Section 53A-3-701 is enacted to read:

Part 7. Comprehensive Staff Professional Development Plans

53A-3-701. School and school district professional development plans.

(1) (a) Each public school and school district shall develop and implement a systematic, comprehensive, and long-term plan for staff professional development.

(b) Each school shall use its community council, school directors, or a subcommittee of the community council as described in Subsection 53A-16-101.5(4) to help develop and implement the plan.

(2) Each plan shall include the following components:

(a) an alignment of professional development activities at the school and school district level with:

(i) the School LAND Trust Program authorized under Section 53A-16-101.5;

(ii) the Utah Performance Assessment System for Students under Title 53A, Chapter 1, Part 6, Achievement Tests;

(iii) the Educational Technology Initiative under Title 53A, Chapter 1, Part 7, Educational Technology Programs;

(iv) Sections 53A-6-101 and 53A-6-104 of the Educator Licensing and Professional Practices Act;

(v) Title 53A, Chapter 9, Teacher Career Ladders; and

(vi) Title 53A, Chapter 10, Educator Evaluation;

(b) provision for the development of internal instructional leadership and support;

(c) the periodic presence of all stakeholders at the same time in the professional development process,

to include administrators, educators, support staff, parents, and students;

(d) provisions for the use of consultants to enhance and evaluators to assess the effectiveness of the plan as implemented; and

(e) the time required for and the anticipated costs of implementing and maintaining the plan.

(3) (a) Each local school board shall review and either approve or recommend modifications for each school plan within its district so that each school's plan is compatible with the district plan.

(b) The board shall:

(i) provide positive and meaningful assistance to a school, if requested by its community council or school directors, in drafting and implementing its plan; and

(ii) monitor the progress of each school plan and hold each school accountable for meeting the objectives of its plan.

(4) (a) The State Board of Education, through the superintendent of public instruction, shall work with school districts to identify the resources required to implement and maintain each school's and school district's professional development plan required under this section.

(b) (i) The state board shall make an annual budget recommendation to the Legislature for state funding of professional development plans under this section.

(ii) The recommendation shall take into account:

(A) monies that could be used for professional development from the programs listed in Subsection (2)(a); and

(B) the professional development block grant program authorized under the Minimum School Program Act.

(5) (a) For the fiscal year beginning July 1, 2001, school districts shall use $10,000,000 of the school professional development appropriation made in Section 53A-17a-124, for teacher professional development days beyond the regular school year as follows:

(i) each school district shall use its allocation for teacher professional development related to implementing and maintaining the Utah Performance Assessment System for Students and may use such training models as Schools for All and Urban Learning Centers in its professional development program; and

(ii) monies for these two additional days shall be allocated to a school district without requiring matching monies.

(b) For the fiscal year beginning July 1, 2002, the Legislature shall increase the funding for teacher professional development under Section 53A-17a-124 and Subsection (5)(a) to provide for a total of three days of teacher professional development related to implementing and maintaining the Utah Performance Assessment System for Students.

(c) Schools are urged to collaborate with one another in the implementation of the teacher development program under Subsection (5)(a) to maximize the effectiveness of the appropriation.

(d) It is the intent of the Legislature that of the $10,000,000 allocated to school districts for additional days $42,305 shall be allocated to the Utah Schools for the Deaf and the Blind per day for each additional day funded.

Section 3. Section 53A-17a-103 is amended to read:

53A-17a-103. Definitions.

As used in this chapter:

(1) "Basic state-supported school program" or "basic program" means public education programs for kindergarten, elementary, and secondary school students that are operated and maintained for the amount derived by multiplying the number of weighted pupil units for each district by [~~$2,006~~] $2,116, except as otherwise provided in this chapter.

(2) "Certified revenue levy" means a property tax levy that provides the same amount of ad valorem property tax revenue as was collected for the prior year, plus new growth, but exclusive of revenue from collections from redemptions, interest, and penalties.

(3) "Leeway program" or "leeway" means a state-supported voted leeway program or board leeway program authorized under Section 53A-17a-133 or 53A-17a-134.

(4) "Pupil in average daily membership (ADM)" means a full-day equivalent pupil.

(5) "State-supported minimum school program" or "minimum school program" means public school programs for kindergarten, elementary, and secondary schools.

(a) The minimum school program established in the districts shall include the equivalent of a school term of nine months as determined by the State Board of Education.

(b) (i) The board shall establish the number of days or equivalent instructional hours that school is held for an academic school year.

(ii) Education, enhanced by utilization of technologically enriched delivery systems, when approved by local school boards, shall receive full support by the State Board of Education as it pertains to fulfilling the 990-hour attendance requirements, excluding time spent viewing commercial advertising.

(c) The program shall be operated and maintained for the total of the following annual costs:

(i) the cost of a basic state-supported school program;

(ii) the amount appropriated in Section 53A-17a-123 for the local discretionary block grant program;

(iii) the amount appropriated in Section 53A-17a-125 for retirement and social security;

(A) each school district shall receive its share of retirement and social security monies based on its total weighted pupil units compared to the total weighted pupil units for all districts in the state;

(B) the monies needed to support retirement and social security shall be determined by taking the district's prior year allocation and adjusting it for student growth, for the percentage increase in the value of the weighted pupil unit, and the effect of any change in the rates for retirement, social security, or both;

(iv) the amount of the employer contribution required or made in behalf of employees under Sections 49-2-301 and 49-3-301;

(v) the amount of the employer contribution under Section 1400 of the Federal Insurance Contribution Act in accordance with Section 67-11-5 for local school boards;

(vi) the amount appropriated in Chapter 17a:

(A) for [~~an incentives for excellence program~~] a professional development block grant program;

[~~(B) as a contingency fund for the State Board of Education;~~]

[~~(C)~~] (B) for state-supported transportation;

[~~(D) for a staff development program;~~]

[~~(E) for regional service centers;~~]

[~~(F) for the educational technology initiative program;~~]

[~~(G) for a school nurse program;~~]

[~~(H) for a comprehensive guidance program;~~]

[~~(I)~~] (C) for families, agencies, and communities together for children and youth at risk programs;

[~~(J)~~] (D) for experimental and developmental programs;

[~~(K)~~] (E) for alternative language services programs;

[~~(L)~~] (F) for highly impacted schools;

[~~(M) for character education programs;~~]

[~~(N) for technology, life, careers, and work-based programs;~~]

[~~(O) for truancy intervention and prevention programs;~~]

[~~(P)~~] (G) for a guarantee transportation levy program;

[~~(Q) for a reading initiative program;~~]

[~~(R) for a reading performance improvement scholarship program;~~]

[~~(S) for an alternative middle schools program;~~]

[~~(T)~~] (H) for a school land trust program; [~~and~~]

[~~(U) for an assessment and accountability program; and~~]

(I) for adult education programs;

(J) for At-risk programs;

(K) for accelerated learning programs;

(L) for a math and science beginning teacher recruitment program;

(M) for a block grant hold harmless program; and

(N) for an electronic high school program; and

(vii) the cost of a leeway program.

(d) The program includes school construction aid programs authorized under Title 53A, Chapter 21, Public Education Capital Outlay Act.

(6) "Weighted pupil unit or units" means the unit of measure of factors that is computed in accordance with this chapter for the purpose of determining the costs of a program on a uniform basis for each district.

Section 4. Section 53A-17a-104 is amended to read:

53A-17a-104. Amount of state's contribution toward minimum school program.

(1) The total contribution of the state toward the cost of the operation and maintenance portion of the minimum school program, as provided and defined in Section 53A-17a-103, may not exceed the sum of [~~$1,535,110,246~~] $1,607,061,760 for the [~~2000-01~~] 2001-02 school year, except as otherwise provided by the Legislature through supplemental appropriations.

(2) It is intended that the funds provided are for the following purposes and in the following amounts:

Estimated Weighted Pupil Units	Purpose State Contribution	Estimated State and Local Funds at [~~$2,006~~] $2,116 Per Weighted Pupil Unit
[~~20,222~~] 20,616	Basic program - kindergarten.	[~~$40,565,332~~] $43,623,456
[~~426,422~~] 427,244	Basic program - grades 1-12.	[~~$855,402,532~~] $904,048,304
41,394	Basic program - professional staff	[~~$83,036,364~~] $87,589,704
1,655	Basic program - administrative costs.	[~~$3,319,930~~] $3,501,980
[~~7,080~~] 7,336	Basic program - necessarily existent small schools and units for consolidated schools.	[~~$14,202,480~~] $15,522,976
[~~52,697~~] 53,153	Special education - regular program - add-on WPUs for students with disabilities.	[~~$105,710,182~~] $112,471,748
[~~5,038~~] 6,109	Preschool Special Education Program.	[~~$10,106,228~~] $12,926,644
[~~12,299~~] 12,466	Self-contained regular WPUs.	[~~$24,671,794~~] $26,378,056
237	Extended year program for severely disabled.	[~~$475,422~~] $501,492
1,350	Special education - state programs.	[~~$2,708,100~~] $2,856,600
[~~19,464~~] 23,423	Applied technology and technical education district programs.	[~~$39,044,784~~] $49,563,068
989	Applied technology district set-aside.	[~~$1,983,934~~] $2,092,724
[~~10,039~~	~~Youth at risk programs.~~	~~$20,138,234~~]
[~~3,407~~	~~Adult education.~~	~~$6,834,442~~]
[~~3,841~~	~~Accelerated learning programs.~~	~~$7,705,046~~]
[~~11,549~~	~~Local programs.~~	~~$23,167,294~~]

[~~24,253~~	~~Career ladder.~~	~~$48,651,518~~]
29,577	Class size reduction.	[~~$59,331,462~~] $62,584,932
[~~671,513~~] 625,549	TOTAL OF ALL ABOVE PROGRAMS	[~~$1,347,055,078~~] $1,323,661,684
	Professional Development Block Grant.	$68,821,511
	Social Security and retirement programs.	[~~$253,325,728~~] $214,685,479
	Pupil Transportation to and from school.	[~~$53,236,772~~] $55,745,940
	[~~Contingency fund.~~	~~$419,246~~]
	[~~Incentives for excellence.~~	~~$614,911~~]
	[~~Regional service centers.~~	~~$1,172,733~~]
	[~~Staff Development.~~	~~$1,965,577~~]
	[~~Comprehensive Guidance.~~	~~$7,420,659~~]
	[~~Educational Technology Initiative – Maintenance.~~]	~~$8,970,322~~]
	Guarantee Transportation Levy.	$500,000
	Local Discretionary Block Grant Program.	$49,948,636
	Math and Science – Beginning Teacher Recruitment.	$2,400,000
	Families, Agencies, and Communities Together.	$1,250,670
	Alternative Language Services.	[~~$3,328,564~~] $3,528,564
	Highly Impacted Schools.	[~~$4,873,207~~] $5,123,207
	[~~Character Education Program.~~	~~$397,680~~]
	[~~Families, Agencies, and Communities Together.~~	~~$1,250,670~~]
	[~~School Nurses~~	~~$496,949~~]
	[~~Transportation Levy~~	~~$225,000~~]
	[~~Technology, Life, Careers, and Work-Based Learning Programs.~~]	~~$2,235,000~~]
	[~~Truancy Intervention and Prevention.~~	~~$150,000~~]
	[~~Reading Performance Improvement~~]	
	[~~Scholarship Program. $9,000~~]	
	[~~Reading Initiative. $5,000,000~~]	
	At-risk Programs.	$25,023,588
	Adult Education.	$8,368,247
	Accelerated Learning Programs.	$9,551,074
	Block Grant Hold Harmless.	$3,897,110
	Experimental and Developmental Program.	[~~$5,933,056~~] $3,102,369
	[~~Alternative Middle Schools Program.~~	~~$2,000,000~~]
	Electronic High School.	$200,000
	School [~~Land~~] LAND Trust Program.	[~~$4,775,000~~] $5,200,000
	[~~Assessment and Accountability Program. $7,500,000~~]	
	[~~State Contribution to School Districts.~~	~~$1,113,100~~]
	State-supported voted leeway.	[~~$121,242,797~~] $141,362,359
	State-supported board leeway.	[~~$36,111,863~~] $41,149,682
	Total estimated contributions to school districts for all programs.	[~~$1,866,822,912~~] $1,963,520,120
	Less estimated proceeds from state-supported local levies.	[~~$331,712,666~~] $356,458,360
	TOTAL STATE FUNDS	[~~$1,535,110,246~~] $1,607,061,760

Section 5. Section 53A-17a-111 is amended to read:

53A-17a-111. Weighted pupil units for programs for students with disabilities -- District allocation.

(1) There is appropriated to the State Board of Education [~~$143,671,726 (71,621~~] $155,134,540 (73,315 weighted pupil units) for allocation to local school board programs for students with disabilities.

(2) Included in the appropriation is [~~$105,710,182~~] $112,471,748 for add-on WPUs for students with disabilities enrolled in regular programs.

(3) The number of weighted pupil units for students with disabilities shall reflect the direct cost of programs for those students conducted in accordance with definitions, guidelines, rules, and standards established by the State Board of Education in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(4) Disability program monies allocated to districts are restricted and shall be spent for the education of students with disabilities but may include expenditures for approved programs of services conducted for certified instructional personnel who have students with disabilities in their classes.

(5) The State Board of Education shall establish and strictly interpret definitions and provide standards for determining which students have disabilities and shall assist districts in determining the services that should be provided to students with disabilities.

(6) Each year the board shall evaluate the standards and guidelines that establish the identifying criteria for disability classifications to assure strict compliance with those standards by the districts.

(7) Each district shall receive its allocation of monies appropriated in Subsection 53A-17a-111(2) for add-on WPUs for students with disabilities enrolled in regular programs as provided in this subsection.

(a) The State Board of Education shall use the total number of special education add-on weighted pupil units used to fund fiscal year 1989-90 as a foundation for the special education add-on appropriation.

(b) A district's special education add-on WPUs for the current year may not be less than the foundation special education add-on WPUs.

(8) When monies appropriated under this chapter fund the foundation weighted pupil units, as outlined in Subsection (7)(a), growth WPUs shall be added to the prior year special education add-on WPUs, and growth WPUs shall be determined as follows:

(a) The special education student growth factor is calculated by comparing S-3 total special education ADM of two years previous to the current year to the S-3 total special education ADM three years previous to the current year, not to exceed the official October total district growth factor from the prior year.

(b) When calculating and applying the growth factor, a district's S-3 total special education ADM for a given year is limited to 12.18% of the district's S-3 total student ADM for the same year.

(c) Growth ADMs are calculated by applying the growth factor in Subsection (8)(a) to the S-3 total special education ADM of two years previous to the current year.

(d) Growth ADMs for each district in Subsection (8)(c) are multiplied by 1.53 weighted pupil units and added to the prior year special education add-on WPU to determine each district's total allocation.

(9) If monies appropriated under this chapter for programs for students with disabilities do not meet the costs of districts for those programs, each district shall first receive the amount generated for each student with a disability under the basic program.

Section 6. Section 53A-17a-112 is amended to read:

53A-17a-112. Preschool special education appropriation -- Extended year program appropriation -- Appropriation for special education programs in state institutions.

(1) Included in the [~~$143,671,726~~] $155,134,540 appropriation under Section 53A-17a-111 is:

(a) an amount of [~~$10,106,228~~] $12,926,644 for preschool special education programs;

(b) an amount of [~~$24,671,794~~] $26,378,056 for self-contained regular WPU special education programs;

(c) an amount of [~~$475,422~~] $501,492 for extended year programs for the severely disabled; and

(d) an amount of [~~$2,708,100~~] $2,856,600 for special education programs in state institutions and for district impact aid.

(2) (a) The amount designated for the preschool special education program under Subsection (1)(a) is allocated to school districts to provide a free, appropriate public education to preschool students with a disability, ages three through five.

(b) The monies are distributed on the basis of a school district's previous year December 1 disabled preschool child count as mandated by federal law.

(3) The extended school year program for the severely disabled is limited to students with severe disabilities with education program goals identifying significant regression and recoupment disability as approved by the State Board of Education.

(4) (a) The monies appropriated for self-contained regular special education programs may not be used to supplement other school programs.

(b) Monies in any of the other restricted line item appropriations may not be reduced more than 2% to be used for purposes other than those specified by the appropriation, unless otherwise provided by law.

(5) (a) The State Board of Education shall compute preschool funding by a factor of [~~1.205~~] 1.47 times the current December 1 child count of eligible preschool aged three, four, and five-year-olds times the WPU value, limited to 8% growth over the prior year December 1 count.

(b) The board shall develop guidelines to implement the funding formula for preschool special education, and establish prevalence limits for distribution of the monies.

Section 7. Section 53A-17a-113 is amended to read:

53A-17a-113. Weighted pupil units for applied technology education programs -- Funding of approved programs -- Performance measures -- Qualifying criteria.

(1) There is appropriated to the State Board for Applied Technology Education, hereafter referred to in this section as the board, [~~$39,044,784 (19,464~~] $49,563,068 (23,423 weighted pupil units) to pay the added instructional costs of approved applied technology education programs.

(a) Included in the appropriation is [~~$844,526~~] $890,836 (421 weighted pupil units) for summer applied technology agriculture programs.

(b) These monies are allocated to eligible recipients as provided in Subsections (2), (3), and (4).

(c) Money appropriated under Subsection 53A-17a-113(1) and any money appropriated for work-based education may not be used to fund programs below the ninth grade level.

(2) Weighted pupil units are computed for pupils in approved programs.

(a) The board shall fund approved programs based upon hours of membership of 9th through 12th grade students.

(b) The board shall use an amount not to exceed 20% of the total appropriation under this section to fund approved programs based on performance measures such as placement and competency attainment defined in standards set by the board for districts to qualify for applied technology funding.

(c) Leadership organization funds shall constitute an amount not to exceed 1% of the total appropriation under this section, and shall be distributed to each local educational agency sponsoring applied technology student leadership organizations in a ratio representing the agency's share of the state's total membership in those organizations.

(d) The board shall make the necessary calculations for distribution of the appropriation to school districts and may revise and recommend changes necessary for achieving equity and ease of administration.

(3) (a) Twenty weighted pupil units shall be computed for each district, or 25 weighted pupil units may be computed for each district that consolidates applied technology administrative services with one or more other districts.

(b) Between 10 and 25 weighted pupil units shall be computed for each high school conducting approved applied technology education programs in a district according to standards established by the board.

(c) Forty weighted pupil units shall be computed for each district that operates an approved district applied technology center.

(d) Between five and seven weighted pupil units shall be computed for each summer applied technology agriculture program according to standards established by the board.

(e) The board shall, by rule, establish qualifying criteria for districts to receive weighted pupil units under Subsection (3).

(4) (a) All monies allocated under Subsection (1) are computed by using average daily membership in approved programs for the previous year.

(b) A district that has experienced student growth in grades 9 through 12 for the previous year shall have the growth factor applied to the previous

year's weighted pupil units when calculating the allocation of monies under this subsection.

(5) (a) The board shall establish rules for the upgrading of high school applied technology education programs.

(b) The rules shall reflect technical training and actual marketable job skills in society.

(c) The rules shall include procedures to assist school districts to convert existing programs which are not preparing students for the job market into programs that will accomplish that purpose.

(6) Programs that do not meet board standards may not be funded under this section.

Section 8. Section 53A-17a-116 is amended to read:

53A-17a-116. Weighted pupil units for applied technology set-aside programs.

(1) There is appropriated to the State Board for Applied Technology Education [~~$1,983,934~~] $2,092,724 (989 weighted pupil units) for an applied technology set-aside program.

(2) Applied technology set-aside funds appropriated to the board are allocated by Request for Proposal (RFP) to provide a district minimum payment for applied technology education.

(3) Each district shall receive a guaranteed minimum allocation.

(4) The set-aside funds remaining after the initial minimum payment allocation are distributed by an RFP process to help pay for equipment costs necessary to initiate new programs and for high priority programs as determined by labor market information.

Section 9. Section 53A-17a-119 is amended to read:

53A-17a-119. Appropriation for adult education programs.

(1) There is appropriated to the State Board of Education [~~$6,834,442 (3,407 weighted pupil units)~~] $8,368,247 for allocation to local school boards for adult education programs, consisting of adult high school completion and adult basic skills programs.

(2) Each district shall receive its pro rata share of the appropriation for adult high school completion programs based on the number of people listed in the latest official census who are over 18 years of age and who do not have a high school diploma and prior year participation.

(3) On February 1 of each school year, the State Board of Education shall recapture monies not used for an adult high school completion program for reallocation to districts that have implemented programs based on need and effort as determined by the board.

(4) To the extent of monies available, school districts shall provide programs to adults who do not have a diploma and who intend to graduate from high school, with particular emphasis on homeless individuals who are seeking literacy and life skills.

(5) Overruns in adult education in any district may not reduce the value of the weighted pupil unit for this program in another district.

(6) The board shall provide the Legislature with a recommendation as to if and when any fees should be charged for participation in the adult high school completion programs funded under this section.

(7) School districts shall spend money on adult basic skills programs according to standards established by the board.

Section 10. Section 53A-17a-120 is amended to read:

53A-17a-120. Appropriation for accelerated learning programs.

(1) There is appropriated to the State Board of Education [~~$7,705,046 (3,841 weighted pupil units)~~] $9,551,074 for allocation to local school boards for accelerated learning programs in grades one through 12, which include programs for the gifted and talented, concurrent enrollment, and advanced placement.

(2) (a) A school participating in the concurrent enrollment programs offered under Section 53A-15-101 shall receive on a per student basis up to $33.33 per quarter hour or $50 per semester hour for each hour of higher education course work undertaken at the school.

(b) Each year the amounts specified in Subsection (2)(a) shall be adjusted in proportion to the increase in the value of the weighted pupil unit from the prior year established in Subsection 53A-17a-103(1).

(3) (a) Districts shall spend monies for these programs according to standards established by the State Board of Education in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(b) The State Board of Education shall develop uniform and consistent policies for school districts to follow in utilizing advanced placement and concurrent enrollment monies.

Section 11. Section 53A-17a-121 is amended to read:

53A-17a-121. Appropriation for At-risk programs.

(1) There is appropriated to the State Board of Education [~~$20,138,234 (10,039 weighted pupil units)~~] $25,023,588 for allocation to local school boards for [~~youth at risk~~] at-risk programs, including the following:

(a) youth in custody;

(b) adolescent pregnancy prevention;

(c) homeless and disadvantaged minority students;

(d) mathematics, engineering, and science achievement programs;

(e) gang prevention and intervention; and

(f) at-risk flow through.

(2) Districts shall spend monies for these programs according to standards established by the State Board of Education in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(3) (a) From the amount appropriated for [~~youth at risk~~] at-risk programs, the board shall allocate moneys for adolescent pregnancy prevention programs to school districts on the basis of a district's total number of students enrolled in classes as of October 1 that teach a curriculum of adolescent pregnancy prevention as compared to the total number of students enrolled in such programs in school districts throughout the state.

(b) The adolescent pregnancy prevention programs funded under this subsection shall require written consent from parents or guardians for student participation, involve parents or guardians of participating students in a substantial and consistent manner, and comply with the requirements of Sections 76-7-321 through 76-7-325.

(c) To qualify for participation in the program, a district shall demonstrate to the state board through prior research and pilot studies with similar student populations that those students attained and retained knowledge, values, attitudes, and behaviors that promote abstinence from sexual activity before marriage, and that the students had a lower pregnancy rate than comparison groups that did not participate in the program.

(d) Further qualification requires approval by the local board and state board of all teaching materials, handouts, media materials, audiovisual materials, textbooks, curriculum materials, and course outlines to be used in the program.

(e) The state board may not use a district's participation in the adolescent pregnancy prevention program as an offset against the district's historical proportionate share of the remaining fund balance.

(f) A school district may spend any additional [~~moneys~~] monies allocated for adolescent pregnancy prevention programs as long as the programs comply with the guidelines established in Subsections (3)(b), (c), and (d), if the need for such a program is greater than the allocation received under Subsection (3)(a).

(4) (a) From the amount appropriated for youth at risk programs, the board shall allocate moneys to school districts for homeless and disadvantaged minority students.

(b) Each district shall receive its allocation on the basis of:

(i) the total number of homeless students in the district;

(ii) added to 50% of the number of disadvantaged minority students in the district;

(iii) multiplying the total of Subsections (4)(b)(i) and (ii) by the value of the weighted pupil unit; and

(iv) prorating the amount under Subsection (4)(b)(iii) to the amount in Subsection (4)(a).

(5) (a) From the amount appropriated for [~~youth at risk~~] at-risk programs, the board shall allocate [~~moneys~~] monies for mathematics, engineering, and science achievement programs, MESA programs, in the districts.

(b) The board shall make the distribution to school districts on a competitive basis by application under guidelines established by the board.

(6) (a) From the amount appropriated for [~~youth at risk~~] at-risk programs, the board shall distribute moneys for gang prevention and intervention programs at the district or school level.

(b) The board shall make the distribution to school districts under guidelines established by the board consistent with Section 53A-15-601.

(7) (a) From the amount appropriated for [~~youth at risk~~] at-risk programs, the board shall distribute moneys for programs for youth in custody.

(b) The board shall allocate these moneys to school districts which operate programs for youth in custody in accordance with standards established by the board.

(8) From the amount appropriated for [~~youth~~] at-risk programs, the board shall allocate monies based on:

(a) a formula which takes into account prior year WPU's per district and a district's low income population; and

(b) a minimum base of no less than $18,600 for small school districts.

Section 12. Section 53A-17a-123 is repealed and reenacted to read:

53A-17a-123. State contribution for local discretionary block grant program.

(1) There is appropriated to the State Board of Education for the fiscal year beginning July 1, 2001, $49,948,636 for a local discretionary block grant program comprised of the following components:

(a) truancy intervention and prevention;

(b) an unrestricted local program;

(c) incentives for excellence;

(d) the Educational Technology Initiative;

(e) character education;

(f) school nurses;

(g) alternative middle schools;

(h) reading initiative;

(i) experimental-developmental programs; and

(j) a local discretionary program.

(2) The board shall distribute the appropriation on the basis of the intent language provided under

Subsection (3) of the Intent Language provision of this act.

(3) Notwithstanding current statutory provisions for programs in the local discretionary block grant and the special population programs, which are Families, Agencies, and Communities Together, Alternative Language Services, Highly Impacted Schools, At-risk Programs, Adult Education and Accelerated Learning, and with the exception of those programs for which funds are awarded based on successful completion through a request of proposal, a school district may spend the allocation for any or all programs within the appropriated block.

Section 13. Section 53A-17a-124 is amended to read:

53A-17a-124. State contributions to professional development.

(1) There is appropriated to the State Board of Education [~~$48,651,518 (24,253 weighted pupil units)~~] for the fiscal year beginning July 1, 2001, $68,821,511 for teacher professional development programs and teacher career ladders for distribution to school districts [~~in accordance with career ladder guidelines provided by the state board and Title 53A, Chapter 9~~] on the basis of each district's total weighted pupil units in kindergarten, grades one through 12, and the necessarily existent small schools portions of the Minimum School Program as compared to the state total.

[~~(a) The state board shall distribute the appropriation, upon application, to each local school board by a formula based on the average of equal weighting considerations for:~~]

[~~(i) a district's prior year average daily membership;~~]

[~~(ii) the total number of teachers employed by a district during the prior year; and~~]

[~~(iii) weighted pupil units allocated to the district.~~]

[~~(b) The Legislature shall provide for an annual adjustment in the career ladder appropriation in proportion to:~~]

[~~(i) the increase in the value of the weighted pupil unit established in this chapter; and~~]

[~~(ii) the increase in the number of students in the state over the prior year.~~]

(2) Each school district [~~participating in the career ladder program~~] may spend career ladder monies:

(a) to pay a performance bonus to teachers judged by the district as being outstanding in regular classroom performance;

(b) (i) for additional nonteaching days for teachers to devote to curriculum development, inservice training, preparation, and related activities;

(ii) a local board of education may specifically use from the career ladder appropriation an amount equivalent to $300 per eligible teacher per year for approved inservice costs, for daily stipends, for per diem expenses, and for eligible teacher trainers; and

(c) for negotiated additional teacher compensation for extending the length of the instructional day or the number of instructional days.

(3) Of the amount appropriated, $10,000,000 shall be distributed by the State Board of Education for teacher professional development days beyond the regular school year under Section 53A-3-701 and standards established by the board in accordance with Title 63, Chapter 46a, Utah Administrative Procedures Act.

Section 14. Section 53A-17a-124.5 is amended to read:

53A-17a-124.5. Appropriation for class size reduction.

(1) There is appropriated to the State Board of Education for the fiscal year beginning July 1, [~~2000, $59,331,462~~] 2001, $62,584,932 (29,577 weighted pupil units) to reduce the average class size in kindergarten through the eighth grade in the state's public schools.

(2) Each district shall receive its allocation based upon prior year average daily membership in kindergarten through grade eight plus growth as determined under Subsection 53A-17a-106(3) as compared to the state total.

(3) (a) A district may use its allocation to reduce class size in any one or all of the grades referred to under this section, except as otherwise provided in Subsection (3)(b).

(b) (i) Each district shall use 50% of its allocation to reduce class size in any one or all of grades kindergarten through grade two, with an emphasis on improving student reading skills.

(ii) If a district's average class size is below 18 in grades kindergarten through two, it may petition the state board for, and the state board may grant, a waiver to use its allocation under Subsection (3)(b)(i) for class size reduction in the other grades.

(4) Schools may use nontraditional innovative and creative methods to reduce class sizes with this appropriation and may use part of their allocation to focus on class size reduction for specific groups, such as at risk students, or for specific blocks of time during the school day.

(5) (a) A school district may use up to 20% of its allocation under Subsection (1) for capital facilities projects if such projects would help to reduce class size.

(b) If a school district's student population increases by 5% or 700 students from the previous school year, the school district may use up to 50% of any allocation it receives under this section for classroom construction.

(6) This appropriation is to supplement any other appropriation made for class size reduction.

(7) (a) The State Board of Education shall compile information on class size, both in average student-teacher ratios and in actual number of students enrolled in each classroom by grade level for elementary grades and by subject matter for secondary grades.

(b) The State Board of Education shall establish uniform class size reporting rules among districts.

(c) Provisions may be made for explaining special circumstances where class size exceeds or is below normal distributions.

(8) (a) Each school district shall provide annually to the state superintendent of public instruction a summary report on the overall district plan for utilizing class size reduction funds provided by the Legislature.

(b) If the district has received new additional class size reduction funds during the previous year, the district shall report data identifying how:

(i) the use of the funds complies with legislative intent; and

(ii) the use of the funds supplements the district's class size reduction plan.

(9) The Legislature shall provide for an annual adjustment in the appropriation authorized under this section in proportion to the increase in the number of students in the state in kindergarten through grade eight.

Section 15. Section 53A-17a-125 is amended to read:

53A-17a-125. Appropriation for retirement and social security.

(1) There is appropriated to the State Board of Education [~~$253,325,728~~] for the fiscal year beginning July 1, 2001, $214,685,479 for retirement and social security costs.

(2) The employee's retirement contribution shall be 1% for employees who are under the state's contributory retirement program.

(3) The employer's contribution under the state's contributory retirement program is determined under Section 49-2-301, subject to the 1% contribution under Subsection (2).

(4) The employer-employee contribution rate for employees who are under the state's noncontributory retirement program is determined under Section 49-3-301.

Section 16. Section 53A-17a-126 is amended to read:

53A-17a-126. State support of pupil transportation -- Incentives to increase economy and productivity in student transportation.

(1) The state's contribution of [~~$53,236,772~~] $55,745,940 for state-supported transportation of public school students is apportioned and distributed in accordance with Section 53A-17a-127, except as otherwise provided in this section.

(2) (a) Included in the appropriation under Subsection (1) is an amount not less than [~~$1,710,235~~] $1,923,148 to be deducted prior to any other distribution under this section to school districts, and allocated to the Utah Schools for the Deaf and the Blind to pay transportation costs of the schools' students.

(b) The Utah Schools for the Deaf and the Blind shall utilize these funds to pay for transportation of their students based on current valid contractual arrangements and best transportation options and methods as determined by the schools.

(c) All student transportation costs of the schools shall be paid from the allocation received under Subsection (2).

(3) Each district shall receive its approved transportation costs, except that if during the fiscal year the total transportation allowance for all districts exceeds the amount appropriated, all allowances shall be reduced pro rata to equal not more than that amount.

(4) Included in the appropriation under Subsection (1) is an amount of $187,000 for transportation of students, as approved by the state board, for school districts that consolidate schools, implement double session programs at the elementary level, or utilize other alternatives to building construction that require additional student transportation.

(5) (a) Part of the state's contribution for transportation, not to exceed $200,000, may be used as an incentive for districts to increase economy and productivity in student transportation.

(b) This amount is distributed on a pro rata basis among districts which have achieved the most efficiency according to the state formula.

(c) Districts receiving the incentive funding may expend the monies at the discretion of the local school board.

(6) (a) Local school boards shall provide salary adjustments to employee groups that work with the transportation of students comparable to those of classified employees authorized under Section 53A-17a-137, when dividing the weighted pupil unit for salary adjustment purposes.

(b) The State Board of Education shall conduct a study to evaluate the reimbursement system of funding for pupil transportation with emphasis on looking at methodologies that will provide incentives for districts that will encourage economical practices.

Section 17. Section 53A-17a-131.2 is amended to read:

53A-17a-131.2. State contribution to highly impacted schools program.

The state's contribution of [~~$4,873,207~~] $5,123,207 for the Highly Impacted Schools Program for the fiscal year beginning July 1, [~~2000~~]

2001, is appropriated to the State Board of Education for distribution according to the formula adopted by the board under Section 53A-15-701, which authorizes the Highly Impacted Schools Program.

Section 18. Section 53A-17a-131.4 is amended to read:

53A-17a-131.4. State contribution to Alternative Language Services Program.

(1) The state's contribution of [~~$3,328,564~~] $3,528,564 for an Alternative Language Services Program for the fiscal year beginning July 1, [~~2000~~] 2001, is appropriated to the State Board of Education as a funding base for school districts to meet the limited-English-proficient and second language acquisition needs of Utah's language minority student population.

(2) The board shall allocate the appropriation to school districts based on submission of grant applications and assurances of and compliance with qualifying criteria established by the state board pursuant to its rulemaking authority.

Section 19. Section 53A-17a-131.9 is amended to read:

53A-17a-131.9. State contribution to agencies coming together for children and youth at risk.

(1) There is appropriated $1,250,670 to the State Board of Education for the fiscal year beginning July 1, [~~2000~~] 2001, to [~~implement~~] maintain Title 63, Chapter 75, Families, Agencies, and Communities Together for Children and Youth At Risk Act.

(2) Participation in the at risk programs funded under this section shall require consent from a parent or legal guardian for the participant to receive initial or continuing services under the program.

(3) A participant's parent or legal guardian shall be actively involved in the program and all applicable state and federal laws and regulations shall be observed by the entities and individuals providing the services.

(4) The board shall use the appropriation to experiment on a community full-service delivery system level to provide data on the merits of moving the concept to a fully implemented statewide system.

Section 20. Section 53A-17a-131.13 is amended to read:

53A-17a-131.13. State contribution to guarantee transportation levy.

The state's contribution of [~~$225,000~~] $500,000 to the guarantee transportation levy program for the fiscal year beginning July 1, [~~2000~~] 2001, is appropriated to the State Board of Education for distribution to school districts according to guidelines established by the board in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

Section 21. Section 53A-17a-131.15 is repealed and reenacted to read:

53A-17a-131.15. State contribution for the Electronic High School.

The state's contribution of $200,000 for the Electronic High School for the fiscal year beginning July 1, 2001, is appropriated to the State Board of Education for distribution to the school according to guidelines established by the board in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

Section 22. Section 53A-17a-131.16 is repealed and reenacted to read:

53A-17a-131.16. State contribution for school district hold harmless program.

(1) The state's contribution of $3,897,110 for a school district hold harmless program for the fiscal year beginning July 1, 2001, is appropriated to the State Board of Education for distribution to school districts impacted by the block grant programs established under this chapter for the fiscal year beginning July 1, 2001.

(2) The board shall allocate the appropriation to the following school districts and the Utah Schools for the Deaf and the Blind as provided in this Subsection (2):

Beaver	$67,019
Cache	$31,416
Carbon	$151,415
Daggett	$86,354
Davis	$6,368
Duchesne	$83,141
Emery	$78,769
Garfield	$51,188
Grand	$146,213
Granite	$379,456
Iron	$268,325
Juab	$81,005
Kane	$55,085
Millard	$176,251
Morgan	$75,443
Nebo	$15,333
North Sanpete	$222,804
North Summit	$84,095
Park City	$62,226
Piute	$80,627
Rich	$78,542
San Juan	$82,539
Sevier	$42,898
South Sanpete	$74,388
South Summit	$73,910
Tintic	$80,932
Uintah	$113,827
Wasatch	$102,531
Wayne	$81,079
Weber	$8,670
Salt Lake City	$170,919
Ogden	$412,576
Provo	$132,060
Logan	$123,326
Murray	$54,156
Utah Schools for the Deaf and the Blind	$62,224

Section 23. Section 53A-17a-131.17 is amended to read:

53A-17a-131.17. State contribution for a School LAND Trust Program.

The state's contribution of [~~$4,775,000~~] $5,200,000 or the amount as determined by Subsections 53A-16-101.5(1), (2), and (3) for a School [~~Land~~] LAND Trust Program for the fiscal year beginning July 1, [~~2000~~] 2001, is appropriated to the State Board of Education for distribution to school districts according to guidelines established by the board in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

Section 24. Section 53A-17a-131.19 is repealed and reenacted to read:

53A-17a-131.19. State contribution to math and science beginning teacher recruitment program.

The state's contribution of $2,400,000 for a math and science beginning teacher recruitment program, for the fiscal year beginning July 1, 2001, is appropriated to the State Board of Education for distribution according to Title 53A, Chapter 1a, Part 6, Public Education Job Enhancement Program.

Section 25. Section 53A-17a-132 is amended to read:

53A-17a-132. Experimental and developmental programs.

(1) The state's contribution of [~~$5,933,056~~] $3,102,369 for experimental and developmental programs for the fiscal year beginning July 1, [~~2000~~] 2001, is appropriated to the State Board of Education for distribution to school districts [~~as follows: (a) the board shall distribute the first part, 34% of the appropriation, equally among the state's 40 school districts; (b) the board shall distribute the second part, 41% of the appropriation, to each district on the basis of its kindergarten through grade 12 average daily membership for the prior year as compared to the prior year state total kindergarten through grade 12 average daily membership; and (c) the board shall distribute 25% of the appropriation~~] pursuant to standards established by the board in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(2) (a) A school district may fund a new experimental or developmental program with monies appropriated under Subsection (1) for a maximum of three consecutive years.

(b) After the third year, the district shall either fund the program with regular ongoing program monies or terminate the program.

(3) (a) The State Board of Education shall allocate $100,000 of the experimental-developmental appropriation for programs to improve the efficiency of classified employees in the public schools.

(b) The programs should include training components, classified staffing formulas, and preventative maintenance formulas.

(4) (a) The State Board of Education shall allocate $584,900 of the appropriation for the planning, development, and implementation of alternative experimental pilot programs, using licensed teachers, which are cooperative ventures that have demonstrated support of parents, the recognized teachers' organization, administrators, and students.

(b) The State Board of Education shall select schools for the pilot programs by a grant process using selection criteria developed by the state board.

(5) Models for experimental activities similar to the nine district consortium activities are permissible under the experimental and developmental appropriation.

Section 26. Section 53A-17a-133 is amended to read:

53A-17a-133. State-supported voted leeway program authorized -- Election requirements -- State guarantee -- Reconsideration of the program.

(1) An election to consider adoption or modification of a voted leeway program is required if initiative petitions signed by 10% of the number of electors who voted at the last preceding general election are presented to the local school board or by action of the board.

(2) (a) To establish a voted leeway program, a majority of the electors of a district voting at an election in the manner set forth in Section 53A-16-110 must vote in favor of a special tax.

(b) The district may maintain a school program which exceeds the cost of the program referred to in Section 53A-17a-145 with this voted leeway.

(c) In order to receive state support the first year, a district must receive voter approval no later than December 1 of the year prior to implementation.

(d) The additional program is the state-supported voted leeway program of the district.

(3) (a) [~~(i)~~] Under the voted leeway program, the state shall contribute an amount sufficient to guarantee [~~$12~~] $17.14 per weighted pupil unit for each .0001 of the first [~~.0004~~] .0016 per dollar of taxable value.

[~~(ii) The guarantee shall apply to the first .0006 per dollar of taxable value beginning July 1, 1996, and shall apply to an additional .0002 per dollar of taxable value each year thereafter so that the guarantee shall apply to the first .0016 of taxable value beginning July 1, 2001, and for each year thereafter.~~]

(b) [~~(i)~~] The same dollar amount guarantee per weighted pupil unit for the [~~.0004~~] .0016 per dollar of taxable value under Subsection (3)(a) shall apply to the board-approved leeway authorized in Section 53A-17a-134, so that the guarantee shall

apply up to a total of [~~.0008~~] .002 per dollar of taxable value if a school district levies a tax rate [~~of up to .0004 in~~] under both programs.

[~~(ii) Beginning July 1, 1996, if a district levies up to.0006 in the voted leeway program and up to .0004 in the board leeway program, the guarantee shall apply up to a total of .001 for both programs and shall apply to an additional .0002 per dollar of taxable value each year thereafter through July 1, 2001, as described in Subsection (3)(a)(ii) so that the guarantee shall apply up to a total of.002 per dollar of taxable value beginning July 1, 2001, and for each year thereafter.~~]

(c) (i) Beginning July 1, [~~1997~~] 2002, the [~~$12~~] $17.14 guarantee under Subsections (3)(a) and (b) shall be indexed each year to the value of the weighted pupil unit by making the value of the guarantee equal to [~~.0075~~] .009044 times the value of the prior year's weighted pupil unit.

(ii) The guarantee shall increase by .0005 times the value of the prior year's weighted pupil unit for each succeeding year until the guarantee is equal to .010544 times the value of the prior year's weighted pupil unit.

(d) (i) The amount of state guarantee money to which a school district would otherwise be entitled to under Subsection (3) may not be reduced for the sole reason that the district's levy is reduced as a consequence of changes in the certified tax rate under Section 59-2-924 pursuant to changes in property valuation.

(ii) Subsection (3)(d)(i) applies for a period of two years following any such change in the certified tax rate.

(4) (a) An election to modify an existing voted leeway program is not a reconsideration of the existing program unless the proposition submitted to the electors expressly so states.

(b) A majority vote opposing a modification does not deprive the district of authority to continue an existing program.

(c) If adoption of a leeway program is contingent upon an offset reducing other local school board levies, the board must allow the electors, in an election, to consider modifying or discontinuing the program prior to a subsequent increase in other levies that would increase the total local school board levy.

(d) Nothing contained in this section terminates, without an election, the authority of a school district to continue an existing voted leeway program previously authorized by the voters.

Section 27. Section 53A-17a-134 is amended to read:

53A-17a-134. Board-approved leeway -- Purpose -- State support -- Disapproval.

(1) Each local school board may levy a tax rate of up to .0004 per dollar of taxable value to maintain a school program above the cost of the basic school program as follows:

(a) a local school board shall use the monies generated by the tax for class size reduction within the school district;

(b) if a local school board determines that the average class size in the school district is not excessive, it may use the monies for other school purposes but only if the board has declared the use for other school purposes in a public meeting prior to levying the tax rate; and

(c) a district may not use the monies for other school purposes under Subsection (1)(b) until it has certified in writing that its class size needs are already being met and has identified the other school purposes for which the monies will be used to the State Board of Education and the state board has approved their use for other school purposes.

(2) (a) The state shall contribute an amount sufficient to guarantee [~~$21.50~~] $17.14 per weighted pupil unit for each [~~.0002~~] .0001 per dollar of taxable value.

(b) The guarantee shall increase in the same [~~years and for the same amounts~~] manner as provided for the voted leeway guarantee in [~~Section~~] Subsections 53A-17a-133(3)(c)(i) and (ii).

(3) The levy authorized under this section is not in addition to the maximum rate of .002 authorized in Section 53A-17a-133, but is a board-authorized component of the total tax rate under that section.

(4) As an exception to Section 53A-17a-133, the board-authorized levy does not require voter approval, but the board may require voter approval if requested by a majority of the board.

(5) An election to consider disapproval of the board-authorized levy is required, if within 60 days after the levy is established by the board, referendum petitions signed by the number of legal voters required in Section 20A-7-301, who reside within the school district, are filed with the school district.

(6) (a) A local school board shall establish its board-approved levy by April 1 to have the levy apply to the fiscal year beginning July 1 in that same calendar year except that if an election is required under this section, the levy applies to the fiscal year beginning July 1 of the next calendar year.

(b) The approval and disapproval votes authorized in Subsections (4) and (5) shall occur at a general election in even-numbered years, except that a vote required under this section in odd-numbered years shall occur at a special election held on a day in odd-numbered years that corresponds to the general election date. The school district shall pay for the cost of a special election.

(7) (a) Modification or termination of a voter-approved leeway rate authorized under this section is governed by Section 53A-17a-133.

(b) A board-authorized leeway rate may be modified or terminated by a majority vote of the board subject to disapproval procedures specified in this section.

(8) A board levy election does not require publication of a voter information pamphlet.

Section 28. Section 53A-17a-135 is amended to read:

53A-17a-135. Certified revenue levy.

(1) (a) In order to qualify for receipt of the state contribution toward the basic program and as its contribution toward its costs of the basic program, each school district shall impose a minimum basic tax rate per dollar of taxable value that generates [~~$189,329,826~~] $196,908,771 in revenues statewide.

(b) The preliminary estimate for the [~~2000-01~~] 2001-02 tax rate is [~~.001845~~] .001768.

(c) The State Tax Commission shall certify on or before June 22 the rate that generates [~~$189,329,826~~] $196,908,771 in revenues statewide.

(d) If the minimum basic tax rate exceeds the certified revenue levy as defined in Section 59-2-102, the state is subject to the notice requirements of Section 59-2-926.

(e) For the calendar year beginning on January 1, 1998, and ending December 31, 1998, the certified revenue levy shall be increased by the amount necessary to offset the decrease in revenues from uniform fees on tangible personal property under Section 59-2-405 as a result of the decrease in uniform fees on tangible personal property under Section 59-2-405 enacted by the Legislature during the 1997 Annual General Session.

(f) For the calendar year beginning on January 1, 1999, and ending on December 31, 1999, the certified revenue levy shall be adjusted by the amount necessary to offset the adjustment in revenues from uniform fees on tangible personal property under Section 59-2-405.1 as a result of the adjustment in uniform fees on tangible personal property under Section 59-2-405.1 enacted by the Legislature during the 1998 Annual General Session.

(2) (a) The state shall contribute to each district toward the cost of the basic program in the district that portion which exceeds the proceeds of the levy authorized under Subsection (1).

(b) In accord with the state strategic plan for public education and to fulfill its responsibility for the development and implementation of that plan, the Legislature instructs the State Board of Education, the governor, and the Office of Legislative Fiscal Analyst in each of the coming five years to develop budgets that will fully fund student enrollment growth.

(3) (a) If the proceeds of the levy authorized under Subsection (1) equal or exceed the cost of the basic program in a school district, no state contribution shall be made to the basic program.

(b) The proceeds of the levy authorized under Subsection (1) which exceed the cost of the basic program shall be paid into the Uniform School Fund as provided by law.

Section 29. Section 53A-21-105 is amended to read:

53A-21-105. State contribution to capital outlay programs.

The state contribution toward the cost of the programs established under Section 53A-21-102 for the fiscal year beginning July 1, [~~2000~~] 2001, shall consist of an appropriation totaling [~~$28,358,000~~] $38,358,000 to the State Board of Education from the Uniform School Fund.

Section 30. Repealer.

This act repeals:

Section 53A-17a-124.1, State contribution for staff development -- Training on personalized education plans.

Section 53A-17a-128, Contingency fund for State Board of Education -- Laboratory school at Utah State University.

Section 53A-17a-129, State contribution for incentives for excellence.

Section 53A-17a-130, State contribution to regional service centers.

Section 53A-17a-131.1, State contribution to the educational technology initiative.

Section 53A-17a-131.3, State contributions to the school nurses program.

Section 53A-17a-131.6, State contribution to Character Education Program.

Section 53A-17a-131.8, State contribution to the Comprehensive Guidance Program.

Section 53A-17a-131.11, State contribution to truancy intervention and prevention.

Section 53A-17a-131.12, State contribution to Technology, Life, Careers, and Work-based Learning Programs.

Section 53A-17a-131.14, State contribution for reading initiative program.

Section 53A-17a-131.18, State contribution for assessment and accountability program.

Section 31. One-time appropriations.

In addition to the contributions and appropriations set out in Title 53A, Chapter 17a, Minimum School Program Act, for the fiscal year beginning July 1, 2001, there is appropriated from the Uniform School Fund to the State Board of Education for distribution to school districts for the fiscal year ending June 30, 2002, $24,785,000 in one-time nonlapsing monies as follows:

(1) $1,375,000 for applied technology-district equipment;

(2) $1,060,000 to the Schools for the 21st Century Program;

(3) $7,500,000 to the Math and Science Beginning Teacher Recruitment Program;

(4) $8,250,000 for the Educational Technology Initiative;

(5) $3,800,000 for Library Media Programs; and

(6) $2,800,000 for Staff Development Programs.

Section 32. Intent language.

(1) It is the intent of the Legislature that pregnancy prevention programs in public schools must stress the importance of abstinence from all sexual activity before marriage and fidelity after marriage as methods for preventing certain communicable diseases.

(2) It is the intent of the Legislature that programs that have been block granted by the 2001 Legislature and are no longer calculated with weighted pupil units be given priority for equivalent weighted pupil unit increases when considering compensation or weighted pupil unit increases by the 2002 Legislature.

(3) (a) It is the intent of the Legislature that school districts meet existing spending criteria and requirements specific to those programs included within block grant categories and for which the local board of education chooses to expend block grant funds.

(b) It is the further intent of the Legislature that school districts report the expenditure of block grant funds to the degree of specificity and detail established by the Utah State Board of Education and sufficient to meet the intent of the Legislature as articulated in this Section (3).

(c) It is the further intent of the Legislature that block grant funds shall be allocated to school districts proportionately based upon the district's total weighted pupil units in kindergarten, grades one through 12, and the necessarily existent small schools portions of the Minimum School Basic Program.

(4) (a) It is the intent of the Legislature that the State Office of Education convene a representative committee to study the needs of English Language Learners (ELL students) in Utah and related issues.

(b) It is the further intent of the Legislature that the committee report to the Education Interim Committee by November 2001.

(5) It is the intent of the Legislature that $72,000 of the one-time appropriation of $8,250,000 for the Educational Technology Initiative be transferred to the Utah Schools for the Deaf and the Blind for fiscal year 2002.

(6) It is the intent of the Legislature that no more than $70,000 of the monies appropriated to fund the School LAND Trust program shall be expended for administration of the program each year.

(7) It is the intent of the Legislature that with the fiscal year beginning July 1, 2001 and for subsequent years the State Office of Education may use carry forward funds from the Minimum School Program to pay school districts the amount necessary to make them whole for any support in subsidizing a charter school for students for whom the district does not receive appropriate state or federal funding.

Section 33. Effective date.

This act takes effect on July 1, 2001.

Section 34. Coordination clause.

(1) If this bill and S.B. 35, Public Education Capital Outlay Act Amendments, both pass, it is the intent of the Legislature that the Office of Legislative Research and General Counsel, in preparing the Utah Code database for publication, insert the amendments to Section 53A-21-105 in this bill as they supercede the amendments to that section in S.B. 35.

(2) If this bill and H.B. 38, School District Voted Leeway Amendments, both pass, it is the intent of the Legislature that the Office of Legislative Research and General Counsel, in preparing the Utah Code database for publication, insert the amendments to Sections 53A-17a-133 and 53A-17a-134 in this bill as they supercede the amendments to those sections in H.B. 38.

(3) (a) If this bill and S.B. 61, Enhancements to the State Systems of Public and Higher Education, both pass, it the intent of the Legislature that the appropriations in Section 53A-17a-131.19 and Section 31, Item (3), One-time appropriations, in this bill shall supercede:

(i) the appropriations in Subsections (2)(a) and (b) of the Appropriation Section 8 of S.B. 61; and

(ii) that part of the Effective date provision of Section 9 in S.B. 61 that would have Section (2)(b) of Appropriations Section 8 become effective May 1, 2001.

(b) The net effect of Subsection (3)(a) is to remove the appropriations for the Public Education Job Enhancement Program from S.B. 61 and have the program funded under the appropriations provisions of H.B. 3 referred to in Subsection (3)(a), effective July 1, 2001.

(c) If this bill and S.B. 61, Enhancements to the State Systems of Public and Higher Education, both pass, it is the intent of the Legislature that the appropriations in Section 53A-17a-131.9 and Section 31, Item (3), One-time appropriations, of this bill shall be distributed in accordance with Title 53A, Chapter 1a, Part 6, Public Education Job Enhancement Program created in S.B. 61.

CHAPTER 336
H. B. 38
Passed February 23, 2001
Approved March 20, 2001
Effective July 1, 2001

SCHOOL DISTRICT VOTED LEEWAY AMENDMENTS

Sponsor: Kevin S. Garn
David Ure
Greg J. Curtis
Patrice M. Arent
Brad King
Ron Bigelow
David L. Hogue
Bradley T. Johnson
Matt Throckmorton
Duane E. Bourdeaux
Judy Ann Buffmire
Fred J. Fife
James R. Gowans
LaWanna Shurtliff
A. Lamont Tyler
Rebecca D. Lockhart
Wayne A. Harper
Paul Ray
Don E. Bush
Douglas C. Aagard
Richard M. Siddoway
Marda Dillree
Sheryl L. Allen
Roger E. Barrus
Jeff Alexander
DeMar Bud Bowman
Joseph G. Murray
Loraine T. Pace
Craig W. Buttars
Stephen D. Clark
Chad E. Bennion
Thomas V. Hatch
David N. Cox
Carl R. Saunders
Kory M. Holdaway
John E. Swallow
Ben C. Ferry

This act modifies provisions related to the State System of Public Education by increasing the value of the state guarantee for voted and board leeways. The act increases the guarantee from .0075 times the value of the prior year's weighted pupil unit to .008044 and by .0005 for each succeeding year until the guarantee is equal to .010544 times the value of the prior year's weighted pupil unit. The act takes effect July 1, 2001.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
53A-17a-133, as last amended by Chapter 8, Laws of Utah 1996, Second Special Session
53A-17a-134, as last amended by Chapter 1, Laws of Utah 1994

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

Section 1. Section 53A-17a-133 is amended to read:

53A-17a-133. State-supported voted leeway program authorized -- Election requirements -- State guarantee -- Reconsideration of the program.

(1) An election to consider adoption or modification of a voted leeway program is required if initiative petitions signed by 10% of the number of electors who voted at the last preceding general election are presented to the local school board or by action of the board.

(2) (a) To establish a voted leeway program, a majority of the electors of a district voting at an election in the manner set forth in Section 53A-16-110 must vote in favor of a special tax.

(b) The district may maintain a school program which exceeds the cost of the program referred to in Section 53A-17a-145 with this voted leeway.

(c) In order to receive state support the first year, a district must receive voter approval no later than December 1 of the year prior to implementation.

(d) The additional program is the state-supported voted leeway program of the district.

(3) (a) [~~(i)~~] Under the voted leeway program, the state shall contribute an amount sufficient to guarantee [~~$12~~] $17.14 per weighted pupil unit for each .0001 of the first [~~.0004~~] .0016 per dollar of taxable value.

[~~(ii) The guarantee shall apply to the first .0006 per dollar of taxable value beginning July 1, 1996, and shall apply to an additional .0002 per dollar of taxable value each year thereafter so that the guarantee shall apply to the first .0016 of taxable value beginning July 1, 2001, and for each year thereafter.~~]

(b) [~~(i)~~] The same dollar amount guarantee per weighted pupil unit for the [~~.0004~~] .0016 per dollar of taxable value under Subsection (a) shall apply to the board-approved leeway authorized in Section 53A-17a-134, so that the guarantee shall apply up to a total of [~~.0008~~] .002 per dollar of taxable value if a school district levies a tax rate [~~of up to .0004 in~~] under both programs.

[~~(ii) Beginning July 1, 1996, if a district levies up to.0006 in the voted leeway program and up to .0004 in the board leeway program, the guarantee shall apply up to a total of .001 for both programs and shall apply to an additional .0002 per dollar of taxable value each year thereafter through July 1, 2001, as described in Subsection (3)(a)(ii) so that the guarantee shall apply up to a total of.002 per dollar of taxable value beginning July 1, 2001, and for each year thereafter.~~]

(c) (i) Beginning July 1, [~~1997~~] 2002, the [~~$12~~] $17.14 guarantee under Subsections (3)(a) and (b) shall be indexed each year to the value of the weighted pupil unit by making the value of the guarantee equal to [~~.0075~~] .008544 times the value of the prior year's weighted pupil unit.

(ii) The guarantee shall increase by .0005 times the value of the prior year's weighted pupil unit for

each succeeding year until the guarantee is equal to .010544 times the value of the prior year's weighted pupil unit.

(d) (i) The amount of state guarantee money to which a school district would otherwise be entitled to under Subsection (3) may not be reduced for the sole reason that the district's levy is reduced as a consequence of changes in the certified tax rate under Section 59-2-924 pursuant to changes in property valuation.

(ii) Subsection (3)(d)(i) applies for a period of two years following any such change in the certified tax rate.

(4) (a) An election to modify an existing voted leeway program is not a reconsideration of the existing program unless the proposition submitted to the electors expressly so states.

(b) A majority vote opposing a modification does not deprive the district of authority to continue an existing program.

(c) If adoption of a leeway program is contingent upon an offset reducing other local school board levies, the board must allow the electors, in an election, to consider modifying or discontinuing the program prior to a subsequent increase in other levies that would increase the total local school board levy.

(d) Nothing contained in this section terminates, without an election, the authority of a school district to continue an existing voted leeway program previously authorized by the voters.

Section 2. Section 53A-17a-134 is amended to read:

53A-17a-134. Board-approved leeway -- Purpose -- State support -- Disapproval.

(1) Each local school board may levy a tax rate of up to .0004 per dollar of taxable value to maintain a school program above the cost of the basic school program as follows:

(a) a local school board shall use the monies generated by the tax for class size reduction within the school district;

(b) if a local school board determines that the average class size in the school district is not excessive, it may use the monies for other school purposes but only if the board has declared the use for other school purposes in a public meeting prior to levying the tax rate; and

(c) a district may not use the monies for other school purposes under Subsection (1)(b) until it has certified in writing that its class size needs are already being met and has identified the other school purposes for which the monies will be used to the State Board of Education and the state board has approved their use for other school purposes.

(2) (a) The state shall contribute an amount sufficient to guarantee [~~$21.50~~] $17.14 per weighted pupil unit for each [~~.0002~~] .0001 per dollar of taxable value.

(b) The guarantee shall increase in the same [~~years and for the same amounts~~] manner as provided for the voted leeway guarantee in [~~Section~~] Subsections 53A-17a-133(3)(c)(i) and (ii).

(3) The levy authorized under this section is not in addition to the maximum rate of .002 authorized in Section 53A-17a-133, but is a board-authorized component of the total tax rate under that section.

(4) As an exception to Section 53A-17a-133, the board-authorized levy does not require voter approval, but the board may require voter approval if requested by a majority of the board.

(5) An election to consider disapproval of the board-authorized levy is required, if within 60 days after the levy is established by the board, referendum petitions signed by the number of legal voters required in Section 20A-7-301, who reside within the school district, are filed with the school district.

(6) (a) A local school board shall establish its board-approved levy by April 1 to have the levy apply to the fiscal year beginning July 1 in that same calendar year except that if an election is required under this section, the levy applies to the fiscal year beginning July 1 of the next calendar year.

(b) The approval and disapproval votes authorized in Subsections (4) and (5) shall occur at a general election in even-numbered years, except that a vote required under this section in odd-numbered years shall occur at a special election held on a day in odd-numbered years that corresponds to the general election date. The school district shall pay for the cost of a special election.

(7) (a) Modification or termination of a voter-approved leeway rate authorized under this section is governed by Section 53A-17a-133.

(b) A board-authorized leeway rate may be modified or terminated by a majority vote of the board subject to disapproval procedures specified in this section.

(8) A board levy election does not require publication of a voter information pamphlet.

Section 3. Effective date.

This act takes effect on July 1, 2001.

CHAPTER 337
H. B. 40
Passed February 26, 2001
Approved March 20, 2001
Effective March 20, 2001

FUNDING FOR TEXTBOOKS

Sponsor: Martin R. Stephens
Kevin S. Garn
David Ure
Greg J. Curtis
Joseph G. Murray
Afton B. Bradshaw
A. Lamont Tyler
Sheryl L. Allen
Brent D. Parker
Paul Ray
Stephen H. Urquhart
Bradley T. Johnson
Peggy Wallace
Merlynn T. Newbold
Marda Dillree
Stephen D. Clark
Chad E. Bennion
Mike Thompson
Matt Throckmorton
Bradley A. Winn
Rebecca D. Lockhart
James A. Ferrin
LaWanna Shurtliff
Gary F. Cox
Glenn L. Way
Gerry A. Adair
David Clark
Thomas V. Hatch
John E. Swallow
Ben C. Ferry
J. Morgan Philpot
Roger E. Barrus
Carl R. Saunders
Glenn A. Donnelson
Ron Bigelow
Douglas C. Aagard
Bryan D. Holladay
David N. Cox
Michael R. Styler
Jack A. Seitz
DeMar Bud Bowman
Darin G. Peterson
Brent H. Goodfellow
Don E. Bush
Karen W. Morgan
Katherine M. Bryson

The act modifies provisions related to the State System of Public Education by requiring the State Board of Education to design and implement a statewide plan to provide for an adequate supply of textbooks for students on an ongoing basis and to replace outdated textbooks or textbooks in poor condition. This act provides an appropriation of $23,790,000 in one-time monies to purchase new textbooks and has an immediate effective date.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:
53A-12-201.5, Utah Code Annotated 1953

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

Section 1. Section 53A-12-201.5 is enacted to read:

53A-12-201.5. State plan to meet textbook needs -- Monitoring and auditing of textbook programs.

(1) (a) The State Board of Education, in consultation with local school boards and local superintendents, shall design and implement a statewide plan to:

(i) provide for an adequate supply of textbooks for students in the state's public schools on an ongoing basis; and

(ii) replace outdated textbooks or textbooks in poor condition.

(b) The board shall review the plan annually and make modifications if necessary to meet the requirements of Subsection (1)(a).

(c) (i) Each local school board shall provide an annual report to the State Board of Education by August 1 on:

(A) the district's textbook needs from the just completed school year;

(B) monies received prior to and during the school year to meet those needs by source and amount; and

(C) how the monies received under Subsection (c)(i)(B) were spent to meet the needs identified under Subsection (c)(i)(A).

(ii) The state board, through the superintendent of public instruction, shall provide a summary report of the data received under Subsection (c)(i) to the Legislative Education Interim Committee by October 1 of each year.

(2) The State Board of Education shall:

(a) make a rule in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, that provides uniform guidelines for determining what constitutes:

(i) an adequate supply of textbooks; and

(ii) an outdated textbook and a textbook in poor condition; and

(b) determine if the definition of textbooks under Section 53A-12-202 should be modified for purposes of this chapter and make its recommendation to the Education Interim Committee of the Legislature prior to November 30, 2001.

(3) (a) The State Board of Education and the Legislative Auditor General's Office shall jointly monitor and conduct an audit of the funding sources and expenditures for textbooks in the state's public schools.

(b) The monitoring and audit shall cover a period of at least three but no more than five years, beginning with the 2000-01 school year.

Section 2. Appropriation.

(1) For fiscal year 2000-01 only, there is appropriated from the Uniform School Fund $23,790,000 in one-time monies to the State Board of Education.

(2) (a) The board shall allocate the appropriation to local school boards for the purchase of textbooks for students on the basis of:

(i) need as identified in the Legislative Auditor General's State Textbook Funding Audit dated November 2000 or as identified by the State Board of Education; and

(ii) effort made by each district to satisfy its textbook needs.

(b) Each local school board shall use its allocation to provide adequate numbers of textbooks for students or to replace textbooks in poor or outdated condition or to do both.

Section 3. Effective date.

If approved by two-thirds of all the members elected to each house, this act takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 338
H. B. 42
Passed February 26, 2001
Approved March 20, 2001
Effective July 1, 2001

FUNDING FOR CLASSROOM SUPPLIES

Sponsor: Ron Bigelow
Patrice M. Arent
Bradley T. Johnson
DeMar Bud Bowman
Jack A. Seitz
Joseph G. Murray
A. Lamont Tyler
Sheryl L. Allen
Mike Thompson
Ben C. Ferry
Michael R. Styler
John E. Swallow
Craig W. Buttars
Afton B. Bradshaw
Don E. Bush
Gordon E. Snow
Chad E. Bennion
Matt Throckmorton
Greg J. Curtis
Bryan D. Holladay
Kevin S. Garn
Judy Ann Buffmire
Brad King
LaWanna Shurtliff

This act appropriates $5,000,000 from the Uniform School Fund for fiscal year 2001-02 to the State Board of Education for distribution to public school teachers for classroom supplies and materials. The act takes effect on July 1, 2001.

This act enacts uncodified material.

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

Section 1. Appropriation.

(1) There is appropriated from the Uniform School Fund for fiscal year 2001-02, $5,000,000 to the State Board of Education for distribution to public school teachers for classroom supplies and materials.

(2) The board shall distribute the appropriation directly to classroom teachers through the state's 40 school districts on the basis of the number of classroom teachers in each public school as compared to the total number of classroom teachers in the 40 school districts.

(3) (a) Each teacher in grades kindergarten through six shall receive up to $225 and each teacher in grades seven through 12 shall receive up to $175 from the appropriation.

(b) Teachers shall spend the money for school supplies, materials, or field trips under rules adopted by the State Board of Education.

(4) As used in this section:

(a) "Public schools" and "school districts" include the Schools for the Deaf and the Blind, the Edith Bowen Laboratory School, and applied technology centers.

(b) "Teachers" mean permanent teacher positions filled by one teacher or two or more job-sharing teachers who are licensed personnel, paid on the teacher's salary schedule, and hired for an entire contract period, and whose primary function is to provide instructional or a combination of instructional and counseling services to students in the public schools.

Section 2. Effective date.

This act takes effect on July 1, 2001.

CHAPTER 339
H. B. 68
Passed February 23, 2001
Approved March 20, 2001
Effective April 30, 2001

ANNUAL LEAVE CONVERSION FOR STATE EMPLOYEES

Sponsor: James R. Gowans

This act enacts code provisions relating to state officer and employee benefits. This act enacts certain provisions regulating conversion of annual leave to a deferred compensation plan.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:
67-19-12.9, Utah Code Annotated 1953

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

Section 1. Section 67-19-12.9 is enacted to read:

67-19-12.9. Accumulated annual leave -- Annual conversion to deferred compensation plan.

(1) The department shall implement a program that allows an employee, in each calendar year, to elect to convert up to 20 hours of annual leave, in whole hour increments not to exceed $250 in value, into any of the employee's designated deferred compensation accounts that:

(a) are sponsored by the Utah State Retirement Board; and

(b) are qualified under Section 401(k) or Section 457 of the Internal Revenue Code.

(2) Any annual leave converted under Subsection (1) shall be:

(a) converted into the employee's deferred compensation account at the employee's pay rate at the time of conversion; and

(b) calculated in the last pay period of the leave year as determined by the Division of Finance.

(3) An employee may not convert hours of accrued annual leave to the extent that any hours converted would:

(a) exceed the maximum amount authorized by the Internal Revenue Code for each calendar year; or

(b) cause the employee's balance of accumulated annual leave to drop below the maximum accrual limit provided by rule.

CHAPTER 340
H. B. 71
Passed February 23, 2001
Approved March 20, 2001
Effective April 30, 2001

APPROPRIATION FOR LAND USE PLANNING

Sponsor: Stephen H. Urquhart

This act appropriates $100,000 from the General Fund for fiscal year 2001-02 to the Office of Planning and Budget for distribution to counties and other local governments for developing and implementing land use plans and to Southern Utah University to conduct workshops on land planning.

This act enacts uncodified material.

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

Section 1. Intent.

The Legislature finds that appropriate land-use planning by the counties and other local governments is a matter of state concern and that the quality of land-use planning improves with training and education. It is the intent of the Legislature in appropriating these funds to help meet the statewide need for training and education of county, local, and state officials involved in land-use planning activities to improve the quality of land-use planning.

Section 2. Appropriation.

(1) (a) For fiscal year 2001-02 only, there is appropriated from the General Fund $100,000 to the Office of Planning and Budget.

(b) The Office of Planning and Budget shall:

(i) distribute up to $10,000 of the appropriated funds to Southern Utah University for use by its Utah Center for Rural Life to conduct workshops on preparation of land-use plans, including protection of private property rights and other rights attached to property;

(ii) determine, in conjunction with the Utah Association of Counties, the counties and other local governments most qualified to receive the remainder of the appropriated funds to assist in developing and implementing land-use plans, based on criteria established by the Governor's Local Government Comprehensive Planning Project Steering Committee;

(iii) consider the recommendations of the Governor's Rural Partnership Board in determining the counties and other local governments most qualified to receive funds under Subsection (1)(b)(ii); and

(iv) distribute the remaining funds to counties and other local governments that:

(A) meet the criteria established by the Governor's Local Government Comprehensive Planning Project Steering Committee;

(B) match the amount distributed by the Office of Planning and Budget in funds or in kind;

(C) agree to encourage county, local, and state officials involved with land-use planning to attend the workshops; and

(D) agree to review and, if necessary, revise the comprehensive general plan at least annually.

(c) In planning and presenting the workshops provided under Subsection (1)(b)(i), Southern Utah University, through its Utah Center for Rural Life, may involve county and other local government officials who are preparing or have completed a land-use plan.

(2) These appropriations are nonlapsing.

CHAPTER 341
H. B. 81
Passed February 9, 2001
Approved March 20, 2001
Effective April 30, 2001

ALCOHOLIC BEVERAGE SERVER TRAINING AMENDMENTS

Sponsor: Carl R. Saunders
Bradley T. Johnson
Richard M. Siddoway
A. Lamont Tyler
Peggy Wallace
Douglas C. Aagard
Don E. Bush
Jack A. Seitz
Jeff Alexander
Kevin S. Garn
DeMar Bud Bowman
Kory M. Holdaway
Paul Ray
LaWanna Shurtliff
Joseph G. Murray
Stephen H. Urquhart
Neil A. Hansen
Max W. Young
Bryan D. Holladay
Duane E. Bourdeaux
Brent D. Parker
David L. Hogue
Craig W. Buttars
David Clark
Michael R. Styler
Sheryl L. Allen
Carol Spackman Moss
Roger E. Barrus
Ty McCartney
Brad King
Carl W. Duckworth

This act modifies the Alcoholic Beverage Code and the Human Services Code to amend provisions related to alcoholic beverage server training and to make technical changes. The act clarifies who is required to be trained and the responsibilities of persons related to the training.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
32A-1-401, as last amended by Chapter 13, Laws of Utah 1998
62A-8-103.5, as last amended by Chapter 334, Laws of Utah 2000

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

Section 1. Section 32A-1-401 is amended to read:

32A-1-401. Alcohol training and education -- Revocation or suspension of licenses.

(1) The commission may revoke, suspend, [~~or~~] withhold, or not renew the license of any new or renewing licensee [~~whose employees~~] if any of the following persons, as defined in Section 62A-8-103.5, fail to complete the seminar [~~provided for~~] required in Section 62A-8-103.5[~~.~~]:

(a) a person who manages operations at the premises of the licensee;

(b) a person who supervises the serving of alcoholic beverages to a customer for consumption on the premises of the licensee; or

(c) a person who serves alcoholic beverages to a customer for consumption on the premises of the licensee.

(2) A city, town, or county in which an establishment[~~, whose employees are required to complete the seminar provided for in Section 62A-8-103.5,~~] conducts its business may revoke, suspend, [~~or~~] withhold, or not renew the business license of the establishment if [~~its employees fail~~] any person described in Subsection (1) fails to complete the seminar required in Section 62A-8-103.5.

Section 2. Section 62A-8-103.5 is amended to read:

62A-8-103.5. Alcohol training and education seminar.

[~~(1) Each new and renewing licensee under Title 32A who sells or furnishes alcoholic beverages to the public within the scope of his employment, and each employee of every other establishment who, within the scope of his employment, serves alcoholic beverages to the public for consumption on the premises shall:~~]

(1) As used in this section:

(a) "instructor" means a person that directly provides the instruction during an alcohol training and education seminar for a seminar provider;

(b) "licensee" means a person who is:

(i) a new or renewing licensee under Title 32A, Alcoholic Beverage Control Act; and

(ii) engaged in the retail sale of alcoholic beverages for consumption on the premises of the licensee; and

(c) "seminar provider" means a person other than the division who provides an alcohol training and education seminar meeting the requirements of this section.

(2) (a) This section applies to a person who, as defined by the board by rule:

(i) manages operations at the premises of a licensee;

(ii) supervises the serving of alcoholic beverages to a customer for consumption on the premises of a licensee; or

(iii) serves alcoholic beverages to a customer for consumption on the premises of a licensee.

(b) A person described in Subsection (2)(a) shall:

[~~(a)~~] (i) complete an alcohol training and education seminar within 30 days of [~~beginning employment; and~~]:

(A) if the person is an employee, the day the person begins employment;

(B) if the person is an independent contractor, the day the person is first hired;

(C) if the person holds an ownership interest in the licensee, the day that person first engages in an activity that would result in that person being required to complete an alcohol training and education seminar; and

[~~(b)~~] (ii) pay a fee:

(A) to the seminar provider[~~.~~]; and

(B) that is equal to or greater than the amount established under Subsection (4)(h).

(c) Notwithstanding Subsection (2)(b)(i)(C), a person described in Subsection (2)(b)(i)(C) shall complete an alcohol training and education seminar by no later than July 31, 2001, if as of May 1, 2001 the person:

(i) holds an ownership interest in the licensee; and

(ii) has engaged in an activity that would result in that person being required to complete an alcohol training and education seminar.

(3) (a) A licensee may not permit a person who is not in compliance with Subsection (2) to:

(i) serve or supervise the serving of alcoholic beverages to a customer for consumption on the premises of the licensee; or

(ii) engage in any activity that would constitute managing operations at the premises of a licensee.

(b) A licensee that violates Subsection (3)(a), is subject to Section 32A-1-401.

[~~(2)~~] (4) The division shall:

(a) (i) provide alcohol training and education seminars; or

(ii) certify one or more seminar providers;

(b) [~~include the following subjects in~~] establish the curriculum [~~and instruction~~] for an alcohol training and education seminar that includes the following subjects:

(i) (A) alcohol as a drug; and [~~its~~]

(B) alcohol's effect on the body and behavior;

(ii) recognizing the problem drinker;

(iii) an overview of state alcohol laws related to responsible beverage service, as determined in consultation with the Department of Alcoholic Beverage Control;

(iv) dealing with the problem customer, including ways to terminate service; and

(v) alternative means of transportation to get the customer safely home; [~~and~~]

(c) recertify each seminar provider every three years;

(d) monitor compliance with the curriculum described in Subsection (4)(b);

(e) maintain for at least three years a record of every person who has completed an alcohol training and education seminar;

(f) provide the information described in Subsection (4)(e) on request to:

(i) the Department of Alcoholic Beverage Control; or

(ii) law enforcement;

(g) provide the Department of Alcoholic Beverage Control on request a list of any seminar provider certified by the division; and

[~~(c)~~] (h) establish a fee amount for each person attending [~~the~~] an alcohol training and education seminar [~~in an amount~~] that is sufficient to offset the division's cost of administering [~~the seminar~~] this section.

(5) The board shall by rule made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act:

(a) define what constitutes under this section a person who:

(i) manages operations at the premises of a licensee;

(ii) supervises the serving of alcoholic beverages to a customer for consumption on the premises of a licensee; or

(iii) serves alcoholic beverages to a customer for consumption on the premises of a licensee;

(b) establish criteria for certifying and recertifying a seminar provider; and

(c) establish guidelines for the manner in which an instructor provides an alcohol education and training seminar.

[~~(3) The~~] (6) A seminar provider shall [~~collect the fee and forward it to the division.~~]:

(a) obtain recertification by the division every three years;

(b) ensure that an instructor used by the seminar provider:

(i) follows the curriculum established under this section; and

(ii) conducts an alcohol training and education seminar in accordance with the guidelines established by rule;

(c) ensure that any information provided by the seminar provider or instructor of a seminar provider is consistent with:

(i) the curriculum established under this section; and

(ii) this section;

(d) provide the division with the names of all persons who complete an alcohol training and education seminar provided by the seminar provider;

(e) collect a fee for each person attending an alcohol training and education seminar in accordance with Subsection (2); and

(f) forward to the division the portion of the fee that is equal to the amount described in Subsection (4)(h).

(7) (a) If after a hearing conducted in accordance with Title 63, Chapter 46b, Administrative Procedures Act, the division finds that a seminar provider violates this section or that an instructor of the seminar provider violates this section, the division may:

(i) suspend the certification of the seminar provider for a period not to exceed 90 days;

(ii) revoke the certification of the seminar provider;

(iii) require the seminar provider to take corrective action regarding an instructor; or

(iv) prohibit the seminar provider from using an instructor until such time that the seminar provider establishes to the satisfaction of the division that the instructor is in compliance with Subsection (6)(b).

(b) The division may certify a seminar provider whose certification is revoked:

(i) no sooner than 90 days from the date the certification is revoked; and

(ii) if the seminar provider establishes to the satisfaction of the division that the seminar provider will comply with this section.

CHAPTER 342
H. B. 84
Passed February 22, 2001
Approved March 20, 2001
Effective July 1, 2001

APPROPRIATIONS FOR THE BLIND CENTER

Sponsor: Gerry A. Adair

This act appropriates $360,000 from the General Fund to the Division of Services for the Blind and Visually Impaired within the Utah State Office of Rehabilitation for fiscal year 2001-02. This act takes effect on July 1, 2001.

This act enacts uncodified material.

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

Section 1. Appropriation.

(1) There is appropriated from the General Fund for fiscal year 2001-02 only, $360,000 to the Division of Services for the Blind and Visually Impaired within the Utah State Office of Rehabilitation to provide services to deaf and blind persons who require communication assistance in their daily living activities.

(2) The appropriation under Subsection (1) is nonlapsing.

Section 2. Effective date.

This act takes effect on July 1, 2001.

CHAPTER 343
H. B. 87
Passed February 22, 2001
Approved March 20, 2001
Effective July 1, 2001

APPROPRIATION FOR UTAH BOTANICAL CENTER

Sponsor: Marda Dillree

This act appropriates $250,000 to Utah State University for costs related to the Utah Botanical Center. This act provides an effective date.

This act enacts uncodified material.

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

Section 1. Appropriation.

(1) For fiscal year 2001-02 only, there is appropriated $250,000 from the General Fund to Utah State University to use for costs associated with the development and operation of the Utah Botanical Center in Kaysville.

(2) The funds appropriated under Subsection (1) are nonlapsing.

Section 2. Effective date.

This act takes effect on July 1, 2001.

CHAPTER 344
H. B. 89
Passed February 23, 2001
Approved March 20, 2001
Effective April 30, 2001

RURAL PHARMACY CHANGES

Sponsor: Loraine T. Pace

This act modifies the Occupational and Professional Licensing Code by amending provisions related to supervision of a pharmacy located in remote rural hospitals or clinics. The act uses defined terms to describe required supervision. The act appropriates $100,000 for fiscal year 2001-02, from the General Fund to the Department of Health Bureau of Primary Care, Rural and Ethnic Health, to establish and oversee a rural telepharmacy system.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
58-17a-611, as enacted by Chapter 247, Laws of Utah 1996

This act enacts uncodified material.

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

Section 1. Section 58-17a-611 is amended to read:

58-17a-611. Supervision -- Pharmacist-in-charge.

(1) (a) A drug outlet, except a wholesaler, distributor, or out-of-state mail service pharmacy, shall be under the general supervision of [~~not less than~~] at least one pharmacist licensed to practice in Utah. One pharmacist licensed in Utah shall be designated as the pharmacist-in-charge.

(b) Notwithstanding the provisions of Subsection 58-17a-102(17), a supervising pharmacist does not have to be in the pharmacy or facility in which the drug outlet is located but shall be available via a telepharmacy system for immediate contact with the supervised pharmacy technician or pharmacy intern if:

(i) the drug outlet is located in:

(A) a remote rural hospital as defined in Section 26-21-13.6; or

(B) a clinic located in a remote rural county with less than 20 people per square mile; and

(ii) the supervising pharmacist described in Subsection (1)(a), is not available; and

(iii) the telepharmacy system maintains records and files quarterly reports as required by division rule adopted in consultation with the Pharmacy Board to assure that patient safety is not compromised.

(2) Each out-of-state mail service pharmacy shall designate and identify to the board a pharmacist holding a current license issued by the state in which the pharmacy is located, who serves as the pharmacist-in-charge for all purposes under this chapter.

Section 2. Intent.

The Legislature finds that:

(1) rural citizens of the state need access to hospitals and pharmacy services;

(2) hospitals and clinics in remote rural areas of the state have limited resources to provide 24-hour, on-site supervision of a hospital or clinic pharmacy by a licensed pharmacist; and

(3) a telepharmacy system in which a consulting pharmacist can oversee the delivery of pharmacy services by a supervised pharmacy technician or pharmacy intern when the remote rural hospital or clinic pharmacist is not available is essential to the viability of rural access to pharmacy services.

Section 3. Appropriation.

(1) There is appropriated from the General Fund for fiscal year 2001-02 only, $100,000 to the Department of Health Bureau of Primary Care, Rural and Ethnic Health.

(2) It is the intent of the Legislature that the Department of Health Bureau of Primary Care, Rural and Ethnic Health, use the University of Utah Telemedicine Outreach Program to establish and give oversight to a hospital and clinic telepharmacy system by using $45,000 for one pharmacy dispensing unit located in a general hospital or clinic in San Juan County, and by using $15,000 to assist with the cost of providing on-line telepharmacy services to San Juan County, and $40,000 to assist with staff support and oversight of the telepharmacy system.

CHAPTER 345
H. B. 92
Passed February 27, 2001
Approved March 20, 2001
Effective July 1, 2001

SPAY AND NEUTER LICENSE PLATE

Sponsor: Jackie Biskupski

This act modifies the Motor Vehicles Code to authorize spay and neuter special group license plates for contributors to spay and neuter programs. This act takes effect on July 1, 2001.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
41-1a-408, as last amended by Chapters 27 and 40, Laws of Utah 2000
41-1a-1201, as last amended by Chapters 40 and 345, Laws of Utah 2000
41-1a-1211, as last amended by Chapters 27 and 40, Laws of Utah 2000

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

Section 1. Section 41-1a-408 is amended to read:

41-1a-408. Special group plates -- Design -- Application -- Issuance.

(1) As used in this section:

(a) "Boy Scouts of America license plates" means the special group license plates issued under this section to a contributor to the Boy Scouts of America.

(b) "Children's issues license plates" means the special group license plates issued under this section to a contributor to the Guardian Ad Litem Services Account and the Children's Museum of Utah.

(c) "Collegiate license plates" means the special group license plates issued under this section to a contributor to an institution after payment of the appropriate fees.

(d) (i) "Contributor" means a person who has donated or in whose name at least $25 has been donated to:

(A) a scholastic scholarship fund of a single institution;

(B) the Office of Veterans' Affairs in the Department of Community and Economic Development for veterans' programs;

(C) the Division of Wildlife Resources for conservation of wildlife and the enhancement, preservation, protection, access, and management of wildlife habitat;

(D) the Department of Agriculture and Food for the benefit of soil conservation districts;

(E) the Division of Parks and Recreation for the benefit of snowmobile programs;

(F) the Guardian Ad Litem Services Account and the Children's Museum of Utah, with the donation evenly divided between the two; [~~or~~]

(G) the Boy Scouts of America for the benefit of a Utah Boy Scouts of America council as specified by the contributor[~~.~~]; or

(H) No More Homeless Pets in Utah for distribution to organizations or individuals that provide spay and neuter programs that subsidize the sterilization of domestic animals.

(ii) Except as provided under Subsection (13), the donation must be made in the 12 months prior to registration or renewal of registration.

(e) "Institution" means a state institution of higher education or a private institution of higher education in the state accredited by a regional or national accrediting agency recognized by the United States Department of Education.

(f) "Snowmobile license plates" means the special group license plates issued under this section to a contributor to the Division of Parks and Recreation after payment of the appropriate fees.

(g) "Soil conservation license plates" means the special group license plates issued under this section to a contributor to the Department of Agriculture and Food after payment of the appropriate fees.

(h) "Spay and neuter license plates" means the special group license plates issued under this section to a contributor to spay and neuter programs through No More Homeless Pets in Utah.

[~~(h)~~] (i) "State institution of higher education" has the same meaning as provided in Section 53B-3-102.

[~~(i)~~] (j) "Veterans' license plates" means the special group license plates issued under this section to a contributor to the Office of Veterans' Affairs after payment of the appropriate fees.

[~~(j)~~] (k) "Wildlife license plates" means the special group license plates issued under this section to a contributor to the Division of Wildlife Resources after payment of the appropriate fees.

(2) (a) The design and maximum number of numerals or characters on special group license plates shall be determined by the division in accordance with the criteria in Subsection (2)(b).

(b) Except for Olympic special group license plates, each special group license plate shall display:

(i) the word Utah;

(ii) the name or identifying slogan of the special group;

(iii) a symbol not exceeding two positions in size representing the special group; and

(iv) the combination of letters, numbers, or both uniquely identifying the registered vehicle.

(3) (a) The division shall, after consultation with a representative designated by the special group,

specify the word or words comprising the special group name and the symbol to be displayed upon the special group license plates.

(b) Collegiate, veterans', children's issues, snowmobile, soil conservation, Boy Scouts of America, spay and neuter, and wildlife license plates may not be redesigned under this section more frequently than every five years.

(c) Veterans' license plates shall display one of the symbols representing the Army, Navy, Air Force, Marines, or Coast Guard.

(4) Subject to Subsections (10) and (12), the division shall only issue special group license plates to a person who is:

(a) a current member of the Legislature;

(b) a current member of the United States Congress;

(c) a survivor of the Japanese attack on Pearl Harbor;

(d) a former prisoner of war;

(e) a recipient of a Purple Heart, as provided in Section 41-1a-409;

(f) a current member of the National Guard;

(g) a person with a disability or the registered owner of a vehicle that an organization uses primarily for the transportation of persons with disabilities that limit or impair the ability to walk;

(h) a contributor to an institution's scholastic scholarship fund;

(i) a contributor to the Division of Wildlife Resources;

(j) a contributor to the Office of Veterans' Affairs;

(k) licensing a special interest vehicle;

(l) licensing a vintage vehicle;

(m) a licensed amateur radio operator;

(n) registering a farm truck;

(o) a currently employed, volunteer, or retired firefighter;

(p) a contributor to the Division of Parks and Recreation;

(q) a contributor to the Department of Agriculture and Food;

(r) a contributor to the Guardian Ad Litem Services Account and the Children's Museum of Utah;

(s) a contributor to the Boy Scouts of America; [~~or~~]

(t) an emergency medical technician[~~,~~]; or

(u) a contributor to spay and neuter programs through No More Homeless Pets in Utah.

(5) (a) A vehicle displaying a survivor of the Japanese attack on Pearl Harbor license plate decal, a former prisoner of war license plate decal, or a Purple Heart license plate decal shall be titled in the name of the veteran or the veteran and spouse.

(b) Upon the death of the veteran, the surviving spouse may, upon application to the division, retain the special group license plate decal so long as the surviving spouse remains unmarried.

(c) The division shall require the surviving spouse to make a sworn statement that the surviving spouse is unmarried before renewing the registration under this section.

(6) (a) (i) In accordance with rules made under Subsection (12), the division shall issue a person with a disability special group license plate, temporary removable windshield placard, or a removable windshield placard to:

(A) a qualifying person with a disability; or

(B) an organization that uses a vehicle registered in the applicant's name primarily for the transportation of persons with disabilities that limit or impair the ability to walk.

(ii) The division shall issue a person with a disability special group license plate or a removable windshield placard to a person with a permanent disability.

(iii) The issuance of a person with a disability special group license plate does not preclude the issuance to the same applicant of a removable windshield placard.

(iv) The division shall issue on request one additional placard to a person with a person with a disability special group license plate, temporary removable windshield placard, or a removable windshield placard.

(b) The temporary removable windshield placard or removable windshield placard shall be hung from the front windshield rearview mirror when the vehicle is parked in a parking space reserved for persons with disabilities so that it is visible from the front and rear of the vehicle.

(7) (a) An applicant for original or renewal collegiate license plates must be a contributor to the institution named in the application and present the original contribution verification form or make a contribution to the division at the time of application.

(b) An institution with a special group license plate shall issue to a contributor a verification form designed by the commission containing:

(i) the name of the contributor;

(ii) the institution to which a donation was made;

(iii) the date of the donation; and

(iv) an attestation that the donation was for a scholastic scholarship.

(c) The state auditor may audit each institution to verify that the moneys collected by the institutions from contributors are used for scholastic scholarships.

(d) After an applicant has been issued collegiate license plates or renewal decals, the commission shall charge the institution whose plate was issued, a fee determined in accordance with Section 63-38-3.2 for management and administrative expenses incurred in issuing and renewing the collegiate license plates.

(e) If the contribution is made at the time of application, the contribution shall be:

(i) collected by the division;

(ii) treated as a voluntary contribution for the named institution's scholastic scholarship fund and not as a motor vehicle registration fee; and

(iii) deposited with the named institution, less actual production and administrative costs associated with making and issuing collegiate license plates.

(8) (a) An applicant for original or renewal wildlife license plates must be a contributor to the Division of Wildlife Resources.

(b) This contribution shall be:

(i) collected by the division;

(ii) treated as a voluntary contribution for the funding of wildlife activities and not as a motor vehicle registration fee; and

(iii) deposited into the Wildlife Resources Account created in Section 23-14-13, less actual production and administrative costs associated with making and issuing wildlife license plates.

(9) The division shall issue Olympic special group license plates.

(10) (a) An organization that makes a significant contribution to the state may request the commission to authorize special group license plates for the organization if the organization collects a minimum of 500 applications with the fees required under Section 41-1a-1211.

(b) If the commission approves the request, the division shall design a license plate in accordance with Subsections (2) and (3).

(c) If the commission rejects the request, the organization shall refund all fees to the applicants.

(11) Any person who meets the criteria established under this part for issuance of special group license plates may make application in the same manner provided in Sections 41-1a-410 and 41-1a-411 for personalized special group license plates.

(12) (a) The commission shall make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, to:

(i) establish qualifying criteria for persons to receive, renew, or surrender special group license plates, a temporary removable windshield placard, or a removable windshield placard;

(ii) establish the maximum number of numerals or characters for special group license plates; and

(iii) require all temporary removable windshield placards and removable windshield placards to include:

(A) an identification number;

(B) an expiration date not to exceed six months for a temporary removable windshield placard and two years for a removable windshield placard; and

(C) the seal or other identifying mark of the division.

(b) The qualifying criteria under Subsection (12)(a) for a person with a disability special group license plate, temporary removable windshield placard, or removable windshield placard shall include a requirement that an initial application of a person with a disability be accompanied by the certification of a licensed physician:

(i) that the applicant meets the definition of a person with a disability that limits or impairs the ability to walk as defined in the federal Uniform System for Handicapped Parking, 58 Fed. Reg. 10, 328 (1991); and

(ii) containing the period of time that the physician determines the applicant will have the disability, not to exceed six months in the case of a temporary disability.

(13) (a) The division may issue original veterans' license plates.

(b) An applicant for original veterans' license plates must be at least a one-time contributor to the Office of Veterans' Affairs.

(c) This contribution shall be:

(i) collected by the division;

(ii) treated as a voluntary contribution for the Office of Veterans' Affairs and not as a motor vehicle registration fee; and

(iii) transferred to the Office of Veterans' Affairs at least monthly, less actual production and administrative costs associated with making and issuing veterans' license plates.

(14) (a) The division may issue original snowmobile license plates if the Division of Parks and Recreation provides a one-time contribution of at least $9,000 to the division from restricted revenue in the Off-Highway Vehicle Account in the General Fund to cover startup materials and programming costs.

(b) An applicant for original snowmobile license plates must be a contributor to the Division of Parks and Recreation.

(c) This contribution shall be:

(i) collected by the division;

(ii) treated as a voluntary contribution for the Division of Parks and Recreation for the benefit of snowmobile programs and not as a motor vehicle registration fee; and

(iii) transferred to the Division of Parks and Recreation at least monthly, less actual production

and administrative costs associated with making and issuing snowmobile license plates.

(15) (a) (i) The division may issue original soil conservation license plates if soil conservation districts provide a one-time contribution of at least $9,000 to the division to cover startup materials and programming costs.

(ii) The contribution described in Subsection (15)(a)(i) may be from private funds available to soil conservation districts.

(b) An applicant for original soil conservation license plates must be a contributor to the Department of Agriculture and Food.

(c) This contribution shall be:

(i) collected by the division;

(ii) treated as a voluntary contribution for the Department of Agriculture and Food for the benefit of soil conservation districts and not as a motor vehicle registration fee; and

(iii) transferred to the Department of Agriculture and Food at least monthly, less actual production and administrative costs associated with making and issuing soil conservation license plates.

(16) (a) (i) The division may issue original children's issues license plates if the Office of the Guardian Ad Litem Director and the Children's Museum of Utah each provide a one-time contribution of at least $4,500 to the division to cover startup materials and programming costs.

(ii) The contribution described in Subsection (16)(a)(i) from the Office of the Guardian Ad Litem Director shall be from private funds not normally available to the Office of the Guardian Ad Litem Director.

(b) An applicant for original or renewal children's issues license plates must be a contributor to the Guardian Ad Litem Services Account and the Children's Museum of Utah.

(c) This contribution shall be:

(i) collected by the division;

(ii) treated as a voluntary contribution for the Guardian Ad Litem Services Account and the Children's Museum of Utah and not as a motor vehicle registration fee; and

(iii) transferred to the Guardian Ad Litem Services Account and the Children's Museum of Utah at least monthly, less actual production and administrative costs associated with making and issuing children's issues license plates.

(17) A current member of the Legislature may select the Olympic license plate as the legislator's special group license plate. The legislator shall pay the special fees for the Olympic license plate, as provided in Section 41-1a-417 and Subsection 41-1a-1211(12).

(18) (a) Beginning January 1, 2001, the division may issue original Boy Scouts of America license plates if the Boy Scouts of America provides a one-time contribution of at least $9,000 to the division to cover startup materials and programming costs.

(b) An applicant for original or renewal Boy Scouts of America license plates must be a contributor to the Boy Scouts of America.

(c) This contribution shall be:

(i) collected by the division;

(ii) treated as a voluntary contribution for the Boy Scouts of America and not as a motor vehicle registration fee; and

(iii) transferred to the Boy Scouts of America at least monthly, less actual production and administrative costs associated with making and issuing Boy Scouts of America license plates.

(19) (a) Beginning January 1, 2002, the division may issue original spay and neuter license plates if No More Homeless Pets in Utah provides a one-time contribution of at least $9,000 to the division to cover startup materials and programming costs.

(b) An applicant for original or renewal spay and neuter license plates must be a contributor to spay and neuter programs.

(c) This contribution shall be:

(i) collected by the division;

(ii) treated as a voluntary contribution to No More Homeless Pets in Utah for spay and neuter programs and not as a motor vehicle registration fee; and

(iii) transferred to No More Homeless Pets in Utah at least monthly, less actual production and administrative costs associated with making and issuing spay and neuter license plates.

Section 2. Section 41-1a-1201 is amended to read:

41-1a-1201. Disposition of fees.

(1) All fees received and collected under this part shall be transmitted daily to the state treasurer.

(2) Except as provided in Subsections (3), (4), and (6), and Subsections 41-1a-408(7), (8), (13), (14), (15), (16), [~~and~~] (18), and (19), and in Section 41-1a-1220, all fees collected under this part shall be deposited in the Transportation Fund.

(3) (a) Funds generated under Subsections 41-1a-1211(1)(a), (7)(a), and (8) and Section 41-1a-1212 may be used by the commission as a dedicated credit to cover the costs incurred in issuing license plates under Part 4, License Plates and Registration Indicia.

(b) Funds collected under Subsections 41-1a-1211(3), (5)(b), and (5)(c), less the actual cost incurred by the division in purchasing decals for special group license plates, shall be deposited in the Transportation Fund.

(c) Fees for statehood centennial license plates shall be collected and deposited in the Transportation Fund, less production and administrative costs incurred by the commission.

(d) Fees for Olympic special group license plates shall be collected and deposited as provided under Section 41-1a-417.

(4) All funds available to the commission for purchase and distribution of license plates and decals are nonlapsing.

(5) Except as provided in Subsection (3) and Section 41-1a-1205, the expenses of the commission in enforcing and administering this part shall be provided for by legislative appropriation from the revenues of the Transportation Fund.

(6) The following portions of the registration fees imposed under Section 41-1a-1206 for each vehicle shall be deposited in the Centennial Highway Fund created under Section 72-2-118:

(a) $10 of the registration fees imposed under Subsections 41-1a-1206(1)(a), (1)(b), (2), and (5);

(b) $1 of the registration fees imposed under Subsections 41-1a-1206(1)(c)(i), (1)(c)(ii), and (1)(d)(ii);

(c) $2 of the registration fee imposed under Subsection 41-1a-1206(1)(e)(ii);

(d) $3 of the registration fee imposed under Subsection 41-1a-1206(1)(d)(i); and

(e) $4.50 of the registration fee imposed under Subsection 41-1a-1206(1)(e)(i).

Section 3. Section 41-1a-1211 is amended to read:

41-1a-1211. License plate fees -- Application fees for issuance and renewal of personalized and special group license plates -- Replacement fee for license plates -- Postage fees.

(1) A license plate fee of $5 per set shall be paid to the division for the issuance of any new license plate under Part 4, License Plates and Registration Indicia, except for license plates issued under Sections 41-1a-407 and 41-1a-417. The license plate fee shall be deposited as follows:

(a) $4 as provided in Section 41-1a-1201; and

(b) $1 in the Transportation Fund.

(2) An applicant for original issuance of personalized license plates issued under Section 41-1a-410 shall pay a $50 per set license plate application fee in addition to the fee required in Subsection (1).

(3) (a) Except as provided in Subsections (3)(b) and (3)(c), applicants for original issuance of special group license plates issued under Section 41-1a-408 shall pay a $50 per set license plate application fee in addition to the fee required under Subsection (1).

(b) A person who qualifies for a licensed amateur radio operator special group license plate shall pay a $5 fee for the original set of license plates in addition to the fee required under Subsection (1).

(c) A person who qualifies for legislative, United States Congressional, person with a disability, collegiate, veterans', wildlife, National Guard, Purple Heart, Prisoner of War, Survivor of the Japanese Attack on Pearl Harbor, firefighter, children's issues, snowmobile, soil conservation, Boy Scouts of America, spay and neuter, farm vehicle, or emergency medical technician special group license plates is exempt from payment of special group license plate application fees imposed under this Subsection (3).

(4) An applicant for original issuance of personalized special group license plates shall pay the license plate application fees required in Subsection (2) in addition to the license plate fees and license plate application fees established under Subsections (1) and (3).

(5) The following application fees for renewal of personalized and special group license plates shall be paid to the division at the time of renewal of registration:

(a) an applicant for renewal of personalized license plates issued under Section 41-1a-410 shall pay a $10 per set application fee;

(b) except as provided in Subsection (5)(c), an applicant for renewal of special group license plates issued under Section 41-1a-408 shall pay a $10 per set application fee; and

(c) an applicant for renewal of legislative, United States Congressional, person with a disability, collegiate, wildlife, National Guard, Purple Heart, Prisoner of War, Survivor of the Japanese Attack on Pearl Harbor, farm vehicle, vintage vehicle, firefighter, children's issues, snowmobile, soil conservation, Boy Scouts of America, spay and neuter, emergency medical technician, or licensed amateur radio operator special group license plates is exempt from payment of application fees imposed under Subsection (5)(b).

(6) An applicant for renewal of personalized special group license plates shall pay the application fee required in Subsection (5)(a) in addition to the applicable application fees for renewal of license plates established under Subsections (5)(b) and (5)(c).

(7) A fee of $5 shall be paid to the division for the replacement of any license plate issued under Part 4, License Plates and Registration Indicia. The license plate fee shall be deposited as follows:

(a) $4 as provided in Section 41-1a-1201; and

(b) $1 in the Transportation Fund.

(8) The division may charge a fee established under Section 63-38-3.2 to recover its costs for the replacement of decals issued under Section 41-1a-408.

(9) The division may charge a fee established under Section 63-38-3.2 to recover the cost of issuing stickers under Section 41-1a-416.

(10) In addition to any other fees required by this section, the division shall assess a fee established under Section 63-38-3.2 to cover postage expenses

if new or replacement license plates are mailed to the applicant.

(11) The fees required under this section are separate from and in addition to registration fees required under Section 41-1a-1206.

(12) For vehicles with registration years expiring on or before June 30, 2002, applicants for original Olympic special group license plates or renewal of registration with Olympic special group license plates shall pay the fees required under Section 41-1a-417.

Section 4. Effective date.

This act takes effect on July 1, 2001.

CHAPTER 346
H. B. 111
Passed February 22, 2001
Approved March 20, 2001
Effective July 1, 2001

APPROPRIATION FOR WATER QUALITY PROTECTION

Sponsor: Brent D. Parker

This act appropriates $40,000 from the General Fund for fiscal year 2001-02 only to Utah State University Extension for a program to assist agricultural producers in identifying and implementing management practices that prevent contamination of water by animal wastes. This act takes effect on July 1, 2001.

This act enacts uncodified material.

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

Section 1. Appropriation.

(1) There is appropriated $40,000 from the General Fund for fiscal year 2001–02 only, to Utah State University Extension for a program to assist agricultural producers in identifying and implementing management practices that prevent contamination of water by animal wastes.

(2) (a) The money appropriated in Subsection (1) may be used to hire personnel and pay operating expenses necessary to conduct activities to assist agricultural producers in employing management practices that improve water quality, including:

(i) on–farm trials in which agricultural producers, with the assistance of extension agents, identify, implement, and evaluate the effectiveness of management practices; and

(ii) training workshops.

(b) On–farm trials and training workshops shall be conducted in different areas of the state.

(3) The money appropriated in Subsection (1) is nonlapsing.

Section 2. Effective date.

This act takes effect on July 1, 2001.

CHAPTER 347
H. B. 114
Passed February 22, 2001
Approved March 20, 2001
Effective April 30, 2001

MORTGAGE PRACTICES ACT AMENDMENTS

Sponsor: Gerry A. Adair

This act modifies the Mortgage Lending and Servicing Act and the Utah Residential Mortgage Practices Act. The act exempts persons who are registered under the Residential Mortgage Practices Act from certain notification and registration requirements under the Mortgage Lending and Servicing Act. The act amends the definition of business of residential mortgage loans.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
61-2c-102, as enacted by Chapter 329, Laws of Utah 2000
70D-1-10, as enacted by Chapter 172, Laws of Utah 1990

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

Section 1. Section 61-2c-102 is amended to read:

61-2c-102. Definitions.

As used in this chapter:

(1) "Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, a specified person.

(2) "Applicant" means a person applying for registration under this chapter.

(3) (a) "Business of residential mortgage loans" means for compensation to:

[~~(a)~~] (i) make or originate a residential mortgage loan;

[~~(b)~~] (ii) directly or indirectly solicit, process, place, or negotiate a residential mortgage loan for another; or

[~~(c)~~] (iii) render services related to the origination, processing, or funding of a residential mortgage loan including:

[~~(i)~~] (A) taking applications;

[~~(ii)~~] (B) obtaining verifications and appraisals; and

[~~(iii)~~] (C) communicating with the borrower and lender.

(b) "Business of residential mortgage loans" does not include the performance of clerical functions such as:

(i) gathering information related to a residential mortgage loan on behalf of the prospective borrower or a person registered under this chapter; or

(ii) requesting or gathering information, word processing, sending correspondence, or assembling files by an individual who works under the instruction of a person registered under this chapter.

(4) "Commission" means the Residential Mortgage Regulatory Commission created in Section 61-2c-104.

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

(a) services;

(b) personal or real property; or

(c) other thing of value.

(6) "Control" means the power, directly or indirectly, to:

(a) direct or exercise a controlling influence over:

(i) the management or policies of an entity; or

(ii) the election of a majority of the directors or managing partners of an entity;

(b) vote 20% or more of any class of voting securities of an entity by an individual; or

(c) vote more than 5% of any class of voting securities of an entity by a person other than an individual.

(7) "Depository institution" is as defined in Section 7-1-103.

(8) "Director" means the director of the division.

(9) "Division" means the Division of Real Estate.

(10) "Dwelling" means a residential structure attached to real property that contains one to four units including any of the following if used as a residence:

(a) a condominium unit;

(b) a cooperative unit;

(c) a manufactured home; or

(d) a house.

(11) "Executive director" means the executive director of the Department of Commerce.

(12) "Record" means information that is:

(a) prepared, owned, received, or retained by a person; and

(b) (i) inscribed on a tangible medium; or

(ii) (A) stored in an electronic or other medium; and

(B) retrievable in perceivable form.

(13) "Residential mortgage loan" means a loan or extension of credit, if:

(a) the loan or extension of credit is secured by a:

(i) mortgage;

(ii) deed of trust; or

(iii) lien interest; and

(b) the mortgage, deed of trust, or lien interest described in Subsection (13)(a):

(i) is on a dwelling located in the state; and

(ii) created with the consent of the owner of the residential real property.

(14) "State" means:

(a) a state, territory, or possession of the United States;

(b) the District of Columbia; or

(c) the Commonwealth of Puerto Rico.

Section 2. Section 70D-1-10 is amended to read:

70D-1-10. Notification of department -- Exemptions.

(1) Except as provided in Subsection (2), no person may engage in the business of making mortgage loans nor may any person engage in the business of being a mortgage loan broker or servicer, without first filing written notification with the department and paying the fees required by this chapter.

(2) The following persons are exempt from the notification requirements contained in this chapter and from the annual fee imposed in Subsection 70D-1-12(1):

(a) all persons authorized under Utah law or under federal law to do business as a depository institution in this state; [~~and~~]

(b) all wholly-owned subsidiaries of depository institutions described in Subsection (2)(a)[~~.~~]; and

(c) all persons required to register with the Utah Division of Real Estate pursuant to Title 61, Chapter 2c, Utah Residential Mortgage Practices Act.

CHAPTER 348
H. B. 125
Passed February 28, 2001
Approved March 20, 2001
Effective April 30, 2001

EIGHT HOUR WORK DAY AMENDMENTS

Sponsor: Jeff Alexander

This act repeals the requirement that workers in certain industries may not work more than eight hours in a day.

This act affects sections of Utah Code Annotated 1953 as follows:

REPEALS:
34-21-2, as last amended by Chapter 375, Laws of Utah 1997

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

Section 1. Repealer.

This act repeals:

Section 34-21-2, Eight-hour day -- Smelters, mines, and related industries -- Exceptions.

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CHAPTER 349
H. B. 143
Passed February 21, 2001
Approved March 20, 2001
Effective April 30, 2001

VOTING BY SECRET BALLOT FOR PERSONS WITH DISABILITIES

Sponsor: Richard M. Siddoway

This act requires the Lieutenant Governor's Elections Office to study and report possible methods for allowing persons with disabilities to vote a secret ballot.

This act enacts uncodified material.

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

Section 1. Voting by persons with disabilities study.

(1) The Lieutenant Governor's State Elections Office, in consultation with county clerks, shall study possible ways to allow persons with disabilities to vote by secret ballot in accordance with Section 20A-3-102.

(2) The State Elections Office shall report the findings of its study and make recommendations to the Government Operations Interim Committee by October 1, 2001.

CHAPTER 350
H. B. 165
Passed February 22, 2001
Approved March 20, 2001
Effective July 1, 2001

APPROPRIATION FOR HOME ENERGY ASSISTANCE TARGET PROGRAM

Sponsor: Ty McCartney

This act appropriates $200,000 from the General Fund, for fiscal year 2001-02 only, to the Department of Community and Economic Development for use in the Home Energy Assistance Target Program. This act takes effect on July 1, 2001.

This act enacts uncodified material.

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

Section 1. Appropriation.

(1) For fiscal year 2001-02 only, there is appropriated $200,000 from the General Fund to the Department of Community and Economic Development.

(2) It is the intent of the Legislature that the Department of Community and Economic Development distribute the money appropriated in Subsection (1) to those who are eligible under Title 9, Chapter 12, Part 1, "Home Energy Assistance Target (HEAT) Program Act" to assist in the unexpected increase in public utility rates which has arisen during this period of volatility in the energy markets.

Section 2. Effective date.

This act takes effect on July 1, 2001.

CHAPTER 351
H. B. 172
Passed February 26, 2001
Approved March 20, 2001
Effective July 1, 2001

APPROPRIATION FOR HERD TESTING FOR JOHNE'S DISEASE

Sponsor: David N. Cox

This act appropriates $40,000 from the General Fund, for fiscal year 2001-02 only, to the Department of Agriculture and Food for the initial herd testing to prevent and control the spread of Johne's Disease in domestic livestock. This act takes effect on July 1, 2001.

This act enacts uncodified material.

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

Section 1. Appropriation.

(1) For fiscal year 2001-02 only, there is appropriated $40,000 from the General Fund to the Department of Agriculture and Food for the initial herd testing to prevent and control the spread of Johne's Disease in domestic livestock.

(2) The money appropriated in Subsection (1) is nonlapsing.

Section 2. Effective date.

This act takes effect on July 1, 2001.

CHAPTER 352
H. B. 174
Passed February 28, 2001
Approved March 20, 2001
Effective April 30, 2001

FINE ARTS CURRICULUM AMENDMENTS

Sponsor: Sheryl L. Allen

This act modifies provisions of the Arts in Elementary Schools Pilot Program by requiring music, visual art, dance, or theater instruction to take place through the joint efforts of a specialist in one of these art forms and the classroom teacher.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
53A-15-901, as enacted by Chapter 234, Laws of Utah 2000

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

Section 1. Section 53A-15-901 is amended to read:

53A-15-901. Arts in Elementary Schools Pilot Program -- Components -- Funding -- Evaluation.

(1) There is created an Arts in Elementary Schools Pilot Program to [~~determine if a sequential ongoing arts program in the state's public elementary schools can improve the overall excellence and scholarship of students at the elementary school level~~] improve student achievement in the K-6 music, art, dance, and drama core curricula and to identify and evaluate the effect of professional development experiences on teaching practices.

(2) (a) The State Board of Education, through the state superintendent of public instruction, may select [~~a~~] pilot school [~~district~~] districts in an urban area as well as individual schools in urban and rural areas for the pilot program.

(b) The number of elementary schools participating in the pilot program may not exceed 12.

(c) Participation in the program is on a voluntary basis.

(d) The board selections shall represent diverse economic and cultural groupings and include networks of two or more elementary schools that feed students into the same middle or junior high school.

(3) The State Board of Education shall structure the pilot program to include at least the following components:

(a) the first year of the program shall focus on planning and preparation for implementation of the program for the school year beginning in 2001, to include the selection and training of art specialists, the acquisition of required hardware, software, and other essential materials, a full set of curriculum for each classroom, and a preassessment of the participating pilot classes;

(b) a professional development plan that may:

(i) include regular and frequent ongoing inservice for all personnel involved in the pilot program;

(ii) be built on sound educational principles and essential elements; and

(iii) be sensitive and responsive to local conditions;

[~~(b)~~] (c) in the second year of the pilot program and for each year thereafter, music, visual art, [~~and~~] dance instruction [~~shall take place in grades kindergarten through three, and~~], or theater instruction shall take place [~~in grades four through six;~~] through the joint efforts of a specialist in one of the fine arts forms and the classroom teacher; and

[~~(c) each subsequent year, the music, visual art, and dance instruction program shall expand upward by one grade level and the theater instruction program shall expand downward by one grade level so that in the fifth year of the pilot program music, visual art, dance, and theater instruction shall take place at all levels in grades kindergarten through six; and~~]

(d) the music, art, dance, [~~and~~] or theater classes shall be held for a minimum of 60 minutes each week for each classroom and could be broken into 30-minute segments or similar time blocks[~~, with the classroom teacher participating side-by-side with the art specialist to enable the teacher to further integrate the process and concepts into other curriculum~~].

(4) (a) The pilot program shall be evaluated on an annual basis in at least the following areas:

[~~(i) student test scores;~~]

[~~(ii) student behavior;~~]

[~~(iii) attitudes of students and teachers about the program and school in general;~~]

[~~(iv) the methodology of inservice;~~]

[~~(v) the effect of technology in relation to different learning styles;~~]

[~~(vi) the effect of the program on the local community, to include parental involvement at the school;~~]

[~~(vii) integration with other academic disciplines, to include reading, math, and science; and~~]

[~~(viii) the increase in music, art, dance, and~~ or theater skills.]

(i) student achievement in the state K-6 music, art, dance, and drama core curricula; and

(ii) the effect of the professional development experience on teaching practices.

(b) The evaluation shall be reported to the State Board of Education and the Legislature's Education Interim Committee prior to November 30 of each year.

(5) (a) The Legislature shall provide an appropriation to help implement the pilot program authorized under this part.

(b) Participant schools are encouraged to supplement their allocation with monies they may have access to under other programs authorized in Title 53A, such as experimental and developmental programs, incentives for excellence, and the School LAND Trust Program.

(c) (i) The selected school district and individual schools may solicit contributions from and enter into partnerships with private businesses and foundations established to develop fine arts education for children.

(ii) It is anticipated that in its first year the pilot program will be funded with a dollar-for-dollar match from the private sector and that the evaluation component and training elements shall be provided from the private sector either through donations or in-kind services.

CHAPTER 353
H. B. 181
Passed February 27, 2001
Approved March 20, 2001
Effective April 30, 2001

PENALTIES FOR SOLICITING MINORS

Sponsor: Duane E. Bourdeaux

This act modifies the Criminal Code to create the offense and penalties regarding enticing a minor over the Internet for sexual activity and to add this offense under the definition of "sex offender." This act includes a coordination clause.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
77-27-21.5, as last amended by Chapter 201, Laws of Utah 2000

ENACTS:
76-4-401, Utah Code Annotated 1953

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

Section 1. Section 76-4-401 is enacted to read:

76-4-401. Enticing a minor over the Internet -- Elements -- Penalties.

(1) A person commits enticement of a minor over the Internet when, not amounting to an attempt, conspiracy, or solicitation under Section 76-4-101, 76-4-201, or 76-4-203, the person knowingly uses a computer to solicit, seduce, lure, or entice, or attempt to solicit, seduce, lure, or entice a minor or a person the defendant believes to be a minor to engage in any sexual activity which is a violation of state criminal law.

(2) It is not a defense to the crime of enticing a minor under Subsection (1), or an attempt to commit this offense, that a law enforcement officer or an undercover operative who is working with a law enforcement agency was involved in the detection or investigation of the offense.

(3) An enticement of a minor under Subsection (1) with the intent to commit:

(a) a first degree felony is a second degree felony;

(b) a second degree felony is a third degree felony;

(c) a third degree felony is a class A misdemeanor;

(d) a class A misdemeanor is a class B misdemeanor; and

(e) a class B misdemeanor is a class C misdemeanor.

Section 2. Section 77-27-21.5 is amended to read:

77-27-21.5. Sex offender registration -- Information system -- Law enforcement and courts to report -- Registration -- Penalty -- Effect of expungement.

(1) As used in this section:

(a) "Department" means the Department of Corrections.

(b) "Notification" means a person's acquisition of information from the department about a sex offender, including his place of habitation, physical description, and methodology of the offense, and other information as provided in Subsections (10) and (11).

(c) "Register" means to comply with the rules of the department made under this section.

(d) "Sex offender" means any person convicted by this state or who enters a plea in abeyance for violating Section 76-4-401, 76-7-102, 76-9-702.5, 76-5a-3, 76-10-1306, or 76-5-301.1 or of committing or attempting, soliciting, or conspiring to commit a felony, under Title 76, Chapter 5, Part 4, Sexual Offenses, and any person convicted by any other state or the United States government of an offense which if committed or attempted in this state would be punishable as one or more of these offenses. "Sex offender" also means all persons committed to a state mental hospital by reason of their mental incapacity and their commission or alleged commission of one or more offenses listed in this Subsection (1)(d).

(2) The department, to assist in investigating sex-related crimes and in apprehending offenders, shall:

(a) develop and operate a system to collect, analyze, maintain, and disseminate information on sex offenders and sex offenses; and

(b) make information collected and developed under this section available to the public.

(3) Any law enforcement agency shall, in the manner prescribed by the department, inform the department of:

(a) the receipt of a report or complaint of an offense listed in Subsection (1)(d), within three working days; and

(b) the arrest of a person suspected of any of the offenses listed in Subsection (1)(d), within five working days.

(4) Upon convicting a person of any of the offenses listed in Subsection (1)(d), or any lesser included offense, the convicting court shall within three working days forward a copy of the judgment and sentence to the department.

(5) A sex offender in the custody of the department shall be registered by agents of the department upon:

(a) being placed on probation;

(b) commitment to a secure correctional facility operated by or under contract to the department;

(c) release from confinement to parole status, termination or expiration of sentence, or escape;

(d) entrance to and release from any community-based residential program operated by or under contract to the department; or

(e) termination of probation or parole.

(6) A sex offender not in the custody of the department who is confined in a correctional facility not operated by or under contract to the department shall, upon release from confinement, be registered with the department by the sheriff of the county in which the offender is confined.

(7) A sex offender confined in a state mental hospital shall be registered with the department by the hospital. A sex offender committed to a state mental hospital shall be registered with the department by the hospital upon admission and upon discharge.

(8) A sex offender shall, for ten years after termination of sentence, register annually and again within ten days of every change of his place of habitation.

(9) An agency that registers a sex offender on parole shall inform him of his duty to comply with the continuing registration requirements of this section, including:

(a) notification to an out-of-state agency of moving across state lines;

(b) notification to the state agencies in the states where the registrant presently resides and plans to reside when moving across state lines; and

(c) verification of address at least every 60 days pursuant to a parole agreement for lifetime parolees.

(10) A sex offender shall provide the department with the following information:

(a) all names or aliases the sex offender is or has been known by;

(b) the sex offender's name and address;

(c) a physical description, including the sex offender's age, height, weight, eye and hair color;

(d) the type of vehicle or vehicles the sex offender drives; and

(e) a current photograph of the sex offender.

(11) The department shall provide the following additional information:

(a) the crimes the sex offender was charged with and convicted of;

(b) a description of the sex offender's primary and secondary targets; and

(c) a description of the sex offender's method of offense.

(12) (a) A sex offender who knowingly fails to register under this section is guilty of a class A misdemeanor and shall be sentenced to serve a term of incarceration for not fewer than 90 days and also at least one year of probation.

(b) Neither the court nor the Board of Pardons and Parole may release a person who violates this section from serving a term of at least 90 days and of completing probation of at least one year. This Subsection (12)(b) supersedes any other provision of the law contrary to this section.

(13) Notwithstanding Title 63, Chapter 2, Government Records Access and Management Act, information in Subsections (10) and (11) collected and released under this section is public information.

(14) (a) If a sex offender is to be temporarily sent outside a secure facility in which he is confined on any assignment, including, without limitation, firefighting or disaster control, the official who has custody of the offender shall, within a reasonable time prior to removal from the secure facility, notify the local law enforcement agencies where the assignment is to be filled.

(b) This Subsection (14) does not apply to any person temporarily released under guard from the institution in which he is confined.

(15) Notwithstanding Sections 77-18-9 through 77-18-14 regarding expungement, a person convicted of any offense listed in Subsection (1)(d) is not relieved from the responsibility to register under this section.

(16) Notwithstanding Section 42-1-1, a sex offender may not change his name while under the jurisdiction of the department and until the registration requirements of this statute have expired.

(17) The department may make rules necessary to implement this section, including:

(a) the method for dissemination of the information; and

(b) instructions to the public regarding the use of the information.

(18) Any information regarding the identity or location of a victim shall be redacted by the department from information provided under Subsections (10) and (11).

(19) Nothing in this section shall be construed to create or impose any duty on any person to request or obtain information regarding any sex offender from the department.

(20) If the department chooses to post registry information on the Internet, the website shall contain a disclaimer informing the public of the following:

(a) the information contained on the site is obtained from sex offenders and the department does not guarantee its accuracy;

(b) members of the public are not allowed to publicize the information or use it to harass or threaten sex offenders or members of their families; and

(c) harassment, stalking, or threats against sex offenders or their families are prohibited and doing so may violate Utah criminal laws.

(21) The department shall construct the website so that users, before accessing registry information, must indicate that they have read the disclaimer, understand it, and agree to comply with its terms.

(22) The department, its personnel, and any individual or entity acting at the request or upon

the direction of the department are immune from civil liability for damages for good faith compliance with this section and will be presumed to have acted in good faith by reporting information.

(23) The department shall redact information that, if disclosed, could reasonably identify a victim.

(24) The website may also include information about sex offenders ordered to accept notification of their registry information as part of a condition of probation or parole.

Section 3. Coordination clause.

(1) If this bill and H.B. 237, Sex Offender Registry, both pass, it is the intent of the Legislature that in preparing the database for publication the Office of Legislative Research and General Counsel be directed to insert the amendment in Section 77-27-21.5 from 1st Sub. H.B. 181 into Subsection 77-27-21.5(1)(d)(i) from H.B. 237 to read as follows:

"(A) Section 76-4-401, enticing a minor over the Internet;".

(2) Renumber the remaining subsections accordingly.

CHAPTER 354
H. B. 191
Passed February 22, 2001
Approved March 20, 2001
Effective April 30, 2001

LIQUOR PACKAGE AGENCY CONTRACTS

Sponsor: Michael R. Styler

This act modifies the Alcoholic Beverage Code to modify language regarding certain package agency agreements to make technical changes. The act appropriates $129,200 from the Liquor Control Fund for fiscal year 2001-02 to provide a one time adjustment in the amounts paid certain package agencies.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
32A-3-101, as last amended by Chapter 132, Laws of Utah 1991

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

Section 1. Section 32A-3-101 is amended to read:

32A-3-101. Commission's power to establish package agencies -- Limitations.

(1) (a) The commission may, when considered necessary, create package agencies by entering into contractual relationships with persons to sell liquor in sealed packages from premises other than those owned or leased by the state. [~~Authorization~~]

(b) The commission shall authorize a person to operate a package agency [~~is made~~] by [~~the issuance of~~] issuing a certificate from the commission that designates the person in charge of the agency as a "package agent" as defined under Section 32A-1-105.

(2) (a) Subject to this [~~subsection~~] Subsection (2), the total number of package agencies may not at any time aggregate more than that number determined by dividing the population of the state by 18,000. [~~Population~~]

(b) For purposes of Subsection (2)(a), population shall be determined by:

(i) the most recent United States decennial or special census; or [~~by~~]

(ii) any other population determination made by the United States or state governments.

[~~(a)~~] (c) The commission may establish seasonal package agencies established in areas and for periods it considers necessary. A seasonal package agency may not be operated for a period longer than nine consecutive months subject to the [~~following~~] restrictions[~~:~~] stated in Subsections (2)(c)(i) through (iii).

(i) [~~Package agencies~~] A package agency established for operation during a summer time [~~periods are~~] period is known as a "Seasonal A" package [~~agencies~~] agency. The period of operation for a "Seasonal A" agency may begin as early as February 1 and may continue until October 31.

(ii) [~~Package agencies~~] A package agency established for operation during a winter time [~~periods are~~] period is known as a "Seasonal B" package [~~agencies~~] agency. The period of operation for a "Seasonal B" agency may begin as early as September 1 and may continue until May 31.

(iii) In determining the number of package agencies that the commission may establish under this section[~~,~~]:

(A) a seasonal package [~~agencies are~~] agency is counted as one half of one package agency[~~. Each~~];

(B) each "Seasonal A" agency shall be paired with a "Seasonal B" agency; and

(C) the total number of months that each combined pair may be established for operation may not exceed 12 months for each calendar year.

[~~(b)~~] (d) (i) If the location, design, and construction of a hotel may require more than one package agency sales location to serve the public convenience, the commission may authorize a single package agent to sell liquor at as many as three locations within the hotel under one package agency if:

(A) the hotel has a minimum of 150 guest rooms; and [~~if~~]

(B) all locations under the agency are:

(I) within the same hotel facility; and

(II) on premises that are managed or operated and owned or leased by the package agent.

(ii) Facilities other than hotels may not have more than one sales location under a single package agency.

(3) (a) [~~A~~] As measured by the method in Subsection (4), a package agency may not be established within 600 feet of any:

(i) public or private school[~~,~~];

(ii) church[~~,~~];

(iii) public library[~~,~~];

(iv) public playground[~~,~~]; or

(v) park[~~, as measured by the method in Subsection (4)~~].

(b) A package agency may not be established within 200 feet of any public or private school, church, public library, public playground, or park, measured in a straight line from the nearest entrance of the proposed package agency to the nearest property boundary of the public or private school, church, public library, public playground, or park.

(c) The restrictions contained in Subsections (3)(a) and (b) govern unless [~~one of the following exemptions~~] Subsection (3)(c)(i) or (ii) applies[~~:~~].

(i) [~~The~~] If the commission finds after full investigation that the premises are located within a

city of the third class or a town, and compliance with the distance requirements would result in peculiar and exceptional practical difficulties or exceptional and undue hardships in the establishment of a package agency[~~. In that event~~], the commission may[~~,~~] authorize a variance from the distance requirement to relieve the difficulties or hardships:

(A) after giving full consideration to all of the attending circumstances[~~,~~];

(B) following a public hearing in:

(I) the city or town[~~,~~] concerned; and

(II) where practical, in the neighborhood concerned[~~, authorize a variance from the distance requirements to relieve the difficulties or hardships~~]; and

(C) if the variance may be granted without:

(I) substantial detriment to the public good; and [~~without~~]

(II) substantially impairing the intent and purpose of this title.

(ii) With respect to the establishment of a package agency in any location, the commission may[~~,~~] reduce the proximity requirements in relation to a church:

(A) after giving full consideration to all of the attending circumstances[~~,~~];

(B) following a public hearing in:

(I) the county[~~,~~] concerned; and

(II) where practical, in the neighborhood concerned[~~, reduce the proximity requirements in relation to a church~~]; and

(C) if the local governing body of the church in question gives its written approval.

(4) With respect to any public or private school, church, public library, public playground, or park, the 600 foot limitation is measured from the nearest entrance of the package agency by following the shortest route of either ordinary pedestrian traffic, or where applicable, vehicular travel along public thoroughfares, whichever is the closer, to the property boundary of the public or private school, church, public library, public playground, school playground, or park.

(5) (a) Nothing in this section prevents the commission from considering the proximity of any educational, religious, and recreational facility, or any other relevant factor in reaching a decision on a proposed location.

(b) For purposes of [~~this~~] Subsection (5)(a), "educational facility" includes:

(i) a nursery [~~schools,~~] school;

(ii) an infant day care [~~centers,~~] center; and

(iii) a trade and technical [~~schools~~] school.

(6) (a) The package agent, under the direction of the department, shall be responsible for implementing and enforcing this title and the rules adopted under this title to the extent they relate to the conduct of the agency and its sale of liquor.

(b) A package agent may not be, or construed to be, a state employee nor be otherwise entitled to any benefits of employment from the state [~~of Utah~~].

(c) A package agent, when selling liquor from a package agency, is considered an agent of the state [~~of Utah~~] only to the extent specifically expressed in the package agency agreement.

(7) The commission may prescribe by policy, directive, or rule, consistent with this title, general operational requirements of all package agencies relating to [~~the~~]:

(a) physical facilities[~~,~~];

(b) conditions of operation[~~,~~];

(c) hours of operation[~~,~~];

(d) inventory levels[~~,~~];

(e) payment schedules[~~,~~];

(f) methods of payment[~~,~~];

(g) premises security[~~,~~]; and

(h) any other matters considered appropriate by the commission.

Section 2. Appropriation.

There is appropriated for fiscal year 2001-02 $129,200 from the Liquor Control Fund, created in Section 32A-1-113, to fund an increase of 11.57% in the amount paid each level of a Type 3 liquor package agency, as defined by the Alcoholic Beverage Control Commission, under a contract entered into in accordance with Title 32A, Chapter 3, Package Agencies.

CHAPTER 355
H. B. 196
Passed February 22, 2001
Approved March 20, 2001
Effective April 30, 2001

DUI - PROBATION AMENDMENTS

Sponsor: A. Lamont Tyler

This act modifies the Motor Vehicle Code to require court ordered supervised probation for certain offenders.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
41-6-44, as last amended by Chapters 333 and 334, Laws of Utah 2000
41-6-44.6, as last amended by Chapter 334, Laws of Utah 2000

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

Section 1. Section 41-6-44 is amended to read:

41-6-44. Driving under the influence of alcohol, drugs, or with specified or unsafe blood alcohol concentration -- Measurement of blood or breath alcohol -- Criminal punishment -- Arrest without warrant -- Penalties -- Suspension or revocation of license.

(1) As used in this section:

(a) "educational series" means an educational series obtained at a substance abuse program that is approved by the Board of Substance Abuse in accordance with Section 62A-8-107;

(b) "prior conviction" means any conviction for a violation of:

(i) this section;

(ii) alcohol-related reckless driving under Subsections (9) and (10);

(iii) local ordinances similar to this section or alcohol-related reckless driving adopted in compliance with Section 41-6-43;

(iv) automobile homicide under Section 76-5-207; or

(v) statutes or ordinances in effect in any other state, the United States, or any district, possession, or territory of the United States which would constitute a violation of this section or alcohol-related reckless driving if committed in this state, including punishments administered under 10 U.S.C. Sec. 815;

(c) "screening and assessment" means a substance abuse addiction and dependency screening and assessment obtained at a substance abuse program that is approved by the Board of Substance Abuse in accordance with Section 62A-8-107;

(d) "serious bodily injury" means bodily injury that creates or causes serious permanent disfigurement, protracted loss or impairment of the function of any bodily member or organ, or creates a substantial risk of death;

(e) "substance abuse treatment" means treatment obtained at a substance abuse program that is approved by the Board of Substance Abuse in accordance with Section 62A-8-107;

(f) "substance abuse treatment program" means a state licensed substance abuse program;

(g) a violation of this section includes a violation under a local ordinance similar to this section adopted in compliance with Section 41-6-43; and

(h) the standard of negligence is that of simple negligence, the failure to exercise that degree of care that an ordinarily reasonable and prudent person exercises under like or similar circumstances.

(2) (a) A person may not operate or be in actual physical control of a vehicle within this state if the person:

(i) has sufficient alcohol in his body that a chemical test given within two hours of the alleged operation or physical control shows that the person has a blood or breath alcohol concentration of .08 grams or greater; or

(ii) is under the influence of alcohol, any drug, or the combined influence of alcohol and any drug to a degree that renders the person incapable of safely operating a vehicle.

(b) The fact that a person charged with violating this section is or has been legally entitled to use alcohol or a drug is not a defense against any charge of violating this section.

(c) Alcohol concentration in the blood shall be based upon grams of alcohol per 100 milliliters of blood, and alcohol concentration in the breath shall be based upon grams of alcohol per 210 liters of breath.

(3) (a) A person convicted the first or second time of a violation of Subsection (2) is guilty of a:

(i) class B misdemeanor; or

(ii) class A misdemeanor if the person:

(A) has also inflicted bodily injury upon another as a proximate result of having operated the vehicle in a negligent manner; or

(B) had a passenger under 16 years of age in the vehicle at the time of the offense.

(b) A person convicted of a violation of Subsection (2) is guilty of a third degree felony if the person has also inflicted serious bodily injury upon another as a proximate result of having operated the vehicle in a negligent manner.

(4) (a) As part of any sentence imposed the court shall, upon a first conviction, impose a mandatory jail sentence of not less than 48 consecutive hours.

(b) The court may, as an alternative to all or part of a jail sentence, require the person to:

(i) work in a compensatory-service work program for not less than 24 hours; or

(ii) participate in home confinement through the use of electronic monitoring in accordance with Subsection (13).

(c) In addition to the jail sentence, compensatory-service work program, or home confinement, the court shall:

(i) order the person to participate in a screening and assessment;

(ii) order the person to participate in an educational series if the court does not order substance abuse treatment as described under Subsection (4)(d); and

(iii) impose a fine of not less than $700.

(d) The court may order the person to obtain substance abuse treatment if the substance abuse treatment program determines that substance abuse treatment is appropriate.

(e) [~~The~~] (i) Except as provided in Subsection (4)(e)(ii), the court may order probation for the person in accordance with Subsection (14).

(ii) If there is admissible evidence that the person had a blood alcohol level of .16 or higher, the court shall order probation for the person in accordance with Subsection (14).

(5) (a) If a person is convicted under Subsection (2) within six years of a prior conviction under this section, the court shall as part of any sentence impose a mandatory jail sentence of not less than 240 consecutive hours.

(b) The court may, as an alternative to all or part of a jail sentence, require the person to:

(i) work in a compensatory-service work program for not less than 240 hours; or

(ii) participate in home confinement through the use of electronic monitoring in accordance with Subsection (13).

(c) In addition to the jail sentence, compensatory-service work program, or home confinement, the court shall:

(i) order the person to participate in a screening and assessment;

(ii) order the person to participate in an educational series if the court does not order substance abuse treatment as described under Subsection (5)(d); and

(iii) impose a fine of not less than $800.

(d) The court may order the person to obtain substance abuse treatment if the substance abuse treatment program determines that substance abuse treatment is appropriate.

(e) The court [~~may~~] shall order probation for the person in accordance with Subsection (14).

(6) (a) A third or subsequent conviction for a violation committed within six years of two or more prior convictions under this section is a third degree felony.

(b) Under Subsection (3)(b) or (6)(a), if the court suspends the execution of a prison sentence and places the defendant on probation the court shall impose:

(i) a fine of not less than $1,500; and

(ii) a mandatory jail sentence of not less than 1,500 hours.

(c) For Subsection (6)(a) or (b), the court shall impose an order requiring the person to obtain a screening and assessment and substance abuse treatment at a substance abuse treatment program providing intensive care or inpatient treatment and long-term closely supervised follow-through after treatment for not less than 240 hours.

(d) In addition to the penalties required under Subsection (6)(b), the court may require the person to participate in home confinement through the use of electronic monitoring in accordance with Subsection (13).

(7) The mandatory portion of any sentence required under this section may not be suspended and the convicted person is not eligible for parole or probation until any sentence imposed under this section has been served. Probation or parole resulting from a conviction for a violation under this section may not be terminated.

(8) (a) (i) The provisions in Subsections (4), (5), and (6) that require a sentencing court to order a convicted person to: participate in a screening and assessment; and an educational series; obtain, in the discretion of the court, substance abuse treatment; obtain, mandatorily, substance abuse treatment; or do a combination of those things, apply to a conviction for a violation of Section 41-6-44.6 or 41-6-45 under Subsection (9).

(ii) The court shall render the same order regarding screening and assessment, an educational series, or substance abuse treatment in connection with a first, second, or subsequent conviction under Section 41-6-44.6 or 41-6-45 under Subsection (9), as the court would render in connection with applying respectively, the first, second, or subsequent conviction requirements of Subsections (4), (5), and (6).

(b) If a person fails to complete all court ordered screening and assessment, educational series, and substance abuse treatment, or fails to pay all fines and fees, including fees for restitution and treatment costs, the court shall notify the Driver License Division of a failure to comply. Upon receiving the notification, the division shall suspend the person's driving privilege in accordance with Subsections 53-3-221(2) and (3).

(9) (a) (i) When the prosecution agrees to a plea of guilty or no contest to a charge of a violation of Section 41-6-45, of an ordinance enacted under Section 41-6-43, or of Section 41-6-44.6 in satisfaction of, or as a substitute for, an original charge of a violation of this section, the prosecution shall state for the record a factual basis for the plea, including whether or not there had been consumption of alcohol, drugs, or a combination of both, by the defendant in connection with the violation.

(ii) The statement is an offer of proof of the facts that shows whether there was consumption of alcohol, drugs, or a combination of both, by the defendant, in connection with the violation.

(b) The court shall advise the defendant before accepting the plea offered under this Subsection (9)(b) of the consequences of a violation of Section 41-6-44.6 or of Section 41-6-45.

(c) The court shall notify the Driver License Division of each conviction of Section 41-6-44.6 or 41-6-45 entered under this Subsection (9).

(10) A peace officer may, without a warrant, arrest a person for a violation of this section when the officer has probable cause to believe the violation has occurred, although not in his presence, and if the officer has probable cause to believe that the violation was committed by the person.

(11) (a) The Driver License Division shall:

(i) suspend for 90 days the operator's license of a person convicted for the first time under Subsection (2);

(ii) revoke for one year the license of a person convicted of any subsequent offense under Subsection (2) if the violation is committed within a period of six years from the date of the prior violation; and

(iii) suspend or revoke the license of a person as ordered by the court under Subsection (12).

(b) The Driver License Division shall subtract from any suspension or revocation period the number of days for which a license was previously suspended under Section 53-3-223 or 53-3-231, if the previous suspension was based on the same occurrence upon which the record of conviction is based.

(12) (a) In addition to any other penalties provided in this section, a court may order the operator's license of a person who is convicted of a violation of Subsection (2) to be suspended or revoked for an additional period of 90 days, 180 days, or one year to remove from the highways those persons who have shown they are safety hazards.

(b) If the court suspends or revokes the person's license under this Subsection (12)(b), the court shall prepare and send to the Driver License Division an order to suspend or revoke that person's driving privileges for a specified period of time.

(13) (a) If the court orders a person to participate in home confinement through the use of electronic monitoring, the electronic monitoring shall alert the appropriate corrections, probation monitoring agency, law enforcement units, or contract provider of the defendant's whereabouts.

(b) The electronic monitoring device shall be used under conditions which require:

(i) the person to wear an electronic monitoring device at all times;

(ii) that a device be placed in the home or other specified location of the person, so that the person's compliance with the court's order may be monitored; and

(iii) the person to pay the costs of the electronic monitoring.

(c) The court shall order the appropriate entity described in Subsection (13)(e) to place an electronic monitoring device on the person and install electronic monitoring equipment in the residence of the person or other specified location.

(d) The court may:

(i) require the person's electronic home monitoring device to include a substance abuse testing instrument;

(ii) restrict the amount of alcohol the person may consume during the time the person is subject to home confinement;

(iii) set specific time and location conditions that allow the person to attend school educational classes, or employment and to travel directly between those activities and the person's home; and

(iv) waive all or part of the costs associated with home confinement if the person is determined to be indigent by the court.

(e) The electronic monitoring described in this section may either be administered directly by the appropriate corrections agency, probation monitoring agency, or by contract with a private provider.

(f) The electronic monitoring provider shall cover the costs of waivers by the court under Subsection (13)(c)(iv).

(14) (a) If supervised probation is ordered under Section 41-6-44.6 or Subsection (4)(e) or (5)(e):

(i) the court shall specify the period of the probation;

(ii) the person shall pay all of the costs of the probation; and

(iii) the court may order any other conditions of the probation.

(b) The court shall provide the probation described in this section by contract with a probation monitoring agency or a private probation provider.

(c) The probation provider described in Subsection (b) shall monitor the person's compliance with all conditions of the person's sentence, conditions of probation, and court orders received under this article and shall notify the court of any failure to comply with or complete that sentence or those conditions or orders.

(d) (i) The court may waive all or part of the costs associated with probation if the person is determined to be indigent by the court.

(ii) The probation provider described in Subsection (14)(b) shall cover the costs of waivers by the court under Subsection (14)(d)(i).

(15) If a person is convicted of a violation of Subsection (2) and there is admissible evidence that the person had a blood alcohol level of .16 or higher, then if the court does not order:

(a) treatment as described under Subsection (4)(d), (5)(d), or (6)(b)(iii), then the court shall enter the reasons on the record; and

(b) the following penalties, the court shall enter the reasons on the record:

(i) the installation of an ignition interlock system as a condition of probation for the person in accordance with Section 41-6-44.7; or

(ii) the imposition of home confinement through the use of electronic monitoring in accordance with Subsection (13).

Section 2. Section 41-6-44.6 is amended to read:

41-6-44.6. Definitions -- Driving with any measurable controlled substance in the body -- Penalties -- Arrest without warrant.

(1) As used in this section:

(a) "Controlled substance" means any substance scheduled under Section 58-37-4.

(b) "Practitioner" has the same meaning as provided in Section 58-37-2.

(c) "Prescribe" has the same meaning as provided in Section 58-37-2.

(d) "Prescription" has the same meaning as provided in Section 58-37-2.

(2) In cases not amounting to a violation of Section 41-6-44, a person may not operate or be in actual physical control of a motor vehicle within this state if the person has any measurable controlled substance or metabolite of a controlled substance in the person's body.

(3) It is an affirmative defense to prosecution under this section that the controlled substance was involuntarily ingested by the accused or prescribed by a practitioner for use by the accused.

(4) A person convicted of a violation of Subsection (2) is guilty of a class B misdemeanor.

(5) A peace officer may, without a warrant, arrest a person for a violation of this section when the officer has probable cause to believe the violation has occurred, although not in the officer's presence, and if the officer has probable cause to believe that the violation was committed by the person.

(6) The Driver License Division shall:

(a) suspend, for 90 days, the driver license of a person convicted under Subsection (2);

(b) revoke, for one year, the driver license of a person convicted of a second or subsequent offense under Subsection (2) if the violation is committed within a period of six years after the date of the prior violation; and

(c) subtract from any suspension or revocation period the number of days for which a license was previously suspended under Section 53-3-223 or 53-3-231, if the previous suspension was based on the same occurrence upon which the record of conviction is based.

(7) If a person fails to complete all court ordered screening and assessment, educational series, and substance abuse treatment, or fails to pay all fines and fees, including fees for restitution and treatment costs, the court shall notify the Driver License Division of a failure to comply. Upon receiving the notification, the division shall suspend the person's driving privilege in accordance with Subsections 53-3-221(2) and (3).

(8) The court shall order supervised probation in accordance with Subsection 41-6-44(14) for a person convicted under Subsection (2).

CHAPTER 356
H. B. 204
Passed February 26, 2001
Approved March 20, 2001
Effective July 1, 2001

OLENE WALKER HOUSING TRUST FUND APPROPRIATION

Sponsor: Wayne A. Harper
Patrice M. Arent

This act appropriates $800,000 from the General Fund to the Olene Walker Housing Trust Fund. The act specifies that $300,000 of the appropriation is for fiscal year 2001-02 only. The act takes effect on July 1, 2001.

This act enacts uncodified material.

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

Section 1. Appropriation.

(1) Subject to Subsection (2), there is appropriated from the General Fund for fiscal year 2001-02, $800,000 to the Olene Walker Housing Trust Fund created in Section 9-4-702.

(2) Notwithstanding Subsection (1), $300,000 of the appropriation under Subsection (1) is appropriated for fiscal year 2001-02 only.

Section 2. Effective date.

This act takes effect on July 1, 2001.

CHAPTER 357
H. B. 212
Passed February 26, 2001
Approved March 20, 2001
Effective July 1, 2001

MUSEUM EDUCATIONAL INITIATIVE

Sponsor: Wayne A. Harper

This act appropriates $1,000,000 from the General Fund to the Office of Museum Services for enhancement of museums within the state. The act takes effect on July 1, 2001.

This act enacts uncodified material.

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

Section 1. Intent.

Recognizing the state's commitment to public education, the Legislature finds that museums are a primary source of information for public education and that public education is enhanced through the use of museum resources, site visits, and tours. It is the intent of the Legislature in appropriating these funds to provide support to the Office of Museum Services for enhancement of museums within the state. It is the intent of the Legislature that this appropriation shall be used for:

(1) grants to local, regional, and state museums;

(2) enhancement of educational outreach programs;

(3) expansion of elementary and middle school outreach programs; and

(4) activities enhancing creation, preservation, and display of historical and educational artifacts and materials.

Section 2. Appropriation.

(1) There is appropriated from the General Fund for fiscal year 2001-02, $1,000,000.

(2) These appropriations are nonlapsing.

Section 3. Effective date.

This act takes effect on July 1, 2001.

CHAPTER 358
H. B. 216
Passed February 23, 2001
Approved March 20, 2001
Effective July 1, 2001

APPROPRIATION FOR ADVANCED READERS AT RISK PROGRAM

Sponsor: Marda Dillree

This act provides a $500,000 appropriation to fund an Advanced Readers at Risk Program in the public schools to develop advanced reading knowledge and skills in students. This act takes effect on July 1, 2001.

This act enacts uncodified material.

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

Section 1. Appropriation.

(1) There is appropriated from the Uniform School Fund for fiscal year 2001-02 only, $500,000 to the State Board of Education to fund an Advanced Readers at Risk Program in the state's public schools.

(2) The purpose of the program is to develop advanced reading knowledge and skills in students through model classrooms, parental involvement, and coordinated service projects.

(3) The program shall run at least three years, subject to reauthorization by the Legislature based on an evaluation of the effectiveness of the program.

(4) The board shall allocate the appropriation to school districts based on submission of grant applications and assurances of and compliance with qualifying criteria established by the state board pursuant to its rulemaking authority.

(5) The appropriation is in addition to the appropriation for accelerated learning programs made under Section 53A-17a-120 as part of the Minimum School Program Act.

Section 2. Effective date.

This act takes effect on July 1, 2001.

CHAPTER 359
H. B. 220
Passed February 16, 2001
Approved March 20, 2001
Effective April 30, 2001

BURGLARY AMENDMENTS

Sponsor: Katherine M. Bryson

This act modifies the Criminal Code by including as a burglary offense the entering of a building with intent to commit a sexual offense.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
76-6-202, as enacted by Chapter 196, Laws of Utah 1973

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

Section 1. Section 76-6-202 is amended to read:

76-6-202. Burglary.

(1) [~~A person~~] An actor is guilty of burglary if he enters or remains unlawfully in a building or any portion of a building [~~with intent to commit a felony or theft or commit an assault on any person.~~] with intent to commit:

(a) a felony;

(b) theft;

(c) an assault on any person;

(d) lewdness, a violation of Subsection76-9-702(1);

(e) sexual battery, a violation of Subsection 76-9-702(3); or

(f) lewdness involving a child, in violation of Section 76-9-702.5.

(2) Burglary is a felony of the third degree unless it was committed in a dwelling, in which event it is a felony of the second degree.

(3) A violation of this section is a separate offense from any of the offenses listed in Subsection (1)(a) or (1)(b), and which may be committed by the actor while he is in the building.

CHAPTER 360
H. B. 221
Passed February 23, 2001
Approved March 20, 2001
Effective April 30, 2001

AMENDMENTS TO ATTORNEY LIEN LAW

Sponsor: David L. Hogue

This act modifies the statute relating to attorney's liens. It repeals the original statute and replaces it with provisions allowing for an attorney's lien on work performed, clarifies the circumstances under which it can be filed, specifies what the lien may be applied to, and provides for enforcement of the lien. The act provides a coordination clause.

This act affects sections of Utah Code Annotated 1953 as follows:

REPEALS AND REENACTS:
78-51-41, as last amended by Chapter 100, Laws of Utah 1989

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

Section 1. Section 78-51-41 is repealed and reenacted to read:

78-51-41. (Codified as 38-2-7) Compensation -- Attorney's lien.

(1) The compensation of an attorney is governed by agreement between the attorney and a client, express or implied, which is not restrained by law.

(2) An attorney shall have a lien for the balance of compensation due from a client on any moneys or property owned by the client that is the subject of or connected with work performed for the client, including, but not limited to:

(a) any real or personal property that is the subject of or connected with the work performed for the client;

(b) any funds held by the attorney for the client, including any amounts paid as a retainer to the attorney by the client; and

(c) any settlement, verdict, report, decision, or judgment in the client's favor in any matter or action in which the attorney assisted, including any proceeds derived from the matter or action, whether or not the attorney is employed by the client at the time the settlement, verdict, report, decision, or judgment is obtained.

(3) An attorney's lien commences at the time of employment of the attorney by the client.

(4) An attorney may enforce a lien under this section by moving to intervene in a pending legal action in which the attorney has assisted or performed work, or by filing a separate legal action. An attorney may not move to intervene in an action or file a separate legal action to enforce a lien before 30 days has expired after a demand for payment has been made and not been complied with.

(5) An attorney may file a notice of lien in a pending legal action in which the attorney has assisted or performed work for which the attorney has a lien under this section. In addition, an attorney may file a notice of lien with the county recorder of the county in which real property that is subject to a lien under this section is located. A notice of lien shall include the following:

(a) the name, address, and telephone number of the attorney claiming the lien;

(b) the name of the client who is the owner of the property subject to the lien;

(c) a verification that the property is the subject of or connected with work performed by the attorney for the client and that a demand for payment of amounts owed to the attorney for the work has been made and not been paid within 30 days of the demand;

(d) the date the attorney first provided services to the client;

(e) a description of the property, sufficient for identification; and

(f) the signature of the lien claimant and an acknowledgment or certificate as required under Title 57, Chapter 3, Recording of Documents.

(6) Within 30 days after filing the notice of lien, the attorney shall deliver or mail by certified mail to the client a copy of the notice of lien.

(7) Any person who takes an interest in any property, other than real property, that is subject to an attorney's lien with actual or constructive knowledge of the attorney's lien, takes their interest subject to the attorney's lien. An attorney's lien on real property has as its priority the date and time when a notice of lien is filed with the county recorder of the county in which real property that is subject to a lien under this section is located.

(8) This section does not alter or diminish in any way an attorney's common law retaining lien rights.

(9) This section does not authorize an attorney to have a lien in the representation of a client in a criminal matter or domestic relations matter where a final order of divorce has not been secured unless:

(a) the criminal matter has been concluded or the domestic relations matter has been concluded by the securing of a final order of divorce or the attorney/client relationship has terminated; and

(b) the client has failed to fulfill their financial obligation to the attorney.

Section 2. Coordination clause.

If this bill and S.B. 13, Repeal of Attorneys and Counselors Provisions, both pass, it is the intent of the Legislature that the Office of Legislative Research and General Counsel in preparing the database for publication, shall renumber Section 78-51-41 in this bill to Section 38-2-7 as provided in S.B. 13.

CHAPTER 361
H. B. 228
Passed February 22, 2001
Approved March 20, 2001
Effective April 30, 2001

UTAH CONSTRUCTION TRADES LICENSING ACT AMENDMENTS

Sponsor: Loraine T. Pace

This act modifies the Utah Construction Trades Licensing Act by amending the penalty provisions for unlawful conduct.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
58-55-503, as last amended by Chapters 100, 233 and 317, Laws of Utah 2000

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

Section 1. Section 58-55-503 is amended to read:

58-55-503. Penalty for unlawful conduct -- Citations.

(1) Any person who violates [~~Subsections~~] Subsection 58-55-501(1), (2), (3), (4), (5), (6), (7), (9), (10), (12), [~~or (17)~~] (14), or (15), or who fails to comply with a citation issued under this section after it is final, is guilty of a class A misdemeanor. Any person who violates the provisions of Subsection 58-55-501(8) may not be awarded and may not accept a contract for the performance of the work.

(2) Any person who violates the provisions of Subsection 58-55-501(13) is guilty of an infraction unless the violator did so with the intent to deprive the person to whom money is to be paid of the money received, in which case the violator is guilty of theft, as classified in Section 76-6-412.

(3) Grounds for immediate suspension of the licensee's license by the division and the board include the issuance of a citation for violation of Section 58-55-501 or the failure by a licensee to make application to, report to, or notify the division with respect to any matter for which application, notification, or reporting is required under this chapter or rules adopted under this chapter, including applying to the division for a new license to engage in a new specialty classification or to do business under a new form of organization or business structure, filing with the division current financial statements, notifying the division concerning loss of insurance coverage, or change in qualifier.

(4) (a) If upon inspection or investigation, the division concludes that a person has violated the provisions of Subsections 58-55-501(1), (2), (3), (9), (10), (12), (14), or any rule or order issued with respect to these subsections, and that disciplinary action is appropriate, the director or his designee from within the division for each alternative respectively, shall, promptly issue a citation to the person according to this chapter and any pertinent rules, attempt to negotiate a stipulated settlement, or notify the person to appear before an adjudicative proceeding conducted under Title 63, Chapter 46b, Administrative Procedures Act.

(i) Any person who is in violation of the provisions of Subsection 58-55-501(1), (2), (3), (9), (10), (12), or (14), as evidenced by an uncontested citation, a stipulated settlement, or by a finding of violation in an adjudicative proceeding, may be assessed a fine pursuant to this Subsection (4) and may, in addition to or in lieu of, be ordered to cease and desist from violating Subsection 58-55-501(1), (2), (3), (9), (10), (12), or (14).

(ii) Except for a cease and desist order, the licensure sanctions cited in Section 58-55-401 may not be assessed through a citation.

(b) Each citation shall be in writing and describe with particularity the nature of the violation, including a reference to the provision of the chapter, rule, or order alleged to have been violated. The citation shall clearly state that the recipient must notify the division in writing within 20 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing conducted under Title 63, Chapter 46b, Administrative Procedures Act. The citation shall clearly explain the consequences of failure to timely contest the citation or to make payment of any fines assessed by the citation within the time specified in the citation.

(c) Each citation issued under this section, or a copy of each citation, may be served upon any person upon whom a summons may be served in accordance with the Utah Rules of Civil Procedure and may be made personally or upon his agent by a division investigator or by any person specially designated by the director or by mail.

(d) If within 20 calendar days from the service of a citation, the person to whom the citation was issued fails to request a hearing to contest the citation, the citation becomes the final order of the division and is not subject to further agency review. The period to contest a citation may be extended by the division for cause.

(e) The division may refuse to issue or renew, suspend, revoke, or place on probation the license of a licensee who fails to comply with a citation after it becomes final.

(f) The failure of an applicant for licensure to comply with a citation after it becomes final is a ground for denial of license.

(g) No citation may be issued under this section after the expiration of six months following the occurrence of any violation.

(h) Fines shall be assessed by the director or his designee according to the following:

(i) for a first offense handled pursuant to Subsection (4)(a), a fine of up to $1,000;

(ii) for a second offense handled pursuant to Subsection (4)(a), a fine of up to $2,000; and

(iii) for any subsequent offense handled pursuant to Subsection (4)(a), a fine of up to $2,000 for each day of continued offense.

(i) (i) For purposes of issuing a final order under this section and assessing a fine under Subsection (4)(i), an offense constitutes a second or subsequent offense if:

(A) the division previously issued a final order determining that a person committed a first or second offense in violation of Subsection 58-55-501(1), (2), (3), (9), (10), (12), or (14); or

(B) (I) the division initiated an action for a first or second offense;

(II) no final order has been issued by the division in the action initiated under Subsection (4) (i)(i)(B)(I);

(III) the division determines during an investigation that occurred after the initiation of the action under Subsection (4) (i)(i)(B)(I) that the person committed a second or subsequent violation of the provisions of Subsection 58-55-501(1), (2), (3), (9), (10), (12), or (14); and

(IV) after determining that the person committed a second or subsequent offense under Subsection (4) (i)(i)(B)(III), the division issues a final order on the action initiated under Subsection (4) (i)(i)(B)(I).

(ii) In issuing a final order for a second or subsequent offense under Subsection (4) (i)(i), the division shall comply with the requirements of this section.

(5) Any penalty imposed by the director under Subsection (4) (h) shall be deposited into the Commerce Service Fund. Any penalty which is not paid may be collected by the director by either referring the matter to a collection agency or bringing an action in the district court of the county in which the person against whom the penalty is imposed resides or in the county where the office of the director is located. Any county attorney or the attorney general of the state is to provide legal assistance and advice to the director in any action to collect the penalty. In any action brought to enforce the provisions of this section, reasonable attorney's fees and costs shall be awarded.

CHAPTER 362
H. B. 232
Passed February 19, 2001
Approved March 20, 2001
Effective April 30, 2001

CERTIFIED CHILD WELFARE SOCIAL SERVICE WORKER AMENDMENTS

Sponsor: Matt Throckmorton

This act modifies the Human Services Code and the State Personnel Management Act by establishing the criteria for certification as a child welfare social service worker and certified child welfare social worker. The act clarifies that the certification is for salary purposes and does not apply to licensing standards. The act establishes criteria for the director of the Department of Human Resource Management to follow in establishing salary and benefit ranges for the certified child welfare social service workers and certified child welfare social workers.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:
62A-4a-107.1, Utah Code Annotated 1953
67-19-12.4, Utah Code Annotated 1953

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

Section 1. Section 62A-4a-107.1 is enacted to read:

62A-4a-107.1. Designation of certified child welfare social service workers and child welfare social workers.

(1) The division shall designate a child welfare social service worker and child welfare social worker as certified if the division social service worker or social worker:

(a) (i) has completed the core training described in Section 62A-4a-107; or

(ii) is exempt from core training under Subsection 62A-4a-107(2)(c);

(b) has earned a minimum of a bachelor's degree from an accredited institute of higher education; and

(c) is licensed under Title 58, Chapter 60, Part 2, Social Worker Licensing Act.

(2) The certification under Subsection (1) is for the purpose of calculating benefits and salary ranges under Section 67-19-12.4. The certification is not for licensing purposes and does not effect the provisions of Title 58, Chapter 60, Part 2, Social Worker Licensing Act.

Section 2. Section 67-19-12.4 is enacted to read:

67-19-12.4. Certified child welfare social service workers' and child welfare social workers' personnel pay plans.

The pay plans for certified child welfare social service workers and certified child welfare social workers, as defined under Section 62A-4a-107.1 employed by the state shall comply with Section 67-19-12 except that:

(1) the department shall determine a classification plan which reflects the professional skill and specialized nature of child welfare work;

(2) the state salary ranges for certified child welfare social service workers and certified child welfare social workers shall be based on a survey of salary ranges and a survey of benefits of similarly trained and educated public child welfare professionals in surrounding states; and

(3) when determining compensation, the director shall consider the compensation under Subsection (2), internal comparisons, and other factors in order to allow the state to recruit and retain the highest qualified certified child welfare social service workers and certified child welfare social workers.

CHAPTER 363
H. B. 233
Passed February 23, 2001
Approved March 20, 2001
Effective April 30, 2001

PROPERTY AND CASUALTY GUARANTY ASSOCIATION ACT

Sponsor: Gerry A. Adair

This act modifies the Utah Property and Casualty Guaranty Association Act. The act establishes a minimum amount for all claims. The act revises definitions, specifically the definition of a "covered claim." The act addresses net worth test for first-party claims. The act eliminates per diem but allows expenses for members of the board of directors. The act addresses the powers and duties of the board of directors. The act addresses termination of obligations on covered claims. The act allows payment of refunds directly to the State Tax Commission. The act grants exclusive jurisdiction over claims against the association to the Utah courts. The act eliminates classes of assessments. The act addresses the plan of operation of the association. The act clarifies that liability of the association commences with an order of liquidation. The act addresses the powers and duties of the commissioner. The act changes the date for submission of the annual report by the association. The act addresses stay of proceedings and makes technical changes. The act provides a coordination clause.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
31A-28-202, as last amended by Chapter 97, Laws of Utah 1988
31A-28-203, as last amended by Chapter 211, Laws of Utah 1991
31A-28-205, as last amended by Chapter 97, Laws of Utah 1988
31A-28-206, as last amended by Chapter 10, Laws of Utah 1997
31A-28-207, as last amended by Chapter 261, Laws of Utah 1989
31A-28-208, as last amended by Chapter 211, Laws of Utah 1991
31A-28-209, as last amended by Chapter 204, Laws of Utah 1986
31A-28-210, as enacted by Chapter 242, Laws of Utah 1985
31A-28-213, as last amended by Chapter 204, Laws of Utah 1986
31A-28-214, as enacted by Chapter 242, Laws of Utah 1985
31A-28-218, as last amended by Chapter 95, Laws of Utah 1987
31A-28-220, as last amended by Chapter 204, Laws of Utah 1986

ENACTS:
31A-28-222, Utah Code Annotated 1953

REPEALS:
31A-28-201, as repealed and reenacted by Chapter 97, Laws of Utah 1988
31A-28-216, as enacted by Chapter 242, Laws of Utah 1985
31A-28-219, as last amended by Chapter 204, Laws of Utah 1986
31A-28-221, as enacted by Chapter 95, Laws of Utah 1987

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

Section 1. Section 31A-28-202 is amended to read:

31A-28-202. Scope.

This part applies to protect resident policyowners and insureds under all types of direct insurance, except [~~life, title, surety, disability, credit (including mortgage guarantee), ocean marine insurance, insurance of warranties or service contracts, financial guarantee, and all insurance coverages guaranteed by the United States Government.~~]:

(1) life insurance;

(2) annuity;

(3) health insurance;

(4) disability insurance;

(5) mortgage guaranty insurance;

(6) financial guaranty, or other forms of insurance offering protection against investment risks;

(7) fidelity or surety bonds, or any other bonding obligation;

(8) credit insurance;

(9) vendor's single interest insurance;

(10) collateral protection insurance, or any similar insurance protecting the interests of a creditor in a creditor-debtor transaction;

(11) mechanical breakdown insurance, as defined in Section 31A-6a-101;

(12) insurance of a warranty or service contract as defined in Section 31A-6a-101;

(13) title insurance;

(14) ocean marine insurance;

(15) any transaction between a person and an insurer, or an affiliate of a person or insurer, that involves the transfer of investment or credit risk unaccompanied by transfer of insurance risk; or

(16) any insurance provided by or guaranteed by government.

Section 2. Section 31A-28-203 is amended to read:

31A-28-203. Definitions.

As used in this part:

(1) "Affiliate" is as defined in Section 31A-1-301.

(2) (a) "Claimant" means:

(i) an insured making a first-party claim; or

(ii) a person instituting a liability claim.

(b) A person who is an affiliate of the insolvent insurer may not be a claimant.

[~~(1)~~] (3) (a) "Covered claim" means an unpaid claim, [~~excluding~~] including an unpaid claim under a personal lines policy for unearned premiums submitted by a claimant, [~~that~~] if:

(i) the claim arises out of [~~and~~] the coverage;

(ii) the claim is within the coverage [~~and~~];

(iii) the claim is not in excess of the applicable limits of an insurance policy to which this part applies[~~, where~~];

(iv) the insurer who issued the policy becomes an insolvent insurer[~~,~~]; and [~~where~~]

(v) (A) the claimant or insured is a resident of this state at the time of the insured event; or [~~the property from which the claim arises is permanently located in this state.~~]

(B) the claim is a first-party claim for damage to property that is permanently located in this state.

(b) "Covered claim" does not include:

(i) any amount awarded as punitive or exemplary damages or any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise, nor does it include any supplementary payment obligation, including adjustment fees and expenses, attorneys' fees and expenses, court costs, interest, and bond premiums, prior to the appointment of a liquidator[~~.~~];

(ii) any amount sought as a return of premium under a retrospective rating plan;

(iii) any first-party claim by an insured if:

(A) the insured's net worth exceeds $25,000,000 on December 31 of the year preceding the date the insurer becomes an insolvent insurer; and

(B) the insured's net worth includes the aggregate net worth of the insured and all of its subsidiaries as calculated on a consolidated basis; or

(iv) any first-party claims by an insured that is an affiliate of the insolvent insurer.

(4) "Insolvent insurer" means a member insurer that is placed under an order of liquidation by a court of competent jurisdiction with a finding of insolvency.

(5) "Member insurer" means any person who:

(a) writes any kind of insurance to which this part applies under Section 31A-28-202, including the exchange of reciprocal or inter-insurance contracts; and

(b) is licensed to transact insurance in this state.

[~~(2)~~] (6) (a) "Net direct written premiums" means direct gross premiums written in this state on insurance policies that this part applies to, less return premiums and dividends paid or credited to policyholders on the direct business.

(b) "Net direct written premiums" does not include premiums on contracts between insurers or reinsurers.

[~~(3) Other definitions applicable to this part are given under Section 31A-28-105.~~]

(7) "Personal lines policy" means an insurance policy issued to an individual that:

(a) insures a motor vehicle used for personal purposes and not used in trade or business; or

(b) insures a residential dwelling.

(8) "Residence" means, for entities other than a natural person, the state where the principal place of business of a claimant, insured, or policyholder is located at the time of the insured event.

Section 3. Section 31A-28-205 is amended to read:

31A-28-205. Creation of the association.

(1) (a) The Utah Property and Casualty Insurance Guaranty Association shall continue as a nonprofit legal entity.

(b) All member insurers of the association are, and remain, members of the association as a condition of their authority to transact insurance business in this state.

(c) The association shall:

(i) perform its functions under the plan of operation established and approved under Section 31A-28-209; and [~~shall~~]

(ii) exercise its powers through a board of directors established under Section 31A-28-206.

(d) For the purposes of administration and assessment, the association shall maintain:

(i) a workers' compensation insurance account[~~,~~];

(ii) an automobile insurance account[~~,~~]; and

(iii) a miscellaneous account for all other insurance to which this part applies.

(2) (a) An insurer shall cease to be a member insurer on the day following the termination or expiration of the insurer's license to transact the kinds of insurance to which this part applies.

(b) Notwithstanding Subsection (2)(a), the insurer shall remain liable as a member insurer for all obligations, including assessments levied:

(i) before the termination or expiration of the insurer's license; and

(ii) after the termination or expiration of the insurer's license but that relate to an insurer that became an insolvent insurer before the termination or expiration of the insurer's license.

[~~(2)~~] (3) Meetings or records of the association shall be open to the public upon a majority vote of the board of directors of the association.

[~~(3)~~] (4) The association is not an agency of the state.

Section 4. Section 31A-28-206 is amended to read:

31A-28-206. Board of directors.

(1) (a) The board of directors of the association consists of not less than five nor more than nine members, serving terms of four years each.

(b) The members of the board shall be selected by member insurers, subject to the commissioner's approval. When a vacancy occurs in the membership for any reason, the replacement shall be elected for the unexpired term by a majority vote of the remaining board members, subject to the commissioner's approval.

(c) In approving selections or in appointing members to the board, the commissioner shall consider whether all member insurers are fairly represented.

(d) Notwithstanding [~~the requirements of~~] Subsection (1)(a), the commissioner shall, at the time of election or reelection, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is selected every two years.

[~~(2) (a) Members shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107 from the assets of the association.~~]

(2) A member of the board of directors may be reimbursed from the assets of the association for expenses the member incurs as a member of the board of directors.

[~~(b) Members may decline to receive per diem and expenses for their service.~~]

Section 5. Section 31A-28-207 is amended to read:

31A-28-207. Powers and duties of the association.

(1) (a) The association is obligated on the amount of the covered claims:

(i) existing prior to the [~~determination of insolvency~~] order of liquidation; and [~~rising~~]

(ii) arising:

(A) within 30 days after the [~~determination of insolvency,~~] order of liquidation; or

(B) (I) before the policy expiration date if it is less than 30 days after the [~~determination,~~] order of liquidation; or

(II) before the insured replaces the policy or causes its cancellation, if [~~he~~] the insured does so within 30 days of the [~~determination~~] order of liquidation.

(b) The obligation under Subsection (1)(a) includes only that amount of each covered claim that is [~~in excess of $100 and is~~] less than $300,000. [~~However, the~~]

(c) A claim under a personal lines policy for unearned premiums shall include only those claims that exceed $100 in amount, subject to a maximum of $10,000 per policy.

(d) The association shall pay the full amount of any covered claim arising out of a [~~workmen's~~] workers' compensation policy. [~~In no event is the~~] The association is not obligated to a policyholder or claimant in an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises.

(e) Any obligation of the association to defend an insured on a covered claim shall cease:

(i) upon payment by the association, as part of a settlement releasing the insured; or

(ii) on a judgment, of the lesser of:

(A) the association's covered claim obligation limit; or

(B) the applicable policy limit.

[~~(b)~~] (f) The association:

(i) is considered as the insurer only to the extent of its obligation on the covered claims, [~~and to that extent,~~] subject to the limitations provided in this part;

(ii) has all the rights, duties, and obligations of the insolvent insurer as if the insurer had not yet become insolvent, including the right to pursue and retain salvage and subrogation recoverable on paid covered claim obligations; and

(iii) may not be considered the insolvent insurer for any purpose relating to whether the association is subject to personal jurisdiction in the courts of any state.

(g) (i) Notwithstanding any other provisions of this part, except in the case of a claim for benefits under workers' compensation coverage, any obligation of the association to or on behalf of a particular insured and its affiliates on covered claims shall cease when:

(A) a total amount of $10,000,000 has been paid to or on behalf of the insured and its affiliates on covered claims by the association or a similar association; and

(B) all payments on covered claims arise under one or more policies of a single insolvent insurer.

(ii) The association may establish a plan to allocate the amounts payable by the association in a manner the association considers equitable if the association determines that:

(A) there is more than one claimant asserting a covered claim against:

(I) the association;

(II) a similar association; or

(III) a property or casualty insurance security fund in another state; and

(B) all claims arise under the policy or policies of a single insolvent insurer.

[~~(e)~~] (h) The association shall allocate claims paid and expenses incurred among the [~~three~~] accounts established under Section 31A-28-205 separately, and assess member insurers separately for each account amounts necessary to pay:

(i) the obligations of the association under Subsection (1)(a), as limited by Subsections (1)(e) through (g), subsequent to [~~an insolvency~~] the liquidation of an insolvent insurer;

(ii) the expenses of handling covered claims subsequent to [~~an insolvency~~] the liquidation of an insolvent insurer;

(iii) the cost of examinations under Section 31A-28-214; and

(iv) other expenses authorized by this part.

[~~(d)~~] (i) (i) The association shall:

(A) investigate claims brought against the association; and

(B) adjust, compromise, settle, and pay covered claims to the extent of the association's obligation and deny all other claims [~~and may review settlements, releases, and judgments that the insolvent insurer or its insureds were parties to in determining if the settlements, releases, or judgments may be properly contested~~].

[~~(e) The association shall notify the persons the commissioner requests under Subsection 31A-28-210 (2) (a).~~]

(ii) The association is not bound by a settlement, release, compromise, waiver, or judgment executed or entered into by the insolvent insurer:

(A) less than 12 months before the entry of an order of liquidation; or

(B) more than 12 months before the entry of an order of liquidation if the settlement, release, compromise, waiver, or judgment is:

(I) based on a claim that is not a covered claim; or

(II) the result of fraud, collusion, default, or failure to defend.

(iii) The association may assert all defenses available including defenses applicable to determining and enforcing the association's statutory rights and obligations to a claim.

(iv) The association may appoint and direct legal counsel retained under a liability insurance policy for the defense of a covered claim.

[~~(f)~~] (j) (i) The association shall handle claims through:

(A) its employees [~~or through~~];

(B) one or more insurers; or

(C) other persons designated as servicing facilities.

(ii) Designation of a servicing facility is subject to the approval of the commissioner, but this designation may be declined by a member insurer.

[~~(g)~~] (k) The association shall:

(i) reimburse each servicing facility for:

(A) obligations of the association paid by the facility; and [~~for~~]

(B) expenses incurred by the facility while handling claims on behalf of the association; and [~~shall~~]

(ii) pay the other expenses of the association as authorized by this title.

(2) The association may:

(a) employ or retain the persons, including private legal counsel, necessary to handle claims and perform other duties of the association;

(b) borrow funds necessary to implement the purposes of this part in accord with the plan of operation;

(c) sue or be sued;

(d) negotiate and become a party to the contracts necessary to carry out the purpose of this part;

(e) perform any other acts necessary or proper to accomplish the purposes of this chapter; or

(f) refund to the member insurers, in proportion to the contribution of each member insurer to that account, the amount that the assets of the account exceed the liabilities, if, at the end of any calendar year, the board of directors finds that:

(i) the assets of the association in any account exceed the liabilities of that account as estimated by the board of directors for the coming year[.]; and

(ii) the excess assets are not needed for other purposes of this part.

(3) For a refund due to a member insurer for an assessment that has been offset against premium taxes, the association may pay the amount of the refund directly to the State Tax Commission.

(4) The courts of the state shall have exclusive jurisdiction over all actions brought against the association that relate to or arise out of this part.

[~~(3)~~] (5) (a) Any person recovering under this part is considered to have assigned [~~his~~] that person's rights under the policy to the association to the extent of [~~his~~] that person's recovery from the association.

(b) Every insured or claimant seeking the protection of this chapter shall cooperate with the association to the same extent the person would have been required to cooperate with the insolvent insurer. [~~The~~]

(c) Except as provided in Subsection (5)(e), the association has no cause of action against the insured of the insolvent insurer for any sums the

association has paid out except those causes of action the insolvent insurer would have had if the sums had been paid by the insolvent insurer.

(d) When an insolvent insurer operates on a plan with assessment liability, payments of claims of the association do not reduce the liability for unpaid assessments of the insurer to:

(i) the receiver[~~,~~];

(ii) liquidator[~~,~~]; or

(iii) statutory successor [~~for unpaid assessments~~].

[~~(b)~~] (e) The association [~~shall have the right to~~] may recover from the following persons the amount of any "covered claim" paid on behalf of [~~such~~] that person pursuant to [~~the act~~] this part:

(i) any insured whose:

(A) net worth on December 31 of the year next preceding the date the insurer becomes insolvent, exceeds [~~$50,000,000,~~] $25,000,000; and [~~whose~~]

(B) liability obligations to other persons are satisfied in whole or in part by payments made under this [~~act~~] part; and

(ii) any person:

(A) who is an affiliate of the insolvent insurer; and

(B) whose liability obligations to other persons are satisfied in whole or in part by payments made under this [~~action~~] part.

[~~(c)~~] (f) (i) The receiver, liquidator, or statutory successor of an insolvent insurer is bound by [~~settlements~~]:

(A) a determination of a covered claim eligibility under this part; and

(B) a settlement of a covered [~~claims~~] claim by the association or a similar organization in another state.

(ii) The court having jurisdiction shall grant [~~these~~] settled claims a priority equal to that which the claimant would have been entitled to in the absence of this [~~chapter~~] part, against the assets of the insolvent insurer. [~~The expenses, including legal fees, of the association or similar organization in handling claims are given the same priority as the liquidator's expenses.~~]

(g) The association or any similar organization in another state shall:

(i) be recognized as a claimant in the liquidation of an insolvent insurer for any amounts paid on a covered claim obligation as determined under this part or a similar law in another state; and

(ii) receive dividends or distributions at the priority set forth in Section 31A-27-335.

[~~(d)~~] (h) (i) The association shall periodically file with the receiver or liquidator of the insolvent insurer[~~,~~]:

(A) statements of the covered claims paid by the association; and

(B) estimates of anticipated claims on the association. [~~This~~]

(ii) The filing under this Subsection (5)(h) preserves the rights of the association for claims against the assets of the insolvent insurer.

[~~(e)~~] (i) The association need not pay any claim filed after the final date under Sections 31A-27-315 and 31A-27-328, or similar statutes of other states, for filing the same type of claim with the liquidator of the insolvent insurer.

Section 6. Section 31A-28-208 is amended to read:

31A-28-208. Assessments.

(1) [~~In order to~~] (a) To provide the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers, separately for each account established under Section 31A-28-205, at the time and in the amount the board finds necessary. [~~Assessments are~~]

(b) An assessment under this section:

(i) is due not less than 30 days after written notice to the member insurers; and [~~accrue~~]

(ii) accrues interest to the extent unpaid after the due date at the greater of:

(A) 10% per annum[~~,~~]; or

(B) the then legal rate of interest provided in Section 15-1-1[~~, whichever is greater, to the extent unpaid after the due date~~].

(c) The association shall allocate claims and incurred expenses among the accounts.

[~~(2) There are two classes of assessments as follows:~~]

[~~(a) Class A assessments are made to meet administrative costs and other general expenses. Class A assessments may be made whether or not they are related to a particular impaired or insolvent insurer.~~]

[~~(b) Class B assessments~~] (2) An assessment for each account [~~are~~] is to be made in the amount necessary to carry out the powers and duties of the association under Section [~~31A-28-108~~] 31A-28-207 for an [~~impaired or~~] insolvent [~~member~~] insurer.

[~~(3) The amount of any Class A assessment is determined by the board. The assessment may not exceed $150 per member insurer in any one calendar year.~~]

[~~(4) Class B assessments~~] (3) An assessment against a member [~~insurers~~] insurer for each account [~~are~~] is in the proportion that the direct written premiums of the member insurer for the preceding calendar year on the kinds of insurance in the account bears to the net direct written premiums of all member insurers for the preceding calendar year on all kinds of insurance in the account.

[~~(5) No~~] (4) A member insurer may not be assessed in any year on any account for an amount greater than 2% of that member insurer's net direct written premiums for the preceding calendar year on the kinds of insurance in the account.

[~~(6)~~] (5) If the maximum assessment, together with the other assets of the association in any account, do not provide in any one year in any account an amount sufficient to make all necessary payments from that account, the funds available shall be prorated and the unpaid portion shall be paid as soon as funds become available.

[~~(7)~~] (6) The association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance.

[~~(8)~~] (7) Each member insurer may set off against any assessment authorized payments made on covered claims and expenses incurred in the payment of the claims by the member insurer, if they are chargeable to the account for which the assessment is made.

Section 7. Section 31A-28-209 is amended to read:

31A-28-209. Plan of operation.

(1) (a) The association shall submit to the commissioner a plan of operation and any amendments necessary or suitable to assure the fair, reasonable, and equitable administration of the association.

(b) The plan of operation and amendments described in Subsection (1)(a) are effective upon approval in writing by the commissioner.

(c) Any amendments made under this section after July 1, 1986, shall be made within 180 days of the changed circumstance.

(2) The plan of operation shall continue in force until:

(a) modified by the commissioner; or

(b) superseded by a plan:

(i) submitted by the association; and

(ii) approved by the commissioner.

(3) All member insurers shall comply with the plan of operation.

(4) The plan of operation shall, in addition to requirements enumerated elsewhere in this [~~chapter~~] part:

(a) establish procedures for handling the assets of the association;

(b) establish the amount and method of reimbursing members of the board of directors under Section 31A-28-206;

(c) establish regular places and times for meetings of the board of directors;

(d) establish procedures for records to be kept of all financial transactions of the association, [~~its~~] the association's agents, and the board of directors;

(e) establish the procedures on how selections for the board of directors shall be made and submitted to the commissioner;

(f) establish a procedure for the disposition of dividends or distributions from the estate of the insolvent insurer;

[~~(f)~~] (g) establish any additional procedures for assessments under Section 31A-28-208; and

[~~(g)~~] (h) contain any additional provisions [~~which~~] that are necessary or proper for the execution of the powers and duties of the association.

(5) (a) The plan of operation may provide that any or all of the powers and duties of the association, except those under Sections 31A-28-207 and 31A-28-208, are delegated to [~~a~~] one of the following that performs functions similar to the association:

(i) a corporation[~~,~~];

(ii) an association[~~,~~]; or [~~other~~]

(iii) organization other than one described in Subsections (5)(a)(i) and (ii). [~~This~~]

(b) A corporation, association, or organization described in Subsection (5)(a) shall:

(i) be reimbursed for any payments made on behalf of the association; and [~~shall~~]

(ii) be paid for its performance of any function of the association.

(c) A delegation under this Subsection (5) takes effect only with the approval of [~~both~~]:

(i) the board of directors; and

(ii) the commissioner.

Section 8. Section 31A-28-210 is amended to read:

31A-28-210. Duties and powers of the commissioner.

(1) In addition to the duties and powers enumerated elsewhere in this part, the commissioner shall:

(a) notify the association of the existence of an insolvent insurer not later than three days after [~~he~~] the commissioner receives notice of the [~~determination of the insolvency;~~] order of liquidation; and

(b) upon request of the board of directors, provide the association with a statement of the premiums in this state for each member insurer.

~~[(2) (a) The commissioner may require that the association notify the insureds of the insolvent insurer and any other interested parties of the determination of insolvency and of their rights under this part. This notification shall be by mail at~~

~~their last known address, where available, but if sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation is sufficient.~~]

[~~(b)~~] (2) (a) The commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer that fails:

(i) to pay an assessment when due; or [~~fails~~]

(ii) to comply with the plan of operation or the rules adopted under this part.

(b) (i) As an alternative to an action described in Subsection (2)(a), the commissioner may levy a fine on any member insurer that fails to pay an assessment when due. [~~This~~]

(ii) The fine [~~shall~~] permitted under this Subsection (2)(b) may not:

(A) exceed 5% of the unpaid assessment per month[~~, except that no fine may~~]; or

(B) be less than $100 per month.

(c) The commissioner may revoke the designation of any servicing facility if [~~he~~] the commissioner finds claims are being handled unsatisfactorily.

(3) Any final action or order of the commissioner under this part is subject to judicial review in a court of competent jurisdiction.

Section 9. Section 31A-28-213 is amended to read:

31A-28-213. Miscellaneous provisions.

(1) (a) Any person who has a claim against an insurer, whether or not the insurer is a member insurer, under any provision in an insurance policy, other than a policy of an insolvent insurer that is also a covered claim, is required to first exhaust [~~his~~] that person's right under [~~his~~] that person's policy.

(b) Any amount payable on a covered claim under this part under an insurance policy is reduced by the amount of any recovery under [~~that~~] the insurance policy described in Subsection (1)(a).

[~~(b) Any~~] (c) (i) Except as provided in Subsection (1)(c)(ii) a person having a claim that may be recovered under more than one insurance guaranty association or its equivalent shall first seek recovery from the association of the place of residence of the insured. [~~However, if this~~]

(ii) If the person's claim is:

(A) a first-party claim for damage to property with a permanent location, [~~he~~] the person shall seek recovery first from the association of the location of the property[~~,~~]; and [~~if this claim is a workmen's~~]

(B) a workers' compensation claim, [~~he~~] the person shall seek recovery first from the association of the residence of the claimant.

(iii) Any recovery under this part shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent.

(2) [~~Nothing in this~~] This part [~~shall~~] may not be construed to reduce the liability for unpaid assessments of the insureds of an impaired or insolvent insurer operating under a plan with assessment liability.

(3) (a) Records shall be kept of all negotiations and meetings in which the association or its representatives are involved to discuss the activities of the association in carrying out [~~its~~] the association's powers and duties under Section 31A-28-207. Records of these negotiations or meetings shall be made public only:

(i) upon the termination of a liquidation, rehabilitation, or conservation proceeding involving the [~~impaired or~~] insolvent insurer[~~, upon~~];

(ii) the termination of the [~~impairment or~~] insolvency of the insurer[~~,~~]; or [~~upon~~]

(iii) the order of a court of competent jurisdiction.

(b) This Subsection (3) does not limit the duty of the association to render a report of its activities under Section 31A-28-214.

(4) For the purpose of carrying out its obligations under this part, the association is considered to be a creditor of the [~~impaired or~~] insolvent insurer, except to the extent of any amounts the association is entitled as subrogee under Section 31A-28-207.

(5) (a) [~~Prior to~~] Before the termination of any liquidation, rehabilitation, or conservation proceeding, the court may take into consideration the contributions of the respective parties, including:

(i) the association[~~,~~];

(ii) the shareholders[~~, and~~];

(iii) the policyowners of the insolvent insurer[~~,~~]; and

(iv) any other party with a bona fide interest, in making an equitable distribution of the ownership rights of the insolvent insurer.

(b) In making [~~this~~] the determination described in Subsection (5)(a), [~~consideration~~] the court shall [~~be given to~~] consider the welfare of the policyholders of the continuing or successor insurer.

[~~(b) No~~] (c) A distribution to stockholders, if any, of an [~~impaired or~~] insolvent insurer may not be made until the total amount of valid claims of the association with interest on those claims for funds expended in carrying out its powers and duties under Section 31A-28-207 regarding this insurer have been fully recovered by the association.

(6) A rehabilitator, liquidator, or conservator appointed under any section of this [~~code~~] part may recover on behalf of the insurer for excessive distributions paid to affiliates, pursuant to Section 31A-27-322.

Section 10. Section 31A-28-214 is amended to read:

31A-28-214. Examination of the association -- Annual report.

(1) The association is subject to examination and regulation by the commissioner.

(2) The board of directors shall submit, [~~not~~] to the commission by no later than [~~March~~] April 30 of each year[~~,~~]:

(a) a financial report for the preceding calendar year in a form approved by the commissioner [~~together with~~]; and

(b) a report of [~~its~~] the association's activities during the preceding calendar year.

Section 11. Section 31A-28-218 is amended to read:

31A-28-218. Stay of proceedings -- Reopening default judgments.

[~~All~~] (1) Except for specific cases involving covered claims that are subject to waiver by the association, all proceedings in which the insolvent insurer is a party or is obligated to defend a party in any court in this state shall be stayed [~~for a period not less than 60 days nor more than six months from the date the insolvency is determined~~] until the last day fixed by the court for the filing of claims to permit proper defense by the association of all pending causes of action. [~~As to~~]

(2) For any covered [~~claims~~] claim arising from a judgment under any decision, order, verdict, or finding based on the default of the insolvent insurer or its failure to defend an insured, the association either on its own behalf or on behalf of the insured:

(a) may apply to have the judgment[~~, order, decision, verdict, or findings~~] set aside by the [~~same~~] issuing court or administrator [~~that made the judgment, order, decision, verdict, or finding~~]; and

(b) shall be permitted to defend against the claim on the merits.

Section 12. Section 31A-28-220 is amended to read:

31A-28-220. Termination of association's operation.

(1) The commissioner shall by order terminate the operation of the [~~Utah Property and Casualty Insurance Guaranty Fund~~] association for any kind of insurance covered under this part when [~~he~~] the commissioner finds that there is in effect a statutory or voluntary plan that:

(a) is a permanent plan that is adequately funded or where adequate funding is provided; or

(b) extends, or will extend to residents and policyholders, protection and benefits regarding insolvent insurers [~~which~~] that are not substantially less favorable and effective to residents and policyholders than the protection and benefits provided regarding the kinds of insurance covered under this part.

(2) (a) The commissioner shall, by the order under Subsection (1), authorize discontinuance of future payments by insurers to the [~~Utah Property and Casualty Insurance Guaranty Fund~~] association regarding the kinds of insurance that are the subject of the order. [~~However, the~~]

(b) Notwithstanding Subsection (2)(a), the assessments and payments shall continue, as necessary, to liquidate covered claims of insurers who are adjudged insolvent prior to the order and to pay the related expenses not covered by any other plan.

(3) (a) If the operation of the [~~insurance guaranty~~] association is terminated under Subsection (1), the association shall, as soon as possible, distribute the balance of monies and assets remaining, after discharging the functions of the association as to prior insurer insolvencies [~~which~~] that were not covered by any other plan, together with related expenses, to the insurers that are then writing in this state policies of the kinds of insurance covered by this part, and that had made payments to the association. [~~This~~]

(b) The reimbursement described in Subsection (3)(a) shall be:

(i) pro rata[~~,~~]; and

(ii) based upon the aggregate of the payments made by the respective insurers during the period of five years next preceding the date of the order.

(c) For a reimbursement of an assessment that has been offset against premium taxes, the association may pay the amount of the reimbursement directly to the State Tax Commission.

(d) Upon completion of the distribution regarding all of the kinds of insurance covered by this part, this part shall terminate.

Section 13. Section 31A-28-222 is enacted to read:

31A-28-222. Application of amendments.

(1) The amendments in this act shall become effective on April 30, 2001 and apply to the association's obligations under policies of insolvent insurers as they exist on or after April 20, 2001.

(2) Notwithstanding Subsection (1), the amendments to Subsections 31A-28-203(3) and 31A-28-207(1)(a) that add coverage for unearned premium claims shall apply only to insurers that become insolvent after the effective date.

Section 14. Repealer.

This act repeals:

Section 31A-28-201, Purpose.

Section 31A-28-216, Assessment inclusion in premiums.

Section 31A-28-219, Prospective application.

Section 31A-28-221, Insolvencies -- Recommendations and reports of board of directors.

Section 15. Coordination clause.

If this bill and S.B. 100, Insurance Law Amendments, both pass, it is the intent of the Legislature that in preparing the Utah Code database for publication, the Office of Legislative Research and General Counsel shall consider that the amendments in Section 31A-28-202 in this bill supersede the amendments to Section 31A-28-202 in S.B. 100.

CHAPTER 364
H. B. 243
Passed February 21, 2001
Approved March 20, 2001
Effective July 1, 2001

APPROPRIATION FOR CAMP FLOYD - STAGECOACH INN STATE PARK

Sponsor: David N. Cox

This act appropriates $9,000 from the General Fund, for fiscal year 2001-02 only, to the Division of Parks and Recreation for the renovation and reconstruction of the restrooms at the old schoolhouse at Camp Floyd - Stagecoach Inn State Park. This act takes effect on July 1, 2001.

This act enacts uncodified material.

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

Section 1. Appropriation.

(1) For fiscal year 2001-02 only, there is appropriated $9,000 from the General Fund to the Division of Parks and Recreation for the renovation and reconstruction of the restrooms at the old schoolhouse at Camp Floyd – Stagecoach Inn State Park.

(2) The money appropriated in Subsection (1) is nonlapsing.

Section 2. Effective date.

This act takes effect on July 1, 2001.

CHAPTER 365
H. B. 246
Passed February 22, 2001
Approved March 20, 2001
Effective July 1, 2001

SUBSTITUTE TEACHERS IN PUBLIC SCHOOLS

Sponsor: Loraine T. Pace

This act provides a $75,000 appropriation to be used by the Substitute Teaching Institute at Utah State University on matters related to the available supply, quality, recruitment, training, and use of substitute teachers in the state's public schools. The act takes effect July 1, 2001.

This act enacts uncodified material.

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

Section 1. Appropriation.

(1) There is appropriated from the General Fund for fiscal year 2001-02 only, $75,000 to Utah State University to be used by the Substitute Teaching Institute for the following purposes:

(a) to collect and compile current statistics on the available supply, qualifications, training, and use of substitute teachers within the State System of Public Education;

(b) to identify and evaluate current policies of the state's 40 school districts on recruiting, training, using, and retaining substitute teachers within the state;

(c) to determine and describe how school and school district policies relate to the quantity, quality, and use of substitute teachers in the state's public schools; and

(d) to document and recommend to schools and school districts practices and procedures that would enable them to consistently monitor the recruitment, training, use, and retention of substitute teachers within the state.

(2) (a) The institute shall make a preliminary report of its activities under Subsection (1) to the Legislature's Education Interim Committee prior to November 30, 2001, and to the State Board of Education and the state's local school boards.

(b) It is anticipated that the institute's activities under this section will assist schools in enhancing the quality of education that occurs when a substitute teacher is in the classroom.

Section 2. Effective date.

This act takes effect on July 1, 2001.

CHAPTER 366
H. B. 251
Passed February 23, 2001
Approved March 20, 2001
Effective July 1, 2001

APPROPRIATION FOR NATIONAL GUARD EDUCATION

Sponsor: Matt Throckmorton

This act appropriates $50,000 to the National Guard to fund the tuition assistance program. This act takes effect July 1, 2001.

This act enacts uncodified material.

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

Section 1. Appropriation.

There is appropriated from the General Fund for fiscal year 2001-02 only, $50,000 to the National Guard to be used for the postsecondary education tuition assistance program described in Section 39-1-63.

Section 2. Effective date.

This act takes effect on July 1, 2001.

CHAPTER 367
H. B. 261
Passed February 27, 2001
Approved March 20, 2001
Effective July 1, 2001

SALES AND USE TAX
EXEMPTION -SCRAP RECYCLERS

Sponsor: Greg J. Curtis

This act amends the Sales and Use Tax Act to exempt from sales and use taxes sales to a scrap recycler of natural gas, electricity, heat, coal, fuel oil, or other fuels for industrial use. The act makes technical changes. This act takes effect on July 1, 2001.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
59-12-102 (Effective 07/01/01), as last amended by Chapter 253, Laws of Utah 2000

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

Section 1. Section 59-12-102 (Effective 07/01/01) is amended to read:

59-12-102 (Effective 07/01/01). Definitions.

As used in this chapter:

(1) (a) "Admission or user fees" includes season passes.

(b) "Admission or user fees" does not include annual membership dues to private organizations.

(2) "Area agency on aging" is as defined in Section 62A-3-101.

(3) "Authorized carrier" means:

(a) in the case of vehicles operated over public highways, the holder of credentials indicating that the vehicle is or will be operated pursuant to both the International Registration Plan [~~(IRP)~~] and the International Fuel Tax Agreement [~~(IFTA)~~];

(b) in the case of aircraft, the holder of a Federal Aviation Administration [~~(FAA)~~] operating certificate or air carrier's operating certificate; or

(c) in the case of locomotives, freight cars, railroad work equipment, or other rolling stock, the holder of a certificate issued by the United States Interstate Commerce Commission.

(4) (a) For purposes of Subsection 59-12-104(43), "coin-operated amusement device" means:

(i) a coin-operated amusement, skill, or ride device;

(ii) that is not controlled through vendor-assisted, over-the-counter, sales of tokens; and

(iii) includes a music machine, pinball machine, billiard machine, video game machine, arcade machine, and a mechanical or electronic skill game or ride.

(b) For purposes of Subsection 59-12-104(43), "coin-operated amusement device" does not mean a coin-operated amusement device possessing a coinage mechanism that:

(i) accepts and registers multiple denominations of coins; and

(ii) allows the vendor to collect the sales and use tax at the time an amusement device is activated and operated by a person inserting coins into the device.

(5) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other fuels that does not constitute industrial use under Subsection (13) or residential use under Subsection (21).

(6) (a) "Common carrier" means a person engaged in or transacting the business of transporting passengers, freight, merchandise, or other property for hire within this state.

(b) (i) "Common carrier" does not include a person who, at the time the person is traveling to or from that person's place of employment, transports a passenger to or from the passenger's place of employment.

(ii) For purposes of Subsection (6)(b)(i), in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may make rules defining what constitutes a person's place of employment.

(7) "Component part" includes:

(a) poultry, dairy, and other livestock feed, and their components;

(b) baling ties and twine used in the baling of hay and straw;

(c) fuel used for providing temperature control of orchards and commercial greenhouses doing a majority of their business in wholesale sales, and for providing power for off-highway type farm machinery; and

(d) feed, seeds, and seedlings.

(8) "Construction materials" means any tangible personal property that will be converted into real property.

(9) (a) "Fundraising sales" means sales:

(i) (A) made by a public or private elementary or secondary school; or

(B) made by a public or private elementary or secondary school student, grades kindergarten through 12;

(ii) that are for the purpose of raising funds for the school to purchase equipment, materials, or provide transportation; and

(iii) that are part of an officially sanctioned school activity.

(b) For purposes of Subsection (9)(a)(iii), "officially sanctioned school activity" means a school activity:

(i) that is conducted in accordance with a formal policy adopted by the school or school district governing the authorization and supervision of fundraising activities;

(ii) that does not directly or indirectly compensate an individual teacher or other educational personnel by direct payment, commissions, or payment in kind; and

(iii) the net or gross revenues from which are deposited in a dedicated account controlled by the school or school district.

(10) (a) "Hearing aid" means:

(i) an instrument or device having an electronic component that is designed to:

(A) (I) improve impaired human hearing; or

(II) correct impaired human hearing; and

(B) (I) be worn in the human ear; or

(II) affixed behind the human ear;

(ii) an instrument or device that is surgically implanted into the cochlea; or

(iii) a telephone amplifying device.

(b) "Hearing aid" does not include:

(i) except as provided in Subsection (10)(a)(i)(B) or (10)(a)(ii), an instrument or device having an electronic component that is designed to be worn on the body;

(ii) except as provided in Subsection (10)(a)(iii), an assistive listening device or system designed to be used by one individual, including:

(A) a personal amplifying system;

(B) a personal FM system;

(C) a television listening system; or

(D) a device or system similar to a device or system described in Subsections (10)(b)(ii)(A) through (C); or

(iii) an assistive listening device or system designed to be used by more than one individual, including:

(A) a device or system installed in:

(I) an auditorium;

(II) a church;

(III) a conference room;

(IV) a synagogue; or

(V) a theater; or

(B) a device or system similar to a device or system described in Subsections (10)(b)(iii)(A)(I) through (V).

(11) (a) "Hearing aid accessory" means a hearing aid:

(i) component;

(ii) attachment; or

(iii) accessory.

(b) "Hearing aid accessory" includes:

(i) a hearing aid neck loop;

(ii) a hearing aid cord;

(iii) a hearing aid ear mold;

(iv) hearing aid tubing;

(v) a hearing aid ear hook; or

(vi) a hearing aid remote control.

(c) "Hearing aid accessory" does not include:

(i) a component, attachment, or accessory designed to be used only with an:

(A) instrument or device described in Subsection (10)(b)(i); or

(B) assistive listening device or system described in Subsection (10)(b)(ii) or (iii); or

(ii) a hearing aid battery.

(12) (a) "Home medical equipment and supplies" means equipment and supplies that:

(i) a licensed physician prescribes or authorizes in writing as necessary for the treatment of a medical illness or injury or as necessary to mitigate an impairment resulting from illness or injury;

(ii) are used exclusively by the person for whom they are prescribed to serve a medical purpose; and

(iii) are listed as eligible for payment under Title [~~18~~] XVIII of the federal Social Security Act or under the state plan for medical assistance under Title [~~19~~] XIX of the federal Social Security Act.

(b) "Home medical equipment and supplies" does not include:

(i) equipment and supplies purchased by, for, or on behalf of any health care facility, as defined in Subsection (12)(c), doctor, nurse, or other health care provider for use in their professional practice;

(ii) eyeglasses, contact lenses, or equipment to correct impaired vision; or

(iii) hearing aids or hearing aid accessories.

(c) For purposes of Subsection (12)(b)(i), "health care facility" includes:

(i) a clinic;

(ii) a doctor's office; and

(iii) a health care facility as defined in Section 26-21-2.

(13) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil, or other fuels [~~in~~]:

(a) in mining or extraction of minerals;

(b) in agricultural operations to produce an agricultural product up to the time of harvest or placing the agricultural product into a storage facility, including:

(i) commercial greenhouses;

(ii) irrigation pumps;

(iii) farm machinery;

(iv) implements of husbandry as defined in Subsection 41-1a-102(23) that are not registered under Title 41, Chapter 1a, Part 2, Registration; and

(v) other farming activities; [~~and~~]

(c) in manufacturing tangible personal property at an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget[.]; or

(d) by a scrap recycler if:

(i) from a fixed location, the scrap recycler utilizes machinery or equipment to process one or more of the following items into prepared grades of processed materials for use in new products:

(A) iron;

(B) steel;

(C) nonferrous metal;

(D) paper;

(E) glass;

(F) plastic;

(G) textile; or

(H) rubber; and

(ii) the new products under Subsection (13)(d)(i) would otherwise be made with nonrecycled materials.

(14) "Manufactured home" means any manufactured home or mobile home as defined in Title 58, Chapter 56, Utah Uniform Building Standards Act.

(15) For purposes of Subsection 59-12-104(14), "manufacturing facility" means:

(a) an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget; or

(b) a scrap recycler if:

(i) from a fixed location, the scrap recycler utilizes machinery or equipment to process one or more of the following items into prepared grades of processed materials for use in new products:

(A) iron;

(B) steel;

(C) nonferrous metal;

(D) paper;

(E) glass;

(F) plastic;

(G) textile; or

(H) rubber; and

(ii) the new products under Subsection (15)(b)(i) would otherwise be made with nonrecycled materials.

(16) (a) "Medicine" means:

(i) insulin, syringes, and any medicine prescribed for the treatment of human ailments by a person authorized to prescribe treatments and dispensed on prescription filled by a registered pharmacist, or supplied to patients by a physician, surgeon, or podiatric physician;

(ii) any medicine dispensed to patients in a county or other licensed hospital if prescribed for that patient and dispensed by a registered pharmacist or administered under the direction of a physician; and

(iii) any oxygen or stoma supplies prescribed by a physician or administered under the direction of a physician or paramedic.

(b) "Medicine" does not include:

(i) any auditory, prosthetic, ophthalmic, or ocular device or appliance; or

(ii) any alcoholic beverage.

(17) "Olympic merchandise" means tangible personal property bearing an Olympic designation, emblem, insignia, mark, logo, service mark, symbol, terminology, trademark, or other copyrighted or protected material, including:

(a) one or more of the following terms:

(i) "Olympic";

(ii) "Olympiad"; or

(iii) "Citius Altius Fortius";

(b) the symbol of the International Olympic Committee, consisting of five interlocking rings;

(c) the emblem of the International Olympic Committee Corporation;

(d) a United States Olympic Committee designation, emblem, insignia, mark, logo, service mark, symbol, terminology, trademark, or other copyrighted or protected material;

(e) any emblem of the Olympic Winter Games of 2002 that is officially designated by the Salt Lake Organizing Committee of the Olympic Winter Games of 2002; or

(f) the mascot of the Olympic Winter Games of 2002.

(18) (a) "Other fuels" means products that burn independently to produce heat or energy.

(b) "Other fuels" includes oxygen when it is used in the manufacturing of tangible personal property.

(19) "Person" includes any individual, firm, partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city, municipality, district, or other local governmental entity of the state, or any group or combination acting as a unit.

(20) "Purchase price" means the amount paid or charged for tangible personal property or any other taxable transaction under Subsection 59-12-103(1), excluding only cash discounts taken or any excise tax imposed on the purchase price by the federal government.

(21) "Residential use" means the use in or around a home, apartment building, sleeping quarters, and similar facilities or accommodations.

(22) (a) "Retail sale" means any sale within the state of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), other than resale of such property, item, or service by a retailer or wholesaler to a user or consumer.

(b) "Retail sale" includes sales by any farmer or other agricultural producer of poultry, eggs, or dairy products to consumers if the sales have an average monthly sales value of $125 or more.

(c) "Retail sale" does not include, and no additional sales or use tax shall be assessed against, those transactions where a purchaser of tangible personal property pays applicable sales or use taxes on its initial nonexempt purchases of property and then enters into a sale-leaseback transaction by which title to such property is transferred by the purchaser-lessee to a lessor for consideration, provided:

(i) the transaction is intended as a form of financing for the property to the purchaser-lessee; and

(ii) pursuant to generally accepted accounting principles, the purchaser-lessee is required to capitalize the subject property for financial reporting purposes, and account for the lease payments as payments made under a financing arrangement.

(23) (a) "Retailer" means any person engaged in a regularly organized retail business in tangible personal property or any other taxable transaction under Subsection 59-12-103(1), and who is selling to the user or consumer and not for resale.

(b) "Retailer" includes commission merchants, auctioneers, and any person regularly engaged in the business of selling to users or consumers within the state.

(c) "Retailer" does not include farmers, gardeners, stockmen, poultrymen, or other growers or agricultural producers producing and doing business on their own premises, except those who are regularly engaged in the business of buying or selling for a profit.

(d) For purposes of this chapter the commission may regard as retailers the following if they determine it is necessary for the efficient administration of this chapter: salesmen, representatives, peddlers, or canvassers as the agents of the dealers, distributors, supervisors, or employers under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of these dealers, distributors, supervisors, or employers, except that:

(i) a printer's facility with which a retailer has contracted for printing shall not be considered to be a salesman, representative, peddler, canvasser, or agent of the retailer; and

(ii) the ownership of property that is located at the premises of a printer's facility with which the retailer has contracted for printing and that consists of the final printed product, property that becomes a part of the final printed product, or copy from which the printed product is produced, shall not result in the retailer being deemed to have or maintain an office, distribution house, sales house, warehouse, service enterprise, or other place of business, or to maintain a stock of goods, within this state.

(24) "Sale" means any transfer of title, exchange, or barter, conditional or otherwise, in any manner, of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), for consideration. It includes:

(a) installment and credit sales;

(b) any closed transaction constituting a sale;

(c) any sale of electrical energy, gas, services, or entertainment taxable under this chapter;

(d) any transaction if the possession of property is transferred but the seller retains the title as security for the payment of the price; and

(e) any transaction under which right to possession, operation, or use of any article of tangible personal property is granted under a lease or contract and the transfer of possession would be taxable if an outright sale were made.

(25) (a) "Sales relating to schools" means sales by a public school district or public or private elementary or secondary school, grades kindergarten through 12, that are directly related to the school's or school district's educational functions or activities and include:

(i) the sale of textbooks, textbook fees, laboratory fees, laboratory supplies, and safety equipment;

(ii) the sale of clothing that:

(A) a student is specifically required to wear as a condition of participation in a school-related event or activity; and

(B) is not readily adaptable to general or continued usage to the extent that it takes the place of ordinary clothing;

(iii) sales of food if the net or gross revenues generated by the food sales are deposited into a school district fund or school fund dedicated to school meals; and

(iv) transportation charges for official school activities.

(b) "Sales relating to schools" does not include:

(i) gate receipts;

(ii) special event admission fees;

(iii) bookstore sales of items that are not educational materials or supplies; and

(iv) except as provided in Subsection (25)(a)(ii), clothing.

(26) "Senior citizen center" means a facility having the primary purpose of providing services to the aged as defined in Section 62A-3-101.

(27) "State" means the state of Utah, its departments, and agencies.

(28) "Storage" means any keeping or retention of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), in this state for any purpose except sale in the regular course of business.

(29) (a) "Tangible personal property" means:

(i) all goods, wares, merchandise, produce, and commodities;

(ii) all tangible or corporeal things and substances which are dealt in or capable of being possessed or exchanged;

(iii) water in bottles, tanks, or other containers; and

(iv) all other physically existing articles or things, including property severed from real estate.

(b) "Tangible personal property" does not include:

(i) real estate or any interest or improvements in real estate;

(ii) bank accounts, stocks, bonds, mortgages, notes, and other evidence of debt;

(iii) insurance certificates or policies;

(iv) personal or governmental licenses;

(v) water in pipes, conduits, ditches, or reservoirs;

(vi) currency and coinage constituting legal tender of the United States or of a foreign nation; and

(vii) all gold, silver, or platinum ingots, bars, medallions, or decorative coins, not constituting legal tender of any nation, with a gold, silver, or platinum content of not less than 80%.

(30) (a) "Use" means the exercise of any right or power over tangible personal property under Subsection 59-12-103(1), incident to the ownership or the leasing of that property, item, or service.

(b) "Use" does not include the sale, display, demonstration, or trial of that property in the regular course of business and held for resale.

(31) "Vehicle" means any aircraft, as defined in Section 72-10-102; any vehicle, as defined in Section 41-1a-102; any off-highway vehicle, as defined in Section 41-22-2; and any vessel, as defined in Section 41-1a-102; that is required to be titled, registered, or both. "Vehicle" for purposes of Subsection 59-12-104(36) only, also includes any locomotive, freight car, railroad work equipment, or other railroad rolling stock.

(32) "Vehicle dealer" means a person engaged in the business of buying, selling, or exchanging vehicles as defined in Subsection (31).

(33) (a) "Vendor" means any person receiving any payment or consideration upon a sale of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), or to whom the payment or consideration is payable.

(b) "Vendor" does not mean a printer's facility described in Subsection (23)(d).

Section 2. Effective date.

This act takes effect on July 1, 2001.

CHAPTER 368
H. B. 267
Passed February 28, 2001
Approved March 20, 2001
Effective March 20, 2001
(Exception clause in Sections 4 and 5)

ENHANCEMENT OF PUBLIC EDUCATION TASK FORCE

Sponsor: Matt Throckmorton
Rebecca D. Lockhart

This act creates the Enhancement of Public Education Task Force and designates its legislative membership and staff. The act outlines the duties of the task force, with a primary focus on reviewing the purpose, functions, roles, and responsibilities of the State Office of Education. The act has a $95,500 appropriation, a split effective date, and a November 30, 2002 repeal date.

This act enacts uncodified material.

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

Section 1. Enhancement of Public Education Task Force -- Creation -- Membership -- Rules -- Compensation -- Staff.

(1) There is created the Enhancement of Public Education Task Force consisting of the following 15 members:

(a) six members of the Senate appointed by the president of the Senate, no more than four of whom may be from the same political party;

(b) seven members of the House of Representatives appointed by the speaker of the House of Representatives, no more than five of whom may be from the same political party; and

(c) two members of the State Board of Education appointed by chairman of the state board.

(2) (a) The president of the Senate shall designate a member of the Senate appointed under Subsection (1)(a) as a cochair of the task force.

(b) The speaker of the House of Representatives shall designate a member of the House of Representatives appointed under Subsection (1)(b) as a cochair of the task force.

(3) (a) A majority of the members of the task force constitute a quorum.

(b) The action of a majority of the quorum constitutes the action of the task force.

(4) The task force may meet up to nine times each year during its two-year term.

(5) Salaries and expenses of the members of the task force shall be paid in accordance with Section 36-2-2 and Legislative Joint Rule 15.03.

(6) (a) The Office of Legislative Research and General Counsel shall provide staff support to the task force.

(b) The task force may also use staff from the Legislative Fiscal Analyst's Office in carrying out its duties.

Section 2. Duties -- Interim report.

(1) The task force shall review and make recommendations on the following issues:

(a) the ability of schools and school districts to comply with legislative and other governmental mandates given by public education policymakers;

(b) the purpose, function, roles, and responsibilities of the State Office of Education in relation to school districts and public schools, to include whether the role of the State Office of Education should be primarily that of a facilitator or resource or primarily that of a regulator or a combination of the two in order to enhance public education within the state system;

(c) whether the functions, roles, and responsibilities should be modified and put into a statutory framework;

(d) the costs required to operate the State Office of Education;

(e) its current ability to track and monitor state and federal monies distributed to school districts through the state office and to verify or validate how those monies are being used at the district and school level;

(f) the nature and magnitude of administrative costs at the school district level and whether those costs are duplicative of administrative costs incurred at the State Office of Education;

(g) the authority or ability of the state office to deal with a school district that is out of compliance with state law or rules made to implement state laws;

(h) the conditions and tools required for schools to provide each student with a reasonable opportunity to achieve expected objectives; and

(i) any other matters the task force identifies to be important to enhance the state's public education system.

(2) The task force shall notify and seek input from the State Board of Education, the Utah School Boards Association, the Utah School Superintendents Association, the Utah Parents and Teachers Association, the Utah Public Education Coalition, the Utah Education Association, teachers, school administrators, parents of students, and other members of the state's education community.

(3) (a) The task force shall issue at least two reports on its activities to the Legislature's Education Interim Committee.

(b) The first shall be presented no later than November 30, 2001, recommending what action the Legislature or the State Board of Education needs to take to clarify the roles and responsibilities of the State Office of Education.

(c) A final report, including any proposed legislation, shall be presented to the Education Interim Committee before November 30, 2002.

Section 3. Appropriation.

(1) There is appropriated from the General Fund for fiscal year 2000-01:

(a) $8,250 to the Senate to pay for the compensation and expenses of senators on the task force;

(b) $9,500 to the House of Representatives to pay for the compensation and expenses of representatives on the task force; and

(c) $30,000 to the Office of Legislative Research and General Counsel to pay for staffing the task force.

(2) The appropriation is nonlapsing.

(3) There is appropriated from the General Fund for fiscal year 2001-02 the same amounts to the same entities identified in Subsection (1) of this appropriation section.

Section 4. Effective date.

If approved by two-thirds of all the members elected to each house, this act takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override, except that Subsection (3) of Section 3, Appropriation, takes effect July 1, 2001.

Section 5. Repeal date.

This act is repealed November 30, 2002.

CHAPTER 369
H. B. 289
Passed February 23, 2001
Approved March 20, 2001
Effective July 1, 2001

CLEAN FUEL VEHICLES - USE OF HIGH OCCUPANCY VEHICLE LANES

Sponsor: Don E. Bush

This act modifies the Motor Vehicles Code to authorize clean fuel special group license plates. This act authorizes vehicles with clean fuel special group license plates to travel in lanes designated for high occupancy vehicles. This act provides a repeal date of December 31, 2005. This act takes effect on July 1, 2001.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
41-1a-408, as last amended by Chapters 27 and 40, Laws of Utah 2000
41-1a-1211, as last amended by Chapters 27 and 40, Laws of Utah 2000
41-6-53.5, as last amended by Chapter 165, Laws of Utah 1999
63-55-241, as last amended by Chapter 52, Laws of Utah 2000

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

Section 1. Section 41-1a-408 is amended to read:

41-1a-408. Special group plates -- Design -- Application -- Issuance.

(1) As used in this section:

(a) "Boy Scouts of America license plates" means the special group license plates issued under this section to a contributor to the Boy Scouts of America.

(b) "Children's issues license plates" means the special group license plates issued under this section to a contributor to the Guardian Ad Litem Services Account and the Children's Museum of Utah.

(c) "Collegiate license plates" means the special group license plates issued under this section to a contributor to an institution after payment of the appropriate fees.

(d) (i) "Contributor" means a person who has donated or in whose name at least $25 has been donated to:

(A) a scholastic scholarship fund of a single institution;

(B) the Office of Veterans' Affairs in the Department of Community and Economic Development for veterans' programs;

(C) the Division of Wildlife Resources for conservation of wildlife and the enhancement, preservation, protection, access, and management of wildlife habitat;

(D) the Department of Agriculture and Food for the benefit of soil conservation districts;

(E) the Division of Parks and Recreation for the benefit of snowmobile programs;

(F) the Guardian Ad Litem Services Account and the Children's Museum of Utah, with the donation evenly divided between the two; or

(G) the Boy Scouts of America for the benefit of a Utah Boy Scouts of America council as specified by the contributor.

(ii) Except as provided under Subsection (13), the donation must be made in the 12 months prior to registration or renewal of registration.

(e) "Institution" means a state institution of higher education or a private institution of higher education in the state accredited by a regional or national accrediting agency recognized by the United States Department of Education.

(f) "Snowmobile license plates" means the special group license plates issued under this section to a contributor to the Division of Parks and Recreation after payment of the appropriate fees.

(g) "Soil conservation license plates" means the special group license plates issued under this section to a contributor to the Department of Agriculture and Food after payment of the appropriate fees.

(h) "State institution of higher education" has the same meaning as provided in Section 53B-3-102.

(i) "Veterans' license plates" means the special group license plates issued under this section to a contributor to the Office of Veterans' Affairs after payment of the appropriate fees.

(j) "Wildlife license plates" means the special group license plates issued under this section to a contributor to the Division of Wildlife Resources after payment of the appropriate fees.

(2) (a) The design and maximum number of numerals or characters on special group license plates shall be determined by the division in accordance with the criteria in Subsection (2)(b).

(b) Except for Olympic special group license plates, each special group license plate shall display:

(i) the word Utah;

(ii) the name or identifying slogan of the special group;

(iii) a symbol not exceeding two positions in size representing the special group; and

(iv) the combination of letters, numbers, or both uniquely identifying the registered vehicle.

(3) (a) The division shall, after consultation with a representative designated by the special group, specify the word or words comprising the special group name and the symbol to be displayed upon the special group license plates.

(b) Collegiate, veterans', children's issues, snowmobile, soil conservation, Boy Scouts of

America, and wildlife license plates may not be redesigned under this section more frequently than every five years.

(c) Veterans' license plates shall display one of the symbols representing the Army, Navy, Air Force, Marines, or Coast Guard.

(4) Subject to Subsections (10) and (12), the division shall only issue special group license plates to a person who is:

(a) a current member of the Legislature;

(b) a current member of the United States Congress;

(c) a survivor of the Japanese attack on Pearl Harbor;

(d) a former prisoner of war;

(e) a recipient of a Purple Heart, as provided in Section 41-1a-409;

(f) a current member of the National Guard;

(g) a person with a disability or the registered owner of a vehicle that an organization uses primarily for the transportation of persons with disabilities that limit or impair the ability to walk;

(h) a contributor to an institution's scholastic scholarship fund;

(i) a contributor to the Division of Wildlife Resources;

(j) a contributor to the Office of Veterans' Affairs;

(k) licensing a special interest vehicle;

(l) licensing a vintage vehicle;

(m) a licensed amateur radio operator;

(n) registering a farm truck;

(o) a currently employed, volunteer, or retired firefighter;

(p) a contributor to the Division of Parks and Recreation;

(q) a contributor to the Department of Agriculture and Food;

(r) a contributor to the Guardian Ad Litem Services Account and the Children's Museum of Utah;

(s) a contributor to the Boy Scouts of America; [~~or~~]

(t) an emergency medical technician[~~.~~]; or

(u) beginning October 1, 2001, licensing a vehicle powered by clean fuel and for which a current clean special fuel certificate is maintained as provided in Section 59-13-304.

(5) (a) A vehicle displaying a survivor of the Japanese attack on Pearl Harbor license plate decal, a former prisoner of war license plate decal, or a Purple Heart license plate decal shall be titled in the name of the veteran or the veteran and spouse.

(b) Upon the death of the veteran, the surviving spouse may, upon application to the division, retain the special group license plate decal so long as the surviving spouse remains unmarried.

(c) The division shall require the surviving spouse to make a sworn statement that the surviving spouse is unmarried before renewing the registration under this section.

(6) (a) (i) In accordance with rules made under Subsection (12), the division shall issue a person with a disability special group license plate, temporary removable windshield placard, or a removable windshield placard to:

(A) a qualifying person with a disability; or

(B) an organization that uses a vehicle registered in the applicant's name primarily for the transportation of persons with disabilities that limit or impair the ability to walk.

(ii) The division shall issue a person with a disability special group license plate or a removable windshield placard to a person with a permanent disability.

(iii) The issuance of a person with a disability special group license plate does not preclude the issuance to the same applicant of a removable windshield placard.

(iv) The division shall issue on request one additional placard to a person with a person with a disability special group license plate, temporary removable windshield placard, or a removable windshield placard.

(b) The temporary removable windshield placard or removable windshield placard shall be hung from the front windshield rearview mirror when the vehicle is parked in a parking space reserved for persons with disabilities so that it is visible from the front and rear of the vehicle.

(7) (a) An applicant for original or renewal collegiate license plates must be a contributor to the institution named in the application and present the original contribution verification form or make a contribution to the division at the time of application.

(b) An institution with a special group license plate shall issue to a contributor a verification form designed by the commission containing:

(i) the name of the contributor;

(ii) the institution to which a donation was made;

(iii) the date of the donation; and

(iv) an attestation that the donation was for a scholastic scholarship.

(c) The state auditor may audit each institution to verify that the moneys collected by the institutions from contributors are used for scholastic scholarships.

(d) After an applicant has been issued collegiate license plates or renewal decals, the commission shall charge the institution whose plate was issued, a fee determined in accordance with Section

63-38-3.2 for management and administrative expenses incurred in issuing and renewing the collegiate license plates.

(e) If the contribution is made at the time of application, the contribution shall be:

(i) collected by the division;

(ii) treated as a voluntary contribution for the named institution's scholastic scholarship fund and not as a motor vehicle registration fee; and

(iii) deposited with the named institution, less actual production and administrative costs associated with making and issuing collegiate license plates.

(8) (a) An applicant for original or renewal wildlife license plates must be a contributor to the Division of Wildlife Resources.

(b) This contribution shall be:

(i) collected by the division;

(ii) treated as a voluntary contribution for the funding of wildlife activities and not as a motor vehicle registration fee; and

(iii) deposited into the Wildlife Resources Account created in Section 23-14-13, less actual production and administrative costs associated with making and issuing wildlife license plates.

(9) The division shall issue Olympic special group license plates.

(10) (a) An organization that makes a significant contribution to the state may request the commission to authorize special group license plates for the organization if the organization collects a minimum of 500 applications with the fees required under Section 41-1a-1211.

(b) If the commission approves the request, the division shall design a license plate in accordance with Subsections (2) and (3).

(c) If the commission rejects the request, the organization shall refund all fees to the applicants.

(11) Any person who meets the criteria established under this part for issuance of special group license plates may make application in the same manner provided in Sections 41-1a-410 and 41-1a-411 for personalized special group license plates.

(12) (a) The commission shall make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, to:

(i) establish qualifying criteria for persons to receive, renew, or surrender special group license plates, a temporary removable windshield placard, or a removable windshield placard;

(ii) establish the maximum number of numerals or characters for special group license plates; and

(iii) require all temporary removable windshield placards and removable windshield placards to include:

(A) an identification number;

(B) an expiration date not to exceed six months for a temporary removable windshield placard and two years for a removable windshield placard; and

(C) the seal or other identifying mark of the division.

(b) The qualifying criteria under Subsection (12)(a) for a person with a disability special group license plate, temporary removable windshield placard, or removable windshield placard shall include a requirement that an initial application of a person with a disability be accompanied by the certification of a licensed physician:

(i) that the applicant meets the definition of a person with a disability that limits or impairs the ability to walk as defined in the federal Uniform System for Handicapped Parking, 58 Fed. Reg. 10, 328 (1991); and

(ii) containing the period of time that the physician determines the applicant will have the disability, not to exceed six months in the case of a temporary disability.

(13) (a) The division may issue original veterans' license plates.

(b) An applicant for original veterans' license plates must be at least a one-time contributor to the Office of Veterans' Affairs.

(c) This contribution shall be:

(i) collected by the division;

(ii) treated as a voluntary contribution for the Office of Veterans' Affairs and not as a motor vehicle registration fee; and

(iii) transferred to the Office of Veterans' Affairs at least monthly, less actual production and administrative costs associated with making and issuing veterans' license plates.

(14) (a) The division may issue original snowmobile license plates if the Division of Parks and Recreation provides a one-time contribution of at least $9,000 to the division from restricted revenue in the Off-Highway Vehicle Account in the General Fund to cover startup materials and programming costs.

(b) An applicant for original snowmobile license plates must be a contributor to the Division of Parks and Recreation.

(c) This contribution shall be:

(i) collected by the division;

(ii) treated as a voluntary contribution for the Division of Parks and Recreation for the benefit of snowmobile programs and not as a motor vehicle registration fee; and

(iii) transferred to the Division of Parks and Recreation at least monthly, less actual production and administrative costs associated with making and issuing snowmobile license plates.

(15) (a) (i) The division may issue original soil conservation license plates if soil conservation

districts provide a one-time contribution of at least $9,000 to the division to cover startup materials and programming costs.

(ii) The contribution described in Subsection (15)(a)(i) may be from private funds available to soil conservation districts.

(b) An applicant for original soil conservation license plates must be a contributor to the Department of Agriculture and Food.

(c) This contribution shall be:

(i) collected by the division;

(ii) treated as a voluntary contribution for the Department of Agriculture and Food for the benefit of soil conservation districts and not as a motor vehicle registration fee; and

(iii) transferred to the Department of Agriculture and Food at least monthly, less actual production and administrative costs associated with making and issuing soil conservation license plates.

(16) (a) (i) The division may issue original children's issues license plates if the Office of the Guardian Ad Litem Director and the Children's Museum of Utah each provide a one-time contribution of at least $4,500 to the division to cover startup materials and programming costs.

(ii) The contribution described in Subsection (16)(a)(i) from the Office of the Guardian Ad Litem Director shall be from private funds not normally available to the Office of the Guardian Ad Litem Director.

(b) An applicant for original or renewal children's issues license plates must be a contributor to the Guardian Ad Litem Services Account and the Children's Museum of Utah.

(c) This contribution shall be:

(i) collected by the division;

(ii) treated as a voluntary contribution for the Guardian Ad Litem Services Account and the Children's Museum of Utah and not as a motor vehicle registration fee; and

(iii) transferred to the Guardian Ad Litem Services Account and the Children's Museum of Utah at least monthly, less actual production and administrative costs associated with making and issuing children's issues license plates.

(17) A current member of the Legislature may select the Olympic license plate as the legislator's special group license plate. The legislator shall pay the special fees for the Olympic license plate, as provided in Section 41-1a-417 and Subsection 41-1a-1211(12).

(18) (a) Beginning January 1, 2001, the division may issue original Boy Scouts of America license plates if the Boy Scouts of America provides a one-time contribution of at least $9,000 to the division to cover startup materials and programming costs.

(b) An applicant for original or renewal Boy Scouts of America license plates must be a contributor to the Boy Scouts of America.

(c) This contribution shall be:

(i) collected by the division;

(ii) treated as a voluntary contribution for the Boy Scouts of America and not as a motor vehicle registration fee; and

(iii) transferred to the Boy Scouts of America at least monthly, less actual production and administrative costs associated with making and issuing Boy Scouts of America license plates.

Section 2. Section 41-1a-1211 is amended to read:

41-1a-1211. License plate fees -- Application fees for issuance and renewal of personalized and special group license plates -- Replacement fee for license plates -- Postage fees.

(1) A license plate fee of $5 per set shall be paid to the division for the issuance of any new license plate under Part 4, License Plates and Registration Indicia, except for license plates issued under Sections 41-1a-407 and 41-1a-417. The license plate fee shall be deposited as follows:

(a) $4 as provided in Section 41-1a-1201; and

(b) $1 in the Transportation Fund.

(2) An applicant for original issuance of personalized license plates issued under Section 41-1a-410 shall pay a $50 per set license plate application fee in addition to the fee required in Subsection (1).

(3) (a) Except as provided in Subsections (3)(b) and (3)(c), applicants for original issuance of special group license plates issued under Section 41-1a-408 shall pay a $50 per set license plate application fee in addition to the fee required under Subsection (1).

(b) A person who qualifies for a licensed amateur radio operator special group license plate shall pay a $5 fee for the original set of license plates in addition to the fee required under Subsection (1).

(c) A person who qualifies for legislative, United States Congressional, person with a disability, collegiate, veterans', wildlife, National Guard, Purple Heart, Prisoner of War, Survivor of the Japanese Attack on Pearl Harbor, firefighter, children's issues, snowmobile, soil conservation, Boy Scouts of America, farm vehicle, [~~or~~] emergency medical technician, or clean fuel special group license plates is exempt from payment of special group license plate application fees imposed under this Subsection (3).

(4) An applicant for original issuance of personalized special group license plates shall pay the license plate application fees required in Subsection (2) in addition to the license plate fees and license plate application fees established under Subsections (1) and (3).

(5) The following application fees for renewal of personalized and special group license plates shall be paid to the division at the time of renewal of registration:

(a) an applicant for renewal of personalized license plates issued under Section 41-1a-410 shall pay a $10 per set application fee;

(b) except as provided in Subsection (5)(c), an applicant for renewal of special group license plates issued under Section 41-1a-408 shall pay a $10 per set application fee; and

(c) an applicant for renewal of legislative, United States Congressional, person with a disability, collegiate, wildlife, National Guard, Purple Heart, Prisoner of War, Survivor of the Japanese Attack on Pearl Harbor, farm vehicle, vintage vehicle, firefighter, children's issues, snowmobile, soil conservation, Boy Scouts of America, emergency medical technician, clean fuel, or licensed amateur radio operator special group license plates is exempt from payment of application fees imposed under Subsection (5)(b).

(6) An applicant for renewal of personalized special group license plates shall pay the application fee required in Subsection (5)(a) in addition to the applicable application fees for renewal of license plates established under Subsections (5)(b) and (5)(c).

(7) A fee of $5 shall be paid to the division for the replacement of any license plate issued under Part 4, License Plates and Registration Indicia. The license plate fee shall be deposited as follows:

(a) $4 as provided in Section 41-1a-1201; and

(b) $1 in the Transportation Fund.

(8) The division may charge a fee established under Section 63-38-3.2 to recover its costs for the replacement of decals issued under Section 41-1a-408.

(9) The division may charge a fee established under Section 63-38-3.2 to recover the cost of issuing stickers under Section 41-1a-416.

(10) In addition to any other fees required by this section, the division shall assess a fee established under Section 63-38-3.2 to cover postage expenses if new or replacement license plates are mailed to the applicant.

(11) The fees required under this section are separate from and in addition to registration fees required under Section 41-1a-1206.

(12) For vehicles with registration years expiring on or before June 30, 2002, applicants for original Olympic special group license plates or renewal of registration with Olympic special group license plates shall pay the fees required under Section 41-1a-417.

Section 3. Section 41-6-53.5 is amended to read:

41-6-53.5. Left lane restrictions -- Exceptions -- Other lane restrictions -- Penalties.

(1) As used in this section "general purpose lane" means a highway lane open to vehicular traffic except:

(a) a high occupancy vehicle (HOV) lane; and

(b) an auxiliary lane that begins as a freeway on-ramp and ends as part of the next freeway off-ramp.

(2) A person may not operate a vehicle in the left most general purpose lane of a highway or section of a highway which has three or more general purpose lanes in the same direction if the person's:

(a) vehicle is drawing a trailer or semitrailer; or

(b) vehicle or combination of vehicle has a gross vehicle weight of 12,001 or more pounds.

(3) Subsection (2) does not apply to a person operating a vehicle who is:

(a) preparing to turn left or taking a highway split or exit on the left;

(b) responding to emergency conditions;

(c) avoiding actual or potential traffic moving onto the highway from an acceleration or merging lane; or

(d) following direction signs that direct use of a designated lane.

(4) (a) The Department of Transportation or local authorities may designate a specific lane or lanes of travel for any type of vehicle on a highway or portion of a highway under their respective jurisdiction for the:

(i) safety of the public;

(ii) efficient maintenance of a highway; or

(iii) use of high occupancy vehicles.

(b) The lane designation under Subsection (4)(a) is effective when appropriate signs giving notice are erected on the highway or portion of the highway.

(5) The lane designation under Subsection (4)(a) shall allow a vehicle with clean fuel special group license plates to travel in lanes designated for the use of high occupancy vehicles regardless of the number of occupants.

[~~(5)~~] (6) A person who operates a vehicle in violation of Subsection (2) or in violation of the restrictions made under Subsection (4) is guilty of a class C misdemeanor.

Section 4. Section 63-55-241 is amended to read:

63-55-241. Repeal dates, Title 41.

The following provisions of Title 41 are repealed on the following dates:

(1) Title 41, Chapter 12a, Part VIII, Uninsured Motorist Identification Database Program, is repealed July 1, 2010.

(2) The Multistate Highway Transportation Cooperating Committee, created in Article IV of Section 41-23-2, is repealed July 1, 2002.

(3) The HOV lane exception for clean fuel special group license plate vehicles in Subsection 41-6-53.5(5) is repealed December 31, 2005.

Section 5. Effective date.

This act takes effect on July 1, 2001.

CHAPTER 370
H. B. 305
Passed February 28, 2001
Approved March 20, 2001
Effective July 1, 2002

JUDGMENT LIEN AMENDMENTS

Sponsor: Thomas V. Hatch

This act modifies provisions of the Utah Code related to judgment liens. The act provides that a judgment or an abstract of a judgment constitutes a lien when it is recorded in the office of the county recorder. The act exempts state agencies from the recording requirement. The act outlines require ments for documents presented for recording in the office of the county recorder. The act designates the duration of a judgment recorded in the office of the county recorder. The act requires that a judgment recorded in the office of the county recorder that becomes a lien on the real property of a judgment debtor shall be entered in the appropriate index in the office of the county recorder. The act modifies provisions related to the filing of judgments in the Registry of Judgments. The act modifies provisions related to foreign judgment liens. The act also makes technical corrections. This act provides an effective date. This act provides a coordination clause.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
21-7-2, as last amended by Chapter 181, Laws of Utah 1991
38-5-1, as last amended by Chapter 85, Laws of Utah 1971
38-12-102 (Effective 07/01/01), as last amended by Chapter 252, Laws of Utah 2000
57-3-106, as last amended by Chapter 320, Laws of Utah 2000
78-5-119, as enacted by Chapter 157, Laws of Utah 1989
78-22-1, as last amended by Chapter 161, Laws of Utah 2000
78-22-1.5, as last amended by Chapter 327, Laws of Utah 1998
78-22a-5, as last amended by Chapter 172, Laws of Utah 1986

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

Section 1. Section 21-7-2 is amended to read:

21-7-2. Payment of fees prerequisite to service -- Exception.

(1) (a) The state and county officers mentioned in this title may not perform any official service unless the fees prescribed for that service are paid in advance.

(b) When the fee is paid, the officer shall perform the services required.

(c) An officer is liable upon [~~his~~] the officer's official bond for every failure or refusal to perform an official duty when the fees are tendered.

(2) Except as provided for payment of [~~filing~~] recording fees [~~of~~] for county and municipal improvement district [~~filings~~] recordings in compliance with Sections 17A-3-207 and 17A-3-307, and as provided for payment of recording fees for judgments recorded in compliance with Section 57-3-106, no fees may be charged:

(a) to the officer's state, or any county or subdivision of the state;

(b) to any public officer acting for the state, county, or subdivision;

(c) in cases of habeas corpus;

(d) in criminal causes before final judgment;

(e) for administering and certifying the oath of office;

(f) for swearing pensioners and their witnesses; or

(g) for filing and recording bonds of public officers.

Section 2. Section 38-5-1 is amended to read:

38-5-1. Filing with clerk of district court -- Recording with county recorder -- Effect.

(1) Transcripts of judgments or decrees rendered in the district court of the United States within the state [~~of Utah~~] may be filed [~~and docketed~~] in the office of the clerk of the state district court of any county in this state, and when so filed [~~and docketed~~], such judgments or decrees shall have the same force and effect as a [~~lien as judgments~~] judgment rendered [~~and docketed~~] in a district court of this state in and for such county.

(2) Except as provided in Subsection (3), if a judgment or an abstract of judgment or decree under Subsection (1) is recorded in the office of the county recorder, that judgment or decree becomes a lien on the real property of the judgment debtor in that county owned or acquired during the time the judgment is effective.

(3) State agencies are exempt from the recording requirement of Subsection (2).

Section 3. Section 38-12-102 (Effective 07/01/01) is amended to read:

38-12-102 (Effective 07/01/01). Notice requirements for lien filings -- Exceptions.

(1) No later than 30 days after the day on which a lien claimant or the lien claimant's authorized agent files for recordation a notice of lien meeting the requirements of Subsection (2) with a county recorder, county clerk, or clerk of the court, a lien claimant or the lien claimant's agent shall send by certified mail a written copy of the notice of lien to the last-known address of the person against whom the notice of lien is filed.

(2) The notice of lien shall contain the following information:

(a) the name and address of the person against whom the lien is filed;

(b) (i) a statement that certain property owned by the person against whom the lien is filed is subject to a lien;

(ii) the amount of the judgment, settlement, or compromise if the lien is based on a charge against or interest in a judgment, settlement, or compromise; or

(iii) the amount of state taxes owed;

(c) the article number contained on the certified mail receipt;

(d) the date the notice of lien was filed; and

(e) the name and address of the lien claimant.

(3) The notice requirements of Subsections (1) and (2) do not apply to [~~a~~]:

(a) a mechanics' lien as provided in Title 38, Chapter 1, Mechanics' Liens;

(b) a lessors' lien as provided in Title 38, Chapter 3, Lessors' Liens;

(c) a federal tax lien as provided in Title 38, Chapter 6, Federal Tax Liens;

(d) a hospital lien as provided in Title 38, Chapter 7, Hospital Lien Law;

(e) a self-service storage facilities lien as provided in Title 38, Chapter 8, Self-Service Storage Facilities;

(f) an oil, gas, or mining lien as provided in Title 38, Chapter 10, Oil, Gas, and Mining Liens;

(g) a claim against the Residence Lien Recovery Fund as provided in Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act;

(h) a trust deed;

(i) a mortgage;

(j) any interests subject to a security agreement as defined in Section 70A-9a-102; [~~or~~]

(k) any other liens subject to the same or stricter notice requirements than those imposed by Subsections (1) and (2)[~~.~~]; or

(l) a court judgment or abstract of a court judgment presented for recording in the office of a county recorder.

Section 4. Section 57-3-106 is amended to read:

57-3-106. Original documents required -- Captions -- Legibility.

(1) (a) Unless otherwise provided, documents presented for recording in the office of the county recorder shall:

(i) be originals; and

(ii) contain a brief caption stating the nature of the document.

(b) If a document is a master form, as defined in Section 57-3-201, the caption required by Subsection (1)(a)(ii) shall state that the document is a master form.

(2) A court judgment or an abstract of a court judgment presented for recording in the office of the county recorder in compliance with Section 78-22-1 shall:

(a) be an original or certified copy; and

(b) include the information identifying the judgment debtor as referred to in Subsection 78-22-1.5(4) either:

(i) in the judgment or abstract of judgment; or

(ii) as a separate information statement of the judgment creditor as referred to in Subsection 78-22-1.5(5).

(3) Judgments, abstracts of judgments, and separate information statements of the judgment creditor do not require an acknowledgment or a legal description to be recorded.

(4) A foreign judgment or an abstract of a foreign judgment recorded in the office of a county recorder shall include the affidavit as required in Section 78-22a-3.

(5) Any document recorded in the office of the county recorder to release or assign a judgment lien shall include:

(a) the name of any judgment creditor, debtor, assignor, or assignee;

(b) the date of recording; and

(c) the entry number of the instrument creating the judgment lien.

[~~(2)~~] (6) Documents presented for recording shall also be sufficiently legible for the recorder to make certified copies.

[~~(3)~~] (7) (a) A document which is of record in the office of the appropriate county recorder in compliance with this chapter may not be recorded again in that same county recorder's office unless the original document has been reexecuted by all parties who executed the document. Unless exempt by statute, original documents which are reexecuted must also contain the appropriate acknowledgment, proof of execution, jurat or other notarial certification for all parties who are reexecuting the document as required by Title 46, Chapter 1, Notaries Public Reform Act, and Title 57, Chapter 2, Acknowledgments. Documents submitted for rerecording shall contain a brief statement explaining the reason for rerecording.

(b) A county recorder may refuse to accept a document for rerecording if that document does not conform to the requirements of this section.

(c) Subsection [~~(3) of this section~~] (7) applies only to documents executed after July 1, 1998.

[~~(4)~~] (8) Minor typographical or clerical errors in a document of record may be corrected by the recording of an appropriate instrument.

Section 5. Section 78-5-119 is amended to read:

78-5-119. Judgment not a lien unless so recorded.

(1) [~~A~~] Except as provided under Subsection (3), a judgment rendered in a justice court does not create a lien upon any [~~lands~~] real property of the judgment debtor unless [~~an~~] the judgment or abstract of the judgment:

(a) is [~~filed and docketed~~] recorded in the office of the [~~clerk of the district court~~] county recorder of the county in which the [~~lands are~~] real property of the judgment debtor is located[~~.~~]; and

(b) contains the information identifying the judgment debtor as referred to in Subsection 78-22-1.5(4) either:

(i) in the judgment or abstract of judgment; or

(ii) as a separate information statement of the judgment creditor as referred to in Subsection 78-22-1.5(5).

(2) [~~When filed and docketed, the judgment is a lien upon the real property of the judgment debtor that is not exempt from execution and is situated in that county~~] The lien runs for eight years from the date the judgment was entered in the district court under Section 78-22-1 unless the judgment is earlier satisfied.

(3) State agencies are exempt from the recording requirement of Subsection (1).

Section 6. Section 78-22-1 is amended to read:

78-22-1. Duration of judgment -- Judgment as a lien upon real property -- Abstract of judgment -- Small claims judgment not a lien -- Appeal of judgment -- Child support orders.

(1) Except as provided in Subsection (6), judgments shall continue for eight years from the date of entry in a court unless previously satisfied or unless enforcement of the judgment is stayed in accordance with law.

(2) Prior to July 1, 1997, except as limited by Subsections (4) and (5), the entry of judgment by a district court [~~is~~] creates a lien upon the real property of the judgment debtor, not exempt from execution, owned or acquired during the existence of the judgment, located in the county in which the judgment is entered.

(3) [~~Prior to and after July 1, 1997, an~~] An abstract of judgment issued by the court in which the judgment is entered may be [~~recorded~~] filed in any court of this state and shall have the same force and effect as a judgment entered in that court.

(4) Prior to July 1, 1997, and after May 15, 1998, a judgment entered in the small claims division of any court shall not qualify as a lien upon real property unless abstracted to the civil division of the district court and recorded in accordance with Subsection (3).

(5) (a) If any judgment is appealed, upon deposit, with the court where the notice of appeal is filed, of cash or other security in a form and amount considered sufficient by the court that rendered the judgment to secure the full amount of the judgment, together with ongoing interest and any other anticipated damages or costs, including attorney's fees and costs on appeal, the lien created by [~~Subsection (2)~~] the judgment shall be terminated as provided in Subsection (5)(b).

(b) Upon the deposit of sufficient security as provided in Subsection (5)(a), the court shall enter an order terminating the lien created by the judgment [~~under Subsection (2)~~] and granting the judgment creditor a perfected lien in the deposited security as of the date of the original judgment.

(6) Enforcement of a child support order may be pursued at any time within four years after the date the youngest child reaches majority.

(7) (a) After July 1, 2002, a judgment entered by a district court or a justice court in the state becomes a lien upon real property if:

(i) the judgment or an abstract of the judgment containing the information identifying the judgment debtor as described in Subsection 78-22-1.5(4) is recorded in the office of the county recorder; or

(ii) the judgment or an abstract of the judgment and a separate information statement of the judgment creditor as described in Subsection 78-22-1.5(5) is recorded in the office of the county recorder.

(b) The judgment shall run from the date of entry by the district court or justice court.

(c) The real property subject to the lien includes all the real property of the judgment debtor:

(i) in the county in which the recording under Subsection (7)(a)(i) or (ii) occurs; and

(ii) owned or acquired at any time by the judgment debtor during the time the judgment is effective.

(d) State agencies are exempt from the recording requirement of Subsection (7)(a).

(8) (a) A judgment referred to in Subsection (7) shall be entered under the name of the judgment debtor in the judgment index in the office of the county recorder as required in Section 17-21-6.

(b) A judgment containing a legal description shall also be abstracted in the appropriate tract index in the office of the county recorder.

Section 7. Section 78-22-1.5 is amended to read:

78-22-1.5. Definitions -- Judgment recorded in Registry of Judgments.

(1) For purposes of this section, "Registry of Judgments" means the index where a judgment shall be [~~recorded~~] filed and searchable by the name of the judgment debtor through electronic means or by tangible document.

(2) On or after July 1, 1997, a judgment [~~rendered or recorded~~] entered in a district court does not create a lien upon or affect the title to real property unless the judgment is [~~recorded~~] filed in the Registry of Judgments of the office of the clerk of the district court of the county in which the property is located.

(3) (a) On or after July 1, 2002, except as provided in Subsection (3)(b), a judgment entered in a district court does not create a lien upon or affect the title to real property unless the judgment or an abstract of judgment is recorded in the office of the county recorder in which the real property of the judgment debtor is located.

(b) State agencies are exempt from the recording requirement of Subsection (3)(a).

[~~(3)~~] (4) In addition to the [~~requirement~~] requirements of [~~Subsection~~] Subsections (2) and (3)(a), any judgment that is [~~recorded~~] filed in the Registry of Judgments on or after September 1, 1998, or any judgment or abstract of judgment that is recorded in the office of a county recorder after July 1, 2002, shall include [~~a~~]:

(a) the information identifying the judgment debtor on the judgment or abstract of judgment; or

(b) a copy of the separate information statement of the judgment creditor that contains:

[~~(a)~~] (i) the correct name and last-known address of each judgment debtor and the address at which each judgment debtor received service of process;

[~~(b)~~] (ii) the name and address of the judgment creditor;

[~~(c)~~] (iii) the amount of the judgment as [~~entered~~] filed in the Registry of Judgments;

[~~(d)~~] (iv) if known, the judgment debtor's social security number, date of birth, and driver's license number if a natural person; and

[~~(e)~~] (v) whether or not a stay of enforcement has been ordered by the court and the date the stay expires.

[~~(4)~~] (5) For the information required in Subsection [~~(3)~~] (4), the judgment creditor shall:

(a) provide the information on the separate information statement if known or available to the judgment creditor from its records, its attorney's records, or the court records in the action in which the judgement was entered; or

(b) state on the separate information statement that the information is unknown or unavailable.

[~~(5)~~] (6) (a) Any judgment that requires payment of money and is [~~recorded~~] entered in a district court on or after September 1, 1998, [~~and is~~] or any judgment or abstract of judgment recorded in the office of a county recorder after July 1, 2002, that does not [~~accompanied by the separate~~] include the debtor identifying information [~~statement~~] as required in [~~Subsections (3) and (4) may be amended by recording a document entitled "Amendment to Recorded Judgment" in the Registry of Judgments~~] Subsection (4) is not a lien until a separate information statement of the judgment creditor is recorded in the office of a county recorder in compliance with [~~Subsections (3) and (4)~~] Subsections (4) and (5).

[~~(b) The amendment to the recorded judgment shall state the date of recording the original judgment in the Registry of Judgments.~~]

[~~(c) Recording an amendment to a recorded judgment has no effect on the computation of time as provided in Section 78-22-1.~~]

(b) The separate information statement of the judgment creditor referred to in Subsection (6)(a) shall include:

(i) the name of any judgment creditor, debtor, assignor, or assignee;

(ii) the date of recording; and

(iii) the entry number of the original judgment or abstract of judgment.

[~~(6)~~] (7) A judgment that requires payment of money recorded on or after September 1, 1998, but prior to July 1, 2002, has as its priority the date of [~~compliance with Subsections (3) and (4)~~] entry.

Section 8. Section 78-22a-5 is amended to read:

78-22a-5. Lien.

(1) A foreign judgment [~~filed~~] entered in a district court under this chapter becomes a lien as provided in Section 78-22-1 if:

(a) a stay of execution has not been granted[~~.~~];

[~~(2) If~~] (b) the requirements of this chapter are satisfied[~~, the foreign~~]; and

(c) the judgment [~~becomes a lien upon the~~] is recorded in the office of the county recorder where the property of the judgment [~~debtor's property on the date it is docketed~~] debtor is located, as provided in Section 78-22-1.

(2) The lien becomes effective at the time and date of recording.

Section 9. Effective date.

This act takes effect on July 1, 2002.

Section 10. Coordination clause.

If this bill and H.B. 19, Fees Recodification, both pass, it is the intent of the Legislature that the Office of Legislative Research and General Counsel in preparing the Utah Code database for publication, shall renumber Section 21-7-2 in this bill as Section 63-38-3.3 and amend it to read:

"[~~21-7-2~~] 63-38-3.3. Payment of fees prerequisite to service -- Exception.

(1) (a) [~~The state~~] State and county officers [~~mentioned in this title~~] required by law to charge fees may not perform any official service unless the fees prescribed for that service are paid in advance.

(b) When the fee is paid, the officer shall perform the services required.

(c) An officer is liable upon [~~his~~] the officer's official bond for every failure or refusal to perform an official duty when the fees are tendered.

(2) Except as provided for payment of [~~filing~~] recording fees [~~of~~] for county and municipal improvement district [~~filings~~] recordings in compliance with Sections 17A-3-207 and 17A-3-307, and as provided for payment of recording fees for judgments recorded in compliance with Sections 57-3-106 and 78-5-119, no fees may be charged:

(a) to the officer's state, or any county or subdivision of the state;

(b) to any public officer acting for the state, county, or subdivision;

(c) in cases of habeas corpus;

(d) in criminal causes before final judgment;

(e) for administering and certifying the oath of office;

(f) for swearing pensioners and their witnesses; or

(g) for filing and recording bonds of public officers."

CHAPTER 371
H. B. 306
Passed February 28, 2001
Approved March 20, 2001
Effective July 1, 2001

NURSE TRAINING GRANT PROGRAM

Sponsor: Chad E. Bennion

This act appropriates $9,500 from the General Fund for fiscal year 2001-02 only, to the Utah Department of Health for the University of Utah College of Nursing to provide for the training and certification of 20 "SANE" (Sexual Assault Nurse Examiner) nurses for use throughout the state. This act provides an effective date.

This act enacts uncodified material.

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

Section 1. Appropriation.

(1) There is appropriated from the General Fund for fiscal year 2001-02 only, $9,500 to the Utah Department of Health to provide for the training and certification of 20 "SANE" (Sexual Assault Nurse Examiner) nurses.

(2) The appropriation under Subsection (1) will be disseminated through the Utah Department of Health through tuition grants to the University of Utah College of Nursing.

(3) The appropriation under Subsection (1) is nonlapsing.

Section 2. Effective date.

This act takes effect on July 1, 2001.

CHAPTER 372
H. B. 307
Passed February 22, 2001
Approved March 20, 2001
Effective July 1, 2001

UTAH SPACEPORT AUTHORITY ACT

Sponsor: Thomas V. Hatch

This act modifies the Transportation Code by designating the Department of Transportation as the state spaceport authority and granting the department regulatory authority over spaceports. This act creates a Spaceport Advisory Board within the Department of Transportation. This act takes effect on July 1, 2001.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
72-1-102, as last amended by Chapter 86, Laws of Utah 2000

ENACTS:
72-13-101, Utah Code Annotated 1953
72-13-102, Utah Code Annotated 1953
72-13-103, Utah Code Annotated 1953
72-13-104, Utah Code Annotated 1953

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

Section 1. Section 72-1-102 is amended to read:

72-1-102. Definitions.

As used in this title:

(1) "Commission" means the Transportation Commission created under Section 72-1-301.

(2) "Construction" means the construction, reconstruction, replacement, and improvement of the highways, including the acquisition of rights-of-way and material sites.

(3) "Department" means the Department of Transportation created in Section 72-1-201.

(4) "Executive director" means the executive director of the department appointed under Section 72-1-202.

(5) "Farm tractor" has the meaning set forth in Section 41-1a-102.

(6) "Federal aid primary highway" means that portion of connected main highways located within this state officially designated by the department and approved by the United States Secretary of Transportation under Title 23, Highways, U.S.C.

(7) "Highway" means any public road, street, alley, lane, court, place, viaduct, tunnel, culvert, bridge, or structure laid out or erected for public use, or dedicated or abandoned to the public, or made public in an action for the partition of real property, including the entire area within the right-of-way.

(8) "Highway authority" means the department or the legislative, executive, or governing body of a county or municipality.

(9) "Implement of husbandry" has the meaning set forth in Section 41-1a-102.

(10) "Interstate system" means any highway officially designated by the department and included as part of the national interstate and defense highways, as provided in the Federal Aid Highway Act of 1956 and any supplemental acts or amendments.

(11) "Limited-access facility" means a highway especially designated for through traffic, and over, from, or to which neither owners nor occupants of abutting lands nor other persons have any right or easement, or have only a limited right or easement of access, light, air, or view.

(12) "Motor vehicle" has the same meaning set forth in Section 41-1a-102.

(13) "Municipality" has the same meaning set forth in Section 10-1-104.

(14) "National highway systems highways" means that portion of connected main highways located within this state officially designated by the department and approved by the United States Secretary of Transportation under Title 23, Highways, U.S.C.

(15) (a) "Port-of-entry" means a fixed or temporary facility constructed, operated, and maintained by the department where drivers, vehicles, and vehicle loads are checked or inspected for compliance with state and federal laws as specified in Section 72-9-501.

(b) "Port-of-entry" includes inspection and checking stations and weigh stations.

(16) "Port-of-entry agent" means a person employed at a port-of-entry to perform the duties specified in Section 72-9-501.

(17) "Right-of-way" means real property or an interest in real property, usually in a strip, acquired for or devoted to a highway.

(18) "Sealed" does not preclude acceptance of electronically sealed and submitted bids or proposals in addition to bids or proposals manually sealed and submitted.

(19) "Semitrailer" has the meaning set forth in Section 41-1a-102.

(20) "SR" means state route and has the same meaning as state highway as defined in this section.

(21) "State highway" means those highways designated as state highways in Title 72, Chapter 4, Designation of State Highways Act.

(22) "State highway purposes" has the meaning set forth in Section 72-5-102.

(23) "State transportation systems" means all streets, alleys, roads, highways, and thoroughfares of any kind, including connected structures, airports, spaceports, and all other modes and forms of conveyance used by the public.

(24) "Trailer" has the meaning set forth in Section 41-1a-102.

(25) "Truck tractor" has the meaning set forth in Section 41-1a-102.

(26) "UDOT" means the Utah Department of Transportation.

(27) "Vehicle" has the same meaning set forth in Section 41-1a-102.

Section 2. Section 72-13-101 is enacted to read:

CHAPTER 13. UTAH SPACEPORT AUTHORITY ACT

72-13-101. Title.

This chapter is known as the "Utah Spaceport Authority Act."

Section 3. Section 72-13-102 is enacted to read:

72-13-102. Definitions.

As used in this chapter:

(1) "Board" means the Spaceport Advisory Board created in Section 72-13-104.

(2) "Spaceport" means an area of land or water which is used, or is made available for, the landing and takeoff of spacecraft, including any appurtenant areas which are used, or intended for use, for spaceport buildings, other spaceport facilities or rights-of-way, together with all spaceport buildings and facilities located thereon, and which may include land and buildings, together with all appurtenances necessary or convenient thereto for the accommodation or convenience of the public, including, parking, dining, recreational, and hotel facilities.

Section 4. Section 72-13-103 is enacted to read:

72-13-103. Powers of department -- Spaceports.

The department is designated as the state spaceport authority and has power to:

(1) plan, design, acquire property for, undertake, construct, operate, maintain, administer, and manage all spaceport properties and attendant spaceport facilities;

(2) regulate the receiving, deposit, and embarkation of passengers or property to or from the spaceport;

(3) regulate or prohibit any spaceport hazard;

(4) exact and require charges, fees, and rentals, and provide for a lien to enforce their payment;

(5) lease or assign for operation any space or area, appurtenances, appliances, or other conveniences as are necessary or useful;

(6) provide rules governing the use of the spaceport or spaceports, and facilities and the use of other property and means of transportation within or over the spaceport or spaceports, landing field and navigation facilities, and perform any duties, necessary for or consistent with the regulation of spacecraft traffic;

(7) enter into contracts or otherwise cooperate with the federal government or other public or private agencies regarding spaceport matters;

(8) exercise the powers that may be required for or that are consistent with the promotion of a spaceport and the furtherance of commerce and navigation by spacecraft; and

(9) consult with the board and provide staff support to the board.

Section 5. Section 72-13-104 is enacted to read:

72-13-104. Advisory board created -- Appointment -- Terms -- Meetings -- Per diem and expenses -- Duties.

(1) There is created within the department the Spaceport Advisory Board consisting of seven members appointed by the governor as follows:

(a) the executive director of the department or his designee;

(b) the executive director of the Department of Community and Economic Development or his designee; and

(c) the governor shall appoint five public members to represent the public at large, aerospace interests, and local governments.

(2) Each public member of the board shall:

(a) be selected at large on a nonpartisan basis; and

(b) have been a legal resident of the state for at least one year immediately preceding the date of appointment.

(3) (a) Except as required by Subsection (3)(b), as terms of current board members expire, the governor shall appoint each new member or reappointed member to a four-year term.

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

(c) A member shall serve from the date of appointment until a replacement is appointed.

(4) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term beginning the day following the expiration of the preceding term.

(5) The board shall elect its own chair and vice chair at the first regular meeting of each calendar year.

(6) The board shall meet as needed when called by the chair.

(7) Any four voting members constitute a quorum for the transaction of business that comes before the board.

(8) (a) Members shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

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

(9) The board shall advise the department and the commission on interpretation, adoption, and implementation of this chapter and other spaceport related issues, including planning, design, operation, maintenance, administration, and management of all spaceports and their attendant facilities under the jurisdiction of the department.

(10) The department shall provide staff support to the board.

Section 6. Effective date.

This act takes effect on July 1, 2001.

CHAPTER 373
H. B. 314
Passed February 28, 2001
Approved March 20, 2001
Effective April 30, 2001

ELECTION CODE - MILITARY OVERSEAS BALLOT PROCEDURES

Sponsor: Matt Throckmorton

This act modifies statutes governing voting by military or overseas citizens. This act establishes criteria for declaring certain ballots invalid.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
20A-3-408, as enacted by Chapter 1, Laws of Utah 1993

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

Section 1. Section 20A-3-408 is amended to read:

20A-3-408. Voting of ballot by military or overseas citizen voter.

(1) (a) The military or overseas citizen voter shall:

(i) upon receipt of the ballot, mark it in secret;

(ii) seal it in the ballot envelope provided for that purpose; and

(iii) execute the registration and voting certificate on the back of the envelope in the presence of a commissioned, noncommissioned, or petty officer not below the rank of sergeant, or other person authorized to administer oaths.

(b) (i) If the military or overseas citizen voter is physically disabled so as to be unable to see or write, he may request assistance from two persons, each of whom shall be qualified to certify to the registration and voting certificate.

(ii) The military or overseas citizen voter shall tell those persons how he wishes his ballot marked.

(iii) Those persons shall mark the ballot as directed by the military or overseas citizen voter in his presence.

(iv) One of the persons assisting the military or overseas citizen voter shall:

(A) read to the voter the registration and voting certificate upon the ballot;

(B) fill in its blanks as the voter directs; and

(C) sign, on the line provided for the signature of the voter, the name of the voter and his own name.

(2) (a) The ballot shall be sent by any available mail service to the county clerk who issued it.

(b) The military or overseas citizen voter is not required to return the ballot by registered mail.

(3) (a) The ballot is not valid unless it is:

(i) clearly postmarked by the appropriate military post office, the Fleet Post Office (FPO) or the Army/Air Force Post Office (APO), on or before election day and received in the office of the election officer before noon on the day of the official canvass following the election; or

(ii) in the possession of a military mail courier, en route to the appropriate fleet post office or army/air force post office, and can be certified as having been picked up on or before election day.

(b) If it is not possible to obtain the appropriate military post office postmark on or before election day, a noncommissioned officer or commissioned officer, may certify that the ballot was voted on or before election day by writing the following on the exterior of the ballot:

(i) "I certify that this ballot was voted on or before election day";

(ii) by signing and dating; and

(iii) clearly printing the noncommissioned officer or the commissioned officer's name, rank, and service number below the signature.

CHAPTER 374
H. B. 338
Passed February 23, 2001
Approved March 20, 2001
Effective July 1, 2001

APPROPRIATION FOR UTAH BLUE RIBBON FISHERIES INITIATIVE

Sponsor: Thomas V. Hatch

This act appropriates $300,000 from the General Fund, for fiscal year 2001-02 only, to the Division of Wildlife Resources for the development and preservation of high quality aquatic systems to produce healthy fish populations for angling and aesthetic experiences. This act takes effect on July 1, 2001.

This act enacts uncodified material.

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

Section 1. Appropriation.

(1) For fiscal year 2001-02 only, there is appropriated $300,000 from the General Fund to the Division of Wildlife Resources for the development and preservation of high quality aquatic systems to produce healthy fish populations for angling and aesthetic experiences.

(2) The money appropriated in Subsection (1) is nonlapsing.

Section 2. Effective date.

This act takes effect on July 1, 2001.

CHAPTER 375
H. B. 349
Passed February 28, 2001
Approved March 20, 2001
Effective April 30, 2001

UNIFORM PROBATE CODE -
POWER OF ATTORNEY AMENDMENTS

Sponsor: Patricia W. Jones

This act modifies sections of the Probate Code to allow for the appointment of a conservator for a person who is disabled even though there may be a valid power of attorney in force. This act also provides that the person holding the power of attorney should be bound by the same standards for trustees.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
75-5-401, as last amended by Chapter 142, Laws of Utah 1999
75-5-501, as last amended by Chapter 179, Laws of Utah 1992

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

Section 1. Section 75-5-401 is amended to read:

75-5-401. Protective proceedings.

(1) Upon petition and after notice and hearing in accordance with the provisions of this part, the court may appoint a conservator or make other protective order for cause as follows:

(a) Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a minor if the court determines that a minor owns money or property that requires management or protection which cannot otherwise be provided, has or may have business affairs which may be jeopardized or prevented by minority, or that funds are needed for the minor's support and education and protection is necessary or desirable to obtain or provide funds.

(b) The provisions of Subsection (1)(a) may be applied to a person beyond minority up to age 21 under special circumstances as determined by the court.

(2) Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a person if the court determines that the person:

(a) is unable to manage the person's property and affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, or disappearance; and

(b) has property which will be wasted or dissipated unless proper management is provided or that funds are needed for the support, care, and welfare of the person or those entitled to be supported by the person and protection is necessary or desirable to obtain or provide funds.

(3) Appointment of a conservator or other protective order may not be denied solely on the basis that the person for whom the conservatorship or other protective order is sought has a valid power of attorney in effect.

Section 2. Section 75-5-501 is amended to read:

75-5-501. When power of attorney not affected by disability or lapse of time.

(1) Whenever a principal designates another his attorney-in-fact or agent by a power of attorney in writing and the writing contains the words "This power of attorney shall not be affected by disability of the principal," or "This power of attorney shall become effective upon the disability of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding his disability, the authority of the attorney-in-fact or agent is exercisable by him as provided in the power on behalf of the principal notwithstanding:

(a) later disability or incapacity of the principal at law or later uncertainty as to whether the principal is dead or alive; or

(b) the lapse of time since the execution of the instrument, unless the instrument states a time of termination.

(2) All acts done by the attorney-in-fact or agent pursuant to the power during any period of disability or incompetence or uncertainty as to whether the principal is dead or alive have the same effect and inure to the benefit of and bind the principal or his heirs, devisees, and personal representative as if the principal were alive, competent, and not disabled. If a conservator thereafter is appointed for the principal, the attorney-in-fact or agent, during the continuance of the appointment, shall account to the conservator rather than the principal. The conservator has the same power the principal would have had if he were not disabled or incompetent to revoke, suspend, or terminate all or any part of the power of attorney or agency.

(3) If a power of attorney remains in effect or becomes effective as a result of a principal's incapacity or disability, the attorney-in-fact or agent holding the power of attorney shall be bound by the duties, liabilities, and standard of care in Title 75, Chapter 7, Part 3, Duties and Liabilities of Trustees.

(4) In applying the duties, liabilities, and standard of care of Part 3, Duties and Liabilities of Trustees, to this section:

(a) "beneficiary" means any person entitled to a part of the principal's estate from the principal's will or through the intestacy laws, whichever is applicable; and

(b) "trust" means that part of the principal's estate which is covered or controlled by the power of attorney.

CHAPTER 376
H. B. 360
Passed February 22, 2001
Approved March 20, 2001
Effective April 30, 2001

CHILDREN'S JUSTICE CENTER PROGRAM AMENDMENTS

Sponsor: Scott Daniels
Mike Thompson
Patrice M. Arent
Gary F. Cox
A. Lamont Tyler
Neal B. Hendrickson
Bryan D. Holladay
Max W. Young
Gerry A. Adair

This act adds provisions allowing the attorney general to establish satellite offices for Children's Justice Centers and adds Emery and Wasatch counties to the list of counties in which a Children's Justice Center shall be established. The act also requires that the governor make separate recommendations in the budget for Children's Justice Centers' through the attorney general's office.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
63-38-2, as last amended by Chapter 339, Laws of Utah 2000
67-5b-102, as last amended by Chapter 320, Laws of Utah 1999

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

Section 1. Section 63-38-2 is amended to read:

63-38-2. Governor to submit budget to Legislature -- Contents -- Preparation -- Appropriations based on current tax laws and not to exceed estimated revenues.

(1) (a) The governor shall, within three days after the convening of the Legislature in the annual general session, submit a budget for the ensuing fiscal year by delivering it to the presiding officer of each house of the Legislature together with a schedule for all of the proposed appropriations of the budget, clearly itemized and classified.

(b) The budget message shall include a projection of estimated revenues and expenditures for the next fiscal year.

(2) At least 34 days before the submission of any budget, the governor shall deliver a confidential draft copy of his proposed budget recommendations to the Office of the Legislative Fiscal Analyst.

(3) (a) The budget shall contain a complete plan of proposed expenditures and estimated revenues for the next fiscal year based upon the current fiscal year state tax laws and rates.

(b) The budget may be accompanied by a separate document showing proposed expenditures and estimated revenues based on changes in state tax laws or rates.

(4) The budget shall be accompanied by a statement showing:

(a) the revenues and expenditures for the last fiscal year;

(b) the current assets, liabilities, and reserves, surplus or deficit, and the debts and funds of the state;

(c) an estimate of the state's financial condition as of the beginning and the end of the period covered by the budget;

(d) a complete analysis of lease with an option to purchase arrangements entered into by state agencies;

(e) the recommendations for each state agency for new full-time employees for the next fiscal year; which recommendation should be provided also to the State Building Board under Subsection 63A-5-103(2);

(f) any explanation the governor may desire to make as to the important features of the budget and any suggestion as to methods for the reduction of expenditures or increase of the state's revenue; and

(g) the information detailing certain regulatory fee increases required by Section 63-38-3.2.

(5) The budget shall include an itemized estimate of the appropriations for:

(a) the Legislative Department as certified to the governor by the president of the Senate and the speaker of the House;

(b) the Executive Department;

(c) the Judicial Department as certified to the governor by the state court administrator;

(d) payment and discharge of the principal and interest of the indebtedness of the state of Utah;

(e) the salaries payable by the state under the Utah Constitution or under law for the lease agreements planned for the next fiscal year;

(f) other purposes that are set forth in the Utah Constitution or under law; and

(g) all other appropriations.

(6) Deficits or anticipated deficits shall be included in the budget.

(7) (a) (i) For the purpose of preparing and reporting the budget, the governor shall require from the proper state officials, including public and higher education officials, all heads of executive and administrative departments and state institutions, bureaus, boards, commissions, and agencies expending or supervising the expenditure of the state moneys, and all institutions applying for state moneys and appropriations, itemized estimates of revenues and expenditures. The entities required by this Subsection (7)(a)(i) to submit itemized estimates of revenues and expenditures to the governor, shall also report to the Utah Information

Technology Commission created in Title 63D, Chapter 1, before October 30 of each year. The report to the Information Technology Commission shall include the proposed information technology expenditures and objectives, the proposed appropriation requests and other sources of revenue necessary to fund the proposed expenditures and an analysis of:

(A) the entity's need for appropriations for information technology;

(B) how the entity's development of information technology coordinates with other state or local government entities;

(C) any performance measures used by the entity for implementing information technology goals; and

(D) any efforts to develop public/private partnerships to accomplish information technology goals.

(ii) (A) The governor may also require other information under these guidelines and at times as the governor may direct.

(B) These guidelines may include a requirement for program productivity and performance measures, where appropriate, with emphasis on outcome indicators.

(b) The estimate for the Legislative Department as certified by the presiding officers of both houses shall be included in the budget without revision by the governor. Before preparing the estimates for the Legislative Department, the Legislature shall report to the Information Technology Commission the proposed information technology expenditures and objectives, the proposed appropriation requests and other sources of revenue necessary to fund the proposed expenditures, including an analysis of:

(i) the Legislature's implementation of information technology goals;

(ii) any coordination of information technology with other departments of state and local government;

(iii) any efforts to develop public/private partnerships to accomplish information technology goals; and

(iv) any performance measures used by the entity for implementing information technology goals.

(c) The estimate for the Judicial Department, as certified by the state court administrator, shall also be included in the budget without revision, but the governor may make separate recommendations on it. Before preparing the estimates for the Judicial Department, the state court administrator shall report to the Information Technology Commission the proposed information technology expenditures and objectives, the proposed appropriation requests and other sources of revenue necessary to fund the proposed expenditures, including an analysis of:

(i) the Judicial Department's information technology goals;

(ii) coordination of information technology statewide between all courts;

(iii) any efforts to develop public/private partnerships to accomplish information technology goals; and

(iv) any performance measures used by the entity for implementing information technology goals.

(d) Before preparing the estimates for the State Office of Education, the state superintendent shall report to the Information Technology Commission the proposed information technology expenditures and objectives, the proposed appropriation requests and other sources of revenue necessary to fund the proposed expenditures, including an analysis of:

(i) the Office of Education's information technology goals;

(ii) coordination of information technology statewide between all public schools;

(iii) any efforts to develop public/private partnerships to accomplish information technology goals; and

(iv) any performance measures used by the Office of Education for implementing information technology goals.

(e) Before preparing the estimates for the state system of Higher Education, the commissioner shall report to the Information Technology Commission the proposed information technology expenditures and objectives, the proposed appropriation requests and other sources of revenue necessary to fund the proposed expenditures, including an analysis of:

(i) Higher Education's information technology goals;

(ii) coordination of information technology statewide within the state system of higher education;

(iii) any efforts to develop public/private partnerships to accomplish information technology goals; and

(iv) any performance measures used by the state system of higher education for implementing information technology goals.

(f) The governor may require the attendance at budget meetings of representatives of public and higher education, state departments and institutions, and other institutions or individuals applying for state appropriations.

(g) The governor may revise all estimates, except those relating to the Legislative Department, the Judicial Department, and those providing for the payment of principal and interest to the state debt and for the salaries and expenditures specified by the Utah Constitution or under the laws of the state.

(8) The total appropriations requested for expenditures authorized by the budget may not exceed the estimated revenues from taxes, fees, and all other sources for the next ensuing fiscal year.

(9) If any item of the budget as enacted is held invalid upon any ground, the invalidity does not affect the budget itself or any other item in it.

(10) (a) In submitting the [~~budget~~] budgets for the Departments of Health and Human Services and the Office of the Attorney General, the governor shall consider a separate recommendation in his budget for funds to be contracted to:

(i) local mental health authorities under Section 17A-3-606;

(ii) local substance abuse authorities under Section 62A-8-110.5;

(iii) area agencies under Section 62A-3-104.2;

(iv) programs administered directly by and for operation of the Divisions of Mental Health, Substance Abuse, and Aging and Adult Services; [~~and~~]

(v) local health departments under Title 26A, Chapter 1, Local Health Departments[~~.~~]; and

(vi) counties for the operation of Children's Justice Centers under Section 67-5b-102.

(b) In his budget recommendations under Subsections (10)(a)(i), (ii), and (iii), the governor shall consider an amount sufficient to grant local health departments, local mental health authorities, local substance abuse authorities, and area agencies the same percentage increase for wages and benefits that he includes in his budget for persons employed by the state.

(c) If the governor does not include in his budget an amount sufficient to grant the increase described in Subsection (10)(b), he shall include a message to the Legislature regarding his reason for not including that amount.

(11) (a) In submitting the budget for the Division of Services for People with Disabilities, the Division of Child and Family Services, and the Division of Youth Corrections within the Department of Human Services, the governor shall consider an amount sufficient to grant employees of corporations that provide direct services under contract with those divisions, the same percentage increase for cost-of-living that he includes in his budget for persons employed by the state.

(b) If the governor does not include in his budget an amount sufficient to grant the increase described in Subsection (11)(a), he shall include a message to the Legislature regarding his reason for not including that amount.

(12) (a) The Families, Agencies, and Communities Together Council may propose to the governor under Subsection 63-75-4(4)(e) a budget recommendation for collaborative service delivery systems operated under Section 63-75-6.5.

(b) The Legislature may, through a specific program schedule, designate funds appropriated for collaborative service delivery systems operated under Section 63-75-6.5.

(13) The governor shall include in his budget the state's portion of the budget for the Utah Communications Agency Network established in Title 63C, Chapter 7, Utah Communications Agency Network Act.

Section 2. Section 67-5b-102 is amended to read:

67-5b-102. Children's Justice Center -- Requirements of center -- Purposes of center.

(1) (a) There is established a program that provides a comprehensive, multidisciplinary, nonprofit, intergovernmental response to sexual abuse of children and serious physical abuse of children in a facility known as a Children's Justice Center.

(b) The attorney general shall administer the program.

(c) The attorney general shall:

(i) allocate the funds appropriated by a line item pursuant to Section 67-5b-103;

(ii) administer applications for state and federal grants;

(iii) staff the Advisory Board on Children's Justice;

(iv) assist in the development of new centers; and

(v) coordinate services between centers.

(2) (a) The attorney general shall establish Children's Justice Centers or satellite offices in Cache County, Carbon County, Davis County, Duchesne County, Emery County, Grand County, Salt Lake County, Tooele County, Uintah County, Utah County, Wasatch County, Washington County, and Weber County.

(b) The attorney general may establish other centers within a county and in other counties of the state.

(3) The attorney general and each center shall fulfill the statewide purpose of each center by:

(a) minimizing the time and duplication of effort required to investigate, prosecute, and initiate treatment for the abused child in the state;

(b) facilitating the investigation of the alleged offense against the abused child;

(c) conducting interviews of abused children and their families in a professional manner;

(d) obtaining reliable and admissible information which can be used effectively in criminal and child protection proceedings in the state;

(e) coordinating and tracking:

(i) the use of limited medical and psychiatric services;

(ii) investigation of the alleged offense;

(iii) preparation of prosecution;

(iv) treatment of the abused child and family; and

(v) education and training of persons who provide services to the abused child and its family in the state;

(f) expediting the processing of the case through the courts in the state;

(g) protecting the interest of the abused child and the community in the state;

(h) reducing trauma to the abused child in the state;

(i) enhancing the community understanding of sexual abuse of children and serious physical abuse of children in the state; and

(j) providing as many services as possible that are required for the thorough and effective investigation of child abuse cases.

(4) To assist a center in fulfilling the requirements and statewide purposes as provided in Subsection (3), each center may obtain access to any relevant juvenile court legal records and adult court legal records, unless sealed by the court.

(5) The statewide purpose of this chapter is to establish a program that provides a comprehensive, multidisciplinary, nonprofit, intergovernmental response to sexual abuse of children and serious physical abuse of children in a facility known as a Children's Justice Center.

CHAPTER 377
H. B. 378
Passed February 22, 2001
Approved March 20, 2001
Effective July 1, 2001

APPROPRIATION FOR STATEWIDE TRAIL DEVELOPMENT

Sponsor: Fred J. Fife

This act appropriates $50,000 from the General Fund, for fiscal year 2001-02 only, to the Division of Parks and Recreation to develop and coordinate a program for a statewide trail system. This act takes effect on July 1, 2001.

This act enacts uncodified material.

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

Section 1. Appropriation.

(1) For fiscal year 2001-02 only, there is appropriated $50,000 from the General Fund to the Division of Parks and Recreation to develop and coordinate a program for a statewide trail system.

(2) The money appropriated in Subsection (1) is nonlapsing.

Section 2. Effective date.

This act takes effect on July 1, 2001.

H. C. R. 1
Passed January 26, 2001
Approved February 13, 2001
Effective February 13, 2001

RESOLUTION FOR A DAY OF REMEMBRANCE

Sponsor: Michael R. Styler

This concurrent resolution of the Legislature and the Governor designating January 27, 2001, as a Day of Remembrance to recognize the sacrifices of those affected by Cold War nuclear testing. The resolution expresses hope for peace, justice, healing, and reconciliation, and commitment not to let the tragedy be repeated.

Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:

WHEREAS, January 27, 2001, marks the 50th anniversary of the beginning of nuclear testing at the Nevada test site on January 27, 1951;

WHEREAS, many Utahns and many other citizens of the United States of America living downwind of those tests suffered as a result of being "active participants" in the nation's nuclear testing program; and

WHEREAS, uranium miners in Utah, Colorado, New Mexico, Arizona, and the Navajo Nation whose work fueled the nuclear weapons program also suffered from exposure to radiation:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the Governor concurring therein, designate January 27, 2001, as a Day of Remembrance to recognize the legacy of the Cold War and express hope for peace, justice, healing, reconciliation, and the fervent desire and commitment to assure that such a legacy will never be repeated.

BE IT FURTHER RESOLVED that the Legislature and the Governor recognize the sacrifices of the downwinders, uranium miners, and all other participants and victims of the Cold War, and their losses due to this tragedy.

BE IT FURTHER RESOLVED that a copy of this resolution be sent to Downwinders, Inc. and the members of Utah's congressional delegation.

H. C. R. 3
Passed February 19, 2001
Approved March 19, 2001
Effective March 19, 2001

RESOLUTION SUPPORTING FLAMING GORGE DAM AND RESERVOIR AND GLEN CANYON DAM AND LAKE POWELL

Sponsor: Gordon E. Snow
Jack A. Seitz
Bradley T. Johnson
Michael R. Styler
Don E. Bush
Merlynn T. Newbold
David N. Cox
Peggy Wallace
James A. Ferrin
David L. Hogue
James R. Gowans
John E. Swallow
Paul Ray
LaWanna Shurtliff
Karen W. Morgan
Chad E. Bennion
Ben C. Ferry
Brent D. Parker
Darin G. Peterson
Bryan D. Holladay
Stephen H. Urquhart
Douglas C. Aagard
Glenn A. Donnelson

This concurrent resolution of the Legislature and the Governor urges the United States Congress and Department of Interior officials to recognize and protect the benefits that Lake Powell, the Glen Canyon Dam, Flaming Gorge Reservoir, and Flaming Gorge Dam bring to U.S. citizens and to visitors from around the world. The resolution urges Congress and Department of Interior officials to oppose any effort to breach Glen Canyon Dam or Flaming Gorge Dam, or to drain Lake Powell or Flaming Gorge Reservoir.

Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:

WHEREAS, the existence of Glen Canyon Dam and Flaming Gorge Dam has allowed the seven Colorado River Basin states to share and cooperatively plan for the beneficial use of water for millions of citizens;

WHEREAS, Lake Powell and Flaming Gorge Reservoir provide water regulation and flood control capability in the Colorado River system for the citizens of the seven states;

WHEREAS, electric generating facilities at Glen Canyon Dam and Flaming Gorge Dam provide electricity to more than a million households;

WHEREAS, millions of visitors annually enjoy the recreational amenities and world-renown fisheries at Lake Powell and Flaming Gorge Reservoir; and

WHEREAS, the construction of the Glen Canyon Dam and the Flaming Gorge Dam has created a rich riparian habitat below the dams that did not previously exist:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the Governor concurring therein, urge the United States Congress and the Department of Interior officials to recognize and protect the water, power, recreation, and environmental benefits of Lake Powell and Flaming Gorge Reservoir, and the water regulation and flood control benefits to United States citizens from Glen Canyon Dam and Flaming Gorge Dam.

BE IT FURTHER RESOLVED that the Legislature and the Governor urge the United States Congress and Department of Interior officials to oppose any effort to breach or remove Glen Canyon Dam or Flaming Gorge Dam, or drain Lake Powell or Flaming Gorge Reservoir.

BE IT FURTHER RESOLVED that the Legislature and the Governor urge Congress and Department of Interior officials to prohibit the use of federal funds for any studies concerning the breaching or removal of Glen Canyon Dam, Flaming Gorge Dam, Lake Powell, or Flaming Gorge Reservoir.

BE IT FURTHER RESOLVED that copies of this resolution be sent to the President of the United States Senate, the Speaker of the United States House of Representatives, the members of Utah's congressional delegation, and Department of Interior officials.

H. C. R. 4
Passed February 9, 2001
Approved February 22, 2001
Effective February 22, 2001

RESOLUTION ON CENTENNIAL OF DAUGHTERS OF UTAH PIONEERS

Sponsor: Chad E. Bennion

This concurrent resolution of the Legislature and the Governor designates April 11, 2001 as International Society Daughters of Utah Pioneers Day and recognizes the Centennial of the International Society Daughters of the Utah Pioneers.

Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:

WHEREAS, the International Society Daughters of the Utah Pioneers is celebrating its 100th anniversary April 11, 2001;

WHEREAS, on April 11, 1901, 46 women, all descendants of the pioneers of 1847, met to organize a group whose objectives were to strengthen the bonds of friendship and love among the descendants of those who so faithfully braved the difficulties encountered in the founding of the territory;

WHEREAS, the group has become an international organization with members in almost every state and in Canada;

WHEREAS, the International Society Daughters of Utah Pioneers is nonpolitical and nonsectarian and was organized for historical, educational, and public purposes;

WHEREAS, the International Society Daughters of Utah Pioneers is dedicated to perpetuating the names and achievements of those men, women, and children who founded Utah;

WHEREAS, the International Society Daughters of Utah Pioneers seeks to encompass a broad scope of services ranging from preservation of historic landmarks to the education of thousands of school children and other citizens about their pioneer forbears;

WHEREAS, the objectives of the International Society Daughters of Utah Pioneers are accomplished by collecting pioneer artifacts, histories, maps, photographs, and manuscripts; providing a repository for pioneer artifacts and an open storage research center; preserving historical landmarks; publishing historical material relating to the pioneer period; marking historical places; and providing a speaker's forum for community gatherings;

WHEREAS, the International Society Daughters of Utah Pioneers has over 85 museums in the state of Utah and in other states;

WHEREAS, the International Society Daughters of Utah Pioneers has marked over 500 historical points of interest with plaques describing their historical significance;

WHEREAS, the International Society Daughters of Utah Pioneers has compiled over 100,000 pioneer histories and approximately 10,000 photographs; and

WHEREAS, the commitment of the International Society Daughters of Utah Pioneers to document and preserve the history of Utah and its people will be remembered with gratitude and appreciation for generations to come:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the Governor concurring therein, designate April 11, 2001 as International Society Daughters of Utah Pioneers Day and recognize the 100th anniversary of the founding of this great organization.

BE IT FURTHER RESOLVED that a copy of this resolution be sent to the International Society Daughters of Utah Pioneers.

H. C. R. 5
Passed February 21, 2001
Approved March 19, 2001
Effective March 19, 2001

RESOLUTION URGING HEALTH STUDY AND INFORMATION ABOUT NEVADA TEST SITE

Sponsor: LaWanna Shurtliff

This concurrent resolution of the Legislature and the Governor urges the United States Department of Health and Human Services to establish and fund a Nevada Test Site Fallout Health Effects Subcommittee and a Nevada Test Site Fallout Health Information Network to study the effects of fallout from the Nevada Test Site.

Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:

WHEREAS, beginning in 1951, the residents of Utah were involuntarily exposed to radiation released from the Nevada Test Site and were the

most heavily exposed population in the United States;

WHEREAS, since fallout from the Nevada Test Site began, many citizens of the state of Utah have developed cancers and other related health effects which may be due to radiation exposure;

WHEREAS, the federal government has authorized the creation and funding of six radiation exposure health effects subcommittees;

WHEREAS, five radiation exposure health subcommittees have already been established for sites producing far less radiation exposure than that created by the Nevada Test Site;

WHEREAS, the fifth committee was recently established, leaving only one remaining slot for a radiation exposure health effects subcommittee; and

WHEREAS, it is in the best interests of the people of Utah that the remaining radiation exposure health effects subcommittee be allocated to the Nevada Test Site:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the Governor concurring therein, urge the United States Department of Health and Human Services to establish and fund a Nevada Test Site Fallout Health Effects Subcommittee and a Nevada Test Site Fallout Health Information Network, with the regional headquarters to be located in the state of Utah.

BE IT FURTHER RESOLVED that a copy of this resolution be sent to the United States Secretary of Health and Human Services; the Deputy Assistant Secretary for Science Policy; the director of the Center for Disease Control and Prevention; and the administrator of the Agency for Toxic Substances and Disease Registry.

H. C. R. 8
Passed February 28, 2001
Approved March 15, 2001
Effective March 15, 2001

RESOLUTION ENCOURAGING UTAH COMMUNITIES TO PARTICIPATE IN NATURE-SAFE UTAH

Sponsor: Ralph Becker

This concurrent resolution of the Legislature and the Governor urges state and local partnerships to participate in the Nature-Safe Utah Initiative to help Utah communities to become disaster resistant through disaster prevention.

Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:

WHEREAS, the Utah Division of Comprehensive Emergency Management coordinates disaster prevention among Utah communities and desires to facilitate a statewide partnership with government, business, voluntary agencies, churches, and civic groups called Nature-Safe Utah;

WHEREAS, the goal of the partnership is to increase Utah disaster resistance;

WHEREAS, state emergency management agencies nationwide are responsible for coordinating new congressional emphases in disaster prevention, requiring local governments to address disaster prevention through planning, broad-based community involvement, and implementation;

WHEREAS, members of related state and federal agencies are able to combine their talents, expertise, and available resources in a coordinated manner to partnership with interested local governments in disaster resistance;

WHEREAS, disaster prevention is different in concept and implementation from disaster preparedness, response, and recovery, involving the mitigation of hazards that might cause disasters;

WHEREAS, Utah, as other states, desires to do its part in reducing the national, state, and local cost of natural disasters;

WHEREAS, each community should assume there is a disaster in its future and that prevention is part of maintaining a sustainable community;

WHEREAS, all elements of communities benefit from disaster prevention;

WHEREAS, much remains to be done statewide in disaster prevention, which is best accomplished at the local level, with state coordination; and

WHEREAS, the Utah Division of Comprehensive Emergency Management is promoting Nature-Safe Utah for the coordinating emphasis in disaster prevention, as it relates to the new national emphasis:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the Governor concurring therein, urge state and local partnerships to participate in the Nature-Safe Utah initiative to help Utah communities in disaster prevention efforts.

BE IT FURTHER RESOLVED that the Legislature and the Governor support the spirit and concept of the Utah Comprehensive Emergency Management's Nature-Safe Utah Initiative so that Utah can more effectively accelerate statewide efforts in disaster prevention.

BE IT FURTHER RESOLVED that a copy of this resolution be sent to the Utah Division of Comprehensive Emergency Management.

H. C. R. 10
Passed February 28, 2001
Approved March 19, 2001
Effective March 19, 2001

RESOLUTION ON HOUSING PRESERVATION

Sponsor: David Litvack

This concurrent resolution of the Legislature and the Governor urges the United States Congress to make the preservation of federally subsidized, project-based low income housing a top priority. The resolution urges Congress to work with the state of Utah to form public and private partnerships to resolve affordable housing problems.

Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:

WHEREAS, there is a critical need for low income affordable housing throughout the state of Utah;

WHEREAS, this need is partially met by the thousands of federally subsidized, project-based low income housing units in the state;

WHEREAS, federally subsidized, project-based low income housing assists some of Utah's senior citizens, people with disabilities, and single parent and working poor families;

WHEREAS, the federally subsidized low income housing contracts expire over the next five years;

WHEREAS, many of the these federally subsidized low income housing contracts may not be renewed and the housing units they provide could be lost from the state's already severely limited low income housing inventory; and

WHEREAS, the loss of this housing could be harmful to the residents served and would have a serious impact on low income housing efforts statewide:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the Governor concurring therein, urge the United States Congress to make the preservation of federally subsidized, project-based low income housing properties a top priority.

BE IT FURTHER RESOLVED that the Legislature and the Governor urge Congress to work with the state of Utah to form public and private partnerships in all potentially affected communities for the purpose of designing the best local solution to the affordable housing problem.

BE IT FURTHER RESOLVED that a copy of this resolution be sent to the President of the United States Senate, the Speaker of the United States House of Representatives, the Utah Division of Community Development and the Olene Walker Housing Trust Fund.

H. C. R. 11
Passed February 28, 2001
Approved March 19, 2001
Effective March 19, 2001

RESOLUTION URGING FEDERAL FUNDING TO FIGHT GRASSHOPPER AND CRICKET INFESTATIONS

Sponsor: Darin G. Peterson

This concurrent resolution of the Legislature and the Governor urges the United States Congress to appropriate the funds necessary to fight cricket and grasshopper infestation in the state of Utah.

Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:

WHEREAS, 1.25 million acres of land in the state of Utah is infested with crickets and grasshoppers;

WHEREAS, $22.5 million in crop losses have occurred in Box Elder and Tooele counties alone, with an additional $5 million in damages in 16 other counties resulting from the infestation;

WHEREAS, crickets and grasshoppers have migrated from federal land, where no insecticides were sprayed, to surrounding private lands;

WHEREAS, on March 15, 2000, Governor Leavitt issued a declaration of agricultural emergency, sought federal disaster relief, and issued a letter to the United States Department of Agriculture seeking federal commodity credit corporation funds for the relief of affected Utah farmers;

WHEREAS, during 1999 and 2000, available state funds and limited federal assistance were used to treat affected lands, but little progress was made because the bulk of the federal assistance came late in the treatment season;

WHEREAS, the cricket and grasshopper infestation will be larger in 2001, with continued large economic losses to property owners and agricultural operators;

WHEREAS, available state funds will be insufficient to adequately control the situation; and

WHEREAS, since the problem originated on federal lands, the federal government should fund a substantial portion of the effort to eliminate the infestation and assist those whose livelihood has been devastated:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the Governor concurring therein, urges the United States Congress to provide funds sufficient to relieve Utahns of the devastating economic impact of the state's cricket and grasshopper infestation.

BE IT FURTHER RESOLVED that a copy of this resolution be sent to the President of the United States Senate, the Speaker of the United States House of Representatives, the United States Department of Agriculture, and the members of Utah's congressional delegation.

H. J. R. 1
Passed January 22, 2001
Effective January 22, 2001

JOINT RULES RESOLUTION - AMENDMENTS TO PROCESSES

Sponsor: Chad E. Bennion

This joint resolution modifies the Legislature's Code of Official Conduct to allow legislators to contract with the state using any method authorized by the Utah Procurement Code. This resolution takes effect upon approval by both the House and Senate.

This resolution affects legislative rules as follows:

AMENDS:
JR-16.03

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

Section 1. JR-16.03 is amended to read:

JR-16.03. Code of Official Conduct.

In judging its members, the Senate and House Ethics Committees have the following guidelines:

(1) (a) Members of the Senate and House shall not engage in any employment or other activity that would destroy or impair their independence of judgment.

(b) Members of the Senate and House may not be paid by a person, as defined in Joint Rule 16.06, to lobby, consult, or to further the interests of any legislation or legislative matter.

(2) Members of the Senate and House shall not exercise any undue influence on any governmental entity.

(3) Members of the Senate and House shall not engage in any activity that would be an abuse of official position or a violation of trust.

(4) Members of the Senate and House may engage in business or professional activity in competition with others, but shall not use any information obtained by reason of their official position to gain advantage over any competition for activities with the state and its political subdivisions.

(5) Members of the Senate and House shall not engage in any business relationship or activity that would require the disclosure of confidential information obtained because of their official position.

(6) Members of the Senate and House shall not use their official position to secure privileges for themselves or others.

(7) While in session, members of the Senate and House shall disclose any conflict of interest on any legislation or legislative matter as provided in JR-16.05.

(8) Members of the Senate and House may accept small gifts, awards, or contributions if these favors do not influence them in the discharge of official duties.

(9) Members of the Senate and the House may engage in business or professional activities with the state or its political subdivisions if the activities are entered into under the same conditions and in the same manner applicable to any private citizen or company engaged in similar activities. Legislators may enter into transactions with the state by contract [~~after public notice and competitive bidding~~] by following the procedures and requirements of Title 63, Chapter 56, Utah Procurement Code.

Section 2. Effective date.

This resolution takes effect upon approval by a constitutional majority vote of all members of the Senate and House of Representatives.

H. J. R. 2
Passed February 9, 2001
Effective February 9, 2001

RESOLUTION ON SOCIAL SECURITY

Sponsor: James A. Ferrin
Stephen D. Clark
Roger E. Barrus
Rebecca D. Lockhart
Matt Throckmorton
Glenn L. Way
David Ure
Mike Thompson
David N. Cox
Peggy Wallace
Kevin S. Garn

This joint resolution of the Legislature urges Congress to enact legislation which enhances and modernizes Social Security, allowing workers, in addition to the existing public option, a private option to direct their Social Security tax contributions to individually owned separate accounts.

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

WHEREAS, Social Security is a federal program that requires almost unanimous participation by employed workers in the state of Utah and throughout the United States;

WHEREAS, the retirement portion of the Social Security tax is high, having risen from an initial rate of 1% of the first $3,000 of a worker's income, up to a maximum of $30 per year, to the present rate of 12.4% of the first $80,400 of employee wages or self-employment income up to a maximum of $830.80 per month or $9,969.60 per year;

WHEREAS, the maximum Social Security retirement tax, paid by almost 11 million workers, has risen 5.51% in 2001 over the year 2000, and is now 57% higher than in 1990;

WHEREAS, because neither the employee's direct tax contribution to Social Security nor the

employer's contribution on the employee's behalf appears on the employee's federal tax return, few employees understand the amount of Social Security retirement tax they actually pay each month;

WHEREAS, individuals can estimate their own Social Security tax cost by estimating 1% of annual compensation paid each month -- for example, an annual income of $30,000 would yield an estimated monthly Social Security retirement tax cost of $300 per month;

WHEREAS, the Social Security retirement tax consumes nearly every dollar that many workers of modest income might otherwise be able to save and invest;

WHEREAS, because higher income workers are better able to save and invest over and above the amounts paid in Social Security taxes, escaping Social Security dependence, but modest income workers cannot, the system creates disproportionate dependence on the system by low and middle-income workers;

WHEREAS, for many lower income American workers, the Social Security retirement tax represents virtually all of the monthly retirement savings they assemble;

WHEREAS, with the individual retirement benefit currently ranging from a low of just a few dollars per month to a high of approximately $1,400 per month, and the average monthly retirement benefit currently at about $845 per month, Social Security retirement benefits amount to a below poverty level subsistence for many retirees;

WHEREAS, although Social Security was originally intended to merely supplement other core retirement income sources, the high tax rate prohibits many workers from ever adequately saving and investing, and as a consequence, Social Security has become the core retirement income source for many Americans;

WHEREAS, national demographics have shifted significantly since the system was created as a part of President Roosevelt's New Deal policies;

WHEREAS, in 1945, 41.9 workers supported each retiree, and today just 3.3 workers support each retiree;

WHEREAS, the ratio is expected to dwindle to 2 workers per retiree within the next 30 years, making the current system unsustainable;

WHEREAS, tax receipts currently exceed benefit payments, yet, Social Security Trustees estimate that benefit payments will exceed tax receipts, producing annual deficits, beginning in approximately 15 years, or the year 2015;

WHEREAS, the Social Security Trustees estimate the cumulative annual deficits for years 2015 through 2075 to reach $21.6 trillion;

WHEREAS, it is unethical to perpetuate a system that accrues benefits for a current generation of retirees at the expense of younger workers who will likely never collect benefits but will inherit the mounting debt;

WHEREAS, the current system is unfair to future retirees because after a lifetime of paying into the system, a worker retains no legal right nor claim to any amount or benefit, but is subject to future congresses who will set the benefit rates;

WHEREAS, the current system is unfair to those who die prematurely because it is possible to pay for a lifetime into the system yet draw only minimal benefit or even no benefit prior to death and leave no residual value to any heir;

WHEREAS, the current system is unfair to widows and widowers because they must forego either their own benefit or their deceased spouse's benefit ("widow(er)" benefit), and may claim the widow(er) benefit only after attaining qualification age themselves regardless of the age of the deceased spouse;

WHEREAS, the current system is unfair to women who leave employment to raise families because many women in Utah and throughout the United States work and pay retirement taxes into the system for many years but never complete the required 10 years or 40 quarters, before leaving employment, making them ineligible for retirement benefits;

WHEREAS, the system is unfair to some ethnic minorities, including African-Americans, whose life expectancies are shorter and will typically collect benefits for a shorter time period;

WHEREAS, retirement security is best achieved by regularly saving and investing one's own money over a lifetime of work, and public policy regarding Social Security should support, facilitate, and encourage saving rather than discourage or deter it;

WHEREAS, the objective of Social Security privatization is for individual workers to have legal ownership in a retirement asset that can be used and ultimately passed on to heirs;

WHEREAS, even with modest return assumptions, the private, individually owned account can be expected to produce a significantly enhanced retirement income;

WHEREAS, private, individually owned accounts accrue value and future benefits to the workers regardless of future congressional actions;

WHEREAS, private, individually owned accounts grow on behalf of the worker whether or not the worker completes 40 quarters of contributions;

WHEREAS, private, individually owned accounts can be passed on by inheritance to spouses, children, or grandchildren, affording an opportunity for long-term inter-generational wealth accumulation;

WHEREAS, a national system of private, individual accounts can be perpetuated without end and without concern for projected dates of insolvency;

WHEREAS, private, individual accounts afford workers the opportunity to select from among multiple investment options, including government bonds or prudent, diversified investment models like those used by large pension or endowment funds;

WHEREAS, workers around the world are embracing privatized systems as a workable solution to an overburdened government Social Security program;

WHEREAS, the successful pioneer Chilean model was commenced 20 years ago with at least seven other Latin American countries following suit;

WHEREAS, Great Britain, Australia, and Singapore have also adopted private options, similar reforms are underway in Russia, Hungary, Poland, and Kazakhstan, and the People's Republic of China have embraced a private option with workers contributing one-half of their retirement funds into an individual account system since 1996;

WHEREAS, some U. S. workers have enjoyed a private account system as certain municipalities, including Galveston, Texas were allowed to opt out of Social Security in favor of a privatized system prior to 1981; and

WHEREAS, since many Americans are unable to save and invest for retirement beyond the 12.4% payroll tax, a privatized Social Security option may be the only hope for many lower income or economically disadvantaged Americans to achieve financial empowerment and retirement security:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah urge the United States Congress to enact legislation to allow individual workers to choose to remain in the current system or to select a private account option.

BE IT FURTHER RESOLVED that the Legislature urge that the legislation not disrupt the benefits paid to existing Social Security recipients.

BE IT FURTHER RESOLVED that the legislation create private accounts to be owned and controlled by individual employees or workers, allow the individual employee or worker discretion to invest among multiple prudent and diversified investment options, and create minimum guaranteed income, disability, and death benefits in the private account.

BE IT FURTHER RESOLVED that a copy of this resolution be sent to the Speaker of the United States House of Representatives, the President of the United States Senate, and the members of Utah's congressional delegation.

H. J. R. 3
Passed January 29, 2001
Effective January 29, 2001

JOINT RESOLUTION APPROVING APPOINTMENT OF DIRECTOR

Sponsor: Kevin S. Garn

This joint resolution of the Legislature approves the appointment of Michael E. Christensen as the Director of the Office of Legislative Research and General Counsel.

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

WHEREAS, pursuant to Utah Code Annotated (1953), Section 36-12-7, the Legislative Management Committee has recommended the appointment of Michael E. Christensen as Director of the Office of Legislative Research and General Counsel; and

WHEREAS, the appointment of Michael E. Christensen in this position for a term of office of six years commencing December 1, 2000, is subject by statute to the further approval by a majority vote of both the House of Representatives and the Senate:

NOW, THEREFORE, BE IT RESOLVED by the Legislature of the state of Utah that Michael E. Christensen's appointment as Director of the Office of Legislative Research and General Counsel for the Utah Legislature is approved for a six-year term of office commencing December 1, 2000.

H. J. R. 5
Passed January 24, 2001
Effective January 24, 2001

JOINT RULES RESOLUTION - REFERENCE TO MASON'S MANUAL

Sponsor: Wayne A. Harper

This joint resolution modifies House rules by establishing Mason's Manual of Legislative Procedure as a reference for parliamentary procedure. This resolution takes effect upon passage by the House and Senate.

This resolution affects legislative rules as follows:

REPEALS AND REENACTS:
JR 11.01

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

Section 1. JR 11.01 is repealed and reenacted to read:

JR-11.01. Mason's Manual of Legislative Procedure; Reference.

[~~Where not otherwise specified in these rules, the proceedings of the Legislature, their committees, and subcommittees shall be conducted in accordance with Mason's Manual of Legislative Procedure.~~] In addition to legislative rules, the presiding officer may use Mason's Manual of Legislative Procedure as a reference when a question arises about parliamentary practice, legislative process, or legislative procedure that is

not resolved by reference to legislative rules.

Section 2. Effective date.

This resolution takes effect upon approval by a constitutional majority vote of all members of the Senate and House of Representatives.

H. J. R. 6
Passed February 15, 2001
Effective February 15, 2001

RESOLUTION URGING CONGRESS TO REGULATE POLL CLOSING

Sponsor: Carl R. Saunders

This joint resolution of the Legislature urges Congress to require that the nation's polling places in the Eastern, Central, Mountain, and Pacific time zones close at the same time when participating in a general election. The Legislature urges that Congress review the various problems with the 2000 General Election vote for the Presidency.

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

WHEREAS, during election night in 2000, television networks made declarations of victory for both candidates for President of the United States before the polls had closed;

WHEREAS, in one erroneous declaration, the winner of the eventually decisive state of Florida was announced hours before polls in the western region of the nation were closed and before all polls in western Florida had closed;

WHEREAS, when news services declare winners before the nation's polls close, voters in states where polls are not yet closed may conclude that their vote will not affect the outcome and choose not to vote;

WHEREAS, releasing the vote count results for states whose polls are closed before the closure of polling places in other regions of the country can distort the results of an election by suggesting that votes not yet cast will have no bearing on the outcome;

WHEREAS, in close races like the most recent election of President of the United States, declarations of victory before polls close can affect the outcome of the vote;

WHEREAS, a uniform poll closing time would prevent the publicizing of early election returns in one region of the nation from impacting the vote in other regions;

WHEREAS, if a uniform poll closing time was established for the Eastern, Central, Mountain, and Pacific time zones, polling places in western regions of the country could open earlier on the morning of election day to compensate for their earlier closing time; and

WHEREAS, uniform poll closing times in these time zones would significantly reduce the possibility that an election could be tainted by premature declarations of victory:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah urge the United States Congress to institute uniform poll closing times for states in the Eastern, Central, Mountain, and Pacific time zones.

BE IT FURTHER RESOLVED that the United States Congress review the factors that contributed to the problems in the 2000 General Election vote for the Presidency of the United States.

BE IT FURTHER RESOLVED that a copy of this resolution be presented to the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of Utah's congressional delegation.

H. J. R. 7
Passed January 31, 2001
Effective January 31, 2001

RESOLUTION ON COMPENSATION OF IN-SESSION EMPLOYEES

Sponsor: Marda Dillree

This joint resolution of the Legislature fixes the compensation for legislative in-session employees for 2001. This resolution provides retrospective operation.

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

WHEREAS, the Legislature acting under the authority of Section 36-2-2, Utah Code Annotated 1953, is required to fix the compensation of its in-session employees by joint resolution:

NOW, THEREFORE, BE IT RESOLVED by the Legislature of the state of Utah that the compensation of legislative in-session employees for actual hours worked be fixed as follows: Emplo yees working for the Legislature for the first time shall be paid under the "Step 1" scale. Employees working a second session for the Legislature may be paid under the "Step 2" scale. Employees working three sessions for the Legislature may be paid under the "Step 3" scale. Employees working four sessions for the Legislature may be paid under the "Step 4" scale. Employees working five or more sessions for the Legislature may be paid under the "Step 5" scale.

Senate employees are designated with an "S". House of Representative employees are designated with an "H".

	Step 1	Step 2	Step 3	Step 4	Step 5
Amending Clerk/Committee Secretary (H-S)	9.43	9.69	9.96	10.23	10.52
Docket Clerk (H-S)	9.18	9.43	9.69	9.96	10.23
Page Supervisor (H-S)	10.52	10.80	11.10	11.41	11.72
Sergeant-at-Arms (H-S)	10.52	10.80	11.10	11.41	11.72
Secretarial Supervisor (H-S)	10.52	10.80	11.10	11.41	11.72
Reading, Amending, and Enrolling Clerk (H)	9.43	9.69	9.96	10.23	10.52
Assistant Page Supervisor (H-S)	8.94	9.18	9.43	9.69	9.96
Assistant Sergeant-at-Arms (H-S)	8.94	9.18	9.43	9.69	9.96

Receptionist and Legislative Aide (S)	7.39	7.59	7.80	8.02	8.24
Bill Status Clerk (S)	8.24	8.46	8.70	8.94	9.18
Committee Secretary (H–S)	9.18	9.43	9.69	9.96	10.23
Admin. Asst. to Third House (H)	9.18	9.43	9.69	9.96	10.23
Public Address System/Computer Operator (S)	8.24	8.46	8.70	8.94	9.18
Public Information Officer (H–S)	8.24	8.46	8.70	8.94	9.18
Telephone Information Officer (H)	8.24	8.46	8.70	8.94	9.18
Legislative Tour Guide (H–S)	8.24	8.46	8.70	8.94	9.18
Page (H–S)	8.24	8.46	8.70	8.94	9.18
Public Address Operator (H)	8.24	8.46	8.70	8.94	9.18
Security (H–S)	8.24	8.46	8.70	8.94	9.18
Custodian (S)	6.28	6.45	6.63	6.81	7.00
Hostess and Aide to Third House (H–S)	8.24	8.46	8.70	8.94	9.18
Supply Clerk (H)	6.81	7.00	7.19	7.39	7.59
Voting Machine Operator (H)	9.18	9.43	9.69	9.96	10.23

H. J. R. 10
Passed February 22, 2001
Effective February 22, 2001

RESOLUTION RECOGNIZING BILL OF RIGHTS DAY

Sponsor: J. Morgan Philpot
Carl R. Saunders
DeMar Bud Bowman
Max W. Young
David L. Hogue
James A. Ferrin
Glenn A. Donnelson
Bryan D. Holladay
Rebecca D. Lockhart
Carl W. Duckworth
Kevin S. Garn
Jeff Alexander
Stephen D. Clark
Paul Ray
Merlynn T. Newbold
Don E. Bush
Margaret Dayton
A. Lamont Tyler
Sheryl L. Allen
Neal B. Hendrickson
Craig W. Buttars
Bradley T. Johnson
Stephen H. Urquhart
Matt Throckmorton
Jackie Biskupski
Mike Thompson
Greg J. Curtis

This joint resolution of the Legislature designates December 15, 2001 as Bill of Rights Day in the state of Utah. The resolution urges government entities in the state to appropriately observe Bill of Rights Day, and that the Bill of Rights be read in public schools and in the Legislature.

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

WHEREAS, the first ten amendments to the United States Constitution are referred to as the Bill of Rights, which limit and define the powers of government;

WHEREAS, the Bill of Rights recognizes, affirms, and protects fundamental, individual human rights for which the human race has struggled for thousands of years;

WHEREAS, the Bill of Rights secures freedom to speak, print, read, assemble, pray, petition the government, and keep and bear arms;

WHEREAS, the Bill of Rights protects Americans from unreasonable arrests, searches, excessive bail, double jeopardy, coerced confessions, and cruel and unusual punishment;

WHEREAS, the Bill of Rights secures rights to due process, jury trials, counsel, and to present witnesses;

WHEREAS, designating a Bill of Rights Day would help prevent the Bill of Rights from being forgotten;

WHEREAS, since many Americans are not familiar with the Bill of Rights, Bill of Rights Day would encourage schools to instruct students about this vital aspect of American heritage;

WHEREAS, designating a Bill of Rights Day would demonstrate to the world Utah's commitment to fundamental human rights;

WHEREAS, just as celebrating religious holidays reminds Americans of their religious beliefs and traditions, Bill of Rights Day would remind Utahns of the manner in which its history and philosophy have secured the rights for which oppressed people everywhere still yearn;

WHEREAS, Bill of Rights Day would remind elected and appointed officials and employees of the state and local executive, legislative, and judicial branches of government that their authority and powers are limited;

WHEREAS, Bill of Rights Day would remind all members of government that they serve the citizens and that the citizens always hold the right to restrain government;

WHEREAS, the rights and freedoms guaranteed by the Bill of Rights deserve celebration, and the sacrifices made to protect the Bill of Rights deserve remembrance; and

WHEREAS, the Bill of Rights of the United States Constitution was ratified on December 15, 1791:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah designate December 15, 2001 as Bill of Rights Day in the state of Utah.

BE IT FURTHER RESOLVED that the Legislature urges all governmental entities in Utah to observe Bill of Rights Day in a manner that brings to mind the meaning and importance of each of the ten provisions contained in the Bill of Rights.

BE IT FURTHER RESOLVED that the

Legislature urges that on Bill of Rights Day, or on the first business day afterwards, the Bill of Rights be read in all public schools and in all government meetings and courtrooms.

BE IT FURTHER RESOLVED that on the first day of the 2002 General Session of the Legislature, the Bill of Rights be read aloud in its entirety in both houses of the Legislature.

BE IT FURTHER RESOLVED that a copy of this resolution be sent to Governor Michael O. Leavitt, the Utah Supreme Court, the Utah Association of Counties, and the Utah League of Cities and Towns.

BE IT FURTHER RESOLVED that the Legislature and other government entities work with civic organizations and groups to disseminate copies of the Bill of Rights to schools and to communicate the importance of the Bill of Rights to our American representative democracy.

H. J. R. 11
Passed February 27, 2001
Effective February 27, 2001

RESOLUTION URGING TRAINING OF JUDGES

Sponsor: Mike Thompson

This joint resolution of the Legislature urges the Judicial Council to provide Utah's judges with training in parental rights.

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

WHEREAS, Utah's judges are frequently required to make determinations that can significantly impact the lives of children and their parents;

WHEREAS, currently, judges receive training regarding the rights of children in the judicial system;

WHEREAS, judges should also receive training on the rights of parents to ensure that their legal determinations benefit from increased access to the full range of potential issues that surface among family members in the judicial system;

WHEREAS, the rights of children and parents should be weighed and considered carefully when making judgments that may affect families for years to come; and

WHEREAS, training in both child and parental rights would ensure a balanced approach to issues coming before Utah's judges:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah urge the Judicial Council to provide Utah's judges with training in issues relating to parental rights in addition to training in children's rights.

BE IT FURTHER RESOLVED that a copy of this resolution be sent to the Judicial Council.

H. J. R. 13
Passed February 5, 2001
Effective February 5, 2001

RESOLUTION RECOGNIZING SESQUICENTENNIAL OF OGDEN CITY

Sponsor: Joseph G. Murray

This joint resolution of the Legislature recognizes the Sesquicentennial of Ogden City. The resolution encourages former and current citizens of Ogden and all citizens of Utah to join in celebrating the sesquicentennial.

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

WHEREAS, in August 1847 a group of Mormon scouts, including Captain James Brown, visited a small fort on the Weber River built by Miles Goodyear, a fur trapper, and found the first buildings built by a white man in what was to become the state of Utah;

WHEREAS, Brigham Young instructed Captain Brown to purchase the fort and the surrounding lands;

WHEREAS, the fort, which consisted of several buildings, a land area of 400 square miles, cattle, goats, sheep, and a $10 cat, were purchased from Miles Goodyear by Captain Brown with funds from the Mormon Battalion for $1,950;

WHEREAS, a new Mormon colony, called Brownsville, was established at this location;

WHEREAS, in 1849 Brigham Young visited the area and recommended the layout of a community which he called Ogden, named after Peter Skene Ogden, a Hudson Bay fur trapper;

WHEREAS, on February 8, 1851, less than five years after the initial purchase of the area, the Territorial Legislature incorporated the City of Ogden as a legal entity;

WHEREAS, from this beginning the citizens of Ogden, as well as a group of courageous, wise, and progressive leaders and entrepreneurs with foresight and tenacity, have built a beautiful and diverse community where agriculture, railroading, and industrial technology have maintained and strengthened a regional economy;

WHEREAS, the residents of Ogden are proud of their colorful and diverse heritage, honor the past, celebrate the present, and anticipate a bright and promising future; and

WHEREAS, the Ogden Sesquicentennial Committee has scheduled a variety of events and activities for the 150th anniversary year of Ogden City:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah recognizes the Sesquicentennial of the City of Ogden and encourages former and current citizens of Ogden and the citizens of Utah to join in celebrating this

important anniversary.

BE IT FURTHER RESOLVED that the Legislature expresses its best wishes for Ogden City's successful year-long celebration.

BE IT FURTHER RESOLVED that a copy of this resolution be sent to Ogden City.

H. J. R. 14
Passed February 28, 2001
Effective February 28, 2001

RESOLUTION SUPPORTING COUNTIES' EXPANSION OF CORRECTIONAL FACILITIES

Sponsor: Thomas V. Hatch

This joint resolution of the Legislature supports Beaver, Cache, Emery, Millard, Sanpete, and Uintah Counties' expansion of their correctional facility capacity by contracting with the Utah Department of Corrections.

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

WHEREAS, counties contract with the Department of Corrections to provide prison bed space for state prisoners;

WHEREAS, this contracting arrangement has proven beneficial to both the state and counties and saved the taxpayers from the burden of building new state correctional facilities while at the same time assisting counties to meet their own correctional space needs; and

WHEREAS, contracting with the Utah Department of Corrections for additional prison bed space would greatly assist the state and Beaver, Cache, Emery, Millard, Sanpete, and Uintah Counties' efforts to have sufficient capacity to house their prison populations:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah supports jail expansion as beneficial to both the state and Beaver, Cache, Emery, Millard, Sanpete, and Uintah Counties.

BE IT FURTHER RESOLVED that a copy of this resolution be sent to the Beaver, Cache, Emery, Millard, Sanpete, and Uintah County Commissions and the Utah Department of Corrections.

H. J. R. 15
Passed February 27, 2001
Effective February 27, 2001

RESOLUTION RESCINDING THE CALL FOR CONSTITUTIONAL CONVENTION

Sponsor: Fred J. Fife
Don E. Bush
Neal B. Hendrickson
Richard M. Siddoway
David L. Hogue
James R. Gowans
Glenn A. Donnelson
Max W. Young
Carl W. Duckworth
DeMar Bud Bowman
Matt Throckmorton
Scott Daniels
Neil A. Hansen
Mike Thompson
Martin R. Stephens
Darin G. Peterson
Stephen D. Clark
David N. Cox
Duane E. Bourdeaux
Joseph G. Murray
Carl R. Saunders
LaWanna Shurtliff
Cindy Beshear
Ty McCartney
Peggy Wallace
Glenn L. Way
Michael R. Styler
Judy Ann Buffmire
Merlynn T. Newbold
Brad King
Sheryl L. Allen
J. Morgan Philpot
David Ure
Craig W. Buttars
Jack A. Seitz
Katherine M. Bryson
Carol Spackman Moss
David Litvack
Roger E. Barrus
Stephen H. Urquhart

This joint resolution of the Legislature urges the repealing, rescinding, and superseding of any and all existing applications to Congress for a constitutional convention previously made by the Legislature of the state of Utah. The resolution urges other states to take the same action.

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

WHEREAS, the Legislature of the state of Utah, acting with the best of intentions, has, at various times, previously made applications to the Congress of the United States of America for one or more constitutional conventions for general purposes or for the limited purposes of considering amendments to the Constitution of the United States of America on various subjects and for various purposes;

WHEREAS, former Justices of the United States Supreme Court and other leading constitutional scholars are in general agreement that a constitutional convention, notwithstanding whatever limitations have been specified in the applications of the several states for a convention, would have within the scope of its authority the complete redrafting of the Constitution of the United States of America, thereby creating an imminent peril to the well-established rights of the people and to the constitutional principles under which we are presently governed;

WHEREAS, the Constitution of the United States of America has been amended many times in the

history of the nation and may yet be amended many more times, and has been interpreted for 200 years and been found to be a sound document which protects the rights and liberties of the people without the need for a constitutional convention;

WHEREAS, there is no need for--rather, there is great danger in--a new constitution, the adoption of which would only create legal chaos in America and only begin the process of another two centuries of litigation over its meaning and interpretation; and

WHEREAS, such changes or amendments as may be needed in the present Constitution may be proposed and enacted, pursuant to the process provided therein and previously used throughout the history of this nation, without resort to a constitutional convention:

NOW, THEREFORE, BE IT RESOLVED by the Legislature of the state of Utah that any and all existing applications to the Congress of the United States of America for a constitutional convention or conventions heretofore made by the Legislature of the state of Utah under Article V of the Constitution of the United States of America for any purpose, whether limited or general, be hereby repealed, rescinded, and canceled and rendered null and void to the same effect as if the applications had never been made.

BE IT FURTHER RESOLVED that the Legislature of the state of Utah urges the legislatures of each and every state which have applied to Congress for either a general or a limited constitutional convention to repeal and rescind the applications.

BE IT FURTHER RESOLVED that a copy of this resolution be sent to presiding officers of both houses of the legislatures of each of the other states of the Union, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to the members of Utah's congressional delegation.

H. J. R. 16
Passed February 28, 2001
Effective February 28, 2001

MASTER STUDY RESOLUTION

Sponsor: Kevin S. Garn

This joint resolution of the legislature directs the legislative management committee to assign items of study to the appropriate interim committee. The resolution requests a report to the legislature in the 2002 annual general session.

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

WHEREAS, the Legislative Management Committee is created by law as a permanent committee to receive and assign matters for the interim study of the Legislature; and

WHEREAS, the 54th Legislature has determined that certain legislative issues require additional investigation and study:

NOW, THEREFORE, BE IT RESOLVED that the Legislative Management Committee assign to the appropriate interim committee the duty to study and make recommendations for legislative action they consider necessary to the 54th Legislature in the 2002 Annual General Session, from the following items of study.

BE IT FURTHER RESOLVED that the Legislative Management Committee, in making study assignments from this list and in approving study requests for individual committees, give consideration to the available time of legislators and the budget and capacity of staff to respond adequately to the number and complexity of the assignments given.

1. Appropriation Intent Language Process – to study whether certain intent items not related to a specific appropriation should be placed in a separate bill.

2. Tobacco Settlement Appropriations – to study the appropriation of tobacco settlement funds and other related issues.

3. Ways and Means Committee – to study eliminating the various subcommittees on appropriations and establishing a Ways and Means Committee.

4. Age Discrimination – to study age discrimination in employment. (SB 133)

5. Alcoholic Beverage Funds – to study with input from the Governor's Council on Driving Under the Influence the funding formula and permitted uses for the alcoholic beverage funds, liquor control profits, and proceeds of the beer excise tax, appropriated annually to municipalities and counties under Section 32A-1-115.

6. Construction Contracts – Prompt Payment – to study whether to require set time frames for payment of obligations under construction contracts. (4th Sub. SB 219)

7. Construction Services – to study whether to create a new division to administer all construction-related activities including licensing and contracts.

8. Consumer Credit Reporting Laws – to study issues related to fair and accurate consumer credit reporting. (SJR 7)

9. Consumer Protection – to study issues related to consumer protection. (HB 82, 2000 General Session)

10. Credit Union Member Access to Information – to study ways to grant members of credit unions access to certain information related to compensation and expense reimbursements of credit union executives. (HB 294)

11. Financial Institutions Practices – to study

various practices including usury laws and interest rate caps.

12. Formation of Quality Growth Areas – to study and work with the Utah Quality Growth Commission to help define and determine how to implement quality growth areas and to identify barriers to growth in state statute.

13. Group Insurance Programs – to study whether to modify the group insurance program's risk pools. (SB 260)

14. Industrial Loan Corporations – to study statutory revisions relating to industrial loan corporations chartered in Utah.

15. Insuring Deposits – to study whether to modify the definition of "qualified depository" to require that deposits be insured by the Federal Deposit Insurance Corporation. (HB 372)

16. License Preemption – to study state preemption of the duties of state license holders.

17. Mobile Home Issues – to study issues related to mobile home owners and mobile home park owners. (SB 43)

18. Mobile Home Park Dispute Resolution – to study whether to allow controversies between mobile home park owners and residents to be submitted to mediation and arbitration and to have the mediation and arbitration conducted through the Office of the Private Property Ombudsman. (2nd Sub. HB 96)

19. Mobile Home Residency Act – to study issues related to a Mobile Home Residency Act. (SB 166, SB 77, HB 96)

20. Penalties for Misuse of Securities – to study whether to increase penalties for misuse of securities.

21. Predatory Mortgage Lending – to study ways to control high cost loans and study moving mortgage registration from the Division of Real Estate to the Department of Financial Institutions.

22. Protection of Trademarks – to study issues related to the registration and protection of trademarks. (1st Sub. SB 218)

23. Tourism Funding – to study the potential economic impact of increased funding of tourism promotion on Utah and the value of a tourism performance marketing fund.

24. Wage Payment Practices – to study issues related to wage payment practices.

25. Wage Withholding – to study unlawful wage withholding practices.

26. Biennial Education Budget Cycle – to study the feasibility of going to a biennial budget cycle for the purpose of funding public education.

27. Charter Schools – to study local and chartering agencies and different funding formulas for charter schools.

28. Classroom Amplification – to study whether to provide audio amplification devices and equipment to public school classrooms. (HB 100)

29. Compulsory Education – to study the elimination of compulsory education laws.

30. Education IRA's for Private School Instruction – to study IRA-type accounts for use by parents to educate their children outside the public school system.

31. Educational Endowment Fund – to study whether to send revenue from state trust lands currently allocated to public schools to an endowment fund account, to infuse the balance with private donations solicited by an account manager, and to determine when the account is mature enough to fund public education.

32. Electronic High School – to study issues related to electronic high schools.

33. Equity in Tuition Benefits – to study equity in tuition benefits for children of higher education employees.

34. Full-time Teachers – to study the hiring of some teachers full time.

35. Funding and Building of Schools – to study the cost-efficiency of building schools on a statewide level or changing how schools fund the construction and maintenance of buildings.

36. Funding of Off-Campus Operations – to study the implications of designating off-campus operations as "branch campuses" particularly as it relates to eligibility for federal funding as well as other potential external funding.

37. Funding of School Buildings – to study the way the state funds the building of schools, specifically the inequities which occur when growth happens in areas least able to fund the buildings.

38. Home Loans for Teachers – to study the creation of a fund for low interest home loans for teachers.

39. Impact of Fee Waivers – to study fee waivers and their effects on districts.

40. Impact of School Fees – to study the impact secondary level school fees have on families and school budgets.

41. Modified WPU Formula – to study converting WPU to a two-tiered formula, one dealing with basic programs and the other with teacher and staff compensation.

42. Physical Fitness and Nutrition in Public Education – to study whether to establish achievement test requirements for physical fitness and nutrition, including an activity-based assessment of physical fitness and requirements for the sale of food at school.

43. Public and Higher Education Medical Insurance Costs – to study methods to reduce the cost of medical insurance benefits in public and higher education including the admission of small districts into the large pools available to the state,

medical savings accounts, and competitive bidding for providing medical services.

44. Public School Employee Medical Expenses – to study the impact of medical savings accounts and medical costs for public school employees. (HB 35)

45. Public School Employee Strikes – to study the prohibition of job actions by public school employees.

46. School Choice – to study school choice, ways to finance school transfers, and limits on school closures.

47. Teacher Mentoring – to study appropriations for teacher mentoring programs. (HB 101)

48. Textbook Purchasing – to study textbooks, the rotation of curricula to be adopted, purchase on a statewide plan, and purchasing practices to ensure best rates and accountability.

49. Trust Lands – to study the authority of the School and Institutional Trust Land Administration and its results achieved from 1995 to the present.

50. WPU Weighting for Deaf Blind School – to study whether to give WPU weighting to those teaching and administering the Deaf Blind School Program.

51. Appropriate Use of Campaign Funds – to study the use of campaign funds including whether to prohibit spending monies for personal use or to modify the definition of "political purposes."

52. Boards and Commissions – to study the composition of executive branch boards and commissions in the state of Utah.

53. Campaign Contributions – to study issues related to limiting campaign contributions.

54. Campaign Finance Reform and Legislative Salary – to study issues related to campaign finance reform and legislative salaries. (HB 328)

55. Campaign Financing – to study and review Utah's election campaign finance laws. (HB 328)

56. Changes in Voting Procedures – to study potential changes to Utah's voting procedures.

57. Competition with Private Sector – to study areas where government is competing with the private sector.

58. Construction Change Orders – to study and analyze the state's construction change orders.

59. Construction Contracts – to study whether to prohibit the inclusion of provisions in a construction contract which would waive the right to recover damages for unreasonable delay, and to study caps and government immunity. (SB 252)

60. Construction Contracts and Bargaining Power – to study construction contracts impacted by a substantial difference in bargaining power between the parties. (1st Sub. SB 252)

61. Efficient Infrastructure Investment – to study ways the state can more efficiently invest in the necessary infrastructure to accommodate economic and population growth.

62. Electronic Voting – to study issues related to electronic voting.

63. Ethical Standards in Government – to study the development of a manual for legislators and state employees on ethical standards and the issue of recusals for conflicts of interest.

64. Geo Exchange System Use – to study geothermal exchange systems, the granting of tax credits for their use, and the feasibility of installing them in state buildings.

65. Government Hiring of Lobbyists – to study the hiring of contract lobbyists and consultants by state agencies, departments, divisions, and other branches of government. (HB 187)

66. Implementing Quality Growth – to study ways the state can implement the principles of quality growth as recommended by the Utah Quality Growth Commission.

67. Mandates to Local Governments – to study controls on mandates to local governmental entities from state government.

68. Master Bonding Statute – to study the possibility of a master bonding statute similar to the Municipal Bond Act.

69. Net Gain of Private Land – to study the process through which the state can achieve a net gain of private land.

70. Procurement Code and Health Coverage – to study procurement code requirements of health care coverage. (SB 137)

71. Public Employee Health Benefits – to study health care benefit options for public employees. (SB 260)

72. Same-day Voter Registration – to study whether to allow citizens to register to vote on the day of an election.

73. Task Force on Government Waste and Inefficiency – to study the formation of a task force designed to address government waste and inefficiency.

74. Voting Issues – to study various voting and election issues, including assessing the condition of the state's voting equipment, vote certification process, and distribution of the voter information pamphlet.

75. Adult Protective Services Law – to study revisions to the Adult Protective Services statute.

76. Approval of Insurance Applications – to study the timely approval of health insurance applications by the Insurance Department.

77. Child Abuse Reporting Laws – to study the impact of laws on volunteers and others who become subject to lawsuit for failure to immediately notify law enforcement of suspected child abuse.

78. Child and Adolescent Health Task Force – to study the creation of a Child and Adolescent Health Task Force to address ways to reduce the prevalence of obesity and its co-occurring diseases among elementary and secondary school populations.

79. Civil Commitment – to study the development of civil commitment criteria.

80. Clinical Experience Hours for Certified Nurses Aides – to study the number of clinical experience hours required for licensure as a certified nurses aide and whether those requirements should be adjusted.

81. Confidentiality of Pharmacy Records and Communications – to study whether to designate pharmacy records and communications with a pharmacy as confidential.

82. Effect of Health Care Contracts on Pharmacy Benefits – to study whether to prohibit insurance companies from structuring health care contracts so that out-of-state mail service pharmacies may offer benefits to insured individuals that in-state pharmacies may not offer.

83. Elder Abuse – to study issues related to the financial and physical abuse of the elderly.

84. Licensing of Acupuncturists – to study current state requirements for licensure of acupuncturists.

85. Medicaid Liens Against Tort Awards – to study modifications to the state's Medicaid lien statutes to ensure that Medicaid recipients receive a fair portion of injury settlements.

86. Medicaid Spindown Requirements – to study and review Medicaid spindown requirements and recommend changes.

87. Midwife Licensing – to study the licensure and regulation of lay midwives.

88. Nursing Home Liability – to study the legal liability of nursing homes for providing medical care to patients.

89. Overlap of Licensing Jurisdictions – to study the overlap in jurisdiction between the Division of Occupational and Professional Licensing in the Department of Commerce and the Bureau of Health Facility Licensure in the Department of Health, the impact that overlap has on efficiencies in the delivery of health care, and the ability of state agencies to respond to the regulatory needs of different geographic regions of the state.

90. Parental Rights and DCFS – to study issues related to parental rights and the treatment of parents by the Division of Child and Family Services and the standard for termination of parental rights.

91. Smoking by Minors – to study access by minors to materials, including butt containers, and the use of controls and fines to restrict availability to minors.

92. Uniform Parentage Act – to study issues related to the determination of parentage.

93. Use of Tobacco Settlement Monies – to study the use of interest money from the permanent Tobacco Settlement Trust Fund for tobacco prevention programs and enforcement.

94. Youth Services Agency – to study the creation of a department to oversee youth services and reassign from the Department of Human Services those areas of oversight that are not well placed. (SB 267)

95. Abuse of Juveniles in the Youth Corrections System – to study issues regarding offenses of sexual misconduct committed by a correctional officer, law enforcement officer, or other persons in positions of authority against a juvenile in the youth corrections system.

96. Attorney Fees in Eminent Domain Cases – to study whether to allow an award of attorney fees in certain eminent domain cases.

97. Attorney Fees in Injured Worker Cases – to study the regulation of attorney fees in the representation of injured workers.

98. Bailiff Funding – to study funding for bailiff services in the district and juvenile courts. (HB 82)

99. Court of Record Services – to study payments for bailiff and other services in courts of record.

100. Covenant Marriage – to study whether to establish covenant marriage in state law.

101. Family Court System – to study a family court system for divorce and custody, adoption, termination of parental rights, limitations on parental rights, standards of proof needed, records, search warrants, and other warrants.

102. Indigent Legal Defense – to study and review indigent legal defense in judicial proceedings and make recommendations regarding indigent legal defense responsibilities.

103. Informed Consent – to study issues related to informed consent within HB 170 and HB 137.

104. Integrated Bar for Attorneys – to study issues related to an integrated bar for attorneys.

105. Parental Rights in Juvenile Court – to study the rights of parents in juvenile court proceedings, particularly proceedings related to abuse or neglect, and parental access to adequate legal defense counsel.

106. Pretrial Preservation of Assets – to study how to determine appropriate restitution requirements as part of the pretrial preservation of assets. (HB 26)

107. Sentencing Alternatives – to study whether to broaden sentencing alternatives for use by judges and prosecutors.

108. Statute of Limitations on Abuse – to study whether to amend the Statute of Limitations on child sexual abuse.

109. Supplying Illegal Substances to Minors – to study penalties for adults who furnish illegal

substances to underage persons.

110. Value of Lien and Claimant Recovery – to study whether a department lien should be diminished in proportion to a claimant's recovery for injury, disease, or disability.

111. Visitation Rights – to study whether to mitigate and support noncustodial parent visitation rights.

112. Visitation Services – to study the creation of an Office of Visitation Services.

113. Criminal Background Checks – to study the potential impact of eliminating criminal background checks and the state's authority to conduct background checks.

114. Juvenile Record Expungement – to study issues relating to the expungement of juvenile records.

115. Licensing of Pawn Shops – to study issues related to the licensure and regulation of pawn shops.

116. Nationwide Gun Laws – to study gun laws across the country and full faith and credit issues.

117. Police and Fire Consolidation – to study whether Utah law should be changed to facilitate the consolidation of services such as police and fire.

118. Protective Orders and Expedited Concealed Weapons Permits – to study whether to allow a person who has filed for a protective order to expedite the process to obtain a concealed weapons permit.

119. Regulation of Pawn Shops – to study implementation of procedures for pawnbrokers to report transactions to law enforcement, including use of electronic means, privacy of records, and procedures regarding law enforcement investigations involving pawned items.

120. Restoration of Right to Bear Arms – to study Senate Judiciary Committee amendments related to the restoration of the right to bear arms. (1st Sub. HB 266)

121. Uniform Law Enforcement Database – to study the creation of a uniform database to contain all arrest, case information, and records throughout 1st and 2nd class counties and to be accessible by law enforcement entities in each county.

122. Communication on the Impact of Amendments – to study the process for informing the House and Senate when amendments to a bill change the legislative review note.

123. Communication with Constituents – to study communication between legislators and constituents during legislative sessions, including a newsletter funded by the state.

124. Internet Broadcast of Legislature – to study the feasibility of broadcasting legislative proceedings on the Internet.

125. Legislative Offices – to study whether to establish legislative offices in state-owned office buildings throughout the state.

126. Quasi Full Time Legislature – to study whether to establish a maximum number of days per year in which legislators may be compensated for fulfilling their legislative duties.

127. Alternative Energy Sources in Energy Master Plan – to study alternative energy sources to be incorporated into the state's energy master plan and study and identify what alternative energy sources are available.

128. Alternative Fuels – to study alternative fuels for vehicles, including amendments to HB 323, 2000 General Session.

129. Beneficial Use Presumption – to study whether to add a presumption that statutes adopted by the Legislature are intended to protect the beneficial use of the state's natural resources.

130. Clean Water Act – to study the implementation, progress, and funding of the program.

131. Collaboration to Protect Wildlife Habitat – to study whether to require the School and Institutional Trust Lands Administration and the Department of Natural Resources to enter into a memorandum of understanding allowing the department to consult and collaborate with the administration on strategies to protect critical wildlife habitat and the management or development of trust lands within or adjacent to state parks. (HB 121)

132. Cooperative Wildlife Management Units – to study the creation of comparable hunting opportunities for hunters in terms of hunting areas and the period of time made available for hunting and study the issue of landowners who provide critical big game habitat but have limited opportunity to earn hunting revenue.

133. Disease Control Program – to study whether the Department of Agriculture and Food should develop a control program for Johne's Disease.

134. Endangered Species – to study endangered species funding and related issues.

135. Horse Promotion Fee – to study whether to have the Department of Agriculture and Food collect a horse promotion fee to be used for promotion of the horse industry.

136. Hunter Education Courses – to study the feasibility of expanding the hours of operation for hunter education courses, or making part of the course available through home study.

137. Hunting and Fishing License Revenues – to study and determine whether, and how much, hunting and fishing license revenue is expended from nongame species programs.

138. Hunting Permits on Cooperative Wildlife Management Units – to study whether a certain percentage of permits to hunt on cooperative wildlife management units should be allocated to the general public. (HB 167)

139. Impact of Water Share Forfeiture – to study the effect on shareholders of a water corporation if water shares are forfeited under Utah law and whether shareholders who used their water can be protected.

140. Improving Agriculture – to study methods of revitalizing and improving agriculture.

141. Interference of Water by Mining – to study issues related to the interference of water by mining.

142. Interstate Dairy Compact – to study the implementation and development of an interstate dairy compact.

143. Milk Marketing Order – to study whether to have the Department of Agriculture and Food enact a State Milk Marketing Order.

144. Mineral Tailings – to study and plan how to address the Atlas Mineral Tailings at Moab.

145. Public Use of Commercial Wildlife Hunting Units – to study whether the public should receive more than 10% of elk bull and deer buck permits.

146. Relocation of Waste Tire Disposal and Recycling – to study the relocation of waste tire disposal and recycling from the 985 S 800 W location in Salt Lake City to a new location in an appropriately zoned area near the current location.

147. Surface Water Source Protection – to study how to enable drinking water systems to comply with federal regulations to protect surface waters that are a source of drinking water.

148. Testing Food for Carcinogens – to study whether the testing of meat and dairy products by the Department of Agriculture and Food could be modified to test for carcinogens.

149. Trail Development – to study how to coordinate a statewide trail development program.

150. Used Oil – to study the disposal of used oil and oil filters.

151. Utah Agriculture Products – to study the promoting and marketing of Utah agriculture products.

152. Vehicle Emissions – to study emissions on vehicles that are 25 years old and newer.

153. Water Corporation Duties and Penalties – to study the organization of private water companies in the state and whether water companies should be held to common standards regarding duties and penalties.

154. Foundation Investment Restrictions – to study the investment policy restrictions of the Utah Athletic Foundation.

155. Funding for Soldier Hollow – to study the Legacy Fund for Soldier Hollow to assist with funding after the 2002 Olympics.

156. Olympic Committee Budget – to study the Salt Lake Olympic Committee budget, review the committee's plans to use budget contingencies, receive the governor's review and consideration for approval of the Salt Lake Olympic Committee's budget.

157. Olympic Public Safety Plan – to study the law enforcement and public safety plan of the Olympic public safety command.

158. Post-Olympic Sports Organization and Development – to study the appropriate structure of post-Olympic sports development organizations and the state's role in post-Olympic sports development.

159. Role of Soldier Hollow Legacy Foundation – to study what is the appropriate role of the Soldier Hollow Legacy Foundation in the operation of the Soldier Hollow venue.

160. Soldier Hollow Funding – to study how to fund the operation of the Soldier Hollow Olympic Venue.

161. Use of Funds to Promote Olympic Tourism – to study and review the Department of Community and Economic Development's use of monies appropriated to take advantage of Olympic tourism opportunities and economic development opportunities.

162. Utah Athletic Foundation – to study the role, composition, and funding of the Utah Athletic Foundation and study the adequacy of the endowment fund.

163. Compliance with Local Land Use Ordinances – to study whether to require state and local entities to comply with municipal and county land use ordinances. (HB 129)

164. County Boundary Changes – to study issues related to county boundary changes. (HB 49, 2000 General Session)

165. County Option for Affordable Housing – to study whether to authorize counties to increase recorder fees to fund affordable housing programs and projects. (SB 62)

166. Culvert Pipe Specifications – to study culvert and drain pipe specifications.

167. Eminent Domain – to study issues related to eminent domain.

168. Independent Special District Recodification – to study the recodification of statutes dealing with independent special districts concerning withdrawal, bonding, and financing issues.

169. Land Conservation – to study whether the Legislature ought to amend the Utah Quality Growth Act to change the 20-acre limitation for fee title acquisition of critical lands and allow select nonprofit entities to hold state funded conservation easements.

170. Municipal Disconnection Procedures – to study potential improvements to disconnection procedures.

171. School and Institutional Trust Lands and Local Ordinances – to study whether to make the

use and development of school and institutional trust lands subject to local zoning or other regulatory ordinances.

172. Subdivision Platting Act – to study the establishment of the statewide subdivision platting act.

173. Net Metering for Electrical Power – to study whether to grant credit to users with electrical production capability for the power they put into the system and charge them only for their net usage.

174. Qualifying for State Telecommunications Funding – to study whether a rural city of the third class or town currently operating a telecommunication system as a carrier of last resort, and whose subscribers have not previously received services from a certified local exchange carrier, should be entitled to receive distributions from the Utah Universal Public Telecommunications Service Support Fund.

175. Firefighter Retirement – to study whether to create a deferred compensation benefit for members of the firefighter's retirement system. (SB 131)

176. Retirement Board Membership – to study whether to expand the membership of the Utah Retirement Board.

177. State Employee Sick Leave – to study whether to modify provisions governing the use of unused sick leave at retirement. (1st Sub. SB 265)

178. Cellular Phone Taxation – to study the imposition of a tax on cellular phones.

179. Certified Revenue Levy – to study whether the calculation of the certified revenue levy needs to be modified.

180. Elimination of Property Tax – to study issues related to the elimination of the property tax.

181. Employer Assistance Tax Credit – to study whether to establish an employer assistance program that would allow employers to claim a $1,500 tax credit per employee for continuing information technology training.

182. Income Tax on Work Performed in Utah – to study whether to collect income taxes from persons who receive payments over time for work done while they were living within the state but who subsequently move out of state before they receive full payment for their services.

183. Local Option Oil and Gas Severance Tax – to study whether to allow a county legislative body to impose a local option oil and gas severance tax.

184. Marriage Tax Penalty – to study what statutory changes need to be made to address the impact of the marriage tax penalty on all taxpayers and the impact of the penalty on seniors, those with fixed incomes, and low income earners, and study potential changes.

185. Property Tax Vote – to study whether to put the state's property tax to a vote of the people. (SB 274)

186. Residential Property Tax Exemption – to study whether to allow a residential property tax exemption for secondary homes. (SB 63)

187. Sales Tax Allocation for Species Protection – to study the need for the sales tax allocation to protect sensitive animal and plant species and how it would be used.

188. Tax Credits for Small Business Loans – to study providing individual income tax and corporate franchise and income tax credits for certain fees associated with small business loans.

189. Taxes on Military Pay – to study whether state income taxes should be collected from persons serving in the military.

190. Taxing of Disabled Veterans – to study income tax relief for disabled veterans.

191. Telecommunications Taxation – to study the taxation of mobile telecommunications service and a task force on telecommunications taxation. (SB 214)

192. Telecommunications Taxes – to study local franchise taxes, sales and use tax, mobile phone taxes and fees, fees for using state and local rights-of-way, degradation and excavation fees, fees for using existing poles and towers, and the administration and ease of compliance when assessing and collecting such taxes and fees.

193. DUI Treatment Requirements – to study whether to require completion of all substance abuse treatment prior to reinstatement of a driver's license after a DUI conviction.

194. Eminent Domain and Public Rights-of-Way – to study issues related to exercising eminent domain and paying a fair price.

195. I-15 Maintenance Contract – to study issues related to an I-15 maintenance contract.

196. I-15 Updates – to study I-15 updates in construction and funding.

197. I-80 Reconstruction – to study reconstruction of I-80 from Parley's Canyon to State Street.

198. Legacy Highway Updates – to study progress in funding options, lawsuits pending, and land acquisition for the Legacy Highway.

199. Light-Rail and Commuter Rail – to study issues related to existing and future rail projects.

200. Light-Rail Extensions – to study light rail extensions to the west side of Salt Lake County, north to Davis County, south to Utah County and colocating with Legacy Highway.

201. Medically Impaired Drivers – to study the reporting of medically impaired drivers. (SB 94)

202. Olympic Event Transportation – to study transportation and access to Olympic sites.

203. Olympic Transportation and Parking – to study parking and bus routing to Olympic sites.

204. Olympic Transportation Needs – to study Olympic readiness related to transportation issues.

205. Park and Ride Issues – to study issues related to the provision, maintenance, and use promotion of park and ride lots.

206. Preservation of Transportation Corridors – to study issues related to preserving corridors for future transportation facilities.

207. Rail Construction – to study heavy rail construction from Brigham City to Payson.

208. Transportation Funding – to study issues related to the Centennial Highway Fund, Transportation Fund, and funding future transportation projects.

209. Use of Transportation Funds – to study issues related to the constitutional restrictions on the use of transportation funds. (HJR 4)

210. UTA Eminent Domain – to study eminent domain powers as exercised by the Utah Transit Authority.

211. Child Care Audit Recommendations – to study the recommendations contained in the audit of the Office of Child Care conducted by the Office of Legislative Auditor General.

212. Child Care Eligibility Threshold – to study the cost of raising the child care eligibility threshold from 56% of the state median income to 62%, 75%, and 85% of the state median income.

213. Child Care Funding – to study alternatives for maximizing the draw down of federal funds for child care and appropriate uses for increased child care funding.

214. Diversity and the Workforce – to study the impact of diversity on the state's workforce.

215. Governor's Business Commission on Child Care – to study the necessary legislation and funding, including funding sources, to implement the recommendations of the Governor's Business Commission on Child Care.

216. HB 47 Long Term Professional Development Programs for Disability Services.

217. World War II Memorial – to study the funding, design, and construction of a World War II memorial for the state of Utah.

218. 2nd Substitute HB 370, specifically lines 454-458.

219. Long term nursing care liability.

220. Cellular telecommunication services taxation policy.

221. Effects of vaccinations and vaccines on infants, children, and young adults.

222. Hall of statues for a remodeled capitol.

223. Jury trial for termination of parental rights.

224. Study property tax relief for the elderly.

225. Issues related to truancy.

226. To study education mandates.

227. Study additional veterans administration hospital.

228. Public education applied technology funding and qualifying classes and funding equity.

229. Impact of new students in Utah over the next decade on Utah taxpayers.

230. Study of tax relief for Utah taxpayers.

231. Family impact statement at the bottom of each bill.

232. Study of the economic impact of the elimination or reduction of the capital gains tax.

233. State Fair Park – to study whether to sell or bring back into state government.

234. Study the impact of time notes on legislation.

235. Study of paper balloting.

236. Study of a statewide trails system.

237. To study the impact of cultural and linguistic factors and patients' access and response to health care services.

238. Water companies' and associations' voting rights (SB 229).

239. Water companies' and associations' assessments (SB 230).

240. Access to health care.

241. Mental health services for foster and adopted children (SB 33).

242. State government immunity amendments (SB 258).

243. Election law procedures.

244. Affordable housing funding options.

245. Enforcement of construction bid limits on public works projects of municipalities and counties.

246. Confidentiality of driver license reports.

H. J. R. 17
Passed February 5, 2001
Effective February 5, 2001

JOINT RULES RESOLUTION - SOURCES OF RULES GOVERNING PROCEDURE

Sponsor: Wayne A. Harper

This joint resolution of the Legislature revises joint rules to set out the order and sources governing legislative procedure. This joint resolution provides an effective date.

This resolution affects legislative rules as follows:

ENACTS:
JR-1.02.1

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

Section 1 Section JR-1.02.1 is enacted to read:

JR-1.02.1. Sources Governing Legislative Procedure.

Rules of legislative procedure are derived from several sources and take precedence in the following order:

(1) constitutional provisions, statutory provisions, and case law;

(2) these legislative rules;

(3) custom, usage, and practice; and

(4) Mason's Manual of Legislative Procedure.

Section 2 Effective date.

This resolution takes effect upon approval by a constitutional majority vote of all members of the Senate and House of Representatives.

H. J. R. 18
Passed February 27, 2001
Effective February 27, 2001

RESOLUTION SUPPORTING PRESIDENT BUSH'S TAX RELIEF PROPOSAL

Sponsor: David Clark

This joint resolution of the Legislature urges the United States Congress to support and work to pass the tax relief plan introduced by President Bush.

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

WHEREAS, federal taxes from all sources are currently the highest ever during peacetime;

WHEREAS, all taxpayers should be allowed to keep more of their own money;

WHEREAS, one of the best ways to encourage economic growth is to cut marginal tax rates across all tax brackets;

WHEREAS, under current tax law, low-income workers often pay the highest marginal rates and President Bush's tax cut would reduce the marginal tax rate by 40-50 percent for low-income families with children;

WHEREAS, President Bush's tax relief plan will contribute to raising the standard of living for all Americans by reducing tax rates, expanding the child tax credit, and reducing the marriage penalty;

WHEREAS, President Bush's tax relief plan will increase access to the middle class for hard working families, treat all middle class families more fairly, encourage entrepreneurship and growth, and promote charitable giving and education; and

WHEREAS, under President Bush's tax relief plan, the largest percentage reductions will go to the lowest income earners:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah urges the United States Congress to support and work to pass the tax relief plan introduced by President Bush.

BE IT FURTHER RESOLVED that a copy of this resolution be sent to the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of Utah's congressional delegation.

H. R. 1
Passed January 15, 2001
Effective January 15, 2001

HOUSE RESOLUTION AMENDING PROVISIONS RELATING TO LONG TITLE

Sponsor: Thomas V. Hatch

This House resolution modifies House rules relating to long titles. This resolution gives the Chief Clerk of the House limited powers to conform long titles to reflect changes made by substitute or amendment and makes a technical change in reading requirements to conform with the Utah Constitution and with current practice. This resolution takes effect upon passage by the House of Representatives.

This resolution affects legislative rules as follows:

Be it resolved by the House of Representatives of the state of Utah:

AMENDS:
HR-20.06
HR-25.08

Section 1. HR-20.06 is amended to read:

HR-20.06. Duties of the Chief Clerk.

A Chief Clerk of the House shall be appointed by the Speaker or Speaker-elect before each session is convened. The general duties of the Chief Clerk are to:

(1) certify and transmit all bills to the Senate and inform the Senate of all House action;

(2) assist the Journal Clerk in preparation of the House Journal and certify it as an accurate reflection of House action;

(3) correct the spelling of words, erroneous division and hyphenation of words, correct mistakes in numbering sections and their references, capitalize or decapitalize words, change numbers from words to figures or from figures to words, and underscore or remove underscoring in bills without a motion to amend, which technical corrections may be made either before or following final passage of a bill;

(4) modify the long title of any bill or resolution to ensure that the long title accurately reflects any changes to the bill or resolution made by amendment or substitute;

[~~(4)~~] (5) (a) supervise all House of Representatives personnel during the session and assign them duties and responsibilities, including keeping a record of the attendance of all employees; and

(b) provide that any employee who is absent without the written consent or subsequent approval of the Speaker may not be paid for the day or days of absence;

[~~(5)~~] (6) be the custodian of all official documents;

[~~(6)~~] (7) receive from the Office of Legislative Research and General Counsel all numbered bills and resolutions;

[~~(7)~~] (8) record the number, title, sponsor, each action, and final disposition of every bill on the bill backs;

[~~(8)~~] (9) prepare and distribute the daily order of business each day;

[~~(9)~~] (10) advise the Speaker on parliamentary procedure, constitutional requirements, and Joint and House Rules;

[~~(10)~~] (11) assist with amendments to bills;

[~~(11)~~] (12) record votes and present the results to the Speaker;

[~~(12)~~] (13) transmit to the Governor all enrolled House bills; and

[~~(13)~~] (14) approve material for placement on the Representative's desks.

Section 2. HR-25.08 is amended to read:

HR-25.08. Third Reading Calendar.

(1) (a) For its third reading, each bill listed shall be read by [~~long~~] title, unless by two-thirds vote the House members suspend this requirement. (Utah Constitution Article VI, Section 22; cf. HR-27.16)

(b) The bill shall then be considered.

(2) (a) On each bill, after reading the [~~long~~] title, the reading clerk shall announce which House standing committee reviewed the bill and the vote in that committee.

(b) If a bill has not received a House standing committee review, the reading clerk shall announce that the bill received no House standing committee review.

(3) (a) The final question is: "This bill (resolution) has been read three times; the question is: Shall the bill (resolution) pass?"

(b) The final vote shall then be taken.

Section 3. Effective date.

This resolution takes effect upon approval by a constitutional majority vote of all members of the House of Representatives.

H. R. 2
Passed January 19, 2001
Effective January 19, 2001

HOUSE RULES RESOLUTION - PROCESS AMENDMENTS

Sponsor: Wayne A. Harper

This House resolution modifies House rules by establishing Mason's Manual of Legislative Procedure as a reference for parliamentary procedure. This resolution prohibits bills placed on the third reading calendar from being read and considered for one day, except during the last three days of the session. This resolution takes effect upon passage by the House.

This resolution affects legislative rules as follows:

AMENDS:
HR 25.03

REPEALS AND REENACTS:
HR 34.03

Be it resolved by the House of Representatives of the state of Utah:

Section 1. HR 25.03 is amended to read:

HR-25.03. Consideration of Bills.

(1) Except for the 43rd, 44th, and 45th day of the session, a bill may not be read the third time until the day after it is placed on the third reading calendar.

(2) Bills on third reading calendar shall be considered in the order they appear on the calendar unless a constitutional majority vote of the members of the House directs other action.

(3) The Chief Clerk [~~is responsible for maintaining~~] shall maintain the calendar properly listing the bills.

Section 2. HR 34.03 is repealed and reenacted to read:

HR-34.03. Mason's Manual of Legislative Procedure; Reference.

[~~The rules of parliamentary practice and legislative procedure given in Mason's Manual of Legislative Procedure govern the House of Representatives where those rules are applicable and are not inconsistent with the standing rules of the House of Representatives.~~] In addition to legislative rules, the presiding officer may use Mason's Manual of Legislative Procedure as a reference when a question arises about parliamentary practice, legislative process, or legislative procedure that is not resolved by reference to legislative rules.

Section 3. Effective date.

This resolution takes effect upon approval by a constitutional majority vote of all members of the House of Representatives.

H. R. 3
Passed January 24, 2001
Effective January 24, 2001

HOUSE RULE - DECLARATION OF CONFLICT OF INTEREST

Sponsor: Margaret Dayton

This House resolution modifies House rules to suggest that a House member make an oral declaration of any conflicts of interest before speaking on legislation or legislative matters on the floor of the House. This resolution takes effect upon approval by the House of Representatives.

This resolution affects legislative rules as follows:

ENACTS:
HR-26.02

Be it resolved by the House of Representatives of the state of Utah:

Section 1. HR-26.02 is enacted to read:

HR-26.02. Verbal Disclosure of Conflict of Interest in House Floor Debate.

(1) (a) Before speaking on the floor of the House on any legislation or legislative matter in which a House member reasonably believes that he may have a conflict of interest, the House member should orally disclose to the House that he may have a conflict of interest and what that conflict is.

(b) The declaration of the conflict of interest shall be noted in the House Journal.

(2) Nothing in this House rule requires a House member with a conflict of interest on legislation or a legislative matter pending before the House to orally disclose that conflict of interest if the House member does not speak on the legislation or legislative matter and the conflict has been disclosed on the legislator's conflict of interest form.

Section 2. Effective date.

This resolution takes effect upon approval by a constitutional majority vote of all members of the House of Representatives.

H. R. 5
Passed February 20, 2001
Effective February 20, 2001

RESOLUTION PROVIDING FOR THE HARD OF HEARING

Sponsor: Loraine T. Pace

This resolution of the House of Representatives urges places of public accommodation to more fully comply with the Americans with Disabilities Act to ensure that persons who are hard of hearing receive the assistance required by the act.

Be it resolved by the House of Representatives of the state of Utah:

WHEREAS, the Americans with Disabilities Act is a federal law aimed at stopping discrimination against people with disabilities;

WHEREAS, the Americans with Disabilities Act governs a wide variety of public accommodations including hotels, restaurants, movie and other theaters, auditoriums, offices of doctors, lawyers, and other professionals, hospitals, nursing homes, drug stores, insurance agencies, retail stores, museums, mortuaries, banks, libraries, parks, private schools and colleges, amusement and recreation facilities, and day care centers;

WHEREAS, many places of public accommodation throughout the state of Utah do not have services and equipment that are adequate to meet the communication access needs of persons who are hard of hearing;

WHEREAS, those who are hard of hearing often retreat from society rather than struggle to have their unique needs heard and understood;

WHEREAS, places of public accommodation should work quickly and decisively to meet the communication access needs of persons who are hard of hearing and comply with federal laws and regulations; and

WHEREAS, places of public accommodation may choose among various alternatives, including assistive listening systems, captioning, and interpreting, to meet the communication access needs of persons who are hard of hearing so long as the result is effective communication for the individual with hearing loss:

NOW, THEREFORE, BE IT RESOLVED that the House of Representatives of the state of Utah urges places of public accommodation to more fully comply with the provisions of the Americans with Disabilities Act governing services for those who are hard of hearing.

BE IT FURTHER RESOLVED that the House of Representatives urges places of public accommodation to more fully comply with federal law to ensure that Utahns who are hard of hearing are more firmly connected to society.

BE IT FURTHER RESOLVED that a copy of this resolution be sent to the Utah State Division of Services to the Deaf and Hard of Hearing.

H. R. 7
Passed February 2, 2001
Effective February 2, 2001

HOUSE RULES RESOLUTION- RE-REFERRING BILLS TO COMMITTEE

Sponsor: Wayne A. Harper

This House resolution of the Legislature revises House rules to outline the process of re-referring bills to committee. This House resolution provides an effective date.

This resolution affects legislative rules as follows:

REPEALS AND REENACTS:
HR-25.11

Be it resolved by the House of Representatives of the state of Utah:

Section 1. HR-25.11 is repealed and reenacted to read:

HR-25.11. Re-referring Bills to Committee.

[~~Any bill may be returned to a committee by a majority vote of the members of the House of Representatives present, at any time prior to its passage on the third reading calendar.~~]

A bill that has been referred to a standing committee may be re-referred as follows:

(1) by the presiding officer;

(2) upon motion from the floor; and

(3) if a bill has been reported back by the committee to which it was assigned with the recommendation that it be re-referred to the House Rules Committee.

Section 2. Effective date.

This resolution takes effect upon approval by a constitutional majority vote of all members of the House of Representatives.

H. R. 8
Passed February 20, 2001
Effective February 20, 2001

HOUSE RESOLUTION URGING CONGRESSIONAL SUPPORT OF RED MESA HEALTH CENTER

Sponsor: Max W. Young

This resolution of the House of Representatives urges the United States Congress to appropriate $48 million in construction funds as part of the Indian Health Services budget for fiscal year 2002 for the Red Mesa Health Center and staff quarters in Red Mesa, Arizona.

Be it resolved by the House of Representatives of the state of Utah:

WHEREAS, since the mid-1980's the Navajo Nation and Indian Health Services have planned the construction of the Red Mesa Health Center and staff quarters to improve access to health care for the 10,000 people residing in southeast Utah and northeast Arizona;

WHEREAS, local land users donated 75 acres of land at Red Mesa, Arizona, for the development of the Red Mesa Health Center and staff quarters;

WHEREAS, all of the necessary documents including legal surveys and environmental clearances have been completed and the site has been legally withdrawn by the Navajo Nation for the project;

WHEREAS, the United States Congress appropriated design funds in fiscal year 2000 for the design of the Red Mesa Health Center;

WHEREAS, the Indian Health Services has hired an architectural firm and the project is currently in design;

WHEREAS, a construction manager also has been hired to oversee the construction of the project once it is designed and construction funds are appropriated;

WHEREAS, the Red Mesa Health Center, when completed, will provide adult and pediatric medical services, diagnosis and laboratory services, short stay nursing beds, dental physical therapy, and 24-hour emergency care;

WHEREAS, most of the services that would be provided by the Red Mesa Health Center are currently unavailable in the proposed service area and the local people have to travel to Shiprock, New Mexico, to receive these services;

WHEREAS, travel distance to Shiprock for the user population is an average of 60 miles;

WHEREAS, Indian Health Services planned the Red Mesa Health Center with 93 units of staff quarters due to the remoteness of the site;

WHEREAS, housing availability is critical in the recruitment and retention of medical doctors, nurses, and other health professionals on the Navajo Nation; and

WHEREAS, it is vital that the staff quarters be constructed at the same time as the health center in order for the clinic to open with adequate staffing:

NOW, THEREFORE, BE IT RESOLVED that the House of Representatives of the state of Utah urges the United States Congress to appropriate $48 million in construction funds as part of the Indian Health Services budget for fiscal year 2002 for the Red Mesa Health Center and staff quarters at Red Mesa, Arizona.

BE IT FURTHER RESOLVED that a copy of this resolution be sent to the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of Utah's congressional delegation.

S. C. R. 3
Passed February 27, 2001
Approved March 9, 2001
Effective March 9, 2001

RESOLUTION APPROVING SETTLEMENT BY UTAH DEPARTMENT OF TRANSPORTATION

Sponsor: Peter C. Knudson

This concurrent resolution of the Legislature and the Governor approves the legal settlement reached between the Utah Department of Transportation and Envirotech Corporation, now known as EVT Holdings, Incorporated. This concurrent resolution has an immediate effective date.

Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:

WHEREAS, the Utah Department of Transportation has the statutory responsibility to condemn land for state highway purposes and, under that authority, has condemned land owned by Envirotech, now known as EVT Holdings, Incorporated;

WHEREAS, the parties have been litigating the condemnation, which eventually resulted in a Stipulation and Agreement resolving all claims;

WHEREAS, in the Stipulation and Agreement, the Utah Department of Transportation agreed to pay Envirotech Corporation the sum of $2,208,000, on the condition that the Utah Legislature approve the settlement pursuant to Section 63-38b-104, which requires the Legislature's approval before a state agency can execute a settlement agreement that might cost government entities more than $1 million to implement;

WHEREAS, the Stipulation and Agreement will be paid out of right-of-way acquisition funds that have already been budgeted for the Interstate 15 Reconstruction Project, thus eliminating the need for further appropriation; and

WHEREAS, a timely execution of the Stipulation and Agreement is in the best interests of the state of Utah and Envirotech Corporation:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the Governor concurring therein, approves the settlement agreement that the Attorney General's Office and the Utah Department of Transportation negotiated with Envirotech Corporation, now known as EVT Holdings, Incorporated for the payment of $2,208,000, which includes the $208,000 previously paid by the Utah Department of Transportation to Envirotech Corporation.

NOW, THEREFORE, if approved by two-thirds of all the members elected to each house, this resolution takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

S. C. R. 4
Passed February 20, 2001
Approved March 16, 2001
Effective March 16, 2001

CONCURRENT RESOLUTION URGING A STATUE OF MARRINER S. ECCLES

Sponsor: Howard A. Stephenson
Ron Allen
D. Edgar Allen
Leonard M. Blackham
Curtis S. Bramble
D. Chris Buttars
Gene Davis
Mike Dmitrich
Dan R. Eastman
Beverly Ann Evans
David L. Gladwell
Karen Hale
Parley Hellewell
John W. Hickman
Lyle W. Hillyard
Scott K. Jenkins
Paula F. Julander
Peter C. Knudson
Al Mansell
Ed P. Mayne
Millie M. Peterson
L. Steven Poulton
Terry R. Spencer
David H. Steele
Howard A. Stephenson
Pete Suazo
John L. Valentine
Michael G. Waddoups
Carlene M. Walker
Bill Wright

This concurrent resolution of the Legislature and the Governor urges that a statue of Marriner S. Eccles be erected, for placement in the State Capitol, to recognize the contributions of Mr. Eccles to the financial strength of Utah, the United States, and its economy.

Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:

WHEREAS, Marriner S. Eccles was born in Logan, Utah in 1890;

WHEREAS, from an early age Mr. Eccles exhibited entrepreneurial zeal and keen business sense;

WHEREAS, after his LDS mission to Scotland and the passing of his father in 1912, and armed with only a high school education, Mr. Eccles formed Eccles Investment Company for the benefit of himself and his eight brothers and sisters in 1916;

WHEREAS, by 1928 Mr. Eccles lead 28 banks with combined resources of $50 million, and that same year he formed First Security Corporation, an invention that was destined to change the financial structure of the nation according to the U. S. Comptroller of the Currency 1930 Annual Report;

WHEREAS, Mr. Eccles was the driving force behind the Utah Construction Company, Ogden's Amalgamated Sugar, and many other diverse enterprises including a hotel company and a railroad;

WHEREAS, Mr. Eccles managed to keep his banks financially sound during the Depression, acquired many Utah and Idaho failed banks, and helped to save the assets of depositors and strengthen the banking industry in the Intermountain West;

WHEREAS, Mr. Eccles was independently nationally recognized for his advocacy of economic principles and theories which were given academic sanction by British economist John Maynard Keynes;

WHEREAS, as a close, trusted advisor to President Roosevelt, many of Mr. Eccles' recommendations were adopted to address dire conditions resulting from the Depression;

WHEREAS, President Roosevelt, a Democrat, appointed Mr. Eccles, a Utah Republican, as Assistant to the Secretary of the Treasury in 1934, and in 1935 was appointed chairman of the Federal Reserve Board;

WHEREAS, Mr. Eccles served as chairman until 1948 and continued on the board until 1951 and played an important role in the financial course of the country while firmly maintaining his belief in the need to get buying power into the hands of the people, guard against inflation, and protect the independence of the country's central bank, the Federal Reserve;

WHEREAS, at age 61, Mr. Eccles returned to Utah and resumed the chairmanship of First Security Corporation, Utah Construction Company, and Amalgamated Sugar Company and during the next 26 years surpassed the successes of his first business career;

WHEREAS, Mr. Eccles expanded the operations of Utah Construction Company, renamed Utah International, into a worldwide mining and shipping conglomerate and oversaw its acquisition by General Electric Company in 1976, the largest corporate merger up to that time;

WHEREAS, until his death in 1977, Mr. Eccles wrote extensively, was a sought-after speaker, continued to advise the federal government, and took strong positions on recognition of Red China, worldwide population explosion, burgeoning government deficits, and the folly of the Vietnam War;

WHEREAS, in 1983, by Act of Congress, the Federal Reserve Building in Washington, D.C. was renamed the Marriner S. Eccles Federal Reserve Board Building at which dedication Federal Reserve Chairman Paul A. Volker called him "The father of the modern Federal Reserve";

WHEREAS, in its Centennial issue, The Wall Street Journal recognized Mr. Eccles as one of 50 of the greatest people who influenced daily business in the last 100 years;

WHEREAS, possessed of ethical and moral values that governed all his actions, Mr. Eccles also demonstrated a rare mixture of independence of thought, wisdom, and foresight;

WHEREAS, Mr. Eccles was loyal, fair, and cared deeply for people and labored tirelessly for the common good;

WHEREAS, Mr. Eccles' contribution continues after his death in perpetuity through his Marriner S. Eccles Foundation; and

WHEREAS, it is fitting that a statue of Mr. Eccles be erected and placed in the State Capitol as a tribute to his dedication and service to the people of Utah and the citizens of the United States:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the Governor concurring therein, urges that a statue of Marriner S. Eccles be erected, for placement in the Utah State Capitol, in recognition of the great contribution Mr. Eccles has made to the strength of the Utah economy, the economy of the United States, and the furthering of the entrepreneurial spirit at the heart of the free market system.

BE IT FURTHER RESOLVED that the Legislature and the Governor urge that the Capitol Preservation Board and the Capitol Arts Placement Commission continue to facilitate the process of having the statue funded from private sources and placed in the Utah State Capitol.

BE IT FURTHER RESOLVED that a copy of this resolution be presented to the Eccles Family.

S. C. R. 5
Passed February 23, 2001
Approved March 16, 2001
Effective March 16, 2001

CONCURRENT RESOLUTION RECOGNIZING UTAH SHAKESPEAREAN FESTIVAL

Sponsor: John W. Hickman

This concurrent resolution of the Legislature and the Governor recognizes the Utah Shakespearean Festival for the consistently high caliber of professional theatre it provides to the citizens of Utah and the nation and for winning the 2000 Antoinette Perry "Tony" Award for Outstanding Regional Theatre. The resolution recognizes the efforts of festival founder and executive producer Fred C. Adams for his contributions to the festival's enduring success and popularity.

Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:

WHEREAS, the Utah Shakespearean Festival was founded in 1961 by Fred C. Adams and presented its first season in 1962;

WHEREAS, under Mr. Adams' tutelage, the Utah Shakespearean Festival has grown from a budget of $1,000 and 3,276 paid admissions in 1961 to a 2000 annual budget of $5.1 million and 155,000 paid admissions;

WHEREAS, as founder and executive producer of the Utah Shakespearean Festival, Mr. Adams' continuing role in the success of the festival includes safeguarding the festival's standards, helping to choose the right combination of directors and designers, selecting upcoming seasons, raising necessary operating and development funds and greeting thousands of theatre patrons who flock each season to the festival;

WHEREAS, the Utah Shakespearean Festival is considered by many to be one of the most prestigious repertory theatres and Shakespeare

Festivals in the United States;

WHEREAS, the Utah Shakespearean Festival is celebrating its fortieth year;

WHEREAS, on June 4, 2000 the Utah Shakespearean Festival was recognized with the Antoinette Perry "Tony" Award as America's Outstanding Regional Theatre by recommendation of the American Theatre Critics Association;

WHEREAS, the recommendation was acted upon by the American Theatre Wing and the League of American Theatres and Producers in New York City;

WHEREAS, the Utah Shakespearean Festival's "Tony" Award for outstanding Regional Theatre follows national and international recognition for the consistent excellence of the festival;

WHEREAS, the Utah Shakespearean Festival promotes and encourages tourism from within and without the state boundaries resulting in significant economic benefit for Cedar City, Iron County, and the entire state; and

WHEREAS, the state of Utah is indebted to Mr. Adams and all those who work with him for establishing professional theatre of the highest quality in the state of Utah:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the Governor concurring therein, recognize the Utah Shakespearean Festival for the consistently high caliber of professional theatre it provides to the citizens of Utah and the nation and for winning the 2000 Antoinette Perry "Tony" Award for Outstanding Regional Theatre.

BE IT FURTHER RESOLVED that the Legislature and the Governor recognize the efforts of Fred C. Adams, festival founder and executive producer, in helping the festival to achieve and maintain its enduring success and popularity.

BE IT FURTHER RESOLVED that a copy of this resolution be presented to Fred C. Adams.

S. C. R. 6
Passed February 28, 2001
Approved March 16, 2001
Effective March 16, 2001

RESOLUTION URGING AVAILABILITY OF TRANSPLANT ORGANS THROUGH COMMUNITY PLEDGE PROGRAMS

Sponsor: Mike Dmitrich

This concurrent resolution of the Legislature and the Governor urges Utah's communities, businesses, educators, service clubs, and interfaith organizations to lead the way in organizing efforts to raise public awareness and education regarding organ and tissue donation to save lives.

Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:

WHEREAS, Utah's Coalition for Organ, Eye and Tissue Donation, in partnership with The Quest for the Gift of Life Foundation, is implementing a statewide, community-based pledge program to involve local governments, businesses, communities, service clubs, educators, and interfaith councils to combine efforts in accomplishing meaningful initiatives that will raise public awareness and education regarding organ transplantation;

WHEREAS, the National Coalition for Organ, Eye and Tissue Donation published statistics that show 70,000 people are currently waiting for a life-saving organ transplant with only 6,000 organ donations taking place annually, resulting in 12-16 lives lost daily due to lack of a needed organ;

WHEREAS, 30% of driver's license donor registrants, upon an unexpected death, do not become donors because their next of kin were unaware of their desire to donate or their next of kin chose not to donate regardless of the signed donor registration card; and

WHEREAS, enough organs are available but cannot be accessed due to a lack of education and a clear understanding about organ and tissue donation, including the misconception that donations are incompatible with religious beliefs:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the Governor concurring therein, urges Utah's local governments, communities, businesses, educators, service clubs, and interfaith organizations to pledge to join in "leading the way" by helping to raise public awareness and education regarding organ and tissue donation for the purpose of saving lives.

BE IT FURTHER RESOLVED that the Legislature and the Governor support a spring media event announcing that Utah is committed to lead the way as a model for other states to follow in raising public awareness and education, through meaningful organ transplant initiatives, to help eliminate the existing shortage of transplant organs and to provide all potential recipients a second chance of life.

BE IT FURTHER RESOLVED that a copy of this resolution be sent to the Utah Association of Counties, the Utah League of Cities and Towns, Utah's Chambers of Commerce, the Utah State Office of Education, the Utah Department of Health, the Utah Coalition for Organ, Eye and Tissue Donation, the Quest for the Gift of Life Foundation, the Utah Attorney General's Office, the Salt Lake City Mayor's Office, and the Salt Lake County Mayor's Office.

S. J. R. 1
Passed January 30, 2001
Effective January 30, 2001

JOINT RULES RESOLUTION - MINI APPROPRIATIONS PROCESS

Sponsor: Leonard M. Blackham

This joint resolution of the Legislature revises joint rules by modifying the process for addressing certain appropriation requests, by revising appropriation subcommittee responsibilities, and by making technical corrections. This resolution takes effect upon approval.

This resolution affects legislative rules as follows:

AMENDS:
JR-4.22
JR-19.02

ENACTS:
JR-4.22.1

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

Section 1. JR-4.22 is amended to read:

JR-4.22. Bills; Requests; Drafting; Copies; Notes.

(1) (a) A [~~member~~] legislator desiring to introduce a bill that enacts, amends, or repeals statutes shall file a Request for Legislation with the Office of Legislative Research and General Counsel within the time limits established by JR-19.02.

(b) A legislator desiring to obtain funding for a project, program, or entity, when that funding request does not require that a statute be enacted, repealed, or amended, may not file a Request for Legislation but instead shall comply with the procedures and requirements of JR-4.22.1.

[~~(b)~~] (c) The request shall designate:

(i) the chief sponsor[~~. (c) A bill may have two types of sponsors: (i) a chief sponsor~~], who is knowledgeable about and responsible for providing pertinent information as the bill is processed; and

(ii) any supporting legislators who wish to cosponsor the bill.

(2) (a) When a member files a Request for Legislation, the Office of Legislative Research and General Counsel shall:

(i) review the request and any accompanying bill; and

(ii) with the approval of the sponsor, prepare the legislation for introduction by making any changes necessary to:

(A) [~~insure~~] ensure that it is in proper legal form;

(B) remove any ambiguities;

(C) avoid constitutional or statutory conflicts;

(D) insure a uniform system of punctuation, capitalization, numbering, and wording;

(E) eliminate duplication and repeal of laws directly or by implication;

(F) correct defective or inconsistent section and paragraph structure in arrangement of the subject matter of existing statutes;

(G) eliminate all obsolete and redundant words; and

(H) correct obvious errors and inconsistencies in punctuation, capitalization, numbering, and wording.

(b) Legislative General Counsel shall indicate on the first page of the bill the drafting attorney's approval of the bill.

(3) The Office of Legislative Research and General Counsel shall reproduce ten copies of the approved bill and deliver:

(a) seven of them to the Chief Clerk or the Secretary; and

(b) three of them to the Legislative Fiscal Analyst for fiscal notes.

(4) (a) The Director of the Office of Legislative Research and General Counsel shall note on any bill reviewed by an interim committee that the committee recommends the bill or has voted the bill out without recommendation.

(b) This interim committee or note shall be printed with the bill.

(5) (a) Any Request for Legislation filed directly with the Office of Legislative Research and General Counsel, with an accompanying bill, shall be reviewed and approved by it within three legislative days.

(b) A legislative review note shall be attached to the bill, together with any interim committee note.

(c) This three day deadline may be extended if the Director of the Office of Legislative Research and General Counsel requests it and states the reasons for the delay.

(6) (a) (i) When the Legislative Fiscal Analyst receives the approved bill, that office has three legislative days to review the bill and provide a fiscal note to the sponsor of the legislation.

(ii) The fiscal note may be printed 24 hours after the sponsor receives it unless the sponsor receives the fiscal note on a Friday, in which case the 24-hour period does not expire until the following Monday.

(iii) The sponsor may direct an earlier release of the fiscal note for printing.

(iv) If the Legislative Fiscal Analyst determines the bill has no fiscal impact, it may be ordered printed immediately after the sponsor has received a copy of the fiscal note, without a 24-hour delay.

(b) The three day deadline for the preparation of the fiscal note may be extended if the Legislative Fiscal Analyst requests it and states the reasons for the delay.

(c) The fiscal note shall be printed with the bill.

(7) (a) The reports of the Legislative Fiscal Analyst and the Office of Legislative Research and General Counsel shall be attached to the original copy of the bill.

(b) The report is not an official part of the bill.

Section 2. Section JR-4.22.1 is enacted to read:

JR-4.22.1. Appropriations; Requests; Disposition.

(1) (a) A legislator desiring to obtain funding for a project, program, or entity that has not previously been funded, or to obtain additional or separate funding for a project, program, or entity, shall file a signed Request for Appropriation with the Office of Legislative Fiscal Analyst within the time limits established by JR-19.02.

(b) The request shall designate:

(i) the project, program, or entity to be funded;

(ii) the source for the funding;

(iii) the chief sponsor, who is knowledgeable about and responsible for providing pertinent information as the appropriation is processed;

(iv) supporting legislators, if any, who wish to cosponsor the appropriation; and

(v) the appropriation subcommittee to which the sponsor wishes the request to be assigned, if any.

(2) (a) When a member files a Request for Appropriation, the Legislative Fiscal Analyst shall review the request.

(b) If the request requires that a statute be enacted, amended, or repealed, the Legislative Fiscal Analyst shall immediately transfer the request to the Office of Legislative Research and General Counsel as a Request for Legislation.

(c) If the request does not require that a statute be enacted, amended, or repealed, the Legislative Fiscal Analyst shall number and title the request and refer the request to:

(i) the House chair of the Executive Appropriations Committee, if the sponsor is a House member; or

(ii) the Senate chair of the Executive Appropriations Committee, if the sponsor is a Senator.

(d) The House or Senate chair of the Executive Appropriations Committee shall refer the request to the appropriate joint appropriations subcommittee.

(3) Each joint appropriations subcommittee that receives a Request for Appropriation shall:

(a) allow the sponsor to present and discuss the request with the subcommittee;

(b) discuss the request; and

(c) either:

(i) include all or part of the requested appropriation in the budget recommendation made to the Executive Appropriations Committee;

(ii) reject the request; or

(iii) recommend to the Executive Appropriations Committee that all or part of the requested appropriation be placed on a funding prioritization list as may be established by the Executive Appropriations Committee.

Section 3. JR-19.02 is amended to read:

JR-19.02. Requesting, Refiling, Approving, and Abandoning Bills.

(1) [~~(a)~~] Except as provided in Subsection [~~(1)(c)~~] (3), a legislator may not file a Request for Legislation with the Office of Legislative Research and General Counsel or file a Request for Appropriation with the Office of the Legislative Fiscal Analyst after noon on the 11th day of the annual general session.

[~~(b)~~] (2) Except as provided in Subsection [~~(1)(c)~~] (3), by noon on the 11th day of the annual general session, each legislator shall, for each [~~bill~~] Request for Legislation on file with the Office of Legislative Research and General Counsel, either approve the [~~bill~~] request for numbering or abandon it.

[~~(c)~~] (3) A legislator may file a Request for Legislation [~~or~~], approve a bill for numbering, or file a Request for Appropriation any time after noon on the 11th day of the annual general session if:

[~~(i)~~] (a) for House bills, the Representative makes a motion to request a bill for drafting and introduction and that motion is approved by a constitutional majority of the House; [~~or~~]

(b) for a Request for Appropriation submitted by a House member, the Representative makes a motion to request an appropriation and that motion is approved by a constitutional majority of the House;

[~~(ii)~~] (c) for Senate bills, the Senator makes a motion to request a bill for drafting and introduction and that motion is approved by a constitutional majority vote of the Senate[~~.~~]; or

(d) for a Request for Appropriation submitted by a Senator, the Senator makes a motion to request an appropriation and that motion is approved by a constitutional majority of the Senate.

Section 4. Effective date.

This resolution takes effect upon approval by a constitutional majority vote of all members of the Senate and House of Representatives.

S. J. R. 2
Passed January 17, 2001
Effective January 17, 2001

**JOINT RULES RESOLUTION -
IN-DEPTH BUDGET REVIEW SELECTION**

Sponsor: Leonard M. Blackham

This joint resolution of the Legislature revises joint rules by establishing certain responsibilities for the executive appropriations committee and appropriation subcommittees relating to in-depth budget reviews. This resolution takes effect upon approval.

This resolution affects legislative rules as follows:

AMENDS:
JR-3.02

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

Section 1. JR-3.02 is amended to read:

JR-3.02. Joint Appropriations Committee.

(1) The Joint Appropriations Committee of the Legislature consists of all the members of the Legislature.

(2) (a) The members of the Joint Appropriations Committee shall be divided into the following subcommittees:

(i) Capital Facilities and Administrative Services;

(ii) Commerce and Revenue;

(iii) Economic Development and Human Resources;

(iv) Executive Offices, Criminal Justice, and Legislature;

(v) Health and Human Services;

(vi) Higher Education;

(vii) Physical Resources;

(viii) Public Education;

(ix) Quasi-Governmental Entities; and

(x) Transportation and Environmental Quality.

(b) The President of the Senate and Speaker of the House shall appoint their respective members to each subcommittee.

(c) The Quasi-Governmental Entities Subcommittee shall have the same members as the Legislative Quasi-Governmental Entities Committee created in Section 63-95-201.

(3) (a) A majority of any committee or subcommittee constitutes a quorum for the transaction of business.

(b) In determining a committee or subcommittee quorum, a majority is at least 50% in one house and more than 50% in the other.

(c) In all decisions of the subcommittees, a majority vote will prevail. A majority vote is at least 50% of the members of one house and more than 50% in the other house in attendance.

(4) (a) There shall be an Executive Appropriations Committee consisting of 18 members composed of:

(i) three members of the majority leadership of the Senate and four members of the majority leadership of the House;

(ii) two members of the minority leadership of the Senate and three members of the minority leadership of the House;

(iii) the chair of the Senate Appropriations Committee and the chair of the House Appropriations Committee; and

(iv) (A) one member from the majority party of the Senate as appointed by the President of the Senate or as chosen by the Senate majority caucus;

(B) two members from the minority party of the Senate as appointed by the Senate minority leader or as chosen by the Senate minority caucus; and

(C) one member from the minority party of the House as appointed by the House minority leader or as chosen by the House minority caucus.

(b) A member of the Executive Appropriations Committee, whose membership is determined under Subsection (4)(a)(i) or (ii), may appoint a designee to permanently serve in that individual's place with the approval of the Speaker or the President for any majority party member or with the approval of the House or Senate minority party leader for any minority party member.

(c) In all decisions of the Executive Appropriations Committee, a majority vote prevails. When a division is requested, that vote must include at least 50% of the members of one house and more than 50% of the members of the other house in attendance.

(5) (a) The Executive Appropriations Committee shall meet no later than the third Wednesday in December to:

(i) direct staff as to what revenue estimate to use in preparing budget recommendations;

(ii) decide whether or not to set aside special allocations for the end of the session;

(iii) set aside an appropriate amount for fiscal note bills;

(iv) approve the appropriate amount for each subcommittee to use in preparing its budget; and

(v) set a budget figure.

(b) The chairs of each appropriation subcommittee are invited to attend this meeting.

(6) The Office of Legislative Fiscal Analyst shall prepare revised revenue estimates in February.

(7) The Executive Appropriations Committee shall include in its consideration tax collections and revenue policy, tax administration, and analysis of revenue sources.

(8) (a) With the approval of the Executive Appropriations Committee, time schedules for subcommittee meetings will be determined so that no conflict exists with the annual general sessions or standing committee meetings of the Legislature.

(b) Appropriations subcommittees may not meet while the Senate or House is in session without special leave from the Speaker of the House and the President of the Senate.

(9) (a) (i) It is the duty of the appropriations chair of each house to receive the reports of the subcommittees and to forward the reports to the Executive Appropriations Committee.

(ii) The Executive Appropriations Committee shall combine the reports into a total appropriations bill.

(b) The Executive Appropriations Committee shall establish a liaison between their committee and each of the appropriations subcommittees.

(10) All proposed items of expenditure to be included in the final appropriations bill, including appropriations for the Legislature and its committees and staff, shall be submitted to one of the subcommittees named in this rule for consideration and recommendation.

(11) (a) After receiving and reviewing subcommittee reports, the Executive Appropriations Committee may refer the report back to an appropriations subcommittee with any guidelines the Executive Appropriations Committee considers necessary to assist the subcommittee in producing a balanced budget.

(b) The subcommittee shall meet to review the new guidelines and report the adjustments to the chairs of the Executive Appropriations Committee as soon as possible.

(12) (a) After receiving the reports, the appropriations chairs will report them to the Executive Appropriations Committee.

(b) That committee shall:

(i) make any further adjustments necessary to balance the budget; and

(ii) complete all decisions necessary to draft the final appropriations bill no later than the 38th day of the annual general session.

(13) (a) During the interim, the Executive Appropriations Committee shall meet at least every other month on the day before interim meetings on alternating months between Legislative Management Committee meetings.

(b) The first meeting of the Executive Appropriations Committee shall be in the month following the first meeting of the Legislative Management Committee.

(c) The appropriations subcommittee chairs may attend these meetings and provide input regarding their budget.

(d) (i) Each year, the Executive Appropriations Committee shall:

(A) select a state agency, institution, or program to be the subject of an in-depth budget review; and

(B) direct an appropriation subcommittee to conduct the in-depth budget review of the agency and report back to the Executive Appropriations Committee.

(ii) In conducting the in-depth budget review, the appropriations subcommittee shall:

(A) study, in detail, the budget of the agency, institution, or program;

(B) prepare a report making recommendations for reduction or additions to the budget of that agency, institution, or program; and

(C) present its findings and recommendations to the Executive Appropriations Committee.

Section 2. Effective date.

This resolution takes effect upon approval by a constitutional majority vote of all members of the Senate and House of Representatives.

S. J. R. 4
Passed January 24, 2001
Effective January 24, 2001

JOINT RULES RESOLUTION - REVISIONSTO APPROPRIATIONS SUBCOMMITTEES

Sponsor: Michael G. Waddoups
D. Chris Buttars
David L. Gladwell
Parley Hellewell
Peter C. Knudson
Ed P. Mayne
Terry R. Spencer
Pete Suazo

This joint resolution modifies joint legislative rules by renaming appropriation subcommittees to accurately reflect their jurisdiction. This resolution takes effect upon passage by both the House and Senate.

This resolution affects legislative rules as follows:

AMENDS:
JR-3.02

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

Section 1. JR-3.02 is amended to read:

JR-3.02. Joint Appropriations Committee.

(1) The Joint Appropriations Committee of the Legislature consists of all the members of the Legislature.

(2) (a) The members of the Joint Appropriations Committee shall be divided into the following subcommittees:

(i) Capital Facilities and Administrative Services;

(ii) Commerce and Revenue;

(iii) Economic Development and Human Resources;

(iv) Executive Offices[~~,~~] and Criminal Justice[~~, and Legislature~~];

(v) Health and Human Services;

(vi) Higher Education;

(vii) [~~Physical~~] Natural Resources;

(viii) Public Education;

(ix) Quasi-Governmental Entities; and

(x) Transportation and Environmental Quality.

(b) The President of the Senate and Speaker of the House shall appoint their respective members to each subcommittee.

(c) The Quasi-Governmental Entities Subcommittee shall have the same members as the Legislative Quasi-Governmental Entities Committee created in Section 63-95-201.

(3) (a) A majority of any committee or subcommittee constitutes a quorum for the transaction of business.

(b) In determining a committee or subcommittee quorum, a majority is at least 50% in one house and more than 50% in the other.

(c) In all decisions of the subcommittees, a majority vote will prevail. A majority vote is at least 50% of the members of one house and more than 50% in the other house in attendance.

(4) (a) There shall be an Executive Appropriations Committee consisting of 18 members composed of:

(i) three members of the majority leadership of the Senate and four members of the majority leadership of the House;

(ii) two members of the minority leadership of the Senate and three members of the minority leadership of the House;

(iii) the chair of the Senate Appropriations Committee and the chair of the House Appropriations Committee; and

(iv) (A) one member from the majority party of the Senate as appointed by the President of the Senate or as chosen by the Senate majority caucus;

(B) two members from the minority party of the Senate as appointed by the Senate minority leader or as chosen by the Senate minority caucus; and

(C) one member from the minority party of the House as appointed by the House minority leader or as chosen by the House minority caucus.

(b) A member of the Executive Appropriations Committee, whose membership is determined under Subsection (4)(a)(i) or (ii), may appoint a designee to permanently serve in that individual's place with the approval of the Speaker or the President for any majority party member or with the approval of the House or Senate minority party leader for any minority party member.

(c) In all decisions of the Executive Appropriations Committee, a majority vote prevails. When a division is requested, that vote must include at least 50% of the members of one house and more than 50% of the members of the other house in attendance.

(5) (a) The Executive Appropriations Committee shall meet no later than the third Wednesday in December to:

(i) direct staff as to what revenue estimate to use in preparing budget recommendations;

(ii) decide whether or not to set aside special allocations for the end of the session;

(iii) set aside an appropriate amount for fiscal note bills;

(iv) approve the appropriate amount for each subcommittee to use in preparing its budget; and

(v) set a budget figure.

(b) The chairs of each appropriation subcommittee are invited to attend this meeting.

(6) The Office of Legislative Fiscal Analyst shall prepare revised revenue estimates in February.

(7) The Executive Appropriations Committee shall include in its consideration tax collections and revenue policy, tax administration, and analysis of revenue sources.

(8) (a) With the approval of the Executive Appropriations Committee, time schedules for subcommittee meetings will be determined so that no conflict exists with the annual general sessions or standing committee meetings of the Legislature.

(b) Appropriations subcommittees may not meet while the Senate or House is in session without special leave from the Speaker of the House and the President of the Senate.

(9) (a) (i) It is the duty of the appropriations chair of each house to receive the reports of the subcommittees and to forward the reports to the Executive Appropriations Committee.

(ii) The Executive Appropriations Committee shall combine the reports into a total appropriations bill.

(b) The Executive Appropriations Committee shall establish a liaison between their committee and each of the appropriations subcommittees.

(10) All proposed items of expenditure to be included in the final appropriations bill, including appropriations for the Legislature and its committees and staff, shall be submitted to one of the subcommittees named in this rule for consideration and recommendation.

(11) (a) After receiving and reviewing subcommittee reports, the Executive Appropriations Committee may refer the report back to an appropriations subcommittee with any guidelines the Executive Appropriations

Committee considers necessary to assist the subcommittee in producing a balanced budget.

(b) The subcommittee shall meet to review the new guidelines and report the adjustments to the chairs of the Executive Appropriations Committee as soon as possible.

(12) (a) After receiving the reports, the appropriations chairs will report them to the Executive Appropriations Committee.

(b) That committee shall:

(i) make any further adjustments necessary to balance the budget; and

(ii) complete all decisions necessary to draft the final appropriations bill no later than the 38th day of the annual general session.

(13) (a) During the interim, the Executive Appropriations Committee shall meet at least every other month on the day before interim meetings on alternating months between Legislative Management Committee meetings.

(b) The first meeting of the Executive Appropriations Committee shall be in the month following the first meeting of the Legislative Management Committee.

(c) The appropriations subcommittee chairs may attend these meetings and provide input regarding their budget.

Section 2. Effective date.

This resolution takes effect upon approval by a constitutional majority vote of all members of the Senate and House of Representatives.

S. J. R. 5
Passed January 23, 2001
Effective January 23, 2001

RESOLUTION RECOGNIZING CONTRIBUTIONS OF RICHARD V. STRONG

Sponsor: Al Mansell

This joint resolution recognizes the outstanding contributions of Richard V. Strong to the Legislature. The resolution recognizes his 30 years of legislative service, including 15 years as the director of the Office of Legislative Research and General Counsel, and wishes him well in his future endeavors.

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

WHEREAS, Richard V. Strong began his service with the Utah Legislature in 1971;

WHEREAS, in 1985, Mr. Strong was named director of the Office of Legislative Research and General Counsel;

WHEREAS, Mr. Strong's service to the Legislature was distinguished by enthusiasm, commitment to excellence, willingness to tackle difficult challenges, and integrity;

WHEREAS, throughout his many years in state service, Mr. Strong demonstrated professionalism and a determination to provide the best service to legislators;

WHEREAS, Mr. Strong managed a professional legislative staff office of nearly 60 employees whose service to the Legislature was greatly enhanced by his faith, support, and loyalty;

WHEREAS, Mr. Strong led by example in serving the needs of 104 legislators and responding with professionalism to their unique needs;

WHEREAS, Mr. Strong's leadership and management of the office brought considerable credibility to the state's legislative process;

WHEREAS, Mr. Strong routinely deflected praise for the Office of Legislative Research and General Counsel's performance to his staff;

WHEREAS, Mr. Strong presided during a time of great change in the technological tools used by staff to serve the Legislature;

WHEREAS, Mr. Strong facilitated these technological advances, encouraging development of online access to legislative information for the Legislature and the public;

WHEREAS, Mr. Strong helped staff to adapt to these changes and to continually improve the manner in which it met the needs of legislators;

WHEREAS, Mr. Strong accepted, on behalf of the office, the 1998 Roy B. Gibson Freedom of Information Award from the Utah Headliners Chapter of the Society of Professional Journalists, for making the Utah Legislature website one of the very best, most useful legislative websites in the nation;

WHEREAS, Mr. Strong worked with genuine enthusiasm for the people he served, the legislative process, and the challenges he tackled on behalf of the Legislature;

WHEREAS, Mr. Strong's commitment to excellence was of great benefit to legislators and the public and served as a guiding influence to his staff;

WHEREAS, Mr. Strong's actions in service to the Legislature clearly demonstrated that integrity came before all else; and

WHEREAS, the Legislature as an institution will long bear the mark of Mr. Strong's steady leadership behind the scenes in support of the Legislature:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah recognize the outstanding contributions of Richard V. Strong to the success of the Legislative Branch in carrying out its duty to serve the needs of the citizens of Utah.

BE IT FURTHER RESOLVED that the Legislature of the state of Utah wish Richard and his family well in all their future endeavors.

BE IT FURTHER RESOLVED that a copy of this resolution be presented to Richard V. Strong.

S. J. R. 6
Passed February 14, 2001
Effective February 14, 2001

JOINT RESOLUTION RECOGNIZING LIBERTY DAY

Sponsor: Ed P. Mayne
Ron Allen
D. Edgar Allen
Leonard M. Blackham
Curtis S. Bramble
D. Chris Buttars
Gene Davis
Mike Dmitrich
Dan R. Eastman
Beverly Ann Evans
David L. Gladwell
Karen Hale
Parley Hellewell
John W. Hickman
Lyle W. Hillyard
Scott K. Jenkins
Paula F. Julander
Peter C. Knudson
Al Mansell
Millie M. Peterson
L. Steven Poulton
Terry R. Spencer
David H. Steele
Howard A. Stephenson
Pete Suazo
John L. Valentine
Michael G. Waddoups
Carlene M. Walker
Bill Wright

This joint resolution of the Legislature designates March 16, 2001 as Liberty Day in the state of Utah. The resolution urges the citizens of Utah to reflect on the freedoms granted to them in the Declaration of Independence and the United States Constitution.

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

WHEREAS, the citizens of the United States of America enjoy liberties through the passage of documents such as the Declaration of Independence and the United States Constitution with its Bill of Rights;

WHEREAS, the rights and liberties enjoyed by the nation's citizens today are rooted in these cherished documents that gave birth to this nation;

WHEREAS, the patriot James Madison, fourth President of the United States, was the major author of the Virginia Plan, the model and the basis for the United States Constitution that emerged from the Constitutional Convention of 1787;

WHEREAS, James Madison kept detailed written records of the debates and compromises that were an integral part of the Constitutional Convention of 1787;

WHEREAS, James Madison wrote many of the newspaper articles now known as the Federalist Papers, outlining why states should endorse the new Constitution;

WHEREAS, these writings have endured as some of the best arguments for the form of government established by the Constitution;

WHEREAS, James Madison introduced the Bill of Rights into the 1st Congress of the United States, which were adopted as the first ten amendments to the Constitution;

WHEREAS, since many Americans are not familiar with the contents of the Declaration of Independence and the Constitution, an important effort should be made to promote and nurture a familiarity and understanding of these founding documents; and

WHEREAS, the 16th day of March, the birthday of the distinguished Founding Father James Madison, is a fitting day to designate as Liberty Day, a celebration of the Declaration of Independence and the United States Constitution, which establish the unalienable rights and liberties of this nation:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah designate March 16, 2001 as Liberty Day in the state of Utah.

BE IT FURTHER RESOLVED that the Legislature urges that Liberty Day be celebrated as a remembrance of the freedom that Americans were given in the Declaration of Independence and the extraordinary rights and liberties protected in the Constitution.

BE IT FURTHER RESOLVED that gratitude and thanks be given to Lions Clubs throughout Utah and the nation for initiating and carrying Liberty Day to the students of the state and nation.

BE IT FURTHER RESOLVED that gratitude and thanks be expressed to all representatives of the people who have voluntarily given their time to serve and to speak to Americans about the founding documents.

BE IT FURTHER RESOLVED that a copy of this resolution be sent to the Lions Club International and the secretary of the Utah Lions Clubs.

S. J. R. 8
Passed February 28, 2001
Effective February 28, 2001

RESOLUTION ON RENT MORATORIUM DURING THE OLYMPICS

Sponsor: Ron Allen

This joint resolution of the Legislature urges owners of rental properties in communities near 2002 Olympic Winter Games venues to limit rental increases, not evict tenants in

the months preceding the games, and allow renters to renew long-term leases.

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

WHEREAS, the state of Utah is proud to welcome visitors from throughout the world to the 2002 Olympic Winter Games and enjoy the state's hospitality;

WHEREAS, there will be great need for accommodations for the many visitors to the 2002 Olympic Winter Games;

WHEREAS, owners of rental properties, who have made considerable financial investment in their property, will play a crucial role in fostering the state's image of fairness and opportunity;

WHEREAS, owners of rental properties are encouraged to limit rental increases during the 12 months preceding the Olympic Games and during the games;

WHEREAS, owners of rental properties should not evict tenants in the months preceding the Olympic Games to rent to Olympic visitors; and

WHEREAS, the success of the 2002 Olympic Winter Games for the state of Utah and those who visit the state will be measured to a significant degree by the good will engendered between Utahns and its visitors:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah strongly encourages owners of rental properties to limit rental increases in the 12 months preceding the 2002 Olympic Winter Games and during the games to amounts no more than cost-of-living increases.

BE IT FURTHER RESOLVED that the Legislature strongly urges owners of rental properties to not evict tenants in the months preceding the 2002 Olympic Winter Games for the purpose of renting to Olympic visitors, and that all renters be given the option to renew long-term leases expiring in 2001 through the period of the Olympic Games.

BE IT FURTHER RESOLVED that a copy of this resolution be sent to the Salt Lake Apartment Association and the Northern Utah Apartment Association.

S. J. R. 10
Passed February 14, 2001
Effective February 14, 2001

RESOLUTION RECOGNIZING PEERY'S EGYPTIAN THEATER

Sponsor: Scott K. Jenkins

This joint resolution of the Legislature recognizes Peery's Egyptian Theater in Ogden City for its distinctive place in Utah's film history and the efforts made to restore the theater.

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

WHEREAS, Peery's Egyptian Theater in Ogden City is one of only 30 Egyptian-themed Movie Theaters to still exist in the United States;

WHEREAS, in 1923 Harmon W. and Louis H. Peery hired two of Utah's premier architects, Leslie S. Hodgson and Myrl A. McClenahan, to design a movie palace that would be the showplace of the West;

WHEREAS, Peery's Egyptian Theater, built on the same ground where the Peery family's pioneer home once stood, opened in 1924;

WHEREAS, Peery's Egyptian Theater seated its audience in an Egyptian courtyard under twinkling stars in a desert sky;

WHEREAS, Peery's Egyptian Theater featured seating on one level in a steeply raked auditorium which provided excellent sight lines from anywhere in the house;

WHEREAS, built entirely of poured, reinforced concrete, the theater was proclaimed upon opening as Ogden's only fireproof theater;

WHEREAS, in 1935 Peery's Egyptian Theater was leased to the fledgling 20th Century-Fox studio;

WHEREAS, in 1951 Peery's Egyptian Theater reopened after being beautifully remodeled and redecorated and updated with the finest sound and projection equipment;

WHEREAS, in 1961 the theater was refurbished, but many of the remaining historic Egyptian designs and colors were gone;

WHEREAS, after three more owners, the theater was leased to a small independent chain which eventually turned it into a second-run, dollar movie house before being closed in 1984;

WHEREAS, in 1985 the Friends of the Egyptian Theater, the forerunner of the Egyptian Theatre Foundation, organized to save the Egyptian Movie Palace;

WHEREAS, the Egyptian Theater was eventually purchased by the Weber County Heritage Foundation, turned over to the Egyptian Theater Foundation, and through a five-way partnership consisting of Weber County, Ogden City, Weber State University, the Egyptian Theater Foundation, and the Ogden/Weber Chamber of Commerce, Peery's Egyptian Theater was saved and restored;

WHEREAS, the restoration was meticulous, complete, and features the original color palette;

WHEREAS, Peery's Egyptian Theater is one of four restored Egyptian Theaters in the West and the lone "atmospheric" theater believed to exist in the region;

WHEREAS, the restored theater became part of a spectacular new conference center complex which opened in 1997; and

WHEREAS, Peery's Egyptian Theater remains

one of Utah's most treasured houses of entertainment:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah recognize the restored Peery's Egyptian Theater and the great effort undertaken to return one of cinema's most impressive venues to its original condition for future generations to enjoy.

BE IT FURTHER RESOLVED that a copy of this resolution be sent to the Egyptian Theatre Foundation, Weber County, Ogden City, Weber State University, and the Ogden/Weber Chamber of Commerce.

S. J. R. 11
Passed February 27, 2001
Effective February 27, 2001

RESOLUTION ON TAXATION OF REMOTE SALES AND DEVELOPING TECHNOLOGIES

Sponsor: John L. Valentine

This joint resolution of the Legislature encourages the Utah Tax Review Commission to study and develop a plan to minimize taxes and remove burdens imposed by the taxes on persons using developing technologies. The Legislature urges that this study and plan incorporate the principles of opposing certain taxes, and minimizing the application of taxes and administrative burdens on business conducted through the use of developing technologies. The Legislature authorizes the plan developed by the Utah Tax Review Commission to provide for the imposition of sales or use taxes on a transaction conducted through the use of developing technologies to the extent that the transaction would be taxable if the transaction was not conducted through the use of developing technologies.

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

WHEREAS, the use of developing technology, including computers, electronic transmission of data, the Internet, and e-commerce, is a vital economic engine in increasing efficiency and in dramatically improving transmission and sharing of information;

WHEREAS, the goal of Utah tax policy is to foster economic growth, and to minimize burdens on the development and use of developing technologies;

WHEREAS, under an Executive Order signed by Governor Michael O. Leavitt on January 18, 2000, the Utah Tax Review Commission is requested and directed to study and develop a plan for tax simplification;

WHEREAS, it is the policy of this Legislature to oppose taxation of the Internet itself, including taxes on access to the Internet, bit taxes, discriminatory taxes, or multiple taxes;

WHEREAS, it is the policy of this Legislature to oppose the introduction of new taxes on such developing technology;

WHEREAS, it is the policy of this Legislature to oppose the introduction of any new tax on remote sales; and

WHEREAS, it is the policy of this Legislature to foster and to encourage the growth of the economy through the use of developing technologies, including making positive efforts to remove barriers and burdens imposed by the tax system:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah encourages the Utah Tax Review Commission to study and develop a plan to minimize and remove burdens imposed by taxes on persons using developing technologies in business and for other purposes, and encourages the Utah Tax Review Commission to make regular reports on the study and plan to the Revenue and Taxation Interim Committee.

BE IT FURTHER RESOLVED that the Utah Tax Review Commission be directed to incorporate into this study the principles expressed in this resolution.

BE IT FURTHER RESOLVED that the plan developed by the Utah Tax Review Commission not include any new taxes imposed on providing Internet services or on providing electronic communications.

BE IT FURTHER RESOLVED that the plan developed by the Utah Tax Review Commission not recommend the application of sales and use taxes to electronic data, information, or services.

BE IT FURTHER RESOLVED that the plan developed by the Utah Tax Review Commission minimize the application of taxes to and administrative burdens on business conducted through the use of developing technologies.

BE IT FURTHER RESOLVED that the plan developed by the Utah Tax Review Commission may provide for the imposition of sales or use taxes on a transaction conducted through the use of developing technologies involving tangible personal property or a service to the extent that the transaction would be taxable if the transaction was not conducted through the use of developing technologies.

S. J. R. 13
Passed February 28, 2001
Effective February 28, 2001

JOINT RESOLUTION ENCOURAGING USE OF STATE PROPERTY FOR FILMING

Sponsor: David L. Gladwell

This joint resolution of the Legislature urges that film production companies be granted incentives to do business in Utah, including

filming on state property free of charge except for actual costs.

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

WHEREAS, for many years the state of Utah has provided a vast array of natural settings and vistas for use by film production companies from around the world;

WHEREAS, during the last 11 years, film production companies have spent $1 billion in the state of Utah;

WHEREAS, while in Utah, film production companies often utilize the state's talented community of actors, crew, and support service providers to complete their production plans;

WHEREAS, many states offer lucrative incentives to attract film production companies;

WHEREAS, for example, Wyoming offers free use of state-owned property, including state parks;

WHEREAS, Arizona provides sales tax rebates on production-related expenses and does not charge for the use of state parks;

WHEREAS, Montana does not charge film production companies sales tax or a room tax; out-of-state vehicles used exclusively in the production of motion pictures, television, or commercials are exempt from licensing requirements for 180 days; and a migratory or transient property or equipment exemption is granted for out-of-state equipment used in the filming process for up to 180 days;

WHEREAS, New Mexico provides sales tax incentives and has established a $20 million film financing fund created from severance tax funds, referred to as community impact monies in Utah;

WHEREAS, Utah should consider measures that would permit the state to remain competitive with other states in attracting film production companies;

WHEREAS, permitting film production companies to film on state-owned property free of charge, except for the assessment of actual costs, would increase the state's profile as a single destination for filmmakers who seek not only the variety of enchanting vistas and manpower resources the state has to offer but also to keep their projects cost effective; and

WHEREAS, providing reasonable incentives will help the state of Utah to enjoy continued economic benefit by remaining an ideal destination for film production companies:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah urges that incentives, including filming on state-owned property free of charge except for actual expenses, be utilized to enhance the state's ability to attract film production companies to Utah.

BE IT FURTHER RESOLVED that the Legislature urges that incentives be provided so that the state can continue to enjoy the many economic benefits which flow from hosting film production companies.

BE IT FURTHER RESOLVED that a copy of this resolution be sent to the Utah Film Commission.

S. R. 1
Passed January 18, 2001
Effective January 18, 2001

SENATE RESOLUTION AMENDING PROVISIONS RELATING TO LONG TITLE

Sponsor: Michael G. Waddoups
D. Chris Buttars
David L. Gladwell
Parley Hellewell
Peter C. Knudson
Ed P. Mayne
Terry R. Spencer
Pete Suazo

This Senate resolution modifies Senate rules relating to long titles. This resolution gives the Secretary of the Senate limited powers to conform long titles to reflect changes made by substitute or amendment and makes a technical change in reading requirements to conform with the Utah Constitution and with current practice. This resolution takes effect upon passage by the Senate.

This resolution affects legislative rules as follows:

AMENDS:
SR-20.06
SR-25.08

Be it resolved by the Senate of the state of Utah:

Section 1. SR-20.06 is amended to read:

SR-20.06. Duties of the Secretary of the Senate.

(1) A Secretary of the Senate shall be appointed by the President or President-elect before each session is convened.

(2) The Secretary shall:

(a) act as chief administrative officer of the Senate, subject to direction by the President;

(b) supervise all Senate personnel during the session and interim and assign them duties and responsibilities;

(c) keep a record of the attendance of all employees, and not pay for the day or days of absence any employee who is absent without the written consent or subsequent approval of the President;

(d) be custodian of all official documents;

(e) receive from the Office of Legislative Research and General Counsel all numbered bills and resolutions;

(f) record the number, title, sponsor, each action, and final disposition of each bill on its bill jacket;

(g) prepare and distribute the legislative agenda each day;

(h) assist the Reading Clerk in preparation of the Senate Journal and certify it as an accurate reflection of Senate action;

(i) read the long title of all bills and other materials as requested by the President;

(j) receive committee reports and present them to the Senate;

(k) advise the President on parliamentary procedure, constitutional requirements, and Joint and Senate Rules;

(l) assist with amendments to bills;

(m) record votes and present the results to the President;

(n) correct spelling, erroneous division and hyphenation of words, correct mistakes in numbering sections and their references, capitalize or lower case words, change numbers from words to figures or from figures to words, and underscore or remove underscoring in bills without a motion to amend, either before or after final passage of a bill;

(o) modify the long title of any bill or resolution to ensure that the long title accurately reflects any changes to the bill or resolution made by amendment or substitute;

[~~(o)~~] (p) certify and transmit bills to the House of Representatives and inform the House of all Senate action;

[~~(p)~~] (q) transmit to the Governor all enrolled Senate bills;

[~~(q)~~] (r) respond to inquiries from legislators, government agencies, and members of the public regarding Senate history, activities, and legislative action; and

[~~(r)~~] (s) represent the Senate at schools, organizations, clubs, and other civic groups when asked by the President.

Section 2. SR-25.08 is amended to read:

SR-25.08. Third Reading Calendar.

(1) (a) For its third reading, each bill listed shall be read by [~~long~~] title, unless by two-thirds vote the Senate suspends this requirement. (Utah Constitution Article VI, Section 22; cf. SR-27.16)

(b) The bill shall then be considered.

(2) (a) The final question is: "This bill (resolution) has been read three times; the question is: Shall the bill (resolution) pass?"

(b) The final vote shall then be taken.

Section 3. Effective date.

This resolution takes effect upon approval by a constitutional majority vote of all members of the Senate.

S. R. 2
Passed January 24, 2001
Effective January 24, 2001

SENATE RULES RESOLUTION - USE OF MASON'S MANUAL

Sponsor: Michael G. Waddoups

This Senate resolution modifies Senate rules by establishing Mason's Manual of Legislative Procedure as a reference for parliamentary procedure. This resolution takes effect upon passage by the Senate.

This resolution affects legislative rules as follows:

REPEALS AND REENACTS:
SR-34.03

Be it resolved by the Senate of the state of Utah:

Section 1. SR-34.03 is repealed and reenacted to read:

SR-34.03. Mason's Manual of Legislative Procedure; Reference.

In addition to legislative rules, the presiding officer may use Mason's Manual of Legislative Procedure as a reference when a question arises about parliamentary practice, legislative process, or legislative procedure that is not resolved by reference to legislative rules.

Section 2. Effective date.

This resolution takes effect upon approval by a constitutional majority vote of all members of the Senate.

S. R. 5
Passed January 31, 2001
Effective January 31, 2001

RESOLUTION URGING JELL-O® RECOGNITION

Sponsor: Leonard M. Blackham
Ron Allen
D. Edgar Allen
Curtis S. Bramble
D. Chris Buttars
Gene Davis
Mike Dmitrich
Dan R. Eastman
Beverly Ann Evans
David L. Gladwell
Karen Hale
Parley Hellewell
John W. Hickman
Lyle W. Hillyard
Scott K. Jenkins
Paula F. Julander
Peter C. Knudson
Al Mansell
Ed P. Mayne
Millie M. Peterson
L. Steven Poulton
Terry R. Spencer

David H. Steele
Howard A. Stephenson
Pete Suazo
John L. Valentine
Michael G. Waddoups
Carlene M. Walker
Bill Wright

This Senate resolution of the Legislature recognizes Jell-O® brand gelatin as a favorite snack of Utah.

Be it resolved by the Senate of the state of Utah:

WHEREAS, Jell-O® brand gelatin was introduced to the country in 1897, just one year after Utah was admitted to the Union as the 45th state;

WHEREAS, Utah has been the number one per capita consumer of Jell-O® brand gelatin for many years;

WHEREAS, Jell-O® is representative of good family fun, which Utah is known for throughout the world;

WHEREAS, Salt Lake Magazine proclaimed Utah "the Jell-O® State" in a cover story in 1996;

WHEREAS, Jell-O® brand gelatin recipes, which often include bananas, apples, marshmallows, pretzels, carrots, and grapes, are a traditional favorite at family, church, and community dinners throughout the Beehive State;

WHEREAS, in 1997, Salt Lake Tribune editorial cartoonist Pat Bagley drew a week-long series of political cartoons showcasing Jell-O® in Utah in conjunction with the 100th anniversary of Jell-O® ;

WHEREAS, a 2002 Winter Olympic pin was designed that featured a bowl of green gelatin and has become a valuable collector's item;

WHEREAS, when Des Moines, Iowa edged out Salt Lake City as the capitol of Jell-O® gelatin consumption in 1999, it sparked front page stories in Salt Lake City's newspapers;

WHEREAS, Utahns rallied to "Take Back the Title" as Chef Scott Blackerby hosted a recipe contest in the Hotel Monaco's Bambara Restaurant and Pat Bagley ran a cartoon persuading Utahns to purchase more Jell-O® gelatin;

WHEREAS, throughout 2000, Brigham Young University students campaigned to make Utah's love of Jell-O® official at festivals and fairs throughout Utah;

WHEREAS, more than 14,000 signatures have been collected from the people of Utah in support of the campaign to select Jell-O® as the Official Snack of Utah; and

WHEREAS, due to these and many other efforts, Salt Lake City has now successfully recaptured the title:

NOW, THEREFORE, BE IT RESOLVED that the Senate of the state of Utah recognize Jell-O® as a favorite snack food of Utah.

BE IT FURTHER RESOLVED that a copy of this resolution be sent to Kraft Foods, Inc.

S. R. 6
Passed February 2, 2001
Effective February 2, 2001

**SENATE RULES RESOLUTION-
RE-REFERRING BILLS TO COMMITTEE**

Sponsor: Michael G. Waddoups

This Senate resolution of the Legislature revises Senate rules to outline the process of re-referring bills to committee. This Senate resolution provides an effective date.

This resolution affects legislative rules as follows:

REPEALS AND REENACTS:
SR-25.11

Be it resolved by the Senate of the state of Utah:

Section 1. SR-25.11 is repealed and reenacted to read:

SR-25.11. Re-referring Bills to Committee.

[~~Any bill may be returned to a committee by a majority vote of those present in the Senate at any time prior to its passage on the third reading calendar.~~]

A bill that has been referred to a standing committee may be re-referred as follows:

(1) by the presiding officer;

(2) upon motion from the floor; and

(3) if a bill has been reported back by the committee to which it was assigned with the recommendation that it be re-referred to the Secretary of the Senate.

Section 2. Effective date.

This resolution takes effect upon approval by a constitutional majority vote of all members of the Senate.

BILLS VETOED BY THE GOVERNOR

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H. B. 168
Passed February 27, 2001
Vetoed March 20, 2001

NOTICE BY SCHOOL TO CUSTODIAL AND NONCUSTODIAL PARENT

Sponsor: Fred J. Fife

THIS ACT REQUIRES A PUBLIC SCHOOL TO NOTIFY THE CUSTODIAL AND ATTEMPT TO NOTIFY THE NONCUSTODIAL PARENT OF A STUDENT WHO IS INJURED OR BECOMES ILL AT THE SCHOOL AND REQUIRES MEDICAL TREATMENT FOR THE INJURY OR ILLNESS AT A FACILITY NOT LOCATED ON THE SCHOOL PREMISES.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:
53A-11-205, Utah Code Annotated 1953

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

Section 1. Section 53A-11-205 is enacted to read:
53A-11-205. Notification to the parent of an injured or sick child.

Except when the court has directed otherwise, a public school shall notify the custodial parent and attempt to notify the noncustodial parent of a student who is injured or becomes ill at the school during the regular school day if:

(1) the injury or illness requires treatment at a hospital, doctor's office, or other medical facility not located on the school premises; and

(2) the school has a current telephone number for the party it is required to notify.

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H. B. 158
Passed February 27, 2001
Vetoed March 20, 2001

INDIVIDUAL INCOME TAX - ADDITION OF INTEREST TO FEDERAL TAXABLE INCOME

Sponsor: Greg J. Curtis

THIS ACT MODIFIES THE INDIVIDUAL INCOME TAX ACT TO PROVIDE THAT INTEREST ON CERTAIN INDEBTEDNESS OF OTHER STATES, THE DISTRICT OF COLUMBIA, OR A POSSESSION OF THE UNITED STATES IS SUBJECT TO STATE INDIVIDUAL INCOME TAXATION. THIS ACT MAKES TECHNICAL CHANGES.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
59-10-114, as last amended by Chapter 257, Laws of Utah 2000

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

Section 1. Section 59-10-114 is amended to read:

59-10-114. Additions to and subtractions from federal taxable income of an individual.

(1) There shall be added to federal taxable income of a resident or nonresident individual:

(a) the amount of any income tax imposed by this or any predecessor Utah individual income tax law and the amount of any income tax imposed by the laws of another state, the District of Columbia, or a possession of the United States, to the extent deducted from federal adjusted gross income, as defined by Section 62, Internal Revenue Code, in determining federal taxable income;

(b) a lump sum distribution allowable as a deduction under Section 402(d)(3), Internal Revenue Code, to the extent deductible under Section 62(a)(8), Internal Revenue Code, in determining federal adjusted gross income;

(c) 25% of the personal exemptions, as defined and calculated in the Internal Revenue Code;

(d) a withdrawal from a medical care savings account and any penalty imposed in the taxable year if:

(i) the taxpayer did not deduct or include the amounts on his federal tax return pursuant to Section 220, Internal Revenue Code; and

(ii) the withdrawal is subject to Subsections 31A-32a-105(1) and (2); [~~and~~]

(e) the amount refunded to a participant under Title 53B, Chapter 8a, Higher Education Savings Incentive Program, in the year in which the amount is refunded[~~.~~]; and

(f) for taxable years beginning on or after January 1, 2002, for bonds, notes, and other evidences of indebtedness acquired on or after January 1, 2002, the interest from bonds, notes, and other evidences of indebtedness issued by:

(i) a state other than this state;

(ii) the District of Columbia;

(iii) a possession of the United States;

(iv) a political subdivision of a state other than this state; or

(v) an agency or instrumentality of an entity described in Subsections (1)(f)(i) through (iv).

(2) There shall be subtracted from federal taxable income of a resident or nonresident individual:

(a) the interest or dividends on obligations or securities of the United States [~~and its possessions~~] or of any authority, commission, or instrumentality of the United States, to the extent includable in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States, but the amount subtracted under this Subsection (2)(a) shall be reduced by any interest on indebtedness incurred or continued to purchase or carry the obligations or securities described in this Subsection (2)(a), and by any expenses incurred in the production of interest or dividend income described in this Subsection (2)(a) to the extent that such expenses, including amortizable bond premiums, are deductible in determining federal taxable income;

(b) 1/2 of the net amount of any income tax paid or payable to the United States after all allowable credits, as reported on the United States individual income tax return of the taxpayer for the same taxable year;

(c) the amount of adoption expenses which, for purposes of this Subsection (2)(c), means any actual medical and hospital expenses of the mother of the adopted child which are incident to the child's birth and any welfare agency, child placement service, legal, and other fees or costs relating to the adoption;

(d) amounts received by taxpayers under age 65 as retirement income which, for purposes of this section, means pensions and annuities, paid from an annuity contract purchased by an employer under a plan which meets the requirements of Section 404(a)(2), Internal Revenue Code, or purchased by an employee under a plan which meets the requirements of Section 408, Internal Revenue Code, or paid by the United States, a state, or political subdivision thereof, or the District of Columbia, to the employee involved or the surviving spouse;

(e) for each taxpayer age 65 or over before the close of the taxable year, a $7,500 personal retirement exemption;

(f) 75% of the amount of the personal exemption, as defined and calculated in the Internal Revenue Code, for each dependent child with a disability and adult with a disability who is claimed as a dependent on a taxpayer's return;

(g) any amount included in federal taxable income that was received pursuant to any federal law enacted in 1988 to provide reparation payments, as damages for human suffering, to United States citizens and resident aliens of Japanese ancestry who were interned during World War II;

(h) subject to the limitations of Subsection (3)(e), amounts a taxpayer pays during the taxable year for health care insurance, as defined in Title 31A, Chapter 1, General Provisions:

(i) for:

(A) the taxpayer;

(B) the taxpayer's spouse; and

(C) the taxpayer's dependents; and

(ii) to the extent the taxpayer does not deduct the amounts under Section 125, 162, or 213, Internal Revenue Code, in determining federal taxable income for the taxable year;

(i) (i) except as otherwise provided in this Subsection (2)(i), the amount of a contribution made [~~in~~] during the [~~tax~~] taxable year on behalf of the taxpayer to a medical care savings account and interest earned on a contribution to a medical care savings account established pursuant to Title 31A, Chapter 32a, Medical Care Savings Account Act, to the extent the contribution is accepted by the account administrator as provided in the Medical Care Savings Account Act, and if the taxpayer did not deduct or include amounts on [~~his~~] the taxpayer's federal individual income tax return pursuant to Section 220, Internal Revenue Code[~~.A~~]; and

(ii) a contribution deductible under this subsection may not exceed either of the following:

[~~(i)~~] (A) the maximum contribution allowed under the Medical Care Savings Account Act for the tax year multiplied by two for taxpayers who file a joint return, if neither spouse is covered by health care insurance as defined in Section 31A-1-301 or self-funded plan that covers the other spouse, and each spouse has a medical care savings account; or

[~~(ii)~~] (B) the maximum contribution allowed under the Medical Care Savings Account Act for the tax year for taxpayers:

[~~(A)~~] (I) who do not file a joint return; or

[~~(B)~~] (II) who file a joint return, but do not qualify under Subsection (2)(i)(i); and

(j) the amount included in federal taxable income that was derived from money paid by the taxpayer to the program fund under Title 53B, Chapter 8a, Higher Education Savings Incentive Program, not to exceed amounts determined under Subsection 53B-8a-106(1)(d) and investment income earned on participation agreements under Subsection 53B-8a-106(1) when used for higher education costs of the beneficiary;

(k) for [~~tax~~] taxable years beginning on or after January 1, 2000, any amounts paid for premiums [~~on~~] for long-term care insurance [~~policies~~] as defined in Section 31A-22-1402 to the extent the amounts paid for long-term care insurance were not deducted under Section 213, Internal Revenue Code, in determining federal taxable income; and

(l) for taxable years beginning on or after January 1, 2000, if the conditions of Subsection (4)(a) are met, the amount of income derived by a Ute tribal member:

(i) during a time period that the Ute tribal member resides on homesteaded land diminished from the Uintah and Ouray Reservation; and

(ii) from a source within the Uintah and Ouray Reservation.

(3) (a) For purposes of Subsection (2)(d), the amount of retirement income subtracted for taxpayers under 65 shall be the lesser of the amount included in federal taxable income, or $4,800, except that:

(i) for married taxpayers filing joint returns, for each $1 of adjusted gross income earned over $32,000, the amount of the retirement income exemption that may be subtracted shall be reduced by 50 cents;

(ii) for married taxpayers filing separate returns, for each $1 of adjusted gross income earned over $16,000, the amount of the retirement income exemption that may be subtracted shall be reduced by 50 cents; and

(iii) for individual taxpayers, for each $1 of adjusted gross income earned over $25,000, the amount of the retirement income exemption that may be subtracted shall be reduced by 50 cents.

(b) For purposes of Subsection (2)(e), the amount of the personal retirement exemption shall be further reduced according to the following schedule:

(i) for married taxpayers filing joint returns, for each $1 of adjusted gross income earned over $32,000, the amount of the personal retirement exemption shall be reduced by 50 cents;

(ii) for married taxpayers filing separate returns, for each $1 of adjusted gross income earned over $16,000, the amount of the personal retirement exemption shall be reduced by 50 cents; and

(iii) for individual taxpayers, for each $1 of adjusted gross income earned over $25,000, the amount of the personal retirement exemption shall be reduced by 50 cents.

(c) For purposes of Subsections (3)(a) and (b), adjusted gross income shall be calculated by adding to federal adjusted gross income any interest income not otherwise included in federal adjusted gross income.

(d) For purposes of determining ownership of items of retirement income common law doctrine will be applied in all cases even though some items may have originated from service or investments in a community property state. Amounts received by the spouse of a living retiree because of the retiree's having been employed in a community property

state are not deductible as retirement income of such spouse.

(e) For purposes of Subsection (2)(h), a subtraction for an amount paid for health care insurance as defined in Title 31A, Chapter 1, General Provisions, is not allowed:

(i) for an amount that is reimbursed or funded in whole or in part by the federal government, the state, or an agency or instrumentality of the federal government or the state; and

(ii) for a taxpayer who is eligible to participate in a health plan maintained and funded in whole or in part by the taxpayer's employer or the taxpayer's spouse's employer.

(4) (a) A subtraction for an amount described in Subsection (2)(l) is allowed only if:

(i) the taxpayer is a Ute tribal member; and

(ii) the governor and the Ute tribe execute and maintain an agreement meeting the requirements of this Subsection (4).

(b) The agreement described in Subsection (4)(a):

(i) may not:

(A) authorize the state to impose a tax in addition to a tax imposed under this chapter;

(B) provide a subtraction under this section greater than or different from the subtraction described in Subsection (2)(l); or

(C) affect the power of the state to establish rates of taxation; and

(ii) shall:

(A) provide for the implementation of the subtraction described in Subsection (2)(l);

(B) be in writing;

(C) be signed by:

(I) the governor; and

(II) the chair of the Business Committee of the Ute tribe;

(D) be conditioned on obtaining any approval required by federal law; and

(E) state the effective date of the agreement.

(c) (i) The governor shall report to the commission by no later than February 1 of each year regarding whether or not an agreement meeting the requirements of this Subsection (4) is in effect.

(ii) If an agreement meeting the requirements of this Subsection (4) is terminated, the subtraction permitted under Subsection (2)(l) is not allowed for taxable years beginning on or after the January 1 following the termination of the agreement.

(d) For purposes of Subsection (2)(l) and in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may make rules:

(i) for determining whether income is derived from a source within the Uintah and Ouray Reservation; and

(ii) that are substantially similar to how federal adjusted gross income derived from Utah sources is determined under Section 59-10-117.

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S. B. 222
Passed February 28, 2001
Vetoed March 20, 2001

NOTIFICATION BY FAMILY SERVICES OF NONCUSTODIAL PARENT OF CHILD'S REMOVAL

Sponsor: Parley Hellewell

THIS ACT AMENDS THE HUMAN SERVICES CODE, THE JUDICIAL CODE AND THE STATE SYSTEM OF PUBLIC EDUCATION. THIS ACT REQUIRES A PEACE OFFICER, CASE WORKER, OR SCHOOL TO INFORM A CUSTODIAL AND NONCUSTODIAL PARENT WHEN A MINOR IS TAKEN INTO CUSTODY OR SUSPENDED OR EXPELLED FROM SCHOOL.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
53A-11-903, as last amended by Chapter 97, Laws of Utah 1995
62A-4a-202.2, as last amended by Chapter 274, Laws of Utah 2000
78-3a-113, as renumbered and amended by Chapter 365, Laws of Utah 1997

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

Section 1. Section 53A-11-903 is amended to read:

53A-11-903. Suspension and expulsion procedures -- Distribution of policies.

(1) (a) Policies required under this part shall include written procedures for the suspension and expulsion of, or denial of admission to, a student, consistent with due process and other provisions of law.

(b) (i) The policies required in Subsection (1)(a) shall include a procedure for the notification of custodial and, unless otherwise ordered by a court, the noncustodial parents of the suspension and expulsion of, or denial of admission to a student.

(ii) For purposes of notice to a noncustodial parent, if a good faith attempt was made by the school to notify the noncustodial parent, failure to notify shall be considered to be due to circumstances beyond the control of the school and may not be construed to permit a new defense to any action under this chapter, or to interfere with any rights, procedures, or investigations provided for in this chapter.

(2) (a) Each local school board shall provide for the distribution of a copy of a school's discipline and conduct policy to each student upon enrollment in the school.

(b) A copy of the policy shall be posted in a prominent location in each school.

(c) Any significant change in a school's conduct and discipline policy shall be distributed to students in the school and posted in the school in a prominent location.

Section 2. Section 62A-4a-202.2 is amended to read:

62A-4a-202.2. Notice to parent upon removal of child -- Written statement of procedural rights and preliminary proceedings.

(1) (a) Any peace officer or caseworker who takes a minor into protective custody pursuant to Section 62A-4a-202.1 shall immediately inform, through the most efficient means available, the [~~parent,~~] parents, including a noncustodial parent, the guardian, or responsible relative:

[~~(a)~~] (i) that the minor has been taken into protective custody;

[~~(b)~~] (ii) the reasons for removal and placement in protective custody;

[~~(c)~~] (iii) that a written statement is available that explains the parent's procedural rights and the preliminary stages of the investigation and shelter hearing; and

[~~(d)~~] (iv) of a telephone number where the parent may access further information.

(b) For purposes of informing the noncustodial parent as required in Subsection (1), the division shall immediately search for the noncustodial parent through the national parent locator database and provide the noncustodial parent notice through information obtained from the database. If the noncustodial parent cannot be located in the national database, the division shall make reasonable effort to provide notice to the noncustodial parent within five days after the shelter hearing.

(2) The attorney general's office shall adopt, print, and distribute a form for the written statement described in Subsection (1)[~~(c)~~](a)(iii). The statement shall be made available to the division and for distribution in schools, health care facilities, local police and sheriff's offices, the division, and any other appropriate office within the Department of Human Services. The notice shall be in simple language and include at least the following information:

(a) the conditions under which a minor may be released, hearings that may be required, and the means by which the parent may access further specific information about a minor's case and conditions of protective and temporary custody; and

(b) the rights of a minor and of the parent or guardian to legal counsel and to appeal.

(3) If a good faith attempt was made by the peace officer or caseworker to notify the parent or guardian in accordance with the requirements of Subsection (1), failure to notify shall be considered to be due to circumstances beyond the control of the peace officer or caseworker and may not be construed to permit a new defense to any juvenile or judicial proceeding or to interfere with any rights, procedures, or investigations provided for by this chapter or Title 62A.

Section 3. Section 78-3a-113 is amended to read:

78-3a-113. Minor taken into custody by peace officer, private citizen, or probation officer -- Grounds -- Notice requirements -- Release or detention -- Grounds for peace officer to take adult into custody.

(1) A minor may be taken into custody by a peace officer without order of the court if:

(a) in the presence of the officer the minor has violated a state law, federal law, local law, or municipal ordinance;

(b) there are reasonable grounds to believe the minor has committed an act which if committed by an adult would be a felony;

(c) the minor is seriously endangered in his surroundings or if the minor seriously endangers others, and immediate removal appears to be necessary for his protection or the protection of others;

(d) there are reasonable grounds to believe the minor has run away or escaped from his parents, guardian, or custodian; or

(e) there is reason to believe the minor is subject to the state's compulsory education law and that the minor is absent from school without legitimate or valid excuse, subject to Section 53A-11-105.

(2) (a) A private citizen or a probation officer may take a minor into custody if under the circumstances he could make a citizen's arrest if the minor was an adult.

(b) A probation officer may also take a minor into custody under Subsection (1) or if the minor has violated the conditions of probation, if the minor is under the continuing jurisdiction of the juvenile court or in emergency situations in which a peace officer is not immediately available.

(3) (a) If an officer or other person takes a minor into temporary custody, he shall without unnecessary delay notify the parents, including a noncustodial parent, guardian, or custodian. The minor shall then be released to the care of his parent or other responsible adult, unless his immediate welfare or the protection of the community requires his detention.

(b) Before the minor is released, the parent or other person to whom the minor is released shall be required to sign a written promise on forms supplied by the court to bring the minor to the court at a time set or to be set by the court.

(4) (a) A minor may not be held in temporary custody by law enforcement any longer than is reasonably necessary to obtain his name, age, residence, and other necessary information and to contact his parents, guardian, or custodian.

(b) If the minor is not released under Subsection (3), he shall be taken to a place of detention or shelter without unnecessary delay.

(5) (a) The person who takes a minor to a detention or shelter facility shall promptly file with the detention or shelter facility a written report on a form provided by the division stating the details of the presently alleged offense, the facts which bring the minor within the jurisdiction of the juvenile court, and the reason the minor was not released by law enforcement.

(b) (i) The designated youth corrections facility staff person shall immediately review the form and determine, based on the guidelines for detention admissions established by the Division of Youth Corrections under Sections 62A-7-104 and 62A-7-205, whether to admit the minor to secure detention, admit the minor to home detention, place the minor in a placement other than detention, or return the minor home upon written promise to bring the minor to the court at a time set, or without restriction.

(ii) If the designated youth corrections facility staff person determines to admit the minor to home detention, that staff person shall notify the juvenile court of that determination. The court shall order that notice be provided to the designated persons in the local law enforcement agency and the school or transferee school, if applicable, which the minor attends of the home detention. The designated persons may receive the information for purposes of the minor's supervision and student safety.

(iii) Any employee of the local law enforcement agency and the school which the minor attends who discloses the notification of home detention is not:

(A) civilly liable except when disclosure constitutes fraud or malice as provided in Section 63-30-4; and

(B) civilly or criminally liable except when disclosure constitutes a knowing violation of Section 63-2-801.

(c) A minor may not be admitted to detention unless the minor is detainable based on the guidelines or the minor has been brought to detention pursuant to a judicial order or division warrant pursuant to Subsection 62A-7-112(8).

(d) If a minor taken to detention does not qualify for admission under the guidelines established by the division under Sections 62A-7-104 and 62A-7-205, detention staff shall arrange appropriate placement.

(e) If a minor is taken into custody and admitted to a secure detention or shelter facility, facility staff shall immediately notify the minor's parents, including a noncustodial parent, guardian, or custodian and shall promptly notify the court of the placement.

(f) If the minor is admitted to a secure detention or shelter facility outside the county of his residence and it is determined in the hearing held under Subsection 78-3a-114(3) that detention shall continue, the judge or commissioner shall direct the sheriff of the county of the minor's residence to transport the minor to a detention or shelter facility as provided in this section.

(6) A person may be taken into custody by a peace officer without a court order if the person is in apparent violation of a protective order or if there is reason to believe that a minor is being abused by the person and any of the situations outlined in Section 77-7-2 exist.

(7) If a good faith attempt was made by the peace officer to notify the noncustodial parent in accordance with the requirements of Subsections (3)(a) and (5)(e), failure to notify shall be considered due to circumstances beyond the control of the peace officer and may not be construed to permit a new defense to any juvenile or judicial proceeding or to interfere with any rights, procedures, or investigations provided for by this chapter or Title 62A.

INITIATIVES APPROVED

BY THE VOTERS

2000 GENERAL ELECTION

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INITIATIVE A
Approved by the voters
November 7, 2000 General Election
Effective December 4, 2000

ENGLISH AS THE OFFICIAL LANGUAGE OF UTAH

An act relating to state affairs in general; declaring English to be the official language for the conduct of government business in Utah; requiring the return to the general fund of any funds appropriated or designated for providing services in another language; and providing exceptions.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:
63-13-1.5. Utah Code Annotated 1953

Section 1. Section 63-13-1.5 is enacted to read:

63-13-1.5. Official state language.

(1) English is declared to be the official language of Utah.

(2) As the official language of this State, the English language is the sole language of the government, except as otherwise provided in this section.

(3) Except as provided in Subsection (4), all official documents, transactions, proceedings, meetings, or publications issued, conducted, or regulated by, on behalf of, or representing the state and its political subdivisions shall be in English.

(4) Languages other than English may be used when required:

(a) by the United States Constitution, the Utah State Constitution, federal law, or federal regulation;

(b) by law enforcement or public health and safety needs;

(c) by public and higher education systems according to rules made by the State Board of Education and the State Board of Regents to comply with Subsection (5);

(d) in judicial proceedings, when necessary to insure that justice is served;

(e) to promote and encourage tourism and economic development, including the hosting of international events such as the Olympics; and

(f) by libraries to:

(i) collect and promote foreign language materials; and

(ii) provide foreign language services and activities.

(5) The State Board of Education and the State Board of Regents shall make rules governing the use of foreign languages in the public and higher education systems that promote the following principles:

(a) non-English speaking children and adults should become able to read, write, and understand English as quickly as possible;

(b) foreign language instruction should be encouraged;

(c) formal and informal programs in English as a Second Language should be initiated, continued, and expanded; and

(d) public schools should establish communication with non-English speaking parents of children within their systems, using a means designed to maximize understanding when necessary, while encouraging those parents who do not speak English to become more proficient in English.

(6) Unless exempted by Subsection (4), all state funds appropriated or designated for the printing or translation of materials or the provision of services or information in a language other than English shall be returned to the General Fund.

(a) Each state agency that has state funds appropriated or designated for the printing or translation of materials or the provision of services or information in a language other than English shall:

(i) notify the Division of Finance that those monies exist and the amount of those monies; and

(ii) return those monies to the Division of Finance.

(b) The Division of Finance shall account for those monies and inform the Legislature of the existence and amount of those monies at the beginning of the Legislature's annual general session.

(c) The Legislature may appropriate any monies received under this section to the State School Board for use in English as a Second Language programs.

(7) Nothing in this section affects the ability of government employees, private businesses, non-profit organizations, or private individuals to exercise their rights under:

(a) the First Amendment of the United States Constitution; and

(b) Utah Constitution, Article 1, Sections 1 and 15.

(8) If any provision of this section, or the application of any such provision to any person or circumstance, is held invalid, the remainder of this act shall be given effect without the invalid provision or application.

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INITIATIVE B
Approved by the voters
November 7, 2000 General Election
Effective March 20, 2001

UTAH PROPERTY PROTECTION ACT

An act relating to forfeiture of assets and property; establishing uniform procedures for the forfeiture of property; forbidding forfeiture against innocent owners; permitting law enforcement officials to seize contraband and the proceeds and instrumentalities of crime; and providing that all property, assets, money or other things of value which are lawfully seized and forfeited be sold or auctioned and that all monies which result from the sale of forfeited assets be deposited in the uniform school fund.

This Act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:

24-1-1 et seq.,Utah Code Annotated 1953.

AMENDS:

23-20-1, as last amended by Chapters 140 and 282, Laws of Utah 1998

32A-13-103, as last amended by Chapter 5, Laws of Utah 1991

41-6-13.7, as last amended by Chapter 198, Laws of Utah 1996

53-10-303, as last amended by Chapter 36, Laws of Utah 1996 and renumbered by Chapter 263, Laws of Utah 1998

53A-16-101, as last amended by Chapter 38, Laws of Utah 1997

58-37-13, as last amended by Chapter 252, Laws of Utah 2000

58-37-20, as last amended by Chapter 36, Laws of Utah 1996.

58-37a-6, as enacted by Chapter 76, Laws of Utah 1981, declared unconstitutional by 10th Circuit (742 F.2d 564, 1984), repealed by Utah Code Ann. § 63-55-258 (effective date July 1, 2007)

58-37c-15, as enacted by Chapter 155, Laws of Utah 1992

58-37d-7, as enacted by Chapter 156, Laws of Utah 1992

59-14-207, as enacted by Chapter 58, Laws of Utah 1986 and renumbered by Chapter 2, Laws of Utah 1987

63-30-7, as enacted by Chapter 139, Laws of Utah 1965

76-3-501, as last amended by Chapter 97, Laws of Utah 1999

76-10-1107, as enacted by Chapter 196, Laws of Utah 1973

76-10-1108, as enacted by Chapter 196, Laws of Utah 1973

76-10-1603.5, as last amended by Chapter 38, Laws of Utah 1993

76-10-1908, as last amended by Chapter 198, Laws of Utah 1996

Be it enacted by the people of the State of Utah:

Section 1. Section 24-1-1 is enacted to read:

24-1-1. Title.

This chapter shall be cited as the "Utah Uniform Forfeiture Procedures Act."

Section 2. Section 24-1-2 is enacted to read:

24-1-2. Purpose.

It is the intent of this chapter to:

(1) provide for a uniform set of procedures and substantive standards for the criminal and civil forfeiture of property within the State of Utah;

(2) permit law enforcement personnel to deter crime by lawfully seizing and forfeiting contraband and the instrumentalities and proceeds of criminal conduct;

(3) protect innocent owners from the wrongful taking of their property;

(4) ensure that seizures and forfeitures of property from private citizens are not disproportionate to the violation or crime committed;

(5) ensure direct control and accountability over the use and sale of forfeited property and the proceeds generated therefrom; and

(6) direct that any and all revenues resulting from the sale of forfeited property be contributed to the Uniform School Fund.

Section 3. Section 24-1-3 is enacted to read:

24-1-3. Definitions.

As used in this section:

(1) "Agency" shall mean any agency of municipal, county, or state government, including law enforcement agencies, law enforcement personnel, and multi-jurisdictional task forces.

(2) "Contraband" shall mean any property which is unlawful to produce or to possess under state or federal law.

(3) "Multi-jurisdictional task force" shall mean a law enforcement task force or other agency comprised of persons who are employed by or acting under the authority of different governmental authorities, including federal, state, county or municipal governments, or any combination thereof.

(4) "Owner" shall mean any person or entity that possesses a legal or equitable interest in real or personal property, including a security interest.

(5) "Property" shall mean all property, whether real or personal, tangible or intangible.

(6) "Prosecuting Attorney" shall mean the public attorney authorized by a specific provision of state law to initiate forfeiture proceedings under this chapter.

(7) "State law" means all Utah law, including municipal, county and state law.

Section 4. Section 24-1-4 is enacted to read:

24-1-4. Civil Procedures.

(1) An agency which seizes property under any provision of state law subjecting an owner's property to civil forfeiture shall, as soon as practicable, but in no case more than 30 days after seizure:

(a) prepare a detailed inventory of all property seized and transfer the seized property to a designated official within the agency, who shall be responsible for holding and maintaining seized property pending a court order of release or final determination of forfeiture and disposition of property under this chapter;

(b) notify the prosecuting attorney responsible for initiating civil forfeiture proceedings under this chapter of the items of property seized, the place of the seizure and any persons arrested at the time of seizure; and

(c) give written notice to all owners known, or reasonably discoverable after due diligence, of the following items:

(i) the date of the seizure and the property seized;

(ii) the owner's rights and obligations under this chapter, including the availability of counsel and hardship relief in appropriate circumstances; and

(iii) an outline of the steps in the proceedings by which property is forfeited under this chapter.

(2) If the seizing agency fails to provide notice as required in subparagraph (1)(c), an owner entitled to notice who does not receive notice may void the forfeiture with respect to the owner's interest in the property by bringing a motion before the appropriate district court and serving it upon the seizing agency. Such motion may be brought at any time prior to the final disposition of the property under this chapter. If an owner brings a motion to void the forfeiture for lack of notice under subparagraph (1)(c), the court shall void the forfeiture unless the seizing agency demonstrates:

(a) good cause for the failure to give notice to that owner; or

(b) that the owner otherwise had actual notice of the seizure.

(3) (a) Within 90 days of any seizure, the prosecuting attorney shall file a complaint for forfeiture in the appropriate district court and serve a copy of the complaint upon all owners known to the prosecuting attorney to have an interest in the property by one of the following methods:

(i) personal service upon each owner whose name and address is known, or by mailing a copy to the last known address; or

(ii) upon all other owners whose addresses are not known, by publication in a newspaper of general circulation in the county where the seizure was made for a period of two consecutive weeks.

(b) The complaint shall describe with reasonable particularity:

(i) the property which is the subject matter of the forfeiture proceeding;

(ii) the date and place of seizure; and

(iii) the allegations which constitute a basis for forfeiture.

(4) If the prosecuting attorney does not timely file a complaint for forfeiture of the property in accordance with subparagraph (3), the agency shall promptly return the property to its owner and the prosecuting attorney shall take no further action to effect the forfeiture of such property. If the agency knows of more than one owner, it shall return the property to the owner who was in possession at the time of the seizure.

(5) In any case where the prosecuting attorney files a complaint for forfeiture of property, an owner may file a claim and an answer to the complaint. The claim and answer shall be filed within 30 days after the complaint is served in person or by mail, or where applicable, within 30 days after publication under subparagraph (3)(a)(ii).

(6) (a) Except as otherwise provided in this chapter, civil forfeiture proceedings are governed by the Utah Rules of Civil Procedure.

(b) The court shall take all reasonable steps to expedite forfeiture proceedings and shall give such proceedings the same priority as is given to criminal cases.

(c) In all suits or actions brought for the civil forfeiture of any property under this chapter, the burden of proof is on the prosecuting attorney to establish, by clear and convincing evidence, to what extent, if any, property is subject to forfeiture.

(d) The right to trial by jury applies to civil forfeiture proceedings.

Section 5. Section 24-1-5 is enacted to read:

24-1-5. No bond required in civil cases.

Any person may assert an interest in seized property or file an answer to a complaint for civil forfeiture without posting bond with respect to the property which is the subject of the seizure or forfeiture action.

Section 6. Section 24-1-6 is enacted to read:

24-1-6. Innocent owners.

(1) An innocent owner's interest in property shall not be forfeited civilly under any provision of state law.

(2) The prosecuting attorney shall have the burden of establishing by clear and convincing

evidence that an individual is not an innocent owner.

(3) With respect to an ownership interest in existence at the time the conduct subjecting the property to seizure took place, the term "innocent owner" means an owner who:

(a) did not have actual knowledge of the conduct subjecting the property to seizure; or

(b) upon learning of the conduct subjecting the property to seizure, took reasonable steps to prohibit such use of the property.

(4) For purposes of subparagraph (3)(b), no owner shall be required to take steps that he reasonably believes would be likely to subject any person (other than the person whose conduct gave rise to the forfeiture) to physical harm or danger. An owner may demonstrate that he took reasonable action to prohibit such use of the property by, for example:

(a) timely notifying a law enforcement agency of information that led the owner to know that conduct subjecting the property to seizure would occur, was occurring, or has occurred; or

(b) timely revoking or attempting to revoke permission for those engaging in such conduct to use the property; or

(c) taking reasonable actions to discourage or prevent the illegal use of the property.

(5) With respect to an ownership interest acquired after the conduct subjecting the property to seizure has occurred, the term "innocent owner" means a person who, at the time he acquired the interest in the property, had no knowledge that the illegal conduct subjecting the property to seizure had occurred or that the property had been seized for forfeiture, and:

(a) acquired the property in a bona fide transaction for value;

(b) was a person, including a minor child, who acquired an interest in property through probate or inheritance; or

(c) was a spouse who acquired an interest in property through dissolution of marriage or by operation of law.

(6) No owner may assert, under this paragraph, an ownership interest in contraband.

Section 7. Section 24-1-7 shall be enacted to read:

Section 24-1-7. Hardship Release of Seized Property.

(1) An owner is entitled to the immediate release of seized property from the seizing agency pending the final determination of civil forfeiture if:

(a) the owner has a possessory interest in the property;

(b) continued possession by the agency or the state pending the final disposition of the forfeiture proceedings will cause substantial hardship to the owner, such as:

(i) preventing the functioning of a legitimate business;

(ii) preventing any individual from working;

(iii) preventing any minor child or student from attending school;

(iv) preventing or hindering any person from receiving necessary medical care;

(v) hindering the care of an elderly or disabled dependent child or adult;

(vi) preventing an owner from retaining counsel to provide a defense in the forfeiture proceeding; or

(vii) leaving any individual homeless, or any other condition that the court determines causes a substantial hardship; and

(c) the hardship from the continued possession by the agency of the seized property outweighs the risk that the property will be destroyed, damaged, lost, concealed, or transferred if it is returned to the owner during the pendency of the proceeding.

(2) The right to appointed counsel under Section 24-1-9 applies throughout civil forfeiture proceedings, including an owner's motion for hardship release. An owner may file a motion for hardship release:

(i) in the court in which forfeiture proceedings have commenced; or

(ii) in any district court having jurisdiction over the property, if forfeiture proceedings have not yet commenced.

(3) The court shall render a decision on a motion or complaint filed under subparagraph (2) not later than 10 days after the date of filing, unless the ten-day period is extended by the consent of the parties or by the court for good cause shown.

(4) If the owner demonstrates substantial hardship pursuant to subparagraph (1), the court shall order the property immediately released to the owner pending completion of proceedings by the government to obtain forfeiture of the property. The court may place such conditions on release of the property as it finds are necessary and appropriate to preserve the availability of the property or its equivalent for forfeiture.

(5) Subparagraph (1) shall not apply if the seized property is:

(a) contraband;

(b) currency or other monetary instrument or electronic funds, unless such property is used to pay for the costs of defending against the forfeiture proceeding or constitutes the assets of a legitimate business; or

(c) likely to be used to commit additional illegal acts if returned to the owner.

Section 8. Section 24-1-8 is enacted to read:

24-1-8. Criminal Procedures.

(1) In cases where an owner is criminally prosecuted for conduct giving rise to forfeiture, the prosecuting attorney may elect to forfeit the owner's interest in the property civilly or criminally, provided that no civil forfeiture judgment may be entered with respect to the property of a defendant who is acquitted of the offense on which the forfeiture claim is based.

(2) If the prosecuting attorney elects to criminally forfeit the owner's interest in the property, the information or indictment must state that the owner's interest in the specifically described property is subject to criminal forfeiture and the basis for the forfeiture.

(3) (a) Upon application of the prosecuting attorney, the court may enter restraining orders or injunctions, or take other reasonable action to preserve for forfeiture under this section any forfeitable property if, after notice to persons known, or discoverable after due diligence, to have an interest in the property and after affording them an opportunity for a hearing, the court determines that:

(i) there is a substantial probability that the state will prevail on the issue of forfeiture and that failure to enter the order will result in the property being sold, transferred, destroyed or removed from the jurisdiction of the court or otherwise made unavailable for forfeiture; and

(ii) the need to preserve the availability of the property or prevent its sale, transfer, destruction or removal through the entry of the requested order outweighs the hardship against any party against whom the order is to be entered.

(b) A temporary restraining order may be entered ex parte upon application of the prosecuting attorney before or after an information or indictment has been filed with respect to the property, if the prosecuting attorney demonstrates that:

(i) there is probable cause to believe that the property with respect to which the order is sought would, in the event of a conviction, be subject to forfeiture under this section; and

(ii) provision of notice would jeopardize the availability of the property for forfeiture or would jeopardize an ongoing criminal investigation.

(c) The temporary order expires not more than 10 days after entry unless extended for good cause shown or unless the party against whom it is entered consents to an extension. An adversarial hearing concerning an order entered under this paragraph shall be held as soon as practicable and prior to the expiration of the temporary order.

(d) The court is not bound by the Utah Rules of Evidence regarding evidence it may receive and consider at any hearing under this paragraph.

(4) (a) Upon conviction by a jury of an owner for conduct giving rise to criminal forfeiture, the jury shall be instructed and asked to return a special verdict as to the extent of the property identified in the information or indictment, if any, that is forfeitable.

(b) Whether property is forfeitable shall be proven beyond a reasonable doubt.

(5) Upon conviction of a person for violating any provision of state law subjecting an owner's property to forfeiture and upon the jury's special verdict that the property is forfeitable, the court shall enter a judgment and order the property forfeited to the state treasurer upon the terms stated by the court in its order. Following the entry of an order declaring property forfeited, the court may, upon application of the prosecuting attorney, enter appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants, or trustees, or take any other action to protect the interest of the state in property ordered forfeited.

(6) (a) After property is ordered forfeited under this section, the state treasurer shall direct the disposition of the property under Section 24-1-16. Any property right or interest not exercisable by or transferable for value to the state expires and does not revert to the defendant. The defendant or any person acting in concert with or on behalf of the defendant is not eligible to purchase forfeited property at any sale held by the state treasurer unless approved by the judge.

(b) The court may stay the sale or disposition of the property pending the conclusion of any appeal of the criminal case giving rise to the forfeiture if the defendant demonstrates that proceeding with the sale or disposition of the property may result in irreparable injury, harm or loss to him.

(7) Except under Subparagraphs (3) or (10), a party claiming an interest in property subject to criminal forfeiture under this section:

(a) may not intervene in a trial or appeal of a criminal case involving the forfeiture of property under this section; and

(b) may not commence an action at law or equity against the state or the county concerning the validity of his alleged interests in the property subsequent to the filing of an indictment or an information alleging that the property is subject to forfeiture under this section.

(8) The district court of the state which has jurisdiction of a case under this part may enter orders under this section without regard to the location of any property which may be subject to forfeiture under this section, or which has been ordered forfeited under this section.

(9) To facilitate the identification or location of property declared forfeited and to facilitate the disposition of petitions for remission or mitigation of forfeiture, after the entry of an order declaring property forfeited to the state treasurer, the court, may upon application of the prosecuting attorney, order that the testimony of any witness relating to the property forfeited be taken by deposition, and that any book, paper, document, record, recording, or other material not privileged shall be produced

as provided for depositions and discovery under the Utah Rules of Civil Procedure.

(10) (a) Following the entry of an order of forfeiture under this section, the prosecuting attorney shall publish notice of the order's intent to dispose of the property as the court may direct. The prosecuting attorney shall also provide direct written notice to any person known to have an alleged interest in the property subject to the order of forfeiture.

(b) Any person, other than the defendant, asserting a legal interest in property which has been ordered forfeited to the state treasurer under this section may, within 30 days of the final publication of notice or his receipt of written notice under subparagraph (a), whichever is earlier, petition the court for a hearing to adjudicate the validity of his alleged interest in the property. Any genuine issue of material fact, including issues of standing, is triable to a jury upon demand of any party.

(c) The petition shall be in writing and signed by the petitioner under penalty of perjury. It shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property, and any additional facts supporting the petitioner's claim and the relief sought.

(d) The trial or hearing on the petition shall be expedited to the extent practicable. The court may consolidate a trial or hearing on the petition and any petition filed by any other person under this section other than the defendant. The court shall permit the parties to conduct pretrial discovery pursuant to the Utah Rules of Civil Procedure.

(e) At the trial or hearing, the petitioner may testify and present evidence and witnesses on his own behalf and cross-examine witnesses who appear at the hearing. The prosecuting attorney may present evidence and witnesses in rebuttal and in defense of the claim to the property and cross-examine witnesses who appear. In addition to testimony and evidence presented at the trial or hearing, the court may consider the relevant portion of the record of the criminal case which resulted in the order of forfeiture. Any trial or hearing shall be conducted pursuant to the Utah Rules of Evidence.

(f) The court shall amend the order of forfeiture in accordance with its determination, if after the trial or hearing, the court or jury determines that the petitioner has established by a preponderance of the evidence that:

(i) the petitioner has a legal right, title, or interest in the property, and the right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts or conduct which gave rise to the forfeiture of the property under this section; or

(ii) the petitioner acquired the right, title or interest in the property in a bona fide transaction for value and, at the time of such acquisition, the petitioner did not know that the property was subject to forfeiture.

(g) Following the court's disposition of all petitions filed under this paragraph, or if no petitions are filed following the expiration of the period provided in subparagraph (b) for the filing of petitions, the state treasurer has clear title to property subject to the order of forfeiture and may warrant good title to any subsequent purchaser or transferee.

Section 9. Section 24-1-9 is enacted to read:

24-1-9. Appointment of counsel for indigent claimants in civil and criminal forfeiture proceedings.

(1) The court may appoint counsel to represent indigent persons in civil and criminal forfeiture proceedings, including owners in criminal forfeiture proceedings who are not charged as criminal defendants. In determining whether to appoint counsel, the court shall take into account such factors as:

(a) the person's asserted interest in the property;

(b) the person's standing to contest the forfeiture; and

(c) whether the person's allegations appear to be in good faith or to be frivolous.

(2) The court shall set compensation for counsel in forfeiture proceedings at a level equivalent to compensation provided for counsel appointed in criminal cases.

Section 10. Section 24-1-10 is enacted to read:

Section 24-1-10. Pre-judgment and post-judgment interest.

In any civil or criminal proceeding to forfeit currency or other negotiable instruments under this chapter, the court shall award a prevailing owner pre-judgment and post-judgment interest on the currency or negotiable instruments at the legal rate of interest established by Section 15-1-1 of the Utah Code.

Section 11. Section 24-1-11 is enacted to read:

Section 24-1-11. Attorneys' fees and costs.

In any civil or criminal proceeding to forfeit seized property under this chapter, the court shall award a prevailing owner reasonable attorneys' fees and other costs of suit reasonably incurred by the owner. An owner who prevails only in part shall be entitled to recover reasonable attorneys' fees and reasonable costs of suit related to those issues on which he prevailed.

Section 12. Section 24-1-12 is enacted to read:

Section 24-1-12. Compensation for Damaged Property.

(1) In any civil or criminal proceeding, an owner shall have a private right of action against a seizing agency for any claim based upon the negligent destruction, loss, damage or other injury to seized property while in the possession or custody of a state agency, if the property was seized for the purpose of initiating forfeiture proceedings under this chapter.

(2) For the purposes of this section, "damage or other injury" does not include normal depreciation, deterioration or ordinary wear and tear.

Section 13. Section 24-1-13 is enacted to read:

Section 24-1-13. Limitation on Fees for Holding Seized Property.

In any civil or criminal proceeding under this chapter in which a judgment is entered in favor of an owner, or where a forfeiture proceeding against an owner is voluntarily dismissed by the prosecuting attorney, the seizing agency shall be prohibited from charging that owner any fee for holding seized property.

Section 14. Section 24-1-14 shall be enacted to read:

Section 24-1-14. Proportionality.

An owner's interest in property, excluding contraband, shall not be civilly or criminally forfeited under a provision of state law unless such forfeiture is substantially proportional to both the use of the property in committing or facilitating a violation of state law and the value of the property. Forfeiture of property used solely in a manner that is merely incidental and not instrumental to the commission or facilitation of a violation of law is not proportional, as a matter of law. The prosecuting attorney has the burden to demonstrate that any forfeiture is proportional to an alleged violation of state law. It is the province of the court, not the jury, to decide questions of proportionality.

Section 15. Section 24-1-15 is enacted to read:

Section 24-1-15. Transfer and Sharing Procedures.

(1) For purposes of Section 24–1–15, property is deemed to be "seized" whenever any agency takes possession of the property or exercises any degree of control over the property.

(2) (a) Transfer of Seized Property. Seizing agencies or prosecuting attorneys authorized to bring civil or criminal forfeiture proceedings under this chapter shall not directly or indirectly transfer seized property to any federal agency or any governmental entity not created under and subject to state law unless the court enters an order, upon petition of the prosecuting attorney, authorizing the property to be transferred. The court may not enter an order authorizing a transfer unless:

(i) the activity giving rise to the investigation or seizure is interstate in nature and sufficiently complex to justify such transfer;

(ii) the seized property may only be forfeited under federal law; or

(iii) pursuing forfeiture under state law would unduly burden prosecuting attorneys or state law enforcement agencies.

(b) Notwithstanding Subparagraph 2(a), the court may refuse to enter an order authorizing a transfer to the federal government if such transfer would circumvent the protections of the Utah Constitution or this chapter that would otherwise be available to the property owner.

(c) Prior to granting any order to transfer pursuant to subparagraph (2)(a), the court must give any owner the right to be heard with regard to the transfer.

(3) (a) Sharing of Seized Property. All property, money or other things of value received by an agency pursuant to federal law which authorizes the sharing or transfer of all or a portion of forfeited property or the proceeds of the sale of forfeited property to an agency shall be promptly transferred to the state treasurer and sold and deposited in the Uniform School Fund as provided under Section 24–1–16.

(b) Subject to subparagraph (3)(a), state agencies are encouraged to seek an equitable share of property forfeited by the federal government and to cooperate with federal law enforcement agencies in all cases in which such cooperation is in the interest of this state.

(4) Any agency that violates subparagraph (2) or (3) is civilly liable to the state for three times the amount of the forfeiture diverted and for costs of suit and reasonable attorneys' fees. Any damages awarded to the state shall be paid to the Uniform School Fund. Any agent, including state law enforcement officers who are detached to, deputized or commissioned by, or working in conjunction with a federal agency, who knowingly transfers or otherwise trades seized property in violation of subparagraph (2)(a) or who receives property, money or other things of value under subparagraph 3(a) and knowingly fails to transfer such property to the state treasurer is guilty of a Class B misdemeanor.

Section 16. Section 24-1-16 is enacted to read:

Section 24-1-16. Disposition of proceeds from criminal or civil forfeiture.

(1) When any property is civilly or criminally forfeited under this chapter by a finding of the court that no person is entitled to recover the property, the property shall be sold by the state treasurer, or destroyed if unfit for sale, and all revenue or proceeds therefrom shall be deposited in the Uniform School Fund after deducting the costs and expenses of:

(a) maintaining and storing the forfeited property;

(b) administering the forfeiture proceeding;

(c) appointed counsel under Section 24-1-9; and

(c) payment of money to compensate victims of conduct giving rise to or related to the forfeiture, or of conduct which is part of the same scheme that led to the forfeiture under this chapter.

(2) No property either seized or forfeited, whether civilly or criminally, nor any revenues or proceeds therefrom shall be paid to, appropriated for, or used for the benefit, directly or indirectly, of law enforcement officers, law enforcement agencies or agencies performing law enforcement functions.

(3) No property either seized or forfeited, whether civilly or criminally, nor any revenue or proceeds therefrom shall be, directly or indirectly, paid to, appropriated for, or used for the benefit of persons acting as:

(a) informants in any law enforcement function;

(b) witnesses in any administrative or judicial forum; or

(c) prosecutors in any state or federal actions.

(4) The state treasurer shall maintain an accounting of all properties which are either civilly or criminally forfeited and subsequently sold and all proceeds therefrom, and the state auditor shall perform an annual audit of such proceeds and communicate the results of the audit to the state treasurer and to the legislature. All accounting and audit records generated under this subparagraph shall be available and open to the public.

Section 17. Section 23-20-1 is amended to read:

23-20-1. Enforcement authority of conservation officers -- Seizure and disposition of property.

(1) Conservation officers of the division shall enforce the provisions of this title with the same authority and following the same procedures as other law enforcement officers.

(2) (a) Conservation officers shall seize any protected wildlife illegally taken or held.

(b) (i) Upon determination of a defendant's guilt by the court, the protected wildlife shall be confiscated by the court and sold or otherwise disposed of by the division.

(ii) Proceeds of the sales shall be deposited in the Wildlife Resources Account.

(iii) Migratory wildfowl may not be sold, but must be given to a charitable institution or used for other charitable purposes.

(3) [~~(a)~~] Materials and devices used for the unlawful taking or possessing of protected wildlife shall be seized, and upon a finding by the court that they were used in the unlawful taking or possessing of protected wildlife, the materials and devices shall be[~~: (i) confiscated by the court; (ii) conveyed to the division; and (iii) upon the expiration of time for appeal, sold at a public auction or otherwise disposed of by the division.~~] subject to criminal or civil forfeiture under the procedures and substantive protections established in the Utah Uniform Forfeiture Procedures Act, Title 24, Chapter 1, of the Utah Code. [~~(b) Any proceeds from the sale of the material or device shall be deposited into the Wildlife Resources Account.~~] [~~(4) (a) (i) As used in Subsection (4), "owner" means a person, other than a person with a security interest, having a property interest in or title to a vehicle and entitled to the use and possession of a vehicle. (ii) "Owner" includes a renter or lessee of a vehicle. (b) (i)~~]

(4) (a) Conservation officers may seize and impound a vehicle used for the unlawful taking or possessing of protected wildlife for any of the following purposes:

[~~(A)~~] (i) to provide for the safekeeping of the vehicle, if the owner or operator is arrested;

[~~(B)~~] (ii) to search the vehicle as provided in Subsection (2)(a) or as provided by a search warrant; or

[~~(C)~~] (iii) to inspect the vehicle for evidence that protected wildlife was unlawfully taken or possessed.

[~~(ii)~~] (b) The division shall store any seized vehicle in a public or private garage, state impound lot, or other secured storage facility.

[~~(iii)~~] (5) A seized vehicle shall be released to the owner no later than 30 days after the date the vehicle is seized, unless the vehicle was used for the unlawful taking or possessing of wildlife by a person who is charged with committing a felony under this title.

[~~(c) (i)~~] (6) (a) Upon a finding by a court that the person who used the vehicle for the unlawful taking or possessing of wildlife is guilty of a felony under this title, the vehicle may be[~~: (A) confiscated by the court; (B) conveyed to the division; and (C) upon expiration of time for appeal, sold at a public auction or otherwise disposed of by the division. (ii) Any proceeds from the sale shall be deposited into the Wildlife Resources Account. (iii) If the vehicle is not confiscated by the court, it shall be released to the owner.~~] subject to criminal or civil forfeiture under the procedures and substantive protections established in the Utah Uniform Forfeiture Procedures Act, Title 24, Chapter 1, of the Utah Code.

[~~(d) (i)~~] (b) The owner of a seized vehicle is liable for the payment of any impound fee if he [~~the person who~~] used the vehicle for the unlawful taking or possessing of wildlife and is found by a court to be guilty of a violation of this title.

[~~(ii)~~] (c) The owner of a seized vehicle is not liable for the payment of any impound fee or, if the fees have been paid, is entitled to reimbursement of the fees paid, if:

[~~(A)~~] (i) no charges are filed or all charges are dropped which involve the use of the vehicle for the unlawful taking or possessing of wildlife; [~~or~~]

[~~(B)~~] (ii) the person charged with using the vehicle for the unlawful taking or possessing of wildlife is found by a court to be not guilty[~~.~~]; or

(iii) the owner did not consent to a use of the vehicle which violates this chapter.

Section 18. Section 32A-13-103 is amended to read:

32A-13-103. Searches, seizures, and forfeitures.

(1) The following are subject to forfeiture [~~and no property right exists in them~~] pursuant to the procedures and substantive protections established in the Utah Uniform Forfeiture Procedures Act, Title 24, Chapter 1, of the Utah Code:

(a) all alcoholic products possessed, used, offered for sale, sold, given, furnished, supplied, received, purchased, stored, warehoused, manufactured, adulterated, shipped, carried, transported, or distributed in violation of this title or commission rules;

(b) all packages or property used or intended for use as a container for an alcoholic product in violation of this title or commission rules;

(c) all raw materials, products, and equipment used, or intended for use, in manufacturing, processing, adulterating, delivering, importing, or exporting any alcoholic product in violation of this title or commission rules;

(d) all implements, furniture, fixtures, or other personal property used or kept for any violation of this title or commission rules;

(e) all conveyances including aircraft, vehicles, or vessels used or intended for use, to transport or in any manner facilitate the transportation, sale, receipt, possession, or concealment of property described in Subsection (a), (b), (c), or (d)[~~, except that: (i) a conveyance used by any person as a common carrier in the transaction of business as a common carrier may not be forfeited under this section unless it appears that the owner or other person in charge of the conveyance was a consenting party or privy to had knowledge of a violation of this title or commission rules; (ii) a conveyance may not be forfeited under this section by reason of any act or omission established by the owner to have been committed or omitted without the owner's knowledge or consent; and (iii) any forfeiture of a conveyance subject to a bona fide security interest shall be subject to the interest of the secured party upon the party's showing that the party could not have known did not know in the exercise of reasonable diligence that a violation would take place in the use of the conveyance~~]; and

(f) all books, records, receipts, ledgers, or other documents used or intended for use in violation of this title or commission rules.

(2) Any of the property subject to forfeiture under this title may be seized by any peace officer of this state or any other person authorized by law upon process issued by any court having jurisdiction over the property in accordance with the procedures provided in Title 77, Chapter 23, Part 2, Search Warrants. However, seizure without process may be made when:

(a) the seizure is incident to an arrest or search under a search warrant or an inspection under an administrative inspection warrant;

(b) the property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding under this title;

(c) the peace officer or other person authorized by law has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) the peace officer or other person authorized by law has probable cause to believe that the property is being or has been used, intended to be used, held, or kept in violation of this title or commission rules.

(3) If the property is seized pursuant to a search or administrative warrant, the peace officer or other person authorized by law shall make a proper receipt, return, and inventory and ensure the safekeeping of the property as required by Sections 77-23-206 through 77-23-208, Utah Code of Criminal Procedure. If the magistrate who issued the warrant is a justice court judge, upon the filing of the return the jurisdiction of the justice court shall cease and the magistrate shall certify the record and all files without delay to the district court of the county in which the property was located. From the time of this filing, the district court has jurisdiction of the case.

(4) In the event of seizure of property without process, the peace officer or other person authorized by law shall make a return of his acts without delay directly to the district court of the county in which the property was located, and the district court shall have jurisdiction of the case. The return shall describe all property seized, the place where it was seized, and any persons in apparent possession of the property. The officer or other person shall also promptly deliver a written inventory of anything seized to any person in apparent authority at the premises where the seizure was made, or post it in a conspicuous place at the premises. The inventory shall state the place where the property is being held. [~~(5) Any peace officer or other person authorized by law who seizes any property subject to seizure under this title shall notify the agency responsible for prosecuting the action without delay and shall file a report with the department detailing information on the property seized, the location of the seizure, and any persons arrested.~~]

[~~(6)~~] (5) Property taken or detained under this section is not repleviable but is considered in custody of the law enforcement agency making the seizure subject only to the orders of the court or the official having jurisdiction. When property is seized under this title, the appropriate person or agency may:

(a) place the property under seal;

(b) remove the property to a place designated by it or the warrant under which it was seized; or

(c) take custody of the property and remove it to an appropriate location for disposition in accordance with law.

[~~(7)~~] (6) When any property is subject to forfeiture under this section, [~~a determination for forfeiture to the state shall be made in the following manner:~~] proceedings shall be instituted in accordance with the procedures and substantive protections of the Utah Uniform Forfeiture Procedures Act, Title 24, Chapter 1, of the Utah Code.]

[~~(a) A complaint verified on oath or affirmation shall be prepared by the county attorney or, if within a prosecution district, the district attorney where the property was seized or is to be seized and shall be filed in the district court. The complaint shall describe with reasonable particularity:~~]

[~~(i) the property that is the subject of the proceeding;~~]

[~~(ii) the date and place of seizure, if known; and~~]

[~~(iii) the allegations that constitute a basis for forfeiture.~~]

[~~(b) Upon filing the complaint, the clerk of the district court shall issue a warrant for seizure of the property that is the subject matter of the action without delay and deliver it to the sheriff for service, unless the property has previously been seized.~~]

[~~(c) Notice of the seizure and intended forfeiture shall be filed with the county clerk and served together with a copy of the complaint, at the place where the property was or is about to be seized by conspicuous posting at the premises, and served upon all persons known to the county attorney or, if within a prosecution district, the district attorney to have a claim in the property by one of the following methods:~~]

[~~(i) upon each claimant whose name and address is known at the last-known address of the claimant; or~~]

[~~(ii) upon each owner whose right, title, or interest is of record in the Division of Motor Vehicles, by mailing a copy of the notice and complaint by registered mail to the address given upon the records of the Division of Motor Vehicles; and~~]

[~~(iii) upon all other claimants whose addresses are unknown, but who are believed to have an interest in the property, by one publication in a newspaper of general circulation in the county where the seizure was made.~~]

[~~(d) Except as provided in Subsection (e), any claimant or interested party shall file with the court a verified answer to the complaint within 20 days after service has been obtained.~~]

[~~(e) When property is seized under this title, any interested person or claimant of the property, before being served with a complaint under this section, may file a petition in the district court for release of the person's interest in the property. The petition shall specify the claimant's interest in the property and the claimant's right to have it released. A copy shall be served upon the county attorney or, if within a prosecution district, a district attorney in the county of the seizure, who shall answer the petition within 20 days. Any person petitioning is not required to answer a complaint of forfeiture. If no complaint or petition is filed within 60 days after seizure of the property or after the final disposition of any criminal proceedings involving the property, whichever occurs last, the property shall automatically escheat to the state and shall be delivered to the custody of the appropriate agency for disposition as provided in Subsection (8).~~]

[~~(f) After 20 days following service of a complaint or petition for release, the court shall examine the record, and if no answer is on file, the court shall allow the complainant or petitioner an opportunity to present evidence in support of the claim and order forfeiture or release of the property as the court may determine. If the county attorney or district attorney has not filed an answer to a petition for release and the court determines from the evidence that the petitioner is not entitled to recovery of the property, it shall enter an order directing the county attorney or district attorney to answer the petition within ten days. If no answer is filed within that period, the court shall order the release of the property to the petitioner entitled to receive it.~~]

[~~(g) When an answer to a complaint or petition appears of record at the end of 20 days, the court shall set the matter for hearing within 20 days. At the hearing all interested parties may present evidence of their right of release of the property following the state's evidence for forfeiture. The court shall determine by a preponderance of the evidence the issues in the case and order forfeiture or release of the property as it determines proper.~~]

[~~(h) Proceedings under this section are independent of any other proceedings, whether civil or criminal, under this title or the laws of this state.~~]

[~~(i) When the court determines that claimants have no right in the property, in whole or in part, it shall declare the property forfeited and direct it delivered to the custody of the department if the property is an alcoholic product or a package used as a container for an alcoholic product, or to the Department of Administrative Services in all other cases. The appropriate department shall dispose of the property as provided in Subsection (8).~~]

[~~(j) When the court determines that property, in whole or in part, is subject to forfeiture, it shall order release of the property to the proper claimant. If the court determines that the property is subject to forfeiture and release in part, it shall order partial release and partial forfeiture. When the property cannot be properly divided for partial forfeiture and release, the court shall order it sold and the proceeds distributed as follows:~~]

[~~(i) first, proportionally among the legitimate claimants;~~]

[~~(ii) second, to defray the costs of the action, including seizure, storage of the property, and costs of sale; and~~]

[~~(iii) third, to the state treasurer for the General Fund.~~]

[~~(k) In any proceeding under this section where forfeiture is declared, in whole or in part, the court shall assess all costs of the forfeiture proceeding, including seizure and storage of the property, against the individual or individuals whose conduct was the basis of the forfeiture, and may assess costs against any other claimant or claimants to the property as the court considers equitable.~~]

[~~(l) Any party to a forfeiture proceeding, including the state, has the right of appeal from any judgment of forfeiture or release as to the whole or any part of the property in issue in the forfeiture proceedings.~~]

[~~(8)~~] (7) When any property is ordered forfeited under [~~this title~~] the Utah Uniform Forfeiture Procedures Act, Title 24, Chapter 1, of the Utah Code by a finding of the court that no person is entitled to recover the property:

(a) the property, if an alcoholic product or a package used as a container for an alcoholic product, shall be [~~deposited in the custody of the department and disposition of the property~~] disposed of as follows:

(i) If the alcoholic product is unadulterated, pure, and free from crude, unrectified, or impure form of ethylic alcohol, or any other deleterious substance or liquid, and is otherwise in saleable condition, [~~the department may sell the alcoholic product and any package or container used to contain the alcoholic product, as appropriate, and forward the proceeds to the state treasurer for deposit in the General Fund. The department shall first cover its own costs and then reimburse the appropriate agency or agencies for costs expended in seizing, storing, and obtaining forfeiture of the property~~] sold in accordance with Section 24-1-16 of the Utah Uniform Forfeiture Procedures Act.

(ii) If the alcoholic product is impure, adulterated, or otherwise unfit for sale, it and its package or container shall be destroyed by the department under competent supervision.

[~~(b) The property, if other than an alcoholic product, package, or container used to contain the alcoholic product shall be deposited in the custody of the Department of Administrative Services and disposition of the property shall be as follows:~~]

[~~(i) Any state agency, bureau, county, or municipality that demonstrates a need for specific property or classes of property subject to forfeiture may make application for the property to the executive director of the Department of Administrative Services, and shall clearly state in the application its need for the property and the use for which the property is intended.~~]

[~~(ii) The executive director of the Department of Administrative Services shall review all applications for property submitted, make a determination based on necessity and advisability as to final disposition, and notify the designated applicant who may obtain the property upon payment of all costs to that department. That department shall reimburse the appropriate agency or agencies for costs expended in seizing, storing, and obtaining forfeiture of the property.~~]

[~~(iii) If no disposition is made upon an application, the executive director of the Department of Administrative Services shall dispose of the property by public bidding, or if considered appropriate by the executive director, by destruction. Proof of destruction shall be upon oath of two officers or employees of the Department of Administrative Services verified by the executive director of that department or the executive director's designee.~~]

Section 19. Section 41-6-13.7 is amended to read:

41-6-13.7. Vehicle subject to forfeiture -- Seizure -- Procedure.

(1) Any conveyance, including vehicles, aircraft, water craft, or other vessel used in violation of Section 41-6-13.5 shall be subject to forfeiture [~~and no property right exists in it,~~] pursuant to the procedures and substantive protections established in the Utah Uniform Forfeiture Procedures Act, Title 24, Chapter 1, Utah Code. [~~,except that:~~

[~~(a) a conveyance used by any person as a common carrier in the transaction of business as a common carrier may not be forfeited under this section unless it appears that the owner or other person in charge of the conveyance was a consenting party or privy to violation of this chapter;~~]

[~~(b) a conveyance may not be forfeited under this section by reason of any act or omission committed or omitted without the owner's knowledge or consent; and~~]

[~~(c) any forfeiture of a conveyance subject to a bona fide security interest is subject to the interest of a secured party who could not have known in the exercise of reasonable diligence that a violation would or did take place in the use of the conveyance.~~]

(2) Property subject to forfeiture under this section may be seized by any peace officer of this state upon notice and service of process issued by any court having jurisdiction over the property. However, seizure without notice and service of process may be made when:

(a) the seizure is incident to an arrest under a search warrant or an inspection under an administrative inspection warrant;

(b) the property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding under this section; or

(c) the peace officer has probable cause to believe that the property has been used in violation of the provisions of Section 41-6-13.5.

[~~(3) In the event of seizure under Subsection (2), proceedings under Subsection (6) shall be instituted without unreasonable delay.~~]

[~~(4)~~] (3) Property taken or detained under this section is not repleviable but is in custody of the law enforcement agency making the seizure, subject only to the orders and decrees of the court or the official having jurisdiction. When property is seized under this section, the appropriate person or agency may:

(a) place the property under seal;

(b) remove the property to a place designated by the warrant under which it was seized; or

(c) take custody of the property and remove it to an appropriate location for disposition in accordance with law.

[~~(5) When any property is forfeited under this section after a finding of the court that no person is entitled to recover the property, it shall be deposited in the custody of the Division of Surplus Property. The director of the Division of Surplus Property shall dispose of the property by public bidding. The net proceeds of such sale shall be paid to the Department of Public Safety Support Fund for use in training peace officers in pursuit driving and providing a public awareness program regarding police pursuits. Property forfeited under this section may not be applied by the court to costs or fines assessed against any defendant in the case.~~]

[~~(6) When any property is subject to forfeiture under this part, a determination for forfeiture to the state shall be made as follows:~~]

[~~(a) A complaint verified on oath or affirmation shall be prepared by the county attorney where the property was seized or is to be seized. The complaint shall be filed in the district court. The complaint shall describe with reasonable particularity:~~]

[~~(i) the property which is the subject matter of the proceeding;~~]

[~~(ii) the date and place of seizure, if known; and~~]

[~~(iii) the allegations which constitute a basis for forfeiture.~~]

[~~(b) Upon filing the complaint, the clerk of the court shall forthwith issue a warrant for seizure of the property which is the subject matter of the action and deliver it to the sheriff for service, unless the property has previously been seized without a warrant under Subsection 41-6-13.7(2).~~]

[~~(c) Notice of the seizure and intended forfeiture shall be filed with the court clerk and served together with a copy of the complaint, upon all persons known to the county attorney to have a claim in the property by one of the following methods:~~]

[~~(i) upon each claimant whose name and address is known, at the last known address of the claimant, or upon each owner whose right, title, or interest is of record in the Division of Motor Vehicles, by mailing a copy of the notice and complaint by certified mail to the address given upon the records of the division, which service is considered complete even though the mail is refused or cannot be forwarded; and~~]

[~~(ii) upon all other claimants whose addresses are unknown, but who are believed to have an interest in the property, by one publication in a newspaper of general circulation in the county where the seizure was made.~~]

[~~(d) Any claimant or interested party shall file with the court a verified answer to the complaint within 20 days after service has been obtained.~~]

[~~(e) When property is seized under this chapter, any interested person or claimant of the property, prior to being served with a complaint under this section, may file a petition in the court having jurisdiction for release of his interest in the property. The petition shall specify the claimant's interest in the property and his right to have it released. A copy shall be served upon the county attorney in the county of the seizure, who shall answer the petition within 20 days. A petitioner need not answer a complaint of forfeiture.~~]

[~~(f) After 20 days following service of a complaint or petition for release, the court shall examine the record and if no answer is on file, the court shall allow the complainant or petitioner an opportunity to present evidence in support of his claim and order forfeiture or release of the property as the court determines. If the county attorney has not filed an answer to a petition for release and the court determines from the evidence that the petitioner is not entitled to recovery of the property, it shall enter an order directing the county attorney to answer the petition within ten days. If no answer is filed within that period, the court shall order the release of the property to the petitioner entitled to receive it.~~]

[~~(g) When an answer to a complaint or petition appears of record at the end of 20 days, the court shall set the matter for hearing within 20 days. At this hearing, all interested parties may present evidence of their rights of release of the property following the state's evidence for forfeiture. The court shall determine by a preponderance of the evidence the issues in the case and order forfeiture or release of the property as it determines.~~]

[~~(h) Proceedings of this section are independent of any other proceedings, whether civil or criminal, under this chapter or the laws of this state.~~]

[~~(i) When the court determines that claimants have no right in the property in whole or in part, it shall declare the property to be forfeited and direct it to be delivered to the custody of the Division of Finance. The division shall dispose of the property under Subsection (5).~~]

[~~(j) When the court determines that property, in whole or in part, is not subject to forfeiture, it shall order release of the property to the proper claimant. If the court determines that the property is subject to forfeiture and release in part, it shall order partial release and partial forfeiture. When the property cannot be divided for partial forfeiture and release, the court shall order it sold and the proceeds distributed:~~]

[~~(i) first, proportionally among the legitimate claimants;~~]

[~~(ii) second, to defray the costs of the action, including seizure, storage of the property, legal costs of filing and pursuing the forfeiture, and costs of sale; and~~]

[~~(iii) third, to the Division of Finance for the General Fund.~~]

[~~(k) In a proceeding under this section where forfeiture is declared, in whole or in part, the court shall assess all costs of the forfeiture proceeding, including seizure and storage of the property, against the individual or individuals whose conduct was the basis of the forfeiture, and may assess costs against any other claimant or claimants to the property as appropriate.~~]

[~~(7) For purposes of this section, it shall be a rebuttable presumption that the owner of a vehicle was the operator of the vehicle at the time of the offense.~~]

Section 20. Section 53-10-303 is amended to read:

[53-10-303. Financial Fraud and Money ~~Laundering Forfeiture Account created --Revenue sources -- Use of account designated.~~]

[~~(1) (a) There is created in the General Fund a restricted account called the "Financial Fraud and Money Laundering Forfeiture Account." (b) All monies forfeited or seized to the state through the state or federal court process as a result of investigations regarding suspicious cash transactions, fraud, and money laundering shall be deposited into this account.~~]

[~~(2) The Department of Public Safety may expend amounts as appropriated by theLegislature from this account to aid in enforcement efforts to combat financial criminal activity.~~] [~~(3) That portion of funds forfeited or seized that are required to be disbursed to othergovernmental entities under existing contractual agreements are exempt from this section.~~] [~~(4) The Department of Public Safety as part of the annual budget hearings shall providethe Executive Offices, Criminal Justice, and Legislature Appropriations Subcommittee with acomplete accounting of expenditures and revenues from the funds under this section.~~] [~~(5) The Legislature may annually provide, in the Appropriations Act, legislativedirection for anticipated expenditures of the monies received under this section.~~]

Section 21. Section 53A-16-101 is amended to read:

53A-16-101. Uniform School Fund - Sources enumerated.

The Uniform School Fund established by Utah Constitution, Article X, Section 5, consists of money received in the state treasury from the following sources:

(1) interest on the State School Fund;

(2) escheats and forfeitures and proceeds from the sale or other disposition of property that may accrue to the state by escheat or forfeiture [~~except under Section 58-37-13, regarding controlled substances, and Section 41-6-13.7, regarding vehicles involved in police pursuits~~];

(3) unclaimed shares and proceeds from the sale or other disposition of those shares and unclaimed dividends of any corporation incorporated under Utah law;

(4) all revenues derived from renewable resources on school and state lands, other than those granted for specific purposes;

(5) the proceeds derived from the leasing or renting of school lands and other state lands, including all forfeitures, penalties, and grazing and other fees received in connection with the leases and rentals;

(6) money received from leases or rentals of land acquired by the state through foreclosure of mortgages securing common school fund or through deeds from mortgagors or owners of those lands; and

(7) all other constitutional or legislative allocations to the fund, including revenues received under Utah Constitution, Article XIII, Section 12(3), from taxes on income or intangible property, except for those income tax revenues appropriated to the state's higher education system.

Section 22. Section 58-37-13 is amended to read:

58-37-13. Property subject to forfeiture -- Seizure -- Procedure.

(1) As used in this section:

(a) "Claimant" means:

(i) any owner as defined in this section; or

(ii) any interest holder as defined in this section and any other person or entity who asserts a claim to any property seized for forfeiture under this section;

[~~(a) "Complaint" means a verified civil in rem complaint seeking forfeiture or any criminal information or indictment which contains or is amended to include a demand for forfeiture of a defendant's in personam interest in any property which is subject to forfeiture.~~]

(b) "Drug distributing paraphernalia" means any property used or designed to be used in the illegal transportation, storage, shipping, or circulation of a controlled substance. Property is considered "designed to be used" for one or more of the above-listed purposes if the property has been altered or modified to include a feature or device which would actually promote or conceal a violation of this chapter.

(c) "Drug manufacturing equipment or supplies" includes any illegally possessed controlled substance precursor, or any chemical, laboratory equipment, or laboratory supplies possessed with intent to engage in clandestine laboratory operations as defined in Section 58-37d-3.

(d) "Interest holder" means a secured party as defined in Section 70A-9a-102, a mortgagee, lien creditor, or the beneficiary of a security interest or encumbrance pertaining to an interest in property, whose interest would be perfected against a good faith purchaser for value. A person who holds property for the benefit of or as an agent or nominee for another, or who is not in substantial compliance with any statute requiring an interest in property to be recorded or reflected in public records in order to perfect the interest against a good faith purchaser for value, is not an interest holder.

(e) "Owner" means an individual or entity who possesses a legal or equitable ownership in real or personal property.

[(e)] (f) "Proceeds" means property acquired directly or indirectly from, produced through, realized through, or caused by an act or omission and includes any property of any kind without reduction for expenses incurred in the acquisition, maintenance, or production of that property, or any other purpose.

(g) "Real Property" means:

(i) land; and

(ii) any building, fixture, improvement, appurtenance, structure, or other development that is affixed permanently to land.

[(f)] (h) "Resolution of criminal charges" occurs at the time a claimant who is also charged with violations under Title 58, Chapters 37, 37a, 37b, 37c, or 37d enters a plea, upon return of a jury verdict or court ruling in a criminal trial, or upon dismissal of the criminal charge.

[(h)] (i) "Violation of this chapter" means any conduct prohibited by Title 58, Chapters 37, 37a, 37b, 37c, or 37d or any conduct occurring outside the state which would be a violation of the laws of the place where the conduct occurred and which would be a violation of Title 58, Chapters 37, 37a, 37b, 37c, or 37d if the conduct had occurred in this state.

(2) The following are subject to criminal or civil forfeiture pursuant to the Utah Uniform Forfeiture Procedures Act, Title 24, Chapter 1, of the Utah Code [~~and no property right exists in them~~]:

(a) all controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this chapter;

(b) all raw materials, products, and equipment of any kind used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this chapter;

(c) all property used or intended for use as a container for property described in Subsections (2)(a) and (2)(b);

(d) all hypodermic needles, syringes, and other paraphernalia, not including capsules used with health food supplements and herbs, used or intended for use to administer controlled substances in violation of this chapter;

(e) all conveyances including aircraft, vehicles, or vessels used or intended [~~for use~~] to be used to [~~transport, or in any manner~~] facilitate the [~~transportation, sale, receipt, simple possession, or concealment of~~] distribution or possession with intent to distribute the property described in Subsections (2)(a) and (2)(b)[~~, except that:~~

[~~(i) a conveyance used by any person as a common carrier in the transaction of business as a common carrier may not be forfeited under this section unless the owner or other person in charge of the conveyance was a consenting party or knew or had reason to know of the violation of this chapter;~~]

[~~(ii) a conveyance may not be forfeited under this section by reason of any act or omission committed or omitted without the owner's knowledge or consent; and~~]

[~~(iii) any forfeiture of a conveyance is subject to the claim of an interest holder who did not know or have reason to know after the exercise of reasonable that a violation would or did take place in the use of the conveyance~~];

(f) all books, records, and research, including formulas, microfilm, tapes, and data used or intended for use in violation of this chapter;

(g) everything of value furnished or intended to be furnished in exchange for a controlled substance in violation of this chapter, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this chapter. An interest in property may not be civilly forfeited under this subsection unless it is proven by [~~a preponderance of the~~] clear and convincing evidence that the owner or any interest holder knew of [~~, had reason to know of, or consented to~~] the conduct which made the property subject to forfeiture. The burden of presenting this evidence is [~~shall be~~] on [~~upon~~] the state;

(h) all imitation controlled substances as defined in Section 58-37b-2, Imitation Controlled Substances Act;

(i) (i) all warehousing, housing, and storage facilities, or interest in real property of any kind used, or intended for use, in producing, cultivating, warehousing, storing, distributing [~~protecting,~~] or manufacturing any controlled substances in violation of this chapter but only if: [~~, except that:~~

[~~(i) any forfeiture of a housing, warehousing or storage facility or interest in real property is subject to the claim of an interest holder who did not know or have reason to know after the exercise of reasonable diligence, that a violation would take place on the property; and~~]

[~~(ii) an interest in property may not be forfeited under this subsection if the owner or any interest holder did not know or have reason to know of the conduct which made the property subject to forfeiture, or did not willingly consent to the conduct;~~]

[~~(iii) unless the premises are used in producing, cultivating, or manufacturing controlled substances, a housing, warehousing, or storage~~

~~facility or interest in real property may not be forfeited under this subsection unless~~]

(A) the cumulative sales of controlled substances on the property within a two-month period total or exceed $1,000; or

(B) the street value of any controlled substances found on the premises at any given time totals or exceeds $1,000, but only after the judge makes a specific finding of proportionality under Section 24-1-14, and subject to the condition that even if proportionality is found, the judge shall have discretion not to forfeit real property which is a primary residence.

(ii) A narcotics officer experienced in controlled substances law enforcement may testify to establish the street value of the controlled substances for purposes of this subsection;

(j) any firearm, weapon, or ammunition carried or used [~~during or in relation to~~] in connection with a violation of this chapter or any firearm, weapon, or ammunition kept or located within the proximity of controlled substances [~~or other property subject to forfeiture under this section~~];

(k) all proceeds traceable to any violation of this chapter. [~~There is a rebuttable presumption that all money, coins, and currency found in proximity to forfeitable controlled substances, drug manufacturing equipment or supplies, drug distributing paraphernalia, or forfeitable records of importation, manufacture, or distribution of controlled substances are proceeds traceable to a violation of this chapter. The burden of proof is upon the claimant of the property to rebut this presumption.~~]

(3)[~~(a)~~] Property subject to forfeiture under this chapter may be seized by any peace officer of this state upon process issued by any court having jurisdiction over the property. However, seizure without process may be made when:

[~~(i)~~] (a) the seizure is incident to an arrest or search under a search warrant or an inspection under an administrative inspection warrant;

~~(ii)~~ (b) the property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding under this chapter;

~~(iii)~~ (c) the peace officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

[~~(iv)~~] (d) the peace officer has probable cause to believe that the property has been used or intended to be used in violation of this chapter and has probable cause to believe the property will be damaged, intentionally diminished in value, destroyed, concealed, or removed from the state.

[~~(b) Upon the filing of a complaint, the court shall immediately issue to the seizing agency a warrant for seizure of any property subject to forfeiture which had been seized without a warrant in a manner described in this subsection.~~]

[~~(4) In the event of seizure under Subsection (3), forfeiture proceedings under Subsection (9) shall be instituted within 90 days of the seizure. The time period may by extended by the court having jurisdiction over the property upon notice to all claimants and interest holders and for good cause shown.~~]

[~~(5)~~] (4) Property taken or detained under this section is not repleviable but is in custody of the law enforcement agency making the seizure, subject only to the orders and decrees of the court or the official having jurisdiction. When property is seized under this chapter, the appropriate person or agency may:

(a) place the property under seal;

(b) remove the property to a place designated by it or the warrant under which it was seized; or

(c) take custody of the property and remove it to an appropriate location for disposition in accordance with law.

[~~(6)~~] (5) All substances listed in Schedule I that are possessed, transferred, distributed, or offered for distribution in violation of this chapter are contraband and no property right shall exist in them. All substances listed in Schedule I which are seized or come into the possession of the state may be retained for any evidentiary or investigative purpose, including sampling or other preservation prior to disposal or destruction by the state.

[~~(7)~~] (6) All marijuana or any species of plants from which controlled substances in Schedules I and II are derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or are wild growths, may be seized and retained for any evidentiary or investigative purpose, including sampling or other preservation prior to disposal or destruction by the state. Failure, upon demand by the department or its authorized agent, of any person in occupancy or in control of land or premises upon which species of plants are growing or being stored, to produce an appropriate license or proof that he is the holder of a license, is authority for the seizure and forfeiture of the plants.

[~~(8) When any property is forfeited under this chapter by a finding of the court that no person is entitled to recover the property, it shall be deposited in the custody of the Division of Finance. Disposition of all property is as follows:~~]

[~~(a) The state may include in its complaint seeking forfeiture, a request that the seizing agency be awarded the property. Upon a finding that the seizing agency is able to use the forfeited property in the enforcement of controlled substances laws, the court having jurisdiction over the case shall award the property to the seizing agency. Each agency shall use the forfeited property for controlled substance law enforcement purposes only. Forfeited property or proceeds from the sale of forfeited property may not be used to pay any cash incentive, award, or bonus to any peace officer or individual acting as an agent for the agency, nor may it be used to supplant any ordinary operating expense of the agency. The seizing agency shall pay~~

~~to the prosecuting agency the legal costs incurred in filing and pursuing the forfeiture action. Property forfeited under this section may not be applied by the court to costs or fines assessed against any defendant in the case.~~]

[~~(b) The seizing agency, or if it makes no application, any state agency, bureau, county, or municipality, which demonstrates a need for specific property or classes of property subject to forfeiture shall be given the property for use in enforcement of controlled substances laws upon the payment of costs to the county attorney or, if within a prosecution district, the district attorney for legal costs for filing and pursuing the forfeiture and upon application for the property to the director of the Division of Finance. The application shall clearly set forth the need for the property and the use to which the property will be put.~~]

[~~(c) The director of the Division of Finance shall review all applications for property submitted under Subsection (8)(b) and, if the seizing agency makes no application, make a determination based on necessity and advisability as to final disposition and shall notify the designated applicant or seizing agency, where no application is made, who may obtain the property upon payment of all costs to the appropriate department. The Division of Finance shall in turn reimburse the prosecuting agency or agencies for costs of filing and pursuing the forfeiture action, not to exceed the amount of the net proceeds received for the sale of the property. Any proceeds remaining after payment shall be returned to the seizing agency or agencies.~~]

[~~(d) If no disposition is made upon an application under Subsection (8)(a) or (b), the director of the Division of Finance shall dispose of the property by publicbidding or as considered appropriate, by destruction. Proof of destruction shall be upon oath of two officers or employees of the department having charge of the property, and verified by the director of the department or his designated agent.~~]

(7) Forfeiture proceedings shall [~~be commenced as follows:~~] conform with the procedures and substantive protections of the Utah Uniform Forfeiture Procedures Act, Title 24, Chapter 1, of the Utah Code.

[~~(a) For actions brought under Subsections (2)(a) through (2)(j), a complaint shall be prepared by the county attorney, or if within a prosecution district, the district attorney, or the attorney general, and filed in a court of record where the property was seized or is to be seized. In cases in which the claimant of the property is also charged as a criminal defendant, the complaint shall be filed in the county where the criminal charges arose, regardless of the location of the property. The complaint shall include:~~]

[~~(i) a description of the property which is subject to forfeiture;~~]

[~~(ii) the date and place of seizure, if known; and~~]

[~~(iii) the allegations of conduct which gives rise to forfeiture.~~]

[~~(b) In cases where a claimant is also charged as a criminal defendant, the forfeiture shall proceed as part of the criminal prosecution as an in personam action against the defendant's interest in the property subject to forfeiture. A defendant need not file a written answer to the complaint, but may acknowledge or deny interest in the property at the time of first appearance on the criminal charges. If a criminal information or indictment is amended to include a demand for forfeiture, the defendant may respond to the demand at the time of the amendment.~~]

[~~(i) Unless motion for disposition is made by the defendant, the determination of forfeiture shall be stayed until resolution of the criminal charges. Hearing on the forfeiture shall be before the court without a jury. The court may consider any evidence presented in the criminal case, and receive any other evidence offered by the state or the defendant. The court shall determine by a preponderance of the evidence the issues in the case and order forfeiture or release of the property as it determines.~~]

[~~(ii) A defendant may move the court to transfer the forfeiture action, to stay all action, including discovery, in the forfeiture, or for hearing on the forfeiture any time prior to trial of the criminal charges. Either party may move the court to enter a finding of forfeiture as to defendant's interest in part or all of the property, either by default or by stipulation. Upon entry of a finding, the court shall stay the entry of judgment until resolution of the criminal charges. Any finding of forfeiture entered by the court prior to resolution of the criminal charges may not constitute a separate judgment, and any motion for disposition, stay, severance, or transfer of the forfeiture action may not create a separate proceeding. Upon the granting of a motion by the defendant for disposition, stay, severance, or transfer of the forfeiture action, the defendant shall be considered to have waived any claim that the defendant has been twice put in jeopardy for the same offense.~~]

[~~(iii) Any other person claiming an interest in property subject to forfeiture under this subsection may not intervene in a trial or appeal of a complaint filed under this subsection. Following the entry of an in personam forfeiture order, or upon the filing of a petition for release under Subsection (e), the county attorney, district attorney, or attorney general may proceed with a separate in rem action to resolve any other claims upon the property subject to forfeiture.~~]

[~~(c) A complaint seeking forfeiture under Subsection (2)(k) shall be prepared by the county attorney, or if within a prosecution district, the district attorney, or by the attorney general, either in personam as part of a criminal prosecution, or in a separate civil in rem action against the property alleged to be proceeds, and filed in the county where the property is seized or encumbered, if the proceeds are located outside the state. A finding that property is the proceeds of a violation of this chapter does not require proof that the property is the proceeds of any particular exchange or transaction. Proof that property is proceeds may be~~

shown by evidence which establishes all of the following by a preponderance of the evidence:]

[(i) that the person has engaged in conduct in violation of this chapter;]

[(ii) that the property was acquired by the person during that period when the conduct in violation of this chapter occurred or within a reasonable time after that period; and]

[(iii) that there was no likely source for the property other than conduct in violation of the chapter.]

[(d) Notice of the seizure and intended forfeiture shall be filed with the clerk of the court, and served upon all persons known to the county attorney or district attorney to have a claim in the property by:]

[(i) personal service upon a claimant who is charged in a criminal information or indictment; and (ii) certified mail to each claimant whose name and address is known or to each owner whose right, title, or interest is of record in the Division of Motor Vehiclesto the address given upon the records of the division, which service is consideredcomplete even though the mail is refused or cannot be forwarded. The countyattorney, district attorney, or attorney general shall make one publication in anewspaper of general circulation in the county where the seizure was made for all other claimants whose addresses are unknown, but who are believed to have aninterest in the property.]

[(e) Except under Subsection (9)(a) in personam actions, any claimant or interest holder shall file with the court a verified answer to the complaint within 20 days after service. When property is seized under this chapter, any interest holder or claimant of the property, prior to being served with a complaint under this section, may file a petition in the court having jurisdiction for release of his interest in the property. The petition shall specify the claimant's interest in the property and his right to have it released. A copy shall be served upon the county attorney or, if within a prosecution district, the district attorney in the county of the seizure, who shall answer the petition within 20 days. A petitioner need not answer a complaint of forfeiture.]

[(f) For civil actions in rem, after 20 days following service of a complaint or petition for release, the court shall examine the record and if no answer is on file, the court shall allow the complainant or petitioner an opportunity to present evidence in support of his claim and order forfeiture or release of the property as the court determines. If the county attorney or district attorney has not filed an answer to a petition for release and the court determines from the evidence that the petitioner is not entitled to recovery of the property, it shall enter an order directing the county attorney or district attorney to answer the petition within ten days. If no answer is filed within that period, the court shall order the release of the property to the petitioner entitled to receive it.]

[(g) When an answer to a complaint or petition appears of record at the end of 20 days, the court shall set the matter for hearing. At this hearing all interested parties may present evidence of their rights of release of the property following the state's evidence for forfeiture. The court shall determine by a preponderance of the evidence the issues in the case and order forfeiture or release of the property as it determines.]

[(h) When the court determines that claimants have no right in the property in whole or in part, it shall declare the property to be forfeited.]

[(i) When the court determines that property, in whole or in part, is not subject to forfeiture, it shall order release of the property to the proper claimant. If the court determines that the property is subject to forfeiture and release in part, it shall order partial release and partial forfeiture. When the property cannot be divided for partial forfeiture and release, the court shall order it sold and the proceeds distributed:]

[(i) first, proportionally among the legitimate claimants;]

[(ii) second, to defray the costs of the action, including seizure, storage of the property, legal costs of filing and pursuing the forfeiture, and costs of sale; and]

[(iii) third, to the Division of Finance for the General Fund.]

[(j) In a proceeding under this section where forfeiture is declared, in whole or in part, the court shall assess all costs of the forfeiture proceeding, including seizure and storage of the property, against the individual or individuals whose conduct was the basis of the forfeiture, and may assess costs against any other claimant or claimants to the property as appropriate.]

Section 23. Section 58-37-20 is amended to read:

[58-37-20. Drug Forfeiture Account created - Revenue sources - Use of account designated.]

[(1) (a) There is created in the General Fund a restricted account called the "Drug Forfeiture Account." (b) All monies forfeited or seized to the state through the state or federal court process as a result of activity involving a controlled substance violation as provided under Title 58, Chapter 37, 37a, 37b, 37c, or 37d, or prohibited under federal law shall be deposited into the Drug Forfeiture Account.]

[(2) The Department of Public Safety may expend amounts as appropriated by the Legislature from the Drug Forfeiture Account to aid in enforcement efforts to combat drug trafficking.]

[(3) That portion of funds forfeited or seized that are required to be disbursed to other governmental entities under existing contractual agreements are exempt from this section.]

[(4) Funds forfeited or seized as a result of the Salt Lake Airport Drug Program, not to exceed the

~~Department of Public Safety's expenditure to that program, are exempt from this section.~~]

[~~(5) The Department of Public Safety as part of the annual budget hearings shall provide the Executive Offices, Criminal Justice, and Legislature Appropriations Subcommittee with a complete accounting of expenditures and revenues from the funds under this section.~~]

[~~(6) The Legislature may annually provide, in the Appropriations Act, legislative direction for anticipated expenditures of the monies received under this section.~~]

Section 24. Section 58-37a-6 is amended to read:

58-37a-6. Seizure -- Forfeiture -- Property rights.

Drug paraphernalia is subject to seizure and forfeiture in accordance with the procedures and substantive protections of the Utah Uniform Forfeiture Procedures Act, Title 24, of the Utah Code.

Section 25. Section 58-37c-15 is amended to read:

58-37c-15. Civil Forfeiture.

The following shall be subject to forfeiture [~~to the state under the procedures of Section 58-37-13 and no property right shall exist in them~~] in accordance with the procedures and substantive protections of the Utah Uniform Forfeiture Procedures Act, Title 24, Chapter 1, of the Utah Code:

(1) all listed controlled substance precursor chemicals regulated under the provisions of this chapter which have been distributed, possessed, or are intended to be distributed or otherwise transferred in violation of any felony provision of this chapter; and

(2) all property used by any person to facilitate, aid, or otherwise cause the unlawful distribution, transfer, possession, or intent to distribute, transfer, or possess a listed controlled substance precursor chemical in violation of any felony provision of this chapter.

Section 26. Section 58-37d-7 is amended to read:

58-37d-7. Seizure and forfeiture.

Chemicals, equipment, supplies, vehicles, aircraft, vessels, and personal and real property used in furtherance of a clandestine laboratory operation are subject to seizure and forfeiture under the procedures [~~of Section 58-37-13.~~] and substantive protections of the Utah Uniform Forfeiture Procedures Act, Title 24, Chapter 1 of the Utah Code.

Section 27. Section 59-14-207 is amended to read:

59-14-207. Unstamped cigarettes -- Contraband goods -- Seizure -- Public auction -- Proceeds of sale.

(1) Any cigarettes found in this state which have been within the state for 72 hours or longer in the possession of any wholesaler, distributor, or retailer or have been sold by that wholesaler, distributor, or retailer not having affixed to the package or container the stamps required by this chapter, are contraband goods and may be seized without a warrant by the commission, its employees, or by any peace officer of the state or its political subdivisions.

(2) The seized goods shall be delivered to the commission [~~for sale at public auction to the highest bidder after due advertisement. Before delivering the goods,~~] and the commission shall [~~require the person receiving the goods to~~] affix the proper amount of stamps to the individual packages or containers, prior to instituting forfeiture proceedings under the Utah Uniform Forfeiture Procedures Act, Title 24, Chapter 1 of the Utah Code.

[~~(3) The proceeds of any goods sold as provided under Subsection (2), after paying the costs of confiscation and sale, shall be turned over to the state treasurer to the credit of the state General Fund.~~]

Section 28. Section 63-30-7 is amended to read:

63-30-7. Waiver of immunity for negligent damage, destruction or loss of seized property.

Immunity from suit of all governmental entities is waived as to any claim based on the negligent destruction, damage or loss of goods, merchandise or other property while in the possession of any officer or agency of state or local government, including law enforcement officers, if the property was seized for the purpose of forfeiture under any provision of state law.

Section 29. Section 76-3-501 is amended to read:

76-3-501. Vehicle subject to forfeiture -- Seizure -- Procedure.

(1) Any vehicle used in the commission of, attempt to commit, or flight after commission of any felony in which a firearm or other dangerous weapon as defined in Section 76-10-501, or explosive, chemical, or incendiary device or parts as defined in Section 76-10-306 is used, or any vehicle used in the commission of the illegal possession or sale of a firearm in or from the vehicle, is subject to forfeiture. [~~and no property right exists in it if the owner of the vehicle was a knowing participant in the offense or voluntarily allowed the vehicle to be used, knowing that it would probably be used to commit the offense.~~

~~(2) Any forfeiture of a vehicle subject to a bona fide security interest is subject to the interest of a secured party who could not have known in the exercise of reasonable diligence that a violation would or did take place in the use of the vehicle.~~]

[~~(3)~~] (2) Vehicles subject to forfeiture under this section may be seized by any peace officer of this state upon process issued by any court having

jurisdiction over the vehicle. However, seizure without process may be made when:

(a) the seizure is incident to a lawful arrest, with or without an arrest warrant;

(b) the vehicle is seized incident to a lawful search with or without a search warrant or an inspection under an administrative inspection warrant;

(c) the vehicle subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding; or

(d) the peace officer seizing the vehicle has probable cause to believe that the vehicle has been used or is intended to be used in violation of this section and the peace officer reasonably believes that the vehicle will be lost, damaged, or used in further violation of law if the officer delays seizure to obtain a warrant.

[~~(4)~~] (3) ~~In the event of seizure under Subsection (3),~~] Forfeiture proceedings under this section [~~Subsection (5)~~] shall be instituted promptly in accordance with the procedures and substantive protections of the Utah Uniform Forfeiture Procedures Act, Title 24, Chapter 1, of the Utah Code.

[~~(5)~~] (4) Any vehicle taken or detained under this section is not repleviable but is in custody of the law enforcement agency making the seizure, subject only to the orders and decrees of the court or the official having jurisdiction. When a vehicle is seized under this chapter the appropriate person or agency may:

(a) remove the vehicle to a place designated by the court, official, or the warrant under which the vehicle was seized; or

(b) take custody of the vehicle and remove it to an appropriate location for disposition in accordance with law.

[~~(6) When any vehicle is subject to forfeiture, determination for forfeiture to the state shall be made as follows:~~]

[~~(a) A complaint verified on oath or affirmation shall be prepared by the county attorney, or if within a prosecution district the district attorney, where the vehiclewas seized or is to be seized. The complaint shall be filed in the district court where the vehicle was seized. The complaint shall describe with reasonable particularity the:~~]

[~~(i) vehicle which is the subject matter of the proceeding;~~]

[~~(ii) date and place of seizure, if known; and~~]

[~~(iii) allegations which constitute the basis for forfeiture.~~]

[~~(b) Upon filing the complaint, the clerk of the court shall forthwith issue a warrant for the seizure of the vehicle which is the subject matter of the action and deliver it to the sheriff for service upon the seizing person or agency.~~]

[~~(c) Notice of the seizure and intended forfeiture shall be filed with the county clerk, and served together with a copy of the complaint, upon all persons known to the county attorney or district attorney to have a claim in the vehicle by one of the following methods: (i) upon each claimant whose name and address is known, at the last known address of the claimant, or upon each owner whose right, title, or interest is of record in the Division of Motor Vehicles, by mailing a copy of the notice and complaint by certified mail to the address given upon therecords of the division, which service is considered complete even thoughthe mail is refused or cannot be forwarded; and (ii) upon all other claimants whose addresses are unknown, but who are believed to have an interest in the vehicle, by publication in a newspaper of general circulation in the county where the seizure was made. (d) Any claimant or interested party shall file with the court a verified answer to the complaint within 20 days after service has been obtained. (e) When a vehicle is seized under this section, any interested person or claimant of thevehicle, prior to being served with a complaint under this section, may file a petition in the court having jurisdiction for release of his interest in the vehicle. The petition shall specify the claimant's interest in the vehicle and his right to have it released. A copy shallbe served upon the county attorney or, if within a prosecution district the district attorney,in the county of the seizure, who shall answer the petition within 20 days. A petitionerunder this subsection need not answer a complaint of forfeiture. (f) After 20 days following service of a complaint or petition for release, the court shallexamine the record and if no answer is on file, the court shall allow the complainant orpetitioner an opportunity to present evidence in support of his claim and order forfeitureor release of the vehicle as the court determines. If the county attorney or district attorney has not filed an answer to a petition for release and the court determines from the evidence that the petitioner is not entitled to recovery of the vehicle, it shall enter an order directing the county attorney or district attorney to answer the petition within ten days. If no answer is filed within that period, the court shall order the release of the vehicle to the petitioner entitled to receive it. (g) When an answer to a complaint or petition appears of record at the end of 20 days, the court shall promptly set the matter for hearing. At this hearing all interested parties may present evidence of their rights of release of the vehicle following the state's evidence for forfeiture. The court shall determine by a preponderance of the evidence the issues in the case and order forfeiture or release of the vehicle as it determines. (h) Proceedings of this section are independent of any other proceedings, whether civil or criminal, under the laws of this state. (i) When the court determines that claimants have no right in the vehicle in whole or in part, it shall declare the vehicle to be forfeited and direct it to be delivered for disposition in accordance with Subsection (7). (j) When the court determines that the vehicle, in whole or in part, is not subject to forfeiture, it shall order release of the vehicle to the proper claimant. If the court determines that the vehicle is subject to forfeiture in part and release in part, it shall order partial~~

~~release and partial forfeiture. When the vehicle cannot be divided for partial forfeiture and release, the court shall order it sold and the proceeds distributed: (i) first, proportionally among the legitimate claimants; (ii) second, to defray the costs of the action, including seizure, storage of the vehicle, legal costs of filing and pursuing the forfeiture, and costs of sale; and (iii) third, in accordance with Subsection (7). (k) In a proceeding under this section where forfeiture is declared, in whole or in part, thecourt shall assess all costs of the forfeiture proceeding, including seizure and storage of the vehicle, against the individual or individuals whose conduct was the basis of the forfeiture, and may assess costs against any other claimant or claimants to the vehicle as appropriate.~~] [~~(7) When any vehicle is forfeited under this section by a finding of the court that no person is entitled to recover it or that the vehicle is subject to forfeiture in part and release in part to a claimant, a court shall order that the vehicle be delivered to the seizing agency for sale as the court directs. The court shall also order that the proceeds from the sale of the vehicle be distributed in accordance with the provisions of Subsection (6)(j).~~] [~~(8) When the court orders that a vehicle be forfeited, in whole or in part, under this section, it shall direct that the proceeds from the sale of the forfeited vehicle, or part thereof, be divided or distributed as follows: (a) 3/4 to the agency making the seizure; and (b) 1/4 to the state treasurer for deposit into the General Fund. (9) If the vehicle is found by the court not to be subject to forfeiture, it shall be released to the owner.~~]

Section 30. Section 76-10-1107 is amended to read:

76-10-1107. Seizure and sale of devices or equipment used for gambling.

(1) Whenever any magistrate shall determine that any devices or equipment is used or kept for the purpose of being used for gambling, the magistrate may authorize the county commissioner of the county wherein the seizure occurred, in conjunction with the sheriff, or if the seizure occurred within the limits of an incorporated city or town, may authorize its governing body, in conjunction with its chief law enforcement officer, to seize the devices [~~and sell them for the best price obtainable~~] or equipment and institute forfeiture proceedings in accordance with the procedures and substantive protections of the Utah Uniform Forfeiture Procedures Act, Title 24, Chapter 1, of the Utah Code. [~~The sale must be made to a person of good character and repute who is a bona fide resident of a state where it is lawful to use the equipment. The officials conducting the sale shall place the equipment on a public carrier, properly consigned to the purchaser at the place of his residence.~~] (2) The proceeds of any sale shall be paid [~~into the treasury, for welfare purposes only, of the county or political unit conducting the sale~~] to the Uniform School Fund, Title 53A, Chapter 16, Section 101 of the Utah Code. [~~(3) If no sale is consummated within ninety days of the authorization therefor, the devices or equipment shall be destroyed under the direction of the magistrate.~~]

Section 31. Section 76-10-1108 is amended to read:

76-10-1108. Seizure and disposition of gambling debts or proceeds.

(1) [~~At the commencement of any prosecution for a violation of this part, any~~] Any gambling bets or gambling proceeds which are reasonably identifiable as having been used or obtained in violation of this part may be seized [~~and they shall be held pending the disposition of the proceedings. At the conclusion of the proceedings, any person who is found guilty of a violation of this part shall forfeit any sums held by the court which were acquired or being used in violation of this part~~] for forfeiture pursuant to the procedures and substantive protections of the Utah Uniform Forfeiture Procedures Act, Title 24, Chapter 1 of the Utah Code. [~~Any sums not identifiable, or in the event the individual is found not guilty, the sums shall be returned to him.~~]

[~~(2) A commencement of prosecution shall occur upon arrest, issuance of a complaint, or indictment, which ever occurs first.~~]

[~~(3)~~](2) All sums forfeited under this section shall be paid [~~into the treasury of the county or political unit conducting the prosecution.~~] to the Uniform School Fund, Title 53A, Chapter 16, Section 101 of the Utah Code.

Section 32. Section 76-10-1603.5 is amended to read:

76-10-1603.5. Violation a felony -- Costs -- Forfeiture -- Fines -- Divestiture -- Restrictions -- Dissolution or reorganization -- Restraining orders and injunctions -- Hearings -- Special verdict -- Findings -- Judgment and order of forfeiture -- Seizure of property -- Sale -- Proceeds -- Petitions for remission or mitigation of forfeiture -- Hearing -- Disposition.

(1) A person who violates any provision of Section 76-10-1603 is guilty of a second degree felony. In addition to penalties prescribed by law, the court may order the person found guilty of the felony to pay to the state, if the attorney general brought the action, or to the county, if the county attorney or district attorney brought the action, the costs of investigating and prosecuting the offense and the costs of securing the forfeitures provided for in this section. The person shall forfeit to the [~~state or the county~~] Uniform School Fund, Title 53A, Chapter 16, Section 101, of the Utah Code:

(a) any interest acquired or maintained in violation of any provision of Section 76-10-1603; (b) any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over any enterprise which the person has established, operated, controlled, conducted, or participated in the conduct of in violation of Section 76-10-1603; and (c) any property constituting or derived from [~~any~~] the net proceeds which the person obtained, directly or indirectly, from the conduct constituting the pattern of unlawful activity or from any act or

conduct constituting the pattern of unlawful activity proven as part of the violation of any provision of Section 76-10-1603. (2) If a violation of Section 76-10-1603 is based on a pattern of unlawful activity consisting of acts or conduct in violation of Section 76-10-1204, 76-10-1205, 76-10-1206, or 76-10-1222, the property subject to forfeiture under this section is limited to property, the seizure or forfeiture of which would not constitute a prior restraint on the exercise of an affected party's rights under the First Amendment to the Constitution of the United States or Article I, Sec. 15 of the Utah Constitution, or would not otherwise unlawfully interfere with the exercise of those rights. (3) In lieu of a fine otherwise authorized by law for a violation of Section 76-10-1603, a defendant who derives net [~~profits or other~~] proceeds from a conduct prohibited by Section 76-10-1603, may be fined not more than twice the amount of the [~~gross~~] net [~~profits or other~~] proceeds. (4) [~~Except under Subsection (2),~~] Property subject to criminal forfeiture in accord with the procedures and substantive protections of the Utah Uniform Forfeiture Procedures Act Title 24, Chapter 1, of the Utah Code includes: (a) real property, including things growing on, affixed to, and found in land; and (b) tangible and intangible personal property including money, rights, privileges, interests, claims, and securities of any kind; (c) but does not include property [~~legitimately~~] exchanged or to be exchanged for services rendered in connection with [~~a defendant's exercise of his rights under the Sixth Amendment to the Constitution of the United States and the right to appear and be defended by counsel in criminal prosecutions guaranteed by Article I, Sec. 12 of the Utah Constitution~~] the defense of the charges or any related criminal case. (5) Upon conviction for violating any provision of Section 76-10-1603, and in addition to any penalty prescribed by law and in addition to any forfeitures provided for in this section, the court may do any or all of the following: (a) order the person to divest himself of any interest in or any control, direct or indirect, of any enterprise; (b) impose reasonable restrictions on the future activities or investments of any person, including prohibiting the person from engaging in the same type of endeavor as the enterprise engaged in, to the extent the Utah Constitution and the Constitution of the United States permit; or (c) order the dissolution or reorganization of any enterprise. (6) If a violation of Section 76-10-1603 is based on a pattern of unlawful activity consisting of acts or conduct in violation of Section 76-10-1204, 76-10-1205, 76-10-1206, or 76-10-1222, the court may not enter any order that would amount to a prior restraint on the exercise of an affected party's rights under the First Amendment to the Constitution of the United States or Article I, Sec. 15 of the Utah Constitution. (7) [~~(a)~~] All rights, title, and interest in forfeitable property described in Subsections (1) and (2) vest in the [~~state if the action was brought by the attorney general or in the county if the action was brought by a county attorney or district attorney,~~] state treasurer, on behalf of the Uniform School Fund, upon the commission of the act or conduct giving rise to the forfeiture under this section.

(8) For purposes of this section, the "net proceeds" of an offense means property acquired as a result of the violation minus the direct costs of acquiring the property. [~~(b) Any forfeitable property that is subsequently transferred to a person other than the defendant may be the subject of a special proceeding and an order that the property be forfeited to the state or the county unless the transferee establishes in a hearing held under Subsection (16) that he is a bona fide purchaser for value of the property who at the time of purchase reasonably believed that the property was not subject to forfeiture under this section.~~]

[~~(8)(a) Upon application of the attorney general, the county attorney, or district attorney, the court may enter restraining orders or injunctions, require the execution of satisfactory performance bonds, or take any other action to preserve for forfeiture under this section any forfeitable property described in Subsections (1) and (2)~~]

[~~(i) upon filing of an indictment or an information charging a violation of Section 76-10-1603 and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; or~~]

[~~(ii) prior to the filing of the indictment or information, if, after notice to persons appearing to have an interest in the property and after affording them an opportunity for a hearing, the court determines that:~~]

[~~(A) there is a substantial probability that the state will prevail on the issue of forfeiture and that failure to enter the order will result in the property being sold, distributed, exhibited, destroyed, or removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and~~]

[~~(B) the need to preserve the availability of the property or prevent its sale, distribution, exhibition, destruction, or removal through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered;~~].

[~~(iii) an order entered under Subsection (ii) is effective for no more than 90 days, unless extended by the court for good cause shown or unless an indictment or information as described in Subsection (i) has been filed~~].

[~~(b) A temporary restraining order may be entered upon application of the attorney general, county attorney, or a district attorney without notice or opportunity for a hearing, when an information or indictment has not yet been filed with respect to the property, if the attorney general, county attorney, or a district attorney demonstrates that there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section and that provision of notice would jeopardize the availability of the property for forfeiture or would jeopardize an~~

~~ongoing criminal investigation. The temporary order expires not more than ten days after it is entered unless extended for good cause shown or unless the party against whom it is entered consents to an extension. A hearing concerning an order entered under this subsection shall be held as soon as possible, and prior to the expiration of the temporary order.~~]

[~~(c) The court is not bound by the Utah Rules of Evidence regarding evidence it may receive and consider at any hearing held under this subsection.~~]

[~~(9) Upon conviction of a person for violating any provision of Section 76-10-1603, the jury, if the case was tried to a jury, shall be instructed and asked to return a special verdict as to whether any of the extent of the property identified in the information or indictment, if any, that is forfeitable under Subsections 76-10-1603.5 (1) and (2)~~]

[~~(b) If the case is tried without a jury, the judge shall make specific written findings if he determines that the property identified in the information or indictment is forfeitable under Subsections 76-10-1603.5 (1) and (2). Whether property is forfeitable shall be proven beyond areasonable doubt.~~]

[~~(10)(a) Upon conviction of a person for violating any provision of Section 76-10-1603 and upon the jury's special verdict or the judge's finding that the property is forfeitable, the court shall enter a judgment and order of forfeiture of the property to the state or the county and shall authorize the attorney general, the county attorney, or, if within a prosecution district, the district attorney to seize all property ordered forfeited upon the terms stated by the court in its order. Following the entry of an order declaring property forfeited, the court may, upon application of the attorney general, the county attorney, or the district attorney, enter appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants, or trustees, or take any other action to protect the interest of the state or county in property ordered forfeited.~~]

[~~(b) Any income accruing to, or derived from, an enterprise or an interest in an enterprise or property which has been ordered forfeited under this section may be used to offset ordinary and necessary expenses to the enterprise which are required by law, or which are necessary to protect the interests of the state or county or third parties.~~]

[~~(11)(a) After seizure of property ordered forfeited under this section, the attorney general, the county attorney, or the district attorney shall direct the disposition of the property by sale or any other commercially feasible means, making provision for the rights of any innocent persons. Any property right or interest not exercisable by or transferable for value to the state or the county, expires and does not revert to the defendant. The defendant or any person acting in concert with or on behalf of the defendant is not eligible to purchase forfeited property at any sale held by the attorney general or the county attorney.~~]

[~~(b) The court may restrain or stay the sale or disposition of the property pending the conclusion of any appeal of the criminal case giving rise to the forfeiture, if the applicant demonstrates that proceeding with the sale or disposition of the property would may result in irreparable injury, harm, or loss to him.~~]

[~~(c) The proceeds of any sale or other disposition of property forfeited under this section and any moneys forfeited may be used first to pay expenses of the forfeiture and the sale, including expenses of seizure, maintenance, and custody of the property pending its disposition, advertising, and court costs.~~]

[~~(12) Regarding property ordered forfeited under this section, the attorney general, the county attorney, or, if within a prosecution district, the district attorney may: (a) grant petitions for mitigation or remission of forfeiture, restore forfeited property to victims of a violation of this chapter, or take any other action to protect the rights of innocent persons in the interest of justice and as is consistent with the provisions of this section;~~]

[~~(b) compromise claims arising under this section;~~]

[~~(c) award compensation to persons providing information resulting in a forfeiture under this section;~~]

[~~(d) direct the disposition by the state or the county of all property ordered forfeited under this section by public sale or any other commercially feasible means, making provision for the rights of innocent persons;~~]

[~~(e) destroy or otherwise dispose of property determined to be obscene or pornographic; and~~]

[~~(f) take appropriate measures necessary to safeguard and maintain property ordered forfeited under this section pending its disposition.~~]

[~~(13) Except under Subsection (16), a party claiming an interest in property subject to forfeiture under this section: (a) may not intervene in a trial or appeal of a criminal case involving the forfeiture of property under this section; and~~]

[~~(b) may not commence an action at law or equity against the state or the county concerning the validity of his alleged interests in the property subsequent to the filing of an indictment or an information alleging that the property is subject to forfeiture under this section.~~]

[~~(14) The district court of the state which has jurisdiction of a case under this part may enter orders under this section without regard to location of any property which may be subject to forfeiture under this section, or which has been ordered forfeited under this section.~~]

[~~(15) To facilitate the identification or location of property declared forfeited and to facilitate the disposition of petitions for remission or mitigation of forfeiture, after the entry of an order declaring property forfeited to the state or county, the court may, upon application of the attorney general, the~~

~~county attorney, or the district attorney order that the testimony of any witness relating to the property forfeited be taken by deposition, and that any book, paper, document, record, recording, or other material not privileged shall be produced as provided for depositions and discovery under the Utah Rules of Civil Procedure.~~]

[~~(16) Following the entry of an order of forfeiture under this section, the attorney general, the county attorney, or the district attorney shall publish notice of the order and of its intent to dispose of the property as the court may direct. The attorney general, the county attorney, or the district attorney may also provide direct written notice to any person known to have an alleged interest in the property subject to the order of forfeiture, as a substitute for published notice as to those persons so notified.~~]

[~~(b) Any person, other than the defendant, asserting a legal interest in property which has been ordered forfeited to the state or to the county under this section may, within 30 days of the final publication of notice or his receipt of notice under Subsection (a), whichever is earlier, petition the court for a hearing to adjudicate the validity of his alleged interest in the property. The hearing is held before the court without a jury.~~]

[~~(c) The petition shall be in writing and signed by the petitioner under penalty of perjury. It shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property, and any additional facts supporting the petitioner's claim, and the relief sought.~~]

[~~(d) The hearing on the petition shall, to the extent practicable, be held within 30 days of the filing of the petition. The court may consolidate the hearing on the petition and any petition filed by any other person under this section, other than the defendant.~~]

[~~(e) At the hearing, the petitioner may testify and present evidence and witnesses on his own behalf and cross-examine witnesses who appear at the hearing. The attorney general, county attorney, or district attorney may present evidence and witnesses in rebuttal and in defense of the claim to the property and cross-examine witnesses who appear at the hearing. In addition to testimony and evidence presented at the hearing, the court shall consider the relevant portion of the record of the criminal case which resulted in the order of forfeiture. The court is not bound by the Utah Rules of Evidence at a hearing held under this subsection.~~]

[~~(f) The court shall amend the order of forfeiture in accordance with its determination, if after the hearing the court determines that the petitioner has established by a preponderance of the evidence that: (i) the petitioner has a legal right, title, or interest in the property, and the right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts or conduct which gave rise to the forfeiture of the property under this section; or (ii) the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and at the time of purchase reasonably believed that the property was not subject to forfeiture under this section.~~]

[~~(g) Following the court's disposition of all petitions filed under this subsection, or if no petitions are filed following the expiration of the period provided in Subsection (b) for the filing of petitions, the state or the county has clear title to property subject to the order of forfeiture and may warrant good title to any subsequent purchaser or transferee.~~]

Section 33. Section 76-10-1908 is amended to read:

76-10-1908.Forfeiture -- Grounds -- Procedure -- Disposition of property forfeited.

(1) (a) Any of the following property shall be subject to civil or criminal forfeiture [~~and no property right exists in it~~]:

[~~(a)~~] (i) any conveyance including vehicles, aircraft, watercraft, or other vessel used in violation of Section 76-10-1904; and [~~(c)~~]

(ii) any [~~monetary instruments or funds which are the subject~~] property which is the net proceeds of a violation of Section 76-10-1903, 76-10-1904, or 76-10-1906. (b) For purposes of this section, the "net proceeds" of an offense means property acquired as a result of the violation minus the direct costs of acquiring the property.

(2) Property subject to forfeiture under Subsection (1) may be seized by any peace officer of this state upon process issued by any court having jurisdiction over the property. However, seizure without process may be made when:

(a) the seizure is incident to an arrest or search under a search warrant, an inspection under an administrative inspection warrant, under a writ of attachment, or under a writ of garnishment;

(b) the property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding under this section; or

(c) the peace officer has probable cause to believe that the property has been used in violation of Section 76-10-1903, 76-10-1904, or 76-10-1906.

(3) [~~In the event of seizure under Subsection (2),~~] Forfeiture proceedings under this section shall be commenced in accordance with the procedures and substantive protections of the Utah Uniform Forfeiture Procedures Act, Title 24, Chapter 1, of the Utah Code. [~~under Subsection (4) shall be instituted promptly~~]

(4) Property taken or detained under this section is not repleviable but is in custody of the law enforcement agency making the seizure, subject

only to the orders and decrees of the court or the official having jurisdiction. When property is seized under this chapter, the appropriate person or agency may:

(a) place the property under seal;

(b) remove the property to a place designated by it or the warrant under which it was seized; or

(c) take custody of the property and remove it to an appropriate location for disposition in accordance with law.

[~~(5) When any property is subject to civil forfeiture, a determination for forfeiture to the state shall be made as follows:~~]

[~~(a) A complaint verified on oath or affirmation shall be prepared by the prosecuting agency where the property was seized or is to be seized. A complaint shall be filed in the district court. The complaint shall describe with reasonable particularity:~~]

[~~(i) the property which is the subject matter of the proceedings;~~]

[~~(ii) the date and place of seizure, if known; and~~]

[~~(iii) the allegations which constitute a basis for forfeiture.~~]

[~~(b) Upon filing the complaint, the clerk of the court shall forthwith issue a warrant for seizure of the property which is the subject matter of the action and deliver it to a peace officer for service, unless the property has previously been seized without a warrant under Subsection (2). If the property was seized under Subsection (2), the warrant of seizure shall be delivered to the officer having custody of the property who shall proceed as directed in the warrant.~~]

[~~(c) Notice of the seizure and intended forfeiture shall be filed with the county clerk, and served together with a copy of the complaint, upon all persons known to the prosecuting agency to have a claim in the property by one of the following methods:~~]

[~~(i) upon each claimant whose name and address is known, at the last known address of the claimant, or upon each owner whose right, title, or interest is of record in the Division of Motor Vehicles, by mailing a copy of the notice and complaint by certified mail to the address given upon the records of the division, which service is considered complete even though the mail is refused or cannot be forwarded; and~~]

[~~(ii) upon all other claimants whose addresses are unknown, but who are believed to have an interest in the property, by one publication in a newspaper of general circulation in the county where the seizure was made.~~]

[~~(d) Except under Subsection (5)(e), any claimant or interested party shall file with the court a verified answer to the complaint within 20 days after service has been obtained.~~]

[~~(e) When property is seized under this section, any interested person or claimant of the property, prior to being served with a complaint under this section, may file a petition in the court having jurisdiction for release of his interest in the property. The petition shall specify the claimant's interest in the property and his right to have it released. A copy shall be served upon the county attorney in the county of the seizure, who shall answer the petition within 20 days. A petitioner need not answer a complaint of forfeiture.~~]

[~~(f) After 20 days following service of a complaint or petition for release, the court shall examine the record and if no answer is on file, the court shall allow the complainant or petitioner an opportunity to present evidence in support of his claim and order forfeiture or release of the property as the court determines. If a prosecuting agency has not filed an answer to a petition for release and the court determines from the evidence that the petitioner is not entitled to recovery of the property, it shall enter an order directing the prosecuting agency to answer the petition within ten days. If no answer is filed within that period, the court shall order the release of the property to the petitioner entitled to receive it.~~]

[~~(g) When an answer to a complaint or petition appears of record at the end of 20 days, the court shall set the matter for hearing within 20 days. At this hearing all interested parties may present evidence of their rights of release of the property following the state's evidence for forfeiture. The court shall determine by a preponderance of the evidence the issues in the case and order forfeiture or release of the property as it determines.~~]

[~~(h) When the court determines that claimants have no right in the property in whole or in part, it shall declare the property to be forfeited and direct it to be delivered as provided in Subsection (6).~~]

[~~(i) When the court determines that property, in whole or in part, is not subject to forfeiture, it shall order release of the property to the proper claimant. If the court determines that the property is subject to forfeiture and release in part, it shall order partial release and partial forfeiture. When the property cannot be divided for partial forfeiture and release, the court shall order it sold and the proceeds distributed:~~]

[~~(i) first, to defray the costs of the action, including seizure, storage of the property, legal costs of filing and pursuing the forfeiture, and costs of sale;~~]

[~~(ii) second, proportionally among the legitimate claimants; and (iii) third, as provided under Subsection (6).~~]

[~~(6) Disposition of all property forfeited under Subsections (1) through (5) by a finding of the court that no person is entitled to recover the property shall be as follows:~~]

[~~(a) Property forfeited under Subsection (1)(a), (b), or (c), if the property is involved in a financial transaction in violation of Section 76-10-1903 or is transported in violation of Section 76-10-1904, may be awarded to the seizing agency upon a petition by the seizing agency of the property in the~~

~~complaint filed under Subsection (5)(a) and a finding by the court that the seizing agency isable to use the forfeited property in the enforcement of offenses under Title 58 and Title 76, Chapter 10.~~]

[~~(b) If the seizing agency makes no application or the court does not make a finding under Subsection (6)(a) that the seizing agency should be awarded the property, the forfeited property shall be deposited in the custody of the Division of Finance. Any state agency, bureau, county, municipality, or drug strike force which demonstrates a need for specific property or classes of property which has been forfeited shall be given the property for use in enforcement of laws prohibiting specified unlawful activity or in enforcement of this part after payment to the prosecuting agency of legal costs for filing and pursuing the forfeiture and upon the application for the property to the director of the Division of Finance. The application shall clearly set forth the need for the property and the use to which the property will be put.~~]

[~~(c) The director of the Division of Finance shall review all applications for property deposited under Subsection (6)(b) and make a determination based on necessity and advisability as to final disposition and shall notify the designated applicant, who may obtain the property after payment of all costs to the appropriate department. The Division of Finance shall reimburse the prosecuting agency for costs of filing and pursuing the forfeiture action, not to exceed the amount of the net proceeds received from the sale of the property.~~]

[~~(d) If no disposition is made upon an application under Subsection (6)(a), (b), or (c), the Division of Finance shall dispose of the property by public bidding, or, as considered appropriate, by destruction. Proceeds from the sale of the property under this subsection shall be distributed as provided in Subsection (e).~~]

[~~(e) Property forfeited under Subsection (1)(c) for violation of Section 76-10-1906 and proceeds from the sale of the property under Subsection (6)(d) shall be awarded and ordered distributed to the General Fund.~~]

[~~(7) Any person who violates any provision of Section 76-10-1903, 76-10-1904, or 76-10-1906 shall forfeit to the state all property, funds, or monetary instruments involved in the violation or, if unavailable for forfeiture in species, its value whether or not located in this state.~~]

[~~(8) Upon conviction for violating any provision of Section 76-10-1903, 76-10-1904, or 76-10-1906, the court may make an order with respect to any property of the defendant, or in which the defendant has an interest, whether or not in this state, to accomplish or further the forfeiture provided under Subsection (7) or the collection of costs under this section.~~]

[~~(9) All rights, title, and interest in forfeitable property described in this section vest in the state upon the commission of the act or conduct giving rise to the forfeiture under this section.~~]

[~~(10) (a) After forfeiture of property under this section, the court shall direct the disposition of the property by sale or other commercially feasible means, making provision for the rights of any innocent persons. Any property right or interest not exercisable by or transferable for value to the state expires and does not revert to the defendant. The defendant or any person acting in concert with or on behalf of the defendant is not eligible to purchase forfeited property at any sale ordered by the court.~~]

[~~(b) The court may restrain or stay the sale or disposition of the property pending the conclusion of any appeal of the criminal case giving rise to the forfeiture, if the applicant demonstrates that proceeding with the sale or disposition of the property would result in irreparable injury, harm, or loss to him.~~]

[~~(c) The proceeds of any sale or other disposition of property forfeited under this section or any monies forfeited may be used first to pay the expenses of the forfeiture and the sale including expenses of seizure, maintenance, and custody of the property pending its disposition, advertising, and court costs.~~]

[~~(d) Disposition of property forfeited under Subsections (7) through (13) shall be as provided in Subsection (6).~~]

[~~(e) Notwithstanding any provisions of this section to the contrary, the state is obligated to search the lien records applicable to the forfeitable property to determine whether any valid lien against the property has been perfected. As long as the lien holder did not violate the provisions of this section, title to forfeitable property shall be subject to such lien, and the state will either give possession of the property to the lien holder or pay to the lien holder the amount secured by the lien.~~]

[~~(11) In any forfeiture proceeding under Subsections (7) through (13), the prosecutor prosecuting the defendant may:~~]

[~~(a) petition the court for mitigation or remission of forfeiture, for restoration of forfeited property to victims of a violation of this section or to take any other action to protect the rights of innocent persons in the interest of justice and the court may, in its discretion, grant the petition;~~]

[~~(b) compromise claims arising under this section;~~]

[~~(c) award compensation to persons providing information resulting in a forfeiture under this section; or~~]

[~~(d) take appropriate measures necessary to safeguard and maintain property ordered forfeited under this section pending its disposition.~~]

[~~(12) In a proceeding under this section where forfeiture is declared, in whole or in part, the court shall:~~]

[~~(a) determine the costs incurred by the prosecuting agency prosecuting the forfeiture which shall be paid by the recipient of forfeited assets from the proceeds from the assets; and~~]

[~~(b) assess all costs of the forfeiture proceeding including seizure and storage of the property against the individual or individuals whose conduct was the basis for the forfeiture, and may assess costs against any other claimant or claimants to the property as appropriate.~~]

[~~(13) Proceedings under this section are independent of any other proceedings whether civil or criminal under this section or the laws of this state.~~]

Section 34. Severability.

If any provision of this Act, or the application of any provision to any person or circumstance, is held invalid, the remainder of this Act shall not be affected thereby but shall be given effect without the invalid provision.

Section 35. Effective Date.

If approved by the voters in this state, this initiative shall take effect on March 20, 2001.

2001 FIRST

SPECIAL SESSION

CHAPTER 1
H. B. 1004
Passed June 20, 2001
Approved June 22, 2001
Effective June 22, 2001

DEPARTMENT OF COMMERCE - FEE APPROVAL

Sponsor: Jeff Alexander

This act approves fees levied by the Department of Commerce that were approved by the Commerce and Revenue Appropriations Subcommittee during the 2001 Annual General Session but that, through clerical error, were not included in the Appropriations Act for approval by the entire Legislature. This act takes effect immediately.

This act enacts uncodified material.

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

Section 1. Department of Commerce fee approval.

Under the terms and conditions of Section 63-38-3.2, the following fees are approved for the use and support of the government of the State of Utah for the fiscal year beginning July 1, 2001 and ending June 30, 2002.

Department of Commerce

In accordance with Subsection 13-1-2(3), the following fees are approved for the services of the Commerce Department for FY 2002.

Commerce Department (All Divisions):

UBC Surcharge (statute)

Building Permit surcharge
(statute) .....variable
Other

Inactive/Reactivation
Emeritus License.....$50

Temporary
License.....$50

License/Registration
Reinstatement.....$50

Duplicate License.....$10

Disciplinary File Search
Per Order Document.....$10

Prelitigation
Filing.....$60

Section 2. Effective date.

If approved by two-thirds of all the members elected to each house, this act takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 2
H. B. 1009
Passed June 20, 2001
Approved June 22, 2001
Effective July 1, 2001

PASSENGER LIMITATIONS FOR YOUNG DRIVERS - PROSPECTIVE APPLICATION

Sponsor: Jeff Alexander

This act modifies the effective date of passenger limitations for young drivers enacted in S.B. 48 during the 2001 General Session. The passenger limitations apply only to a person whose driver license is issued on or after July 1, 2001.

This act affects uncodified material as follows:

AMENDS:

Uncodified Section 2, Chapter 98, Laws of Utah 2001

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

Section 1. Uncodified Section 2, Chapter 98, Laws of Utah 2001 is amended to read:

Section 2. Effective date -- Prospective application.

(1) This act takes effect on July 1, 2001.

(2) This act applies only to a person whose driver license is issued on or after July 1, 2001.

CHAPTER 3
H. B. 1001
Passed June 20, 2001
Approved July 5, 2001
Effective August 20, 2001

NOTICE BY SCHOOL TO CUSTODIAL AND NONCUSTODIAL PARENT

Sponsor: Fred J. Fife

This act requires a public school to notify the custodial and make reasonable efforts to notify the noncustodial parent of a student who is injured or becomes ill at the school and requires medical treatment for the injury or illness at a facility not located on the school premises.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:
53A-11-205, Utah Code Annotated 1953

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

Section 1. Section 53A-11-205 is enacted to read:

53A-11-205. Notification to the parent of an injured or sick child.

(1) A public school shall notify the custodial parent and, if requested in writing by a noncustodial parent, make reasonable efforts to notify the noncustodial parent of a student who is injured or becomes ill at the school during the regular school day if:

(a) the injury or illness requires treatment at a hospital, doctor's office, or other medical facility not located on the school premises; and

(b) the school has received a current telephone number for the party it is required to notify or make reasonable efforts to notify.

(2) (a) Subsection (1) does not apply to a noncustodial parent forbidden to have contact with the student under a court order or similar procedure.

(b) The custodial parent is responsible for providing the school with the noncustodial parent's status under Subsection (2)(a) through a procedure adopted by the local school board.

CHAPTER 4
H. B. 1002
Passed June 20, 2001
Approved July 5, 2001
Effective July 5, 2001

CRIMINAL LAW AMENDMENTS

Sponsor: Afton B. Bradshaw

This act modifies the Criminal Code, the Code of Criminal Procedure, and the Judicial Code to make technical corrections and to give the Board of Pardons and Parole discretion regarding the appointment of alienists for the examination of certain offenders. This bill takes effect upon approval.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
76-5-205, as last amended by Chapters 2 and 90, Laws of Utah 1999
76-6-202, as last amended by Chapter 359, Laws of Utah 2001
77-27-7, as last amended by Chapter 301, Laws of Utah 2001
77-27-21.5, as last amended by Chapters 17, 298 and 353, Laws of Utah 2001
78-5-120, as repealed and reenacted by Chapter 122, Laws of Utah 2001

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

Section 1. Section 76-5-205 is amended to read:

76-5-205. Manslaughter.

(1) Criminal homicide constitutes manslaughter if the actor:

(a) recklessly causes the death of another;

(b) commits a homicide which would be murder, but the offense is reduced pursuant to Subsection 76-5-203[~~(3)~~](4); or

(c) commits murder, but special mitigation is established under Section 76-5-205.5.

(2) Manslaughter is a felony of the second degree.

Section 2. Section 76-6-202 is amended to read:

76-6-202. Burglary.

(1) An actor is guilty of burglary if he enters or remains unlawfully in a building or any portion of a building with intent to commit:

(a) a felony;

(b) theft;

(c) an assault on any person;

(d) lewdness, a violation of Subsection 76-9-702(1);

(e) sexual battery, a violation of Subsection 76-9-702(3); or

(f) lewdness involving a child, in violation of Section 76-9-702.5.

(2) Burglary is a felony of the third degree unless it was committed in a dwelling, in which event it is a felony of the second degree.

(3) A violation of this section is a separate offense from any of the offenses listed in [~~Subsection~~] Subsections (1)[~~(a) or (1)(b)~~](a) through (f), and which may be committed by the actor while he is in the building.

Section 3. Section 77-27-7 is amended to read:

77-27-7. Parole or hearing dates -- Interview -- Hearings -- Report of alienists -- Mental competency.

(1) The Board of Pardons and Parole shall determine within six months after the date of an offender's commitment to the custody of the Department of Corrections, for serving a sentence upon conviction of a felony or class A misdemeanor offense, a date upon which the offender shall be afforded a hearing to establish a date of release or a date for a rehearing, and shall promptly notify the offender of the date.

(2) Before reaching a final decision to release any offender under this chapter, the chair shall cause the offender to appear before the board, its panel, or any appointed hearing officer, who shall personally interview the offender to consider his fitness for release and verify as far as possible information furnished from other sources. Any offender may waive a personal appearance before the board. Any offender outside of the state shall, if ordered by the board, submit to a courtesy hearing to be held by the appropriate authority in the jurisdiction in which the offender is housed in lieu of an appearance before the board. The offender shall be promptly notified in writing of the board's decision.

(3) (a) In the case of an offender convicted of violating or attempting to violate any of the provisions of Section 76-5-301.1, Subsection 76-5-302(1)(b)(vi), Section 76-5-402, 76-5-402.1, 76-5-402.2, 76-5-402.3, 76-5-403, 76-5-403.1, 76-5-404, 76-5-404.1, or 76-5-405, the chair [~~shall~~] may appoint one or more alienists who shall examine the offender within six months prior to a hearing at which an original parole date is granted on any offense listed in this Subsection (3).

(b) The alienists shall report in writing the results of the examination to the board prior to the hearing. The report of the appointed alienists shall specifically address the question of the offender's current mental condition and attitudes as they relate to any danger the offender may pose to children or others if the offender is released on parole.

(4) The parolee may petition the board for termination of lifetime parole as provided in Section 76-3-202 in the case of a person convicted of a first degree felony violation or convicted of attempting to violate Section 76-5-301.1, Subsection 76-5-302(1)(b)(vi), Section 76-5-402, 76-5-402.1,

76-5-402.2, 76-5-402.3, 76-5-403, 76-5-403.1, 76-5-404.1, or 76-5-405.

(5) In any case where an offender's mental competency is questioned by the board, the chair [~~shall~~] may appoint one or more alienists to examine the offender and report in writing to the board, specifically addressing the issue of competency.

(6) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the board shall make rules governing:

(a) the hearing process;

(b) alienist examination; and

(c) parolee petitions for termination of parole.

Section 4. Section 77-27-21.5 is amended to read:

77-27-21.5. Sex offender registration -- Information system -- Law enforcement and courts to report -- Registration -- Penalty -- Effect of expungement.

(1) As used in this section:

(a) "Department" means the Department of Corrections.

(b) "Notification" means a person's acquisition of information from the department about a sex offender, including his place of habitation, physical description, and other information as provided in Subsections (11) and (12).

(c) "Register" means to comply with the rules of the department made under this section.

(d) "Sex offender" means any person:

(i) convicted by this state of:

(A) Section 76-4-401, enticing a minor over the Internet;

(B) Section 76-5-301.1, kidnapping of a child;

(C) a felony violation of Section 76-5-401, unlawful sexual activity with a minor;

(D) Section 76-5-401.1, sexual abuse of a minor;

(E) Section 76-5-401.2, unlawful sexual conduct with a 16 or 17 year old;

(F) Section 76-5-402, rape;

(G) Section 76-5-402.1, rape of a child;

(H) Section 76-5-402.2, object rape;

(I) Section 76-5-402.3, object rape of a child;

(J) a felony violation of Section 76-5-403, forcible sodomy;

(K) Section 76-5-403.1, sodomy on a child;

(L) Section 76-5-404, forcible sexual abuse;

(M) Section 76-5-404.1, sexual abuse of a child or aggravated sexual abuse of a child;

(N) Section 76-5-405, aggravated sexual assault;

(O) Section 76-5a-3, sexual exploitation of a minor;

(P) Section 76-7-102, incest;

(Q) Section 76-9-702.5, lewdness involving a child;

(R) Section 76-10-1306, aggravated exploitation of prostitution; or

(S) attempting, soliciting, or conspiring to commit any offense listed in [~~Subsections~~] Subsection (1)(d)(i)(A), (B), (C), (E) through (P), or (R);

(ii) convicted by any other state or the United States government of an offense which if committed in this state would be punishable as one or more of the offenses listed in Subsection (1)(d)(i) and who is:

(A) a Utah resident; or

(B) not a Utah resident, but who is in the state for a period exceeding 14 consecutive days, or for an aggregate period exceeding 30 days, during any calendar year; or

(iii) who is found not guilty by reason of insanity of one or more offenses listed in Subsection (1)(d)(i).

(2) The department, to assist in investigating sex-related crimes and in apprehending offenders, shall:

(a) develop and operate a system to collect, analyze, maintain, and disseminate information on sex offenders and sex offenses; and

(b) make information collected and developed under this section available to the public.

(3) Any law enforcement agency shall, in the manner prescribed by the department, inform the department of:

(a) the receipt of a report or complaint of an offense listed in Subsection (1)(d), within three working days; and

(b) the arrest of a person suspected of any of the offenses listed in Subsection (1)(d), within five working days.

(4) Upon convicting a person of any of the offenses listed in Subsection (1)(d), the convicting court shall within three working days forward a copy of the judgment and sentence to the department.

(5) A sex offender in the custody of the department shall be registered by agents of the department upon:

(a) being placed on probation;

(b) commitment to a secure correctional facility operated by or under contract to the department;

(c) release from confinement to parole status, termination or expiration of sentence, or escape;

(d) entrance to and release from any community-based residential program operated by or under contract to the department; or

(e) termination of probation or parole.

(6) A sex offender not in the custody of the department and who is confined in a correctional facility not operated by or under contract to the department shall be registered with the department by the sheriff of the county in which the offender is confined upon:

(a) commitment to the correctional facility; and

(b) release from confinement.

(7) A sex offender committed to a state mental hospital shall be registered with the department by the hospital upon admission and upon discharge.

(8) A sex offender convicted by any other state or by the United States government is required to register under Subsection (1)(d)(ii) and shall register with the department within ten days after entering the state.

(9) (a) Except as provided in [~~Subsection~~] Subsections (9)(b) and (c), a sex offender shall, for the duration of the sentence and for ten years after termination of sentence, register annually and again within ten days of every change of his place of habitation.

(b) (i) A sex offender convicted of any of the offenses listed in Subsection (9)(b)(ii) shall, for the offender's lifetime, register annually and again within ten days of every change of the offender's place of habitation. This registration requirement is not subject to exemptions and may not be terminated or altered during the offender's lifetime.

(ii) Offenses referred to in Subsection (9)(b)(i) are:

(A) any offense listed in Subsection (1)(d) if the offender has previously been convicted of an offense listed in Subsection (1)(d);

(B) Section 76-5-402.1, rape of a child;

(C) Section 76-5-402.3, object rape of a child;

(D) Section 76-5-403, forcible sodomy;

(E) Section 76-5-403.1, sodomy on a child; and

(F) Section 76-5-405, aggravated sexual assault.

(c) Notwithstanding Subsections (9)(a) and (b), a sex offender who is confined in a secure facility or in a state mental hospital is not required to register annually.

(10) An agency in the state that registers a sex offender on probation, a sex offender who has been released from confinement to parole status or termination, or a sex offender whose sentence has expired shall inform the offender of the duty to comply with the continuing registration requirements of this section during the period of registration required in Subsection (9), including:

(a) notification to the state agencies in the states where the registrant presently resides and plans to reside when moving across state lines;

(b) verification of address at least every 60 days pursuant to a parole agreement for lifetime parolees; and

(c) notification to the out-of-state agency where the offender is living, whether or not the offender is a resident of that state.

(11) A sex offender shall provide the department with the following information:

(a) all names or aliases the sex offender is or has been known by;

(b) the sex offender's name and residential address;

(c) a physical description, including the sex offender's age, height, weight, eye and hair color;

(d) the type of vehicle or vehicles the sex offender drives; and

(e) a current photograph of the sex offender.

(12) The department shall provide the following additional information when available:

(a) the crimes the sex offender was convicted of; and

(b) a description of the sex offender's primary and secondary targets.

(13) (a) A sex offender who knowingly fails to register under this section is guilty of a class A misdemeanor and shall be sentenced to serve a term of incarceration for not fewer than 90 days and also at least one year of probation.

(b) Neither the court nor the Board of Pardons and Parole may release a person who violates this section from serving a term of at least 90 days and of completing probation of at least one year. This Subsection (13)(b) supersedes any other provision of the law contrary to this section.

(14) Notwithstanding Title 63, Chapter 2, Government Records Access and Management Act, information in Subsections (11) and (12) collected and released under this section is public information.

(15) (a) If a sex offender is to be temporarily sent outside a secure facility in which he is confined on any assignment, including, without limitation, firefighting or disaster control, the official who has custody of the offender shall, within a reasonable time prior to removal from the secure facility, notify the local law enforcement agencies where the assignment is to be filled.

(b) This Subsection (15) does not apply to any person temporarily released under guard from the institution in which he is confined.

(16) Notwithstanding Sections 77-18-9 through 77-18-14 regarding expungement, a person convicted of any offense listed in Subsection (1)(d) is not relieved from the responsibility to register as required under this section.

(17) Notwithstanding Section 42-1-1, a sex offender:

(a) may not change his name:

(i) while under the jurisdiction of the department; and

(ii) until the registration requirements of this statute have expired; or

(b) may not change his name at any time, if registration is under Subsection (9)(b).

(18) The department may make rules necessary to implement this section, including:

(a) the method for dissemination of the information; and

(b) instructions to the public regarding the use of the information.

(19) Any information regarding the identity or location of a victim shall be redacted by the department from information provided under Subsections (11) and (12).

(20) Nothing in this section shall be construed to create or impose any duty on any person to request or obtain information regarding any sex offender from the department.

(21) If the department chooses to post registry information on the Internet, the website shall contain a disclaimer informing the public of the following:

(a) the information contained on the site is obtained from sex offenders and the department does not guarantee its accuracy;

(b) members of the public are not allowed to publicize the information or use it to harass or threaten sex offenders or members of their families; and

(c) harassment, stalking, or threats against sex offenders or their families are prohibited and doing so may violate Utah criminal laws.

(22) The department shall construct the website so that users, before accessing registry information, must indicate that they have read the disclaimer, understand it, and agree to comply with its terms.

(23) The department, its personnel, and any individual or entity acting at the request or upon the direction of the department are immune from civil liability for damages for good faith compliance with this section and will be presumed to have acted in good faith by reporting information.

(24) The department shall redact information that, if disclosed, could reasonably identify a victim.

Section 5. Section 78-5-120 is amended to read:

78-5-120. Appeals from justice court -- Trial or hearing de novo in district court.

(1) In a criminal case, a defendant is entitled to a trial de novo in the district court only if the defendant files a notice of appeal within 30 days of:

(a) sentencing after a bench or jury trial, or a plea of guilty in the justice court resulting in a finding or verdict of guilt; or

(b) a plea of guilty in the justice court that is held in abeyance.

(2) If an appeal under Subsection (1)[~~(b)~~] is of a plea entered pursuant to negotiation with the prosecutor, and the defendant did not reserve the right to appeal as part of the plea negotiation, the negotiation is voided by the appeal.

(3) A defendant convicted and sentenced in justice court is entitled to a hearing de novo in the district court on the following matters, if he files a notice of appeal within 30 days of:

(a) an order revoking probation;

(b) an order entering a judgment of guilt pursuant to the person's failure to fulfil the terms of a plea in abeyance agreement;

(c) a sentence entered pursuant to Subsection (3)(b); or

(d) an order denying a motion to withdraw a plea.

(4) The prosecutor is entitled to a hearing de novo in the district court on:

(a) a final judgment of dismissal;

(b) an order arresting judgment;

(c) an order terminating the prosecution because of a finding of double jeopardy or denial of a speedy trial;

(d) a judgment holding invalid any part of a statute or ordinance;

(e) a pretrial order excluding evidence, when the prosecutor certifies that exclusion of that evidence prevents continued prosecution; or

(f) an order granting a motion to withdraw a plea of guilty or no contest.

(5) Upon entering a decision in a hearing de novo, the district court shall remand the case to the justice court unless:

(a) the decision results in immediate dismissal of the case;

(b) with agreement of the parties, the district court consents to retain jurisdiction; or

(c) the defendant enters a plea of guilty in the district court.

(6) The district court shall retain jurisdiction over the case on trial de novo.

(7) The decision of the district court is final and may not be appealed unless the district court rules on the constitutionality of a statute or ordinance.

Section 6. Effective date.

If approved by two-thirds of all the members elected to each house, this act takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 5
H. B. 1003
Passed June 20, 2001
Approved July 5, 2001
Effective September 1, 2001

APPLIED TECHNOLOGY EDUCATION GOVERNANCE

Sponsor: Ron Bigelow

This act establishes a new applied technology education governance structure for Utah. This act creates the Utah College of Applied Technology and regional applied technology colleges in Utah, establishes their governance structure, and defines their powers and duties. This act defines the governing authority of the State Board of Regents with respect to the Utah College of Applied Technology and its regional applied technology colleges. This act creates the Utah College of Applied Technology Board of Trustees, establishes its membership and meeting requirements, and defines its powers and duties. This act establishes regional applied technology college boards, establishes their membership and meeting requirements, and defines their powers and duties. This act establishes the offices of the president of the Utah College of Applied Technology and the regional presidents and defines their appointments, powers, and duties. This act repeals the State Board for Applied Technology and transfers most of its duties and responsibilities to the State Board of Education. This act makes technical and conforming changes to other sections of the Utah Code to make those sections consistent with the substantive provisions of this act. This act establishes funding guidelines governing future legislative appropria tions. This act transfers appropriations relating to the Utah College of Applied Technology and its regional applied technology colleges. This act repeals superseded sections. This act takes effect September 1, 2001.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
53A-1-101, as repealed and reenacted by Chapter 1, Laws of Utah 1995
53A-1-402, as last amended by Chapter 73, Laws of Utah 2001
53A-8-102, as last amended by Chapter 324, Laws of Utah 1999
53A-15-202, as last amended by Chapter 53, Laws of Utah 1992
53A-15-205, as last amended by Chapter 1, Laws of Utah 2000
53A-17a-113 (Effective 07/01/01), as last amended by Chapter 335, Laws of Utah 2001
53A-17a-116 (Effective 07/01/01), as last amended by Chapter 335, Laws of Utah 2001
53A-24-102, as last amended by Chapter 37, Laws of Utah 1996
53A-24-103, as last amended by Chapter 53, Laws of Utah 1992
53B-1-102, as last amended by Chapter 7, Laws of Utah 2000
53B-1-103, as last amended by Chapter 287, Laws of Utah 1995
53B-1-104, as enacted by Chapter 167, Laws of Utah 1987
53B-2-104, as last amended by Chapter 243, Laws of Utah 1996
53B-2-106, as last amended by Chapter 401, Laws of Utah 1998
53B-6-101, as last amended by Chapters 2 and 53, Laws of Utah 1992
53B-8-105, as last amended by Chapter 121, Laws of Utah 2000
53B-16-102, as last amended by Chapter 53, Laws of Utah 1992
53B-16-205, as enacted by Chapter 256, Laws of Utah 1998

ENACTS:
53B-1-101.5, Utah Code Annotated 1953
53B-2a-101, Utah Code Annotated 1953
53B-2a-102, Utah Code Annotated 1953
53B-2a-103, Utah Code Annotated 1953
53B-2a-104, Utah Code Annotated 1953
53B-2a-105, Utah Code Annotated 1953
53B-2a-106, Utah Code Annotated 1953
53B-2a-107, Utah Code Annotated 1953
53B-2a-108, Utah Code Annotated 1953
53B-2a-109, Utah Code Annotated 1953
53B-2a-110, Utah Code Annotated 1953
53B-2a-111, Utah Code Annotated 1953
53B-2a-112, Utah Code Annotated 1953

REPEALS:
53A-1-501, as last amended by Chapter 86, Laws of Utah 2001
53A-1-502, as last amended by Chapters 28 and 375, Laws of Utah 1997
53A-15-201, as last amended by Chapter 53, Laws of Utah 1992
53A-15-202.5, as enacted by Chapter 35, Laws of Utah 1999
53A-15-203, as last amended by Chapter 53, Laws of Utah 1992

This act enacts uncodified material.

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

Section 1. Section 53A-1-101 is amended to read:

53A-1-101. State Board of Education -- Members.

(1) Members of the State Board of Education shall be nominated and elected as provided in Title 20A, Chapter 14, Nomination and Election of State and Local School Boards.

(2) (a) In addition to the members designated under Subsection (1), two members of the State Board of Regents, appointed by the chair of the State Board of Regents, shall serve as nonvoting members of the State Board of Education.

(b) A nonvoting member shall continue to serve as a member without a set term until the member is

replaced by the chair of the State Board of Regents.

Section 2. Section 53A-1-402 is amended to read:

53A-1-402. Board to establish minimum standards for public schools.

(1) The State Board of Education shall establish rules and minimum standards for the public schools, to include:

(a) the qualification and certification of educators and ancillary personnel who provide direct student services, required school administrative and supervisory services, and evaluation of instructional personnel;

(b) access to programs, attendance, competency levels, graduation requirements, discipline and control, and health and safety requirements;

(c) school accreditation, the academic year, alternative and pilot programs, curriculum and instruction requirements, school libraries, and services to persons with a disability as defined by and covered under the Americans with Disabilities Act of 1990, 42 U.S.C. 12102; the Rehabilitation Act of 1973, 29 U.S.C. 705(20)(A); and the Individuals with Disabilities and Education Act, 20 U.S.C. 1401(3); and other special groups;

(d) requirements for school design, general educational specifications, school sites, and building accessibility;

(e) state reimbursed bus routes, bus safety and operational requirements, and other transportation needs; and

(f) school productivity and cost effectiveness measures, the minimum school program, school building aid, school lunch, driver education, federal programs, school budget formats, and financial, statistical, and student accounting requirements.

(2) The board shall determine [~~whether~~] if:

(a) the minimum standards have been met[~~,~~]; and [~~that~~]

(b) required reports are properly submitted.

(3) The board may apply for, receive, administer, and distribute to eligible applicants funds made available through programs of the federal government.

(4) The board shall approve any competency-based high school diploma equivalent before any applied technology college may offer the diploma equivalent.

Section 3. Section 53A-8-102 is amended to read:

53A-8-102. Definitions.

As used in this chapter:

(1) "Career employee" means an employee of a school district who has obtained a reasonable expectation of continued employment based upon Section 53A-8-106 and an agreement with the employee or the employee's association, district practice, or policy.

(2) "Contract term" or "term of employment" means the period of time during which an employee is engaged by the school district under a contract of employment, whether oral or written.

(3) "Dismissal" or "termination" means:

(a) termination of the status of employment of an employee;

(b) failure to renew or continue the employment contract of a career employee beyond the then-current school year;

(c) reduction in salary of an employee not generally applied to all employees of the same category employed by the school district during the employee's contract term; or

(d) change of assignment of an employee with an accompanying reduction in pay, unless the assignment change and salary reduction are agreed to in writing.

(4) "Employee" means a career or provisional employee of a school district, but does not include:

(a) the district superintendent, or the equivalent at [~~an applied technology center or~~] the Schools for the Deaf and the Blind;

(b) the district business administrator or the equivalent at [~~an applied technology center or~~] the Schools for the Deaf and the Blind; or

(c) a temporary employee.

(5) "Provisional employee" means an individual, other than a career employee or a temporary employee, who is employed by a school district.

(6) "School board" or "board" means a district school board or its equivalent at [~~an applied technology center or~~] the Schools for the Deaf and the Blind.

(7) "School district" or "district" means:

(a) a public school district; or

[~~(b) an applied technology center; or~~]

[~~(c)~~] (b) the Schools for the Deaf and the Blind.

(8) "Temporary employee" means an individual who is employed on a temporary basis as defined by policies adopted by the local board of education. If the class of employees in question is represented by an employee organization recognized by the local board, the board shall adopt its policies based upon an agreement with that organization. Temporary employees serve at will and have no expectation of continued employment.

Section 4. Section 53A-15-202 is amended to read:

53A-15-202. Powers of the board.

The State Board [~~for Applied Technology~~] of Education:

(1) shall establish minimum standards for applied technology programs in the public

education system;

(2) may apply for, receive, administer, and distribute funds made available through programs of federal and state governments to promote and aid applied technology education;

(3) shall cooperate with federal and state governments to administer programs which promote and maintain applied technology education;

[~~(4) shall appoint staff and establish their duties;~~]

[~~(5) shall fix staff compensation and pay their expenses from funds appropriated for this purpose; and~~]

[~~(6) shall perform other duties as required by law.~~]

(4) shall cooperate with the Utah College of Applied Technology to ensure that students in the public education system have access to applied technology education in applied technology colleges; and

(5) shall, after consulting with local school districts, prepare and submit an annual report to the governor and to the Legislature's Education Interim Committee by October 31 of each year detailing:

(a) how the applied technology education needs of secondary students are being met; and

(b) what access secondary students have to programs offered at applied technology colleges.

Section 5. Section 53A-15-205 is amended to read:

53A-15-205. Disability Determination Services Advisory Council -- Membership -- Duties -- Requirements for DDDS.

(1) As used in this section, "council" means the Disability Determination Services Advisory Council [~~to the State Board for Applied Technology Education,~~] created in Subsection (2).

(2) There is created the Disability Determination Services Advisory Council to act as an advisory council to the State Board [~~for Applied Technology~~] of Education regarding the Division of Disability Determination Services (DDDS)[~~,~~] established under Chapter 24, Part 5.

(3) The council is composed of the following members:

(a) the administrator of DDDS;

(b) a representative of the United States Department of Health and Human Services, Social Security Administration, appointed by the board; and

(c) nine persons, appointed by the board in accordance with Subsections (5) and (6), who represent a cross section of:

(i) persons with disabilities;

(ii) advocates for persons with disabilities;

(iii) health care providers;

(iv) representatives of allied state and local agencies; and

(v) representatives of the general public.

(4) The members appointed under Subsections (3)(a) and (3)(b) serve as nonvoting members of the council.

(5) In appointing the members described in Subsection (3)(c), the board shall:

(a) solicit nominations from organizations and agencies that represent the interests of members described in that subsection; and

(b) make every effort to create a balance in terms of geography, sex, race, ethnicity, and type of both mental and physical disabilities.

(6) In making initial appointments of members described in Subsection (3)(c), the board shall appoint three members for two-year terms, three members for four-year terms, and three members for six-year terms. All subsequent appointments are for four years. The board shall fill any vacancy that occurs on the council for any reason by appointing a person for the unexpired term of the vacated member. Council members are eligible for one reappointment and serve until their successors are appointed.

(7) Five voting members of the council constitute a quorum. The action of a majority of a quorum represents the action of the council.

(8) Members of the council serve without compensation but may be reimbursed for expenses incurred in the performance of their official duties.

(9) (a) The council shall annually elect a chairperson from among the membership described, and shall adopt bylaws governing its activities.

(b) The chairperson shall set the meeting agenda.

(10) The council shall:

(a) advise DDDS and the Social Security Administration regarding its practices and policies on the determination of claims for social security disability benefits;

(b) participate in the development of new internal practices and procedures of DDDS and [~~of the~~] policies of the Social Security Administration regarding the evaluation of disability claims;

(c) recommend changes to practices and policies to ensure that DDDS is responsive to disabled individuals;

(d) review the DDDS budget to ensure that it is adequate to effectively evaluate disability claims and to meet the needs of persons with disabilities who have claims pending with DDDS; and

(e) review and recommend changes to policies and practices of allied state and federal agencies, health care providers, and private community organizations.

(11) The council shall annually report to the board, the governor, and the Legislative Education and Health and Human Services Interim Committees regarding its activities.

(12) (a) To assist the council in its duties, DDDS shall provide the necessary staff assistance to enable the council to make timely and effective recommendations. [~~That~~]

(b) Staff assistance may include[~~, but is not limited to, developing~~]:

(i) distributing meeting agendas [~~and minutes,~~];

(ii) advising the chairpersons of the council regarding relevant items for council discussion[~~,~~]; and

(iii) providing reports, documents, budgets, memorandums, statutes, and regulations regarding the management of DDDS.

(c) Staff assistance shall include maintaining minutes.

Section 6. Section 53A-17a-113 (Effective 07/01/01) is amended to read:

53A-17a-113 (Effective 07/01/01). Weighted pupil units for applied technology education programs -- Funding of approved programs -- Performance measures -- Qualifying criteria.

(1) There is appropriated to the State Board [~~for Applied Technology~~] of Education, hereafter referred to in this section as the board, $49,563,068 (23,423 weighted pupil units) to pay the added instructional costs of approved applied technology education programs.

(a) Included in the appropriation is $890,836 (421 weighted pupil units) for summer applied technology agriculture programs.

(b) These monies are allocated to eligible recipients as provided in Subsections (2), (3), and (4).

(c) Money appropriated under Subsection 53A-17a-113(1) and any money appropriated for work-based education may not be used to fund programs below the ninth grade level.

(2) Weighted pupil units are computed for pupils in approved programs.

(a) The board shall fund approved programs based upon hours of membership of 9th through 12th grade students.

(b) The board shall use an amount not to exceed 20% of the total appropriation under this section to fund approved programs based on performance measures such as placement and competency attainment defined in standards set by the board for districts to qualify for applied technology funding.

(c) Leadership organization funds shall constitute an amount not to exceed 1% of the total appropriation under this section, and shall be distributed to each local educational agency sponsoring applied technology student leadership organizations in a ratio representing the agency's share of the state's total membership in those organizations.

(d) The board shall make the necessary calculations for distribution of the appropriation to school districts and may revise and recommend changes necessary for achieving equity and ease of administration.

(3) (a) Twenty weighted pupil units shall be computed for each district, or 25 weighted pupil units may be computed for each district that consolidates applied technology administrative services with one or more other districts.

(b) Between 10 and 25 weighted pupil units shall be computed for each high school conducting approved applied technology education programs in a district according to standards established by the board.

(c) Forty weighted pupil units shall be computed for each district that operates an approved district applied technology center.

(d) Between five and seven weighted pupil units shall be computed for each summer applied technology agriculture program according to standards established by the board.

(e) The board shall, by rule, establish qualifying criteria for districts to receive weighted pupil units under Subsection (3).

(4) (a) All monies allocated under Subsection (1) are computed by using average daily membership in approved programs for the previous year.

(b) A district that has experienced student growth in grades 9 through 12 for the previous year shall have the growth factor applied to the previous year's weighted pupil units when calculating the allocation of monies under this subsection.

(5) (a) The board shall establish rules for the upgrading of high school applied technology education programs.

(b) The rules shall reflect technical training and actual marketable job skills in society.

(c) The rules shall include procedures to assist school districts to convert existing programs which are not preparing students for the job market into programs that will accomplish that purpose.

(6) Programs that do not meet board standards may not be funded under this section.

Section 7. Section 53A-17a-116 (Effective 07/01/01) is amended to read:

53A-17a-116 (Effective 07/01/01). Weighted pupil units for applied technology set-aside programs.

(1) There is appropriated to the State Board [~~for Applied Technology~~] of Education $2,092,724 (989 weighted pupil units) for an applied technology set-aside program.

(2) Applied technology set-aside funds appropriated to the board are allocated by Request

for Proposal (RFP) to provide a district minimum payment for applied technology education.

(3) Each district shall receive a guaranteed minimum allocation.

(4) The set-aside funds remaining after the initial minimum payment allocation are distributed by an RFP process to help pay for equipment costs necessary to initiate new programs and for high priority programs as determined by labor market information.

Section 8. Section 53A-24-102 is amended to read:

53A-24-102. Definitions.

As used in this chapter:

(1) "Board" means the [~~Utah~~] State Board [~~for Applied Technology~~] of Education.

(2) "DDDS" means the Division of Disability Determination Services.

(3) "Disability" means a physical or mental condition which materially limits, contributes to limiting, or, if not corrected, will probably result in materially limiting an individual's activities or functioning.

(4) "DRS" means the Division of Rehabilitation Services.

(5) ""DSBVI" means the Division of Services for the Blind and Visually Impaired.

(6) "DSDHH" means the Division of Services to the Deaf and Hard of Hearing.

(7) "Eligible individual" means an individual determined to be eligible to receive services under laws or rules governing eligibility for the program in question.

(8) "Executive director" means the executive director of the Utah State Office of Rehabilitation.

(9) "Independent living rehabilitation services" means goods and services reasonably necessary to enable an individual with a severe disability to maintain or increase functional independence.

(10) "Office" means the Utah State Office of Rehabilitation.

(11) "Vocational rehabilitation services" means goods and services reasonably necessary to enable an individual with a disability to obtain and retain employment.

Section 9. Section 53A-24-103 is amended to read:

53A-24-103. Creation -- Responsibilities.

(1) There is [~~hereby~~] created the Utah State Office of Rehabilitation under the policy direction of the State Board [~~for Applied Technology~~] of Education and under the direction and general supervision of the [~~executive officer of the board~~] superintendent of public instruction.

(2) The board is the sole state agency designated to administer the state plans for vocational rehabilitation and independent living rehabilitation programs.

(3) The office is the state unit designated to carry out the state plans and other duties assigned by law or the board.

Section 10. Section 53B-1-101.5 is enacted to read:

53B-1-101.5. Definitions.

As used in this title:

(1) "Board" means the State Board of Regents established in Section 53B-1-103.

(2) "Commissioner" means the commissioner of higher education appointed in accordance with Section 53B-1-105.

Section 11. Section 53B-1-102 is amended to read:

53B-1-102. State system of higher education.

(1) The state system of higher education consists of the following institutions:

(a) State Board of Regents;

(b) the University of Utah;

(c) Utah State University of Agricultural and Applied Science, hereafter referred to in this title as Utah State University;

(d) Weber State University;

(e) Southern Utah University;

(f) Snow College;

(g) Dixie State College of Utah;

(h) the College of Eastern Utah;

(i) Utah Valley State College;

(j) Salt Lake Community College; [~~and~~]

(k) the Utah College of Applied Technology; and

[~~(k)~~] (l) other public post-high school educational institutions as the Legislature may designate.

(2) A change in the name of an institution within the system of higher education shall not be considered a change in the role or mission of the institution, unless otherwise authorized by the State Board of Regents.

(3) It is not the intent of the Legislature to increase the number of research universities in the state beyond the University of Utah and Utah State University.

(4) These institutions are empowered to sue and be sued and to contract and be contracted with.

Section 12. Section 53B-1-103 is amended to read:

53B-1-103. Establishment of State Board of Regents -- Powers and authority.

(1) There is established a State Board of Regents[,

~~hereafter referred to in this title as the "board."~~].

(2) (a) The board is vested with the control, management, and supervision of the institutions of higher education designated in Section 53B-1-102 in a manner consistent with the policy and purpose of this title and the specific powers and responsibilities granted to it.

(b) The board is vested with the following powers relating to the Utah College of Applied Technology and its regional applied technology colleges:

(i) approving each competency-based associate of applied technology degree before allowing an applied technology college to offer the degree;

(ii) making rules governing the transfer of applied technology education degrees awarded by the Utah College of Applied Technology to other higher education institutions;

(iii) appointing the president for the Utah College of Applied Technology in accordance with Section 53B-2a-102; and

(iv) facilitating and coordinating the operation of the Utah College of Applied Technology within the system of higher education.

[~~(b) The~~] (c) Except for the Utah College of Applied Technology, the board may modify the name of an institution under its control and management, as designated in Section 53B-1-102, to reflect the role and general course of study of the institution.

(3) The board is the State Postsecondary Review Entity for Utah for purposes of Title IV, Part H, of the federal Higher Education Act of 1965, as amended by the Higher Education Act Amendments of 1992.

(4) This section does not affect the power and authority vested in the State Board [~~for Applied Technology~~] of Education to apply for, accept, and manage federal appropriations for the establishment and maintenance of applied technology education.

Section 13. Section 53B-1-104 is amended to read:

53B-1-104. Membership of the board -- Student appointee -- Terms -- Oath -- Officers -- Committees -- Bylaws -- Meetings -- Quorum -- Vacancies -- Compensation.

(1) (a) The board [~~consists~~] shall consist of [~~16 resident citizens~~] 18 residents of the state.

(b) (i) Fifteen members [~~are~~] shall be appointed by the governor with the consent of the Senate.

(ii) (A) One additional member [~~is~~] shall be appointed by the governor from nominations of the student body presidents council.

(B) The council [~~nominates~~] shall nominate three qualified, matriculated students enrolled in the state institutions of higher education.

(C) Student body presidents are not eligible for nomination.

(iii) Other than the student appointee, not more than eight members appointed by the governor shall, at any time, be from one political party.

(iv) In making appointments to the board, [~~persons are selected~~] the governor shall select:

(A) individuals from the state at large with due consideration for geographical representation[~~.~~]; and

(B) at least three individuals with personal experience in applied technology education, which could include service on a regional applied technology college regional board.

(c) (i) In addition to the members designated under Subsection (1)(b), two members of the State Board of Education, appointed by the chair of the State Board of Education, shall serve as nonvoting members of the board.

(ii) A nonvoting member shall continue to serve as a member without a set term until the member is replaced by the chair of the State Board of Education.

(2) (a) Five members of the board, other than the student member[~~, are~~] and the State Board of Education members, shall be appointed during each odd-numbered year to six-year staggered terms which commence on July 1 of the year of appointment.

(b) (i) The student member [~~is~~] shall be appointed for a one-year term and may be reappointed for one additional term.

(ii) The student member has full voting rights [~~but does not~~] and may vote on selection of a board [~~chairman~~] chair or vice[~~-chairman~~] chair, [~~or~~] but not serve in either office.

(c) Board members shall hold office until their successors have been appointed and qualified.

(3) (a) Each member of the board [~~takes~~] shall take the official oath of office before entering upon the duties of office.

(b) The oath [~~is~~] shall be filed with the Division of Archives and Records Services.

(4) The board [~~elects~~] shall elect a [~~chairman~~] chair and vice[~~-chairman~~] chair from its members who shall serve terms of two years and until their successors are chosen and qualified.

(5) (a) The board [~~appoints~~] shall appoint a secretary from the staff of its chief executive [~~officer~~] to serve at its [~~pleasure~~] discretion.

(b) The secretary [~~is~~] shall be a full-time employee [~~and~~] who receives a salary set by the board.

(c) The secretary [~~records~~] shall record and [~~maintains~~] maintain a record of all board meetings and [~~performs~~] perform other duties as the board directs.

(6) The board [~~appoints~~] shall appoint a treasurer

who serves at the [~~pleasure~~] discretion of the board.

(7) (a) The board may establish advisory committees.

(b) The powers and authority of the board are nondelegable, except as specifically provided for in this title.

(c) All matters requiring board determination shall be addressed in a properly convened meeting of the board or its executive committee.

(8) The board shall enact bylaws for its own government not inconsistent with the constitution or the laws of this state.

(9) (a) The board [~~meets~~] shall meet regularly upon its own determination.

(b) The board may also [~~meets~~] meet, in full or executive session, at the request of its [~~chairman~~] chair, its executive officer, or five members of the board.

(10) A quorum of the voting members of the board is required to conduct its business and consists of nine members.

(11) (a) A vacancy in the board occurring before the expiration of a voting member's full term shall be immediately filled by appointment by the governor.

(b) The appointee serves for the remainder of the unexpired term, subject to confirmation by the Senate at its next session.

(12) (a) Each member of the board [~~receives~~] shall receive a per diem as provided by law as compensation for services for attending meetings of the board.

(b) Each member [~~is~~] shall also be paid actual expenses incurred for attending meetings of the board or its committees or for attending to any business of the institutions under the direction of the board or authority of the board or its committees.

Section 14. Section 53B-2-104 is amended to read:

53B-2-104. Memberships of board of trustees -- Terms -- Vacancies -- Oath -- Officers -- Bylaws -- Quorum -- Committees -- Compensation.

(1) (a) The board of trustees of an institution of higher education consists of the following:

[~~(a)~~] (i) eight persons appointed by the governor and approved by the Senate; and

[~~(b)~~] (ii) two ex officio members who are the president of the institution's alumni association, and the president of the associated students of the institution.

(b) The appointed members of the boards of trustees for Utah Valley State College and Salt Lake Community College shall be representative of the interests of business, industry, and labor.

(2) (a) The governor shall appoint four members of each board of trustees during each odd-numbered year to four-year terms commencing on July 1 of the year of appointment.

(b) An appointed member holds office until a successor is appointed and qualified.

(c) The ex officio members serve for the same period as they serve as presidents and until their successors have qualified.

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

(4) (a) Each member shall take the official oath of office prior to assuming the office.

(b) The oath [~~is~~] shall be filed with the Division of Archives and Records Services.

(5) Each board of trustees shall elect a chair and vice chair, who serve for two years and until their successors are elected and qualified.

(6) (a) Each board of trustees may enact bylaws for its own government, including provision for regular meetings.

(b) (i) The board of trustees may provide for an executive committee in its bylaws.

(ii) If established, the committee shall have full authority of the board of trustees to act upon routine matters during the interim between board of trustees meetings.

(iii) The committee may act on nonroutine matters only under extraordinary and emergency circumstances.

(iv) The committee shall report its activities to the board of trustees at its next regular meeting following the action.

(c) Copies of the board of trustees' bylaws [~~are~~] shall be filed with the board.

(7) A quorum is required to conduct business and consists of six members.

(8) A board of trustees may establish advisory committees.

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

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

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

(ii) State government officer and employee

members may decline to receive per diem and expenses for their service.

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

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

(10) This section does not apply to the Utah College of Applied Technology.

Section 15. Section 53B-2-106 is amended to read:

53B-2-106. Duties and responsibilities of the president of each institution -- Approval by board of trustees.

(1) The president of each institution may exercise grants of power and authority as delegated by the board, as well as the necessary and proper exercise of powers and authority not specifically denied to the institution, its administration, faculty, or students by the board or by law, to assure the effective and efficient administration and operation of the institution consistent with the statewide master plan for higher education.

(2) Except as provided by the board, the president of each institution, with the approval of the institution's board of trustees may:

(a) (i) appoint a secretary, a treasurer, administrative officers, deans, faculty members, and other professional personnel, prescribe their duties, and determine their salaries;

(ii) appoint support personnel, prescribe their duties, and determine their salaries from the institution's position classification plan, which may:

(A) be based upon similarity of duties and responsibilities within the institution; and

(B) as funds permit, provide salary and benefits comparable with private enterprise;

(iii) adopt policies for:

(A) employee sick leave use and accrual; and

(B) service recognition for employees with more than 15 years of employment with the institution;

(iv) subject to the authority of, policy established by, and the approval of the board of regents, and recognizing the status of the institutions within the state system of higher education as bodies politic and corporate, appoint attorneys to provide legal advice to the institution's administration and to coordinate legal affairs within the institution. The board of regents shall coordinate activities of attorneys at the institutions of higher education. The institutions shall provide an annual report to the board of regents on the activities of appointed attorneys. These appointed attorneys may not conduct litigation, settle claims covered by the State Risk Management Fund, or issue formal legal opinions but shall, in all respects, cooperate with the Office of the Attorney General in providing legal representation to the institution;

(b) provide for the constitution, government, and organization of the faculty and administration, and enact implementing rules, including the establishment of a prescribed system of tenure;

(c) authorize the faculty to determine the general initiation and direction of instruction and of the examination, admission, and classification of students. In recognition of the diverse nature and traditions of the various institutions governed by the board, the systems of faculty government need not be identical but should be designed to further faculty identification with and involvement in the institution's pursuit of achievement and excellence and in fulfillment of the institution's role as established in the statewide master plan for higher education; and

(d) enact rules for administration and operation of the institution which are consistent with the prescribed role established by the board, rules enacted by the board, or the laws of the state. The rules may provide for administrative, faculty, student, and joint committees with jurisdiction over specified institutional matters, for student government and student affairs organization, for the establishment of institutional standards in furtherance of the ideals of higher education fostered and subscribed to by the institution, its administration, faculty, and students, and for the holding of classes on legal holidays, other than Sunday.

(3) Compensation costs and related office expenses for appointed attorneys shall be funded within existing budgets.

(4) The State Board of Regents shall establish guidelines relating to the roles and relationships between institutional presidents and boards of trustees, including those matters which must be approved by a board of trustees before implementation by the president.

(5) This section does not apply to the Utah College of Applied Technology.

Section 16. Section 53B-2a-101 is enacted to read:

CHAPTER 2a. UTAH COLLEGE OF APPLIED TECHNOLOGY

53B-2a-101. Definitions.

As used in this chapter:

(1) "Applied technology education" means open-entry, open-exit, competency-based education. "Applied technology education" may include approved programs that are not open-entry, open-exit, competency-based education only for secondary students.

(2) "Board of trustees" means the Utah College of

Applied Technology Board of Trustees.

(3) "Competency-based" means mastery of subject matter as demonstrated through approved standards and assessments rather than credit hours.

Section 17. Section 53B-2a-102 is enacted to read:

53B-2a-102. President -- Appointment -- Duties.

(1) (a) The board shall appoint a president for the Utah College of Applied Technology.

(b) The president of the Utah College of Applied Technology does not need to have a doctorate degree, but shall have extensive experience in applied technology education.

(c) The president shall serve at the board's discretion and at the salary the board determines.

(d) As president of the Utah College of Applied Technology, the president is also an associate commissioner of higher education.

(e) The names of the final candidates for president of the Utah College of Applied Technology shall be publicly disclosed.

(2) The president shall:

(a) coordinate the activities of each regional applied technology college;

(b) in cooperation with the board of trustees and with the approval of the board, develop a competency-based associate of applied technology degree;

(c) ensure that an applied technology education degree is transferable to other higher education institutions in accordance with board rules;

(d) in consultation with the board of trustees, applied technology college regional presidents, and applied technology college regional boards, prepare a comprehensive strategic plan for delivering applied technology education through the regional applied technology colleges;

(e) after consulting with local school districts and other higher education institutions in the regions, ensure that the curricula of the regional applied technology colleges meet the needs of the state, the regions, and the local school districts;

(f) in consultation with the board of trustees, applied technology college regional presidents, and applied technology college regional boards, and after consulting with local school districts and other higher education institutions in the region, develop strategies for providing applied technology education in rural areas, specifically considering the distances between rural applied technology education providers;

(g) establish minimum standards for applied technology programs of the regional applied technology colleges;

(h) in conjunction with the board of trustees, develop and implement a system of common definitions, standards, and criteria for tracking and measuring the effectiveness of applied technology education;

(i) in conjunction with the board of trustees, develop and implement a plan to inform citizens about the availability, cost, and advantages of applied technology education; and

(j) after consulting with the State Board of Education and local school districts, ensure that secondary students in the public education system have access to applied technology education in applied technology colleges.

Section 18. Section 53B-2a-103 is enacted to read:

53B-2a-103. Utah College of Applied Technology Board of Trustees -- Membership -- Terms -- Vacancies -- Oath -- Officers -- Quorum -- Committees -- Compensation.

(1) There is created the Utah College of Applied Technology Board of Trustees, composed of the following members:

(a) two members of the State Board of Education appointed by the governor with the consent of the Senate;

(b) two members of the State Board of Regents appointed by the governor with the consent of the Senate;

(c) one member representing business and industry from the regional board of each regional applied technology college appointed by a majority vote of the business and industry members of the regional board; and

(d) one business or industry representative appointed by the governor with the consent of the Senate from nominations submitted by the speaker of the House of Representatives and president of the Senate.

(2) (a) Except as provided in Subsection (b), the members of the board of trustees shall be appointed commencing on September 1 of the year of appointment to:

(i) two-year terms for the members described in Subsections (1)(a) and (b); and

(ii) four-year terms for the members described in Subsections (1)(c) and (d).

(b) At the first meeting of the board:

(i) the members described in Subsections (1)(c) and (d) shall divide up their positions so that approximately half of them serve for initial two-year terms; and

(ii) the members described in Subsections (1)(a) and (b) shall divide up their positions so that approximately half of them serve for initial one-year terms.

(c) An appointed member holds office until a successor is appointed and qualified.

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

(4) (a) Each member shall take the official oath of office prior to assuming the office.

(b) The oath shall be filed with the Division of Archives and Records Services.

(5) The board of trustees shall elect a chair and vice chair, who serve for two years and until their successors are elected and qualified.

(6) (a) The board of trustees may enact bylaws for its own government, including provision for regular meetings.

(b) (i) The board of trustees may provide for an executive committee in its bylaws.

(ii) If established, the committee shall have full authority of the board of trustees to act upon routine matters during the interim between board of trustees meetings.

(iii) The committee may act on nonroutine matters only under extraordinary and emergency circumstances.

(iv) The committee shall report its activities to the board of trustees at its next regular meeting following the action.

(c) Copies of the board of trustees' bylaws shall be filed with the board.

(7) A quorum shall be required to conduct business which shall consist of a majority of board of trustee members.

(8) The board of trustees may establish advisory committees.

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

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

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

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

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

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

Section 19. Section 53B-2a-104 is enacted to read:

53B-2a-104. Utah College of Applied Technology Board of Trustees -- Powers and duties.

The Utah College of Applied Technology Board of Trustees shall:

(1) in cooperation with the president of the Utah College of Applied Technology, and with the approval of the State Board of Regents, develop a competency-based associate of applied technology degree to be offered by the regional applied technology colleges;

(2) ensure that an applied technology education degree is transferable to other higher education institutions in accordance with State Board of Regents rules;

(3) ensure that the regional applied technology colleges within the Utah College of Applied Technology comply with the requirements in Section 53B-2a-106;

(4) advise the president of the Utah College of Applied Technology and the State Board of Regents on issues related to applied technology education;

(5) receive budget requests from each regional applied technology college, prioritize the requests, and submit the prioritized requests to:

(a) the Legislature; and

(b) the Governor's Office of Planning and Budget;

(6) receive funding requests pertaining to capital facilities and land purchases from each regional applied technology college, ensure that the requests comply with Section 53B-2a-112, prioritize the requests, and submit the prioritized requests to the State Building Board;

(7) prepare and submit an annual report detailing its progress and recommendations on applied technology education issues to the governor and to the Legislature's Education Interim Committee by October 31 of each year, which shall include information detailing:

(a) how the applied technology education needs of secondary students are being met; and

(b) what access secondary students have to programs offered at applied technology colleges; and

(8) perform other duties and responsibilities as delegated by the State Board of Regents.

Section 20. Section 53B-2a-105 is enacted to read:

53B-2a-105. Utah College of Applied Technology -- Composition.

The Utah College of Applied Technology is

composed of the following regional applied technology colleges:

(1) the Bridgerland Applied Technology College which:

(a) serves the geographic area encompassing:

(i) the Box Elder School District;

(ii) the Cache School District;

(iii) the Logan School District; and

(iv) the Rich School District; and

(b) includes the facilities, equipment, and personnel of the Bridgerland Applied Technology Center;

(2) the Ogden-Weber Applied Technology College which:

(a) serves the geographic area encompassing:

(i) the Ogden City School District; and

(ii) the Weber School District; and

(b) includes the facilities, equipment, and personnel of the Ogden-Weber Applied Technology Center;

(3) the Davis Applied Technology College which:

(a) serves the geographic area encompassing:

(i) the Davis School District; and

(ii) the Morgan School District; and

(b) includes the facilities, equipment, and personnel of the Davis Applied Technology Center;

(4) the Salt Lake/Tooele Applied Technology College which:

(a) serves the geographic area encompassing:

(i) the Salt Lake City School District;

(ii) the Granite School District;

(iii) the Jordan School District;

(iv) the Murray School District; and

(v) the Tooele School District; and

(b) includes the facilities, equipment, and personnel of the Wasatch Front South Applied Technology Center;

(5) the Mountainlands Applied Technology College which:

(a) serves the geographic area encompassing:

(i) the Alpine School District;

(ii) the Nebo School District;

(iii) the Provo School District;

(iv) the South Summit School District;

(v) the North Summit School District;

(vi) the Wasatch School District; and

(vii) the Park City School District; and

(b) includes the facilities, equipment, and personnel of the Mountainlands Applied Technology Center Service Region;

(6) the Uintah Basin Applied Technology College which:

(a) serves the geographic area encompassing:

(i) the Daggett School District;

(ii) the Duchesne School District; and

(iii) the Uintah School District; and

(b) includes the existing facilities, equipment, and personnel of the Uintah Basin Applied Technology Center;

(7) the Central Applied Technology College which serves the geographic area encompassing:

(a) the Juab School District;

(b) the Millard School District;

(c) the Tintic School District;

(d) the North Sanpete School District;

(e) the South Sanpete School District;

(f) the Wayne School District;

(g) the Piute School District; and

(h) the Sevier School District;

(8) the Southwest Applied Technology College which:

(a) serves the geographic area encompassing:

(i) the Beaver School District;

(ii) the Garfield School District;

(iii) the Iron School District; and

(iv) the Kane School District; and

(b) includes the facilities, equipment, and personnel of the Southwest Applied Technology Education Center Service Region;

(9) the Dixie Applied Technology College which serves the geographic area encompassing the Washington School District; and

(10) the Southeast Applied Technology College which:

(a) serves the geographic area encompassing:

(i) the Carbon School District;

(ii) the Emery School District;

(iii) the Grand School District; and

(iv) the San Juan School District; and

(b) includes the facilities, equipment, and personnel of the Southeast Applied Technology Center Service Region.

Section 21. Section 53B-2a-106 is enacted to read:

53B-2a-106. Regional applied technology

colleges -- Duties.

(1) Each regional applied technology college shall:

(a) offer a post-secondary and extra-secondary applied technology education curriculum;

(b) offer that curriculum at low cost to adult students and at no cost to secondary students within the college's jurisdiction;

(c) provide applied technology education that will result in:

(i) appropriate licensing, certification, or other evidence of completion of training; and

(ii) qualification for specific employment in business and industry;

(d) offer competency-based associate of applied technology degrees approved by the State Board of Regents in accordance with Section 53B-1-103;

(e) develop cooperative agreements with local school districts, other higher education institutions, businesses, industries, and community and private agencies to maximize the availability of instructional facilities; and

(f) after consulting with local school districts within the geographic area served by the regional applied technology college:

(i) ensure that secondary students in the public education system have access to applied technology education in the regional applied technology college; and

(ii) prepare and submit an annual report to the Utah College of Applied Technology detailing:

(A) how the applied technology education needs of secondary students within the region are being met; and

(B) what access secondary students within the region have to programs offered at applied technology colleges.

(2) A regional applied technology college may offer a competency-based high school diploma equivalent approved by the State Board of Education in accordance with Section 53A-1-402.

(3) A regional applied technology college may not:

(a) offer courses other than applied technology education;

(b) offer a degree other than a competency-based associate of applied technology degree approved by the State Board of Regents in accordance with Section 53B-1-103;

(c) provide tenure or academic rank for its instructors; and

(d) participate in intercollegiate athletics.

(4) The mission of a regional applied technology college is limited to applied technology education and may not expand to include credit-based academic programs typically offered by community colleges or other institutions of higher education.

Section 22. Section 53B-2a-107 is enacted to read:

53B-2a-107. Regional presidents -- Appointments -- Duties.

(1) The president of the Utah College of Applied Technology shall appoint a regional president for each regional applied technology college from a list of at least three names submitted to the president by the regional board to serve as the chief executive officer of the regional applied technology college.

(2) Each regional president of a regional applied technology college shall:

(a) serve as the executive officer of the regional board;

(b) administer the day-to-day operations of the regional applied technology college under the direction of the regional board; and

(c) administer human resource policies and employee compensation plans.

Section 23. Section 53B-2a-108 is enacted to read:

53B-2a-108. Applied technology college regional boards -- Membership -- Appointments.

Beginning September 1, 2001, each regional applied technology college shall have a regional board appointed as follows:

(1) the Bridgerland Applied Technology College Regional Board shall be composed of the following 13 members:

(a) one elected local school board member appointed by the board of education for the Box Elder School District;

(b) one elected local school board member appointed by the board of education for the Cache School District;

(c) one elected local school board member appointed by the board of education for the Logan School District;

(d) one elected local school board member appointed by the board of education for the Rich School District;

(e) one member of the Utah State University board of trustees;

(f) one member of the State Board of Regents designated by the chair of the State Board of Regents to serve a one-year term; and

(g) seven representatives of business or industry within the region appointed jointly by the members appointed under Subsections (1)(a) through (f);

(2) the Ogden-Weber Applied Technology College Regional Board shall be composed of the following 11 members:

(a) one elected local school board member appointed by the board of education for the Ogden

City School District;

(b) one elected local school board member appointed by the board of education for the Weber School District;

(c) one elected local school board member jointly appointed by the boards of education for the Ogden City School District and the Weber School District;

(d) one member of the Weber State University board of trustees;

(e) one member of the State Board of Regents designated by the chair of the State Board of Regents to serve a one-year term; and

(f) six representatives of business or industry within the region appointed jointly by the members appointed under Subsections (2)(a) through (e);

(3) the Davis Applied Technology College Regional Board shall be composed of the following 11 members:

(a) one elected local school board member appointed by the board of education for the Davis School District;

(b) one elected local school board member appointed by the board of education for the Morgan School District;

(c) one elected local school board member jointly appointed by the boards of education for the Davis School District and the Morgan School District;

(d) one member of the Weber State University board of trustees;

(e) one member of the State Board of Regents designated by the chair of the State Board of Regents to serve a one-year term; and

(f) six representatives of business or industry within the region appointed jointly by the members appointed under Subsections (3)(a) through (e);

(4) the Salt Lake/Tooele Applied Technology College Regional Board shall be composed of the following 15 members:

(a) one elected local school board member appointed by the board of education for the Salt Lake City School District;

(b) one elected local school board member appointed by the board of education for the Granite School District;

(c) one elected local school board member appointed by the board of education for the Jordan School District;

(d) one elected local school board member appointed by the board of education for the Murray School District;

(e) one elected local school board member appointed by the board of education for the Tooele School District;

(f) one member of the Salt Lake Community College board of trustees;

(g) one member of the State Board of Regents designated by the chair of the State Board of Regents to serve a one-year term; and

(h) eight representatives of business or industry within the region appointed jointly by the members appointed under Subsections (4)(a) through (g);

(5) the Mountainlands Applied Technology College Regional Board shall be composed of the following 19 members:

(a) one elected local school board member appointed by the board of education for the Alpine School District;

(b) one elected local school board member appointed by the board of education for the Nebo School District;

(c) one elected local school board member appointed by the board of education for the Provo School District;

(d) one elected local school board member appointed by the board of education for the South Summit School District;

(e) one elected local school board member appointed by the board of education for the North Summit School District;

(f) one elected local school board member appointed by the board of education for the Wasatch School District;

(g) one elected local school board member appointed by the board of education for the Park City School District;

(h) one member of the Utah Valley State College board of trustees;

(i) one member of the State Board of Regents designated by the chair of the State Board of Regents to serve a one-year term; and

(j) ten representatives of business or industry within the region appointed jointly by the members appointed under Subsections (5)(a) through (i);

(6) the Uintah Basin Applied Technology College Regional Board shall be composed of the following 11 members:

(a) one elected local school board member appointed by the board of education for the Daggett School District;

(b) one elected local school board member appointed by the board of education for the Duchesne School District;

(c) one elected local school board member appointed by the board of education for the Uintah School District;

(d) one member of the Utah State University board of trustees;

(e) one member of the State Board of Regents designated by the chair of the State Board of Regents to serve a one-year term; and

(f) six representatives of business or industry

within the region appointed jointly by the members appointed under Subsections (6)(a) through (d);

(7) the Central Applied Technology College Regional Board shall be composed of the following 21 members:

(a) one elected local school board member appointed by the board of education for the Juab School District;

(b) one elected local school board member appointed by the board of education for the Millard School District;

(c) one elected local school board member appointed by the board of education for the Tintic School District;

(d) one elected local school board member appointed by the board of education for the North Sanpete School District;

(e) one elected local school board member appointed by the board of education for the South Sanpete School District;

(f) one elected local school board member appointed by the board of education for the Wayne School District;

(g) one elected local school board member appointed by the board of education for the Piute School District;

(h) one elected local school board member appointed by the board of education for the Sevier School District;

(i) one member of the Snow College board of trustees;

(j) one member of the State Board of Regents designated by the chair of the State Board of Regents to serve a one-year term; and

(k) 11 representatives of business or industry within the region appointed jointly by the members appointed under Subsections (7)(a) through (j);

(8) the Southwest Applied Technology College Regional Board shall be composed of the following 13 members:

(a) one elected local school board member appointed by the board of education for the Beaver School District;

(b) one elected local school board member appointed by the board of education for the Garfield School District;

(c) one elected local school board member appointed by the board of education for the Iron School District;

(d) one elected local school board member appointed by the board of education for the Kane School District;

(e) one member of the Southern Utah University board of trustees;

(f) one member of the State Board of Regents designated by the chair of the State Board of Regents to serve a one-year term; and

(g) seven representatives of business or industry within the region appointed jointly by the members appointed under Subsections (8)(a) through (f);

(9) the Dixie Applied Technology College Regional Board shall be composed of the following 11 members:

(a) three elected local school board members appointed by the board of education for the Washington School District;

(b) one member of the Dixie State College of Utah board of trustees;

(c) one member of the State Board of Regents designated by the chair of the State Board of Regents to serve a one-year term; and

(d) six representatives of business or industry within the region appointed jointly by the members appointed under Subsections (9)(a) through (c);

(10) the Southeast Applied Technology College Regional Board shall be composed of the following 13 members:

(a) one elected local school board member appointed by the board of education for the Carbon School District;

(b) one elected local school board member appointed by the board of education for the Emery School District;

(c) one elected local school board member appointed by the board of education for the Grand School District;

(d) one elected local school board member appointed by the board of education for the San Juan School District;

(e) one member of the College of Eastern Utah board of trustees;

(f) one member of the State Board of Regents designated by the chair of the State Board of Regents to serve a one-year term; and

(g) seven representatives of business or industry within the region appointed jointly by the members appointed under Subsections (10)(a) through (f); and

(11) the representatives of business or industry shall be appointed jointly by the designated members from a list of names provided by local organizations or associations whose members employ workers with applied technology education.

Section 24. Section 53B-2a-109 is enacted to read:

53B-2a-109. Applied technology college regional boards -- Terms -- Quorum -- Chair-- Compensation.

(1) (a) At the first meeting of an applied technology college regional board after September 1, 2001:

(i) the representatives from the local school

boards shall divide up their positions so that approximately half of them serve for two-year terms and half serve for four-year terms; and

(ii) the representatives from business and industry shall divide up their positions so that approximately half of them serve for two-year terms and half serve for four-year terms.

(b) Except as provided in Subsection (1)(a) and except for State Board of Regents members who serve a one-year term, individuals appointed to the board shall serve four-year terms.

(2) The original appointing authority shall fill any vacancies that occur on the regional board.

(3) A majority of the regional board is a quorum.

(4) The regional board shall elect a chair from its membership.

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

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

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

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

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

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

(6) (a) Each regional board may enact bylaws for its own government, including provision for regular meetings.

(b) (i) The regional board may provide for an executive committee in its bylaws.

(ii) If established, the committee shall have the full authority of the regional board to act upon routine matters during the interim between regional board meetings.

(iii) The committee may act on nonroutine matters only under extraordinary and emergency circumstances.

(iv) The committee shall report its activities to the regional board at its next regular meeting following the action.

(7) A regional board may establish advisory committees.

Section 25. Section 53B-2a-110 is enacted to read:

53B-2a-110. Applied technology college regional board -- Powers and duties.

(1) Each applied technology college regional board shall:

(a) prepare and submit a budget request for its annual operations to the Utah College of Applied Technology Board of Trustees;

(b) after consulting with the higher education institutions and local school districts within its region, prepare a comprehensive strategic plan for delivering applied technology education within its region;

(c) consult with business, industry, the Department of Workforce Services, and the Governor's Office of Planning and Budget on an ongoing basis to determine what workers and skills are needed for employment in Utah businesses and industries;

(d) develop programs based upon the information gathered in accordance with Subsection (1)(c), including expedited program approval and termination procedures to meet market needs;

(e) adopt an annual budget and fund balances;

(f) develop policies for the operation of applied technology education facilities under its jurisdiction;

(g) establish human resources and compensation policies for all employees;

(h) establish credentials for employees and define employee duties;

(i) conduct annual program evaluations;

(j) appoint program advisory committees and other advisory groups to provide counsel, support, and recommendations for updating and improving the effectiveness of training programs and services;

(k) approve regulations, both regular and emergency, to be issued and executed by the regional president;

(l) coordinate with local school boards and districts to protect the applied technology education needs of secondary students; and

(m) develop policies and procedures for the admission, classification, instruction, and examination of students.

(2) In apportioning monies appropriated by the Legislature to the Central Applied Technology College, the regional board of the Central Applied Technology College:

(a) may not, until June 30, 2006, diminish applied technology education services currently being provided at Snow College South; and

(b) may direct that any new monies provided to the Central Applied Technology College go first to funding underserved portions of the geographic area it serves.

(3) A regional board may not exercise any jurisdiction over applied technology education provided by a local school district or provided by a higher education institution independently of a regional applied technology college.

(4) If a program advisory committee or other advisory group submits a printed recommendation to the regional board, the board shall acknowledge the recommendation with a printed response that explains the board action regarding the recommendation and the reasons for the action.

Section 26. Section 53B-2a-111 is enacted to read:

53B-2a-111. Consultation with boards of trustees.

(1) The board shall consult with the Utah College of Applied Technology Board of Trustees or the president of the Utah College of Applied Technology or both before acting on matters pertaining to the Utah College of Applied Technology.

(2) The board shall consult with an applied technology college regional board or the regional president of an applied technology college or both before acting on matters pertaining to a regional applied technology college.

(3) The board may:

(a) call meetings with the Utah College of Applied Technology Board of Trustees or one or more of the applied technology college regional boards; and

(b) appoint committees to perform duties assigned by the board that include:

(i) (A) members of the Utah College of Applied Technology Board of Trustees; or

(B) administrators of the Utah College of Applied Technology; or

(ii) (A) members of one or more of the applied technology college regional boards; or

(B) administrators, faculty staff members, or students of one or more of the applied technology colleges.

Section 27. Section 53B-2a-112 is enacted to read:

53B-2a-112. Regional applied technology colleges -- Relationships with other public and higher education institutions -- Agreements -- Priorities -- New capital facilities.

(1) As used in this section,"higher education institution" means, for each regional applied technology college, the higher education institution designated in Section 53B-2a-108, except for the State Board of Regents, to have a representative on its regional board.

(2) A regional applied technology college shall avoid any unnecessary duplication of applied technology instructional facilities, programs, administration, and staff between the regional applied technology college and other public and higher education institutions.

(3) A regional applied technology college may enter into agreements:

(a) with other higher education institutions to cultivate cooperative relationships;

(b) with other public and higher education institutions to enhance applied technology education within its region; or

(c) to comply with Subsection (2).

(4) Before a regional applied technology college develops its own new instructional facilities, it shall give priority to:

(a) maintaining its own existing instructional facilities for both secondary and adult students;

(b) coordinating with the president of a higher education institution and entering into any necessary agreements to provide applied technology education to both secondary and adult students that:

(i) maintain and support existing higher education applied technology education programs; and

(ii) maximize the use of existing higher education facilities; and

(c) developing cooperative agreements with local school districts, other higher education institutions, businesses, industries, and community and private agencies to maximize the availability of applied technology instructional facilities for both secondary and adult students.

(5) (a) Before submitting a funding request pertaining to new capital facilities and land purchases to the Utah College of Applied Technology, a regional applied technology college shall:

(i) ensure that all available instructional facilities are maximized in accordance with Subsections (4)(a) through (c); and

(ii) coordinate the request with the president of a higher education institution, if applicable.

(b) The State Building Board shall make a finding that the requirements of this section are met before it may consider a funding request of the Utah College of Applied Technology pertaining to new capital facilities and land purchases.

(c) A regional applied technology college may not construct, approve the construction of, plan for the design or construction of, or consent to the construction of an applied technology education facility without approval of the Legislature.

(6) Before acquiring new fiscal and administrative support structures, a regional

applied technology college shall:

(a) review the use of existing public or higher education administrative and accounting systems, financial record systems, and student and financial aid systems for the delivery of applied technology education in the region;

(b) determine whether it is feasible to use those existing systems; and

(c) with the approval of the regional board, use those existing systems.

(7) (a) The higher education institution for the region shall have the first opportunity to offer the general education courses that are required for an associate of applied technology degree offered by a regional applied technology college, at the applied technology college site.

(b) The general education courses described in Subsection (7)(a) shall be defined by the higher education institution for the region.

(c) If the higher education institution for the region is unable to offer the courses described in Subsection (7)(a), other institutions of higher education may offer those courses.

(d) The regional applied technology colleges shall be responsible to provide technical skills training and basic skills as required by business and industry towards an associate of applied technology degree.

Section 28. Section 53B-6-101 is amended to read:

53B-6-101. Additional responsibilities of the board -- Studies and evaluations -- Master plan for higher education -- Productivity -- Institutional student assessment -- Biennial accountability report to the Legislature.

(1) The board shall conduct continuing studies and evaluations of the facilities, grounds, buildings, and equipment at the higher education institutions under its jurisdiction and use space utilization and other studies conducted by the State Building Board.

(2) The board shall establish and maintain an up-to-date master plan which shall include:

(a) providing for statewide planning of public higher education in terms of aims, purposes, and objectives of the system as a whole;

(b) establishing and defining the role and programs of each institution within the system;

(c) establishing criteria for and determination of the future needs and requirements for new programs and new institutions and the elimination, curtailment, or consolidation of existing programs and facilities;

(d) providing for the initiation and financing of projects as considered necessary to meet and satisfy the projected patterns of growth and maintenance;

(e) establishing criteria for and determination of the operating and capital budgetary needs of each institution and the system as a whole;

(f) recommending the methods and sources of future financial support of the higher education system;

(g) establishing procedures for the development of maximum utilization of existing facilities as suggested by space utilization studies conducted by the State Building Board; and

(h) securing an adequate and coordinated program for the community colleges and applied technology/technical programs in the institutions and departments in the state system of higher education.

(3) (a) The board may do all things necessary for the effective implementation of the statewide master plan as adopted and revised by the board from time to time.

(b) The State Board [~~for Applied Technology~~] of Education and the Utah College of Applied Technology shall provide applied technology education staff assistance to the State Board of Regents in support of master planning activities related to applied technology education in higher education.

(4) (a) The board shall adopt rules and initiate programs to promote and increase productivity in the state system of higher education.

(b) The board shall require each college and university in the system to establish multiple measures of institutional and student assessment in order to improve student instruction, academic programs, and learning opportunities.

(c) The board shall submit a biennial accountability report to the Legislature, which shall include such factors as:

(i) space utilization, faculty productivity, and other similar measures of the management of institutional resources at each institution; and

(ii) student assessment at entry to each institution, at critical midway points, and at exit.

(d) The board shall establish a systemwide committee to address assessment and accountability issues and propose essential elements to be included in the biennial report.

Section 29. Section 53B-8-105 is amended to read:

53B-8-105. Scholarships for high school students who complete the requirements for an associate degree in high school.

(1) In addition to Centennial Scholarships awarded under Section 53A-15-102 and Career Teaching Scholarships awarded under Title 53B, Chapter 10, Terrill H. Bell Teaching Incentive Loan Program, the State Board of Regents and the State Board of Education shall jointly award New Century scholarships to students in Utah schools who complete the requirements for an associate degree by September 1 of the year they qualify to

graduate from high school.

(2) (a) The scholarship may be used at any higher education institution in the state accredited by the Northwest Association of Schools and Colleges that offers baccalaureate programs.

(b) (i) If used at an institution within the state system of higher education, the scholarship is equal in value to 75% of the tuition costs at the selected institution.

(ii) If used at an institution not within the state system of higher education, the scholarship is equal in value to 75% of the tuition costs at the institution, not to exceed 75% of the average tuition costs at the institutions referred in Subsection (2)(b)(i).

(c) Each scholarship is valid for up to two years of full-time equivalent enrollment, or until the requirements for a baccalaureate degree have been met, whichever is shorter.

(d) The State Board of Regents may grant a leave of absence to a scholarship holder, but the scholarship must be used in its entirety within four years after completion of high school.

(3) The New Century scholarship may be canceled at any time by the institution of attendance if the student fails to:

(a) maintain a "B average" for two consecutive semesters; or

(b) make reasonable progress towards the completion of a baccalaureate degree.

(4) (a) The Legislature shall make an annual appropriation from the General Fund to the State Board of Regents for the costs associated with the New Century scholarship program authorized under this section.

(b) It is understood that the appropriation is offset in part by the state moneys that would otherwise be required and appropriated for these students if they were enrolled in a four-year postsecondary program at a state-operated institution.

(5) This section does not apply to a student who completes an associate of applied technology degree from the Utah College of Applied Technology.

Section 30. Section 53B-16-102 is amended to read:

53B-16-102. Changes in curriculum -- Substantial alterations in institutional operations -- Periodic review of programs -- Applied technology education curriculum changes.

(1) Under procedures and policies approved by the board and developed in consultation with each institution of higher education, each institution may make such changes in its curriculum as necessary to better effectuate the institutional role previously approved by the board.

(2) Notice of a change in the curriculum shall in all cases be promptly submitted to the board.

(3) The board shall establish procedures and policies for considering institutional proposals for substantial alterations in the scope of existing institutional operations.

(4) Alterations shall not be made without prior approval of the state board.

(5) For purposes of this section, "substantial alteration" means the establishment of a branch, extension center, college, professional school, division, institute, department, or a new program in instruction, research, or public services or a new degree, diploma, or certificate.

(6) The board shall conduct periodic reviews of all programs of instruction, research, and public service at each institution, including those funded by gifts, grants, and contracts, and may require the modification or termination of any program.

(7) Prior to requiring modification or termination of a program, the board shall give the institution adequate opportunity for a hearing before the board.

(8) In making decisions related to applied technology curriculum changes, the board shall request a review of the proposed changes by the State Board [~~for Applied Technology~~] of Education to ensure an orderly and systematic applied technology education curriculum that eliminates overlap and duplication of course work with the high schools and [~~applied technology centers~~] the Utah College of Applied Technology.

Section 31. Section 53B-16-205 is amended to read:

53B-16-205. Establishment of Snow College South -- Supervision and administration -- Transition -- Institutional mission.

(1) There is [~~hereby~~] established a [~~higher education institution~~] branch campus of Snow College in Richfield, Utah, hereafter referred to as Snow College South.

(2) Snow College shall administer the [~~institution~~] branch campus under the general control and supervision of the State Board of Regents as an integrated part of Snow College's mission, programs, and curriculum [~~to include Snow College South's mission, programs, and curriculum~~].

[~~(3) (a) In conjunction with the establishment of Snow College South, the facilities, staff, and programs at the Sevier Valley Applied Technology Center in Richfield shall become a part of the state system of higher education and the structure from which Snow College South shall begin its operations.~~]

[~~(b) The State Board of Regents shall take the appropriate action required to assure the successful transition of the applied technology center and its faculty and staff into the state system of higher education, including, if necessary:~~]

[~~(i) creating and recording any conveyances needed for the transfer of property; and~~]

[~~(ii) providing procedures for assimilating the center's faculty into the rank and tenure structure of Snow College.~~]

[~~(4)~~] (3) (a) Snow College [~~South~~] shall:

(i) maintain a strong curriculum in applied technology and technical courses of a general nature at Snow College South which can be transferred to other institutions within the higher education system, together with lower division courses of a general nature and courses required for associate degrees in science, arts, and applied science[~~,~~]; and [~~shall~~]

(ii) work with local school districts in developing an aggressive concurrent enrollment program in cooperation with Snow College South.

[~~(b) The institution may confer certificates of completion and degrees as determined by the State Board of Regents within the parameters referred to in Subsection (4)(a).~~]

[~~(c)~~] (b) The institution shall [~~also~~] coordinate offerings of applied technology education with the Central Applied Technology College to provide for open-entry[~~-~~], open-exit applied technology education programs at Snow College South that emphasize short-term job training or retraining for immediate placement in the job market.

[~~(d)~~] (c) [~~The institution~~] Snow College shall make provisions for students, including high school students, to take classes at Snow College South for which college credit is not awarded, together with appropriate fees for taking such classes.

[~~(e)~~] (d) The [~~institution may request and receive a waiver from the~~] State Board of Regents or the president of Snow College [~~of~~] may waive any board rule or institutional policy that would prevent or inhibit Snow College South from achieving its performance goals, unless approval of the request would conflict with state or federal law or put the institution out of compliance with matters related to health, safety, civil rights, and insurance.

Section 32. Funding guidelines -- Cooperative agreements.

(1) In funding applied technology education, the Legislature shall:

(a) accept prioritized budget requests combining the budgets of all the regional applied technology colleges from the Utah College of Applied Technology Board of Trustees and consider those prioritized budget requests in its appropriation process independent of whatever recommendations are made by the governor and the State Board of Regents; and

(b) appropriate all operating monies for each regional applied technology college directly to each regional applied technology college under the heading " Utah Applied Technology Colleges" and not to any other entity such as the State Board of Regents.

(2) The Legislature encourages the regional applied technology colleges to enter into the cooperative agreements authorized in Subsection 53B-2a-112(3) with institutions of higher education.

Section 33. Appropriation.

(1) Under the terms and conditions of Section 63-38-3, the following sums of money are appropriated for the fiscal year beginning July 1, 2001 and ending June 30, 2002. This is in addition to amounts appropriated by House Bill 1, 2001 General Session and Senate Bill 3, 2001 General Session. Appropriations referenced below as provided in House Bill 1, 2001 General Session and Senate Bill 3, 2001 General Session remain in effect until September 1, 2001, and any obligations made from the appropriations referenced below in House Bill 1, 2001 General Session and Senate Bill 3, 2001 General Session between July 1, 2001 and September 1, 2001 will reduce the amounts appropriated below. In cases where a portion of the following sums has been obligated between July 1, 2001 and September 1, 2001, the unobligated balance of each of the debited line items shall supercede the amounts indicated below in both the debited and corresponding credited items.

Item 1
To State Board of Applied Technology Education - Public Education Applied Technology Center Service Regions
From Uniform School Fund (1,947,000)
Schedule of Programs:
Mountainlands (771,200)
Southeast (226,100)
Southwest (949,700)
To transfer funds provided by Item 80, House Bill 1, 2001 General Session.

Item 2
To Mountainlands Applied Technology College
From Income Tax 771,200
Schedule of Programs:
Mountainlands Applied Technology College 771,200
To transfer funds provided by Item 80, House Bill 1, 2001 General Session.

Item 3
To Southeast Applied Technology College
From Income Tax 226,100
Schedule of Programs:
Southeast Applied Technology College 226,100
To transfer funds provided by Item 80, House Bill 1, 2001 General Session.

Item 4
To Southwest Applied Technology College
From Income Tax 675,800
Schedule of Programs:
Southwest Applied

Technology College 675,800
To transfer funds provided
by Item 80, House Bill 1, 2001
General Session.

Item 5
To Dixie Applied
Technology College
From Income Tax 273,900
Schedule of Programs:
Dixie Applied
Technology College 273,900
To transfer funds provided
by Item 80, House Bill 1, 2001
General Session.

Item 6
To State Board of Applied
Technology Education –
Applied Technology
Center/Applied Technology
Center Service Region Development
From Uniform School Fund (2,700,000)
Schedule of Programs:
ATC/ATCSR
Development (2,700,000)
To transfer funds provided
by Item 81, House Bill 1, 2001
General Session.

Item 7
To Utah College of
Applied Technology –
Administration
From Income Tax 2,700,000
Schedule of Programs:
Development 1,700,000
Equipment 1,000,000
To transfer funds provided
by Item 81, House Bill 1, 2001
General Session.

Item 8
To State Board of Applied
Technology Education –
Custom Fit
From Uniform School Fund (3,366,500)
From Beginning Nonlapsing
Appropriation Balances (112,100)
From Closing Nonlapsing
Appropriation Balances 112,100
Schedule of Programs:
Custom Fit (3,366,500)
To transfer funds provided
by Item 82, House Bill 1, 2001
General Session.

Item 9
To Utah College of Applied
Technology – Administration
From Income Tax 3,366,500
From Beginning Nonlapsing
Appropriation Balances 112,100
From Closing Nonlapsing
Appropriation Balances (112,100)
Schedule of Programs:
Custom Fit 3,366,500
To transfer funds provided
by Item 82, House Bill 1, 2001
General Session.

Item 10
To State Board of Applied
Technology Education –
Higher Education Applied
Technology Center Service Regions
From General Fund (1,221,500)
From Income Tax (56,100)
Schedule of Programs:
Applied Technology Center
Service Regions (1,277,600)
To transfer funds provided
by Item 83, House Bill 1, 2001
General Session.

Item 11
To Mountainlands Applied
Technology College
From General Fund 417,600
Schedule of Programs:
Mountainlands Applied
Technology College 417,600
To transfer funds provided
by Item 83, House Bill 1, 2001
General Session.

Item 12
To Southeast Applied
Technology College
From General Fund 283,200
Schedule of Programs:
Southeast Applied
Technology College 283,200
To transfer funds provided
by Item 83, House Bill 1, 2001
General Session.

Item 13
To Southwest Applied
Technology College
From General Fund 270,300
Schedule of Programs:
Southwest Applied
Technology College 270,300
To transfer funds provided
by Item 83, House Bill 1, 2001
General Session.

Item 14
To Dixie Applied
Technology College
From General Fund 109,500
Schedule of Programs:
Dixie Applied
Technology College 109,500
To transfer funds provided
by Item 83, House Bill 1, 2001
General Session.

Item 15
To Utah College of
Applied Technology –
Administration
From General Fund 140,900

From Income Tax 56,100
Schedule of Programs:
Administration 197,000
To transfer funds provided by Item 83, House Bill 1, 2001 General Session.

Item 16
To Snow College –
Snow College South Secondary
From General Fund (103,000)
From Uniform School Fund (153,300)
From Income Tax (761,000)
Schedule of Programs:
Snow South Secondary (1,017,300)
To transfer funds provided by Item 176, House Bill 1, 2001 General Session.

Item 17
To Central Applied Technology College
From General Fund 103,000
From Income Tax 914,300
Schedule of Programs:
Central Applied Technology College 1,017,300
To transfer funds provided by Item 176, House Bill 1, 2001 General Session.

Item 18
To State Board of Education –
State Office of Education
From Uniform School Fund (197,000)
Schedule of Programs:
Applied Technology Education (197,000)
To transfer funds provided by Item 231, House Bill 1, 2001 General Session.

Item 19
To Utah College of Applied Technology –
Administration
From Income Tax 197,000
Schedule of Programs:
Administration 197,000
To transfer funds provided by Item 231, House Bill 1, 2001 General Session.

Item 20
To State Board of Applied Technology Education –
Applied Technology Center/Applied Technology Center Service Region Development
From Uniform School Fund, One-time (600,000)
Schedule of Programs:
ATC/ATCSR Equipment (400,000)
Administration (200,000)
To transfer funds provided by Item 55, Senate Bill 3, 2001 General Session.

Item 21
To Utah College of Applied Technology –
Administration
From Income Tax, One Time 200,000
Schedule of Programs:
Administration 200,000
To transfer funds provided by Item 55, Senate Bill 3, 2001 General Session.

Item 22
To Salt Lake/Tooele Applied Technology College
From Income Tax, One-time 400,000
Schedule of Programs:
Salt Lake/Tooele Applied Technology College 400,000
To transfer funds provided by Item 55, Senate Bill 3, 2001 General Session.

Item 23
To State Board of Applied Technology Education –
Custom Fit
From Uniform School Fund, One-time (500,000)
Schedule of Programs:
Custom Fit (500,000)
To transfer funds provided by Item 56, Senate Bill 3, 2001 General Session.

Item 24
To Utah College of Applied Technology – Administration
From Income Tax, One-time 500,000
Schedule of Programs:
Custom Fit 500,000
To transfer funds provided by Item 56, Senate Bill 3, 2001 General Session.

Item 25
To Southwest Applied Technology Center Service Region – General
From Income Tax (571,500)
From Income Tax, One-time (157,300)
Schedule of Programs:
Southwest Applied Technology Center Service Region (728,800)
To transfer funds provided by Item 63, Senate Bill 3, 2001 General Session.

Item 26
To Southwest Applied

Technology College
From Income Tax 257,200
From Income Tax,
One-time 70,800
Schedule of Programs:
Southwest Applied
Technology College 328,000
To transfer funds provided
by Item 63, Senate Bill 3, 2001
General Session.

Item 27
To Dixie Applied
Technology College
From Income Tax 314,300
From Income Tax,
One-time 86,500
Schedule of Programs:
Dixie Applied
Technology College 400,800
To transfer funds provided
by Item 63, Senate Bill 3, 2001
General Session.

Item 28
To Snow College South -
General
From Income Tax (240,800)
From Income Tax,
One-time (206,200)
Schedule of Programs:
Snow College South (447,000)
To transfer funds provided
by Item 65, Senate Bill 3, 2001
General Session.

Item 29
To Central Applied
Technology College -
Secondary Students
From Income Tax 240,800
From Income Tax,
One-time 206,200
Schedule of Programs:
Secondary Students 447,000
To transfer funds provided
by Item 65, Senate Bill 3, 2001
General Session.

(2) Effective September 1, 2001, the unobligated balance of the appropriations made in House Bill 1, 2001 General Session, and Senate Bill 3, 2001 General Session, to the Bridgerland Applied Technology Center, Ogden-Weber Applied Technology Center, Davis Applied Technology Center, Wasatch Front South Applied Technology Center, Uintah Basin Applied Technology Center, Mountainlands Applied Technology Center Service Region, and Southeast Applied Technology Center Service Region shall be transferred to their successor applied technology colleges.

Section 34. Repealer.

This act repeals:

Section 53A-1-501, Membership -- Duties -- Advisory decisions -- Annual report.

Section 53A-1-502, Advisory committee -- Duties -- Task forces.

Section 53A-15-201, State Board for Applied Technology Education -- Chief officer.

Section 53A-15-202.5, Applied technology centers.

Section 53A-15-203, Applied technology centers -- Management by board.

Section 35. Effective date.

This act takes effect on September 1, 2001.

CHAPTER 6
H. B. 1005
Passed June 20, 2001
Approved July 5, 2001
Effective August 20, 2001
(Retrospective operation to January 1, 2001)

INDIVIDUAL INCOME TAX AND CORPORATE FRANCHISE AND INCOME TAX -RENEWABLE ENERGY SYSTEMS TAX CREDITS

Sponsor: John E. Swallow

This act amends the Individual Income Tax Act and Corporate Franchise and Income Taxes by reinstating tax credits for renewable energy systems for taxable years beginning on or after January 1, 2001, but beginning on or before December 31, 2006, repealing the requirement that an individual taxpayer must be a resident of the state to claim a credit, requiring the Public Utilities and Technology Interim Committee to study the tax credits, and making technical changes. This act has retrospective operation for taxable years beginning on or after January 1, 2001.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
63-55b-159, as last amended by Chapter 290, Laws of Utah 2001

ENACTS:
59-7-614, Utah Code Annotated 1953
59-10-134, Utah Code Annotated 1953

This act enacts uncodified material.

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

Section 1. Section 59-7-614 is enacted to read:

59-7-614. Renewable energy systems tax credit -- Definitions -- Limitations -- State tax credit in addition to allowable federal credits -- Certification -- Rulemaking authority -- Reimbursement of Uniform School Fund.

(1) As used in this section:

(a) "Active solar system":

(i) means a system of equipment capable of collecting and converting incident solar radiation into thermal, mechanical, or electrical energy, and transferring these forms of energy by a separate apparatus to storage or to the point of use; and

(ii) includes water heating, space heating or cooling, and electrical or mechanical energy generation.

(b) "Biomass system" means any system of apparatus and equipment capable of converting organic plant, wood, or waste products into electrical and thermal energy and transferring these forms of energy by a separate apparatus to the point of use or storage.

(c) "Business entity" means any sole proprietorship, estate, trust, partnership, association, corporation, cooperative, or other entity under which business is conducted or transacted.

(d) "Commercial energy system" means any active solar, passive solar, wind, hydroenergy, or biomass system used to supply energy to a commercial unit or as a commercial enterprise.

(e) "Commercial enterprise" means a business entity whose purpose is to produce electrical, mechanical, or thermal energy for sale from a commercial energy system.

(f) (i) "Commercial unit" means any building or structure which a business entity uses to transact its business except as provided in Subsection (1)(f)(ii); and

(ii) (A) in the case of an active solar system used for agricultural water pumping or a wind system, each individual energy generating device shall be a commercial unit; and

(B) if an energy system is the building or structure which a business entity uses to transact its business, a commercial unit is the complete energy system itself.

(g) "Hydroenergy system" means a system of apparatus and equipment capable of intercepting and converting kinetic water energy into electrical or mechanical energy and transferring this form of energy by separate apparatus to the point of use or storage.

(h) "Individual taxpayer" means any person who is a taxpayer as defined in Section 59-10-103 and an individual as defined in Section 59-10-103.

(i) "Office of Energy and Resource Planning" means the Office of Energy and Resource Planning, Department of Natural Resources.

(j) "Passive solar system":

(i) means a direct thermal system which utilizes the structure of a building and its operable components to provide for collection, storage, and distribution of heating or cooling during the appropriate times of the year by utilizing the climate resources available at the site; and

(ii) includes those portions and components of a building that are expressly designed and required for the collection, storage, and distribution of solar energy.

(k) "Residential energy system" means any active solar, passive solar, wind, or hydroenergy system used to supply energy to or for any residential unit.

(l) "Residential unit" means any house, condominium, apartment, or similar dwelling unit which serves as a dwelling for a person, group of persons, or a family but does not include property subject to the fees in lieu of the ad valorem tax under:

(i) Section 59-2-404;

(ii) Section 59-2-405; or

(iii) Section 59-2-405.1.

(m) "Wind system" means a system of apparatus and equipment capable of intercepting and converting wind energy into mechanical or electrical energy and transferring these forms of energy by a separate apparatus to the point of use or storage.

(2) (a) (i) For taxable years beginning on or after January 1, 2001, but beginning on or before December 31, 2006, a business entity that purchases and completes or participates in the financing of a residential energy system to supply all or part of the energy required for a residential unit owned or used by the business entity and situated in Utah is entitled to a tax credit as provided in this Subsection (2)(a).

(ii) (A) A business entity is entitled to a tax credit equal to 25% of the costs of a residential energy system installed with respect to each residential unit it owns or uses, including installation costs, against any tax due under this chapter for the taxable year in which the energy system is completed and placed in service.

(B) The total amount of the credit under this Subsection (2)(a) may not exceed $2,000 per residential unit.

(C) The credit under this Subsection (2)(a) is allowed for any residential energy system completed and placed in service on or after January 1, 2001, but on or before December 31, 2006.

(iii) If a business entity sells a residential unit to an individual taxpayer prior to making a claim for the tax credit under this Subsection (2)(a), the business entity may:

(A) assign its right to this tax credit to the individual taxpayer; and

(B) if the business entity assigns its right to the tax credit to an individual taxpayer under Subsection (2)(a)(iii)(A), the individual taxpayer may claim the tax credit as if the individual taxpayer had completed or participated in the costs of the residential energy system under Section 59-10-134.

(b) (i) For taxable years beginning on or after January 1, 2001, but beginning on or before December 31, 2006, a business entity that purchases or participates in the financing of a commercial energy system is entitled to a tax credit as provided in this Subsection (2)(b) if:

(A) the commercial energy system supplies all or part of the energy required by commercial units owned or used by the business entity; or

(B) the business entity sells all or part of the energy produced by the commercial energy system as a commercial enterprise.

(ii) (A) A business entity is entitled to a tax credit equal to 10% of the costs of any commercial energy system installed, including installation costs, against any tax due under this chapter for the taxable year in which the commercial energy system is completed and placed in service.

(B) The total amount of the credit under this Subsection (2)(b) may not exceed $50,000 per commercial unit.

(C) The credit under this Subsection (2)(b) is allowed for any commercial energy system completed and placed in service on or after January 1, 2001, but on or before December 31, 2006.

(iii) A business entity that leases a commercial energy system installed on a commercial unit is eligible for the tax credit under this Subsection (2)(b) if the lessee can confirm that the lessor irrevocably elects not to claim the credit.

(iv) Only the principal recovery portion of the lease payments, which is the cost incurred by a business entity in acquiring a commercial energy system, excluding interest charges and maintenance expenses, is eligible for the tax credit under this Subsection (2)(b).

(v) A business entity that leases a commercial energy system is eligible to use the tax credit under this Subsection (2)(b) for a period no greater than seven years from the initiation of the lease.

(c) (i) A tax credit under this section may be claimed for the taxable year in which the energy system is completed and placed in service.

(ii) Additional energy systems or parts of energy systems may be claimed for subsequent years.

(iii) If the amount of a tax credit under this section exceeds a business entity's tax liability under this chapter for a taxable year, the amount of the credit exceeding the liability may be carried over for a period which does not exceed the next four taxable years.

(3) (a) The tax credits provided for under Subsection (2) are in addition to any tax credits provided under the laws or rules and regulations of the United States.

(b) (i) The Office of Energy and Resource Planning may promulgate standards for residential and commercial energy systems that cover the safety, reliability, efficiency, leasing, and technical feasibility of the systems to ensure that the systems eligible for the tax credit use the state's renewable and nonrenewable energy resources in an appropriate and economic manner.

(ii) A tax credit may not be taken under Subsection (2) until the Office of Energy and Resource Planning has certified that the energy system has been completely installed and is a viable system for saving or production of energy from renewable resources.

(c) The Office of Energy and Resource Planning and the commission are authorized to promulgate rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, which are necessary to implement this section.

(d) The Uniform School Fund shall be reimbursed by transfers from the General Fund for any credits taken under this section.

Section 2. Section 59-10-134 is enacted to read:

59-10-134. Renewable energy systems tax credit -- Definitions -- Individual tax credit -- Limitations -- Business tax credit -- Limitations -- State tax credit in addition to allowable federal credits -- Certification -- Rulemaking authority -- Reimbursement of Uniform School Fund.

(1) As used in this part:

(a) "Active solar system":

(i) means a system of equipment capable of collecting and converting incident solar radiation into thermal, mechanical, or electrical energy, and transferring these forms of energy by a separate apparatus to storage or to the point of use; and

(ii) includes water heating, space heating or cooling, and electrical or mechanical energy generation.

(b) "Biomass system" means any system of apparatus and equipment capable of converting organic plant, wood, or waste products into electrical and thermal energy and transferring these forms of energy by a separate apparatus to the point of use or storage.

(c) "Business entity" means any sole proprietorship, estate, trust, partnership, association, corporation, cooperative, or other entity under which business is conducted or transacted.

(d) "Commercial energy system" means any active solar, passive solar, wind, hydroenergy, or biomass system used to supply energy to a commercial unit or as a commercial enterprise.

(e) "Commercial enterprise" means a business entity whose purpose is to produce electrical, mechanical, or thermal energy for sale from a commercial energy system.

(f) (i) "Commercial unit" means any building or structure which a business entity uses to transact its business, except as provided in Subsection (1)(f)(ii); and

(ii) (A) in the case of an active solar system used for agricultural water pumping or a wind system, each individual energy generating device shall be a commercial unit; and

(B) if an energy system is the building or structure which a business entity uses to transact its business, a commercial unit is the complete energy system itself.

(g) "Hydroenergy system" means a system of apparatus and equipment capable of intercepting and converting kinetic water energy into electrical or mechanical energy and transferring this form of energy by separate apparatus to the point of use or storage.

(h) "Individual taxpayer" means any person who is a taxpayer as defined in Section 59-10-103 and an individual as defined in Section 59-10-103.

(i) "Office of Energy and Resource Planning" means the Office of Energy and Resource Planning, Department of Natural Resources.

(j) "Passive solar system":

(i) means a direct thermal system which utilizes the structure of a building and its operable components to provide for collection, storage, and distribution of heating or cooling during the appropriate times of the year by utilizing the climate resources available at the site; and

(ii) includes those portions and components of a building that are expressly designed and required for the collection, storage, and distribution of solar energy.

(k) "Residential energy system" means any active solar, passive solar, wind, or hydroenergy system used to supply energy to or for any residential unit.

(l) "Residential unit" means any house, condominium, apartment, or similar dwelling unit which serves as a dwelling for a person, group of persons, or a family but does not include property subject to the fees in lieu of the ad valorem tax under:

(i) Section 59-2-404;

(ii) Section 59-2-405; or

(iii) Section 59-2-405.1.

(m) "Wind system" means a system of apparatus and equipment capable of intercepting and converting wind energy into mechanical or electrical energy and transferring these forms of energy by a separate apparatus to the point of use or storage.

(2) For taxable years beginning on or after January 1, 2001, but beginning on or before December 31, 2006, any individual taxpayer may claim a tax credit as provided in this section if:

(a) the individual taxpayer purchases and completes or participates in the financing of a residential energy system to supply all or part of the energy for the individual taxpayer's residential unit in the state; or

(b) (i) a business entity sells a residential unit to an individual taxpayer prior to making a claim for a tax credit under Subsection (6) or Section 59-7-614; and

(ii) the business entity assigns its right to the tax credit to the individual taxpayer as provided in Subsection (6)(c) or Subsection 59-7-614(2)(a)(iii).

(3) (a) An individual taxpayer meeting the requirements of Subsection (2) is entitled to a tax credit equal to 25% of the costs of the energy system, including installation costs, against any income tax liability of the individual taxpayer under this chapter for the taxable year in which the residential energy system is completed and placed in service.

(b) The total amount of the credit under this section may not exceed $2,000 per residential unit.

(c) The credit under this section is allowed for any residential energy system completed and placed in

service on or after January 1, 2001, but on or before December 31, 2006.

(4) (a) The tax credit provided for in this section shall be claimed in the return for the taxable year in which the energy system is completed and placed in service.

(b) Additional residential energy systems or parts of residential energy systems may be similarly claimed in returns for subsequent taxable years as long as the total amount claimed does not exceed $2,000 per residential unit.

(c) If the amount of the tax credit under this section exceeds the income tax liability of the individual taxpayer for that taxable year, then the amount not used may be carried over for a period which does not exceed the next four taxable years.

(5) (a) Individual taxpayers who lease a residential energy system installed on a residential unit are eligible for the residential energy tax credits if the lessee can confirm that the lessor irrevocably elects not to claim the state tax credit.

(b) Only the principal recovery portion of the lease payments, which is the cost incurred by the taxpayer in acquiring the residential energy system excluding interest charges and maintenance expenses, is eligible for the tax credits.

(c) Individual taxpayers who lease residential energy systems are eligible to use the tax credits for a period no greater than seven years from the initiation of the lease.

(6) (a) A business entity that purchases and completes or participates in the financing of a residential energy system to supply all or part of the energy required for a residential unit owned or used by the business entity and situated in Utah is entitled to a tax credit as provided in this Subsection (6).

(b) (i) For taxable years beginning on or after January 1, 2001, but beginning on or before December 31, 2006, a business entity is entitled to a tax credit equal to 25% of the costs of a residential energy system installed with respect to each residential unit it owns or uses, including installation costs, against any tax due under this chapter for the taxable year in which the energy system is completed and placed in service.

(ii) The total amount of the credit under this Subsection (6) may not exceed $2,000 per residential unit.

(iii) The credit under this Subsection (6) is allowed for any residential energy system completed and placed in service on or after January 1, 2001, but on or before December 31, 2006.

(c) If a business entity sells a residential unit to an individual taxpayer prior to making a claim for the tax credit under this Subsection (6), the business entity may:

(i) assign its right to this tax credit to the individual taxpayer; and

(ii) if the business entity assigns its right to the tax credit to an individual taxpayer under Subsection (6)(c)(i), the individual taxpayer may claim the tax credit as if the individual taxpayer had completed or participated in the costs of the residential energy system under this section.

(7) (a) A business entity that purchases or participates in the financing of a commercial energy system is entitled to a tax credit as provided in this Subsection (7) if:

(i) the commercial energy system supplies all or part of the energy required by commercial units owned or used by the business entity; or

(ii) the business entity sells all or part of the energy produced by the commercial energy system as a commercial enterprise.

(b) (i) A business entity is entitled to a tax credit equal to 10% of the costs of any commercial energy system installed, including installation costs, against any tax due under this chapter for the taxable year in which the commercial energy system is completed and placed in service.

(ii) The total amount of the credit under this Subsection (7) may not exceed $50,000 per commercial unit.

(iii) The credit under this Subsection (7) is allowed for any commercial energy system completed and placed in service on or after January 1, 2001, but on or before December 31, 2006.

(c) A business entity that leases a commercial energy system installed on a commercial unit is eligible for the tax credit under this Subsection (7) if the lessee can confirm that the lessor irrevocably elects not to claim the credit.

(d) Only the principal recovery portion of the lease payments, which is the cost incurred by a business entity in acquiring a commercial energy system, excluding interest charges and maintenance expenses, is eligible for the tax credit under this Subsection (7).

(e) A business entity that leases a commercial energy system is eligible to use the tax credit under this Subsection (7) for a period no greater than seven years from the initiation of the lease.

(8) (a) A tax credit under this section may be claimed for the taxable year in which the energy system is completed and placed in service.

(b) Additional energy systems or parts of energy systems may be claimed for subsequent years.

(c) If the amount of a tax credit under this section exceeds a business entity's tax liability under this chapter for a taxable year, the amount of the credit exceeding the liability may be carried over for a period which does not exceed the next four taxable years.

(9) The tax credits provided for under this section are in addition to any tax credits provided under the laws or rules and regulations of the United States.

(10) (a) The Office of Energy and Resource Planning may promulgate standards for residential

and commercial energy systems that cover the safety, reliability, efficiency, leasing, and technical feasibility of the systems to ensure that the systems eligible for the tax credit use the state's renewable and nonrenewable energy resources in an appropriate and economic manner.

(b) A tax credit may not be taken under this section until the Office of Energy and Resource Planning has certified that the energy system has been completely installed and is a viable system for saving or production of energy from renewable resources.

(11) The Office of Energy and Resource Planning and the commission are authorized to promulgate rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, which are necessary to implement this section.

(12) The Uniform School Fund shall be reimbursed by transfers from the General Fund for any credits taken under this section.

Section 3. Section 63-55b-159 is amended to read:

63-55b-159. Repeal dates -- Title 59.

(1) Section 59-7-604 is repealed January 1, 2002.

[~~(2) Section 59-7-611 and Sections 59-10-601 through 59-10-604 are repealed January 1, 2001.~~]

[~~(3)~~] (2) Section 59-9-101.3 is repealed January 1, 2005, and the Labor Commission may not impose an assessment under Section 59-9-101.3 after December 31, 2004.

Section 4. Study of renewable energy systems tax credits.

(1) The Public Utilities and Technology Interim Committee shall study the renewable energy systems tax credits provided for in Sections 59-7-614 and 59-10-134 during the 2001 interim, including an analysis of the appropriate credit amounts.

(2) The Public Utilities and Technology Interim Committee:

(a) shall consider on or before the October 2001interim meeting whether the renewable energy systems tax credits provided for in Sections 59-7-614 and 59-10-134 should be modified; and

(b) may coordinate with the Revenue and Taxation Interim Committee and the Government Revenue and Tax System Task Force in conducting the study required by this section.

Section 5. Retrospective operation.

This act has retrospective operation for taxable years beginning on or after January 1, 2001.

CHAPTER 7
H. B. 1006
Passed June 20, 2001
Approved July 5, 2001
Effective August 20, 2001

INDIVIDUAL INCOME TAX - ADDITION OF INTEREST TO FEDERAL TAXABLE INCOME

Sponsor: Greg J. Curtis

This act modifies the Individual Income Tax Act to provide that for taxable years beginning on or after January 1, 2003, interest on certain bonds, notes, and other indebtedness of other states or the District of Columbia is subject to state individual income taxation. This act makes technical changes.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
59-10-114, as last amended by Chapters 116 and 233, Laws of Utah 2001

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

Section 1. Section 59-10-114 is amended to read:

59-10-114. Additions to and subtractions from federal taxable income of an individual.

(1) There shall be added to federal taxable income of a resident or nonresident individual:

(a) the amount of any income tax imposed by this or any predecessor Utah individual income tax law and the amount of any income tax imposed by the laws of another state, the District of Columbia, or a possession of the United States, to the extent deducted from federal adjusted gross income, as defined by Section 62, Internal Revenue Code, in determining federal taxable income;

(b) a lump sum distribution that the taxpayer does not include in adjusted gross income on the taxpayer's federal individual income tax return for the taxable year;

(c) for taxable years beginning on or after January 1, 2002, the amount of a child's income calculated under Subsection (5) that:

(i) a parent elects to report on the parent's federal individual income tax return for the taxable year; and

(ii) the parent does not include in adjusted gross income on the parent's federal individual income tax return for the taxable year;

(d) 25% of the personal exemptions, as defined and calculated in the Internal Revenue Code;

(e) a withdrawal from a medical care savings account and any penalty imposed in the taxable year if:

(i) the taxpayer did not deduct or include the amounts on his federal tax return pursuant to Section 220, Internal Revenue Code; and

(ii) the withdrawal is subject to Subsections 31A-32a-105(1) and (2); [~~and~~]

(f) the amount refunded to a participant under Title 53B, Chapter 8a, Higher Education Savings Incentive Program, in the year in which the amount is refunded[~~.~~]; and

(g) except as provided in Subsection (6), for taxable years beginning on or after January 1, 2003, for bonds, notes, and other evidences of indebtedness acquired on or after January 1, 2003, the interest from bonds, notes, and other evidences of indebtedness issued by one or more of the following entities:

(i) a state other than this state;

(ii) the District of Columbia;

(iii) a political subdivision of a state other than this state; or

(iv) an agency or instrumentality of an entity described in Subsections (1)(g)(i) through (iii).

(2) There shall be subtracted from federal taxable income of a resident or nonresident individual:

(a) the interest or dividends on obligations or securities of the United States and its possessions or of any authority, commission, or instrumentality of the United States, to the extent includable in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States, but the amount subtracted under this Subsection (2)(a) shall be reduced by any interest on indebtedness incurred or continued to purchase or carry the obligations or securities described in this Subsection (2)(a), and by any expenses incurred in the production of interest or dividend income described in this Subsection (2)(a) to the extent that such expenses, including amortizable bond premiums, are deductible in determining federal taxable income;

(b) 1/2 of the net amount of any income tax paid or payable to the United States after all allowable credits, as reported on the United States individual income tax return of the taxpayer for the same taxable year;

(c) the amount of adoption expenses which, for purposes of this Subsection (2)(c), means any actual medical and hospital expenses of the mother of the adopted child which are incident to the child's birth and any welfare agency, child placement service, legal, and other fees or costs relating to the adoption;

(d) amounts received by taxpayers under age 65 as retirement income which, for purposes of this section, means pensions and annuities, paid from an annuity contract purchased by an employer under a plan which meets the requirements of Section 404(a)(2), Internal Revenue Code, or purchased by an employee under a plan which meets the requirements of Section 408, Internal Revenue Code, or paid by the United States, a state,

or political subdivision thereof, or the District of Columbia, to the employee involved or the surviving spouse;

(e) for each taxpayer age 65 or over before the close of the taxable year, a $7,500 personal retirement exemption;

(f) 75% of the amount of the personal exemption, as defined and calculated in the Internal Revenue Code, for each dependent child with a disability and adult with a disability who is claimed as a dependent on a taxpayer's return;

(g) any amount included in federal taxable income that was received pursuant to any federal law enacted in 1988 to provide reparation payments, as damages for human suffering, to United States citizens and resident aliens of Japanese ancestry who were interned during World War II;

(h) subject to the limitations of Subsection (3)(e), amounts a taxpayer pays during the taxable year for health care insurance, as defined in Title 31A, Chapter 1, General Provisions:

(i) for:

(A) the taxpayer;

(B) the taxpayer's spouse; and

(C) the taxpayer's dependents; and

(ii) to the extent the taxpayer does not deduct the amounts under Section 125, 162, or 213, Internal Revenue Code, in determining federal taxable income for the taxable year;

(i) (i) except as otherwise provided in this Subsection (2)(i), the amount of a contribution made [~~in~~] during the [~~tax~~] taxable year on behalf of the taxpayer to a medical care savings account and interest earned on a contribution to a medical care savings account established pursuant to Title 31A, Chapter 32a, Medical Care Savings Account Act, to the extent the contribution is accepted by the account administrator as provided in the Medical Care Savings Account Act, and if the taxpayer did not deduct or include amounts on [~~his~~] the taxpayer's federal individual income tax return pursuant to Section 220, Internal Revenue Code[~~.~~ ~~A~~]; and

(ii) a contribution deductible under this Subsection (2)(i) may not exceed either of the following:

[~~(i)~~] (A) the maximum contribution allowed under the Medical Care Savings Account Act for the tax year multiplied by two for taxpayers who file a joint return, if neither spouse is covered by health care insurance as defined in Section 31A-1-301 or self-funded plan that covers the other spouse, and each spouse has a medical care savings account; or

[~~(ii)~~] (B) the maximum contribution allowed under the Medical Care Savings Account Act for the tax year for taxpayers:

[~~(A)~~] (I) who do not file a joint return; or

[~~(B)~~] (II) who file a joint return, but do not qualify under Subsection (2)(i)(i)(A); and

(j) the amount included in federal taxable income that was derived from money paid by the taxpayer to the program fund under Title 53B, Chapter 8a, Higher Education Savings Incentive Program, not to exceed amounts determined under Subsection 53B-8a-106(1)(d) and investment income earned on participation agreements under Subsection 53B-8a-106(1) when used for higher education costs of the beneficiary;

(k) for [~~tax~~] taxable years beginning on or after January 1, 2000, any amounts paid for premiums for long-term care insurance as defined in Section 31A-1-301 to the extent the amounts paid for long-term care insurance were not deducted under Section 213, Internal Revenue Code, in determining federal taxable income; and

(l) for taxable years beginning on or after January 1, 2000, if the conditions of Subsection (4)(a) are met, the amount of income derived by a Ute tribal member:

(i) during a time period that the Ute tribal member resides on homesteaded land diminished from the Uintah and Ouray Reservation; and

(ii) from a source within the Uintah and Ouray Reservation.

(3) (a) For purposes of Subsection (2)(d), the amount of retirement income subtracted for taxpayers under 65 shall be the lesser of the amount included in federal taxable income, or $4,800, except that:

(i) for married taxpayers filing joint returns, for each $1 of adjusted gross income earned over $32,000, the amount of the retirement income exemption that may be subtracted shall be reduced by 50 cents;

(ii) for married taxpayers filing separate returns, for each $1 of adjusted gross income earned over $16,000, the amount of the retirement income exemption that may be subtracted shall be reduced by 50 cents; and

(iii) for individual taxpayers, for each $1 of adjusted gross income earned over $25,000, the amount of the retirement income exemption that may be subtracted shall be reduced by 50 cents.

(b) For purposes of Subsection (2)(e), the amount of the personal retirement exemption shall be further reduced according to the following schedule:

(i) for married taxpayers filing joint returns, for each $1 of adjusted gross income earned over $32,000, the amount of the personal retirement exemption shall be reduced by 50 cents;

(ii) for married taxpayers filing separate returns, for each $1 of adjusted gross income earned over $16,000, the amount of the personal retirement exemption shall be reduced by 50 cents; and

(iii) for individual taxpayers, for each $1 of adjusted gross income earned over $25,000, the amount of the personal retirement exemption shall be reduced by 50 cents.

(c) For purposes of Subsections (3)(a) and (b), adjusted gross income shall be calculated by adding to federal adjusted gross income any interest income not otherwise included in federal adjusted gross income.

(d) For purposes of determining ownership of items of retirement income common law doctrine will be applied in all cases even though some items may have originated from service or investments in a community property state. Amounts received by the spouse of a living retiree because of the retiree's having been employed in a community property state are not deductible as retirement income of such spouse.

(e) For purposes of Subsection (2)(h), a subtraction for an amount paid for health care insurance as defined in Title 31A, Chapter 1, General Provisions, is not allowed:

(i) for an amount that is reimbursed or funded in whole or in part by the federal government, the state, or an agency or instrumentality of the federal government or the state; and

(ii) for a taxpayer who is eligible to participate in a health plan maintained and funded in whole or in part by the taxpayer's employer or the taxpayer's spouse's employer.

(4) (a) A subtraction for an amount described in Subsection (2)(l) is allowed only if:

(i) the taxpayer is a Ute tribal member; and

(ii) the governor and the Ute tribe execute and maintain an agreement meeting the requirements of this Subsection (4).

(b) The agreement described in Subsection (4)(a):

(i) may not:

(A) authorize the state to impose a tax in addition to a tax imposed under this chapter;

(B) provide a subtraction under this section greater than or different from the subtraction described in Subsection (2)(l); or

(C) affect the power of the state to establish rates of taxation; and

(ii) shall:

(A) provide for the implementation of the subtraction described in Subsection (2)(l);

(B) be in writing;

(C) be signed by:

(I) the governor; and

(II) the chair of the Business Committee of the Ute tribe;

(D) be conditioned on obtaining any approval required by federal law; and

(E) state the effective date of the agreement.

(c) (i) The governor shall report to the commission by no later than February 1 of each year regarding whether or not an agreement meeting the requirements of this Subsection (4) is in effect.

(ii) If an agreement meeting the requirements of this Subsection (4) is terminated, the subtraction permitted under Subsection (2)(l) is not allowed for taxable years beginning on or after the January 1 following the termination of the agreement.

(d) For purposes of Subsection (2)(l) and in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may make rules:

(i) for determining whether income is derived from a source within the Uintah and Ouray Reservation; and

(ii) that are substantially similar to how federal adjusted gross income derived from Utah sources is determined under Section 59-10-117.

(5) (a) For purposes of this Subsection (5), "Form 8814" means:

(i) the federal individual income tax Form 8814, Parents' Election To Report Child's Interest and Dividends; or

(ii) (A) for taxable years beginning on or after January 1, 2002, a form designated by the commission in accordance with Subsection (5)(a)(ii)(B) as being substantially similar to 2000 Form 8814 if for purposes of federal individual income taxes the information contained on 2000 Form 8814 is reported on a form other than Form 8814; and

(B) for purposes of Subsection (5)(a)(ii)(A) and in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may make rules designating a form as being substantially similar to 2000 Form 8814 if for purposes of federal individual income taxes the information contained on 2000 Form 8814 is reported on a form other than Form 8814.

(b) The amount of a child's income added to adjusted gross income under Subsection (1)(c) is equal to the difference between:

(i) the lesser of:

(A) the base amount specified on Form 8814; and

(B) the sum of the following reported on Form 8814:

(I) the child's taxable interest;

(II) the child's ordinary dividends; and

(III) the child's capital gain distributions; and

(ii) the amount not taxed that is specified on Form 8814.

(6) Notwithstanding Subsection (1)(g), interest from bonds, notes, and other evidences of indebtedness issued by an entity described in Subsections (1)(g)(i) through (iv) may not be added to federal taxable income of a resident or nonresident individual if, as annually determined by the commission:

(a) for an entity described in Subsection (1)(g)(i) or (ii), the entity and all of the political subdivisions, agencies, or instrumentalities of the entity do not impose a tax based on income on any part of the bonds, notes, and other evidences of indebtedness of this state; or

(b) for an entity described in Subsection (1)(g)(iii) or (iv), the following do not impose a tax based on income on any part of the bonds, notes, and other evidences of indebtedness of this state:

(i) the entity; or

(ii) (A) the state in which the entity is located; or

(B) the District of Columbia, if the entity is located within the District of Columbia.

CHAPTER 8
H. B. 1007
Passed June 20, 2001
Approved July 5, 2001
Effective July 1, 2002

PRIVATE RECORDS UNDER GOVERNMENT RECORDS ACCESS AND MANAGEMENT ACT

Sponsor: Cindy Beshear

This act modifies the Government Records Access and Management Act (GRAMA). GRAMA currently requires that certain information about a government employee be classified "private." This act authorizes government employees to give written notice of their status as government employees to other governmental entities in order to ensure that those entities classify personal information about government employees as "private." This act corrects cross-references contained in other sections of statute. This act removes any liability for damages that a government entity or government employee may have if they negligently disclose certain private records. This act repeals the predecessor bill passed in the 2001 Annual General Session and replaces it with amendments as described above. This act takes effect July 1, 2002. This act provides instructions for preparing the Utah Code database.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
26-1-17.5 [~~(Superseded 01/01/02)~~], as last amended by Chapter 312, Laws of Utah 1994
31A-23-202 [~~(Superseded 01/01/02)~~], as last amended by Chapter 116, Laws of Utah 2001
31A-25-202, as last amended by Chapter 116, Laws of Utah 2001
31A-26-202 [~~(Superseded 01/01/02)~~], as last amended by Chapter 116, Laws of Utah 2001
58-1-301 [~~(Superseded 01/01/02)~~], as last amended by Chapter 232, Laws of Utah 1997
61-1-4 [~~(Superseded 01/01/02)~~], as last amended by Chapters 160 and 232, Laws of Utah 1997
61-2-6 [~~(Superseded 01/01/02)~~], as last amended by Chapter 232, Laws of Utah 1997
63-2-202 [~~(Superseded 01/01/02)~~], as last amended by Chapter 256, Laws of Utah 2001
63-2-206 [~~(Superseded 01/01/02)~~], as last amended by Chapter 229, Laws of Utah 2000
63-2-301 [~~(Superseded 01/01/02)~~], as last amended by Chapter 48, Laws of Utah 1999
63-2-302 [~~(Superseded 01/01/02)~~], as last amended by Chapter 48, Laws of Utah 1999
63-2-803 [~~(Superseded 01/01/02)~~], as last amended by Chapter 280, Laws of Utah 1992
76-10-1311 [~~(Superseded 01/01/02)~~], as enacted by Chapter 179, Laws of Utah 1993This act repeals changes to Utah Law made by Chapter 74, Laws of Utah 2001

This act enacts uncodified material.

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

Section 1. Section 26-1-17.5 [~~(Superseded 01/01/02)~~] is amended to read:

26-1-17.5 [~~(Superseded 01/01/02)~~]. Confidential records.

(1) A record classified as confidential under this title shall remain confidential, and be released according to the provisions of this title, notwithstanding Section 63-2-909.

(2) In addition to those persons granted access to records described in Subsection 63-2-302(1)[~~(b)~~](a)(ii), immunization records may be shared among schools, school districts, and local and state health departments and the state Department of Human Services as necessary to assure compliance with Section 53A-11-301 and to prevent, investigate, and control the causes of epidemic, infectious, communicable, and other diseases affecting the public health.

Section 2. Section 31A-23-202 [~~(Superseded 01/01/02)~~] is amended to read:

31A-23-202 [~~(Superseded 01/01/02)~~]. Application for license.

(1) (a) Subject to Subsection (2) the application for a resident license as an agent, a broker, or a consultant shall be:

(i) made to the commissioner on forms and in a manner the commissioner prescribes; and

(ii) accompanied by an applicable fee that is not refunded if the application is denied; and

(b) the application for a nonresident license as an agent, a broker, or a consultant shall be:

(i) made on the uniform application; and

(ii) accompanied by an applicable fee that is not refunded if the application is denied.

(2) An application described in Subsection (1) shall provide:

(a) information about the applicant's identity;

(b) the applicant's:

(i) social security number; or

(ii) federal employer identification number;

(c) the applicant's personal history, experience, education, and business record;

(d) if the applicant is a natural person, whether the applicant is 18 years of age or older;

(e) whether the applicant has committed an act that is a ground for denial, suspension, or revocation as set forth in Section 31A-23-216; and

(f) any other information the commissioner reasonably requires.

(3) The commissioner may require any documents reasonably necessary to verify the information contained in an application.

(4) The following are private records under Subsection 63-2-302(1)[~~(g)~~](a)(vii) an applicant's:

(a) social security number; or

(b) federal employer identification number.

Section 3. Section 31A-25-202 is amended to read:

31A-25-202. Application for license.

(1) (a) An application for a license as a third party administrator shall be:

(i) made to the commissioner on forms and in a manner the commissioner prescribes; and

(ii) accompanied by the applicable fee, which is not refundable if the application is denied.

(b) The application for a license as a third party administrator shall:

(i) state the applicant's:

(A) social security number; or

(B) federal employer identification number;

(ii) provide information about:

(A) the applicant's identity;

(B) the applicant's personal history, experience, education, and business record;

(C) if the applicant is a natural person, whether the applicant is 18 years of age or older; and

(D) whether the applicant has committed an act that is a ground for denial, suspension, or revocation as set forth in Section 31A-25-208; and

(iii) any other information as the commissioner reasonably requires.

(2) The commissioner may require documents reasonably necessary to verify the information contained in the application.

(3) The following are private records under Subsection 63-2-302(1)[~~(g)~~] (a)(vii):

(a) an applicant's social security number; and

(b) an applicant's federal employer identification number.

Section 4. Section 31A-26-202 [~~(Superseded 01/01/02)~~] is amended to read:

31A-26-202 [~~(Superseded 01/01/02)~~]. Application for license.

(1) (a) The application for a license as an independent adjuster or public adjuster shall be:

(i) made to the commissioner on forms and in a manner the commissioner prescribes; and

(ii) accompanied by the applicable fee, which is not refunded if the application is denied.

(b) The application shall provide:

(i) information about the identity;

(ii) the applicant's:

(A) social security number; or

(B) federal employer identification number;

(iii) the applicant's personal history, experience, education, and business record;

(iv) if the applicant is a natural person, whether the applicant is 18 years of age or older;

(v) whether the applicant has committed an act that is a ground for denial, suspension, or revocation as set forth in Section 31A-25-208; and

(vi) any other information as the commissioner reasonably requires.

(2) The commissioner may require documents reasonably necessary to verify the information contained in the application.

(3) The following are private records under Subsection 63-2-302(1)[~~(g)~~](a)(vii):

(a) the applicant's social security number; and

(b) the applicant's federal employer identification number.

Section 5. Section 58-1-301 [~~(Superseded 01/01/02)~~] is amended to read:

58-1-301 [~~(Superseded 01/01/02)~~]. License application -- Licensing procedure.

(1) (a) Each license applicant shall apply to the division in writing upon forms available from the division. Each completed application shall contain documentation of the particular qualifications required of the applicant, shall include the applicant's social security number, shall be verified by the applicant, and shall be accompanied by the appropriate fees.

(b) An applicant's social security number is a private record under Subsection 63-2-302(1)[~~(g)~~](a)(vii).

(2) (a) A license shall be issued to an applicant who submits a complete application if the division determines that the applicant meets the qualifications of licensure.

(b) A written notice of additional proceedings shall be provided to an applicant who submits a complete application, but who has been, is, or will be placed under investigation by the division for conduct directly bearing upon his qualifications for licensure, if the outcome of additional proceedings is required to determine the division's response to the application.

(c) A written notice of denial of licensure shall be provided to an applicant who submits a complete application if the division determines that the applicant does not meet the qualifications of licensure.

(d) A written notice of incomplete application and conditional denial of licensure shall be provided to an applicant who submits an incomplete application. This notice shall advise the applicant that the application is incomplete and that the application is denied, unless the applicant corrects the deficiencies within the time period specified in

the notice and otherwise meets all qualifications for licensure.

(3) Before any person is issued a license under this title, all requirements for that license as established under this title and by rule shall be met.

(4) If all requirements are met for the specific license, the division shall issue the license.

Section 6. Section 61-1-4 [~~(Superseded 01/01/02)~~] is amended to read:

61-1-4 [~~(Superseded 01/01/02)~~]. Licensing and notice filing procedure.

(1) (a) A broker-dealer, agent, investment adviser, or investment adviser representative must obtain an initial or renewal license by filing with the division or its designee an application together with a consent to service of process under Section 61-1-26.

(b) (i) The application shall contain the applicant's social security number and whatever information the division by rule requires concerning such matters as:

(A) the applicant's form and place of organization;

(B) the applicant's proposed method of doing business;

(C) the qualifications and business history of the applicant; in the case of a broker-dealer or investment adviser, the qualifications and business history of any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser;

(D) any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony; and

(E) the applicant's financial condition and history.

(ii) An applicant's social security number is a private record under Subsection 63-2-302(1)[~~(g)~~](a)(vii).

(c) The division may, by rule or order, require an applicant for an initial license to publish an announcement of the application in one or more specified newspapers published in this state.

(d) Licenses or notice filings of broker-dealers, agents, investment advisers, and investment adviser representatives shall expire on December 31 of each year.

(e) (i) If no denial order is in effect and no proceeding is pending under Section 61-1-6, a license becomes effective at noon of the 30th day after an application is filed.

(ii) The division may by rule or order specify an earlier effective date and may by order defer the effective date until noon of the 30th day after the filing of any amendment.

(iii) Licensing of a broker-dealer automatically constitutes licensing of only one partner, officer, director, or a person occupying a similar status or performing similar functions as a licensed agent of the broker-dealer.

(iv) Licensing of an investment adviser automatically constitutes licensing of only one partner, officer, director, or a person occupying a similar status or performing similar functions.

(2) Except with respect to federal covered advisers whose only clients are those described in Subsection 61-1-3(3)(b) or (c), a federal covered adviser shall file with the division, prior to acting as a federal covered adviser in this state, a notice filing consisting of such documents as have been filed with the Securities and Exchange Commission as the division by rule or order may require.

(3) (a) Any applicant for an initial or renewal license as a broker-dealer or agent shall pay a reasonable filing fee as determined under Section 61-1-18.4.

(b) Any applicant for an initial or renewal license as an investment adviser or investment adviser representative who is subject to licensing under this chapter shall pay a reasonable filing fee as determined under Section 61-1-18.4.

(c) Any person acting as a federal covered adviser in this state shall pay an initial and renewal notice filing fee as determined under Section 61-1-18.4.

(d) If the license or renewal is not granted or the application is withdrawn, the division shall retain the fee.

(4) A licensed broker-dealer or investment adviser may file an application for licensing of a successor for the unexpired portion of the year. There shall be no filing fee.

(5) The division may by rule or order require a minimum capital for licensed broker-dealers, subject to the limitations of Section 15 of the Securities Exchange Act of 1934, and establish minimum financial requirements for investment advisers, subject to the limitations of Section 222 of the Investment Advisers Act of 1940, which may include different requirements for those investment advisers who maintain custody of or have discretionary authority over client funds or securities and those investment advisers who do not.

(6) (a) The division may by rule or order require licensed broker-dealers and investment advisers who have custody of or discretionary authority over client funds or securities to post bonds in amounts as the division may prescribe, subject to the limitations of Section 15 of the Securities Exchange Act of 1934 for broker-dealers and Section 222 of the Investment Advisers Act of 1940 for investment advisers, and may determine their conditions.

(b) Any appropriate deposit of cash or securities may be accepted in lieu of any required bond.

(c) No bond may be required of any licensee whose net capital, or in the case of an investment adviser whose minimum financial requirements, which

may be defined by rule, exceeds the amounts required by the division.

(d) Every bond shall provide for suit on the bond by any person who has a cause of action under Section 61-1-22 and, if the division by rule or order requires, by any person who has a cause of action not arising under this chapter.

(e) Every bond shall provide that no suit may be maintained to enforce any liability on the bond unless brought before the expiration of four years after the act or transaction constituting the violation or the expiration of two years after the discovery by the plaintiff of the facts constituting the violation, whichever expires first.

Section 7. Section 61-2-6 [~~(Superseded 01/01/02)~~] is amended to read:

61-2-6 [~~(Superseded 01/01/02)~~]. Licensing procedures and requirements.

(1) The Real Estate Commission shall determine the qualifications and requirements of applicants for a principal broker, associate broker, or sales agent license. The division, with the concurrence of the commission, shall require and pass upon proof necessary to determine the honesty, integrity, truthfulness, reputation, and competency of each applicant for an initial license or for renewal of an existing license. The division, with the concurrence of the commission, shall require an applicant for a sales agent license to complete an approved educational program not to exceed 90 hours, and an applicant for an associate broker or principal broker license to complete an approved educational program not to exceed 120 hours. The hours required by this section mean 50 minutes of instruction in each 60 minutes; and the maximum number of program hours available to an individual is ten hours per day. The division, with the concurrence of the commission, shall require the applicant to pass an examination approved by the commission covering the fundamentals of the English language, arithmetic, bookkeeping, real estate principles and practices, the provisions of this chapter, the rules established by the Real Estate Commission, and any other aspect of Utah real estate license law considered appropriate. Three years' full-time experience as a real estate sales agent or its equivalent is required before any applicant may apply for, and secure a principal broker or associate broker license in this state. The commission shall establish by rule the criteria by which it will accept experience or special education in similar fields of business in lieu of the three years' experience.

(2) (a) The division, with the concurrence of the commission, may require an applicant to furnish a sworn statement setting forth evidence satisfactory to the division of the applicant's reputation and competency as set forth by rule.

(b) The division shall require an applicant to provide his social security number, which is a private record under Subsection 63-2-302(1)[~~(g)~~](a)(vii).

(3) A nonresident principal broker may be licensed in this state by conforming to all the provisions of this chapter except that of residency. A nonresident associate broker or sales agent may become licensed in this state by conforming to all the provisions of this chapter except that of residency and by being employed or engaged as an independent contractor by or on behalf of a nonresident or resident principal broker who is licensed in this state.

(4) An applicant who has had a real estate license revoked shall be relicensed as prescribed for an original application, but may not apply for a new license until at least five years after the revocation. In the case of an applicant for a new license as a principal broker or associate broker, the applicant is not entitled to credit for experience gained prior to the revocation of license.

Section 8. Section 63-2-202 [~~(Superseded 01/01/02)~~] is amended to read:

63-2-202 [~~(Superseded 01/01/02)~~]. Access to private, controlled, and protected documents.

(1) Upon request, a governmental entity shall disclose a private record to:

(a) the subject of the record;

(b) the parent or legal guardian of an unemancipated minor who is the subject of the record;

(c) the legal guardian of a legally incapacitated individual who is the subject of the record;

(d) any other individual who:

(i) has a power of attorney from the subject of the record;

(ii) submits a notarized release from the subject of the record or his legal representative dated no more than 90 days before the date the request is made; or

(iii) if the record is a medical record described in Subsection 63-2-302(1)[~~(b)~~](a)(ii), is a health care provider, as defined in Section 26-33a-102, if releasing the record or information in the record is consistent with normal professional practice and medical ethics; or

(e) any person to whom the record must be provided pursuant to court order as provided in Subsection (7) or a legislative subpoena as provided in Title 36, Chapter 14.

(2) (a) Upon request, a governmental entity shall disclose a controlled record to:

(i) a physician, psychologist, certified social worker, insurance provider or agent, or a government public health agency upon submission of a release from the subject of the record that is dated no more than 90 days prior to the date the request is made and a signed acknowledgment of the terms of disclosure of controlled information as provided by Subsection (2)(b); and

(ii) any person to whom the record must be disclosed pursuant to court order as provided in

Subsection (7) or a legislative subpoena as provided in Title 36, Chapter 14.

(b) A person who receives a record from a governmental entity in accordance with Subsection (2)(a)(i) may not disclose controlled information from that record to any person, including the subject of the record.

(3) If there is more than one subject of a private or controlled record, the portion of the record that pertains to another subject shall be segregated from the portion that the requester is entitled to inspect.

(4) Upon request, a governmental entity shall disclose a protected record to:

(a) the person who submitted the record;

(b) any other individual who:

(i) has a power of attorney from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification; or

(ii) submits a notarized release from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification or from their legal representatives dated no more than 90 days prior to the date the request is made;

(c) any person to whom the record must be provided pursuant to a court order as provided in Subsection (7) or a legislative subpoena as provided in Title 36, Chapter 14; or

(d) the owner of a mobile home park, subject to the conditions of Subsection 41-1a-116(5).

(5) A governmental entity may disclose a private, controlled, or protected record to another governmental entity, political subdivision, another state, the United States, or a foreign government only as provided by Section 63-2-206.

(6) Before releasing a private, controlled, or protected record, the governmental entity shall obtain evidence of the requester's identity.

(7) A governmental entity shall disclose a record pursuant to the terms of a court order signed by a judge from a court of competent jurisdiction, provided that:

(a) the record deals with a matter in controversy over which the court has jurisdiction;

(b) the court has considered the merits of the request for access to the record; and

(c) the court has considered and, where appropriate, limited the requester's use and further disclosure of the record in order to protect privacy interests in the case of private or controlled records, business confidentiality interests in the case of records protected under Subsections 63-2-304(1) and (2), and privacy interests or the public interest in the case of other protected records;

(d) to the extent the record is properly classified private, controlled, or protected, the interests favoring access, considering limitations thereon, outweigh the interests favoring restriction of access; and

(e) where access is restricted by a rule, statute, or regulation referred to in Subsection 63-2-201(3)(b), the court has authority independent of this chapter to order disclosure.

(8) (a) A governmental entity may disclose or authorize disclosure of private or controlled records for research purposes if the governmental entity:

(i) determines that the research purpose cannot reasonably be accomplished without use or disclosure of the information to the researcher in individually identifiable form;

(ii) determines that the proposed research is bona fide, and that the value of the research outweighs the infringement upon personal privacy;

(iii) requires the researcher to assure the integrity, confidentiality, and security of the records and requires the removal or destruction of the individual identifiers associated with the records as soon as the purpose of the research project has been accomplished;

(iv) prohibits the researcher from disclosing the record in individually identifiable form, except as provided in Subsection (8)(b), or from using the record for purposes other than the research approved by the governmental entity; and

(v) secures from the researcher a written statement of his understanding of and agreement to the conditions of this subsection and his understanding that violation of the terms of this subsection may subject him to criminal prosecution under Section 63-2-801.

(b) A researcher may disclose a record in individually identifiable form if the record is disclosed for the purpose of auditing or evaluating the research program and no subsequent use or disclosure of the record in individually identifiable form will be made by the auditor or evaluator except as provided by this section.

(c) A governmental entity may require indemnification as a condition of permitting research under this Subsection (8).

(9) (a) Under Subsections 63-2-201(5)(b) and 63-2-401(6) a governmental entity may disclose records that are private under Section 63-2-302, or protected under Section 63-2-304 to persons other than those specified in this section.

(b) Under Subsection 63-2-403(11)(b) the Records Committee may require the disclosure of records that are private under Section 63-2-302, controlled under Section 63-2-303, or protected under Section 63-2-304 to persons other than those specified in this section.

(c) Under Subsection 63-2-404(8) the court may require the disclosure of records that are private under Section 63-2-302, controlled under Section 63-2-303, or protected under Section 63-2-304 to persons other than those specified in this section.

Section 9. Section 63-2-206 [~~(Superseded 01/01/02)~~] is amended to read:

63-2-206 [~~(Superseded 01/01/02)~~]. Sharing records.

(1) A governmental entity may provide a record that is private, controlled, or protected to another governmental entity, a government-managed corporation, a political subdivision, the federal government, or another state if the requesting entity:

(a) serves as a repository or archives for purposes of historical preservation, administrative maintenance, or destruction;

(b) enforces, litigates, or investigates civil, criminal, or administrative law, and the record is necessary to a proceeding or investigation;

(c) is authorized by state statute to conduct an audit and the record is needed for that purpose; or

(d) is one that collects information for presentence, probationary, or parole purposes.

(2) A governmental entity may provide a private or controlled record or record series to another governmental entity, a political subdivision, a government-managed corporation, the federal government, or another state if the requesting entity provides written assurance:

(a) that the record or record series is necessary to the performance of the governmental entity's duties and functions;

(b) that the record or record series will be used for a purpose similar to the purpose for which the information in the record or record series was collected or obtained; and

(c) that the use of the record or record series produces a public benefit that outweighs the individual privacy right that protects the record or record series.

(3) A governmental entity may provide a record or record series that is protected under Subsection 63-2-304(1) or (2) to another governmental entity, a political subdivision, a government-managed corporation, the federal government, or another state if:

(a) the record is necessary to the performance of the requesting entity's duties and functions; or

(b) the record will be used for a purpose similar to the purpose for which the information in the record or record series was collected or obtained.

(4) (a) A governmental entity shall provide a private, controlled, or protected record to another governmental entity, a political subdivision, a government-managed corporation, the federal government, or another state if the requesting entity:

(i) is entitled by law to inspect the record;

(ii) is required to inspect the record as a condition of participating in a state or federal program or for receiving state or federal funds; or

(iii) is an entity described in Subsection [~~63-2-206~~](1)(a), (b), (c), or (d).

(b) Subsection (4)(a)(iii) applies only if the record is a record described in Subsection 63-2-304(4).

(5) Before disclosing a record or record series under this section to another governmental entity, another state, the United States, or a foreign government, the originating governmental entity shall:

(a) inform the recipient of the record's classification and the accompanying restrictions on access; and

(b) if the recipient is not a governmental entity to which this chapter applies, obtain the recipient's written agreement which may be by mechanical or electronic transmission that it will abide by those restrictions on access unless a statute, federal regulation, or interstate agreement otherwise governs the sharing of the record or record series.

(6) A governmental entity may disclose a record to another state, the United States, or a foreign government for the reasons listed in Subsections (1), (2), and (3) without complying with the procedures of Subsection (2) or (5) if disclosure is authorized by executive agreement, treaty, federal statute, compact, federal regulation, or state statute.

(7) A governmental entity receiving a record under this section is subject to the same restrictions on disclosure of the material as the originating entity.

(8) Notwithstanding any other provision of this section, if a more specific court rule or order, state statute, federal statute, or federal regulation prohibits or requires sharing information, that rule, order, statute, or federal regulation controls.

(9) The following records may not be shared under this section:

(a) records held by the Division of Oil, Gas and Mining that pertain to any person and that are gathered under authority of Title 40, Chapter 6, Board and Division of Oil, Gas and Mining; and

(b) records of publicly funded libraries as described in Subsection 63-2-302(1)[~~(c)~~](a)(iii).

(10) Records that may evidence or relate to a violation of law may be disclosed to a government prosecutor, peace officer, or auditor.

Section 10. Section 63-2-301 [~~(Superseded 01/01/02)~~] is amended to read:

63-2-301 [~~(Superseded 01/01/02)~~]. Records that must be disclosed.

(1) The following records are public except to the extent they contain information expressly permitted to be treated confidentially under the provisions of Subsections 63-2-201(3)(b) and (6)(a):

(a) laws;

(b) names, gender, gross compensation, job titles, job descriptions, business addresses, business telephone numbers, number of hours worked per

pay period, dates of employment, and relevant education, previous employment, and similar job qualifications of the governmental entity's former and present employees and officers excluding:

(i) undercover law enforcement personnel; and

(ii) investigative personnel if disclosure could reasonably be expected to impair the effectiveness of investigations or endanger any individual's safety;

(c) final opinions, including concurring and dissenting opinions, and orders that are made by a governmental entity in an administrative, adjudicative, or judicial proceeding except that if the proceedings were properly closed to the public, the opinion and order may be withheld to the extent that they contain information that is private, controlled, or protected;

(d) final interpretations of statutes or rules by a governmental entity unless classified as protected as provided in Subsections 63-2-304(15), (16), and (17);

(e) information contained in or compiled from a transcript, minutes, or report of the open portions of a meeting of a governmental entity as provided by Title 52, Chapter 4, Open and Public Meetings, including the records of all votes of each member of the governmental entity;

(f) judicial records unless a court orders the records to be restricted under the rules of civil or criminal procedure or unless the records are private under this chapter;

(g) records filed with or maintained by county recorders, clerks, treasurers, surveyors, zoning commissions, the Division of Forestry, Fire and State Lands, the School and Institutional Trust Lands Administration, the Division of Oil, Gas and Mining, the Division of Water Rights, or other governmental entities that give public notice of:

(i) titles or encumbrances to real property;

(ii) restrictions on the use of real property;

(iii) the capacity of persons to take or convey title to real property; or

(iv) tax status for real and personal property;

(h) records of the Department of Commerce that evidence incorporations, mergers, name changes, and uniform commercial code filings;

(i) data on individuals that would otherwise be private under this chapter if the individual who is the subject of the record has given the governmental entity written permission to make the records available to the public;

(j) documentation of the compensation that a governmental entity pays to a contractor or private provider;

(k) summary data; and

(l) voter registration records, including an individual's voting history, except for those parts of the record that are classified as private in Subsection 63-2-302(1)[~~(h)~~](a)(viii).

(2) The following records are normally public, but to the extent that a record is expressly exempt from disclosure, access may be restricted under Subsection 63-2-201(3)(b), Section 63-2-302, 63-2-303, or 63-2-304:

(a) administrative staff manuals, instructions to staff, and statements of policy;

(b) records documenting a contractor's or private provider's compliance with the terms of a contract with a governmental entity;

(c) records documenting the services provided by a contractor or a private provider to the extent the records would be public if prepared by the governmental entity;

(d) contracts entered into by a governmental entity;

(e) any account, voucher, or contract that deals with the receipt or expenditure of funds by a governmental entity;

(f) records relating to government assistance or incentives publicly disclosed, contracted for, or given by a governmental entity, encouraging a person to expand or relocate a business in Utah, except as provided in Subsection 63-2-304(34);

(g) chronological logs and initial contact reports;

(h) correspondence by and with a governmental entity in which the governmental entity determines or states an opinion upon the rights of the state, a political subdivision, the public, or any person;

(i) empirical data contained in drafts if:

(i) the empirical data is not reasonably available to the requester elsewhere in similar form; and

(ii) the governmental entity is given a reasonable opportunity to correct any errors or make nonsubstantive changes before release;

(j) drafts that are circulated to anyone other than:

(i) a governmental entity;

(ii) a political subdivision;

(iii) a federal agency if the governmental entity and the federal agency are jointly responsible for implementation of a program or project that has been legislatively approved;

(iv) a government-managed corporation; or

(v) a contractor or private provider;

(k) drafts that have never been finalized but were relied upon by the governmental entity in carrying out action or policy;

(l) original data in a computer program if the governmental entity chooses not to disclose the program;

(m) arrest warrants after issuance, except that, for good cause, a court may order restricted access to arrest warrants prior to service;

(n) search warrants after execution and filing of the return, except that a court, for good cause, may order restricted access to search warrants prior to trial;

(o) records that would disclose information relating to formal charges or disciplinary actions against a past or present governmental entity employee if:

(i) the disciplinary action has been completed and all time periods for administrative appeal have expired; and

(ii) the charges on which the disciplinary action was based were sustained;

(p) records maintained by the Division of Forestry, Fire and State Lands, the School and Institutional Trust Lands Administration, or the Division of Oil, Gas and Mining that evidence mineral production on government lands;

(q) final audit reports;

(r) occupational and professional licenses;

(s) business licenses; and

(t) a notice of violation, a notice of agency action under Section 63-46b-3, or similar records used to initiate proceedings for discipline or sanctions against persons regulated by a governmental entity, but not including records that initiate employee discipline.

(3) The list of public records in this section is not exhaustive and should not be used to limit access to records.

Section 11. Section 63-2-302 [~~(Superseded 01/01/02)~~] is amended to read:

63-2-302 [~~(Superseded 01/01/02)~~]. Private records.

(1) (a) The following records are private:

[~~(a)~~] (i) records concerning an individual's eligibility for unemployment insurance benefits, social services, welfare benefits, or the determination of benefit levels;

[~~(b)~~] (ii) records containing data on individuals describing medical history, diagnosis, condition, treatment, evaluation, or similar medical data;

[~~(c)~~] (iii) records of publicly funded libraries that when examined alone or with other records identify a patron;

[~~(d)~~] (iv) records received or generated for a Senate or House Ethics Committee concerning any alleged violation of the rules on legislative ethics, prior to the meeting, and after the meeting, if the ethics committee meeting was closed to the public;

[~~(e)~~] (v) records received or generated for a Senate confirmation committee concerning character, professional competence, or physical or mental health of an individual:

[~~(i)~~] (A) if [~~prior to~~] before the meeting, the chair of the committee determines release of the records:

[~~(A)~~] (I) reasonably could be expected to interfere with the investigation undertaken by the committee; or

[~~(B)~~] (II) would create a danger of depriving a person of a right to a fair proceeding or impartial hearing;

[~~(ii)~~] (B) after the meeting, if the meeting was closed to the public;

[~~(f)~~] (vi) records concerning a current or former employee of, or applicant for employment with, a governmental entity that would disclose that individual's home address, home telephone number, social security number, insurance coverage, marital status, or payroll deductions;

[~~(g)~~] (vii) that part of a record indicating a person's social security number if provided under Section 31A-23-202, 31A-26-202, 58-1-301, 61-1-4, or 61-2-6; and

[~~(h)~~] (viii) that part of a voter registration record identifying a voter's driver license or identification card number, social security number, or last four digits of the social security number.

(b) For records declared private under Subsection (1)(a)(vi), a current or former employee of a government entity may:

(i) give actual written notice of the employee's status as a government employee to each agency of a government entity holding records that would disclose the employee's home address, home telephone number, social security number, insurance coverage, marital status, or payroll deductions; and

(ii) in the notice:

(A) provide evidence of qualifying employment;

(B) request assistance by the agency to identify the records containing information in Subsection (1)(b)(i);

(C) designate each specific record that the applicant desires to be classified as private; and

(D) affirmatively request that the government entity holding those records classify them as private.

(2) The following records are private if properly classified by a governmental entity:

(a) records concerning a current or former employee of, or applicant for employment with a governmental entity, including performance evaluations and personal status information such as race, religion, or disabilities, but not including records that are public under Subsection 63-2-301(1)(b) or 63-2-301(2)(o), or private under Subsection [~~63-2-302~~](1)[~~(b)~~](a)(ii);

(b) records describing an individual's finances, except that the following are public:

(i) records described in Subsection 63-2-301(1);

(ii) information provided to the governmental entity for the purpose of complying with a financial assurance requirement; or

(iii) records that must be disclosed in accordance with another statute;

(c) records of independent state agencies if the disclosure of those records would conflict with the fiduciary obligations of the agency;

(d) other records containing data on individuals the disclosure of which constitutes a clearly unwarranted invasion of personal privacy; and

(e) records provided by the United States or by a government entity outside the state that are given with the requirement that the records be managed as private records, if the providing entity states in writing that the record would not be subject to public disclosure if retained by it.

(3) (a) As used in this Subsection (3), "medical records" means medical reports, records, statements, history, diagnosis, condition, treatment, and evaluation.

(b) Medical records in the possession of the University of Utah Hospital, its clinics, doctors, or affiliated entities are not private records or controlled records under Section 63-2-303 when the records are sought:

(i) in connection with any legal or administrative proceeding in which the patient's physical, mental, or emotional condition is an element of any claim or defense; or

(ii) after a patient's death, in any legal or administrative proceeding in which any party relies upon the condition as an element of the claim or defense.

(c) Medical records are subject to production in a legal or administrative proceeding according to state or federal statutes or rules of procedure and evidence as if the medical records were in the possession of a nongovernmental medical care provider.

Section 12. Section 63-2-803 [~~(Superseded 01/01/02)~~] is amended to read:

63-2-803 [~~(Superseded 01/01/02)~~]. No liability for certain decisions of a governmental entity or a political subdivision.

(1) Neither the governmental entity or political subdivision, nor any officer or employee of the governmental entity or political subdivision, is liable for damages resulting from the release of a record where the person or government requesting the record presented evidence of authority to obtain the record even if it is subsequently determined that the requester had no authority.

(2) Neither the governmental entity or political subdivision, nor any officer or employee of the governmental entity or political subdivision, is liable for damages arising from the negligent disclosure of records classified as private under Subsection 63-2-302(1)(a)(vi) unless:

(a) the disclosure was of employment records maintained by the governmental entity; or

(b) the disclosure was of nonemployment records and the current or former government employee had filed the notice required by Subsection 63-2-302(1)(b).

Section 13. Section 76-10-1311 [~~(Superseded 01/01/02)~~] is amended to read:

76-10-1311 [~~(Superseded 01/01/02)~~]. Mandatory testing -- Retention of offender medical file -- Civil liability.

(1) A person who has entered a plea of guilty, a plea of no contest, a plea of guilty and mentally ill, or been found guilty for violation of Section 76-10-1302, 76-10-1303, or 76-10-1313 shall be required to submit to a mandatory test to determine if the offender is an HIV positive individual. The mandatory test shall be required and conducted prior to sentencing.

(2) If the mandatory test has not been conducted prior to sentencing, and the convicted offender is already confined in a county jail or state prison, such person shall be tested while in confinement.

(3) The local law enforcement agency shall cause the blood specimen of the offender as defined in Subsection (1) confined in county jail to be taken and tested.

(4) The Department of Corrections shall cause the blood specimen of the offender defined in Subsection (1) confined in any state prison to be taken and tested.

(5) The local law enforcement agency shall collect and retain in the offender's medical file the following data:

(a) the HIV infection test results;

(b) a copy of the written notice as provided in Section 76-10-1312;

(c) photographic identification; and

(d) fingerprint identification.

(6) The local law enforcement agency shall classify the medical file as a private record pursuant to Subsection 63-2-302(1)[~~(b)~~](a)(ii) or a controlled record pursuant to Section 63-2-303.

(7) The person tested shall be responsible for the costs of testing, unless the person is indigent. The costs will then be paid by the local law enforcement agency or the Department of Corrections from the General Fund.

(8) (a) The laboratory performing testing shall report test results to only designated officials in the Department of Corrections, the Department of Health, and the local law enforcement agency submitting the blood specimen.

(b) Each department or agency shall designate those officials by written policy.

(c) Designated officials may release information identifying an offender under Section 76-10-1302, 76-10-1303, or 76-10-1313 who has tested HIV positive as provided under Subsection 63-2-202(1) and for purposes of prosecution pursuant to Section 76-10-1309.

(9) (a) An employee of the local law enforcement agency, the Department of Corrections, or the Department of Health who discloses the HIV test results under this section is not civilly liable except when disclosure constitutes fraud or malice as provided in Section 63-30-4.

(b) An employee of the local law enforcement agency, the Department of Corrections, or the Department of Health who discloses the HIV test results under this section is not civilly or criminally liable, except when disclosure constitutes a knowing violation of Section 63-2-801.

(10) When the medical file is released as provided in Section 63-2-803, the local law enforcement agency, the Department of Corrections, or the Department of Health or its officers or employees are not liable for damages for release of the medical file.

Section 14. Effective date.

This act takes effect on July 1, 2002.

Section 15. Instructions for preparing the Utah Code database.

If this bill passes, it is the intent of the Legislature that:

(1) this bill be read as if the amendments contained in H.B. 88, Chapter 74, Laws of Utah 2001 have not been given effect; and

(2) the Office of Legislative Research and General Counsel prepare the Utah Code database so that the provisions of this bill supersede the amendments contained in H.B. 88, Chapter 74, Laws of Utah 2001.

CHAPTER 9
H. B. 1008
Passed June 20, 2001
Approved July 5, 2001
Effective August 20, 2001
(Retrospective operation to January 1, 2001)

INDIVIDUAL INCOME TAX - 2001
FEDERAL RATE BRACKET BENEFIT

Sponsor: Matt Throckmorton
Wayne A. Harper
Joseph G. Murray
Stephen D. Clark
Ben C. Ferry
Kory M. Holdaway
Chad E. Bennion
Gordon E. Snow
David L. Hogue
Sheryl L. Allen
David Ure
DeMar Bud Bowman
Michael R. Styler
Stephen H. Urquhart
Paul Ray
Roger E. Barrus
James A. Ferrin
Mike Thompson
Bryan D. Holladay
Darin G. Peterson
Bradley A. Winn
Brent D. Parker
Duane E. Bourdeaux
Merlynn T. Newbold
Peggy Wallace
Loraine T. Pace
Martin R. Stephens
Margaret Dayton
Rebecca D. Lockhart
Glenn L. Way
Ron Bigelow
Craig W. Buttars
Marda Dillree
Afton B. Bradshaw
Kevin S. Garn
Greg J. Curtis
Carl R. Saunders
Don E. Bush
Jack A. Seitz
Katherine M. Bryson
John E. Swallow
Thomas V. Hatch
Bradley T. Johnson
Richard M. Siddoway
Gerry A. Adair
Douglas C. Aagard

This act modifies the Individual Income Tax Act by providing that a federal individual income tax credit or advance refund amount allowed as a result of the 2001 federal rate bracket benefit is not subject to state individual income taxation, and making technical changes. This act has retrospective operation for taxable years beginning on or after January 1, 2001.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
59-10-114, as last amended by Chapters 116 and 233, Laws of Utah 2001

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

Section 1. Section 59-10-114 is amended to read:

59-10-114. Additions to and subtractions from federal taxable income of an individual.

(1) There shall be added to federal taxable income of a resident or nonresident individual:

(a) the amount of any income tax imposed by this or any predecessor Utah individual income tax law and the amount of any income tax imposed by the laws of another state, the District of Columbia, or a possession of the United States, to the extent deducted from federal adjusted gross income, as defined by Section 62, Internal Revenue Code, in determining federal taxable income;

(b) a lump sum distribution that the taxpayer does not include in adjusted gross income on the taxpayer's federal individual income tax return for the taxable year;

(c) for taxable years beginning on or after January 1, 2002, the amount of a child's income calculated under Subsection (5) that:

(i) a parent elects to report on the parent's federal individual income tax return for the taxable year; and

(ii) the parent does not include in adjusted gross income on the parent's federal individual income tax return for the taxable year;

(d) 25% of the personal exemptions, as defined and calculated in the Internal Revenue Code;

(e) a withdrawal from a medical care savings account and any penalty imposed in the taxable year if:

(i) the taxpayer did not deduct or include the amounts on his federal tax return pursuant to Section 220, Internal Revenue Code; and

(ii) the withdrawal is subject to Subsections 31A-32a-105(1) and (2); and

(f) the amount refunded to a participant under Title 53B, Chapter 8a, Higher Education Savings Incentive Program, in the year in which the amount is refunded.

(2) There shall be subtracted from federal taxable income of a resident or nonresident individual:

(a) the interest or dividends on obligations or securities of the United States and its possessions or of any authority, commission, or instrumentality of the United States, to the extent includable in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States, but the amount subtracted under this Subsection (2)(a) shall be reduced by any interest on indebtedness incurred or continued to purchase or carry the obligations or securities described in this Subsection (2)(a), and by any

expenses incurred in the production of interest or dividend income described in this Subsection (2)(a) to the extent that such expenses, including amortizable bond premiums, are deductible in determining federal taxable income;

(b) (i) except as provided in Subsection (2)(b)(ii), 1/2 of the net amount of any income tax paid or payable to the United States after all allowable credits, as reported on the United States individual income tax return of the taxpayer for the same taxable year; and

(ii) notwithstanding Subsection (2)(b)(i), for taxable years beginning on or after January 1, 2001, the amount of a credit or an advance refund amount reported on a resident or nonresident individual's United States individual income tax return allowed as a result of the acceleration of the income tax rate bracket benefit for 2001 in accordance with Section 101, Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, may not be used in calculating the amount described in Subsection (2)(b)(i);

(c) the amount of adoption expenses which, for purposes of this Subsection (2)(c), means any actual medical and hospital expenses of the mother of the adopted child which are incident to the child's birth and any welfare agency, child placement service, legal, and other fees or costs relating to the adoption;

(d) amounts received by taxpayers under age 65 as retirement income which, for purposes of this section, means pensions and annuities, paid from an annuity contract purchased by an employer under a plan which meets the requirements of Section 404(a)(2), Internal Revenue Code, or purchased by an employee under a plan which meets the requirements of Section 408, Internal Revenue Code, or paid by the United States, a state, or political subdivision thereof, or the District of Columbia, to the employee involved or the surviving spouse;

(e) for each taxpayer age 65 or over before the close of the taxable year, a $7,500 personal retirement exemption;

(f) 75% of the amount of the personal exemption, as defined and calculated in the Internal Revenue Code, for each dependent child with a disability and adult with a disability who is claimed as a dependent on a taxpayer's return;

(g) any amount included in federal taxable income that was received pursuant to any federal law enacted in 1988 to provide reparation payments, as damages for human suffering, to United States citizens and resident aliens of Japanese ancestry who were interned during World War II;

(h) subject to the limitations of Subsection (3)(e), amounts a taxpayer pays during the taxable year for health care insurance, as defined in Title 31A, Chapter 1, General Provisions:

(i) for:

(A) the taxpayer;

(B) the taxpayer's spouse; and

(C) the taxpayer's dependents; and

(ii) to the extent the taxpayer does not deduct the amounts under Section 125, 162, or 213, Internal Revenue Code, in determining federal taxable income for the taxable year;

(i) (i) except as otherwise provided in this Subsection (2)(i), the amount of a contribution made [~~in~~] during the [~~tax~~] taxable year on behalf of the taxpayer to a medical care savings account and interest earned on a contribution to a medical care savings account established pursuant to Title 31A, Chapter 32a, Medical Care Savings Account Act, to the extent the contribution is accepted by the account administrator as provided in the Medical Care Savings Account Act, and if the taxpayer did not deduct or include amounts on [~~his~~] the taxpayer's federal individual income tax return pursuant to Section 220, Internal Revenue Code[~~. A~~]; and

(ii) a contribution deductible under this Subsection (2)(i) may not exceed either of the following:

[~~(i)~~] (A) the maximum contribution allowed under the Medical Care Savings Account Act for the tax year multiplied by two for taxpayers who file a joint return, if neither spouse is covered by health care insurance as defined in Section 31A-1-301 or self-funded plan that covers the other spouse, and each spouse has a medical care savings account; or

[~~(ii)~~] (B) the maximum contribution allowed under the Medical Care Savings Account Act for the tax year for taxpayers:

[~~(A)~~] (I) who do not file a joint return; or

[~~(B)~~] (II) who file a joint return, but do not qualify under Subsection (2)(i)(i)(A); and

(j) the amount included in federal taxable income that was derived from money paid by the taxpayer to the program fund under Title 53B, Chapter 8a, Higher Education Savings Incentive Program, not to exceed amounts determined under Subsection 53B-8a-106(1)(d) and investment income earned on participation agreements under Subsection 53B-8a-106(1) when used for higher education costs of the beneficiary;

(k) for [~~tax~~] taxable years beginning on or after January 1, 2000, any amounts paid for premiums for long-term care insurance as defined in Section 31A-1-301 to the extent the amounts paid for long-term care insurance were not deducted under Section 213, Internal Revenue Code, in determining federal taxable income; and

(l) for taxable years beginning on or after January 1, 2000, if the conditions of Subsection (4)(a) are met, the amount of income derived by a Ute tribal member:

(i) during a time period that the Ute tribal member resides on homesteaded land diminished from the Uintah and Ouray Reservation; and

(ii) from a source within the Uintah and Ouray Reservation.

(3) (a) For purposes of Subsection (2)(d), the amount of retirement income subtracted for taxpayers under 65 shall be the lesser of the amount included in federal taxable income, or $4,800, except that:

(i) for married taxpayers filing joint returns, for each $1 of adjusted gross income earned over $32,000, the amount of the retirement income exemption that may be subtracted shall be reduced by 50 cents;

(ii) for married taxpayers filing separate returns, for each $1 of adjusted gross income earned over $16,000, the amount of the retirement income exemption that may be subtracted shall be reduced by 50 cents; and

(iii) for individual taxpayers, for each $1 of adjusted gross income earned over $25,000, the amount of the retirement income exemption that may be subtracted shall be reduced by 50 cents.

(b) For purposes of Subsection (2)(e), the amount of the personal retirement exemption shall be further reduced according to the following schedule:

(i) for married taxpayers filing joint returns, for each $1 of adjusted gross income earned over $32,000, the amount of the personal retirement exemption shall be reduced by 50 cents;

(ii) for married taxpayers filing separate returns, for each $1 of adjusted gross income earned over $16,000, the amount of the personal retirement exemption shall be reduced by 50 cents; and

(iii) for individual taxpayers, for each $1 of adjusted gross income earned over $25,000, the amount of the personal retirement exemption shall be reduced by 50 cents.

(c) For purposes of Subsections (3)(a) and (b), adjusted gross income shall be calculated by adding to federal adjusted gross income any interest income not otherwise included in federal adjusted gross income.

(d) For purposes of determining ownership of items of retirement income common law doctrine will be applied in all cases even though some items may have originated from service or investments in a community property state. Amounts received by the spouse of a living retiree because of the retiree's having been employed in a community property state are not deductible as retirement income of such spouse.

(e) For purposes of Subsection (2)(h), a subtraction for an amount paid for health care insurance as defined in Title 31A, Chapter 1, General Provisions, is not allowed:

(i) for an amount that is reimbursed or funded in whole or in part by the federal government, the state, or an agency or instrumentality of the federal government or the state; and

(ii) for a taxpayer who is eligible to participate in a health plan maintained and funded in whole or in part by the taxpayer's employer or the taxpayer's spouse's employer.

(4) (a) A subtraction for an amount described in Subsection (2)(l) is allowed only if:

(i) the taxpayer is a Ute tribal member; and

(ii) the governor and the Ute tribe execute and maintain an agreement meeting the requirements of this Subsection (4).

(b) The agreement described in Subsection (4)(a):

(i) may not:

(A) authorize the state to impose a tax in addition to a tax imposed under this chapter;

(B) provide a subtraction under this section greater than or different from the subtraction described in Subsection (2)(l); or

(C) affect the power of the state to establish rates of taxation; and

(ii) shall:

(A) provide for the implementation of the subtraction described in Subsection (2)(l);

(B) be in writing;

(C) be signed by:

(I) the governor; and

(II) the chair of the Business Committee of the Ute tribe;

(D) be conditioned on obtaining any approval required by federal law; and

(E) state the effective date of the agreement.

(c) (i) The governor shall report to the commission by no later than February 1 of each year regarding whether or not an agreement meeting the requirements of this Subsection (4) is in effect.

(ii) If an agreement meeting the requirements of this Subsection (4) is terminated, the subtraction permitted under Subsection (2)(l) is not allowed for taxable years beginning on or after the January 1 following the termination of the agreement.

(d) For purposes of Subsection (2)(l) and in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may make rules:

(i) for determining whether income is derived from a source within the Uintah and Ouray Reservation; and

(ii) that are substantially similar to how federal adjusted gross income derived from Utah sources is determined under Section 59-10-117.

(5) (a) For purposes of this Subsection (5), "Form 8814" means:

(i) the federal individual income tax Form 8814, Parents' Election To Report Child's Interest and Dividends; or

(ii) (A) for taxable years beginning on or after January 1, 2002, a form designated by the commission in accordance with Subsection (5)(a)(ii)(B) as being substantially similar to 2000 Form 8814 if for purposes of federal individual income taxes the information contained on 2000 Form 8814 is reported on a form other than Form 8814; and

(B) for purposes of Subsection (5)(a)(ii)(A) and in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may make rules designating a form as being substantially similar to 2000 Form 8814 if for purposes of federal individual income taxes the information contained on 2000 Form 8814 is reported on a form other than Form 8814.

(b) The amount of a child's income added to adjusted gross income under Subsection (1)(c) is equal to the difference between:

(i) the lesser of:

(A) the base amount specified on Form 8814; and

(B) the sum of the following reported on Form 8814:

(I) the child's taxable interest;

(II) the child's ordinary dividends; and

(III) the child's capital gain distributions; and

(ii) the amount not taxed that is specified on Form 8814.

Section 2. Retrospective operation.

This act has retrospective operation for taxable years beginning on or after January 1, 2001.

CHAPTER 10
S. B. 1001
Passed June 20, 2001
Approved July 5, 2001
Effective August 20, 2001

NOTIFICATION BY SCHOOL OR FAMILY SERVICES TO NONCUSTODIAL PARENT OF CHILD'S DISCIPLINE OR REMOVAL

Sponsor: Parley Hellewell

This act amends the Human Services Code and the State System of Public Education. This act requires a peace officer, case worker, or school to inform a custodial and noncustodial parent when a minor is taken into protective custody or suspended or expelled from school. The act also makes technical corrections.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
53A-11-903, as last amended by Chapter 97, Laws of Utah 1995
62A-4a-202.2, as last amended by Chapter 274, Laws of Utah 2000

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

Section 1. Section 53A-11-903 is amended to read:

53A-11-903. Suspension and expulsion procedures -- Notice to parents -- Distribution of policies.

(1) (a) Policies required under this part shall include written procedures for the suspension and expulsion of, or denial of admission to, a student, consistent with due process and other provisions of law.

(b) (i) The policies required in Subsection (1)(a) shall include a procedure directing public schools to notify the custodial parent and, if requested in writing by a noncustodial parent, the noncustodial parent of the suspension and expulsion of, or denial of admission to, a student.

(ii) Subsection (1)(b)(i) does not apply to that portion of school records which would disclose any information protected under a court order.

(iii) The custodial parent is responsible for providing to the school a certified copy of the court order under Subsection (1)(b)(ii) through a procedure adopted by the local school board.

(2) (a) Each local school board shall provide for the distribution of a copy of a school's discipline and conduct policy to each student upon enrollment in the school.

(b) A copy of the policy shall be posted in a prominent location in each school.

(c) Any significant change in a school's conduct and discipline policy shall be distributed to students in the school and posted in the school in a prominent location.

Section 2. Section 62A-4a-202.2 is amended to read:

62A-4a-202.2. Notice to parents upon removal of child -- Locating noncustodial parent -- Written statement of procedural rights and preliminary proceedings.

(1) (a) Any peace officer or caseworker who takes a minor into protective custody pursuant to Section 62A-4a-202.1 shall immediately use reasonable efforts to locate and inform, through the most efficient means available, the [~~parent,~~] parents, including a noncustodial parent, the guardian, or responsible relative:

[~~(a)~~] (i) that the minor has been taken into protective custody;

[~~(b)~~] (ii) the reasons for removal and placement in protective custody;

[~~(c)~~] (iii) that a written statement is available that explains the parent's procedural rights and the preliminary stages of the investigation and shelter hearing; and

[~~(d)~~] (iv) of a telephone number where the parent may access further information.

(b) For purposes of locating and informing the noncustodial parent as required in Subsection (1)(a), the division shall search for the noncustodial parent through the national parent locator database if the division is unable to locate the noncustodial parent through other reasonable efforts.

(2) The attorney general's office shall adopt, print, and distribute a form for the written statement described in Subsection (1)[~~(c)~~] (a)(iii). The statement shall be made available to the division and for distribution in schools, health care facilities, local police and sheriff's offices, the division, and any other appropriate office within the Department of Human Services. The notice shall be in simple language and include at least the following information:

(a) the conditions under which a minor may be released, hearings that may be required, and the means by which the parent may access further specific information about a minor's case and conditions of protective and temporary custody; and

(b) the rights of a minor and of the parent or guardian to legal counsel and to appeal.

(3) If a good faith attempt was made by the peace officer or caseworker to notify the parent or guardian in accordance with the requirements of Subsection (1), failure to notify shall be considered to be due to circumstances beyond the control of the peace officer or caseworker and may not be construed to permit a new defense to any juvenile or judicial proceeding or to interfere with any rights, procedures, or investigations provided for by this chapter or [~~Title 62A~~] Title 78, Chapter 3a, Juvenile Courts.

CHAPTER 11
S. B. 1003
Passed June 20, 2001
Approved July 5, 2001
Effective July 1, 2001

TAXES ON RENTALS OF PUBLIC SLEEPING ACCOMMODATIONS

Sponsor: John L. Valentine

This act amends the Sales and Use Tax Act to require that certain public sleeping accommodations must be regularly rented for a time period of less than 30 consecutive days to be subject to certain taxes within the Sales and Use Tax Act, and to provide definitions. The act takes effect on July 1, 2001, if approved by two-thirds of all the members elected to each house, or on October 1, 2001, if the two-thirds vote requirement is not met.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
59-12-102 (Effective 07/01/01), as last amended by Chapters 9, 152, 188, 262 and 367, Laws of Utah 2001
59-12-103 (Effective 07/01/01), as last amended by Chapters 12, 104, 152 and 188, Laws of Utah 2001
59-12-301, as last amended by Chapter 319, Laws of Utah 2000
59-12-351, as enacted by Chapter 305, Laws of Utah 1997
59-12-603, as last amended by Chapter 159, Laws of Utah 2001

REPEALS:
17-31-4, as last amended by Chapter 79, Laws of Utah 1996

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

Section 1. Section 59-12-102 (Effective 07/01/01) is amended to read:

59-12-102 (Effective 07/01/01). Definitions.

As used in this chapter:

(1) (a) "Admission or user fees" includes season passes.

(b) "Admission or user fees" does not include annual membership dues to private organizations.

(2) "Area agency on aging" is as defined in Section 62A-3-101.

(3) "Authorized carrier" means:

(a) in the case of vehicles operated over public highways, the holder of credentials indicating that the vehicle is or will be operated pursuant to both the International Registration Plan and the International Fuel Tax Agreement;

(b) in the case of aircraft, the holder of a Federal Aviation Administration operating certificate or air carrier's operating certificate; or

(c) in the case of locomotives, freight cars, railroad work equipment, or other rolling stock, the holder of a certificate issued by the United States Interstate Commerce Commission.

(4) (a) For purposes of Subsection 59-12-104(43), "coin-operated amusement device" means:

(i) a coin-operated amusement, skill, or ride device;

(ii) that is not controlled through vendor-assisted, over-the-counter, sales of tokens; and

(iii) includes a music machine, pinball machine, billiard machine, video game machine, arcade machine, and a mechanical or electronic skill game or ride.

(b) For purposes of Subsection 59-12-104(43), "coin-operated amusement device" does not mean a coin-operated amusement device possessing a coinage mechanism that:

(i) accepts and registers multiple denominations of coins; and

(ii) allows the vendor to collect the sales and use tax at the time an amusement device is activated and operated by a person inserting coins into the device.

(5) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other fuels that does not constitute industrial use under Subsection (13) or residential use under Subsection [~~(21)~~] (22).

(6) (a) "Common carrier" means a person engaged in or transacting the business of transporting passengers, freight, merchandise, or other property for hire within this state.

(b) (i) "Common carrier" does not include a person who, at the time the person is traveling to or from that person's place of employment, transports a passenger to or from the passenger's place of employment.

(ii) For purposes of Subsection (6)(b)(i), in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may make rules defining what constitutes a person's place of employment.

(7) "Component part" includes:

(a) poultry, dairy, and other livestock feed, and their components;

(b) baling ties and twine used in the baling of hay and straw;

(c) fuel used for providing temperature control of orchards and commercial greenhouses doing a majority of their business in wholesale sales, and for providing power for off-highway type farm machinery; and

(d) feed, seeds, and seedlings.

(8) "Construction materials" means any tangible personal property that will be converted into real property.

(9) (a) "Fundraising sales" means sales:

(i) (A) made by a school; or

(B) made by a school student;

(ii) that are for the purpose of raising funds for the school to purchase equipment, materials, or provide transportation; and

(iii) that are part of an officially sanctioned school activity.

(b) For purposes of Subsection (9)(a)(iii), "officially sanctioned school activity" means a school activity:

(i) that is conducted in accordance with a formal policy adopted by the school or school district governing the authorization and supervision of fundraising activities;

(ii) that does not directly or indirectly compensate an individual teacher or other educational personnel by direct payment, commissions, or payment in kind; and

(iii) the net or gross revenues from which are deposited in a dedicated account controlled by the school or school district.

(10) (a) "Hearing aid" means:

(i) an instrument or device having an electronic component that is designed to:

(A) (I) improve impaired human hearing; or

(II) correct impaired human hearing; and

(B) (I) be worn in the human ear; or

(II) affixed behind the human ear;

(ii) an instrument or device that is surgically implanted into the cochlea; or

(iii) a telephone amplifying device.

(b) "Hearing aid" does not include:

(i) except as provided in Subsection (10)(a)(i)(B) or (10)(a)(ii), an instrument or device having an electronic component that is designed to be worn on the body;

(ii) except as provided in Subsection (10)(a)(iii), an assistive listening device or system designed to be used by one individual, including:

(A) a personal amplifying system;

(B) a personal FM system;

(C) a television listening system; or

(D) a device or system similar to a device or system described in Subsections (10)(b)(ii)(A) through (C); or

(iii) an assistive listening device or system designed to be used by more than one individual, including:

(A) a device or system installed in:

(I) an auditorium;

(II) a church;

(III) a conference room;

(IV) a synagogue; or

(V) a theater; or

(B) a device or system similar to a device or system described in Subsections (10)(b)(iii)(A)(I) through (V).

(11) (a) "Hearing aid accessory" means a hearing aid:

(i) component;

(ii) attachment; or

(iii) accessory.

(b) "Hearing aid accessory" includes:

(i) a hearing aid neck loop;

(ii) a hearing aid cord;

(iii) a hearing aid ear mold;

(iv) hearing aid tubing;

(v) a hearing aid ear hook; or

(vi) a hearing aid remote control.

(c) "Hearing aid accessory" does not include:

(i) a component, attachment, or accessory designed to be used only with an:

(A) instrument or device described in Subsection (10)(b)(i); or

(B) assistive listening device or system described in Subsection (10)(b)(ii) or (iii); or

(ii) a hearing aid battery.

(12) (a) "Home medical equipment and supplies" means equipment and supplies that:

(i) a licensed physician prescribes or authorizes in writing as necessary for the treatment of a medical illness or injury or as necessary to mitigate an impairment resulting from illness or injury;

(ii) are used exclusively by the person for whom they are prescribed to serve a medical purpose; and

(iii) are listed as eligible for payment under Title XVIII of the federal Social Security Act or under the state plan for medical assistance under Title XIX of the federal Social Security Act.

(b) "Home medical equipment and supplies" does not include:

(i) equipment and supplies purchased by, for, or on behalf of any health care facility, as defined in Subsection (12)(c), doctor, nurse, or other health care provider for use in their professional practice;

(ii) eyeglasses, contact lenses, or equipment to correct impaired vision; or

(iii) hearing aids or hearing aid accessories.

(c) For purposes of Subsection (12)(b)(i), "health care facility" includes:

(i) a clinic;

(ii) a doctor's office; and

(iii) a health care facility as defined in Section 26-21-2.

(13) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil, or other fuels:

(a) in mining or extraction of minerals;

(b) in agricultural operations to produce an agricultural product up to the time of harvest or placing the agricultural product into a storage facility, including:

(i) commercial greenhouses;

(ii) irrigation pumps;

(iii) farm machinery;

(iv) implements of husbandry as defined in Subsection 41-1a-102(23) that are not registered under Title 41, Chapter 1a, Part 2, Registration; and

(v) other farming activities;

(c) in manufacturing tangible personal property at an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget; or

(d) by a scrap recycler if:

(i) from a fixed location, the scrap recycler utilizes machinery or equipment to process one or more of the following items into prepared grades of processed materials for use in new products:

(A) iron;

(B) steel;

(C) nonferrous metal;

(D) paper;

(E) glass;

(F) plastic;

(G) textile; or

(H) rubber; and

(ii) the new products under Subsection (13)(d)(i) would otherwise be made with nonrecycled materials.

(14) "Manufactured home" means any manufactured home or mobile home as defined in Title 58, Chapter 56, Utah Uniform Building Standards Act.

(15) For purposes of Subsection 59-12-104(14), "manufacturing facility" means:

(a) an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget; or

(b) a scrap recycler if:

(i) from a fixed location, the scrap recycler utilizes machinery or equipment to process one or more of the following items into prepared grades of processed materials for use in new products:

(A) iron;

(B) steel;

(C) nonferrous metal;

(D) paper;

(E) glass;

(F) plastic;

(G) textile; or

(H) rubber; and

(ii) the new products under Subsection (15)(b)(i) would otherwise be made with nonrecycled materials.

(16) (a) "Medicine" means:

(i) insulin, syringes, and any medicine prescribed for the treatment of human ailments by a person authorized to prescribe treatments and dispensed on prescription filled by a registered pharmacist, or supplied to patients by a physician, surgeon, or podiatric physician;

(ii) any medicine dispensed to patients in a county or other licensed hospital if prescribed for that patient and dispensed by a registered pharmacist or administered under the direction of a physician; and

(iii) any oxygen or stoma supplies prescribed by a physician or administered under the direction of a physician or paramedic.

(b) "Medicine" does not include:

(i) any auditory, prosthetic, ophthalmic, or ocular device or appliance; or

(ii) any alcoholic beverage.

(17) "Olympic merchandise" means tangible personal property bearing an Olympic designation, emblem, insignia, mark, logo, service mark, symbol, terminology, trademark, or other copyrighted or protected material, including:

(a) one or more of the following terms:

(i) "Olympic";

(ii) "Olympiad"; or

(iii) "Citius Altius Fortius";

(b) the symbol of the International Olympic Committee, consisting of five interlocking rings;

(c) the emblem of the International Olympic Committee Corporation;

(d) a United States Olympic Committee designation, emblem, insignia, mark, logo, service mark, symbol, terminology, trademark, or other copyrighted or protected material;

(e) any emblem of the Olympic Winter Games of 2002 that is officially designated by the Salt Lake Organizing Committee of the Olympic Winter Games of 2002; or

(f) the mascot of the Olympic Winter Games of 2002.

(18) (a) "Other fuels" means products that burn independently to produce heat or energy.

(b) "Other fuels" includes oxygen when it is used in the manufacturing of tangible personal property.

(19) "Person" includes any individual, firm, partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city, municipality, district, or other local governmental entity of the state, or any group or combination acting as a unit.

(20) "Purchase price" means the amount paid or charged for tangible personal property or any other taxable transaction under Subsection 59-12-103(1), excluding only cash discounts taken or any excise tax imposed on the purchase price by the federal government.

(21) "Regularly rented" means:

(a) rented to a guest for value three or more times during a calendar year; and

(b) advertised or held out to the public as a place that is regularly rented to guests for value.

[~~(21)~~] (22) "Residential use" means the use in or around a home, apartment building, sleeping quarters, and similar facilities or accommodations.

[~~(22)~~] (23) (a) "Retail sale" means any sale within the state of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), other than resale of such property, item, or service by a retailer or wholesaler to a user or consumer.

(b) "Retail sale" includes sales by any farmer or other agricultural producer of poultry, eggs, or dairy products to consumers if the sales have an average monthly sales value of $125 or more.

(c) "Retail sale" does not include, and no additional sales or use tax shall be assessed against, those transactions where a purchaser of tangible personal property pays applicable sales or use taxes on its initial nonexempt purchases of property and then enters into a sale-leaseback transaction by which title to such property is transferred by the purchaser-lessee to a lessor for consideration, provided:

(i) the transaction is intended as a form of financing for the property to the purchaser-lessee; and

(ii) pursuant to generally accepted accounting principles, the purchaser-lessee is required to capitalize the subject property for financial reporting purposes, and account for the lease payments as payments made under a financing arrangement.

[~~(23)~~] (24) (a) "Retailer" means any person engaged in a regularly organized retail business in tangible personal property or any other taxable transaction under Subsection 59-12-103(1), and who is selling to the user or consumer and not for resale.

(b) "Retailer" includes commission merchants, auctioneers, and any person regularly engaged in the business of selling to users or consumers within the state.

(c) "Retailer" does not include farmers, gardeners, stockmen, poultrymen, or other growers or agricultural producers producing and doing business on their own premises, except those who are regularly engaged in the business of buying or selling for a profit.

(d) For purposes of this chapter the commission may regard as retailers the following if they determine it is necessary for the efficient administration of this chapter: salesmen, representatives, peddlers, or canvassers as the agents of the dealers, distributors, supervisors, or employers under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of these dealers, distributors, supervisors, or employers, except that:

(i) a printer's facility with which a retailer has contracted for printing shall not be considered to be a salesman, representative, peddler, canvasser, or agent of the retailer; and

(ii) the ownership of property that is located at the premises of a printer's facility with which the retailer has contracted for printing and that consists of the final printed product, property that becomes a part of the final printed product, or copy from which the printed product is produced, shall not result in the retailer being deemed to have or maintain an office, distribution house, sales house, warehouse, service enterprise, or other place of business, or to maintain a stock of goods, within this state.

[~~(24)~~] (25) "Sale" means any transfer of title, exchange, or barter, conditional or otherwise, in any manner, of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), for consideration. It includes:

(a) installment and credit sales;

(b) any closed transaction constituting a sale;

(c) any sale of electrical energy, gas, services, or entertainment taxable under this chapter;

(d) any transaction if the possession of property is transferred but the seller retains the title as security for the payment of the price; and

(e) any transaction under which right to possession, operation, or use of any article of tangible personal property is granted under a lease or contract and the transfer of possession would be taxable if an outright sale were made.

[~~(25)~~] (26) (a) "Sales relating to schools" means the following sales by, amounts paid to, or amounts charged by a school:

(i) sales that are directly related to the school's educational functions or activities including:

(A) the sale of:

(I) textbooks;

(II) textbook fees;

(III) laboratory fees;

(IV) laboratory supplies; or

(V) safety equipment;

(B) the sale of clothing that:

(I) a student is specifically required to wear as a condition of participation in a school-related event or school-related activity; and

(II) is not readily adaptable to general or continued usage to the extent that it takes the place of ordinary clothing;

(C) sales of food if the net or gross revenues generated by the food sales are deposited into a school district fund or school fund dedicated to school meals; or

(D) transportation charges for official school activities; or

(ii) amounts paid to or amounts charged by a school for admission to a school-related event or school-related activity.

(b) "Sales relating to schools" does not include:

(i) bookstore sales of items that are not educational materials or supplies;

(ii) except as provided in Subsection [~~(25)~~] (26)(a)(i)(B), clothing; or

(iii) amounts paid to or amounts charged by a school for admission to a school-related event or school-related activity if the amounts paid or charged are passed through to a person:

(A) other than a:

(I) school;

(II) nonprofit organization authorized by a school board or a governing body of a private school to organize and direct a competitive secondary school activity; or

(III) nonprofit association authorized by a school board or a governing body of a private school to organize and direct a competitive secondary school activity; and

(B) that is required to collect sales and use taxes under this chapter.

(c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may make rules defining the term "passed through."

[~~(26)~~] (27) For purposes of this section and Section 59-12-104, "school" means:

(a) an elementary school or a secondary school that:

(i) is a:

(A) public school; or

(B) private school; and

(ii) provides instruction for one or more grades kindergarten through 12; or

(b) a public school district.

[~~(27)~~] (28) (a) "Semiconductor fabricating or processing materials" means tangible personal property:

(i) used primarily in the process of:

(A) (I) manufacturing a semiconductor; or

(II) fabricating a semiconductor; or

(B) maintaining an environment suitable for a semiconductor; or

(ii) consumed primarily in the process of:

(A) (I) manufacturing a semiconductor; or

(II) fabricating a semiconductor; or

(B) maintaining an environment suitable for a semiconductor.

(b) "Semiconductor fabricating or processing materials" includes a chemical, catalyst, or other material used to:

(i) produce or induce in a semiconductor a:

(A) chemical change; or

(B) physical change;

(ii) remove impurities from a semiconductor; or

(iii) improve the marketable condition of a semiconductor.

[~~(28)~~] (29) "Senior citizen center" means a facility having the primary purpose of providing services to the aged as defined in Section 62A-3-101.

[~~(29)~~] (30) "State" means the state of Utah, its departments, and agencies.

[~~(30)~~] (31) "Storage" means any keeping or retention of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), in this state for any purpose except sale in the regular course of business.

[~~(31)~~] (32) (a) "Tangible personal property" means:

(i) all goods, wares, merchandise, produce, and commodities;

(ii) all tangible or corporeal things and substances which are dealt in or capable of being possessed or exchanged;

(iii) water in bottles, tanks, or other containers; and

(iv) all other physically existing articles or things, including property severed from real estate.

(b) "Tangible personal property" does not include:

(i) real estate or any interest or improvements in real estate;

(ii) bank accounts, stocks, bonds, mortgages, notes, and other evidence of debt;

(iii) insurance certificates or policies;

(iv) personal or governmental licenses;

(v) water in pipes, conduits, ditches, or reservoirs;

(vi) currency and coinage constituting legal tender of the United States or of a foreign nation; and

(vii) all gold, silver, or platinum ingots, bars, medallions, or decorative coins, not constituting legal tender of any nation, with a gold, silver, or platinum content of not less than 80%.

[~~(32)~~] (33) (a) "Telephone corporation" means a corporation that:

(i) owns, controls, operates, or manages a telephone service; and

(ii) engages in an activity described in Subsection [~~(32)~~] (33)(a)(i) for the shared use with or resale to any person of the telephone service.

(b) A corporation described in Subsection [~~(32)~~] (33)(a) is a telephone corporation whether or not the Public Service Commission of Utah regulates:

(i) the corporation; or

(ii) the telephone service that the corporation owns, controls, operates, or manages.

[~~(33)~~] (34) (a) For purposes of Subsection [~~(32)~~] (33) and Section 59-12-103, "telephone service" means a two-way transmission:

(i) by:

(A) wire;

(B) radio;

(C) lightwave; or

(D) other electromagnetic means; and

(ii) of one or more of the following:

(A) a sign;

(B) a signal;

(C) writing;

(D) an image;

(E) sound;

(F) a message;

(G) data; or

(H) other information of any nature.

(b) "Telephone service" includes:

(i) cellular telephone service;

(ii) private communications service; or

(iii) automated digital telephone answering service.

(c) "Telephone service" does not include a service or a transaction that a state or a political subdivision of a state is prohibited from taxing as of July 1, 2001, under the Internet Tax Freedom Act, Pub. L. No. 105-277.

[~~(34)~~] (35) (a) "Use" means the exercise of any right or power over tangible personal property under Subsection 59-12-103(1), incident to the ownership or the leasing of that property, item, or service.

(b) "Use" does not include the sale, display, demonstration, or trial of that property in the regular course of business and held for resale.

[~~(35)~~] (36) "Vehicle" means any aircraft, as defined in Section 72-10-102; any vehicle, as defined in Section 41-1a-102; any off-highway vehicle, as defined in Section 41-22-2; and any vessel, as defined in Section 41-1a-102; that is required to be titled, registered, or both. "Vehicle," for purposes of Subsection 59-12-104(36) only, also includes any locomotive, freight car, railroad work equipment, or other railroad rolling stock.

[~~(36)~~] (37) "Vehicle dealer" means a person engaged in the business of buying, selling, or exchanging vehicles as defined in Subsection [~~(35)~~] (36).

[~~(37)~~] (38) (a) "Vendor" means any person receiving any payment or consideration upon a sale of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), or to whom the payment or consideration is payable.

(b) "Vendor" does not mean a printer's facility described in Subsection [~~(23)~~] (24)(d).

Section 2. Section 59-12-103 (Effective 07/01/01) is amended to read:

59-12-103 (Effective 07/01/01). Sales and use tax base -- Rate -- Use of sales and use tax revenues.

(1) A tax is imposed on the purchaser as provided in this part for amounts paid or charged for the following transactions:

(a) retail sales of tangible personal property made within the state;

(b) amounts paid to common carriers or to telephone corporations or telegraph corporations, whether the corporations are municipally or privately owned, for:

(i) all transportation;

(ii) intrastate telephone service; or

(iii) telegraph service;

(c) sales of the following for commercial use:

(i) gas;

(ii) electricity;

(iii) heat;

(iv) coal;

(v) fuel oil; or

(vi) other fuels;

(d) sales of the following for residential use:

(i) gas;

(ii) electricity;

(iii) heat;

(iv) coal;

(v) fuel oil; or

(vi) other fuels;

(e) sales of meals;

(f) except as provided in Section 59-12-104, amounts paid or charged as admission or user fees for theaters, movies, operas, museums, planetariums, shows of any type or nature, exhibitions, concerts, carnivals, amusement parks, amusement rides, circuses, menageries, fairs, races, contests, sporting events, dances, boxing matches, wrestling matches, closed circuit television broadcasts, billiard parlors, pool parlors, bowling lanes, golf, miniature golf, golf driving ranges, batting cages, skating rinks, ski lifts, ski runs, ski trails, snowmobile trails, tennis courts, swimming pools, water slides, river runs, jeep tours, boat tours, scenic cruises, horseback rides, sports activities, or any other amusement, entertainment, recreation, exhibition, cultural, or athletic activity;

(g) amounts paid or charged for services:

(i) for repairs or renovations of tangible personal property; or

(ii) to install tangible personal property in connection with other tangible personal property;

(h) except as provided in Subsection 59-12-104(7), amounts paid or charged for cleaning or washing of tangible personal property;

(i) amounts paid or charged for tourist home, hotel, motel, or trailer court accommodations and services that are regularly rented for less than 30 consecutive days;

(j) amounts paid or charged for laundry or dry cleaning services;

(k) amounts paid or charged for leases or rentals of tangible personal property if:

(i) the tangible personal property's situs is in this state;

(ii) the lessee took possession of the tangible personal property in this state; or

(iii) within this state the tangible personal property is:

(A) stored;

(B) used; or

(C) otherwise consumed;

(l) amounts paid or charged for tangible personal property if within this state the tangible personal property is:

(i) stored;

(ii) used; or

(iii) consumed; and

(m) amounts paid or charged for prepaid telephone calling cards.

(2) (a) Except as provided in Subsections (2)(b) and (c), beginning on July 1, 2001, a state tax and a local tax is imposed on a transaction described in Subsection (1) equal to the sum of:

(i) a state tax imposed on the transaction at a rate of 4.75%; and

(ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the transaction under this chapter other than this part.

(b) Notwithstanding Subsection (2)(a), beginning on July 1, 2001, a state tax and a local tax is imposed on a transaction described in Subsection (1)(d) equal to the sum of:

(i) a state tax imposed on the transaction at a rate of 2%; and

(ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the transaction under this chapter other than this part.

(c) Notwithstanding Subsections (2)(a) and (b), beginning on July 1, 2001, if a vendor collects a tax under Subsection 59-12-107(1)(b) on a transaction described in Subsection (1), a state tax and a local tax is imposed on the transaction equal to the sum of:

(i) a state tax imposed on the transaction at a rate of:

(A) 4.75% for a transaction other than a transaction described in Subsection (1)(d); or

(B) 2% for a transaction described in Subsection (1)(d); and

(ii) except as provided in Subsection (2)(d), a local tax imposed on the transaction at a rate equal to the sum of the following tax rates:

(A) (I) the lowest tax rate imposed by a county, city, or town under Section 59-12-204, but only if all of the counties, cities, and towns in the state impose the tax under Section 59-12-204; or

(II) the lowest tax rate imposed by a county, city, or town under Section 59-12-205, but only if all of the counties, cities, and towns in the state impose the tax under Section 59-12-205; and

(B) the tax rate authorized by Section 59-12-1102, but only if all of the counties in the state impose the tax under Section 59-12-1102.

(d) Tax rates authorized under the following do not apply to Subsection (2)(c)(ii):

(i) Subsection (2)(a)(i);

(ii) Subsection (2)(b)(i);

(iii) Subsection (2)(c)(i);

(iv) Section 59-12-301;

(v) Section 59-12-352;

(vi) Section 59-12-353;

(vii) Section 59-12-401;

(viii) Section 59-12-402;

(ix) Section 59-12-501;

(x) Section 59-12-502;

(xi) Section 59-12-603;

(xii) Section 59-12-703;

(xiii) Section 59-12-802;

(xiv) Section 59-12-804;

(xv) Section 59-12-1001;

(xvi) Section 59-12-1201; or

(xvii) Section 59-12-1302.

(3) (a) Except as provided in Subsections (4) through (9), the state taxes described in Subsections (2)(a)(i), (2)(b)(i), and (2)(c)(i) shall be deposited into the General Fund.

(b) The local taxes described in Subsections (2)(a)(ii) and (2)(b)(ii) shall be distributed to a county, city, or town as provided in this chapter.

(c) (i) Notwithstanding any provision of this chapter, each county, city, or town in the state shall receive the county's, city's, or town's proportionate share of the revenues generated by the local tax described in Subsection (2)(c)(ii) as provided in Subsection (3)(c)(ii).

(ii) The commission shall determine a county's, city's, or town's proportionate share of the revenues under Subsection (3)(c)(i) by:

(A) calculating an amount equal to:

(I) the population of the county, city, or town; divided by

(II) the total population of the state; and

(B) multiplying the amount determined under Subsection (3)(c)(ii)(A) by the total amount of revenues generated by the local tax under Subsection (2)(c)(ii) for all counties, cities, and towns.

(iii) (A) Except as provided in Subsection (3)(c)(iii)(B), population figures for purposes of this section shall be derived from the most recent official census or census estimate of the United States Census Bureau.

(B) Notwithstanding Subsection (3)(c)(iii)(A), if a needed population estimate is not available from the United States Census Bureau, population figures shall be derived from the estimate from the Utah Population Estimates Committee created by executive order of the governor.

(C) For purposes of this section, the population of a county may only include the population of the unincorporated areas of the county.

(4) (a) Notwithstanding Subsection (3)(a), there shall be deposited in an Olympics special revenue fund or funds as determined by the Division of Finance under Section 51-5-4, for the use of the Utah Sports Authority created under Title 63A, Chapter 7, Utah Sports Authority Act:

(i) from January 1, 1990, through December 31, 1999, the amount of sales and use tax generated by a 1/64% tax rate on the taxable transactions under Subsection (1);

(ii) from January 1, 1990, through June 30, 1999, the amount of revenue generated by a 1/64% tax rate under Section 59-12-204 or Section 59-12-205 on the taxable transactions under Subsection (1); and

(iii) interest earned on the amounts under Subsections (4)(a)(i) and (ii).

(b) These funds shall be used:

(i) by the Utah Sports Authority as follows:

(A) to the extent funds are available, to transfer directly to a debt service fund or to otherwise reimburse to the state any amount expended on debt service or any other cost of any bonds issued by the state to construct any public sports facility as defined in Section 63A-7-103;

(B) to pay for the actual and necessary operating, administrative, legal, and other expenses of the Utah Sports Authority, but not including protocol expenses for seeking and obtaining the right to host the Winter Olympic Games;

(C) as otherwise appropriated by the Legislature; and

(D) unless the Legislature appropriates additional funds from the Olympics Special Revenue Fund to the Utah Sports Authority, the Utah Sports Authority may not expend, loan, or pledge in the aggregate more than:

(I) $59,000,000 of sales and use tax deposited into the Olympics Special Revenue Fund under Subsection (4)(a);

(II) the interest earned on the amount described in Subsection (4)(b)(i)(D)(I); and

(III) the revenues deposited into the Olympics Special Revenue Fund that are not sales and use taxes deposited under Subsection (4)(a) or interest on the sales and use taxes;

(ii) to pay salary, benefits, or administrative costs associated with the State Olympic Officer under Subsection 63A-10-103(3), except that the salary, benefits, or administrative costs may not be paid from the sales and use tax revenues generated by municipalities or counties and deposited under Subsection (4)(a)(ii).

(c) A payment of salary, benefits, or administrative costs under Subsection 63A-10-103(3) is not considered an expenditure of the Utah Sports Authority.

(d) If the Legislature appropriates additional funds under Subsection (4)(b)(i)(D), the authority may not expend, loan, pledge, or enter into any agreement to expend, loan, or pledge the appropriated funds unless the authority:

(i) contracts in writing for the full reimbursement of the monies to the Olympics Special Revenue

Fund by a public sports entity or other person benefitting from the expenditure; and

(ii) obtains a security interest that secures payment or performance of the obligation to reimburse.

(e) A contract or agreement entered into in violation of Subsection (4)(d) is void.

(5) (a) Notwithstanding Subsection (3)(a), beginning on July 1, 2001, the amount of sales and use tax generated annually by a 1/16% tax rate on the taxable transactions under Subsection (1) shall be used as provided in Subsections (5)(b) through (g).

(b) (i) Beginning on July 1, 2001, $2,300,000 each year shall be transferred as dedicated credits to the Department of Natural Resources to:

(A) implement the measures described in Subsections 63-34-14(4)(a) through (d) to protect sensitive plant and animal species; or

(B) award grants, up to the amount authorized by the Legislature in an appropriations act, to political subdivisions of the state to implement the measures described in Subsections 63-34-14(4)(a) through (d) to protect sensitive plant and animal species.

(ii) Money transferred to the Department of Natural Resources under Subsection (5)(b)(i) may not be used to assist the United States Fish and Wildlife Service or any other person to list or attempt to have listed a species as threatened or endangered under the Endangered Species Act of 1973, 16 U.S.C. Sec. 1531 et seq.

(iii) At the end of each fiscal year:

(A) 50% of any unexpended dedicated credits shall lapse to the Water Resources Conservation and Development Fund created in Section 73-10-24;

(B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan Program subaccount created in Section 73-10c-5; and

(C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan Program subaccount created in Section 73-10c-5.

(c) Five hundred thousand dollars each year shall be deposited in the Agriculture Resource Development Fund created in Section 4-18-6.

(d) (i) One hundred thousand dollars each year shall be transferred as dedicated credits to the Division of Water Rights to cover the costs incurred in hiring legal and technical staff for the adjudication of water rights.

(ii) At the end of each fiscal year:

(A) 50% of any unexpended dedicated credits shall lapse to the Water Resources Conservation and Development Fund created in Section 73-10-24;

(B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan Program subaccount created in Section 73-10c-5; and

(C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan Program subaccount created in Section 73-10c-5.

(e) Fifty percent of the remaining amount generated by the 1/16% tax rate shall be deposited in the Water Resources Conservation and Development Fund created in Section 73-10-24 for use by the Division of Water Resources. In addition to the uses allowed of the fund under Section 73-10-24, the fund may also be used to:

(i) provide a portion of the local cost share, not to exceed in any fiscal year 50% of the funds made available to the Division of Water Resources under this section, of potential project features of the Central Utah Project;

(ii) conduct hydrologic and geotechnical investigations by the Department of Natural Resources in a cooperative effort with other state, federal, or local entities, for the purpose of quantifying surface and ground water resources and describing the hydrologic systems of an area in sufficient detail so as to enable local and state resource managers to plan for and accommodate growth in water use without jeopardizing the resource;

(iii) fund state required dam safety improvements; and

(iv) protect the state's interest in interstate water compact allocations, including the hiring of technical and legal staff.

(f) Twenty-five percent of the remaining amount generated by the 1/16% tax rate shall be deposited in the Utah Wastewater Loan Program subaccount created in Section 73-10c-5 for use by the Water Quality Board to fund wastewater projects.

(g) Twenty-five percent of the remaining amount generated by the 1/16% tax rate shall be deposited in the Drinking Water Loan Program subaccount created in Section 73-10c-5 for use by the Division of Drinking Water to:

(i) provide for the installation and repair of collection, treatment, storage, and distribution facilities for any public water system, as defined in Section 19-4-102;

(ii) develop underground sources of water, including springs and wells; and

(iii) develop surface water sources.

(6) (a) Notwithstanding Subsection (3)(a), beginning on July 1, 2001, the amount of sales and use tax generated annually by a 1/16% tax rate on the taxable transactions under Subsection (1) shall be used as provided in Subsections (6)(b) through (d).

(b) (i) Five hundred thousand dollars each year shall be deposited in the Transportation Corridor Preservation Revolving Loan Fund created in Section 72-2-117.

(ii) At least 50% of the money deposited in the Transportation Corridor Preservation Revolving Loan Fund under Subsection (6)(b)(i) shall be used

to fund loan applications made by the Department of Transportation at the request of local governments.

(c) From July 1, 1997, through June 30, 2006, $500,000 each year shall be transferred as nonlapsing dedicated credits to the Department of Transportation for the State Park Access Highways Improvement Program created in Section 72-3-207.

(d) The remaining amount generated by the 1/16% tax rate shall be deposited in the class B and class C roads account to be expended as provided in Title 72, Chapter 2, Transportation Finances Act, for the use of class B and C roads.

(7) (a) Notwithstanding Subsection (3)(a), beginning on January 1, 2000, the Division of Finance shall deposit into the Centennial Highway Fund created in Section 72-2-118 a portion of the state sales and use tax under Subsection (2) equal to the revenues generated by a 1/64% tax rate on the taxable transactions under Subsection (1).

(b) Except for sales and use taxes deposited under Subsection (8), beginning on July 1, 1999, the revenues generated by the 1/64% tax rate:

(i) retained under Subsection 59-12-204(7)(a) shall be retained by the counties, cities, or towns as provided in Section 59-12-204; and

(ii) retained under Subsection 59-12-205(4)(a) shall be distributed to each county, city, and town as provided in Section 59-12-205.

(8) Notwithstanding Subsection (3)(a), beginning on July 1, 1999, the commission shall deposit into the Airport to University of Utah Light Rail Restricted Account created in Section 17A-2-1064 the portion of the sales and use tax under Sections 59-12-204 and 59-12-205 that is:

(a) generated by a city or town that will have constructed within its boundaries the Airport to University of Utah Light Rail described in the Transportation Equity Act for the 21st Century, Pub. L. No. 105-178, Sec. 3030(c)(2)(B)(i)(II), 112 Stat. 107; and

(b) equal to the revenues generated by a 1/64% tax rate on the taxable items and services under Subsection (1).

(9) (a) Notwithstanding Subsection (3)(a), for fiscal years beginning on or after fiscal year 2002-03, the commission shall on or before September 30 of each year deposit the difference described in Subsection (9)(b) into the Remote Sales Restricted Account created in Section 59-12-103.2 if that difference is greater than $0.

(b) The difference described in Subsection (9)(a) is equal to the difference between:

(i) the total amount of revenues under Subsection (2)(c)(i) the commission received from vendors collecting a tax under Subsection 59-12-107(1)(b) for the fiscal year immediately preceding the September 30 described in Subsection (9)(a); and

(ii) the total amount of revenues under Subsection (2)(c)(i) the commission estimates that the commission received from vendors described in Subsection 59-12-107(1)(b) for fiscal year 2000-01.

(10) (a) For purposes of amounts paid or charged as admission or user fees relating to the Olympic Winter Games of 2002, the amounts are considered to be paid or charged on the day on which the Salt Lake Organizing Committee for the Olympic Winter Games of 2002 or a person designated by the Salt Lake Organizing Committee for the Olympic Winter Games of 2002 sends a purchaser confirmation of the purchase of an admission or user fee described in Subsection (1)(f).

(b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission shall make rules defining what constitutes sending a purchaser confirmation under Subsection (10)(a).

Section 3. Section 59-12-301 is amended to read:

59-12-301. Transient room tax -- Rate -- Imposition or repeal of tax -- Tax rate change -- Effective date -- Notice requirements.

(1) (a) Any county legislative body may impose a transient room tax not to exceed 3% of the rent for every occupancy of a suite[~~,~~] or room[~~, or rooms~~]:

(i) on [~~all persons, companies, corporations, or other similar persons, groups, or organizations~~] the following entities doing business as motor courts, motels, hotels, inns, or providing similar public accommodations[~~.~~]:

(A) a person;

(B) a company;

(C) a corporation; or

(D) a person, group, or organization similar to Subsections (1)(a)(i)(A) through (C); and

(ii) if the suite or room is regularly rented for less than 30 consecutive days.

(b) A county legislative body imposing a tax under this part shall impose the tax on the rents described in Subsection (1)(a) relating to the Olympic Winter Games of 2002 made to or by an organization exempt from federal income taxation under Section 501(c)(3), Internal Revenue Code, except for rents described in Subsection (1)(a):

(i) paid for in full by the Salt Lake Organizing Committee for the Olympic Winter Games of 2002;

(ii) exclusively used by:

(A) an officer, a trustee, or an employee of the Salt Lake Organizing Committee for the Olympic Winter Games of 2002; or

(B) a volunteer supervised by the Salt Lake Organizing Committee for the Olympic Winter Games of 2002; and

(iii) for which the Salt Lake Organizing Committee for the Olympic Winter Games of 2002 does not receive reimbursement.

(2) Subject to Subsection (3), a county legislative body:

(a) may increase or decrease the transient room tax; and

(b) shall regulate the transient room tax by ordinance.

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

(i) "Annexation" means an annexation to a county under Title 17, Chapter 2, Annexation to County.

(ii) "Annexing area" means an area that is annexed into a county.

(b) (i) If, on or after May 1, 2000, a county enacts or repeals a tax or changes the rate of a tax under this part, the enactment, repeal, or change shall take effect:

(A) on the first day of a calendar quarter; and

(B) after a 75-day period beginning on the date the commission receives notice meeting the requirements of Subsection (3)(b)(ii) from the county.

(ii) The notice described in Subsection (3)(b)(i)(B) shall state:

(A) that the county will enact or repeal a tax or change the rate of a tax under this part;

(B) the statutory authority for the tax described in Subsection (3)(b)(ii)(A);

(C) the effective date of the tax described in Subsection (3)(b)(ii)(A); and

(D) if the county enacts the tax or changes the rate of the tax described in Subsection (3)(b)(ii)(A), the new rate of the tax.

(c) (i) If, for an annexation that occurs on or after May 1, 2000, the annexation will result in a change in the rate of a tax under this part for an annexing area, the change shall take effect:

(A) on the first day of a calendar quarter; and

(B) after a 75-day period beginning on the date the commission receives notice meeting the requirements of Subsection (3)(c)(ii) from the county that annexes the annexing area.

(ii) The notice described in Subsection (3)(c)(i)(B) shall state:

(A) that the annexation described in Subsection (3)(c)(i) will result in a change in the rate of a tax under this part for the annexing area;

(B) the statutory authority for the tax described in Subsection (3)(c)(ii)(A);

(C) the effective date of the tax described in Subsection (3)(c)(ii)(A); and

(D) the new rate of the tax described in Subsection (3)(c)(ii)(A).

Section 4. Section 59-12-351 is amended to read:

59-12-351. Definitions.

For purposes of this part:

(1) "Public accommodation" means a place providing temporary sleeping accommodations that is regularly rented to the public and includes:

(a) a motel;

(b) a hotel;

(c) a motor court;

(d) an inn;

(e) a bed and breakfast establishment;

(f) a condominium; and

(g) a resort home.

(2) "Rents" include:

(a) rents; and

(b) timeshare fees or dues.

(3) "Transient" means a person who occupies a public accommodation for less than 30 consecutive days [~~or less~~].

Section 5. Section 59-12-603 is amended to read:

59-12-603. County tax -- Bases -- Rates -- Use of revenues -- Collection -- Adoption of ordinance required -- Administration -- Distribution -- Enactment or repeal of tax or tax rate change -- Effective date -- Notice requirements.

(1) In addition to any other taxes, a county legislative body may, as provided in this part, impose a tourism, recreation, cultural, and convention tax as follows:

(a) (i) a county legislative body of any county may impose a tax of not to exceed 3% on all short-term leases and rentals of motor vehicles not exceeding 30 days, except for leases and rentals of motor vehicles made for the purpose of temporarily replacing a person's motor vehicle that is being repaired pursuant to a repair or an insurance agreement;

(ii) beginning on or after January 1, 1999, a county legislative body of any county imposing a tax under Subsection (1)(a)(i) may, in addition to imposing the tax under Subsection (1)(a)(i), impose a tax of not to exceed 4% on all short-term leases and rentals of motor vehicles not exceeding 30 days, except for leases and rentals of motor vehicles made for the purpose of temporarily replacing a person's motor vehicle that is being repaired pursuant to a repair or an insurance agreement;

(b) a county legislative body of any county may impose a tax of not to exceed 1% of all sales of prepared foods and beverages that are sold by restaurants; and

(c) a county legislative body of any county may impose a tax of not to exceed 1/2% of the rent for every occupancy of a suite[~~,~~] or room[~~, or rooms~~]:

(i) on [~~all persons, companies, corporations, or other similar persons, groups, or organizations~~] the following entities doing business as motor courts, motels, hotels, inns, or providing similar public accommodations[~~.~~]:

(A) a person;

(B) a company;

(C) a corporation; or

(D) a person, group, or organization similar to Subsections (1)(c)(i)(A) through (C); and

(ii) if the suite or room is regularly rented for less than 30 consecutive days.

(2) The revenue from the imposition of the taxes provided for in Subsections (1)(a) through (c) may be used for the purposes of financing tourism promotion, and the development, operation, and maintenance of tourist, recreation, cultural, and convention facilities as defined in Section 59-12-602.

(3) The tax imposed under Subsection (1)(c) shall be in addition to the transient room tax imposed under Part 3, Transient Room Tax, and may be imposed only by a county of the first class.

(4) (a) A tax imposed under this part shall be levied at the same time and collected in the same manner as provided in Part 2, Local Sales and Use Tax Act, except that the collection and distribution of the tax revenue is not subject to the provisions of Subsection 59-12-205(2).

(b) A tax imposed under this part may be pledged as security for bonds, notes, or other evidences of indebtedness incurred by a county under Title 11, Chapter 14, Utah Municipal Bond Act, to finance tourism, recreation, cultural, and convention facilities.

(5) (a) In order to impose the tax under Subsection (1), each county legislative body shall annually adopt an ordinance imposing the tax.

(b) (i) The ordinance under Subsection (5)(a) shall include provisions substantially the same as those contained in Part 1, Tax Collection, except that the tax shall be imposed only on those items and sales described in Subsection (1).

(ii) A county legislative body imposing a tax under this part shall impose the tax as provided in this section on the leases, rentals, and sales described in Subsection (1) relating to the Olympic Winter Games of 2002 made to or by an organization exempt from federal income taxation under Section 501(c)(3), Internal Revenue Code, except for leases, rentals, and sales described in Subsection (1):

(A) paid for in full by the Salt Lake Organizing Committee for the Olympic Winter Games of 2002;

(B) exclusively used by:

(I) an officer, a trustee, or an employee of the Salt Lake Organizing Committee for the Olympic Winter Games of 2002; or

(II) a volunteer supervised by the Salt Lake Organizing Committee for the Olympic Winter Games of 2002; and

(C) for which the Salt Lake Organizing Committee for the Olympic Winter Games of 2002 does not receive reimbursement.

(c) The name of the county as the taxing agency shall be substituted for that of the state where necessary, and an additional license is not required if one has been or is issued under Section 59-12-106.

(6) In order to maintain in effect its tax ordinance adopted under this part, each county legislative body shall, within 30 days of any amendment of any applicable provisions of Part 1, Tax Collection, adopt amendments to its tax ordinance to conform with the applicable amendments to Part 1, Tax Collection.

(7) The commission shall:

(a) administer, collect, and enforce the tax authorized under this part pursuant to:

(i) the same procedures used to administer, collect, and enforce the sales and use tax under Part 1, Tax Collection; and

(ii) Chapter 1, General Taxation Policies;

(b) (i) except as provided in Subsection (7)(c), for a tax under this part other than the tax under Subsection (1)(a)(ii), distribute the revenues to the county imposing the tax; and

(ii) except as provided in Subsection (7)(c), for a tax under Subsection (1)(a)(ii), distribute the revenues according to the distribution formula provided in Subsection (8); and

(c) deduct from the distributions under Subsection (7)(b) an administrative charge for collecting the tax as provided in Section 59-12-206.

(8) The commission shall distribute the revenues generated by the tax under Subsection (1)(a)(ii) to each county collecting a tax under Subsection (1)(a)(ii) according to the following formula:

(a) the commission shall distribute 70% of the revenues based on the percentages generated by dividing the revenues collected by each county under Subsection (1)(a)(ii) by the total revenues collected by all counties under Subsection (1)(a)(ii); and

(b) the commission shall distribute 30% of the revenues based on the percentages generated by dividing the population of each county collecting a tax under Subsection (1)(a)(ii) by the total population of all counties collecting a tax under Subsection (1)(a)(ii).

(9) (a) For purposes of this Subsection (9):

(i) "Annexation" means an annexation to a county under Title 17, Chapter 2, Annexation to County.

(ii) "Annexing area" means an area that is annexed into a county.

(b) (i) If, on or after May 1, 2000, a county enacts or repeals a tax or changes the rate of a tax under

this part, the enactment, repeal, or change shall take effect:

(A) on the first day of a calendar quarter; and

(B) after a 75-day period beginning on the date the commission receives notice meeting the requirements of Subsection (9)(b)(ii) from the county.

(ii) The notice described in Subsection (9)(b)(i)(B) shall state:

(A) that the county will enact or repeal a tax or change the rate of a tax under this part;

(B) the statutory authority for the tax described in Subsection (9)(b)(ii)(A);

(C) the effective date of the tax described in Subsection (9)(b)(ii)(A); and

(D) if the county enacts the tax or changes the rate of the tax described in Subsection (9)(b)(ii)(A), the new rate of the tax.

(c) (i) If, for an annexation that occurs on or after May 1, 2000, the annexation will result in a change in the rate of a tax under this part for an annexing area, the change shall take effect:

(A) on the first day of a calendar quarter; and

(B) after a 75-day period beginning on the date the commission receives notice meeting the requirements of Subsection (9)(c)(ii) from the county that annexes the annexing area.

(ii) The notice described in Subsection (9)(c)(i)(B) shall state:

(A) that the annexation described in Subsection (9)(c)(i) will result in a change in the rate of a tax under this part for the annexing area;

(B) the statutory authority for the tax described in Subsection (9)(c)(ii)(A);

(C) the effective date of the tax described in Subsection (9)(c)(ii)(A); and

(D) the new rate of the tax described in Subsection (9)(c)(ii)(A).

Section 6. Repealer.

This act repeals:

Section 17-31-4, "Transient" defined.

Section 7. Effective date.

(1) If approved by two-thirds of all the members elected to each house, this act takes effect on July 1, 2001.

(2) If this bill passes but is not approved by two-thirds of all the members elected to each house, this act takes effect on October 1, 2001.

CHAPTER 12
S. B. 1004
Passed June 20, 2001
Approved July 5, 2001
Effective August 20, 2001

REGISTRATION AND TAXATION OF VEHICLES FOR SPORTS EVENTS

Sponsor: John W. Hickman

This act modifies provisions related to Motor Vehicles and Revenue and Taxation to address the issuance of temporary permits or temporary sports event registration certificates by the Motor Vehicle Enforcement Division or a motor vehicle dealer, and to address the suspension or revocation of the authority of a motor vehicle dealer to issue a temporary permit or a temporary sports event registration certificate. The act requires the Motor Vehicle Enforcement Division to impose fees for issuing a temporary permit or a temporary sports event registration certificate, and provides that the fees may be used as dedicated credits toward the costs of the division. The act subjects a motor vehicle issued a temporary sports event registration certificate to a $5 uniform fee in lieu of property taxes, addresses the imposition of property taxes and uniform fees on tangible personal property, and provides a sales and use tax exemption for the lease or use of a motor vehicle issued a temporary sports event registration certificate. The act makes technical changes.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
41-1a-202, as last amended by Chapter 245, Laws of Utah 1998
41-3-304, as renumbered and amended by Chapter 234, Laws of Utah 1992
59-2-405, as last amended by Chapter 322, Laws of Utah 1998
59-2-405.1, as enacted by Chapter 322, Laws of Utah 1998
59-12-104, as last amended by Chapters 170, 243 and 262, Laws of Utah 2001

ENACTS:
41-3-306, Utah Code Annotated 1953
41-3-603, Utah Code Annotated 1953

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

Section 1. Section 41-1a-202 is amended to read:

41-1a-202. Definitions -- Vehicles exempt from registration -- Registration of vehicles after establishing residency.

(1) In this section:

(a) "Domicile" means the place:

(i) where an individual has a fixed permanent home and principal establishment;

(ii) to which the individual if absent, intends to return; and

(iii) in which the individual and his family voluntarily reside, not for a special or temporary purpose, but with the intention of making a permanent home.

(b) (i) "Resident" means any of the following:

(A) an individual who:

(I) has established a domicile in this state;

(II) regardless of domicile, remains in this state for an aggregate period of six months or more during any calendar year;

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

(IV) declares himself to be a resident of this state for the purpose of obtaining a driver license or motor vehicle registration; or

(V) declares himself a resident of Utah to obtain privileges not ordinarily extended to nonresidents, including going to school, or placing children in school without paying nonresident tuition or fees;

(B) any individual, partnership, limited liability company, firm, corporation, association, or other entity that:

(I) maintains a main office, branch office, or warehouse facility in this state and that bases and operates a motor vehicle in this state; or

(II) operates a motor vehicle in intrastate transportation for other than seasonal work.

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

(A) a member of the military temporarily stationed in Utah; and

(B) an out-of-state student, as classified by the institution of higher education, enrolled with the equivalent of seven or more quarter hours, regardless of whether the student engages in a trade, profession, or occupation in this state or accepts employment in this state.

(2) Registration under this chapter is not required for any:

(a) vehicle registered in another state and owned by a nonresident of the state or operating under a temporary registration permit issued by the division or a dealer authorized by this chapter, driven or moved upon a highway in conformance with the provisions of this chapter relating to manufacturers, transporters, dealers, lien holders, or interstate vehicles;

(b) vehicle driven or moved upon a highway only for the purpose of crossing the highway from one property to another;

(c) implement of husbandry, whether of a type otherwise subject to registration or not, that is only incidentally operated or moved upon a highway;

(d) special mobile equipment;

(e) vehicle owned or leased by the federal government;

(f) motor vehicle not designed, used, or maintained for the transportation of passengers for hire or for the transportation of property if the motor vehicle is registered in another state and is owned and operated by a nonresident of this state;

(g) vehicle or combination of vehicles designed, used, or maintained for the transportation of persons for hire or for the transportation of property if the vehicle or combination of vehicles is registered in another state and is owned and operated by a nonresident of this state and if the vehicle or combination of vehicles has a gross laden weight of 26,000 pounds or less;

(h) trailer of 750 pounds or less unladen weight and not designed, used, and maintained for hire for the transportation of property or person;

(i) manufactured home or mobile home;

(j) off-highway vehicle currently registered under Section 41-22-3 if the off-highway vehicle is:

(i) being towed;

(ii) operated on a street or highway designated as open to off-highway vehicle use; or

(iii) operated in the manner prescribed in Section 41-22-10.3;

(k) off-highway implement of husbandry operated in the manner prescribed in Subsections 41-22-5.5(3) through (5);

(l) modular and prebuilt homes conforming to the uniform building code and presently regulated by the United States Department of Housing and Urban Development that are not constructed on a permanent chassis;

(m) electric assisted bicycles defined under Section 41-6-1; or

(n) motor assisted scooters defined under Section 41-6-1.

(3) Unless otherwise exempted under Subsection (2), registration under this chapter is required for any motor vehicle, combination of vehicles, trailer, semitrailer, or vintage vehicle within 60 days of the owner establishing residency in this state.

(4) A motor vehicle that is registered under Section 41-3-306 is exempt from the registration requirements of this part for the time period that the registration under Section 41-3-306 is valid.

Section 2. Section 41-3-304 is amended to read:

41-3-304. Temporary permits -- Temporary sports event registration certificate -- Suspension or revocation of dealer's authority to issue -- Return of temporary permits to division -- Refunds -- Appeal.

(1) The division may suspend or revoke [~~the privilege of issuing~~] a dealer's authority to issue a temporary [~~permits when it~~] permit or a temporary sports event registration certificate under this part if the division determines the dealer has failed to comply with this chapter or with any rules made by the [~~administrator~~] commission under [~~Section 41-3-302~~] this part.

(2) (a) Suspension or revocation of authority to issue a temporary [~~permits~~] permit or a temporary sports event registration certificate takes effect immediately upon written notification to the [~~licensee~~] dealer by the division.

(b) Upon notification, the [~~licensee~~] dealer shall immediately return all temporary permits to the division.

(c) [~~If~~] Subject to Subsection (2)(d), if the authority to issue a temporary permit under Section 41-3-302 is revoked or suspended for more than 30 days, the dealer may apply for a refund of the money paid to the division only for [~~all~~] temporary permits described in Section 41-3-302 that are returned prior to issuance.

(d) [~~Permits~~] Temporary permits being returned may not have ever been issued, written on, or separated from their stubs, and shall be in useable condition.

[~~(3) Failure to return the permits or to continue issuing them after the authority is suspended or revoked is a violation of this chapter and grounds for automatic suspension of a dealer's license.~~]

(3) If the division suspends or revokes a dealer's authority to issue a temporary permit or a temporary sports event registration certificate as provided in this section, each of the following is a violation of this chapter and grounds for automatic suspension of the dealer's license:

(a) failure to return a temporary permit to the division as provided in this section; or

(b) issuing a:

(i) temporary permit; or

(ii) temporary sports event registration certificate.

(4) (a) [~~If a licensee desires to~~] A dealer may appeal the division's suspension or revocation[~~, he shall file~~] by filing a written appeal with the administrator within ten days of the suspension or revocation.

(b) Upon receiving the [~~licensee's~~] dealer's written appeal, the administrator shall set a hearing for not more than 20 days from the date the written appeal is received.

[~~(c) The licensee may not continue to issue or possess any temporary permits while his authority is suspended or revoked.~~]

[~~(d) The~~] (c) A hearing [~~and subsequent~~] or appeal [~~process are~~] under this section shall be conducted

in accordance with Title 63, Chapter 46b, Administrative Procedures Act.

Section 3. Section 41-3-306 is enacted to read:

41-3-306. Temporary sports event registration -- Definitions -- Issuance -- Fees -- Expiration -- Rulemaking authority.

(1) As used in this section:

(a) "Distributor-provided vehicle" means a motor vehicle:

(i) that has never been titled or registered in any state; and

(ii) the use of which is donated by a distributor licensed under Part 2, Licensing, through a dealer licensed under Part 2, Licensing.

(b) (i) "Event period" means a time period:

(A) during which a sports event takes place;

(B) not to exceed 180 consecutive calendar days; and

(C) specified by the division on a temporary sports event registration certificate.

(ii) "Event period" may include one or more of the following time periods if the division determines that good cause exists for including the time period within the event period:

(A) a reasonable time period before a sports event as determined by the division; or

(B) a reasonable time period after a sports event as determined by the division.

(c) (i) Notwithstanding Section 41-3-102 and except as provided in Subsection (1)(c)(ii), "motor vehicle" means a motor vehicle that is subject to the uniform fee imposed by Section 59-2-405.1.

(ii) "Motor vehicle" does not include a state-assessed commercial vehicle as defined in Section 59-2-102.

(d) (i) "Sports event" means an amateur or professional:

(A) sports:

(I) game;

(II) race; or

(III) contest; or

(B) athletic:

(I) game;

(II) race; or

(III) contest.

(ii) "Sports event" includes a game, race, or contest described in Subsection (1)(d)(i) that is:

(A) an independent game, race, or contest; or

(B) a part of another event or activity regardless of whether the other event or activity is an event or activity relating to sports or athletics.

(e) "Temporary sports event registration certificate" means a motor vehicle certificate of registration issued by the division to a dealer in accordance with this section.

(2) Beginning on September 1, 2001, the division may register a motor vehicle for an event period by issuing to a dealer licensed under Part 2, Licensing, a temporary sports event registration certificate if the division determines that:

(a) the motor vehicle is a distributor-provided vehicle;

(b) the motor vehicle will be used for a sports event within the state during the event period; and

(c) the dealer provides the division an application stating:

(i) the person to whom the distributor is donating use of the motor vehicle;

(ii) the motor vehicle identification number;

(iii) the motor vehicle:

(A) make;

(B) model; and

(C) year;

(iv) the name of the sports event;

(v) the beginning date and ending date of the sports event; and

(vi) any other information the division requires.

(3) If the division issues a temporary sports event registration certificate to a dealer licensed under Part 2, Licensing:

(a) the division:

(i) shall specify the event period on the temporary sports event registration certificate; and

(ii) may specify any other information on the temporary sports event registration certificate as determined by the division; and

(b) the dealer shall for each motor vehicle for which the division issues a temporary sports event registration certificate:

(i) pay the:

(A) registration fees required by Chapter 1a, Part 12, Fee and Tax Requirements; and

(B) uniform fee required by Section 59-2-405.1; and

(ii) place the temporary sports event registration certificate in the rear license plate holder of the motor vehicle.

(4) A temporary sports event registration certificate issued by the division under this section is valid for the event period specified on the temporary sports event registration certificate.

(5) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may make rules:

(a) specifying the information to be provided to the division by a dealer or a person using a distributor-provided vehicle in connection with the issuance of a temporary sports event registration certificate;

(b) specifying the form for a temporary sports event registration certificate; or

(c) defining the terms:

(i) "reasonable time period before a sports event"; and

(ii) "reasonable time period after a sports event."

Section 4. Section 41-3-603 is enacted to read:

41-3-603. Fees for temporary permits and temporary sports event registration certificates -- Dedicated credits -- Use of fees.

(1) A dealer shall pay to the division a fee of $6 for each of the following the division issues to the dealer:

(a) a temporary permit under Section 41-3-302; or

(b) a temporary sports event registration certificate under Section 41-3-306.

(2) The division may use fees collected under Subsection (1) as dedicated credits to be used toward the costs of the division.

Section 5. Section 59-2-405 is amended to read:

59-2-405. Uniform fee on tangible personal property required to be registered with the state -- Distribution of revenues -- Appeals.

(1) The property described in Subsection (2), except Subsections (2)(b)(ii) and (iii), is exempt from ad valorem property taxes pursuant to Utah Constitution Article XIII, Section 14.

(2) (a) Except as provided in Subsection (2)(b), there is levied [~~an annual~~] as provided in this part a statewide uniform fee in lieu of the ad valorem tax on:

(i) motor vehicles required to be registered with the state that weigh 12,001 pounds or more;

(ii) motorcycles as defined in Section 41-1a-102 that are required to be registered with the state;

[~~(ii)~~] (iii) watercraft required to be registered with the state;

[~~(iii)~~] (iv) recreational vehicles required to be registered with the state; and

[~~(iv)~~] (v) all other tangible personal property required to be registered with the state before it is used on a public highway, on a public waterway, on public land, or in the air.

(b) The following personal property is exempt from the statewide uniform fee imposed by this section:

(i) aircraft;

(ii) vintage vehicles as defined in Section 41-21-1;

(iii) state-assessed commercial vehicles; [~~and~~]

(iv) tangible personal property subject to a uniform fee imposed by Section 59-2-405.1; and

[~~(iv)~~] (v) personal property that is exempt from state or county ad valorem property taxes under the laws of this state or of the federal government.

(3) Beginning on January 1, 1999, the uniform fee is 1.5% of the fair market value of the personal property, as established by the commission.

(4) Notwithstanding Section 59-2-407, property subject to the uniform fee that is brought into the state and is required to be registered in Utah shall, as a condition of registration, be subject to the uniform fee unless all property taxes or uniform fees imposed by the state of origin have been paid for the current calendar year.

(5) (a) The revenues collected in each county from the uniform fee shall be distributed by the county to each taxing entity in which the property described in Subsection (2) is located in the same proportion in which revenue collected from ad valorem real property tax is distributed.

(b) Each taxing entity shall distribute the revenues received under Subsection (5)(a) in the same proportion in which revenue collected from ad valorem real property tax is distributed.

(6) Appeals of the valuation of the tangible personal property described in Subsection (2) shall be filed pursuant to Section 59-2-1005.

Section 6. Section 59-2-405.1 is amended to read:

59-2-405.1. Uniform fee on certain vehicles weighing 12,000 pounds or less -- Distribution of revenues -- Appeals.

(1) The property described in Subsection (2), except Subsection (2)(b)(ii), is exempt from ad valorem property taxes pursuant to Utah Constitution Article XIII, Section 14.

(2) (a) Except as provided in Subsection (2)(b), there is levied [~~an annual~~] as provided in this part a statewide uniform fee in lieu of the ad valorem tax on:

(i) motor vehicles as defined in Section 41-1a-102 that:

(A) are required to be registered with the state [~~that~~]; and

(B) weigh 12,000 pounds or less; and

(ii) state-assessed commercial vehicles required to be registered with the state that weigh 12,000 pounds or less.

(b) The following personal property is exempt from the statewide uniform fee imposed by this section:

(i) aircraft;

(ii) vintage vehicles as defined in Section 41-21-1; [~~and~~]

(iii) tangible personal property subject to the uniform fee imposed by Section 59-2-405; and

[~~(iii)~~] (iv) tangible personal property that is exempt from state or county ad valorem property taxes under the laws of this state or of the federal government.

(3) [~~Beginning~~] (a) Except as provided in Subsection (3)(b), beginning on January 1, 1999, the uniform fee [~~under Subsection (2)~~] for purposes of this section is as follows:

Age of Vehicle	Uniform Fee
12 or more years	$10
9 or more years but less than 12 years	$50
6 or more years but less than 9 years	$80
3 or more years but less than 6 years	$110
Less than 3 years	$150

(b) Notwithstanding Subsection (3)(a), beginning on September 1, 2001, for a motor vehicle issued a temporary sports event registration certificate in accordance with Section 41-3-306, the uniform fee for purposes of this section is $5 for the event period specified on the temporary sports event registration certificate regardless of the age of the motor vehicle.

(4) Notwithstanding Section 59-2-407, property subject to the uniform fee that is brought into the state and is required to be registered in Utah shall, as a condition of registration, be subject to the uniform fee unless all property taxes or uniform fees imposed by the state of origin have been paid for the current calendar year.

(5) (a) The revenues collected in each county from the uniform fee shall be distributed by the county to each taxing entity in which the property described in Subsection (2) is located in the same proportion in which revenue collected from ad valorem real property tax is distributed.

(b) Each taxing entity shall distribute the revenues received under Subsection (5)(a) in the same proportion in which revenue collected from ad valorem real property tax is distributed.

(6) Appeals of the valuation of the tangible personal property described in Subsection (2) shall be filed pursuant to Section 59-2-1005.

Section 7. Section 59-12-104 is amended to read:

59-12-104. Exemptions.

The following sales and uses are exempt from the taxes imposed by this chapter:

(1) sales of aviation fuel, motor fuel, and special fuel subject to a Utah state excise tax under Chapter 13, Motor and Special Fuel Tax Act;

(2) sales to the state, its institutions, and its political subdivisions; however, this exemption does not apply to sales of construction materials except:

(a) construction materials purchased by or on behalf of institutions of the public education system as defined in Utah Constitution Article X, Section 2, provided the construction materials are clearly identified and segregated and installed or converted to real property which is owned by institutions of the public education system; and

(b) construction materials purchased by the state, its institutions, or its political subdivisions which are installed or converted to real property by employees of the state, its institutions, or its political subdivisions;

(3) sales of food, beverage, and dairy products from vending machines in which the proceeds of each sale do not exceed $1 if the vendor or operator of the vending machine reports an amount equal to 150% of the cost of items as goods consumed;

(4) sales of food, beverage, dairy products, similar confections, and related services to commercial airline carriers for in-flight consumption;

(5) sales of parts and equipment installed in aircraft operated by common carriers in interstate or foreign commerce;

(6) sales of commercials, motion picture films, prerecorded audio program tapes or records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture exhibitor, distributor, or commercial television or radio broadcaster;

(7) sales of cleaning or washing of tangible personal property by a coin-operated laundry or dry cleaning machine;

(8) (a) except as provided in Subsection (8)(b), sales made to or by religious or charitable institutions in the conduct of their regular religious or charitable functions and activities, if the requirements of Section 59-12-104.1 are fulfilled;

(b) the exemption provided for in Subsection (8)(a) does not apply to the following sales, uses, leases, or rentals relating to the Olympic Winter Games of 2002 made to or by an organization exempt from federal income taxation under Section 501(c)(3), Internal Revenue Code:

(i) retail sales of Olympic merchandise;

(ii) except as provided in Subsection (51), admissions or user fees described in Subsection 59-12-103(1)(f);

(iii) sales of accommodations and services as provided in Subsection 59-12-103(1)(i), except for accommodations and services:

(A) paid for in full by the Salt Lake Organizing Committee for the Olympic Winter Games of 2002;

(B) exclusively used by:

(I) an officer, a trustee, or an employee of the Salt Lake Organizing Committee for the Olympic Winter Games of 2002; or

(II) a volunteer supervised by the Salt Lake Organizing Committee for the Olympic Winter Games of 2002; and

(C) for which the Salt Lake Organizing Committee for the Olympic Winter Games of 2002 does not receive reimbursement; or

(iv) a lease or rental of a vehicle as defined in Section 41-1a-102, except for a lease or rental of a vehicle:

(A) paid for in full by the Salt Lake Organizing Committee for the Olympic Winter Games of 2002;

(B) exclusively used by:

(I) an officer, a trustee, or an employee of the Salt Lake Organizing Committee for the Olympic Winter Games of 2002; or

(II) a volunteer supervised by the Salt Lake Organizing Committee for the Olympic Winter Games of 2002; and

(C) for which the Salt Lake Organizing Committee for the Olympic Winter Games of 2002 does not receive reimbursement;

(9) sales of vehicles of a type required to be registered under the motor vehicle laws of this state which are made to bona fide nonresidents of this state and are not afterwards registered or used in this state except as necessary to transport them to the borders of this state;

(10) sales of medicine;

(11) sales or use of property, materials, or services used in the construction of or incorporated in pollution control facilities allowed by Sections 19-2-123 through 19-2-127;

(12) (a) sales of meals served by:

(i) the following if the meals are not available to the general public:

(A) a church; or

(B) a charitable institution;

(ii) an institution of higher education if:

(A) the meals are not available to the general public; or

(B) the meals are prepaid as part of a student meal plan offered by the institution of higher education; or

(b) inpatient meals provided at:

(i) a medical facility; or

(ii) a nursing facility;

(13) isolated or occasional sales by persons not regularly engaged in business, except the sale of vehicles or vessels required to be titled or registered under the laws of this state in which case the tax is based upon:

(a) the bill of sale or other written evidence of value of the vehicle or vessel being sold; or

(b) in the absence of a bill of sale or other written evidence of value, the then existing fair market value of the vehicle or vessel being sold as determined by the commission;

(14) (a) the following purchases or leases by a manufacturer on or after July 1, 1995:

(i) machinery and equipment:

(A) used in the manufacturing process;

(B) having an economic life of three or more years; and

(C) used:

(I) to manufacture an item sold as tangible personal property; and

(II) in new or expanding operations in a manufacturing facility in the state; and

(ii) subject to the provisions of Subsection (14)(b), normal operating replacements that:

(A) have an economic life of three or more years;

(B) are used in the manufacturing process in a manufacturing facility in the state;

(C) are used to replace or adapt an existing machine to extend the normal estimated useful life of the machine; and

(D) do not include repairs and maintenance;

(b) the rates for the exemption under Subsection (14)(a)(ii) are as follows:

(i) beginning July 1, 1996, through June 30, 1997, 30% of the sale or lease described in Subsection (14)(a)(ii) is exempt;

(ii) beginning July 1, 1997, through June 30, 1998, 60% of the sale or lease described in Subsection (14)(a)(ii) is exempt; and

(iii) beginning July 1, 1998, 100% of the sale or lease described in Subsection (14)(a)(ii) is exempt;

(c) for purposes of this Subsection (14), the commission shall by rule define the terms "new or expanding operations" and "establishment"; and

(d) on or before October 1, 1991, and every five years after October 1, 1991, the commission shall:

(i) review the exemptions described in Subsection (14)(a) and make recommendations to the Revenue and Taxation Interim Committee concerning whether the exemptions should be continued, modified, or repealed; and

(ii) include in its report:

(A) the cost of the exemptions;

(B) the purpose and effectiveness of the exemptions; and

(C) the benefits of the exemptions to the state;

(15) sales of tooling, special tooling, support equipment, and special test equipment used or consumed exclusively in the performance of any aerospace or electronics industry contract with the United States government or any subcontract

under that contract, but only if, under the terms of that contract or subcontract, title to the tooling and equipment is vested in the United States government as evidenced by a government identification tag placed on the tooling and equipment or by listing on a government-approved property record if a tag is impractical;

(16) intrastate movements of:

(a) freight by common carriers; and

(b) passengers:

(i) by taxicabs as described in SIC Code 4121 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget; or

(ii) transported by an establishment described in SIC Code 4111 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget, if the transportation originates and terminates within a county of the first, second, or third class;

(17) sales of newspapers or newspaper subscriptions;

(18) tangible personal property, other than money, traded in as full or part payment of the purchase price, except that for purposes of calculating sales or use tax upon vehicles not sold by a vehicle dealer, trade-ins are limited to other vehicles only, and the tax is based upon:

(a) the bill of sale or other written evidence of value of the vehicle being sold and the vehicle being traded in; or

(b) in the absence of a bill of sale or other written evidence of value, the then existing fair market value of the vehicle being sold and the vehicle being traded in, as determined by the commission;

(19) sprays and insecticides used to control insects, diseases, and weeds for commercial production of fruits, vegetables, feeds, seeds, and animal products, but not those sprays and insecticides used in the processing of the products;

(20) (a) sales of tangible personal property used or consumed primarily and directly in farming operations, including sales of irrigation equipment and supplies used for agricultural production purposes, whether or not they become part of real estate and whether or not installed by farmer, contractor, or subcontractor, but not sales of:

(i) machinery, equipment, materials, and supplies used in a manner that is incidental to farming, such as hand tools with a unit purchase price not in excess of $250, and maintenance and janitorial equipment and supplies;

(ii) tangible personal property used in any activities other than farming, such as office equipment and supplies, equipment and supplies used in sales or distribution of farm products, in research, or in transportation; or

(iii) any vehicle required to be registered by the laws of this state, without regard to the use to which the vehicle is put;

(b) sales of hay;

(21) exclusive sale of locally grown seasonal crops, seedling plants, or garden, farm, or other agricultural produce if sold by a producer during the harvest season;

(22) purchases of food as defined in 7 U.S.C. Sec. 2012(g) under the Food Stamp Program, 7 U.S.C. Sec. 2011 et seq.;

(23) sales of nonreturnable containers, nonreturnable labels, nonreturnable bags, nonreturnable shipping cases, and nonreturnable casings to a manufacturer, processor, wholesaler, or retailer for use in packaging tangible personal property to be sold by that manufacturer, processor, wholesaler, or retailer;

(24) property stored in the state for resale;

(25) property brought into the state by a nonresident for his or her own personal use or enjoyment while within the state, except property purchased for use in Utah by a nonresident living and working in Utah at the time of purchase;

(26) property purchased for resale in this state, in the regular course of business, either in its original form or as an ingredient or component part of a manufactured or compounded product;

(27) property upon which a sales or use tax was paid to some other state, or one of its subdivisions, except that the state shall be paid any difference between the tax paid and the tax imposed by this part and Part 2, Local Sales and Use Tax Act, and no adjustment is allowed if the tax paid was greater than the tax imposed by this part and Part 2, Local Sales and Use Tax Act;

(28) any sale of a service described in Subsections 59-12-103(1)(b), (c), and (d) to a person for use in compounding a service taxable under the subsections;

(29) purchases of supplemental foods as defined in 42 U.S.C. Sec. 1786(b)(14) under the special supplemental nutrition program for women, infants, and children established in 42 U.S.C. Sec. 1786;

(30) beginning on July 1, 1999, through June 30, 2004, sales or leases of rolls, rollers, refractory brick, electric motors, or other replacement parts used in the furnaces, mills, or ovens of a steel mill described in SIC Code 3312 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget;

(31) sales of boats of a type required to be registered under Title 73, Chapter 18, State Boating Act, boat trailers, and outboard motors which are made to bona fide nonresidents of this state and are not thereafter registered or used in this state except as necessary to transport them to the borders of this state;

(32) sales of tangible personal property to persons within this state that is subsequently shipped outside the state and incorporated pursuant to contract into and becomes a part of real property located outside of this state, except to the extent that the other state or political entity imposes a sales, use, gross receipts, or other similar transaction excise tax on it against which the other state or political entity allows a credit for taxes imposed by this chapter;

(33) sales of aircraft manufactured in Utah if sold for delivery and use outside Utah where a sales or use tax is not imposed, even if the title is passed in Utah;

(34) amounts paid for the purchase of telephone service for purposes of providing telephone service;

(35) fares charged to persons transported directly by a public transit district created under the authority of Title 17A, Chapter 2, Part 10, Utah Public Transit District Act;

(36) sales or leases of vehicles to, or use of vehicles by an authorized carrier;

(37) (a) 45% of the sales price of any new manufactured home; and

(b) 100% of the sales price of any used manufactured home;

(38) sales relating to schools and fundraising sales;

(39) sales or rentals of home medical equipment and supplies;

(40) (a) sales to a ski resort of electricity to operate a passenger ropeway as defined in Section 72-11-102; and

(b) the commission shall by rule determine the method for calculating sales exempt under Subsection (40)(a) that are not separately metered and accounted for in utility billings;

(41) sales to a ski resort of:

(a) snowmaking equipment;

(b) ski slope grooming equipment; and

(c) passenger ropeways as defined in Section 72-11-102;

(42) sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for industrial use;

(43) sales or rentals of the right to use or operate for amusement, entertainment, or recreation a coin-operated amusement device as defined in Section 59-12-102;

(44) sales of cleaning or washing of tangible personal property by a coin-operated car wash machine;

(45) sales by the state or a political subdivision of the state, except state institutions of higher education as defined in Section 53B-3-102, of:

(a) photocopies; or

(b) other copies of records held or maintained by the state or a political subdivision of the state; and

(46) (a) amounts paid:

(i) to a person providing intrastate transportation to an employer's employee to or from the employee's primary place of employment;

(ii) by an:

(A) employee; or

(B) employer; and

(iii) pursuant to a written contract between:

(A) the employer; and

(B) (I) the employee; or

(II) a person providing transportation to the employer's employee; and

(b) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may for purposes of Subsection (46)(a) make rules defining what constitutes an employee's primary place of employment;

(47) amounts paid for admission to an athletic event at an institution of higher education that is subject to the provisions of Title IX of the Education Amendments of 1972, 20 U.S.C. Sec. 1681 et seq.;

(48) sales of telephone service charged to a prepaid telephone calling card;

(49) (a) sales of hearing aids; and

(b) sales of hearing aid accessories;

(50) (a) sales made to or by:

(i) an area agency on aging; or

(ii) a senior citizen center owned by a county, city, or town; or

(b) sales made by a senior citizen center that contracts with an area agency on aging;

(51) (a) beginning on July 1, 2000, through June 30, 2002, amounts paid or charged as admission or user fees described in Subsection 59-12-103(1)(f) relating to the Olympic Winter Games of 2002 if the amounts paid or charged are established by the Salt Lake Organizing Committee for the Olympic Winter Games of 2002 in accordance with requirements of the International Olympic Committee; and

(b) the State Olympic Officer and the Salt Lake Organizing Committee for the Olympic Winter Games of 2002 shall make at least two reports during the 2000 interim:

(i) to the:

(A) Olympic Coordination Committee; and

(B) Revenue and Taxation Interim Committee; and

(ii) regarding the status of:

(A) agreements relating to the funding of public safety services for the Olympic Winter Games of 2002;

(B) agreements relating to the funding of services, other than public safety services, for the Olympic Winter Games of 2002;

(C) other agreements relating to the Olympic Winter Games of 2002 as requested by the Olympic Coordination Committee or the Revenue and Taxation Interim Committee;

(D) other issues as requested by the Olympic Coordination Committee or the Revenue and Taxation Interim Committee; or

(E) a combination of Subsections (51)(b)(ii)(A) through (D);

(52) (a) beginning on July 1, 2001, through June 30, 2004, and subject to Subsection (52)(b), a sale or lease of semiconductor fabricating or processing materials regardless of whether the semiconductor fabricating or processing materials:

(i) actually come into contact with a semiconductor; or

(ii) ultimately become incorporated into real property;

(b) (i) beginning on July 1, 2001, through June 30, 2002, 10% of the sale or lease described in Subsection (52)(a) is exempt;

(ii) beginning on July 1, 2002, through June 30, 2003, 50% of the sale or lease described in Subsection (52)(a) is exempt; and

(iii) beginning on July 1, 2003, through June 30, 2004, the entire amount of the sale or lease described in Subsection (52)(a) is exempt; and

(c) each year on or before the November interim meeting, the Revenue and Taxation Interim Committee shall:

(i) review the exemption described in this Subsection (52) and make recommendations concerning whether the exemption should be continued, modified, or repealed; and

(ii) include in the review under this Subsection (52)(c):

(A) the cost of the exemption;

(B) the purpose and effectiveness of the exemption; and

(C) the benefits of the exemption to the state; [~~and~~]

(53) an amount paid by or charged to a purchaser for accommodations and services described in Subsection 59-12-103(1)(i) to the extent the amount is exempt under Section 59-12-104.2[~~.~~]; or

(54) beginning on September 1, 2001, the lease or use of a vehicle issued a temporary sports event registration certificate in accordance with Section 41-3-306 for the event period specified on the temporary sports event registration certificate.

CHAPTER 13
S. B. 1005
Passed June 20, 2001
Approved July 5, 2001
Effective July 5, 2001
(Exception clause in Section 5)

UTAH REVISED NONPROFIT CORPORATION ACT AMENDMENTS

Sponsor: Lyle W. Hillyard

This act modifies the Utah Revised Nonprofit Corporations Act to address issues related to a quorum of a nonprofit corporation and taking action by written ballot. The act addresses issues related to transition between the old and revised law. The act has an immediate effective date and portions of the act have retrospective operation to April 30, 2001.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
16-6a-709, as last amended by Chapter 127, Laws of Utah 2001
16-6a-714, as enacted by Chapter 300, Laws of Utah 2000
16-6a-1704, as enacted by Chapter 300, Laws of Utah 2000

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

Section 1. Section 16-6a-709 is amended to read:

16-6a-709. Action by written ballot.

(1) Unless otherwise provided by the bylaws, any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting if the nonprofit corporation delivers a written ballot to every member entitled to vote on the matter.

(2) A written ballot described in Subsection (1) shall:

(a) set forth each proposed action; and

(b) provide an opportunity to vote for or against each proposed action.

(3) (a) Approval by written ballot pursuant to this section shall be valid only when:

[~~(a) the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action; and~~]

(i) the time by which all ballots must be received by the nonprofit corporation has passed so that a quorum can be determined; and

[~~(b)~~] (ii) the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

(b) Unless otherwise provided in this chapter or in accordance with Section 16-6a-716, for purposes of taking action by written ballot the number of votes cast by written ballot pursuant to this section constitute a quorum for action on the matter.

(4) All solicitations for votes by written ballot shall:

(a) indicate the number of responses needed to meet the quorum requirements;

(b) state the percentage of approvals necessary to approve each matter other than election of directors;

(c) specify the time by which a ballot must be received by the nonprofit corporation in order to be counted; and

(d) be accompanied by written information sufficient to permit each person casting the ballot to reach an informed decision on the matter.

(5) Unless otherwise provided by the bylaws, a written ballot may not be revoked.

(6) Action taken under this section has the same effect as action taken at a meeting of members and may be described as such in any document.

(7) Unless otherwise provided by the bylaws, a written ballot delivered to every member entitled to vote on the matter or matters therein, as described in this section, may also be used in connection with any annual, regular, or special meeting of members, thereby allowing members the choice of either voting in person or by written ballot delivered by a member to the nonprofit corporation in lieu of attendance at such meeting. Any written ballot shall comply with the requirements of Subsection (2) and shall be counted equally with the votes of members in attendance at any meeting for every purpose, including satisfaction of a quorum requirement.

Section 2. Section 16-6a-714 is amended to read:

16-6a-714. Quorum and voting requirements for voting groups.

(1) (a) Members entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those members exists with respect to that matter.

(b) Unless otherwise provided in this chapter or [~~the bylaws, a majority of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter~~] in accordance with Section 16-6a-716, at a meeting of the voting group, the members of the voting group that are represented for any purpose at the meeting constitute a quorum of that voting group for action on a matter.

(2) Once a member is represented for any purpose at a meeting, including the purpose of determining that a quorum exists, the member is considered present for quorum purposes:

(a) for the remainder of the meeting; and

(b) for any adjournment of that meeting, unless:

(i) otherwise provided in the bylaws; or

(ii) a new record date is or shall be set for that adjourned meeting.

(3) Action on a matter other than the election of directors by a voting group is approved if:

(a) a quorum exists;

(b) the votes cast within the voting group favoring the action exceed the votes cast within the voting group opposing the action; and

(c) a greater number of affirmative votes is not required by this chapter or the bylaws.

(4) The election of directors is governed by Section 16-6a-717.

Section 3. Section 16-6a-1704 is amended to read:

16-6a-1704. Saving provisions.

(1) (a) Except as provided in Subsection (2), the repeal of any statute by this act does not affect:

(i) the operation of the statute or any action taken under it before its repeal;

(ii) any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute before its repeal;

(iii) any violation of the statute, or any penalty, forfeiture, or punishment incurred because of the violation of the statute before its repeal; or

(iv) any proceeding, reorganization, or dissolution commenced under the statute before its repeal.

(b) A proceeding, reorganization, or dissolution described in Subsection (1)(a)(iv) may be completed in accordance with the repealed statute as if the statute had not been repealed.

(2) If a penalty or punishment imposed for violation of a statute repealed by this act is reduced by this act, the penalty or punishment if not already imposed shall be imposed in accordance with this act.

(3) Section 16-6a-707 does not operate to permit a nonprofit corporation in existence prior to April 30, 2001, to take action by the written consent of fewer than all of the members entitled to vote with respect to the subject matter of the action, until the date a resolution providing otherwise is approved either:

(a) by a consent in writing:

(i) setting forth the proposed resolution; and

(ii) signed by all of the members entitled to vote with respect to the subject matter of the resolution; or

(b) at a duly convened meeting of members, by the vote of the same percentage of members of each voting group as would be required to include the resolution in an amendment to the nonprofit corporation's articles of incorporation.

(4) Indemnification for an act or omission of a director or officer of a nonprofit corporation if the act or omission occurs prior to April 30, 2001, is governed by Title 16, Chapter 6, Utah Nonprofit Corporation and Co-operative Association Act, in effect as of April 29, 2001.

(5) A nonprofit corporation is not required to amend the nonprofit corporation's articles of incorporation to state whether its members are voting members if:

(a) the nonprofit corporation was:

(i) formed prior to April 30, 2001;

(ii) formed under the laws of this state; and

(iii) existing on April 30, 2001; and

(b) the articles of incorporation of the nonprofit corporation states on April 30, 2001, that the nonprofit corporation has members.

Section 4. Effective date.

If approved by two-thirds of all the members elected to each house, this act takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

Section 5. Retrospective operation.

The amendments to Section 16-6a-1704 in this act have retrospective operation to April 30, 2001.

CHAPTER 14
S. B. 1006
Passed June 20, 2001
Approved July 5, 2001
Effective July 5, 2001

UNIFORM PROBATE CODE -
POWER OF ATTORNEY AMENDMENTS

Sponsor: John L. Valentine

This act modifies a section of the Probate Code to provide that a person holding a power of attorney for a disabled principal may be held accountable by the principal's heirs. This act becomes effective immediately.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:
75-5-501, as last amended by Chapter 375, Laws of Utah 2001

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

Section 1. Section 75-5-501 is amended to read:

75-5-501. Power of attorney not affected by disability or lapse of time -- Agent responsibilities.

(1) Whenever a principal designates another his attorney-in-fact or agent by a power of attorney in writing and the writing contains the words "This power of attorney shall not be affected by disability of the principal," or "This power of attorney shall become effective upon the disability of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding his disability, the authority of the attorney-in-fact or agent is exercisable by him as provided in the power on behalf of the principal notwithstanding:

(a) later disability or incapacity of the principal at law or later uncertainty as to whether the principal is dead or alive; or

(b) the lapse of time since the execution of the instrument, unless the instrument states a time of termination.

(2) If an attorney-in-fact or agent determines that the principal has become incapacitated or disabled and the power of attorney by its terms remains in effect or becomes effective as a result of a principal's incapacity or disability, the attorney-in-fact or agent shall:

(a) notify all interested persons of his status as the power of attorney holder within 30 days of the principal's incapacitation, and provide them with his name and address;

(b) provide to any interested persons upon written request, a copy of the power of attorney and a statement of the assets to which the power of attorney applies;

(c) provide to any interested persons upon written request, an annual accounting of the assets to which the power of attorney applies; and

(d) notify all interested persons upon the death of the principal.

(3) All interested persons shall be notified within ten days if the attorney-in-fact or agent changes. The notification shall be made by the new attorney-in-fact or agent who shall then be accountable to the interested persons in accordance with Subsection (2).

[~~(2)~~] (4) All acts done by the attorney-in-fact or agent pursuant to the power during any period of disability or incompetence or uncertainty as to whether the principal is dead or alive have the same effect and inure to the benefit of and bind the principal or his heirs, devisees, and personal representative as if the principal were alive, competent, and not disabled. If a conservator thereafter is appointed for the principal, the attorney-in-fact or agent, during the continuance of the appointment, shall account to the conservator rather than the principal. The conservator has the same power the principal would have had if he were not disabled or incompetent to revoke, suspend, or terminate all or any part of the power of attorney or agency.

[~~(3) If a power of attorney remains in effect or becomes effective as a result of a principal's incapacity or disability, the attorney-in-fact or agent holding the power of attorney shall be bound by the duties, liabilities, and standard of care in Title 75, Chapter 7, Part 3, Duties and Liabilities of Trustees.~~]

[~~(4) In applying the duties, liabilities, and standard of care of Part 3, Duties and Liabilities of Trustees, to this section: (a) "beneficiary"~~]

(5) For the purposes of this section, "interested person" means any person entitled to a part of the principal's estate from the principal's will or through the intestacy laws, whichever is applicable[~~; and~~].

[~~(b) "trust" means that part of the principal's estate which is covered or controlled by the power of attorney.~~]

Section 2. Effective date.

If approved by two-thirds of all the members elected to each house, this act takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

H. C. R. 101
Passed June 20, 2001
Approved July 5, 2001
Effective July 5, 2001

RESOLUTION APPROVING WASTE DISPOSAL

Sponsor: David Ure

This concurrent resolution of the Legislature and the Governor gives approval for the operation of a landfill in Cedar Valley in Utah County, to receive exclusively construction and demolition waste. The resolution follows approval to operate the landfill previously granted by the Department of Environmental Quality.

Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:

WHEREAS, Bear Construction Services Inc. (Bear Construction) desires to operate a new commercial landfill under Section 19-6-108 to receive exclusively construction and demolition waste, as defined in Section 19-6-102;

WHEREAS, the site where Bear Construction desires to locate the commercial landfill is two miles south of the town of Fairfield, on Allens Ranch Road in Cedar Valley in Utah County, and the facility is to be known as the Cedar Valley Landfill;

WHEREAS, Section 19-6-108 of the Utah Code requires that an applicant for authority to operate a commercial landfill receive approval from the Utah State Legislature and the Governor of the State as a part of the approval process;

WHEREAS, Section 19-6-108 of the Utah Code also requires that an applicant for authority to operate a commercial landfill receive approval from the executive secretary of the Solid and Hazardous Waste Control Board within the Department of Environmental Quality prior to receiving legislative and gubernatorial approval; and

WHEREAS, Bear Construction has submitted an application for the operation of a commercial landfill to the Department of Environmental Quality, and that application was approved by the executive secretary of the Solid and Hazardous Waste Control Board in October of 2000, and the approval has an effective date of November 1, 2000:

NOW, THEREFORE, BE IT RESOLVED by the Legislature, the Governor concurring therein, that Bear Construction Services Inc. is granted approval to operate a commercial nonhazardous solid waste landfill in Cedar Valley for the purpose of receiving exclusively construction and demolition waste, as defined in Section 19-6-102. Any other types of waste require additional legislative approval.

S. J. R. 101
Passed June 20, 2001
Effective June 20, 2001

RESOLUTION APPROVING SETTLEMENT FOR PRIVATE PRISON

Sponsor: David L. Gladwell

This joint resolution of the Legislature approves the legal settlement reached between the Utah Department of Corrections and Cornell Corrections Corporation and their subcontractors VCBO Architects and Hogan Construction. This joint resolution has an immediate effective date.

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

WHEREAS, the Utah Department of Corrections, following a lengthy mediation process conducted by the Honorable Judge James S. Sawaya (retired), entered into a Stipulation and Agreement to pay Cornell Corrections Corporation and their subcontractors VCBO Architects and Hogan Construction for claims resulting from the cancellation of the privatized prison project;

WHEREAS, the Stipulation and Agreement will be paid out of funds that have already been budgeted in the Department of Corrections and the Division of Risk Management, thus eliminating the need for further appropriation;

WHEREAS, the Governor has approved the settlement agreement and is submitting it to the Legislature for approval as required by Subsection 63-38b-104(2)(a); and

WHEREAS, Utah Code Section 63-38b-104 requires the Legislature's approval before a state agency can execute a settlement agreement that might cost government entities more than $1 million to implement:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the State of Utah approves the settlement agreement that the Utah Department of Administrative Services, the Attorney General's Office, and the Utah Department of Corrections negotiated with Cornell Corrections Corporation and their subcontractors VCBO Architects and Hogan Construction for the payment of $1,547,000, which includes the $675,000 previously paid by the state to Cornell Corrections Corporation and their subcontractors VCBO Architects and Hogan Construction.

BE IT FURTHER RESOLVED that if approved by two-thirds of all the members elected

to each house, this resolution takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

S. J. R. 102
Passed June 20, 2001
Effective June 20, 2001

RESOLUTION APPROVING TOBACCO LAWSUIT SETTLEMENT

Sponsor: David H. Steele

A joint resolution of the Legislature approving the settlement agreement between the state of Utah and the law firms of Bendinger, Crockett, Peterson and Casey and Ness, Motley, Loadholt, Richardson and Poole. This joint resolution has an immediate effective date.

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

WHEREAS, on or about October 22, 1996, the Utah Attorney General's Office entered into a contingent fee agreement on behalf of the state of Utah with the outside law firms of Bendinger, Crockett, Peterson and Casey (of Salt Lake City, Utah) and Ness, Motley, Loadholt, Richardson and Poole (of Charleston, South Carolina), wherein, among other things, the state agreed to pay to the law firms 25% of the amounts, if any, received by the state from the tobacco companies in the state's tobacco reimbursement litigation;

WHEREAS, the state's tobacco reimbursement litigation (in the United States District Court for the District of Utah) was settled in 1998, through the signing by the state of Utah and other participating states of a Master Settlement Agreement with the tobacco companies;

WHEREAS, the Master Settlement Agreement provides, among other things, that the tobacco companies will pay settlement sums to the state over a period of approximately 25-30 years. The Utah Attorney General's Office has estimated that such payments could total as much as $1 billion and that sums paid to the state thus far approximate $64 million;

WHEREAS, at the insistence of the attorneys general of the participating states, the Master Settlement Agreement included a process for payment of attorneys' fees by the tobacco companies separate from and in addition to the settlement payments due the states under the Master Settlement Agreement. Pursuant to that process, the law firms entered into a February 4, 1999 Utah Fee Payment Agreement with the tobacco companies. The Utah Fee Payment Agreement provides that the tobacco companies would offer a single lump-sum cash payment for attorneys' fees. If the law firms were not satisfied with that offer, the law firms and the tobacco companies would arbitrate the amount of the attorneys' fees to be paid by the tobacco companies. The law firms party to the contingent fee agreement with the state of Utah rejected the cash offer and pursued their remedy against the tobacco companies and were awarded $64,850,000 as "reasonable compensation," to be paid at the rate of $2.5 million per year. This fee was awarded on the assumption that the law firms had logged 26,000 hours in representing the state in the tobacco litigation;

WHEREAS, the Utah Fee Payment Agreement (which is part of the Master Settlement Agreement signed by the Utah Attorney General) also provides that the rights and obligations of the state and the law firms (i.e., under the contingent fee agreement) "shall be unaffected by this Utah Fee Payment Agreement" and that the fees paid by the tobacco companies directly to the law firms are to be "credited, on a dollar-for-dollar basis, against any amount payable" to the law firms by the state;

WHEREAS, the state and the law firms have been litigating (in the Third Judicial District Court for Salt Lake County) the amount of attorneys' fees payable to the law firms as a result of the tobacco reimbursement litigation settlement, as well as the method and timing of the payment of fees;

WHEREAS, based upon the estimated total payout of $1 billion, the total attorneys' fees which could be awarded in the litigation under the contingent fee agreement could possibly be as high as $250 million (i.e., 25% of $1 billion), minus the $65 million being paid under the Utah Fee Payment Agreement, for a net possible sum of approximately $185 million;

WHEREAS, approximately 25% of all payments received by the state from the tobacco companies are being held in an escrow account in the United States District Court for the District of Utah, pending resolution of the litigation between the state and the law firms. The current balance in the escrow account is approximately $16.5 million;

WHEREAS, the state and the law firms have entered into a stipulation and settlement agreement which, subject to approval by the Legislature, resolves all claims and disputes between the state and the law firms;

WHEREAS, in the stipulation and settlement agreement, the state has agreed to pay to the law firms the sum of $9,950,000, in complete satisfaction of the state's obligations to the law firms;

WHEREAS, the entire settlement sum of $9,950,000 is to be paid out of the tobacco settlement funds being held in escrow by the United States District Court for the District of Utah, thus eliminating the need for appropriation by the state;

WHEREAS, Utah Attorney General Mark Shurtleff recommends that the Legislature approve the stipulation and settlement;

WHEREAS, Section 63-38b-104 requires the Legislature's approval before a state agency can execute a legally binding settlement agreement that might cost government entities more than $1 million to implement;

WHEREAS, the governor has approved the settlement agreement and is submitting it to the

Legislature for approval, as required by Subsection 63-38b-104(2)(a); and

WHEREAS, the Legislature believes that execution and performance of the stipulation and settlement agreement are in the best interests of the state of Utah, given the facts of the case, applicable case law, and the risks of litigation:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah approves the stipulation and settlement agreement the Attorney General's Office has negotiated with the law firms of Bendinger, Crockett, Peterson and Casey and Ness, Motley, Loadholt, Richardson and Poole and approves the payment of $9,950,000 to the law firms from the escrowed funds held by the United States District Court for the District of Utah in complete satisfaction of the state's obligations to the law firms.

BE IT FURTHER RESOLVED, if approved by two-thirds of all the members elected to each house, this resolution takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

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UTAH CODE SECTION INDEX

The following Code Section Index lists, in section order, each Utah Code section affected by bills passed during the 2001 General Session and the 2001 First Special Session. The first column lists the section affected. The second column lists the action taken with the following abbreviations: A = Amends, E = Enacts, F = Former Section Number, N = Renumbered and Amended, R = Repeals, T = Technical Renumbers, X = Repeals and Reenacts. The third column lists the bill number. The fourth column lists either the former number or the new number, if applicable. The fifth column lists the chapter number.

See Technical Action Index (page 1873) for explanations and clarifications of sections that were technically renumbered.

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53B-2-106	A	HB1003	005

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53B-2a-102	E	HB1003		005
53B-2a-103	E	HB1003		005
53B-2a-104	E	HB1003		005
53B-2a-105	E	HB1003		005
53B-2a-106	E	HB1003		005
53B-2a-107	E	HB1003		005
53B-2a-108	E	HB1003		005
53B-2a-109	E	HB1003		005
53B-2a-110	E	HB1003		005
53B-2a-111	E	HB1003		005
53B-2a-112	E	HB1003		005
53B-6-101	A	HB1003		005
53B-8-105	A	HB1003		005
53B-16-102	A	HB1003		005
53B-16-205	A	HB1003		005
58-1-301	A	HB1007		008
59-2-405	A	SB1004		012
59-2-405.1	A	SB1004		012
59-7-614	E	HB1005		006
59-10-114	A	HB1006		007
59-10-114	A	HB1008		009
59-10-134	E	HB1005		006
59-12-102	A	SB1003		011
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59-12-351	A	SB1003		011
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61-2-6	A	HB1007		008
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63-2-202	A	HB1007		008
63-2-206	A	HB1007		008
63-2-301	A	HB1007		008
63-2-302	A	HB1007		008
63-2-803	A	HB1007		008
63-55b-159	A	HB1005		006
75-5-501	A	SB1006		014
76-5-205	A	HB1002		004
76-6-202	A	HB1002		004
76-10-1311	A	HB1007		008
77-27-7	A	HB1002		004
77-27-21.5	A	HB1002		004
78-5-120	A	HB1002		004

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Section	Action	Bill Number	Former/ Renumber	Chapter Number

TECHNICAL ACTION INDEX

The following Technical Action Index lists Utah Code sections which received further modification after the 2001 General Session to resolve technical problems relating to section numbering, conflicting actions, or multiple amendments. These sections are listed in order by the section numbers used to identify them in the bills.

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Section Number Used In Bill	Codified as Section Number	Action	Bill Number	Chapter Number	Additional Information
17A-2-747		A	SB0099	009	Repealer in SB 23, Chapter 90 takes precedence.
17A-2-1225		A	SB0099	009	Repealer in HB 7, Chapter 133 takes precedence.
17A-2-1236		A	SB0099	009	Repealer in HB 7, Chapter 133 takes precedence.
17A-2-1247.5		A	SB0070	103	Repealer in HB 7, Chapter 133 takes precedence.
17A-2-1264		A	SB0099	009	Repealer in HB 7, Chapter 133 takes precedence.
17B-2-506		E	SB0023	090	Coordination clause direction to amend language in Subsection (3).
17B-4-1002		E	HB0007	133	Coordination clause direction to add new language as Subsections (7) and (8).
19-3-301		A	SB0081	241	Coordination clause direction to replace language the effective date of this act with the actual effective date of 3/15/2001.
19-3-319	19-3-320	T	SB0198	269	Technically renumbered to avoid duplication of section number also enacted in SB 81, Chapter 107.
31A-28-105		A	HB0109	161	Coordination clause direction to amend language in Subsections (1) and (23)(b).
34-30-106	34-40-106	T	SB0138	248	Technically renumbered to place in proper chapter.
53B-18-1001	53B-18-901	T	SB0120	329	Technically renumbered for proper placement in title.
54-5-1.5		A	HB0265	212	Coordination clause direction for this section not to be repealed.
54-7-12		A	HB0297	219	Coordination clause direction for this section not to be superseded.
55-3-2.5		A	SB0099	009	Repealer in HB 4, Chapter 10 takes precedence.
59-24-103		E	HB0370	314	Coordination clause direction to replace language the effective date of this act with the actual effective date of 4/30/2001.
62A-4a-801	62A-4a-901	T	SB0097	115	Technically renumbered to avoid duplication of section number also enacted in HB 12, Chapter 134.
62A-4a-802	62A-4a-902	T	SB0097	115	Technically renumbered to avoid duplication of section number also enacted in HB 12, Chapter 134.

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62A-4a-803	62A-4a-903	T	SB0097	115	Technically renumbered for proper placement in title.
62A-4a-804	62A-4a-904	T	SB0097	115	Technically renumbered for proper placement in title.
62A-4a-805	62A-4a-905	T	SB0097	115	Technically renumbered for proper placement in title.
62A-4a-806	62A-4a-906	T	SB0097	115	Technically renumbered for proper placement in title.
62A-4a-807	62A-4a-907	T	SB0097	115	Technically renumbered for proper placement in title.
63-38-3.3	63-38-3.4	T	SB0232	191	Technically renumbered to avoid duplication of section number also used in HB 19, Chapter 46 and HB 305, Chapter 370.
63B-10-301	63B-10-302	T	SB0065	239	Technically renumbered for proper placement in title.
63B-10-501	63B-10-301	T	SB0002	321	Technically renumbered for proper placement in title.
63B-10-601	63B-10-401	T	SB0002	321	Technically renumbered for proper placement in title.
67-19-12.4	67-19-12.2	T	HB0340	231	Technically renumbered to avoid duplication of section number also enacted in HB 232, Chapter 362.
73-10b-2		A	SB0099	009	Repealer in HB 9, Chapter 12 takes precedence.
73-10h-8		A	SB0099	009	Repealer in HB 9, Chapter 12 takes precedence.
76-8-306		A	HB0258	209	Repeal and reenact in HB 250, Chapter 307 takes precedence.
76-10-2401	76-10-2501	T	SB0101	067	Technically renumbered to avoid duplication of section number also enacted in HB 322, Chapter 225.
77-7-19		A	SB0110	118	Coordination clause direction to reinstate the language sooner than five days or in Subsection (2) on 3/16/02.
78-3a-911		A	SB0117	244	Changed cross reference in Subsection (3)(l) from 78-7-36 to 78-7-45.
78-7-17.5		A	SB0110	118	Coordination clause direction to repeal Subsection (3) on 3/16/02.
78-7-36	78-7-45	T	SB0117	244	Technically renumbered to avoid duplication of section number also used in HB 19, Chapter 46.

Section Number Used In Bill	Codified as Section Number	Action	Bill Number	Chapter Number	Additional Information
78-51-41	38-2-7	N	SB0013	004	Repeal and reenact in HB 221, Chapter 360 takes precedence. Coordination clause direction to renumber section.

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The following topical or subject index is intended to aid in locating a bill according to its subject matter. Titles of bills are listed under the subject heading and are followed by the page numbers on which they begin in this volume.

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