

## **Chapter 3 Construction**

### **68-3-1 Common law adopted.**

The common law of England so far as it is not repugnant to, or in conflict with, the constitution or laws of the United States, or the constitution or laws of this state, and so far only as it is consistent with and adapted to the natural and physical conditions of this state and the necessities of the people hereof, is hereby adopted, and shall be the rule of decision in all courts of this state.

No Change Since 1953

### **68-3-2 Statutes in derogation of common law not strictly construed -- Rules of equity prevail.**

- (1) The rule of the common law that a statute in derogation of the common law is to be strictly construed does not apply to the Utah Code.
- (2) A statute of the Utah Code establishes the law of this state respecting the subjects to which the statute relates.
- (3) Each provision of, and each proceeding under, the Utah Code shall be construed with a view to effect the objects of the provision and to promote justice.
- (4) When there is a conflict between the rules of equity and the rules of common law in reference to the same matter, the rules of equity prevail.

Amended by Chapter 254, 2010 General Session

### **68-3-3 Retroactive effect.**

A provision of the Utah Code is not retroactive, unless the provision is expressly declared to be retroactive.

Amended by Chapter 254, 2010 General Session

### **68-3-4 Civil and criminal remedies not merged.**

When the violation of a right admits of both a civil and criminal remedy, the right to prosecute the one is not merged in the other.

No Change Since 1953

### **68-3-5 Effect of repeal.**

The repeal of a statute does not revive a statute previously repealed, or affect any right which has accrued, any duty imposed, any penalty incurred, or any action or proceeding commenced under or by virtue of the statute repealed.

No Change Since 1953

### **68-3-6 Identical provisions deemed a continuation, not new enactment.**

The provisions of any statute, so far as they are the same as those of any prior statute, shall be construed as a continuation of such provisions, and not as a new enactment.

No Change Since 1953

**68-3-7 Time, how computed.**

- (1) A person shall compute the period of time provided by law to perform an act by:
  - (a) excluding the first day; and
  - (b) except as provided in Subsection (2), including the last day.
- (2) If the last day is a legal holiday, a Saturday, or a Sunday, then a person shall:
  - (a) exclude the day described in this Subsection (2) from the time computation described in Subsection (1); and
  - (b) compute the period of time to include the end of the next day that is not a legal holiday, a Saturday, or a Sunday.

Amended by Chapter 236, 2012 General Session

**68-3-8 When a day appointed is a holiday.**

Whenever any act of a secular nature, other than a work of necessity or mercy, is appointed by law or contract to be performed upon a particular day, which day falls upon a legal holiday, such act may be performed upon the next succeeding business day with the same effect as if it had been performed upon the day appointed.

Amended by Chapter 236, 2012 General Session

**68-3-8.5 Mailing reports and payments to government -- Determining when the report or payment is considered to be filed or made.**

- (1) As used in this section:
  - (a) "Payment" means money required or authorized to be paid to the state or a political subdivision of the state.
  - (b) "Report" means a report, claim, tax return, statement, or other document required or authorized to be filed with the state or a political subdivision of the state.
  - (c) "Trigger report" means a report that, upon its receipt by a political subdivision of the state, triggers a responsibility on the part of the political subdivision to respond.
- (2)
  - (a) Except as otherwise provided by statute:
    - (i) a report, other than a trigger report, or a payment that is transmitted through the United States mail is considered to be filed or made and received by the state or political subdivision on the date shown by the post office cancellation mark stamped upon the envelope or other appropriate wrapper containing it; and
    - (ii) a trigger report that is transmitted through the United States mail is considered to be filed and received on the date shown by the post office cancellation mark stamped upon the envelope or other appropriate wrapper containing it, if the report is addressed to the attention of:
      - (A) the county clerk, for a county;
      - (B) the city recorder, for a city;
      - (C) the town clerk, for a town; or
      - (D) the clerk or comparable official of the political subdivision, for any other political subdivision of the state.

- (b) A report or payment that is mailed but not received by the state or political subdivision, or received but the cancellation mark is illegible, erroneous, or omitted, is considered to be filed or made and received on the date it was mailed if:
  - (i) the sender establishes by competent evidence that the report or payment was deposited in the United States mail on or before the date for filing or paying; and
  - (ii) the sender files with the state or political subdivision a duplicate within 30 days after the state or political subdivision gives the sender written notification of nonreceipt of the report or payment.
- (c) If any report or payment is sent by United States mail, consistent with Subsection (2)(a), and is registered or certified:
  - (i) a record authenticated by the United States post office of that registration or certification is considered to be competent evidence that the report or payment was delivered to the person or entity to which it was addressed; and
  - (ii) the date of registration or certification is considered to be the postmarked date.
- (3) If the date for filing a report or making a payment falls upon a Saturday, Sunday, or legal holiday, the filing or payment is considered to be timely if it is performed on the next business day.

Amended by Chapter 180, 2009 General Session

**68-3-9 Seal, how affixed.**

When the seal of a court or public officer is required by law to be affixed to any paper, the word "seal" includes an impression of such seal upon the paper alone, as well as upon wax or a wafer affixed thereto. In all other cases the word "seal" may include a scroll printed or written.

No Change Since 1953

**68-3-10 Joint authority is authority to majority.**

Words giving a joint authority to three or more public officers, or other persons, are to be construed as giving such authority to a majority of them, unless it is otherwise expressed in the act giving the authority.

No Change Since 1953

**68-3-11 Rules of construction as to words and phrases.**

Words and phrases are to be construed according to the context and the approved usage of the language; but technical words and phrases, and such others as have acquired a peculiar and appropriate meaning in law, or are defined by statute, are to be construed according to such peculiar and appropriate meaning or definition.

No Change Since 1953

**68-3-12 Rules of construction.**

- (1)
  - (a) In the construction of a statute in the Utah Code, the general rules listed in this Subsection (1) shall be observed, unless the construction would be:
    - (i) inconsistent with the manifest intent of the Legislature; or
    - (ii) repugnant to the context of the statute.

- (b) The singular includes the plural, and the plural includes the singular.
  - (c) A word used in one gender includes the other gender.
  - (d) A word used in the present tense includes the future tense.
  - (e) In accordance with Title 46, Chapter 4, Part 5, Electronic Records in Government Agencies, a word related to the medium used in the provision of a government service may include an electronic or other medium.
  - (f) "Include," "includes," or "including" means that the items listed are not an exclusive list, unless the word "only" or similar language is used to expressly indicate that the list is an exclusive list.
  - (g) "May" means that an action is authorized or permissive.
  - (h) "May not" means that an action is not authorized and is prohibited.
  - (i) "Must" means, depending on the context in which it is used, that:
    - (i) an action is required or mandatory;
    - (ii) an action or result is compelled by necessity;
    - (iii) an item is indispensable; or
    - (iv) an action or event is a condition precedent to:
      - (A) the authority to act;
      - (B) a prohibition;
      - (C) the accrual or loss of a right; or
      - (D) the imposition or removal of an obligation.
  - (j) "Shall" means that an action is required or mandatory.
- (2)
- (a) Except as provided in Subsection (2)(b) or (c), the use of the following terms in the Utah Code is strongly discouraged:
    - (i) "shall not";
    - (ii) "should not";
    - (iii) "must not"; or
    - (iv) "but not limited to" after "include," "includes," or "including."
  - (b) A term described in Subsection (2)(a) may be used when unusual circumstances exist that require the use of the term, including the use of the term:
    - (i) in an interstate compact; or
    - (ii) to ensure consistency with a federal law or rule.
  - (c)
    - (i) Except as provided in Subsection (2)(c)(ii), the use of the word "should" is strongly discouraged.
    - (ii) The word "should" may be used to:
      - (A) refer to a recommended action, including a provision that a person shall or may recommend whether an action "should" be taken;
      - (B) indicate an expected standard of knowledge, including a provision that a person "should" know:
        - (I) whether a fact exists; or
        - (II) that an action is likely to cause a specified result; or
      - (C) refer to a determination as to whether an action "should" have occurred.
  - (d) The use of the word "must" is strongly discouraged when the term "shall" can be used in its place.

Amended by Chapter 254, 2010 General Session

**68-3-12.5 Definitions for Utah Code.**

- (1) The definitions listed in this section apply to the Utah Code, unless:
  - (a) the definition is inconsistent with the manifest intent of the Legislature or repugnant to the context of the statute; or
  - (b) a different definition is expressly provided for the respective title, chapter, part, section, or subsection.
- (2) "Adjudicative proceeding" means:
  - (a) an action by a board, commission, department, officer, or other administrative unit of the state that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including an action to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license; and
  - (b) judicial review of an action described in Subsection (2)(a).
- (3) "Administrator" includes "executor" when the subject matter justifies the use.
- (4) "Advisory board," "advisory commission," and "advisory council" mean a board, commission, committee, or council that:
  - (a) is created by, and whose duties are provided by, statute or executive order;
  - (b) performs its duties only under the supervision of another person as provided by statute; and
  - (c) provides advice and makes recommendations to another person that makes policy for the benefit of the general public.
- (5) "Armed forces" means the United States Army, Navy, Air Force, Marine Corps, Space Force, and Coast Guard.
- (6) "City" includes, depending on population, a metro township as defined in Section 10-3c-102.
- (7) "County executive" means:
  - (a) the county commission, in the county commission or expanded county commission form of government established under Title 17, Chapter 52a, Changing Forms of County Government;
  - (b) the county executive, in the county executive-council optional form of government authorized by Section 17-52a-203; or
  - (c) the county manager, in the council-manager optional form of government authorized by Section 17-52a-204.
- (8) "County legislative body" means:
  - (a) the county commission, in the county commission or expanded county commission form of government established under Title 17, Chapter 52a, Changing Forms of County Government;
  - (b) the county council, in the county executive-council optional form of government authorized by Section 17-52a-203; and
  - (c) the county council, in the council-manager optional form of government authorized by Section 17-52a-204.
- (9) "Depose" means to make a written statement made under oath or affirmation.
- (10) "Executor" includes "administrator" when the subject matter justifies the use.
- (11) "Guardian" includes a person who:
  - (a) qualifies as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment; or
  - (b) is appointed by a court to manage the estate of a minor or incapacitated person.
- (12) "Highway" includes:
  - (a) a public bridge;
  - (b) a county way;
  - (c) a county road;

- (d) a common road; and
  - (e) a state road.
- (13) "Intellectual disability" means a significant, subaverage general intellectual functioning that:
- (a) exists concurrently with deficits in adaptive behavior; and
  - (b) is manifested during the developmental period as defined in the current edition of the Diagnostic and Statistical Manual of Mental Disorders, published by the American Psychiatric Association.
- (14) "Intermediate care facility for people with an intellectual disability" means an intermediate care facility for the mentally retarded, as defined in Title XIX of the Social Security Act.
- (15) "Land" includes:
- (a) land;
  - (b) a tenement;
  - (c) a hereditament;
  - (d) a water right;
  - (e) a possessory right; and
  - (f) a claim.
- (16) "Month" means a calendar month, unless otherwise expressed.
- (17) "Oath" includes "affirmation."
- (18) "Person" means:
- (a) an individual;
  - (b) an association;
  - (c) an institution;
  - (d) a corporation;
  - (e) a company;
  - (f) a trust;
  - (g) a limited liability company;
  - (h) a partnership;
  - (i) a political subdivision;
  - (j) a government office, department, division, bureau, or other body of government; and
  - (k) any other organization or entity.
- (19) "Personal property" includes:
- (a) money;
  - (b) goods;
  - (c) chattels;
  - (d) effects;
  - (e) evidences of a right in action;
  - (f) a written instrument by which a pecuniary obligation, right, or title to property is created, acknowledged, transferred, increased, defeated, discharged, or diminished; and
  - (g) a right or interest in an item described in Subsections (19)(a) through (f).
- (20) "Personal representative," "executor," and "administrator" include:
- (a) an executor;
  - (b) an administrator;
  - (c) a successor personal representative;
  - (d) a special administrator; and
  - (e) a person who performs substantially the same function as a person described in Subsections (20)(a) through (d) under the law governing the person's status.
- (21) "Policy board," "policy commission," or "policy council" means a board, commission, or council that:

- (a) is authorized to make policy for the benefit of the general public;
  - (b) is created by, and whose duties are provided by, the constitution or statute; and
  - (c) performs its duties according to its own rules without supervision other than under the general control of another person as provided by statute.
- (22) "Population" is shown by the most recent state or national census, unless expressly provided otherwise.
- (23) "Process" means a writ or summons issued in the course of a judicial proceeding.
- (24) "Property" includes both real and personal property.
- (25) "Real estate" or "real property" includes:
- (a) land;
  - (b) a tenement;
  - (c) a hereditament;
  - (d) a water right;
  - (e) a possessory right; and
  - (f) a claim.
- (26) "Review board," "review commission," and "review council" mean a board, commission, committee, or council that:
- (a) is authorized to approve policy made for the benefit of the general public by another body or person;
  - (b) is created by, and whose duties are provided by, statute; and
  - (c) performs its duties according to its own rules without supervision other than under the general control of another person as provided by statute.
- (27) "Road" includes:
- (a) a public bridge;
  - (b) a county way;
  - (c) a county road;
  - (d) a common road; and
  - (e) a state road.
- (28) "Signature" includes a name, mark, or sign written with the intent to authenticate an instrument or writing.
- (29) "State," when applied to the different parts of the United States, includes a state, district, or territory of the United States.
- (30) "Swear" includes "affirm."
- (31) "Testify" means to make an oral statement under oath or affirmation.
- (32) "Town" includes, depending on population, a metro township as defined in Section 10-3c-102.
- (33) "Uniformed services" means:
- (a) the armed forces;
  - (b) the commissioned corps of the National Oceanic and Atmospheric Administration; and
  - (c) the commissioned corps of the United States Public Health Service.
- (34) "United States" includes each state, district, and territory of the United States of America.
- (35) "Utah Code" means the 1953 recodification of the Utah Code, as amended, unless the text expressly references a portion of the 1953 recodification of the Utah Code as it existed:
- (a) on the day on which the 1953 recodification of the Utah Code was enacted; or
  - (b)
    - (i) after the day described in Subsection (35)(a); and
    - (ii) before the most recent amendment to the referenced portion of the 1953 recodification of the Utah Code.

- (36) "Vessel," when used with reference to shipping, includes a steamboat, canal boat, and every structure adapted to be navigated from place to place.
- (37)
- (a) "Veteran" means an individual who:
    - (i) has served in the United States Armed Forces for at least 180 days:
      - (A) on active duty; or
      - (B) in a reserve component, to include the National Guard; or
    - (ii) has incurred an actual service-related injury or disability while in the United States Armed Forces regardless of whether the individual completed 180 days; and
    - (iii) was separated or retired under conditions characterized as honorable or general.
  - (b) This definition is not intended to confer eligibility for benefits.
- (38) "Will" includes a codicil.
- (39) "Writ" means an order or precept in writing, issued in the name of:
- (a) the state;
  - (b) a court; or
  - (c) a judicial officer.
- (40) "Writing" includes:
- (a) printing;
  - (b) handwriting; and
  - (c) information stored in an electronic or other medium if the information is retrievable in a perceivable format.

Amended by Chapter 93, 2021 General Session

**68-3-13 Printing boldface in numbered bills -- Purpose -- Effect -- Power of Office of Legislative Research and General Counsel to change.**

A short summary of each section, part, chapter, or title, called boldface, may be printed in numbered bills introduced in the Legislature. This boldface is not law; it is intended only to highlight the content of each section, part, chapter, or title for legislators. Inaccurate boldface is not a basis for invalidating legislation. The Office of Legislative Research and General Counsel is authorized in Section 36-12-12 to change the boldface in the enrolling process so that it more accurately reflects the substance of each section, part, chapter, or title.

Enacted by Chapter 16, 1989 General Session

**68-3-14 Submitting reports to the Legislature, governor, and state auditor.**

- (1) As used in this section:
- (a) "Governmental entity" means:
    - (i) the state or any department, division, agency, or other instrumentality of the state; or
    - (ii) a political subdivision of the state.
  - (b) "Legislative committee" means a standing, interim, or other committee of the Legislature.
  - (c) "Required annual report" means a written annual report that a governmental entity is required by statute to submit to the governor, whether or not the governmental entity is also required to submit the report to someone other than the governor.
  - (d) "Required financial report" means a written report that a governmental entity is required by statute to submit to the state auditor.
  - (e) "Specified report" means:



- (i) a written annual or other report that a governmental entity is required by statute to submit to the Legislature or a legislative committee, whether or not the governmental entity is also required to submit the report to someone other than the Legislature or a legislative committee; or
  - (ii) a written report that a governmental entity submits to the Legislature or a legislative committee without a statutory requirement to do so.
- (2) A governmental entity may fulfill a statutory requirement to submit a required annual report to the governor by:
- (a) sending the governor:
    - (i) an executive summary of the report, highlighting the contents of the report; and
    - (ii)
      - (A) the address of an electronic copy of the report; or
      - (B) a hard copy of the report; and
  - (b) providing an electronic copy of the report on the state's Internet web site.
- (3) To submit a specified report to the Legislature or a legislative committee, a governmental entity shall:
- (a) electronically submit the report to:
    - (i) each member of the Legislature, if the governmental entity submits the report to the Legislature; or
    - (ii) each member of the legislative committee, if the governmental entity submits the report to a legislative committee;
  - (b) provide a printed copy of the report to each member of the Legislature who requests a printed copy, but only if one or more members request a printed copy and only to the one or more members who request a printed copy;
  - (c)
    - (i) post an electronic copy of the report on the state's Internet web site, if the governmental entity is the state or a department, division, agency, or other instrumentality of the state; or
    - (ii) post an electronic copy of the report on the Internet web site of the governmental entity, if the governmental entity is a political subdivision that has an Internet web site; and
  - (d)
    - (i) submit an electronic copy of the report to the director of the Office of Legislative Research and General Counsel, if the governmental entity submits the report to the Legislature; and
    - (ii) submit an electronic copy of the report to staff of the legislative committee, if the governmental entity submits the report to a legislative committee.
- (4) To submit a required financial report to the state auditor, a governmental entity shall:
- (a) submit the report electronically to the state auditor, in the manner prescribed by the state auditor; and
  - (b) provide a printed copy of the report to the state auditor, but only if the state auditor requests a printed copy.
- (5) Subsections (3) and (4) supersede any other statutory provision specifying the manner of a governmental entity submitting:
- (a) a specified report to the Legislature or a legislative committee; and
  - (b) a required financial report to the state auditor.
- (6) Nothing in this section may be construed to require the disclosure of a report or information in a report that is not subject to disclosure under Title 63G, Chapter 2, Government Records Access and Management Act, or other applicable law.

Amended by Chapter 18, 2017 General Session

