1	PRETRIAL AMENDMENTS
2	2021 SECOND SPECIAL SESSION
3	STATE OF UTAH
4	Chief Sponsor: Stephanie Pitcher
5	Senate Sponsor: Todd D. Weiler
6 7	LONG TITLE
8	General Description:
9	This bill amends provisions related to the pretrial process.
10	Highlighted Provisions:
11	This bill:
12	 recodifies Title 77, Chapter 20, Bail, and Chapter 20b, Bail Surety;
13	 amends provisions related to a bail commissioner;
14	 amends provisions related to a mistake made in charging an offense;
15	 defines terms related to bail;
16	 addresses the collection of pretrial information for a magistrate or judge;
17	 amends provisions related to the release of individuals by a sheriff or bail
18	commissioner on own recognizance;
19	 addresses the release of an individual by a bail commissioner on a financial
20	condition;
21	 addresses the release of an individual by a magistrate or judge, including the
22	standards and guidance for pretrial status orders and imposing pretrial release or
23	detention;
24	 addresses motions for pretrial detention filed by prosecuting attorneys;
25	 addresses pretrial detention hearings, including the time in which a pretrial
26	detention hearing shall be held;
27	 addresses modification of a pretrial status order;



28	 addresses the release from pretrial conditions when charges are not filed within 120
29	days;
30	 modifies the time-period requirement for an issuance of a warrant for failure to
31	appear and for a prosecuting attorney to send notice of a failure to appear to a
32	surety;
33	 modifies the time-period requirement for bail bond forfeiture;
34	 provides that a justice court judge, who is exercising the authority of a magistrate,
35	may not perform any act or function in a capital felony case;
36	 addresses affidavits of indigency and requires certain individuals to submit an
37	affidavit of indigency to the court;
38	 creates a pilot program to verify the indigency of certain individuals;
39	repeals statutes related to bail; and
40	makes technical and conforming changes.
41	Money Appropriated in this Bill:
42	None
43	Other Special Clauses:
44	This bill provides a special effective date.
45	Utah Code Sections Affected:
46	AMENDS:
47	17-22-5.5, as last amended by Laws of Utah 2021, First Special Session, Chapter 6
48	17-32-1, as last amended by Laws of Utah 2021, First Special Session, Chapter 6
49	17-32-2, as last amended by Laws of Utah 1990, Chapter 283
50	31A-1-301, as last amended by Laws of Utah 2021, Chapter 252
51	31A-35-504, as last amended by Laws of Utah 2016, Chapter 234
52	63M-7-215, as enacted by Laws of Utah 2020, Chapter 185
53	77-17-8, as last amended by Laws of Utah 2021, Chapter 431
54	77-18a-1, as last amended by Laws of Utah 2021, Chapters 147 and 431
55	78A-2-220, as last amended by Laws of Utah 2021, Chapter 431
56	78A-7-118, as last amended by Laws of Utah 2017, Chapter 115
57	78B-7-802, as last amended by Laws of Utah 2021, Chapter 159
58	78B-9-108, as last amended by Laws of Utah 2017, Chapter 447

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59
            78B-22-202, as enacted by Laws of Utah 2019, Chapter 326
60
     ENACTS:
61
            77-20-101, Utah Code Annotated 1953
62
            77-20-102, Utah Code Annotated 1953
63
            77-20-201, Utah Code Annotated 1953
64
            77-20-202, Utah Code Annotated 1953
65
            77-20-204, Utah Code Annotated 1953
66
            77-20-205, Utah Code Annotated 1953
67
            77-20-206, Utah Code Annotated 1953
68
            77-20-207, Utah Code Annotated 1953
69
            77-20-208, Utah Code Annotated 1953
70
            77-20-401. Utah Code Annotated 1953
71
            77-20-504, Utah Code Annotated 1953
72
            78B-22-201.5, Utah Code Annotated 1953
73
            78B-22-1001, Utah Code Annotated 1953
74
            78B-22-1002, Utah Code Annotated 1953
75
     RENUMBERS AND AMENDS:
76
            77-20-103, (Renumbered from 77-20-1.1, as last amended by Laws of Utah 2021,
77
     Chapter 431)
78
            77-20-203, (Renumbered from 77-20-3.2, as enacted by Laws of Utah 2021, First
79
     Special Session, Chapter 6)
80
            77-20-301, (Renumbered from 77-20-8, as last amended by Laws of Utah 2021,
81
     Chapter 431)
82
            77-20-302, (Renumbered from 77-20-10, as last amended by Laws of Utah 2021,
     Chapter 431)
83
84
            77-20-402, (Renumbered from 77-20-4, as last amended by Laws of Utah 2021,
85
     Chapters 260 and 431)
86
            77-20-404, (Renumbered from 77-20-9, as last amended by Laws of Utah 2021,
87
     Chapter 431)
88
            77-20-501, (Renumbered from 77-20b-101, as last amended by Laws of Utah 2021,
89
     Chapters 260 and 431)
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90	77-20-502, (Renumbered from 77-20b-102, as last amended by Laws of Utah 2021,
91	Chapter 431)
92	77-20-503, (Renumbered from 77-20-8.5, as last amended by Laws of Utah 2021,
93	Chapter 431)
94	77-20-505, (Renumbered from 77-20b-104, as last amended by Laws of Utah 2021,
95	Chapter 431)
96	REPEALS:
97	10-3-920, as last amended by Laws of Utah 2015, Chapter 99
98	77-20-1, as last amended by Laws of Utah 2021, Chapters 88, 94, 431 and last amended
99	by Coordination Clause, Laws of Utah 2021, Chapter 431
100	77-20-3.1, as enacted by Laws of Utah 2021, Chapter 431
101	77-20-7, as last amended by Laws of Utah 2021, Chapter 431
102	77-20b-100, as enacted by Laws of Utah 2016, Chapter 234
103	77-20b-103, as last amended by Laws of Utah 2016, Chapter 234
104	77-20b-105, as last amended by Laws of Utah 2016, Chapter 234
105	
105 106	Be it enacted by the Legislature of the state of Utah:
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106	
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106107108	Section 1. Section 17-22-5.5 is amended to read: 17-22-5.5. Sheriff's classification of jail facilities Maximum operating capacity
106107108109	Section 1. Section 17-22-5.5 is amended to read: 17-22-5.5. Sheriff's classification of jail facilities Maximum operating capacity of jail facilities Transfer or release of prisoners Limitation Records regarding
106 107 108 109 110	Section 1. Section 17-22-5.5 is amended to read: 17-22-5.5. Sheriff's classification of jail facilities Maximum operating capacity of jail facilities Transfer or release of prisoners Limitation Records regarding release.
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106 107 108 109 110 111 112 113	Section 1. Section 17-22-5.5 is amended to read: 17-22-5.5. Sheriff's classification of jail facilities Maximum operating capacity of jail facilities Transfer or release of prisoners Limitation Records regarding release. (1) (a) Except as provided in Subsection (4), a county sheriff shall determine: (i) subject to Subsection (1)(b), the classification of each jail facility or section of a jail facility under the sheriff's control;
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106 107 108 109 110 111 112 113 114 115 116	Section 1. Section 17-22-5.5 is amended to read: 17-22-5.5. Sheriff's classification of jail facilities Maximum operating capacity of jail facilities Transfer or release of prisoners Limitation Records regarding release. (1) (a) Except as provided in Subsection (4), a county sheriff shall determine: (i) subject to Subsection (1)(b), the classification of each jail facility or section of a jail facility under the sheriff's control; (ii) the nature of each program conducted at a jail facility under the sheriff's control; and (iii) the internal operation of a jail facility under the sheriff's control.
106 107 108 109 110 111 112 113 114 115 116	Section 1. Section 17-22-5.5 is amended to read: 17-22-5.5. Sheriff's classification of jail facilities Maximum operating capacity of jail facilities Transfer or release of prisoners Limitation Records regarding release. (1) (a) Except as provided in Subsection (4), a county sheriff shall determine: (i) subject to Subsection (1)(b), the classification of each jail facility or section of a jail facility under the sheriff's control; (ii) the nature of each program conducted at a jail facility under the sheriff's control; and (iii) the internal operation of a jail facility under the sheriff's control. (b) A classification under Subsection (1)(a)(i) of a jail facility may not violate any

121	capacity for each jain facility under the sheriff's control, based on facility design and starting;
122	and
123	(b) upon a jail facility reaching the jail facility's maximum operating capacity:
124	(i) transfer prisoners to another appropriate facility:
125	(A) under the sheriff's control; or
126	(B) available to the sheriff by contract;
127	(ii) release prisoners:
128	(A) to a supervised release program, according to release criteria established by the
129	sheriff; or
130	(B) to another alternative incarceration program developed by the sheriff; or
131	(iii) admit prisoners in accordance with law and a uniform admissions policy imposed
132	equally upon all entities using the county jail.
133	(3) (a) The sheriff shall keep records of the release status and the type of release
134	program or alternative incarceration program for any prisoner released under Subsection
135	(2)(b)(ii).
136	(b) The sheriff shall make these records available upon request to the Department of
137	Corrections, the Judiciary, and the Commission on Criminal and Juvenile Justice.
138	(4) This section may not be construed to authorize a sheriff to modify provisions of a
139	contract with the Department of Corrections to house in a county jail an individual sentenced to
140	the Department of Corrections.
141	(5) Regardless of whether a jail facility has reached the jail facility's maximum
142	operating capacity under Subsection (2), a sheriff may release an individual from a jail facility
143	in accordance with Section [77-20-3.2] <u>77-20-203 or 77-20-204</u> .
144	Section 2. Section 17-32-1 is amended to read:
145	17-32-1. Appointment of bail commissioners.
146	(1) The county executive, with the advice and consent of the county legislative body,
147	may appoint one or more responsible and discreet members of the sheriff's department of the
148	county as a bail commissioner.
149	[(2) A bail commissioner may:]
150	[(a) receive bail for an individual arrested in the county for a felony;]
151	[(b) fix and receive bail for an individual arrested in the county for a misdemeanor

152	under the laws of the state, or for a violation of any of the county ordinances in accordance
153	with the uniform bail schedule adopted by the Judicial Council or a reasonable bail for county
154	ordinances not contained in the schedule; and]
155	[(c) authorize the release of an individual from a jail facility on the individual's own
156	recognizance in accordance with Section 77-20-3.2.]
157	[(3) An individual who has been ordered by a magistrate, judge, or bail commissioner
158	to give bail may deposit the amount with the bail commissioner:]
159	[(a) in money, by cash, certified or cashier's check, personal check with check
160	guarantee card, money order, or credit card, if the bail commissioner has chosen to establish
161	any of those options; or]
162	[(b) by a bond issued by a licensed bail bond surety.]
163	[(4) Any money or bond collected by a bail commissioner shall be delivered to the
164	appropriate court within three days of receipt of the money or bond.]
165	[(5) The court may review the amount of bail ordered by a bail commissioner and may
166	modify the amount of bail required for good cause.]
167	(2) The power, duties, and responsibilities of a bail commissioner are described in this
168	chapter and Sections 77-20-203, 77-20-204, and 77-20-401.
169	Section 3. Section 17-32-2 is amended to read:
170	17-32-2. Collection of fines by bail commissioners Disposition.
171	(1) [In addition to the duty of fixing bail, a] A bail commissioner shall have power to
172	[collect and receipt] receive money tendered in payment of the fine of [a person] an individual
173	serving sentence in default of the payment of the fine when the court is closed.
174	[(2) Money collected by a bail commissioner shall be delivered to the court that issued
175	the commitment order within three days of receipt of the money.]
176	(2) A bail commissioner shall deliver any money received by a bail commissioner
177	under Subsection (1) to the court that issued the commitment order within three days after the
178	day on which the money is received.
179	Section 4. Section 31A-1-301 is amended to read:
180	31A-1-301. Definitions.
181	As used in this title, unless otherwise specified:
182	(1) (a) "Accident and health insurance" means insurance to provide protection against

183	economic losses resulting from:
184	(i) a medical condition including:
185	(A) a medical care expense; or
186	(B) the risk of disability;
187	(ii) accident; or
188	(iii) sickness.
189	(b) "Accident and health insurance":
190	(i) includes a contract with disability contingencies including:
191	(A) an income replacement contract;
192	(B) a health care contract;
193	(C) an expense reimbursement contract;
194	(D) a credit accident and health contract;
195	(E) a continuing care contract; and
196	(F) a long-term care contract; and
197	(ii) may provide:
198	(A) hospital coverage;
199	(B) surgical coverage;
200	(C) medical coverage;
201	(D) loss of income coverage;
202	(E) prescription drug coverage;
203	(F) dental coverage; or
204	(G) vision coverage.
205	(c) "Accident and health insurance" does not include workers' compensation insurance.
206	(d) For purposes of a national licensing registry, "accident and health insurance" is the
207	same as "accident and health or sickness insurance."
208	(2) "Actuary" is as defined by the commissioner by rule, made in accordance with Title
209	63G, Chapter 3, Utah Administrative Rulemaking Act.
210	(3) "Administrator" means the same as that term is defined in Subsection (178).
211	(4) "Adult" means an individual who has attained the age of at least 18 years.
212	(5) "Affiliate" means a person who controls, is controlled by, or is under common
213	control with, another person. A corporation is an affiliate of another corporation, regardless of

214	ownership, if substantially the same group of individuals manage the corporations.
215	(6) "Agency" means:
216	(a) a person other than an individual, including a sole proprietorship by which an
217	individual does business under an assumed name; and
218	(b) an insurance organization licensed or required to be licensed under Section
219	31A-23a-301, 31A-25-207, or 31A-26-209.
220	(7) "Alien insurer" means an insurer domiciled outside the United States.
221	(8) "Amendment" means an endorsement to an insurance policy or certificate.
222	(9) "Annuity" means an agreement to make periodical payments for a period certain or
223	over the lifetime of one or more individuals if the making or continuance of all or some of the
224	series of the payments, or the amount of the payment, is dependent upon the continuance of
225	human life.
226	(10) "Application" means a document:
227	(a) (i) completed by an applicant to provide information about the risk to be insured;
228	and
229	(ii) that contains information that is used by the insurer to evaluate risk and decide
230	whether to:
231	(A) insure the risk under:
232	(I) the coverage as originally offered; or
233	(II) a modification of the coverage as originally offered; or
234	(B) decline to insure the risk; or
235	(b) used by the insurer to gather information from the applicant before issuance of an
236	annuity contract.
237	(11) "Articles" or "articles of incorporation" means:
238	(a) the original articles;
239	(b) a special law;
240	(c) a charter;
241	(d) an amendment;
242	(e) restated articles;
243	(f) articles of merger or consolidation;
244	(g) a trust instrument;

245	(h) another constitutive document for a trust or other entity that is not a corporation;
246	and
247	(i) an amendment to an item listed in Subsections (11)(a) through (h).
248	(12) "Bail bond insurance" means a guarantee that a person will attend court when
249	required, up to and including surrender of the person in execution of a sentence imposed under
250	Subsection $[77-20-7]$ $77-20-501(1)$, as a condition to the release of that person from
251	confinement.
252	(13) "Binder" means the same as that term is defined in Section 31A-21-102.
253	(14) "Blanket insurance policy" or "blanket contract" means a group insurance policy
254	covering a defined class of persons:
255	(a) without individual underwriting or application; and
256	(b) that is determined by definition without designating each person covered.
257	(15) "Board," "board of trustees," or "board of directors" means the group of persons
258	with responsibility over, or management of, a corporation, however designated.
259	(16) "Bona fide office" means a physical office in this state:
260	(a) that is open to the public;
261	(b) that is staffed during regular business hours on regular business days; and
262	(c) at which the public may appear in person to obtain services.
263	(17) "Business entity" means:
264	(a) a corporation;
265	(b) an association;
266	(c) a partnership;
267	(d) a limited liability company;
268	(e) a limited liability partnership; or
269	(f) another legal entity.
270	(18) "Business of insurance" means the same as that term is defined in Subsection (94).
271	(19) "Business plan" means the information required to be supplied to the
272	commissioner under Subsections 31A-5-204(2)(i) and (j), including the information required
273	when these subsections apply by reference under:
274	(a) Section 31A-8-205; or
275	(b) Subsection 31A-9-205(2).

276	(20) (a) "Bylaws" means the rules adopted for the regulation or management of a
277	corporation's affairs, however designated.
278	(b) "Bylaws" includes comparable rules for a trust or other entity that is not a
279	corporation.
280	(21) "Captive insurance company" means:
281	(a) an insurer:
282	(i) owned by a parent organization; and
283	(ii) whose purpose is to insure risks of the parent organization and other risks as
284	authorized under:
285	(A) Chapter 37, Captive Insurance Companies Act; and
286	(B) Chapter 37a, Special Purpose Financial Captive Insurance Company Act; or
287	(b) in the case of a group or association, an insurer:
288	(i) owned by the insureds; and
289	(ii) whose purpose is to insure risks of:
290	(A) a member organization;
291	(B) a group member; or
292	(C) an affiliate of:
293	(I) a member organization; or
294	(II) a group member.
295	(22) "Casualty insurance" means liability insurance.
296	(23) "Certificate" means evidence of insurance given to:
297	(a) an insured under a group insurance policy; or
298	(b) a third party.
299	(24) "Certificate of authority" is included within the term "license."
300	(25) "Claim," unless the context otherwise requires, means a request or demand on an
301	insurer for payment of a benefit according to the terms of an insurance policy.
302	(26) "Claims-made coverage" means an insurance contract or provision limiting
303	coverage under a policy insuring against legal liability to claims that are first made against the
304	insured while the policy is in force.
305	(27) (a) "Commissioner" or "commissioner of insurance" means Utah's insurance
306	commissioner.

307	(b) When appropriate, the terms listed in Subsection (27)(a) apply to the equivalent
308	supervisory official of another jurisdiction.
309	(28) (a) "Continuing care insurance" means insurance that:
310	(i) provides board and lodging;
311	(ii) provides one or more of the following:
312	(A) a personal service;
313	(B) a nursing service;
314	(C) a medical service; or
315	(D) any other health-related service; and
316	(iii) provides the coverage described in this Subsection (28)(a) under an agreement
317	effective:
318	(A) for the life of the insured; or
319	(B) for a period in excess of one year.
320	(b) Insurance is continuing care insurance regardless of whether or not the board and
321	lodging are provided at the same location as a service described in Subsection (28)(a)(ii).
322	(29) (a) "Control," "controlling," "controlled," or "under common control" means the
323	direct or indirect possession of the power to direct or cause the direction of the management
324	and policies of a person. This control may be:
325	(i) by contract;
326	(ii) by common management;
327	(iii) through the ownership of voting securities; or
328	(iv) by a means other than those described in Subsections (29)(a)(i) through (iii).
329	(b) There is no presumption that an individual holding an official position with another
330	person controls that person solely by reason of the position.
331	(c) A person having a contract or arrangement giving control is considered to have
332	control despite the illegality or invalidity of the contract or arrangement.
333	(d) There is a rebuttable presumption of control in a person who directly or indirectly
334	owns, controls, holds with the power to vote, or holds proxies to vote 10% or more of the
335	voting securities of another person.
336	(30) "Controlled insurer" means a licensed insurer that is either directly or indirectly
337	controlled by a producer.

338	(31) "Controlling person" means a person that directly or indirectly has the power to
339	direct or cause to be directed, the management, control, or activities of a reinsurance
340	intermediary.
341	(32) "Controlling producer" means a producer who directly or indirectly controls an
342	insurer.
343	(33) "Corporate governance annual disclosure" means a report an insurer or insurance
344	group files in accordance with the requirements of Chapter 16b, Corporate Governance Annual
345	Disclosure Act.
346	(34) (a) "Corporation" means an insurance corporation, except when referring to:
347	(i) a corporation doing business:
348	(A) as:
349	(I) an insurance producer;
350	(II) a surplus lines producer;
351	(III) a limited line producer;
352	(IV) a consultant;
353	(V) a managing general agent;
354	(VI) a reinsurance intermediary;
355	(VII) a third party administrator; or
356	(VIII) an adjuster; and
357	(B) under:
358	(I) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and
359	Reinsurance Intermediaries;
360	(II) Chapter 25, Third Party Administrators; or
361	(III) Chapter 26, Insurance Adjusters; or
362	(ii) a noninsurer that is part of a holding company system under Chapter 16, Insurance
363	Holding Companies.
364	(b) "Mutual" or "mutual corporation" means a mutual insurance corporation.
365	(c) "Stock corporation" means a stock insurance corporation.
366	(35) (a) "Creditable coverage" has the same meaning as provided in federal regulations
367	adopted pursuant to the Health Insurance Portability and Accountability Act.
368	(b) "Creditable coverage" includes coverage that is offered through a public health plan

369	such as:
370	(i) the Primary Care Network Program under a Medicaid primary care network
371	demonstration waiver obtained subject to Section 26-18-3;
372	(ii) the Children's Health Insurance Program under Section 26-40-106; or
373	(iii) the Ryan White Program Comprehensive AIDS Resources Emergency Act, Pub. L
374	No. 101-381, and Ryan White HIV/AIDS Treatment Modernization Act of 2006, Pub. L. No.
375	109-415.
376	(36) "Credit accident and health insurance" means insurance on a debtor to provide
377	indemnity for payments coming due on a specific loan or other credit transaction while the
378	debtor has a disability.
379	(37) (a) "Credit insurance" means insurance offered in connection with an extension of
380	credit that is limited to partially or wholly extinguishing that credit obligation.
381	(b) "Credit insurance" includes:
382	(i) credit accident and health insurance;
383	(ii) credit life insurance;
384	(iii) credit property insurance;
385	(iv) credit unemployment insurance;
386	(v) guaranteed automobile protection insurance;
387	(vi) involuntary unemployment insurance;
388	(vii) mortgage accident and health insurance;
389	(viii) mortgage guaranty insurance; and
390	(ix) mortgage life insurance.
391	(38) "Credit life insurance" means insurance on the life of a debtor in connection with
392	an extension of credit that pays a person if the debtor dies.
393	(39) "Creditor" means a person, including an insured, having a claim, whether:
394	(a) matured;
395	(b) unmatured;
396	(c) liquidated;
397	(d) unliquidated;
398	(e) secured;
399	(f) unsecured;

400	(g) absolute;
401	(h) fixed; or
402	(i) contingent.
403	(40) "Credit property insurance" means insurance:
404	(a) offered in connection with an extension of credit; and
405	(b) that protects the property until the debt is paid.
406	(41) "Credit unemployment insurance" means insurance:
407	(a) offered in connection with an extension of credit; and
408	(b) that provides indemnity if the debtor is unemployed for payments coming due on a:
409	(i) specific loan; or
410	(ii) credit transaction.
411	(42) (a) "Crop insurance" means insurance providing protection against damage to
412	crops from unfavorable weather conditions, fire or lightning, flood, hail, insect infestation,
413	disease, or other yield-reducing conditions or perils that is:
414	(i) provided by the private insurance market; or
415	(ii) subsidized by the Federal Crop Insurance Corporation.
416	(b) "Crop insurance" includes multiperil crop insurance.
417	(43) (a) "Customer service representative" means a person that provides an insurance
418	service and insurance product information:
419	(i) for the customer service representative's:
420	(A) producer;
421	(B) surplus lines producer; or
422	(C) consultant employer; and
423	(ii) to the customer service representative's employer's:
424	(A) customer;
425	(B) client; or
426	(C) organization.
427	(b) A customer service representative may only operate within the scope of authority of
428	the customer service representative's producer, surplus lines producer, or consultant employer.
429	(44) "Deadline" means a final date or time:
430	(a) imposed by:

431	(i) statute;
432	(ii) rule; or
433	(iii) order; and
434	(b) by which a required filing or payment must be received by the department.
435	(45) "Deemer clause" means a provision under this title under which upon the
436	occurrence of a condition precedent, the commissioner is considered to have taken a specific
437	action. If the statute so provides, a condition precedent may be the commissioner's failure to
438	take a specific action.
439	(46) "Degree of relationship" means the number of steps between two persons
440	determined by counting the generations separating one person from a common ancestor and
441	then counting the generations to the other person.
442	(47) "Department" means the Insurance Department.
443	(48) "Director" means a member of the board of directors of a corporation.
444	(49) "Disability" means a physiological or psychological condition that partially or
445	totally limits an individual's ability to:
446	(a) perform the duties of:
447	(i) that individual's occupation; or
448	(ii) an occupation for which the individual is reasonably suited by education, training,
449	or experience; or
450	(b) perform two or more of the following basic activities of daily living:
451	(i) eating;
452	(ii) toileting;
453	(iii) transferring;
454	(iv) bathing; or
455	(v) dressing.
456	(50) "Disability income insurance" means the same as that term is defined in
457	Subsection (85).
458	(51) "Domestic insurer" means an insurer organized under the laws of this state.
459	(52) "Domiciliary state" means the state in which an insurer:
460	(a) is incorporated;
461	(b) is organized; or

462	(c) in the case of an alien insurer, enters into the United States.
463	(53) (a) "Eligible employee" means:
464	(i) an employee who:
465	(A) works on a full-time basis; and
466	(B) has a normal work week of 30 or more hours; or
467	(ii) a person described in Subsection (53)(b).
468	(b) "Eligible employee" includes:
469	(i) an owner who:
470	(A) works on a full-time basis;
471	(B) has a normal work week of 30 or more hours; and
472	(C) employs at least one common employee; and
473	(ii) if the individual is included under a health benefit plan of a small employer:
474	(A) a sole proprietor;
475	(B) a partner in a partnership; or
476	(C) an independent contractor.
477	(c) "Eligible employee" does not include, unless eligible under Subsection (53)(b):
478	(i) an individual who works on a temporary or substitute basis for a small employer;
479	(ii) an employer's spouse who does not meet the requirements of Subsection (53)(a)(i);
480	or
481	(iii) a dependent of an employer who does not meet the requirements of Subsection
482	(53)(a)(i).
483	(54) "Employee" means:
484	(a) an individual employed by an employer; and
485	(b) an owner who meets the requirements of Subsection (53)(b)(i).
486	(55) "Employee benefits" means one or more benefits or services provided to:
487	(a) an employee; or
488	(b) a dependent of an employee.
489	(56) (a) "Employee welfare fund" means a fund:
490	(i) established or maintained, whether directly or through a trustee, by:
491	(A) one or more employers;
492	(B) one or more labor organizations; or

493	(C) a combination of employers and labor organizations; and
494	(ii) that provides employee benefits paid or contracted to be paid, other than income
495	from investments of the fund:
496	(A) by or on behalf of an employer doing business in this state; or
497	(B) for the benefit of a person employed in this state.
498	(b) "Employee welfare fund" includes a plan funded or subsidized by a user fee or tax
499	revenues.
500	(57) "Endorsement" means a written agreement attached to a policy or certificate to
501	modify the policy or certificate coverage.
502	(58) (a) "Enrollee" means:
503	(i) a policyholder;
504	(ii) a certificate holder;
505	(iii) a subscriber; or
506	(iv) a covered individual:
507	(A) who has entered into a contract with an organization for health care; or
508	(B) on whose behalf an arrangement for health care has been made.
509	(b) "Enrollee" includes an insured.
510	(59) "Enrollment date," with respect to a health benefit plan, means:
511	(a) the first day of coverage; or
512	(b) if there is a waiting period, the first day of the waiting period.
513	(60) "Enterprise risk" means an activity, circumstance, event, or series of events
514	involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a
515	material adverse effect upon the financial condition or liquidity of the insurer or its insurance
516	holding company system as a whole, including anything that would cause:
517	(a) the insurer's risk-based capital to fall into an action or control level as set forth in
518	Sections 31A-17-601 through 31A-17-613; or
519	(b) the insurer to be in hazardous financial condition set forth in Section 31A-27a-101.
520	(61) (a) "Escrow" means:
521	(i) a transaction that effects the sale, transfer, encumbering, or leasing of real property,
522	when a person not a party to the transaction, and neither having nor acquiring an interest in the
523	title, performs, in accordance with the written instructions or terms of the written agreement

524	between the parties to the transaction, any of the following actions:
525	(A) the explanation, holding, or creation of a document; or
526	(B) the receipt, deposit, and disbursement of money;
527	(ii) a settlement or closing involving:
528	(A) a mobile home;
529	(B) a grazing right;
530	(C) a water right; or
531	(D) other personal property authorized by the commissioner.
532	(b) "Escrow" does not include:
533	(i) the following notarial acts performed by a notary within the state:
534	(A) an acknowledgment;
535	(B) a copy certification;
536	(C) jurat; and
537	(D) an oath or affirmation;
538	(ii) the receipt or delivery of a document; or
539	(iii) the receipt of money for delivery to the escrow agent.
540	(62) "Escrow agent" means an agency title insurance producer meeting the
541	requirements of Sections 31A-4-107, 31A-14-211, and 31A-23a-204, who is acting through an
542	individual title insurance producer licensed with an escrow subline of authority.
543	(63) (a) "Excludes" is not exhaustive and does not mean that another thing is not also
544	excluded.
545	(b) The items listed in a list using the term "excludes" are representative examples for
546	use in interpretation of this title.
547	(64) "Exclusion" means for the purposes of accident and health insurance that an
548	insurer does not provide insurance coverage, for whatever reason, for one of the following:
549	(a) a specific physical condition;
550	(b) a specific medical procedure;
551	(c) a specific disease or disorder; or
552	(d) a specific prescription drug or class of prescription drugs.
553	(65) "Expense reimbursement insurance" means insurance:
554	(a) written to provide a payment for an expense relating to hospital confinement

555	resulting from illness or injury; and
556	(b) written:
557	(i) as a daily limit for a specific number of days in a hospital; and
558	(ii) to have a one or two day waiting period following a hospitalization.
559	(66) "Fidelity insurance" means insurance guaranteeing the fidelity of a person holding
560	a position of public or private trust.
561	(67) (a) "Filed" means that a filing is:
562	(i) submitted to the department as required by and in accordance with applicable
563	statute, rule, or filing order;
564	(ii) received by the department within the time period provided in applicable statute,
565	rule, or filing order; and
566	(iii) accompanied by the appropriate fee in accordance with:
567	(A) Section 31A-3-103; or
568	(B) rule.
569	(b) "Filed" does not include a filing that is rejected by the department because it is not
570	submitted in accordance with Subsection (67)(a).
571	(68) "Filing," when used as a noun, means an item required to be filed with the
572	department including:
573	(a) a policy;
574	(b) a rate;
575	(c) a form;
576	(d) a document;
577	(e) a plan;
578	(f) a manual;
579	(g) an application;
580	(h) a report;
581	(i) a certificate;
582	(j) an endorsement;
583	(k) an actuarial certification;
584	(l) a licensee annual statement;
585	(m) a licensee renewal application;

586	(n) an advertisement;
587	(o) a binder; or
588	(p) an outline of coverage.
589	(69) "First party insurance" means an insurance policy or contract in which the insurer
590	agrees to pay a claim submitted to it by the insured for the insured's losses.
591	(70) "Foreign insurer" means an insurer domiciled outside of this state, including an
592	alien insurer.
593	(71) (a) "Form" means one of the following prepared for general use:
594	(i) a policy;
595	(ii) a certificate;
596	(iii) an application;
597	(iv) an outline of coverage; or
598	(v) an endorsement.
599	(b) "Form" does not include a document specially prepared for use in an individual
600	case.
601	(72) "Franchise insurance" means an individual insurance policy provided through a
602	mass marketing arrangement involving a defined class of persons related in some way other
603	than through the purchase of insurance.
604	(73) "General lines of authority" include:
605	(a) the general lines of insurance in Subsection (74);
606	(b) title insurance under one of the following sublines of authority:
607	(i) title examination, including authority to act as a title marketing representative;
608	(ii) escrow, including authority to act as a title marketing representative; and
609	(iii) title marketing representative only;
610	(c) surplus lines;
611	(d) workers' compensation; and
612	(e) another line of insurance that the commissioner considers necessary to recognize in
613	the public interest.
614	(74) "General lines of insurance" include:
615	(a) accident and health;
616	(b) casualty;

617	(c) life;
618	(d) personal lines;
619	(e) property; and
620	(f) variable contracts, including variable life and annuity.
621	(75) "Group health plan" means an employee welfare benefit plan to the extent that the
622	plan provides medical care:
623	(a) (i) to an employee; or
624	(ii) to a dependent of an employee; and
625	(b) (i) directly;
626	(ii) through insurance reimbursement; or
627	(iii) through another method.
628	(76) (a) "Group insurance policy" means a policy covering a group of persons that is
629	issued:
630	(i) to a policyholder on behalf of the group; and
631	(ii) for the benefit of a member of the group who is selected under a procedure defined
632	in:
633	(A) the policy; or
634	(B) an agreement that is collateral to the policy.
635	(b) A group insurance policy may include a member of the policyholder's family or a
636	dependent.
637	(77) "Group-wide supervisor" means the commissioner or other regulatory official
638	designated as the group-wide supervisor for an internationally active insurance group under
639	Section 31A-16-108.6.
640	(78) "Guaranteed automobile protection insurance" means insurance offered in
641	connection with an extension of credit that pays the difference in amount between the
642	insurance settlement and the balance of the loan if the insured automobile is a total loss.
643	(79) (a) "Health benefit plan" means, except as provided in Subsection (79)(b), a
644	policy, contract, certificate, or agreement offered or issued by a health carrier to provide,
645	deliver, arrange for, pay for, or reimburse any of the costs of health care.
646	(b) "Health benefit plan" does not include:
647	(i) coverage only for accident or disability income insurance, or any combination

648	thereof;
649	(ii) coverage issued as a supplement to liability insurance;
650	(iii) liability insurance, including general liability insurance and automobile liability
651	insurance;
652	(iv) workers' compensation or similar insurance;
653	(v) automobile medical payment insurance;
654	(vi) credit-only insurance;
655	(vii) coverage for on-site medical clinics;
656	(viii) other similar insurance coverage, specified in federal regulations issued pursuant
657	to Pub. L. No. 104-191, under which benefits for health care services are secondary or
658	incidental to other insurance benefits;
659	(ix) the following benefits if they are provided under a separate policy, certificate, or
660	contract of insurance or are otherwise not an integral part of the plan:
661	(A) limited scope dental or vision benefits;
662	(B) benefits for long-term care, nursing home care, home health care,
663	community-based care, or any combination thereof; or
664	(C) other similar limited benefits, specified in federal regulations issued pursuant to
665	Pub. L. No. 104-191;
666	(x) the following benefits if the benefits are provided under a separate policy,
667	certificate, or contract of insurance, there is no coordination between the provision of benefits
668	and any exclusion of benefits under any health plan, and the benefits are paid with respect to an
669	event without regard to whether benefits are provided under any health plan:
670	(A) coverage only for specified disease or illness; or
671	(B) hospital indemnity or other fixed indemnity insurance;
672	(xi) the following if offered as a separate policy, certificate, or contract of insurance:
673	(A) Medicare supplemental health insurance as defined under the Social Security Act,
674	42 U.S.C. Sec. 1395ss(g)(1);
675	(B) coverage supplemental to the coverage provided under United States Code, Title
676	10, Chapter 55, Civilian Health and Medical Program of the Uniformed Services
677	(CHAMPUS); or
678	(C) similar supplemental coverage provided to coverage under a group health insurance

679	plan;
680	(xii) short-term limited duration health insurance; and
681	(xiii) student health insurance, except as required under 45 C.F.R. Sec. 147.145.
682	(80) "Health care" means any of the following intended for use in the diagnosis,
683	treatment, mitigation, or prevention of a human ailment or impairment:
684	(a) a professional service;
685	(b) a personal service;
686	(c) a facility;
687	(d) equipment;
688	(e) a device;
689	(f) supplies; or
690	(g) medicine.
691	(81) (a) "Health care insurance" or "health insurance" means insurance providing:
692	(i) a health care benefit; or
693	(ii) payment of an incurred health care expense.
694	(b) "Health care insurance" or "health insurance" does not include accident and health
695	insurance providing a benefit for:
696	(i) replacement of income;
697	(ii) short-term accident;
698	(iii) fixed indemnity;
699	(iv) credit accident and health;
700	(v) supplements to liability;
701	(vi) workers' compensation;
702	(vii) automobile medical payment;
703	(viii) no-fault automobile;
704	(ix) equivalent self-insurance; or
705	(x) a type of accident and health insurance coverage that is a part of or attached to
706	another type of policy.
707	(82) "Health care provider" means the same as that term is defined in Section
708	78B-3-403.
709	(83) "Health insurance exchange" means an exchange as defined in 45 C.F.R. Sec.

710	155.20.
711	(84) "Health Insurance Portability and Accountability Act" means the Health Insurance
712	Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat. 1936, as amended.
713	(85) "Income replacement insurance" or "disability income insurance" means insurance
714	written to provide payments to replace income lost from accident or sickness.
715	(86) "Indemnity" means the payment of an amount to offset all or part of an insured
716	loss.
717	(87) "Independent adjuster" means an insurance adjuster required to be licensed under
718	Section 31A-26-201 who engages in insurance adjusting as a representative of an insurer.
719	(88) "Independently procured insurance" means insurance procured under Section
720	31A-15-104.
721	(89) "Individual" means a natural person.
722	(90) "Inland marine insurance" includes insurance covering:
723	(a) property in transit on or over land;
724	(b) property in transit over water by means other than boat or ship;
725	(c) bailee liability;
726	(d) fixed transportation property such as bridges, electric transmission systems, radio
727	and television transmission towers and tunnels; and
728	(e) personal and commercial property floaters.
729	(91) "Insolvency" or "insolvent" means that:
730	(a) an insurer is unable to pay the insurer's obligations as the obligations are due;
731	(b) an insurer's total adjusted capital is less than the insurer's mandatory control level
732	RBC under Subsection 31A-17-601(8)(c); or
733	(c) an insurer's admitted assets are less than the insurer's liabilities.
734	(92) (a) "Insurance" means:
735	(i) an arrangement, contract, or plan for the transfer of a risk or risks from one or more
736	persons to one or more other persons; or
737	(ii) an arrangement, contract, or plan for the distribution of a risk or risks among a
738	group of persons that includes the person seeking to distribute that person's risk.

(i) a risk distributing arrangement providing for compensation or replacement for

(b) "Insurance" includes:

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damages or loss through the provision of a service or a benefit in kind;

- (ii) a contract of guaranty or suretyship entered into by the guarantor or surety as a business and not as merely incidental to a business transaction; and
- (iii) a plan in which the risk does not rest upon the person who makes an arrangement, but with a class of persons who have agreed to share the risk.
- (93) "Insurance adjuster" means a person who directs or conducts the investigation, negotiation, or settlement of a claim under an insurance policy other than life insurance or an annuity, on behalf of an insurer, policyholder, or a claimant under an insurance policy.
 - (94) "Insurance business" or "business of insurance" includes:
- 750 (a) providing health care insurance by an organization that is or is required to be 751 licensed under this title;
 - (b) providing a benefit to an employee in the event of a contingency not within the control of the employee, in which the employee is entitled to the benefit as a right, which benefit may be provided either:
 - (i) by a single employer or by multiple employer groups; or
 - (ii) through one or more trusts, associations, or other entities;
- 757 (c) providing an annuity:

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- 758 (i) including an annuity issued in return for a gift; and
- 759 (ii) except an annuity provided by a person specified in Subsections 31A-22-1305(2) and (3);
- 761 (d) providing the characteristic services of a motor club as outlined in Subsection 762 (125);
 - (e) providing another person with insurance;
 - (f) making as insurer, guarantor, or surety, or proposing to make as insurer, guarantor, or surety, a contract or policy offering title insurance;
 - (g) transacting or proposing to transact any phase of title insurance, including:
- 767 (i) solicitation;
- 768 (ii) negotiation preliminary to execution;
- 769 (iii) execution of a contract of title insurance;
- 770 (iv) insuring; and
- (v) transacting matters subsequent to the execution of the contract and arising out of

772 the contract, including reinsurance; 773 (h) transacting or proposing a life settlement; and 774 (i) doing, or proposing to do, any business in substance equivalent to Subsections 775 (94)(a) through (h) in a manner designed to evade this title. 776 (95) "Insurance consultant" or "consultant" means a person who: 777 (a) advises another person about insurance needs and coverages; 778 (b) is compensated by the person advised on a basis not directly related to the insurance 779 placed; and 780 (c) except as provided in Section 31A-23a-501, is not compensated directly or 781 indirectly by an insurer or producer for advice given. 782 (96) "Insurance group" means the persons that comprise an insurance holding company 783 system. 784 (97) "Insurance holding company system" means a group of two or more affiliated 785 persons, at least one of whom is an insurer. 786 (98) (a) "Insurance producer" or "producer" means a person licensed or required to be 787 licensed under the laws of this state to sell, solicit, or negotiate insurance. 788 (b) (i) "Producer for the insurer" means a producer who is compensated directly or 789 indirectly by an insurer for selling, soliciting, or negotiating an insurance product of that 790 insurer. 791 (ii) "Producer for the insurer" may be referred to as an "agent." 792 (c) (i) "Producer for the insured" means a producer who: 793 (A) is compensated directly and only by an insurance customer or an insured; and 794 (B) receives no compensation directly or indirectly from an insurer for selling, 795 soliciting, or negotiating an insurance product of that insurer to an insurance customer or 796 insured. 797 (ii) "Producer for the insured" may be referred to as a "broker." 798 (99) (a) "Insured" means a person to whom or for whose benefit an insurer makes a 799 promise in an insurance policy and includes: 800 (i) a policyholder;

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(ii) a subscriber;

(iii) a member; and

803	(iv) a beneficiary.
804	(b) The definition in Subsection (99)(a):
805	(i) applies only to this title;
806	(ii) does not define the meaning of "insured" as used in an insurance policy or
807	certificate; and
808	(iii) includes an enrollee.
809	(100) (a) "Insurer" means a person doing an insurance business as a principal
810	including:
811	(i) a fraternal benefit society;
812	(ii) an issuer of a gift annuity other than an annuity specified in Subsections
813	31A-22-1305(2) and (3);
814	(iii) a motor club;
815	(iv) an employee welfare plan;
816	(v) a person purporting or intending to do an insurance business as a principal on that
817	person's own account; and
818	(vi) a health maintenance organization.
819	(b) "Insurer" does not include a governmental entity.
820	(101) "Interinsurance exchange" means the same as that term is defined in Subsection
821	(160).
822	(102) "Internationally active insurance group" means an insurance holding company
823	system:
824	(a) that includes an insurer registered under Section 31A-16-105;
825	(b) that has premiums written in at least three countries;
826	(c) whose percentage of gross premiums written outside the United States is at least
827	10% of its total gross written premiums; and
828	(d) that, based on a three-year rolling average, has:
829	(i) total assets of at least \$50,000,000,000; or
830	(ii) total gross written premiums of at least \$10,000,000,000.
831	(103) "Involuntary unemployment insurance" means insurance:
832	(a) offered in connection with an extension of credit; and
833	(b) that provides indemnity if the debtor is involuntarily unemployed for payments

834	coming due on a:
835	(i) specific loan; or
836	(ii) credit transaction.
837	(104) "Large employer," in connection with a health benefit plan, means an employer
838	who, with respect to a calendar year and to a plan year:
839	(a) employed an average of at least 51 employees on business days during the
840	preceding calendar year; and
841	(b) employs at least one employee on the first day of the plan year.
842	(105) "Late enrollee," with respect to an employer health benefit plan, means an
843	individual whose enrollment is a late enrollment.
844	(106) "Late enrollment," with respect to an employer health benefit plan, means
845	enrollment of an individual other than:
846	(a) on the earliest date on which coverage can become effective for the individual
847	under the terms of the plan; or
848	(b) through special enrollment.
849	(107) (a) Except for a retainer contract or legal assistance described in Section
850	31A-1-103, "legal expense insurance" means insurance written to indemnify or pay for a
851	specified legal expense.
852	(b) "Legal expense insurance" includes an arrangement that creates a reasonable
853	expectation of an enforceable right.
854	(c) "Legal expense insurance" does not include the provision of, or reimbursement for
855	legal services incidental to other insurance coverage.
856	(108) (a) "Liability insurance" means insurance against liability:
857	(i) for death, injury, or disability of a human being, or for damage to property,
858	exclusive of the coverages under:
859	(A) medical malpractice insurance;
860	(B) professional liability insurance; and
861	(C) workers' compensation insurance;
862	(ii) for a medical, hospital, surgical, and funeral benefit to a person other than the
863	insured who is injured, irrespective of legal liability of the insured, when issued with or
864	supplemental to insurance against legal liability for the death, injury, or disability of a human

865	being, exclusive of the coverages under:
866	(A) medical malpractice insurance;
867	(B) professional liability insurance; and
868	(C) workers' compensation insurance;
869	(iii) for loss or damage to property resulting from an accident to or explosion of a
870	boiler, pipe, pressure container, machinery, or apparatus;
871	(iv) for loss or damage to property caused by:
872	(A) the breakage or leakage of a sprinkler, water pipe, or water container; or
873	(B) water entering through a leak or opening in a building; or
874	(v) for other loss or damage properly the subject of insurance not within another kind
875	of insurance as defined in this chapter, if the insurance is not contrary to law or public policy.
876	(b) "Liability insurance" includes:
877	(i) vehicle liability insurance;
878	(ii) residential dwelling liability insurance; and
879	(iii) making inspection of, and issuing a certificate of inspection upon, an elevator,
880	boiler, machinery, or apparatus of any kind when done in connection with insurance on the
881	elevator, boiler, machinery, or apparatus.
882	(109) (a) "License" means authorization issued by the commissioner to engage in an
883	activity that is part of or related to the insurance business.
884	(b) "License" includes a certificate of authority issued to an insurer.
885	(110) (a) "Life insurance" means:
886	(i) insurance on a human life; and
887	(ii) insurance pertaining to or connected with human life.
888	(b) The business of life insurance includes:
889	(i) granting a death benefit;
890	(ii) granting an annuity benefit;
891	(iii) granting an endowment benefit;
892	(iv) granting an additional benefit in the event of death by accident;
893	(v) granting an additional benefit to safeguard the policy against lapse; and
894	(vi) providing an optional method of settlement of proceeds.
895	(111) "Limited license" means a license that:

896	(a) is issued for a specific product of insurance; and
897	(b) limits an individual or agency to transact only for that product or insurance.
898	(112) "Limited line credit insurance" includes the following forms of insurance:
899	(a) credit life;
900	(b) credit accident and health;
901	(c) credit property;
902	(d) credit unemployment;
903	(e) involuntary unemployment;
904	(f) mortgage life;
905	(g) mortgage guaranty;
906	(h) mortgage accident and health;
907	(i) guaranteed automobile protection; and
908	(j) another form of insurance offered in connection with an extension of credit that:
909	(i) is limited to partially or wholly extinguishing the credit obligation; and
910	(ii) the commissioner determines by rule should be designated as a form of limited line
911	credit insurance.
912	(113) "Limited line credit insurance producer" means a person who sells, solicits, or
913	negotiates one or more forms of limited line credit insurance coverage to an individual through
914	a master, corporate, group, or individual policy.
915	(114) "Limited line insurance" includes:
916	(a) bail bond;
917	(b) limited line credit insurance;
918	(c) legal expense insurance;
919	(d) motor club insurance;
920	(e) car rental related insurance;
921	(f) travel insurance;
922	(g) crop insurance;
923	(h) self-service storage insurance;
924	(i) guaranteed asset protection waiver;
925	(j) portable electronics insurance; and
926	(k) another form of limited insurance that the commissioner determines by rule should

927	be designated a form of limited line insurance.
928	(115) "Limited lines authority" includes the lines of insurance listed in Subsection
929	(114).
930	(116) "Limited lines producer" means a person who sells, solicits, or negotiates limited
931	lines insurance.
932	(117) (a) "Long-term care insurance" means an insurance policy or rider advertised,
933	marketed, offered, or designated to provide coverage:
934	(i) in a setting other than an acute care unit of a hospital;
935	(ii) for not less than 12 consecutive months for a covered person on the basis of:
936	(A) expenses incurred;
937	(B) indemnity;
938	(C) prepayment; or
939	(D) another method;
940	(iii) for one or more necessary or medically necessary services that are:
941	(A) diagnostic;
942	(B) preventative;
943	(C) therapeutic;
944	(D) rehabilitative;
945	(E) maintenance; or
946	(F) personal care; and
947	(iv) that may be issued by:
948	(A) an insurer;
949	(B) a fraternal benefit society;
950	(C) (I) a nonprofit health hospital; and
951	(II) a medical service corporation;
952	(D) a prepaid health plan;
953	(E) a health maintenance organization; or
954	(F) an entity similar to the entities described in Subsections (117)(a)(iv)(A) through (E)
955	to the extent that the entity is otherwise authorized to issue life or health care insurance.
956	(b) "Long-term care insurance" includes:
957	(i) any of the following that provide directly or supplement long-term care insurance:

958	(A) a group or individual annuity or rider; or
959	(B) a life insurance policy or rider;
960	(ii) a policy or rider that provides for payment of benefits on the basis of:
961	(A) cognitive impairment; or
962	(B) functional capacity; or
963	(iii) a qualified long-term care insurance contract.
964	(c) "Long-term care insurance" does not include:
965	(i) a policy that is offered primarily to provide basic Medicare supplement coverage;
966	(ii) basic hospital expense coverage;
967	(iii) basic medical/surgical expense coverage;
968	(iv) hospital confinement indemnity coverage;
969	(v) major medical expense coverage;
970	(vi) income replacement or related asset-protection coverage;
971	(vii) accident only coverage;
972	(viii) coverage for a specified:
973	(A) disease; or
974	(B) accident;
975	(ix) limited benefit health coverage; or
976	(x) a life insurance policy that accelerates the death benefit to provide the option of a
977	lump sum payment:
978	(A) if the following are not conditioned on the receipt of long-term care:
979	(I) benefits; or
980	(II) eligibility; and
981	(B) the coverage is for one or more the following qualifying events:
982	(I) terminal illness;
983	(II) medical conditions requiring extraordinary medical intervention; or
984	(III) permanent institutional confinement.
985	(118) "Managed care organization" means a person:
986	(a) licensed as a health maintenance organization under Chapter 8, Health Maintenance
987	Organizations and Limited Health Plans; or
988	(b) (i) licensed under:

989	(A) Chapter 5, Domestic Stock and Mutual Insurance Corporations;
990	(B) Chapter 7, Nonprofit Health Service Insurance Corporations; or
991	(C) Chapter 14, Foreign Insurers; and
992	(ii) that requires an enrollee to use, or offers incentives, including financial incentives,
993	for an enrollee to use, network providers.
994	(119) "Medical malpractice insurance" means insurance against legal liability incident
995	to the practice and provision of a medical service other than the practice and provision of a
996	dental service.
997	(120) "Member" means a person having membership rights in an insurance
998	corporation.
999	(121) "Minimum capital" or "minimum required capital" means the capital that must be
1000	constantly maintained by a stock insurance corporation as required by statute.
1001	(122) "Mortgage accident and health insurance" means insurance offered in connection
1002	with an extension of credit that provides indemnity for payments coming due on a mortgage
1003	while the debtor has a disability.
1004	(123) "Mortgage guaranty insurance" means surety insurance under which a mortgagee
1005	or other creditor is indemnified against losses caused by the default of a debtor.
1006	(124) "Mortgage life insurance" means insurance on the life of a debtor in connection
1007	with an extension of credit that pays if the debtor dies.
1008	(125) "Motor club" means a person:
1009	(a) licensed under:
1010	(i) Chapter 5, Domestic Stock and Mutual Insurance Corporations;
1011	(ii) Chapter 11, Motor Clubs; or
1012	(iii) Chapter 14, Foreign Insurers; and
1013	(b) that promises for an advance consideration to provide for a stated period of time
1014	one or more:
1015	(i) legal services under Subsection 31A-11-102(1)(b);
1016	(ii) bail services under Subsection 31A-11-102(1)(c); or
1017	(iii) (A) trip reimbursement;
1018	(B) towing services;
1019	(C) emergency road services;

1020	(D) stolen automobile services;
1021	(E) a combination of the services listed in Subsections (125)(b)(iii)(A) through (D); or
1022	(F) other services given in Subsections 31A-11-102(1)(b) through (f).
1023	(126) "Mutual" means a mutual insurance corporation.
1024	(127) "Network plan" means health care insurance:
1025	(a) that is issued by an insurer; and
1026	(b) under which the financing and delivery of medical care is provided, in whole or in
1027	part, through a defined set of providers under contract with the insurer, including the financing
1028	and delivery of an item paid for as medical care.
1029	(128) "Network provider" means a health care provider who has an agreement with a
1030	managed care organization to provide health care services to an enrollee with an expectation of
1031	receiving payment, other than coinsurance, copayments, or deductibles, directly from the
1032	managed care organization.
1033	(129) "Nonparticipating" means a plan of insurance under which the insured is not
1034	entitled to receive a dividend representing a share of the surplus of the insurer.
1035	(130) "Ocean marine insurance" means insurance against loss of or damage to:
1036	(a) ships or hulls of ships;
1037	(b) goods, freight, cargoes, merchandise, effects, disbursements, profits, money,
1038	securities, choses in action, evidences of debt, valuable papers, bottomry, respondentia
1039	interests, or other cargoes in or awaiting transit over the oceans or inland waterways;
1040	(c) earnings such as freight, passage money, commissions, or profits derived from
1041	transporting goods or people upon or across the oceans or inland waterways; or
1042	(d) a vessel owner or operator as a result of liability to employees, passengers, bailors,
1043	owners of other vessels, owners of fixed objects, customs or other authorities, or other persons
1044	in connection with maritime activity.
1045	(131) "Order" means an order of the commissioner.
1046	(132) "ORSA guidance manual" means the current version of the Own Risk and
1047	Solvency Assessment Guidance Manual developed and adopted by the National Association of
1048	Insurance Commissioners and as amended from time to time.
1049	(133) "ORSA summary report" means a confidential high-level summary of an insurer

or insurance group's own risk and solvency assessment.

1050

1051	(134) "Outline of coverage" means a summary that explains an accident and health
1052	insurance policy.
1053	(135) "Own risk and solvency assessment" means an insurer or insurance group's
1054	confidential internal assessment:
1055	(a) (i) of each material and relevant risk associated with the insurer or insurance group;
1056	(ii) of the insurer or insurance group's current business plan to support each risk
1057	described in Subsection (135)(a)(i); and
1058	(iii) of the sufficiency of capital resources to support each risk described in Subsection
1059	(135)(a)(i); and
1060	(b) that is appropriate to the nature, scale, and complexity of an insurer or insurance
1061	group.
1062	(136) "Participating" means a plan of insurance under which the insured is entitled to
1063	receive a dividend representing a share of the surplus of the insurer.
1064	(137) "Participation," as used in a health benefit plan, means a requirement relating to
1065	the minimum percentage of eligible employees that must be enrolled in relation to the total
1066	number of eligible employees of an employer reduced by each eligible employee who
1067	voluntarily declines coverage under the plan because the employee:
1068	(a) has other group health care insurance coverage; or
1069	(b) receives:
1070	(i) Medicare, under the Health Insurance for the Aged Act, Title XVIII of the Social
1071	Security Amendments of 1965; or
1072	(ii) another government health benefit.
1073	(138) "Person" includes:
1074	(a) an individual;
1075	(b) a partnership;
1076	(c) a corporation;
1077	(d) an incorporated or unincorporated association;
1078	(e) a joint stock company;
1079	(f) a trust;
1080	(g) a limited liability company;
1081	(h) a reciprocal;

1082	(i) a syndicate; or
1083	(j) another similar entity or combination of entities acting in concert.
1084	(139) "Personal lines insurance" means property and casualty insurance coverage sold
1085	for primarily noncommercial purposes to:
1086	(a) an individual; or
1087	(b) a family.
1088	(140) "Plan sponsor" means the same as that term is defined in 29 U.S.C. Sec.
1089	1002(16)(B).
1090	(141) "Plan year" means:
1091	(a) the year that is designated as the plan year in:
1092	(i) the plan document of a group health plan; or
1093	(ii) a summary plan description of a group health plan;
1094	(b) if the plan document or summary plan description does not designate a plan year or
1095	there is no plan document or summary plan description:
1096	(i) the year used to determine deductibles or limits;
1097	(ii) the policy year, if the plan does not impose deductibles or limits on a yearly basis;
1098	or
1099	(iii) the employer's taxable year if:
1100	(A) the plan does not impose deductibles or limits on a yearly basis; and
1101	(B) (I) the plan is not insured; or
1102	(II) the insurance policy is not renewed on an annual basis; or
1103	(c) in a case not described in Subsection (141)(a) or (b), the calendar year.
1104	(142) (a) "Policy" means a document, including an attached endorsement or application
1105	that:
1106	(i) purports to be an enforceable contract; and
1107	(ii) memorializes in writing some or all of the terms of an insurance contract.
1108	(b) "Policy" includes a service contract issued by:
1109	(i) a motor club under Chapter 11, Motor Clubs;
1110	(ii) a service contract provided under Chapter 6a, Service Contracts; and
1111	(iii) a corporation licensed under:
1112	(A) Chapter 7 Nonprofit Health Service Insurance Corporations: or

1113	(B) Chapter 8, Health Maintenance Organizations and Limited Health Plans.
1114	(c) "Policy" does not include:
1115	(i) a certificate under a group insurance contract; or
1116	(ii) a document that does not purport to have legal effect.
1117	(143) "Policyholder" means a person who controls a policy, binder, or oral contract by
1118	ownership, premium payment, or otherwise.
1119	(144) "Policy illustration" means a presentation or depiction that includes
1120	nonguaranteed elements of a policy offering life insurance over a period of years.
1121	(145) "Policy summary" means a synopsis describing the elements of a life insurance
1122	policy.
1123	(146) "PPACA" means the Patient Protection and Affordable Care Act, Pub. L. No.
1124	111-148 and the Health Care Education Reconciliation Act of 2010, Pub. L. No. 111-152, and
1125	related federal regulations and guidance.
1126	(147) "Preexisting condition," with respect to health care insurance:
1127	(a) means a condition that was present before the effective date of coverage, whether or
1128	not medical advice, diagnosis, care, or treatment was recommended or received before that day
1129	and
1130	(b) does not include a condition indicated by genetic information unless an actual
1131	diagnosis of the condition by a physician has been made.
1132	(148) (a) "Premium" means the monetary consideration for an insurance policy.
1133	(b) "Premium" includes, however designated:
1134	(i) an assessment;
1135	(ii) a membership fee;
1136	(iii) a required contribution; or
1137	(iv) monetary consideration.
1138	(c) (i) "Premium" does not include consideration paid to a third party administrator for
1139	the third party administrator's services.
1140	(ii) "Premium" includes an amount paid by a third party administrator to an insurer for
1141	insurance on the risks administered by the third party administrator.
1142	(149) "Principal officers" for a corporation means the officers designated under
1143	Subsection 31A-5-203(3).

1144	(150) "Proceeding" includes an action or special statutory proceeding.
1145	(151) "Professional liability insurance" means insurance against legal liability incident
1146	to the practice of a profession and provision of a professional service.
1147	(152) (a) Except as provided in Subsection (152)(b), "property insurance" means
1148	insurance against loss or damage to real or personal property of every kind and any interest in
1149	that property:
1150	(i) from all hazards or causes; and
1151	(ii) against loss consequential upon the loss or damage including vehicle
1152	comprehensive and vehicle physical damage coverages.
1153	(b) "Property insurance" does not include:
1154	(i) inland marine insurance; and
1155	(ii) ocean marine insurance.
1156	(153) "Qualified long-term care insurance contract" or "federally tax qualified
1157	long-term care insurance contract" means:
1158	(a) an individual or group insurance contract that meets the requirements of Section
1159	7702B(b), Internal Revenue Code; or
1160	(b) the portion of a life insurance contract that provides long-term care insurance:
1161	(i) (A) by rider; or
1162	(B) as a part of the contract; and
1163	(ii) that satisfies the requirements of Sections 7702B(b) and (e), Internal Revenue
1164	Code.
1165	(154) "Qualified United States financial institution" means an institution that:
1166	(a) is:
1167	(i) organized under the laws of the United States or any state; or
1168	(ii) in the case of a United States office of a foreign banking organization, licensed
1169	under the laws of the United States or any state;
1170	(b) is regulated, supervised, and examined by a United States federal or state authority
1171	having regulatory authority over a bank or trust company; and
1172	(c) meets the standards of financial condition and standing that are considered
1173	necessary and appropriate to regulate the quality of a financial institution whose letters of credit
1174	will be acceptable to the commissioner as determined by:

1175	(i) the commissioner by rule; or
1176	(ii) the Securities Valuation Office of the National Association of Insurance
1177	Commissioners.
1178	(155) (a) "Rate" means:
1179	(i) the cost of a given unit of insurance; or
1180	(ii) for property or casualty insurance, that cost of insurance per exposure unit either
1181	expressed as:
1182	(A) a single number; or
1183	(B) a pure premium rate, adjusted before the application of individual risk variations
1184	based on loss or expense considerations to account for the treatment of:
1185	(I) expenses;
1186	(II) profit; and
1187	(III) individual insurer variation in loss experience.
1188	(b) "Rate" does not include a minimum premium.
1189	(156) (a) Except as provided in Subsection (156)(b), "rate service organization" means
1190	a person who assists an insurer in rate making or filing by:
1191	(i) collecting, compiling, and furnishing loss or expense statistics;
1192	(ii) recommending, making, or filing rates or supplementary rate information; or
1193	(iii) advising about rate questions, except as an attorney giving legal advice.
1194	(b) "Rate service organization" does not mean:
1195	(i) an employee of an insurer;
1196	(ii) a single insurer or group of insurers under common control;
1197	(iii) a joint underwriting group; or
1198	(iv) an individual serving as an actuarial or legal consultant.
1199	(157) "Rating manual" means any of the following used to determine initial and
1200	renewal policy premiums:
1201	(a) a manual of rates;
1202	(b) a classification;
1203	(c) a rate-related underwriting rule; and
1204	(d) a rating formula that describes steps, policies, and procedures for determining
1205	initial and renewal policy premiums.

1206	(158) (a) "Rebate" means a licensee paying, allowing, giving, or offering to pay, allow,
1207	or give, directly or indirectly:
1208	(i) a refund of premium or portion of premium;
1209	(ii) a refund of commission or portion of commission;
1210	(iii) a refund of all or a portion of a consultant fee; or
1211	(iv) providing services or other benefits not specified in an insurance or annuity
1212	contract.
1213	(b) "Rebate" does not include:
1214	(i) a refund due to termination or changes in coverage;
1215	(ii) a refund due to overcharges made in error by the licensee; or
1216	(iii) savings or wellness benefits as provided in the contract by the licensee.
1217	(159) "Received by the department" means:
1218	(a) the date delivered to and stamped received by the department, if delivered in
1219	person;
1220	(b) the post mark date, if delivered by mail;
1221	(c) the delivery service's post mark or pickup date, if delivered by a delivery service;
1222	(d) the received date recorded on an item delivered, if delivered by:
1223	(i) facsimile;
1224	(ii) email; or
1225	(iii) another electronic method; or
1226	(e) a date specified in:
1227	(i) a statute;
1228	(ii) a rule; or
1229	(iii) an order.
1230	(160) "Reciprocal" or "interinsurance exchange" means an unincorporated association
1231	of persons:
1232	(a) operating through an attorney-in-fact common to all of the persons; and
1233	(b) exchanging insurance contracts with one another that provide insurance coverage
1234	on each other.
1235	(161) "Reinsurance" means an insurance transaction where an insurer, for
1236	consideration, transfers any portion of the risk it has assumed to another insurer. In referring to

123/	reinsurance transactions, this title sometimes refers to:
1238	(a) the insurer transferring the risk as the "ceding insurer"; and
1239	(b) the insurer assuming the risk as the:
1240	(i) "assuming insurer"; or
1241	(ii) "assuming reinsurer."
1242	(162) "Reinsurer" means a person licensed in this state as an insurer with the authority
1243	to assume reinsurance.
1244	(163) "Residential dwelling liability insurance" means insurance against liability
1245	resulting from or incident to the ownership, maintenance, or use of a residential dwelling that is
1246	a detached single family residence or multifamily residence up to four units.
1247	(164) (a) "Retrocession" means reinsurance with another insurer of a liability assumed
1248	under a reinsurance contract.
1249	(b) A reinsurer "retrocedes" when the reinsurer reinsures with another insurer part of a
1250	liability assumed under a reinsurance contract.
1251	(165) "Rider" means an endorsement to:
1252	(a) an insurance policy; or
1253	(b) an insurance certificate.
1254	(166) "Secondary medical condition" means a complication related to an exclusion
1255	from coverage in accident and health insurance.
1256	(167) (a) "Security" means a:
1257	(i) note;
1258	(ii) stock;
1259	(iii) bond;
1260	(iv) debenture;
1261	(v) evidence of indebtedness;
1262	(vi) certificate of interest or participation in a profit-sharing agreement;
1263	(vii) collateral-trust certificate;
1264	(viii) preorganization certificate or subscription;
1265	(ix) transferable share;
1266	(x) investment contract;
1267	(xi) voting trust certificate;

1268	(xii) certificate of deposit for a security;
1269	(xiii) certificate of interest of participation in an oil, gas, or mining title or lease or in
1270	payments out of production under such a title or lease;
1271	(xiv) commodity contract or commodity option;
1272	(xv) certificate of interest or participation in, temporary or interim certificate for,
1273	receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the items listed
1274	in Subsections (167)(a)(i) through (xiv); or
1275	(xvi) another interest or instrument commonly known as a security.
1276	(b) "Security" does not include:
1277	(i) any of the following under which an insurance company promises to pay money in a
1278	specific lump sum or periodically for life or some other specified period:
1279	(A) insurance;
1280	(B) an endowment policy; or
1281	(C) an annuity contract; or
1282	(ii) a burial certificate or burial contract.
1283	(168) "Securityholder" means a specified person who owns a security of a person,
1284	including:
1285	(a) common stock;
1286	(b) preferred stock;
1287	(c) debt obligations; and
1288	(d) any other security convertible into or evidencing the right of any of the items listed
1289	in this Subsection (168).
1290	(169) (a) "Self-insurance" means an arrangement under which a person provides for
1291	spreading its own risks by a systematic plan.
1292	(b) Except as provided in this Subsection (169), "self-insurance" does not include an
1293	arrangement under which a number of persons spread their risks among themselves.
1294	(c) "Self-insurance" includes:
1295	(i) an arrangement by which a governmental entity undertakes to indemnify an
1296	employee for liability arising out of the employee's employment; and
1297	(ii) an arrangement by which a person with a managed program of self-insurance and
1298	risk management undertakes to indemnify its affiliates, subsidiaries, directors, officers, or

1299	employees for liability or risk that is related to the relationship or employment.
1300	(d) "Self-insurance" does not include an arrangement with an independent contractor.
1301	(170) "Sell" means to exchange a contract of insurance:
1302	(a) by any means;
1303	(b) for money or its equivalent; and
1304	(c) on behalf of an insurance company.
1305	(171) "Short-term limited duration health insurance" means a health benefit product
1306	that:
1307	(a) after taking into account any renewals or extensions, has a total duration of no more
1308	than 36 months; and
1309	(b) has an expiration date specified in the contract that is less than 12 months after the
1310	original effective date of coverage under the health benefit product.
1311	(172) "Significant break in coverage" means a period of 63 consecutive days during
1312	each of which an individual does not have creditable coverage.
1313	(173) (a) "Small employer" means, in connection with a health benefit plan and with
1314	respect to a calendar year and to a plan year, an employer who:
1315	(i) (A) employed at least one but not more than 50 eligible employees on business days
1316	during the preceding calendar year; or
1317	(B) if the employer did not exist for the entirety of the preceding calendar year,
1318	reasonably expects to employ an average of at least one but not more than 50 eligible
1319	employees on business days during the current calendar year;
1320	(ii) employs at least one employee on the first day of the plan year; and
1321	(iii) for an employer who has common ownership with one or more other employers, is
1322	treated as a single employer under 26 U.S.C. Sec. 414(b), (c), (m), or (o).
1323	(b) "Small employer" does not include a sole proprietor that does not employ at least
1324	one employee.
1325	(174) "Special enrollment period," in connection with a health benefit plan, has the
1326	same meaning as provided in federal regulations adopted pursuant to the Health Insurance
1327	Portability and Accountability Act.

(175) (a) "Subsidiary" of a person means an affiliate controlled by that person either

directly or indirectly through one or more affiliates or intermediaries.

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1330	(b) "Wholly owned subsidiary" of a person is a subsidiary of which all of the voting
1331	shares are owned by that person either alone or with its affiliates, except for the minimum
1332	number of shares the law of the subsidiary's domicile requires to be owned by directors or
1333	others.
1334	(176) Subject to Subsection (91)(b), "surety insurance" includes:
1335	(a) a guarantee against loss or damage resulting from the failure of a principal to pay or
1336	perform the principal's obligations to a creditor or other obligee;
1337	(b) bail bond insurance; and
1338	(c) fidelity insurance.
1339	(177) (a) "Surplus" means the excess of assets over the sum of paid-in capital and
1340	liabilities.
1341	(b) (i) "Permanent surplus" means the surplus of an insurer or organization that is
1342	designated by the insurer or organization as permanent.
1343	(ii) Sections 31A-5-211, 31A-7-201, 31A-8-209, 31A-9-209, and 31A-14-205 require
1344	that insurers or organizations doing business in this state maintain specified minimum levels of
1345	permanent surplus.
1346	(iii) Except for assessable mutuals, the minimum permanent surplus requirement is the
1347	same as the minimum required capital requirement that applies to stock insurers.
1348	(c) "Excess surplus" means:
1349	(i) for a life insurer, accident and health insurer, health organization, or property and
1350	casualty insurer as defined in Section 31A-17-601, the lesser of:
1351	(A) that amount of an insurer's or health organization's total adjusted capital that
1352	exceeds the product of:
1353	(I) 2.5; and
1354	(II) the sum of the insurer's or health organization's minimum capital or permanent
1355	surplus required under Section 31A-5-211, 31A-9-209, or 31A-14-205; or
1356	(B) that amount of an insurer's or health organization's total adjusted capital that
1357	exceeds the product of:
1358	(I) 3.0; and
1359	(II) the authorized control level RBC as defined in Subsection 31A-17-601(8)(a); and
1360	(ii) for a monoline mortgage guaranty insurer, financial guaranty insurer, or title insurer

1301	that amount of an insurer's paid-in-capital and surplus that exceeds the product of:
1362	(A) 1.5; and
1363	(B) the insurer's total adjusted capital required by Subsection 31A-17-609(1).
1364	(178) "Third party administrator" or "administrator" means a person who collects
1365	charges or premiums from, or who, for consideration, adjusts or settles claims of residents of
1366	the state in connection with insurance coverage, annuities, or service insurance coverage,
1367	except:
1368	(a) a union on behalf of its members;
1369	(b) a person administering a:
1370	(i) pension plan subject to the federal Employee Retirement Income Security Act of
1371	1974;
1372	(ii) governmental plan as defined in Section 414(d), Internal Revenue Code; or
1373	(iii) nonelecting church plan as described in Section 410(d), Internal Revenue Code;
1374	(c) an employer on behalf of the employer's employees or the employees of one or
1375	more of the subsidiary or affiliated corporations of the employer;
1376	(d) an insurer licensed under the following, but only for a line of insurance for which
1377	the insurer holds a license in this state:
1378	(i) Chapter 5, Domestic Stock and Mutual Insurance Corporations;
1379	(ii) Chapter 7, Nonprofit Health Service Insurance Corporations;
1380	(iii) Chapter 8, Health Maintenance Organizations and Limited Health Plans;
1381	(iv) Chapter 9, Insurance Fraternals; or
1382	(v) Chapter 14, Foreign Insurers;
1383	(e) a person:
1384	(i) licensed or exempt from licensing under:
1385	(A) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and
1386	Reinsurance Intermediaries; or
1387	(B) Chapter 26, Insurance Adjusters; and
1388	(ii) whose activities are limited to those authorized under the license the person holds
1389	or for which the person is exempt; or
1390	(f) an institution, bank, or financial institution:
1391	(i) that is:

1392 (A) an institution whose deposits and accounts are to any extent insured by a federal 1393 deposit insurance agency, including the Federal Deposit Insurance Corporation or National 1394 Credit Union Administration; or 1395 (B) a bank or other financial institution that is subject to supervision or examination by 1396 a federal or state banking authority; and 1397 (ii) that does not adjust claims without a third party administrator license. (179) "Title insurance" means the insuring, guaranteeing, or indemnifying of an owner 1398 of real or personal property or the holder of liens or encumbrances on that property, or others 1399 1400 interested in the property against loss or damage suffered by reason of liens or encumbrances upon, defects in, or the unmarketability of the title to the property, or invalidity or 1401 1402 unenforceability of any liens or encumbrances on the property. 1403 (180) "Total adjusted capital" means the sum of an insurer's or health organization's 1404 statutory capital and surplus as determined in accordance with: 1405 (a) the statutory accounting applicable to the annual financial statements required to be 1406 filed under Section 31A-4-113; and 1407 (b) another item provided by the RBC instructions, as RBC instructions is defined in 1408 Section 31A-17-601. 1409 (181) (a) "Trustee" means "director" when referring to the board of directors of a 1410 corporation. (b) "Trustee," when used in reference to an employee welfare fund, means an 1411 1412 individual, firm, association, organization, joint stock company, or corporation, whether acting 1413 individually or jointly and whether designated by that name or any other, that is charged with 1414 or has the overall management of an employee welfare fund. (182) (a) "Unauthorized insurer," "unadmitted insurer," or "nonadmitted insurer" 1415 1416 means an insurer: 1417 (i) not holding a valid certificate of authority to do an insurance business in this state; 1418 or

- (ii) transacting business not authorized by a valid certificate.
 - (b) "Admitted insurer" or "authorized insurer" means an insurer:
- (i) holding a valid certificate of authority to do an insurance business in this state; and
- (ii) transacting business as authorized by a valid certificate.

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1423	(183) Underwrite lineans the authority to accept of reject risk on behalf of the insurer
1424	(184) "Vehicle liability insurance" means insurance against liability resulting from or
1425	incident to ownership, maintenance, or use of a land vehicle or aircraft, exclusive of a vehicle
1426	comprehensive or vehicle physical damage coverage under Subsection (152).
1427	(185) "Voting security" means a security with voting rights, and includes a security
1428	convertible into a security with a voting right associated with the security.
1429	(186) "Waiting period" for a health benefit plan means the period that must pass before
1430	coverage for an individual, who is otherwise eligible to enroll under the terms of the health
1431	benefit plan, can become effective.
1432	(187) "Workers' compensation insurance" means:
1433	(a) insurance for indemnification of an employer against liability for compensation
1434	based on:
1435	(i) a compensable accidental injury; and
1436	(ii) occupational disease disability;
1437	(b) employer's liability insurance incidental to workers' compensation insurance and
1438	written in connection with workers' compensation insurance; and
1439	(c) insurance assuring to a person entitled to workers' compensation benefits the
1440	compensation provided by law.
1441	Section 5. Section 31A-35-504 is amended to read:
1442	31A-35-504. Failure to pay bail bond forfeiture Grounds for suspension and
1443	revocation of bail bond agency license.
1444	(1) As used in this section:
1445	(a) "Agency" means a bail bond agency.
1446	(b) "Judgment" means a judgment of bail bond forfeiture issued under Section
1447	[77-20b-104] <u>77-20-505</u> .
1448	(2) (a) (i) An agency shall pay a judgment not later than 15 days following service of
1449	notice upon the agency from a prosecutor of the entry of the judgment.
1450	(ii) An agency may pay a bail bond forfeiture to the court prior to judgment.
1451	(b) (i) A prosecutor who does not receive proof of or notice of payment of the
1452	judgment within 15 days after the service of notice to the agency of a judgment shall notify the
1453	commissioner of the failure to pay the judgment.

(ii) The commissioner shall notify the agency, by the most expeditious means available, of the nonpayment of the judgment.

- (iii) The agency shall satisfy the judgment within five business days after receiving notice under Subsection (2)(b)(ii). If the judgment is not satisfied at the end of the five days, the commissioner may suspend the agency's license under Subsection (3).
- (c) If notice of entry of judgment is served upon the agency by mail, three additional days are added to the 15 days provided in Subsections (2)(a), (2)(b), and (2)(d).
- (d) A prosecutor may not proceed under Subsection (2)(b) if an agency, within 15 days after service of notice of the entry of judgment is served:
- (i) files a motion to set aside the judgment or files an application for an extraordinary writ; and
- (ii) provides proof that the agency has posted the judgment amount with the court in the form of cash, a cashier's check, or certified funds.
- (e) As used in this section, the filing of the following tolls the time within which an agency is required to pay a judgment if the motion or application is filed within 15 days after the day on which service of notice of the entry of a judgment is served:
 - (i) a motion to set aside a judgment; or

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- (ii) an application for extraordinary writ.
- (3) The commissioner shall suspend the license of the agency not later than five days following the agency's failure to satisfy the judgment as required under Subsection (2)(b).
- (4) If the prosecutor receives proof of or notice of payment of the judgment during the suspension period under Subsection (3), the prosecutor shall immediately notify the commissioner of the payment. The notice shall be in writing and by the most expeditious means possible, including facsimile or other electronic means.
- (5) The commissioner shall lift a suspension under Subsection (3) within five days of the day on which all of the following conditions are met:
 - (a) the suspension has been in place for no fewer than 14 days;
- 1481 (b) the commissioner has received written notice of payment of the unpaid forfeiture 1482 from the prosecutor; and
 - (c) the commissioner has received:
- (i) no other notice of any unpaid forfeiture from a prosecutor; or

1485	(ii) if a notice of unpaid forfeiture is received, written notice from the prosecutor that
1486	the unpaid forfeiture has been paid.
1487	(6) The commissioner shall commence an administrative proceeding and revoke the
1488	license of an agency that fails to meet the conditions under Subsection (5) within 60 days
1489	following the initial date of suspension.
1490	(7) This section does not restrict or otherwise affect the rights of a prosecutor to
1491	commence collection proceedings under Subsection [77-20b-104] <u>77-20-505(5)</u> .
1492	Section 6. Section 63M-7-215 is amended to read:
1493	63M-7-215. Pretrial Release Programs Special Revenue Fund Funding Uses.
1494	(1) As used in this section:
1495	(a) "Commission" means the Commission on Criminal and Juvenile Justice created in
1496	Section 63M-7-201.
1497	(b) "Fund" means the Pretrial Release Programs Special Revenue Fund created in this
1498	section.
1499	(2) There is created an expendable special revenue fund known as the "Pretrial Release
1500	Programs Special Revenue Fund."
1501	(3) The Division of Finance shall administer the fund in accordance with this section.
1502	(4) The fund shall consist of:
1503	(a) money collected and remitted to the fund under Section [77-20-9] 77-20-403 ;
1504	(b) appropriations from the Legislature;
1505	(c) interest earned on money in the fund; and
1506	(d) contributions from other public or private sources.
1507	(5) The commission shall award grants from the fund to county agencies and other
1508	agencies the commission determines appropriate to assist counties with establishing and
1509	expanding pretrial services programs that serve the purpose of:
1510	(a) assisting a court in making an informed decision regarding an individual's pretrial
1511	release; and
1512	(b) providing supervision of an individual released from law enforcement custody on
1513	conditions pending a final determination of a criminal charge filed against the individual.
1514	(6) The commission may retain up to 3% of the money deposited into the fund to pay
1515	for administrative costs incurred by the commission, including salary and benefits, equipment,

1516	supplies, or travel costs that are directly related to the administration of this section.
1517	(7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1518	commission shall establish a grant application and review process for the expenditure of money
1519	from the fund.
1520	(8) The grant application and review process shall describe:
1521	(a) the requirements to complete the grant application;
1522	(b) requirements for receiving funding;
1523	(c) criteria for the approval of a grant application; and
1524	(d) support offered by the commission to complete a grant application.
1525	(9) Upon receipt of a grant application, the commission shall:
1526	(a) review the grant application for completeness;
1527	(b) make a determination regarding the grant application;
1528	(c) inform the grant applicant of the commission's determination regarding the grant
1529	application; and
1530	(d) if approved, award grants from the fund to the grant applicant.
1531	(10) Before November 30 of each year, the commission shall provide an electronic
1532	report to the Law Enforcement and Criminal Justice Interim Committee regarding the status of
1533	the fund and expenditures made from the fund.
1534	Section 7. Section 77-17-8 is amended to read:
1535	77-17-8. Mistake in charging offense Procedure Witnesses.
1536	(1) If, at any time before verdict or judgment, a mistake is made in charging the proper
1537	offense, and there is probable cause to believe that the defendant is chargeable with another
1538	offense, the court may [commit the defendant or require the defendant to give bail under
1539	Section 77-20-1 for the defendant's appearance to answer to the proper charge when filed, and
1540	may also require witnesses to give bail for their appearance.]:
1541	(a) release the individual on the individual's own recognizance, as defined in Section
1542	77-20-102, during the time the individual awaits trial or other resolution of criminal charges;
1543	(b) designate a condition, or a combination of conditions, described in Subsection
1544	77-20-205(4), to be imposed upon the individual's release during the time the individual awaits
1545	trial or other resolution of criminal charges; or
1546	(c) order the individual be detained during the time the individual awaits trial or other

1547	resolution of criminal charges.
1548	(2) A court may require a witness to post monetary bail, as defined in Section
1549	77-20-102, to ensure that the witness appears in court.
1550	Section 8. Section 77-18a-1 is amended to read:
1551	77-18a-1. Appeals When proper.
1552	(1) A defendant may, as a matter of right, appeal from:
1553	(a) a final judgment of conviction, whether by verdict or plea;
1554	(b) an order made after judgment that affects the substantial rights of the defendant;
1555	(c) an order adjudicating the defendant's competency to proceed further in a pending
1556	prosecution; or
1557	(d) an order denying bail[, as provided in Subsection 77-20-1(9)] under Chapter 20,
1558	Bail.
1559	(2) In addition to any appeal permitted by Subsection (1), a defendant may seek
1560	discretionary appellate review of any interlocutory order.
1561	(3) The prosecution may, as a matter of right, appeal from:
1562	(a) a final judgment of dismissal, including a dismissal of a felony information
1563	following a refusal to bind the defendant over for trial;
1564	(b) a pretrial order dismissing a charge on the ground that the court's suppression of
1565	evidence has substantially impaired the prosecution's case;
1566	(c) an order granting a motion to withdraw a plea of guilty or no contest;
1567	(d) an order arresting judgment or granting a motion for merger;
1568	(e) an order terminating the prosecution because of a finding of double jeopardy or
1569	denial of a speedy trial;
1570	(f) an order granting a new trial;
1571	(g) an order holding a statute or any part of it invalid;
1572	(h) an order adjudicating the defendant's competency to proceed further in a pending
1573	prosecution;
1574	(i) an order finding, pursuant to Title 77, Chapter 19, Part 2, Competency for
1575	Execution, that an inmate sentenced to death is incompetent to be executed;
1576	(j) an order reducing the degree of offense pursuant to Section 76-3-402;
1577	(k) an illegal sentence: or

1578	(l) an order dismissing a charge pursuant to Subsection 76-2-309(3).
1579	(4) In addition to any appeal permitted by Subsection (3), the prosecution may seek
1580	discretionary appellate review of any interlocutory order entered before jeopardy attaches.
1581	Section 9. Section 77-20-101 is enacted to read:
1582	CHAPTER 20. BAIL
1583	Part 1. General Provisions
1584	<u>77-20-101.</u>
1585	This chapter is known as "Bail."
1586	Section 10. Section 77-20-102 is enacted to read:
1587	77-20-102. Definitions.
1588	As used in this chapter:
1589	(1) "Bail bond" means the same as that term is defined in Section 31A-35-102.
1590	(2) "Bail bond agency" means the same as that term is defined in Section 31A-35-102.
1591	(3) "Bail bond producer" means the same as that term is defined in Section
1592	31A-35-102 <u>.</u>
1593	(4) "Bail commissioner" means a bail commissioner appointed in accordance with
1594	<u>Section 17-32-1.</u>
1595	(5) "Exonerate" means to release and discharge a surety, or a surety's bail bond
1596	producer, from liability for a bail bond.
1597	(6) "Financial condition" or "monetary bail" means any monetary condition that is
1598	imposed to secure an individual's pretrial release.
1599	(7) "Forfeiture" means:
1600	(a) to divest an individual or surety from a right to the repayment of monetary bail; or
1601	(b) to enforce a pledge of assets or real or personal property from an individual or
1602	surety used to secure an individual's pretrial release.
1603	(8) "Magistrate" means the same as that term is defined in Section 77-1-3.
1604	(9) "Own recognizance" means the release of an individual without any condition of
1605	release other than the individual's promise to:
1606	(a) appear for all required court proceedings; and
1607	(b) not commit any criminal offense.
1608	(10) "Pretrial detention hearing" means a hearing described in Section 77-20-206

1609	(11) "Pretrial release" or "bail" means the release of an individual from law
1610	enforcement custody during the time the individual awaits trial or other resolution of criminal
1611	charges.
1612	(12) "Pretrial risk assessment" means an objective, research-based, validated
1613	assessment tool that measures an individual's risk of flight and risk of anticipated criminal
1614	conduct while on pretrial release.
1615	(13) "Pretrial services program" means a program that is established to:
1616	(a) gather information on individuals booked into a jail facility;
1617	(b) conduct pretrial risk assessments; and
1618	(c) supervise individuals granted pretrial release.
1619	(14) "Pretrial status order" means an order issued by a magistrate or judge that:
1620	(a) releases the individual on the individual's own recognizance while the individual
1621	awaits trial or other resolution of criminal charges;
1622	(b) sets the terms and conditions of the individual's pretrial release while the individual
1623	awaits trial or other resolution of criminal charges; or
1624	(c) denies pretrial release and orders that the individual be detained while the
1625	individual awaits trial or other resolution of criminal charges.
1626	(15) "Principal" means the same as that term is defined in Section 31A-35-102.
1627	(16) "Surety" means a surety insurer or a bail bond agency.
1628	(17) "Surety insurer" means the same as that term is defined in Section 31A-35-102.
1629	(18) "Temporary pretrial status order" means an order issued by a magistrate that:
1630	(a) releases the individual on the individual's own recognizance until a pretrial status
1631	order is issued;
1632	(b) sets the terms and conditions of the individual's pretrial release until a pretrial status
1633	order is issued; or
1634	(c) denies pretrial release and orders that the individual be detained until a pretrial
1635	status order is issued.
1636	(19) "Unsecured bond" means an individual's promise to pay a financial condition if
1637	the individual's fails to appear for any required court appearance.
1638	Section 11. Section 77-20-103, which is renumbered from Section 77-20-1.1 is
1639	renumbered and amended to read:

1640	[77-20-1.1]. <u>77-20-103.</u> Release data requirements.
1641	(1) The Administrative Office of the Courts shall submit the following data on cases
1642	involving individuals for whom the Administrative Office of the Courts has a state
1643	identification number broken down by judicial district to the Commission on Criminal and
1644	Juvenile Justice before July 1 of each year:
1645	(a) for the preceding calendar year:
1646	(i) the number of individuals charged with a criminal offense who failed to appear at a
1647	required court preceding while on pretrial release[, in accordance with Section 77-20-1,] under
1648	each of the following categories of release:
1649	(A) the individual's own recognizance;
1650	(B) a financial condition; and
1651	(C) a release condition other than a financial condition;
1652	(ii) the number of offenses that carry a potential penalty of incarceration an individual
1653	committed while on pretrial release[, in accordance with Section 77-20-1,] under each of the
1654	following categories of release:
1655	(A) the individual's own recognizance;
1656	(B) a financial condition; and
1657	(C) a release condition other than a financial condition; and
1658	(iii) the total amount of fees and fines, including bond forfeiture, collected by the court
1659	from an individual for the individual's failure to comply with a condition of release under each
1660	of the following categories of release:
1661	(A) an individual's own recognizance;
1662	(B) a financial condition; and
1663	(C) a release condition other than a financial condition; and
1664	(b) at the end of the preceding calendar year:
1665	(i) the total number of outstanding warrants of arrest for individuals who were released
1666	from law enforcement custody[, in accordance with Section 77-20-1,] on pretrial release under
1667	each of the following categories of release:
1668	(A) the individual's own recognizance;
1669	(B) a financial condition; and
1670	(C) a release condition other than a financial condition;

1671	(ii) for each of the categories described in Subsection (1)(b)(i), the average length of
1672	time that the outstanding warrants had been outstanding; and
1673	(iii) for each of the categories described in Subsection (1)(b)(i), the number of
1674	outstanding warrants for arrest for crimes of each of the following categories:
1675	(A) a first degree felony;
1676	(B) a second degree felony;
1677	(C) a third degree felony;
1678	(D) a class A misdemeanor;
1679	(E) a class B misdemeanor; and
1680	(F) a class C misdemeanor.
1681	(2) Each county jail shall submit the following data, based on the preceding calendar
1682	year, to the Commission of Criminal and Juvenile Justice before July 1 of each year:
1683	(a) the number of individuals released upon payment of monetary bail before appearing
1684	before a court;
1685	(b) the number of individuals released on the individual's own recognizance before
1686	appearing before a court; and
1687	(c) the amount of monetary bail, any fees, and any other money paid by or on behalf of
1688	individuals collected by the county jail.
1689	(3) The Commission on Criminal and Juvenile Justice shall compile the data collected
1690	under this section and shall submit the compiled data in an electronic report to the Law
1691	Enforcement and Criminal Justice Interim Committee before November 1 of each year.
1692	Section 12. Section 77-20-201 is enacted to read:
1693	Part 2. Preconviction Bail
1694	77-20-201. Right to bail Capital felony.
1695	(1) An individual charged with, or arrested for, a criminal offense shall be admitted to
1696	bail as a matter of right, except if the individual is charged with:
1697	(a) a capital felony when the court finds there is substantial evidence to support the
1698	charge;
1699	(b) a felony committed while on parole or on probation for a felony conviction, or
1700	while free on bail awaiting trial on a previous felony charge, when the court finds there is
1701	substantial evidence to support the current felony charge;

1702	(c) a felony when there is substantial evidence to support the charge and the court
1703	finds, by clear and convincing evidence, that the individual would constitute a substantial
1704	danger to any other individual or to the community, or is likely to flee the jurisdiction of the
1705	court, if released on bail;
1706	(d) a felony when the court finds there is substantial evidence to support the charge and
1707	the court finds, by clear and convincing evidence, that the individual violated a material
1708	condition of release while previously on bail;
1709	(e) a domestic violence offense if the court finds:
1710	(i) that there is substantial evidence to support the charge; and
1711	(ii) by clear and convincing evidence, that the individual would constitute a substantial
1712	danger to an alleged victim of domestic violence if released on bail;
1713	(f) the offense of driving under the influence or driving with a measurable controlled
1714	substance in the body if:
1715	(i) the offense results in death or serious bodily injury to an individual; and
1716	(ii) the court finds:
1717	(A) that there is substantial evidence to support the charge; and
1718	(B) by clear and convincing evidence, that the person would constitute a substantial
1719	danger to the community if released on bail; or
1720	(g) a felony violation of Section 76-9-101 if there is substantial evidence to support the
1721	charge and the court finds, by clear and convincing evidence, that the individual is not likely to
1722	appear for a subsequent court appearance.
1723	(2) Notwithstanding any other provision of this section, there is a rebuttable
1724	presumption that an individual is a substantial danger to the community under Subsection
1725	<u>(1)(f)(ii)(B):</u>
1726	(a) as long as the individual has a blood or breath alcohol concentration of .05 grams or
1727	greater if the individual is arrested for, or charged with, the offense of driving under the
1728	influence and the offense resulted in death or serious bodily injury to an individual; or
1729	(b) if the individual has a measurable amount of controlled substance in the
1730	individual's body, the individual is arrested for, or charged with, the offense of driving with a
1731	measurable controlled substance in the body and the offense resulted in death or serious bodily
1732	injury to an individual.

1733	(3) For purposes of Subsection (1)(a), any arrest or charge for a violation of Section
1734	76-5-202, aggravated murder, is a capital felony unless:
1735	(a) the prosecuting attorney files a notice of intent to not seek the death penalty; or
1736	(b) the time for filing a notice to seek the death penalty has expired and the prosecuting
1737	attorney has not filed a notice to seek the death penalty.
1738	Section 13. Section 77-20-202 is enacted to read:
1739	77-20-202. Collection of pretrial information.
1740	(1) On or after May 4, 2022, when an individual is arrested without a warrant for an
1741	offense and booked at a jail facility, an employee at the jail facility, or an employee of a pretrial
1742	services program, shall submit the following information to the court with the probable cause
1743	statement to the extent that the information is reasonably available to the employee:
1744	(a) identification information for the individual, including:
1745	(i) the individual's legal name and any known aliases;
1746	(ii) the individual's date of birth;
1747	(iii) the individual's state identification number;
1748	(iv) the individual's mobile phone number; and
1749	(v) the individual's email address;
1750	(b) the individual's residential address;
1751	(c) any pending criminal charge or warrant for the individual, including the offense
1752	tracking number of the current offense for which the individual is booked;
1753	(d) the individual's probation or parole supervision status;
1754	(e) whether the individual was on pretrial release for another criminal offense prior to
1755	the booking of the individual for the current criminal offense;
1756	(f) the individual's financial circumstances to the best of the individual's knowledge at
1757	the time of booking, including:
1758	(i) the individual's current employer;
1759	(ii) the individual's monthly income, including any alimony or child support that
1760	contributes to the individual's monthly income;
1761	(iii) the individual's monthly expenses, including any alimony or child support
1762	obligation that the individual is responsible for paying;
1763	(iv) the individual's ownership of, or any interest in, personal or real property,

1764	including any savings or checking accounts or cash;
1765	(v) the number, ages, and relationships of any dependents;
1766	(vi) any financial support or benefit that the individual receives from a state or federal
1767	government; and
1768	(vii) any other information about the individual's financial circumstances that may be
1769	relevant; and
1770	(g) any ties the individual has to the community, including:
1771	(i) the length of time that the individual has been at the individual's residential address;
1772	(ii) any enrollment in a local college, university, or trade school; and
1773	(iii) the name and contact information for any family member or friend that the
1774	individual believes would be willing to provide supervision of the individual.
1775	(2) Upon request, the jail facility, or the pretrial services program, shall provide the
1776	information described in Subsection (1) to the individual, the individual's attorney, or the
1777	prosecuting attorney.
1778	(3) Any information collected from an individual under Subsection (1) is inadmissible
1779	in any court proceeding other than:
1780	(a) a criminal proceeding addressing the individual's pretrial release or indigency for
1781	the offense, or offenses, for which the individual was arrested or charged with; or
1782	(b) another criminal proceeding regarding prosecution for providing a false statement
1783	under Subsection (1).
1784	(4) Nothing in this section prohibits a court and a county from entering into an
1785	agreement regarding information to be submitted to the court with a probable cause statement.
1786	Section 14. Section 77-20-203, which is renumbered from Section 77-20-3.2 is
1787	renumbered and amended to read:
1788	[77-20-3.2]. <u>77-20-203.</u> Sheriff and bail commissioner authority to release an
1789	individual from jail on own recognizance.
1790	(1) As used in this section:
1791	[(a) "County bail commissioner" means a bail commissioner appointed in accordance
1792	with Section 17-32-1.]
1793	[(b)] (a) "Qualifying offense" means the same as that term is defined in Section
1794	78B-7-801.

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1826	(x) any other similar factor a sheriff determines is relevant.
1827	(4) Nothing in this section prohibits a [district] court and a county from entering into
1828	an agreement regarding release.
1829	Section 15. Section 77-20-204 is enacted to read:
1830	77-20-204. Bail commissioner authority to release an individual from jail on
1831	monetary bail.
1832	(1) As used in this section, "eligible felony offense" means a third degree felony
1833	violation under:
1834	(a) Section 23-19-15;
1835	(b) Section 23-20-4;
1836	(c) Section 23-20-4.7;
1837	(d) Title 76, Chapter 6, Part 4, Theft;
1838	(e) Title 76, Chapter 6, Part 5, Fraud;
1839	(f) Title 76, Chapter 6, Part 6, Retail Theft;
1840	(g) Title 76, Chapter 6, Part 7, Utah Computer Crimes Act;
1841	(h) Title 76, Chapter 6, Part 8, Library Theft;
1842	(i) Title 76, Chapter 6, Part 9, Cultural Sites Protection;
1843	(j) Title 76, Chapter 6, Part 10, Mail Box Damage and Mail Theft;
1844	(k) Title 76, Chapter 6, Part 11, Identity Fraud Act;
1845	(1) Title 76, Chapter 6, Part 12, Utah Mortgage Fraud Act;
1846	(m) Title 76, Chapter 6, Part 13, Utah Automated Sales Suppression Device Act;
1847	(n) Title 76, Chapter 6, Part 14, Regulation of Metal Dealers;
1848	(o) Title 76, Chapter 6a, Pyramid Scheme Act;
1849	(p) Title 76, Chapter 7, Offenses Against the Family;
1850	(q) Title 76, Chapter 7a, Abortion Prohibition;
1851	(r) Title 76, Chapter 9, Part 2, Electronic Communication and Telephone Abuse;
1852	(s) Title 76, Chapter 9, Part 3, Cruelty to Animals;
1853	(t) Title 76, Chapter 9, Part 4, Offenses Against Privacy;
1854	(u) Title 76, Chapter 9, Part 5, Libel; or
1855	(v) Title 76, Chapter 9, Part 6, Offenses Against the Flag.
1856	(2) Except as provided in Subsection (7)(a), a bail commissioner may fix a financial

1857	condition for an individual if:
1858	(a) (i) the individual is ineligible to be released on the individual's own recognizance
1859	under Section 77-20-203;
1860	(ii) the individual is arrested for, or charged with:
1861	(A) a misdemeanor offense under state law; or
1862	(B) a violation of a city or county ordinance that is classified as a class B or C
1863	misdemeanor offense;
1864	(iii) the individual agrees in writing to appear for any future criminal proceedings
1865	related to the arrest; and
1866	(iv) law enforcement has not submitted a probable cause statement to a magistrate; or
1867	(b) (i) the individual is arrested for, or charged with, an eligible felony offense;
1868	(ii) the individual is not on pretrial release for a separate criminal offense;
1869	(iii) the individual is not on probation or parole;
1870	(iv) the primary risk posed by the individual is the risk of failure to appear;
1871	(v) the individual agrees in writing to appear for any future criminal proceedings
1872	related to the arrest; and
1873	(vi) law enforcement has not submitted a probable cause statement to a magistrate.
1874	(3) A bail commissioner may not fix a financial condition at a monetary amount that
1875	exceeds:
1876	(a) \$5,000 for an eligible felony offense;
1877	(b) \$1,950 for a class A misdemeanor offense;
1878	(c) \$680 for a class B misdemeanor offense;
1879	(d) \$340 for a class C misdemeanor offense;
1880	(e) \$150 for a violation of a city or county ordinance that is classified as a class B
1881	misdemeanor; or
1882	(f) \$80 for a violation of a city or county ordinance that is classified as a class C
1883	misdemeanor.
1884	(4) If an individual is arrested for more than one offense, and the bail commissioner
1885	fixes a financial condition for release:
1886	(a) the bail commissioner shall fix the financial condition at a single monetary amount
1887	and

1888	(b) the single monetary amount may not exceed the monetary amount under Subsection
1889	(3) for the highest level of offense for which the individual is arrested.
1890	(5) Except as provided in Subsection (7)(b), an individual shall be released if the
1891	individual posts a financial condition fixed by a bail commissioner in accordance with this
1892	section.
1893	(6) If a bail commissioner fixes a financial condition for an individual, law
1894	enforcement shall submit a probable cause statement in accordance with Rule 9 of the Utah
1895	Rules of Criminal Procedure after the bail commissioner fixes the financial condition.
1896	(7) Once a magistrate begins a review of an individual's case under Rule 9 of the Utah
1897	Rules of Criminal Procedure:
1898	(a) a bail commissioner may not fix or modify a financial condition for an individual;
1899	<u>and</u>
1900	(b) if a bail commissioner fixed a financial condition for the individual before the
1901	magistrate's review, the individual may no longer be released on the financial condition.
1902	(8) Nothing in this section prohibits a court and a county from entering into an
1903	agreement regarding release.
1904	Section 16. Section 77-20-205 is enacted to read:
1905	77-20-205. Pretrial release by a magistrate or judge.
1906	(1) (a) At the time that a magistrate issues a warrant of arrest, or finds there is probable
1907	cause to support the individual's arrest under Rule 9 of the Utah Rules of Criminal Procedure,
1908	the magistrate shall issue a temporary pretrial status order that:
1909	(i) releases the individual on the individual's own recognizance during the time the
1910	individual awaits trial or other resolution of criminal charges;
1911	(ii) designates a condition, or a combination of conditions, to be imposed upon the
1912	individual's release during the time the individual awaits trial or other resolution of criminal
1913	charges; or
1914	(iii) orders the individual be detained during the time the individual awaits trial or
1915	other resolution of criminal charges.
1916	(b) At the time that a magistrate issues a summons, the magistrate may issue a
1917	temporary pretrial status order that:
1918	(i) releases the individual on the individual's own recognizance during the time the

1919	individual awaits trial or other resolution of criminal charges; or
1920	(ii) designates a condition, or a combination of conditions, to be imposed upon the
1921	individual's release during the time the individual awaits trial or other resolution of criminal
1922	charges.
1923	(2) (a) Except as provided in Subsection (2)(c), at an individual's first appearance
1924	before the court, the magistrate or judge shall issue a pretrial status order that:
1925	(i) releases the individual on the individual's own recognizance during the time the
1926	individual awaits trial or other resolution of criminal charges;
1927	(ii) designates a condition, or a combination of conditions, to be imposed upon the
1928	individual's release during the time the individual awaits trial or other resolution of criminal
1929	charges; or
1930	(iii) orders the individual be detained during the time the individual awaits trial or
1931	other resolution of criminal charges.
1932	(b) In making a determination under Subsection (2)(a), the magistrate or judge may not
1933	give any deference to a magistrate's decision in a temporary pretrial status order.
1934	(c) The magistrate or judge shall delay the issuance of a pretrial status order described
1935	in Subsection (2)(a):
1936	(i) until a pretrial detention hearing is held if a prosecuting attorney makes a motion for
1937	pretrial detention as described in Section 77-20-206;
1938	(ii) if a party requests a delay; or
1939	(iii) if there is good cause to delay the issuance.
1940	(d) If a magistrate or judge delays the issuance of a pretrial status order under
1941	Subsection (2)(c), the magistrate or judge shall extend the temporary pretrial detention order
1942	until the issuance of a pretrial status order.
1943	(3) In making a determination about pretrial release under Subsection (1) or (2), a
1944	magistrate or judge shall impose only conditions of release that are reasonably available and
1945	necessary to reasonably ensure:
1946	(a) the individual's appearance in court when required;
1947	(b) the safety of any witnesses or victims of the offense allegedly committed by the
1948	individual;
1949	(c) the safety and welfare of the public; and

1950	(d) that the individual will not obstruct, or attempt to obstruct, the criminal justice
1951	process.
1952	(4) Except as provided in Subsection (5), a magistrate or judge may impose a
1953	condition, or combination of conditions, under Subsection (1) or (2) that requires an individual
1954	<u>to:</u>
1955	(a) not commit a federal, state, or local offense during the period of pretrial release;
1956	(b) avoid contact with a victim of the alleged offense;
1957	(c) avoid contact with a witness who:
1958	(i) may testify concerning the alleged offense; and
1959	(ii) is named in the pretrial status order;
1960	(d) not consume alcohol or any narcotic drug or other controlled substance unless
1961	prescribed by a licensed medical practitioner;
1962	(e) submit to drug or alcohol testing;
1963	(f) complete a substance abuse evaluation and comply with any recommended
1964	treatment or release program;
1965	(g) submit to electronic monitoring or location device tracking;
1966	(h) participate in inpatient or outpatient medical, behavioral, psychological, or
1967	psychiatric treatment;
1968	(i) maintain employment or actively seek employment if unemployed;
1969	(j) maintain or commence an education program;
1970	(k) comply with limitations on where the individual is allowed to be located or the
1971	times that the individual shall be, or may not be, at a specified location;
1972	(l) comply with specified restrictions on personal associations, place of residence, or
1973	travel;
1974	(m) report to a law enforcement agency, pretrial services program, or other designated
1975	agency at a specified frequency or on specified dates;
1976	(n) comply with a specified curfew;
1977	(o) forfeit or refrain from possession of a firearm or other dangerous weapon;
1978	(p) if the individual is charged with an offense against a child, limit or prohibit access
1979	to any location or occupation where children are located, including any residence where
1980	children are on the premises, activities where children are involved, locations where children

1981	congregate, or where a reasonable person would know that children congregate;
1982	(q) comply with requirements for house arrest;
1983	(r) return to custody for a specified period of time following release for employment,
1984	schooling, or other limited purposes;
1985	(s) remain in custody of one or more designated individuals who agree to:
1986	(i) supervise and report on the behavior and activities of the individual; and
1987	(ii) encourage compliance with all court orders and attendance at all required court
1988	proceedings;
1989	(t) comply with a financial condition; or
1990	(u) comply with any other condition that is reasonably available and necessary to
1991	ensure compliance with Subsection (3).
1992	(5) (a) If a county or municipality has established a pretrial services program, the
1993	magistrate or judge shall consider the services that the county or municipality has identified as
1994	available in determining what conditions of release to impose.
1995	(b) The magistrate or judge may not order conditions of release that would require the
1996	county or municipality to provide services that are not currently available from the county or
1997	municipality.
1998	(c) Notwithstanding Subsection (5)(a), the magistrate or judge may impose conditions
1999	of release not identified by the county or municipality so long as the condition does not require
2000	assistance or resources from the county or municipality.
2001	(6) (a) If the magistrate or judge determines that a financial condition, other than an
2002	unsecured bond, is necessary to impose as a condition of release, the magistrate or judge shall
2003	consider the individual's ability to pay when determining the amount of the financial condition.
2004	(b) If the magistrate or judge determines that a financial condition is necessary to
2005	impose as a condition of release, and a bail commissioner fixed a financial condition for the
2006	individual under Section 77-20-204, the magistrate or judge may not give any deference to:
2007	(i) the bail commissioner's action to fix a financial condition; or
2008	(ii) the amount of the financial condition that the individual was required to pay for
2009	pretrial release.
2010	(c) If a magistrate or judge orders a financial condition as a condition of release, the
2011	judge or magistrate shall set the financial condition at a single amount per case.

2012	(7) In making a determination about pretrial release under this section, the magistrate
2013	or judge may:
2014	(a) rely upon information contained in:
2015	(i) the indictment or information;
2016	(ii) any sworn or probable cause statement or other information provided by law
2017	enforcement;
2018	(iii) a pretrial risk assessment;
2019	(iv) an affidavit of indigency described in Section 78B-22-201.5;
2020	(v) witness statements or testimony; or
2021	(vi) any other reliable record or source, including proffered evidence; and
2022	(d) consider:
2023	(i) the nature and circumstances of the offense, or offenses, that the individual was
2024	arrested for, or charged with, including:
2025	(A) whether the offense is a violent offense; and
2026	(B) the vulnerability of a witness or alleged victim;
2027	(ii) the nature and circumstances of the individual, including the individual's:
2028	(A) character;
2029	(B) physical and mental health;
2030	(C) family and community ties;
2031	(D) employment status or history;
2032	(E) financial resources;
2033	(F) past criminal conduct;
2034	(G) history of drug or alcohol abuse; and
2035	(H) history of timely appearances at required court proceedings;
2036	(iii) the potential danger to another individual, or individuals, posed by the release of
2037	the individual;
2038	(iv) whether the individual was on probation, parole, or release pending an upcoming
2039	court proceeding at the time the individual allegedly committed the offense or offenses;
2040	(v) the availability of:
2041	(A) other individuals who agree to assist the individual in attending court when
2042	required; or

2043	(B) supervision of the individual in the individual's community;
2044	(vi) the eligibility and willingness of the individual to participate in various treatment
2045	programs, including drug treatment; or
2046	(vii) other evidence relevant to the individual's likelihood of fleeing or violating the
2047	law if released.
2048	(8) An individual arrested for violation of a jail release agreement, or a jail release
2049	court order, issued in accordance with Section 78B-7-802:
2050	(a) may not be released before the individual's first appearance before a magistrate or
2051	judge; and
2052	(b) may be denied pretrial release by the magistrate or judge under Subsection (2).
2053	Section 17. Section 77-20-206 is enacted to read:
2054	77-20-206. Motion for pretrial detention Pretrial detention hearing.
2055	(1) (a) If the criminal charges filed against an individual include one or more offenses
2056	eligible for detention under Subsection 77-20-201(1) or Utah Constitution, Article I, Section 8,
2057	the prosecuting attorney may make a motion for pretrial detention.
2058	(b) Upon receiving a motion for pretrial detention under Subsection (1)(a), the judge
2059	shall set a pretrial detention hearing in accordance with Subsection (2).
2060	(2) If a pretrial status order is not issued at an individual's first appearance and the
2061	individual remains detained, a pretrial detention hearing shall be held at the next available
2062	court hearing that is:
2063	(a) no sooner than seven days from the day on which the defendant was arrested; and
2064	(b) no later than fourteen days from the day on which the defendant was arrested.
2065	(3) (a) An individual, who is the subject of a pretrial detention hearing, has the right to
2066	be represented by counsel at the pretrial detention hearing.
2067	(b) If a judge finds the individual is indigent under Section 78B-22-202, the judge shall
2068	appoint counsel to represent the individual in accordance with Section 78B-22-203.
2069	(4) At the pretrial detention hearing:
2070	(a) the judge shall give both parties the opportunity to make arguments and to present
2071	relevant evidence or information;
2072	(b) the prosecuting attorney and the defendant have a right to subpoena witnesses to
2073	testify; and

2074	(c) the judge shall issue a pretrial status order in accordance with Subsection (5) and
2075	Section 77-20-205.
2076	(5) After hearing evidence on a motion for pretrial detention, and based on the totality
2077	of the circumstances, a judge may order detention if:
2078	(a) the individual is accused of committing an offense that qualifies for detention of the
2079	individual under Subsection 77-20-201(1) or Utah Constitution, Article I, Section 8; and
2080	(b) the prosecuting attorney demonstrates substantial evidence to support the charge,
2081	and meets all additional evidentiary burdens required under Subsection 77-20-201(1) or Utah
2082	Constitution, Article I, Section 8.
2083	(6) An alleged victim has the right to be heard at a pretrial detention hearing on a
2084	motion for pretrial detention.
2085	(7) If a defendant seeks to subpoena an alleged victim who did not willingly testify at
2086	the pretrial detention hearing, a defendant may issue a subpoena, at the conclusion of the
2087	pretrial detention hearing, compelling the alleged victim to testify at a subsequent hearing only
2088	if the judge finds that the testimony sought by the subpoena:
2089	(a) is material to the substantial evidence or clear and convincing evidence
2090	determinations described in Section 77-20-201 in light of all information presented to the
2091	court; and
2092	(b) would not unnecessarily intrude on the rights of the victim or place an undue
2093	burden on the victim.
2094	Section 18. Section 77-20-207 is enacted to read:
2095	77-20-207. Modification of pretrial status order.
2096	(1) A motion to modify a pretrial status order may be made:
2097	(a) by a party at any time after a pretrial status order is issued; and
2098	(b) only upon a showing that there has been a material change in circumstances.
2099	(2) (a) If a party makes a motion to modify the pretrial status order, the party shall
2100	provide notice to the opposing party sufficient to permit the opposing party to prepare for a
2101	hearing and to permit each alleged victim to be notified and be present.
2102	(b) A hearing on a motion to modify a pretrial status order may be held in conjunction
2103	with a preliminary hearing or any other pretrial hearing.
2104	(3) In ruling upon a motion to modify a pretrial status order, the judge may:

2105	(a) rely on information as provided in Subsection 77-20-205(7);
2106	(b) base the judge's ruling on evidence provided at the hearing so long as each party is
2107	provided an opportunity to present additional evidence or information relevant to pretrial
2108	release; and
2109	(c) modify the pretrial status order, including the conditions of release, upon a finding
2110	that there has been a material change in circumstances.
2111	Section 19. Section 77-20-208 is enacted to read:
2112	77-20-208. Release from conditions when charges not filed in specified time
2113	period.
2114	(1) If a prosecuting attorney does not file an information, indictment, or a request to
2115	extend time under Subsection (2), within 120 days after the day on which a bail commissioner
2116	released the individual on a financial condition under Section 77-20-203 or within 120 days
2117	after the day on which a temporary pretrial status order was issued for the individual:
2118	(a) the individual shall be relieved from any condition of pretrial release;
2119	(b) the court shall refund any monetary bail in accordance with Subsection
2120	77-20-402(5); and
2121	(c) if a bail bond was used to post monetary bail, the bail bond shall be exonerated
2122	without further order of the court.
2123	(2) A request to extend time shall:
2124	(a) be served on:
2125	(i) the individual and the individual's attorney; and
2126	(ii) if a bail bond was used to post monetary bail, the surety; and
2127	(b) except as provided in Subsection (3), be granted for a period of up to 60 days.
2128	(3) The magistrate may grant a request to extend time for a period of up to 120 days
2129	upon a showing of good cause.
2130	(4) Nothing in this section prohibits the filing of charges against an individual at any
2131	time.
2132	Section 20. Section 77-20-301, which is renumbered from Section 77-20-8 is
2133	renumbered and amended to read:
2134	Part 3. Postconviction Bail
2135	[77-20-8]. 77-20-301. Grounds for detaining or releasing defendant on

conviction and prior to sentence.

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- (1) Upon conviction, by plea or trial, the court shall order that the convicted defendant who is waiting imposition or execution of sentence be detained, unless the court finds, by clear and convincing evidence, presented by the defendant that the defendant:
 - (a) is not likely to flee the jurisdiction of the court[7] if released; and
- (b) will not pose a danger to the physical, psychological, or financial and economic safety or well-being of any other person or the community if released.
- (2) If the court finds the defendant does not need to be detained, the court shall order the release of the defendant on suitable conditions, [which may include the conditions under Subsection 77-20-10(2)] including conditions of release described in Subsection 77-20-205(4).
- Section 21. Section **77-20-302**, which is renumbered from Section 77-20-10 is renumbered and amended to read:

[77-20-10]. <u>77-20-302.</u> Grounds for detaining defendant while appealing the defendant's conviction -- Conditions for release while on appeal.

- (1) The court shall order that a defendant who has been found guilty of an offense in a court of record and sentenced to a term of imprisonment in jail or prison, and who has filed an appeal or a petition for a writ of certiorari, be detained, unless the court finds:
 - (a) the appeal raises a substantial question of law or fact likely to result in:
- 2154 (i) reversal;
 - (ii) an order for a new trial; or
 - (iii) a sentence that does not include a term of imprisonment in jail or prison;
- (b) the appeal is not for the purpose of delay; and
- 2158 (c) by clear and convincing evidence presented by the defendant, that the defendant:
 - (i) is not likely to flee the jurisdiction of the court[-] if released; and
 - (ii) will not pose a danger to the physical, psychological, or financial and economic safety or well-being of any other person or the community if released.
 - (2) (a) If the court makes a finding under Subsection (1) that justifies not detaining the defendant, the court shall order the release of the defendant, subject to only conditions [that result in the least restrictive condition or combination of conditions that the court determines will] of release that are reasonably available and necessary to reasonably ensure the appearance of the defendant as required and the safety of any other individual, property, and the

2167	community. [The conditions may include that the defendant:]
2168	[(a) post appropriate bail;]
2169	[(b) execute a bail bond with a surety under Title 31A, Chapter 35, Bail Bond Act, in
2170	an amount necessary to ensure the appearance of the defendant as required;]
2171	[(c) (i) execute a written agreement to forfeit, upon failing to appear as required,
2172	designated property, including money, as is reasonably necessary to ensure the appearance of
2173	the defendant; and]
2174	[(ii) post with the court indicia of ownership of the property or a percentage of the
2175	money as the court may specify;]
2176	[(d) not commit a federal, state, or local crime during the period of release;]
2177	[(e) remain in the custody of a designated person who agrees to assume supervision of
2178	the defendant and who agrees to report any violation of a release condition to the court, if the
2179	designated person is reasonably able to assure the court that the defendant will appear as
2180	required and will not pose a danger to the safety of any other person or the community;]
2181	[(f) maintain employment, or if unemployed, actively seek employment;]
2182	[(g) maintain or commence an educational program;]
2183	[(h) abide by specified restrictions on personal associations, place of abode, or travel;]
2184	[(i) avoid all contact with the victims of the offense and with any witnesses who
2185	testified against the defendant or potential witnesses who may testify concerning the offense if
2186	the appeal results in a reversal or an order for a new trial;]
2187	[(j) report on a regular basis to a designated law enforcement agency, pretrial services
2188	agency, or other designated agency;]
2189	[(k) comply with a specified curfew;]
2190	[(1) not possess a firearm, destructive device, or other dangerous weapon;]
2191	[(m) not use alcohol, or any narcotic drug or other controlled substance except as
2192	prescribed by a licensed medical practitioner;]
2193	[(n) undergo available medical, psychological, or psychiatric treatment, including
2194	treatment for drug or alcohol dependency, and remain under the supervision of or in a specified
2195	institution if required for that purpose;]
2196	[(o) return to custody for specified hours following release for employment, schooling,
2197	or other limited purposes;]

2198	[(p) satisfy any other condition that is reasonably necessary to ensure the appearance of
2199	the defendant as required and to ensure the safety of any other person and the community; and]
2200	[(q) if convicted of committing a sexual offense or an assault or other offense
2201	involving violence against a child 17 years old or younger, is limited or denied access to any
2202	location or occupation where children are, including:
2203	[(i) any residence where children are on the premises;]
2204	[(ii) activities, including organized activities, in which children are involved; and]
2205	[(iii) locations where children congregate, or where a reasonable person should know
2206	that children congregate.]
2207	(b) The conditions under Subsection (2)(a) may include conditions described in
2208	Subsection 77-20-205(4).
2209	[(3)] (c) The court may, in [its] the court's discretion, amend an order granting release
2210	to impose additional or different conditions of release.
2211	[(4)] (3) If the defendant is found guilty of an offense in a court not of record and files
2212	a timely notice of appeal [pursuant to] in accordance with Subsection 78A-7-118(1) for a trial
2213	de novo, the court shall stay all terms of a sentence, unless at the time of sentencing the judge
2214	finds by a preponderance of the evidence that the defendant poses a danger to another person or
2215	the community.
2216	[(5)] (4) If a stay is ordered, the court may order [post-conviction] postconviction
2217	restrictions on the defendant's conduct as appropriate, including:
2218	(a) continuation of any [pre-trial] pretrial restrictions or orders;
2219	(b) sentencing protective orders under Section 78B-7-804;
2220	(c) drug and alcohol use;
2221	(d) use of an ignition interlock; and
2222	(e) posting appropriate monetary bail.
2223	[(6)] (5) The provisions of Subsections $[(4)$ and $(5)]$ (3) and (4) do not apply to
2224	convictions for an offense under Title 41, Chapter 6a, Part 5, Driving Under the Influence and
2225	Reckless Driving.
2226	[(7)] (6) Any stay authorized by Subsection $[(4)]$ (3) is lifted upon the dismissal of the
2227	appeal by the district court.
2228	Section 22. Section 77-20-401 is enacted to read:

2229	Part 4. Monetary Bail
2230	77-20-401. Payment of monetary bail to sheriff or bail commissioner Specific
2231	payment methods.
2232	(1) Subject to Subsection 77-20-402(2), if an individual has been required by a bail
2233	commissioner, or ordered by a magistrate or judge, to post monetary bail as a condition of
2234	pretrial release, the individual may post the amount of monetary bail with the bail
2235	commissioner:
2236	(a) in money, by cash, certified or cashier's check, personal check with check guarantee
2237	card, money order, or credit card, if the bail commissioner has chosen to establish any of those
2238	options; or
2239	(b) by a bail bond issued by a surety.
2240	(2) A bail commissioner shall deliver any monetary bail received under Subsection (1)
2241	to the appropriate court within three days after the day on which the monetary bail is received
2242	by the bail commissioner.
2243	Section 23. Section 77-20-402, which is renumbered from Section 77-20-4 is
2244	renumbered and amended to read:
2245	[77-20-4]. <u>77-20-402.</u> Payment of monetary bail to court Specific payment
2246	methods Refund of monetary bail.
2247	[(1) (a) Except as provided in Subsection (2), the judge or magistrate shall set bail at a
2248	single amount per case or charge.]
2249	[(b)] (1) Subject to Subsection (2), a defendant may choose to post the amount
2250	[described in Subsection (1)(a)] of monetary bail imposed by a judge or magistrate by any of
2251	the following methods:
2252	(i) in cash;
2253	(ii) by [written undertaking with sureties] a bail bond with a surety;
2254	(iii) by [written undertaking without sureties] an unsecured bond, at the discretion of
2255	the judge or magistrate; or
2256	(iv) by credit or debit card, at the discretion of the [judge or bail commissioner] judge
2257	or magistrate.
2258	(2) A judge or magistrate may limit a defendant to a specific method of posting
2259	monetary bail described in Subsection (1)[(b)(i), (ii), (iii), or (iv)]:

2260 (a) if, after charges are filed, the defendant fails to appear in the case on a bail bond 2261 and the case involves a violent offense;

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- (b) in order to allow the defendant to voluntarily remit the fine in accordance with Section 77-7-21 and the offense with which the defendant is charged is listed in the shared master offense table as one for which an appearance is not mandatory;
- (c) if the defendant has failed to respond to a citation or summons and the offense with which the defendant is charged is listed in the shared master offense table as one for which an appearance is not mandatory;
- (d) if a warrant is issued for the defendant solely for failure to pay a criminal accounts receivable, as defined in Section 77-32b-102, and the defendant's <u>monetary</u> bail is limited to the amount owed; or
- (e) if a court has entered a judgment of bail <u>bond</u> forfeiture under Section [77-20b-104] <u>77-20-505</u> in any case involving the defendant.
 - (3) [Bail] Monetary bail may not be accepted without receiving in writing at the time the bail is posted the current mailing address, telephone number, and email address of the surety.
 - (4) [Bail] Monetary bail posted by debit or credit card, less the fee charged by the financial institution, shall be tendered to the courts.
 - (5) (a) [Bail] Monetary bail refunded by the court may be refunded by credit to the debit or credit card[7] or in cash.
 - (b) The amount refunded shall be the full amount received by the court under Subsection (4), which may be less than the full amount of the <u>monetary</u> bail set by the [court] judge or magistrate.
 - [(6)] (c) Before refunding monetary bail that is posted by the defendant in cash, by credit card, or by debit card, the court may apply the amount posted toward a criminal accounts receivable, as defined in Section 77-32b-102, that is owed by the defendant in the priority set forth in Section 77-38b-304.
- Section 24. Section **77-20-404**, which is renumbered from Section 77-20-9 is renumbered and amended to read:
- 2289 [77-20-9]. <u>77-20-404.</u> Disposition of forfeited monetary bail.
- 2290 If [by reason of the neglect of the defendant to appear,] money deposited as a financial

2291	condition or money paid by [sureties on bond] a surety on a bail bond is forfeited and the
2292	forfeiture is not discharged or remitted, the clerk with whom [it] the money is deposited or paid
2293	shall, immediately after final adjournment of the court, pay over the money forfeited as
2294	follows:
2295	(1) the forfeited amount in cases in precinct justice courts or in municipal justice courts
2296	shall be distributed as provided in Sections 78A-7-120 and 78A-7-121; and
2297	(2) in all other cases:
2298	(a) where the financial condition was paid by a surety:
2299	(i) 60% of the forfeited amount shall be paid to the Pretrial Release Programs Special
2300	Revenue Fund established in Section 63M-7-215;
2301	(ii) 20% of the forfeited amount shall be paid to the General Fund; and
2302	(iii) 20% of the forfeited amount shall be paid to the prosecuting agency that brings an
2303	action to collect under Section [77-20b-104] 77-20-505; and
2304	(b) where the financial condition was paid without the assistance of a surety:
2305	(i) 75% of the forfeited amount shall be paid to the Pretrial Release Programs Special
2306	Revenue Fund established in Section 63M-7-215; and
2307	(ii) 25% of the forfeited amount shall be paid to the General Fund.
2308	Section 25. Section 77-20-501, which is renumbered from Section 77-20b-101 is
2309	renumbered and amended to read:
2310	Part 5. Bail Surety
2311	[77-20b-101]. <u>77-20-501.</u> Liability on a bail bond Failure to appear
2312	Notice to surety.
2313	(1) (a) Unless exonerated under Subsection 77-20-504(5)(b), the principal and the
2314	surety on a bail bond are liable on the bail bond during all proceedings and for all court
2315	appearances required of the defendant up to and including the surrender of the defendant for
2316	sentencing, regardless of any contrary provision in the bail bond agreement.
2317	(b) Any failure of the defendant to appear when required is a breach of the conditions
2318	of the bail bond and subjects the bail bond to forfeiture regardless of whether notice of the
2319	required appearance was given to the surety.
2320	[(1)] (2) (a) If a defendant, who has posted [bail] monetary bail by a bail bond, fails to
2321	appear before the appropriate court as required, the court shall[-]:

2322	(1) within $[50]$ 28 days after the day on which the defendant rails to appear, issue a
2323	bench warrant that includes the original case number[. The court shall also direct that the
2324	surety be given notice of the nonappearance.]; and
2325	(ii) direct the clerk of the court to notify the surety of the defendant's failure to appear.
2326	(b) The clerk of the court shall:
2327	[(a)] (i) email notice of [nonappearance] the defendant's failure to appear to the surety
2328	at the email address provided on the bond;
2329	[(b)] (ii) notify the surety as listed on the bail bond of the name, address, and telephone
2330	number of the [prosecutor] prosecuting attorney;
2331	[(e)] (iii) email a copy of the notice sent under Subsection $[(1)(a)]$ (2)(b)(i) to the
2332	[prosecutor's] prosecuting attorney's office at the same time notice is sent under Subsection
2333	$[\frac{(1)(a)}{(2)(b)(i)}$; and
2334	[(d)] (iv) ensure that the name, address, business email address, and telephone number
2335	of the surety or the surety's agent as listed on the bail bond is stated on the bench warrant.
2336	[(2)] (3) The [prosecutor] prosecuting attorney may email notice of [nonappearance]
2337	the defendant's failure to appear to the address of the surety as listed on the bail bond within
2338	[37] 35 days after the [date of the defendant's failure to appear] day on which the defendant
2339	fails to appear.
2340	[(3) If notice of nonappearance is not emailed to a surety as listed on the bail bond,
2341	other than the defendant, in accordance with Subsection (1) or (2), the surety and the surety's
2342	bail bond producer are relieved of further obligation under the bail bond if the surety's current
2343	name and address or the current name and address of the bail bond agency are on the bail bond
2344	in the court's file.]
2345	(4) (a) (i) If a defendant appears in court within seven days after a missed, scheduled
2346	court appearance, the court may reinstate the bail bond without further notice to the surety.
2347	(ii) If the defendant, while in custody, appears on the case for which the bail bond was
2348	posted, the court may not reinstate the bail bond without the consent of the bail bond company
2349	(b) If a defendant fails to appear within seven days after a scheduled court appearance,
2350	the court may not reinstate the bail bond without the consent of the surety.
2351	[(c) If the defendant is arrested and booked into a county jail booking facility pursuant
2352	to a warrant for failure to appear on the original charges and the court is notified of the arrest,

2353	or the court recalls the warrant due to the defendant's having paid the fine and prior to entry of
2354	judgment of forfeiture, the court shall exonerate the bail bond.]
2355	[(d) Unless the court makes a finding of good cause why the bond should not be
2356	exonerated, the court shall exonerate the bail bond if:]
2357	[(i) the surety has delivered the defendant to the county jail booking facility in the
2358	county where the original charge or charges are pending;]
2359	[(ii) the defendant has been released on a bond secured from a subsequent surety for
2360	the original charge and the failure to appear;]
2361	[(iii) after an arrest, the defendant has escaped from jail or has been released on the
2362	defendant's own recognizance, pursuant to a pretrial release, under a court order regulating jail
2363	capacity, or by a sheriff's release under Section 17-22-5.5;]
2364	[(iv) the surety has transported or agreed to pay for the transportation of the defendant
2365	from a location outside of the county back to the county where the original charge is pending,
2366	and the payment is in an amount equal to the cost of government transportation under Section
2367	76-3-201; or]
2368	[(v) the surety demonstrates by a preponderance of the evidence that:]
2369	[(A) at the time the surety issued the bail bond, it had made reasonable efforts to
2370	determine that the defendant was legally present in the United States;]
2371	[(B) a reasonable person would have concluded, based on the surety's determination,
2372	that the defendant was legally present in the United States; and]
2373	[(C) the surety has failed to bring the defendant before the court because the defendant
2374	is in federal custody or has been deported.]
2375	[(e) Under circumstances not otherwise provided for in this section, the court may
2376	exonerate the bail bond if it finds that the prosecutor has been given reasonable notice of a
2377	surety's motion and there is good cause for the bail bond to be exonerated.]
2378	[(f) If a surety's bail bond has been exonerated under this section and the surety
2379	remains liable for the cost of transportation of the defendant, the surety may take custody of the
2380	defendant for the purpose of transporting the defendant to the jurisdiction where the charge is
2381	pending.]
2382	Section 26. Section 77-20-502, which is renumbered from Section 77-20b-102 is
2383	renumbered and amended to read:

2384	[77-200-102]. Time for bringing defendant to court
2385	Defendant in custody in another jurisdiction Notice to prosecuting attorney.
2386	(1) (a) If notice of [nonappearance] a defendant's failure to appear is emailed to a
2387	surety under Section [77-20b-101] <u>77-20-501</u> , the surety may bring the defendant before the
2388	court, or surrender the defendant into the custody of a county sheriff within the state, within
2389	[six months after the date of nonappearance, during which time a forfeiture action on the bail
2390	bond may not be brought] 180 days after the day on which the defendant failed to appear in
2391	court as required.
2392	(b) A forfeiture action may not be brought during the 180-day time period described in
2393	Subsection (1)(a).
2394	(2) A surety may request an extension of the [six-month] 180-day time period in
2395	Subsection $(1)[\frac{1}{2}]$ if the surety within that time:
2396	(a) files a motion for extension with the court; and
2397	(b) mails the motion for extension and a notice of hearing on the motion to the
2398	[prosecutor] prosecuting attorney.
2399	(3) The court may extend the [six-month time in Subsection (1) for not more than 60
2400	days, if] 180-day time period in Subsection (1) for no more than 30 days if:
2401	(a) the surety has complied with Subsection (2); and
2402	(b) the court finds good cause.
2403	(4) If a surety is unable to bring a defendant to the court because the defendant is and
2404	will be in the custody of authorities of another jurisdiction, the surety shall:
2405	(a) notify the court and the prosecuting attorney; and
2406	(b) provide the name, address, and telephone number of the custodial authority.
2407	Section 27. Section 77-20-503 , which is renumbered from Section 77-20-8.5 is
2408	renumbered and amended to read:
2409	[77-20-8.5]. <u>77-20-503.</u> Surrender of defendant by surety Arrest of defendant.
2410	(1) (a) (i) [Sureties] A surety may at any time prior to a defendant's failure to appear,
2411	surrender the defendant and obtain [exoneration of bail,] an exoneration of the bail bond by
2412	notifying the clerk of the court in which the bail bond was posted of the defendant's surrender
2413	and requesting exoneration.
2414	(ii) Notification shall be made immediately following the surrender by [surface mail,

2415	electronic] mail, email, or fax.
2416	(b) To effect surrender of the defendant, a certified copy of the surety's [undertaking]
2417	bail bond from the court in which [it] the bail bond was posted or a copy of the bail bond
2418	agreement with the defendant shall be delivered to the on-duty jailer, who shall:
2419	(i) detain the defendant in the on-duty jailer's custody as upon a commitment[5]; and
2420	[shall]
2421	(ii) in writing acknowledge the surrender upon the copy of the [undertaking or bail]
2422	bail bond or bail bond agreement.
2423	(c) The certified copy of the [undertaking] bail bond or copy of the bail bond
2424	agreement upon which the acknowledgment of surrender is endorsed shall be filed with the
2425	court. [The court may then, upon proper application, order the undertaking exonerated and
2426	may order]
2427	(d) Upon a filing described in Subsection (1)(c), the court, upon proper application,
2428	<u>may:</u>
2429	(i) exonerate the bail bond; and
2430	(ii) order a refund of any paid premium, or part of a premium, as [it] the court finds
2431	just.
2432	(2) For the purpose of surrendering the defendant, the [sureties] surety may:
2433	(a) arrest the defendant:
2434	(i) at any time before the defendant is finally exonerated; and
2435	(ii) at any place within the state; and
2436	(b) surrender the defendant to any county jail booking facility in Utah.
2437	(3) An arrest under this section is not a basis for exoneration of the bail bond under
2438	Section [77-20b-101] <u>77-20-504</u> .
2439	(4) A surety acting under this section is subject to Title 53, Chapter 11, Bail Bond
2440	Recovery Act.
2441	Section 28. Section 77-20-504 is enacted to read:
2442	77-20-504. Exoneration of a bail bond.
2443	(1) The court shall exonerate a bail bond if:
2444	(a) (i) a defendant, who has posted monetary bail by a bail bond, fails to appear before
2445	the appropriate court as required;

2446	(ii) notice of the defendant's failure to appear is not emailed to the surety as listed on
2447	the bail bond as described in Subsection 77-20-501(2) or (3); and
2448	(iii) the surety's current name and email address, or the bail bond agency's current name
2449	and email address, are listed on the bail bond in the court's file;
2450	(b) the defendant is arrested and booked into a county jail booking facility pursuant to a
2451	warrant for failure to appear on the original charges for which the bail bond was issued and the
2452	surety provides written proof of the arrest and booking to the court and the prosecuting
2453	attorney;
2454	(c) the court recalls a warrant for failure to appear due to the defendant's having paid
2455	the fine and before entry of a judgment of forfeiture of the bail bond;
2456	(d) the surety provides written proof to the court and the prosecuting attorney that the
2457	defendant is in custody and the surety has served the defendant's bail bond revocation on the
2458	custodial authority; or
2459	(e) unless the court makes a finding of good cause why the bail bond should not be
2460	exonerated:
2461	(i) the surety has delivered the defendant to the county jail booking facility in the
2462	county where the original charge or charges are pending;
2463	(ii) the defendant has been released on a bail bond secured from a subsequent surety for
2464	the original charge and the failure to appear;
2465	(iii) after an arrest, the defendant has escaped from jail or has been released on the
2466	defendant's own recognizance under a court order regulating jail capacity or by a sheriff's
2467	release under Section 17-22-5.5;
2468	(iv) the surety has transported or agreed to pay for the transportation of the defendant
2469	from a location outside of the county back to the county where the original charge is pending
2470	and the payment is in an amount equal to the cost of government transportation under Section
2471	<u>76-3-201; or</u>
2472	(v) the surety demonstrates, by a preponderance of the evidence, that:
2473	(A) at the time the surety issued the bail bond, the surety made reasonable efforts to
2474	determine that the defendant was legally present in the United States;
2475	(B) a reasonable person would have concluded, based on the surety's determination,
2476	that the defendant was legally present in the United States; and

2477	(C) the surety has failed to bring the defendant before the court because the defendant
2478	is in federal custody or has been deported.
2479	(2) Under circumstances not otherwise provided for in Subsection (1), the court may
2480	exonerate the bail bond if the court finds:
2481	(a) that the prosecuting attorney has been given reasonable notice of a surety's motion
2482	to exonerate the bail bond; and
2483	(b) there is good cause for the bail bond to be exonerated.
2484	(3) If a surety's bail bond has been exonerated under Subsection (1) or (2) and the
2485	surety remains liable for the cost of transportation of the defendant, the surety may take custody
2486	of the defendant for the purpose of transporting the defendant to the jurisdiction where the
2487	charge is pending.
2488	(4) If the defendant is subject to extradition or other means by which the state can
2489	return the defendant to law enforcement custody within the court's jurisdiction, and the surety
2490	gives notice under Subsection 77-20-502(4)(a), the surety's bail bond shall be exonerated:
2491	(a) if the prosecuting attorney elects in writing not to extradite the defendant
2492	immediately; and
2493	(b) if the prosecuting attorney elects in writing to extradite the defendant, to the extent
2494	the bail bond exceeds the reasonable, actual, or estimated costs to extradite and return the
2495	defendant to law enforcement custody within the court's jurisdiction, upon the occurrence of
2496	the earlier of:
2497	(i) the prosecuting attorney's lodging a detainer on the defendant; or
2498	(ii) 60 days after the day on which the surety gives notice to the prosecuting attorney
2499	under Subsection 77-20-502(4)(a) if the defendant remains in custody of the same authority
2500	during that 60-day time period.
2501	(5) (a) Except as provided in Subsection (6), the court shall exonerate the bail bond,
2502	without motion, upon sentencing the defendant.
2503	(b) If the defendant's sentence includes commitment to a jail or prison, the court shall
2504	exonerate the bail bond when the defendant appears at the appropriate jail or prison, unless the
2505	judge does not require the defendant to begin the commitment within seven days, in which case
2506	the bail bond is exonerated upon sentencing.
2507	(c) For purposes of this Subsection (5), an order of the court accepting a plea in

2508 abeyance agreement and holding that plea in abeyance in accordance with Title 77, Chapter 2a, 2509 Pleas in Abeyance, is considered to be the same as a sentencing upon a guilty plea. 2510 (d) Any suspended or deferred sentencing is not the responsibility of the surety and the 2511 bail bond is exonerated without any motion, upon acceptance of the court and the defendant of 2512 a plea in abeyance, probation, fine payments, post sentencing reviews, or any other deferred sentencing reviews or any other deferred sentencing agreement. 2513 2514 (6) If a surety issues a bail bond after sentencing, the surety is liable on the bail bond during all proceedings and for all court appearances required of the defendant up to and 2515 2516 including the defendant's appearance to commence serving the sentence imposed under 2517 Subsection (5). 2518 Section 29. Section 77-20-505, which is renumbered from Section 77-20b-104 is 2519 renumbered and amended to read: 77-20-505. Forfeiture of a bail bond. 2520 [77-20b-104]. 2521 (1) If a surety fails to bring the defendant before the court within [the time provided in 2522 Section 77-20b-102.] the time period described in Section 77-20-502, the prosecuting attorney 2523 may request the forfeiture of the bail bond by: (a) filing a motion for bail bond forfeiture with the court, supported by proof of notice 2524 2525 to the surety of the defendant's [nonappearance] failure to appear; and 2526 (b) emailing a copy of the motion to the surety. (2) A court shall enter judgment of bail bond forfeiture without further notice if the 2527 court finds, by a preponderance of the evidence: 2528 2529 (a) the defendant failed to appear as required; 2530 (b) the surety was given notice of the defendant's [nonappearance] failure to appear in 2531 accordance with Section [77-20b-101] 77-20-501; 2532 (c) the surety failed to bring the defendant to the court within the [six-month] 180-day 2533 time period under Section [77-20b-102] 77-20-502; and 2534 (d) the [prosecutor] prosecuting attorney has complied with the notice requirements 2535 under Subsection (1). 2536 (3) If the surety shows, by a preponderance of the evidence, that [it] the surety has 2537 failed to bring the defendant before the court because the defendant is deceased through no act 2538 of the surety, the court may not enter judgment of bail bond forfeiture and the bail bond is

Subsection (1) with the following limitations:

2539	exonerated.
2540	(4) (a) The amount of bail forfeited is the face amount of the bail bond, but if the
2541	defendant is in the custody of another jurisdiction and the state extradites or intends to extradite
2542	the defendant, the court may reduce the amount forfeited to the actual or estimated costs of
2543	returning the defendant to the court's jurisdiction.
2544	(b) A judgment under Subsection (5) shall:
2545	[(a)] (i) identify the surety against whom judgment is granted;
2546	[(b)] (ii) specify the amount of monetary bail forfeited;
2547	[(c)] (iii) grant the forfeiture of the bail bond; and
2548	[(d)] (iv) be docketed by the clerk of the court in the civil judgment docket.
2549	(5) A [prosecutor] prosecuting attorney may immediately commence collection
2550	proceedings to execute a judgment of bail bond forfeiture against the assets of the surety.
2551	Section 30. Section 78A-2-220 is amended to read:
2552	78A-2-220. Authority of magistrate.
2553	(1) Except as otherwise provided by law, a magistrate as defined in Section 77-1-3
2554	shall have the authority to:
2555	(a) commit a person to incarceration prior to trial;
2556	(b) set or deny bail under Section [77-20-1] <u>77-20-205</u> and release upon the payment of
2557	monetary bail, as defined in Section 77-20-102, and satisfaction of any other conditions of
2558	release;
2559	(c) issue to any place in the state summonses and warrants of search and arrest and
2560	authorize administrative traffic checkpoints under Section 77-23-104;
2561	(d) conduct an initial appearance;
2562	(e) conduct arraignments;
2563	(f) conduct a preliminary examination to determine probable cause;
2564	(g) appoint attorneys and order recoupment of attorney fees;
2565	(h) order the preparation of presentence investigations and reports;
2566	(i) issue temporary orders as provided by rule of the Judicial Council; and
2567	(j) perform any other act or function authorized by statute.
2568	(2) A judge of the justice court may exercise the authority of a magistrate specified in

2570	(a) a judge of the justice court may conduct an initial appearance, preliminary
2571	examination, or arraignment as provided by rule of the Judicial Council; and
2572	(b) a judge of the justice court may not [set bail in a capital felony nor deny bail in any
2573	case] perform any act or function in a capital felony case.
2574	Section 31. Section 78A-7-118 is amended to read:
2575	78A-7-118. Appeals from justice court Trial or hearing de novo in district
2576	court.
2577	(1) In a criminal case, a defendant is entitled to a trial de novo in the district court only
2578	if the defendant files a notice of appeal within 28 days of:
2579	(a) sentencing, except as provided in Subsection (4)(b); or
2580	(b) a plea of guilty or no contest in the justice court that is held in abeyance.
2581	(2) Upon filing a proper notice of appeal, any term of a sentence imposed by the justice
2582	court shall be stayed as provided for in Section [77-20-10] 77-20-302 and the Rules of
2583	Criminal Procedure.
2584	(3) If an appeal under Subsection (1) is of a plea entered pursuant to negotiation with
2585	the prosecutor, and the defendant did not reserve the right to appeal as part of the plea
2586	negotiation, the negotiation is voided by the appeal.
2587	(4) A defendant convicted and sentenced in justice court is entitled to a hearing de
2588	novo in the district court on the following matters, if the defendant files a notice of appeal
2589	within 28 days of:
2590	(a) an order revoking probation;
2591	(b) imposition of a sentence, following a determination that a defendant failed to fulfill
2592	the terms of a plea in abeyance agreement;
2593	(c) an order denying a motion to withdraw a plea, if the plea is being held in abeyance
2594	and the motion to withdraw the plea is filed within 28 days of the entry of the plea;
2595	(d) a postsentence order fixing total or court ordered restitution; or
2596	(e) an order denying expungement.
2597	(5) The prosecutor is entitled to a hearing de novo in the district court if an appeal is
2598	filed within 28 days of the court entering:
2599	(a) a final judgment of dismissal;
2600	(b) an order arresting judgment;

2601	(c) an order terminating the prosecution because of a finding of double jeopardy or
2602	denial of a speedy trial;
2603	(d) a judgment holding invalid any part of a statute or ordinance;
2604	(e) a pretrial order excluding evidence, when the prosecutor certifies that exclusion of
2605	that evidence prevents continued prosecution of an infraction or class C misdemeanor;
2606	(f) a pretrial order excluding evidence, when the prosecutor certifies that exclusion of
2607	that evidence impairs continued prosecution of a class B misdemeanor;
2608	(g) an order granting a motion to withdraw a plea of guilty or no contest;
2609	(h) an order fixing total restitution at an amount less than requested by a crime victim;
2610	or
2611	(i) an order granting an expungement, if the expungement was opposed by the
2612	prosecution or a victim before the order was entered.
2613	(6) Upon entering a decision in a hearing de novo, the district court shall remand the
2614	case to the justice court unless:
2615	(a) the decision results in immediate dismissal of the case; or
2616	(b) the hearing de novo was on a pretrial order and the parties and the district court
2617	agree to have the district court retain jurisdiction.
2618	(7) The district court shall retain jurisdiction over the case on trial de novo.
2619	(8) The decision of the district court is final and may not be appealed unless the district
2620	court rules on the constitutionality of a statute or ordinance.
2621	Section 32. Section 78B-7-802 is amended to read:
2622	78B-7-802. Conditions for release after arrest for domestic violence and other
2623	offenses Jail release agreements Jail release court orders.
2624	(1) Upon arrest or issuance of a citation for a qualifying offense and before the
2625	individual is released [on bail, recognizance, or otherwise] under Section 77-20-204 or
2626	77-20-205, the individual may not telephone, contact, or otherwise communicate with the
2627	alleged victim, directly or indirectly.
2628	(2) (a) After an individual is arrested or issued a citation for a qualifying offense, the
2629	individual may not be released before:
2630	(i) the matter is submitted to a magistrate in accordance with Section 77-7-23; or
2631	(ii) the individual signs a jail release agreement.

(b) If an arrested individual is booked into jail, the arresting officer shall ensure that the information presented to the magistrate includes whether the alleged victim has made a waiver described in Subsection (5)(a).

- (c) [(i)] If the magistrate determines there is probable cause to support the charge or charges of one or more qualifying offenses, the magistrate shall [determine whether the arrested individual may be held without bail, in accordance with Section 77-20-1] issue a temporary pretrial status order, as defined in Section 77-20-102, in accordance with Section 77-20-205.
- [(ii) If the magistrate determines that the arrested individual has the right to be admitted to bail, the magistrate shall determine:]
- [(A) whether any release conditions, including electronic monitoring, are necessary to protect the alleged victim; and]
- [(B) any bail that is required to guarantee the arrested individual's subsequent appearance in court.]
- (d) The magistrate may not release an individual arrested for a qualifying offense unless the magistrate issues a jail release court order or the arrested individual signs a jail release agreement.
- (3) (a) If an individual charged with a qualifying offense fails to either schedule an initial appearance or to appear at the time scheduled by the magistrate within 96 hours after the time of arrest, the individual shall comply with the release conditions of a jail release agreement or jail release court order until the individual makes an initial appearance.
- (b) If the prosecutor has not filed charges against an individual who was arrested for a qualifying offense and who appears in court at the time scheduled by the magistrate under Subsection (2), or by the court under Subsection (3)(b)(ii), the court:
- (i) may, upon the motion of the prosecutor and after allowing the individual an opportunity to be heard on the motion, extend the release conditions described in the jail release court order or the jail release agreement by no more than three court days; and
- (ii) if the court grants the motion described in Subsection (3)(b)(i), shall order the arrested individual to appear at a time scheduled before the end of the granted extension.
- (c) (i) If the prosecutor determines that there is insufficient evidence to file charges before an initial appearance scheduled under Subsection (3)(a), the prosecutor shall transmit a

notice of declination to either the magistrate who signed the jail release court order or, if the releasing agency obtains a jail release agreement from the released arrestee, to the statewide domestic violence network described in Section 78B-7-113.

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- (ii) A prosecutor's notice of declination transmitted under this Subsection (3)(c) is considered a motion to dismiss a jail release court order and a notice of expiration of a jail release agreement.
- (4) Except as provided in Subsections (3) and (11) or otherwise ordered by a court, a jail release agreement or jail release court order expires at midnight after the earlier of:
- (a) the arrested or cited individual's initial scheduled court appearance described in Subsection (3)(a);
- (b) the day on which the prosecutor transmits the notice of the declination under Subsection (3)(c); or
 - (c) 30 days after the day on which the individual is arrested or issued a citation.
- (5) (a) (i) After an individual is arrested or issued a citation for a qualifying offense, an alleged victim who is not a minor may waive in writing any condition of a jail release agreement by:
- (A) appearing in person to the law enforcement agency that arrested the individual or issued the citation to the individual for the qualifying offense;
- (B) appearing in person to the jail or correctional facility that released the arrested individual from custody; or
- (C) appearing in person to the clerk at the court of the jurisdiction where the charges are filed.
- (ii) An alleged victim who is not a minor may waive in writing the release conditions prohibiting:
- (A) telephoning, contacting, or otherwise communicating with the alleged victim, directly or indirectly; or
- (B) knowingly entering on the premises of the alleged victim's residence or on premises temporarily occupied by the alleged victim.
- 2691 (iii) Except as provided in Subsection (5)(a)(iv), a parent or guardian may waive any 2692 condition of a jail release agreement on behalf of an alleged victim who is a minor in the 2693 manner described in Subsections (5)(a)(i) and (ii).

(iv) A parent or guardian may not, without the approval of the court, waive the release conditions described in Subsection (5)(a)(ii) on behalf of an alleged victim who is a minor, if the alleged victim who is a minor:

(A) allegedly suffers bodily injury as a result of the qualifying offense;

- (B) summons or attempts to summon emergency aid for the qualifying offense; or
- (C) after the time at which the qualifying offense is allegedly committed and before the time at which the arrested or cited individual signs the jail release agreement, discloses to a law enforcement officer that the arrested or cited individual threatened the alleged victim who is a minor with bodily injury.
- (v) Upon waiver, the release conditions described in Subsection (5)(a)(ii) do not apply to the arrested or cited individual.
- (b) A court or magistrate may modify a jail release agreement or a jail release court order in writing or on the record, and only for good cause shown.
- (6) (a) When an individual is arrested or issued a citation and subsequently released in accordance with Subsection (2), the releasing agency shall:
- (i) notify the arresting law enforcement agency of the release, conditions of release, and any available information concerning the location of the alleged victim;
 - (ii) make a reasonable effort to notify the alleged victim of the release; and
- (iii) before releasing the individual who is arrested or issued a citation, give the arrested or cited individual a copy of the jail release agreement or the jail release court order.
- (b) (i) When an individual arrested or issued a citation for domestic violence is released under this section based on a jail release agreement, the releasing agency shall transmit that information to the statewide domestic violence network described in Section 78B-7-113.
- (ii) When an individual arrested or issued a citation for domestic violence is released under this section based upon a jail release court order or if a jail release agreement is modified under Subsection (5)(b), the court shall transmit that order to the statewide domestic violence network described in Section 78B-7-113.
- (c) This Subsection (6) does not create or increase liability of a law enforcement officer or agency, and the good faith immunity provided by Section 77-36-8 is applicable.
- (7) An individual who is arrested for a qualifying offense that is a felony and released in accordance with this section may subsequently be held without bail if there is substantial

evidence to support a new felony charge against the individual.

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(8) At the time an arrest is made or a citation is issued for a qualifying offense, the arresting officer shall provide the alleged victim with written notice containing:

- (a) the release conditions described in this section, and notice that the alleged perpetrator will not be released, before appearing before the court with jurisdiction over the offense for which the alleged perpetrator was arrested, unless:
- (i) the alleged perpetrator enters into a jail release agreement to comply with the release conditions; or
 - (ii) the magistrate issues a jail release order that specifies the release conditions;
- (b) notification of the penalties for violation of any jail release agreement or jail release court order;
- (c) the address of the appropriate court in the district or county in which the alleged victim resides;
 - (d) the availability and effect of any waiver of the release conditions; and
- (e) information regarding the availability of and procedures for obtaining civil and criminal protective orders with or without the assistance of an attorney.
- (9) At the time an arrest is made or a citation is issued for a qualifying offense, the arresting officer shall provide the alleged perpetrator with written notice containing:
- (a) notification that the alleged perpetrator may not contact the alleged victim before being released, including telephoning, contacting, or otherwise communicating with the alleged victim, directly or indirectly;
- (b) the release conditions described in this section and notice that the alleged perpetrator will not be released, before appearing before the court with jurisdiction over the offense for which the alleged perpetrator was arrested, unless:
- (i) the alleged perpetrator enters into a jail release agreement to comply with the release conditions; or
 - (ii) the magistrate issues a jail release court order;
- (c) notification of the penalties for violation of any jail release agreement or jail release court order; and
- 2754 (d) notification that the alleged perpetrator is to personally appear in court on the next 2755 day the court is open for business after the day of the arrest.

2756 (10) (a) A pretrial or sentencing protective order issued under this part supersedes a jail release agreement or jail release court order.

- (b) If a court dismisses the charges for the qualifying offense that gave rise to a jail release agreement or jail release court order, the court shall dismiss the jail release agreement or jail release court order.
- (11) (a) This section does not apply if the individual arrested for the qualifying offense is a minor who is under 18 years old, unless the qualifying offense is domestic violence.
- (b) A jail release agreement signed by, or a jail release court order issued against, a minor expires on the earlier of:
 - (i) the day of the minor's initial court appearance described in Subsection (3)(a);
- (ii) the day on which the prosecutor transmits the notice of declination under Subsection (3)(c);
 - (iii) 30 days after the day on which the minor is arrested or issued a citation; or
 - (iv) the day on which the juvenile court terminates jurisdiction.
 - Section 33. Section **78B-9-108** is amended to read:

2771 **78B-9-108.** Effect of granting relief -- Notice.

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- (1) If the court grants the petitioner's request for relief, except requests for relief under Subsection 78B-9-104(1)(g), [it] the court shall either:
 - (a) modify the original conviction or sentence; or
- 2775 (b) vacate the original conviction or sentence and order a new trial or sentencing proceeding as appropriate.
 - (2) If the court grants the petitioner's request for relief under Subsection 78B-9-104(1)(g), the court shall:
 - (a) vacate the original conviction and sentence; and
 - (b) order the petitioner's records expunged pursuant to Section 77-40-108.5.
 - (3) (a) If the petitioner is serving a felony sentence, the order shall be stayed for five days. Within the stay period, the respondent shall give written notice to the court and the petitioner that the respondent will pursue a new trial or sentencing proceedings, appeal the order, or take no action.
- 2785 (b) If the respondent fails to provide notice or gives notice at any time during the stay period that it intends to take no action, the court shall lift the stay and deliver the order to the

2787	custodian of the petitioner.
2788	(c) If the respondent gives notice of intent to appeal the court's decision, the stay
2789	provided for by Subsection (3)(a) shall remain in effect until the appeal concludes, including
2790	any petitions for rehearing or for discretionary review by a higher court. The court may lift the
2791	stay if the petitioner can make the showing required for a certificate of probable cause under
2792	Section [77-20-10 and URCP 27] 77-20-302 and Utah Rules of Criminal Procedure, Rule 27.
2793	(d) If the respondent gives notice that it intends to retry or resentence the petitioner, the
2794	trial court may order any supplementary orders as to arraignment, trial, sentencing, custody,
2795	bail, discharge, or other matters that may be necessary.
2796	Section 34. Section 78B-22-201.5 is enacted to read:
2797	78B-22-201.5. Affidavit of indigency.
2798	(1) Except as provided in Subsection (5), on or after January 1, 2022, an individual,
2799	who is seeking appointment of an indigent defense service provider, shall submit an affidavit
2800	of indigency described in Subsection (2) to the court.
2801	(2) An affidavit of indigency shall include the following information:
2802	(a) the individual's identifying information, including:
2803	(i) the individual's legal name and any known aliases;
2804	(ii) the individual's mobile or residential phone number;
2805	(iii) the individual's residential address; and
2806	(iv) the individual's date of birth; and
2807	(b) the individual's financial information, including:
2808	(i) any financial support or benefit that the individual receives from a state or federal
2809	government;
2810	(ii) the individual's monthly income, including any alimony or child support that
2811	contributes to the individual's monthly income;
2812	(iii) the individual's monthly expenses, including any alimony or child support
2813	obligation that the individual is responsible for paying;
2814	(iv) the individual's ownership of, or any interest in, personal or real property,
2815	including any savings or checking accounts or cash;
2816	(v) the number ages and relationships of any dependents; and

(vi) any extraordinary financial conditions that would prevent the individual from

2818	retaining private counsel.
2819	(3) The affidavit of indigency shall:
2820	(a) require the signature of the individual; and
2821	(b) include a statement that:
2822	(i) by signing the affidavit the individual confirms that, to the best of the individual's
2823	knowledge, the information in the affidavit is true;
2824	(ii) the individual may be subject to a criminal penalty for a written false statement
2825	under Section 76-8-504;
2826	(iii) the individual authorizes an indigent defense system to contact or request
2827	information from the individual or a third party to verify whether an individual is indigent; and
2828	(iv) the individual may be ordered to pay the cost of the individual's indigent defense
2829	services if a court determines that the individual is not indigent.
2830	(4) The Judicial Council or Supreme Court shall adopt an affidavit of indigency form
2831	described in Subsection (2) to be distributed to an individual seeking the appointment of an
2832	indigent defense service provider.
2833	(5) This section does not apply to a minor, who is appointed an indigent defense
2834	service provider, or the minor's parent or legal guardian.
2835	Section 35. Section 78B-22-202 is amended to read:
2836	78B-22-202. Determining indigency.
2837	(1) A court shall find an individual indigent if the individual:
2838	(a) has an income level at or below 150% of the United States poverty level as defined
2839	by the most recent poverty income guidelines published by the United States Department of
2840	Health and Human Services; or
2841	(b) has insufficient income or other means to pay for legal counsel and the necessary
2842	expenses of representation without depriving the individual or the individual's family of food,
2843	shelter, clothing, or other necessities, considering:
2844	(i) the individual's ownership of, or any interest in, personal or real property;
2845	(ii) the amount of debt owed by the individual or that might reasonably be incurred by
2846	the individual because of illness or other needs within the individual's family;
2847	(iii) the number, ages, and relationships of any dependents;
2848	(iv) the probable expense and burden of defending the case;

	(v) the reasonableness of fees and expenses charged by an attorney and the scope of
2850	representation undertaken when represented by privately retained defense counsel; and
2851	(vi) any other factor the court considers relevant.
2852	(2) Notwithstanding Subsection (1), a court may not find an individual indigent if the
2853	individual transferred or otherwise disposed of assets since the commission of the offense with
2854	the intent of becoming eligible to receive indigent defense services.
2855	(3) <u>(a)</u> The court may:
2856	(i) make a finding of indigency at any time[-]; and
2857	(ii) rely on information contained in an affidavit of indigency described in Section
2858	78B-22-201.5 in making a finding about whether an individual is an indigent individual.
2859	(b) An individual's inability to submit, or to provide the information required in, an
2860	affidavit of indigency under Section 78B-22-201.5 does not preclude a court from:
2861	(i) making a finding about whether an individual is an indigent individual under this
2862	section; or
2863	(ii) appointing an indigent defense service provider under Section 78B-22-203.
2864	Section 36. Section 78B-22-1001 is enacted to read:
2865	Part 10. Indigency Verification
2003	rart 10. mulgency vernication
2866	78B-22-1001. Verification of indigency Pilot program.
2866	78B-22-1001. Verification of indigency Pilot program.
2866 2867	78B-22-1001. Verification of indigency Pilot program.(1) Beginning on July 1, 2022, and ending on June 30, 2025, an indigent defense
2866 2867 2868	78B-22-1001. Verification of indigency Pilot program. (1) Beginning on July 1, 2022, and ending on June 30, 2025, an indigent defense system in Cache County, Davis County, Duchesne County, and San Juan County shall conduct
2866 2867 2868 2869	78B-22-1001. Verification of indigency Pilot program. (1) Beginning on July 1, 2022, and ending on June 30, 2025, an indigent defense system in Cache County, Davis County, Duchesne County, and San Juan County shall conduct a pilot program to verify the indigency of individuals who were provided indigent defense
2866 2867 2868 2869 2870	78B-22-1001. Verification of indigency Pilot program. (1) Beginning on July 1, 2022, and ending on June 30, 2025, an indigent defense system in Cache County, Davis County, Duchesne County, and San Juan County shall conduct a pilot program to verify the indigency of individuals who were provided indigent defense services by the indigent defense system, except as provided in Subsection (5).
2866 2867 2868 2869 2870 2871	78B-22-1001. Verification of indigency Pilot program. (1) Beginning on July 1, 2022, and ending on June 30, 2025, an indigent defense system in Cache County, Davis County, Duchesne County, and San Juan County shall conduct a pilot program to verify the indigency of individuals who were provided indigent defense services by the indigent defense system, except as provided in Subsection (5). (2) Under the pilot program described in Subsection (1), the indigent defense system
2866 2867 2868 2869 2870 2871 2872	78B-22-1001. Verification of indigency Pilot program. (1) Beginning on July 1, 2022, and ending on June 30, 2025, an indigent defense system in Cache County, Davis County, Duchesne County, and San Juan County shall conduct a pilot program to verify the indigency of individuals who were provided indigent defense services by the indigent defense system, except as provided in Subsection (5). (2) Under the pilot program described in Subsection (1), the indigent defense system shall review and verify financial information in a statistically significant sample of cases for
2866 2867 2868 2869 2870 2871 2872 2873	78B-22-1001. Verification of indigency Pilot program. (1) Beginning on July 1, 2022, and ending on June 30, 2025, an indigent defense system in Cache County, Davis County, Duchesne County, and San Juan County shall conduct a pilot program to verify the indigency of individuals who were provided indigent defense services by the indigent defense system, except as provided in Subsection (5). (2) Under the pilot program described in Subsection (1), the indigent defense system shall review and verify financial information in a statistically significant sample of cases for each calendar year where, except as provided in Subsection (5):
2866 2867 2868 2869 2870 2871 2872 2873 2874	78B-22-1001. Verification of indigency Pilot program. (1) Beginning on July 1, 2022, and ending on June 30, 2025, an indigent defense system in Cache County, Davis County, Duchesne County, and San Juan County shall conduct a pilot program to verify the indigency of individuals who were provided indigent defense services by the indigent defense system, except as provided in Subsection (5). (2) Under the pilot program described in Subsection (1), the indigent defense system shall review and verify financial information in a statistically significant sample of cases for each calendar year where, except as provided in Subsection (5): (a) an individual was found to be indigent by a court; and
2866 2867 2868 2869 2870 2871 2872 2873 2874 2875	78B-22-1001. Verification of indigency Pilot program. (1) Beginning on July 1, 2022, and ending on June 30, 2025, an indigent defense system in Cache County, Davis County, Duchesne County, and San Juan County shall conduct a pilot program to verify the indigency of individuals who were provided indigent defense services by the indigent defense system, except as provided in Subsection (5). (2) Under the pilot program described in Subsection (1), the indigent defense system shall review and verify financial information in a statistically significant sample of cases for each calendar year where, except as provided in Subsection (5): (a) an individual was found to be indigent by a court; and (b) the indigent defense system provided indigent defense services to the individual.
2866 2867 2868 2869 2870 2871 2872 2873 2874 2875 2876	78B-22-1001. Verification of indigency Pilot program. (1) Beginning on July 1, 2022, and ending on June 30, 2025, an indigent defense system in Cache County, Davis County, Duchesne County, and San Juan County shall conduct a pilot program to verify the indigency of individuals who were provided indigent defense services by the indigent defense system, except as provided in Subsection (5). (2) Under the pilot program described in Subsection (1), the indigent defense system shall review and verify financial information in a statistically significant sample of cases for each calendar year where, except as provided in Subsection (5): (a) an individual was found to be indigent by a court; and (b) the indigent defense system provided indigent defense services to the individual. (3) To verify financial information under Subsection (2), the indigent defense system

2880	Interim Committee and the Law Enforcement and Criminal Justice Interim Committee,
2881	concerning the results of the pilot program described in this section, on or before November 1
2882	of each year of the three-year pilot program.
2883	(5) This section does not apply to a minor, who is appointed an indigent defense
2884	service provider, or the minor's parent or legal guardian.
2885	Section 37. Section 78B-22-1002 is enacted to read:
2886	78B-22-1002. Recovery of costs for indigent defense services.
2887	(1) Except as provided in Subsection (2), a court shall order an individual to pay the
2888	indigent defense system for the cost of indigent defense services in accordance with Subsection
2889	76-3-201(4)(e) and Section 77-32-104 if:
2890	(a) the individual was provided indigent defense services by the indigent defense
2891	system; and
2892	(b) the indigent defense system provides financial documentation or proof to the court
2893	that demonstrates that the individual is not indigent under Section 78B-22-202.
2894	(2) This section does not apply to a minor, who is appointed an indigent defense
2895	service provider, or the minor's parent or legal guardian.
2896	Section 38. Repealer.
2897	This bill repeals:
2898	Section 10-3-920, Bail commissioner Powers and duties.
2899	Section 77-20-1, Right to bail Pretrial status order Denial of bail Detention
2900	hearing Motion to modify.
2901	Section 77-20-3.1, Release on own recognizance Changing amount of bail or
2902	conditions of release.
2903	Section 77-20-7, Duration of liability on undertaking Notices to sureties
2904	Exoneration if charges not filed.
2905	Section 77-20b-100, Definitions.
2906	Section 77-20b-103, Defendant in custody Notice to prosecutor.
2907	Section 77-20b-105, Revocation of bail bond.
2908	Section 39. Effective date.
2909	If approved by two-thirds of all the members elected to each house, this bill takes effect
2910	upon approval by the governor, or the day following the constitutional time limit of Utah

2911 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,

2912 <u>the date of veto override.</u>