

## **Chapter 9**

### **Utah Division of Indian Affairs Act**

#### **Part 1**

#### **Division of Indian Affairs**

##### **9-9-101 Title -- Definitions.**

- (1) This chapter is known as the "Utah Division of Indian Affairs Act."
- (2)
  - (a) As used in this chapter, "division" means the Utah Division of Indian Affairs created in Section 9-9-102.
  - (b) As used in this part, "Indian tribe" or "tribe" means a tribe, band, nation, or other organized group or community of Indians that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Amended by Chapter 50, 1999 General Session

##### **9-9-102 Division of Indian Affairs created -- Supervision by department.**

- (1) There is created within the department a Utah Division of Indian Affairs.
- (2) The division shall be under the administration and general supervision of the department.

Amended by Chapter 50, 1999 General Session

##### **9-9-103 Purpose.**

The division shall:

- (1) develop programs that will allow Indian citizens residing on or off reservations an opportunity to share in the progress of Utah;
- (2) promote an atmosphere in which Indian citizens are provided alternatives so that individual citizens may choose for themselves the kinds of lives they will live, both socially and economically;
- (3) promote programs to help the tribes and Indian communities find and implement solutions to their community problems; and
- (4) promote government-to-government relations between the state and tribal governments.

Amended by Chapter 50, 1999 General Session

##### **9-9-104 Duties and powers.**

- (1) The division shall:
  - (a) have all of the functions, powers, duties, rights, and responsibilities granted to it by this chapter;
  - (b) staff those committees or boards as specified in this chapter; and
  - (c) in accordance with policies set by state government, coordinate relations between:
    - (i) the state;
    - (ii) tribal governments;
    - (iii) other Indian groups; and
    - (iv) federal agencies.
- (2) The division may:

- (a) contract with public and private entities to provide services or facilities;
- (b) acquire and hold funds or other property for the administration of the programs outlined in this chapter;
- (c) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that are necessary to carry out the duties of the division;
- (d) accept gifts, grants, devises, and property, in cash or in kind, for the benefit of Indians; and
- (e) apply or dispose of those gifts, grants, devises, and property received under Subsection (2)(d) for the use and benefit of Indians within the state.

Amended by Chapter 382, 2008 General Session

**9-9-104.5 Meetings with Tribal Leaders and Native American Indian organizations.**

- (1) The division shall meet regularly with:
  - (a) elected officials of Indian Tribal Nations located in whole or in part in the state; or
  - (b) individuals designated by elected officials of the Indian Tribal Nations described in Subsection (1)(a).
- (2)
  - (a) Subject to Section 9-9-104.6, at least six times each year, the division shall coordinate and attend a joint meeting of the representatives of tribal governments listed in Subsection (2)
    - (b) for the purpose of coordinating the efforts of state and tribal governments in meeting the needs of the Native American Indians residing in Utah.
  - (b)
    - (i) The representatives to be included in the meeting described in Subsection (2)(a) shall be elected officials, serve as representatives for their entire elected term, and be selected as follows:
      - (A) an elected Navajo Nation council delegate who resides in Utah or Arizona and represents at least one Utah Navajo Chapter, as defined in Section 35A-8-1702, selected by the President of the Navajo Nation;
      - (B) an elected official of the Ute Indian Tribe of the Uintah and Ouray Reservation selected by the Uintah and Ouray Tribal Business Committee;
      - (C) an elected official of the Paiute Indian Tribe of Utah selected by the Paiute Indian Tribe of Utah Tribal Council;
      - (D) an elected official of the Northwestern Band of the Shoshone Nation that resides in Utah or Idaho selected by the Northwestern Band of the Shoshone Nation Tribal Council;
      - (E) an elected official of the Confederated Tribes of the Goshute selected by the Confederated Tribes of the Goshute Reservation Tribal Council;
      - (F) an elected official of the Skull Valley Band of Goshute Indians selected by the Skull Valley Band of Goshute Indian Tribal Executive Committee;
      - (G) an elected official of the Ute Mountain Ute Tribe that resides in Utah or Colorado selected by the Ute Mountain Ute Tribal Council; and
      - (H) an elected official of the San Juan Southern Paiute Tribe, residing in Utah or Arizona, selected by the San Juan Southern Paiute Tribal Council.
    - (ii) Notwithstanding Subsection (2)(b)(i), if an elected official of an Indian Tribal Nation provides notice to the division, the Indian Tribal Nation may designate an individual other than the elected official selected under Subsection (2)(b)(i) to represent the Indian Tribal Nation at an individual meeting held under Subsection (2)(a).
    - (iii) A majority of members listed in Subsection (2)(b)(i) constitutes a quorum for purposes of a meeting held under Subsection (2)(a). An action of a majority of members present when

a quorum is present constitutes action of the representatives for purposes of a meeting described in Subsection (2)(a).

(c)

- (i) A meeting held in accordance with Subsection (2)(a) is subject to Title 52, Chapter 4, Open and Public Meetings Act.
- (ii) A meeting of representatives listed in Subsection (2)(b) is not subject to the requirements of Title 52, Chapter 4, Open and Public Meetings Act, notwithstanding whether it is held on the same day as a meeting held in accordance with Subsection (2)(a) if:
  - (A) the division does not coordinate the meeting described in this Subsection (2)(c)(ii);
  - (B) no state agency participates in the meeting described in this Subsection (2)(c)(ii);
  - (C) a representative receives no per diem or expenses under this section for attending the meeting described in this Subsection (2)(c)(ii) that is in addition to any per diem or expenses the representative receives under Subsection (2)(d) for attending a meeting described in Subsection (2)(a); and
  - (D) the meeting described in this Subsection (2)(c)(ii) is not held:
    - (I) after a meeting described in Subsection (2)(a) begins; and
    - (II) before the meeting described in Subsection (2)(c)(ii)(D)(I) adjourns.
- (d) A representative of a tribal government that attends a meeting held in accordance with Subsection (2)(a) may not receive compensation or benefits for the representative's service, but may receive per diem and travel expenses in accordance with:
  - (i) Section 63A-3-106;
  - (ii) Section 63A-3-107; and
  - (iii) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.
- (e) For a meeting described in Subsection (2)(a), only the individuals described in Subsection (2)(b) may receive per diem and expenses, as provided in Subsection (2)(d).
- (3) The division may meet as necessary with Native American Indian groups other than tribal governments representing the interests of Native American Indians who are citizens of the state residing on or off reservation land.

Amended by Chapter 233, 2020 General Session

**9-9-104.6 Participation of state agencies in meetings with tribal leaders -- Contact information.**

- (1) For at least three of the joint meetings described in Subsection 9-9-104.5(2)(a), the division shall coordinate with representatives of tribal governments and the entities listed in Subsection (2) to provide for the broadest participation possible in the joint meetings.
- (2) The following may participate in all meetings described in Subsection (1):
  - (a) the chairs of the Native American Legislative Liaison Committee created in Section 36-22-1;
  - (b) the governor or the governor's designee;
  - (c) the American Indian-Alaska Native Health Liaison appointed in accordance with Section 26B-1-305;
  - (d) the American Indian-Alaska Native Public Education Liaison appointed in accordance with Section 53F-5-604; and
  - (e) a representative appointed by the chief administrative officer of the following:
    - (i) the Department of Human Services;
    - (ii) the Department of Natural Resources;
    - (iii) the Department of Workforce Services;
    - (iv) the Governor's Office of Economic Opportunity;

- (v) the State Board of Education; and
  - (vi) the Utah Board of Higher Education.
- (3)
- (a) The chief administrative officer of the agencies listed in Subsection (3)(b) shall:
    - (i) designate the name of a contact person for that agency that can assist in coordinating the efforts of state and tribal governments in meeting the needs of the Native Americans residing in the state; and
    - (ii) notify the division:
      - (A) who is the designated contact person described in Subsection (3)(a)(i); and
      - (B) of any change in who is the designated contact person described in Subsection (3)(a)(i).
  - (b) This Subsection (3) applies to:
    - (i) the Department of Agriculture and Food;
    - (ii) the Department of Cultural and Community Engagement;
    - (iii) the Department of Corrections;
    - (iv) the Department of Environmental Quality;
    - (v) the Department of Public Safety;
    - (vi) the Department of Transportation;
    - (vii) the Office of the Attorney General;
    - (viii) the State Tax Commission; and
    - (ix) any agency described in Subsections (2)(c) through (e).
  - (c) At the request of the division, a contact person listed in Subsection (3)(b) may participate in a meeting described in Subsection (1).
- (4)
- (a) A participant under this section who is not a legislator may not receive compensation or benefits for the participant's service, but may receive per diem and travel expenses as allowed in:
    - (i) Section 63A-3-106;
    - (ii) Section 63A-3-107; and
    - (iii) rules made by the Division of Finance according to Sections 63A-3-106 and 63A-3-107.
  - (b) Compensation and expenses of a participant who is a legislator are governed by Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.

Amended by Chapter 245, 2022 General Session

**9-9-105 Division director.**

- (1) The executive director of the department shall appoint the director of the division with the approval of the governor.
- (2) The director shall be a person knowledgeable in the field of Indian affairs and experienced in administration.

Amended by Chapter 190, 1992 General Session

Renumbered and Amended by Chapter 241, 1992 General Session

**9-9-107 Division report.**

The department shall include a report of the division's operations and recommendations, including the division's activities under Section 9-9-113, in the annual written report described in Section 9-1-208.

Amended by Chapter 189, 2021 General Session

**9-9-108 Investments.**

Funds not allocated for use by the division shall be invested in accordance with Section 51-7-11.

Renumbered and Amended by Chapter 241, 1992 General Session

**9-9-112 Bears Ears Visitor Center Advisory Committee.**

- (1) Utah extends an invitation to the Navajo Nation, the Ute Mountain Ute Tribe, the Hopi Nation, the Zuni Tribe, and the Ute Indian Tribe of the Uintah Ouray to form an advisory committee for the purpose of exploring the feasibility, location, functions, and other important matters surrounding the creation of a visitor center at Bears Ears.
- (2) As used in this section:
  - (a) "Advisory committee" means the Bears Ears Visitor Center Advisory Committee created by this section.
  - (b) "Bears Ears" means the Bears Ears National Monument.
- (3)
  - (a) Subject to Subsection (3)(b), there is created the Bears Ears Visitor Center Advisory Committee consisting of the following eight members:
    - (i) five voting members as follows:
      - (A) a representative of the Navajo Nation, appointed by the Navajo Nation;
      - (B) a representative of the Ute Mountain Ute Tribe, appointed by the Ute Mountain Ute Tribe;
      - (C) a representative of the Hopi Nation, appointed by the Hopi Nation;
      - (D) a representative of the Zuni Tribe, appointed by the Zuni Tribe; and
      - (E) a representative of the Ute Indian Tribe of the Uintah Ouray, appointed by the Ute Indian Tribe of the Uintah Ouray; and
    - (ii) subject to Subsection (4), three nonvoting members as follows:
      - (A) one member of the Senate, appointed by the president of the Senate; and
      - (B) two members of the House of Representatives, appointed by the speaker of the House of Representatives.
  - (b) The advisory committee is formed when all of the tribes described in Subsection (1) have communicated to the other tribes and to the Division of Indian Affairs that the tribe has appointed a member to the advisory committee.
- (4) At least one of the three legislative members appointed under Subsection (3)(a)(ii) shall be from a minority party.
- (5) The advisory committee may select from the advisory committee members the chair or other officers of the advisory committee.
- (6)
  - (a) If a vacancy occurs in the membership of the advisory committee appointed under Subsection (3), the member shall be replaced in the same manner in which the original appointment was made.
  - (b) A member appointed under Subsection (3) serves until the member's successor is appointed and qualified.
- (7)
  - (a) A majority of the voting members of the advisory committee constitutes a quorum.
  - (b) The action of a majority of a quorum constitutes an action of the advisory committee.
- (8)

- (a) The salary and expenses of an advisory committee member who is a legislator shall be paid in accordance with Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.
- (b) An advisory committee member who is not a legislator may not receive compensation or benefits for the member's service on the advisory committee, but may receive per diem and reimbursement for travel expenses incurred as an advisory committee member at the rates established by the Division of Finance under:
  - (i) Sections 63A-3-106 and 63A-3-107; and
  - (ii) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.
- (9) The advisory committee may invite the United States Forest Service, the Bureau of Land Management, the Division of State Parks, the Division of Outdoor Recreation, and the Utah Office of Tourism within the Governor's Office of Economic Opportunity, to serve as technical advisors to the advisory committee.
- (10) The Division of Indian Affairs shall staff the advisory committee.
- (11) The advisory committee shall study and make recommendations concerning:
  - (a) the need for a visitor center associated with Bears Ears;
  - (b) the feasibility of a visitor center associated with Bears Ears, including investigating:
    - (i) potential locations for the visitor center;
    - (ii) purposes for the visitor center; and
    - (iii) sources of funding to build and maintain the visitor center;
  - (c) whether a visitor center will increase visitorship to Bears Ears; and
  - (d) whether a visitor center at Bears Ears could function as a repository of traditional knowledge and practices.
- (12) The advisory committee may contract with one or more consultants to conduct work related to the issues raised in Subsection (11) if the Legislature appropriates money expressly for the purpose of the advisory committee contracting with a consultant.
- (13) The advisory committee shall hold at least one public hearing to obtain public comment on the creation of a Bears Ears visitor center.
- (14) The advisory committee shall report the advisory committee's recommendations to one or more of the following:
  - (a) the Economic Development and Workforce Services Interim Committee;
  - (b) the House Economic Development and Workforce Services Committee; or
  - (c) the Senate Economic Development and Workforce Services Committee.

Amended by Chapter 68, 2022 General Session

**9-9-113 Geographic place names -- Role of division -- Report.**

- (1) As used in this section, "location name referring to American Indians" means the name of a place in the state that uses American Indian related terms.
- (2)
  - (a) To facilitate the United States Board on Geographic Names' application process for changing a location name referring to American Indians, the division may create an application template for the following to use:
    - (i) a county in which a place with a location name referring to American Indians is located;
    - (ii) an Indian tribe that is connected to the geographic location referring to American Indians for which the Indian tribe seeks to change the name;
    - (iii) a local community in and around a place with a location name referring to American Indians;
  - or

- (iv) another person identified by the division.
- (b) The application template described in Subsection (2)(a) shall encourage an applicant to solicit feedback from the one or more tribal governments that are connected to the geographic location for which the applicant is proposing to change the location name referring to American Indians.
- (c) If the division assists a person applying to change the location name referring to American Indians, the division shall direct the person to consult with any tribal government that is connected to the geographic location for which the location name referring to American Indians is proposed to be changed so that a tribal government has an opportunity to provide an official response.
- (d) The division may bring proposed name changes to location names referring to American Indians to tribal leaders to solicit input from the Indian tribes.
- (3) The division shall provide on the division's website resources for applicants and information about proposed changes to location names referring to American Indians.
- (4) In accordance with Section 9-9-107, the division shall annually report to the Native American Legislative Liaison Committee on the division's activities under this section.

Amended by Chapter 249, 2023 General Session

## **Part 2**

### **State and Tribal Jurisdiction**

#### **9-9-201 Assumption by state of criminal and civil jurisdiction over Indians and Indian territory.**

The state of Utah hereby obligates and binds itself to assume criminal and civil jurisdiction over Indians and Indian territory, country, and lands or any portion thereof within this state in accordance with the consent of the United States given by the Act of Congress of April 11, 1968, 82 Stat. 78-80 (Public Law 284, 90th Congress), to the extent authorized by that act and this chapter.

Renumbered and Amended by Chapter 241, 1992 General Session

#### **9-9-202 Special elections on acceptance or retrocession of state jurisdiction.**

- (1) State jurisdiction acquired or retroceded pursuant to this chapter with respect to criminal offenses or civil causes of action shall be applicable in Indian country only where the enrolled Indians residing within the affected area of the Indian country accept state jurisdiction or request its retrocession by a majority vote of the adult Indians voting at a special election held for that purpose.
- (2) These special elections shall be called pursuant to federal law.

Renumbered and Amended by Chapter 241, 1992 General Session

#### **9-9-203 Acceptance or rejection of cession of state jurisdiction -- Proclamation by governor.**

- (1) If the governor receives a resolution signed by the majority of any tribe, tribal council, or other governing body duly recognized by the Bureau of Indian Affairs of any tribe, community, band or group in the state certifying the results of a special election expressly ceding criminal or civil

jurisdiction of the Indian tribe, community, band, or group or its lands or any portion thereof to the state of Utah within the limits authorized by federal law, he shall either accept or reject the cession of jurisdiction within 60 days.

- (2) If the governor accepts jurisdiction, he shall issue a proclamation within 60 days to the effect that civil or criminal jurisdiction shall apply, subject to the limitations of this chapter, to all Indians and all Indian territory, country, lands or any portion thereof of the Indian body involved to the extent authorized by the resolution. Failure to issue the proclamation within the time prescribed is considered a rejection of the assumption of jurisdiction.

Renumbered and Amended by Chapter 241, 1992 General Session

#### **9-9-204 Criminal jurisdiction.**

The state of Utah shall assume jurisdiction over offenses as set forth in this chapter, committed by or against Indians in the lands described in each tribal resolution 60 days after issuance of the governor's proclamation to the same extent it has jurisdiction over offenses committed elsewhere within the state. The criminal laws of the state shall have the same force and effect within these lands as they have elsewhere within the state.

Renumbered and Amended by Chapter 241, 1992 General Session

#### **9-9-205 Civil jurisdiction.**

The state of Utah shall assume jurisdiction over civil causes of action as set forth in this chapter, between Indians or to which Indians are parties in the lands described in each tribal resolution 60 days after issuance of the governor's proclamation to the same extent it has jurisdiction over civil causes of action as elsewhere within the state. The civil laws of the state shall have the same force and effect within these lands as they have elsewhere within the state, except as otherwise provided by this chapter.

Renumbered and Amended by Chapter 241, 1992 General Session

#### **9-9-206 State jurisdiction subject to provisions of federal law and resolution of tribe.**

The jurisdiction assumed pursuant to this chapter is subject to the limitations and provisions of the federal Act of Congress of April 11, 1968, 82 Stat. 78-80 (Public Law 284, 90th Congress), and the specific limitations set forth in each resolution ceding jurisdiction to the state, both as to geographical area and subject matter.

Renumbered and Amended by Chapter 241, 1992 General Session

#### **9-9-207 Retrocession of state jurisdiction -- Proclamation by governor.**

- (1) The state of Utah hereby obligates and binds itself to retrocede all or any measure of the criminal or civil jurisdiction acquired by it pursuant to this chapter whenever the governor receives a resolution from a majority of any tribe, tribal council, or other governing body duly recognized by the Bureau of Indian Affairs of any Indian tribe, community, band or group in this state, certifying the results of a special election and expressly requesting the state to retrocede jurisdiction over its people or lands or any portion thereof within the limits authorized by the Act of Congress of April 11, 1968, 82 Stat., 78-80 (Public Law 284, 90th Congress).
- (2) The governor shall issue within 60 days a proclamation to the effect that jurisdiction has been retroceded for all these Indians and all Indian territory, country, lands or any portion thereof.



Renumbered and Amended by Chapter 241, 1992 General Session

**9-9-208 Limitations on state authority with respect to property and rights of Indians.**

Nothing in this chapter:

- (1) authorizes the alienation, encumbrance, or taxation of any real or personal property, including water rights belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States;
- (2) authorizes the regulation of the use of this property in a manner inconsistent with any federal treaty, agreement, or statute or with any regulation made pursuant to them;
- (3) confers jurisdiction upon the state to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of this property or any interest in it; or
- (4) enlarges, diminishes, or deprives any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under federal treaty, agreement, statute, or executive order with respect to Indian land grants, hunting, trapping, or fishing or the control, licensing, or regulation of these.

Renumbered and Amended by Chapter 241, 1992 General Session

**9-9-209 Tribal ordinance or custom given full force and effect.**

Any tribal ordinance or custom adopted by an Indian tribe, band, or community in the exercise of any authority that it may possess shall, if not inconsistent with any applicable civil law of the state, be given full force and effect in the determination of civil causes of action.

Renumbered and Amended by Chapter 241, 1992 General Session

**9-9-210 Criminal jurisdiction of state over hunting, trapping, or fishing offenses on reservations -- "Indian reservation" defined.**

As used in this part, "Indian reservation" means:

- (1) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights of way running through the reservation; and
- (2) all Indian allotments, to which the Indian titles have not been extinguished, including rights of way thereon.

Renumbered and Amended by Chapter 241, 1992 General Session

**9-9-211 Hunting, trapping, or fishing on reservation a misdemeanor.**

Any person who, without lawful authority or permission from constituted tribal authorities, willfully and knowingly goes upon any real property within an Indian reservation belonging to any Indian, or any Indian tribe, band, or community, that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States, for the purpose of hunting, trapping, or fishing thereon, or for the removal of game, peltries, or fish therefrom, is guilty of a class B misdemeanor, and all game, fish, and peltries in the person's possession shall be forfeited to the tribe.

Amended by Chapter 148, 2018 General Session

**9-9-212 Jurisdiction of tribe over hunting, trapping, or fishing offenses by member.**

This chapter does not extend to offenses committed by an enrolled member of a federally recognized Indian tribe who is subject to the law of the tribe having jurisdiction of the Indian reservation, or in any case where the exclusive jurisdiction over the offense is, or may be, secured to the Indian tribes respectively.

Renumbered and Amended by Chapter 241, 1992 General Session

**9-9-213 Concurrent state and federal jurisdiction over hunting, trapping, or fishing offenses on reservations.**

- (1) With respect to any of the offenses enumerated in this chapter, over which federal courts may have lawful jurisdiction, the jurisdiction of the courts of the state of Utah shall be concurrent and not exclusive.
- (2) It shall be the duty of the courts of the state of Utah to order delivery to the proper authorities of the federal government for prosecution, any offender, there to be dealt with according to law or regulations authorized by law, where such authorities consent to exercise jurisdiction lawfully vested in them over the said offender.

Renumbered and Amended by Chapter 241, 1992 General Session

**9-9-214 Law enforcement in presidential townsites.**

- (1) As used in this section:
  - (a) "Agents of the Bureau of Indian Affairs" means individuals the Bureau of Indian Affairs has empowered to enforce federal statutes in Indian land under 25 U.S.C. Sec. 2802 or 25 U.S.C. Sec. 2804.
  - (b) "Bureau of Indian Affairs" means the Bureau of Indian Affairs within the United States Department of the Interior.
  - (c) "Indian land" means land that qualifies as "Indian country" under 18 U.S.C. Sec. 1151.
  - (d) "Indian tribe" or "tribe" means an Indian tribe included in the list of federally recognized Indian tribes under 25 U.S.C. Sec. 5131.
  - (e) "Non-Indian land" means land that does not qualify as "Indian country" under 18 U.S.C. Sec. 1151.
  - (f) "Presidential townsite with Indian land" means a municipality incorporated under the laws of the state:
    - (i) created by presidential proclamation pursuant to Sections 2380 and 2381 of the Revised Statutes of the United States, Act of Congress of March 3, 1863, 12 Stat. 754; and
    - (ii) encompassing Indian land and non-Indian land within its municipal boundaries.
- (2) A presidential townsite with Indian land may enter into an agreement that grants authority to agents of the Bureau of Indian Affairs to enforce all applicable state and local misdemeanor and felony offenses on all lands within the presidential townsite with Indian land, provided that each of the following shall be party to the agreement:
  - (a) the presidential townsite with Indian land;
  - (b) the local county sheriff;
  - (c) the Indian tribe with jurisdiction over Indian lands within the presidential townsite with Indian land; and
  - (d) the Bureau of Indian Affairs.

- (3) An agreement entered into under Subsection (2) may be for any period of time and shall state the period of time that the agreement lasts.
- (4) Agents of the Bureau of Indian Affairs who are granted authority to enforce state and local criminal misdemeanor offenses and felonies under an agreement entered into under Subsection (2) shall successfully complete a course focusing on Utah criminal and constitutional law and process specifically approved by the director of the Peace Officer Standards and Training Division created under Section 53-6-103 to qualify the individual for cross-deputization pursuant to this section.

Enacted by Chapter 237, 2018 General Session

### **Part 3 Reserved**

### **Part 4 Native American Grave Protection and Repatriation Act**

#### **9-9-401 Short title.**

This part is known as the "Native American Grave Protection and Repatriation Act."

Enacted by Chapter 286, 1992 General Session

#### **9-9-402 Definitions.**

As used in this part:

- (1) "Antiquities Section" means the Antiquities Section of the State Historic Preservation Office.
- (2) "Burial site" means a natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which as a part of the death rite or ceremony of a culture individual human remains are deposited.
- (3) "Cultural affiliation" means that there is a relationship of shared group identity that can be reasonably traced historically or prehistorically between a present day Indian tribe and an identifiable earlier group.
- (4) "Director" means the director of the Division of Indian Affairs.
- (5) "Division" means the Division of Indian Affairs.
- (6) "Indian tribe" means a tribe, band, nation, or other organized group or community of Indians that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.
- (7) "Lineal descendant" means the genealogical descendant established by oral or written record.
- (8) "Native American" means of or relating to a tribe, people, or culture that is indigenous to the United States.
- (9) "Native American remains" means remains that are Native American.
- (10)
  - (a) "Nonfederal land" means land in the state that is not owned, controlled, or held in trust by the federal government.
  - (b) "Nonfederal land" includes:
    - (i) land owned or controlled by:

- (A) the state;
- (B) a county, city, or town;
- (C) an Indian tribe, if the land is not held in trust by the United States for the Indian tribe or the Indian tribe's members; or
- (D) a person other than the federal government; or
- (ii) school and institutional trust lands as defined in Section 53C-1-103.
- (11) "Partner agency" means an agency of the state or a tribal agency that participates in the remains repatriation process.
- (12) "Remains" means all or part of a physical individual and objects on or attached to the physical individual that are placed there as part of the death rite or ceremony of a culture.
- (13) "Review committee" means the Native American Remains Review Committee created by Section 9-9-405.
- (14)
  - (a) "State land" means land owned by the state including the state's:
    - (i) legislative and judicial branches;
    - (ii) departments, divisions, agencies, boards, commissions, councils, and committees; and
    - (iii) institutions of higher education as defined under Section 53B-3-102.
  - (b) "State land" does not include:
    - (i) land owned by a political subdivision of the state;
    - (ii) land owned by a school district;
    - (iii) private land; or
    - (iv) school and institutional trust lands as defined in Section 53C-1-103.
- (15) "Tribal consultation" means the state and the tribes exchanging views and information, in writing or in person, regarding implementing proposed state action under this part that has or may have substantial implications for tribes including impacts on:
  - (a) tribal cultural practices;
  - (b) tribal lands;
  - (c) tribal resources;
  - (d) access to traditional areas of tribal cultural or religious importance; or
  - (e) the consideration of the state's responsibilities to Indian tribes.

Amended by Chapter 160, 2023 General Session

**9-9-403 Ownership and disposition of Native American remains.**

- (1) If Native American remains are discovered on nonfederal lands on or after April 30, 2007, the ownership or control of the Native American remains shall be determined in the following priority:
  - (a) first, in the lineal descendants of the Native American;
  - (b) second, if the lineal descendants cannot be ascertained, in the Indian tribe that:
    - (i) has the closest cultural affiliation with the Native American remains; and
    - (ii) states a claim for the Native American remains; or
  - (c) third:
    - (i) in the Indian tribe that is recognized as aboriginally occupying the area in which the Native American remains are discovered, if:
      - (A) cultural affiliation of the Native American remains cannot be reasonably ascertained;
      - (B) the land is recognized either by a final judgment of the Indian Claims Commission or through other evidence as the exclusive or joint aboriginal land of some Indian tribe; and
      - (C) that tribe states a claim for the Native American remains; or

- (ii) in a different tribe if:
    - (A) it can be shown by a preponderance of the evidence that that different tribe has a stronger genetic or cultural relationship with the Native American remains; and
    - (B) that different tribe states a claim for the Native American remains.
- (2) Subject to Subsection (7), Native American remains discovered on nonfederal lands that are not claimed under Subsection (1) shall be disposed of in accordance with rules made by the division:
  - (a) consistent with Chapter 8a, Part 3, Antiquities; and
  - (b) in consultation with Native American groups, representatives of repositories, and the review committee established under Section 9-9-405.
- (3) The intentional removal or excavation of Native American remains from state lands may be permitted only if:
  - (a) the Native American remains are excavated or removed pursuant to a permit issued under Section 9-8a-305;
  - (b) the Native American remains are excavated or removed after consultation with and written consent of the owner of the state land; and
  - (c) the ownership or right of control of the disposition of the Native American remains is determined as provided in Subsections (1) and (2).
- (4)
  - (a) A person who knows or has reason to know that the person has discovered Native American remains on state lands after March 17, 1992, shall notify, in writing, the appropriate state agency having primary management authority over the lands as provided in Chapter 8a, Part 3, Antiquities.
  - (b) If the discovery occurs in connection with construction, mining, logging, agriculture, or a related activity, the person shall:
    - (i) cease the activity in the area of the discovery;
    - (ii) make a reasonable effort to protect the Native American remains discovered before resuming the activity; and
    - (iii) provide notice of discovery to the appropriate state agency under Subsection (4)(a).
  - (c) Following notification under Subsections (4)(a) and (b) and upon certification by the head of the appropriate state agency that notification is received, the activity may resume after compliance with Section 76-9-704.
- (5)
  - (a) Scientific study of Native American remains may be carried out only with approval of the owner of the Native American remains as established in Subsections (1) and (2).
  - (b)
    - (i) If ownership is unknown, study before identifying ownership is restricted to those sufficient to identify ownership.
    - (ii) Study to identify ownership shall be approved only in accordance with rules made by the division in consultation with the review committee.
  - (c) The Native American remains may not be retained longer than 90 days after the date of establishing ownership.
- (6)
  - (a) Ownership of Native American remains shall be determined in accordance with this Subsection (6) if:
    - (i) there are multiple claims of ownership under Subsection (1) of Native American remains; and
    - (ii) the division cannot clearly determine which claimant is the most appropriate claimant.

- (b) If the conditions of Subsection (6)(a) are met, the appropriate state agency having primary authority over the lands as provided in Chapter 8a, Part 3, Antiquities, may retain the remains until:
  - (i) the multiple claimants for the Native American remains enter into an agreement concerning the disposition of the Native American remains;
  - (ii) the dispute is resolved through an administrative process:
    - (A) established by rules made by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
    - (B) that is exempt from Title 63G, Chapter 4, Administrative Procedures Act; or
  - (iii) after the administrative process described in Subsection (6)(b)(ii) is complete, the dispute is resolved by a court of competent jurisdiction.
- (7) The division may not make rules that impose any requirement on a person who discovers Native American remains or owns or controls nonfederal land that is not state land on which Native American remains are discovered that is not expressly provided for in Section 9-8a-309.
- (8) For purposes of this part, if Native American remains are discovered on nonfederal land that is not state land, the Antiquities Section is considered the state agency having primary authority over the nonfederal land.
- (9) This part does not modify any property rights of a person that owns or controls nonfederal land except as to the ownership of Native American remains.

Amended by Chapter 160, 2023 General Session

#### **9-9-404 Illegal trafficking.**

- (1) Any person who knowingly sells, purchases, uses for profit, or transports for sale or profit the remains of a Native American without the right of possession to those remains as provided in this part is guilty of a class A misdemeanor. In the case of a second or subsequent violation the person is guilty of a third degree felony.
- (2) Any person who knowingly sells, purchases, exchanges, receives, uses for profit, or transports for sale or profit any Native American remains obtained in violation of this part is guilty of a class A misdemeanor. In the case of a second or subsequent violation the person is guilty of a third degree felony.

Enacted by Chapter 286, 1992 General Session

#### **9-9-405 Review committee.**

- (1) There is created a Native American Remains Review Committee.
- (2)
  - (a) The review committee shall be composed of seven members as follows:
    - (i) four Tribal members shall be appointed by the director from nominations submitted by the elected officials of Indian Tribal Nations described in Subsection 9-9-104.5(2)(b); and
    - (ii) three shall be appointed by the director from nominations submitted by representatives of Utah's repositories.
  - (b) A member appointed under Subsection (2)(a)(i) shall have familiarity and experience with this part.
  - (c)
    - (i) A member appointed under Subsection (2)(a)(i) serves at the will of the director, and if the member represents an Indian Tribal Nation, at the will of that Indian Tribal Nation. Removal

of a member who represents an Indian Tribal Nation requires the joint decision of the director and the Indian Tribal Nation.

- (ii) A member appointed under Subsection (2)(a)(ii) serves at the will of the director, and if the member represents a repository, at the will of the Division of State History. Removal of a member who represents a repository requires the joint decision of the director and the Division of State History.
- (d) When a vacancy occurs in the membership for any reason, the director shall appoint a replacement in the same manner as the original appointment under Subsection (2)(a).
- (e) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
  - (i) Section 63A-3-106;
  - (ii) Section 63A-3-107; and
  - (iii) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.
- (f) The review committee shall designate one of its members as chair.
- (3) The review committee shall:
  - (a) monitor the identification process conducted under Section 9-9-403 to ensure a fair and objective consideration and assessment of all available relevant information and evidence;
  - (b) review a finding relating to the following, subject to the rules made by the division under Subsection 9-9-403(6):
    - (i) the identity or cultural affiliation of Native American remains; or
    - (ii) the return of Native American remains;
  - (c) facilitate the resolution of a dispute among Indian Tribal Nations or lineal descendants and state agencies relating to the return of Native American remains, including convening the parties to the dispute if considered desirable;
  - (d) consult with Indian Tribal Nations on matters within the scope of the work of the review committee affecting these Indian Tribal Nations;
  - (e) consult with the division in the development of rules to carry out this part;
  - (f) perform other related functions as the division may assign to the review committee; and
  - (g) make recommendations, if appropriate, regarding care of Native American remains that are to be repatriated.
- (4) A record or finding made by the review committee relating to the identity of or cultural affiliation of Native American remains and the return of Native American remains may be admissible in any action brought under this part.
- (5) The appropriate state agency having primary authority over the lands as provided in Chapter 8a, Part 3, Antiquities, shall ensure that the review committee has reasonable access to:
  - (a) Native American remains under review; and
  - (b) associated scientific and historical documents.
- (6) The division shall provide reasonable administrative and staff support necessary for the deliberations of the review committee.
- (7) The department shall include in the annual written report described in Section 9-1-208:
  - (a) a description of the progress made, and any barriers encountered, by the review committee in implementing this section during the previous year; and
  - (b) a review of the expenditures made from the Native American Repatriation Restricted Account.

Amended by Chapter 160, 2023 General Session

**9-9-406 Savings provision.**

Nothing in this part may be construed to:

- (1) limit the authority of a state agency to:
  - (a) return or repatriate Native American remains to Indian tribes or individuals; or
  - (b) enter into another agreement with the consent of the lineal descendant or culturally affiliated tribe as to the disposition or control over Native American remains;
- (2) delay actions on repatriation requests that are pending on March 17, 1992;
- (3) deny or otherwise affect access to any court, except as provided in Subsection 9-9-403(6);
- (4) limit any procedural or substantive rights that may otherwise be secured to individuals or Indian tribes; or
- (5) limit the application of any state or federal law pertaining to theft or stolen property.

Amended by Chapter 114, 2008 General Session

**9-9-407 Native American Repatriation Restricted Account.**

- (1) There is created a restricted account within the General Fund known as the "Native American Repatriation Restricted Account."
- (2)
  - (a) The Native American Repatriation Restricted Account shall consist of appropriations from the Legislature.
  - (b) All interest earned on Native American Repatriation Restricted Account money shall be deposited into the Native American Repatriation Restricted Account.
- (3) Subject to appropriation from the Legislature, the division may use the money in the Native American Repatriation Restricted Account as follows:
  - (a) for a grant issued in accordance with Subsection (6) to an Indian Tribe to pay the following costs of reburial of Native American remains:
    - (i) use of equipment;
    - (ii) labor for use of the equipment;
    - (iii) reseeding and vegetation efforts;
    - (iv) compliance with Section 9-8a-404; and
    - (v) caskets;
  - (b) for tribal consultation, including:
    - (i) consultation time, drafting reports, taking detailed notes, communicating to the stakeholders, facilitating discussions, and traveling to individual tribal locations;
    - (ii) travel costs, including per diem and lodging costs, for:
      - (A) Utah tribal leaders and tribal cultural resource managers; and
      - (B) regional partner tribes;
    - (iii) meeting facilities for the division to host tribal consultations when the division determines that a state facility does not meet tribal consultation needs; and
    - (iv) costs for holding meetings under Subsection (3)(b)(iii); and
  - (c) for training tribal representatives, councils, and staff of a partner agency with repatriation responsibilities in the processes under Section 9-8a-404 and rules made by the State Historic Preservation Office in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, including costs for:
    - (i) lodging and transportation of employees of the department or a partner agency; or
    - (ii) travel grants issued in accordance with Subsection (6) for tribal representatives.
- (4) If the balance in the Native American Repatriation Restricted Account exceeds \$100,000 at the close of any fiscal year, the excess shall be transferred into the General Fund.
- (5) In accordance with Section 63J-1-602.1, appropriations from the account are nonlapsing.
- (6) To issue a grant under this section, the division shall:



- (a) require that an Indian Tribe request the grant in writing and specify how the grant money will be expended; and
- (b) enter into an agreement with the Indian Tribe to ensure that the grant money is expended in accordance with Subsection (3).

Amended by Chapter 160, 2023 General Session

**9-9-408 Burial of ancient Native American remains in state parks.**

(1) As used in this section:

- (a) "Ancient Native American remains" means ancient human remains, as defined in Section 9-8a-302, that are Native American remains, as defined in Section 9-9-402.
- (b) "Antiquities Section" means the Antiquities Section of the State Historic Preservation Office created in Section 9-8a-304.

(2)

- (a) The division, the Antiquities Section, and the Division of State Parks shall cooperate in a study of the feasibility of burying ancient Native American remains in state parks.
- (b) The study shall include:
  - (i) the process and criteria for determining which state parks would have land sufficient and appropriate to reserve a portion of the land for the burial of ancient Native American remains;
  - (ii) the process for burying the ancient Native American remains on the lands within state parks, including the responsibilities of state agencies and the assurance of cultural sensitivity;
  - (iii) how to keep a record of the locations in which specific ancient Native American remains are buried;
  - (iv) how to account for the costs of:
    - (A) burying the ancient Native American remains on lands found within state parks; and
    - (B) securing and maintaining burial sites in state parks; and
  - (v) any issues related to burying ancient Native American remains in state parks.

Amended by Chapter 160, 2023 General Session