REVISOR'S STATUTE

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: John P. Holmgren

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AN ACT RELATING TO STATE AFFAIRS; CORRECTING INTERIM COMMITTEE NAMES, CROSS REFERENCES, AND WORD ERRORS; MAKING TECHNICAL AMENDMENTS; AND REPEALING CERTAIN UNNECESSARY OR OUTDATED SECTIONS.

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

AMENDS:

9-2-1603, as enacted by Chapter 236, Laws of Utah 1996

9-3-410, as last amended by Chapter 10, Laws of Utah 1997

9-7-401, as last amended by Chapter 247, Laws of Utah 1995

10-1-303, as enacted by Chapter 280, Laws of Utah 1996

10-2-103, as last amended by Chapter 3, Laws of Utah 1997, Second Special Session

10-2-105, as last amended by Chapter 3, Laws of Utah 1997, Second Special Session

10-2-404, as last amended by Chapter 3, Laws of Utah 1997, Second Special Session

10-2-407, as last amended by Chapter 3, Laws of Utah 1997, Second Special Session

10-9-804, as last amended by Chapter 151, Laws of Utah 1997

17-5-274, as renumbered and amended by Chapter 147, Laws of Utah 1994

17-27-201, as last amended by Chapter 3, Laws of Utah 1997, Second Special Session

17-27-804, as last amended by Chapter 151, Laws of Utah 1997

17-41-304, as last amended by Chapters 82 and 383, Laws of Utah 1997

17A-2-1404, as last amended by Chapter 10, Laws of Utah 1997

19-6-104, as last amended by Chapter 230, Laws of Utah 1996

19-6-108, as last amended by Chapter 230, Laws of Utah 1996

20A-11-204, as last amended by Chapter 355, Laws of Utah 1997

23-19-9, as last amended by Chapter 179, Laws of Utah 1997

26-6-3.5, as enacted by Chapter 211, Laws of Utah 1996

26-9-212, as enacted by Chapter 44, Laws of Utah 1993

26-9d-10, as enacted by Chapter 252, Laws of Utah 1992

26-9e-11, as enacted by Chapter 345, Laws of Utah 1996

26-18-305, as enacted by Chapter 255, Laws of Utah 1993

26-18-401, as last amended by Chapter 79, Laws of Utah 1996

26-21-2, as last amended by Chapter 209, Laws of Utah 1997

27-17-405, as last amended by Chapter 250, Laws of Utah 1997

30-3-35.5, as enacted by Chapter 80, Laws of Utah 1997

31A-1-301, as last amended by Chapter 185, Laws of Utah 1997

31A-12-107, as last amended by Chapter 12, Laws of Utah 1987, First Special Session

31A-22-613.5, as last amended by Chapter 243, Laws of Utah 1996

31A-27-311, as last amended by Chapter 204, Laws of Utah 1986

32A-1-401, as renumbered and amended by Chapter 23, Laws of Utah 1990

34-41-104, as last amended by Chapter 10, Laws of Utah 1997

34A-2-207, as renumbered and amended by Chapter 375, Laws of Utah 1997

34A-2-211, as last amended by Chapter 9 and renumbered and amended by Chapter 375, Laws of Utah 1997

34A-2-415, as renumbered and amended by Chapter 375, Laws of Utah 1997

34A-6-104, as renumbered and amended by Chapter 375, Laws of Utah 1997

35A-3-114, as renumbered and amended by Chapter 375, Laws of Utah 1997

35A-3-207, as enacted by Chapter 173, Laws of Utah 1997

35A-3-306, as enacted by Chapter 174, Laws of Utah 1997

35A-4-103, as renumbered and amended by Chapter 240, Laws of Utah 1996

35A-4-305, as last amended by Chapter 375, Laws of Utah 1997

35A-4-508, as last amended by Chapter 375, Laws of Utah 1997

36-11-102, as last amended by Chapter 192, Laws of Utah 1995

38-11-102, as last amended by Chapter 172, Laws of Utah 1995

41-6-44, as last amended by Chapter 68, Laws of Utah 1997

41-22-30, as last amended by Chapter 363, Laws of Utah 1997

52-3-4, as last amended by Chapter 99, Laws of Utah 1996

53-3-219, as last amended by Chapters 51 and 365, Laws of Utah 1997

53-5-704, as last amended by Chapter 280, Laws of Utah 1997

53-5-711, as enacted by Chapter 57, Laws of Utah 1997

53-6-211, as last amended by Chapter 315, Laws of Utah 1997

53C-3-103, as last amended by Chapter 299, Laws of Utah 1995

58-31-2, as last amended by Chapter 10, Laws of Utah 1997

58-37-6, as last amended by Chapter 64, Laws of Utah 1997

58-37-7.5, as last amended by Chapter 247, Laws of Utah 1996

58-47b-304, as last amended by Chapter 10, Laws of Utah 1997

58-56-4, as last amended by Chapter 225, Laws of Utah 1996

58-56-5, as last amended by Chapters 225 and 243, Laws of Utah 1996

58-56-7, as last amended by Chapter 225, Laws of Utah 1996

59-12-1102, as enacted by Chapter 228, Laws of Utah 1997

61-1-22, as last amended by Chapter 161, Laws of Utah 1991

62A-3-304, as last amended by Chapter 10, Laws of Utah 1997

62A-4a-118, as enacted by Chapter 260, Laws of Utah 1994

62A-4a-202.3, as last amended by Chapter 329, Laws of Utah 1997

62A-4a-207, as last amended by Chapter 329, Laws of Utah 1997

62A-7-401, as last amended by Chapters 318 and 322, Laws of Utah 1996

62A-11-304.2, as last amended by Chapter 232, Laws of Utah 1997

62A-12-283.1, as enacted by Chapter 234, Laws of Utah 1996

62A-12-289, as last amended by Chapter 10, Laws of Utah 1997

62A-13-110, as enacted by Chapter 158, Laws of Utah 1994

63-38-2, as last amended by Chapter 136, Laws of Utah 1997

63-38-3.2, as last amended by Chapter 172, Laws of Utah 1995

63-46a-9, as last amended by Chapter 375, Laws of Utah 1997

63-55-209, as last amended by Chapters 8, 10, 15 and 134, Laws of Utah 1997

63-55-226, as last amended by Chapters 1, 15 and 134, Laws of Utah 1997

63-55-259, as last amended by Chapters 15 and 134, Laws of Utah 1997

63-55-263, as last amended by Chapters 15, 98, 134 and 393, Laws of Utah 1997

63-56-9, as last amended by Chapter 252, Laws of Utah 1997

63-56-20.7, as last amended by Chapter 133, Laws of Utah 1994

67-16-5, as last amended by Chapter 188, Laws of Utah 1997

67-20-3, as last amended by Chapter 240, Laws of Utah 1996

69-4-1, as enacted by Chapter 61, Laws of Utah 1991

70A-1-201, as last amended by Chapters 237 and 251, Laws of Utah 1993

70A-2-725, as enacted by Chapter 154, Laws of Utah 1965

70A-2a-506, as enacted by Chapter 197, Laws of Utah 1990

70A-3-415, as repealed and reenacted by Chapter 237, Laws of Utah 1993

76-7-305.5, as last amended by Chapters 174 and 221, Laws of Utah 1997

76-8-601, as last amended by Chapter 215, Laws of Utah 1997

76-10-1504, as last amended by Chapter 289, Laws of Utah 1997

77-27-2, as last amended by Chapter 308, Laws of Utah 1997

77-36-2.1, as enacted by Chapter 300, Laws of Utah 1995

78-3-25, as last amended by Chapter 215, Laws of Utah 1997

78-3a-306, as last amended by Chapter 329, Laws of Utah 1997

78-3a-911, as enacted by Chapter 1, Laws of Utah 1996

78-23-9, as last amended by Chapter 19, Laws of Utah 1989

REPEALS:

55-15-32, as enacted by Chapter 126, Laws of Utah 1961

55-15-34, as last amended by Chapter 10, Laws of Utah 1997

55-15-39, as enacted by Chapter 126, Laws of Utah 1961

58-25a-4, as repealed and reenacted by Chapter 297, Laws of Utah 1993

58-25a-5, as enacted by Chapter 42, Laws of Utah 1989

62A-7-301, as last amended by Chapter 318, Laws of Utah 1996

62A-7-303, as last amended by Chapter 154, Laws of Utah 1995

62A-9-113, as last amended by Chapter 242, Laws of Utah 1988

62A-9-134, as last amended by Chapter 20, Laws of Utah 1995

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

Section 1. Section **9-2-1603** is amended to read:

9-2-1603. Powers of the department.

The department shall:

(1) facilitate recycling development zones through state support of county incentives which encourage development of manufacturing enterprises that use recycling materials currently collected;

(2) evaluate an application from a county or municipality executive authority to be designated as a recycling market development zone and determine if the county or municipality qualifies for that designation;

(3) provide technical assistance to municipalities and counties in developing applications for designation as a recycling market development zone;

(4) assist counties and municipalities designated as recycling market development zones in obtaining assistance from the federal government and agencies of the state;

(5) assist any qualified business in obtaining the benefits of any incentive or inducement program authorized by this part;

(6) monitor the implementation and operation of this part and conduct a continuing evaluation of the progress made in the recycling market development zone; and

(7) submit an annual written report evaluating the effectiveness of the program and providing recommendations for legislation to the [~~legislative~~] Business [~~and~~]<u>,</u> Labor<u>, and Economic Development</u> Interim Committee and [~~Health~~] <u>Natural Resources, Agriculture,</u> and Environment Interim Committee not later than November 1 of each year.

Section 2. Section **9-3-410** is amended to read:

9-3-410. Relation to certain acts.

(1) The authority is exempt from:

(a) Title 51, Chapter 5, Funds Consolidation Act;

(b) Title 63, Chapter 38, Budgetary Procedures Act;

(c) Title 63, Chapter 56, Utah Procurement Code;

(d) Title 63A, Chapter 1, Utah Administrative Services Code; and

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

(2) The authority shall be subject to audit by the state auditor pursuant to Title 67, Chapter 3, and by the legislative auditor general pursuant to Section 36-12-15.

(3) The authority shall annually report to the [~~Community~~] Business, Labor, and Economic Development Interim Committee concerning the authority's implementation of this part.

Section 3. Section **9-7-401** is amended to read:

9-7-401. Tax for establishment and maintenance of public library -- Library fund.

(1) A city governing body may establish and maintain a public library.

(2) For this purpose, cities may levy annually a tax not to exceed .001 of taxable value of taxable property in the city. The tax is in addition to all taxes levied by cities and is not limited by the levy limitation imposed on cities by law. However, if bonds are issued for purchasing a site, or constructing or furnishing a building, then taxes sufficient for the payment of the bonds and any interest may be levied.

(3) The taxes shall be levied and collected in the same manner as other general taxes of the city and shall constitute a fund to be known as the city library fund.

(4) The city library fund shall receive a portion of the uniform fee on tangible personal property in accordance with the procedures established in Subsection 59-2-405[~~(4)~~](5).

Section 4. Section **10-1-303** is amended to read:

10-1-303. Definitions.

As used in this part:

(1) "Commission" means the State Tax Commission.

(2) "Contractual franchise fee" means:

(a) a fee:

(i) provided for in a franchise agreement; and

(ii) that is consideration for the franchise agreement; or

(b) (i) a fee similar to Subsection (2)(a); or

(ii) any combination of Subsections (2)(a) and (b).

(3) (a) "Delivered value" means the fair market value of the taxable energy delivered for sale or use in the municipality and includes:

(i) the value of the energy itself; and

(ii) any transportation, freight, customer demand charges, services charges, or other costs typically incurred in providing taxable energy in usable form to each class of customer in the municipality.

(b) "Delivered value" does not include the amount of a tax paid under:

(i) Title 59, Chapter 12, Part 1, Tax Collection; or

(ii) Title 59, Chapter 12, Part 2, The Local Sales and Use Tax Act.

(4) "De minimus amount" means an amount of taxable energy that does not exceed the greater of:

(a) 5% of the energy supplier’s estimated total Utah gross receipts from sales of property or services; or

(b) $10,000.

(5) "Energy supplier" means a person supplying taxable energy, except that the commission may by rule exclude from this definition a person supplying a de minimus amount of taxable energy.

(6) "Franchise agreement" means a franchise or an ordinance, contract, or agreement granting a franchise.

(7) "Franchise tax" means:

(a) a franchise tax;

(b) a tax similar to a franchise tax; or

(c) any combination of Subsections (7)(a) and (b).

(8) "Person" is as defined in [~~Subsection~~] Section 59-12-102[~~(10)~~].

(9) "Taxable energy" means gas and electricity.

Section 5. Section **10-2-103** is amended to read:

10-2-103. Request for feasibility study -- Requirements -- Limitations.

(1) The process to incorporate a contiguous area of a county as a city is initiated by a request for a feasibility study filed with the clerk of the county in which the area is located.

(2) Each request under Subsection (1) shall:

(a) be signed by the owners of private real property that:

(i) is located within the area proposed to be incorporated;

(ii) covers at least 10% of the total private land area within the area; and

(iii) is equal in value to at least 7% of the value of all private real property within the area;

(b) indicate the typed or printed name and current residence address of each owner signing the request;

(c) describe the contiguous area proposed to be incorporated as a city;

(d) designate up to five signers of the request as sponsors, one of whom shall be designated as the contact sponsor, with the mailing address and telephone number of each;

(e) be accompanied by and circulated with an accurate map or plat, prepared by a licensed surveyor, showing the boundaries of the proposed city; and

(f) request the county legislative body to commission a study to determine the feasibility of incorporating the area as a city.

(3) A request for a feasibility study under this section may not describe an area that includes some or all of an area that is the subject of a completed feasibility study or supplemental feasibility study whose results comply with Subsection 10-2-109(3) unless:

(a) the proposed incorporation that is the subject of the completed feasibility study or supplemental feasibility study has been defeated by the voters at an election under Section 10-2-111; or

(b) the time provided under Subsection 10-2-109(1) for filing an incorporation petition based on the completed feasibility study or supplemental feasibility study has elapsed without the filing

of a petition.

(4) A request under this section may not describe an area that includes some or all of an area proposed for annexation in an annexation petition under Section 10-2-403 that:

(a) was filed before the filing of the request; and

(b) is still pending on the date the request is filed.

(5) (a) At the time of filing the request for a feasibility study with the county clerk, the sponsors of the request shall mail or deliver a copy of the request to the chair of the planning commission of each township in which any part of the area proposed for incorporation is located.

(b) (i) Except as provided in Subsection (5)(b)(ii), the sponsors of each request for a feasibility study filed under Subsection (1) before [~~the effective date of this Subsection (5)~~] July 17, 1997, shall, [~~within ten days of the effective date of this Subsection (5)~~] no later than July 27, 1997, deliver or mail a copy of the request to the planning commission of each township in which any part of the area proposed for incorporation is located.

(ii) Subsection (5)(b)(i) does not apply if the feasibility consultant has completed the feasibility study before [~~the effective date of this Subsection (5)~~] July 17, 1997.

Section 6. Section **10-2-105** is amended to read:

10-2-105. Processing a request for feasibility study -- Certification or rejection by county clerk -- Processing priority -- Limitations -- Township planning commission recommendation.

(1) Within 45 days of the filing of a request under Section 10-2-103, the county clerk shall:

(a) with the assistance of other county officers from whom the clerk requests assistance, determine whether the request complies with Section 10-2-103; and

(b) (i) if the clerk determines that the request complies with Section 10-2-103:

(A) certify the request and deliver the certified request to the county legislative body; and

(B) mail or deliver written notification of the certification to:

(I) the contact sponsor; and

(II) the chair of the planning commission of each township in which any part of the area proposed for incorporation is located; or

(ii) if the clerk determines that the request fails to comply with any of those requirements, reject the request and notify the contact sponsor in writing of the rejection and the reasons for the rejection.

(2) The county clerk shall certify or reject requests under Subsection (1) in the order in which they are filed.

(3) (a) (i) If the county clerk rejects a request under Subsection (1)(b)(ii), the request may be amended to correct the deficiencies for which it was rejected and then refiled with the county clerk.

(ii) A signature on a request under Section 10-2-103 may be used toward fulfilling the signature requirement of Subsection 10-2-103(2)(a) for the request as modified under Subsection (3)(a)(i).

(b) If a request is amended and refiled under Subsection (3)(a) after having been rejected by the county clerk under Subsection (1)(b)(ii), it shall be considered as a newly filed request, and its processing priority is determined by the date on which it is refiled.

(4) (a) A township planning commission may recommend to the legislative body of the county in which the township is located that, for purposes of Subsection 10-2-106(4)(a)(xiii), the county legislative body support or oppose a proposed incorporation under this part of an area located within the township.

(b) (i) Except as provided in Subsection (4)(b)(ii), the township planning commission shall communicate each recommendation under Subsection (4)(a) in writing to the county legislative body within 60 days of the county clerk's certification under Subsection (1)(b)(i).

(ii) Notwithstanding Subsection (4)(b)(i), if [~~the effective date of this Subsection (4) is after~~] the county clerk's certification under Subsection (1)(b)(i) is before July 17, 1997, the township planning commission shall communicate its recommendation under Subsection (4)(a) in writing to the county legislative body within 60 days of the county clerk's certification under Subsection (1)(b)(i) or [~~45 days of the effective date of this Subsection (4)~~] August 31, 1997, whichever is later, but no later than:

(A) 75 days after the county legislative body has engaged the feasibility consultant under

Subsection 10-2-106(1); or

(B) the completion of the feasibility study.

(iii) At the time the recommendation under Subsection (4)(b)(i) is delivered to the county legislative body, the township planning commission shall mail or deliver a copy of the recommendation to the contact sponsor.

Section 7. Section **10-2-404** is amended to read:

10-2-404. Certain annexation petitions invalid -- Certain petitions considered filed on May 5, 1997 -- Signatures on invalid petitions -- Special requirements for certain petitions.

(1) Except as provided in Subsection (3), an annexation petition filed before and still pending on May 5, 1997, that fails to comply with the requirements of Subsections 10-2-403(2), (3), and (4) is invalid.

(2) Each annexation petition filed before and still pending on May 5, 1997, that complies with the requirements of Subsections 10-2-403(2), (3), and (4) shall:

(a) except as provided in Subsection (2)(b), be considered to have been filed on May 5, 1997, and shall be processed according to the provisions of this part; and

(b) notwithstanding Subsection (2)(a), be given processing priority according to its actual filing date.

(3) Notwithstanding Subsection (1), the signatures on an annexation petition that is invalid because of Subsection (1) may be used toward fulfilling the signature requirement of Subsection 10-2-403(2)(b).

(4) (a) Except as provided in Subsection (4)(c), the sponsors of each annexation petition filed under Section 10-2-403 on or after May 5, 1997, and before [~~the effective date of this Subsection (4)~~] July 17, 1997, or considered filed on May 5, 1997, under Subsection (2)(a), shall, [~~within ten days of the effective date of this Subsection (4)~~] no later than July 27, 1997, deliver or mail a copy of the annexation petition to the planning commission of each township in which any part of the area proposed for annexation is located.

(b) Except as provided in Subsection (4)(c), if an annexation petition described in Subsection (4)(a) is accepted by a municipal legislative body under Subsection 10-2-405(1)(a)(ii), the municipal

legislative body may not grant the petition for annexation until after expiration of the deadline for filing a protest under Subsection 10-2-407(2)(a)(i)(A), (2)(e), or (2)(f).

(c) Subsections (4)(a) and (b) do not apply if the time for filing a protest under Subsection 10-2-407(2)(a)(i)(A) or (2)(e), excluding an extension under Subsection 10-2-407(2)(f), expires before [~~the effective date of this Subsection (4)~~] July 17, 1997.

Section 8. Section **10-2-407** is amended to read:

10-2-407. Protest to annexation petition -- Requirements -- Disposition if no protest -- Township planning commission recommendation.

(1) (a) A protest to an annexation petition under Section 10-2-403 may be filed by:

(i) the legislative body of the county in which the area proposed for annexation is located;

(ii) the board of a special district whose boundaries include part or all of the area proposed for annexation;

(iii) the legislative body of a municipality whose boundaries are within 1/2 mile of the area proposed for annexation; or

(iv) the owners of private real property that:

(A) is located in the unincorporated area within 1/2 mile of the area proposed for annexation;

(B) covers at least 25% of the private land area located in the unincorporated area within 1/2 mile of the area proposed for annexation; and

(C) is equal in value to at least 15% of all real property located in the unincorporated area within 1/2 mile of the area proposed for annexation.

(b) (i) (A) Except as provided in Subsection (1)(b)(i)(B), a township planning commission may recommend to the legislative body of the county in which the township is located that the county legislative body file a protest against a proposed annexation under this part of an area located within the township.

(B) Subsection (1)(b)(i)(A) does not apply if the time for filing a protest under Subsection 10-2-407(2)(a)(i)(A) or (2)(e) expires before [~~the effective date of this Subsection (1)(b)~~] July 17, 1997.

(ii) (A) Except as provided in Subsection (1)(b)(ii)(B), the township planning commission

shall communicate each recommendation under Subsection [~~(2)~~] (1)(b)(i) in writing to the county legislative body within 30 days of the city recorder or town clerk's certification of the annexation petition under Subsection 10-2-405(2)(b)(i).

(B) Notwithstanding Subsection (1)(b)(ii)(A), if the city recorder or town clerk's certification under Subsection 10-2-405(2)(b)(i) occurs before [~~the effective date of this Subsection (1)(b)~~] July 17, 1997, the township planning commission shall communicate its recommendation under Subsection (2)(b)(i) in writing to the county legislative body [~~within 30 days of the effective date of this Subsection (1)(b)~~] on or before August 16, 1997, but no later than the deadline for filing a protest under Subsection (2)(a)(i)(A) or (2)(e), excluding an extension under Subsection (2)(f).

(C) At the time the recommendation is communicated to the county legislative body under Subsection (1)(b)(ii)(A), the township planning commission shall mail or deliver a copy of the recommendation to the legislative body of the proposed annexing municipality and to the contact sponsor.

(2) (a) Each protest under Subsection (1)(a) shall:

(i) be filed:

(A) except as provided in Subsections (2)(e) and (f), no later than 60 days after the municipal legislative body's receipt of the notice of certification under Subsection 10-2-405(2)(b)(i); and

(B) (I) in a county that has already created a commission under Section 10-2-409, with the commission; or

(II) in a county that has not yet created a commission under Section 10-2-409, with the clerk of the county in which the area proposed for annexation is located; and

(ii) state each reason for the protest of the annexation petition.

(b) The party filing a protest under this section shall on the same date deliver or mail a copy of the protest to the city recorder or town clerk of the proposed annexing municipality.

(c) Each clerk who receives a protest under Subsection (2)(a)(i)(B)(II) shall immediately notify the county legislative body of the protest and shall deliver the protest to the boundary commission within five days of its creation under Subsection 10-2-409(1)(b).

(d) Each protest under Subsection (1)(a)(iv) shall, in addition to the requirements of

Subsections (2)(a) and (b):

(i) indicate the typed or printed name and current residence address of each owner signing the protest; and

(ii) designate one of the signers of the protest as the contact person and state the mailing address of the contact person.

(e) Notwithstanding Subsection (2)(a)(i)(A) and except as provided in Subsection (2)(f), each protest under Subsection (1) shall be filed no later than 40 days after the municipal legislative body's receipt of the notice of certification under Subsection 10-2-405(2)(b)(i) if the annexation petition proposes the annexation of an area that:

(i) is undeveloped; and

(ii) covers an area that is equivalent to less than 5% of the total land mass of all private real property within the municipality.

(f) The deadline under Subsection (2)(a)(i)(A) or (2)(e) for the county legislative body to file a protest is extended by ten days if:

(i) the city recorder or town clerk's certification of the annexation petition under Subsection 10-2-405(2)(b)(i) occurs before [~~the effective date of this Subsection (2)(f)~~] July 17, 1997; and

(ii) the time for filing a protest under Subsection (2)(a)(i)(A) or (2)(e) has not expired as of [~~the effective date of this Subsection (2)(f)~~] July 17, 1997.

(3) (a) (i) If a protest is filed under this section:

(A) the municipal legislative body may, at its next regular meeting after expiration of the deadline under Subsection (2)(a)(i)(A) or (e), deny the annexation petition; or

(B) if the municipal legislative body does not deny the annexation petition under Subsection (3)(a)(i)(A), the municipal legislative body may take no further action on the annexation petition until after receipt of the commission's notice of its decision on the protest under Section 10-2-416.

(ii) If a municipal legislative body denies an annexation petition under Subsection (3)(a)(i)(A), the municipal legislative body shall, within five days of the denial, send notice of the denial in writing to:

(A) the contact sponsor of the annexation petition;

(B) the commission;

(C) each entity that filed a protest; and

(D) if a protest was filed under Subsection (1)[~~(d)~~](a)(iv), the contact person.

(b) (i) If no timely protest is filed under this section, the municipal legislative body may, subject to Subsection (3)(b)(ii), grant the petition and, by ordinance, annex the area that is the subject of the annexation petition.

(ii) Before granting an annexation petition under Subsection (3)(b)(i), the municipal legislative body shall:

(A) hold a public hearing; and

(B) at least seven days before the public hearing under Subsection (3)(b)(ii)(A):

(I) publish notice of the hearing in a newspaper of general circulation within the municipality and the area proposed for annexation; or

(II) if there is no newspaper of general circulation in those areas, post written notices of the hearing in conspicuous places within those areas that are most likely to give notice to residents within those areas.

Section 9. Section **10-9-804** is amended to read:

10-9-804. Maps and plats required.

(1) Unless exempt under Section 10-9-806 or not included in the definition of subdivision under Subsection 10-9-103(1)[~~(r)~~], whenever any lands are laid out and platted, the owner of those lands shall provide an accurate map or plat that describes or specifies:

(a) the boundaries, course, and dimensions of the parcels of ground;

(b) whether the parcels of ground are intended to be used as streets or for other public uses, and whether any areas are reserved for public purposes;

(c) the number, temporary address, and length and width of the blocks and lots intended for sale; and

(d) existing right-of-way and easement grants of record for underground facilities, as defined in Section 54-8a-2, and for other utility facilities.

(2) (a) The owner of the land shall acknowledge the map or plat before an officer authorized

by law to take the acknowledgement of conveyances of real estate.

(b) The surveyor making the map or plat shall certify it.

(c) The owner or operator of the underground and utility facilities shall approve the map or plat of its property interest if it specifies:

(i) the boundary, course, dimensions, and intended use of the right-of-way and easement grants of record;

(ii) the location of existing underground and utility facilities; and

(iii) any conditions or restrictions governing the location of the facilities within the right-of-way, and easement grants of records, and utility facilities within the subdivision.

(d) The legislative body shall approve the map or plat as provided in this part. Before the legislative body may approve a map or plat, the owner of the land shall provide the legislative body with a tax clearance indicating that all taxes, interest, and penalties owing on the land have been paid.

(3) After the map or plat has been acknowledged, certified, and approved, the owner of the land shall file and record it in the county recorder's office in the county in which the lands platted and laid out are situated.

Section 10. Section **17-5-274** is amended to read:

17-5-274. Contracting for management, maintenance, operation, or construction of jails.

(1) (a) With the approval of the sheriff, the county executive may contract with private contractors for management, maintenance, operation, and construction of county jails.

(b) The county executive may include a provision in the contract that allows use of a building authority created under the provisions of Title 17A, Chapter 3, Part 9, Municipal Building Authorities, to construct or acquire a jail facility.

(c) The county executive may include a provision in the contract that requires that any jail facility meet any federal, state, or local standards for the construction of jails.

(2) If the county executive contracts only for the management, maintenance, or operation of a jail, the county executive shall include provisions in the contract that:

(a) require the private contractor to post a performance bond in the amount set by the county legislative body;

(b) establish training standards that must be met by jail personnel;

(c) require the private contractor to provide and fund training for jail personnel so that the personnel meet the standards established in the contract and any other federal, state, or local standards for the operation of jails and the treatment of jail prisoners;

(d) require the private contractor to indemnify the county for errors, omissions, defalcations, and other activities committed by the private contractor that result in liability to the county;

(e) require the private contractor to show evidence of liability insurance protecting the county and its officers, employees, and agents from liability arising from the construction, operation, or maintenance of the jail, in an amount not less than those specified in Title 63, Chapter 30, Utah Governmental Immunity Act;

(f) require the private contractor to:

(i) receive all prisoners committed to the jail by competent authority; and

(ii) provide them with necessary food, clothing, and bedding in the manner prescribed by the governing body; and

(g) prohibit the use of inmates by the private contractor for private business purposes of any kind.

(3) A contractual provision requiring the private contractor to maintain liability insurance in an amount not less than the liability limits established by Title 63, Chapter 30, Utah Governmental Immunity Act, may not be construed as waiving the limitation on damages recoverable from a governmental entity or its employees established by that chapter.

Section 11. Section **17-27-201** is amended to read:

17-27-201. Establishment of commission -- Appointment or election, term, vacancy, and compensation.

(1) (a) Except as provided in Subsection (1)(b), each county shall enact an ordinance establishing a countywide planning commission for the unincorporated areas of the county not within a township.

(b) Subsection (1)(a) does not apply if all of the county is included within any combination of:

(i) municipalities; and

(ii) townships with their own planning commissions.

(2) The ordinance establishing a countywide planning commission shall define:

(a) the number and terms of the members;

(b) the mode of appointment;

(c) the procedures for filling vacancies and removal from office; and

(d) other details relating to the organization and procedures of the planning commission.

(3) (a) If the county establishes township planning commissions, the county legislative body shall enact an ordinance defining appointment procedures, procedures for filling vacancies and removing members from office, and other details relating to the organization and procedures of each township planning commission.

(b) The planning commission for each township shall consist of seven members who, except as provided in Subsection (3)(e), shall be appointed by:

(i) in a county operating under a form of government in which the executive and legislative functions of the governing body are separated, the county executive with the advice and consent of the county legislative body; or

(ii) in a county operating under a form of government in which the executive and legislative functions of the governing body are not separated, the county legislative body.

(c) (i) Members shall serve four-year terms and until their successors are appointed or, as provided in Subsection (3)(e), elected and qualified.

(ii) Notwithstanding the provisions of Subsection (3)(c)(i) and except as provided in Subsection (3)(e), members of the first planning commissions shall be appointed so that, for each commission, the terms of at least one member and no more than two members expire each year.

(d) (i) Except as provided in Subsection (3)(d)(ii), each member of a township planning commission shall be a registered voter residing within the township.

(ii) (A) Notwithstanding Subsection (3)(d)(i), one member of a planning commission of a

township reconstituted under Chapter 389, Laws of Utah 1997, or reinstated or established under Subsection 17-27-200.5(2)(e)(i) may be an appointed member who is a registered voter residing outside the township if that member:

(I) is an owner of real property located within the township; and

(II) resides within the county in which the township is located.

(B) (I) Each appointee under Subsection (3)(d)(ii)(A) shall be chosen by the township planning commission from a list of three persons submitted by the county legislative body.

(II) If the township planning commission has not notified the county legislative body of its choice under Subsection (3)(d)(ii)(B)(I) within 60 days of the township planning commission's receipt of the list, the county legislative body may appoint one of the three persons on the list or a registered voter residing within the township as a member of the township planning commission.

(e) (i) The legislative body of each county in which a township reconstituted under Chapter 389, Laws of Utah 1997, or reinstated or established under Subsection 17-27-200.5(2)(e)(i) is located shall enact an ordinance that provides for the election of at least three members of the planning commission of that township.

(ii) The election of planning commission members under Subsection (3)(e)(i) shall coincide with the election of other county officers during even-numbered years. Approximately half the elected planning commission members shall be elected every four years during elections held on even-numbered years, and the remaining elected members shall be elected every four years on alternating even-numbered years.

(f) (i) (A) The legislative body of each county in which a township reconstituted under Chapter 389, Laws of Utah 1997, or reinstated or established under Subsection 17-27-200.5(2)(e)(i) is located shall enact an ordinance appointing each elected member of the planning and zoning board of the former township, established under Chapter 308, Laws of Utah 1996, as a member of the planning commission of the reconstituted or reinstated township. Each member appointed under this subsection shall be considered an elected member.

(B) (I) Except as provided in Subsection (3)(f)(i)(B)(II), the term of each member appointed under Subsection (3)(f)(i)(A) shall continue until the time that the member's term as an elected

member of the former township planning and zoning board would have expired.

(II) Notwithstanding Subsection (3)(f)(i)(B)(I), the county legislative body may adjust the terms of the members appointed under Subsection (3)(f)(i)(A) so that the terms of those members coincide with the schedule under Subsection (3)(e)(ii) for elected members.

(ii) Subject to Subsection (3)(f)(iii), the legislative body of a county in which a township reconstituted under Chapter 389, Laws of Utah 1997, or reinstated or established under Subsection 17-27-200.5(2)(e)(i) is located may enact an ordinance allowing each appointed member of the planning and zoning board of the former township, established under Chapter 308, Laws of Utah 1996, to continue to hold office as a member of the planning commission of the reconstituted or reinstated township until the time that the member's term as a member of the former township's planning and zoning board would have expired.

(iii) If a planning commission of a township reconstituted under Chapter 389, Laws of Utah 1997, or reinstated or established under Subsection 17-27-200.5(2)(e)(i) has more than one appointed member who resides outside the township, the legislative body of the county in which that township is located shall, within 15 days of the effective date of this Subsection (3)(f)(iii), dismiss all but one of the appointed members who reside outside the township, and a new member shall be appointed under Subsection (3)(b) [~~within 30 days of the effective date of this Subsection (3)(f)(iii)~~] no later than August 16, 1997, to fill the position of each dismissed member.

(g) (i) Except as provided in Subsection (3)(g)(ii), upon the appointment or election of all members of a township planning commission, each township planning commission under this section shall begin to exercise the powers and perform the duties provided in Section 17-27-204 with respect to all matters then pending that previously had been under the jurisdiction of the countywide planning commission or township planning and zoning board.

(ii) Notwithstanding Subsection (3)(g)(i), if the members of a former township planning and zoning board continue to hold office as members of the planning commission of the township planning district under an ordinance enacted under Subsection (3)(f), the township planning commission shall immediately begin to exercise the powers and perform the duties provided in Section 17-27-204 with respect to all matters then pending that had previously been under the

jurisdiction of the township planning and zoning board.

(4) The legislative body may fix per diem compensation for the members of the planning commission, based on necessary and reasonable expenses and on meetings actually attended.

Section 12. Section **17-27-804** is amended to read:

17-27-804. Plats required.

(1) Unless exempt under Section 17-27-806 or not included in the definition of a subdivision under Subsection 17-27-103(1)[~~(r)~~], whenever any lands are divided, the owner of those lands shall have an accurate plat made of them that sets forth and describes:

(a) all the parcels of ground divided, by their boundaries, course, and extent, and whether they are intended for streets or other public uses, together with any areas that are reserved for public purposes; and

(b) all blocks and lots intended for sale, by numbers, and their precise length and width.

(2) (a) The owner of the land shall acknowledge the plat before an officer authorized by law to take the acknowledgement of conveyances of real estate.

(b) The surveyor making the plat shall certify it.

(c) The county legislative body shall approve the plat as provided in this part. Before the legislative body may approve a map or plat, the owner of the land shall provide the legislative body with a tax clearance indicating that all taxes, interest, and penalties owing on the land have been paid.

(3) After the plat has been acknowledged, certified, and approved, the owner of the land shall file and record it in the county recorder's office in the county in which the lands platted and divided are situated.

Section 13. Section **17-41-304** is amended to read:

17-41-304. Public hearing -- Review and action on proposal.

(1) After receipt of the written reports from the advisory committee and planning commission, or after the 45 days [~~has~~] have expired, whichever is earlier, the county legislative body shall:

(a) schedule a public hearing;

(b) provide notice of the public hearing by:

(i) publishing notice in a newspaper having general circulation within the same county as the land proposed for inclusion within the agriculture protection area; and

(ii) posting notice at five public places, designated by the county legislative body, within or near the proposed agriculture protection area; and

(c) ensure that the notice includes:

(i) the time, date, and place of the public hearing on the proposal;

(ii) a description of the proposed agriculture protection area;

(iii) any proposed modifications to the proposed agriculture protection area;

(iv) a summary of the recommendations of the advisory committee and planning commission; and

(v) a statement that interested persons may appear at the public hearing and speak in favor of or against the proposal, any proposed modifications to the proposal, or the recommendations of the advisory committee and planning commission.

(2) The county legislative body shall:

(a) convene the public hearing at the time, date, and place specified in the notice; and

(b) take verbal or written testimony from interested persons.

(3) (a) Within 120 days of the submission of the proposal, the county legislative body shall approve, modify and approve, or reject the proposal.

(b) The creation of an agriculture protection area is effective at the earlier of:

(i) a county legislative body's approval of a proposal or modified proposal; or

(ii) 120 days after submission of a proposal complying with Subsection 17-41-301(2) if the county legislative body has failed to approve or reject the proposal within that time.

(4) (a) In order to give constructive notice of the existence of the agriculture protection area to all persons who have, may acquire, or may seek to acquire an interest in land in or adjacent to the agriculture protection area, within ten days of the creation of an agriculture protection area, the county legislative body shall file an executed document containing a legal description of the agriculture protection area with:

(i) the county recorder of deeds; and

(ii) the affected county or district planning commission or township planning and zoning board.

(b) If the legal description of the property to be included in the agriculture protection area is available through the county recorder's office, the county legislative body shall use that legal description in its executed document required in Subsection (4)(a).

(5) Within ten days of the recording of the agriculture protection area, the county legislative body shall:

(a) send written notification to the commissioner of agriculture and food that the agriculture protection area has been created; and

(b) include in the notification:

(i) the number of landowners owning land within the agriculture protection area;

(ii) the total acreage of the area;

(iii) the date of approval of the area; and

(iv) the date of recording.

(6) A county legislative body's failure to record the notice required under Subsection (4) or to send the written notification under Subsection (5) does not invalidate the creation of an agriculture protection area.

(7) The county legislative body may consider the cost of recording notice under Subsection (4) and the cost of sending notification under Subsection (5) in establishing a fee under Subsection 17-41-301(4)(b).

Section 14. Section **17A-2-1404** is amended to read:

17A-2-1404. Establishment of district -- Petition -- Effect of defects.

(1) Before any water conservancy district is established under this part, a petition must be filed in the clerk's office of the court vested with jurisdiction in a county in which all or part of the lands within the proposed water conservancy district are situated.

(2) [~~(a)~~] A petition for the establishment of a water conservancy district situated in a single county must be signed by the following number of owners of land within the county and within the

proposed district:

[~~(i)~~] (a) not fewer than 20% of the owners of land outside the limits of any incorporated city or town; and

[~~(ii)~~] (b) not fewer than 5% of the owners of land within the limits of each incorporated city or town.

(3) A petition for the establishment of a water conservancy district situated in more than one county must be signed by the following number of owners of land within each county and within the proposed district:

(a) not fewer than 10%, or 500, whichever is less, of the owners of land outside the limits of any incorporated city or town; and

(b) not fewer than 5% of the owners of land within the limits of each incorporated city or town.

(4) The property identification number of each tract of land that is owned by a petitioner and is within the proposed water conservancy district must be listed opposite the petitioner's name.

(5) (a) If a petitioner signs a petition, both as owner of land situated within and outside a municipality, the petitioner's name shall be counted only as an owner of land situated outside a municipality.

(b) A signing petitioner is not permitted to withdraw his name after the petition is filed.

(6) A district may not be formed under this part unless the taxable value of land within the proposed district, together with improvements on the land, exceeds $500,000.

(7) The petition shall set forth:

(a) the proposed name of the district;

(b) that property within the proposed district will be benefited by the accomplishment of the purposes enumerated in Section 17A-2-1403;

(c) a general description of the purpose of the contemplated improvement and of the territory to be included in the proposed district;

(d) a general designation of the district's divisions and the number of directors proposed for each division; and

(e) a request to organize the district by the name proposed.

(8) The description of a water conservancy district's territory, as set forth in the petition, need not be given by metes and bounds or by legal subdivisions, but it must be sufficiently detailed to enable a property owner to ascertain whether his property is within the territory proposed to be organized as a district.

(9) The territory of a proposed water conservancy district:

(a) may include area within an existing water conservancy district; and

(b) need not be contiguous, provided it is so situated that the organization of a single district for the territory described is calculated to promote one or more of the purposes enumerated in Section 17A-2-1403.

(10) (a) No petition with the requisite signatures may be declared void because of alleged defects, but the court may permit the petition to be amended to conform to the facts by correcting any errors in the description of the territory or other errors.

(b) Similar petitions or multiple copies of the same petition:

(i) may be filed and together shall be regarded as one petition; and

(ii) if filed prior to the hearing on the first petition, shall be considered by the court to be filed with the first petition.

(11) In determining whether the requisite number of landowners have signed or are considered to have signed the petition, the court shall be governed by the names as they appear upon the tax roll, which is prima facie evidence of land ownership.

Section 15. Section **19-6-104** is amended to read:

19-6-104. Powers of board -- Creation of statewide solid waste management plan.

(1) The board shall:

(a) survey solid and hazardous waste generation and management practices within this state and, after public hearing and after providing opportunities for comment by local governmental entities, industry, and other interested persons, prepare and revise, as necessary, a waste management plan for the state;

(b) carry out inspections pursuant to Section 19-6-109;

(c) hold hearings and compel the attendance of witnesses, the production of documents, and other evidence, administer oaths and take testimony, and receive evidence it finds proper, or appoint hearing officers who shall be delegated these powers;

(d) issue orders necessary to effectuate the provisions of this part and implementing rules and enforce them by administrative and judicial proceedings, and cause the initiation of judicial proceedings to secure compliance with this part;

(e) settle or compromise any administrative or civil action initiated to compel compliance with this part and any rules adopted under this part;

(f) require submittal of specifications or other information relating to hazardous waste plans for review, and approve, disapprove, revoke, or review the plans;

(g) advise, consult, cooperate with, and provide technical assistance to other agencies of the state and federal government, other states, interstate agencies, and affected groups, political subdivisions, industries, and other persons in carrying out the purposes of this part;

(h) promote the planning and application of resource recovery systems to prevent the unnecessary waste and depletion of natural resources;

(i) meet the requirements of federal law related to solid and hazardous wastes to insure that the solid and hazardous wastes program provided for in this part is qualified to assume primacy from the federal government in control over solid and hazardous waste;

(j) (i) require any facility, including those listed in Subsection (j)(ii), that is intended for disposing of nonhazardous solid waste or wastes listed in Subsection (j)(ii)(B) to submit plans, specifications, and other information required by the board to the board prior to construction, modification, installation, or establishment of a facility to allow the board to determine whether the proposed construction, modification, installation, or establishment of the facility will be in accordance with rules made under this part;

(ii) facilities referred to in Subsection (j)(i) include:

(A) any incinerator that is intended for disposing of nonhazardous solid waste; and

(B) except for facilities that receive the following wastes solely for the purpose of recycling, reuse, or reprocessing, any commercial facility that accepts for treatment or disposal, and with the

intent to make a profit: fly ash waste, bottom ash waste, slag waste, or flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels; wastes from the extraction, beneficiation, and processing of ores and minerals; or cement kiln dust wastes; and

(k) exercise all other incidental powers necessary to carry out the purposes of this part.

(2) (a) The board shall establish a comprehensive statewide solid waste management plan by January 1, 1994.

(b) The plan shall:

(i) incorporate the solid waste management plans submitted by the counties;

(ii) provide an estimate of solid waste capacity needed in the state for the next 20 years;

(iii) assess the state's ability to minimize waste and recycle;

(iv) evaluate solid waste treatment, disposal, and storage options, as well as solid waste needs and existing capacity;

(v) evaluate facility siting, design, and operation;

(vi) review funding alternatives for solid waste management; and

(vii) address other solid waste management concerns that the board finds appropriate for the preservation of the public health and the environment.

(c) The board shall consider the economic viability of solid waste management strategies prior to incorporating them into the plan and shall consider the needs of population centers.

(d) The board shall review and modify the comprehensive statewide solid waste management plan no less frequently than every five years.

(3) (a) The board shall determine the type of solid waste generated in the state and tonnage of solid waste disposed of in the state in developing the comprehensive statewide solid waste management plan.

(b) The board shall review and modify the inventory no less frequently than once every five years.

(4) Subject to the limitations contained in Subsection 19-6-102[~~(14)~~](16)(b), the board shall establish siting criteria for nonhazardous solid waste disposal facilities, including incinerators.

Section 16. Section **19-6-108** is amended to read:

19-6-108. New nonhazardous solid or hazardous waste operation plans for facility or site -- Administrative and legislative approval required -- Time periods for review -- Information required -- Other conditions -- Revocation of approval -- Periodic review.

(1) For purposes of this section, the following items shall be treated as submission of a new operation plan:

(a) the submission of a revised operation plan specifying a different geographic site than a previously submitted plan;

(b) an application for modification of a commercial hazardous waste incinerator if the construction or the modification would increase the hazardous waste incinerator capacity above the capacity specified in the operation plan as of January 1, 1990, or the capacity specified in the operation plan application as of January 1, 1990, if no operation plan approval has been issued as of January 1, 1990;

(c) an application for modification of a commercial nonhazardous solid waste incinerator if the construction of the modification would cost 50% or more of the cost of construction of the original incinerator or the modification would result in an increase in the capacity or throughput of the incinerator of a cumulative total of 50% above the total capacity or throughput that was approved in the operation plan as of January 1, 1990, or the initial approved operation plan if the initial approval is subsequent to January 1, 1990; or

(d) an application for modification of a commercial nonhazardous solid or hazardous waste treatment, storage, or disposal facility, other than an incinerator, if the modification would be outside the boundaries of the property owned or controlled by the applicant, as shown in the application or approved operation plan as of January 1, 1990, or the initial approved operation plan if the initial approval is subsequent to January 1, 1990.

(2) Capacity under Subsection (1)(b) shall be calculated based on the throughput tonnage specified for the trial burn in the operation plan or the operation plan application if no operation plan approval has been issued as of January 1, 1990, and on annual operations of 7,000 hours.

(3) (a) No person may own, construct, modify, or operate any facility or site for the purpose of disposing of nonhazardous solid waste or treating, storing, or disposing of hazardous waste

without first submitting and receiving the approval of the executive secretary for a nonhazardous solid or hazardous waste operation plan for that facility or site.

(b) (i) Except for facilities that receive the following wastes solely for the purpose of recycling, reuse, or reprocessing, no person may own, construct, modify, or operate any commercial facility that accepts for treatment or disposal, with the intent to make a profit, any of the wastes listed in Subsection (3)(b)(ii) without first submitting a request to and receiving the approval of the executive secretary for an operation plan for that facility site.

(ii) Wastes referred to in Subsection (3)(b)(i) are:

(A) fly ash waste, bottom ash waste, slag waste, or flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels;

(B) wastes from the extraction, beneficiation, and processing of ores and minerals; or

(C) cement kiln dust wastes.

(c) (i) No person may construct any facility listed under Subsection (3)(c)(ii) until he receives, in addition to local government approval and subsequent to the approval required in Subsection (a), approval by the governor and the Legislature.

(ii) Facilities referred to in Subsection (3)(c)(i) are:

(A) commercial nonhazardous solid or hazardous waste treatment or disposal facilities; and

(B) except for facilities that receive the following wastes solely for the purpose of recycling, reuse, or reprocessing, any commercial facility that accepts for treatment or disposal, with the intent to make a profit: fly ash waste, bottom ash waste, slag waste, or flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels; wastes from the extraction, beneficiation, and processing of ores and minerals; or cement kiln dust wastes.

(d) No person need obtain gubernatorial or legislative approval for the construction of a hazardous waste facility for which an operating plan has been approved by or submitted for approval to the executive secretary under this section before April 24, 1989, and which has been determined, on or before December 31, 1990, by the executive secretary to be complete, in accordance with state and federal requirements for operating plans for hazardous waste facilities even if a different geographic site is subsequently submitted.

(e) No person need obtain gubernatorial and legislative approval for the construction of a commercial nonhazardous solid waste disposal facility for which an operation plan has been approved by or submitted for approval to the executive secretary under this section on or before January 1, 1990, and which, on or before December 31, 1990, the executive secretary determines to be complete, in accordance with state and federal requirements applicable to operation plans for nonhazardous solid waste facilities.

(f) Any person owning or operating a facility or site on or before November 19, 1980, who has given timely notification as required by Section 3010 of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6921, et seq., and who has submitted a proposed hazardous waste plan under this section for that facility or site, may continue to operate that facility or site without violating this section until the plan is approved or disapproved under this section.

(g) (i) The executive secretary shall suspend acceptance of further applications for a commercial nonhazardous solid or hazardous waste facility upon a finding that he cannot adequately oversee existing and additional facilities for permit compliance, monitoring, and enforcement.

(ii) The executive secretary shall report any suspension to the [~~Health~~] Natural Resources, Agriculture, and Environment Interim Committee.

(4) The executive secretary shall review each proposed nonhazardous solid or hazardous waste operation plan to determine whether that plan complies with the provisions of this part and the applicable rules of the board.

(5) (a) If the facility is a class I or class II facility, the executive secretary shall approve or disapprove that plan within 270 days from the date it is submitted.

(b) Within 60 days after receipt of the plans, specifications, or other information required by this section for a class I or II facility, the executive secretary shall determine whether the plan is complete and contains all information necessary to process the plan for approval.

(c) (i) If the plan for a class I or II facility is determined to be complete, the executive secretary shall issue a notice of completeness.

(ii) If the plan is determined by the executive secretary to be incomplete, he shall issue a notice of deficiency, listing the additional information to be provided by the owner or operator to

complete the plan.

(d) The executive secretary shall review information submitted in response to a notice of deficiency within 30 days after receipt.

(e) The following time periods may not be included in the 270 day plan review period for a class I or II facility:

(i) time awaiting response from the owner or operator to requests for information issued by the executive secretary;

(ii) time required for public participation and hearings for issuance of plan approvals; and

(iii) time for review of the permit by other federal or state government agencies.

(6) (a) If the facility is a class III or class IV facility, the executive secretary shall approve or disapprove that plan within 365 days from the date it is submitted.

(b) The following time periods may not be included in the 365 day review period:

(i) time awaiting response from the owner or operator to requests for information issued by the executive secretary;

(ii) time required for public participation and hearings for issuance of plan approvals; and

(iii) time for review of the permit by other federal or state government agencies.

(7) If, within 365 days after receipt of a modification plan or closure plan for any facility, the executive secretary determines that the proposed plan, or any part of it, will not comply with applicable rules, the executive secretary shall issue an order prohibiting any action under the proposed plan for modification or closure in whole or in part.

(8) Any person who owns or operates a facility or site required to have an approved hazardous waste operation plan under this section and who has pending a permit application before the United States Environmental Protection Agency shall be treated as having an approved plan until final administrative disposition of the permit application is made under this section, unless the board determines that final administrative disposition of the application has not been made because of the failure of the owner or operator to furnish any information requested, or the facility's interim status has terminated under Section 3005 (e) of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6925 (e).

(9) No proposed nonhazardous solid or hazardous waste operation plan may be approved unless it contains the information that the board requires, including:

(a) estimates of the composition, quantities, and concentrations of any hazardous waste identified under this part and the proposed treatment, storage, or disposal of it;

(b) evidence that the disposal of nonhazardous solid waste or treatment, storage, or disposal of hazardous waste will not be done in a manner that may cause or significantly contribute to an increase in mortality, an increase in serious irreversible or incapacitating reversible illness, or pose a substantial present or potential hazard to human health or the environment;

(c) consistent with the degree and duration of risks associated with the disposal of nonhazardous solid waste or treatment, storage, or disposal of specified hazardous waste, evidence of financial responsibility in whatever form and amount that the executive secretary determines is necessary to insure continuity of operation and that upon abandonment, cessation, or interruption of the operation of the facility or site, all reasonable measures consistent with the available knowledge will be taken to insure that the waste subsequent to being treated, stored, or disposed of at the site or facility will not present a hazard to the public or the environment;

(d) evidence that the personnel employed at the facility or site have education and training for the safe and adequate handling of nonhazardous solid or hazardous waste;

(e) plans, specifications, and other information that the executive secretary considers relevant to determine whether the proposed nonhazardous solid or hazardous waste operation plan will comply with this part and the rules of the board; and

(f) compliance schedules, where applicable, including schedules for corrective action or other response measures for releases from any solid waste management unit at the facility, regardless of the time the waste was placed in the unit.

(10) The executive secretary may not approve a commercial nonhazardous solid or hazardous waste operation plan that meets the requirements of Subsection (9) unless it contains the information required by the board, including:

(a) evidence that the proposed commercial facility has a proven market of nonhazardous solid or hazardous waste, including:

(i) information on the source, quantity, and price charged for treating, storing, and disposing of potential nonhazardous solid or hazardous waste in the state and regionally;

(ii) a market analysis of the need for a commercial facility given existing and potential generation of nonhazardous solid or hazardous waste in the state and regionally; and

(iii) a review of other existing and proposed commercial nonhazardous solid or hazardous waste facilities regionally and nationally that would compete for the treatment, storage, or disposal of the nonhazardous solid or hazardous waste;

(b) a description of the public benefits of the proposed facility, including:

(i) the need in the state for the additional capacity for the management of nonhazardous solid or hazardous waste;

(ii) the energy and resources recoverable by the proposed facility;

(iii) the reduction of nonhazardous solid or hazardous waste management methods, which are less suitable for the environment, that would be made possible by the proposed facility; and

(iv) whether any other available site or method for the management of hazardous waste would be less detrimental to the public health or safety or to the quality of the environment; and

(c) compliance history of an owner or operator of a proposed commercial nonhazardous solid or hazardous waste treatment, storage, or disposal facility, which may be applied by the executive secretary in a nonhazardous solid or hazardous waste operation plan decision, including any plan conditions.

(11) The executive secretary may not approve a commercial nonhazardous solid or hazardous waste facility operation plan unless based on the application, and in addition to the determination required in Subsections (9) and (10), the executive secretary determines that:

(a) the probable beneficial environmental effect of the facility to the state outweighs the probable adverse environmental effect; and

(b) there is a need for the facility to serve industry within the state.

(12) Approval of a nonhazardous solid or hazardous waste operation plan may be revoked, in whole or in part, if the person to whom approval of the plan has been given fails to comply with that plan.

(13) The executive secretary shall review all approved nonhazardous solid and hazardous waste operation plans at least once every five years.

(14) The provisions of Subsections (10) and (11) do not apply to hazardous waste facilities in existence or to applications filed or pending in the department prior to April 24, 1989, that are determined by the executive secretary on or before December 31, 1990, to be complete, in accordance with state and federal requirements applicable to operation plans for hazardous waste facilities.

(15) The provisions of Subsections (9), (10), and (11) do not apply to a nonhazardous solid waste facility in existence or to an application filed or pending in the department prior to January 1, 1990, that is determined by the executive secretary, on or before December 31, 1990, to be complete in accordance with state and federal requirements applicable to operation plans for nonhazardous solid waste facilities.

(16) Nonhazardous solid waste generated outside of this state that is defined as hazardous waste in the state where it is generated and which is received for disposal in this state shall not be disposed of at a nonhazardous waste disposal facility owned and operated by local government or a facility under contract with a local government solely for disposal of nonhazardous solid waste generated within the boundaries of the local government, unless disposal is approved by the executive secretary.

(17) This section may not be construed to exempt any facility from applicable regulation under the federal Atomic Energy Act, 42 U.S.C. Sections 2014 and 2021 through 2114.

Section 17. Section **20A-11-204** is amended to read:

20A-11-204. State office candidate -- Financial reporting requirements -- Interim reports.

(1) Each state office candidate shall file an interim report at the following times in any year in which the candidate has filed a declaration of candidacy for a public office:

(a) seven days before any political convention if more than one individual in the candidate's same party has filed a declaration of candidacy for the particular public office that the candidate seeks;

(b) seven days before the regular primary election date;

(c) September 15; and

(d) seven days before the regular general election date.

(2) Each interim report shall include the following information:

(a) the net balance of the last summary report, if any;

(b) a single figure equal to the total amount of receipts reported on all prior interim reports, if any, during the calendar year in which the interim report is due;

(c) a single figure equal to the total amount of expenditures reported on all prior interim reports, if any, filed during the calendar year in which the interim report is due;

(d) a detailed listing of each contribution and public service assistance received since the last summary report that has not been reported in detail on a prior interim report;

(e) for each nonmonetary contribution, the fair market value of the contribution;

(f) a detailed listing of each expenditure made since the last summary report that has not been reported in detail on a prior interim report;

(g) for each nonmonetary expenditure, the fair market value of the expenditure;

(h) a net balance for the year consisting of the net balance from the last summary report, if any, plus all receipts since the last summary report minus all expenditures since the last summary report; and

(i) a summary page in the form required by the lieutenant governor that identifies:

[~~(A)~~] (i) beginning balance;

[~~(B)~~] (ii) total contributions during the period since the last statement;

[~~(C)~~] (iii) total contributions to date;

[~~(D)~~] (iv) total expenditures during the period since the last statement; and

[~~(E)~~] (v) total expenditures to date.

(3) (a) For all individual contributions or public service assistance of $50 or less, a single aggregate figure may be reported without separate detailed listings.

(b) Two or more contributions from the same source that have an aggregate total of more than $50 may not be reported in the aggregate, but shall be reported separately.

(4) In preparing each interim report, all receipts and expenditures shall be reported as of three days before the required filing date of the report.

(5) State office candidates reporting under this section need only report contributions received and expenditures made after April 29, 1991.

Section 18. Section **23-19-9** is amended to read:

23-19-9. Revocation of license -- Grounds -- Notice -- Restriction on obtaining new license.

(1) A license, permit, tag, or certificate of registration shall be revoked by a hearing officer appointed by the division director:

(a) if the hearing officer determines that a person flagrantly and knowingly:

(i) violates or countenances the violation of:

(A) this title; or

(B) any rule, proclamation, or order of the Wildlife Board; or

(ii) while engaged in an activity regulated under this title:

(A) kills or injures domestic livestock; or

(B) violates Section 76-10-508; or

(b) upon receiving notice from another state's wildlife agency that a person has:

(i) failed to comply with the terms of a wildlife citation; or

(ii) been convicted of a violation that would warrant an action taken under Subsection (1)(a).

(2) A hearing officer may revoke or suspend the certificate of registration of a person who fails to comply with the terms of a certificate of registration.

(3) All certificates of registration for the harvesting of brine shrimp eggs, as defined in Section 59-23-3, shall be revoked by a hearing officer appointed by the division if the hearing officer determines the holder of the certificates of registration has violated Section 59-23-5.

(4) The director shall appoint a qualified person as a hearing officer to perform the adjudicative functions provided in this section. The director may not appoint a division employee who investigates or enforces wildlife violations.

(5) (a) A hearing officer may not revoke a person's license, permit, tag, or certificate of

registration if:

(i) the person was not charged with a violation in Subsection (1) or (3);

(ii) the charges were dismissed; or

(iii) the person was found not guilty of the violation in a court of law.

(b) For purposes of this section, the following shall not be construed as a finding of not guilty:

(i) a plea of guilty;

(ii) a plea of no contest; or

(iii) the entry of a plea in abeyance.

(6) The hearing officer shall consider any recommendation made by a sentencing court concerning revocation before issuing a revocation order.

(7) Prior to revocation, a person must be:

(a) given written notice of an action the division intends to take; and

(b) provided with an opportunity for a hearing.

(8) A hearing officer may prohibit the person from obtaining a new license, permit, tag, or certificate of registration of the same type for a period of up to five years.

(9) (a) A person may not obtain a new license, permit, tag, or certificate of registration of the same type while under an order of revocation.

(b) A violation of Subsection (9)(a) is a class B misdemeanor and a hearing officer shall prohibit the person from obtaining a license, permit, tag, or certificate of registration of the same type for up to an additional five years.

(10) A hearing officer may construe any subsequent conviction which occurs within the revocation period as a flagrant violation and may prohibit the person from obtaining a new license, permit, tag, or certificate of registration for up to an additional five years.

(11) A hearing officer may reinstate a license, permit, tag, or certificate of registration revoked under Subsection (1)(b)(i) upon receiving a report that the person has complied with the citation.

(12) (a) A person may file an appeal of a hearing officer's decision with the Wildlife Board.

(b) The Wildlife Board shall review the hearing officer's findings and conclusions and any written documentation submitted at the hearing. The Wildlife Board may:

(i) take no action;

(ii) vacate or remand the decision; or

(iii) amend the period of revocation.

(13) The Wildlife Board may make rules to implement this section in accordance with Title 63, Chapter [~~46b~~] 46a, Utah Administrative [~~Procedures~~] Rulemaking Act.

Section 19. Section **26-6-3.5** is amended to read:

26-6-3.5. Reporting AIDS and HIV infection -- Anonymous testing.

(1) Because of the nature and consequences of Acquired Immunodeficiency Syndrome and Human Immunodeficiency Virus infection, the department shall:

(a) require reporting of those conditions; and

(b) utilize contact tracing and other methods for "partner" identification and notification. The department shall, by rule, define individuals who are considered "partners" for purposes of this section.

(2) (a) The requirements of Subsection (1) do not apply to seroprevalence and other epidemiological studies conducted by the department.

(b) The requirements of Subsection (1) do not apply to, and anonymity shall be provided in, research studies conducted by universities or hospitals, under the authority of institutional review boards if those studies are funded in whole or in part by research grants and if anonymity is required in order to obtain the research grant or to carry out the research.

(3) For all purposes of this chapter, Acquired Immunodeficiency Syndrome and Human Immunodeficiency Virus infection are considered communicable and infectious diseases.

(4) The department may establish or allow one site or agency within the state to provide anonymous testing.

(a) The site or agency that provides anonymous testing shall maintain accurate records regarding:

(i) the number of HIV positive individuals that it is able to contact or inform of their

condition;

(ii) the number of HIV positive individuals who receive extensive counseling;

(iii) how many HIV positive individuals provide verifiable information for partner notification; and

(iv) how many cases in which partner notification is carried through.

(b) A statistical report of the information maintained under Subsection (4)(a) shall be presented to the [~~Legislative Interim~~] Health and Human Services Interim Committee on an annual basis. The information collected under Subsection (4)(a) and the reports required by this subsection shall be maintained and presented in such a way that no individual is identifiable.

(c) If the information and reports indicate anonymous testing is not resulting in partner notification, the department shall phase out the anonymous testing program allowed by this subsection.

Section 20. Section **26-9-212** is amended to read:

26-9-212. Reporting.

Annually on or before August 1, the committee shall submit a written report of its activities under this part to the executive director of the department and to the Health and [~~Environment~~] Human Services Interim Committee [~~of the Legislature~~]. The report shall include:

(1) the number and type of grant and scholarship recipients;

(2) the total amount of each grant and scholarship;

(3) the site at which each grant recipient is practicing;

(4) the site at which each scholarship recipient is practicing;

(5) the number of applications filed under this part within the preceding year; and

(6) the amount of administrative expenses incurred by the committee and by the department to provide staff support during the preceding year in carrying out the provisions of this part.

Section 21. Section **26-9d-10** is amended to read:

26-9d-10. Reporting.

Annually on or before August 1, the committee shall submit a written report of its activities under this chapter to the executive director of the department and to the Health and [~~Environment~~]

Human Services Interim Committee. The report shall include:

(1) the number of grant and scholarship recipients;

(2) the total amount of each grant and scholarship;

(3) the nursing shortage area in which each grant recipient is practicing;

(4) the needed nursing specialty area in which each scholarship recipient is practicing;

(5) the number of scholarship recipients who are seeking graduate education pursuant to the conditions of a scholarship awarded pursuant to this chapter;

(6) the number of applications filed under this chapter within the preceding year; and

(7) the amount of administrative expenses incurred by the committee and by the department to provide staff support during the preceding year in carrying out the provisions of this chapter.

Section 22. Section **26-9e-11** is amended to read:

26-9e-11. Committee report.

Annually on or before August 1, the committee shall submit a written report of its activities under this chapter to the executive director of the department and to the Health and [~~Environment~~] Human Services Interim Committee [~~of the Legislature~~]. The report shall include:

(1) the number and type of loan repayment grants and scholarships, and the areas of practice of the recipients;

(2) the total amount of each award;

(3) the site at which each recipient is practicing;

(4) the number of applications filed under this chapter within the preceding year;

(5) the areas designated by the committee as medically underserved urban areas;

(6) the amount of administrative expenses incurred by the committee and by the department to provide staff support during the preceding year in carrying out the provisions of this chapter;

(7) an assessment of the needs in the designated underserved urban areas for providers and programs;

(8) the plan for addressing the assessed needs in terms of recruitment and retention of health care providers;

(9) the location and type of education program where each scholarship recipient is receiving

training; and

(10) the location where each former award recipient is currently practicing.

Section 23. Section **26-18-305** is amended to read:

26-18-305. Report on implementation.

The department shall report to the Health and [~~Environment~~] Human Services Interim Committee by November 1, 1994, and every year thereafter on the implementation of the grant program for primary care services. The report shall include a description of the scope and level of coverage provided to low-income persons by primary care grant programs and by the medical assistance program established in Section 26-18-10. The report shall also include recommendations to minimize the loss of revenue by hospitals that serve a disproportionate share of persons under Section 26-18-10.

Section 24. Section **26-18-401** is amended to read:

26-18-401. Medicaid waiver.

(1) (a) Before July 1, 1995, the division shall submit to the Secretary of the United States Department of Health and Human Services an application for a Medicaid Waiver under 42 U.S.C. Section 1315. The purpose of the waiver is to expand the coverage of the Medicaid program, and to the extent permissible under the waiver, private health insurance plans to low income, otherwise uninsured persons who are in eligibility categories not traditionally served by the Medicaid program.

(b) Prior to submitting the application under Subsection (1)(a), the department shall submit to the Health and Human Services Interim Committee a summary of the application and proposal for implementing the waiver.

(c) Prior to adopting any rules or policies to implement the waiver, the department shall submit to the Health and Human Services Interim Committee the proposed rules and policies.

(2) Implementation and execution of this waiver by the department will be within appropriations from the Legislature.

(3) The Health Policy Commission may make recommendations to the department regarding implementation and execution of the waiver.

(4) The department shall establish by rule the policies governing eligibility, income

limitations, cost sharing, participating in private insurance plans, benefit plan, and voluntary employee enrollment by employers who volunteer to participate.

(5) The department shall provide a periodic report to the Health Policy Committee and an annual report to the [~~Legislature's~~] Health and Human Services Interim Committee [~~and Health and Environment Interim Committee~~] on the progress and results of the waiver implementation.

Section 25. Section **26-21-2** is amended to read:

26-21-2. Definitions.

As used in this chapter:

(1) "Abortion clinic" means a facility, other than a general acute or specialty hospital, that performs abortions and provides abortion services during the second trimester of pregnancy.

(2) "Activities of daily living" means essential activities including:

(a) dressing;

(b) eating;

(c) grooming;

(d) bathing;

(e) toileting;

(f) ambulation;

(g) transferring; and

(h) self-administration of medication.

(3) "Ambulatory surgical facility" means a freestanding facility, which provides surgical services to patients not requiring hospitalization.

(4) "Assistance with activities of daily living" means providing of or arranging for the provision of assistance with activities of daily living.

(5) "Assisted living facility" means a residential facility with a home-like setting that provides an array of coordinated supportive personal and health care services, available 24 hours per day, to residents who have been assessed under division rule to need any of these services. Each resident shall have a service plan based on the assessment, which may include:

(a) specified services of intermittent nursing care;

(b) administration of medication; and

(c) support services promoting residents' independence and self sufficiency.

(6) "Birthing center" means a freestanding facility, receiving maternal clients and providing care during pregnancy, delivery, and immediately after delivery.

(7) "Committee" means the Health Facility Committee created in Section 26-1-7.

(8) "Consumer" means any person not primarily engaged in the provision of health care to individuals or in the administration of facilities or institutions in which such care is provided and who does not hold a fiduciary position, or have a fiduciary interest in any entity involved in the provision of health care, and does not receive, either directly or through his spouse, more than 1/10 of his gross income from any entity or activity relating to health care.

(9) "End stage renal disease facility" means a facility which furnishes staff-assisted kidney dialysis services, self-dialysis services, or home-dialysis services on an outpatient basis.

(10) "Freestanding" means existing independently or physically separated from another health care facility by fire walls and doors and administrated by separate staff with separate records.

(11) "General acute hospital" means a facility which provides diagnostic, therapeutic, and rehabilitative services to both inpatients and outpatients by or under the supervision of physicians.

(12) "Governmental unit" means the state, or any county, municipality, or other political subdivision or any department, division, board, or agency of the state, a county, municipality, or other political subdivision.

(13) (a) "Health care facility" means general acute hospitals, specialty hospitals, home health agencies, hospices, nursing care facilities, residential assisted living facilities, birthing centers, ambulatory surgical facilities, small health care facilities, abortion clinics, facilities owned or operated by health maintenance organizations, end stage renal disease facilities, and any other health care facility which the committee designates by rule.

(b) "Health care facility" does not include the offices of private physicians or dentists, whether for individual or group practice.

(14) "Health maintenance organization" means an organization, organized under the laws of any state which:

(a) is a qualified health maintenance organization under [~~Section 1310 (d) of the Public Health Service Act~~] 42 U.S.C. Sec. 300e-9; or

(b) (i) provides or otherwise makes available to enrolled participants at least the following basic health care services: usual physician services, hospitalization, laboratory, x-ray, emergency, and preventive services and out-of-area coverage;

(ii) is compensated, except for copayments, for the provision of the basic health services listed in Subsection (14)(b)(i) to enrolled participants by a payment which is paid on a periodic basis without regard to the date the health services are provided and which is fixed without regard to the frequency, extent, or kind of health services actually provided; and

(iii) provides physicians' services primarily directly through physicians who are either employees or partners of such organizations, or through arrangements with individual physicians or one or more groups of physicians organized on a group practice or individual practice basis.

(15) (a) "Home health agency" means an agency, organization, or facility or a subdivision of an agency, organization, or facility which employs two or more direct care staff persons who provide licensed nursing services, therapeutic services of physical therapy, speech therapy, occupational therapy, medical social services, or home health aide services on a visiting basis.

(b) "Home health agency" does not mean an individual who provides services under the authority of a private license.

(16) "Hospice" means a program of care for the terminally ill and their families which occurs in a home or in a health care facility and which provides medical, palliative, psychological, spiritual, and supportive care and treatment.

(17) "Nursing care facility" means a health care facility, other than a general acute or specialty hospital, constructed, licensed, and operated to provide patient living accommodations, 24-hour staff availability, and at least two of the following patient services:

(a) a selection of patient care services, under the direction and supervision of a registered nurse, ranging from continuous medical, skilled nursing, psychological, or other professional therapies to intermittent health-related or paraprofessional personal care services;

(b) a structured, supportive social living environment based on a professionally designed and

supervised treatment plan, oriented to the individual's habilitation or rehabilitation needs; or

(c) a supervised living environment that provides support, training, or assistance with individual activities of daily living.

(18) "Person" means any individual, firm, partnership, corporation, company, association, or joint stock association, and the legal successor thereof.

(19) "Resident" means a person 21 years of age or older who:

(a) as a result of physical or mental limitations or age requires or requests services provided in a residential health care facility or assisted living facility; and

(b) does not require intensive medical or nursing services as provided in a hospital or nursing care facility.

(20) "Residential health care facility" means a facility providing assistance with activities of daily living and social care to two or more residents who require protected living arrangements.

(21) "Small health care facility" means a four to sixteen bed facility that provides licensed health care programs and services to residents who generally do not need continuous nursing care or supervision.

(22) "Specialty hospital" means a facility which provides specialized diagnostic, therapeutic, or rehabilitative services in the recognized specialty or specialties for which the hospital is licensed.

(23) "Substantial compliance" means in a department survey of a licensee, the department determines there is an absence of deficiencies which would harm the physical health, mental health, safety, or welfare of patients or residents of a licensee.

Section 26. Section **27-17-405** is amended to read:

27-17-405. Information lettered on vehicle -- Exceptions.

(1) Except under Subsection [~~(3)~~] (4), a motor carrier shall have lettered on both sides of any vehicle used for transportation of persons or property:

(a) the name of the motor carrier company; and

(b) the location of domicile by city and state.

(2) The lettering shall be free from obstruction and legible at least from a distance of 50 feet.

(3) (a) In addition to the lettering required under Subsection (1), the department may require

an identification number assigned by the department to be displayed in accordance with this section.

(b) The number may be used to assist the department in conjunction with the U.S. Department of Transportation to develop a program to improve motor carrier safety enforcement.

(4) A commercial vehicle primarily used by a farmer for the production of agricultural products is exempt from the provisions of this section.

Section 27. Section **30-3-35.5** is amended to read:

30-3-35.5. Minimum schedule for visitation for children under five years of age.

(1) The visitation schedule in this section applies to children under five years old.

(2) If the parties do not agree to a visitation schedule, the following schedule shall be considered the minimum visitation to which the noncustodial parent and the child shall be entitled:

(a) for children under five months of age:

(i) six hours of visitation per week to be specified by the court or the noncustodial parent preferably:

(A) divided into three visitation periods; and

(B) in the custodial home, established child care setting, or other environment familiar to the child;

(ii) two hours on holidays and in the years specified in Subsections 30-3-35(2)(f) through (i) preferably in the custodial home, the established child care setting, or other environment familiar to the child;

(b) for children five months of age or older, but younger than 10 months of age:

(i) nine hours of visitation per week to be specified by the court or the noncustodial parent preferably:

(A) divided into three visitation periods; and

(B) in the custodial home, established child care setting, or other environment familiar to the child;

(ii) two hours on the holidays and in the years specified in Subsections 30-3-35(2)(f) through (i) preferably in the custodial home, the established child care setting, or other environment familiar to the child;

(c) for children 10 months of age or older, but younger than 18 months of age:

(i) one eight hour visit per week to be specified by the noncustodial parent or court;

(ii) one three hour visit per week to be specified by the noncustodial parent or court;

(iii) eight hours on the holidays and in the years specified in Subsections 30-3-5(2)(f) through (i); and

(iv) brief phone contact with the noncustodial parent at least two times per week;

(d) for children 18 months of age or older, but younger than three years of age:

(i) one weekday evening for two hours between 5:30 p.m. and 8:30 p.m. to be specified by the noncustodial parent or court;

(ii) alternative weekends beginning on the first weekend after the entry of the decree from 6:00 p.m. on Friday until 7:00 p.m. on Sunday continuing each year;

(iii) visitation on holidays as specified in Subsections 30-3-35(2)(c) through (i);

(iv) extended visitation may be:

(A) two one-week periods, separated by at least four weeks, at the option of the noncustodial parent;

(B) one week shall be uninterrupted time for the noncustodial parent;

(C) the remaining week shall be subject to visitation for the custodial parent consistent with these guidelines; and

(D) the custodial parent shall have an identical one-week period of uninterrupted time for vacation; and

(v) brief phone contact with the noncustodial parent at least two times per week;

(e) for children three years of age or older, but younger than five years of age:

(i) one weekday evening between 5:30 p.m. and 8:30 p.m. to be specified by the noncustodial parent or court;

(ii) alternative weekends beginning on the first weekend after the entry of the decree from 6:00 p.m. on Friday until 7:00 p.m. on Sunday continuing each year;

(iii) visitation on holidays as specified in Subsections 30-3-35(2)(c) through (i);

(iv) extended visitation with the noncustodial parent may be:

(A) two two-week periods, separated by at least four weeks, at the option of the noncustodial parent;

(B) one two-week period shall be uninterrupted time for the noncustodial parent;

(C) the remaining two-week period shall be subject to visitation for the custodial parent consistent with these guidelines; and

(D) the custodial parent shall have an identical two-week period of uninterrupted time for vacation; and

(v) brief phone contact with the noncustodial parent at least two times per week.

(3) A parent shall notify the other parent at least 30 days in advance of extended visitation or vacation weeks.

(4) Telephone contact shall be at reasonable hours and for reasonable duration.

Section 28. Section **31A-1-301** is amended to read:

31A-1-301. Definitions.

As used in this title, unless otherwise specified:

(0.5) "Administrator" is defined in Subsection (77).

(1) "Adult" means a natural person who has attained the age of at least 18 years.

(2) "Affiliate" means any person who controls, is controlled by, or is under common control with, another person. A corporation is an affiliate of another corporation, regardless of ownership, if substantially the same group of natural persons manages the corporations.

(3) "Alien insurer" means an insurer domiciled outside the United States.

(4) "Annuities" means all agreements to make periodical payments for a period certain or over the lifetime of one or more natural persons if the making or continuance of all or some of the series of the payments, or the amount of the payment, is dependent upon the continuance of human life.

(5) "Articles" or "articles of incorporation" means the original articles, special laws, charters, amendments, restated articles, articles of merger or consolidation, trust instruments, and other constitutive documents for trusts and other entities that are not corporations, and amendments to any of these. Refer also to "bylaws" in this section and Section 31A-5-203.

(6) "Bail bond insurance" means a guarantee that a person will attend court when required, or will obey the orders or judgment of the court, as a condition to the release of that person from confinement.

(7) "Binder" is defined in Section 31A-21-102.

(8) "Board," "board of trustees," or "board of directors" means the group of persons with responsibility over, or management of, a corporation, however designated. Refer also to "trustee" in this section.

(9) "Business of insurance" is defined in Subsection (44).

(10) "Business plan" means the information required to be supplied to the commissioner under Subsections 31A-5-204(2)(i) and (j), including the information required when these subsections are applicable by reference under Section 31A-7-201, Section 31A-8-205, or Subsection 31A-9-205(2).

(11) "Bylaws" means the rules adopted for the regulation or management of a corporation's affairs, however designated. It includes comparable rules for trusts and other entities that are not corporations. Refer also to "articles" and Section 31A-5-203.

(12) "Casualty insurance" means liability insurance as defined in Subsection (50).

(13) "Certificate" means the evidence of insurance given to an insured under a group policy.

(14) "Certificate of authority" is included within the term "license."

(14.5) "Claim," unless the context otherwise requires, means a request or demand on an insurer for payment of benefits according to the terms of an insurance policy.

(14.6) "Claims-made coverage" means any insurance contract or provision limiting coverage under a policy insuring against legal liability to claims that are first made against the insured while the policy is in force.

(15) "Commissioner" or "commissioner of insurance" means Utah's insurance commissioner. Where appropriate, these terms apply to the equivalent supervisory official of another jurisdiction.

(16) "Control," "controlling," "controlled," or "under common control" means the direct or indirect possession of the power to direct or cause the direction of the management and policies of a person. This control may be by contract, by common management, through the ownership of

voting securities, or otherwise. There is no presumption that an individual holding an official position with another person controls that person solely by reason of the position. A person having a contract or arrangement giving control is considered to have control despite the illegality or invalidity of the contract or arrangement. There is a rebuttable presumption of control in a person who directly or indirectly owns, controls, holds with the power to vote, or holds proxies to vote 10% or more of the voting securities of another person. Refer also to "affiliate" in this section.

(17) (a) "Corporation" means insurance corporation, except where referring under Chapter 23, Insurance Marketing - Licensing Agents, Brokers and Consultants, and Reinsurance Intermediaries, and Chapter 26, Insurance Adjusters, to corporations doing business as insurance agents, brokers, consultants, or adjusters, or where referring under Chapter 16, Insurance Holding Companies, to a noninsurer which is part of a holding company system.

(b) "Stock corporation" means stock insurance corporation.

(c) "Mutual" or "mutual corporation" means mutual insurance corporation.

(18) "Credit disability insurance" means insurance on a debtor to provide indemnity for payments coming due on a specific loan or other credit transaction while the debtor is disabled. Refer also to Subsection 31A-22-802(1).

(19) "Credit insurance" means surety insurance under which mortgagees and other creditors are indemnified against losses caused by the default of debtors.

(20) "Credit life insurance" means insurance on the life of a debtor in connection with a loan or other credit transaction. Refer also to Subsection 31A-22-802(2).

(21) "Creditor" means a person, including an insured, having any claim, whether matured, unmatured, liquidated, unliquidated, secured, unsecured, absolute, fixed, or contingent.

(22) "Deemer clause" means a provision under this title under which upon the occurrence of a condition precedent, the commissioner is deemed to have taken a specific action. If the statute so provides, the condition precedent may be the commissioner's failure to take a specific action. Refer also to Section 31A-2-302.

(23) "Degree of relationship" means the number of steps between two persons determined by counting the generations separating one person from a common ancestor and then counting the

generations to the other person.

(24) "Department" means the Insurance Department.

(25) "Director" means a member of the board of directors of a corporation.

(26) "Disability insurance" means insurance written to indemnify for losses and expenses resulting from accident or sickness, to provide payments to replace income lost from accident or sickness, and to pay for services resulting directly from accident or sickness, including medical, surgical, hospital, and other ancillary expenses.

(27) "Domestic insurer" means an insurer organized under the laws of this state.

(28) "Domiciliary state" means the state in which an insurer is incorporated or organized or, in the case of an alien insurer, the state of entry into the United States.

(29) "Employee benefits" means one or more benefits or services provided employees or their dependents.

(30) "Employee welfare fund" means a fund established or maintained by one or more employers, one or more labor organizations, or a combination of employers and labor organizations, whether directly or through trustees. This fund is to provide employee benefits paid or contracted to be paid, other than income from investments of the fund, by or on behalf of an employer doing business in this state or for the benefit of any person employed in this state. It includes plans funded or subsidized by user fees or tax revenues.

(31) "Excludes" is not exhaustive and does not mean that other things are not also excluded. The items listed are representative examples for use in interpretation of this title.

(31.5) "Fidelity insurance" means insurance guaranteeing the fidelity of persons holding positions of public or private trust.

(31.7) "First party insurance" means an insurance policy or contract in which the insurer agrees to pay claims submitted to it by the insured for the insured's losses.

(32) "Foreign insurer" means an insurer domiciled outside of this state, including an alien insurer.

(33) "Form" means a policy, certificate, or application prepared for general use. It does not include one specially prepared for use in an individual case. Refer also to "policy" in this section.

(34) "Franchise insurance" means individual insurance policies provided through a mass marketing arrangement involving a defined class of persons related in some way other than through the purchase of insurance.

(35) "Health care insurance" or "health insurance" means disability insurance providing benefits solely of medical, surgical, hospital, or other ancillary services or payment of medical, surgical, hospital, or other ancillary expenses incurred. "Health care insurance" or "health insurance" does not include disability insurance providing benefits for:

(a) replacement of income;

(b) short-term accident;

(c) fixed indemnity;

(d) credit disability;

(e) supplements to liability;

(f) workers' compensation;

(g) automobile medical payment;

(h) no-fault automobile;

(i) equivalent self-insurance; or

(j) any type of disability insurance coverage that is a part of or attached to another type of policy.

(35.5) "Indemnity" means the payment of an amount to offset all or part of an insured loss.

(36) "Independent adjuster" means an insurance adjuster required to be licensed under Section 31A-26-201 who engages in insurance adjusting as a representative of insurers. Refer also to Section 31A-26-102.

(37) "Independently procured insurance" means insurance procured under Section 31A-15-104.

(37.5) "Individual" means a natural person.

(38) "Inland marine insurance" includes insurance covering:

(a) property in transit on or over land;

(b) property in transit over water by means other than boat or ship;

(c) bailee liability;

(d) fixed transportation property such as bridges, electric transmission systems, radio and television transmission towers and tunnels; and

(e) personal and commercial property floaters.

(39) "Insolvency" means that:

(a) an insurer is unable to pay its debts or meet its obligations as they mature;

(b) an insurer's total adjusted capital is less than the insurer's mandatory control level RBC under Subsection 31A-17-601(7)(c); or

(c) an insurer is determined to be hazardous under this title.

(40) "Insurance" means any arrangement, contract, or plan for the transfer of a risk or risks from one or more persons to one or more other persons, or any arrangement, contract, or plan for the distribution of a risk or risks among a group of persons that includes the person seeking to distribute his risk. "Insurance" includes:

(a) risk distributing arrangements providing for compensation or replacement for damages or loss through the provision of services or benefits in kind;

(b) contracts of guaranty or suretyship entered into by the guarantor or surety as a business and not as merely incidental to a business transaction; and

(c) plans in which the risk does not rest upon the person who makes the arrangements, but with a class of persons who have agreed to share it.

(41) "Insurance adjuster" means a person who directs 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. Refer also to Section 31A-26-102.

(41.5) "Interinsurance exchange" is defined in Subsection (69).

(42) "Insurance agent" or "agent" means a person who represents insurers in soliciting, negotiating, or placing insurance. Refer to Subsection 31A-23-102(3) for exceptions to this definition.

(43) "Insurance broker" or "broker" means a person who acts in procuring insurance on behalf of an applicant for insurance or an insured, and does not act on behalf of the insurer except

by collecting premiums or performing other ministerial acts. Refer also to Subsection 31A-23-102(3) for exceptions to this definition.

(44) "Insurance business" or "business of insurance" includes:

(a) providing health care insurance, as defined in Subsection (35), by organizations that are or should be licensed under this title;

(b) providing benefits to employees in the event of contingencies not within the control of the employees, in which the employees are entitled to the benefits as a right, which benefits may be provided either by single employers or by multiple employer groups through trusts, associations, or other entities;

(c) providing annuities, including those issued in return for gifts, except those provided by persons specified in Subsections 31A-22-1305(2) and (3);

(d) providing the characteristic services of motor clubs as outlined in Subsection (56);

(e) providing other persons with insurance as defined in Subsection (40);

(f) making as insurer, guarantor, or surety, or proposing to make as insurer, guarantor, or surety, any contract or policy of title insurance;

(g) transacting or proposing to transact any phase of title insurance, including solicitation, negotiation preliminary to execution, execution of a contract of title insurance, insuring, and transacting matters subsequent to the execution of the contract and arising out of it, including reinsurance; and

(h) doing, or proposing to do, any business in substance equivalent to Subsections (44)(a) through (g) in a manner designed to evade the provisions of this title.

(45) "Insurance consultant" or "consultant" means a person who advises other persons about insurance needs and coverages, is compensated by the person advised on a basis not directly related to the insurance placed, and is not compensated directly or indirectly by an insurer, agent, or broker for advice given. Refer also to Subsection 31A-23-102(3) for exceptions to this definition.

(46) "Insurance holding company system" means a group of two or more affiliated persons, at least one of whom is an insurer.

(47) "Insured" means a person to whom or for whose benefit an insurer makes a promise in

an insurance policy. The term includes policyholders, subscribers, members, and beneficiaries. This definition applies only to the provisions of this title and does not define the meaning of this word as used in insurance policies or certificates.

(48) (a) "Insurer" means any person doing an insurance business as a principal, including fraternal benefit societies, issuers of gift annuities other than those specified in Subsections 31A-22-1305(2) and (3), motor clubs, employee welfare plans, and any person purporting or intending to do an insurance business as a principal on his own account. It does not include a governmental entity, as defined in [~~Subsection~~] Section 63-30-2[~~(3)~~], to the extent it is engaged in the activities described in Section 31A-12-107.

(b) "Admitted insurer" is defined in Subsection (80)(b).

(c) "Alien insurer" is defined in Subsection (3).

(d) "Authorized insurer" is defined in Subsection (80)(b).

(e) "Domestic insurer" is defined in Subsection (27).

(f) "Foreign insurer" is defined in Subsection (32).

(g) "Nonadmitted insurer" is defined in Subsection (80)(a).

(h) "Unauthorized insurer" is defined in Subsection (80)(a).

(49) "Legal expense insurance" means insurance written to indemnify or pay for specified legal expenses. It includes arrangements that create reasonable expectations of enforceable rights, but it does not include the provision of, or reimbursement for, legal services incidental to other insurance coverages. Refer to Section 31A-1-103 for a list of exemptions.

(50) (a) "Liability insurance" means insurance against liability:

(i) for death, injury, or disability of any human being, or for damage to property, exclusive of the coverages under Subsection (53) for medical malpractice insurance, Subsection (66) for professional liability insurance, and Subsection (83) for workers' compensation insurance;

(ii) for medical, hospital, surgical, and funeral benefits to persons other than the insured who are injured, irrespective of legal liability of the insured, when issued with or supplemental to insurance against legal liability for the death, injury, or disability of human beings, exclusive of the coverages under Subsection (53) for medical malpractice insurance, Subsection (66) for professional

liability insurance, and Subsection (83) for workers' compensation insurance;

(iii) for loss or damage to property resulting from accidents to or explosions of boilers, pipes, pressure containers, machinery, or apparatus;

(iv) for loss or damage to any property caused by the breakage or leakage of sprinklers, water pipes and containers, or by water entering through leaks or openings in buildings; or

(v) for other loss or damage properly the subject of insurance not within any other kind or kinds of insurance as defined in this chapter, if such insurance is not contrary to law or public policy.

(b) "Liability insurance" includes vehicle liability insurance as defined in Subsection (81), residential dwelling liability insurance as defined in Subsection (70.3), and also includes making inspection of, and issuing certificates of inspection upon, elevators, boilers, machinery, and apparatus of any kind when done in connection with insurance on them.

(51) "License" means the authorization issued by the insurance commissioner under this title to engage in some activity that is part of or related to the insurance business. It includes certificates of authority issued to insurers.

(52) "Life insurance" means insurance on human lives and insurances pertaining to or connected with human life. The business of life insurance includes granting annuity benefits, granting endowment benefits, granting additional benefits in the event of death by accident or accidental means, granting additional benefits in the event of the total and permanent disability of the insured, and providing optional methods of settlement of proceeds.

(53) "Medical malpractice insurance" means insurance against legal liability incident to the practice and provision of medical services other than the practice and provision of dental services.

(54) "Member" means a person having membership rights in an insurance corporation. Refer also to "insured" in Subsection (47).

(55) "Minimum capital" or "minimum required capital" means the capital that must be constantly maintained by a stock insurance corporation as required by statute. Refer also to "permanent surplus" under Subsection (76)(a) and Sections 31A-5-211, 31A-8-209, and 31A-9-209.

(56) "Motor club" means a person licensed under Chapter 5, Domestic Stock and Mutual Insurance Corporations, Chapter 11, Motor Clubs, or Chapter 14, Foreign Insurers, that promises

for an advance consideration to provide legal services under Subsection 31A-11-102(1)(b), bail services under Subsection 31A-11-102(1)(c), trip reimbursement, towing services, emergency road services, stolen automobile services, a combination of these services, or any other services given in Subsections 31A-11-102(1)(b) through (f) for a stated period of time.

(57) "Mutual" means mutual insurance corporation.

(57.5) "Nonparticipating" means a plan of insurance under which the insured is not entitled to receive dividends representing shares of the surplus of the insurer.

(58) "Ocean marine insurance" means insurance against loss of or damage to:

(a) ships or hulls of ships;

(b) goods, freight, cargoes, merchandise, effects, disbursements, profits, moneys, securities, choses in action, evidences of debt, valuable papers, bottomry, respondentia interests, or other cargoes in or awaiting transit over the oceans or inland waterways;

(c) earnings such as freight, passage money, commissions, or profits derived from transporting goods or people upon or across the oceans or inland waterways; or

(d) a vessel owner or operator as a result of liability to employees, passengers, bailors, owners of other vessels, owners of fixed objects, customs or other authorities, or other persons in connection with maritime activity.

(59) "Order" means an order of the commissioner.

(59.5) "Participating" means a plan of insurance under which the insured is entitled to receive dividends representing shares of the surplus of the insurer.

(60) "Person" includes an individual, partnership, corporation, incorporated or unincorporated association, joint stock company, trust, reciprocal, syndicate, or any similar entity or combination of entities acting in concert.

(61) (a) "Policy" means any document, including attached endorsements and riders, purporting to be an enforceable contract, which memorializes in writing some or all of the terms of an insurance contract. Service contracts issued by motor clubs under Chapter 11, Motor Clubs, and by corporations licensed under Chapter 7, Nonprofit Health Service Insurance Corporations, or Chapter 8, Health Maintenance Organizations and Limited Health Plans, are policies. A certificate

under a group insurance contract is not a policy. A document which does not purport to have legal effect is not a policy.

(b) "Group insurance policy" means a policy covering a group of persons that is issued to a policyholder on behalf of the group, for the benefit of group members who are selected under procedures defined in the policy or in agreements which are collateral to the policy. This type of policy may, but is not required to, include members of the policyholder's family or dependents.

(c) "Blanket insurance policy" means a group policy covering classes of persons without individual underwriting, where the persons insured are determined by definition of the class with or without designating the persons covered.

(62) "Policyholder" means the person who controls a policy, binder, or oral contract by ownership, premium payment, or otherwise. Refer also to "insured" in Subsection (47).

(63) "Premium" means the monetary consideration for an insurance policy, and includes assessments, membership fees, required contributions, or monetary consideration, however designated. Consideration paid to third party administrators for their services is not "premium," though amounts paid by third party administrators to insurers for insurance on the risks administered by the third party administrators are "premium."

(64) "Principal officers" of a corporation means the officers designated under Subsection 31A-5-203(3).

(65) "Proceedings" includes actions and special statutory proceedings.

(66) "Professional liability insurance" means insurance against legal liability incident to the practice of a profession and provision of any professional services.

(67) "Property insurance" means insurance against loss or damage to real or personal property of every kind and any interest in that property, from all hazards or causes, and against loss consequential upon the loss or damage including vehicle comprehensive and vehicle physical damage coverages, but excluding inland marine insurance and ocean marine insurance as defined under Subsections (38) and (58).

(67.5) "Public agency insurance mutual" means any entity formed by joint venture or interlocal cooperation agreement by two or more political subdivisions or public agencies of the state

for the purpose of providing insurance coverage for the political subdivisions or public agencies. Any public agency insurance mutual created under this title and Title 11, Chapter 13, Interlocal Cooperation Act, is considered to be a governmental entity and political subdivision of the state with all of the rights, privileges, and immunities of a governmental entity or political subdivision of the state.

(68) (a) Except as provided in Subsection (68)(b), "rate service organization" means any person who assists insurers in rate making or filing by:

(i) collecting, compiling, and furnishing loss or expense statistics;

(ii) recommending, making, or filing rates or supplementary rate information; or

(iii) advising about rate questions, except as an attorney giving legal advice. Refer also to Subsection 31A-19-102(2).

(b) "Rate service organization" does not mean an employee of an insurer, a single insurer or group of insurers under common control, a joint underwriting group, or a natural person serving as an actuarial or legal consultant.

(69) "Reciprocal" or "interinsurance exchange" means any unincorporated association of persons operating through an attorney-in-fact common to all of them and exchanging insurance contracts with one another that provide insurance coverage on each other.

(70) "Reinsurance" means an insurance transaction where an insurer, for consideration, transfers any portion of the risk it has assumed to another insurer. In referring to reinsurance transactions, this title sometimes refers to the insurer transferring the risk as the "ceding insurer," and to the insurer assuming the risk as the "assuming insurer" or the "assuming reinsurer."

(70.3) "Residential dwelling liability insurance" means insurance against liability resulting from or incident to the ownership, maintenance, or use of a residential dwelling that is a detached single family residence or multifamily residence up to four units.

(71) "Retrocession" means reinsurance with another insurer of a liability assumed under a reinsurance contract. A reinsurer "retrocedes" when it reinsures with another insurer part of a liability assumed under a reinsurance contract.

(72) (a) "Security" means any:

(i) note;

(ii) stock;

(iii) bond;

(iv) debenture;

(v) evidence of indebtedness;

(vi) certificate of interest or participation in any profit-sharing agreement;

(vii) collateral-trust certificate;

(viii) preorganization certificate or subscription;

(ix) transferable share;

(x) investment contract;

(xi) voting trust certificate;

(xii) certificate of deposit for a security;

(xiii) certificate of interest of participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease;

(xiv) commodity contract or commodity option;

(xv) any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the items listed in Subsections (72)(a)(i) through (xiv); or

(xvi) any other interest or instrument commonly known as a security.

(b) "Security" does not include:

(i) any insurance or endowment policy or annuity contract under which an insurance company promises to pay money in a specific lump sum or periodically for life or some other specified period; or

(ii) a burial certificate or burial contract.

(73) "Self-insurance" means any arrangement under which a person provides for spreading its own risks by a systematic plan.

(a) Except as provided in this subsection, self-insurance does not include an arrangement under which a number of persons spread their risks among themselves.

(b) Self-insurance does include an arrangement by which a governmental entity, as defined in Section 63-30-2, undertakes to indemnify its employees for liability arising out of the employees' employment.

(c) Self-insurance does include an arrangement by which a person with a managed program of self-insurance and risk management undertakes to indemnify its affiliates, subsidiaries, directors, officers, or employees for liability or risk which is related to the relationship or employment. Self-insurance does not include any arrangement with independent contractors.

(74) (a) "Subsidiary" of a person means an affiliate controlled by that person either directly or indirectly through one or more affiliates or intermediaries.

(b) "Wholly owned subsidiary" of a person is a subsidiary of which all of the voting shares are owned by that person either alone or with its affiliates, except for the minimum number of shares the law of the subsidiary's domicile requires to be owned by directors or others.

(75) Subject to Subsection (40)(b), "surety insurance" includes:

(a) a guarantee against loss or damage resulting from failure of principals to pay or perform their obligations to a creditor or other obligee;

(b) bail bond insurance; and

(c) fidelity insurance.

(76) (a) "Surplus" means the excess of assets over the sum of paid-in capital and liabilities.

(b) "Permanent surplus" means the surplus of a mutual insurer that has been designated by the insurer as permanent. Sections 31A-5-211, 31A-7-201, 31A-8-209, 31A-9-209, and 31A-14-209 require that mutuals doing business in this state maintain specified minimum levels of permanent surplus. Except for assessable mutuals, the minimum permanent surplus requirement is essentially the same as the minimum required capital requirement that applies to stock insurers. Refer also to Subsection (55) on "minimum capital."

(c) "Excess surplus" means:

(i) for life or disability insurers, as defined in Subsection 31A-17-601(3), and property and casualty insurers, as defined in Subsection 31A-17-601(4), the lesser of:

(A) that amount of an insurer's total adjusted capital, as defined in Subsection

31A-1-301(78.5), that exceeds the product of 2.5 and the sum of the insurer's minimum capital or permanent surplus required under Section 31A-5-211, 31A-9-209, or 31A-14-205; or

(B) that amount of an insurer's total adjusted capital, as defined in Subsection 31A-1-301(78.5), that exceeds the product of 3.0 and the authorized control level RBC as defined in Subsection 31A-17-601(7)(a); and

(ii) for monoline mortgage guaranty insurers, financial guaranty insurers, and title insurers, that amount of an insurer's paid-in-capital and surplus that exceeds the product of 1.5 and the insurer's total adjusted capital required by Subsection 31A-17-609(1).

(77) "Third party administrator" or "administrator" means any person who collects charges or premiums from, or who, for consideration, adjusts or settles claims of residents of the state in connection with life or disability insurance coverage, annuities, or service insurance coverage, except:

(a) a union on behalf of its members;

(b) a person exempt as a trust under Section 514 of the federal Employee Retirement Income Security Act of 1974;

(c) an employer on behalf of his employees or the employees of one or more of the subsidiary or affiliated corporations of the employer;

(d) an insurer licensed under Chapter 5, 7, 8, 9, or 14, but only with respect to insurance issued by the insurer; or

(e) a person licensed or exempt from licensing under Chapter 23 or 26 whose activities are limited to those authorized under the license the person holds or for which the person is exempt. Refer also to Section 31A-25-101.

(78) "Title insurance" means the insuring, guaranteeing, or indemnifying of owners of real or personal property or the holders of liens or encumbrances on that property, or others 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 unenforceability of any liens or encumbrances on the property.

(78.5) "Total adjusted capital" means the sum of an insurer's statutory capital and surplus

as determined in accordance with:

(a) the statutory accounting applicable to the annual financial statements required to be filed under Section 31A-4-113; and

(b) any other items provided by the RBC instructions, as RBC instructions is defined in Subsection 31A-17-601(6).

(79) (a) "Trustee" means "director" when referring to the board of directors of a corporation.

(b) "Trustee," when used in reference to an employee welfare fund, means an individual, firm, association, organization, joint stock company, or corporation, whether acting individually or jointly and whether designated by that name or any other, that is charged with or has the overall management of an employee welfare fund.

(80) (a) "Unauthorized insurer," "unadmitted insurer," or "nonadmitted insurer" means an insurer not holding a valid certificate of authority to do an insurance business in this state, or an insurer transacting business not authorized by a valid certificate.

(b) "Admitted insurer" or "authorized insurer" means an insurer holding a valid certificate of authority to do an insurance business in this state and transacting business as authorized by a valid certificate.

(81) "Vehicle liability insurance" means insurance against liability resulting from or incident to ownership, maintenance, or use of any land vehicle or aircraft, exclusive of vehicle comprehensive and vehicle physical damage coverages under Subsection (67).

(82) "Voting security" means a security with voting rights, and includes any security convertible into a security with a voting right associated with it.

(83) "Workers' compensation insurance" means:

(a) insurance for indemnification of employers against liability for compensation:

(i) based upon compensable accidental injuries; and

(ii) based on occupational disease disability;

(b) employer's liability insurance incidental to workers' compensation insurance and written in connection with it; and

(c) insurance assuring to the persons entitled to workers' compensation benefits the

compensation provided by law.

Section 29. Section **31A-12-107** is amended to read:

31A-12-107. Governmental immunity.

Notwithstanding any other provision of this title, a governmental entity, as defined in [~~Subsection~~] Section 63-30-2 [~~(3)~~], is not an insurer for purposes of this title and is not engaged in the business of insurance to the extent it is covering its own liabilities under Title 63, Chapter 30, the Governmental Immunity Act, or engaging in other related risk management activities related to the normal course of its activities. A public agency insurance mutual created or regulated under Section 31A-5-214 is a governmental entity entitled to all the rights and benefits of the Governmental Immunity Act.

Section 30. Section **31A-22-613.5** is amended to read:

31A-22-613.5. Price and value comparisons of health insurance.

(1) This section applies generally to all health insurance policies and health maintenance organization contracts.

(2) (a) Immediately after the effective date of this section, the commissioner shall appoint a Health Benefit Plan Committee.

(b) The committee shall be composed of representatives of carriers, employers, employees, health care providers, consumers, and producers, appointed to four-year terms.

(c) Notwithstanding the requirements of Subsection (2)(b), the commissioner shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the committee is appointed every two years.

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

(4) (a) Members shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

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

(5) The committee shall serve as an advisory committee to the commissioner and shall recommend services to be covered, copays, deductibles, levels of coinsurance, annual out-of-pocket maximums, exclusions, and limitations for two or more designated health care plans to be marketed in the state.

(a) The plans recommended by the committee may include reasonable benefit differentials applicable to participating and nonparticipating providers.

(b) The plans recommended by the committee shall not prohibit the use of the following cost management techniques by an insurer:

(i) preauthorization of health care services;

(ii) concurrent review of health care services;

(iii) case management of health care services;

(iv) retrospective review of medical appropriateness;

(v) selective contracting with hospitals, physicians, and other health care providers to the extent permitted by law; and

(vi) other reasonable techniques intended to manage health care costs.

(c) The committee shall submit the plans to the commissioner within 180 days after the appointment of the committee in accordance with this section.

(d) The commissioner shall adopt two or more health benefit plans within 60 days after the committee submits recommendations.

(e) If the committee fails to submit recommendations to the commissioner within 180 days after appointment, the commissioner shall, within 90 days, develop two or more designated health benefit plans. The commissioner shall, after notice and hearing, adopt two or more designated health benefit plans. The commissioner shall provide incentives for personal management of health care expenses by adopting one plan that applies deductibles in the amount of $1,500 and another plan that applies deductibles in the amount of $2,500. These plans may include illustrations and explanations showing the premium savings generated by the high deductibles being applied to a medical savings account for the insured which can be used to pay medical expenses up to the plan deductible and/or any other medical expenses not covered by the insurance, and an explanation that any funds in the

savings account belong to the insured.

(f) The commissioner may reconvene a Health Benefit Plan Committee in accordance with Subsections (2) and (5) to recommend revisions to the designated benefit plans adopted by the commissioner.

(6) (a) Within 180 days after the adoption of the designated benefit plans by the commissioner, or any changes in the designated plans an insurer offering health insurance policies for sale in this state shall, at the request of a potential buyer, offer the current designated plans at a premium based on factors such as that buyer's previous claims experience, group size, demographic characteristics, and health status.

(b) This section does not prohibit an insurer from refusing to insure, under any plan, a person or group. However, if the insurer offers any policy or contract to that person or group, the insurer must offer the designated plans.

(7) The designated benefit plans, described in Subsection (5) are intended to facilitate price and value comparisons by consumers. The designated benefit plans are not minimum standards for health insurance policies. An insurer offering the designated benefit plans may offer policies that provide more or less coverage than the designated benefit plans.

(8) (a) The commissioner shall convene or reconvene a Health Benefit Plan Committee for the purpose of developing a Basic Health Care Plan to be offered under the open enrollment provisions of Chapter 30.

(b) The commissioner shall adopt a Basic Health Care Plan within 60 days after the committee submits recommendations, or if the committee fails to submit recommendations to the commissioner within 180 days after appointment, the commissioner shall, within 90 days, adopt a Basic Health Care Plan.

(c) (i) Before adoption of a plan under Subsection (8)(b), the commissioner shall submit the proposed Basic Health Care Plan to the [~~Legislative~~] Health and [~~Environment~~] Human Services Interim Committee for review and recommendations.

(ii) After the commissioner adopts the Basic Health Care Plan, the Health and [~~Environment~~] Human Services Interim Committee shall provide legislative oversight of the Basic Health Care

Plan and may recommend legislation to modify the Basic Health Care Plan adopted by the commissioner.

(d) The committee's recommendations for the Basic Health Care Plan shall be advisory to the commissioner.

(9) (a) The commissioner shall promote informed consumer behavior and responsible health insurance and health plans by requiring an insurer issuing health insurance policies or health maintenance organization contracts to provide to all enrollees, prior to enrollment in the health benefit plan or health insurance policy, written disclosure of:

(i) restrictions or limitations on prescription drugs and biologics including the use of a formulary and generic substitution. If a formulary is used, the drugs included and the patented drugs not included, and any conditions which exist as a precedent to coverage shall be made readily available to prospective enrollees and evidence of the fact of that disclosure shall be maintained by the insurer; and

(ii) coverage limits under the plan.

(b) An insurer described in Subsection (9)(a) shall also submit the written disclosure required by this subsection to the commissioner annually, and anytime thereafter when the insurer amends the treatment policies, practice standards, or restrictions described in Subsection (8)(a).

(c) The commissioner may adopt rules to implement the disclosure requirements of this subsection, taking into account business confidentiality of the insurer, definitions of terms, and the method of disclosure to enrollees.

(10) (a) The commissioner shall annually publish a table comparing the rates charged by insurers for the designated health plans and other health insurance plans in this state.

(b) The comparison shall list the top 20 insurers writing the greatest volume by premium dollar per calendar year and others requesting inclusion in the comparison.

(c) In conjunction with the rate comparison described in this subsection, the commissioner shall publish for each of the listed health insurers a table comparing the complaints filed and the combined loss and expense ratio as described in Subsections 31A-2-208.5(2) and (3).

Section 31. Section **31A-27-311** is amended to read:

31A-27-311. Continuance of coverage.

All insurance policies issued by the insurer continue in force as a claim against the insurer's estate for the shortest of the following periods:

(1) for 30 days from the entry of the liquidation order;

(2) until the normal expiration of the policy coverage;

(3) until the policyholder has replaced the insurance coverage; or

(4) until the liquidator has effected a transfer of the policy obligation pursuant to Subsection 31A-27-314[~~(8)~~](1)(h).

Section 32. Section **32A-1-401** is amended to read:

32A-1-401. Alcohol training and education -- Revocation or suspension of licenses.

(1) The commission may revoke, suspend, or withhold the license of any new or renewing licensee whose employees fail to complete the seminar provided for in Section [~~62A-8-403~~] 62A-8-103.5.

(2) A city, town, or county in which an establishment, whose employees are required to complete the seminar provided for in Section [~~62A-8-403~~] 62A-8-103.5, conducts its business may revoke, suspend, or withhold the business license of the establishment if its employees fail to complete the seminar.

Section 33. Section **34-41-104** is amended to read:

34-41-104. Requirements for identification, collection, and testing of samples.

(1) The local governmental entity or state institution of higher education shall ensure that:

(a) all sample collection under this chapter is performed by an entity independent of the local government or state institution of higher education;

(b) all testing for drugs under this chapter is performed by an independent laboratory certified for employment drug testing by either the Substance Abuse and Mental Health Services Administration or the College of American Pathology;

(c) the instructions, chain of custody forms, and collection kits, including bottles and seals, used for sample collection are prepared by an independent laboratory certified for employment drug testing by either the Substance Abuse and Mental Health Services Administration or the College of

American Pathology; and

(d) sample collection and testing for drugs under this chapter is in accordance with the conditions established in this section.

(2) The local governmental entity or state institution of higher education may:

(a) require samples from its employees, volunteers, prospective employees, or prospective volunteers;

(b) require presentation of reliable identification to the person collecting the samples; and

(c) in order to dependably test for the presence of drugs, designate the type of sample to be used for testing.

(3) The local governmental entity or state institution of higher education shall ensure that its ordinance or policy requires that:

(a) the collection of samples is performed under reasonable and sanitary conditions;

(b) samples are collected and tested:

(i) to ensure the privacy of the individual being tested; and

(ii) in a manner reasonably calculated to prevent substitutions or interference with the collection or testing of reliable samples;

(c) sample collection is appropriately documented to ensure that:

(i) samples are labeled and sealed so as reasonably to preclude the probability of erroneous identification of test results; and

(ii) employees, volunteers, prospective employees, or prospective volunteers have the opportunity to provide notification of any information:

(A) that [~~that~~] any person named in Subsection (3)(c)(ii) considers relevant to the test, including identification of currently or recently used prescription or nonprescription drugs or other relevant medical information; and

(B) in compliance with the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 through 12213;

(d) sample collection, storage, and transportation to the place of testing are performed in a manner that reasonably precludes the probability of sample misidentification, contamination, or

adulteration; and

(e) sample testing conforms to scientifically accepted analytical methods and procedures.

(4) Before the result of any test may be used as a basis for any action by a local governmental entity or state institution of higher education under Section 34-41-105, the local governmental entity or state institution of higher education shall verify or confirm any positive initial screening test by gas chromatography, gas chromatography-mass spectroscopy, or other comparably reliable analytical methods and shall provide that the employee, prospective employee, volunteer, or prospective volunteer be notified as soon as possible by telephone or in writing at the last-known address or telephone number of the result of the initial test, if it is positive, and told of his option to have the 15 ml urine sample tested, at an expense equally divided between the donor and the employer. In addition to the initial test results, the test results of the 15 ml urine sample shall be considered at any subsequent disciplinary hearing if the requirements of this section and Section 34-41-104 have been complied with in the collection, handling, and testing of these samples.

(5) Any drug testing by a local governmental entity or state institution of higher education shall occur during or immediately after the regular work period of the employee or volunteer and shall be considered as work time for purposes of compensation and benefits.

(6) The local governmental entity or state institution of higher education shall pay all costs of sample collection and testing for drugs required under its ordinance or policy, including the costs of transportation if the testing of a current employee or volunteer is conducted at a place other than the workplace.

Section 34. Section **34A-2-207** is amended to read:

34A-2-207. Noncompliance -- Civil action by employees.

(1) (a) Employers who fail to comply with Section [~~34A-3-201~~] 34A-2-201 are not entitled to the benefits of this chapter or Chapter 3, Utah Occupational Disease Act, during the period of noncompliance, but shall be liable in a civil action to their employees for damages suffered by reason of personal injuries arising out of or in the course of employment caused by the wrongful act, neglect, or default of the employer or any of the employer's officers, agents, or employees, and also to the dependents or personal representatives of such employees when death results from such

injuries.

(b) In any action described in Subsection (1)(a), the defendant may not avail himself of any of the following defenses:

(i) the fellow-servant rule;

(ii) assumption of risk; or

(iii) contributory negligence.

(2) Proof of the injury shall constitute prima facie evidence of negligence on the part of the employer and the burden shall be upon the employer to show freedom from negligence resulting in the injury.

(3) An employer who fails to comply with Section 34A-2-201 is subject to Sections 34A-2-208 and 34A-2-212.

(4) In any civil action permitted under this section against the employer, the employee shall be entitled to necessary costs and a reasonable attorney fee assessed against the employer.

Section 35. Section **34A-2-211** is amended to read:

34A-2-211. Notice of noncompliance to employer -- Enforcement power of division -- Penalty.

(1) (a) In addition to the remedies specified in Section 34A-2-210, if the division has reason to believe that an employer is conducting business without securing the payment of benefits in one of the three ways provided in Section 34A-2-201, the division may give that employer written notice of the noncompliance by certified mail to the last-known address of the employer.

(b) If the employer does not remedy the default within 15 days after delivery of the notice, the division may issue an order requiring the employer to appear before the division and show cause why the employer should not be ordered to comply with Section 34A-2-201.

(c) If it is found that the employer has failed to provide for the payment of benefits in one of the three ways provided in Section [~~34A-3-201~~] 34A-2-201, the division may require any employer to comply with Section 34A-2-201.

(2) (a) Notwithstanding Subsection (1), the division may impose a penalty against the employer under this Subsection (2):

(i) subject to the notice and other requirements of Title 63, Chapter 46b, Administrative Procedures Act; and

(ii) if the division believes that an employer of one or more employees is conducting business without securing the payment of benefits in one of the three ways provided in Section 34A-2-201.

(b) The penalty imposed under Subsection (2)(a) shall be the greater of:

(i) $1,000; or

(ii) three times the amount of the premium the employer would have paid for workers' compensation insurance based on the rate filing of the Workers' Compensation Fund of Utah during the period of noncompliance.

(c) For purposes of Subsection (2)(b)(ii), the premium is calculated by applying rates and rate multipliers to the payroll basis under Subsection (2)(d), using the highest rated employee class code applicable to the employer's operations.

(d) The payroll basis for the purpose of calculating the premium penalty shall be 150% of the state's average weekly wage multiplied by the highest number of workers employed by the employer during the period of the employer's noncompliance multiplied by the number of weeks of the employer's noncompliance up to a maximum of 156 weeks.

(3) The penalty imposed under Subsection (2) shall be deposited in the Uninsured Employers' Fund created by Section 34A-2-704 and used for the purposes of that fund.

(4) (a) An employer who disputes the determination, imposition, or amount of a penalty imposed under Subsection (2) shall request a hearing before an administrative law judge within 30 days of the date of issuance of the administrative action imposing the penalty or the administrative action becomes a final order of the commission.

(b) The employer's request for a hearing under Subsection (4)(a) shall specify the facts and grounds that are the basis of the employer's objection to the determination, imposition, or amount of the penalty.

(c) An administrative law judge's decision under this Subsection (4) may be reviewed pursuant to Part 8, Adjudication.

(5) (a) After a penalty has been issued and becomes a final order of the commission the division on behalf of the commission may file an abstract for any uncollected penalty in the district court.

(b) The abstract filed under Subsection (5)(a) shall state:

(i) the amount of the uncollected penalty;

(ii) reasonable attorneys' fees;

(iii) costs of collection; and

(iv) court costs.

(c) The filed abstract shall have the effect of a judgment of that court.

(6) Any administrative action issued by the division under this section shall:

(a) be in writing;

(b) be sent by certified mail to the last-known address of the employer;

(c) state the findings and administrative action of the division; and

(d) specify its effective date, which may be immediate or may be at a later date.

(7) The final order of the commission under this section, upon application by the division on behalf of the commission made on or after the effective date of the order to a court of general jurisdiction in any county in this state, may be enforced by an order to comply entered ex parte and without notice by the court.

Section 36. Section **34A-2-415** is amended to read:

34A-2-415. Increase of award to children and dependent spouse -- Effect of death, marriage, majority, or termination of dependency of children -- Death, divorce, or remarriage of spouse.

If an award is made to, or increased because of a dependent spouse or dependent minor child or children, as provided in this chapter or Chapter 3, Utah Occupational Disease Act, the award or increase in amount of the award shall cease at:

(1) the death, marriage, attainment of the age of 18 years, or termination of dependency of the minor child or children; or

(2) upon the death, divorce, or remarriage of the spouse of the employee, subject to the

provisions in Section [~~34A-3-414~~] 34A-2-414 relative to the remarriage of a spouse.

Section 37. Section **34A-6-104** is amended to read:

34A-6-104. Administration of chapter -- Selection of administrator -- Powers and duties of commission -- Application of chapter and exceptions.

(1) Administration of this chapter is vested in the commission and the division. The commission:

(a) is vested with jurisdiction and supervision over every workplace in this state and is empowered to administer all laws and lawful orders to ensure that every employee in this state has a workplace free of recognized hazards;

(b) through the administrator [~~the division director~~], shall carry out the state plan and this chapter, provided[~~,~~] that the administrator is a person with at least five years experience or training in the field of industrial safety and health;

(c) shall make, establish, promulgate and enforce all necessary and reasonable rules and provisions to carry this chapter into effect except when the division is authorized by this chapter to make rules; and

(d) may in its discretion administer oaths, take depositions, subpoena witnesses, compel production of documents, books, and accounts in any inquiry, investigation, hearing, or proceeding in any part of this state.

(2) This chapter shall apply to all workplaces in the state except that nothing in this chapter shall apply to:

(a) working conditions of employees with respect to which federal agencies and other state agencies acting under section 274 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2021, exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health; or

(b) any workplace or employer not subject to the provisions of the federal Williams-Steiger Occupational Safety and Health Act of 1970 and any amendments to that act or any regulations promulgated under that act.

Section 38. Section **35A-3-114** is amended to read:

35A-3-114. Programs for displaced homemakers.

(1) For purposes of this section, "displaced homemaker" means an individual:

(a) who has been a homemaker for a period of eight or more years without significant gainful employment outside the home;

(b) whose primary occupation during the period of time described in Subsection (1)(a) was the provision of unpaid household services for family members;

(c) has found it necessary to enter the job market;

(d) is not reasonably capable of obtaining employment sufficient to provide self-support or necessary support for dependents, due to a lack of marketable job skills or other skills necessary for self-sufficiency; and

(e) has depended on:

(i) the income of a family member and lost that income; or

(ii) governmental assistance as the parent of dependent children and is no longer eligible for that assistance.

(2) The department shall establish, in cooperation with state and local governmental agencies, community-based organizations, and private employers, a program for the education, training, and transitional counseling of displaced homemakers, which includes referral services and the following services:

(a) employment and skills training, career counseling, and placement services specifically designed to address the needs of displaced homemakers;

(b) assistance in obtaining access to existing public and private employment training programs;

(c) educational services, including information on high school or college programs, or assistance in gaining access to existing educational programs;

(d) health education and counseling, or assistance in gaining access to existing health education and counseling services;

(e) financial management services which provide information on insurance, taxes, estate and probate matters, mortgages, loans, and other financial issues; and

(f) prevocational self-esteem and assertiveness training.

(3) The department shall:

(a) (i) contract with existing governmental or private agencies or community-based organizations that have demonstrated effectiveness in serving displaced homemakers to provide a program for displaced homemakers in each county or group of counties, as the population demands; or

(ii) establish a program for displaced homemakers in that area;

(b) coordinate its program for displaced homemakers with existing state or federal programs of a similar nature and, where possible, utilize existing physical resources;

(c) establish rules to implement this section, and may form an advisory committee for recommendations on the establishment and improvement of a program for displaced homemakers;

(d) encourage the placement of displaced homemakers in programs established under:

(i) the Job Training Partnership Act, 29 U.S.C. Section 1501; and

(ii) the Carl D. Perkins Vocational <u>and Applied Technology</u> Education Act, 20 U.S.C. Section 2301, et seq.; and

(e) prepare an evaluation of its program for displaced homemakers, including the success of placement of displaced homemakers in programs described in this section, and annually submit a written report of that evaluation to the Legislature.

(4) Displaced homemakers may act as peer counselors in programs for displaced homemakers.

(5) (a) Appropriate funds received by the state under Section 17-5-214 shall be deposited as nonlapsing dedicated credits and used for the purposes of this section.

(b) Notwithstanding Subsection (5)(a), if the nonlapsing amount exceeds $300,000 at the end of any fiscal year, the excess shall lapse into the General Fund.

(6) The department shall establish procedures for payment and repayment, when possible, by clients to the department of the costs of services provided to displaced homemakers under this section.

Section 39. Section **35A-3-207** is amended to read:

35A-3-207. Community based prevention programs.

(1) As used in this section:

(a) "political subdivision" means a town, city, county, or school district;

(b) "qualified sponsor" means a:

(i) political subdivision;

(ii) community nonprofit, religious, or charitable organization;

(iii) regional or statewide nonprofit organization; or

(iv) private for profit [~~and~~] or nonprofit child care [~~organizations~~] organization with experience and expertise in operating community-based prevention programs described in Subsection (2) and that are licensed under Title 62A, Chapter 2.

(2) Within appropriations from the Legislature, the department may provide grants to qualified sponsors for community-based prevention programs that:

(a) support parents in their primary care giving role to children;

(b) provide positive alternatives to idleness for school-aged children when school is not in session; and

(c) support other community-based prevention programs.

(3) In awarding grants under this section, the department shall:

(a) request proposals for funding from potential qualified sponsors; and

(b) comply with the requirements of Subsection (4).

(4) In awarding these grants, the department shall ensure that each dollar of funds from political subdivisions or private funds is matched for each dollar received from the department. The value of in-kind contributions such as materials, supplies, paid labor, volunteer labor, and the incremental increase in building maintenance and operation expenses incurred attributable to the prevention program may be considered in meeting this match requirement.

(5) In awarding a grant under this section, the department shall consider:

(a) the cash portion of the proposed match in relation to the financial resources of the qualified sponsor; and

(b) the extent to which the qualified sponsor has:

(i) consulted and collaborated with parents of children who are likely to participate, local parent-teacher organizations, other parent organizations, and the appropriate local interagency council established under Section 63-75-5.7;

(ii) identified at risk factors that will be ameliorated through the proposed prevention program;

(iii) identified protective factors and developmental assets that will be supported and strengthened through the proposed prevention program; and

(iv) the financial support of parents and the organizations specified in Subsection (5)(b)(i).

(6) At least 50 percent of the grants awarded under this section shall be awarded to organizations described in Subsection (1)(b)(iv).

(7) No federal funds shall be used as matching funds under this act.

Section 40. Section **35A-3-306** is amended to read:

35A-3-306. Limits on eligibility.

(1) For purposes of this section, "battered or subjected to extreme cruelty" is defined in Section [~~408 of~~] 103(a)(1) of P.L. 104-193 or 42 U.S.C. Sec. 608(a)(7)(C)(iii), The Personal Responsibility and Work Opportunity Reconciliation Act of 1996[~~, Pub. L. No. 104-193~~].

(2) Except as provided in Subsection (4), the division may not provide cash assistance to a family who has received cash assistance for 36 months or more.

(3) (a) The division shall count toward the 36-month time limit in Subsection (2) any time after January 1, 1997, during which:

(i) the parent client received cash assistance in this or another state; and

(ii) [~~if~~] the parent client is disqualified from receiving cash assistance and the parent client's income and assets are counted in determining eligibility for the family in this or another state.

(b) The division may not count toward the 36-month time limit in Subsection (2) or the 24-month time period in Subsection (4) any time during which a person 18 years of age or older received cash assistance as a minor child and not as a parent.

(4) (a) On a month-to-month basis for up to 24 months, the division may provide cash assistance to a family beyond the 36-month time limit in Subsection (2) if:

(i) during the previous month, the parent client was employed for no less than 80 hours; and

(ii) during at least six of the previous 24 months in which the family received cash assistance, the parent client was employed for no less than 80 hours a month.

(b) For up to 20% of the average monthly number of families who receive cash assistance under this part, the division may provide cash assistance to a family beyond the 36-month time limit in Subsection (2):

(i) by reason of a hardship; or

(ii) if the family includes an individual who has been battered or subjected to extreme cruelty.

(c) For up to 20% of the average monthly number of families who receive cash assistance under this part, the division may provide cash assistance to a family beyond the additional 24-month time period in Subsection (4)(a):

(i) by reason of a hardship; or

(ii) if the family includes an individual who has been battered or subjected to extreme cruelty.

(d) Except as provided in Subsection (4)(c), the division may not provide cash assistance to a family who has received 60 months of cash assistance after October 1, 1996.

Section 41. Section **35A-4-103** is amended to read:

35A-4-103. Void agreements -- Child support obligations -- Penalties.

(1) (a) Any agreement by an individual to waive, release, or commute his rights to benefits or any other rights under this chapter is void.

(b) Any agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's contributions, required under this chapter from the employer, is void.

(c) No employer may directly or indirectly:

(i) make, require, or accept any deduction from wages to finance the employer's contributions required from the employer;

(ii) require or accept any waiver of any right under this chapter by any individual in his employ;

(iii) discriminate in regard to the hiring or tenure of work on any term or condition of work of any individual on account of his claiming benefits under this chapter; or

(iv) in any manner obstruct or impede the filing of claims for benefits.

(d) (i) Any employer or officer or agent of an employer who violates Subsection (1)(c) is, for each offense, guilty of a class B misdemeanor.

(ii) Notwithstanding Sections 76-3-204 and 76-3-301, a fine imposed under Subsection (1) shall be not less than $100, and a penalty of imprisonment shall be not more than six months.

(2) No individual claiming benefits shall be charged fees or costs of any kind in any proceeding under this chapter by the department, or by any court or any officer of the court.

(3) (a) Any individual claiming benefits in any proceeding before the department or its representatives or a court may be represented by counsel or any other duly authorized agent.

(b) No counsel or agent shall either charge or receive for his services more than an amount approved by the division or administrative law judge in accordance with rules made by the department.

(c) Any person who violates any provision of Subsection (3) is guilty of a class B misdemeanor for each offense.

(d) Notwithstanding Sections 76-3-204 and 76-3-301, a fine imposed under Subsection (3) shall be not less than $50 nor more than $500, and a penalty for imprisonment shall be not more than six months.

(4) Except as provided for in Subsection (5):

(a) any assignment, pledge, or encumbrance of any right to benefits that are or may become due or payable under this chapter is void;

(b) rights to benefits are exempt from levy, execution, attachment, or any other remedy provided for the collection of debt;

(c) benefits received by any individual, so long as they are not mingled with other funds of the recipient, are exempt from any remedy for the collection of all debts except debts incurred for necessaries furnished to the individual or his spouse or dependents during the time when the individual was unemployed; and

(d) any waiver of any exemption provided for in Subsection (4) is void.

(5) (a) An individual filing a new claim for unemployment compensation shall, at the time of filing the claim, disclose whether or not he owes child support obligations.

(b) If the individual owes child support obligations, and is determined to be eligible for unemployment compensation, the division shall notify the state or local child support agency charged with enforcing that obligation that the individual is eligible for unemployment compensation.

(c) The division shall deduct and withhold from any unemployment compensation payable to an individual that owes child support obligations:

(i) any amount required to be deducted and withheld from unemployment compensation under legal process, as defined in [~~Subsection 462(e) of~~] the Social Security Act, 42 U.S.C. [~~662(e)~~] Sec. 659(i), properly served upon the department;

(ii) the amount determined under an agreement submitted to the division under Subsection 454 (19)(B)(i) of the Social Security Act, 42 U.S.C. Sec. 654, by the state or local child support enforcement agency, except if Subsection (5)(c)(i) is applicable; or

(iii) the amount specified by the claimant to the division if neither Subsection (5)(c)(i) nor (ii) is applicable.

(d) Any amount deducted and withheld under Subsection (5)(c) shall be paid by the department to the appropriate state or local child support enforcement agency.

(e) Any amount deducted and withheld under Subsection (5)(c) shall, for all purposes, be treated as if it was paid to the individual as unemployment compensation and then paid by him to the state or local child support enforcement agency in satisfaction of his child support obligation.

(f) For purposes of Subsection (5):

(i) "Child support obligation" means obligations that are enforced under a plan described in Section 454 of the Social Security Act, 42 U.S.C. Sec. 654, that has been approved by the Secretary of Health and Human Services under Part D of Title IV of the Social Security Act, 42 U.S.C. Sec. 651 et seq.

(ii) "State or local child support enforcement agency" means any agency or political

subdivision of the state operating under a plan described in Subsection (5).

(iii) "Unemployment compensation" means any compensation payable under this chapter, including amounts payable under an agreement directed by federal law that provides compensation assistance or allowances for unemployment.

(g) Subsection (5) is applicable only if appropriate arrangements have been made for reimbursement by the state or local child support enforcement agency for the administrative costs of the department under Subsection (5) that are directly related to the enforcement of child support obligations.

Section 42. Section **35A-4-305** is amended to read:

35A-4-305. Collection of contributions -- Unpaid contributions to bear interest.

(1) (a) Contributions unpaid on the date on which they are due and payable, as prescribed by the division, shall bear interest at the rate of 1% per month from and after that date until payment plus accrued interest is received by the division.

(b) (i) Contribution reports not made and filed by the date on which they are due as prescribed by the division shall be subject to a penalty to be assessed and collected in the same manner as contributions due under this section equal to 5% of the contribution due if the failure to file on time was not more than 15 days, with an additional 5% for each additional 15 days or fraction thereof during which the failure continued, but not to exceed 25% in the aggregate and not less than $25 with respect to each reporting period.

(ii) If a report is filed after such time and it is shown to the satisfaction of the division or its authorized representative that the failure to file was due to a reasonable cause and not to willful neglect, no addition shall be made to the contribution.

(c) (i) If contributions are unpaid after ten days from the date of the mailing or personal delivery by the division or its authorized representative, of a written demand for payment, there shall attach to the contribution, to be assessed and collected in the same manner as contributions due under this section, a penalty equal to 5% of the contribution due.

(ii) A penalty may not attach if within ten days after the mailing or personal delivery, arrangements for payment have been made with the division, or its authorized representative, and

payment is made in accordance with those arrangements.

(d) The division shall assess as a penalty a service charge, in addition to any other penalties that may apply, in an amount not to exceed the maximum service charge allowed by Subsection 7-15-1(2) for dishonored instruments if:

(i) any amount due the division for contributions, interest, other penalties or benefit overpayments is paid by check, draft, order, or other instrument; and

(ii) the instrument is dishonored or not paid by the institution against which it is drawn.

(e) Except for benefit overpayments under Subsection 35A-4-405(5), benefit overpayments, contributions, interest, penalties, and assessed costs, uncollected three years after they become due, may be charged as uncollectable and removed from the records of the division if:

(i) no assets belonging to the liable person and subject to attachment can be found; and

(ii) in the opinion of the division there is no likelihood of collection at a future date.

(f) Interest and penalties collected in accordance with this section shall be paid into the Special Administrative Expense Fund.

(g) Action required for the collection of sums due under this chapter is subject to the applicable limitations of actions under Title 78, Chapter 12, Limitation of Actions.

(2) (a) If an employer fails to file a report when prescribed by the division for the purpose of determining the amount of the employer's contribution due under this chapter, or if the report when filed is incorrect or insufficient or is not satisfactory to the division, the division may determine the amount of wages paid for employment during the period or periods with respect to which the reports were or should have been made and the amount of contribution due from the employer on the basis of such information as it may be able to obtain.

(b) The division shall give written notice of the determination to the employer.

(c) The determination is considered correct unless:

(i) the employer, within ten days after mailing or personal delivery of notice of the determination, applies to the division for a review of the determination as provided in Section 35A-4-508; or

(ii) unless the division or its authorized representative of its own motion reviews the

determination.

(d) The amount of contribution so determined shall be subject to penalties and interest as provided in Subsection (1).

(3) (a) If, after due notice, any employer defaults in any payment of contributions, interest, or penalties on the contributions, or any claimant defaults in any repayment of benefit overpayments and penalties on the overpayments, the amount due shall be collectible by civil action in the name of the division, and the employer adjudged in default shall pay the costs of the action.

(b) Civil actions brought under this section to collect contributions, interest or penalties from an employer, or benefit overpayments and penalties from a claimant shall be:

(i) heard by the court at the earliest possible date; and

(ii) entitled to preference upon the calendar of the court over all other civil actions except:

(A) petitions for judicial review under this chapter; and

(B) cases arising under the workers' compensation law of this state.

(c) (i) To collect contributions, interest or penalties, or benefit overpayments and penalties due from employers or claimants located outside Utah the division may employ private collectors providing debt collection services outside Utah. Accounts may be placed with private collectors only after the employer or claimant has been given a final notice that the division intends to place the account with a private collector for further collection action. The notice shall advise the employer or claimant of the employer's or claimant's rights under this chapter and the rules applicable of the department.

(ii) A private collector may receive as compensation up to, but no more than, 25% of the lesser of the amount collected or the amount due, plus the costs and fees of any civil action or post-judgment remedy instituted by the private collector with the approval of the division. The employer or claimant shall be liable to pay the compensation of the collector, costs, and fees in addition to the original amount due.

(iii) A private collector is subject to the federal Fair Debt Collection Practices Act, 15 U.S.C. Sec. 1692 et seq. [~~Fair Debt Collection Practices Act.~~]

(iv) A civil action may not be maintained by any private collector without specific prior

written approval of the division. When division approval is given for civil action against an employer or claimant, the division may cooperate with the private collector to the extent necessary to effect the civil action.

(d) (i) Notwithstanding Section 35A-4-312, the division may disclose the contribution, interest, penalties or benefit overpayments and penalties, costs due, the name of the employer or claimant, and the employer's or claimant's address and telephone number when any collection matter is referred to a private collector under Subsection (3)(c).

(ii) A private collector is subject to the confidentiality requirements and penalty provisions provided in Section 35A-4-312 and Subsection 35A-4-104(4), except to the extent disclosure is necessary in any civil action to enforce collection of the amounts due.

(e) An action taken by the division under this section may not be construed to be an election to forego other collection procedures by the division.

(4) (a) In the event of any distribution of an employer's assets under an order of any court under the laws of Utah, including any receivership, assignment for benefits of creditors, adjudicated insolvency, composition, or similar proceedings, contributions then or thereafter due shall be paid in full prior to all other claims except taxes and claims for wages of not more than $400 to each claimant, earned within five months of the commencement of the proceeding.

(b) If an employer commences a proceeding in the Federal Bankruptcy Court under any chapter of the Bankruptcy Reform Act of 1978, 11 U.S.C. 101 et seq., as amended, contributions, interest, and penalties then or thereafter due shall be entitled to the priority provided for taxes, interest, and penalties in the Bankruptcy Reform Act of 1978.

(5) (a) In addition and as an alternative to any other remedy provided by this chapter and provided that no appeal or other proceeding for review provided by this chapter is then pending and the time for taking it has expired, the division may issue a warrant in duplicate, under its official seal, directed to the sheriff of any county of the state, commanding the sheriff to levy upon and sell the real and personal property of a delinquent employer or claimant found within the sheriff's county for the payment of the contributions due thereon, with the added penalties, interest, or benefit overpayment and penalties, and costs, and to return the warrant to the division and pay into the fund

the money collected by virtue of the warrant by a time to be therein specified, not more than 60 days from the date of the warrant.

(b) Immediately upon receipt of the warrant in duplicate, the sheriff shall file the duplicate with the clerk of the district court in the sheriff's county. The clerk shall enter in the judgment docket, in the column for judgment debtors, the name of the delinquent employer or claimant mentioned in the warrant, and in appropriate columns the amount of the contribution, penalties, interest, or benefit overpayment and penalties, and costs, for which the warrant is issued and the date when the duplicate is filed.

(c) The amount of the warrant so docketed shall:

(i) have the force and effect of an execution against all personal property of the delinquent employer; and

(ii) become a lien upon the real property of the delinquent employer or claimant in the same manner and to the same extent as a judgment duly rendered by any district court and docketed in the office of the clerk.

(d) After docketing, the sheriff shall:

(i) proceed in the same manner as is prescribed by law with respect to execution issued against property upon judgments of a court of record; and

(ii) be entitled to the same fees for the sheriff's services in executing the warrant, to be collected in the same manner.

(6) (a) Contributions imposed by this chapter are a lien upon the property of any employer liable for the contribution required to be collected under this section who shall sell out the employer's business or stock of goods or shall quit business, if the employer fails to make a final report and payment on the date subsequent to the date of selling or quitting business on which they are due and payable as prescribed by rule.

(b) An employer's successor, successors, or assigns, if any, shall be required to withhold sufficient of the purchase money to cover the amount of the contributions and interest or penalties due and payable until such time as the former owner shall produce a receipt from the division showing that they have been paid or a certificate stating that no amount is due. If the purchaser of

a business or stock of goods fails to withhold sufficient purchase money, the purchaser shall be personally liable for the payment of the amount of the contributions required to be paid by the former owner, interest and penalties accrued and unpaid by the former owner, owners, or assignors.

(7) (a) If any employer is delinquent in the payment of any contribution, the division may give notice of the amount of the delinquency by registered mail to all persons having in their possession or under their control, any credits or other personal property belonging to the employer, or owing any debts to the employer at the time of the receipt by them of the notice.

(b) Any persons notified under Subsection (7)(a) shall neither transfer nor make any other disposition of the credits, other personal property, or debts until:

(i) the division has consented to a transfer or disposition; or

(ii) 20 days after the receipt of the notice.

(c) All persons notified under Subsection (7)(a) shall within five days after receipt of the notice, advise the division of credits, other personal property, or other debts in their possession, under their control or owing by them, as the case may be.

(8) (a) Each employer shall furnish the division necessary information for the proper administration of this chapter and shall include wage information for each employee, for each calendar quarter beginning October 1, 1984. The information shall be furnished at a time, in the form, and to those individuals as the department may by rule require.

(b) Each employer shall furnish each individual worker who is separated that information as the department may by rule require, and shall furnish within 48 hours of the receipt of a request from the division a report of the earnings of any individual during the individual's base-period. The report shall be on a form prescribed by the division and contain all information prescribed by the division.

(c) For each failure by an employer to conform to this Subsection (8) the division shall, unless good cause is shown to the satisfaction of the division for the failure, assess a $50 penalty to be collected in the same manner as contributions due under this chapter.

(9) If any person liable to pay any contribution or benefit overpayment imposed by this chapter neglects or refuses to pay the same after demand, the amount, including any interest,

additional amount, addition to contributions, or assessable penalty, together with any additional accruable costs, shall be a lien in favor of the division upon all property and rights to property, whether real or personal belonging to the person.

(10) (a) The lien imposed by Subsection (9) arises at the time the assessment, as defined in the department rules, is made and continues until the liability for the amount so assessed, or a judgment against the taxpayer arising out of the liability, is satisfied.

(b) The lien imposed by Subsection (9) is not valid as against any purchaser, holder of a security interest, mechanics lien holder, or judgment lien creditor until a warrant which meets the requirements of Subsection (5) has been filed with the clerk of the district court. For the purposes of Subsection (10)(b):

(i) "Judgment lien creditor" means a person who obtains a valid judgment of a court of record for recovery of specific property or a sum certain of money, and who in the case of a recovery of money, has a perfected lien under the judgment on the property involved. A judgment lien does not include inchoate liens such as attachment or garnishment liens until they ripen into a judgment. A judgment lien does not include the determination or assessment of a quasi-judicial authority, such as a state or federal taxing authority.

(ii) "Mechanics lien holder" means any person who has a lien on real property, or on the proceeds of a contract relating to real property, for services, labor, or materials furnished in connection with the construction or improvement of the property. A person has a lien on the earliest date the lien becomes valid against subsequent purchasers without actual notice, but not before the person begins to furnish the services, labor, or materials.

(iii) "Person" means:

(A) an individual;

(B) a trust;

(C) an estate;

(D) a partnership;

(E) an association;

(F) a company;

(G) a limited liability company;

(H) a limited liability partnership; or

(I) a corporation.

(iv) "Purchaser" means a person who, for adequate and full consideration in money or money's worth, acquires an interest, other than a lien or security interest, in property which is valid under state law against subsequent purchasers without actual notice.

(v) "Security interest" means any interest in property acquired by contract for the purpose of securing payment or performance of an obligation or indemnifying against loss or liability. A security interest exists at any time:

(A) the property is in existence and the interest has become protected under the law against a subsequent judgment lien arising out of an unsecured obligation; and

(B) to the extent that, at that time, the holder has parted with money or money's worth.

Section 43. Section **35A-4-508** is amended to read:

35A-4-508. Review of decision or determination by division -- Administrative law judge -- Division of adjudication -- Workforce Appeals Board -- Judicial review by Court of Appeals -- Exclusive procedure.

(1) (a) A review of a decision or determination involving contribution liability or applications for refund of contributions shall be made by the division in accordance with the provisions of this chapter.

(b) The division in conducting the review may in its discretion:

(i) refer the matter to an administrative law judge;

(ii) decide the application for review on the basis of any facts and information as may be obtained; or

(iii) hear argument or hold an informal hearing to secure further facts.

(c) After the review, notice of the decision shall be given to the employing unit.

(d) The decision made pursuant to the review is the final decision of the division unless, within ten days after the date of notification or mailing of the decision, a further appeal is initiated under the provisions of this section.

(2) (a) Within ten days after the mailing or personal delivery of a notice of a determination or decision rendered following a review under Subsection (1), an employing unit may appeal to the Division of Adjudication by filing a notice of appeal.

(b) The administrative law judge shall give notice of the pendency of the appeal to the division and any parties entitled to notice as provided by department rule. The administrative law judge shall receive into the record of the appeal any documents or other records provided by the division, and may obtain or request any additional documents or records held by the division or any of the parties that the administrative law judge considers relevant to a proper determination of the appeal.

(c) After affording the parties reasonable opportunity for a fair hearing, the administrative law judge shall make findings and conclusions and on that basis affirm, modify, or reverse the determination of the division.

(d) The parties and the division shall be promptly notified of the administrative law judge's decision and furnished a copy of the decision and findings.

(e) The decision of the administrative law judge is considered to be a final order of the department unless within 30 days after the date the decision of the administrative law judge is issued further appeal is initiated under this section and Chapter 1, Part 3, Adjudicative Proceedings.

(3) (a) The director of the Division of Adjudication shall assign an impartial, salaried administrative law judge selected in accordance with Subsection 35A-4-502(4)[~~(d)~~](a) to hear and decide referrals or appeals relating to claims for benefits or to make decisions affecting employing units under this chapter.

(b) All records on appeals shall be maintained in the offices of the Division of Adjudication. The records shall include an appeal docket showing the receipt and disposition of the appeals on review.

(4) The Workforce Appeals Board may review and decide an appeal from a decision of an administrative law judge issued under this chapter.

(5) (a) The manner in which disputed matters are presented, the reports required from the claimant and employing units, and the conduct of hearings and appeals shall be in accordance with

rules prescribed by the department for determining the rights of the parties, whether or not the rules conform to common-law or statutory rules of evidence and other technical rules of procedure.

(b) When the same or substantially similar evidence is relevant and material to the matters in issue in more than one proceeding, the same time and place for considering each matter may be fixed, hearings jointly conducted, a single record of the proceedings made, and evidence introduced with respect to one proceeding considered as introduced in the others, if in the judgment of the administrative law judge having jurisdiction of the proceedings, the consolidation would not be prejudicial to any party.

(6) (a) Except for reconsideration of any determination under Subsection 35A-4-406(2), any right, fact, or matter in issue, directly passed upon or necessarily involved in a determination or redetermination that has become final, or in a decision on appeal under this section that has become final, is conclusive for all the purposes of this chapter as between the division, the claimant, and all employing units that had notice of the determination, redetermination, or decision. Subject to appeal proceedings and judicial review as provided in this section, any determination, redetermination, or decision as to rights to benefits is conclusive for all the purposes of this chapter and is not subject to collateral attack by any employing unit, irrespective of notice.

(b) Any findings of fact or law, judgment, conclusion, or final order made by an unemployment insurance hearing officer, administrative law judge, or any person with the authority to make findings of fact or law in any action or proceeding before the unemployment insurance appeals tribunal, is not conclusive or binding in any separate or subsequent action or proceeding, between an individual and the individual's present or prior employer, brought before an arbitrator, court, or judge of this state or the United States, regardless of whether the prior action was between the same or related parties or involved the same facts.

(7) (a) Any decision in the absence of an appeal as provided becomes final upon issuance and judicial review may be permitted only after any party claiming to be aggrieved has exhausted the party's remedies before the department as provided by this chapter.

(b) The division is a party to any judicial action involving any decisions and shall be represented in the judicial action by any qualified attorney employed by the department and

designated by it for that purpose or at the division's request by the attorney general.

(8) (a) Within 30 days after the decision of the Workforce Appeals Board is issued, any aggrieved party may secure judicial review by commencing an action in the court of appeals against the Workforce Appeals Board for the review of its decision, in which action any other party to the proceeding before the Workforce Appeals Board shall be made a defendant.

(b) In that action a petition, that shall state the grounds upon which a review is sought, shall be served upon the Workforce Appeals Board or upon that person the Workforce Appeals Board designates. This service is considered completed service on all parties but there shall be left with the party served as many copies of the petition as there are defendants and the Workforce Appeals Board shall mail one copy to each defendant.

(c) With its answer, the Workforce Appeals Board shall certify and file with the court all documents and papers and a transcript of all testimony taken in the matter together with its findings of fact and decision, in accordance with the requirements of the Utah Rules of Appellate Procedure.

(d) The Workforce Appeals Board may certify to the court questions of law involved in any decision by the board.

(e) In any judicial proceeding under this section, the findings of the Workforce Appeals Board as to the facts, if supported by evidence, are conclusive and the jurisdiction of the court is confined to questions of law.

(f) It is not necessary in any judicial proceeding under this section to enter exceptions to the rulings of the division, an administrative law judge, Workforce Appeals Board and no bond is required for entering the appeal.

(g) Upon final determination of the judicial proceeding, the division shall enter an order in accordance with the determination. In no event may a petition for judicial review act as a supersedeas.

(9) The procedure provided for hearings and decisions with respect to any decision or determination of the division affecting claimants or employing units under this chapter is the sole and exclusive procedure notwithstanding any other provision of this title.

Section 44. Section **36-11-102** is amended to read:

36-11-102. Definitions.

As used in this chapter:

(1) "Aggregate daily expenditures" means the total expenditures made within a 24-hour period.

(2) "Executive action" means:

(a) nominations and appointments by the governor;

(b) the proposal, drafting, amendment, enactment, or defeat by a state agency of any rule made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act; and

(c) agency ratemaking proceedings.

(3) (a) "Expenditure" means any of the items listed in this subsection when given to or for the benefit of a public official or his immediate family:

(i) a purchase, payment, distribution, loan, gift, advance, deposit, subscription, forbearance, services, or goods, unless consideration of equal or greater value is received; and

(ii) a contract, promise, or agreement, whether or not legally enforceable, to provide any of the items listed in Subsection (3)(a)(i).

(b) "Expenditure" does not mean:

(i) a commercially reasonable loan made in the ordinary course of business;

(ii) a campaign contribution reported in accordance with Title [~~20~~] 20A, Chapter [~~14~~] 11, Corrupt Practices in Elections;

(iii) printed informational material;

(iv) a devise or inheritance;

(v) any item listed in Subsection (3)(a) if given by a relative;

(vi) a modest item of food or refreshment such as a beverage or pastry offered other than as part of a meal;

(vii) a greeting card or other item of little intrinsic value that is intended solely for presentation;

(viii) plaques, commendations, or awards; or

(ix) reimbursement of reasonable expenses for or providing travel, lodging, or meals to a

public official when:

(A) those expenses are directly related to the public official's attendance and participation in a regularly scheduled meeting of an organization, association, or group; and

(B) that organization, association, or group pays or provides those expenses.

(4) (a) "Government officer" means:

(i) an individual elected to a position in state or local government, when acting within his official capacity; or

(ii) an individual appointed to or employed in a full-time position by state or local government, when acting within the scope of his employment.

(b) "Government officer" does not mean a member of the legislative branch of state government.

(5) "Immediate family" means a spouse, a child residing in the household, or an individual claimed as a dependent for tax purposes.

(6) "Interested person" means an individual defined in Subsections (9)(b)(ii) and (viii).

(7) "Legislative action" means:

(a) bills, resolutions, amendments, nominations, and other matters pending or proposed in either house of the Legislature or its committees or requested by a legislator; and

(b) the action of the governor in approving or vetoing legislation.

(8) "Lobbying" means communicating with a public official for the purpose of influencing the passage, defeat, amendment, or postponement of legislative or executive action.

(9) (a) "Lobbyist" means an individual who is employed by a principal or who contracts for economic consideration, other than reimbursement for reasonable travel expenses, with a principal to lobby a public official.

(b) "Lobbyist" does not include:

(i) a public official while acting in his official capacity on matters pertaining to his office or a state employee while acting within the scope of his employment;

(ii) any person appearing at, or providing written comments to, a hearing conducted in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act or Title 63, Chapter

46b, Administrative Procedures Act;

(iii) any person participating on or appearing before an advisory or study task force, commission, board, or committee, constituted by the Legislature or any agency or department of state government, except legislative standing, appropriation, or interim committees;

(iv) a representative of a political party;

(v) an individual representing a bona fide church solely for the purpose of protecting the right to practice the religious doctrines of the church unless the individual or church makes an expenditure that confers a benefit on a public official;

(vi) a newspaper, television station or network, radio station or network, periodical of general circulation, or book publisher for the purpose of publishing news items, editorials, other comments, or paid advertisements that directly or indirectly urge legislative or executive action;

(vii) an elected official of a local government while acting within the scope of his official capacity on matters pertaining to his office or an employee of a local government while acting within the scope of his employment; or

(viii) an individual who appears on his own behalf before a committee of the Legislature or an executive branch agency solely for the purpose of testifying in support of or in opposition to legislative or executive action.

(10) "Person" includes individuals, bodies politic and corporate, partnerships, associations, and companies.

(11) "Principal" means a person who employs a lobbyist either as an employee or as an independent contractor.

(12) "Public official" means:

(a) a member of the Legislature;

(b) an individual elected to a position in the executive branch; or

(c) an individual appointed to or employed in the executive or legislative branch if that individual:

(i) occupies a policymaking position or makes purchasing or contracting decisions;

(ii) drafts legislation or makes rules;

(iii) determines rates or fees; or

(iv) makes adjudicative decisions.

(13) "Related person" means any person, or agent or employee of a person, who knowingly and intentionally assists a lobbyist, principal, or government officer in lobbying.

(14) "Relative" means a spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, first cousin, or spouse of any of these individuals.

Section 45. Section **38-11-102** is amended to read:

38-11-102. Definitions.

(1) "Board" means the Residence Lien Recovery Fund Advisory Board established under Section 38-11-104.

(2) "Construction on an owner-occupied residence" means designing, engineering, constructing, altering, remodeling, improving, repairing, or maintaining a new or existing residence.

(3) "Department" means the Department of Commerce.

(4) "Director" means the director of the Division of Occupational and Professional Licensing.

(5) "Division" means the Division of Occupational and Professional Licensing.

(6) "Encumbered fund balance" means the aggregate amount of all outstanding claims against the fund. The remainder of monies in the fund are unencumbered funds.

(7) "Executive director" means the executive director of the Department of Commerce.

(8) "Fund" means the Residence Lien Recovery Fund established under Section 38-11-201.

(9) "Laborer" means a person who provides services at the site of the construction on an owner-occupied residence as an employee of an original contractor or other qualified beneficiary performing qualified services on the residence.

(10) "Licensee" means any holder of a license issued under Title 58, Chapters [~~3~~] 3a, 22, 53, and 55.

(11) "Original contractor" means a person who contracts with the owner of real property or the owner's agent to provide services, labor, or material for the construction of an owner-occupied

residence.

(12) "Owner" means a person who:

(a) contracts with a person who is licensed as a contractor or is exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, for the construction on an owner-occupied residence upon real property owned by that person;

(b) contracts with a real estate developer to buy a residence upon completion of the construction on the owner-occupied residence; or

(c) buys a residence from a real estate developer after completion of the construction on the owner-occupied residence.

(13) "Owner-occupied residence" means a residence that is, or after completion of the construction on the residence will be, occupied by the owner or the owner's tenant or lessee as a primary or secondary residence within 180 days from the date of the completion of the construction on the residence.

(14) "Qualified beneficiary" means a person who:

(a) provides qualified services;

(b) pays all necessary fees or assessment required under this chapter; and

(c) registers with the division:

(i) as a licensed contractor under Subsection 38-11-301(1) or (2) if that person seeks recovery from the fund as a licensed contractor; or

(ii) as a person providing qualified services other than as a licensed contractor under Subsection 38-11-301(3) if the person seeks recovery from the fund in a capacity other than as a licensed contractor.

(15) "Qualified services" means the following performed in construction on an owner-occupied residence:

(a) contractor services provided by a contractor licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act;

(b) architectural services provided by an architect licensed under Title 58, Chapter [~~3~~] 3a;

(c) engineering and land surveying services provided by a professional engineer or land

surveyor licensed or exempt from licensure under Title 58, Chapter 22;

(d) landscape architectural services by a landscape architect licensed or exempt from licensure under Title 58, Chapter 53;

(e) design and specification services of mechanical or other systems;

(f) other services related to the design, drawing, surveying, specification, cost estimation, or other like professional services;

(g) providing materials, supplies, components, or similar products;

(h) renting equipment or materials; and

(i) labor at the site of the construction on the owner-occupied residence.

(16) "Real estate developer" means a person having an ownership interest in real property who contracts for the construction of a residence that is offered for sale to the public.

(17) "Residence" means an improvement to real property used or occupied, to be used or occupied as, or in conjunction with, a primary or secondary detached single family residence or multifamily residence up to two units.

(18) "Subsequent owner" means a person who purchases a residence from an owner within 180 days from the date of the completion of the construction on the residence.

Section 46. Section **41-6-44** is amended to read:

41-6-44. Driving under the influence of alcohol, drugs, or with specified or unsafe blood alcohol concentration -- Measurement of blood or breath alcohol -- Criminal punishment -- Arrest without warrant -- Penalties -- Suspension or revocation of license.

(1) As used in this section:

(a) "prior conviction" means any conviction for a violation of:

(i) this section;

(ii) alcohol-related reckless driving under Subsections (9) and (10);

(iii) local ordinances similar to this section or alcohol-related reckless driving adopted in compliance with Section 41-6-43;

(iv) automobile homicide under Section 76-5-207; or

(v) statutes or ordinances in effect in any other state, the United States, or any district,

possession, or territory of the United States which would constitute a violation of this section or alcohol-related reckless driving if committed in this state, including punishments administered under 10 U.S.C. Sec. 815;

(b) a violation of this section includes a violation under a local ordinance similar to this section adopted in compliance with Section 41-6-43; and

(c) the standard of negligence is that of simple negligence, the failure to exercise that degree of care that an ordinarily reasonable and prudent person exercises under like or similar circumstances.

(2) (a) A person may not operate or be in actual physical control of a vehicle within this state if the person:

(i) has a blood or breath alcohol concentration of .08 grams or greater as shown by a chemical test given within two hours after the alleged operation or physical control; or

(ii) is under the influence of alcohol, any drug, or the combined influence of alcohol and any drug to a degree that renders the person incapable of safely operating a vehicle.

(b) The fact that a person charged with violating this section is or has been legally entitled to use alcohol or a drug is not a defense against any charge of violating this section.

(c) Alcohol concentration in the blood shall be based upon grams of alcohol per 100 milliliters of blood, and alcohol concentration in the breath shall be based upon grams of alcohol per 210 liters of breath.

(3) A person convicted the first or second time of a violation of Subsection (2) is guilty of a:

(a) class B misdemeanor; or

(b) class A misdemeanor if the person:

(i) has also inflicted bodily injury upon another as a proximate result of having operated the vehicle in a negligent manner; or

(ii) had a passenger under 16 years of age in the vehicle at the time of the offense.

(4) (a) As part of any sentence imposed the court shall, upon a first conviction, impose a mandatory jail sentence of not less than 48 consecutive hours.

(b) The court may, as an alternative to all or part of a jail sentence, require the person to work in a community-service work program for not less than 24 hours.

(c) In addition to the jail sentence or community-service work program, the court shall:

(i) order the person to participate in an assessment and educational series at a licensed alcohol or drug dependency rehabilitation facility, as appropriate; and

(ii) impose a fine of not less than $700.

(d) For a violation committed after July 1, 1993, the court may order the person to obtain treatment at an alcohol or drug dependency rehabilitation facility if the licensed alcohol or drug dependency rehabilitation facility determines that the person has a problem condition involving alcohol or drugs.

(5) (a) If a person is convicted under Subsection (2) within six years of a prior conviction under this section, the court shall as part of any sentence impose a mandatory jail sentence of not less than 240 consecutive hours.

(b) The court may, as an alternative to all or part of a jail sentence, require the person to work in a community-service work program for not less than 80 hours.

(c) In addition to the jail sentence or community-service work program, the court shall:

(i) order the person to participate in an assessment and educational series at a licensed alcohol or drug dependency rehabilitation facility, as appropriate; and

(ii) impose a fine of not less than $800.

(d) The court may order the person to obtain treatment at an alcohol or drug dependency rehabilitation facility.

(6) (a) A third or subsequent conviction for a violation committed within six years of two or more prior convictions under this section is a:

(i) class A misdemeanor except as provided in Subsection (6)(a)(ii); and

(ii) third degree felony if at least:

(A) three prior convictions are for violations committed after April 23, 1990; or

(B) two prior convictions are for violations committed after July 1, 1996.

(b) (i) Under Subsection (6)(a)(i), the court shall as part of any sentence impose a fine of not

less than $2,000 and impose a mandatory jail sentence of not less than 720 hours.

(ii) The court may, as an alternative to all or part of a jail sentence, require the person to work in a community-service work program for not less than 240 hours, but only if the court enters in writing on the record the reason it finds the defendant should not serve the jail sentence. Enrollment in and completion of an alcohol or drug dependency rehabilitation program approved by the court may be a sentencing alternative to incarceration or community service if the program provides intensive care or inpatient treatment and long-term closely supervised follow-through after the treatment.

(iii) In addition to the jail sentence or community-service work program, the court shall order the person to obtain treatment at an alcohol or drug dependency rehabilitation facility.

(c) Under Subsection (6)(a)(ii), if the court suspends the execution of a prison sentence and places the defendant on probation the court shall impose:

(i) a fine of not less than $1,500;

(ii) a mandatory jail sentence of not less than 1,000 hours; and

(iii) an order requiring the person to obtain treatment at an alcohol or drug dependency rehabilitation program providing intensive care or inpatient treatment and long-term closely supervised follow-through after treatment.

(7) (a) The mandatory portion of any sentence required under this section may not be suspended and the convicted person is not eligible for parole or probation until any sentence imposed under this section has been served. Probation or parole resulting from a conviction for a violation under this section may not be terminated.

(b) The department may not reinstate any license suspended or revoked as a result of the conviction under this section, until the convicted person has furnished evidence satisfactory to the department that:

(i) all required alcohol or drug dependency assessment, education, treatment, and rehabilitation ordered for a violation committed after July 1, 1993, have been completed;

(ii) all fines and fees including fees for restitution and rehabilitation costs assessed against the person have been paid, if the conviction is a second or subsequent conviction for a violation

committed within six years of a prior violation; and

(iii) the person does not use drugs in any abusive or illegal manner as certified by a licensed alcohol or drug dependency rehabilitation facility, if the conviction is for a third or subsequent conviction for a violation committed within six years of two prior violations committed after July 1, 1993.

(8) (a) (i) The provisions in Subsections (4), (5), and (6) that require a sentencing court to order a convicted person to: participate in an assessment and educational series at a licensed alcohol or drug dependency rehabilitation facility; obtain, in the discretion of the court, treatment at an alcohol or drug dependency rehabilitation facility; obtain, mandatorily, treatment at an alcohol or drug dependency rehabilitation facility; or do a combination of those things, apply to a conviction for a violation of Section 41-6-44.6 or 41-6-45 under Subsection (9).

(ii) The court shall render the same order regarding education or treatment at an alcohol or drug dependency rehabilitation facility, or both, in connection with a first, second, or subsequent conviction under Section 41-6-44.6 or 41-6-45 under Subsection (9), as the court would render in connection with applying respectively, the first, second, or subsequent conviction requirements of Subsections (4), (5), and (6).

(b) Any alcohol or drug dependency rehabilitation program and any community-based or other education program provided for in this section shall be approved by the Department of Human Services.

(9) (a) (i) When the prosecution agrees to a plea of guilty or no contest to a charge of a violation of Section 41-6-45, of an ordinance enacted under Section 41-6-43, or of Section 41-6-44.6 in satisfaction of, or as a substitute for, an original charge of a violation of this section, the prosecution shall state for the record a factual basis for the plea, including whether or not there had been consumption of alcohol, drugs, or a combination of both, by the defendant in connection with the violation.

(ii) The statement is an offer of proof of the facts that shows whether there was consumption of alcohol, drugs, or a combination of both, by the defendant, in connection with the violation.

(b) The court shall advise the defendant before accepting the plea offered under this

subsection of the consequences of a violation of Section 41-6-44.6 or of Section 41-6-45.

(c) The court shall notify the department of each conviction of Section 41-6-44.6 or 41-6-45 entered under this subsection.

(10) A peace officer may, without a warrant, arrest a person for a violation of this section when the officer has probable cause to believe the violation has occurred, although not in his presence, and if the officer has probable cause to believe that the violation was committed by the person.

(11) (a) The Department of Public Safety shall:

(i) suspend for 90 days the operator's license of a person convicted for the first time under Subsection (2);

(ii) revoke for one year the license of a person convicted of any subsequent offense under Subsection (2) if the violation is committed within a period of six years from the date of the prior violation; and

(iii) suspend or revoke the license of a person as ordered by the court under Subsection (12).

(b) The department shall subtract from any suspension or revocation period the number of days for which a license was previously suspended under Section 53-3-223, if the previous suspension was based on the same occurrence upon which the record of conviction is based.

(12) (a) In addition to any other penalties provided in this section, a court may order the operator’s license of a person who is convicted of a violation of Subsection (2) to be suspended or revoked for an additional period of 90 days, 180 days, or one year to remove from the highways those persons who have shown they are safety hazards.

(b) If the court suspends or revokes the person’s license under this subsection, the court shall prepare and send to the Driver License Division of the Department of Public Safety an order to suspend or revoke that person's driving privileges for a specified period of time.

Section 47. Section **41-22-30** is amended to read:

41-22-30. Supervision, safety certificate, or driver license required -- Penalty.

(1) A person may not operate and an owner may not give that person permission to operate an off-highway vehicle on any public land, trail, street, or highway of this state unless the person:

(a) is under the direct supervision of a certified off-highway vehicle safety instructor during a scheduled safety training course;

(b) has in his possession the appropriate safety certificate issued by the division; or

(c) has in his immediate possession a valid motor vehicle operator's license, as provided in Title 53, Chapter 3, Uniform Driver License Act.

(2) (a) Any person convicted of a violation of this section is guilty of an infraction and shall be fined not more than $50 per offense.

(b) It is a defense to a charge under this section, if the person charged produces in court a license or an appropriate safety certificate that was issued to the [~~youth~~] person operating the off-highway vehicle and was valid at the time of the citation or arrest.

(3) The requirements of this section apply only to Utah residents.

Section 48. Section **52-3-4** is amended to read:

52-3-4. Exceptions in towns and rural areas.

(1) In a town, as defined in [~~Subsection~~] Section 10-1-104[~~(4)~~], this chapter shall not apply to the employment of uncles, aunts, nephews, nieces, or cousins.

(2) This chapter shall not apply to the employment of a relative if:

(a) fewer than 3,000 people live within 40 miles of the primary place of employment, measured over all weather public roads;

(b) the job opening has had reasonable public notice; and

(c) the relative is the best qualified candidate for the position.

(3) In any proceeding challenging the hiring of a relative under the exception in Subsection (2), the employer has the burden of establishing each of the criteria provided in Subsections (2)(a) through (c).

Section 49. Section **53-3-219** is amended to read:

53-3-219. Suspension of minor's driving privileges.

(1) The division shall immediately suspend all driving privileges of any person upon receipt of an order suspending driving privileges under Section 32A-12-209, Subsection 76-9-701(1), or Section 78-3a-506.

(a) Upon receipt of the first order suspending a person's driving privileges, the division shall impose a suspension for 90 days or, if the person is under the age of eligibility for a driver license, deny application for a driver license for the first 90 days following the date of eligibility.

(b) Upon receipt of a second order suspending a person's driving privileges, the division shall impose a suspension for six months or, if the person is under the age of eligibility for a driver license, deny application for a driver license for the first six months following the date of eligibility.

(c) Upon receipt of a third or subsequent order suspending a person's driving privileges, the division shall impose a suspension for one year or, if the person is under the age of eligibility for a driver license, deny application for a driver license for one year beginning on the date of eligibility.

(2) After reinstatement of the license under Subsection (1)(a), a report authorized under Section 53-3-104 may not contain evidence of the suspension of a [~~juvenile's~~] minor's license under this section if he has not been convicted of any other offense for which the suspension under Subsection (1)(a) may be extended.

Section 50. Section **53-5-704** is amended to read:

53-5-704. Division duties -- Permit to carry concealed firearm -- Requirements for issuance -- Violation -- Denial, suspension, or revocation -- Appeal procedure.

(1) The division or its designated agent shall issue a permit to carry a concealed firearm for lawful self defense to an applicant who is 21 years of age or older within 60 days after receiving an application and upon proof that the person applying is of good character. The permit is valid throughout the state, without restriction, for two years.

(2) An applicant satisfactorily demonstrates good character if he:

(a) has not been convicted of a felony;

(b) has not been convicted of any crime of violence;

(c) has not been convicted of any offenses involving the use of alcohol;

(d) has not been convicted of any offense involving the unlawful use of narcotics or other controlled substances;

(e) has not been convicted of any offenses involving moral turpitude;

(f) has not been convicted of any offense involving domestic violence;

(g) has not been adjudicated by a court of a state or of the United States as mentally incompetent, unless the adjudication has been withdrawn or reversed.

(3) (a) The division may deny, suspend, or revoke a concealed firearm permit if the licensing authority has reasonable cause to believe that the applicant has been or is a danger to self or others as demonstrated by evidence including, but not limited to:

(i) past pattern of behavior involving unlawful violence or threats of unlawful violence;

(ii) past participation in incidents involving unlawful violence or threats of unlawful violence; or

(iii) conviction of any offense in violation of Title 76, Chapter 10, Part 5, Weapons.

(b) In determining whether the applicant has been or is a danger to self or others, the division may inspect:

(i) expunged records of arrests and convictions of adults as provided in Section 77-18-15; and

(ii) juvenile court records as provided in Section 78-3a-206.

(c) (i) If a person granted a permit under this part has been charged with a crime of violence in Utah or any other state, the division shall suspend the permit.

(ii) Upon notice of the acquittal of the person charged, or notice of the charges having been dropped, the division shall immediately reinstate the suspended permit.

(4) A former peace officer who departs full-time employment as a peace officer, in an honorable manner, shall be issued a concealed firearm permit within five years of that departure if the officer meets the requirements of this section.

(5) In assessing good character under Subsection (2), the licensing authority shall consider mitigating circumstances.

(6) The licensing authority shall also require the applicant to provide:

(a) letters of character reference;

(b) two recent dated photographs;

(c) two sets of fingerprints;

(d) a five-year employment history;

(e) a five-year residential history; and

(f) evidence of general familiarity with the types of firearms to be concealed as defined in Subsection (7).

(7) (a) General familiarity with the types of firearms to be concealed includes training in:

(i) the safe loading, unloading, storage, and carrying of the types of firearms to be concealed; and

(ii) current laws defining lawful use of a firearm by a private citizen, including lawful self-defense, use of deadly force, transportation, and concealment.

(b) Evidence of general familiarity with the types of firearms to be concealed may be satisfied by one of the following:

(i) completion of a course of instruction conducted by any national, state, or local firearms training organization approved by the division;

(ii) certification of general familiarity by a person who has been approved by the division, which may include a law enforcement officer, military or civilian firearms instructor, or hunter safety instructor; or

(iii) equivalent experience with a firearm through participation in an organized shooting competition, law enforcement, or military service.

(8) In issuing a permit under this part, the licensing authority is not vicariously liable for damages caused by the permit holder.

(9) If any person knowingly and willfully provides false information on an application filed under this part, he is guilty of a class B misdemeanor, and his application may be denied, or his permit may be suspended or revoked.

(10) (a) In the event of a denial, suspension, or revocation by the agency, the applicant may file a petition for review with the board within 60 days from the date the denial, suspension, or revocation is received by the applicant by certified mail, return receipt requested.

(b) The denial of a permit shall be in writing and shall include the general reasons for the action.

(c) If an applicant appeals his denial to the review board, the applicant may have access to

the evidence upon which the denial is based in accordance with Title 63, Chapter 2, Government Records Access and Management Act.

(d) On appeal to the board, the agency shall have the burden of proof by a preponderance of the evidence.

(e) Upon a ruling by the board on the appeal of a denial, the division shall issue a final order within 30 days stating the board's decision. The final order shall be in the form prescribed by Subsection 63-46b-5(1)(i). The final order is final agency action for purposes of judicial review under Section 63-46b-15.

[~~(12)~~] (11) The commissioner may make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, necessary to administer this chapter.

Section 51. Section **53-5-711** is amended to read:

53-5-711. Law enforcement officials and judges -- Training requirements -- Qualification -- Revocation.

(1) For purposes of this section and Section 76-10-523:

(a) "Judge" means a judge or justice of a court of record or court not of record, but does not include a judge pro tem or senior judge.

(b) "Law enforcement official of this state" means:

(i) a member of the Board of Pardons and Paroles;

(ii) a district attorney, deputy district attorney, county attorney or deputy county attorney of a county not in a prosecution district;

(iii) the attorney general;

(iv) an assistant attorney general designated as a criminal prosecutor; or

(v) a city attorney or a deputy city attorney designated as a criminal prosecutor.

(2) To qualify for the exemptions enumerated in Section 76-10-523, a law enforcement official or judge shall complete the following training requirements:

(a) meet the requirements of Sections 53-5-704, 53-5-706, and 53-5-707; and

(b) successfully complete an additional course of training as established by the commissioner of public safety designed to assist them while carrying out their official law

enforcement and judicial duties as agents for the state or its political subdivisions.

(3) Annual requalification requirements for law enforcement officials and judges shall be established by the:

(a) Board of Pardons and Paroles by rule for its members;

(b) Judicial Council by rule for judges; and

(c) the district attorney, county attorney in a county not in a prosecution district, the attorney general, or city attorney by policy for prosecutors under their jurisdiction.

(4) The division may:

(a) issue a certificate of qualification to a judge or law enforcement official who has completed the requirements of Subsection (1), which certificate of qualification is valid until revoked;

(b) revoke the certificate of qualification of a judge or law enforcement official[~~: (i)~~] who fails to meet the annual requalification criteria established pursuant to Subsection (3); [~~or~~] and

[~~(ii) as provided in Section 53-5-709; and~~]

(c) certify instructors for the training requirements of this section.

Section 52. Section **53-6-211** is amended to read:

53-6-211. Revocation, suspension, or refusal of certification -- Hearings -- Grounds -- Notice to employer.

(1) (a) The director may, upon the concurrence of the majority of the council, revoke, refuse, or suspend certification of a peace officer for cause.

(b) Except as provided under Subsection (6), the council shall give the person or peace officer involved prior notice and an opportunity for a full hearing before the council.

(c) The director, with the concurrence of the council, may by rule designate a presiding officer to represent the council in adjudicative proceedings or hearings before the council.

(d) Any of the following constitute cause for action under Subsection (1)(a):

(i) willful falsification of any information to obtain certified status;

(ii) physical or mental disability affecting the employee's ability to perform his duties;

(iii) addiction to or the unlawful sale, possession, or use of narcotics, drugs, or drug

paraphernalia;

(iv) conviction of a felony or any crime involving dishonesty, unlawful sexual conduct, physical violence, or driving under the influence of alcohol or drugs; or

(v) any conduct or pattern of conduct that would tend to disrupt, diminish, or otherwise jeopardize public trust and fidelity in law enforcement.

(2) (a) Notwithstanding any expungement statute or rule of any other jurisdiction, any conviction obtained in this state or other jurisdiction may be considered for purposes of this section.

(b) In this section, "conviction" includes a conviction that has been expunged, dismissed, or treated in a similar manner to either of these procedures.

(c) This provision applies to convictions entered both before and after [~~the effective date of this section~~] April 25, 1988.

(3) The director shall send notice to the governing body of the political subdivision employing the peace officer and shall receive information or comments concerning the peace officer from the governing body or the agency employing the officer before suspending or revoking that peace officer's certification.

(4) Denial, suspension, or revocation procedures may not be initiated by the council when an officer is terminated for infraction of his agency's policies, general orders, or similar guidelines of operation that do not amount to any of the causes for denial, suspension, or revocation enumerated in Subsection (1).

(5) (a) Termination of a peace officer, whether voluntary or involuntary, does not preclude revocation or subsequent denial of peace officer certification status by the council if the peace officer was terminated for any of the reasons under Subsection (1).

(b) Employment by another agency, or reinstatement of a peace officer by his parent agency after termination, whether the termination was voluntary or involuntary, does not preclude revocation or subsequent denial of peace officer certification status by the council if the peace officer was terminated for any of the reasons under Subsection (1).

(6) (a) When the cause for action is conviction of a felony, the proceedings prior to a recommendation shall be limited to an informal review of written documentation by the presiding

officer.

(b) If the presiding officer determines that the peace officer has been convicted of a felony, then the presiding officer shall recommend revocation.

(c) The peace officer may request an informal hearing before the presiding officer solely to present evidence that there was no felony conviction, or that the conviction has been overturned, reduced to a misdemeanor, or expunged.

(d) At the conclusion of an informal hearing, the presiding officer shall make a recommendation to the director and the council.

Section 53. Section **53C-3-103** is amended to read:

53C-3-103. Disposition of interest on permanent funds.

The interest derived from the investment of funds belonging to the permanent State School Fund, less the amount required to be retained in the [~~Permanent~~] State School Fund pursuant to the Utah Constitution Article X, Section [~~14~~] 5, and the permanent funds of the respective state institutions, shall be distributed for use for the maintenance of public elementary and secondary schools or the state institutions in accordance with Title 51, Chapter 7, State Money Management Act.

Section 54. Section **58-31-2** is amended to read:

58-31-2. Definitions.

In addition to the definitions in Section 58-1-102, as used in this chapter:

(1) "Applicant" means a person who applies for licensure under this chapter by submitting a completed application for licensure and the required fees to the department.

(2) "Approved education program" means a nursing education program that meets the minimum standards established under this chapter or by division rule in collaboration with the board.

(3) "Board" means the Board of Nursing created in Section 58-31-3.

(4) "Consultation and referral plan" means a written plan:

(a) jointly developed by an advanced practice registered nurse who has or is applying for prescriptive authority and the consulting physician to that nurse;

(b) approved by the Prescriptive Practice Board; and

(c) that contains consultation and referral criteria by which that advanced practice registered nurse, working in collaboration with that consulting physician, may prescribe medicines in the treatment of common health problems.

(5) "Consulting physician" means a physician who:

(a) has agreed to practice consultation with an advanced practice registered nurse who has or is applying for prescriptive authority in accordance with an approved written consultation and referral plan; and

(b) is actively engaged in the same or a similar practice as is the advanced practice registered nurse.

(6) "Diagnosis" means the identification of and discrimination between physical and psychosocial signs and symptoms essential to effective execution and management of health care.

(7) "Examinee" means a person who applies to take or does take any examination required under this chapter for licensure.

(8) "Licensee" means a person who is licensed under this chapter.

(9) "Physician" means a person licensed and in good standing as a physician and surgeon under Title 58, Chapter 67, Utah Medical Practice Act, or as an osteopathic physician under Title 58, Chapter [~~12, Practice of Medicine and Surgery and the Treatment of Human Ailments~~] 68, Utah Osteopathic Medical Practice Act.

(10) "Practice of nursing" means performance of acts by a person licensed under this chapter or Title 58, Chapter 44a, Nurse [~~Midwifery~~] Midwife Practice Act, based upon that person's knowledge, skill, preparation, education, and experience including:

(a) initiating and maintaining comfort measures;

(b) promoting and supporting human functions and responses;

(c) establishing an environment conducive to well-being;

(d) providing health counseling and teaching; and

(e) collaborating with health care professionals on aspects of the health care regimen.

(11) "Practice of practical nursing" means a performance of nursing acts as provided in this subsection by a person licensed under this chapter as a licensed practical nurse and under the

direction of a registered nurse, licensed physician, or other specified health care professional as defined by rule. Practical nursing acts include:

(a) contributing to the assessment of the health status of individuals and groups;

(b) participating in the development and modification of the strategy of care;

(c) implementing appropriate aspects of the strategy of care;

(d) maintaining safe and effective nursing care rendered to a patient directly or indirectly;

(e) participating in the evaluation of responses to interventions; and

(f) delegating nursing interventions that may be performed by others and that do not conflict with this chapter.

(12) "Practice of registered nursing" means performing acts of nursing as provided in this subsection by a person licensed under this chapter as a registered nurse. The nursing acts require substantial specialized education, preparation, skill, judgment, and knowledge in the generally recognized scope of practice of registered nurses. Registered nursing acts include:

(a) assessing the health status of individuals and groups;

(b) identifying health care needs;

(c) establishing goals to meet identified health care needs;

(d) planning a strategy of care;

(e) prescribing nursing interventions to implement the strategy of care;

(f) implementing the strategy of care;

(g) delegating nursing interventions that may be performed by others and are not in conflict with this chapter;

(h) maintaining safe and effective nursing care that is rendered to a patient directly or indirectly;

(i) evaluating responses to interventions;

(j) teaching the theory and practice of nursing; and

(k) managing and supervising the practice of nursing.

(13) "Practice of advanced practice registered nursing" means the practice of nursing within the generally recognized scope of advanced practice registered nursing as defined by division rule

consistent with professionally recognized preparation and education standards of an advanced practice registered nurse by a person licensed under this chapter as an advanced practice registered nurse. Advanced practice registered nursing includes:

(a) maintenance and promotion of health and prevention of disease;

(b) diagnosis, treatment, correction, consultation, or referral for common health problems; and

(c) prescription or administration of prescription drugs, including local anesthesia and prescription devices in conformance with an approved consultation and referral plan.

(14) "Practice of nurse anesthesia" means the practice of nursing by a person licensed under this chapter as a certified registered nurse anesthetist and includes the administration of general, regional, or local anesthesia.

(15) "Prescriptive Practice Board" means the Nurse Prescriptive Practice Board established in Section 58-31-3.

(16) "Unlawful conduct" as defined in Section 58-1-501 includes:

(a) using the following titles, names or initials, if the user is not properly licensed under this chapter:

(i) nurse;

(ii) licensed practical nurse, practical nurse, or L.P.N.;

(iii) registered nurse or R.N.;

(iv) registered nurse practitioner, N.P., or R.N.P.;

(v) registered nurse specialist, N.S., or R.N.S.;

(vi) registered psychiatric mental health nurse specialist;

(vii) advanced practice registered nurse;

(viii) nurse anesthetist, certified nurse anesthetist, certified registered nurse anesthetist, or C.R.N.A.; or

(ix) other generally recognized names or titles used in the profession of nursing; and

(b) using any other name, title, or initials that would cause a reasonable person to believe the user is licensed under this chapter if the user is not properly licensed under this chapter.

(17) "Unprofessional conduct" as defined in Section 58-1-501 and as may be further defined by rule includes:

(a) failure to safeguard a patient's right to privacy as to the patient's person, condition, diagnosis, personal effects, or any other matter about which the licensee is privileged to know because of the licensee's position or practice as a nurse;

(b) failure to provide nursing service in a manner that demonstrates respect for the patient's human dignity and unique personal character and needs without regard to the patient's race, religion, ethnic background, socioeconomic status, age, sex, or the nature of the patient's health problem;

(c) engaging in sexual relations with a patient during any:

(i) period when a generally recognized professional relationship exists between the nurse and patient; or

(ii) extended period when a patient has reasonable cause to believe a professional relationship exists between the nurse and patient;

(d) (i) as a result of any circumstance under Subsection (c) a licensee exploits or uses information about a patient or exploits the licensee's professional relationship between the licensee and the patient; or

(ii) the licensee exploits the patient by the use of the licensee's knowledge of the patient obtained while acting as a nurse;

(e) unlawfully obtaining, possessing, or using any prescription drug or illicit drug;

(f) unauthorized taking or personal use of nursing supplies from an employer;

(g) unauthorized taking or personal use of a patient's personal property;

(h) knowingly entering into any medical record any false or misleading information or altering a medical record in any way for the purpose of concealing an act, omission, or record of events, medical condition, or any other circumstance related to the patient and the medical or nursing care provided;

(i) unlawful or inappropriate delegation of nursing care;

(j) failure to exercise appropriate supervision of persons providing patient care services under supervision of the licensed nurse;

(k) employing or aiding and abetting the employing of an unqualified or unlicensed person to practice as a nurse; and

(l) failure to report to the division known facts regarding unprofessional or unlawful conduct by any health care professional licensed under the laws of this state.

Section 55. Section **58-37-6** is amended to read:

58-37-6. License to manufacture, produce, distribute, dispense, administer, or conduct research -- Issuance by department -- Denial, suspension, or revocation -- Records required -- Prescriptions.

(1) (a) The department may adopt rules relating to the licensing and control of the manufacture, distribution, production, prescription, administration, dispensing, conducting of research with, and performing of laboratory analysis upon controlled substances within this state.

(b) The department may assess reasonable fees to defray the cost of issuing original and renewal licenses under this chapter pursuant to Section 63-38-3.2.

(c) The director of the department may delegate to any division or agency within the department, authority to perform the responsibilities and functions prescribed to the department under this chapter if the delegated authority is consistent with the function of the division or agency provided by law.

(2) (a) (i) Every person who manufactures, produces, distributes, prescribes, dispenses, administers, conducts research with, or performs laboratory analysis upon any controlled substance in Schedules II through V within this state, or who proposes to engage in manufacturing, producing, distributing, prescribing, dispensing, administering, conducting research with, or performing laboratory analysis upon controlled substances included in Schedules II through V within this state shall obtain a license issued by the department.

(ii) The division shall issue each license under this chapter in accordance with a two-year renewal cycle established by rule. The division may by rule extend or shorten a renewal period by as much as one year to stagger the renewal cycles it administers.

(b) Persons licensed to manufacture, produce, distribute, prescribe, dispense, administer, conduct research with, or perform laboratory analysis upon controlled substances in Schedules II

through V within this state may possess, manufacture, produce, distribute, prescribe, dispense, administer, conduct research with, or perform laboratory analysis upon those substances to the extent authorized by their license and in conformity with this chapter.

(c) The following persons are not required to obtain a license and may lawfully possess controlled substances under this section:

(i) an agent or employee, except a sales representative, of any registered manufacturer, distributor, or dispenser of any controlled substance, if the agent or employee is acting in the usual course of his business or employment; however, nothing in this subsection shall be interpreted to permit an agent, employee, sales representative, or detail man to maintain an inventory of controlled substances separate from the location of his employer's registered and licensed place of business;

(ii) a motor carrier or warehouseman, or an employee of a motor carrier or warehouseman, who possesses any controlled substance in the usual course of his business or employment; and

(iii) an ultimate user, or any person who possesses any controlled substance pursuant to a lawful order of a practitioner.

(d) The department may enact rules waiving the license requirement for certain manufacturers, producers, distributors, prescribers, dispensers, administrators, research practitioners, or laboratories performing analysis if consistent with the public health and safety.

(e) A separate license is required at each principal place of business or professional practice where the applicant manufactures, produces, distributes, prescribes, dispenses, administers, conducts research with, or performs laboratory analysis upon controlled substances.

(f) The department may enact rules providing for the inspection of a licensee or applicant's establishment, and may inspect the establishment according to those rules.

(3) (a) Upon proper application, the department shall license a qualified applicant to manufacture, produce, distribute, conduct research with, or perform laboratory analysis upon controlled substances included in Schedules I through V, unless it determines that issuance of a license is inconsistent with the public interest. The department shall not issue a license to any person to prescribe, dispense, or administer a Schedule I controlled substance. In determining public interest, the department shall consider whether or not the applicant has:

(i) maintained effective controls against diversion of controlled substances and any Schedule I or II substance compounded from any controlled substance into other than legitimate medical, scientific, or industrial channels;

(ii) complied with applicable state and local law;

(iii) been convicted under federal or state laws relating to the manufacture, distribution, or dispensing of substances;

(iv) past experience in the manufacture of controlled dangerous substances;

(v) established effective controls against diversion; and

(vi) complied with any other factors that the department establishes that promote the public health and safety.

(b) Licenses granted under Subsection (3)(a) do not entitle a licensee to manufacture, produce, distribute, conduct research with, or perform laboratory analysis upon controlled substances in Schedule I other than those specified in the license.

(c) (i) Practitioners shall be licensed to administer, dispense, or conduct research with substances in Schedules II through V if they are authorized to administer, dispense, or conduct research under the laws of this state.

(ii) The department need not require a separate license for practitioners engaging in research with nonnarcotic controlled substances in Schedules II through V where the licensee is already licensed under this act in another capacity.

(iii) With respect to research involving narcotic substances in Schedules II through V, or where the department by rule requires a separate license for research of nonnarcotic substances in Schedules II through V, a practitioner shall apply to the department prior to conducting research.

(iv) Licensing for purposes of bona fide research with controlled substances by a practitioner considered qualified may be denied only on a ground specified in Subsection (4), or upon evidence that the applicant will abuse or unlawfully transfer or fail to safeguard adequately his supply of substances against diversion from medical or scientific use.

(v) Practitioners registered under federal law to conduct research in Schedule I substances may conduct research in Schedule I substances within this state upon furnishing the department

evidence of federal registration.

(d) Compliance by manufacturers, producers, and distributors with the provisions of federal law respecting registration, excluding fees, entitles them to be licensed under this chapter.

(e) The department shall initially license those persons who own or operate an establishment engaged in the manufacture, production, distribution, dispensation, or administration of controlled substances prior to April 3, 1980, and who are licensed by the state.

(4) (a) Any license pursuant to Subsection (2) or (3) may be denied, suspended, placed on probation, or revoked by the department upon finding that the applicant or licensee has:

(i) materially falsified any application filed or required pursuant to this chapter;

(ii) been convicted of an offense under this chapter or any law of the United States, or any state, relating to any substance defined as a controlled substance;

(iii) been convicted of a felony under any other law of the United States or any state within five years of the date of the issuance of the license;

(iv) had a federal license denied, suspended, or revoked by competent federal authority and is no longer authorized to engage in the manufacturing, distribution, or dispensing of controlled substances;

(v) had his license suspended or revoked by competent authority of another state for violation of laws or regulations comparable to those of this state relating to the manufacture, distribution, or dispensing of controlled substances;

(vi) violated any department rule that reflects adversely on the licensee's reliability and integrity with respect to controlled substances;

(vii) refused inspection of records required to be maintained under this chapter by a person authorized to inspect them; or

(viii) prescribed, dispensed, administered, or injected an anabolic steroid for the purpose of manipulating human hormonal structure so as to:

(A) increase muscle mass, strength, or weight without medical necessity and without a written prescription by any practitioner in the course of his professional practice; or

(B) improve performance in any form of human exercise, sport, or game.

(b) The department may limit revocation or suspension of a license to a particular controlled substance with respect to which grounds for revocation or suspension exist.

(c) (i) Proceedings to deny, revoke, or suspend a license shall be conducted pursuant to this section and in accordance with the procedures set forth in Title 58, Chapter 1, Division of Occupational and Professional Licensing Act, and conducted in conjunction with the appropriate representative committee designated by the director of the department.

(ii) Nothing in this Subsection (4)(c) gives the Division of Occupational and Professional Licensing exclusive authority in proceedings to deny, revoke, or suspend licenses, except where the department is designated by law to perform those functions, or, when not designated by law, is designated by the executive director of the Department of Commerce to conduct the proceedings.

(d) (i) The department may suspend any license simultaneously with the institution of proceedings under this section if it finds there is an imminent danger to the public health or safety.

(ii) Suspension shall continue in effect until the conclusion of proceedings, including judicial review, unless withdrawn by the department or dissolved by a court of competent jurisdiction.

(e) (i) If a license is suspended or revoked under Subsection (4), all controlled substances owned or possessed by the licensee may be placed under seal in the discretion of the department.

(ii) Disposition may not be made of substances under seal until the time for taking an appeal has lapsed, or until all appeals have been concluded, unless a court, upon application, orders the sale of perishable substances and the proceeds deposited with the court.

(iii) If a revocation order becomes final, all controlled substances shall be forfeited.

(f) The department shall notify promptly the [~~Bureau of Narcotics and Dangerous Drugs~~] Drug Enforcement Administration of all orders suspending or revoking a license and all forfeitures of controlled substances.

(5) (a) Persons licensed under Subsection (2) or (3) shall maintain records and inventories in conformance with the record keeping and inventory requirements of federal and state law and any additional rules issued by the department.

(b) (i) Every physician, dentist, veterinarian, practitioner, or other person who is authorized to administer or professionally use a controlled substance shall keep a record of the drugs received

by him and a record of all drugs administered, dispensed, or professionally used by him otherwise than by a prescription.

(ii) A person using small quantities or solutions or other preparations of those drugs for local application has complied with Subsection (5)(b) if he keeps a record of the quantity, character, and potency of those solutions or preparations purchased or prepared by him, and of the dates when purchased or prepared.

(6) Controlled substances in Schedules I through V may be distributed only by a licensee and pursuant to an order form prepared in compliance with department rules or a lawful order under the rules and regulations of the United States.

(7) (a) A person may not write or authorize a prescription for a controlled substance unless he is:

(i) a practitioner authorized to prescribe drugs and medicine under the laws of this state or under the laws of another state having similar standards; and

(ii) licensed under this chapter or under the laws of another state having similar standards.

(b) A person other than a pharmacist licensed under the laws of this state, or his licensed intern, as required by Section 58-17a-302, may not dispense a controlled substance.

(c) (i) A controlled substance may not be dispensed without the written prescription of a practitioner, if the written prescription is required by the federal Controlled Substances Act.

(ii) That written prescription shall be made in accordance with Subsection (7)(a) and in conformity with Subsection (7)(d).

(iii) In emergency situations, as defined by department rule, controlled substances may be dispensed upon oral prescription of a practitioner, if reduced promptly to writing on forms designated by the department and filed by the pharmacy.

(iv) Prescriptions reduced to writing by a pharmacist shall be in conformity with Subsection (7)(d).

(d) Except for emergency situations designated by the department, a person may not issue, fill, compound, or dispense a prescription for a controlled substance unless the prescription is signed in ink or indelible pencil by the prescriber and contains the following information:

(i) the name, address, and registry number of the prescriber;

(ii) the name, address, and age of the person to whom or for whom the prescription is issued;

(iii) the date of issuance of the prescription; and

(iv) the name, quantity, and specific directions for use by the ultimate user of the controlled substance.

(e) A prescription may not be written, issued, filled, or dispensed for a Schedule I controlled substance.

(f) Except when administered directly to an ultimate user by a licensed practitioner, controlled substances are subject to the following restrictions:

(i) A prescription for a Schedule II substance may be refilled only upon the written prescription of an authorized practitioner, and a prescription for a Schedule II controlled substance may not be filled in a quantity to exceed a one-month's supply, as directed on the daily dosage rate of the prescriptions.

(ii) A Schedule III or IV controlled substance may not be refilled more than six months after the date of its original issuance or be refilled more than five times after the date of the prescription unless renewed by the practitioner.

(iii) All other controlled substances in Schedule V may be refilled as the prescriber's prescription directs, but they may not be refilled one year after the date the prescription was issued unless renewed by the practitioner.

(iv) Any prescription for a Schedule II, III, and IV substance that is not presented to a pharmacist for dispensing by a pharmacist, or, if an oral prescription, that is not obtained within ten days of the date the prescription was written or authorized, may not be filled or dispensed.

(g) An order for a controlled substance in Schedules II through V for use by an inpatient or an outpatient of a licensed hospital is exempt from all requirements of Subsection (7) if the order is:

(i) issued or made by a prescribing practitioner who holds an unrestricted registration with the federal Drug Enforcement Administration, and an active Utah controlled substance license in good standing issued by the division under this section, or a medical resident who is exempted from licensure under Subsection 58-1-307(1)(c);

(ii) authorized by the prescribing practitioner treating the patient and the prescribing practitioner designates the quantity ordered;

(iii) entered upon the record of the patient, the record is signed by the prescriber affirming his authorization of the order within 48 hours after filling or administering the order, and the patient's record reflects the quantity actually administered; and

(iv) filled and dispensed by a pharmacist practicing his profession within the physical structure of the hospital, or the order is taken from a supply lawfully maintained by the hospital and the amount taken from the supply is administered directly to the patient authorized to receive it.

(h) A practitioner licensed under this chapter may not prescribe, administer, or dispense a controlled substance to a minor, without first obtaining the consent required in Section 78-14-5 of a parent, guardian, or person standing in loco parentis of the minor except in cases of an emergency. For purposes of this subsection, "minor" has the same meaning as defined in Section 78-3a-103, and "emergency" means any physical condition requiring the administration of a controlled substance for immediate relief of pain or suffering.

(i) A practitioner licensed under this chapter may not prescribe or administer dosages of a controlled substance in excess of medically recognized quantities necessary to treat the ailment, malady, or condition of the ultimate user.

(j) A practitioner licensed under this chapter may not prescribe, administer, or dispense any controlled substance to another person knowing that the other person is using a false name, address, or other personal information for the purpose of securing the controlled substance.

(k) A person who is licensed under this chapter to manufacture, distribute, or dispense a controlled substance may not manufacture, distribute, or dispense a controlled substance to another licensee or any other authorized person not authorized by this license.

(l) A person licensed under this chapter may not omit, remove, alter, or obliterate a symbol required by this chapter or by a rule issued under this chapter.

(m) A person licensed under this chapter may not refuse or fail to make, keep, or furnish any record notification, order form, statement, invoice, or information required under this chapter.

(n) A person licensed under this chapter may not refuse entry into any premises for

inspection as authorized by this chapter.

(o) A person licensed under this chapter may not furnish false or fraudulent material information in any application, report, or other document required to be kept by this chapter or willfully make any false statement in any prescription, order, report, or record required by this chapter.

(8) (a) Any person licensed under this chapter who is found by the department to have violated any of the provisions of Subsections (7)(k) through (7)(o) is subject to a fine not to exceed $5,000. The department shall determine the procedure for adjudication of any violations in accordance with Sections 58-1-106 and 58-1-108.

(b) Any person who knowingly and intentionally violates Subsections (7)(h) through (7)(j) is:

(i) upon first conviction, guilty of a class B misdemeanor;

(ii) upon second conviction, guilty of a class A misdemeanor;

(iii) on third or subsequent conviction, guilty of a third degree felony.

(c) Any person who knowingly and intentionally violates Subsections (7)(k) through (7)(o) shall upon conviction be guilty of a third degree felony.

(9) Any information communicated to any licensed practitioner in an attempt to unlawfully procure, or to procure the administration of, a controlled substance is not considered to be a privileged communication.

Section 56. Section **58-37-7.5** is amended to read:

58-37-7.5. Controlled Substance Database -- Advisory committee -- Pharmacy reporting requirements -- Access -- Penalties.

(1) As used in this section:

(a) "Committee" means the Controlled Substance Database Advisory Committee created in this section.

(b) "Database" means the controlled <u>substance</u> database created in this section.

(c) "Database manager" means the person responsible for operating the database, or his designee.

(d) "Division" means the Division of Occupational and Professional Licensing created in Section 58-1-103.

(e) "Drug outlet" has the same definition as in Section 58-17a-102.

(f) "Health care facility" has the same definition as in Section 26-21-2.

(2) (a) There is created within the division a controlled substance database.

(b) The division shall administer and direct the functioning of the database in accordance with this section. The division may under state procurement laws contract with another state agency or private entity to establish, operate, or maintain the database. The division in collaboration with the board shall determine whether to operate the database within the division or contract with another entity to operate the database, based on an analysis of costs and benefits.

(c) The purpose of the database is to contain data as described in this section regarding every prescription for a controlled substance dispensed in the state to any person other than an inpatient in a licensed health care facility.

(d) Data required by this section shall be submitted in compliance with this section to the manager of the database by the pharmacist in charge of the drug outlet where the controlled substance is dispensed.

(3) (a) There is created the Controlled Substance Database Advisory Committee. The committee members are:

(i) two members representing the Utah Medical Association;

(ii) one member representing the Utah Dental Association;

(iii) two members representing the Utah Pharmaceutical Association;

(iv) one member representing the Department of Public Safety;

(v) one member representing the Utah Association of Chiefs of Police;

(vi) one member representing the Utah Sheriffs Association;

(vii) one member representing the state Office of the Attorney General;

(viii) one member representing the Statewide Association of Public Attorneys; and

(ix) three members representing the general public, and who are not health care providers.

(b) The committee shall be appointed and serve in accordance with Section 58-1-201.

(c) The committee shall advise the division regarding:

(i) establishing, maintaining, and operating the database;

(ii) access to the database and how access is obtained; and

(iii) control of information contained in the database.

(4) The pharmacist in charge shall, regarding each controlled substance dispensed by a pharmacist under his supervision other than those dispensed for an inpatient at a health care facility, submit to the manager of the database the following information, by a procedure and in a format established by the division:

(a) name of the prescribing practitioner;

(b) date of the prescription;

(c) date the prescription was filled;

(d) name of the person for whom the prescription was written;

(e) positive identification of the person receiving the prescription, including the type of identification and any identifying numbers on the identification;

(f) name of the controlled substance;

(g) quantity of controlled substance prescribed;

(h) strength of controlled substance;

(i) quantity of controlled substance dispensed;

(j) dosage quantity and frequency as prescribed;

(k) name of drug outlet dispensing the controlled substance;

(l) name of pharmacist dispensing the controlled substance; and

(m) other relevant information as required by division rule.

(5) The division shall maintain the database in an electronic file or by other means established by the division to facilitate use of the database for identification of:

(a) prescribing practices and patterns of prescribing and dispensing controlled substances;

(b) practitioners prescribing controlled substances in an unprofessional or unlawful manner;

(c) individuals receiving prescriptions for controlled substances from licensed practitioners, and who subsequently obtain dispensed controlled substances from a drug outlet in quantities or with

a frequency inconsistent with generally recognized standards of dosage for that controlled substance; and

(d) individuals presenting forged or otherwise false or altered prescriptions for controlled substances to a drug outlet.

(6) (a) The division shall by rule establish the electronic format in which the information required under this section shall be submitted to the administrator of the database.

(b) The division shall ensure the database system records and maintains for reference:

(i) identification of each person who requests information from the database;

(ii) the information provided to the requesting person regarding each request; and

(iii) the date and time of each request.

(7) The division shall make rules in collaboration with the committee to:

(a) effectively enforce the limitations on access to the database as described in Subsection (8); and

(b) establish standards and procedures to ensure accurate identification of individuals requesting information from the database.

(8) The manager of the database shall make information in the database available only to the following persons, and in accordance with the limitations stated and division rules:

(a) personnel of the division specifically assigned to conduct investigations related to controlled substances laws under the jurisdiction of the division;

(b) authorized division personnel engaged in analysis of controlled substance prescription information as a part of the assigned duties and responsibilities of their employment;

(c) a licensed practitioner having authority to prescribe controlled substances, to the extent the information requested relates specifically to a current patient of the practitioner, to whom the practitioner is prescribing or considering prescribing any controlled substance;

(d) a licensed pharmacist having authority to dispense controlled substances to the extent the information requested relates specifically to a current patient to whom that pharmacist is dispensing or considering dispensing any controlled substance;

(e) federal, state, and local law enforcement authorities engaged as a specified duty of their

employment in enforcing laws regulating controlled substances; and

(f) an individual who is the recipient of a controlled substance prescription entered into the database, upon providing evidence satisfactory to the database manager that the individual requesting the information is in fact the person about whom the data entry was made.

(9) Any person who knowingly and intentionally releases any information in the database in violation of the limitations under Subsection (8) is guilty of a third degree felony.

(10) Any person who obtains or attempts to obtain information from the database by misrepresentation or fraud is guilty of a third degree felony.

(11) (a) A person may not knowingly and intentionally use, release, publish, or otherwise make available to any other person or entity any information obtained from the database for any purpose other than those specified in Subsection (8). Each separate violation of this subsection is a third degree felony and is also subject to a civil penalty not to exceed $5,000.

(b) The procedure for determining a civil violation of this subsection shall be in accordance with Section 58-1-108, regarding adjudicative proceedings within the division.

(c) Civil penalties assessed under this subsection shall be deposited in the General Fund.

(12) (a) The failure of a pharmacist in charge to submit information to the database as required under this section after the division has submitted a specific written request for the information or when the division determines the individual has a demonstrable pattern of failing to submit the information as required is grounds for the division to take the following actions in accordance with Section 58-1-401:

(i) refuse to issue a license to the individual;

(ii) refuse to renew the individual's license;

(iii) revoke, suspend, restrict, or place on probation the license;

(iv) issue a public or private reprimand to the individual;

(v) issue a cease and desist order; and

(vi) impose a civil penalty of not more than $1,000 for each dispensed prescription regarding which the required information is not submitted.

(b) Civil penalties assessed under Subsection (a)(vi) shall be deposited in the General Fund.

(c) The procedure for determining a civil violation of this subsection shall be in accordance with Section 58-1-108, regarding adjudicative proceedings within the division.

(13) An individual who has submitted information to the database in accordance with this section may not be held civilly liable for having submitted the information.

(14) (a) All department and the division costs necessary to establish and operate the database shall be funded by appropriations from the General Fund.

(b) Funding for this section shall be appropriated without the use of any resources within the Commerce Service Fund.

(15) All costs associated with recording and submitting data as required in this section shall be assumed by the submitting drug outlet.

Section 57. Section **58-47b-304** is amended to read:

58-47b-304. Exemptions from licensure.

(1) In addition to the exemptions from licensure in Section 58-1-307, the following individuals may engage in the practice of massage as defined under this chapter, subject to the stated circumstances and limitations, without being licensed, but may not represent themselves as a massage technician or massage apprentice:

(a) physicians and surgeons licensed under Title 58, Chapter [~~12, Part 5~~] 67, Utah Medical Practice Act;

(b) nurses licensed under Title 58, Chapter 31, Nurse Practice Act, or under Title 58, Chapter 44a, Nurse Midwife Practice Act;

(c) physical therapists licensed under Title 58, Chapter 24a, Physical Therapist Practice Act;

(d) [~~osteopaths~~] osteopathic physicians licensed under Title 58, Chapter [~~12, Part 1~~] 68, Utah Osteopathic [~~Medicine Licensing~~] Medical Practice Act;

(e) [~~chiropractors~~] chiropractic physicians licensed under Title 58, Chapter 73, Chiropractic Physician Practice Act;

(f) hospital staff members employed by a hospital who practice massage as part of their responsibilities;

(g) athletic trainers who practice massage as part of their responsibilities while employed

by an educational institution or an athletic team that participates in organized sports competition;

(h) students in training enrolled in a massage therapy school approved by the division; and

(i) individuals engaging in lymphatic massage and who meet training standards as defined by division rule.

(2) This chapter may not be construed to authorize any individual licensed as a massage technician to engage in any manner in the practice of medicine as defined by the laws of this state.

(3) This chapter may not be construed to:

(a) create or require insurance coverage or reimbursement for massage from third party payors if this type of coverage did not exist on or before February 15, 1990; or

(b) prevent any insurance carrier from offering coverage for massage.

Section 58. Section **58-56-4** is amended to read:

58-56-4. Adoption of building codes -- Amendments.

(1) As used in this section:

(a) "Agricultural use" means a use which relates to the tilling of soil and raising of crops, or keeping or raising domestic animals, for the purpose of commercial food production.

(b) "Not for human occupancy" means use of a structure for purposes other than protection or comfort of human beings, but allows people to enter the structure for maintenance and repair, and for the care of livestock, crops, or equipment intended for agricultural use which are kept there.

(2) Subject to the provisions of Subsections (4) and (5), the following are adopted as the construction standards to which the state and each political subdivision of this state shall adhere in building construction, alteration, remodeling and repair, and in the regulation of building construction, alteration, remodeling and repair:

(a) a building code promulgated by a nationally recognized code authority;

(b) the National Electrical Code promulgated by the National Fire Protection Association;

(c) a plumbing code adopted by a nationally recognized code authority; and

(d) a mechanical code promulgated by a nationally recognized code authority.

(3) The division, in collaboration with the commission, shall adopt by rule the edition of the NEC or code and specific edition of the codes described in Subsections [~~(1)~~] (2)(a), (c), and (d) to

be used as the standard and may adopt by rule successor editions of any adopted code.

(4) The division, in collaboration with the commission, may adopt amendments to the adopted codes to be applicable to the entire state or within a political subdivision only in accordance with Section 58-56-7.

(5) Except in a residential area, a structure used solely in conjunction with agriculture use, and not for human occupancy, is exempted from the permit requirements of any building code adopted by the division, however, unless otherwise exempted, plumbing, electrical, and mechanical permits may be required when that work is included in the structure.

Section 59. Section **58-56-5** is amended to read:

58-56-5. Building Code Commission -- Composition of commission -- Commission duties and responsibilities.

(1) There is established a Uniform Building Code Commission to advise the division with respect to the division's responsibilities in administering the codes under this chapter.

(2) The commission shall be appointed by the executive director who shall submit his nominations to the governor for confirmation or rejection. If a nominee is rejected, alternative names shall be submitted until confirmation is received. Following confirmation by the governor, the appointment shall be made.

(3) The commission shall consist of eleven members who shall be appointed in accordance with the following:

(a) one member shall be from among candidates nominated by the Utah League of Cities and Towns and the Utah Association of Counties;

(b) one member shall be a licensed building inspector employed by a political subdivision of the state;

(c) one member shall be a licensed professional engineer;

(d) one member shall be a licensed architect;

(e) one member shall be a fire official;

(f) three members shall be contractors licensed by the state, of which one shall be a general contractor, one an electrical contractor, and one a plumbing contractor;

(g) two members shall be from the general public and have no affiliation with the construction industry or real estate development industry; and

(h) one member shall be from the Division of Facilities Construction Management, Department of Administrative Services.

(4) (a) Except as required by Subsection (4)(b), as terms of current commission members expire, the executive director shall appoint each new member or reappointed member to a four-year term.

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

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

(6) No commission member may serve more than two full terms, and no commission member who ceases to serve may again serve on the commission until after the expiration of two years from the date of cessation of service.

(7) A majority of the commission members shall constitute a quorum and may act on behalf of the commission.

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

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

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

(ii) State government officer and employee members may decline to receive per diem and

expenses for their service.

(c) (i) Local government members who do not receive salary, per diem, or expenses from the entity that they represent for their service may receive per diem and expenses incurred in the performance of their official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

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

(9) The commission shall annually designate one of its members to serve as chair of the commission. The division shall provide a secretary to facilitate the function of the commission and to record its actions and recommendations.

(10) The duties and responsibilities of the commission are to:

(a) recommend to the director the adoption by rule of the edition of the NEC, and the specific codes and editions of the codes described in Subsections 58-56-4[~~(1)~~](2)(a), (c) and (d) adopted pursuant to this chapter;

(b) recommend to the director the adoption by rule of amendments to the NEC, the building code, the mechanical code, and plumbing code adopted pursuant to this chapter;

(c) offer an opinion regarding the interpretation of or the application of any of the codes adopted pursuant to this chapter upon a formal submission by a party to the matter in question which submission must clearly state the facts in question, the specific code citation involved and the position taken by all parties;

(d) act as an appeals board as provided in Subsection 58-56-8(3);

(e) establish advisory peer committees on either a standing or ad hoc basis to advise the commission with respect to building code matters, including a committee to advise the commission regarding health matters related to the UPC; and

(f) assist the division in overseeing code related training in accordance with Section 58-56-9.

Section 60. Section **58-56-7** is amended to read:

58-56-7. Code amendments -- Commission recommendations -- Division duties and responsibilities.

(1) The division, with the commission, shall establish by rule the procedure and manner under which requests for amendments to codes shall be:

(a) filed with the division; and

(b) recommended or declined for adoption.

(2) The division shall accept from any local regulators, state regulators, state agencies involved with the construction and design of buildings, the contractors, plumbers, or electricians licensing boards, or from recognized construction-related associations a request for amendment to the NEC, the building code, the mechanical code, or the plumbing code adopted under Section 58-56-4.

(3) The division or the commission on its own initiative may make recommendations to the commission for amendment to the NEC, the building code, the mechanical code, or the plumbing code adopted under Section 58-56-4.

(4) On May 15 and November 15 of each calendar year, or the first government working day thereafter if either date falls on a weekend or government holiday, the division shall convene a public hearing, as a part of the rulemaking process, before the commission concerning requests for amendment of the codes, recommended by the division and commission to be adopted by rule. The hearing shall be conducted in accordance with the rules of the commission.

(5) Within 15 days following completion of the hearing under Subsection (4) or (5), the commission shall provide to the division a written recommendation concerning each amendment.

(6) The division shall consider the recommendations and promulgate amendments by rule in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act and as prescribed by the director.

(7) The decision of the division to accept or reject the recommendation of the commission shall be made within 15 days after receipt of the recommendation.

(8) All decisions of the division pertaining to adoption of a code edition or amendments to any code, which are contrary to recommendations of the commission, may be overridden by a two-thirds vote of the commission according to a procedure to be established by rule.

(9) (a) Amendments with statewide application:

(i) shall be effective on the January 1 or July 1 immediately following the public hearing; or

(ii) may be effective prior to the dates in Subsection (i) if designated by the division and the commission as necessary for the public health, safety, and welfare.

(b) Amendments with local application only shall be effective on a date to be determined by the division and the commission.

(c) In making rules required by this chapter, the division shall comply with the provisions of Title 63, Chapter 46a, Administrative Rulemaking Act, the provisions of that chapter shall have control over this section in case of any conflict.

[~~(10) The commission shall study the necessity of an engineer's stamp on all building permits. This study shall be reported to the Business and Labor Interim Committee by November 1996.~~]

Section 61. Section **59-12-1102** is amended to read:

59-12-1102. Base -- Rate -- Imposition of tax -- Distribution of revenue -- Administration.

(1) (a) Subject to the provisions of Subsections (2) through (4), and in addition to any other tax authorized by this chapter, a county may impose by ordinance a county option sales and use tax of 1/4% upon the sales and uses described in Subsection 59-12-103(1), subject to the exemptions provided for in Section 59-12-104.

(b) The county option sales and use tax under this section shall be imposed:

(i) upon sales and uses made in the county, including sales and uses made within municipalities in the county; and

(ii) except as provided in Subsection (1)(c), beginning on the first day of January:

(A) of the next calendar year after adoption of the ordinance imposing the tax if the ordinance is adopted on or before May 25; or

(B) of the second calendar year after adoption of the ordinance imposing the tax if the ordinance is adopted after May 25.

(c) Notwithstanding Subsection (1)(b)(ii), the county option sales and use tax under this

section shall be imposed:

(i) beginning January 1, 1998, if an ordinance adopting the tax imposed on or before September 4, 1997; or

(ii) beginning January 1, 1999, if an ordinance adopting the tax is imposed during 1997 but after September 4, 1997.

(2) (a) Before imposing a county option sales and use tax under Subsection (1), a county shall:

(i) hold two public hearings on separate days in geographically diverse locations in the county; and

(ii) notify the commission at least 30 days prior to the adoption of the ordinance.

(b) (i) At least one of the hearings required by Subsection (2)(a)(i) shall have a starting time of no earlier than 6:00 p.m.

(ii) The earlier of the hearings required by Subsection (2)(a)(i) shall be no less than seven days after the day the first advertisement required by Subsection (2)(c) is published.

(c) (i) Before holding the public hearings required by Subsection (2)(a)(i), the county shall advertise in a newspaper of general circulation in the county:

(A) its intent to adopt a county option sales and use tax;

(B) the date, time, and location of each public hearing; and

(C) a statement that the purpose of each public hearing is to obtain public comments regarding the proposed tax.

(ii) The advertisement shall be published once each week for the two weeks preceding the earlier of the two public hearings.

(iii) The advertisement shall be no less than 1/8 page in size, and the type used shall be no smaller than 18 point and surrounded by a 1/4-inch border.

(iv) The advertisement may not be placed in that portion of the newspaper where legal notices and classified advertisements appear.

(v) Whenever possible:

(A) the advertisement shall appear in a newspaper that is published at least five days a week,

unless the only newspaper in the county is published less than five days a week; and

(B) the newspaper selected shall be one of general interest and readership in the community, and not one of limited subject matter.

(d) The adoption of an ordinance imposing a county option sales and use tax is subject to a local referendum election as provided in Title 20A, Chapter 7, Part 6, Local Referenda - Procedures, except that:

(i) notwithstanding Subsection 20A-7-609(2)(a), the county clerk shall hold a referendum election that qualifies for the ballot on the earlier of the next regular general election date or the next municipal general election date more than 155 days after adoption of an ordinance under this section;

(ii) for 1997 only, the 120-day period in Subsection 20A-7-606(1) shall be 30 days; and

(iii) the deadlines in Subsection 20A-7-606(2) and (3) do not apply, and the clerk shall take the actions required by [~~the~~] those subsections before the referendum election.

(3) (a) If the aggregate population of the counties imposing a county option sales and use tax under Subsection (1) is less than 75% of the state population, the tax levied under Subsection (1) shall be distributed to the county in which the tax was collected.

(b) If the aggregate population of the counties imposing a county option sales and use tax under Subsection (1) is greater than or equal to 75% of the state population:

(i) 50% of the tax collected under Subsection (1) in each county shall be distributed to the county in which the tax was collected; and

(ii) except as provided in Subsection (3)(c), 50% of the tax collected under Subsection (1) in each county shall be distributed proportionately among all counties imposing the tax, based on the total population of each county.

(c) If the amount to be distributed annually to a county under Subsection (3)(b)(ii), when combined with the amount distributed to the county under Subsection (3)(b)(i), does not equal at least $75,000, then:

(i) the amount to be distributed annually to that county under Subsection (3)(b)(ii) shall be increased so that, when combined with the amount distributed to the county under Subsection (3)(b)(i), the amount distributed annually to the county is $75,000; and

(ii) the amount to be distributed annually to all other counties under Subsection (3)(b)(ii) shall be reduced proportionately to offset the additional amount distributed under Subsection (3)(c)(i).

(d) The commission shall establish rules to implement the distribution of the tax under Subsections (3)(a), (b), and (c).

(4) (a) Except as provided in Subsections (4)(b) and (c), a county option sales and use tax under Subsection (1) shall be imposed and administered in the same manner as a tax imposed under Title 59, Chapter 12, Part 2, The Local Sales and Use Tax Act.

(b) A county option sales and use tax imposed under this part is not subject to:

(i) the distribution provisions of Subsections 59-12-205(2) and (3); and

(ii) the earmarking provisions of Subsection 59-12-205(4).

(c) The fee charged by the commission under Section 59-12-206 shall be based on the distribution amounts resulting after all the applicable distribution calculations under Subsection (3) have been made.

Section 62. Section **61-1-22** is amended to read:

61-1-22. Sales and purchases in violation -- Remedies -- Limitation of actions.

(1) (a) A person who offers or sells a security in violation of Subsection 61-1-3 (1), Section 61-1-7, Subsection 61-1-17 (2), any rule or order under Section 61-1-15, which requires the affirmative approval of sales literature before it is used, any condition imposed under Subsection 61-1-10 (4) or 61-1-11 (7), or offers, sells, or purchases a security in violation of Subsection 61-1-1 (2) is liable to the person selling the security to or buying the security from him, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at 12% per year from the date of payment, costs, and reasonable attorney's fees, less the amount of any income received on the security, upon the tender of the security or for damages if he no longer owns the security.

(b) Damages are the amount that would be recoverable upon a tender less the value of the security when the buyer disposed of it and interest at 12% per year from the date of disposition.

(2) The court in a suit brought under Subsection (1) may award an amount equal to three

times the consideration paid for the security, together with interest, costs, and attorney's fees, less any amounts, all as specified in Subsection (1) upon a showing that the violation was reckless or intentional.

(3) A person who offers or sells a security in violation of Subsection 61-1-1 (2) is not liable under Subsection (1)(a) if the purchaser knew of the untruth or omission, or the seller did not know and in the exercise of reasonable care could not have known of the untrue statement or misleading omission.

(4) (a) Every person who directly or indirectly controls a seller or buyer liable under Subsection (1), every partner, officer, or director of such a seller or buyer, every person occupying a similar status or performing similar functions, every employee of such a seller or buyer who materially aids in the sale or purchase, and every broker-dealer or agent who materially aids in the sale are also liable jointly and severally with and to the same extent as the seller or purchaser, unless the nonseller or nonpurchaser who is so liable sustains the burden of proof that he did not know, and in exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist.

(b) There is contribution as in cases of contract among the several persons so liable.

(5) Any tender specified in this section may be made at any time before entry of judgment.

(6) A cause of action under this section survives the death of any person who might have been a plaintiff or defendant.

(7) (a) No action shall be maintained to enforce any liability under this section unless brought before the expiration of four years after the act or transaction constituting the violation or the expiration of two years after the discovery by the plaintiff of the facts constituting the violation, whichever expires first.

(b) No person may sue under this section if:

(i) the buyer or seller received a written offer, before suit and at a time when he owned the security, to refund the consideration paid together with interest at 12% per year from the date of payment, less the amount of any income received on the security, and he failed to accept the offer within 30 days of its receipt; or

(ii) the buyer or seller received such an offer before suit and at a time when he did not own the security, unless he rejected the offer in writing within 30 days of its receipt.

(8) No person who has made or engaged in the performance of any contract in violation of this chapter or any rule or order hereunder, or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation, may base any suit on the contract.

(9) A condition, stipulation, or provision binding a person acquiring a security to waive compliance with this chapter or a rule or order hereunder is void.

(10) (a) The rights and remedies provided by this chapter are in addition to any other rights or remedies that may exist at law or in equity.

(b) This chapter does not create any cause of action not specified in this section or Subsection 61-1-4 [~~(5)~~](6).

Section 63. Section **62A-3-304** is amended to read:

62A-3-304. Adult protective services provided by division -- Costs -- Procedures.

(1) The division shall furnish, to the extent funded by the Legislature, adult protective services in response to referrals of abuse, neglect, or exploitation involving disabled or elder adults in need of protection. Those services may be provided by voluntary agreement or upon court order, in accordance with this section and Sections 62A-3-305, 62A-3-306, 62A-3-309, and 62A-3-310.

(2) Disabled or elder adults who receive protective services from the division shall receive those services knowingly and voluntarily, and without coercion in accordance with Subsection [~~(5)~~] (4), unless the services are court ordered in accordance with Subsections (5), (6), [~~(7),~~] and [~~(8)~~] (7) and Sections 62A-3-305, 62A-3-306, 62A-3-307, 62A-3-308, and 62A-3-309.

(3) Costs incurred in providing protective services are the responsibility of the disabled or elder adult if:

(a) the disabled or elder adult to be protected is eligible for those services from another governmental agency;

(b) the disabled or elder adult to be protected is financially able to pay for those services according to rates established by the division and that payment is provided for as part of the written

agreement for services described in Subsection (4)(b); or

(c) the court appoints a guardian and orders that the costs be paid from the disabled or elder adult's estate.

(4) (a) Protective services may be provided without a court order, after review by the division, for a disabled or elder adult who has the capacity to consent and who requests or knowingly and voluntarily consents to receive those services.

(b) Whenever the division provides adult protective services, a written agreement shall be executed by the division and the recipient, setting forth the purposes and limitations of the services to be provided. If consent to protective services is subsequently withdrawn by the disabled or elder adult, services provided under this section shall cease.

(5) Involuntary protective services may be provided to a disabled adult who does not consent or who lacks the capacity to consent to those services only upon court order in accordance with Section 62A-3-305.

(6) When protective services are furnished pursuant to court order in accordance with Sections 62A-3-305, 62A-3-306, 62A-3-307, 62A-3-308, and 62A-3-309, the disabled or elder adult receiving those services has the following rights prior to the provision of services:

(a) personal service of a copy of the petition for protective services which complies with Section 62A-3-305;

(b) the right to a hearing before a district court, with at least ten days' notice of the contents of the petition, the rights set forth in this section, and of the possible consequences of the hearing. This notice shall also be provided to all reasonably ascertainable persons and agencies having some responsibility for the disabled or elder adult's welfare, and to his guardian;

(c) the right to be present at the hearing described in Subsection (b), unless the disabled or elder adult has knowingly and voluntarily waived the right to be present, or a licensed physician who is not the petitioner or an agent of the petitioner, has certified that the disabled or elder adult is physically unable to attend, in which case the court shall appoint a court investigator to personally interview that disabled or elder adult and determine his desires concerning the hearing. Waiver shall not be presumed by nonappearance of the disabled or elder adult, but shall be determined at the

hearing on the basis of factual information supplied to the court;

(d) the right to counsel at the hearing, in preparation for the hearing, and at every significant stage of the protective service. If a disabled or elder adult is unable to afford counsel, the court shall appoint counsel, who shall be paid by the division in accordance with Subsection (3);

(e) the right to offer evidence on his behalf, to compel the attendance of witnesses, and to confront and cross-examine witnesses. The disabled or elder adult shall also be provided a written statement setting forth the reasons for and conditions of any protective order; and

(f) the right to the least possible restriction of his rights, consistent with his welfare and safety.

(7) Nothing in this section limits specific procedures under Title 75, Utah Uniform Probate Code, or under the protective placement process described in Section 62A-3-309, designed to safeguard the best interests of the person to be protected.

Section 64. Section **62A-4a-118** is amended to read:

62A-4a-118. Accountability to the Legislature.

(1) As of July 1, 1994, the division shall use principles of quality management systems, including statistical measures of processes of service, and the routine reporting of performance data to employees.

(2) In addition to development of quantifiable outcome measures and performance measures in accordance with Section 62A-4a-117, the executive director or his designee, shall annually review a randomly selected statistically significant sample of foster care and child protective service cases. The executive director shall report, regarding his review of those cases, to the Legislative Auditor General and the Health and Human Services Interim Committee before October 1, 1995, and each subsequent year.

(3) The executive director's review and report to the Legislature shall include:

(a) the criteria used by the executive director, or his designee, in making the evaluation; and

(b) findings regarding whether state statutes, division policy, and legislative policy were followed in each sample case.

(4) In addition to the review conducted by the executive director, the Legislative Auditor

General shall audit a subsample of the cases reviewed by the executive director, and report his findings to the Health and Human Services Interim Committee before December 31, 1995, and each subsequent year.

Section 65. Section **62A-4a-202.3** is amended to read:

62A-4a-202.3. Investigation -- Substantiation of reports -- Child in protective custody.

(1) When a child is taken into protective custody in accordance with Sections 62A-4a-202.1 and 78-3a-301, the Division of Child and Family Services shall immediately investigate the circumstances of the minor and the facts surrounding his being taken into protective custody.

(2) The division's investigation shall include, among other actions necessary to meet reasonable professional standards:

(a) a search for and review of any records of past reports of abuse or neglect involving the same child, any sibling or other child residing in that household, and the alleged perpetrator;

(b) with regard to a child who is five years of age or older, a personal interview with the child outside of the presence of the alleged perpetrator, conducted in accordance with the requirements of Subsection [~~(5)~~] (6);

(c) an interview with the child's natural parents or other guardian, unless their whereabouts are unknown;

(d) an interview with the person who reported the abuse, unless anonymous;

(e) where possible and appropriate, interviews with other third parties who have had direct contact with the child, including school personnel and the child's health care provider;

(f) an unscheduled visit to the child's home; and

(g) if appropriate and indicated in any case alleging physical injury, sexual abuse, or failure to meet the child's medical needs, a medical examination. That examination shall be obtained no later than 24 hours after the child was placed in protective custody.

(3) (a) The division's determination of whether a report is substantiated or unsubstantiated may be based on the child's statements alone.

(b) Inability to identify or locate the perpetrator may not be used by the division as a basis for determining that a report is unsubstantiated, or for closing the case.

(c) The division may not determine a case to be unsubstantiated or identify a case as unsubstantiated solely because the perpetrator was an out-of-home perpetrator.

(d) Decisions regarding whether a report is substantiated or unsubstantiated shall be based on the facts of the case at the time the report was made.

(4) The division should maintain protective custody of the child if it finds that one or more of the following conditions exist:

(a) the minor has no natural parent, guardian, or responsible relative who is able and willing to provide safe and appropriate care for the minor;

(b) shelter of the minor is a matter of necessity for the protection of the minor and there are no reasonable means by which the minor can be protected in his home or the home of a responsible relative;

(c) there is substantial evidence that the parent or guardian is likely to flee the jurisdiction of the court; or

(d) the minor has left a previously court ordered placement.

(5) (a) Within 24 hours after receipt of a child into protective custody, excluding weekends and holidays, the Division of Child and Family Services shall convene a child protection team to review the circumstances regarding removal of the child from his home, and prepare the testimony and evidence that will be required of the division at the shelter hearing, in accordance with Section 78-3a-306.

(b) Members of that team shall include:

(i) the caseworker assigned to the case and the caseworker who made the decision to remove the child;

(ii) a representative of the school or school district in which the child attends school;

(iii) the peace officer who removed the child from the home;

(iv) a representative of the appropriate Children's Justice Center, if one is established within the county where the child resides;

(v) if appropriate, and known to the division, a therapist or counselor who is familiar with the child's circumstances; and

(vi) any other individuals as determined to be appropriate and necessary by the team coordinator and chair.

(c) At that 24-hour meeting, the division shall have available for review and consideration, the complete child protective services and foster care history of the child and the child's parents and siblings.

(6) After receipt of a child into protective custody and prior to the adjudication hearing, all investigative interviews with the child that are initiated by the division shall be audio or video taped, and the child shall be allowed to have a support person of the child's choice present. That support person may not be an alleged perpetrator.

(7) The division shall cooperate with law enforcement investigations regarding the alleged perpetrator.

(8) The division may not close an investigation solely on the grounds that the division investigator is unable to locate the child, until all reasonable efforts have been made to locate the child and family members. Those efforts include:

(a) visiting the home at times other than normal work hours;

(b) contacting local schools;

(c) contacting local, county, and state law enforcement agencies; and

(d) checking public assistance records.

Section 66. Section **62A-4a-207** is amended to read:

62A-4a-207. Legislative Oversight Panel -- Responsibilities.

(1) (a) There is created the Child Welfare Legislative Oversight Panel composed of the following members:

(i) two members of the Senate, one from the majority party and one from the minority party, appointed by the president of the Senate; and

(ii) three members of the House of Representatives, two from the majority party and one from the minority party, appointed by the speaker of the House of Representatives.

(b) Members of the panel shall serve for two-year terms, or until their successors are appointed.

(c) A vacancy exists whenever a member ceases to be a member of the Legislature, or when a member resigns from the panel. Vacancies shall be filled by the appointing authority, and the replacement shall fill the unexpired term.

(2) The president of the Senate shall designate one of the senators appointed to the panel under Subsection (1) as the Senate chair of the panel. The speaker of the House of Representatives shall designate one of the representatives appointed to the panel under Subsection (1) as the House chair of the panel.

(3) The panel shall follow the interim committee rules established by the Legislature.

(4) The panel shall:

(a) examine and observe the process and execution of laws governing the child welfare system by the executive branch and the judicial branch;

(b) upon request, receive testimony from the public, the juvenile court, and from all state agencies involved with the child welfare system including, but not limited to, the division, other offices and agencies within the department, the attorney general's office, the Office of the Guardian Ad Litem Director, and school districts;

(c) receive reports from the Consumer Hearing Panel, described in Subsection 62A-4a-102(3), and consider and review the actions, reports, and recommendations of that panel;

(d) receive recommendations from, and make recommendations to the governor, the Legislature, the attorney general, the division, the Office of the Guardian Ad Litem Director, the juvenile court, and the public;

(e) study and recommend proposed changes to laws governing the child welfare system;

(f) perform such other duties related to the oversight of the child welfare system as the panel considers appropriate; and

(g) annually report its findings and recommendations to the president of the Senate, the speaker of the House of Representatives, the Health and Human Services Interim Committee, and the Judiciary Interim Committee.

(5) The panel has authority to review and discuss individual cases. When an individual case is discussed, the panel's meeting may be held in private.

(6) (a) The panel has authority to make recommendations to the Legislature, the governor, the Board of Juvenile Court Judges, the division, and any other statutorily created entity related to the policies and procedures of the child welfare system. The panel does not have authority to make recommendations to the court, the division, or any other public or private entity regarding the disposition of any individual case.

(b) The panel may hold public hearings, as it considers advisable, in various locations within the state in order to afford all interested persons an opportunity to appear and present their views regarding the child welfare system in this state.

(7) (a) All records of the panel regarding individual cases shall be classified private, and may be disclosed only in accordance with federal law and the provisions of Title 63, Chapter 2, Government Records Access and Management Act.

(b) The panel shall have access to all of the division's records, including those regarding individual cases. In accordance with Title 63, Chapter 2, Government Records Access Management Act, all documents and information received by the panel shall maintain the same classification that was designated by the division.

(8) In order to accomplish its oversight functions, the panel has:

(a) all powers granted to legislative interim committees in Section 36-12-11; and

(b) legislative subpoena powers under Title 36, Chapter 14, Legislative Subpoena Powers.

(9) Members of the panel shall receive salary and expenses in accordance with Section 36-2-2.

(10) (a) The Office of Legislative Research and General Counsel shall provide staff support to the panel.

(b) The panel is authorized to employ additional professional assistance and other staff members as it considers necessary and appropriate.

Section 67. Section **62A-7-401** is amended to read:

62A-7-401. Juvenile Sex Offender Authority -- Purpose -- Duties -- Members -- Staff specialists.

(1) There is established the Utah State Juvenile Sex Offender Authority within the

Department of Human Services, Division of Youth Corrections.

(2) The purpose of the authority is to supervise and coordinate the efforts of law enforcement, the Divisions of Youth Corrections, Mental Health, Family Services, and Services for People with Disabilities, the State Office of Education, the Juvenile Court, prosecution, and juvenile sex offender intervention and treatment specialists.

(3) The authority shall:

(a) coordinate and develop effective and cost-effective programs for the treatment of juveniles who sexually offend;

(b) administer the development of a comprehensive continuum of juvenile sex offender services;

(c) administer the development of programs to protect the communities from juvenile sex offending and offenders; and

(d) by June 30, 2000, implement fully the comprehensive and detailed plan which shall include provisions for the type of services by levels of intensity, agency responsibility for services, and professional qualifications for persons delivering the services. The plan shall also include detailed outcome measures to determine program effectiveness.

(4) The authority shall be comprised of:

(a) the director of the Division of Youth Corrections or a designee;

(b) the director of the Division of Mental Health or a designee;

(c) the director of the Division of Child and Family Services or a designee;

(d) the director of the Division of Services for People with Disabilities or a designee;

(e) the State Superintendent of Public Instruction;

(f) the juvenile court administrator or a designee;

(g) a representative of the Statewide Association of Public Attorneys as designated by its director;

(h) a representative of the Utah Sheriffs Association as designated by its president;

(i) a representative of the Utah Police Chiefs Association as designated by its president;

(j) a citizen appointed by the governor;

(k) a representative of the Utah Network on Juveniles Offending Sexually (NOJOS) as designated by its director; and

(l) the attorney general or a designee.

(5) Staff to the authority shall be the staff specialists of the statewide juvenile sex offender supervision and treatment unit [~~as provided in Section 62A-7-301~~].

Section 68. Section **62A-11-304.2** is amended to read:

62A-11-304.2. Issuance or modification of administrative order -- Compliance with court order -- Authority of office -- Stipulated agreements -- Interest -- Notification requirements.

(1) Through an adjudicative proceeding the office may issue or modify an administrative order[~~, based on the criteria outlined in Section 62A-11-304.3,~~] that:

(a) determines paternity in accordance with Section 78-45a-10;

(b) determines whether an obligor owes support;

(c) determines temporary orders of child support upon clear and convincing evidence of paternity in the form of genetic test results or other evidence;

(d) requires an obligor to pay a specific or determinable amount of present and future support;

(e) determines the amount of past-due support;

(f) orders an obligor who owes past-due support and is obligated to support a child receiving public assistance to participate in appropriate work activities if the obligor is unemployed and is not otherwise incapacitated;

(g) imposes a penalty authorized under this chapter;

(h) determines an issue that may be specifically contested under this chapter by a party who timely files a written request for an adjudicative proceeding with the office; and

(i) renews an administrative judgment. The office shall commence an adjudicative proceeding to renew a judgment by serving notice of agency action on the obligor before the judgment is barred by the applicable statute of limitations.

(2) (a) An abstract of a final administrative order issued under this section or a notice of

judgment-lien under Section 62A-11-312.5 may be filed with the clerk of any district court.

(b) Upon a filing under Subsection (2)(a), the clerk of the court shall:

(i) docket the abstract or notice in the judgment docket of the court and note the time of receipt on the abstract or notice and in the judgment docket; and

(ii) at the request of the office, place a copy of the abstract or notice in the file of a child support action involving the same parties.

(3) (a) If a court order has been issued, the office may not issue an order under Subsection (1) that is not based on the court order.

(b) Notwithstanding Subsection (3)(a), the office may issue an order of current support in accordance with the child support guidelines if the conditions of Subsection 78-45f-207(2)(c) are met.

(4) The office may proceed under this section in the name of this state, another state under Section 62A-11-305, any department of this state, the office, or the obligee.

(5) The office may accept voluntary acknowledgment of a support obligation and enter into stipulated agreements providing for the issuance of an administrative order under this part.

(6) The office may act in the name of the obligee in endorsing and cashing any drafts, checks, money orders, or other negotiable instruments received by the office for support.

(7) The office may assess interest not to exceed 1% per month on any unpaid support if notice of the assessment of interest has been provided to the obligor in a notice of agency action.

(8) The obligor shall, after a notice of agency action has been served on him under this part, keep the office informed of:

(a) his current address;

(b) the name and address of current payors of income;

(c) availability of or access to health insurance coverage; and

(d) applicable health insurance policy information.

Section 69. Section **62A-12-283.1** is amended to read:

62A-12-283.1. Invasive treatment -- Due process proceedings.

(1) For purposes of this section, "invasive treatment" means treatment in which a

constitutionally protected liberty or privacy interest may be affected, including antipsychotic medication, electroshock therapy, and psychosurgery.

(2) The requirements of this section apply to all children receiving services or treatment from a local mental health authority, its designee, or its provider regardless of whether a local mental health authority has physical custody of the child or the child is receiving outpatient treatment from the local authority, its designee, or provider.

(3) (a) The division shall promulgate rules, in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, establishing due process procedures for children prior to any invasive treatment as follows:

(i) with regard to antipsychotic medications, if either the parent or child disagrees with that treatment, a due process proceeding shall be held in compliance with the procedures established under this subsection;

(ii) with regard to psychosurgery and electroshock therapy, a due process proceeding shall be conducted pursuant to the procedures established under this subsection, regardless of whether the parent or child agree or disagree with the treatment; and

(iii) other possible invasive treatments may be conducted unless either the parent or child disagrees with the treatment, in which case a due process proceeding shall be conducted pursuant to the procedures established under this subsection.

(b) In promulgating the rules required by Subsection (3)(a), the division shall consider the advisability of utilizing an administrative law judge, court proceedings, a neutral and detached fact finder, and other methods of providing due process for the purposes of this section. The division shall also establish the criteria and basis for determining when invasive treatment should be administered.

[~~(4) On or before June 1, 1996, the division shall provide a written report and review the rules promulgated pursuant to Subsection (3) with the Human Services Interim Committee. Those rules shall be effective and utilized on or before July 1, 1996.~~]

Section 70. Section **62A-12-289** is amended to read:

62A-12-289. Responsibilities of the Division of Mental Health.

(1) It is the responsibility of the division to assure that the requirements of this part are met and applied uniformly by local mental health authorities across the state.

(2) Since it is the division's responsibility, under Section 62A-12-102, to contract with, review, and approve local mental health authority plans, and to withhold funds from local mental health authorities and public and private providers for contract noncompliance, the division shall:

(a) require each local mental health authority to submit its plan to the division by May 1 of each year;

(b) forward a copy of each local mental health authority's written plan to the Office of Legislative Research and General Counsel, for review by the Health and Human Services Interim Committee, within ten days after receiving the plan;

(c) conduct an annual program audit and review of each local mental health authority in the state, and its contract provider; and

(d) provide a written report to the Health and Human Services Interim Committee on July 1, 1996, and each year thereafter, and provide an oral report to that committee, as scheduled. That report shall provide information regarding the annual program audit, the financial status of each local mental health authority and its contract provider, the status of each local authority's and its contract provider's compliance with its plan, state statutes, and with the provisions of the contract awarded.

Section 71. Section **62A-13-110** is amended to read:

62A-13-110. Reporting.

Annually on or before August 1, the committee shall submit a written report of its activities under this chapter to the executive director of the department and to the Health and Human Services Interim Committee of the Legislature. The report shall include:

(1) the number and type of grant and scholarship recipients;

(2) the total amount of each grant and scholarship;

(3) the site at which each grant recipient is practicing;

(4) the site at which each scholarship recipient is practicing;

(5) the number of applications filed under this chapter within the preceding year; and

(6) the amount of administrative expenses incurred by the committee and by the department

to provide staff support during the preceding year in carrying out the provisions of this chapter.

Section 72. Section **63-38-2** is amended to read:

63-38-2. Governor to submit budget to Legislature -- Contents -- Preparation -- Appropriations based on current tax laws and not to exceed estimated revenues.

(1) (a) The governor shall, within three days after the convening of the Legislature in the annual general session, submit a budget for the ensuing fiscal year by delivering it to the presiding officer of each house of the Legislature together with a schedule for all of the proposed appropriations of the budget, clearly itemized and classified.

(b) The budget message shall include a projection of estimated revenues and expenditures for the next fiscal year.

(2) At least 34 days before the submission of any budget, the governor shall deliver a confidential draft copy of his proposed budget recommendations to the Office of the Legislative Fiscal Analyst.

(3) (a) The budget shall contain a complete plan of proposed expenditures and estimated revenues for the next fiscal year based upon the current fiscal year state tax laws and rates.

(b) The budget may be accompanied by a separate document showing proposed expenditures and estimated revenues based on changes in state tax laws or rates.

(4) The budget shall be accompanied by a statement showing:

(a) the revenues and expenditures for the last fiscal year;

(b) the current assets, liabilities, and reserves, surplus or deficit, and the debts and funds of the state;

(c) an estimate of the state's financial condition as of the beginning and the end of the period covered by the budget;

(d) a complete analysis of lease with an option to purchase arrangements entered into by state agencies;

(e) the recommendations for each state agency for new full-time employees for the next fiscal year; which recommendation should be provided also to the State Building Board under Subsection 63A-5-103(2);

(f) any explanation the governor may desire to make as to the important features of the budget and any suggestion as to methods for the reduction of expenditures or increase of the state's revenue; and

(g) the information detailing certain regulatory fee increases required by Section 63-38-3.2.

(5) The budget shall include an itemized estimate of the appropriations for:

(a) the Legislative Department as certified to the governor by the president of the Senate and the speaker of the House;

(b) the Executive Department;

(c) the Judicial Department as certified to the governor by the state court administrator;

(d) payment and discharge of the principal and interest of the indebtedness of the state of Utah;

(e) the salaries payable by the state under the Utah Constitution or under law for the lease agreements planned for the next fiscal year;

(f) other purposes that are set forth in the Utah Constitution or under law; and

(g) all other appropriations.

(6) Deficits or anticipated deficits shall be included in the budget.

(7) (a) (i) For the purpose of preparing and reporting the budget, the governor shall require from the proper state officials, including public and higher education officials, all heads of executive and administrative departments and state institutions, bureaus, boards, commissions, and agencies expending or supervising the expenditure of the state moneys, and all institutions applying for state moneys and appropriations, itemized estimates of revenues and expenditures. The entities required by this subsection to submit itemized estimates of revenues and expenditures to the governor, shall also report to the Utah Information Technology Commission created in Title 63C, Chapter 2, before October 30 of each year. The report to the Information Technology Commission shall include the proposed information technology expenditures and objectives, the proposed appropriation requests and other sources of revenue necessary to fund the proposed expenditures and an analysis of:

(A) the entity's need for appropriations for information technology;

(B) how the entity's development of information technology coordinates with other state or

local government entities;

(C) any performance measures used by the entity for implementing information technology goals; and

(D) any efforts to develop public/private partnerships to accomplish information technology goals.

(ii) (A) The governor may also require other information under these guidelines and at times as the governor may direct.

(B) These guidelines may include a requirement for program productivity and performance measures, where appropriate, with emphasis on outcome indicators.

(b) The estimate for the Legislative Department as certified by the presiding officers of both houses shall be included in the budget without revision by the governor. Before preparing the estimates for the Legislative Department, the Legislature shall report to the Information Technology Commission the proposed information technology expenditures and objectives, the proposed appropriation requests and other sources of revenue necessary to fund the proposed expenditures, including an analysis of:

(i) the Legislature's implementation of information technology goals;

(ii) any coordination of information technology with other departments of state and local government;

(iii) any efforts to develop public/private partnerships to accomplish information technology goals; and

(iv) any performance measures used by the entity for implementing information technology goals.

(c) The estimate for the Judicial Department, as certified by the state court administrator, shall also be included in the budget without revision, but the governor may make separate recommendations on it. Before preparing the estimates for the Judicial Department, the state court administrator shall report to the Information Technology Commission the proposed information technology expenditures and objectives, the proposed appropriation requests and other sources of revenue necessary to fund the proposed expenditures, including an analysis of:

(i) the Judicial Department's information technology goals;

(ii) coordination of information technology statewide between all courts;

(iii) any efforts to develop public/private partnerships to accomplish information technology goals; and

(iv) any performance measures used by the entity for implementing information technology goals.

(d) Before preparing the estimates for the State Office of Education, the state superintendent shall report to the Information Technology Commission the proposed information technology expenditures and objectives, the proposed appropriation requests and other sources of revenue necessary to fund the proposed expenditures, including an analysis of:

(i) the Office of Education's information technology goals;

(ii) coordination of information technology statewide between all public schools;

(iii) any efforts to develop public/private partnerships to accomplish information technology goals; and

(iv) any performance measures used by the Office of Education for implementing information technology goals.

(e) Before preparing the estimates for the state system of Higher Education, the commissioner shall report to the Information Technology Commission the proposed information technology expenditures and objectives, the proposed appropriation requests and other sources of revenue necessary to fund the proposed expenditures, including an analysis of:

(i) Higher Education's information technology goals;

(ii) coordination of information technology statewide within the state system of higher education;

(iii) any efforts to develop public/private partnerships to accomplish information technology goals; and

(iv) any performance measures used by the state system of higher education for implementing information technology goals.

(f) The governor may require the attendance at budget meetings of representatives of public

and higher education, state departments and institutions, and other institutions or individuals applying for state appropriations.

(g) The governor may revise all estimates, except those relating to the Legislative Department, the Judicial Department, and those providing for the payment of principal and interest to the state debt and for the salaries and expenditures specified by the Utah Constitution or under the laws of the state.

(8) The total appropriations requested for expenditures authorized by the budget may not exceed the estimated revenues from taxes, fees, and all other sources for the next ensuing fiscal year.

(9) If any item of the budget as enacted is held invalid upon any ground, the invalidity does not affect the budget itself or any other item in it.

(10) (a) In submitting the budget for the Departments of Health and Human Services, the governor shall consider a separate recommendation in his budget for funds to be contracted to:

(i) local mental health authorities under Section 17A-3-606;

(ii) local substance abuse authorities under Section 62A-8-110.5;

(iii) area agencies on aging under Section 62A-3-104.2;

(iv) programs administered directly by and for operation of the Divisions of Mental Health, Substance Abuse, and Aging and Adult Services; and

(v) local health departments under Title 26A, Chapter 1, Local Health Departments.

(b) In his budget recommendations under Subsections (10)(a)(i), (ii), and (iii), the governor shall consider an amount sufficient to grant local health departments, local mental health authorities, local substance abuse authorities, and area agencies on aging the same percentage increase for wages and benefits that he includes in his budget for persons employed by the state.

(c) If the governor does not include in his budget an amount sufficient to grant the increase described in Subsection (10)(b), he shall include a message to the Legislature regarding his reason for not including that amount.

(11) (a) In submitting the budget for the Division of Services for People with Disabilities within the Department of Human Services, the governor shall consider an amount sufficient to grant employees of private nonprofit corporations that contract with that division, the same percentage

increase for cost-of-living that he includes in his budget for persons employed by the state.

(b) If the governor does not include in his budget an amount sufficient to grant the increase described in Subsection (11)(a), he shall include a message to the Legislature regarding his reason for not including that amount.

[~~(12) The governor shall include the projected revenues and expenditures for collecting the uniform fee and other motor vehicle fees under Section 59-2-406 in the 1996-97 fiscal year budget.~~]

[~~(13)~~] (12) (a) The Families, Agencies, and Communities Together Council may propose to the governor under Subsection 63-75-4(3)(e) a budget recommendation for collaborative service delivery systems operated under Section 63-75-6.5.

(b) The Legislature may, through a specific program schedule, designate funds appropriated for collaborative service delivery systems operated under Section 63-75-6.5.

[~~(14)~~] (13) The governor shall include in his budget the state's portion of the budget for the Utah Communications Agency Network established in Title 63C, Chapter 7, Utah Communications Agency Network Act.

Section 73. Section **63-38-3.2** is amended to read:

63-38-3.2. Fees -- Adoption, procedure, and approval -- Establishing and assessing fees without legislative approval.

(1) As used in this section:

(a) (i) "Agency" means each department, commission, board, council, agency, institution, officer, corporation, fund, division, office, committee, authority, laboratory, library, unit, bureau, panel, or other administrative unit of the state.

(ii) "Agency" does not mean the Legislature or its committees.

(b) "Fee agency" means any agency that is authorized to establish regulatory fees.

(c) "Fee schedule" means the complete list of regulatory fees charged by a fee agency and the amount of those fees.

(d) "Regulatory fees" means fees established for licensure, registration, or certification.

(2) Each fee agency shall:

(a) adopt a schedule of fees assessed for services provided by the fee agency that are:

(i) reasonable, fair, and reflect the cost of services provided; and

(ii) established according to a cost formula determined by the director of the Office of Planning and Budget and the director of the Division of Finance in conjunction with the agency seeking to establish the regulatory fee;

(b) conduct a public hearing on any proposed regulatory fee and increase or decrease the proposed regulatory fee based upon the results of the public hearing;

(c) except as provided in Subsection (6), submit the fee schedule to the Legislature as part of the agency's annual appropriations request;

(d) where necessary, modify the fee schedule to implement the Legislature's actions; and

(e) deposit all regulatory fees collected under the fee schedule into the General Fund.

(3) A fee agency may not:

(a) set regulatory fees by rule; or

(b) charge or collect any regulatory fee without approval by the Legislature unless the fee agency has complied with the procedures and requirements of Subsection (5).

(4) The Legislature may approve, increase or decrease and approve, or reject any regulatory fee submitted to it by a fee agency.

(5) (a) After the public hearing required by this section, a fee agency may establish and assess regulatory fees without legislative approval if:

(i) the Legislature creates a new program that is to be funded by regulatory fees to be set by the Legislature; and

(ii) the new program's effective date is before the Legislature's next annual general session; or

(iii) the Division of Occupational and Professional licensing makes a special assessment against qualified beneficiaries under the Residence Lien Restriction and Lien Recovery Fund Act as provided in Subsection 38-11-206(1).

(b) Each fee agency shall submit its fee schedule or special assessment amount to the Legislature for its approval at a special session, if allowed in the governor's call, or at the next annual general session of the Legislature, whichever is sooner.

(c) Unless the fee schedule is approved by the Legislature, the fee agency may not collect a regulatory fee set according to this subsection after the adjournment of the annual general session following the session that established the new program.

(6) (a) Each fee agency that wishes to increase any regulatory fee by 5% or more shall obtain legislative approval for the fee increase as provided in this subsection before assessing the new regulatory fee.

(b) Each fee agency that wishes to increase any regulatory fee by 5% or more shall submit to the governor as part of the agency's annual appropriation request a list that identifies:

(i) the title or purpose of the regulatory fee;

(ii) the present amount of the regulatory fee;

(iii) the proposed new amount of the regulatory fee;

(iv) the percent that the regulatory fee will have increased if the Legislature approves the higher fee; and

(v) the reason for the increase in the regulatory fee.

(c) (i) The governor may review and approve, modify and approve, or reject the regulatory fee increases.

(ii) The governor shall transmit the list required by Subsection (6)(b), with any modifications, to the Legislative Fiscal Analyst with the governor's budget recommendations.

(d) Bills approving any regulatory fee increases of 5% or more shall be filed before the beginning of the Legislature's annual general session, if possible.

Section 74. Section **63-46a-9** is amended to read:

63-46a-9. Agency review of rules -- Schedule of filings -- Limited exemption for certain rules.

(1) Each agency shall review each of its rules within five years of the rule's original effective date or within five years of the filing of the last five-year review, whichever is later. Rules effective prior to 1992 need not be reviewed until 1997.

(2) An agency may consider any substantial review of a rule to be a five-year review. If the agency chooses to consider a review a five-year review, it shall follow the procedures outlined in

Subsection (3).

(3) At the conclusion of its review, the agency shall file a notice of review on or before the anniversary date indicating its intent to continue, amend, or repeal the rule.

(a) If the agency continues the rule, it shall file a statement which includes:

(i) a concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require the rule;

(ii) a summary of written comments received after enactment of the rule from interested persons supporting or opposing the rule; and

(iii) a reasoned justification for continuation of the rule, including reasons why the agency disagrees with comments in opposition to the rule, if any.

(b) If the agency repeals the rule, it shall comply with Section 63-46a-4.

(c) If the agency amends and continues the rule, it shall comply with the requirements of Section 63-46a-4 and file the statement required in Subsection (3)(a).

(4) (a) The division shall publish the notice and statement in the bulletin.

(b) The division may schedule the publication of agency notices and statements, provided that no notice and statement shall be published more than one year after the review deadline established under Subsection (1).

(5) The division shall notify an agency of rules due for review at least 180 days prior to the anniversary date.

(6) If an agency finds that it will not meet the deadline established in Subsection (1):

(a) the agency may file an extension prior to the anniversary date with the division indicating the reason for the extension; and

(b) the division shall publish the extension in the next issue of the bulletin.

(7) An extension permits the agency to file a notice no more than 120 days after the anniversary date.

(8) If an agency fails to file a notice of review or extension before the date specified in the notice mandated in Subsection (4), the division shall:

(a) publish a notice in the next issue of the bulletin that the rule has expired and is no longer

enforceable;

(b) remove the rule from the code; and

(c) notify the agency that the rule has expired.

(9) After a rule expires, an agency must comply with the requirements of Section 63-46a-4 to reenact the rule.

(10) (a) Rules issued under the following provisions related to the Department of Workforce Services or Labor Commission that are in effect on July 1, 1997, are not subject to the requirements of this section until July 1, 1998:

(i) Title 34, Labor in General;

(ii) Title 34A, Utah Labor Code;

[~~(iii) Title 35, Labor - Industrial Commission;~~]

[~~(iv)~~] (iii) Title 35A, Workforce Services Code;

[~~(v)~~] (iv) Title 40, Chapter 2, Mines; and

[~~(vi)~~] (v) Title 57, Chapter 21, Utah Fair Housing Act.

(b) Any rule described in Subsection (10)(a) that would have expired on or after July 1, 1997 but before July 1, 1998, expires July 1, 1998, unless for that rule the Department of Workforce Services or Labor Commission files:

(i) the notice of review, described in Subsection (3); or

(ii) an extension described in Subsection (6).

Section 75. Section **63-55-209** is amended to read:

63-55-209. Repeal dates, Title 9.

(1) Title 9, Chapter 1, Part 8, [~~Utah~~] Commission on [~~Volunteers~~] National and Community Service Act, is repealed July 1, 1999.

(2) Title 9, Chapter 2, Part 3, Small Business Advisory Council, is repealed July 1, 1999.

(3) Title 9, Chapter 2, Part 4, Enterprise Zone Act, is repealed July 1, 2008.

(4) Title 9, Chapter 2, Part 7, Utah Technology Finance Corporation Act, is repealed July 1, 2002.

(5) Section 9-2-1208 regarding waste tire recycling loans is repealed July 1, 2000.

(6) Title 9, Chapter 2, Part 16, Recycling Market Development Zone Act, is repealed July 1, 2000, Sections 59-7-608 and 59-10-108.7 are repealed for tax years beginning on or after January 1, 2001.

(7) Title 9, Chapter 3, Part 3, Heber Valley Historic Railroad Authority, is repealed July 1, 1999.

(8) Title 9, Chapter 4, Part 4, Disaster Relief, is repealed July 1, 1999.

(9) Title 9, Chapter 4, Part 9, Utah Housing Finance Agency Act, is repealed July 1, 2006.

Section 76. Section **63-55-226** is amended to read:

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

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

(2) Title 26, Chapter 4, Utah Medical Examiner Act, is repealed July 1, 2000.

(3) Title 26, Chapter 10, Family Health Services, is repealed July 1, 2000.

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

(5) Title 26, Chapter 32a, Waste Tire Recycling Act, is repealed July 1, 2000.

(6) Title 26, Chapter 33a, Utah Health Data Authority Act, is repealed July 1, 1999.

(7) Section 26-32a-114 is repealed July 1, 2000.

Section 77. Section **63-55-259** is amended to read:

63-55-259. Repeal dates, Title 59.

(1) Title 59, Chapter 1, Part 11, Private Collection, is repealed July 1, 1998.

(2) Section 59-10-530.5, Homeless Trust Account, is repealed July 1, 2007.

[~~(3) Title 59, Chapter 17a, State Appropriations and Tax Limitation Act, is repealed July 1, 2005.~~]

Section 78. Section **63-55-263** is amended to read:

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

[~~(2)~~] (1) (a) Title 63, Chapter 25a, Part 1, Commission on Criminal and Juvenile Justice, is repealed July 1, 2002.

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

[~~(3)~~] (2) The Resource Development Coordinating Committee, created in Section 63-28a-2,

is repealed July 1, 2004.

[~~(4)~~] (3) The Crime Victims' Reparations Board, created in Section 63-25a-404, is repealed July 1, 2007.

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

[~~(11)~~] (5) Section 63-49-24, Growth Impact Highway Grants, is repealed July 1, 1999.

[~~(5)~~] (6) Title 63, Chapter 75, Families, Agencies, and Communities Together for Children and Youth At Risk Act, is repealed July 1, 2001.

[~~(8)~~] (7) Title 63, Chapter 88, Navajo Trust Fund, is repealed July 1, 2000.

[~~(1)~~] (8) Sections 63A-4-204 and 63A-4-205, authorizing the Risk Management Fund to provide coverage to nonstate entities, are repealed July 1, 2001.

[~~(6)~~] (9) Title 63A, Chapter 7, Utah Sports Authority Act, is repealed July 1, 2003.

[~~(7)~~] (10) Title 63A, Chapter 10, State Olympic Coordination Act, is repealed July 1, 2003.

[~~(9)~~] (11) The Utah Health Policy Commission, created in Title 63C, Chapter 3, is repealed July 1, 2001.

[~~(10)~~] (12) The Utah Pioneer Sesquicentennial Celebration Coordinating Council created in Section 63C-5-102 is repealed June 30, 1998.

Section 79. Section **63-56-9** is amended to read:

63-56-9. Duties of chief procurement officer.

Except as otherwise specifically provided in this chapter, the chief procurement officer serves as the central procurement officer of the state and shall:

(1) adopt office policies governing the internal functions of the Division of Purchasing and General Services;

(2) procure or supervise the procurement of all supplies, services, and construction needed by the state;

(3) exercise general supervision and control over all inventories or supplies belonging to the state;

(4) establish and maintain programs for the inspection, testing, and acceptance of supplies,

services, and construction;

(5) prepare statistical data concerning the procurement and usage of all supplies, services, and construction;

(6) before June 1, 1990, notify all public procurement units of the requirements of Section 63-56-20.7 regarding purchases of recycled paper and recycled paper products, recycling requirements, and provide guidelines on the availability of recycled paper and paper products, including the sources of supply and the potential uses of various grades of recycled paper; and

(7) before July 1, 1992:

(a) establish standards and specifications for determining which supplies are considered recycled, based upon his review of current definitions and standards employed by national procurement, product recycling, and other relevant organizations and the federal Environmental Protection Agency;

(b) compile and update as necessary the specifications, a list of recycled supplies available on state contract, and sources where the supplies may be obtained;

(c) make the compiled information under Subsection (b) available to:

(i) all local government entities under Section 11-37-101;

(ii) all local health departments under Section 26A-1-108.7;

(iii) all procurement officers or other persons responsible for purchasing supplies within the public school system under Title 53A, State System of Public Education;

(iv) all procurement officers or other persons responsible for purchasing supplies within the state system of higher education under Title 53B, State System of Higher Education; and

(v) all procurement officers or other persons responsible for purchasing supplies for all public procurement units as defined in Section 63-56-5; and

(d) present a written report to the [~~Health~~] Natural Resources, Agriculture, and Environment Interim Committee annually prior to November 30 regarding the purchases of recycled goods on state contracts during the prior fiscal year.

Section 80. Section **63-56-20.7** is amended to read:

63-56-20.7. Preference for recycled paper and paper products.

(1) As used in this section:

(a) "Chief procurement officer" is the chief procurement officer appointed under Section 63-56-8.

(b) "Paper" means any newspaper, high-grade office paper, fine paper, bond paper, offset paper, xerographic paper, mimeographic paper, duplicator paper, and related types of cellulosic material containing not more than 10% by weight or volume of noncellulosic material such as laminates, binders, coatings, or saturants.

(c) "Paper product" means any paper items or commodities, including paper napkins, towels, corrugated and other cardboard, toilet tissue, paper and related types of cellulosic products containing not more than 10% by weight or volume of noncellulosic material such as laminates, binders, coatings, or saturants. "Paper product" does not include preprinted cellulosic products such as books, newspapers, calendars, and magazines.

(d) "Postconsumer waste," "recycled paper," "recycled paper product," and "secondary waste paper material" are defined by rule made by the Division of Purchasing, Department of Administrative Services. The division rules shall be based on current definitions and standards employed by national procurement, product recycling, and other relevant organizations such as the federal Environmental Protection Agency.

(2) Notwithstanding Section 63-56-20, which requires public procurement units to purchase products from the lowest responsible bidder, and subject to Subsection (3), every public procurement unit shall give preference to the purchase of paper and paper products which are manufactured or produced from recycled materials.

(3) A public procurement unit shall give preference to purchasing recycled paper and recycled paper products unless:

(a) the bid or purchase price for recycled paper or paper products exceeds by more than 5% the lowest responsive and responsible bidder whose bid meets the requirements and criteria set forth in the invitation for bids;

(b) there is no recycled paper or paper product reasonably available that meets the requirements and criteria set forth in the invitation for bids; or

(c) the public procurement unit has purchased at least the minimum percentage purchase requirement of recycled paper or recycled paper products as provided in Subsection (4).

(4) (a) The minimum percentage purchase requirement for fiscal year 1990-91 is 10% of the public procurement unit's projected annual paper and paper product purchases.

(b) The minimum percentage purchase requirement shall be increased by 5% each fiscal year until the minimum percentage purchase requirement is 50%.

(5) Each public procurement unit shall provide the chief procurement officer with a report at the end of each fiscal year documenting:

(a) the dollar amounts of paper and paper products purchased;

(b) the dollar amounts of recycled paper and recycled paper products purchased; and

(c) any additional costs resulting from purchasing recycled paper or recycled paper products.

(6) The chief procurement officer shall provide a written report of the information received under Subsection (5) to the [~~Health~~] Natural Resources, Agriculture, and Environment Interim Committee prior to November 30 of each year.

(7) (a) Each state agency shall separate and collect all types of recyclable paper for recycling, except under Subsection (7)(b). The chief procurement officer shall maintain an updated list of which papers are recyclable.

(b) If the state agency conducts an evaluation under Subsection (8) and determines the cost of recycling a certain type of recyclable paper is more than 10% greater than the cost of the current disposal method, the entity is exempt from the requirements of Subsection (7)(a) regarding that type of paper.

(8) A state agency's evaluation shall:

(a) determine the types and quantities of recyclable paper in the state agency's current waste stream;

(b) determine the market value of the recyclable paper;

(c) determine and describe the alternatives for separating recyclable paper from the waste stream;

(d) for each type of paper and for each method of separation, determine the cost of separating

and collecting the recyclable paper for recycling;

(e) determine the cost of the current disposal method for each type of recyclable paper;

(f) for each type of paper, compare the cost of the current disposal method with the cost of separating and collecting the paper for recycling; and

(g) determine the cost of producing the report required under Subsection (13)(b).

(9) Each evaluation conducted under Subsection (8) shall:

(a) be in writing;

(b) justify all estimates;

(c) be retained by the state agency;

(d) be accessible to the public for review; and

(e) be submitted to the chief procurement officer.

(10) Each state agency conducting an evaluation shall revise the evaluation as necessary, at least every 30 months.

(11) A state agency that is required to separate paper for recycling shall:

(a) designate an existing employee as a recycling coordinator to organize and coordinate the state agency's recycling program;

(b) establish procedures for separating each type of paper required to be separated for recycling;

(c) establish a system for separating and collecting each type of paper to be recycled, which assures the recyclable paper is sold to appropriate industries for reuse or recycling; and

(d) make participation in the recycling program as easy as practicable for state agency personnel by establishing clear policies.

(12) The monies received from the sale of recyclable paper shall be retained by the agency for:

(a) reimbursement to the state agency for program administration costs incurred as a result of recycling, if any; and

(b) funding recycling incentives programs.

(13) (a) The recycling coordinator designated in Subsection (11) shall keep records of:

(i) the quantity of paper recycled by the state agency;

(ii) the costs incurred by the state agency in recycling paper; and

(iii) the monies received from the sale of recyclable paper.

(b) Each recycling coordinator shall provide a written report of the state agency's recycling activities including the information required under Subsection (13)(a) before September 30 of each year to the chief procurement officer.

(14) The chief procurement officer shall provide a written report of the information received under Subsection (13) to the [~~Health~~] Natural Resources, Agriculture, and Environment Interim Committee prior to November 30 of each year.

Section 81. Section **67-16-5** is amended to read:

67-16-5. Accepting gift, compensation, or loan -- When prohibited.

(1) As used in this section, "economic benefit tantamount to a gift" includes:

(a) a loan at an interest rate that is substantially lower than the commercial rate then currently prevalent for similar loans;

(b) compensation received for private services rendered at a rate substantially exceeding the fair market value of the services.

(2) A public officer, public employee, or legislator may not knowingly receive, accept, take, seek, or solicit, directly or indirectly for himself or another a gift of substantial value or a substantial economic benefit tantamount to a gift:

(a) that would tend improperly to influence a reasonable person in the person's position to depart from the faithful and impartial discharge of the person's public duties;

(b) that the person knows or that a reasonable person in that position should know under the circumstances is primarily for the purpose of rewarding the person for official action taken; or

(c) if he recently has been, [~~or~~] is now, or in the near future may be involved in any governmental action directly affecting the donor or lender, unless a disclosure of the gift, compensation, or loan and other relevant information has been made in the manner provided in Section 67-16-6.

(3) Subsection (1) does not apply to the following:

(a) an occasional nonpecuniary gift, having a value of not in excess of $50;

(b) an award publicly presented in recognition of public services;

(c) any bona fide loan made in the ordinary course of business; or

(d) a political campaign contribution.

Section 82. Section **67-20-3** is amended to read:

67-20-3. Purposes for which volunteer considered a government employee.

A volunteer is considered a government employee for purposes of:

(1) receiving workers' compensation medical benefits, which shall be the exclusive remedy for all injuries and occupational diseases as provided under Title [~~35A~~] 34A, Chapter [~~3~~] 2, Workers' Compensation Act, and Chapter [~~3a~~] 3, Utah Occupational Disease Act;

(2) the operation of motor vehicles or equipment if the volunteer is properly licensed and authorized to do so; and

(3) liability protection and indemnification normally afforded paid government employees.

Section 83. Section **69-4-1** is amended to read:

69-4-1. Telecommunication network review.

(1) Before the creation, expansion, or upgrade of a state-owned or state-funded telecommunication network, whether voice, data, or video transmission, the agency or entity proposing any change shall submit a plan to the governor detailing the proposed changes.

(2) If, after consultation with the agency or entity it is the opinion of the governor that implementation of the plan would result in significant impact on telephone ratepayers, the governor shall direct the Public Service Commission to prepare an advisory report detailing how implementing the plan will affect telephone ratepayers where the plan would be in effect.

(3) (a) The Public Service Commission shall complete and provide the advisory report to the governor, the agency or entity involved, and the [~~Legislature's State and Local Affairs~~] Public Utilities and Technology Interim Committee within 60 days after receiving the governor's request.

(b) The Public Service Commission may not conduct any public hearings or proceedings in the preparation of the report.

Section 84. Section **70A-1-201** is amended to read:

70A-1-201. General definitions.

In addition to definitions contained in the subsequent chapters of this title and unless the context otherwise requires, in this title:

(1) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, setoff, suit in equity, and any other proceedings in which rights are determined.

(2) "Aggrieved party" means a party entitled to resort to a remedy.

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in Sections 70A-1-205 and 70A-2-208. Whether an agreement has legal consequences is determined by the provisions of this title, if applicable; otherwise by the law of contracts as provided in Section 70A-1-103. Compare the definition of "contract" in Subsection (11).

(4) "Bank" means any person engaged in the business of banking.

(5) "Bearer" means the person in possession of an instrument, document of title, or certificated security payable to bearer or indorsed in blank.

(6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing a fact" means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence.

(9) "Buyer in ordinary course of business" means a person who, in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. All persons who sell minerals or the like, including oil and gas, at wellhead or minehead are considered to be persons in the business of selling goods of that kind. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and

includes receiving goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(10) "Conspicuous" means a term or clause that is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals such as: NONNEGOTIABLE BILL OF LADING is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. In a telegram any stated term is "conspicuous." Whether a term or clause is "conspicuous" or not is for decision by the court.

(11) "Contract" means the total legal obligation which results from the parties' agreement as affected by this title and any other applicable rules of law. Compare the definition of "agreement" in Subsection (3).

(12) "Creditor" includes a general creditor, a secured creditor, a lien creditor, and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity, and an executor or administrator of an insolvent debtor's or assignor's estate.

(13) "Defendant" includes a person in the position of defendant in a cross-action or counterclaim.

(14) "Delivery" with respect to instruments, documents of title, chattel paper, or certificated securities means voluntary transfer of possession.

(15) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt, or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately representing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title, a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

(16) "Fault" means wrongful act, omission, or breach.

(17) "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible are considered fungible for the purposes of this title to the extent that under a particular agreement or document unlike units are treated as equivalents.

(18) "Genuine" means free of forgery or counterfeiting.

(19) "Good faith" means honesty in fact in the conduct or transaction concerned.

(20) "Holder" with respect to a negotiable instrument, certificated security, or document of title means the person in possession if:

(a) in the case of a negotiable instrument payable to bearer or to an identified person, the identified person is in possession;

(b) in the case of a security, the person in possession is the registered owner, or the security has been indorsed to the person in possession by the registered owner, or the security is in bearer form; or

(c) in the case of a document of title, the goods are deliverable to bearer or to the order of the person in possession.

(21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

(22) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) A person is "insolvent" who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due or if he is insolvent within the meaning of the federal bankruptcy law.

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government or intergovernmental organization and includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more nations.

(25) (a) A person has "notice" of a fact when:

(i) he has actual knowledge of it;

(ii) he has received a notice or notification of it; or

(iii) from all the facts and circumstances known to him at the time in question he has reason to know that it exists.

(b) A person "knows" or has "knowledge" of a fact when he has actual knowledge of it.

(c) "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather

than to reason to know.

(d) The time and circumstances under which a notice or notification may cease to be effective are not determined by this title.

(26) (a) A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other person in ordinary course whether or not the other person actually comes to know of it.

(b) A person "receives" a notice or notification when:

(i) it comes to his attention; or

(ii) it is duly delivered at the place of business through which the contract was made or at any other place held out by him as the place for receipt of such communications.

(27) Notice, knowledge of a notice, or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

(28) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(29) "Party," as distinct from "third party," means a person who has engaged in a transaction or made an agreement within this title.

(30) "Person" includes an individual or an organization as provided in Section 70A-1-102.

(31) "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(32) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, issue or reissue, gift, or any other voluntary transaction creating an interest in property.

(33) "Purchaser" means a person who takes by purchase.

(34) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(35) "Representative" includes an agent, an officer of a corporation or association, and a trustee, executor, or administrator of an estate, or any other person empowered to act for another.

(36) "Rights" includes remedies.

(37) (a) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The retention or reservation of title by a seller of goods, notwithstanding shipment or delivery to the buyer as provided in Section 70A-2-401, is limited in effect to a reservation of a "security interest." The term also includes any interest of a buyer of accounts or chattel paper which is subject to Title 70A, Chapter 9, Uniform Commercial Code -- Secured Transactions. The special property interest of a buyer of goods on identification of those goods to a contract for sale under Section 70A-2-401 is not a "security interest," but a buyer may also acquire a "security interest" by complying with Title 70A, Chapter 9, Uniform Commercial Code -- Secured Transactions. Unless a consignment is intended as security, reservation of title under the consignment is not a "security interest." A consignment in any event is subject to the provisions on consignment sales provided in Section 70A-2-326. Notwithstanding anything in Title 70A to the contrary, "security interest" does not include a rental purchase agreement as defined in Section 15-8-3.

(b) Whether a transaction creates a lease or security interest is determined by the facts of each case; however, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee, and:

(i) the original term of the lease is equal to or greater than the remaining economic life of the goods;

(ii) the lessee is bound to renew the lease for the remaining economic life of the goods or

is bound to become the owner of the goods;

(iii) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement; or

(iv) the lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

(c) A transaction does not create a security interest merely because it provides that:

(i) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;

(ii) the lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, recording, or registration fees, or service or maintenance costs with respect to the goods;

(iii) the lessee has an option to renew the lease or to become the owner of the goods;

(iv) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or

(v) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

(d) For purposes of this subsection:

(i) Additional consideration is not nominal if, when the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed, or when the option to become the owner of the goods is granted to the lessee the price is stated to be the fair market value of the goods determined at the time the option is to be performed.

(ii) Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised.

(iii) "Reasonably predictable" and "remaining economic life of the goods" are to be

determined with reference to the facts and circumstances at the time the transaction is entered into.

(iv) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(38) "Send" in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or the cost of the transmission provided for and properly addressed, and, in the case of an instrument, to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.

(39) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(40) "Surety" includes guarantor.

(41) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(42) "Term" means that portion of an agreement which relates to a particular matter.

(43) "Unauthorized signature" means one made without actual, implied, or apparent authority and includes a forgery.

(44) "Value." Except as otherwise provided with respect to negotiable instruments and bank collections as in Sections 70A-3-303, [~~70A-4-208, and 70A-4-209~~] 70A-4-210, and 70A-4-211, a person gives "value" for rights if he acquires them:

(a) in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection;

(b) as security for or in total or partial satisfaction of a preexisting claim;

(c) by accepting delivery pursuant to a preexisting contract for purchase; or

(d) generally, in return for any consideration sufficient to support a simple contract.

(45) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.

(46) "Written" or "writing" includes printing, typewriting, or any other intentional reduction to tangible form.

Section 85. Section **70A-2-725** is amended to read:

70A-2-725. Statute of limitations in contracts for sale.

(1) An action for breach of any contract for sale must be commenced within four years after the cause of action has accrued. By the original agreement the parties may reduce the period of limitation to not less than one year but may not extend it.

(2) A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered.

(3) Where an action commenced within the time limited by Subsection (1) is so terminated as to leave available a remedy by another action for the same breach such other action may be commenced after the expiration of the time limited and within six months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

(4) This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action which have accrued before [~~this act becomes effective~~] December 31, 1965.

Section 86. Section **70A-2a-506** is amended to read:

70A-2a-506. Statute of limitations.

(1) An action for default under a lease contract, including breach of warranty or indemnity, must be commenced within four years after the cause of action accrued. By the original lease contract, the parties may reduce the period of limitation to not less than one year.

(2) A cause of action for default accrues when the act or omission on which the default or

breach of warranty is based is or should have been discovered by the aggrieved party, or when the default occurs, whichever is later. A cause for action of indemnity accrues:

(a) in the case of an indemnity against liability, when the act or omission on which the claim for indemnity is based is or should have been discovered by the indemnified party, whichever is later; or

(b) in the case of an indemnity against loss or damage, when the person indemnified makes payment thereof.

(3) If an action commenced within the time limited by Subsection (1) is so terminated as to leave available a remedy by another action for the same default or breach of warranty or indemnity, the other action may be commenced after the expiration of the time limit and within six months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

(4) This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action that have accrued before [~~this chapter becomes effective~~] July 1, 1990.

Section 87. Section **70A-3-415** is amended to read:

70A-3-415. Obligation of indorser.

(1) Subject to Subsections (2), (3), and (4) and to Subsection 70A-3-419 (4), if an instrument is dishonored, an indorser is obliged to pay the amount due on the instrument according to the terms of the instrument at the time it was indorsed, or if the indorser indorsed an incomplete instrument, according to its terms when completed, to the extent stated in Sections 70A-3-115 and 70A-3-407. The obligation of the indorser is owed to a person entitled to enforce the instrument or to a subsequent indorser who paid the instrument under this section.

(2) If an indorsement states that it is made "without recourse" or otherwise disclaims liability of the indorser, the indorser is not liable under Subsection (1) to pay the instrument.

(3) If notice of dishonor of an instrument is required by Section 70A-3-503 and notice of dishonor complying with that section is not given to an indorser, the liability of the indorser under Subsection (1) is discharged.

(4) If a draft is accepted by a bank after an indorsement is made, the liability of the indorser

under Subsection (1) is discharged.

(5) If an indorser of a check is liable under Subsection (1) and the check is not presented for payment, or given to a depositary bank for collection, within 30 days after the day the indorsement was made, the liability of the indorser under Subsection [~~(a)~~] (1) is discharged.

Section 88. Section **76-7-305.5** is amended to read:

76-7-305.5. Requirements for printed materials and informational video -- Annual report of Department of Health.

(1) In order to insure that a woman's consent to an abortion is truly an informed consent, the Department of Health shall publish printed materials and produce an informational video in accordance with the requirements of this section. The department and each local health department shall make those materials and a viewing of the video available at no cost to any person. The printed material and the informational video shall be comprehensible and contain all of the following:

(a) geographically indexed materials informing the woman of public and private services and agencies available to assist her, financially and otherwise, through pregnancy, at childbirth, and while the child is dependent, including services and supports available under Section 35A-3-308. Those materials shall contain a description of available adoption services, including a comprehensive list of the names, addresses, and telephone numbers of public and private agencies and private attorneys whose practice includes adoption, and explanations of possible available financial aid during the adoption process. The information regarding adoption services shall include the fact that private adoption is legal, and that the law permits adoptive parents to pay the costs of prenatal care, childbirth, and neonatal care. The printed information and video shall present adoption as a preferred and positive choice and alternative to abortion. The department may, at its option, include printed materials that describe the availability of a toll-free 24-hour telephone number that may be called in order to obtain, orally, the list and description of services, agencies, and adoption attorneys in the locality of the caller;

(b) truthful and nonmisleading descriptions of the probable anatomical and physiological characteristics of the unborn child at two-week gestational increments from fertilization to full term, accompanied by pictures or video segments representing the development of an unborn child at those

gestational increments. The descriptions shall include information about brain and heart function and the presence of external members and internal organs during the applicable stages of development. Any pictures used shall contain the dimensions of the fetus and shall be realistic and appropriate for that woman's stage of pregnancy. The materials shall be designed to convey accurate scientific information about an unborn child at the various gestational ages, and to convey the state's preference for childbirth over abortion;

(c) truthful, nonmisleading descriptions of abortion procedures used in current medical practice at the various stages of growth of the unborn child, the medical risks commonly associated with each procedure, including those related to subsequent childbearing, the consequences of each procedure to the fetus at various stages of fetal development, the possible detrimental psychological effects of abortion, and the medical risks associated with carrying a child to term;

(d) any relevant information on the possibility of an unborn child's survival at the two-week gestational increments described in Subsection (1)(b);

(e) information on the availability of medical assistance benefits for prenatal care, childbirth, and neonatal care;

(f) a statement conveying that it is unlawful for any person to coerce a woman to undergo an abortion;

(g) a statement conveying that any physician who performs an abortion without obtaining the woman's informed consent or without according her a private medical consultation in accordance with the requirements of this section, may be liable to her for damages in a civil action at law;

(h) a statement conveying that the state of Utah prefers childbirth over abortion; and

(i) information regarding the legal responsibility of the father to assist in child support, even in instances where he has agreed to pay for an abortion, including a description of the services available through the Office of Recovery Services, within the Department of Human Services, to establish and collect that support.

(2) (a) The materials described in Subsection (1) shall be produced and printed in a way that conveys the state's preference for childbirth over abortion.

(b) The printed material described in Subsection (1) shall be printed in a typeface large

enough to be clearly legible.

(3) Every facility in which abortions are performed shall immediately provide the printed informed consent materials and a viewing of or a copy of the informational video described in Subsection (1) to any patient or potential patient prior to the performance of an abortion, unless the patient's attending or referring physician certifies in writing that he reasonably believes that provision of the materials or video to that patient would result in a severely adverse effect on her physical or mental health.

(4) The Department of Health shall produce a standardized videotape that may be used statewide, containing all of the information described in Subsection (1), in accordance with the requirements of that subsection and Subsection (2). In preparing the video, the department may summarize and make reference to the printed comprehensive list of geographically indexed names and services described in Subsection (1)(a). The videotape shall, in addition to the information described in Subsection (1), show an ultrasound of the heart beat of an unborn child at three weeks gestational age, at six to eight weeks gestational age, and each month thereafter, until 14 weeks gestational age. That information shall be presented in a truthful, nonmisleading manner designed to convey accurate scientific information, the state's preference for childbirth over abortion, and the positive aspects of adoption.

(5) The Department of Health and local health departments shall provide ultrasounds in accordance with the provisions of Subsection 76-7-305(1)(b), at no expense to the pregnant woman.

(6) The Department of Health shall compile and report the following information annually, preserving physician and patient anonymity:

(a) the total amount of informed consent material described in Subsection (1) that was distributed;

(b) the number of women who obtained abortions in this state without receiving those materials;

(c) the number of statements signed by attending physicians certifying to his opinion regarding adverse effects on the patient under Subsection (3); and

(d) any other information pertaining to protecting the informed consent of women seeking

abortions.

(7) The Department of Health shall annually report to the Health and Human Services Interim Committee regarding the information described in Subsection (6), and provide a copy of the printed materials and the videotape produced in accordance with this section to that committee.

Section 89. Section **76-8-601** is amended to read:

76-8-601. Wrongful commencement of action in justice court.

Any party to any suit or proceeding, and any attorney or agent for the party, who knowingly commences, prosecutes, or maintains any action, suit, or proceeding in any justice court [~~in violation of~~] other than as provided in Sections 78-5-103 and 78-5-104, is guilty of a class B misdemeanor.

Section 90. Section **76-10-1504** is amended to read:

76-10-1504. Bus hijacking -- Assault with intent to commit hijacking -- Use of a dangerous weapon or firearm -- Penalties.

(1) A person is guilty of bus hijacking if he seizes or exercises control, by force or violence or threat of force or violence, of any bus within the state. Bus hijacking is a first degree felony.

(2) A person is guilty of assault with the intent to commit bus hijacking if he intimidates, threatens, or commits assault or battery toward any driver, attendant, guard, or any other person in control of a bus so as to interfere with the performance of duties by such person. Assault with the intent to commit bus hijacking is a second degree felony.

(3) Any person who, in the commission of assault with intent to commit bus hijacking, uses a dangerous weapon, as defined in Section 76-1-601, is guilty of a first degree felony.

(4) (a) Any person who boards a bus with a concealed dangerous weapon or firearm upon his person or effects is guilty of a second degree felony.

(b) The prohibition of [~~this~~] Subsection (4)(a) does not apply to elected or appointed law enforcement officers or commercial security personnel who are in possession of weapons or firearms used in the course and scope of their employment, or a person licensed to carry a concealed weapon; nor shall the prohibition apply to persons in possession of weapons or firearms with the consent of the owner of the bus or his agent, or the lessee or bailee of the bus.

Section 91. Section **77-27-2** is amended to read:

77-27-2. Board of Pardons and Parole -- Creation -- Compensation -- Functions.

(1) There is created the Board of Pardons and Parole. The board shall consist of five full-time members and five pro tempore members to be appointed by the governor with the advice and consent of the Senate as provided in this section. The members of the board shall be resident citizens of the state. The governor shall establish salaries for the members of the board within the salary range fixed by the Legislature in Title 67, Chapter 22, State Officer Compensation.

(2) (a) (i) The full-time board members shall serve terms of five years. The terms of the full-time members shall be staggered so one board member is appointed for a term of five years on March 1 of each year.

(ii) The pro tempore members shall serve terms of five years. The [~~two~~] five pro tempore members added by Subsection (1) shall be appointed to terms that both commence on May 1, 1996, and respectively end on February 28, 1999, and February 29, 2000. These terms are reduced by two and one years respectively so that the appointment of one pro tempore member expires every year beginning in 1996. Terms previously set to expire will now expire the last day of February of their respective years.

(b) All vacancies occurring on the board for any cause shall be filled by the governor with the advice and consent of the Senate pursuant to this section for the unexpired term of the vacating member.

(c) The governor may at any time remove any member of the board for inefficiency, neglect of duty, malfeasance or malfeasance in office, or for cause upon a hearing.

(d) A member of the board may not hold any other office in the government of the United States, this state or any other state, or of any county government or municipal corporation within a state. A member may not engage in any occupation or business inconsistent with his duties.

(e) A majority of the board constitutes a quorum for the transaction of business, including the holding of hearings at any time or any place within or without the state, or for the purpose of exercising any duty or authority of the board. Action taken by a majority of the board regarding whether parole, pardon, commutation, termination of sentence, or remission of fines or forfeitures may be granted or restitution ordered in individual cases is deemed the action of the board. A

majority vote of the five full-time members of the board is required for adoption of rules or policies of general applicability as provided by statute. However, a vacancy on the board does not impair the right of the remaining board members to exercise any duty or authority of the board as long as a majority of the board remains.

(f) Any investigation, inquiry, or hearing that the board has authority to undertake or hold may be conducted by any board member or an examiner appointed by the board. When any of these actions are approved and confirmed by the board and filed in its office, they are considered to be the action of the board and have the same effect as if originally made by the board.

(g) When a full-time board member is absent or in other extraordinary circumstances the chair may, as dictated by public interest and efficient administration of the board, assign a pro tempore member to act in the place of a full-time member. Pro tempore members shall receive a per diem rate of compensation as established by the Division of Finance and all actual and necessary expenses incurred in attending to official business.

(h) The chair may request staff and administrative support as necessary from the Department of Corrections.

(3) (a) Except as provided in Subsection (3)(c), the Commission on Criminal and Juvenile Justice shall:

(i) recommend five applicants to the governor for appointment to the Board of Pardons and Parole; and

(ii) consider applicants' knowledge of the criminal justice system, state and federal criminal law, judicial procedure, corrections policies and procedures, and behavioral sciences.

(b) The procedures and requirements of Subsection (3)(a) do not apply if the governor appoints a sitting board member to a new term of office.

(4) (a) The board shall appoint an individual to serve as its mental health adviser and may appoint other staff necessary to aid it in fulfilling its responsibilities under Title 77, Chapter 16a, Commitment and Treatment of Mentally Ill Persons. The adviser shall prepare reports and recommendations to the board on all persons adjudicated as guilty and mentally ill, in accordance with Title 77, Chapter 16a.

(b) The mental health adviser shall possess the qualifications necessary to carry out the duties imposed by the board and may not be employed by the Department of Corrections, the Department of Human Services, or a local mental health authority.

(c) The mental health adviser shall:

(i) act as liaison for the board with the Department of Human Services and local mental health authorities;

(ii) educate the members of the board regarding the needs and special circumstances of mentally ill persons in the criminal justice system;

(iii) in cooperation with the Department of Corrections, monitor the status of persons in the prison who have been found guilty and mentally ill;

(iv) monitor the progress of other persons under the board's jurisdiction who are mentally ill;

(v) conduct hearings as necessary in the preparation of reports and recommendations; and

(vi) perform other duties as assigned by the board.

Section 92. Section **77-36-2.1** is amended to read:

77-36-2.1. Duties of law enforcement officers -- Notice to victims.

(1) A law enforcement officer who responds to an allegation of domestic violence shall use all reasonable means to protect the victim and prevent further violence, including:

(a) taking the action that, in the officer's discretion, is reasonably necessary to provide for the safety of the victim and any family or household member;

(b) confiscating the weapon or weapons involved in the alleged domestic violence;

(c) making arrangements for the victim and any child to obtain emergency housing or shelter;

(d) providing protection for the victim while he or she removes essential personal effects;

(e) arrange, facilitate, or provide for the victim and any child to obtain medical treatment; and

(f) arrange, facilitate, or provide the victim with immediate and adequate notice of the rights of victims and of the remedies and services available to victims of domestic violence, in accordance

with Subsection (2).

(2) (a) A law enforcement officer shall give written notice to the victim in simple language, describing the rights and remedies available to her under this chapter and Title 30, Chapter 6, Cohabitant Abuse Act.

(b) The written notice shall also include:

(i) a statement that the forms needed in order to obtain an order for protection are available from the district court clerk's office in the judicial district where the victim resides or is temporarily domiciled;

(ii) a list of shelters, services, and resources available in the appropriate community, together with telephone numbers, to assist the victim in accessing any needed assistance; and

(iii) the information required to be provided to both parties in accordance with Subsection 77-36-2.5[~~(6)~~](7).

Section 93. Section **78-3-25** is amended to read:

78-3-25. Assistants for administrator of the courts -- Appointment of trial court executives.

(1) The administrator of the courts, with the approval of the presiding officer of the council, is responsible for the establishment of positions and salaries of assistants as necessary to enable him to perform the powers and duties vested in him by this [~~act~~] chapter, including the positions of appellate court administrator, district court administrator, juvenile court administrator, and justices' court administrator, whose appointments shall be made by the administrator of the courts with the concurrence of the respective boards as established by the council.

(2) The district court administrator, with the concurrence of the presiding judge of a district or the district court judge in single judge districts, may appoint in each district a trial court executive. The trial court executive may appoint, subject to budget limitations, necessary support personnel including clerks, research clerks, secretaries, and other persons required to carry out the work of the court. The trial court executive shall supervise the work of all nonjudicial court staff and serve as administrative officer of the district.

(3) Administrators and assistants appointed under this section shall be known collectively

as the Administrative Office of the Courts.

Section 94. Section **78-3a-306** is amended to read:

78-3a-306. Shelter hearing.

(1) A shelter hearing shall be held within 72 hours after removal of a child from his home, excluding weekends and holidays.

(2) Upon removal of a child from his home and receipt of that child into protective custody, the division shall issue a notice that contains all of the following:

(a) the name and address of the person to whom the notice is directed;

(b) the date, time, and place of the shelter hearing;

(c) the name of the minor on whose behalf a petition is being brought;

(d) a concise statement regarding the allegations and code sections under which the proceeding has been instituted;

(e) a statement that the parent or guardian to whom notice is given, and the minor, are entitled to have an attorney present at the shelter hearing, and that if the parent or guardian is indigent and cannot afford an attorney, and desires to be represented by an attorney, one will be provided; and

(f) a statement that the parent or guardian is liable for the cost of support of the minor in the protective custody, temporary custody, and custody of the division, and the cost for legal counsel appointed for the parent or guardian under Subsection (2)(e), according to his financial ability.

(3) That notice shall be personally served as soon as possible, but at least 24 hours prior to the time set for the shelter hearing, on:

(a) the appropriate guardian ad litem; and

(b) both parents and any guardian of the minor, unless they cannot be located.

(4) The following persons shall be present at the shelter hearing:

(a) the child, unless it would be detrimental for the child;

(b) the child's parents or guardian, unless they cannot be located, or fail to appear in response to the notice;

(c) counsel for the parents, if one has been requested;

(d) the child's guardian ad litem;

(e) the caseworker from the Division of Child and Family Services who has been assigned to the case; and

(f) the attorney from the attorney general's office who is representing the division.

(5) (a) At the shelter hearing, the court shall provide an opportunity for the minor's parent or guardian, if present, and any other person having relevant knowledge, to provide relevant testimony. The court may also provide an opportunity for the minor to testify.

(b) The court may consider all relevant evidence, in accordance with the Utah Rules of Juvenile Procedure. The court shall hear relevant evidence presented by the minor, his parent or guardian, the requesting party, or their counsel, but may in its discretion limit testimony and evidence to only that which goes to the issues of removal and the child's need for continued protection.

(6) If the child is in the protective custody of the division, the division shall report to the court:

(a) the reasons why the minor was removed from the parent's or guardian's custody;

(b) any services provided to the child and his family in an effort to prevent removal;

(c) the need, if any, for continued shelter;

(d) the available services that could facilitate the return of the minor to the custody of his parent or guardian; and

(e) whether the child has any relatives who may be able and willing to take temporary custody.

(7) If necessary to protect the child, preserve the rights of a party, or for other good cause shown, the court may grant no more than one time-limited continuance, not to exceed five judicial days.

(8) The court shall order that the minor be released from the protective custody of the division unless it finds, by a preponderance of the evidence, that any one of the following exist:

(a) there is a substantial danger to the physical health or safety of the minor and the minor's physical health or safety may not be protected without removing him from his parent's custody. If

a minor has previously been adjudicated as abused, neglected, or dependent and a subsequent incident of abuse, neglect, or dependency occurs, that fact constitutes prima facie evidence that the child cannot safely remain in the custody of his parent;

(b) the minor is suffering emotional damage, as may be indicated by, but is not limited to, extreme anxiety, depression, withdrawal, or negative aggressive behavior toward self or others, and there are no reasonable means available by which the minor's emotional health may be protected without removing the minor from the custody of his parent;

(c) the minor or another minor residing in the same household has been physically or sexually abused, or is deemed to be at substantial risk of being physically or sexually abused, by a parent, a member of the parent's household, or other person known to the parent. If a parent has received actual notice that physical or sexual abuse by a person known to the parent has occurred, and there is evidence that the parent has allowed the child to be in the physical presence of the alleged abuser, that fact constitutes prima facie evidence that the child is at substantial risk of being physically or sexually abused;

(d) the parent is unwilling to have physical custody of the child;

(e) the minor has been left without any provision for his support;

(f) a parent who has been incarcerated or institutionalized has not or cannot arrange for safe and appropriate care for the minor;

(g) a relative or other adult custodian with whom the minor has been left by the parent is unwilling or unable to provide care or support for the minor, the whereabouts of the parent are unknown, and reasonable efforts to locate him have been unsuccessful;

(h) the minor is in immediate need of medical care;

(i) the physical environment or the fact that the child is left unattended poses a threat to the child's health or safety;

(j) the minor or another minor residing in the same household has been severely neglected; or

(k) the child's welfare is otherwise endangered.

(9) The court shall also make a determination on the record as to whether reasonable efforts

were made to prevent or eliminate the need for removal of the minor from his home and whether there are available services that would prevent the need for continued removal. If the court finds that the minor can be safely returned to the custody of his parent or guardian through the provision of those services, it shall place the minor with his parent or guardian and order that those services be provided by the division.

(10) Where the division's first contact with the family occurred during an emergency situation in which the child could not safely remain at home, even with reasonable services being provided, the court shall make a finding that any lack of preplacement preventive efforts was reasonable.

(11) In cases where obvious sexual abuse or abandonment, or serious physical abuse or neglect are involved, neither the division nor the court has any duty to maintain a child in his home, return a child to his home, provide reunification services, or attempt to rehabilitate the offending parent or parents. The court may, however, determine that those services or efforts would be reasonable in specific circumstances, and order the division to provide those services.

(12) The court may not order continued removal of a minor solely on the basis of educational neglect as described in Subsection 78-3a-103(1)(q)(ii).

(13) (a) Whenever a court orders continued removal of a minor under this section, it shall state the facts on which that decision is based.

(b) If no continued removal is ordered and the minor is returned home, the court shall state the facts on which that decision is based.

(14) If the court finds that continued removal and temporary custody is necessary for the protection of a child because harm may result to the child if he were returned home, it shall order continued removal regardless of any error in the initial removal of the child, or the failure of a party to comply with notice provisions, or any other procedural requirement of this chapter or Title 62A, Chapter 4a, Child and Family Services.

Section 95. Section **78-3a-911** is amended to read:

78-3a-911. Office of Guardian Ad Litem Director.

(1) There is hereby created the Office of Guardian Ad Litem Director under the direct

supervision of the Judicial Council in accordance with Subsection 78-3-21(13).

(2) (a) The Judicial Council shall appoint one person to serve full time as the guardian ad litem director for the state.

(b) The director shall be an attorney licensed to practice law in this state and selected on the basis of:

(i) professional ability;

(ii) experience in abuse, neglect, and dependency proceedings;

(iii) familiarity with the role, purpose, and function of guardians ad litem in both juvenile and district courts; and

(iv) ability to develop training curricula and reliable methods for data collection and evaluation.

(c) The director shall be trained in the United States Department of Justice National Court Appointed Special Advocate program prior to or immediately after his appointment.

(3) The guardian ad litem director shall:

(a) establish policy and procedure for the management of a statewide guardian ad litem program;

(b) manage the guardian ad litem program to assure that minors receive qualified guardian ad litem services in abuse, neglect, and dependency proceedings in accordance with state and federal law and policy;

(c) develop standards for contracts of employment and contracts with independent contractors, and employ or contract with attorneys licensed to practice law in this state, to act as attorney guardians ad litem in accordance with Section 78-3a-912;

(d) develop and provide training programs for attorney guardians ad litem and volunteers in accordance with the United States Department of Justice National Court Appointed Special Advocates Association standards;

(e) update and develop the guardian ad litem manual, combining elements of the National Court Appointed Special Advocates Association manual with specific information about the law and policy of this state;

(f) develop and provide a library of materials for the continuing education of attorney guardians ad litem and volunteers;

(g) educate court personnel regarding the role and function of guardians ad litem;

(h) develop needs assessment strategies, perform needs assessment surveys, and ensure that guardian ad litem training programs correspond with actual and perceived needs for training;

(i) design and implement evaluation tools based on specific objectives targeted in the needs assessments described in Subsection (3)(h); and

(j) prepare and submit an annual report to the Judicial Council and the [~~Legislative~~] Health and Human Services Interim Committee regarding the development, policy, and management of the statewide guardian ad litem program, and the training and evaluation of attorney guardians ad litem and volunteers.

(4) A contract of employment or independent contract described under Subsection (3)(c) shall provide that attorney guardians ad litem in the second, third, and fourth judicial districts devote their full time and attention to the role of attorney guardian ad litem, having no clients other than the children whose interest they represent within the guardian ad litem program.

Section 96. Section **78-23-9** is amended to read:

78-23-9. Exemption of proceeds from property sold, taken by condemnation, lost, damaged, or destroyed -- Tracing exempt property and proceeds.

(1) If property, or a part thereof, that could have been claimed exempt under Subsection 78-23-5 (1) (a)(i) or [~~(b)~~] (ii), or personal property subject to a value limitation under Subsection 78-23-8 (1) (a), (b), or (c) has been sold or taken by condemnation, or has been lost, damaged, or destroyed and the owner has been compensated therefor, the individual is entitled to an exemption of proceeds that are traceable for one year after the proceeds are received. The exemption of proceeds under this subsection does not entitle the individual to claim an aggregate exemption in excess of the value limitation otherwise allowable under Section 78-23-3 or 78-23-8.

(2) Money or other property exempt under Subsection 78-23-5 (1) [~~(c), (d), (e), or (f)~~] (a)(iii), (iv), (v), or (vi), or exempt to the extent reasonably necessary for support under Section 78-23-6, remains exempt after its receipt by, and while it is in the possession of, the individual or

in any other form into which it is traceable.

(3) Money or other property and proceeds exempt under this chapter are traceable under this section by application of the principle of first-in first-out, last-in last-out, or any other reasonable basis for tracing selected by the individual.

Section 97. **Repealer.**

This act repeals:

Section **55-15-32, Assistance not assignable -- Exemption from legal process or bankruptcy or insolvency law.**

Section **55-15-34, Charges or fees for representing applicants.**

Section **55-15-39, Short title.**

Section **58-25a-4, Board created -- Membership -- Duties.**

Section **58-25a-5, Reciprocity.**

Section **62A-7-301, Juvenile sex offender unit -- Purpose -- Members -- Duties -- Staff specialists.**

Section **62A-7-303, Restrictions on appropriation.**

Section **62A-9-113, Federal grants.**

Section **62A-9-134, County attorney, district attorney, and attorney general responsibilities.**