REVISOR'S STATUTE

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: Susan J. Koehn

AN ACT RELATING TO STATE AFFAIRS; MAKING TECHNICAL AMENDMENTS; AND REPEALING CERTAIN OUTDATED SECTIONS.

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

AMENDS:

9-2-1610, as enacted by Chapter 236, Laws of Utah 1996

10-2-115, as enacted by Chapter 389, Laws of Utah 1997

10-2-416, as repealed and reenacted by Chapter 389, Laws of Utah 1997

10-3-106, as last amended by Chapter 17, Laws of Utah 1999

13-30-106, as last amended by Chapter 124, Laws of Utah 1999

17A-1-301, as last amended by Chapter 30, Laws of Utah 1992

17A-1-437, as last amended by Chapter 285, Laws of Utah 1992

17A-2-215, as last amended by Chapter 227, Laws of Utah 1993

17A-2-219, as renumbered and amended by Chapter 186, Laws of Utah 1990

17A-2-331, as renumbered and amended by Chapter 186, Laws of Utah 1990

17A-2-422, as renumbered and amended by Chapter 186, Laws of Utah 1990

17A-2-534, as renumbered and amended by Chapter 186, Laws of Utah 1990

17A-2-535, as last amended by Chapter 227, Laws of Utah 1993

17A-2-544, as renumbered and amended by Chapter 186, Laws of Utah 1990

17A-2-553, as renumbered and amended by Chapter 186, Laws of Utah 1990

17A-2-605, as last amended by Chapter 146, Laws of Utah 1994

17A-2-812, as renumbered and amended by Chapter 186, Laws of Utah 1990

17A-2-818, as last amended by Chapters 199 and 299, Laws of Utah 1995

17A-2-824, as renumbered and amended by Chapter 186, Laws of Utah 1990

17A-2-1023, as renumbered and amended by Chapter 186, Laws of Utah 1990

17A-2-1024, as renumbered and amended by Chapter 186, Laws of Utah 1990

17A-2-1030, as renumbered and amended by Chapter 186, Laws of Utah 1990

17A-2-1202, as last amended by Chapter 320, Laws of Utah 1995

17A-2-1210, as last amended by Chapter 50, Laws of Utah 1993

17A-2-1302, as renumbered and amended by Chapter 186, Laws of Utah 1990

17A-2-1411, as renumbered and amended by Chapter 186, Laws of Utah 1990

17A-2-1425, as renumbered and amended by Chapter 186, Laws of Utah 1990

17A-2-1437, as last amended by Chapter 152, Laws of Utah 1996

17A-2-1444, as renumbered and amended by Chapter 186, Laws of Utah 1990

17A-2-1512, as renumbered and amended by Chapter 186, Laws of Utah 1990

17A-2-1704, as last amended by Chapter 212, Laws of Utah 1993

17A-2-1709, as renumbered and amended by Chapter 186, Laws of Utah 1990

17A-2-1803, as last amended by Chapter 19, Laws of Utah 1998

17A-2-1805, as enacted by Chapter 216, Laws of Utah 1995

17A-3-209, as last amended by Chapter 365, Laws of Utah 1999

17A-3-210, as last amended by Chapter 30, Laws of Utah 1992

17A-3-303, as last amended by Chapter 47, Laws of Utah 1991

17A-3-412, as renumbered and amended by Chapter 186, Laws of Utah 1990

17A-3-701, as last amended by Chapter 106, Laws of Utah 1999

17B-2-201, as enacted by Chapter 368, Laws of Utah 1998

19-6-703, as enacted by Chapter 283, Laws of Utah 1993

26-8a-402, as enacted by Chapter 141, Laws of Utah 1999

26-8a-502, as enacted by Chapter 141, Laws of Utah 1999

26-18-2, as last amended by Chapter 61, Laws of Utah 1999

26-18-3.7, as last amended by Chapter 209, Laws of Utah 1997

26-21-2, as last amended by Chapters 13 and 192, Laws of Utah 1998

26-40-102, as enacted by Chapter 360, Laws of Utah 1998

26-44-101, as enacted by Chapter 344, Laws of Utah 1999

26-44-202, as enacted by Chapter 344, Laws of Utah 1999

30-1-9, as last amended by Chapter 15, Laws of Utah 1999

30-3-38, as last amended by Chapters 235 and 329, Laws of Utah 1997

31A-5-103, as enacted by Chapter 242, Laws of Utah 1985

31A-16-103, as last amended by Chapter 131, Laws of Utah 1999

31A-22-302, as last amended by Chapter 132, Laws of Utah 1992

31A-22-604, as last amended by Chapter 102, Laws of Utah 1995

31A-23-102, as last amended by Chapter 131, Laws of Utah 1999

31A-23-503, as last amended by Chapter 9, Laws of Utah 1996, Second Special Session

31A-23-601, as last amended by Chapter 9, Laws of Utah 1996, Second Special Session

31A-25-205, as enacted by Chapter 242, Laws of Utah 1985

32A-1-105, as last amended by Chapter 141, Laws of Utah 1998

32A-1-113, as last amended by Chapter 169, Laws of Utah 1997

32A-1-117, as renumbered and amended by Chapter 23, Laws of Utah 1990

32A-1-118, as renumbered and amended by Chapter 23, Laws of Utah 1990

32A-1-121, as renumbered and amended by Chapter 23, Laws of Utah 1990

32A-1-504, as enacted by Chapter 20, Laws of Utah 1993

32A-3-102, as last amended by Chapter 132, Laws of Utah 1991

32A-4-102, as last amended by Chapter 132, Laws of Utah 1991

32A-4-106, as last amended by Chapter 127, Laws of Utah 1998

32A-4-202, as last amended by Chapter 132, Laws of Utah 1991

32A-4-206, as last amended by Chapter 127, Laws of Utah 1998

32A-5-102, as last amended by Chapter 132, Laws of Utah 1991

32A-5-107, as last amended by Chapter 127, Laws of Utah 1998

32A-7-102, as last amended by Chapter 132, Laws of Utah 1991

32A-8-102, as last amended by Chapter 132, Laws of Utah 1991

32A-8-106, as last amended by Chapters 77 and 88, Laws of Utah 1994

32A-8-502, as enacted by Chapter 20, Laws of Utah 1993

32A-8-505, as last amended by Chapter 141, Laws of Utah 1998

32A-9-102, as last amended by Chapter 132, Laws of Utah 1991

32A-9-106, as last amended by Chapter 270, Laws of Utah 1998

32A-10-202, as last amended by Chapter 282, Laws of Utah 1998

32A-10-206, as last amended by Chapter 127, Laws of Utah 1998

32A-11-102, as last amended by Chapter 282, Laws of Utah 1998

32A-11-106, as last amended by Chapter 88, Laws of Utah 1994

32A-11a-102, as enacted by Chapter 328, Laws of Utah 1998

32A-12-303, as last amended by Chapter 132, Laws of Utah 1991

32A-12-304, as last amended by Chapter 132, Laws of Utah 1991

32A-12-305, as last amended by Chapter 132, Laws of Utah 1991

32A-12-306, as renumbered and amended by Chapter 23, Laws of Utah 1990

32A-12-307, as last amended by Chapter 20, Laws of Utah 1993

32A-12-308, as last amended by Chapter 132, Laws of Utah 1991

32A-12-310, as enacted by Chapter 132, Laws of Utah 1991

32A-13-109, as renumbered and amended by Chapter 23, Laws of Utah 1990

53-10-102, as renumbered and amended by Chapter 263, Laws of Utah 1998

53-10-304, as renumbered and amended by Chapter 263, Laws of Utah 1998

53-10-305, as renumbered and amended by Chapter 263, Laws of Utah 1998

53A-15-205, as enacted by Chapter 246, Laws of Utah 1994

58-37c-19, as enacted by Chapter 100, Laws of Utah 1998

58-37c-20, as enacted by Chapter 100, Laws of Utah 1998

58-56-3, as last amended by Chapter 42, Laws of Utah 1999

58-59-303, as repealed and reenacted by Chapter 247, Laws of Utah 1994

58-67-102, as last amended by Chapter 4, Laws of Utah 1999

58-68-102, as last amended by Chapter 4, Laws of Utah 1999

59-2-601, as last amended by Chapter 264, Laws of Utah 1998

62A-7-109, as last amended by Chapter 10, Laws of Utah 1999

62A-12-282.1, as last amended by Chapters 10, 329 and 365, Laws of Utah 1997

63-25a-501, as enacted by Chapter 346, Laws of Utah 1999

63-55-209, as last amended by Chapters 21, 76 and 156, Laws of Utah 1999

63-55-254, as last amended by Chapter 189, Laws of Utah 1999

63-55-262, as last amended by Chapters 15 and 134, Laws of Utah 1997

63-55-263, as last amended by Chapters 13, 122 and 270, Laws of Utah 1998

63-55b-163, as renumbered and amended by Chapter 21, Laws of Utah 1999

63-75-7, as last amended by Chapter 136, Laws of Utah 1996

63A-9-801, as renumbered and amended by Chapter 252 and last amended by Chapter 375, Laws of Utah 1997

63C-8-101, as enacted by Chapter 202, Laws of Utah 1997

76-8-508, as last amended by Chapter 175, Laws of Utah 1988

76-9-704, as last amended by Chapter 51, Laws of Utah 1999

76-10-105.1, as last amended by Chapter 412, Laws of Utah 1998

76-10-803, as last amended by Chapter 141, Laws of Utah 1992

76-10-1305, as last amended by Chapter 79, Laws of Utah 1996

76-10-1902, as last amended by Chapter 97, Laws of Utah 1999

77-19-11, as last amended by Chapter 113, Laws of Utah 1996

77-20-8.5, as last amended by Chapter 257, Laws of Utah 1998

77-32-401, as enacted by Chapter 354, Laws of Utah 1997

77-37-3, as last amended by Chapter 40, Laws of Utah 1993

78-3a-905, as last amended by Chapter 260, Laws of Utah 1999

78-3c-4, as last amended by Chapter 30, Laws of Utah 1992

78-3g-102, as last amended by Chapter 68, Laws of Utah 1998

REPEALS:

26-8-15, as last amended by Chapter 241, Laws of Utah 1991

78-32-12.3, as enacted by Chapter 152, Laws of Utah 1993

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

Section 1. Section **9-2-1610** is amended to read:

9-2-1610. Recycling market development zones credit.

For a taxpayer within a recycling market development zone, there are allowed the credits against tax as provided by Sections [~~59-7-608~~] 59-7-610 and 59-10-108.7.

Section 2. Section **10-2-115** is amended to read:

10-2-115. Notice of number of commission or council members to be elected and of district boundaries -- Declaration of candidacy for city office.

(1) (a) Within 20 days of the county legislative body's receipt of the information under Subsection 10-2-114(1)(d), the county clerk shall publish in a newspaper of general circulation within the future city a notice containing:

(i) the number of commission or council members to be elected for the new city;

(ii) if some or all of the commission or council members are to be elected by district, a description of the boundaries of those districts as designated by the petition sponsors under Subsection 10-2-114(1)(b);

(iii) information about the deadline for filing a declaration of candidacy for those seeking to become candidates for mayor or city commission or council; and

(iv) information about the length of the initial term of each of the city officers, as determined by the petition sponsors under Subsection 10-2-114(1)(c).

(b) The notice under Subsection (1)(a) shall be published at least once a week for two successive weeks.

(c) (i) If there is no newspaper of general circulation within the future city, the county clerk shall post at least one notice per 1,000 population in conspicuous places within the future city that are most likely to give notice to the residents of the future city.

(ii) The notice under Subsection (1)(c)(i) shall contain the information required under Subsection (1)(a).

(iii) The petition sponsors shall post the notices under Subsection (1)(c)(i) at least seven days before the deadline for filing a declaration of candidacy under Subsection (2).

(2) Notwithstanding Subsection [~~20A-2-203~~] 20A-9-203(2)(a), each person seeking to become a candidate for mayor or city commission or council of a city incorporating under this part

shall, within 45 days of the incorporation election under Section 10-2-111, file a declaration of candidacy with the clerk of the county in which the future city is located.

Section 3. Section **10-2-416** is amended to read:

10-2-416. Commission decision -- Written decision -- Limitation.

(1) Subject to Subsection (3), after the public hearing under Subsection 10-2-415(1) the commission may:

(a) approve the proposed annexation, either with or without conditions;

(b) make minor modifications to the proposed annexation and approve it, either with or without conditions; or

(c) disapprove the proposed annexation.

(2) The commission shall issue a written decision on the proposed annexation within 20 days of the conclusion of the hearing under Subsection 10-2-415(1) and send a copy of the decision to:

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

(b) the legislative body of the proposed annexing municipality;

(c) the contact person on the annexation petition;

(d) each entity that filed a protest; and

(e) if a protest was filed under Subsection 10-2-407(1)[~~(d)~~](a)(iv), the contact person.

(3) The commission may not approve a proposed annexation unless the results of the feasibility study under Section 10-2-413 show that the average annual amount under Subsection 10-2-413(3)(a)(ix) does not exceed the average annual amount under Subsection 10-2-413(3)(a)(viii) by more than 5%.

Section 4. Section **10-3-106** is amended to read:

10-3-106. Governing body in towns.

The governing body of each town that has not adopted an optional form of government under Part 12, Alternative Forms of Municipal Government Act, shall be a council of five persons one of whom shall be the mayor and the remaining four shall be [~~councilmen~~] council members.

Section 5. Section **13-30-106** is amended to read:

13-30-106. Bond, certificate of deposit, or letter of credit.

(1) (a) A person may not conduct a personal introduction service unless at the time of conducting the personal introduction service the person has on file with the division a good and sufficient bond, certificate of deposit, or letter of credit.

(b) If a personal introduction service business obtains and maintains a bond, the bond shall be a performance bond issued by a surety authorized to transact surety business in this state.

(2) The bond, certificate of deposit, or letter of credit shall be for an amount prescribed by rule, payable to the division.

(3) (a) The bond, certificate of deposit, or letter of credit shall provide that the person giving it shall, upon written demand, remit to the division the amount necessary:

(i) as reimbursement for both administrative and civil violations of this chapter; and

(ii) in satisfaction of any civil [~~and or~~] judgments, criminal judgments, or both, rendered by a court of competent jurisdiction for violations of this chapter.

(b) Notwithstanding Subsection (3)(a), recovery from a bond, certificate of deposit, or letter of credit is limited to the amount of the bond, certificate of deposit, or letter of credit.

(4) The division may:

(a) specify the form of the bond, certificate of deposit, or letter of credit; and

(b) require that the bond, certificate of deposit, or letter of credit contain additional provisions and conditions that the division considers necessary or proper to protect the persons for whom the collection is undertaken.

(5) (a) A bond, certificate of deposit, or letter of credit required under this section shall be for the term of one year from the date of issuance and shall run concurrently with the registration.

(b) The applicant shall maintain the bond, certificate of deposit, or letter of credit for the entire duration of the registration and for a period of not less than one year after the division receives notice in writing from the person engaged in the business of a personal introduction service that all activities have ceased.

(c) An action on a bond, certificate of deposit, or letter of credit may not be initiated more than two years from the date the bond, certificate of deposit, or letter of credit expires.

Section 6. Section **17A-1-301** is amended to read:

17A-1-301. Exemptions.

This part does not apply to:

(1) public transit districts established under authority of Title 17A, Chapter 2, Part 10, Utah Public Transit District Act;

(2) water conservancy districts established under Title 17A, Chapter 2, Part 14, Water Conservancy Districts;

(3) soil conservation districts created under the authority of Title 17A, Chapter 3, Part 8, Soil Conservation Districts;

(4) neighborhood redevelopment agencies established under authority of Title 17A, Chapter 2, Part 12, Utah Neighborhood Development Act;

(5) metropolitan water districts established under authority of Title 17A, Chapter 2, Part 8, Metropolitan Water District Act;

(6) any dependent special district established under the authority of Title 17A, Chapter 3, Dependent Special Districts; and

(7) a hazardous waste facilities [~~Management Authorities~~] authority established under authority of [~~Title 17A,~~] Chapter 2, Part 17, Hazardous Waste Facilities Management Act.

Section 7. Section **17A-1-437** is amended to read:

17A-1-437. District treasurer -- Duties generally.

(1) (a) The governing body of the district shall appoint a district treasurer.

(b) (i) Where required, the treasurer may be chosen from among the members of the governing board, except that the chairman of the board may not be district treasurer.

(ii) The district clerk may not also be the district treasurer.

(2) The district treasurer is custodian of all money, bonds, or other securities of the district.

(3) The district treasurer shall:

(a) determine the cash requirements of the district and provide for the deposit and investment of all monies by following the procedures and requirements of Title 51, Chapter 7, State Money Management Act;

(b) receive all public funds and money payable to the district within three business days after

collection, including all taxes, licenses, fines, and intergovernmental revenue;

(c) keep an accurate detailed account of all monies received under Subsection [~~(2)~~] (3)(b) in the manner provided in this part and as directed by the governing body of the district by resolution; and

(d) collect all special taxes and assessments as provided by law and ordinance.

Section 8. Section **17A-2-215** is amended to read:

17A-2-215. Board of cemetery maintenance commissioners -- Organization -- Vacancies -- Officers -- Certified copies of appointments -- Regular and special meetings -- Bills payable -- Oath of office and bond.

Immediately after qualifying, the board of cemetery maintenance commissioners shall meet and organize as a board and, at that time, and whenever thereafter vacancies in the respective offices may occur, they shall elect a president from their number and shall appoint a secretary and treasurer who may also be from their number all of whom shall hold office during the pleasure of the board or for terms fixed by the board. The offices of secretary and treasurer may be filled by the same person. Certified copies of all such appointments under the hand of each of the commissioners shall be forthwith filed with the clerk of the county legislative body and with the tax collector of the county.

As soon as practicable after the organization of the first board of cemetery maintenance commissioners and thereafter when deemed expedient or necessary such board shall designate a day and hour on which regular meetings shall be held and a place for the holding thereof which shall be within the district. Regular meetings must show what bills are submitted, considered, allowed or rejected. The secretary shall make a list of all bills presented, showing to whom payable, for what service or material, when and where used, amount claimed, allowed or disallowed. Such list shall be signed by the chairman and attested by the secretary; provided, that all special meetings must be ordered by the president or a majority of the board, the order must be entered of record, and the secretary must give each member not joining in the order[;] five days notice of special meetings; provided further, that whenever all members of the board are present the same shall be deemed a legal meeting and any lawful business may be transacted. All meetings of the board must be public and a majority shall constitute a quorum for the transaction of business. All records shall be open to the

inspection of any elector during business hours.

The officers of the district shall take and file with the secretary an oath for the faithful performance of the duties of the respective officers. The treasurer shall on his appointment execute and file with the secretary an official bond in such an amount as may be fixed by the cemetery maintenance board which amount shall be at least sufficient to cover the probable amounts of money coming into his hands and 25% thereof in addition thereto.

Section 9. Section **17A-2-219** is amended to read:

17A-2-219. Acquisition and possession of property -- Legal title -- Actions by and against board.

The legal title to all property acquired under the provisions of this part shall immediately, and by operation of law, vest in such cemetery maintenance district and shall be held by such district in trust for and is dedicated and set aside to the uses and purposes set forth in this part. Said board is authorized and empowered to hold, use, acquire, manage, occupy and possess said property as herein provided and to institute and maintain any and all actions and proceedings, suits at law or in equity or to enforce, maintain, protect or preserve any and all rights, privileges and immunities created by this part or acquired in pursuance thereof. In all courts, actions, suits or proceedings, the said board may sue, appear and defend, in person or by attorney and in the manner of such cemetery maintenance district.

Section 10. Section **17A-2-331** is amended to read:

17A-2-331. Annexation of areas.

[~~Area~~] An area outside of any improvement district created under or operating under provisions of Chapter 2, Part 3, County Improvement Districts for Water, Sewerage, Flood Control, Electric and Gas, may be annexed to any such improvement district in the manner herein provided.

Section 11. Section **17A-2-422** is amended to read:

17A-2-422. Proposal to incur indebtedness -- Resolution -- Notice -- Hearing -- Calling of bond election -- Written protests.

(1) (a) A proposal to incur indebtedness which would cause the total county debt to exceed the county taxes for the current year or which would not be payable within one year, as the case may

be, may be originated by a majority vote of the board of trustees or by petition of not less than 100 property owners or 10% of all the property owners, whichever is less, who own property within the county service area or by petition of not less than 10% of all the qualified voters residing in the county service area.

(b) The proposal shall specify the particular purpose for which the indebtedness is to be created, the amount in money of bonds which it is proposed to issue and the name and number of the county service area.

(2) After the proposal has been made, the board of trustees, as expeditiously as possible, shall adopt a resolution fixing a time and place at which the proposal shall be heard, which time shall be not less than 30 nor more than 60 days after the date of adoption of the resolution.

(3) (a) The board of trustees shall immediately issue a notice of the time and place of hearing, which notice shall state that all persons who own property in the service area when the debt is payable solely from within the county service area or all persons residing in the county when the debt is countywide may appear at the hearing and contend for or protest against the incurrence of the debt and the holding of a bond election.

(b) If the service area has issued bonds, the notice shall include a statement of the amount of outstanding bonds of the service area and shall indicate whether the bonds are general obligations of the county or are payable solely from within the county service area.

(4) (a) The board of trustees shall cause the notice to be published once a week during four consecutive weeks in a newspaper of general circulation in the county, the first publication to be not more than 60 days nor less than 28 days prior to the date of the hearing.

(b) It is not necessary that the notice be published on the same day of the week in each of four calendar weeks, but not less than 20 days shall intervene between the first publication and the last publication.

(5) At the time and place set for the hearing of the petition, or upon a subsequent date fixed at the original hearing the board of trustees shall proceed to hear the proposal and all matters in respect to a bond election.

(6) If, upon the hearing of the proposal, the board of trustees finds that due notice has been

given and that the services under discussion would be for the benefit of all taxable property or the real property owners situated in the service area, then the board shall make and cause to be entered of record upon its minutes an order so finding, and shall proceed to call the bond election and, if a majority of those voting, vote in the affirmative, to issue the bonds in the manner provided.

(7) The board may reduce the amount in money of the bonds named in the petition.

(8) (a) If written protests are filed prior to the date fixed for the original hearing, signed by property owners owning taxable property in the service area with a taxable value in excess of 40% of the taxable value of all the taxable property within the service area, according to the last assessment roll for county taxes completed prior to the holding of the election or by 40% of all the qualified voters residing in the county service area or by 40% of all the qualified voters residing in the county, the board does not have authority to proceed with the calling of the election, and no new petition for a bond election in the service area may be entertained for a period of 12 months from that time.

(b) If written protests are filed and the board of trustees determines that the protests so filed represent less than the 40% required, a resolution or finding in writing of the board calling the election shall so recite and the recital shall be conclusive.

(9) The provisions of this section and of Section 17A-2-407 with regard to publication of notice in a newspaper may be carried out concurrently.

Section 12. Section **17A-2-534** is amended to read:

17A-2-534. Public uses -- Right of entry on lands -- Penalty for interference.

(1) The use of any canal, ditch, or the like, created under the provisions of this part, shall be deemed a public use and for a public benefit.

(2) The supervisors or their representatives from the time of their appointment may go upon the lands lying within [~~said~~] the district for the purpose of examining the same, and making surveys, and after the organization of [~~said~~] the district and payment or tender of compensation allowed, may go upon [~~said~~] those lands with their servants, teams, tools, instruments, or other equipment, for the purpose of constructing such proposed work, and may forever thereafter enter upon [~~said~~] those lands, as aforesaid, for the purpose of maintaining or repairing such proposed work, doing no more

damage than the necessity of the occasion may require[~~, any~~].

(3) Any person or persons who shall willfully prevent or prohibit any of such persons from entering such lands for the purpose aforesaid shall be deemed guilty of a misdemeanor and upon conviction be fined any sum not exceeding $25 per day for each day's hindrance, which sum shall be paid into the county treasury for the use of [~~said~~] the district.

Section 13. Section **17A-2-535** is amended to read:

17A-2-535. Validation of organization proceedings -- Notice of proposed corrections, amendments, or changes in assessment of benefits -- Hearing by county legislative body of report of board of supervisors -- Board of equalization -- Increase of drainage benefits and taxes -- Lien.

Whenever it shall appear to the board of supervisors that any proceedings for the organization of a drainage district have not been strictly in compliance with law, or if any lands within the district have been erroneously assessed for benefits or taxes, or inequitably assessed for benefits or taxes, or that any assessment of damages or benefits under this part has been made in error as to description, ownership, or acreage intended to be assessed, or if it shall appear to such board of supervisors that the assessment of benefits has been inequitably distributed among the various parcels of land, or unjustly equalized as between the various parcels of land within the district, or that any tract of land, easement or interest in land, public[;] or private road, railroad or railroad right-of-way, has been included in, or omitted from, any assessment roll of benefits or taxes by reason of clerical error or otherwise, or that proper notice or notices as required by law has not or have not been given, such noncompliance, error, omission or want of notice shall not invalidate such organization, neither shall any such assessments of benefits or taxes be lost to the district in case of any omission, nor shall the board of supervisors and the county legislative body be held to have lost jurisdiction to correct such error or omission, or to readjust such assessments of benefits or to redistribute such assessment of benefits upon the various parcels of land and interest in lands within such district, and to justly equalize the same as between various parcels of land and interest in lands within the district, but the board of supervisors of such district may report any such conditions and recommend such corrections and changes as such board of supervisors may deem necessary to remedy the same; and upon

receiving such report and recommendation the said county legislative body may make such corrections, amendments or changes in the assessment rolls of benefits and taxes, or correct any error, omission, mistake, inequality or want of sufficient notice, as may be just; provided, that when any correction, amendment or change is sought to be made, notice of such proposed correction, amendment or change in the assessment of benefits and taxes shall be given to all persons affected thereby, in the following manner:

The board of supervisors of the drainage district shall file with the clerk of the county legislative body of the county wherein the drainage district is located, a verified report containing the proposed corrections, amendments, and/or changes in the assessments of benefits and taxes with their recommendation with respect thereto, to the county legislative body. The county legislative body shall, at its first meeting thereafter, fix a time and place for a hearing on said report and shall cause a notice of the hearing thereon to be published three times if in a daily newspaper, twice if in a semiweekly newspaper and once if in a weekly newspaper, not less than 15 days before said hearing, and when the residence or post-office address of any landowner, whose assessment of benefits or taxes is to be corrected, amended or changed is known the clerk of the county legislative body shall cause a copy of the notice to be sent by United States mail to such landowner, not less than 15 days before the time fixed for the hearing on the report. The notice shall state generally the purpose of the hearing and the time and place where the county legislative body shall meet as a board of equalization to hear and determine any complaint made against such report, corrections, amendments and changes in the assessment roll of benefits and taxes.

The county legislative body at the time and place fixed in the notice shall sit as a board of equalization and it shall make and finally determine such corrections, amendments and changes in the roll of assessment of benefits and taxes, as it shall determine after such hearing, and thereafter all such lands, easements or interest in lands shall be assessed in accordance with the assessment roll as thus corrected, amended, or changed; and such changed assessment roll of benefits and taxes shall be the basis of lien upon the parcels of land or interest in land, as corrected, amended or changed, for all district indebtedness. Whenever it shall be made to appear to the board of supervisors of the drainage district that any owner or operator of any land within the drainage district has so changed the use of

such land so as to increase the benefits received by such land by reason of the construction, maintenance, and operation of the drainage system, the board of supervisors of the drainage district shall view each tract of such land and shall carefully consider the increased benefits such tract of land is receiving from the construction, maintenance and operation of the drainage system and shall assess such tract of land in accordance with the increased benefits received by it. After such assessment is made, the secretary of the board of supervisors shall transmit the same to the county legislative body and the county legislative body shall within 15 days after receipt thereof, cause not less than 15 days notice to be sent by mail to each landowner in the district whose benefits have thus been increased, showing the amount of the benefits as thus increased on the land owned by the landowner within the district; and stating therein the time and place where the county legislative body shall meet as a board of equalization to hear and determine complaints made against such increased assessments. At such hearing any landowner upon whose lands the benefits are thus increased may appear and oppose such increase or any part thereof. The county legislative body shall sit as a board of equalization of the increased drainage benefits and taxes, and shall equalize and determine the assessment of benefits and taxes to be made and levied upon such tract of land within the district. Such increased assessment of benefits shall be the basis of a lien upon such lands within the district for all district indebtedness and taxes.

Section 14. Section **17A-2-544** is amended to read:

17A-2-544. Bonds -- Lien on land and improvements.

Whenever any such drainage district bonds shall be issued, or contract with the United States made, in accordance with the provisions of this part, such bonds or contract[~~,~~] shall constitute a lien upon all of the lands and improvements thereon within the boundaries of the district, to the extent of the total benefits, assessed and equalized, and pledged for such purpose, and not in excess thereof, and the board of supervisors of said district shall from time to time, as by this part provided, levy a sufficient tax to pay the annual interest charge on such bonds, and in addition thereto, such an amount as a sinking fund which shall, in the course of events and ultimately, amount to a sufficient sum to redeem said bonds, or in case of contract with the United States, shall levy a sufficient tax to meet all payments due, or to become due thereunder, and in addition thereto, a sufficient tax to pay the

interest or penalties on any delinquent payment or payments, as provided in said contract or as required by the statutes of the United States.

Section 15. Section **17A-2-553** is amended to read:

17A-2-553. Taxes considered lien -- Sale of property -- Time of redemption -- Notice -- Penalty -- Record.

All drainage taxes levied and assessed under the provisions of this title shall attach to and become a lien on the real property assessed from and after the second Monday in March. Drainage taxes shall become due and delinquent at the same time, and shall be collected by the same officers and in the same manner and at the same time as state and county taxes, and when collected shall be paid to the treasurer of the board of supervisors. The revenue laws of this state for the assessment, levying, and collecting of taxes on real estate for county purposes, except as herein modified, shall be applicable for the purposes of this part, including the enforcement of penalties and forfeiture for delinquent taxes; provided, that lands sold for delinquent district taxes shall be sold separately for such tax and a separate certificate of sale shall issue therefor, and provided further that the period of redemption from sale for taxes under this part[,] shall be four years. At the same time and in the same manner as the county treasurer publishes the delinquent tax list for state and county taxes in each year, the county treasurer must publish a delinquent drainage tax list, which must contain the names of the owners, when known and a description of the property delinquent or subject to lien of drainage district taxes with the amount of taxes due exclusive of penalty. The county treasurer must publish with such list a notice, each year, that unless the delinquent drainage taxes, together with the penalty, are paid before the date for tax sales for state and county taxes the real property upon which such taxes are a lien will be sold for taxes, penalty and costs, beginning on said date, at the front door of the county courthouse. The delinquent list shall be published three times if in a daily newspaper, twice if in a semiweekly and once if in a weekly newspaper. On the date for tax sales for state and county taxes each year, the county treasurer shall expose for sale, between the hours of ten a.m. and three p.m. sufficient of all delinquent real estate to pay the drainage district taxes, penalty and costs for which such real estate is liable, at public auction, at the front door of the county courthouse, and sell the same to the highest responsible bidder for cash, and the county treasurer shall continue to sell

from day to day between such hours until the property of all delinquents is exhausted or the taxes, penalty and costs are paid. In offering such real estate for sale the treasurer shall offer the entire tract assessed, and the first bid received in an amount sufficient to pay the taxes and costs shall be accepted unless a further bid in the same amount for less than the entire tract shall be received; and the highest and best bid shall be construed to mean the bid of that bidder who will pay the full amount of the taxes and costs for the smallest undivided portion of said real estate. After receiving a bid for the full amount of the taxes and costs it shall not be the duty of the treasurer to attempt to secure a higher bid, but he shall accept it if made. The treasurer shall make a record of all sales of real property in a book to be kept by him for that purpose therein describing the several parcels of real property on which the taxes and costs were paid by the purchasers, in the same order as the published list of delinquent sales contained in the list of advertisements on file in his office. Separate columns shall also be provided in said record in which the treasurer shall enter the description of any tract sold that is less than the entire tract on which the taxes are due, the date of sale, to whom sold, the penalty, and costs, and the date of redemption. The purchaser shall be required to pay the penalty to the county treasurer, which penalty shall in all cases accrue to the benefit of the drainage district. When all sales have been made the county treasurer shall file the record in his office, in looseleaf bound form. It shall be the duty of the county treasurer to issue a receipt to any person paying drainage district taxes on an undivided interest in real estate, showing the interest on which taxes are paid, and in case any portion of the drainage district taxes on such real estate remains unpaid, it shall be the duty of the treasurer to sell only such undivided interest in said real estate as belongs to the co-owners who have not paid their portion of the taxes. In absence or default of purchaser at any such public sale of drainage district taxes, the drainage district in which taxes are delinquent shall become the purchaser and shall receive from the county treasurer the tax sale certificate of the real property on which drainage district taxes are delinquent upon the same terms upon which the county receives tax sales certificates on sales for delinquent state and county taxes and shall hold the same in the same manner as an individual may hold real property upon which state or county taxes are delinquent, subject to the same rights of redemption. In all respects, a drainage district shall be the beneficiary of taxes assessed and levied by it, provided, however, that county treasurer shall retain the costs and expense

provided by law for the advertisement, sale and redemption of drainage district taxes.

Section 16. Section **17A-2-605** is amended to read:

17A-2-605. Organization of proposed district -- Adoption of ordinance -- Election -- Qualification of voters.

After the county legislative body has made its order finally fixing and determining the boundaries of the proposed district, the district can be created by either (1) the county legislative body adopting an ordinance creating the [~~said~~] district, which ordinance shall give the name thereof, the county in which it is located and a description of the proposed area and boundaries of the district. The [~~said~~] district shall become legally existent, provided no appeal is taken [~~as set forth in Section 17A-2-607~~], 30 days from the date of first publication of the ordinance creating the [~~said~~] fire district or (2) the county legislative body shall give notice of an election to be held within the proposed district for the purpose of determining whether or not the same shall be organized under the provisions of this part. Such notice shall give the name of the proposed fire protection district, describe the boundaries thereof, name the precinct or precincts therein with a description of the boundaries of each, together with a designation of the polling places. The notice shall be published, previous to the time of such election, in the same manner as provided in Section 17A-2-603 [~~above~~]. Such notice shall require the electors to cast ballots which shall contain the words " ____ fire protection district, yes," or "____ fire protection district, no" or words equivalent thereto. Qualified electors, under the general laws of the state, living within such district shall be entitled to vote on the question of whether the district shall or shall not be created.

Section 17. Section **17A-2-812** is amended to read:

17A-2-812. Ballot.

The ballot used at such election shall contain the words "Shall the territory embraced within the corporate boundaries of the city of ..... become a part of the ..... metropolitan water district" (inserting the name of the city or water district as the case may be wherein such ballot shall be used and the name of the metropolitan water district as stated in the initiating ordinance) and the words "Yes" and "No" accompanied by voting squares set opposite thereto so that any elector may record [~~his~~] a vote either for or against the [~~propositions~~] proposition.

Section 18. Section **17A-2-818** is amended to read:

17A-2-818. Powers of incorporated districts -- Preferential right of city to purchase water.

(1) (a) Any district incorporated as provided in this part may:

(i) have perpetual succession;

(ii) sue and be sued in all actions and proceedings and in all courts and tribunals of competent jurisdiction;

(iii) adopt a corporate seal and alter it;

(iv) take by grant, purchase, bequest, devise, or lease, and hold, enjoy, lease, sell, encumber, alienate, or otherwise dispose of, water, waterworks, water rights, and sources of water supply, and any real and personal property of any kind within or without the district and within and without Utah necessary or convenient to the full exercise of its powers;

(v) acquire, construct, or operate, control, and use works, facilities, and means necessary or convenient to the exercise of its powers, both within and without the district and within and without Utah; and

(vi) perform any and all things necessary or convenient to the full exercise of the powers granted under this section.

(b) (i) Any district incorporated as provided in this part may have and exercise the power of eminent domain and, in the manner provided by law for the condemnation of private property for public use, take any property necessary to the exercise of the powers granted under this section.

(ii) In any proceeding relative to the exercise of the power of eminent domain, the district has the same rights, powers, and privileges as a municipal corporation.

(2) (a) Any district incorporated as provided in this part may:

(i) construct and maintain works and establish and maintain facilities across or along any public street or highway and in, upon, or over any vacant public lands, that are now, or may become, the property of the state, other than those lands defined in Subsection 53C-1-103(6); and

(ii) construct works and establish and maintain facilities across any stream of water or watercourse if the district promptly restores the street or highway to its former state of usefulness as

nearly as may be and does not use the street or highway in a manner that completely or unnecessarily impairs the usefulness of it.

(b) (i) In the use of streets, the district is subject to the reasonable rules and regulations concerning excavations and the refilling of excavations, the relaying of pavements and the protection of the public during periods of construction of the county or municipality in which the streets are located.

(ii) The county or municipality may not require the district to pay any license or permit fees, or file any bonds.

(iii) The county or municipality may require the district to pay reasonable inspection fees.

(3) (a) Any district incorporated as provided in this part may borrow money, incur indebtedness, and issue bonds and other obligations.

(b) A district may not issue bonds that pledge the full faith and credit of the district for payment if those bonds, in the aggregate, exceed 10% of the fair market value, as defined under Section 59-2-102, of the taxable property in the district as computed from the last equalized assessment roll for county purposes before the issuance of the bonds.

(c) For purposes of Subsection (3), the district shall include the fair market value of all tax equivalent property, as defined under Section 59-3-102, as a part of the fair market value of taxable property in the district.

(4) Contracts and agreements with the United States of America, and with any water users' association or any other public, cooperative, or private entity from which the district procures water, and bonds payable solely from revenues of the district other than from the proceeds of ad valorem taxes, are not within the limitation established by this Subsection (4).

(5) (a) Any district incorporated as provided in this part may fix and determine the funds required for district purposes of every nature and apportion and charge the same against the area of each city within the district by following the procedures and requirements of this Subsection (5).

(b) As to the costs of all water, water rights, reservoirs, canals, conduits, and other works for which the district as a whole receives the benefit, and because of which the district is indebted or because of which the district has made payment without any previous apportionment and charge

having been made, and the charges made against the district because of its ownership of stock in any water users' association, in the same proportion as the water and water rights set apart or allotted to each area bear to the total water and water rights owned or held by the district.

(c) As to that portion of these funds required for operation, maintenance, and the cost of construction of distributing systems, the district shall equitably apportion these costs and determine and base them on the benefits and the relative cost of service provided by the district to each respective area.

(6) (a) Any district incorporated as provided in this part may:

(i) levy and collect taxes for the purposes of carrying on the operations and paying the obligations of the district; and

(ii) in any year, levy a tax sufficient to cover in full any deficit that may have resulted from tax delinquencies for any preceding year.

(b) (i) Taxes levied under this subsection for administering the district and maintaining and operating its properties may not exceed .0005 per dollar of taxable value of taxable property in the district.

(ii) Taxes levied to pay principal of and interest on the bonds of the district, to pay indebtedness and interest owed to the United States of America, or to pay assessments or other amounts due any water users' association or other public cooperative[~~,~~] or private entity from which the district procures water are not subject to the limitation established by this Subsection [~~(5)~~] (6)(b).

(c) (i) The district shall:

(A) levy taxes for the payment of principal of and interest on the bonds of the district as separate and special levies for that specific purpose; and

(B) apply the proceeds from them solely to the payment of this principal and interest.

(ii) As separate and special levies, these levies are not subject to any priorities in favor of obligations of the district in existence at the time the bonds were issued.

(d) (i) The district may not levy any of the taxes authorized by this Subsection (6) unless it has conducted, at its regular place of business, a public hearing on the purposes and necessities of the taxation.

(ii) The board of directors of the district shall publish notice of the public hearing at least seven days prior to the hearing in a newspaper of general circulation published in the county or counties in which the district is located.

(e) Any district incorporated as provided in this part may:

(i) enter into contracts, employ and retain personal services, and employ laborers;

(ii) create, establish, and maintain and elect, appoint, and employ necessary and convenient:

(A) officers, attorneys, and agents convenient for the transaction of the business of the district;

(B) officers and positions as necessary; and

(C) employees.

(7) (a) Any district incorporated as provided in this part may:

(i) join with one or more other corporations, public or private, for the purpose of carrying out any of its powers;

(ii) contract with any other corporation or corporations for the purposes of financing acquisitions, constructions, and operations;

(iii) in the contract, obligate itself severally or jointly with the other corporations; and

(iv) secure, guarantee, or become surety for the payment of any indebtedness, or the performance of any contract or other obligation that may be, or has been, incurred or entered into by any corporation in which the district has acquired shares of stock by subscription or otherwise.

(b) The contracts may provide for:

(i) contributions to be made by each party to them;

(ii) the division and apportionment of the expenses of the acquisitions and operations;

(iii) the division and apportionment of the benefits, the services, and the products from them; and

(iv) an agency to effect the acquisitions and carry on these operations.

(c) The contracts shall provide the powers and the methods of procedure for the agency the method by which the agency may contract.

(d) The contract may contain further covenants and agreements as necessary and convenient

to accomplish its purposes.

(8) Any district incorporated as provided in this part may:

(a) acquire water and water rights within or without Utah;

(b) develop, store, and transport water;

(c) subscribe for, purchase, and acquire stock in canal companies, water companies, and water users' associations;

(d) provide, sell, lease, and deliver water within or outside of the district for municipal and domestic purposes, irrigation, power, milling, manufacturing, mining, and metallurgical and any and all other beneficial uses;

(e) fix the rates;

(f) acquire, construct, operate, and maintain any works, facilities, improvements, and property that are necessary or convenient; and

(g) in the doing of all of these things:

(i) obligate itself jointly with other persons and corporations, public and private; and

(ii) execute and perform these obligations according to their tenor.

(9) (a) Any district incorporated as provided in this part may invest any surplus money in the district treasury, including any money in any sinking fund established for the purpose of providing for the payment of the principal or interest of any bonded contract or other indebtedness or for any other purpose, not required for immediate necessities of the district, by following the procedures and requirements of Title 51, Chapter 7, State Money Management Act.

(b) The district shall ensure that the sales of any bonds or treasury notes purchased and held are made in season so that the proceeds may be applied to the purposes for which the money, with which the bonds or treasury notes were originally purchased, was placed in the treasury of the district.

(c) The treasurer and controller, with the approval of the attorney, shall perform the functions and duties authorized by this subsection under rules adopted by the board of directors of the district.

(10) Each city, the area of which is a part or all of any district incorporated under this part, has a preferential right to purchase from the district, at rates determined by the board of directors of the district, for distribution by the city, or any public utility empowered by the city for the purpose,

for domestic, municipal, and other beneficial uses within the city, a portion of the water served by the district which shall bear the same ratio to all of the water supply of the district as the total accumulation of amounts levied as taxes by the district against the property of the city which is within the area of the district shall bear to the total of all taxes levied by the district against the property in all of the cities in the areas of which are within the area of the district.

Section 19. Section **17A-2-824** is amended to read:

17A-2-824. Revenue indebtedness or general obligation indebtedness -- Procedure for incurring -- Terms.

(1) Any district which has determined to issue bonds shall issue its bonds under Title 11, Chapter 14, the Utah Municipal Bond Act, for the acquisition through construction, purchase, or otherwise and for the improvement or extension of any properties necessary or desirable in the obtaining, treatment, and distribution of water and any other properties which the district is authorized to own under this part. Bonds may be issued or a contract indebtedness or obligation may be created (a) payable solely from the revenues of the district other than the proceeds of taxes, in which case they shall be known for purposes of this section as "revenue indebtedness", or (b) payable solely from the proceeds of taxes, in which case they shall be known for purposes of this section as "general obligation indebtedness", or (c) payable from both operating revenues and the proceeds of taxes, in which case they shall be known for purposes of this section as "general obligation revenue indebtedness." The full faith and credit of the district shall be pledged to the payment of its general obligation and general obligation revenue indebtedness, and taxes shall be levied fully sufficient to pay that part of the principal of and interest on general obligation revenue indebtedness as the revenues of the district pledged for this purpose may not be sufficient to meet. General obligation indebtedness and general obligation revenue indebtedness may be issued only after approval at an election as provided in Section 17A-2-821. Revenue indebtedness may be similarly submitted at an election as provided in Section 17A-2-821 if considered desirable by the board of directors, but nothing in this part shall be construed to require such submission. Refunding bonds may be issued without approval at an election.

(2) Revenue indebtedness and general obligation revenue indebtedness may be payable from

and secured by the pledge of all or any specified part of the revenues to be derived by the district from its water supply and the operation of its water facilities and other properties. It is the duty of the board of directors to impose for water and water services rendered thereby, rates fully sufficient to carry out all undertakings contained in the resolution authorizing the bonds or the contract. The board of directors may in the resolution agree to pay the expenses of maintaining and operating the properties of the district from the proceeds of the ad valorem taxes authorized in Subsection 17A-2-818[~~(1)(i)~~](6) and may enter into those covenants with the future holders of the bonds or the other contracting party as to the management and operation of the properties, the imposition and collection of fees and charges for water and services furnished thereby, the disposition of the fees and revenues, the issuance of future bonds or the creation of future contract indebtedness or obligations and the creation of future liens and encumbrances against the properties and the revenues from them, the carrying of insurance on the properties, the keeping of books and records, the deposit, securing, and paying out of the proceeds of the bonds, and other pertinent matters, as deemed proper by the board of directors to assure the marketability of the bonds or the making of the contract. The board of directors may undertake in the resolution to make the revenues of the properties sufficient to pay all or any specified part of the expense of the operation and maintenance of them. Covenants may be contained in the resolution with respect to the manner of the imposition and collection of water charges, and provision also may be made in it for the appointment of a receiver for the properties of the district in the event of a default by the district in carrying out the covenants and agreements contained in the resolution. Provision may also be made in the resolution for a trustee to perform those services with respect to the holding and paying out of the revenues of the district and the proceeds of the bonds, and otherwise, as may be considered advisable. Maintenance and operation costs and expenses as referred to in this section shall be construed to include any payments made by the district to the United States of America, to any water users' association, or to any other public or private entity for the cost of operating facilities used in providing water for the district.

Section 20. Section **17A-2-1023** is amended to read:

17A-2-1023. Technical rules of evidence not to apply.

Oral evidence shall be taken on oath or affirmation. Hearings need not be conducted

according to technical rules of evidence, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in a civil action. Hearsay evidence is admissible for purposes of supplementing or explaining direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in a civil action.

Section 21. Section **17A-2-1024** is amended to read:

17A-2-1024. Record of hearing -- Review.

A complete record of all proceedings and testimony before the board at the hearing shall be taken by a reporter appointed by the board. If an action is brought to review any decision of the board a transcript of testimony together with all exhibits or copies thereof introduced and the written request for hearing and other proceedings in the cause shall constitute the record on review; provided, that the board and other parties may stipulate in writing that a specified part of the evidence be certified to the court for judgment and in that case the part of the evidence specified and the stipulation specifying the evidence shall be the record on review.

Section 22. Section **17A-2-1030** is amended to read:

17A-2-1030. Employee rights and benefits extended under federal law to apply.

The rights, benefits and other employee protective conditions and remedies of Section 13(c) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. [~~1609(c)~~] 5333(b)), as determined by the Secretary of Labor, shall apply to the establishment and operation by the district of any public transit service or system and to any lease, contract, or other arrangement to operate such system or services. Whenever the district shall operate such system or services, or enter into any lease, contract, or other arrangement for the operation of such system or services, the district shall take such action as may be necessary to extend to employees or affected public transit service systems furnishing like services, in accordance with seniority, the first opportunity for reasonably comparable employment in any available nonsupervisory jobs in respect to such operations for which they can qualify after a reasonable training period. Such employment shall not result in any worsening of the employee's position in his former employment or any loss of wages, hours, working conditions, seniority, fringe benefits and rights and privileges pertaining thereto.

Section 23. Section **17A-2-1202** is amended to read:

17A-2-1202. Definitions.

As used in this part:

(1) "Agency" means the legislative body of a community when designated by the legislative body itself to act as a redevelopment agency.

(2) "Base tax amount" means that portion of taxes that would be produced by the rate upon which the tax is levied each year by or for all taxing agencies upon the total sum of the taxable value of the taxable property in a redevelopment project area as shown upon the assessment roll used in connection with the taxation of the property by the taxing agencies, last equalized before the effective date of the:

(a) ordinance approving the plan for projects for which a preliminary plan has been prepared prior to April 1, 1993, and for which all of the following have occurred prior to July 1, 1993: the agency blight study has been completed, and a hearing under Section 17A-2-1221 has in good faith been commenced by the agency; or

(b) the first approved project area budget for projects for which a preliminary plan has been prepared after April 1, 1993, and for which any of the following have occurred after July 1, 1993: the completion of the agency blight study, and the good faith commencement of the hearing by the agency under Section 17A-2-1221; and

(c) as adjusted by Sections 17A-2-1250.5, 17A-2-1251, 17A-2-1252, and 17A-2-1253.

(3) "Blighted area" or "blight" means:

(a) for projects for which a preliminary plan has been prepared prior to April 1, 1993, and for which all of the following have occurred prior to July 1, 1993: the agency blight study has been completed, and a hearing under Section 17A-2-1221 has in good faith been commenced by the agency, an area used or intended to be used for residential, commercial, industrial, or other purposes or any combination of such uses which is characterized by two or more of the following factors:

(i) defective design and character of physical construction;

(ii) faulty interior arrangement and exterior spacing;

(iii) high density of population and overcrowding;

(iv) inadequate provision for ventilation, light, sanitation, open spaces, and recreation facilities;

(v) age, obsolescence, deterioration, dilapidation, mixed character, or shifting of uses;

(vi) economic dislocation, deterioration, or disuse, resulting from faulty planning;

(vii) subdividing and sale of lots of irregular form and shape and inadequate size for proper usefulness and development;

(viii) laying out of lots in disregard of the contours and other physical characteristics of the ground and surrounding conditions;

(ix) existence of inadequate streets, open spaces, and utilities; and

(x) existence of lots or other areas which are subject to being submerged by water.

(b) For projects for which a preliminary plan has been prepared after April 1, 1993, and for which any of the following have occurred after July 1, 1993: the completion of the agency blight study, and the good faith commencement of the hearing by the agency under Section 17A-2-1221, when a finding of blight is required, an area with buildings or improvements, used or intended to be used for residential, commercial, industrial, or other urban purposes or any combination of these uses, which:

(i) contains buildings and improvements, not including out-buildings, on at least 50% of the number of parcels and the area of those parcels is at least 50% of the project area; and

(ii) is unfit or unsafe to occupy or may be conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime because of any three or more of the following factors:

(A) defective character of physical construction;

(B) high density of population and overcrowding;

(C) inadequate provision for ventilation, light, sanitation, and open spaces;

(D) mixed character and shifting of uses which results in obsolescence, deterioration, or dilapidation;

(E) economic deterioration or continued disuse;

(F) lots of irregular form and shape and inadequate size for proper usefulness and development, or laying out of lots in disregard of the contours and other physical characteristics of

the ground and surrounding conditions;

(G) existence of inadequate streets, open spaces, and utilities;

(H) existence of lots or other areas which are subject to being submerged by water; and

(I) existence of any hazardous or solid waste defined as any substance defined, regulated, or listed as "hazardous substances," "hazardous materials," "hazardous wastes," "toxic waste," "pollutant," "contaminant," or "toxic substances," or identified as hazardous to human health or the environment under state or federal law or regulation.

(c) For purposes of Subsection (3)(b), if a developer involved in the project area redevelopment or economic development causes any of the factors of blight listed in Subsection (b)(ii), the developer-caused blight may not be used as one of the three required elements of blight. Notwithstanding the provisions of this section, any blight caused by owners or tenants who may become developers under the provisions of Section 17A-2-1214 shall not be subject to this Subsection (3).

(4) "Bond" means any bonds, notes, interim certificates, debentures, or other obligations issued by an agency.

(5) "Community" means a city, county, town, or any combination of these.

(6) "Economic development" means the planning or replanning, design or redesign, development or redevelopment, construction or reconstruction, rehabilitation, business relocation or any combination of these, within all or part of a project area and the provision of office, industrial, manufacturing, warehousing, distribution, parking, public or other facilities, or improvements as may benefit the state or the community in order for a public or private employer to create additional jobs within the state.

(7) "Federal government" means the United States or any of its agencies or instrumentalities.

(8) "Legislative body" means the city council, city commission, county legislative body, or other legislative body of the community.

(9) "Planning commission" means a city, town, or county planning commission established pursuant to law or charter.

(10) "Project area" or "redevelopment project area" means an area of a community within

a designated redevelopment survey area, the redevelopment of which is necessary to eliminate blight or provide economic development and which is selected by the redevelopment agency pursuant to this part.

(11) "Project area budget" means, for projects for which a preliminary plan has been prepared after April 1, 1993, and for which any of the following have occurred after July 1, 1993: the completion of the agency blight study, and the good faith commencement of the hearing by the agency under Section 17A-2-1221, a multiyear budget for the redevelopment plan prepared by the redevelopment agency showing:

(a) the base year taxable value of the project area;

(b) the projected tax increment of the project area, including the amount of any tax increment shared with other taxing districts which shall include:

(i) the tax increment expected to be used to implement the redevelopment plan including the estimated amount of tax increment to be used for land acquisition, public, and infrastructure improvements, and loans, grants, or tax incentives to private and public entities; and

(ii) the total principal amount of bonds expected to be issued by the redevelopment agency to finance the project;

(c) the tax increment expected to be used to cover the cost of administering the project area plan;

(d) a legal description for the portion of the project area from which tax increment will be collected pursuant to Section 17A-2-1247.5, if the area from which tax increment is to be collected is less than the entire project area; and

(e) for properties to be sold, the expected total cost of the property to the agency and the expected sales price to be paid by the purchaser.

(12) "Public body" means the state, or any city, county, district, authority, or any other subdivision or public body of the state, their agencies, instrumentalities, or political subdivisions.

(13) (a) "Redevelopment" means the planning, development, replanning, redesign, clearance, reconstruction, or rehabilitation, or any combination of these, of all or part of a project area, and the provision of residential, commercial, industrial, public, or other structures or spaces that are

appropriate or necessary to eliminate blight in the interest of the general welfare, including recreational and other facilities incidental or appurtenant to them.

(b) "Redevelopment" includes:

(i) the alteration, improvement, modernization, reconstruction, or rehabilitation, or any combination of these, of existing structures in a project area;

(ii) provision for open space types of use, such as streets and other public grounds and space around buildings, and public or private buildings, structures and improvements, and improvements of public or private recreation areas and other public grounds; and

(iii) the replanning or redesign or original development of undeveloped areas as to which either of the following conditions exist:

(A) the areas are stagnant or improperly utilized because of defective or inadequate street layout, faulty lot layout in relation to size, shape, accessibility, or usefulness, or for other causes; or

(B) the areas require replanning and land assembly for reclamation or development in the interest of the general welfare.

(14) "Redevelopment plan" means a plan developed by the agency and adopted by ordinance of the governing body of a community to guide and control redevelopment and economic development undertakings in a specific project area.

(15) "Redevelopment survey area" or "survey area" means an area of a community designated by resolution of the legislative body or the governing body of the agency for study by the agency to determine if blight exists if redevelopment is planned, and if a redevelopment or economic development project or projects within the area are feasible.

(16) "Taxes" include all levies on an ad valorem basis upon land, real property, personal property, or any other property, tangible or intangible.

[~~(18)~~] (17) "Tax increment" means that portion of the levied taxes each year in excess of the base tax amount which excess amount is to be paid into a special fund of an agency.

[~~(17)~~] (18) "Taxing agencies" mean the public entities, including the state, any city, county, city and county, any school district, special district, or other public corporation, which levy property taxes within the project area.

Section 24. Section **17A-2-1210** is amended to read:

17A-2-1210. Limits on value and size of project areas using tax increment financing without consent of local taxing agencies -- Time limits.

(1) (a) A redevelopment plan adopted after April 1, 1983, and projects for which a preliminary plan has been prepared prior to April 1, 1993, and for which all of the following have occurred prior to July 1, 1993: the agency blight study has been completed, and a hearing under Section 17A-2-1221 has in good faith been commenced by the agency, may not incorporate the provisions of tax increment financing under Section 17A-2-1247 if the taxable value of the project area described in the redevelopment plan, when added to the total taxable value as shown on the last equalized assessment roll certified by the county assessor for other redevelopment project areas of the community for which an allocation of ad valorem taxes is provided, exceeds a figure at the time of the adoption of the redevelopment plan after April 1, 1983, equal to 15% of the taxable value of the locally assessed property of the community, unless the governing body of each local taxing agency which levies taxes upon the property within the proposed redevelopment project area consents to the redevelopment project area plan in writing.

(b) An agency may not obtain approval of a project area budget pursuant to Section 17A-2-1247.5 if the allocated incremental value of all existing project areas exceeds 10% of the total taxable value of the community, or if the projected allocated incremental value of the project area as described in the proposed project area budget, when added to the allocated incremental value of all existing project areas, exceeds 12% of the total taxable value of the community unless the agency obtains the majority consent of the taxing agency committee. The taxable value of the community shall be the total taxable value for the community as shown on the last equalized assessment roles as certified by the county assessor. The allocated incremental value shall be calculated as follows:

(i) for projects for which a preliminary plan has been prepared prior to April 1, 1993, and for which all of the following have occurred prior to July 1, 1993: the agency blight study has been completed, and a hearing under Section 17A-2-1221 has in good faith been commenced by the agency, the allocated incremental value shall be the taxable value in excess of the adjusted base-year taxable value in the tax increment collection area, multiplied by the applicable percentage of tax

increment to be paid to the agency pursuant to Subsection 17A-2-1247(2)(f); and

(ii) for projects for which a preliminary plan has been prepared after April 1, 1993, and for which any of the following have occurred after July 1, 1993: the completion of the agency blight study, and the good faith commencement of the hearing by the agency under Section 17A-2-1221, the allocated incremental value shall be the taxable value in excess of the adjusted base value in the tax increment collection area, multiplied by the applicable percentage of tax increment to be paid to the agency in accordance with the approved and proposed project area budgets pursuant to Subsections 17A-2-1247.5(3), (4), and (5).

(c) "Tax increment collection area" means that area of a project area from which an agency may receive an allocation of tax increment pursuant to a plan incorporating provisions of Section 17A-2-1247 or an approved or a proposed project area budget incorporating the provisions of Section 17A-2-1247.5.

(d) The consent of the taxing entities required by this section may be obtained by majority consent of the taxing agency committee in accordance with Section 17A-2-1247.5.

(2) If the county assessor fails to report the value of the locally assessed property within the proposed redevelopment project area within 90 days after notice as provided in Section 17A-2-1222, the 15% limitation does not apply.

(3) A redevelopment plan adopted before April 1, 1983, incorporating the provisions of tax increment financing under Section 17A-2-1247 may not be amended after April 1, 1983, to add area containing additional taxable value unless the governing body of each local taxing agency that levies taxes upon the property within the area proposed to be added consents in writing to a higher percentage of taxable value if the additional taxable value, when added to the taxable value in the project area as the taxable value existed immediately before the adoption of the amendment, would exceed the limits established in this subsection for a redevelopment plan adopted after April 1, 1983.

(4) (a) A project area with a redevelopment plan adopted after April 1, 1983, incorporating the provisions of tax increment financing under Sections 17A-2-1247 and 17A-2-1247.5 may not exceed 100 acres of privately owned property unless the governing body of each local taxing agency that levies taxes upon property within the proposed redevelopment project area consents in writing

to exceeding the limit of [~~100-acre~~] 100 acres of privately owned property in the redevelopment plan.

(b) A redevelopment plan adopted before April 1, 1983, may not be amended after April 1, 1983, to add any additional area if the project area exceeds 100 acres of privately owned property, or the project area is less than 100 acres of privately owned property but would exceed 100 acres of privately owned property with the additional area, unless the governing body of each local taxing agency that levies taxes upon property within the area proposed to be added consents in writing to the adding of the additional area to the project area.

(5) (a) For purposes of computing under Section 17A-2-1247 the amount to be allocated to and when collected to be paid into a special fund of a redevelopment agency to pay the principal of and interest on loans, moneys advanced to, or indebtedness (whether funded, refunded, assumed, or otherwise) incurred by the redevelopment agency after April 1, 1983, from a project area with a redevelopment plan adopted before April 1, 1983, incorporating the provisions of Section 17A-2-1247 and containing more than 100 acres of privately owned property, the redevelopment agency may be paid only that portion of that amount levied each year from 100 acres selected by the redevelopment agency from the entire project area. The amount allocated to and when collected to be paid into a special fund of a redevelopment agency under Subsections 17A-2-1247 (2)(c) and (2)(e) from the 100 acres of privately owned property shall be that portion of the levied taxes each year in excess of the amount from the 100 acres allocated to and when collected paid to the taxing agencies under Subsection 17A-2-1247 (2)(a). The 100 acres of privately owned property shall be contiguous.

(b) The 100-acre limit of privately owned property established in this Subsection (5) does not apply to loans, moneys advanced to, or indebtedness, whether funded, refunded, assumed, or otherwise, incurred by redevelopment agencies before April 1, 1983, in projects with redevelopment plans adopted before April 1, 1983. The 100-acre limit of privately owned property does not apply if the governing body of each local taxing agency which levies taxes upon the property within the project area consents in writing to exceeding the 100-acre limit of privately owned property.

(c) Each agency shall establish by resolution adopted on or before August 1, 1983, which areas in the project area shall be included in the 100 acres of privately owned property to be used for

the purposes of computing the amount of tax increment to be paid to the agency. The resolution shall also contain a legal description of the areas included in the 100 acres. A copy of the resolution shall be filed with the county auditor and the State Tax Commission within 30 days of adoption of the resolution. After the resolution has been adopted no person, entity, or public body may contest the regularity, formality, or legality of the establishment of the 100 acres or of the resolution for any cause.

(6) Each project area with a redevelopment plan adopted before April 1, 1983, that exceeds 590 acres of privately owned property shall be reduced to 590 acres of privately owned property unless the governing body of each local taxing agency that levies taxes upon property within the project area consents in writing to the project area not being reduced. Each agency shall establish by resolution adopted on or before August 1, 1983, which areas in the project area shall be included in the 590 acres of privately owned property to be used for the purposes of reducing to the 590 acre limit of privately owned property. The resolution shall also contain a legal description of the areas included in the 590 acres of privately owned property. A copy of the resolution shall be filed with the county auditor and the State Tax Commission within 30 days of adoption of the resolution. After the resolution has been adopted no person, entity, or public body may contest the regularity, formality, or legality of the reduction to the 590 acre limit of privately owned property or of the resolution for any cause.

(7) A redevelopment plan adopted after April 1, 1983, and redevelopment projects for which a preliminary plan has been prepared prior to April 1, 1993, and for which all of the following have occurred prior to July 1, 1993: the agency blight study has been completed, and a hearing under Section 17A-2-1221 has in good faith been commenced by the agency, shall contain:

(a) a time limit not to exceed seven years from the date of the approval of the plan after which the agency may not commence acquisition of property through eminent domain;

(b) a time limit not to exceed 15 years from the date of the approval of the plan after which no bonds may be issued for redevelopment projects; and

(c) a time limit not to exceed 32 years from the date of the approval of the plan after which no tax increment from the project area may be allocated to or used by the agency.

(8) The time limits established in Subsections (5)(a), (b), and (c) shall apply to redevelopment plans adopted before April 1, 1983, but shall be measured from April 1, 1983.

(9) Notwithstanding the provisions of Subsections (7) and (8) or of any corresponding provisions of a redevelopment plan, an agency may issue bonds for the purpose of refunding bonds previously issued for redevelopment projects (or to refund bonds issued for redevelopment projects) without regard to the 15-year limit provided therein.

Section 25. Section **17A-2-1302** is amended to read:

17A-2-1302. Definitions.

As used in this part:

(1) "County" means a county of this state and includes any such county regardless of the form of government under which it is operating.

[~~(7)~~] (2) "Facility" or "facilities" means any structure, building, system, land, water right, and other real and personal property required to provide any service authorized by Section 17A-2-1304, including, without limitation, all related and appurtenant easements and rights-of-way, improvements, utilities, landscaping, sidewalks, roads, curbs and gutters, and equipment and furnishings.

(3) "Governing authority" means the board or body, however designated, in which the general legislative powers of a county, municipality, or improvement district are vested and includes the board of commissioners of a county or a city of the first or second class, the city council of a city of the third class, the town council of a town, and the board of trustees of an improvement district.

[~~(6)~~] (4) "Guaranteed bonds" mean bonds the annual debt service on which is or will be guaranteed by one or more taxpayers owning property within the boundaries of the service district.

[~~(2)~~] (5) "Improvement district" means an improvement district established under Chapter 2, Part 3.

[~~(4)~~] (6) "Municipality" means a city or town of this state.

[~~(5)~~] (7) "Service district" means a special service district established in the manner provided by this part under Article XIV, Section 8 of the Constitution of Utah.

Section 26. Section **17A-2-1411** is amended to read:

17A-2-1411. Quorum.

A majority of the directors shall constitute a quorum, and a concurrence of a majority of those in attendance, in any matter, within their duties, shall be sufficient for its determination, except as otherwise herein provided.

Section 27. Section **17A-2-1425** is amended to read:

17A-2-1425. Board may sell or lease water to irrigation districts -- Levy and collection of special assessments under class C.

To levy and collect special assessments upon lands under class C as herein provided, the board shall make an allotment of water to each of the petitioning irrigation districts within the district in the manner as hereinafter provided in such quantity as will in the judgment of the board, when added to the present supply of water of such irrigation district, make an adequate supply of water for such irrigation district, and shall fix and determine the rates per acre-foot or other unit of measurement, the service, turnout, connection, distribution system charges or other charges and terms at and upon which water shall be sold, leased or otherwise disposed of to such irrigation district; provided, however, that such rates and charges shall be equitable although not necessarily equal or uniform for like classes of services throughout the district. In the event any irrigation district shall desire to purchase, lease, or otherwise obtain the beneficial use of waters of the district, the board of such irrigation district shall by resolution authorize and direct its president and secretary to petition the board for an allotment of water, upon terms prescribed by the board, which petition shall contain, inter alia, the following:

(1) Name of irrigation district.

(2) Quantity of water to be purchased or otherwise acquired.

(3) Price per acre-foot or other unit of measurement and the amount of any service, connection, distribution system charge or other charges to be paid.

(4) Whether payments are to be made in cash or annual installments.

(5) Agreement by such irrigation district to make payments for the beneficial use of such water, together with annual maintenance and operating charges, and to be bound by the provision of this part and the rules and regulations of the board.

The secretary of the board shall cause notice of the filing of such petition to be given and

published, which notice shall state the filing of such petition and giving notice to all persons interested to appear at the office of the board at a time named in said notice and show cause in writing, if any they have, why the petition should not be granted. The board at the time and place mentioned in said notice, or at such time or times at which the hearing of said petition may be adjourned, shall proceed to hear the petition and objections thereto, presented, in writing, by any person showing cause as aforesaid why said petition should not be granted. The failure of any person interested to show cause in writing, as aforesaid, shall be deemed and taken as an assent on his part to the granting of said petition. The board may, at its discretion, accept or reject the said petition, but if it deems it for the best interest of the district that the said petition shall be granted, shall enter an order to that effect granting the said petition, and from and after such order, the irrigation district, and/or persons therein shall be deemed to have purchased, leased, or otherwise acquired the beneficial use of water as set forth in said order. If said petition is granted, the board shall, in each year, determine the amount of money necessary to be raised by special assessment on lands within such irrigation district and shall determine whether such special assessment shall be levied by the district or by the irrigation district. If the board determines that such assessments shall be levied by the district, it shall certify to the county auditor of the county in which the lands of such irrigation district are located the amount of the assessment, plus a fair proportionate amount of the estimated operating and maintenance charges for the next succeeding year on each tract of land on or before the 1st day of July of each year, and such county auditor shall extend the amount of such special assessment, plus said operating and maintenance charges on the tax roll as a special assessment against the lands on which said special assessment is made. If the board determines that such assessments shall be levied by the irrigation district, the district shall make a contract with the irrigation district which shall provide among other things for the annual payment to the district of an amount to be obtained from the levy by the irrigation district of annual assessments in accordance with the irrigation district law. If a subdistrict or subdistricts are organized as herein provided, assessments of special benefits shall be made, spread on the tax rolls, and collected in the same manner as herein provided in the case of irrigation districts.

Section 28. Section **17A-2-1437** is amended to read:

17A-2-1437. Change of boundaries -- Petitions for and against inclusion within district

-- Hearing -- Petition protesting inclusion -- Hearing -- Appeal -- Annexation -- Hearings -- Objections -- Order of inclusion -- Findings and decrees -- Appeal.

(1) The boundaries of any district organized under this part may be changed as provided by this section, but the change of boundaries of the district shall not impair or affect:

(a) its organization;

(b) its rights in or to property;

(c) any of its other rights or privileges; or

(d) any contract, obligation, lien, or charge for or upon which it might be liable or chargeable had the change of boundaries not been made.

(2) (a) (i) The owners of lands which are either contiguous or noncontiguous to the district and to each other may file a written petition with the board requesting that their lands be included in the district. The petition shall contain:

(A) a description of the tracts or body of land sought to be included; and

(B) the signatures, acknowledged in the same form as conveyances of real estate, of the owners of the lands.

(ii) A petition filed in this form will be considered to give assent of the petitioners to the inclusion within the district of the lands described in the petition.

(b) The board shall, within 90 days after the filing of the petition, set and convene a hearing to consider the petition and all objections.

(c) The secretary of the board shall cause notice of the filing of the petition to be given and published in the county in which the lands are situated. This notice shall state:

(i) the names of petitioners;

(ii) a description of lands mentioned;

(iii) the request of the petitioners; and

(iv) that all persons interested must appear at the office of the board at the time named in the notice and state in writing why the petition should not be granted.

(d) The board shall, at the appropriate time, proceed to hear the petition and review the written objections to the petition. The failure of any person to show cause, in writing, shall be

considered to be his assent to the inclusion of these lands within the district.

(e) If any of the lands proposed for inclusion in the district are located within a municipality, the petitioners shall, before the date of the hearing set by the board, obtain from the municipality's governing body its written consent to the inclusion of the land located within the municipality.

(f) (i) If any of the lands proposed for inclusion in the district are located within a municipality's proposed municipal expansion area established by the municipality's annexation policy declaration adopted under Title 10, Chapter 2, Part 4, [~~Extension of Corporate Limits - Local Boundary Commissions~~] Annexation, the petitioners shall, before the date of the hearing set by the board, obtain from that municipality's governing body its written consent to the inclusion of the land located within the area proposed for municipal expansion.

(ii) Subsection (2)(f)(i) does not apply if the land proposed for inclusion in the district is located within the proposed municipal expansion area of more than one municipality in a county of the first class.

(g) If any of the lands proposed for inclusion in the district are located within a county not previously containing any part of the district, the petitioners shall, before the date of the hearing set by the board, obtain from the county's legislative body its written consent to the inclusion of the land located within that county.

(h) If any of the lands proposed for inclusion in the district are located within the unincorporated portion of a county, the petitioners shall, before the date of the hearing set by the board, obtain from the county's legislative body its written consent to the inclusion of that land.

(i) If the petition is granted, the board shall make an order to that effect and file the petition with the clerk of the court and upon order of the court the lands shall be included in the district.

(3) (a) In addition to the method provided in Subsection (2), additional areas may be included in a district by petition as described in this subsection. A written petition may be filed to include:

(i) irrigated lands;

(ii) nonirrigated lands;

(iii) land in towns and cities;

(iv) other lands; or

(v) any combination of lands under this subsection. These lands may be contiguous or noncontiguous to the district and to each other.

(b) The petition must:

(i) be filed in the district court of the county in which the petition for organization of the original district was filed;

(ii) include the signatures, acknowledged in the same form as conveyances of real estate, of not fewer than 20% or 500, whichever is the lesser, of the owners of irrigated lands in the area, but outside the corporate limits of a city or town;

(iii) include the signatures, acknowledged in the same form as conveyances of real estate, of not fewer than 5% or 100, whichever is the lesser, of the owners of nonirrigated lands and lands within the incorporated limits of a city or town, which are within the area specified in the petition;

(iv) list a description of each tract of land owned by the signer opposite the name of the signer, with an indication that each tract, together with its improvements, has a taxable value of not less than $300; and

(v) set forth:

(A) a general description of the territory in the area sought to be included in the district;

(B) the name of the district in which it is sought to be included;

(C) the terms and conditions upon which inclusion is sought;

(D) a statement that the property sought to be included will be benefited by the accomplishment of the purposes for which the original district was formed; and

(E) a request for inclusion of the area in the district.

(c) No petition with the requisite signatures shall be declared null and void because of alleged defects, but the court may permit the petition to be amended to conform to the facts by correcting any errors. However, similar petitions or duplicate copies of the petition for the inclusion of the same area may be filed and shall together be regarded as one petition. All petitions filed prior to the hearing on the first petition shall be considered by the court the same as though filed with the first petition. In determining whether the requisite number of landowners has signed the petition, the names as they appear upon the tax roll shall be prima facie evidence of their ownership.

(d) At the time of filing the petition or at any time before, and prior to the time of hearing on the petition, a bond shall be filed, with security approved by the court sufficient to pay all expenses connected with the proceedings in the case. If at any time during the proceeding the court determines that the first bond is insufficient, the court may require that an additional bond be obtained within ten days following the court's request. If the petitioner fails to obtain a bond, the petition shall be dismissed.

(e) Immediately after the filing of the petition, the district court of the county where the petition is filed shall fix a place and time between 60 and 90 days after the petition is filed for a hearing. The clerk of the court shall then publish notice of the pendency of the petition and of the time and place of hearing. The clerk of the court shall also mail a copy of the notice by registered mail to:

(i) the board of directors of the district;

(ii) the county legislative body of each of the counties with land within the area proposed to be included in the district; and

(iii) the governing body of each of the cities or towns having territory within the area proposed to be included within the district.

(f) If any of the lands proposed for inclusion in the district are located within a municipality, the petitioners shall, before the date of the hearing set by the district court, obtain from the municipality’s governing body its written consent to the inclusion of the land located within the municipality.

(g) (i) If any of the lands proposed for inclusion in the district are located within a municipality’s proposed municipal expansion area established by the municipality’s annexation policy declaration adopted under Title 10, Chapter 2, Part 4, [~~Extension of Corporate Limits - Local Boundary Commissions~~] Annexation, the petitioners shall, before the date of the hearing set by the board, obtain from that municipality’s governing body its written consent to the inclusion of the land located within the area proposed for municipal expansion.

(ii) Subsection (3)(g)(i) does not apply if the land proposed for inclusion in the district is located within the proposed municipal expansion area of more than one municipality in a county of the first class.

(h) If any of the lands proposed for inclusion in the district are located within a county not previously containing any part of the district, the petitioners shall, before the date of the hearing set by the district court, obtain from the county's legislative body its written consent to the inclusion of the land located within that county.

(i) If any of the lands proposed for inclusion in the district are located within the unincorporated portion of a county, the petitioners shall, before the date of the hearing set by the district court, obtain from the county's legislative body its written consent to the inclusion of that land.

(j) After the filing of a petition for inclusion of an additional area and at least 30 days prior to the time fixed by the court for the hearing on the petition, a petition protesting the inclusion of the lands within the district may be filed in the clerk's office of the court where the proceeding for inclusion is pending. The protest petition must contain:

(i) the signatures, acknowledged in the same form as conveyances of real estate, of at least:

(A) 35% of the owners of irrigated lands in the area sought to be included, but not within the incorporated limits of a city or town; and

(B) 20% of the owners of nonirrigated lands and lands within the incorporated limits of a city or town within the area proposed to be included within the district; and

(ii) a description of each tract of land opposite the name of the signer, with an indication that each tract, together with its improvements, has an assessed value of at least $300.

(k) A landowner may protest if he:

(i) did not sign the petition for inclusion; and

(ii) owns land, including improvements thereon, which had a taxable value of at least $300 as shown by the last preceding assessment.

(l) If a petitioner signs the petition both as owner of irrigated and nonirrigated land, his name counts only as an owner of irrigated lands.

(m) On the day set for the hearing on the original petition, if it appears to the court that the protesting petition does not meet the requirements of Subsection (3)(j), the court shall dismiss the protesting petition and proceed with the original hearing as provided in this section. If the court finds

from the evidence that the protesting petition does qualify, the court shall dismiss the original petition for inclusion. The finding of the court upon the question of valuation, the genuineness of the signatures, and all matters of law and fact incident to this determination shall be final and conclusive on all parties in interest whether appearing or not, unless within 30 days from entry of the order of dismissal an appeal is taken to the Supreme Court.

(n) (i) Any owner of real property in the proposed area who did not individually sign a petition for the inclusion, but who desires to object to the inclusion, may, on or before ten days prior to the date set for the cause to be heard, file an objection to the inclusion. This objection shall be heard by the court as an advanced case without unnecessary delay.

(ii) An owner of irrigated lands may file a petition asking to have his irrigated lands excluded from the inclusion pursuant to the requirements of Subsection (3)(n)(i). This petition shall be heard by the district court on the date set for the hearing of the petition for inclusion of the area and the district court shall exclude these irrigated lands from the area proposed for inclusion within the district.

(o) If it appears at the hearing that a petition for the inclusion has been signed and presented as provided in Subsections (a) and (b), that each written consent required by Subsections (3)(f), (g),(h), and (i) has been obtained, that the allegations of the petition are true, and that no protesting petition has been filed, or if filed has been dismissed as provided in Subsection (3)(m), the court shall:

(i) adjudicate all questions of jurisdiction;

(ii) find that the property described in the petition will, if included, be benefited by the accomplishment of the purposes for which the original district was formed;

(iii) declare the area included in the district;

(iv) declare whether the area is annexed to an existing division, or constitutes a separate division; and

(v) declare whether the area can be properly represented by existing directors or whether the number of directors shall be increased to provide for representation of the area annexed. However, prior to the entry of its decree including such area within the district, the court shall obtain the verified consent of the board of directors of the district to the inclusion of such area.

(p) If the court finds that the petition for inclusion has not been signed and presented pursuant to this section, that any written consent required by Subsections (3)(f), (g), (h), and (i) has not been obtained, or that the material facts are not as set forth in the petition filed, it shall dismiss the proceedings and adjudge the costs against the signers of the petition in such proportion as it considers just and equitable. An appeal to the Supreme Court shall lie from an order dismissing the proceeding. Nothing in this part shall be construed to prevent the filing of a subsequent petition or petitions for similar purposes, and the right to renew such proceeding is expressly granted.

(4) (a) If lands are annexed into a public corporation which corporation is already part of the district described in this part and these annexed lands are not located within the district's boundaries, the board may make a finding that these lands are not part of the district, and that these lands are or may be benefited from the service provided by the district. Upon making this finding, the board shall set a time and place for a public hearing to hear objections as to why these lands should not be annexed and included within the district. The secretary of the board shall cause notice of the time and place of the hearing to consider the inclusion of the lands within the district to be given and published in the county in which the lands are situated. The notice shall:

(i) state a general description of the lands;

(ii) state that the lands are being considered for inclusion within the district; and

(iii) give notice to all interested persons to appear at the time and place named in the notice and show cause, in writing, as to why the lands should not be included within the district. The secretary shall mail a copy of the notice by registered mail to the governing body of the public corporation and to the landowners.

(b) Before the date set for the hearing, the board shall obtain the written consent of the public corporation’s governing body to the inclusion of the lands into the district.

(c) The board shall, at the time and place named in the notice or at any time at which the hearing may be adjourned, proceed to hear all objections to the inclusion of the lands within the district. The failure of any interested person to appear or show cause, in writing, shall be taken as an assent on his part to the inclusion of the lands within the district. If, after hearing all objections to the inclusion of the land within the district, the board has obtained the consent of the public corporation’s

governing body as required in Subsection (4)(b) and determines that the lands will be benefited by inclusion within the district, the board shall make an order to that effect. Upon filing the order with the clerk of the court and upon order of the court, the lands shall be included in the district.

(d) A finding by the board that the lands will not be benefited by inclusion within the district shall not preclude the board at any subsequent date from finding that changed conditions or circumstances now benefit the lands. After making this finding the board may renew the proceedings for inclusion of these lands in whole or in part and find that the lands will be benefited by inclusion in the district and make an order to that effect. Upon filing the order with the clerk of the court and upon order of the court, the lands shall be included in the district.

(e) If the board finds that any portion of land to be annexed into the district is presently receiving water from another public water system, the board shall exclude that portion of land from the land to be annexed into the district.

(5) Upon the entry of the decree, the clerk of the court shall transmit to the Division of Corporations and Commercial Code and the county recorder in each of the counties having lands in the area, copies of the findings and decrees of the court. The findings and decrees shall be filed with the Division of Corporations and Commercial Code pursuant to the general laws concerning corporations. Copies shall also be filed in the office of the county recorder in each county in which the district is located where they will become permanent records. The recorder in each county shall receive the fee designated by the county legislative body for filing and preservation. The Office of the Lieutenant Governor shall receive fees as may be provided by law for like services in similar cases.

(6) If an order is entered establishing the inclusion of the area into the district, such order shall be final unless within 30 days an appeal is taken to the Supreme Court. The entry of a final order shall conclusively establish the inclusion of the area against all persons, except that the state may attack the order in an action in the nature of a writ of quo warranto, commenced by the attorney general within three months after the decree declaring the area included. The inclusion of the area shall not be directly or collaterally questioned in any suit, action, or proceeding, except as expressly authorized.

(7) Any area included in a district pursuant to this part shall be subject to taxes and

assessments levied for the payment of indebtedness of the district which was outstanding at the time of the entry of the order for inclusion, and for the payment of indebtedness thereafter incurred as if the area were a part of the district as originally established.

(8) The boundaries of any subdistrict may be changed in the manner provided in this part for the change of the boundaries of districts.

Section 29. Section **17A-2-1444** is amended to read:

17A-2-1444. Hearings to be advanced.

All cases in which there may arise a question of the validity of the organization of a water conservancy district[~~,~~] or a question of the validity of any proceeding under this part, the question shall be advanced as a matter of immediate public interest and concern, and heard at the earliest practicable moment. The courts shall be open at all times for the purposes of this part.

Section 30. Section **17A-2-1512** is amended to read:

17A-2-1512. Expense reimbursement.

A commissioner is entitled to the necessary expenses, including traveling expenses, incurred in the discharge of official duties.

Section 31. Section **17A-2-1704** is amended to read:

17A-2-1704. Creation of authority -- Members.

(1) (a) The authority comprises ten members. If the requirements of Section 17A-2-1703 are met, the governor shall, with the advice and consent of the Senate, appoint six members of the authority from the public-at-large.

(b) The remaining four members of the authority are:

(i) the executive director of the Department of Environmental Quality;

(ii) the executive director of the Department of Community and Economic Development;

(iii) the executive director of the Department of Natural Resources; and

(iv) the executive director of the Department of Transportation.

(2) Public-at-large members, no more than three of whom shall be from the same political party, shall be appointed to six-year terms of office, subject to removal by the governor with or without cause.

(3) The governor shall name one public-at-large member as chairman of the authority responsible for the call and conduct of authority meetings.

(4) The authority may elect other officers as necessary.

(5) Five members of the authority present at a properly noticed meeting constitute a quorum for the transaction of official authority business.

(6) Public-at-large members are entitled to per diem and expenses[~~,~~] for each day devoted to authority business at the rates established by the director of the Division of Finance under Sections 63A-3-106 and 63A-3-107.

Section 32. Section **17A-2-1709** is amended to read:

17A-2-1709. Security for obligations -- Provisions of security instruments.

(1) The principal and interest on any obligation issued pursuant to this part shall be secured by:

(a) a pledge and assignment of the proceeds earned by the facility built and acquired with the proceeds of the obligations;

(b) a mortgage or trust deed on the facility built and acquired with the proceeds from the obligations; and

(c) such other security on the facility as is deemed most advantageous by the authority.

(2) Obligations authorized for issuance under this part and any mortgage or other security given to secure such obligations may contain any provisions customarily contained in security instruments, including, but not limited to:

(a) the fixing and collection of fees from the facility;

(b) the maintenance of insurance on the facility;

(c) the creation and maintenance of special funds to receive revenues earned by the facility; and

(d) the rights and remedies available to obligation holders in the event of default.

(3) All mortgages, trust deeds, security agreements, or trust indentures on a facility shall provide, in the event of foreclosure, that no deficiency judgment may be entered against the authority, the state, or any of the state's political subdivisions.

(4) Any mortgage or other security instrument securing such obligations may provide that in the event of a default in the payment of principal or interest or in the performance of any agreement, that payment or performance may be enforced by the appointment of a receiver with power to charge and collect fees and to apply the revenues from the facility in accordance with the provisions of the security instrument.

(5) Any mortgage or other security instrument made pursuant to this part may also provide that in the event of default in payment or breach of a condition, that the mortgage may be foreclosed or otherwise satisfied in any manner permitted by law, and that the trustee under the mortgage or the holder of any obligation secured by such mortgage may, if the highest bidder, purchase the security at foreclosure sale.

Section 33. Section **17A-2-1803** is amended to read:

17A-2-1803. Area -- Procedures -- Appeals.

(1) A regional service area may consist of:

(a) all or part of any county; and

(b) areas that are not contiguous.

(2) (a) Only one regional service area may be located in a county.

(b) (i) A county service area may not reorganize as a regional service area on or after May 4, 1998.

(ii) No regional service area may be created on or after May 4, 1998.

(3) The adoption of this part does not affect the existence, operation, or establishment of any county service area operating under Title 17A, Chapter 2, Part 4, County Service Areas.

(4) After it is reorganized, the county service area shall be a regional service area subject to this part containing all of the territory of the county service area, and not subject to Chapter 2, Part 4.

(5) (a) Beginning on the effective date of the resolution reorganizing the county service area as a regional service area, the regional service area is reorganized with all the rights, privileges, [~~and~~] powers, and limitations under this part.

(b) (i) Any outstanding bonds, notes, contracts, or other obligations of any former county

service area shall be the bonds, notes, contracts, and obligations of the new regional service area which is taking its place with like effect as if issued or entered into by the regional service area.

(ii) Any election authorizing the issuance of bonds of the former county service area shall have the same effect as a bond election held under this part.

(c) Taxes at the most recent rate levied by the former county service area may continue to be levied by the regional service area.

(d) All assets of the former county service area, including both real and personal property, shall be the property of the regional service area with the same effect as if originally constructed, purchased, leased, or otherwise acquired by the regional service area and the contracts of the former county service area shall be the contracts of the regional service area.

(e) The employees, officers, and agents of the former county service area shall be the employees, officers, and agents of the regional service area and all employee benefits, including pension plans shall carry forward to the regional service area.

(f) Until amended, the bylaws, rules, regulations, policies, and procedures of the former county service area shall be the bylaws, rules, regulations, policies, and procedures of the regional service area.

(6) The conversion of a county service area to a regional service area may not impair or affect any existing contract, obligation, lien, charge, or bond for or upon which the county service area might be liable or chargeable had the conversion not taken place.

(7) (a) Any aggrieved person may appeal the decision of the governing authority of the county service area to reorganize the county service area as a regional service area to the district court in the county where the regional service area is located.

(b) If that appeal is not filed within 30 days after the effective date of the resolution reorganizing the county service area as a regional service area, the reorganization shall be final and conclusive.

(c) In the appeal, the district court shall affirm the reorganization unless the person challenging the reorganization establishes by clear and convincing evidence that:

(i) the county service area did not qualify to reorganize as a regional service area under the

criteria specified in this section; or

(ii) the board of trustees of the county service area substantially failed to follow the procedural requirements of this section in reorganizing the county service area as a regional service area.

Section 34. Section **17A-2-1805** is amended to read:

17A-2-1805. Body corporate -- Authority.

(1) Beginning on the effective date of the resolution reorganizing a county service area as a regional service area, the regional service area shall be a body corporate and politic and a quasi-municipal public corporation.

(2) The regional service area, acting through its board of trustees, shall, without in any way limiting the powers granted to regional service areas by the provisions of this part, have the following authority:

(a) The right to sue and be sued.

(b) The power to enter into contracts to carry out the functions of the regional service area, including the power to enter into contracts with the United States of America and any of its agencies, municipal corporations, counties, or other public corporations, county service areas or districts, or any other political subdivision of the state, including any entity created under [~~the~~] Title 11, Chapter 13, Interlocal Cooperation Act, (and any county, municipal or other public corporation, or political subdivision shall have the power to enter into contracts with regional service areas organized under this part).

(c) The regional service area, the county, and any municipality lying in whole or in part within the boundaries of the regional service area, are encouraged to coordinate and cooperate with one another regarding such matters as traffic control and planning and zoning approvals in the vicinity of facilities owned or operated by the regional service area, signs approaching or on property owned or operated by the regional service area, approvals for mass gatherings for special events, and security and crowd control at facilities owned or operated by the regional service area. This coordination and cooperation may take the form of one or more interlocal cooperation agreements. Any bond obligations of a legal or administrative entity created under the Utah Interlocal Cooperation Act with

which a regional service area may contract as provided in this section may not be counted as an obligation of the regional service area for purposes of this part.

(d) The power to impose and collect charges or fees for any commodities, services, or facilities afforded by the regional service area to its customers and to pledge all or any part of the revenues so derived to the payment of any bonds of the regional service area, whether the bonds are issued as revenue bonds or as general obligations of the regional service area. Where revenue bonds are issued payable solely from the revenues of commodities, services, and facilities, the fees and charges imposed shall always be sufficient to carry out the provisions of the resolution authorizing the bonds. The board of trustees may act and adopt the regulations necessary to assure the collection and enforcement of all fees and charges imposed. Any of the commodities, services, and facilities furnished to a consumer by the regional service area may be suspended if any fees and charges due the regional service area are not paid in full when due. Higher fees may be charged for services provided to participants who reside outside the boundaries of the regional service area.

(e) The power to sell, lease, mortgage, encumber, or otherwise dispose of any properties owned by the regional service area under the terms and conditions approved by the board of trustees.

(f) The power to own any property or property interests approved by the board of trustees to carry out the purposes of the regional service area and the power to acquire the same by purchase, lease, gift, devise, bequest, or any other lawful means.

(g) The power to exercise all powers of eminent domain possessed by counties in the manner provided by law for the exercise of eminent domain power by counties.

(h) The right to employ officers, employees, consultants, and agents, including attorneys, accountants, engineers, and fiscal agents, and to fix their compensation.

(i) The power to cause to be levied taxes on all taxable property in the regional service area as provided in this part.

(j) The right to set meeting times.

(k) The right to adopt an official seal.

(l) The right to adopt bylaws and regulations for the conduct of its business.

(m) The right to operate under a trade name or an assumed name.

(n) The right to establish a fiscal year, beginning either on January 1 or July 1.

(o) Other rights and powers as are reasonably necessary for the efficient operation of the regional service area or to undertake any lawful activity, including all the rights, powers, and authority of the former county service area, and the authority to provide all the services and facilities that were provided by the former county service area.

Section 35. Section **17A-3-209** is amended to read:

17A-3-209. Payment of contracts -- Progress payments -- Retainage.

(1) (a) Any contract for work in any special improvement district and any contract for the purchase or exchange of property necessary to be acquired in order to make improvements in any special improvement district may provide that the contract price or property price shall be paid, or, at the option of the governing entity, may be paid, in whole or in part, by the issuance of special improvement bonds issued against the funds created by assessments levied to pay the costs and expenses of improvements in the special improvement district or by interim warrants issued as authorized by this part at the time the special improvement bonds or interim warrants, as the case may be, may be legally issued and delivered. If any contract is not paid from these sources in whole or in part, or if paid in part, to the extent not so paid from these sources, the governing entity shall be responsible for advancing funds for payment of the contract price or property price from the general funds of the governing entity or from other funds legally available for this purpose as provided in the contract.

(b) From the proceeds of the sale of interim warrants or special improvement bonds, or from funds paid on assessments not pledged for the payment of the bonds or warrants, the governing entity may reimburse itself for the amount paid from its general funds or other funds, except that the governing entity may not reimburse itself for any of the costs of making the improvements properly chargeable to the governing entity for which assessments may not be levied.

(2) Any contract for work in a special improvement district may provide for payments to the contractor as the work progresses. If the contract so provides, payments may be made from time to time [~~to the extent of~~] for an amount not to exceed 95% of the value of the work done to the date of payment, as determined by estimates of the project engineer, with final payment to be made only

after completion of the work by the contractor and acceptance of the work by the governing entity. If moneys payable to the contractor as the work progresses are retained, they shall be retained or withheld and released as provided in Section 13-8-5.

Section 36. Section **17A-3-210** is amended to read:

17A-3-210. Interim warrants.

(1) (a) As work proceeds in a special improvement district, the governing body may issue interim warrants against the district:

(i) for an amount not to exceed 90% [~~in~~] of the value of the work previously done, upon estimates of the project engineer;

(ii) after completion of the work and acceptance of the work by the project engineer and by the governing body, for 100% of the value of the work completed; and

(iii) where improvements in the district require the acquisition of property, for not more than the property price.

(b) Subject to the provisions of Section 17A-3-209, the governing body may issue warrants to:

(i) a contractor, to apply at par value on the contract price for the improvements; or

(ii) to the owner of the acquired property, to apply at par value on the property price.

(c) The governing body may also issue and sell warrants at not less than par value in a manner determined by the governing body and apply the proceeds of the sale towards payment of the contract price and property price.

(2) (a) Interim warrants shall bear interest from date of issue until paid.

(b) The governing body shall fix the interest rate or rates.

(c) The governing body may fix a maturity date for each interim warrant. If a warrant matures before the governing body has available to it the sources of payment itemized in Subsection (3)(a), (b), (c), or (d), it may authorize the issuance of a new interim warrant to pay the principal and interest on the warrant falling due.

(d) Interest accruing on interim warrants shall be included as a cost of the improvements.

(3) The governing body shall pay interim warrants and interest on the warrants from one or

more of the following sources:

(a) issuance of or proceeds from the sale of special improvement bonds issued against the district;

(b) cash received from the payment for improvements;

(c) payment of assessments not pledged to the payment of the bonds;

(d) the guaranty fund if appropriate; or

(e) proceeds of an interim warrant.

(4) With the authorization of the governing body, the governing entity may purchase any or all of the interim warrants issued against the district and may use the governing entity's general funds for this purchase.

Section 37. Section **17A-3-303** is amended to read:

17A-3-303. Definitions.

As used in this part:

(1) (a) "Assessment" means a special tax levied against property within a special improvement district to pay all or a portion of the costs of making improvements in the district.

(b) "Assessment" or "assessments" in Subsection 17A-3-321 (3) and Sections 17A-3-322, 17A-3-324, 17A-3-325, 17A-3-326, 17A-3-331, 17A-3-332, 17A-3-333, 17A-3-338, and 17A-3-340, include any reduced payment obligations.

(2) (a) "Bonds" or "special improvement bonds" means bonds issued under this part payable from assessments, improvement revenues, and from the special improvement guaranty fund, or reserve fund, as applicable, established as provided in this part.

(b) "Bonds" or "special improvement bonds" in the following provisions include any special improvement refunding bonds:

(i) Subsection 17A-3-304[~~(2)~~](3)(d);

(ii) Sections 17A-3-321, 17A-3-322, 17A-3-325, 17A-3-326, 17A-3-327, 17A-3-331, 17A-3-332, and 17A-3-333;

(iii) Section 17A-3-336, except the reference in that section to "bond fund"; and

(iv) Sections 17A-3-337, 17A-3-339, and 17A-3-342.

(3) (a) "Connection fee" means a fee:

(i) charged by the governing body to connect onto the municipal sewer, water, gas, or electrical system; and

(ii) used to finance special improvements in a special improvement district or to pay for the privilege of using existing improvements of the municipality.

(b) "Connection fee" includes a fee charged by the governing body to pay for the costs of connecting onto the municipal sewer, water, gas, or electrical system even though the improvements are installed on the assessed owner's property.

(4) "Contract price" means the amount payable to one or more contractors for the designing, engineering, inspection, and making of improvements in a special improvement district. The costs of improvements, other than designing, engineering, and inspection costs, shall be incurred under any contract let to the lowest responsible bidder as required by this part, including amounts payable for extra or additional work when authorized by the governing body or in accordance with the terms of the contract, less appropriate credit for work deleted from the contract when authorized by the governing body, or in accordance with the contract.

(5) "Economic promotion activities" means promotion and developmental activities such as sponsoring festivals and markets in the downtown area, promoting business investment in the downtown area, helping to coordinate public and private actions in the downtown area, and developing and issuing publications on the downtown area designed to improve the economic well-being of the downtown area.

(6) "Governing body" means the board of commissioners or city council of a city or the town council of a town.

(7) "Improvement revenues" means any charges, fees, or other revenues received by a municipality from improvements described in Section 17A-3-304.

(8) "Incidental refunding costs" means any costs of issuing special improvement refunding bonds and of calling, retiring, or paying prior bonds, including legal fees, accounting fees, charges of fiscal agents, escrow agents, and trustees, underwriting discount, printing costs, giving of notices, any premium necessary in the calling or retiring of the prior bonds, any other costs that the governing

body determines are necessary or desirable in connection with the issuance of special improvement refunding bonds, and any interest on the prior bonds that is required to be paid in connection with the issuance of the special improvement refunding bonds.

(9) "Installment payment date" means the date on which installment payments of assessments are payable.

(10) "Municipality" means a city or town of this state.

(11) (a) "Net improvement revenues" means all improvement revenues received by a municipality since the last installment payment date minus all amounts payable by the municipality from those improvement revenues for items other than the payment of interim warrants and special improvement bonds.

(b) "Net improvement revenues" shall be calculated as of any installment payment date.

(12) "Optional improvements" means improvements in a special improvement district that may be conveniently installed at the same time as other improvements in the district and that the governing body provides may be installed at the option of the property owner on whose property or for whose particular benefit the improvements are made, including private driveways, irrigation ditches, and water turnouts.

(13) "Overhead costs" means the actual costs incurred by a municipality in connection with a special improvement district for appraisals, legal fees, financial advisory charges, escrow and trustee fees, publishing and mailing notices, levying assessments, and all other incidental costs relating to the district.

(14) "Prior bonds" means the outstanding special improvement bonds that are refunded by an issue of special improvement refunding bonds.

(15) "Prior ordinance" means the ordinance levying the assessments from which the prior bonds and the interest on those bonds are payable.

(16) "Property" means real property or any interest in real property.

(17) "Property price" means the purchase or condemnation price of property acquired in order to make improvements in a special improvement district.

(18) "Reduced payment obligations" means the reduced amounts of the assessments levied,

the interest on assessments established in the prior ordinance, or both, as set forth in the amending ordinance described in Section 17A-3-329.

(19) "Special improvement district" or "district" means a district created for the purpose of making improvements under this part.

(20) "Special improvement fund" means the fund established under Section 17A-3-326.

(21) "Special improvement refunding bonds" means any obligations issued to refund any special improvement bonds.

Section 38. Section **17A-3-412** is amended to read:

17A-3-412. Control of district by governing authority -- Administrative board of directors -- Powers.

(1) After the adoption of the resolution establishing a district, the district so established shall be under the control of the governing authority. However, the governing authority may appoint an administrative board consisting of any number of directors as the governing authority shall determine. [~~Said director~~] The directors shall receive no pay for their services as directors, but may be reimbursed for reasonable and authorized out-of-pocket expenses they may incur as directors.

(2) All actions taken by the board shall constitute recommendations to the governing authority and shall not constitute official action. The board shall have the power, subject to approval of the governing authority, to:

(a) adopt and alter rules and regulations for the operation of the district;

(b) determine broad matters of policy regarding the operation of the district; and

(c) assist the governing authority in the operation of the district in any manner that the governing authority may direct.

Section 39. Section **17A-3-701** is amended to read:

17A-3-701. Local substance abuse authorities -- Responsibilities.

(1) All county governing bodies in this state are local substance abuse authorities. Within legislative appropriations and county matching funds required by this section, and under the policy direction of the state Board of Substance Abuse and the administrative direction of the Division of Substance Abuse within the Department of Human Services, local substance abuse authorities shall

provide substance abuse services to residents of their respective counties. Two or more county governing bodies may join to provide substance abuse prevention and treatment services.

(2) The governing bodies may establish acceptable ways of apportioning the cost of substance abuse services. Any agreement for joint substance abuse services may designate the treasurer of one of the participating counties as the custodian of moneys available for those joint services, and that the designated treasurer, or other disbursing officer, may make payments from those moneys for such purposes upon audit of the appropriate auditing officer or officers representing the participating counties. The agreement may provide for joint operation of services and facilities or for operation of services and facilities under contract by one participating local substance abuse authority for other participating local substance abuse authorities.

(3) (a) All county governing bodies, as local substance abuse authorities, are accountable to the Department of Human Services, the Department of Health, and the state with regard to the use of state and federal funds received from those departments for substance abuse services, regardless of whether the services are provided by a private contract provider.

(b) A local substance abuse authority shall comply, and require compliance by its contract provider, with all directives issued by the Department of Human Services and the Department of Health regarding the use and expenditure of state and federal funds received from those departments for the purpose of providing substance abuse programs and services. The Department of Human Services and Department of Health shall ensure that those directives are not duplicative or conflicting, and shall consult and coordinate with local substance abuse authorities with regard to programs and services.

(4) Local substance abuse authorities shall:

(a) review and evaluate substance abuse prevention and treatment needs and services;

(b) annually prepare and submit a plan to the division for funding and service delivery; the plan shall include, but is not limited to, primary prevention, targeted prevention, early intervention, and treatment services;

(c) establish and maintain, either directly or by contract, programs licensed under Title 62A, Chapter 2, Licensure of Programs and Facilities;

(d) appoint directly or by contract[,] a full or part time director for substance abuse programs, and prescribe his duties;

(e) provide input and comment on new and revised policies established by the state Board of Substance Abuse;

(f) establish and require contract providers to establish administrative, clinical, personnel, financial, and management policies regarding substance abuse services and facilities, in accordance with the policies of the state Board of Substance Abuse, and state and federal law;

(g) establish mechanisms allowing for direct citizen input;

(h) annually contract with the Division of Substance Abuse to provide substance abuse programs and services in accordance with the provisions of Title 62A, Chapter 8, Substance Abuse;

(i) comply with all applicable state and federal statutes, policies, audit requirements, contract requirements, and any directives resulting from those audits and contract requirements;

(j) promote or establish programs for the prevention of substance abuse within the community

setting through community-based prevention programs;

(k) provide funding equal to at least 20% of the state funds that it receives to fund services described in the plan; and

(l) comply with the requirements and procedures of Title 11, Chapter 13, Interlocal Cooperation Act, Title 51, Chapter 2, Audits of Political Subdivisions, Interlocal Organizations and Other Local Entities, and Title 17A, Chapter 1, Part 4, Uniform Fiscal Procedures for Special Districts Act.

(5) Before disbursing any public funds, local substance abuse authorities shall require that all entities that receive any public funds from a local substance abuse authority agree in writing that:

(a) the division may examine the entity's financial records;

(b) the county auditor may examine and audit the entity's financial records; and

(c) the entity will comply with the provisions of Subsection (3)(b).

(6) Local substance abuse authorities may receive property, grants, gifts, supplies, materials, contributions, and any benefit derived therefrom, for substance abuse services. If those gifts are conditioned upon their use for a specified service or program, they shall be so used.

(7) (a) For purposes of this section "public funds" means the same as that term is defined in Section 17A-3-703.

(b) Nothing in this section limits or prohibits an organization exempt under Section 501(c)(3), Internal Revenue Code, from using public funds for any business purpose or in any financial arrangement that is otherwise lawful for that organization.

Section 40. Section **17B-2-201** is amended to read:

17B-2-201. Definitions and general provisions.

(1) As used in this part:

(a) "Applicable area" means:

(i) for a county, the unincorporated area of the county that is included within the proposed local district; or

(ii) for a municipality, the area of the municipality that is included within the proposed local district.

(b) "Municipal" means of or relating to a municipality.

(c) "Municipality" means a city or town.

(d) "Petition" means a petition under Subsection 17B-2-203(1)(a) or (b).

(e) "Political subdivision" means a county, city, town, local district under this chapter, independent special district under Title 17A, Chapter 2, Independent Special Districts, or an entity created by interlocal cooperation agreement under Title 11, Chapter 13, Interlocal Cooperation Act.

(f) "Private," with respect to real property, means not owned by the United States or any agency of the federal government, the state, a county, a municipality, a school district, an independent special district under Title 17A, Chapter 2, Independent Special Districts, a local district, or any other political subdivision of the state.

(g) "Property owner petition" means a petition under Subsection 17B-2-203(1)(a).

(h) "Property owner request" means a request under Section 17B-2-204 that is signed by owners of real property as provided in Subsection 17B-2-204(2)(b)(i).

[~~(i)~~] (i) "Registered owner request" means a request under Section 17B-2-204 that is signed by registered voters as provided in Subsection 17B-2-204(2)(b)(ii).

[~~(i)~~] (j) "Registered voter petition" means a petition under Subsection 17B-2-203(1)(b).

(k) "Request" means a request as described in Section 17B-2-204.

(l) "Responsible body" means the legislative body of:

(i) the municipality in which the proposed local district is located, if the petition proposes the creation of a local district located entirely within a single municipality;

(ii) the county in which the proposed local district is located, if the petition proposes the creation of a local district located entirely within a single county and all or part of the proposed local district is located within:

(A) the unincorporated part of the county; or

(B) more than one municipality within the county; or

(iii) if the petition proposes the creation of a local district located within more than one county, the county whose boundaries include more of the area of the proposed local district than is included within the boundaries of any other county.

(m) "Responsible clerk" means the clerk of the county or the clerk or recorder of the municipality whose legislative body is the responsible body.

(n) "Unincorporated" means not included within a municipality.

(2) For purposes of this part:

(a) the owner of real property shall be the record title owner according to the records of the county recorder on the date of the filing of the request or petition; and

(b) the value of private real property shall be determined according to the last assessment before the filing of the request or petition, as determined by:

(i) the county under Title 59, Chapter 2, Part 3, County Assessment, for property subject to assessment by the county;

(ii) the State Tax Commission under Title 59, Chapter 2, Part 2, Assessment of Property, for property subject to assessment by the State Tax Commission; or

(iii) the county, for all other property.

(3) For purposes of each provision of this part that requires the owners of private real property covering a percentage of the total private land area within the proposed local district to sign

a request, petition, or protest:

(a) a parcel of real property may not be included in the calculation of the required percentage unless the request or petition is signed by:

(i) except as provided in Subsection (3)(a)(ii), owners representing a majority ownership interest in that parcel; or

(ii) if the parcel is owned by joint tenants or tenants by the entirety, 50% of the number of owners of that parcel;

(b) the signature of a person signing a request or petition in a representative capacity on behalf of an owner is invalid unless:

(i) the person's representative capacity and the name of the owner the person represents are indicated on the request or petition with the person's signature; and

(ii) the person provides documentation accompanying the request or petition that reasonably substantiates the person's representative capacity; and

(c) subject to Subsection (3)(b), a duly appointed personal representative may sign a request or petition on behalf of a deceased owner.

Section 41. Section **19-6-703** is amended to read:

19-6-703. Definitions.

(1) "Board" means the Solid and Hazardous Waste Control Board created in Section 19-1-106.

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

(3) "Department" means the Department of Environmental Quality created in Title 19, Chapter 1, General Provisions.

(4) "Division" means the Division of Solid and Hazardous Waste as created in Section 19-1-105.

(5) "DIY" means do it yourself.

(6) "DIYer" means a person who generates used oil through household activities, including maintenance of personal vehicles.

(7) "DIYer used oil" means used oil a person generates through household activities,

including maintenance of personal vehicles.

(8) "DIYer used oil collection center" means any site or facility that accepts or aggregates and stores used oil collected only from DIYers.

(9) "Executive secretary" means the executive secretary of the board.

(10) "Hazardous waste" means any substance defined as hazardous waste under Title 19, Chapter 6, Hazardous Substances.

(11) "Lubricating oil" means the fraction of crude oil or synthetic oil used to reduce friction in an industrial or mechanical device. Lubricating oil includes rerefined oil.

(12) "Lubricating oil vendor" means the person making the first sale of a lubricating oil in Utah.

(13) "Manifest" means the form used for identifying the quantity and composition and the origin, routing, and destination of used oil during its transportation from the point of collection to the point of storage, processing, use, or disposal.

(14) "Off-specification used oil" means used oil that exceeds levels of constituents and properties as specified by board rule and consistent with 40 CFR 279, Standards for the Management of Used Oil.

(15) "On-specification used oil" means used oil that does not exceed levels of [~~constitutents~~] constituents and properties as specified by board rule and consistent with 40 CFR 279, Standards for the Management of Used Oil.

(16) (a) "Processing" means chemical or physical operations under Subsection (b) designed to produce from used oil, or to make used oil more amenable for production of:

(i) gasoline, diesel, and other petroleum derived fuels;

(ii) lubricants; or

(iii) other products derived from used oil.

(b) Processing includes:

(i) blending used oil with virgin petroleum products;

(ii) blending used oils to meet fuel specifications;

(iii) filtration;

(iv) simple distillation;

(v) chemical or physical separation; and

(vi) rerefining.

(17) "Recycled oil" means oil reused for any purpose following its original use, including:

(a) the purpose for which the oil was originally used; and

(b) used oil processed or burned for energy recovery.

(18) "Rerefining distillation bottoms" means the heavy fraction produced by vacuum distillation of filtered and dehydrated used oil. The composition varies with column operation and feedstock.

(19) "Used oil" means any oil, refined from crude oil or a synthetic oil, that has been used and as a result of that use is contaminated by physical or chemical impurities.

(20) (a) "Used oil aggregation point" means any site or facility that accepts, aggregates, or stores used oil collected only from other used oil generation sites owned or operated by the owner or operator of the aggregation point, from which used oil is transported to the aggregation point in shipments of no more than 55 gallons.

(b) A used oil aggregation point may also accept oil from DIYers.

(21) "Used oil burner" means a person who burns used oil for energy recovery.

(22) "Used oil collection center" means any site or facility registered with the state to manage used oil and that accepts or aggregates and stores used oil collected from used oil generators, other than DIYers, who are regulated under this part and bring used oil to the collection center in shipments of no more than 55 gallons and under the provisions of this part. Used oil collection centers may accept DIYer used oil also.

(23) "Used oil fuel marketer" means any person who:

(a) directs a shipment of off-specification used oil from its facility to a used oil burner; or

(b) first claims the used oil to be burned for energy recovery meets the used oil fuel specifications of 40 CFR 279, Standards for the Management of Used Oil, except when the oil is to be burned in accordance with rules for on-site burning in space heaters in accordance with 40 CFR 279.

(24) "Used oil generator" means any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulation.

(25) "Used oil handler" means a person generating used oil, collecting used oil, transporting used oil, operating a transfer facility or aggregation point, processing or rerefining used oil, or marketing used oil.

(26) "Used oil processor or rerefiner" means a facility that processes used oil.

(27) "Used oil transfer facility" means any transportation-related facility, including loading docks, parking areas, storage areas, and other areas where shipments of used oil are held for more than 24 hours during the normal course of transportation and not longer than 35 days.

(28) (a) "Used oil transporter" means the following persons unless they are exempted under Subsection (28)(b):

(i) any person who transports used oil;

(ii) any person who collects used oil from more than one generator and transports the collected oil;

(iii) except as exempted under Subsection (28)(b)(i), (ii), or (iii), any person who transports collected DIYer used oil from used oil generators, collection centers, aggregation points, or other facilities required to be permitted or registered under this part and where household DIYer used oil is collected; and

(iv) owners and operators of used oil transfer facilities.

(b) "Used oil transporter" does not include:

(i) persons who transport oil on site;

(ii) generators who transport shipments of used oil totalling 55 gallons or less from the generator to a used oil collection center as allowed under 40 CFR 279.24, Off-site Shipments;

(iii) generators who transport shipments of used oil totalling 55 gallons or less from the generator to a used oil aggregation point owned or operated by the same generator as allowed under 40 CFR 279.24, Off-site Shipments;

(iv) persons who transport used oil generated by DIYers from the initial generator to a used oil generator, used oil collection center, used oil aggregation point, used oil processor or rerefiner,

or used oil burner subject to permitting or registration under this part; or

(v) railroads that transport used oil and are regulated under [~~45~~] 49 U.S.C. [~~421 et seq.~~] Subtitle V, Rail Programs, [~~federal Railroad Safety Act,~~] and 49 U.S.C. [~~1801~~] 5101 et seq., federal Hazardous Materials Transportation Uniform Safety Act.

Section 42. Section **26-8a-402** is amended to read:

26-8a-402. Exclusive geographic service areas.

(1) Each ground ambulance provider license issued under this part shall be for an exclusive geographic service area as described in the license. Only the licensed ground ambulance provider may respond to an ambulance request that originates within the provider's exclusive geographic service area, except as provided in Subsection (5) and Section 26-8a-416.

(2) Each paramedic provider license issued under this part shall be for an exclusive geographic service area as described in the license. Only the licensed paramedic provider may respond to a paramedic request that originates within the exclusive geographic service area, except as provided in Subsection (6) and Section 26-8a-416.

(3) Nothing in this section may be construed as either requiring or prohibiting that the formation of boundaries in a given location be the same for a licensed paramedic provider as it is for a licensed ambulance provider.

(4) (a) A licensed ground ambulance or paramedic provider may, as necessary, enter into a mutual aid agreement to allow another licensed provider to give assistance in times of unusual demand, as that term is defined by the committee in rule.

(b) A mutual aid agreement shall include a formal written plan detailing the type of assistance and the circumstances under which it would be given.

(c) The parties to a mutual aid agreement shall submit a copy of the agreement to the department.

(d) Notwithstanding this Subsection (4), a licensed provider may not subcontract with another entity to provide services in the licensed provider's exclusive geographic service area.

(5) Notwithstanding Subsection (1), a licensed ground ambulance provider may respond to an ambulance request that originates from the exclusive geographic area of another provider:

(a) pursuant to a mutual aid agreement;

(b) to render assistance on a case-by-case basis to that provider; and

(c) as necessary to meet needs in time of disaster or other major emergency.

(6) Notwithstanding Subsection (2), a licensed paramedic provider may respond to a paramedic request that originates from the exclusive geographic area of another provider:

(a) pursuant to a mutual aid agreement;

(b) to render assistance on a case-by-case basis to that provider; and

(c) as necessary to meet needs in time of disaster or other major emergency.

Section 43. Section **26-8a-502** is amended to read:

26-8a-502. Illegal activity.

(1) Except as provided in Section 26-8a-308, a person may not:

(a) practice or engage in the practice, represent himself to be practicing or engaging in the practice, or [~~attempting~~] attempt to practice or engage in the practice of any activity that requires a license, certification, or designation under this chapter unless that person is so licensed, certified, or designated; or

(b) offer an emergency medical service that requires a license, certificate, or designation unless the person is so licensed, certified, or designated.

(2) A person may not advertise or hold himself out as one holding a license, certification, or designation required under this chapter, unless that person holds the license, certification, or designation.

(3) A person may not employ or permit any employee to perform any service for which a license or certificate is required by this chapter, unless the person performing the service possesses the required license or certificate.

(4) A person may not wear, display, sell, reproduce, or otherwise use any Utah Emergency Medical Services insignia without authorization from the department.

(5) A person may not reproduce or otherwise use materials developed by the department for certification or recertification testing or examination without authorization from the department.

(6) A person may not willfully summon an ambulance or emergency response vehicle or

report that one is needed when such person knows that the ambulance or emergency response vehicle is not needed.

(7) A person who violates this section is subject to Section 26-23-6.

Section 44. Section **26-18-2** is amended to read:

26-18-2. Definitions.

As used in this chapter:

(1) "Applicant" means any person who requests assistance under the medical programs of the state.

[~~(3)~~] (2) "Client" means a person who the department has determined to be eligible for assistance under the Medicaid program or the Utah Medical Assistance Program established under Section 26-18-10.

[~~(2)~~] (3) "Division" means the Division of Health Care Financing within the department, established under Section 26-18-2.1.

(4) "Medicaid program" means the state program for medical assistance for persons who are eligible under the state plan adopted pursuant to Title XIX of the federal Social Security Act.

(5) "Medical or hospital assistance" means services furnished or payments made to or on behalf of recipients of medical or hospital assistance under state medical programs.

(6) (a) "Passenger vehicle" means a self-propelled, two-axle vehicle intended primarily for operation on highways and used by an applicant or recipient to meet basic transportation needs and has a fair market value below 40% of the applicable amount of the federal luxury passenger automobile tax established in 26 U.S.C. Sec. 4001 and adjusted annually for inflation.

(b) "Passenger vehicle" does not include:

(i) a commercial vehicle, as defined in Section 41-1a-102;

(ii) an off-highway vehicle, as defined in Section 41-1a-102; or

(iii) a motor home, as defined in Section 13-14-102.

(7) "Recipient" means a person who has received medical or hospital assistance under the Medicaid program or the Utah Medical Assistance Program established under Section 26-18-10.

Section 45. Section **26-18-3.7** is amended to read:

26-18-3.7. Prepaid health care delivery systems.

(1) (a) Before July 1, 1996, the division shall submit to the Health Care Financing Administration within the United States Department of Health and Human Services, an amendment to the state's freedom of choice waiver. That amendment shall provide that the following persons who are eligible for services under the state plan for medical assistance, who reside in Salt Lake, Utah, Davis, or Weber counties, shall enroll in the recipient's choice of a health care delivery system that meets the requirements of Subsection (2):

(i) by July 1, 1994, 40% of eligible persons;

(ii) by July 1, 1995, 65% of eligible persons; and

(iii) by July 1, 1996, 100% of eligible persons.

(b) The division may not enter into any agreements with mental health providers that establish a prepaid capitated delivery system for mental health services that were not in existence prior to July 1, 1993, until the application of the Utah Medicaid Hospital Provider Temporary Assessment Act with regard to a specialty hospital as defined in Section 26-21-2 that may be engaged exclusively in rendering psychiatric or other mental health treatment is repealed.

(c) The following are exempt from the requirements of Subsection (1)(a):

(i) persons who:

(A) receive medical assistance for the first time after July 1, 1996;

(B) have a mental illness, as that term is defined in Section 62A-12-202; and

(C) are receiving treatment for that mental illness. The division, when appropriate, shall enroll these persons in a health care delivery system that meets the requirements of this section;

(ii) persons who are institutionalized in a facility designated by the division as a nursing facility or an intermediate care facility for the mentally retarded; or

(iii) persons with a health condition that requires specialized medical treatment that is not available from a health care delivery system that meets the requirements of this section.

(2) In submitting the amendment to the state's freedom of choice waiver under Subsection (1), the division shall ensure that the proposed health care delivery systems have at least the following characteristics, so that the system:

(a) is financially at risk, for a specified continuum of health care services, for a defined population, and has incentives to balance the patient's need for care against the need for cost control;

(b) follows utilization and quality controls developed by the department;

(c) is encouraged to promote the health of patients through primary and preventive care;

(d) coordinates care to avoid unnecessary duplication and services;

(e) conserves health care resources; and

(f) if permissible under the waiver, utilizes private insurance plans including health maintenance organizations and other private health care delivery organizations.

(3) Subsection (2) does not prevent the division from contracting with other health care delivery organizations if the division determines that it is advantageous to do so.

(4) Health care delivery systems that meet the requirements of this section may provide all services otherwise available under the state plan for medical assistance, except prescribed drugs.

(5) The division shall periodically report to the [~~Legislative~~] Health and [~~Environment and~~] Human Services Interim [~~Committees~~] Committee regarding the development and implementation of the amendment to the state's freedom of choice waiver required under this section.

Section 46. 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) (a) "Assisted living facility" means:

(i) a type I assisted living facility, which is a residential facility that provides assistance with activities of daily living and social care to two or more residents who:

(A) require protected living arrangements; and

(B) are capable of achieving mobility sufficient to exit the facility without the assistance of another person; and

(ii) a type II assisted living facility, which is 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 department rule to need any of these services.

(b) Each resident in a type I or type II assisted living facility shall have a service plan based on the assessment, which may include:

[~~(a)~~] (i) specified services of intermittent nursing care;

[~~(b)~~] (ii) administration of medication; and

[~~(c)~~] (iii) 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 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 an assisted living facility; and

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

(20) "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.

(21) "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.

(22) "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 47. Section **26-40-102** is amended to read:

26-40-102. Definitions.

As used in this chapter:

(1) "Assessment" means the hospital provider assessment established in Section 26-40-111.

(2) "Child" means a person who is under 19 years of age.

(3) "Eligible child" means a child who qualifies for enrollment in the program as provided in Section 26-40-105.

(4) "Enrollee" means any child enrolled in the program.

(5) "Freestanding ambulatory surgical facility" means an urban or rural nonhospital-based or nonhospital-affiliated licensed facility, as defined in Section 26-21-2, as an ambulatory surgical facility, with an organized professional staff that provides surgical services to patients who do not require an inpatient bed.

(6) (a) "Hospital" means any general acute hospital, as defined in Section 26-21-2, operating in this state.

(b) "Hospital" does not include:

(i) a residential care or treatment facility, as defined in Subsections 62A-2-101[~~(16)~~] (14), [~~(17)~~] (15), and [~~(19)~~] (18);

(ii) the Utah State Hospital;

(iii) any rural hospital that operates outside of a metropolitan statistical area, a metropolitan area, or an urbanized area as designated by the U.S. Bureau of Census; or

(iv) any specialty hospital operating in this state, as defined in Section 26-21-2, that is engaged exclusively in rendering psychiatric or other mental health treatment.

(7) "Hospital-based ambulatory surgical facility" means an urban or rural on-hospital campus or hospital-affiliated licensed facility with an organized professional staff that provides surgical services to patients who do not require an inpatient bed.

(8) "Plan" means the department's plan submitted to the United States Department of Health and Human Services pursuant to 42 U.S.C. Sec. 1397ff.

(9) "Program" means the Utah Children's Health Insurance Program created by this chapter.

Section 48. Section **26-44-101** is amended to read:

26-44-101. Title.

[~~The~~] This chapter is known as the "Tobacco Manufacturers Responsibility Act."

Section 49. Section **26-44-202** is amended to read:

26-44-202. Definitions.

As used in this part:

(1) "Adjusted for inflation" means increased in accordance with the formula for inflation adjustment set forth in Exhibit C to the Master Settlement Agreement.

(2) "Affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms "owns," "is owned" and "ownership" mean ownership of an equity interest, or the equivalent thereof, of 10% or more, and the term "person" means an individual, partnership, committee, association, corporation or any other organization or group of persons.

(3) "Allocable share" means Allocable Share as that term is defined in the Master Settlement Agreement.

(4) "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (a) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or (b) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (c) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by,

consumers as a cigarette described in clause (a) of this definition. The term "cigarette" includes "roll-your-own[;]" (i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For purposes of this definition of "cigarette," 0.09 ounces of "roll-your-own" tobacco shall constitute one individual "cigarette."

(5) "Master Settlement Agreement" means the settlement agreement (and related documents) entered into on November 23, 1998, by the State and leading United States tobacco product manufacturers.

(6) "Qualified escrow fund" means an escrow arrangement with a federally or State chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least $1,000,000,000 where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing, or directing the use of the funds' principal except as consistent with Subsection 26-44-203(2).

(7) "Released claims" means Released Claims as that term is defined in the Master Settlement Agreement.

(8) "Releasing parties" means Releasing Parties as that term is defined in the Master Settlement Agreement.

(9) (a) "Tobacco product manufacturer" means an entity that after the date of enactment of this Act directly (and not exclusively through any affiliate):

(i) manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is an original participating manufacturer (as that term is defined in the Master Settlement Agreement) that will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as a result of the provisions of Subsection II(mm) of the Master Settlement Agreement and that pays the taxes specified in Subsection II(z) of the Master Settlement Agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States);

(ii) is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

(iii) becomes a successor of an entity described in Subsection (9)(a)(i) or (ii).

(b) "Tobacco product manufacturer" shall not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within any Subsection (9)(a)(i) through (iii).

(10) "Units sold" means the number of individual cigarettes sold in the State by the applicable tobacco product manufacturer (whether directly or through a distributor, retailer or similar intermediary or intermediaries) during the year in question, as measured by excise taxes collected by the State on packs (or "roll-your-own" tobacco containers) bearing the excise tax stamp of the State. The State Tax Commission shall promulgate such regulations as are necessary to ascertain the amount of State excise tax paid on the cigarettes of such tobacco product manufacturer for each year.

Section 50. Section **30-1-9** is amended to read:

30-1-9. Marriage by minors -- Consent of parent or guardian -- Juvenile court authorization.

(1) For purposes of this section, "minor" means a male or female under 18 years of age.

(2) (a) If at the time of applying for a license the applicant is a minor, and not before married, a license may not be issued without the signed consent of the minor's father, mother, or guardian given in person to the clerk; however:

(i) if the parents of the minor are divorced, consent shall be given by the parent having legal custody of the minor as evidenced by an oath of affirmation to the clerk;

(ii) if the parents of the minor are divorced and have been awarded joint custody of the minor, consent shall be given by the parent having physical custody of the minor the majority of the time as evidenced by an oath of affirmation to the clerk; or

(iii) if the minor is not in the custody of a parent, the legal guardian shall provide the consent and provide proof of guardianship by court order as well as an oath of affirmation.

(b) If the male or female is 15 years of age, the minor and [~~their~~] the parent or guardian of the minor shall obtain a written authorization to marry from:

(i) a judge of the court exercising juvenile jurisdiction in the county where either party to the

marriage resides; or

(ii) a court commissioner as permitted by rule of the Judicial Council.

(3) (a) Before issuing written authorization for a minor to marry, the judge or court commissioner shall determine:

(i) that the minor is entering into the marriage voluntarily; and

(ii) the marriage is in the best interests of the minor under the circumstances.

(b) The judge or court commissioner shall require that both parties to the marriage complete premarital counseling. This requirement may be waived if premarital counseling is not reasonably available.

(c) The judge or court commissioner may require:

(i) that the person continue to attend school, unless excused under Section 53A-11-102; and

(ii) any other conditions that the court deems reasonable under the circumstances.

(4) The determination required in Subsection (3) shall be made on the record. Any inquiry conducted by the judge or commissioner may be conducted in chambers.

Section 51. Section **30-3-38** is amended to read:

30-3-38. Pilot Program for Expedited Visitation Enforcement.

(1) There is established an Expedited Visitation Enforcement Pilot Program in the third judicial district to be administered by the Administrative Office of the Courts from July 1, 1996, to July 1, 2000.

(2) As used in this section:

(a) "Mediator" means a person who:

(i) is qualified to mediate visitation disputes under criteria established by the Administrative Office of the Courts; and

(ii) agrees to follow billing guidelines established by the Administrative Office of the Courts and this section.

(b) "Services to facilitate visitation" or "services" means services designed to assist families in resolving visitation problems through:

(i) counseling;

(ii) supervised visitation;

(iii) neutral drop-off and pick-up;

(iv) educational classes; and

(v) other related activities.

(3) (a) Under this pilot program, if a parent files a motion in the third district court alleging that court-ordered visitation rights are being violated, the clerk of the court, after assigning the case to a judge, shall refer the case to the administrator of this pilot program for assignment to a mediator.

(b) Upon receipt of a case, the mediator shall:

(i) meet with the parents to address visitation issues within 15 days of the motion being filed;

(ii) assess the situation;

(iii) facilitate an agreement on visitation between the parents; and

(iv) determine whether a referral to a service provider under Subsection (3)(c) is warranted.

(c) While a case is in mediation, a mediator may refer the parents to a service provider designated by the Department of Human Services for services to facilitate visitation if:

(i) the services may be of significant benefit to the parents; or

(ii) (A) a mediated agreement between the parents is unlikely; and

(B) the services may facilitate an agreement.

(d) At anytime during mediation, a mediator shall terminate mediation and transfer the case to the administrator of the pilot program for referral to the judge to whom the case was assigned under Subsection (2) if:

(i) a written agreement between the parents is reached; or

(ii) the parents are unable to reach an agreement through mediation; and

(A) the parents have received services to facilitate visitation;

(B) both parents object to receiving services to facilitate visitation; or

(C) the parents are unlikely to benefit from receiving services to facilitate visitation.

(e) Upon receiving a case from the administrator of the pilot program, a judge may:

(i) review the agreement of the parents and, if acceptable, sign it as an order;

(ii) order the parents to receive services to facilitate visitation;

(iii) proceed with the case; or

(iv) take other appropriate action.

(4) (a) If a parent makes a particularized allegation of physical or sexual abuse of a child who is the subject of a visitation order against the other parent or a member of the other parent's household to a mediator or service provider, the mediator or service provider shall immediately report that information to:

(i) the judge assigned to the case who may immediately issue orders and take other appropriate action to resolve the allegation and protect the child; and

(ii) the Division of Child and Family Services within the Department of Human Services in the manner required by Title 62A, Chapter 4a, Part 4, Child Abuse or Neglect Reporting Requirements.

(b) If an allegation under Subsection (4)(a) is made against a parent with visitation rights or a member of that parent's household, visitation by that parent shall be supervised until:

(i) the allegation has been resolved; or

(ii) a court orders otherwise.

(c) Notwithstanding an allegation under Subsection (4)(a), a mediator may continue to mediate visitation problems and a service provider may continue to provide services to facilitate visitation unless otherwise ordered by a court.

(5) (a) The Department of Human Services may contract with one or more entities in accordance with Title 63, Chapter 56, Utah Procurement Code, to provide:

(i) services to facilitate visitation;

(ii) case management services; and

(iii) administrative services.

(b) An entity who contracts with the Department of Human Services under Subsection (5)(a) shall:

(i) be qualified to provide one or more of the services listed in Subsection (5)(a); and

(ii) agree to follow billing guidelines established by the Department of Human Services and this section.

(6) (a) Except as provided in Subsection (6)(b), the cost of mediation and the cost of services to facilitate visitation shall be:

(i) reduced to a sum certain;

(ii) divided equally between the parents; and

(iii) charged against each parent taking into account the ability of that parent to pay under billing guidelines adopted in accordance with this section.

(b) (i) A judge may order a parent to pay an amount in excess of that provided for in Subsection (6)(a) if the parent:

(A) failed to participate in good faith in mediation or services to facilitate visitation; or

(B) made an unfounded assertion or claim of physical or sexual abuse of a child.

(c) (i) The cost of mediation and services to facilitate visitation may be charged to parents at periodic intervals.

(ii) Mediation and services to facilitate visitation may only be terminated on the ground of nonpayment if both parents are delinquent.

(7) If a parent fails to cooperate in good faith in mediation or services to facilitate visitation, a court may order, in subsequent proceedings, a temporary change in custody or visitation.

(8) (a) The Judicial Council may make rules to implement and administer the provisions of this pilot program related to mediation.

(b) The Department of Human Services may make rules to implement and administer the provisions of this pilot program related to services to facilitate visitation.

(9) (a) The Administrative Office of the Courts shall adopt outcome measures to evaluate the effectiveness of the mediation component of this pilot program. Progress reports shall be provided to the Judiciary Interim Committee by August 1998 and as requested thereafter by the committee. At least once during this pilot program, the Administrative Office of the Courts shall present to the committee the results of a survey that measures the effectiveness of the program in terms of increased compliance with visitation orders and the responses of interested persons.

(b) The Department of Human Services shall adopt outcome measures to evaluate the effectiveness of the services component of this pilot program. Progress reports shall be provided to

the Judiciary Interim Committee by August 1998 and as requested thereafter by the committee.

(c) The Administrative Office of the Courts and the Department of Human Services may adopt joint outcome measures and file joint reports to satisfy the requirements of Subsections [~~8~~] (8)(a) and (b).

(10) (a) The Department of Human Services shall apply for federal funds designated for visitation, if such funds are available.

(b) This pilot program shall be funded through funds received under Subsection (10)(a), the Children's Legal Defense Account as established in Section 63-63a-8, or other available funding. Without funding, the pilot program may not proceed.

Section 52. Section **31A-5-103** is amended to read:

31A-5-103. Orders imposing and relaxing restrictions.

(1) The commissioner may by order subject an individual corporation not otherwise subject to some or all of the restrictions of Subsections 31A-5-304[~~(5)~~](4), 31A-5-305(1)(a), 31A-5-305(2)(a)(i) and (ii), and 31A-5-410(1)(b) if he finds after a hearing that the individual corporation's financial condition, management, and other circumstances require additional regulation for the protection of the interests of insureds or the public. The commissioner shall detail in writing the grounds for his order.

(2) The commissioner may by order free a new corporation from any or all of the restrictions generally applicable to new corporations under the provisions listed in Subsection (1), if he is satisfied that the corporation's financial condition, management, and other circumstances give assurance that the interests of insureds and the public will not be endangered by doing so.

Section 53. Section **31A-16-103** is amended to read:

31A-16-103. Acquisition of control of or merger with domestic insurer -- Required filings -- Content of statement -- Alternative filing materials -- Criminal background information -- Approval by commissioner -- Dissenting shareholders -- Violations -- Jurisdiction, consent to service of process.

(1) (a) A person may not take the actions described in Subsections (1)(b) or (c) unless, at the time any offer, request, or invitation is made or any such agreement is entered into, or prior to the

acquisition of securities if no offer or agreement is involved:

(i) the person files with the commissioner a statement containing the information required by this section;

(ii) the person provides a copy of the statement described in Subsection (1)(a)(i) to the insurer; and

(iii) the commissioner approves the offer, request, invitation, agreement or acquisition.

(b) Unless the person complies with Subsection (1)(a), a person other than the issuer may not make a tender offer for, a request or invitation for tenders of, or enter into any agreement to exchange
securities, or seek to acquire or acquire in the open market or otherwise, any voting security of a domestic insurer if after the acquisition, the person would directly, indirectly, by conversion, or by exercise of any right to acquire be in control of the insurer.

(c) Unless the person complies with Subsection (1)(a), a person may not enter into an agreement to merge with or otherwise to acquire control of a domestic insurer or any person controlling a domestic insurer.

(d) (i) For purposes of this section a domestic insurer includes any person controlling a domestic insurer unless the person as determined by the commissioner is either directly or through its affiliates primarily engaged in business other than the business of insurance.

(ii) The controlling person described in Subsection (1)(d)(i) shall file with the commissioner a preacquisition notification containing the information required in Subsection (2) 30 calendar days before the proposed effective date of the acquisition.

(iii) For the purposes of this section, "person" does not include any securities broker holding less than 20% of the voting securities of an insurance company or of any person that controls an insurance company in the usual and customary brokers function.

(iv) This section applies to all domestic insurers and other entities licensed under Chapters 5, 7, 8, 9, and 11.

(e) (i) An agreement for acquisition of control or merger as contemplated by this Subsection (1) is not valid or enforceable unless the agreement:

(A) is in writing; and

(B) includes a provision that the agreement is subject to the approval of the commissioner upon the filing of any applicable statement required under this chapter.

(ii) A written agreement for acquisition or control that includes the provision described in Subsection (1)(e)(i) satisfies the requirements of this Subsection (1).

(2) The statement to be filed with the commissioner under Subsection (1) shall be made under oath or affirmation and shall contain the following information:

(a) the name and address of the "acquiring party," which means each person by whom or on whose behalf the merger or other acquisition of control referred to in Subsection (1) is to be effected; and

(i) if the person is an individual:

(A) the person's principal occupation;

(B) a listing of all offices and positions held by the person during the past five years; and

(C) any conviction of crimes other than minor traffic violations during the past ten years; and

(ii) if the person is not an individual:

(A) a report of the nature of its business operations during the past five years or for any lesser period as the person and any of its predecessors has been in existence;

(B) an informative description of the business intended to be done by the person and the person's subsidiaries;

(C) a list of all individuals who are or who have been selected to become directors or executive officers of the person, or individuals who perform, or who will perform functions appropriate to such positions; and

(D) for each individual described in Subsection (2)(a)(ii)(C), the information required by Subsection (2)(a)(i)(A) for each individual;

(b) (i) the source, nature, and amount of the consideration used or to be used in effecting the merger or acquisition of control;

(ii) a description of any transaction in which funds were or are to be obtained for that purpose of effecting the merger or acquisition of control, including any pledge of the insurer's stock or the stock of any of its subsidiaries or controlling affiliates; and

(iii) the identity of persons furnishing the consideration;

(c) fully audited financial information, or other financial information considered acceptable by the commissioner, of the earnings and financial condition of each acquiring party for the preceding five fiscal years of each acquiring party, or for any lesser period the acquiring party and any of its predecessors shall have been in existence, and similar unaudited information prepared within the 90 days prior to the filing of the statement;

(d) any plans or proposals which each acquiring party may have to:

(i) liquidate the insurer;

(ii) sell its assets;

(iii) merge or consolidate the insurer with any person; or

(iv) make any other material change in the insurer's business, corporate structure, or management;

(e) (i) the number of shares of any security referred to in Subsection (1) that each acquiring party proposes to acquire;

(ii) the terms of the offer, request, invitation, agreement, or acquisition referred to in Subsection (1); and

(iii) a statement as to the method by which the fairness of the proposal was arrived at;

(f) the amount of each class of any security referred to in Subsection (1) that:

(i) is beneficially owned; or

(ii) concerning which there is a right to acquire beneficial ownership by each acquiring party;

(g) a full description of any contract, arrangement, or understanding with respect to any security referred to in Subsection (1) in which any acquiring party is involved, including:

(i) the transfer of any of the securities;

(ii) joint ventures;

(iii) loan or option arrangements;

(iv) puts or calls;

(v) guarantees of loans;

(vi) guarantees against loss or guarantees of profits;

(vii) division of losses or profits; or

(viii) the giving or withholding of proxies;

(h) a description of the purchase by any acquiring party of any security referred to in Subsection (1) during the 12 calendar months preceding the filing of the statement including:

(i) the dates of purchase;

(ii) the names of the purchasers; and

(iii) the consideration paid or agreed to be paid for the purchase;

(i) a description of any recommendations to purchase by any acquiring party any security referred to in Subsection (1) made during the 12 calendar months preceding the filing of the statement or any recommendations made by anyone based upon interviews or at the suggestion of the acquiring party;

(j) (i) copies of all tender offers for, requests for, or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in Subsection (1); and

(ii) if distributed, copies of additional soliciting material relating to the transactions described in Subsection (2)(j)(i);

(k) (i) the term of any agreement, contract, or understanding made with, or proposed to be made with, any broker-dealer as to solicitation of securities referred to in Subsection (1) for tender; and

(ii) the amount of any fees, commissions, or other compensation to be paid to broker-dealers with regard to any agreement, contract, or understanding described in Subsection (2)(k)(i); and

(l) any additional information the commissioner requires by rule, which the commissioner determines to be:

(i) necessary or appropriate for the protection of policyholders of the insurer; or

(ii) in the public interest.

(3) The department may request:

(a) (i) criminal background information maintained pursuant to Title 53, Chapter 10, Part 2, from the Bureau of Criminal Identification; and

(ii) complete Federal Bureau of Investigation criminal background checks through the

national criminal history system.

(b) Information obtained by the department from the review of criminal history records received under Subsection (3)(a) shall be used by the department for the purpose of:

(i) verifying the information in Subsection (2)(a)(i);

(ii) determining the integrity of persons who would control the operation of an insurer; and

(iii) preventing persons who violate 18 U.S.C. Sections 1033 and 1034 from engaging in the business of insurance in the state.

(c) If the department requests the criminal background information, the department shall:

(i) pay to the Department of Public Safety the costs incurred by the Department of Public Safety in providing the department criminal background information under Subsection (3)(a)(i);

(ii) pay to the Federal Bureau of Investigation the costs incurred by the Federal Bureau of Investigation in providing the department criminal background information under Subsection (3)(a)(ii); and

(iii) charge the person required to file the statement referred to in Subsection (1) a fee equal to the aggregate of Subsections (3)(c)(i) and (ii).

(4) (a) If the source of the consideration under Subsection (2)(b)(i) is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential, if the person filing the statement so requests.

(b) Under Subsection (2)(e), the commissioner may require a statement of the adjusted book value assigned by the acquiring party to each security in arriving at the terms of the offer, with "adjusted book value" meaning each security's proportional interest in the capital and surplus of the insurer with adjustments that reflect:

(i) [~~reflect~~] market conditions;

(ii) business in force; and

(iii) other intangible assets or liabilities of the insurer.

(c) The description required by Subsection (2)(g) shall identify the persons with whom the contracts, arrangements, or understandings have been entered into.

(5) (a) If the person required to file the statement referred to in Subsection (1) is a

partnership, limited partnership, syndicate, or other group, the commissioner may require that all the information called for by Subsections (2), (3), or (4) shall be given with respect to each:

(i) partner of the partnership or limited partnership;

(ii) member of the syndicate or group; and

(iii) person who controls the partner or member.

(b) If any partner, member, or person referred to in Subsection (5)(a) is a corporation, or if the person required to file the statement referred to in Subsection (1) is a corporation, the commissioner may require that the information called for by Subsection (2) shall be given with respect to:

(i) the corporation;

(ii) each officer and director of the corporation; and

(iii) each person who is directly or indirectly the beneficial owner of more than 10% of the outstanding voting securities of the corporation.

(6) If any material change occurs in the facts set forth in the statement filed with the commissioner and sent to the insurer pursuant to Subsection (2), an amendment setting forth the change, together with copies of all documents and other material relevant to the change, shall be filed with the commissioner and sent to the insurer within two business days after the filing person learns of such change.

(7) If any offer, request, invitation, agreement, or acquisition referred to in Subsection (1) is proposed to be made by means of a registration statement under the Securities Act of 1933, or under circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, or under a state law requiring similar registration or disclosure, a person required to file the statement referred to in Subsection (1) may use copies of any registration or disclosure documents in furnishing the information called for by the statement.

(8) (a) The commissioner shall approve any merger or other acquisition of control referred to in Subsection (1) unless, after a public hearing on the merger or acquisition, the commissioner finds that:

(i) after the change of control, the domestic insurer referred to in Subsection (1) would not

be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

(ii) the effect of the merger or other acquisition of control would substantially lessen competition in insurance in this state or tend to create a monopoly in insurance;

(iii) the financial condition of any acquiring party might:

(A) jeopardize the financial stability of the insurer; or

(B) prejudice the interest of:

(I) its policyholders; or

(II) any remaining securityholders who are unaffiliated with the acquiring party;

(iv) the terms of the offer, request, invitation, agreement, or acquisition referred to in Subsection (1) are unfair and unreasonable to the securityholders of the insurer;

(v) the plans or proposals which the acquiring party has to liquidate the insurer, sell its assets, or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are:

(A) unfair and unreasonable to policyholders of the insurer; and

(B) not in the public interest; or

(vi) the competence, experience, and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of the policyholders of the insurer and the public to permit the merger or other acquisition of control.

(b) For purposes of Subsection (8)(a)(iv), the offering price for each security may not be considered unfair if the adjusted book values under Subsection (2)(e):

(i) are disclosed to the securityholders; and

(ii) determined by the commissioner to be reasonable.

(9) (a) The public hearing referred to in Subsection (8) shall be held within 30 days after the statement required by Subsection (1) is filed.

(b) (i) At least 20 days notice of the hearing shall be given by the commissioner to the person filing the statement.

(ii) Affected parties may waive the notice required by this Subsection (9)(b).

(iii) Not less than seven days notice of the public hearing shall be given by the person filing the statement to:

(A) the insurer; and

(B) any person designated by the commissioner.

(c) The commissioner shall make a determination within 30 days after the conclusion of the hearing.

(d) At the hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interest may be affected by the hearing may:

(i) present evidence;

(ii) examine and cross-examine witnesses; and

(iii) offer oral and written arguments.

(e) (i) A person or insurer described in Subsection (9)(d) may conduct discovery proceedings in the same manner as is presently allowed in the district courts of this state.

(ii) All discovery proceedings shall be concluded not later than three days before the commencement of the public hearing.

(10) At the acquiring person's expense and consent, the commissioner may retain any attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff, which are reasonably necessary to assist the commissioner in reviewing the proposed acquisition of control.

(11) (a) (i) If a domestic insurer proposes to merge into another insurer, any securityholder electing to exercise a right of dissent may file with the insurer a written request for payment of the adjusted book value given in the statement required by Subsection (1) and approved under Subsection (8), in return for the surrender of the security holder's securities.

(ii) The request described in Subsection (11)(a)(i) shall be filed not later than ten days after the day of the securityholders' meeting where the corporate action is approved.

(b) The dissenting securityholder is entitled to and the insurer is required to pay to the dissenting securityholder the specified value within 60 days of receipt of the dissenting security holder's security.

(c) Persons electing under this Subsection (11) to receive cash for their securities waive the dissenting shareholder and appraisal rights otherwise applicable under Title 16, Chapter 10a, Part 13, Dissenters' Rights.

(d) (i) This Subsection (11) provides an elective procedure for dissenting securityholders to resolve their objections to the plan of merger.

(ii) This section does not restrict the rights of dissenting securityholders under Title 16, Chapter 10a, Utah Revised Business Corporation Act, unless this election is made under this Subsection (11).

(12) (a) All statements, amendments, or other material filed under Subsection (1), and all notices of public hearings held under Subsection (8), shall be mailed by the insurer to its securityholders within five business days after the insurer has received the statements, amendments, other material, or notices.

(b) Mailing expenses shall be paid by the person making the filing. As security for the payment of these expenses, that person shall file with the commissioner an acceptable bond or other deposit in an amount determined by the commissioner.

(13) This section does not apply to any offer, request, invitation, agreement, or acquisition that the commissioner by order exempts from the requirements of this section as:

(a) not having been made or entered into for the purpose of, and not having the effect of, changing or influencing the control of a domestic insurer; or

(b) as otherwise not comprehended within the purposes of this section.

(14) The following are violations of this section:

(a) the failure to file any statement, amendment, or other material required to be filed pursuant to Subsections (1), (2), and (5); or

(b) the effectuation, or any attempt to effectuate, an acquisition of control of or merger with a domestic insurer unless the commissioner has given the commissioner's approval to the acquisition or merger.

(15) (a) The courts of this state are vested with jurisdiction over:

(i) a person who:

(A) files a statement with the commissioner under this section; and

(B) is not resident, domiciled, or authorized to do business in this state; and

(ii) overall actions involving persons described in Subsection (15)(a)(i) arising out of a violation of this section.

(b) A person described in Subsection (15)(a) is considered to have performed acts equivalent to and constituting an appointment of the commissioner by that person, to be that person's lawful attorney upon whom may be served all lawful process in any action, suit, or proceeding arising out of a violation of this section.

(c) A copy of a lawful process described in Subsection (15)(b) shall be:

(i) served on the commissioner; and

(ii) transmitted by registered or certified mail by the commissioner to the person at that person's last-known address.

Section 54. Section **31A-22-302** is amended to read:

31A-22-302. Required components of motor vehicle insurance policies -- Exceptions.

(1) Every policy of insurance or combination of policies purchased to satisfy the owner's or operator's security requirement of Section 41-12a-301 shall include:

(a) motor vehicle liability coverage under Sections 31A-22-303 and 31A-22-304;

(b) uninsured motorist coverage under Section 31A-22-305, unless affirmatively waived under Subsection 31A-22-305 (4); and

(c) underinsured motorist coverage under Section 31A-22-305, unless affirmatively waived under Subsection 31A-22-305 [~~(8)~~] (9)(c).

(2) Every policy of insurance or combination of policies, purchased to satisfy the owner's or operator's security requirement of Section 41-12a-301, except for motorcycles, trailers, and semitrailers, shall also include personal injury protection under Sections 31A-22-306 through 31A-22-309.

(3) First party medical coverages may be offered or included in policies issued to motorcycle, trailer, and semitrailer owners or operators. Owners and operators of motorcycles, trailers, and semitrailers are not covered by personal injury protection coverages in connection with injuries

incurred while operating any of these vehicles.

Section 55. Section **31A-22-604** is amended to read:

31A-22-604. Reimbursement by insurers of Medicaid benefits.

(1) As used in this section, "Medicaid" means the program under [~~42 U.S.C. 1396a or Section 1902,~~] Title XIX of the federal Social Security Act.

(2) Any disability insurer, including a group disability insurance plan, as defined in Section 607(1), Federal Employee Retirement Income Security Act of 1974, or health maintenance organization as defined in Section 31A-8-101, is prohibited from considering the availability or eligibility for medical assistance in this or any other state under Medicaid, when considering eligibility for coverage or making payments under its plan for eligible enrollees, subscribers, policyholders, or certificate holders.

(3) To the extent that payment for covered expenses has been made under the state Medicaid program for health care items or services furnished to an individual in any case when a third party has a legal liability to make payments, the state is considered to have acquired the rights of the individual to payment by any other party for those health care items or services.

(4) Title 26, Chapter 19, Medical Benefits Recovery Act, applies to reimbursement of insurers of Medicaid benefits.

Section 56. Section **31A-23-102** is amended to read:

31A-23-102. Definitions.

As used in this chapter:

(1) Except as provided in Subsection (2):

(a) "Escrow" is a license category that allows a person to conduct escrows, settlements, or closings on behalf of a title insurance agency or a title insurer.

(b) "Limited license" means a license that is issued for a specific product of insurance and limits an individual or agency to transact only for those products.

(c) "Search" is a license category that allows a person to issue title insurance commitments or policies on behalf of a title insurer.

(d) "Title marketing representative" means a person who:

(i) represents a title insurer in soliciting, requesting, or negotiating the placing of:

(A) title insurance; or

(B) escrow, settlement, or closing services; and

(ii) does not have a search or escrow license.

(2) The following persons are not acting as agents, brokers, title marketing representatives, or consultants when acting in the following capacities:

(a) any regular salaried officer, employee, or other representative of an insurer or licensee under this chapter who devotes substantially all of the officer's, employee's, or representative's working time to activities other than those described in Subsection (1) and Subsections 31A-1-301 (51), (52), and (54) including the clerical employees of persons required to be licensed under this chapter;

(b) a regular salaried officer or employee of a person seeking to purchase insurance, who receives no compensation that is directly dependent upon the amount of insurance coverage purchased;

(c) a person who gives incidental advice in the normal course of a business or professional activity, other than insurance consulting, if neither that person nor that person's employer receives direct or indirect compensation on account of any insurance transaction that results from that advice;

(d) a person who, without special compensation, performs incidental services for another at the other's request, without providing advice or technical or professional services of a kind normally provided by an agent, broker, or consultant;

(e) (i) a holder of a group insurance policy, or any other person involved in mass marketing, but only:

(A) with respect to administrative activities in connection with that type of policy, including the collection of premiums; and

(B) if the person receives no compensation for the activities described in Subsection (2)(e)(i) beyond reasonable expenses including a fair payment for the use of capital; and

(f) a person who gives advice or assistance without direct or indirect compensation or any expectation of direct or indirect compensation.

(3) "Actuary" means a person who is a member in good standing of the American Academy of Actuaries.

(4) "Agency" means a person other than an individual, and includes a sole proprietorship by which a natural person does business under an assumed name.

(5) "Broker" means an insurance broker or any other person, firm, association, or corporation that for any compensation, commission, or other thing of value acts or aids in any manner in soliciting, negotiating, or procuring the making of any insurance contract on behalf of an insured other than itself.

(6) "Bail bond agent" means any individual:

(a) appointed by an authorized bail bond surety insurer or appointed by a licensed bail bond surety company to execute or countersign undertakings of bail in connection with judicial proceedings; and

(b) who receives or is promised money or other things of value for this service.

(7) "Captive insurer" means:

(a) an insurance company owned by another organization whose exclusive purpose is to insure risks of the parent organization and affiliated companies; or

(b) in the case of groups and associations, an insurance organization owned by the insureds whose exclusive purpose is to insure risks of member organizations, group members, and their affiliates.

(8) "Controlled insurer" means a licensed insurer that is either directly or indirectly controlled by a broker.

(9) "Controlling broker" means a broker who either directly or indirectly controls an insurer.

(10) "Controlling person" means any person, firm, association, or corporation that directly or indirectly has the power to direct or cause to be directed, the management, control, or activities of a reinsurance intermediary.

(11) "Insurer" is as defined in [~~Subsection~~] Section 31A-1-301[~~(48)~~], except the following persons or similar persons are not insurers for purposes of Part 6 [~~of this chapter~~], Broker Controlled Insurers:

(a) all risk retention groups as defined in:

(i) the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499;

(ii) the Risk Retention Act, 15 U.S.C. Sec. 3901 et seq.; and

(iii) Title 31A, Chapter 15, Part II, Risk Retention Groups Act;

(b) all residual market pools and joint underwriting authorities or associations; and

(c) all captive insurers.

(12) (a) "Managing general agent" means any person, firm, association, or corporation that:

(i) manages all or part of the insurance business of an insurer, including the management of a separate division, department, or underwriting office;

(ii) acts as an agent for the insurer whether it is known as a managing general agent, manager, or other similar term;

(iii) with or without the authority, either separately or together with affiliates, directly or indirectly produces and underwrites an amount of gross direct written premium equal to, or more than 5% of, the policyholder surplus as reported in the last annual statement of the insurer in any one quarter or year; and

(iv) either adjusts or pays claims in excess of an amount determined by the commissioner, or that negotiates reinsurance on behalf of the insurer.

(b) Notwithstanding Subsection (12)(a), the following persons may not be considered as managing general agent for the purposes of this chapter:

(i) an employee of the insurer;

(ii) a U.S. manager of the United States branch of an alien insurer;

(iii) an underwriting manager that, pursuant to contract:

(A) manages all the insurance operations of the insurer;

(B) is under common control with the insurer;

(C) is subject to Title 31A, Chapter 16, Insurance Holding Companies; and

(D) is not compensated based on the volume of premiums written; and

(iv) the attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or inter-insurance exchange under powers of attorney.

(13) "Producer" is a person who arranges for insurance coverages between insureds and insurers.

(14) "Qualified U.S. financial institution" means an institution that:

(a) is organized or, in the case of a U.S. office of a foreign banking organization licensed, under the laws of the United States or any state;

(b) is regulated, supervised, and examined by U.S. federal or state authorities having regulatory authority over banks and trust companies; and

(c) has been determined by either the commissioner, or the Securities Valuation Office of the National Association of Insurance Commissioners, to meet the standards of financial condition and standing that are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.

(15) "Reinsurance intermediary" means a reinsurance intermediary-broker or a reinsurance intermediary-manager as these terms are defined in Subsections (16) and (17).

(16) "Reinsurance intermediary-broker" means a person other than an officer or employee of the ceding insurer, firm, association, or corporation who solicits, negotiates, or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of the insurer.

(17) (a) "Reinsurance intermediary-manager" means a person, firm, association, or corporation who:

(i) has authority to bind or who manages all or part of the assumed reinsurance business of a reinsurer, including the management of a separate division, department, or underwriting office; and

(ii) acts as an agent for the reinsurer whether the person, firm, association, or corporation is known as a reinsurance intermediary-manager, manager, or other similar term.

(b) Notwithstanding Subsection (17)(a), the following persons may not be considered reinsurance intermediary-managers for the purpose of this chapter with respect to the reinsurer:

(i) an employee of the reinsurer;

(ii) a U.S. manager of the United States branch of an alien reinsurer;

(iii) an underwriting manager that, pursuant to contract:

(A) manages all the reinsurance operations of the reinsurer;

(B) is under common control with the reinsurer;

(C) is subject to Title 31A, Chapter 16, Insurance Holding Companies; and

(D) is not compensated based on the volume of premiums written; and

(iv) the manager of a group, association, pool, or organization of insurers that:

(A) engage in joint underwriting or joint reinsurance; and

(B) are subject to examination by the insurance commissioner of the state in which the manager's principal business office is located.

(18) "Reinsurer" means any person, firm, association, or corporation duly licensed in this state as an insurer with the authority to assume reinsurance.

(19) "Surplus lines broker" means a person licensed under Subsection 31A-23-204(5) to place insurance with unauthorized insurers in accordance with Section 31A-15-103.

(20) "Underwrite" means the authority to accept or reject risk on behalf of the insurer.

Section 57. Section **31A-23-503** is amended to read:

31A-23-503. Duties of insurers.

(1) The insurer shall have on file an independent financial examination, in a form acceptable to the commissioner, of each managing general agent with which it has done business.

(2) If a managing general agent establishes loss reserves, the insurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the managing general agent. This is in addition to any other required loss reserve certification.

(3) The insurer shall at least semiannually conduct an on-site review of the underwriting and claims processing operations of the managing general agent.

(4) Binding authority for all reinsurance contracts or participation in insurance or reinsurance syndicates shall rest with an officer of the insurer, who may not be affiliated with the managing general agent.

(5) Within 30 days after entering into or terminating a contract with a managing general agent, the insurer shall provide written notification of the appointment or termination to the

commissioner. A notice of appointment of a managing general agent shall include:

(a) a statement of duties that the applicant is expected to perform on behalf of the insurer;

(b) the lines of insurance for which the applicant is to be authorized to act; and

(c) any other information the commissioner may request.

(6) An insurer shall review its books and records each quarter to determine if any producer, as defined by Subsection 31A-23-102[~~(12)~~](13), has become a managing general agent as defined in Subsection 31A-23-102[~~(11)~~](12). If the insurer determines that a producer has become a managing general agent, the insurer shall promptly notify the producer and the commissioner of the determination. The insurer and producer shall fully comply with the provisions of this chapter within 30 days.

(7) An insurer may not appoint officers, directors, employees, subproducers, or controlling shareholders of its managing general agents to its board of directors. This Subsection (7) does not apply to relationships governed by Title 31A, Chapter 16, Insurance Holding Companies, or Chapter 23, Part 6, Broker Controlled Insurers, if it applies.

Section 58. Section **31A-23-601** is amended to read:

31A-23-601. Applicability.

This part applies to licensed insurers, as defined in Subsection 31A-23-102[~~(10)~~](11), which are either domiciled in this state or domiciled in a state that does not have a substantially similar law. All provisions of Title 31A, Chapter 16, Insurance Holding Companies, to the extent they are not superseded by this part, continue to apply to all parties within holding company systems subject to this part.

Section 59. Section **31A-25-205** is amended to read:

31A-25-205. Financial responsibility.

(1) Every person licensed under this chapter shall, while licensed and for one year after that date, maintain an insurance policy or surety bond, issued by an authorized insurer, in an amount specified under Subsection (2), on a policy or contract form which is acceptable under Subsection (3).

(2) (a) Insurance policies or surety bonds satisfying the requirement of Subsection (1) shall

be in a face amount equal to at least 10% of the total funds handled by the administrator. However, no policy or bond under this subsection may be in a face amount of less than $5,000 nor more than $500,000.

(b) In fixing the policy or bond face amount under Subsection (2)(a), the total funds handled is the greater of the premiums received or claims paid through the administrator during the previous calendar year, or, if no funds were handled during the preceding year, the total funds reasonably anticipated to be handled by the administrator during the current calendar year.

(c) This section does not prohibit any person dealing with the administrator from requiring, by contract, insurance coverage in amounts greater than required under this section.

(3) Insurance policies or surety bonds issued to satisfy Subsection (1) shall be on forms approved by the commissioner. The policies or bonds shall require the insurer to pay, up to the policy or bond face amount, any judgment obtained by participants in or beneficiaries of plans administered by the insured licensee which arise from the negligence or culpable acts of the licensee or any employee or agent of the licensee in connection with the activities described under the first paragraph of [~~Section 31A-25-101~~] Subsection 31A-1-301(90). The commissioner may require that policies or bonds issued to satisfy the requirements of this section require the insurer to give the commissioner 20 day prior notice of policy cancellation.

(4) The commissioner shall establish annual reporting requirements and forms to monitor compliance with this section.

(5) This section may not be construed as limiting any cause of action an insured would otherwise have against the insurer.

Section 60. Section **32A-1-105** is amended to read:

32A-1-105. Definitions.

As used in this title:

(1) "Airport lounge" means a place of business licensed to sell alcoholic beverages, at retail, for consumption on its premises located at an international airport with a United States Customs office on its premises.

(2) "Alcoholic beverages" means "beer" and "liquor" as the terms are defined in this section.

(3) (a) "Alcoholic products" means all products that contain at least 63/100 of 1% of alcohol by volume or at least ½ of 1% by weight, and are obtained by fermentation, infusion, decoction, brewing, distillation, or any other process that uses any liquid or combinations of liquids, whether drinkable or not, to create alcohol in an amount greater than the amount prescribed in this Subsection (3)(a).

(b) "Alcoholic products" does not include common extracts, vinegars, ciders, essences, tinctures, food preparations, or over-the-counter drugs and medicines that otherwise come within this definition.

(4) "Beer" means all products that contain 63/100 of 1% of alcohol by volume or ½ of 1% of alcohol by weight, but not more than 4% of alcohol by volume or 3.2% by weight, and are obtained by fermentation, infusion, or decoction of any malted grain. Beer may or may not contain hops or other vegetable products. Beer includes products referred to as malt liquor, malted beverages, or malt coolers.

(5) (a) "Beer retailer" means any business establishment engaged, primarily or incidentally, in the retail sale or distribution of beer to public patrons, whether for consumption on or off the establishment's premises, and that is licensed to sell beer by the commission, by a local authority, or both.

(b) (i) "On-premise beer retailer" means any beer retailer engaged, primarily or incidentally, in the sale or distribution of beer to public patrons for consumption on the beer retailer's premises.

(ii) "On-premise beer retailer" includes taverns.

(c) (i) "Tavern" means any business establishment engaged primarily in the retail sale or distribution of beer to public patrons for consumption on the establishment's premises, and that is licensed to sell beer under Chapter 10, Part 2, On-Premise Beer Retailer Licenses.

(ii) "Tavern" includes a beer bar, parlor, lounge, cabaret, and night club where the revenue from the sale of beer exceeds the revenue of the sale of food, although food need not be sold in the establishment.

(6) "Billboard" means any light device, painting, drawing, poster, sign, signboard, scoreboard, or other similar public display used to advertise, but does not include:

(a) displays on beer delivery vehicles if the displays do not overtly promote the consumption of alcoholic beverages;

(b) displays in taverns and private clubs, if the displays are not visible to persons off-premises;

(c) point-of-sale displays, other than light devices, in retail establishments that sell beer for off-premise consumption, if the displays are not visible to persons off-premises;

(d) private business signs on the premises of any business engaged primarily in the distribution of beer;

(e) newspapers, magazines, circulars, programs, or other similar printed materials, if the materials are not directed primarily to minors;

(f) menu boards in retail establishments that sell beer for on-premise consumption if the menu boards also contain food items;

(g) handles on alcoholic beverage dispensing equipment that identify brands of products being dispensed; and

(h) displays at the site of a temporary special event for which a single event liquor permit has been obtained from the commission or a temporary special event beer permit has been obtained from a local authority to inform attendees of the location where alcoholic beverages are being dispensed.

(7) "Brewer" means any person engaged in manufacturing beer, malt liquor, or malted beverages.

(8) "Chartered bus" means a passenger bus, coach, or other motor vehicle provided by a bus company to a group of persons pursuant to a common purpose, under a single contract, and at a fixed charge in accordance with the bus company's tariff, for the purpose of giving the group of persons the exclusive use of the bus and a driver to travel together to a specified destination or destinations.

(9) "Church" means a building:

(a) set apart primarily for the purpose of worship;

(b) in which religious services are held;

(c) with which clergy is associated;

(d) the main body of which is kept for that use and not put to any other use inconsistent with its primary purpose; and

(e) which is tax exempt under the laws of this state.

(10) "Club" and "private club" means any nonprofit corporation operating as a social club, recreational, fraternal, or athletic association, or kindred association organized primarily for the benefit of its stockholders or members.

(11) "Commission" means the Alcoholic Beverage Control Commission.

(12) "Cork-finished wine" means a container of wine stopped by a cork and finished by foil, lead, or other substance by the manufacturer.

[~~(13) "Council" means the Citizen's Council on Alcoholic Beverage Control.~~]

[~~(14)~~] (13) "Department" means the Department of Alcoholic Beverage Control.

[~~(15)~~] (14) "Distressed merchandise" means any alcoholic beverage in the possession of the department that is saleable, but for some reason is unappealing to the public.

[~~(16)~~] (15) "General food store" means any business establishment primarily engaged in selling food and grocery supplies to public patrons for off-premise consumption.

[~~(17)~~] (16) "Governing body" means the board of not fewer than five shareholders or voting members of a private club who have been elected and authorized to control or conduct the business and affairs of that club.

[~~(18)~~] (17) "Guest" means a person accompanied by an active member or visitor of a club who enjoys only those privileges derived from the host for the duration of the visit to the club.

[~~(19)~~] (18) "Heavy beer" means all products that contain more than 4% alcohol by volume obtained by fermentation, infusion, or decoction of any malted grain. "Heavy beer" is considered "liquor" for the purposes of this title.

[~~(20)~~] (19) "Identification card" means the card issued by the commissioner of the Department of Public Safety under Title 53, Chapter 3, Part 8, Identification Card Act.

[~~(21)~~] (20) "Interdicted person" means a person to whom the sale, gift, or provision of an alcoholic beverage is prohibited by law or court order.

[~~(22)~~] (21) "Licensee" means any person issued a license by the commission to sell, manufacture, store, or allow consumption of alcoholic beverages on premises owned or controlled by the person.

[~~(23)~~] (22) "Limousine" means any motor vehicle licensed by the state or a local authority, other than a bus or taxicab:

(a) in which the driver and passengers are separated by a partition, glass, or other barrier; and

(b) that is provided by a company to an individual or individuals at a fixed charge in accordance with the company's tariff for the purpose of giving the individual or individuals the exclusive use of the limousine and a driver to travel to a specified destination or destinations.

[~~(24)~~] (23) (a) "Liquor" means alcohol, or any alcoholic, spiritous, vinous, fermented, malt, or other liquid, or combination of liquids, a part of which is spiritous, vinous, or fermented, and all other drinks, or drinkable liquids that contain more than ½ of 1% of alcohol by volume and is suitable to use for beverage purposes.

(b) "Liquor" does not include any beverage defined as a beer, malt liquor, or malted beverage that has an alcohol content of less than 4% alcohol by volume.

[~~(25)~~] (24) "Local authority" means:

(a) the county legislative body of the county if the premises are located in an unincorporated area of a county; or

(b) the governing body of the city or town if the premises are located in an incorporated city or town.

[~~(26)~~] (25) "Manufacture" means to distill, brew, rectify, mix, compound, process, ferment, or otherwise make an alcoholic product for personal use or for sale or distribution to others.

[~~(27)~~] (26) "Member" means a person who, after paying regular dues, has full privileges of a club under this title.

[~~(28)~~] (27) "Minor" means any person under the age of 21 years.

[~~(29)~~] (28) "Outlet" means a location other than a state store or package agency where alcoholic beverages are sold pursuant to a license issued by the commission.

[~~(30)~~] (29) "Package" means any container, bottle, vessel, or other receptacle containing liquor.

[~~(31)~~] (30) "Package agency" means a retail liquor location operated under a contractual agreement with the department, by a person other than the state, who is authorized by the commission

to sell package liquor for consumption off the premises of the agency.

[~~(32)~~] (31) "Package agent" means any person permitted by the commission to operate a package agency pursuant to a contractual agreement with the department to sell liquor from premises that the package agent shall provide and maintain.

[~~(33)~~] (32) "Permittee" means any person issued a permit by the commission to perform acts or exercise privileges as specifically granted in the permit.

[~~(34)~~] (33) "Person" means any individual, partnership, firm, corporation, association, business trust, or other form of business enterprise, including a receiver or trustee, and the plural as well as the singular number, unless the intent to give a more limited meaning is disclosed by the context.

[~~(35)~~] (34) "Policy" means a statement of principles established by the commission to guide the administration of this title and the management of the affairs of the department.

[~~(36)~~] (35) "Premises" means any building, enclosure, room, or equipment used in connection with the sale, storage, service, manufacture, distribution, or consumption of alcoholic products, unless otherwise defined in this title or in the rules adopted by the commission.

[~~(37)~~] (36) "Prescription" means a writing in legal form, signed by a physician or dentist and given to a patient for obtaining an alcoholic beverage for medicinal purposes only.

[~~(38)~~] (37) (a) "Privately hosted event" or "private social function" means a specific social, business, or recreational event for which an entire room, area, or hall has been leased or rented, in advance by an identified group, and the event or function is limited in attendance to people who have been specifically designated and their guests.

(b) "Privately hosted event" and "private social function" does not include events or functions to which the general public is invited, whether for an admission fee or not.

[~~(39)~~] (38) (a) "Public building" means any building or permanent structure owned or leased by the state, a county, or local government entity that is used for:

(i) public education;

(ii) transacting public business; or

(iii) regularly conducting government activities.

(b) "Public building" does not mean or refer to any building owned by the state or a county or local government entity when the building is used by anyone, in whole or in part, for proprietary functions.

[~~(40)~~] (39) "Representative" means an individual who is compensated by salary, commission, or any other means for representing and selling the alcoholic beverage products of a manufacturer, supplier, or importer of liquor, wine, or heavy beer.

[~~(41)~~] (40) "Residence" means the person's principal place of abode within Utah.

[~~(42)~~] (41) "Restaurant" means any business establishment:

(a) where a variety of foods is prepared and complete meals are served to the general public;

(b) located on a premises having adequate culinary fixtures for food preparation and dining accommodations; and

(c) that is engaged primarily in serving meals to the general public.

[~~(43)~~] (42) "Retailer" means any person engaged in the sale or distribution of alcoholic beverages to the consumer.

[~~(44)~~] (43) (a) "Rule" means a general statement adopted by the commission to guide the activities of those regulated or employed by the department, to implement or interpret this title, or to describe the organization, procedure, or practice requirements of the department in order to carry out the intent of the law and ensure its uniform application. This definition includes any amendment or repeal of a prior rule.

(b) "Rule" does not include a rule concerning only the internal management of the department that does not affect private rights or procedures available to the public, including intradepartmental memoranda.

[~~(45)~~] (44) (a) "Sample" includes:

(i) department samples;

(ii) industry representative samples; and

(iii) department trade show samples.

(b) "Department sample" means liquor, wine, and heavy beer that has been placed in the possession of the department for testing, analysis, and sampling.

(c) "Department trade show sample" means liquor, wine, and heavy beer that has been placed in the possession of the department for use in a trade show conducted by the department.

(d) "Industry representative sample" means liquor, wine, and heavy beer that has been placed in the possession of the department for testing, analysis, and sampling by local industry representatives on the premises of the department to educate themselves of the quality and characteristics of the product.

(e) "Retail licensee wine tasting" means cork-finished wine checked out under the procedures provided in Section 32A-12-603:

(i) to a local industry representative holding a license described in Section 32A-8-501;

(ii) to conduct the tasting of cork-finished wines to a retail licensee licensed to sell wine at retail for consumption on its premises; and

(iii) for the purpose of disseminating information and educating the retail licensees described in Subsection [~~(45)~~] (44)(e)(ii) as to the quality and characteristics of the cork-finished wines.

[~~(46)~~] (45) (a) "School" means any building used primarily for the general education of minors.

(b) "School" does not include nursery schools, infant day care centers, or trade or technical schools.

[~~(47)~~] (46) "Sell," "sale," and "to sell" means any transaction, exchange, or barter whereby, for any consideration, an alcoholic beverage is either directly or indirectly transferred, solicited, ordered, delivered for value, or by any means or under any pretext is promised or obtained, whether done by a person as a principal, proprietor, or as an agent, servant, or employee, unless otherwise defined in this title or the rules made by the commission.

[~~(48)~~] (47) "Small brewer" means a brewer who manufactures less than 60,000 barrels of beer and heavy beer per year.

[~~(49)~~] (48) (a) "State label" means the official label designated by the commission affixed to all liquor containers sold in the state.

(b) "State label" includes the department identification mark and inventory control number.

[~~(50)~~] (49) (a) "State store" means a facility for the sale of package liquor located on

premises owned or leased by the state and operated by state employees.

(b) "State store" does not apply to any licensee, permittee, or to package agencies.

[~~(51)~~] (50) "Supplier" means any person selling alcoholic beverages to the department.

[~~(52)~~] (51) "Temporary domicile" means the principal place of abode within Utah of a person who does not have a present intention to continue residency within Utah permanently or indefinitely.

[~~(53)~~] (52) "Unsaleable liquor merchandise" means merchandise that is unsaleable because it is unlabeled, leaky, damaged, difficult to open, partly filled, or is in a container having faded labels or defective caps or corks, or in which the contents are cloudy, spoiled, or chemically determined to be impure, or that contains sediment, or any foreign substance, or is otherwise considered by the department as unfit for sale.

[~~(54)~~] (53) "Visitor" means a person holding limited privileges in a club by virtue of a visitor card purchased from the club and authorized by a sponsoring member of the club.

[~~(55)~~] (54) "Warehouser" means any person, other than a licensed manufacturer, engaged in the importation for sale, storage, or distribution of liquor regardless of amount.

[~~(56)~~] (55) "Wholesaler" means any person engaged in the importation for sale, or in the sale of beer in wholesale or jobbing quantities to retailers, other than a small brewer selling beer manufactured by that brewer.

[~~(57)~~] (56) (a) "Wine" means any alcoholic beverage obtained by the fermentation of the natural sugar content of fruits, plants, honey, or milk, or any other like substance, whether or not other ingredients are added.

(b) "Wine" is considered "liquor" for purposes of this title.

Section 61. Section **32A-1-113** is amended to read:

32A-1-113. Department expenditures and revenues -- Liquor Control Fund -- Exempt from Division of Finance -- Annual audits.

(1) (a) All money received by the department in the administration of this title, except as otherwise provided, together with all property acquired, administered, possessed, or received by the department, is the property of the state. Money received in the administration of this title shall be paid to the department and transferred into the state treasury to the credit of the Liquor Control

Fund.

(b) All expenses, debts, and liabilities incurred by the department in connection with the administration of this title shall be paid from the Liquor Control Fund.

(c) The fiscal officers of the department shall transfer annually from the Liquor Control Fund to the General Fund a sum equal to the amount of net profit earned from the sale of liquor since the preceding transfer of funds. The transfer shall be made within 90 days of the end of the department's fiscal year on June 30.

(2) (a) Deposits made by the department shall be made to banks designated as state depositories and reported to the state treasurer at the end of each day.

(b) Any member of the commission and any employee of the department is not personally liable for any loss caused by the default or failure of depositories.

(c) All funds deposited in any bank or trust company are entitled to the same priority of payment as other public funds of the state.

(3) All expenditures necessary for the administration of this title, including the payment of all salaries, premiums, if any, on bonds of the commissioners, the director, and the department staff in all cases where bonds are required, and all other expenditures incurred in establishing, operating, and maintaining state stores and package agencies and in the administration of this title, shall be paid by warrants drawn on the state treasurer paid out of the Liquor Control Fund.

(4) If the cash balance of the Liquor Control Fund is not adequate to cover the warrants drawn against it by the state treasurer, the cash resources of the General Fund may be utilized to the extent necessary. However, at no time may the fund equity of the Liquor Control Fund fall below zero.

(5) When any check issued in payment of any fees or costs authorized or required by this title is returned to the department as dishonored, the department may assess a service charge in an amount set by commission rule against the person on whose behalf the check was tendered.

(6) The laws that govern the Division of Finance and prescribe the general powers and duties of the Division of Finance are not applicable to the Department of Alcoholic Beverage Control in the purchase and sale of alcoholic products.

(7) The accounts of the department shall be audited annually by the state auditor or by any other person, firm, or corporation the state auditor appoints. The audit report shall be made to the state auditor, and copies submitted to members of the Legislature [~~and the council~~] not later than January 1 following the close of the fiscal year for which the report is made.

Section 62. Section **32A-1-117** is amended to read:

32A-1-117. Department may sue and be sued.

The department may be sued and may institute or defend proceedings in any court of law or otherwise in the name of the Department of Alcoholic Beverage Control as though the department were incorporated under that name or title. Proceedings may not be taken against the commission or in the names of the members of the commission[~~, or against the council or in the names of the members of the council~~].

Section 63. Section **32A-1-118** is amended to read:

32A-1-118. Liability insurance -- Governmental immunity.

(1) The department shall maintain insurance against loss on each motor vehicle operated by it on any public highway. Each motor vehicle shall be covered for:

(a) any liability imposed by law upon the department for damages from bodily injuries suffered by any person or persons by reason of the ownership, maintenance, or use of the motor vehicle; and

(b) any liability or loss from damage to or destruction of property of any description, including liability of the department for the resultant loss of use of the property, which results from accident due to the ownership, maintenance, or use of the motor vehicle.

(2) The department is liable to respond in damages in all cases if a private corporation under the same circumstances would be liable.

(3) The provisions of Title 63, Chapter 30, Governmental Immunity Act, apply in all actions commenced against the department in any action for damages sustained as a result of department ownership, maintenance, or use of motor vehicles under Subsections (1) and (2). Immunity from suit against [~~the council or~~] the commission or any member of the [~~council or~~] commission, is in all respects retained in any such action.

Section 64. Section **32A-1-121** is amended to read:

32A-1-121. Reports.

(1) The department shall report to the governor on the administration of this title, as the governor may require, and shall submit an annual report to the governor not later than November 30, for the fiscal year ending June 30 of the year in which the report is made. The report shall contain:

(a) a statement of the nature and amount of the business transacted by the department during the year;

(b) a statement of the department's assets and liabilities including a profit and loss account, and other accounts and matters necessary to show the results of operations of the department for the year;

(c) general information and remarks on the application of this title in the state; and

(d) any other information requested by the governor.

(2) Copies of the report shall be submitted to the Legislature [~~and the council~~].

Section 65. Section **32A-1-504** is amended to read:

32A-1-504. Operational restrictions.

(1) Department trade shows may not be open to the general public, and may be attended only by industry members, retailers, personnel of any trade association, authorized representatives of the commission, the department, [~~the council,~~] and any law enforcement officer. Authorized representatives of the commission[~~, the council,~~] and any law enforcement officer shall have unrestricted right of access, ingress, and egress to and from all premises of a department trade show.

(2) No person under the age of 21 years may attend a department trade show.

(3) No bottle or container of liquor, wine, or heavy beer may be used in a department trade show unless it has been processed, labeled, and delivered to the show by the department in accordance with Section 32A-12-602, and has affixed to it a department label clearly identifying it as a "department trade show sample".

(4) No department trade show sample may be removed from the premises of the trade show except by the department in accordance with Section 32A-12-602.

(5) No department trade show sample may be stored, used, served, or consumed in any place

other than the premises of the department trade show.

(6) No department trade show sample may be served or otherwise furnished to any:

(a) minor;

(b) person actually, apparently, or obviously drunk;

(c) known habitual drunkard; or

(d) known interdicted person.

(7) No attendees of the department trade show may bring any alcoholic beverage product onto the premises of the department trade show.

(8) A violation of this section is a class B misdemeanor.

Section 66. Section **32A-3-102** is amended to read:

32A-3-102. Application requirements.

(1) A person seeking to operate a package agency as a package agent under this chapter shall file a written application with the department in a form prescribed by the department.

(2) The application shall be accompanied by:

(a) a nonrefundable application fee of $100;

(b) written consent of the local authority;

(c) evidence of proximity to any public or private school, church, public library, public playground, or park, and if the proximity is within the 600 foot or 200 foot limitations of Subsections 32A-3-101 (3), (4), and (5), the application shall be processed in accordance with those subsections;

(d) a bond as specified by Section 32A-3-105;

(e) a floor plan of the premises, including a description and highlighting of that part of the premises in which the applicant proposes that the package agency be established;

(f) evidence that the package agency is carrying public liability insurance in an amount and form satisfactory to the department;

(g) a signed consent form stating that the package agent will permit any authorized representative of the commission, department, [~~council,~~] or any law enforcement officer to have unrestricted right to enter the package agency;

(h) in the case of a corporate applicant, proper verification evidencing that the person or

persons signing the package agency application are authorized to so act on the corporation's behalf; and

(i) any other information as the commission or department may direct.

Section 67. Section **32A-4-102** is amended to read:

32A-4-102. Application and renewal requirements.

(1) A person seeking a restaurant liquor license under this chapter shall file a written application with the department, in a form prescribed by the department. It shall be accompanied by:

(a) a nonrefundable $300 application fee;

(b) an initial license fee of $300, which is refundable if a license is not granted;

(c) written consent of the local authority;

(d) a copy of the applicant's current business license;

(e) evidence of proximity to any public or private school, church, public library, public playground, or park, and if the proximity is within the 600 foot or 200 foot limitation of Subsections 32A-4-101 (4), (5), and (6), the application shall be processed in accordance with those subsections;

(f) a bond as specified by Section 32A-4-105;

(g) a floor plan of the restaurant, including consumption areas and the area where the applicant proposes to keep, store, and sell liquor;

(h) evidence that the restaurant is carrying public liability insurance in an amount and form satisfactory to the department;

(i) evidence that the restaurant is carrying dramshop insurance coverage of at least $100,000 per occurrence and $300,000 in the aggregate;

(j) a signed consent form stating that the restaurant will permit any authorized representative of the commission, department, [~~council,~~] or any law enforcement officer unrestricted right to enter the restaurant;

(k) in the case of a corporate applicant, proper verification evidencing that the person or persons signing the restaurant application are authorized to so act on the corporation's behalf; and

(l) any other information the commission or department may require.

(2) All restaurant liquor licenses expire on October 31 of each year. Persons desiring to

renew their restaurant liquor license shall submit a renewal fee of $300 and a completed renewal application to the department no later than September 30. Failure to meet the renewal requirements shall result in an automatic forfeiture of the license effective on the date the existing license expires. Renewal applications shall be in a form as prescribed by the department.

(3) If any restaurant liquor licensee does not immediately notify the department of any change in ownership of the restaurant, or in the case of a Utah corporate owner of any change in the corporate officers or directors, the commission may suspend or revoke that license.

Section 68. Section **32A-4-106** is amended to read:

32A-4-106. Operational restrictions.

Each person granted a restaurant liquor license and the employees and management personnel of the restaurant shall comply with the following conditions and requirements. Failure to comply may result in a suspension or revocation of the license or other disciplinary action taken against individual employees or management personnel.

(1) (a) Liquor may not be purchased by a restaurant liquor licensee except from state stores or package agencies.

(b) Liquor purchased may be transported by the licensee from the place of purchase to the licensed premises.

(c) Payment for liquor shall be made in accordance with rules established by the commission.

(2) A restaurant liquor licensee may not sell or provide any primary liquor except in one ounce quantities dispensed through a calibrated metered dispensing system approved by the department in accordance with commission rules adopted under this title, except that:

(a) liquor need not be dispensed through a calibrated metered dispensing system if used as a secondary flavoring ingredient in a beverage subject to the following restrictions:

(i) the secondary ingredient may be dispensed only in conjunction with the purchase of a primary liquor;

(ii) the secondary ingredient is not the only liquor in the beverage;

(iii) the licensee shall designate a location where flavorings are stored on the floor plan provided to the department; and

(iv) all flavoring containers shall be plainly and conspicuously labeled "flavorings";

(b) liquor need not be dispensed through a calibrated metered dispensing system if used as a flavoring on desserts and in the preparation of flaming food dishes, drinks, and desserts;

(c) wine may be served by the glass in quantities not exceeding five ounces per glass; and

(d) heavy beer may be served in original containers not exceeding one liter.

(3) (a) Restaurants licensed to sell liquor may sell beer in any size container not exceeding two liters, and on draft for on-premise consumption without obtaining a separate on-premise beer retailer license from the commission.

(b) Restaurants licensed under this chapter that sell beer pursuant to Subsection (3)(a) shall comply with all appropriate operational restrictions under Chapter 10, Beer Retailer Licenses, that apply to on-premise beer retailers except when those restrictions are inconsistent with or less restrictive than the operational restrictions under this chapter.

(c) Failure to comply with the operational restrictions under Chapter 10, Beer Retailer Licenses, required by Subsection (3)(b) may result in a suspension or revocation of the restaurant's:

(i) state liquor license; and

(ii) alcoholic beverage license issued by the local authority.

(4) Wine may be served in accordance with commission rule in containers not exceeding 750 ml.

(5) (a) Liquor may not be stored or sold in any place other than as designated in the licensee's application, unless the licensee first applies for and receives approval from the department for a change of location within the restaurant.

(b) A patron may only make alcoholic beverage purchases in the restaurant from a server designated and trained by the licensee.

(c) Any alcoholic beverage may only be consumed at the patron's table.

(d) Liquor may not be stored where it is visible to patrons of the restaurant.

(6) (a) Alcoholic beverages may not be dispensed directly to a patron from the storage area.

(b) Alcoholic beverages shall be delivered by a server to the patron.

(7) The liquor storage area shall remain locked at all times other than those hours and days

when liquor sales are authorized by law.

(8) (a) Liquor may not be sold or offered for sale at a restaurant during the following days or hours:

(i) on the day of any regular general election, regular primary election, or statewide special election until after the polls are closed;

(ii) on the day of any municipal, special district, or school election, but only:

(A) within the boundaries of the municipality, special district, or school district; and

(B) if closure is required by local ordinance; and

(iii) on any other day after 12 midnight and before 12 noon.

(b) The hours of beer sales are those specified in Chapter 10, Beer Retailer Licenses, for on-premise beer licensees.

(9) Alcoholic beverages may not be sold except in connection with an order for food prepared, sold, and served at the restaurant.

(10) Alcoholic beverages may not be sold, delivered, or furnished to any:

(a) minor;

(b) person actually, apparently, or obviously drunk;

(c) known habitual drunkard; or

(d) known interdicted person.

(11) (a) Liquor may not be sold except at prices fixed by the commission.

(b) Mixed drinks and wine may not be sold at discount prices on any date or at any time.

(12) Each restaurant patron may have only one alcoholic beverage at a time before the patron on the patron's table.

(13) No more than one ounce of primary liquor may be served to a patron at a time, except:

(a) wine as provided in Subsection (2)(c); and

(b) heavy beer as provided in Subsection (2)(d).

(14) Alcoholic beverages may not be purchased by the licensee, or any employee or agent of the licensee, for patrons of the restaurant.

(15) Alcoholic beverages purchased in a restaurant may not be served or consumed at any

location where they are stored or dispensed.

(16) (a) A wine service may be performed and a service charge assessed by the restaurant as authorized by commission rule for wine purchased at the restaurant or carried in by a patron.

(b) If wine is carried in by a patron, the patron shall deliver the wine to a server or other representative of the licensee upon entering the licensee premises.

(17) (a) A person may not bring onto the premises of a restaurant liquor licensee any alcoholic beverage for on-premise consumption, except a person may bring, subject to the discretion of the licensee, cork-finished wine onto the premises of any restaurant liquor licensee and consume wine pursuant to Subsection (16).

(b) A restaurant, whether licensed under this title or unlicensed, or its officers, managers, employees, or agents may not allow:

(i) a person to bring onto the restaurant premises any alcoholic beverage for on-premise consumption; or

(ii) consumption of any such alcoholic beverage on its premises, except cork-finished wine under Subsection (17)(a).

(c) If a restaurant licensee, or any of its officers, managers, employees, or agents violates this Subsection (17):

(i) the commission may immediately suspend or revoke the restaurant's liquor license and the restaurant licensee is subject to possible criminal prosecution under Chapter 12, Criminal Offenses; and

(ii) the local authority may immediately suspend or revoke the restaurant's:

(A) local liquor license;

(B) local consent under Subsection 32A-4-102(1); or

(C) local business license.

(18) Alcoholic beverages purchased from the restaurant may not be removed from the restaurant premises.

(19) (a) Minors may not be employed by a restaurant licensee to sell or dispense alcoholic beverages.

(b) Notwithstanding Subsection (19)(a), a minor may be employed to enter the sale at a cash register or other sales recording device.

(20) An employee of a restaurant liquor licensee, while on duty, may not:

(a) consume an alcoholic beverage; or

(b) be under the influence of alcoholic beverages.

(21) (a) Advertising or other reference to the sale of liquor and wine is not allowed on a food menu except that a statement of availability of a liquor and wine menu on request, the content and form of which is approved by the department, may be attached to or carried on a food menu. The context of both food and liquor and wine menus may not in any manner attempt to promote or increase the sale of alcoholic beverages.

(b) A server, employee, or agent of a licensee may not draw attention to the availability of alcoholic beverages for sale, unless a patron or guest first inquires about it.

(c) Any set-up charge, service charge, chilling fee, or any other charge or fee made in connection with the sale, service, or consumption of liquor may be stated in food or alcoholic beverage menus.

(22) Each restaurant liquor licensee shall display in a prominent place in the restaurant:

(a) the liquor license that is issued by the department;

(b) a list of the types and brand names of liquor being served through its calibrated metered dispensing system; and

(c) a sign in large letters stating: "Warning: The consumption of alcoholic beverages purchased in this establishment may be hazardous to your health and the safety of others."

(23) The following acts or conduct in a restaurant licensed under this chapter are considered contrary to the public welfare and morals, and are prohibited upon the premises:

(a) employing or using any person in the sale or service of alcoholic beverages while the person is unclothed or in attire, costume, or clothing that exposes to view any portion of the female breast below the top of the areola or any portion of the pubic hair, anus, cleft of the buttocks, vulva, or genitals;

(b) employing or using the services of any person to mingle with the patrons while the person

is unclothed or in attire, costume, or clothing described in Subsection (23)(a);

(c) encouraging or permitting any person to touch, caress, or fondle the breasts, buttocks, anus, or genitals of any other person;

(d) permitting any employee or person to wear or use any device or covering, exposed to view, that simulates the breast, genitals, anus, pubic hair, or any portion of these;

(e) permitting any person to use artificial devices or inanimate objects to depict any of the prohibited activities described in this Subsection (23);

(f) permitting any person to remain in or upon the premises who exposes to public view any portion of that person's genitals or anus; or

(g) showing films, still pictures, electronic reproductions, or other visual reproductions depicting:

(i) acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any sexual acts prohibited by Utah law;

(ii) any person being touched, caressed, or fondled on the breast, buttocks, anus, or genitals;

(iii) scenes wherein artificial devices or inanimate objects are used to depict, or drawings are used to portray, any of the prohibited activities described in this Subsection (23); or

(iv) scenes wherein a person displays the vulva or the anus or the genitals.

(24) Nothing in Subsection (23) precludes a local authority from being more restrictive of acts or conduct of the type prohibited in Subsection (23).

(25) (a) Although live entertainment is permitted on the premises of a restaurant liquor licensee, a licensee may not allow any person to perform or simulate sexual acts prohibited by Utah law, including sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, the touching, caressing, or fondling of the breast, buttocks, anus, or genitals, or the displaying of the pubic hair, anus, vulva, or genitals. Entertainers shall perform only upon a stage or at a designated area approved by the commission.

(b) Nothing in Subsection (25)(a) precludes a local authority from being more restrictive of acts or conduct of the type prohibited in Subsection (25)(a).

(26) A restaurant liquor licensee may not engage in or permit any form of gambling, or have

any video gaming device, as defined and proscribed by Title 76, Chapter 10, Part 11, Gambling, on the premises of the restaurant liquor licensee.

(27) (a) Each restaurant liquor licensee shall maintain an expense ledger or record showing in detail:

(i) quarterly expenditures made separately for:

(A) malt or brewed beverages;

(B) set-ups;

(C) liquor;

(D) food; and

(E) all other items required by the department; and

(ii) sales made separately for:

(A) malt or brewed beverages;

(B) set-ups;

(C) food; and

(D) all other items required by the department.

(b) The record required by Subsection (27)(a) shall be kept:

(i) in a form approved by the department; and

(ii) current for each three-month period.

(c) Each expenditure shall be supported by:

(i) delivery tickets;

(ii) invoices;

(iii) receipted bills;

(iv) canceled checks;

(v) petty cash vouchers; or

(vi) other sustaining data or memoranda.

(28) (a) Each restaurant liquor licensee shall maintain accounting and other records and documents as the department may require.

(b) Any restaurant or person acting for the restaurant, who knowingly forges, falsifies, alters,

cancels, destroys, conceals, or removes the entries in any of the books of account or other documents of the restaurant required to be made, maintained, or preserved by this title or the rules of the commission for the purpose of deceiving the commission[~~, council,~~] or the department, or any of their officials or employees, is subject to the immediate suspension or revocation of the restaurant's liquor license and possible criminal prosecution under Chapter 12, Criminal Offenses.

(29) (a) A restaurant liquor licensee may not close or cease operation for a period longer than 240 hours, unless:

(i) the restaurant liquor license notifies the department in writing at least seven days before the closing; and

(ii) the closure or cessation of operation is first approved by the department.

(b) Notwithstanding Subsection (29)(a), in the case of emergency closure, immediate notice of closure shall be made to the department by telephone.

(c) The department may authorize a closure or cessation of operation for a period not to exceed 60 days. The department may extend the initial period an additional 30 days upon written request of the restaurant licensee and upon a showing of good cause. A closure or cessation of operation may not exceed a total of 90 days without commission approval.

(d) Any notice shall include:

(i) the dates of closure or cessation of operation;

(ii) the reason for the closure or cessation of operation; and

(iii) the date on which the licensee will reopen or resume operation.

(e) Failure of the licensee to provide notice and to obtain department authorization prior to closure or cessation of operation shall result in an automatic forfeiture of:

(i) the license; and

(ii) the unused portion of the license fee for the remainder of the license year effective immediately.

(f) Failure of the licensee to reopen or resume operation by the approved date shall result in an automatic forfeiture of:

(i) the license; and

(ii) the unused portion of the license fee for the remainder of the license year.

(30) Each restaurant liquor licensee shall maintain at least 70% of its total restaurant business from the sale of food, which does not include mix for alcoholic beverages or service charges.

(31) A person may not transfer a restaurant liquor license from one location to another, without prior written approval of the commission.

(32) (a) A person, having been granted a restaurant liquor license may not sell, exchange, barter, give, or attempt in any way to dispose of the license whether for monetary gain or not.

(b) A restaurant liquor license has no monetary value for the purpose of any type of disposition.

(33) Each server of alcoholic beverages in a licensee's establishment shall keep a written beverage tab for each table or group that orders or consumes alcoholic beverages on the premises. The beverage tab shall list the type and amount of alcoholic beverages ordered or consumed.

(34) A person's willingness to serve alcoholic beverages may not be made a condition of employment as a server with a restaurant that has a restaurant liquor license.

Section 69. Section **32A-4-202** is amended to read:

32A-4-202. Application and renewal requirements.

(1) A person seeking an airport lounge liquor license under this part shall file a written application with the department, in a form prescribed by the department, accompanied by:

(a) a nonrefundable $1,000 application fee;

(b) an initial license fee of $1,000, which is refundable if a license is not granted;

(c) written consent of the local and airport authority;

(d) a copy of the applicant's current business license;

(e) a bond as specified by Section 32A-4-205;

(f) a floor plan of the airport lounge, including consumption areas and the area where the applicant proposes to keep, store, and sell liquor;

(g) a copy of the sign proposed to be used by the licensee on its premises to inform the public that alcoholic beverages are sold and consumed there;

(h) evidence that the airport lounge is carrying public liability insurance in an amount and

form satisfactory to the department;

(i) evidence that the airport lounge is carrying dramshop insurance coverage of at least $100,000 per occurrence and $300,000 in the aggregate;

(j) a signed consent form stating that the airport lounge will permit any authorized representative of the commission, department, [~~council,~~] or any law enforcement officer unrestricted right to enter the airport lounge;

(k) in the case of a corporate applicant, proper verification evidencing that the person or persons signing the airport lounge application are authorized to so act on the corporation's behalf; and

(l) any other information the commission or department may require.

(2) All airport lounge liquor licenses expire on October 31 of each year. Persons desiring to renew their airport lounge liquor license shall submit a renewal fee of $1,000 and a completed renewal application to the department no later than September 30. Failure to meet the renewal requirements shall result in an automatic forfeiture of the license, effective on the date the existing license expires. Renewal applications shall be in a form as prescribed by the department.

(3) If any airport liquor licensee does not immediately notify the department of any change in ownership of the licensee, or in the case of a Utah corporate owner of any change in the corporate officers or directors, the commission may suspend or revoke that license.

Section 70. Section **32A-4-206** is amended to read:

32A-4-206. Operational restrictions.

Each person granted an airport lounge liquor license and the employees and management personnel of the airport lounge shall comply with the following conditions and requirements. Failure to comply may result in a suspension or revocation of the license or other disciplinary action taken against individual employees or management personnel.

(1) Liquor may not be purchased by an airport lounge liquor licensee except from state stores or package agencies. Liquor purchased may be transported by the licensee from the place of purchase to the licensed premises. Payment for liquor shall be made in accordance with the rules established by the commission.

(2) An airport lounge liquor licensee may not sell or provide any primary liquor except in one ounce quantities dispensed through a calibrated metered dispensing system approved by the department in accordance with commission rules adopted under this title, except that:

(a) liquor need not be dispensed through a calibrated metered dispensing system if used as a secondary flavoring ingredient in a beverage subject to the following restrictions:

(i) the secondary ingredient may be dispensed only in conjunction with the purchase of a primary liquor;

(ii) the secondary ingredient is not the only liquor in the beverage;

(iii) the licensee shall designate a location where flavorings are stored on the floor plan provided to the department; and

(iv) all flavoring containers shall be plainly and conspicuously labeled "flavorings";

(b) wine may be served by the glass in quantities not exceeding five ounces per glass; and

(c) heavy beer may be served in original containers not exceeding one liter.

(3) (a) Airport lounges may sell beer in any size container not exceeding two liters, and on draft without obtaining a separate on-premise beer retailer license from the commission.

(b) Airport lounges that sell beer pursuant to Subsection (3)(a) shall comply with all appropriate operational restrictions under Chapter 10 that apply to on-premise beer retailers except when those restrictions are inconsistent with or less restrictive than the operational restrictions under this chapter that apply to airport lounges.

(c) Failure to comply with the operational restrictions under Chapter 10, Beer Retailer Licenses, as set forth in Subsection (3)(b) may result in a suspension or revocation of the airport lounge's state liquor license and its alcoholic beverage license issued by the local authority.

(4) Wine may be served in accordance with commission rule in containers not exceeding 750 ml.

(5) (a) Liquor may not be stored or sold in any place other than as designated in the licensee's application, unless the licensee first applies for and receives approval from the department for a change of location within the airport lounge.

(b) A patron or guest may only make purchases in the airport lounge from a server designated

and trained by the licensee.

(c) Alcoholic beverages may not be stored where they are visible to persons outside the airport lounge.

(6) The liquor storage area shall remain locked at all times other than those hours and days when liquor sales are authorized by law.

(7) Alcoholic beverages may not be sold or offered for sale at an airport lounge during the following days or hours:

(a) on the day of any regular general election, regular primary election, or statewide special election until after the polls are closed; and

(b) on any other day after 12 midnight and before 8 a.m.

(8) Alcoholic beverages may not be sold, delivered, or furnished to any:

(a) minor;

(b) person actually, apparently, or obviously drunk;

(c) known habitual drunkard; or

(d) known interdicted person.

(9) Liquor may not be sold except at prices fixed by the commission. Mixed drinks and wine may not be sold at discount prices on any day or at any time.

(10) An airport lounge patron or guest may have only one alcoholic beverage at a time before him.

(11) No more than one ounce of primary liquor may be served to a patron or guest at a time, except wine as provided in Subsection (2)(b) and heavy beer as provided in Subsection (2)(c).

(12) Alcoholic beverages may not be purchased by the licensee, or any employee or agent of the licensee, for patrons or guests of the airport lounge.

(13) (a) Beginning January 1, 1991, a person may not bring onto the premises of an airport lounge licensee any alcoholic beverage for on-premise consumption.

(b) Beginning January 1, 1991, an airport lounge or its officers, managers, employees, or agents may not allow a person to bring onto the airport lounge premises any alcoholic beverage for on-premise consumption or allow consumption of any such alcoholic beverage on its premises.

(c) Beginning January 1, 1991, if any airport lounge liquor licensee or any of its officers, managers, employees, or agents violates Subsection (13):

(i) the commission may immediately suspend or revoke the airport lounge's liquor license and the airport lounge liquor licensee is subject to criminal prosecution under Chapter 12, Criminal Offenses; and

(ii) the local authority may immediately suspend or revoke the airport lounge's local liquor license, local consent under Subsection 32A-4-202(1), or local business license.

(14) Alcoholic beverages purchased from the airport lounge may not be removed from the airport lounge premises.

(15) Minors may not be employed by an airport lounge licensee to sell or dispense alcoholic beverages.

(16) An employee of a licensee, while on duty, may not consume an alcoholic beverage or be under the influence of alcoholic beverages.

(17) Each airport lounge liquor licensee shall display in a prominent place in the airport lounge:

(a) the liquor license that is issued by the department;

(b) a list of the types and brand names of liquor being served through its calibrated metered dispensing system; and

(c) a sign in large letters stating: "Warning: The consumption of alcoholic beverages purchased in this establishment may be hazardous to your health and the safety of others."

(18) (a) Each airport lounge liquor licensee shall maintain an expense ledger or record showing in detail:

(i) quarterly expenditures made separately for malt or brewed beverages, liquor, and all other items required by the department; and

(ii) sales made separately for malt or brewed beverages, food, and all other items required by the department.

(b) This record shall be kept in a form approved by the department and shall be kept current for each three-month period. Each expenditure shall be supported by delivery tickets, invoices,

receipted bills, canceled checks, petty cash vouchers, or other sustaining data or memoranda.

(19) Each airport lounge liquor licensee shall maintain accounting and other records and documents as the department may require. Any airport lounge or person acting for the airport lounge, who knowingly forges, falsifies, alters, cancels, destroys, conceals, or removes the entries in any of the books of account or other documents of the airport lounge required to be made, maintained, or preserved by this title or the rules of the commission for the purpose of deceiving the commission[~~, council,~~] or the department, or any of their officials or employees, is subject to the immediate suspension or revocation of the airport lounge's liquor license and possible criminal prosecution under Chapter 12, Criminal Offenses.

(20) There shall be no transfer of an airport lounge liquor license from one location to another, without prior written approval of the commission.

(21) (a) A person, having been granted an airport lounge liquor license, may not sell, exchange, barter, give, or attempt in any way to dispose of the license whether for monetary gain or not.

(b) An airport lounge liquor license has no monetary value for the purpose of any type of disposition.

(22) Each server of alcoholic beverages in a licensee's establishment shall keep a written beverage tab for each table or group that orders or consumes alcoholic beverages on the premises. The beverage tab shall list the type and amount of alcoholic beverages ordered or consumed.

(23) An airport lounge liquor licensee's premises may not be leased for private functions.

(24) An airport lounge liquor licensee may not engage in or permit any form of gambling, or have any video gaming device, as defined and proscribed by Title 76, Chapter 10, Part 11, Gambling, on the premises of the airport lounge liquor licensee.

Section 71. Section **32A-5-102** is amended to read:

32A-5-102. Application and renewal requirements.

(1) A person seeking a private club liquor license under this chapter shall file a written application with the department, in the name of an officer or director of a corporation, in a form prescribed by the department. It shall be accompanied by:

(a) a nonrefundable $1,000 application fee;

(b) an initial license fee of $750, which is refundable if a license is not granted;

(c) written consent of the local authority;

(d) a copy of the applicant's current business license;

(e) evidence that the applicant is a corporation or association organized under the Utah Nonprofit Corporation and Cooperative Association Act, and is in good standing;

(f) evidence of proximity to any public or private school, church, public library, public playground, or park, and if the proximity is within the 600 foot or 200 foot limitations of Subsections 32A-5-101 (5), (6), and (7), the application shall be processed in accordance with those subsections;

(g) evidence that the applicant operates a club where a variety of food is prepared and served in connection with dining accommodations;

(h) a bond as specified by Section 32A-5-106;

(i) a floor plan of the club premises, including consumption areas and the area where the applicant proposes to keep and store liquor;

(j) evidence that the club is carrying public liability insurance in an amount and form satisfactory to the department;

(k) evidence that the club is carrying dramshop insurance coverage of at least $100,000 per occurrence and $300,000 in the aggregate;

(l) a copy of the club's articles, bylaws, house rules, and any amendments to those documents, which shall be kept on file with the department at all times;

(m) a signed consent form stating that the club and its management will permit any authorized representative of the commission, department, [~~council,~~] or any law enforcement officer unrestricted right to enter the club premises;

(n) a signed consent form authorizing the department to obtain Internal Revenue Service tax information on the club;

(o) a signed consent form authorizing the department to obtain state and county real and personal property tax information on the club;

(p) profit and loss statements for the previous fiscal year and pro forma statements for one

year if the applicant has not previously operated; and

(q) any other information, documents, and evidence the department may require by rule or policy to allow complete evaluation of the application.

(2) (a) Each application shall be signed and verified by oath or affirmation by an executive officer or any person specifically authorized by the corporation or association to sign the application, to which shall be attached written evidence of said authority.

(b) The applicant may attach to the application a verified copy of a letter of exemption from federal tax, issued by the United States Treasury Department, Internal Revenue Service, which the commission may consider as evidence of the applicant's nonprofit status. The commission may also consider the fact that the licensee has lost its tax exemption from federal tax as evidence that the licensee has ceased to operate as a nonprofit corporation.

(3) (a) The commission may refuse to issue a license if it determines that any provisions of the club's articles, bylaws, house rules, or amendments to any of those documents are not reasonable and consistent with the declared nature and purpose of the applicant and the purposes of this chapter.

(b) Club bylaws shall include provisions respecting the following:

(i) standards of eligibility for members;

(ii) limitation of members, consistent with the nature and purpose of the corporation or association;

(iii) the period for which dues are paid, and the date upon which the period expires;

(iv) provisions for dropping members for the nonpayment of dues or other cause; and

(v) provisions for guests or visitors, if any, and for the issuance and use of visitor cards.

(4) All private club liquor licenses expire on June 30 of each year. Persons desiring to renew their private club liquor license shall submit a renewal fee of $750 and a completed renewal application to the department no later than May 31. Failure to meet the renewal requirements shall result in an automatic forfeiture of the license effective on the date the existing license expires. Renewal applications shall be in a form as prescribed by the department.

Section 72. Section **32A-5-107** is amended to read:

32A-5-107. Operational restrictions.

Each corporation or association granted a private club liquor license and its employees, officers, managing agent, and members shall comply with the following conditions and requirements. Failure to comply may result in a suspension or revocation of the license or other disciplinary action taken against individual employees or management personnel.

(1) Each private club shall hold regular meetings as required by its articles or bylaws and conduct its business through regularly elected officers. Within ten days following the election of any officer, the department shall be notified in writing of the officer's name, address, and office to which the officer has been elected, and the term of that office.

(2) Each private club may admit members only on written application signed by the applicant, following investigation and approval of the governing body. Admissions shall be recorded in the official minutes of a regular meeting of the governing body and the application, whether approved or disapproved, shall be filed as a part of the official records of the licensee. An applicant may not be accorded the privileges of a member until a quorum of the governing body has formally voted upon and approved the applicant as a member. An applicant may not be admitted to membership until seven days after the application is submitted.

(3) Each private club shall maintain a current and complete membership record showing the date of application of each proposed member, the member's address, the date of admission following application, and the date initiation fees and dues were assessed and paid. The record shall also show the serial number of the membership card issued to each member. A current record shall also be kept indicating when members were dropped or resigned.

(4) Each private club shall establish in the club bylaws initial fees and monthly dues, as established by commission rules, which are collected from all members.

(5) Each private club may allow guests or visitors to use the premises only when previously authorized by a member. A member is responsible for all services extended to guests and visitors. If the guest or visitor is a member of the same fraternal organization as the private club liquor licensee, no previous authorization is required.

(6) Each private club shall limit the issuance of visitor cards for a period not to exceed two weeks and assess and collect a fee from each visitor of not less than $5 for each two-week period the

visitor card is issued. One dollar of every visitor card fee shall be remitted quarterly to the department for the administration of this title. A current record of the issuance of each card shall be maintained and shall contain the name of the member sponsoring the visitor.

(7) A private club may not sell alcoholic beverages to any person other than a member, guest, or visitor who holds a valid visitor card issued under Subsection (6).

(8) A person who is under 21 years of age may not be a member, officer, director, or trustee of a private club.

(9) An employee of a club, while on duty, may not consume an alcoholic beverage, be under the influence of alcoholic beverages, sponsor a person for visitor privileges, or act as a host for a guest.

(10) A visitor to a club may not host more than five guests at one time.

(11) Each private club shall maintain an expense ledger or record showing in detail all expenditures separated by payments for malt or brewed beverages, liquor, food, detailed payroll, entertainment, rent, utilities, supplies, and all other expenditures. This record shall be kept in a form approved by the department and balanced each month. Each expenditure shall be supported by delivery tickets, invoices, receipted bills, canceled checks, petty cash vouchers, or other sustaining data or memoranda. All invoices and receipted bills for the current calendar or fiscal year documenting purchases made by officers of the club for the benefit of the club shall also be maintained.

(12) Each private club shall maintain a bank account that shows all income and expenditures as a control on the income and disbursements records. This account shall be balanced each month under the direction of the treasurer or other officer of the licensee.

(13) Each private club shall maintain a minute book that is posted currently by the secretary. This record shall contain the minutes of all regular and special meetings of the governing body and all committee meetings held to conduct club business. Membership lists shall also be maintained.

(14) Each private club shall maintain current copies of the club's articles of incorporation, current bylaws, and current house rules. Changes in the bylaws are not effective unless submitted to the department within ten days after adoption, and become effective 15 days after received by the

department unless rejected by the department before the expiration of the 15-day period.

(15) Each private club shall maintain accounting and other records and documents as the department may require.

(16) Any club or person acting for the club, who knowingly forges, falsifies, alters, cancels, destroys, conceals, or removes the entries in any of the books of account or other documents of the club required to be made, maintained, or preserved by this title or the rules of the commission for the purpose of deceiving the commission[~~, council,~~] or the department, or any of their officials or employees, is subject to the immediate suspension or revocation of the club's license and possible criminal prosecution under Chapter 12, Criminal Offenses.

(17) Each private club shall maintain and keep all the records required by this section and all other books, records, receipts, and disbursements maintained or utilized by the licensee, as the department requires, for a minimum period of three years. All records, books, receipts, and disbursements are subject to inspection by authorized representatives of the commission[~~,~~] and the department[~~, and council~~]. The club shall allow the department, through its auditors or examiners, to audit all records of the club at times the department considers advisable. The department shall audit the records of the licensee at least once annually.

(18) Each private club shall make available to the department, upon request, verified copies of any returns filed with the United States Treasury Department, Internal Revenue Service, under the federal Internal Revenue Code. Failure to provide any returns and supporting documents upon reasonable request by the department or, alternatively, to provide evidence of an extension granted by the Internal Revenue Service, constitutes sufficient grounds for the commission to suspend or revoke a license. Any return or copy of a return so filed with the department is confidential and may not be used in any manner not directly connected with the enforcement of this title, nor may it be disclosed to any person or any department or agency of government, whether federal, state, or local.

(19) Each private club shall own or lease premises suitable for its activities in its own name. A copy of the lease shall be filed with the department.

(20) Each private club shall operate the club under the supervision of a manager or house committee, appointed by the governing body of the club.

(21) A private club may not maintain facilities in any manner that barricades or conceals the club operation. Any member of the commission, authorized department personnel, [~~member of the council,~~] or any peace officer shall, upon presentation of credentials, be admitted immediately to the club and permitted without hindrance or delay to inspect completely the entire club premises and all books and records of the licensee, at any time during which the same are open for the transaction of business to its members.

(22) A private club may not pay any person or entity any fee, salary, rent, or other payment of any kind in excess of the fair market value for the service rendered, goods furnished, or facilities or equipment rented. It is the intention of this subsection to insure that no officer, managing agent, employee, or other person derives a principal economic benefit from the operation of a club.

(23) A private club may not engage in any public solicitation or public advertising calculated to increase its membership.

(24) Each private club shall comply with the following operational restrictions:

(a) The liquor storage and sales area shall remain locked at all times when it is not open for business.

(b) Liquor may not be purchased by a private club liquor licensee except from state stores or package agencies. Liquor so purchased may be transported by the licensee from the place of purchase to the licensed premises. Payment for liquor shall be made in accordance with rules established by the commission.

(c) Beginning July 1, 1991, a private club liquor licensee may not sell or provide any primary liquor except in one ounce quantities dispensed through a calibrated metered dispensing system approved by the department in accordance with commission rules adopted under this title, except that:

(i) liquor need not be dispensed through a calibrated metered dispensing system if used as a secondary flavoring ingredient in a beverage subject to the following restrictions:

(A) the beverage shall contain liquor from a lawfully purchased container;

(B) the secondary ingredient is not the only liquor in the beverage;

(C) the licensee shall designate a location where flavorings are stored on the floor plan

provided to the department; and

(D) all flavoring containers shall be plainly and conspicuously labeled "flavorings";

(ii) liquor need not be dispensed through a calibrated metered dispensing system if used as a flavoring on desserts and in the preparation of flaming food dishes, drinks, and desserts;

(iii) wine may be served by the glass in quantities not exceeding five ounces per glass; and

(iv) heavy beer may be served in standard containers not exceeding one liter.

(d) (i) Private clubs licensed to sell liquor may sell beer in any size container not exceeding two liters, and on draft without obtaining a separate on-premise beer retailer license from the commission.

(ii) Private clubs licensed under this chapter that sell beer pursuant to Subsection (24)(d)(i) shall comply with all appropriate operational restrictions under Title 32A, Chapter 10, Beer Retailer Licenses, that apply to on-premise beer retailers except when those restrictions are inconsistent with or less restrictive than the operational restrictions under this chapter.

(iii) Failure to comply with the operational restrictions under Title 32A, Chapter 10, Beer Retailer Licenses, as set forth in Subsection (24)(d)(ii) may result in a suspension or revocation of the private club's state liquor license and its alcoholic beverage license issued by the local authority.

(e) Wine may be served in accordance with commission rule in containers not exceeding 750 ml.

(f) A private club may not charge for the service or supply of glasses, ice, or mixers unless the charges are fixed in the house rules of the club and a copy of the rules is kept on the club premises and available at all times for examination by the members, guests, and visitors to the club.

(g) Minors may not be employed by any club to sell, dispense, or handle any alcoholic beverage.

(h) An officer, director, managing agent, employee, and any other person employed by or acting for or in behalf of any licensee, may not sell, deliver, or furnish, or cause or permit to be sold, delivered, or furnished any liquor to any:

(i) minor;

(ii) person actually, apparently, or obviously drunk;

(iii) known habitual drunkard; or

(iv) known interdicted person.

(i) (i) Liquor may not be sold or offered for sale at any private club during the following days or hours:

(A) on the day of any regular general election, regular primary election, or statewide special election until after the polls are closed;

(B) on the day of any municipal, special district, or school election, but only within the boundaries of the municipality, special district, or school district, and only if closure is required by local ordinance; and

(C) on Sunday and any state or federal legal holiday after 12 midnight and before 12 noon.

(ii) The hours of beer sales are those specified in Chapter 10 for on-premise beer licensees.

(j) On all other days the liquor storage and sales area in the club shall be closed from 1 a.m. until 10 a.m.

(k) Liquor may not be sold except at prices fixed by the commission. Mixed drinks and wine may not be sold at discount prices on any date or at any time.

(l) Beginning July 1, 1991, no more than one ounce of primary liquor may be served to a member, guest, or visitor at a time, except wine as provided in Subsection (24)(c)(iii) and heavy beer as provided in Subsection (24)(c)(iv).

(m) (i) Beginning January 1, 1991, a person may not bring onto the premises of a private club liquor licensee any alcoholic beverage for on-premise consumption, except a person may bring, subject to the discretion of the licensee, cork-finished wine onto the premises of any private club liquor licensee and consume wine pursuant to Subsection (24)(n).

(ii) Beginning January 1, 1991, a private club or its officers, managers, employees, or agents may not allow a person to bring onto the private club premises any alcoholic beverage for on-premise consumption, except cork-finished wine under Subsection (24)(m)(i).

(iii) Beginning January 1, 1991, if any private club licensee or any of its officers, managers, employees, or agents violates this Subsection (24):

(A) the commission may immediately suspend or revoke the private club's liquor license and

the private club licensee is subject to criminal prosecution under Chapter 12, Criminal Offenses; and

(B) the local authority may immediately suspend or revoke the private club's local liquor license, local consent under Subsection 32A-5-102(1), or local business license.

(n) A wine service may be performed and a service charge assessed by the private club as authorized by commission rule for wine purchased at the private club or carried in by a member, guest, or visitor. If wine is carried in by a member, guest, or visitor, the member, guest, or visitor shall deliver the wine to a server or other representative of the licensee upon entering the licensee premises.

(o) A member, guest, or visitor to a club may not carry from a club premises an open container used primarily for drinking purposes containing any alcoholic beverage.

(p) Each private club liquor licensee shall display in a prominent place in the private club:

(i) the private club liquor license that is issued by the department;

(ii) a list of the types and brand names of liquor being served through its calibrated metered dispensing system; and

(iii) a sign in large letters stating: "Warning: The consumption of alcoholic beverages purchased in this establishment may be hazardous to your health and the safety of others."

(q) The following acts or conduct in a private club licensed under this chapter are considered contrary to the public welfare and morals, and are prohibited upon the premises:

(i) employing or using any person in the sale or service of alcoholic beverages while the person is unclothed or in attire, costume, or clothing that exposes to view any portion of the female breast below the top of the areola or any portion of the pubic hair, anus, cleft of the buttocks, vulva, or genitals;

(ii) employing or using the services of any person to mingle with the patrons while the person is unclothed or in attire, costume, or clothing described in Subsection (24)(q)(i);

(iii) encouraging or permitting any person to touch, caress, or fondle the breasts, buttocks, anus, or genitals of any other person;

(iv) permitting any employee or person to wear or use any device or covering, exposed to view, that simulates the breast, genitals, anus, pubic hair, or any portion of these;

(v) permitting any person to use artificial devices or inanimate objects to depict any of the prohibited activities described in this Subsection (24);

(vi) permitting any person to remain in or upon the premises who exposes to public view any portion of his or her genitals or anus; or

(vii) showing films, still pictures, electronic reproductions, or other visual reproductions depicting:

(A) acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any sexual acts prohibited by Utah law;

(B) any person being touched, caressed, or fondled on the breast, buttocks, anus, or genitals;

(C) scenes wherein artificial devices or inanimate objects are used to depict, or drawings are used to portray, any of the prohibited activities described in this Subsection (24); or

(D) scenes wherein a person displays the vulva or the anus or the genitals.

(r) Nothing in Subsection (24)(q) precludes a local authority from being more restrictive of acts or conduct of the type prohibited in Subsection (24)(q).

(s) (i) Although live entertainment is permitted on the premises of a club liquor licensee, a licensee may not allow any person to perform or simulate sexual acts prohibited by Utah law, including sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or the touching, caressing, or fondling of the breast, buttocks, anus, or genitals, or the displaying of the pubic hair, anus, vulva, or genitals. Entertainers shall perform only upon a stage or at a designated area approved by the commission.

(ii) Nothing in Subsection (24)(s)(i) precludes a local authority from being more restrictive of acts or conduct of the type prohibited in Subsection (24)(s)(i).

(25) A private club may not engage in or permit any form of gambling, or have any video gaming device, as defined and proscribed in Title 76, Chapter 10, Part 11, Gambling, on the premises of the private club.

(26) (a) A private club may not close or cease operation for a period longer than 240 hours, unless written notice is given to the department at least seven days before the closing, and the closure or cessation of operation is first approved by the department.

(b) In the case of emergency closure, immediate notice of closure shall be made to the department by telephone.

(c) The department may authorize a closure or cessation of operation for a period not to exceed 60 days. The department may extend the initial period an additional 30 days upon written request of the private club and upon a showing of good cause. A closure or cessation of operation may not exceed a total of 90 days without commission approval.

(d) Any notice shall include the dates of closure or cessation of operation, the reason for the closure or cessation of operation, and the date on which the licensee will reopen or resume operation.

(e) Failure of the licensee to provide notice and to obtain department authorization prior to closure or cessation of operation shall result in an automatic forfeiture of the license and the forfeiture of the unused portion of the license fee for the remainder of the license year effective immediately.

(f) Failure of the licensee to reopen or resume operation by the approved date shall result in an automatic forfeiture of the license and the forfeiture of the unused portion of the club's license fee for the remainder of the license year.

(27) Each private club shall conduct its affairs so that it is not operated for a pecuniary profit.

(28) A private club may not transfer a private club liquor license from one location to another, without prior written approval of the commission.

(29) A person, having been granted a private club liquor license, may not sell, exchange, barter, give, or attempt in any way to dispose of the license, whether for monetary gain or not. A private club liquor license has no monetary value for the purpose of any type of disposition.

Section 73. Section **32A-7-102** is amended to read:

32A-7-102. Application requirements.

(1) A qualified applicant for a single event permit shall file a written application with the department in a form as the department shall prescribe.

(2) The application shall be accompanied by:

(a) a single event permit fee of $100, which is refundable if a permit is not granted and shall be returned to the applicant with the application;

(b) written consent of the local authority;

(c) a bond as specified by Section 32A-7-105;

(d) the times, dates, location, nature, and purpose of the event;

(e) a description or floor plan designating:

(i) the area in which the applicant proposes that liquor be stored;

(ii) the site from which the applicant proposes that liquor be sold or served; and

(iii) the area in which the applicant proposes that liquor be allowed to be consumed;

(f) a statement of the purpose of the association, corporation, church, or political organization, or its local lodge, chapter, or other local unit;

(g) a signed consent form stating that authorized representatives of the commission, department, [~~council,~~] or any law enforcement officers will have unrestricted right to enter the premises during the event;

(h) proper verification evidencing that the person signing the application is authorized to act on behalf of the association, corporation, church, or political organization; and

(i) any other information as the commission or department may direct.

Section 74. Section **32A-8-102** is amended to read:

32A-8-102. Application and renewal requirements.

(1) Each person seeking an alcoholic beverage manufacturing license of any kind under this chapter shall file a written application with the department, in a form prescribed by the department. It shall be accompanied by:

(a) a nonrefundable application fee of $100;

(b) an initial license fee of $1,000 unless otherwise provided in this chapter, which is refundable if a license is not granted;

(c) a statement of the purpose for which the applicant has applied for the alcoholic beverage manufacturing license;

(d) written consent of the local authority;

(e) a bond as specified by Section 32A-8-105;

(f) evidence that the applicant is carrying public liability insurance in an amount and form satisfactory to the department;

(g) evidence that the applicant is authorized by the United States to manufacture alcoholic beverages;

(h) a signed consent form stating that the licensee will permit any authorized representative of the commission, department, [~~council,~~] or any law enforcement officer to have unrestricted right to enter the premises; and

(i) any other documents and evidence the department may require by rule or policy to allow complete evaluation of the application.

(2) Each application shall be signed and verified by oath or affirmation by an executive officer or any person specifically authorized by the corporation or association to sign the application, to which shall be attached written evidence of said authority.

(3) All alcoholic beverage manufacturing licenses expire on December 31 of each year. Persons desiring to renew their license shall submit a renewal fee of $1,000 and a completed renewal application to the department no later than November 30 of the year the license expires. Failure to meet the renewal requirements results in an automatic forfeiture of the license effective on the date the existing license expires. Renewal applications shall be in a form prescribed by the department.

(4) If any manufacturing licensee does not immediately notify the department of any change in ownership of the licensee, or in the case of a Utah corporate owner of any change in the corporate officers or directors, the commission may suspend or revoke that license.

Section 75. Section **32A-8-106** is amended to read:

32A-8-106. Operational restrictions.

(1) Each person granted an alcoholic beverage manufacturing license and the employees and management of the licensee shall abide by the following conditions and requirements, and any special conditions and restrictions otherwise provided in this chapter. Failure to comply may result in a suspension or revocation of the license or other disciplinary action taken against individual employees or management personnel:

(a) A licensee may not sell any liquor within the state except to the department and to military installations.

(b) Each license issued under this chapter shall be conspicuously displayed on the licensed

premises.

(c) A licensee may not advertise its product in violation of this title or any other federal or state law, except that nothing in this title prohibits the advertising or solicitation of orders for industrial alcohol from holders of special permits.

(d) Each alcoholic beverage manufacturing licensee shall maintain accounting and other records and documents as the department may require. Any manufacturing licensee or person acting for the manufacturing licensee, who knowingly forges, falsifies, alters, cancels, destroys, conceals, or removes the entries in any of the books of account or other documents of the licensee required to be made, maintained, or preserved by this title or the rules of the commission for the purpose of deceiving the commission, [~~council,~~] or the department, or any of their officials or employees, is subject to the immediate suspension or revocation of the manufacturing license and criminal prosecution under Chapter 12, Criminal Offenses.

(e) There shall be no transfer of an alcoholic beverage manufacturing license from one location to another, without prior written approval of the commission.

(f) Each licensee shall from time to time, on request of the department, furnish for analytical purposes samples of the alcoholic products that it has for sale or that it has in the course of manufacture for sale in this state.

(2) Nothing in this chapter prevents any manufacturer of, or dealer in, patent or proprietary medicines containing alcohol from selling the medicines in the original and unbroken package if the medicine contains sufficient medication to prevent its use as an alcoholic beverage. Each manufacturer or dealer who keeps patent or proprietary medicines for sale shall, upon request by the department, provide a sufficient sample of the medicine to enable the department to have the medicine analyzed.

(3) (a) Nothing in this chapter prevents any person from manufacturing vinegar or preserved nonintoxicating cider for use or sale, or the manufacture or sale for lawful purposes of any food preparation, or any United States Pharmacopoeia or national formulary preparation in conformity with the Utah pharmacy laws, if the preparation conforms to standards established by the state departments of agriculture and health, and contains no more alcohol than is absolutely necessary to

preserve or extract the medicinal, flavoring, or perfumed properties of the treated substances.

(b) Nothing in this chapter prevents the manufacture or sale of wood or denatured alcohol under rules established by the department and in compliance with the formulas and rules established by the United States.

Section 76. Section **32A-8-502** is amended to read:

32A-8-502. Application and renewal requirements.

(1) An individual resident, partnership, or corporation seeking a local industry representative license under this chapter shall file a written application with the department, in a form prescribed by the department. It shall be accompanied by:

(a) a nonrefundable $100 application fee;

(b) an initial license fee of $50, which is refundable if a license is not granted;

(c) verification that the applicant is a resident of Utah, or a Utah partnership or corporation;

(d) an affidavit stating the name and address of all manufacturers, suppliers, and importers the applicant will represent;

(e) a signed consent form stating that the local industry representative will permit any authorized representative of the commission, department, [~~council,~~] or any law enforcement officer the right to enter, during normal business hours, the specific premises where the representative conducts business;

(f) in the case of a partnership or corporate applicant, proper verification evidencing that the person or persons signing the application are authorized to so act on the partnership's or corporation's behalf; and

(g) any other information the commission or department may require.

(2) All local industry representative licenses expire on January 1 of each year. Licensees desiring to renew their license shall submit a renewal fee of $50 and a completed renewal application to the department no later than November 30. Failure to meet the renewal requirements shall result in an automatic forfeiture of the license effective on the date the existing license expires. Renewal applications shall be in a form as prescribed by the department, but shall require the licensee to file an affidavit stating the name and address of all manufacturers, suppliers, and importers the licensee

currently represents.

(3) A licensed local industry representative may represent more than one manufacturer, supplier, or importer without paying additional license fees.

Section 77. Section **32A-8-505** is amended to read:

32A-8-505. Operational restrictions.

(1) (a) A local industry representative licensee, employee or agent of the licensee, or employee or agent of a manufacturer, supplier, or importer who is conducting business in the state, shall abide by the conditions and requirements set forth in this section.

(b) If any person listed in Subsection (1)(a) knowingly violates or fails to comply with the conditions and requirements set forth in this section, such violation or failure to comply may result in a suspension or revocation of the license or other disciplinary action taken against individual employees or agents of the licensee, and the commission may order the removal of the manufacturer's, supplier's, or importer's products from the department's sales list and a suspension of the department's purchase of those products for a period determined by the commission if the manufacturer, supplier, or importer directly committed the violation, or solicited, requested, commanded, encouraged, or intentionally aided another to engage in the violation.

(2) A local industry representative licensee, employee or agent of the licensee, or employee or agent of a manufacturer, supplier, or importer who is conducting business in the state:

(a) may assist the department in ordering, shipping, and delivering merchandise, new product notification, listing and delisting information, price quotations, product sales analysis, shelf management, and educational seminars, and may, for the purpose of acquiring new listings, solicit orders from the department and submit to the department price lists and samples of their products, but only to the extent authorized by Chapter 12, Criminal Offenses;

(b) may not sell any liquor, wine, or heavy beer within the state except to the department and military installations;

(c) may not ship or transport, or cause to be shipped or transported, into this state or from one place to another within this state any liquor, wine, or heavy beer;

(d) may not sell or furnish, except as provided in Section 32A-12-603 for retail licensee wine

tasting, any liquor, wine, or heavy beer to any person within this state other than to the department and military installations;

(e) except as otherwise provided, may not advertise products it represents in violation of this title or any other federal or state law;

(f) shall comply with all trade practices provided in Chapter 12, Criminal Offenses; and

(g) may only provide samples of their products for tasting and sampling purposes: (i) as provided in Section 32A-12-603;

(ii) by the department; or

(iii) by retail licensees or permittees at a department trade show.

(3) (a) A local industry representative licensee shall maintain on file with the department a current accounts list of the names and addresses of all manufacturers, suppliers, and importers the licensee represents.

(b) The licensee shall notify the department in writing of any changes to the accounts listed within 14 days from the date the licensee either acquired or lost the account of a particular manufacturer, supplier, or importer.

(4) A local industry representative licensee shall maintain accounting and other records and documents as the department may require for at least three years.

(5) Any local industry representative licensee or person acting for the licensee, who knowingly forges, falsifies, alters, cancels, destroys, conceals, or removes the entries in any of the books of account or other documents of the licensee required to be made, maintained, or preserved by this title or the rules of the commission for the purpose of deceiving the commission[~~, council,~~] or the department, or any of their officials or employees, is subject to the immediate suspension or revocation of the industry representative's license and possible criminal prosecution under Chapter 12, Criminal Offenses.

(6) A local industry representative licensee may, for the purpose of becoming educated as to the quality and characteristics of a liquor, wine, or heavy beer product which the licensee represents, taste and analyze industry representative samples under the following conditions:

(a) The licensee may not receive more than two industry representative samples of a

particular type, vintage, and production lot of a particular branded product within a consecutive 120-day period.

(b) (i) Each sample of liquor may not exceed 1 liter.

(ii) Each sample of wine or heavy beer may not exceed 1.5 liters unless that exact product is only commercially packaged in a larger size, not to exceed 5 liters.

(c) Each industry representative sample may only be of a product not presently listed on the department's sales list.

(d) Industry representative samples shall be shipped prepaid by the manufacturer, supplier, or importer by common carrier and not via United States mail directly to the department's central administrative warehouse office. These samples may not be shipped to any other location within the state.

(e) Industry representative samples shall be accompanied by a letter from the manufacturer, supplier, or importer:

(i) clearly identifying the product as an "industry representative sample"; and

(ii) clearly stating:

(A) the FOB case price of the product; and

(B) the name of the local industry representative for who it is intended.

(f) The department shall assess a reasonable handling, labeling, and storage fee for each industry representative sample received.

(g) The department shall affix to each bottle or container a label clearly identifying the product as an "industry representative sample".

(h) The department shall:

(i) account for and record each industry representative sample received;

(ii) account for the sample's disposition; and

(iii) maintain a record of the sample and its disposition for a two-year period.

(i) Industry representative samples may not leave the premises of the department's central administrative warehouse office.

(j) Licensed industry representatives and their employees and agents may, at regularly

scheduled days and times established by the department, taste and analyze industry representative samples on the premises of the department's central administrative warehouse office.

(k) Any unused contents of an opened product remaining after the product has been sampled shall be destroyed by the department under controlled and audited conditions established by the department.

(l) Industry representative samples that are not tasted within 30 days of receipt by the department shall be disposed of at the discretion of the department in one of the following ways:

(i) contents destroyed under controlled and audited conditions established by the department; or

(ii) added to the inventory of the department for sale to the public.

(7) A local industry representative licensee may conduct retail licensee wine tasting as provided in Section 32A-12-603.

(8) A local representative licensee may not sell, exchange, barter, give, or attempt in any way to dispose of the license whether for monetary gain or not. A local industry representative license has no monetary value for the purpose of any type of disposition.

Section 78. Section **32A-9-102** is amended to read:

32A-9-102. Application and renewal requirements.

(1) A person seeking a warehousing license under this chapter shall file a written application with the department, in a form prescribed by the department. It shall be accompanied by:

(a) a nonrefundable $100 application fee;

(b) an initial license fee of $250, which is refundable if a license is not granted;

(c) written consent of the local authority;

(d) a copy of the applicant's current business license;

(e) a bond as specified by Section 32A-9-105;

(f) evidence that the applicant is carrying public liability insurance in an amount and form satisfactory to the department;

(g) a floor plan of the applicant's warehouse, including the area in which the applicant proposes that liquor be stored;

(h) a signed consent form stating that the licensee will permit any authorized representative of the commission, department, [~~council,~~] or any law enforcement officer unrestricted right to enter the warehouse premises; and

(i) any other documents and evidence the department may require by rule or policy to allow complete evaluation of the application.

(2) Each application shall be signed and verified by oath or affirmation by an executive officer or any person specifically authorized by the corporation to sign the application, to which shall be attached written evidence of said authority.

(3) All warehousing licenses expire on December 31 of each year. Persons desiring to renew their license shall submit a renewal fee of $250 and a completed renewal application to the department
no later than November 30 of the year the license expires. Failure to meet the renewal requirements results in an automatic forfeiture of the license effective on the date the existing license expires. Renewal applications shall be in a form prescribed by the department.

(4) If any licensee does not immediately notify the department of any change in ownership of the licensee, or in the case of a Utah corporate owner of any change in the corporate officers or directors, the commission may suspend or revoke that license.

Section 79. Section **32A-9-106** is amended to read:

32A-9-106. Operational restrictions.

Each person granted a warehousing license and the employees and management of the licensee
shall abide by the following conditions and requirements. Failure to comply may result in a suspension or revocation of the license, or other disciplinary action taken against individual employees
or management personnel:

(1) All liquor warehoused in this state and sold to out-of-state consignees, shall be transported out of the state only by a motor carrier regulated under Title 72, Chapter 9, Motor Carrier Safety Act.

(2) All liquor warehoused in this state and sold to the department shall be transported by motor carriers approved by the department.

(3) All liquor transported to or from the licensee's premises shall be carried in sealed

conveyances that are made available for inspection by the department while en route within the state.

(4) A licensee may not ship, convey, distribute, or remove liquor from any warehouse in less than full case lots.

(5) A licensee may not ship, convey, distribute, or remove any liquor from a warehouse to any consignee outside the state that is not licensed as a liquor wholesaler or retailer by the state in which the consignee is domiciled.

(6) A licensee may not receive, warehouse, ship, distribute, or convey any liquor that the commission has not authorized the licensee to handle through its warehouse.

(7) Each licensee shall maintain accounting and other records and documents as the department may require. Any licensee or person acting for the licensee, who knowingly forges, falsifies, alters, cancels, destroys, conceals, or removes the entries in any of the books of account or other documents of the licensee required to be made, maintained, or preserved by this title or the rules of the commission for the purpose of deceiving the commission[~~, council,~~] or the department, or any of their officials or employees, is subject to the immediate suspension or revocation of the license and possible criminal prosecution under Chapter 12, Criminal Offenses.

(8) There shall be no transfer of a liquor warehousing license from one location to another, without prior written approval of the commission.

Section 80. Section **32A-10-202** is amended to read:

32A-10-202. Application and renewal requirements.

(1) A person seeking an on-premise beer retailer license under this chapter shall file a written application with the department, in a form prescribed by the department. It shall be accompanied by:

(a) a nonrefundable $300 application fee;

(b) an initial license fee of $100, which is refundable if a license is not granted;

(c) written consent of the local authority or a license to sell beer at retail for on-premise consumption granted by the local authority under Section 32A-10-101;

(d) a copy of the applicant's current business license;

(e) for applications made on or after July 1, 1991, evidence of proximity to any public or private school, church, public library, public playground, or park, and if the proximity is within the

600 foot or 200 foot limitation of Subsections 32A-10-201 (3), (4), and (5), the application shall be processed in accordance with those subsections;

(f) a bond as specified by Section 32A-10-205;

(g) a floor plan of the premises, including consumption areas and the area where the applicant proposes to keep, store, and sell beer;

(h) evidence that the on-premise beer retailer licensee is carrying public liability insurance in an amount and form satisfactory to the department;

(i) for those licensees that sell more than $5,000 of beer annually, evidence that the on-premise beer retailer licensee is carrying dramshop insurance coverage of at least $100,000 per occurrence and $300,000 in the aggregate;

(j) a signed consent form stating that the on-premise beer retailer licensee will permit any authorized representative of the commission, department, [~~council,~~] or any peace officer unrestricted right to enter the licensee premises;

(k) in the case of a corporate applicant, proper verification evidencing that the person or persons signing the on-premise beer retailer licensee application are authorized to so act on the corporation's behalf; and

(l) any other information the department may require.

(2) All on-premise beer retailer licenses expire on the last day of February of each year, except that all on-premise beer retailer licenses obtained before the last day of February 1991 expire on the last day of February 1992. Persons desiring to renew their on-premise beer retailer license shall submit a renewal fee of $100 and a completed renewal application to the department no later than January 31. Failure to meet the renewal requirements shall result in an automatic forfeiture of the license, effective on the date the existing license expires. Renewal applications shall be in a form as prescribed by the department.

(3) If any beer retailer licensee does not immediately notify the department of any change in ownership of the beer retailer, or in the case of a Utah corporate owner of any change in the officers or directors, the commission may suspend or revoke that license.

(4) If the applicant is a county, municipality, or other political subdivision, it need not meet

the requirements of Subsections (1)(a), (b), (c), (d), and (f).

(5) Only one state on-premise beer retailer license is required for each building or resort facility owned or leased by the same applicant. Separate licenses are not required for each retail beer dispensing outlet located in the same building or on the same resort premises owned or operated by the same applicant.

Section 81. Section **32A-10-206** is amended to read:

32A-10-206. Operational restrictions.

Each person granted an on-premise beer retailer license and the employees and management personnel of the on-premise beer retailer licensee shall comply with the following conditions and requirements. Failure to comply may result in a suspension or revocation of the license or other disciplinary action taken against individual employees or management personnel.

(1) On-premise beer retailer licensees may sell beer in open containers, in any size not exceeding two liters, and on draft.

(2) Liquor may not be stored or sold on the premises of any on-premise beer retailer licensee.

(3) A patron or guest may only make purchases in the on-premise beer retailer licensee from a server designated and trained by the licensee.

(4) (a) Beer may not be sold or offered for sale at any on-premise beer retailer licensee after 1 a.m. and before 10 a.m.

(b) Beer may not be sold, delivered, or furnished to any:

(i) minor;

(ii) person actually, apparently, or obviously drunk;

(iii) known habitual drunkard; or

(iv) known interdicted person.

(5) Beer sold in sealed containers by the on-premise beer retailer licensee may be removed from the on-premise beer retailer premises.

(6) (a) Beginning January 1, 1991, a person may not bring onto the premises of an on-premise beer retailer licensee any alcoholic beverage for on-premise consumption.

(b) Beginning January 1, 1991, an on-premise beer retailer licensee or its officers, managers,

employees, or agents may not allow a person to bring onto the on-premise beer retailer licensee premises any alcoholic beverage for on-premise consumption or allow consumption of any such alcoholic beverage on its premises.

(c) Beginning January 1, 1991, if any on-premise beer retailer licensee or any of its officers, managers, employees, or agents violates this Subsection (6):

(i) the commission may immediately suspend or revoke the on-premise beer retailer license and the on-premise beer retailer licensee is subject to possible criminal prosecution under Chapter 12; and

(ii) the local authority may immediately suspend or revoke the business license of the on-premise beer retailer licensee.

(7) Minors may not be employed by or be on the premises of an on-premise beer retailer licensee to sell or dispense beer. Minors may not be employed by or be on the premises of any tavern.

(8) An employee of a licensee, while on duty, may not consume an alcoholic beverage or be under the influence of alcoholic beverages.

(9) Each on-premise beer retailer licensee shall display in a prominent place in the on-premise beer retailer licensee:

(a) the on-premise beer retailer license that is issued by the department; and

(b) a sign in large letters stating: "Warning: The consumption of alcoholic beverages purchased in this establishment may be hazardous to your health and the safety of others."

(10) The following acts or conduct in an on-premise beer retailer outlet licensed under this part are considered contrary to the public welfare and morals, and are prohibited upon the premises:

(a) employing or using any person in the sale or service of alcoholic beverages while the person is unclothed or in attire, costume, or clothing that exposes to view any portion of the female breast below the top of the areola or any portion of the pubic hair, anus, cleft of the buttocks, vulva, or genitals;

(b) employing or using the services of any person to mingle with the patrons while the person is unclothed or in attire, costume, or clothing as described in Subsection (10)(a);

(c) encouraging or permitting any person to touch, caress, or fondle the breasts, buttocks,

anus, or genitals of any other person;

(d) permitting any employee or person to wear or use any device or covering, exposed to view, that simulates the breast, genitals, anus, pubic hair, or any portion of these;

(e) permitting any person to use artificial devices or inanimate objects to depict any of the prohibited activities described in this section;

(f) permitting any person to remain in or upon the premises who exposes to public view any portion of his or her genitals or anus; or

(g) showing films, still pictures, electronic reproductions, or other visual reproductions depicting:

(i) acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any sexual acts that are prohibited by Utah law;

(ii) any person being touched, caressed, or fondled on the breast, buttocks, anus, or genitals;

(iii) scenes wherein artificial devices or inanimate objects are employed to depict, or drawings are employed to portray, any of the prohibited activities described in this section; or

(iv) scenes wherein a person displays the vulva or the anus or the genitals.

(11) Nothing in Subsection (10) precludes a local authority from being more restrictive of acts or conduct of the type prohibited in Subsection (10).

(12) An on-premise beer retailer licensee may not engage in or permit any form of gambling, or have any video gaming device, as defined and proscribed in Title 76, Chapter 10, Part 11, Gambling, on the premises of the on-premise beer retailer licensee.

(13) (a) Although live entertainment is permitted on the premises of an on-premise beer retailer licensee, a licensee may not permit any person to perform or simulate sexual acts prohibited by Utah law, including sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, the touching, caressing, or fondling of the breast, buttocks, anus, or genitals, or the displaying of the pubic hair, anus, vulva, or genitals. Entertainers shall perform only upon a stage or at a designated area approved by the commission.

(b) Nothing in Subsection (13)(a) precludes a local authority from being more restrictive of acts or conduct of the type prohibited in Subsection (13)(a).

(14) Each on-premise beer retailer licensee shall maintain accounting and other records and documents as the department may require. Any on-premise beer retailer licensee or person acting for the on-premise beer retailer licensee, who knowingly forges, falsifies, alters, cancels, destroys, conceals, or removes the entries in any of the books of account or other documents of the on-premise beer retailer licensee required to be made, maintained, or preserved by this title or the rules of the commission for the purpose of deceiving the commission[~~, council,~~] or the department, or any of their officials or employees, is subject to the immediate suspension or revocation of the on-premise beer retailer license and possible criminal prosecution under Chapter 12, Criminal Offenses.

(15) There shall be no transfer of an on-premise beer retailer license from one location to another, without prior written approval of the commission.

(16) (a) A person having been granted an on-premise beer retailer license may not sell, exchange, barter, give, or attempt in any way to dispose of the license whether for monetary gain or not.

(b) An on-premise beer retailer license has no monetary value for the purpose of any type of disposition.

Section 82. Section **32A-11-102** is amended to read:

32A-11-102. Application and renewal requirements.

(1) A person seeking a beer wholesaling license under this chapter shall file a written application with the department, in a form prescribed by the department. It shall be accompanied by:

(a) a nonrefundable $100 application fee;

(b) an initial license fee of $300, which is refundable if a license is not granted;

(c) written consent of the local authority;

(d) a copy of the applicant's current business license;

(e) a bond as specified in Section 32A-11-105;

(f) evidence that the applicant is carrying public liability insurance in an amount and form satisfactory to the department;

(g) a signed consent form stating that the licensee will permit any authorized representative of the commission, department, [~~council,~~] or any peace officer unrestricted right to enter the licensed

premises;

(h) a statement of the brands of beer the applicant is authorized to sell and distribute;

(i) a statement of all geographical areas in which the applicant is authorized to sell and distribute beer; and

(j) any other documents and evidence as the department may direct.

(2) Each application shall be signed and verified by oath or affirmation by an executive officer or any person specifically authorized by the corporation to sign the application, to which shall be attached written evidence of said authority.

(3) (a) All beer wholesaling licenses expire on December 31 of each year. Persons desiring to renew their beer wholesaling license shall submit a renewal fee of $300 and a completed renewal application to the department no later than November 30 of the year the license expires. Failure to meet the renewal requirements results in an automatic forfeiture of the license effective on the date the existing license expires. Renewal applications shall be in a form prescribed by the department.

(b) The annual renewal fee prescribed in this Subsection (3) is independent of any like license fee which may be assessed by the local authority of the city or county in which the wholesaler's warehouse is located. Any local fees may not exceed $300. Payment of local fees shall be made directly to the local authority assessing them.

(4) If any licensee does not immediately notify the department of any change in ownership of the licensee, or in the case of a Utah corporate owner of any change in the corporate officers or directors, the commission may suspend or revoke that license.

Section 83. Section **32A-11-106** is amended to read:

32A-11-106. Operational restrictions.

(1) Any person who is granted a beer wholesaling license, and the employees and management personnel of the licensee, shall abide by the following conditions and requirements:

(a) A licensee may not wholesale any beer manufactured within the state by a brewer who is not licensed by the commission as a manufacturing licensee.

(b) A licensee may not wholesale any beer manufactured out of state by a brewer who has not obtained a certificate of approval from the department.

(c) A licensee may not sell or distribute beer to any person within the state except licensed beer retailers or holders of retail beer permits or licenses issued by a local authority for temporary special events that do not last longer than 30 days.

(d) A licensee may not sell or distribute any beer to any retailer outside of the geographic area designated on its application, except that if a licensee is temporarily unable to supply retail dealers within its authorized geographical area, the department may grant temporary authority to another licensed wholesaler who distributes the same brand in another area to supply retailers.

(e) (i) Every licensee shall own, lease, or otherwise control and maintain a warehouse facility located in this state for the receipt, storage, and further distribution of all beer sold by the licensee to any person within the state.

(ii) A licensee may not sell beer to any person in this state, other than the department, unless the beer has first been physically removed from the vehicle used to transport the beer from the supplier to the licensee and delivered into the actual possession and control of the licensee in its warehouse or other facility.

(f) Each beer wholesaling licensee shall maintain accounting and other records and documents as the department may require. Any licensee or person acting for the licensee, who knowingly forges, falsifies, alters, cancels, destroys, conceals, or removes the entries in any of the books of account or other documents of the licensee required to be made, maintained, or preserved by this title or the rules of the commission for the purpose of deceiving the commission[~~, council,~~] or the department, or any of their officials or employees, is subject to the immediate suspension or revocation of the beer wholesaling license and possible criminal prosecution under Chapter 12, Criminal Offenses.

(g) A licensee may not assign or transfer its license unless the assignment or transfer is done in accordance with the commission rules and after written consent has been given by the commission.

(h) A licensee may not sell or distribute any alcoholic beverage that is not clearly labeled in a manner reasonably calculated to put the public on notice that the beverage is an alcoholic beverage. The beverage shall bear the label "alcoholic beverage" or a manufacturer's label which in common usage apprises the general public that the beverage contains alcohol.

(2) Failure to comply with the provisions of Subsection (1) may result in suspension or

revocation of the beer wholesaling license or other disciplinary action taken against individual employees or management personnel of the licensee.

Section 84. Section **32A-11a-102** is amended to read:

32A-11a-102. Definitions.

As used in this chapter:

(1) "Affected party" means a supplier or wholesaler who is a party to a distributorship agreement that a terminating party seeks to terminate or not renew.

(2) (a) "Distributorship agreement" means any written contract, agreement, or arrangement between a supplier and a wholesaler pursuant to which the wholesaler has the right to purchase, resell, and distribute in a designated geographical area any brand of beer manufactured, imported, or distributed by the supplier.

(b) A separate agreement between a supplier and a wholesaler that relates to the relationship between the supplier and the wholesaler or the duties of either of them under a distributorship agreement is considered to be part of the distributorship agreement for purposes of this chapter.

(c) A distributorship agreement may be for a definite or indefinite period.

(3) "Good cause" means the material failure by a supplier or a wholesaler to comply with an essential, reasonable, and lawful requirement imposed by a distributorship agreement if the failure occurs after the supplier or wholesaler acting in good faith provides notice of deficiency and an opportunity to correct in accordance with Sections 32A-11a-103 and 32A-11a-104.

(4) "Good faith" is as defined in Section 70A-2-103.

(5) "Retailer" means a person subject to license under Chapter 10, Beer Retailer Licenses.

(6) "Sales territory" means the geographic area of distribution and sale responsibility designated by a distributorship agreement.

(7) "Supplier," notwithstanding Section [~~32A-1-107~~] 32A-1-105, means a brewer or other person who sells beer to a wholesaler for resale in this state.

(8) "Terminating party" means a supplier or wholesaler who:

(a) is a party to a distributorship agreement; and

(b) seeks to terminate or not renew the distributorship agreement.

Section 85. Section **32A-12-303** is amended to read:

32A-12-303. Tampering with records.

(1) Any official or employee of the commission[~~, council,~~] or the department who has custody of any writing or record required to be filed or deposited with the commission[~~, council,~~] or the department under this title, and who steals, falsifies, alters, willfully destroys, mutilates, defaces, removes, or conceals in whole or in part that writing or record, or who knowingly permits any other person to do so, is guilty of a third degree felony.

(2) Any person not an official or employee of the commission[~~, council,~~] or the department who commits any of the acts specified in Subsection (1) is guilty of a class B misdemeanor.

Section 86. Section **32A-12-304** is amended to read:

32A-12-304. Making false statements.

(1) (a) Any person who makes any false material statement under oath or affirmation in any official proceeding before the commission[~~, council,~~] or the department is guilty of a second degree felony.

(b) As used in Subsection (1)(a), "material" statement is as defined in Section 76-8-501.

(2) A person is guilty of a class B misdemeanor if that person knowingly:

(a) makes a false statement under oath or affirmation in any official proceeding before the commission[~~, council,~~] or the department;

(b) makes a false statement with a purpose to mislead a public servant in performing that servant's official functions under this title;

(c) makes a false statement and the statement is required by this title to be sworn or affirmed before a notary or other person authorized to administer oaths;

(d) makes a false written statement on or pursuant to any application, form, affidavit, or document required by this title;

(e) creates a false impression in a written application, form, affidavit, or document required by this title by omitting information necessary to prevent statements in them from being misleading;

(f) makes a false written statement with intent to deceive a public servant in the performance of that servant's official functions under this title; or

(g) submits or invites reliance on any writing or document required under this title which he knows to be lacking in authenticity.

(3) A person is not guilty under Subsection (2) if that person retracts the falsification before it becomes apparent that the falsification was or would be exposed.

Section 87. Section **32A-12-305** is amended to read:

32A-12-305. Obstructing an officer making a search or an official proceeding or investigation.

(1) A person in or having charge of any premises may not refuse or fail to admit to the premises or obstruct the entry of any member of the commission, [~~council,~~] authorized representative of the commission or department, or any law enforcement officer who demands entry when acting under this title.

(2) A person is guilty of a second degree felony if, believing that an official proceeding or investigation is pending or about to be instituted under this title, that person:

(a) alters, destroys, conceals, or removes any writing or record with a purpose to impair its verity or availability in the proceeding or investigation; or

(b) makes, presents, or uses anything that the person knows to be false with a purpose to deceive any commissioner, [~~council member,~~] department official or employee, law enforcement official, or other person who may be engaged in a proceeding or investigation under this title.

Section 88. Section **32A-12-306** is amended to read:

32A-12-306. Conflicting interests.

(1) A member of the commission [~~or council,~~] or an employee of the department may not be directly or indirectly interested or engaged in any other business or undertaking dealing in alcoholic products, whether as owner, part owner, partner, member of syndicate, shareholder, agent, or employee and whether for the member's own benefit or in a fiduciary capacity for some other person or entity.

(2) A member of the commission [~~or council,~~] or an employee of the department may not enter into or participate in any business transaction as a partner, co-owner, joint venturer, or shareholder with any agent, representative, employee, or officer of any supplier of alcoholic products

to the department.

(3) This section does not prevent the purchase of alcoholic products by any commission [~~or council~~] member or employee of the department as authorized by this title.

Section 89. Section **32A-12-307** is amended to read:

32A-12-307. Interfering with suppliers.

A member of the commission [~~or council,~~] or an employee of the department may not directly or indirectly participate in any manner, by recommendation or otherwise, in the appointment, employment, or termination of appointment or employment of any agent, representative, employee, or officer of any manufacturer, supplier, or importer of liquor, wine, or heavy beer to the department except to determine qualifications for licensing under Chapter 8, Part 5, Local Industry Representative Licenses, and to enforce compliance with this title.

Section 90. Section **32A-12-308** is amended to read:

32A-12-308. Offering or soliciting bribes or gifts.

(1) A person, association, or corporation having sold, selling, or offering any alcoholic product for sale to the commission or department may not offer, make, tender, or in any way deliver or transfer any bribe, gift, or share of profits to any commissioner, the department director, any department employee, officer, or agent, [~~any member of the council,~~] or any law enforcement officer responsible for the enforcement of this title.

(2) A commissioner, the department director, any department employee, officer, or agent, [~~any member of the council,~~] or any law enforcement officer responsible for the enforcement of this title may not knowingly solicit, receive, accept, take, or seek, directly or indirectly, any commission, remuneration, gift, or loan whatsoever from any person, association, or corporation having sold, selling, or offering any alcoholic product for sale.

(3) A violation of this section is a third degree felony.

(4) No other provision of law supersedes this section.

Section 91. Section **32A-12-310** is amended to read:

32A-12-310. Forgery.

(1) (a) Any person, with a purpose to defraud the commission[~~, council,~~] or the department

or with knowledge that he is facilitating a fraud to be perpetrated by anyone, who forges any writing required under this title, is guilty of forgery as provided under Section 76-6-501.

(b) A violation of Subsection (1)(a) is a second degree felony.

(2) Any person, with intent to defraud the commission[~~, council,~~] or the department, who knowingly possesses any writing that is a forgery as defined in Section 76-6-501, is guilty of a third degree felony.

Section 92. Section **32A-13-109** is amended to read:

32A-13-109. Authority to inspect.

(1) For purposes of enforcing this title and commission rules, all members of the commission, [~~council,~~] authorized representatives of the commission or department, or any law enforcement or peace officer shall be accorded access, ingress, and egress to and from all premises or conveyances used in the manufacture, storage, transportation, service, or sale of any alcoholic product. They also may open any package containing, or supposed to contain, any article manufactured, sold, or exposed for sale, or held in possession with intent to sell in violation of this title or commission rules, and may inspect its contents and take samples of the contents for analysis.

(2) All dealers, clerks, bookkeepers, express agents, railroad and airline officials, common and other carriers, and their employees shall assist, when so requested by any authorized person specified in Subsection (1), in tracing, finding, or discovering the presence of any article prohibited by this title or commission rules to the extent assistance would not infringe upon the person's federal and state constitutional rights.

Section 93. Section **53-10-102** is amended to read:

53-10-102. Definitions.

As used in this chapter:

(1) "Administration of criminal justice" means performance of any of the following: detection, apprehension, detention, pretrial release, posttrial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders.

(2) "Alcoholic beverages" has the same meaning as provided in Section 32A-1-105.

(3) "Alcoholic products" has the same meaning as provided in Section 32A-1-105.

(4) "Commission" means the Alcoholic Beverage Control Commission.

(5) "Communications services" means the technology of reception, relay, and transmission of information required by public safety agencies in the performance of their duty.

(6) "Conviction record" means criminal history information indicating a record of a criminal charge which has led to a declaration of guilt of an offense.

[~~(7) "Council" means the Citizen's Council on Alcoholic Beverage Control.~~]

[~~(8)~~] (7) "Criminal history record information" means information on individuals consisting of identifiable descriptions and notations of:

(a) arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising from any of them; and

(b) sentencing, correctional supervision, and release.

[~~(9)~~] (8) "Criminalist" means the scientific discipline directed to the recognition, identification, individualization, and evaluation of physical evidence by application of the natural sciences in law-science matters.

[~~(10)~~] (9) "Criminal justice agency" means courts or a government agency or subdivision of a government agency that administers criminal justice under a statute, executive order, or local ordinance and that allocates greater than 50% of its annual budget to the administration of criminal justice.

[~~(11)~~] (10) "Department"means the Department of Public Safety.

[~~(12)~~] (11) "Director" means the division director appointed under Section 53-10-103.

[~~(13)~~] (12) "Division" means the Criminal Investigations and Technical Services Division created in Section 53-10-103.

[~~(14)~~] (13) "Executive order" means an order of the president of the United States or the chief executive of a state that has the force of law and that is published in a manner permitting regular public access to it.

[~~(15)~~] (14) "Forensic" means dealing with the application of scientific knowledge relating to criminal evidence.

[~~(16)~~] (15) "Missing child" means any person under the age of 18 years who is missing from

his or her home environment or a temporary placement facility for any reason and whose location cannot be determined by the person responsible for the child's care.

[~~(17)~~] (16) "Missing person" has the same meaning as provided in Section 26-2-27.

[~~(18)~~] (17) "Pathogens" means disease-causing agents.

[~~(19)~~] (18) "Physical evidence" means something submitted to the bureau to determine the truth of a matter using scientific methods of analysis.

[~~(20)~~] (19) "Qualifying entity" means a business, organization, or a governmental entity which employs persons who deal with:

(a) national security interests;

(b) care, custody, or control of children;

(c) fiduciary trust over money; or

(d) health care to children or vulnerable adults.

Section 94. Section **53-10-304** is amended to read:

53-10-304. Narcotics and alcoholic beverage enforcement -- Responsibility and jurisdiction.

The bureau shall:

(1) have specific responsibility for the enforcement of all laws of the state pertaining to alcoholic beverages and products;

(2) have general law enforcement jurisdiction throughout the state;

(3) have concurrent law enforcement jurisdiction with all local law enforcement agencies and their officers;

(4) cooperate and exchange information with any other state agency and with other law enforcement agencies of government, both within and outside this state, to obtain information that may achieve more effective results in the prevention, detection, and control of crime and apprehension of criminals;

[~~(5) cooperate with the council in all matters concerning Title 32A, Alcoholic Beverage Control Act;~~]

[~~(6)~~] (5) sponsor or supervise programs or projects related to prevention, detection, and

control of violations of:

(a) Title 32A, Alcoholic Beverage Control Act;

(b) Title 58, Chapter 37, Utah Controlled Substance Act;

(c) Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

(d) Title 58, Chapter 37b, Imitation Controlled Substances Act;

(e) Title 58, Chapter 37c, Utah Controlled Substance Precursor Act; and

(f) Title 58, Chapter 37d, Clandestine Drug Lab Act; and

[~~(7)~~] (6) assist the governor in an emergency or as the governor may require.

Section 95. Section **53-10-305** is amended to read:

53-10-305. Duties of bureau chief.

The bureau chief, with the consent of the commissioner, shall do the following:

(1) conduct in conjunction with the state boards of education and higher education in state schools, colleges, and universities, an educational program concerning alcoholic products, and work in conjunction with civic organizations, churches, local units of government, and other organizations in the prevention of alcoholic product and drug violations;

(2) coordinate law enforcement programs throughout the state and accumulate and disseminate information related to the prevention, detection, and control of violations of this chapter and Title 32A, Alcoholic Beverage Control Act, as it relates to storage or consumption of alcoholic beverages on premises maintained by social clubs, recreational, athletic, and kindred associations;

(3) make inspections and investigations as required by the commission and the Department of Alcoholic Beverage Control;

[~~(4) consult and cooperate with the council;~~]

[~~(5)~~] (4) perform other acts as may be necessary or appropriate concerning control of the use of alcoholic beverages and products and drugs; and

[~~(6)~~] (5) make reports and recommendations to the Legislature, the governor, the commissioner, the commission, and the Department of Alcoholic Beverage Control[~~, and the council~~] as may be required or requested.

Section 96. Section **53A-15-205** is amended to read:

53A-15-205. Disability Determination Services Advisory Council -- Membership -- Duties -- Requirements for DDDS.

(1) As used in this section "council" means the Disability Determination Services Advisory Council to the State Board for Applied Technology Education, created in Subsection (2).

(2) There is created the Disability Determination Services Advisory Council to act as an advisory council to the State Board for Applied Technology Education regarding the Division of Disability Determination Services (DDDS), established under Chapter 24, Part 5.

(3) The council is composed of the following members:

(a) the administrator of DDDS;

(b) a representative of the United States Department of Health and Human Services, Social Security Administration, appointed by the board; and

(c) nine persons, appointed by the board in accordance with Subsections (5) and (6), who represent a cross section of:

(i) persons with disabilities;

(ii) advocates for persons with disabilities;

(iii) health care providers;

(iv) representatives of allied state and local agencies; and

(v) representatives of the general public.

(4) The members appointed under Subsections (3)(a) and (3)(b) serve as nonvoting members of the council.

(5) In appointing the members described in Subsection (3)(c), the board shall:

(a) solicit nominations from organizations and agencies that represent the interests of members described in that subsection; and

(b) make every effort to create a balance in terms of geography, sex, race, ethnicity, and type of both mental and physical disabilities.

(6) In making initial appointments of members described in Subsection (3)(c), the board shall appoint three members for two-year terms, three members for four-year terms, and three members for six-year terms. All subsequent appointments are for four years. The board shall fill any vacancy

that occurs on the council for any reason by appointing a person for the unexpired term of the vacated member. Council members are eligible for one reappointment and serve until their successors are appointed.

(7) Five voting members of the council constitute a quorum. The action of a majority of a quorum represents the action of the council.

(8) Members of the council serve without compensation but may be reimbursed for expenses incurred in the performance of their official duties.

(9) The council shall annually elect a chairperson from among the membership described, and shall adopt bylaws governing its activities.

(10) The council shall:

(a) advise DDDS and the Social Security Administration regarding its practices and policies on the determination of claims for social security disability benefits;

(b) participate in the development of new internal practices and procedures of DDDS and of the policies of the Social Security Administration regarding the evaluation of disability claims;

(c) recommend changes to practices and policies to ensure that DDDS is responsive to disabled individuals;

(d) review the DDDS budget to ensure that it is adequate to effectively evaluate disability claims and to meet the needs of persons with disabilities who have claims pending with DDDS; and

(e) review and recommend changes to policies and practices of allied state and federal agencies, health care providers, and private community organizations.

(11) The council shall annually report to the board, the governor, and the Legislative Education and Health and Human Services Interim Committees regarding its activities.

(12) To assist the council in its duties, DDDS shall provide the necessary staff assistance to enable the council to make timely and effective recommendations. That assistance may include, but is not limited to, developing meeting agendas and minutes, advising the chairpersons of the council regarding relevant items for council discussion, and providing reports, documents, budgets, memorandums, statutes, and regulations regarding the management of DDDS.

Section 97. Section **58-37c-19** is amended to read:

58-37c-19. Possession or sale of crystal iodine.

(1) Any person licensed to engage in a regulated transaction is guilty of a class B misdemeanor who, under circumstances not amounting to a violation of Subsection 58-37d-4(1)(c), offers to sell, sells, or distributes more than two ounces of crystal iodine to another person who is:

(a) not licensed as a regulated purchaser of crystal iodine;

(b) not excepted from licensure; or

(c) not excepted under Subsection (3).

(2) Any person who is not licensed to engage in regulated transactions and not excepted from licensure is guilty of a class A misdemeanor who, under circumstances not amounting to a violation of Subsection 58-37c-3[~~(10)~~](12)(k) or Subsection 58-37d-4(1)(a):

(a) possesses more than two ounces of crystal iodine; or

(b) offers to sell, sells, or distributes crystal iodine to another.

(3) Subsection (2)(a) does not apply to:

(a) a chemistry laboratory maintained by:

(i) a public or private regularly established secondary school; or

(ii) a public or private institution of higher education that is accredited by a regional or national accrediting agency recognized by the United States Department of Education;

(b) a veterinarian licensed to practice under Title 58, Chapter 28, [~~Veterinarians~~] Veterinary Practice Act; or

(c) a general acute hospital.

Section 98. Section **58-37c-20** is amended to read:

58-37c-20. Possession of ephedrine or pseudoephedrine -- Penalties.

(1) Any person who is not licensed to engage in regulated transactions and not excepted from licensure who, under circumstances not amounting to a violation of Subsection 58-37c-3[~~(10)~~](12)(k) or Subsection 58-37d-4(1)(a), possesses more than 12 grams of ephedrine or pseudoephedrine, their salts, isomers, or salts of isomers, or a combination of any of these substances, is guilty of a class A misdemeanor.

(2) (a) It is an affirmative defense to a charge under Subsection (1) that the person in

possession of ephedrine or pseudoephedrine, or a combination of these two substances:

(i) is a physician, pharmacist, retail distributor, wholesaler, manufacturer, warehouseman, or common carrier, or an agent of any of these persons; and

(ii) possesses the substances in the regular course of lawful business activities.

(b) (i) The defendant shall provide written notice of intent to claim an affirmative defense under this section as soon as practicable, but not later than ten days prior to trial. The court may waive the notice requirement in the interest of justice for good cause shown, if the prosecutor is not unfairly prejudiced by the lack of timely notice.

(ii) The notice shall include the specifics of the asserted defense.

(iii) The defendant shall establish the affirmative defense by a preponderance of the evidence. If the defense is established, it is a complete defense to the charges.

(3) This section does not apply to dietary supplements, herbs, or other natural products, including concentrates or extracts, which:

(a) are not otherwise prohibited by law; and

(b) may contain naturally occurring ephedrine, ephedrine alkaloids, or pseudoephedrine, or their salts, isomers, or salts of isomers, or a combination of these substances, that:

(i) are contained in a matrix of organic material; and

(ii) do not exceed 15% of the total weight of the natural product.

Section 99. Section **58-56-3** is amended to read:

58-56-3. Definitions.

In addition to the definitions in Section 58-1-102, as used in this chapter:

(1) "ANSI" means American National Standards Institute, Inc.

(2) "Code(s)" means the NEC, building code, mechanical code, or plumbing code as defined in this section and as applied in context.

(3) "Commission" means the Uniform Building Code Commission created under this chapter.

(4) "Compliance agency" means an agency of the state or any of its political subdivisions which issue permits for construction regulated under the codes, or any other agency of the state or its political subdivisions specifically empowered to enforce compliance with the codes.

(5) "Factory built housing" means manufactured homes or mobile homes.

[~~(10)~~] (6) "Factory built housing set-up contractor" means an individual licensed by the division to set up or install factory built housing on a temporary or permanent basis. The scope of the work included under the license includes the placement and or securing of the factory built housing on a permanent or temporary foundation, securing the units together if required, and connection of the utilities to the factory built housing unit, but does not include site preparation, construction of a permanent foundation, and construction of utility services to the near proximity of the factory built housing unit. If a dealer is not licensed as a factory built housing set up contractor, that individual must subcontract the connection services to individuals who are licensed by the division to perform those specific functions under Title 58, Chapter 55, Utah Construction Trades Licensing Act.

[~~(6)~~] (7) "HUD code" means the Federal Manufactured Housing Construction and Safety Standards Act.

[~~(7)~~] (8) "Installation standard" means the standard adopted and published by the National Conference of States on Building Codes and Standards (NCSBCS), for the installation of manufactured homes titled "The Standard for Manufactured Home Installations," the accompanying manufacturer's instructions for the installation of the manufactured home, or such equivalent standard as adopted by rule.

[~~(8)~~] (9) "Local regulator" means each political subdivision of the state which is empowered to engage in the regulation of construction, alteration, remodeling, building, repair, and other activities subject to the codes adopted pursuant to this chapter.

[~~(9)~~] (10) "Manufactured home" means a transportable factory built housing unit constructed on or after June 15, 1976, according to the Federal Home Construction and Safety Standards Act of 1974 (HUD Code), in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or when erected on site, is 400 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems. All manufactured homes constructed on or after June 15,

1976, shall be identifiable by the manufacturer's data plate bearing the date the unit was manufactured and a HUD label attached to the exterior of the home certifying the home was manufactured to HUD standards.

(11) "Mobile home" means a transportable factory built housing unit built prior to June 15, 1976, in accordance with a state mobile home code which existed prior to the Federal Manufactured Housing and Safety Standards Act (HUD Code).

(12) "Modular unit" means a structure built from sections which are manufactured in accordance with the construction standards adopted pursuant to Section 58-56-4 and transported to a building site, the purpose of which is for human habitation, occupancy, or use.

(13) "NEC" means the National Electrical Code.

(14) "Opinion" means a written, nonbinding, and advisory statement issued by the commission concerning an interpretation of the meaning of the codes or the application of the codes in a specific circumstance issued in response to a specific request by a party to the issue.

(15) "State regulator" means an agency of the state which is empowered to engage in the regulation of construction, alteration, remodeling, building, repair, and other activities subject to the codes adopted pursuant to this chapter.

(16) "Unlawful conduct" is as defined in Subsection 58-1-501(1) and includes:

(a) engaging in the sale of factory built housing without being registered with the division as a dealer, unless the sale is exempt under Section 58-56-16; and

(b) selling factory built housing within the state as a dealer without collecting and remitting to the division the fee required by Section 58-56-17.

(17) "Unprofessional conduct" is as defined in Subsection 58-1-501(2) and includes:

(a) any nondelivery of goods or services by a registered dealer which constitutes a breach of contract by the dealer;

(b) the failure of a registered dealer to pay a subcontractor or supplier any amounts to which that subcontractor or supplier is legally entitled; and

(c) any other activity which is defined as unprofessional conduct by division rule in accordance with the provisions of Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

Section 100. Section **58-59-303** is amended to read:

58-59-303. Term of license -- Expiration -- Renewal.

(1) The division shall issue each license under this chapter in accordance with a one-year renewal cycle established by rule. The division may by rule extend or shorten a renewal period by as much as six months to stagger the renewal cycles it administers.

(2) At the time of renewal the licensee shall show satisfactory documentation in accordance with Section [~~58-59-303~~] 58-59-306 of each of the following renewal requirements:

(a) current evidence of financial responsibility; and

(b) current evidence of financial responsibility in all self-funded insurance programs.

(3) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

Section 101. Section **58-67-102** is amended to read:

58-67-102. Definitions.

In addition to the definitions in Section 58-1-102, as used in this chapter:

[~~(2)~~] (1) "ACGME" means the Accreditation Council for Graduate Medical Education of the American Medical Association.

[~~(1)~~] (2) "Administrative penalty" means a monetary fine imposed by the division for acts or omissions determined to constitute unprofessional or unlawful conduct, as a result of an adjudicative proceeding conducted in accordance with Title 63, Chapter 46b, Administrative Procedures Act.

(3) "Board" means the Physicians Licensing Board created in Section 58-67-201.

(4) "Diagnose" means:

(a) to examine in any manner another person, parts of a person's body, substances, fluids, or materials excreted, taken, or removed from a person's body, or produced by a person's body, to determine the source, nature, kind, or extent of a disease or other physical or mental condition;

(b) to attempt to conduct an examination or determination described under Subsection (4)(a);

(c) to hold oneself out as making or to represent that one is making an examination or determination as described in Subsection (4)(a); or

(d) to make an examination or determination as described in Subsection (4)(a) upon or from

information supplied directly or indirectly by another person, whether or not in the presence of the person making or attempting the diagnosis or examination.

(5) "LCME" means the Liaison Committee on Medical Education of the American Medical Association.

(6) "Medical assistant" means an unlicensed individual working under the direct and immediate supervision of a licensed physician and surgeon and engaged in specific tasks assigned by the licensed physician and surgeon in accordance with the standards and ethics of the profession.

(7) "Physician" means both physicians and surgeons licensed under Section 58-67-301, Utah Medical Practice Act, and osteopathic physicians and surgeons licensed under Section 58-68-301, Utah Osteopathic Medical Practice Act.

(8) "Practice of medicine" means:

(a) to diagnose, treat, correct, administer anesthesia, or prescribe for any human disease, ailment, injury, infirmity, deformity, pain or other condition, physical or mental, real or imaginary, or to attempt to do so, by any means or instrumentality, and by an individual in Utah or outside the state upon or for any human within the state, except that conduct described in this Subsection (8)(a) that is performed by a person legally and in accordance with a license issued under another chapter of this title does not constitute the practice of medicine;

(b) when a person not licensed as a physician directs a licensee under this chapter to withhold or alter the health care services that the licensee has ordered, but practice of medicine does not include any conduct under Subsection 58-67-501(2);

(c) to maintain an office or place of business for the purpose of doing any of the acts described in Subsection (8)(a) whether or not for compensation; or

(d) to use, in the conduct of any occupation or profession pertaining to the diagnosis or treatment of human diseases or conditions in any printed material, stationery, letterhead, envelopes, signs, or advertisements, the designation "doctor," "doctor of medicine," "physician," "surgeon," "physician and surgeon," "Dr.," "M.D.," or any combination of these designations in any manner which might cause a reasonable person to believe the individual using the designation is a licensed physician and surgeon, and if the party using the designation is not a licensed physician and surgeon,

the designation must additionally contain the description of the branch of the healing arts for which the person has a license.

(9) "Prescription drug or device" means:

(a) a drug or device which, under federal law, is required to be labeled with either of the following statements or their equivalent:

(i) "CAUTION: Federal law prohibits dispensing without prescription"; or

(ii) "CAUTION: Federal law restricts this drug to use by or on the order of a licensed veterinarian"; or

(b) a drug or device that is required by any applicable federal or state law or rule to be dispensed on prescription only or is restricted to use by practitioners only.

(10) "SPEX" means the Special Purpose Examination of the Federation of State Medical Boards.

(11) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-67-501.

(12) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-67-502, and as may be further defined by division rule.

Section 102. Section **58-68-102** is amended to read:

58-68-102. Definitions.

In addition to the definitions in Section 58-1-102, as used in this chapter:

[~~(2)~~] (1) "ACGME" means the Accreditation Council for Graduate Medical Education of the American Medical Association.

[~~(1)~~] (2) "Administrative penalty" means a monetary fine imposed by the division for acts or omissions determined to constitute unprofessional or unlawful conduct, as a result of an adjudicative proceeding conducted in accordance with Title 63, Chapter 46b, Administrative Procedures Act.

(3) "AOA" means the American Osteopathic Association.

(4) "Board" means the Osteopathic Physicians Licensing Board created in Section 58-68-201.

(5) "Diagnose" means:

(a) to examine in any manner another person, parts of a person's body, substances, fluids, or materials excreted, taken, or removed from a person's body, or produced by a person's body, to

determine the source, nature, kind, or extent of a disease or other physical or mental condition;

(b) to attempt to conduct an examination or determination described under Subsection (5)(a);

(c) to hold oneself out as making or to represent that one is making an examination or determination as described in Subsection (5)(a); or

(d) to make an examination or determination as described in Subsection (5)(a) upon or from information supplied directly or indirectly by another person, whether or not in the presence of the person making or attempting the diagnosis or examination.

(6) "Medical assistant" means an unlicensed individual working under the direct and immediate supervision of a licensed osteopathic physician and surgeon and engaged in specific tasks assigned by the licensed osteopathic physician and surgeon in accordance with the standards and ethics of the profession.

(7) "Physician" means both physicians and surgeons licensed under Section 58-67-301, Utah Medical Practice Act, and osteopathic physicians and surgeons licensed under Section 58-68-301, Utah Osteopathic Medical Practice Act.

(8) "Practice of osteopathic medicine" means:

(a) to diagnose, treat, correct, administer anesthesia, or prescribe for any human disease, ailment, injury, infirmity, deformity, pain, or other condition, physical or mental, real or imaginary, or to attempt to do so, by any means or instrumentality, which in whole or in part is based upon emphasis of the importance of the musculoskeletal system and manipulative therapy in the maintenance and restoration of health, by an individual in Utah or outside of the state upon or for any human within the state, except that conduct described in this Subsection (8)(a) that is performed by a person legally and in accordance with a license issued under another chapter of this title does not constitute the practice of medicine;

(b) when a person not licensed as a physician directs a licensee under this chapter to withhold or alter the health care services that the licensee has ordered, but practice of medicine does not include any conduct under Subsection 58-68-501(2);

(c) to maintain an office or place of business for the purpose of doing any of the acts described in Subsection (8)(a) whether or not for compensation; or

(d) to use, in the conduct of any occupation or profession pertaining to the diagnosis or treatment of human diseases or conditions, in any printed material, stationery, letterhead, envelopes, signs, or advertisements, the designation "doctor," "doctor of osteopathic medicine," "osteopathic physician," "osteopathic surgeon," "osteopathic physician and surgeon," "Dr.," "D.O.," or any combination of these designations in any manner which might cause a reasonable person to believe the individual using the designation is a licensed osteopathic physician, and if the party using the designation is not a licensed osteopathic physician, the designation must additionally contain the description of the branch of the healing arts for which the person has a license.

(9) "Prescription drug or device" means:

(a) a drug or device which, under federal law, is required to be labeled with either of the following statements or their equivalent:

(i) "CAUTION: Federal law prohibits dispensing without prescription"; or

(ii) "CAUTION: Federal law restricts this drug to use by or on the order of a licensed veterinarian"; or

(b) a drug or device that is required by any applicable federal or state law or rule to be dispensed on prescription only or is restricted to use by practitioners only.

(10) "SPEX" means the Special Purpose Examination of the Federation of State Medical Boards.

(11) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-68-501.

(12) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-68-502 and as may be further defined by division rule.

Section 103. Section **59-2-601** is amended to read:

59-2-601. Definitions.

As used in this part:

(1) "Manufactured home" means a transportable factory built housing unit constructed on or after June 15, 1976, according to the Federal Home Construction and Safety Standards Act of 1974 (HUD Code), in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or when erected on site, is 400 or more square feet, and

which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems.

(2) "Mobile home" means a transportable factory built housing unit built prior to June 15, 1976, in accordance with a state mobile home code which existed prior to the Federal Manufactured Housing and Safety Standards Act (HUD Code).

(3) "Permanently affixed" means anchored to, and supported by, a permanent foundation or installed in accordance with an installation standard as defined in Subsection 58-56-3[~~(7)~~](8).

Section 104. Section **62A-7-109** is amended to read:

62A-7-109. Youth Parole Authority -- Expenses -- Responsibilities -- Procedures.

(1) There is created within the division a Youth Parole Authority.

(2) The authority is composed of ten part-time members and five pro tempore members who are residents of this state. No more than three pro tempore members may serve on the authority at any one time. Throughout this section, the term "member" shall refer to both part-time and pro tempore members of the Youth Parole Authority.

(3) (a) Except as required by Subsection (3)(b), members shall be appointed to four-year terms by the governor with the advice and consent of the Senate.

(b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of authority members are staggered so that approximately half of the authority is appointed every two years.

(4) Each member shall have training or experience in social work, law, juvenile or criminal justice, or related behavioral sciences.

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

(6) During the tenure of his appointment, a member may not:

(a) be an employee of the department, other than in his capacity as a member of the authority;

(b) hold any public office;

(c) hold any position in the state's juvenile justice system; or

(d) be an employee, officer, advisor, policy board member, or subcontractor of any juvenile justice agency or its contractor.

(7) In extraordinary circumstances or when a regular board member is absent or otherwise unavailable, the chair may assign a pro tempore member to act in [~~their~~] the absent board member's place.

(8) (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.

(9) The authority shall determine appropriate parole dates for youth offenders, based on guidelines established by the board. The board shall review and update policy guidelines annually.

(10) Youth offenders may be paroled to their own homes, to a residential community-based program, to a nonresidential community-based treatment program, to an approved independent living setting, or to other appropriate residences, but shall remain on parole until parole is terminated by the authority.

(11) The division's case management staff shall implement parole release plans and shall supervise youth offenders while on parole.

(12) The division shall permit the authority to have reasonable access to youth offenders in secure facilities and shall furnish all pertinent data requested by the authority in matters of parole, revocation, and termination.

Section 105. Section **62A-12-282.1** is amended to read:

62A-12-282.1. Residential and inpatient settings -- Commitment proceeding -- Child in physical custody of local mental health authority.

(1) A child may receive services from a local mental health authority in an inpatient or residential setting only after a commitment proceeding, for the purpose of transferring physical custody, has been conducted in accordance with the requirements of this section.

(2) That commitment proceeding shall be initiated by a petition for commitment, and shall be a careful, diagnostic inquiry, conducted by a neutral and detached fact finder, pursuant to the

procedures and requirements of this section. If the findings described in Subsection (4) exist, the proceeding shall result in the transfer of physical custody to the appropriate local mental health authority, and the child may be placed in an inpatient or residential setting.

(3) The neutral and detached fact finder who conducts the inquiry:

(a) shall be a designated examiner, as defined in Subsection 62A-12-202(3); and

(b) may not profit, financially or otherwise, from the commitment or physical placement of the child in that setting.

(4) Upon determination by the fact finder that the following circumstances clearly exist, he may order that the child be committed to the physical custody of a local mental health authority:

(a) the child has a mental illness, as defined in Subsection 62A-12-202(8);

(b) the child demonstrates a risk of harm to himself or others;

(c) the child is experiencing significant impairment in his ability to perform socially;

(d) the child will benefit from care and treatment by the local mental health authority; and

(e) there is no appropriate less-restrictive alternative.

(5) (a) The commitment proceeding before the neutral and detached fact finder shall be conducted in as informal manner as possible, and in a physical setting that is not likely to have a harmful effect on the child.

(b) The child, the child's parent or legal guardian, the person who submitted the petition for commitment, and a representative of the appropriate local mental health authority shall all receive informal notice of the date and time of the proceeding. Those parties shall also be afforded an opportunity to appear and to address the petition for commitment.

(c) The neutral and detached fact finder may, in his discretion, receive the testimony of any other person.

(d) The fact finder may allow the child to waive his right to be present at the commitment proceeding, for good cause shown. If that right is waived, the purpose of the waiver shall be made a matter of record at the proceeding.

(e) At the time of the commitment proceeding, the appropriate local mental health authority, its designee, or the psychiatrist who has been in charge of the child's care prior to the commitment

proceeding, shall provide the neutral and detached fact finder with the following information, as it relates to the period of current admission:

(i) the petition for commitment;

(ii) the admission notes;

(iii) the child's diagnosis;

(iv) physicians' orders;

(v) progress notes;

(vi) nursing notes; and

(vii) medication records.

(f) The information described in Subsection (5)(e) shall also be provided to the child's parent or legal guardian upon written request.

(g) (i) The neutral and detached fact finder's decision of commitment shall state the duration of the commitment. Any commitment to the physical custody of a local mental health authority may not exceed 180 days. Prior to expiration of the commitment, and if further commitment is sought, a hearing shall be conducted in the same manner as the initial commitment proceeding, in accordance with the requirements of this section.

(ii) When a decision for commitment is made, the neutral and detached fact finder shall inform

the child and his parent or legal guardian of that decision, and of the reasons for ordering commitment at the conclusion of the hearing, and also in writing.

(iii) The neutral and detached fact finder shall state in writing the basis of his decision, with specific reference to each of the criteria described in Subsection (4), as a matter of record.

(6) Absent the procedures and findings required by this section, a child may be temporarily committed to the physical custody of a local mental health authority only in accordance with the emergency procedures described in Subsection 62A-12-232(1) or (2). A child temporarily committed in accordance with those emergency procedures may be held for a maximum of 72 hours, excluding Saturdays, Sundays, and legal holidays. At the expiration of that time period, the child shall be released unless the procedures and findings required by this section have been satisfied.

(7) A local mental health authority shall have physical custody of each child committed to it

under this section. The parent or legal guardian of a child committed to the physical custody of a local mental health authority under this section, retains legal custody of the child, unless legal custody has been otherwise modified by a court of competent jurisdiction. In cases when the Division of Child and Family Services or the Division of Youth Corrections has legal custody of a child, that division shall retain legal custody for purposes of this part.

(8) The cost of caring for and maintaining a child in the physical custody of a local mental health authority shall be assessed to and paid by the child's parents, according to their ability to pay. For purposes of this section, the Division of Child and Family Services or the Division of Youth Corrections shall be financially responsible, in addition to the child's parents, if the child is in the legal custody of either of those divisions at the time the child is committed to the physical custody of a local mental health authority under this section, unless Medicaid regulation or contract provisions specify otherwise. The Office of Recovery Services shall assist those divisions in collecting the costs assessed pursuant to this section.

(9) Whenever application is made for commitment of a minor to a local mental health authority under any provision of this section by a person other than the child's parent or guardian, the local mental health authority or its designee shall notify the child's parent or guardian. The parents shall be provided sufficient time to prepare and appear at any scheduled proceeding.

(10) (a) Each child committed pursuant to this section is entitled to an appeal within 30 days after any order for commitment. The appeal may be brought on the child's own petition, or that of his parent or legal guardian, to the juvenile court in the district where the child resides or is currently physically located. With regard to a child in the custody of the Division of Child and Family Services or the Division of Youth Corrections, the attorney general's office shall handle the appeal, otherwise the appropriate county attorney's office is responsible for appeals brought pursuant to this Subsection (10)(a).

(b) Upon receipt of the petition for appeal, the court shall appoint a designated examiner previously unrelated to the case, to conduct an examination of the child in accordance with the criteria described in Subsection (4), and file a written report with the court. The court shall then conduct an appeal hearing to determine whether the findings described in Subsection (4) exist by clear

and convincing evidence.

(c) Prior to the time of the appeal hearing, the appropriate local mental health authority, its designee, or the mental health professional who has been in charge of the child's care prior to commitment, shall provide the court and the designated examiner for the appeal hearing with the following information, as it relates to the period of current admission:

(i) the original petition for commitment;

(ii) admission notes;

(iii) diagnosis;

(iv) physicians' orders;

(v) progress notes;

(vi) nursing notes; and

(vii) medication records.

(d) Both the neutral and detached fact finder and the designated examiner appointed for the appeal hearing shall be provided with an opportunity to review the most current information described in Subsection (10)(c) prior to the appeal hearing.

(e) The child, his parent or legal guardian, the person who submitted the original petition for commitment, and a representative of the appropriate local mental health authority shall be notified by the court of the date and time of the appeal hearing. Those persons shall be afforded an opportunity to appear at the hearing. In reaching its decision, the court shall review the record and findings of the neutral and detached fact finder, the report of the designated examiner appointed pursuant to Subsection (10)(b), and may, in its discretion, allow or require the testimony of the neutral and detached fact finder, the designated examiner, the child, the child's parent or legal guardian, the person who brought the initial petition for commitment, or any other person whose testimony the court deems relevant. The court may allow the child to waive his right to appear at the appeal hearing, for good cause shown. If that waiver is granted, the purpose shall be made a part of the court's record.

(11) Each local mental health authority has an affirmative duty to conduct periodic evaluations of the mental health and treatment progress of every child committed to its physical

custody under this section, and to release any child who has sufficiently improved so that the criteria justifying commitment no longer exist.

(12) (a) A local mental health authority or its designee, in conjunction with the child's current treating mental health professional may release an improved child to a less restrictive environment, as they determine appropriate. Whenever the local mental health authority or its designee, and the child's current treating mental health professional, determine that the conditions justifying commitment no longer exist, the child shall be discharged and released to his parent or legal guardian. With regard to a child who is in the physical custody of the State Hospital, the treating psychiatrist or clinical director of the State Hospital shall be the child's current treating mental health professional.

(b) A local mental health authority or its designee, in conjunction with the child's current treating mental health professional, is authorized to issue a written order for the immediate placement of a child not previously released from an order of commitment into a more restrictive environment, if the local authority or its designee and the child's current treating mental health professional has reason to believe that the less restrictive environment in which the child has been placed is exacerbating his mental illness, or increasing the risk of harm to himself or others.

(c) The written order described in Subsection (12)(b) shall include the reasons for placement in a more restrictive environment and shall authorize any peace officer to take the child into physical custody and transport him to a facility designated by the appropriate local mental health authority in conjunction with the child's current treating mental health professional. Prior to admission to the more restrictive environment, copies of the order shall be personally delivered to the child, his parent or legal guardian, the administrator of the more restrictive environment, or his designee, and the child's former treatment provider or facility.

(d) If the child has been in a less restrictive environment for more than 30 days and is aggrieved by the change to a more restrictive environment, the child or his representative may request a review within 30 days of the change, by a neutral and detached fact finder as described in Subsection (3). The fact finder shall determine whether:

(i) the less restrictive environment in which the child has been placed is exacerbating his mental illness, or increasing the risk of harm to himself or others; or

(ii) the less restrictive environment in which the child has been placed is not exacerbating his mental illness, or increasing the risk of harm to himself or others, in which case the fact finder shall designate that the child remain in the less restrictive environment.

(e) Nothing in this section prevents a local mental health authority or its designee, in conjunction with the child's current mental health professional, from discharging a child from commitment or from placing a child in an environment that is less restrictive than that designated by the neutral and detached fact finder.

(13) Each local mental health authority or its designee, in conjunction with the child's current treating mental health professional shall discharge any child who, in the opinion of that local authority,

or its designee, and the child's current treating mental health professional, no longer meets the criteria specified in Subsection (4), except as provided by Section 78-3a-121. The local authority and the mental health professional shall assure that any further supportive services required to meet the child's needs upon release will be provided.

(14) Even though a child has been committed to the physical custody of a local mental health authority pursuant to this section, the child is still entitled to additional due process proceedings, in accordance with Section 62A-12-283.1, before any treatment which may affect a constitutionally protected liberty or privacy interest is administered. Those treatments include, but are not limited to, antipsychotic medication, electroshock therapy, and psychosurgery.

Section 106. Section **63-25a-501** is amended to read:

63-25a-501. Definitions.

As used in this part:

(1) "Commission" means the Commission on Criminal and Juvenile Justice.

(2) "Executive director" means the executive director of the Commission on Criminal and Juvenile Justice.

(3) "Local criminal justice agency" means each county and municipal law enforcement agency.

(4) "State criminal justice agency" means the Department of Public Safety, Department of Corrections, the Division of Youth Corrections, [~~and~~] or the Administrative Office of the Courts.

Section 107. Section **63-55-209** is amended to read:

63-55-209. Repeal dates, Title 9.

(1) Title 9, Chapter 1, Part 8, Commission on National and Community Service Act, is repealed July 1, 2004.

[~~(2) Title 9, Chapter 2, Part 3, Small Business Advisory Council, is repealed July 1, 1999.~~]

[~~(3)~~] (2) Title 9, Chapter 2, Part 4, Enterprise Zone Act, is repealed July 1, 2008.

[~~(5)~~] (3) Section 9-2-1208 regarding waste tire recycling loans is repealed July 1, 2000.

[~~(6)~~] (4) Title 9, Chapter 2, Part 16, Recycling Market Development Zone Act, is repealed July 1, 2000, and Sections 59-7-610 and 59-10-108.7 are repealed for tax years beginning on or after January 1, 2001.

[~~(7)~~] (5) Title 9, Chapter 3, Part 3, Heber Valley Historic Railroad Authority, is repealed July 1, 2009.

[~~(8) Title 9, Chapter 4, Part 4, Disaster Relief, is repealed July 1, 1999.~~]

[~~(9)~~] (6) Title 9, Chapter 4, Part 9, Utah Housing Finance Agency Act, is repealed July 1, 2006.

[~~(4)~~] (7) Title 9, Chapter 13, Utah Technology and Small Business Finance Act, is repealed July 1, 2002.

Section 108. Section **63-55-254** is amended to read:

63-55-254. Repeal dates, Title 54.

[~~Section 54-3-8.1 is repealed December 31, 1999.~~]

Section 109. Section **63-55-262** is amended to read:

63-55-262. Repeal dates, Title 62A.

[~~Title 62A, Chapter 3, Part 4, Reverse Mortgage Services, is repealed July 1, 1998.~~]

Section 110. Section **63-55-263** is amended to read:

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

(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.

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

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

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

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

(6) Title 63, Chapter 88, Navajo Trust Fund, is repealed July 1, 2000.

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

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

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

(10) The Utah Health Policy Commission, created in Title 63C, Chapter 3, is repealed July 1, 2001.

[~~(11) The Utah Pioneer Sesquicentennial Celebration Coordinating Council created in Section 63C-5-102 is repealed June 30, 1998.~~]

Section 111. Section **63-55b-163** is amended to read:

63-55b-163. Repeal dates -- Title 63, Title 63D.

[~~(1)~~] Sections 63-63b-101 and 63-63b-102 are repealed on July 1, 2002.

[~~(2) Section 63D-1-301.6 is repealed January 1, 1999.~~]

Section 112. Section **63-75-7** is amended to read:

63-75-7. Evaluation of programs -- Report to legislative interim committee.

(1) At the end of each fiscal year, a final report shall be submitted to the council summarizing the outcome of each project under this chapter.

(2) (a) The council may conduct an independent evaluation of any or all of the projects to assess the status of services provided and identified outcomes.

(b) The council shall prepare and deliver a report on the program to the Legislature's

Education, Health[~~,~~] and Human Services, and Judiciary Interim Committees prior to each annual general session.

(c) The report shall include a recommendation by the council as to whether the program should be terminated, continued, or expanded.

Section 113. Section **63A-9-801** is amended to read:

63A-9-801. State surplus property program -- Definitions -- Administration.

(1) As used in this section:

(a) "Agency" means:

(i) the Utah Departments of Administrative Services, Agriculture, Alcoholic Beverage Control, Commerce, Community and Economic Development, Corrections, Workforce Services, Health, Human Resource Management, Human Services, Insurance, Natural Resources, Public Safety, and Transportation and the Labor Commission;

(ii) the Utah Offices of the Auditor, Attorney General, Court Administrator, Crime Victim Reparations, Rehabilitation, and Treasurer;

(iii) the Public Service Commission and State Tax Commission;

(iv) the State Boards of Education, Pardons and Parole, and Regents;

(v) the Career Service Review Board [~~and the Citizens' Council on Alcoholic Beverage Control~~];

(vi) other state agencies designated by the governor;

(vii) the legislative branch, the judicial branch, and the State Board of Regents; and

(viii) an institution of higher education, its president, and its board of trustees for purposes of Section 63A-9-802.

(b) "Division" means the Division of Fleet Operations.

(c) "Information technology equipment" means any equipment that is designed to electronically manipulate, store, or transfer any form of data.

(d) "Inventory property" means property in the possession of the division that is available for purchase by an agency or the public.

(e) "Judicial district" means the geographic districts established by Section 78-1-2.1.

(f) (i) "Surplus property" means property purchased by, seized by, or donated to, an agency that the agency wishes to dispose of.

(ii) "Surplus property" does not mean real property.

(g) "Transfer" means transfer of surplus property without cash consideration.

(2) (a) The division shall make rules establishing a state surplus property program that meets the requirements of this chapter by following the procedures and requirements of Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(b) Those rules shall include:

(i) a requirement prohibiting the transfer of surplus property from one agency to another agency without written approval from the division;

(ii) procedures and requirements governing division administration requirements that an agency must follow;

(iii) requirements governing purchase priorities;

(iv) requirements governing accounting, reimbursement, and payment procedures;

(v) procedures for collecting bad debts;

(vi) requirements and procedures for disposing of firearms;

(vii) the elements of the rates or other charges assessed by the division for services and handling;

(viii) procedures governing the timing and location of public sales of inventory property; and

(ix) procedures governing the transfer of information technology equipment by state agencies directly to public schools.

(c) The division shall report all transfers of information technology equipment by state agencies to public schools to the state's Information Technology Commission and to the Legislative Interim Education Committee at the end of each fiscal year.

(3) In creating and administering the program, the division shall:

(a) when conditions, inventory, and demand permit:

(i) establish facilities to store inventory property at geographically dispersed locations throughout the state; and

(ii) hold public sales of property at geographically dispersed locations throughout the state;

(b) establish, after consultation with the agency requesting the sale of surplus property, the price at which the surplus property shall be sold; and

(c) transfer proceeds arising from the sale of state surplus property to the agency requesting the sale in accordance with the Budgetary Procedures Act, less an amount established by the division by rule to pay the costs of administering the surplus property program.

(4) Unless specifically exempted from this chapter by explicit reference to this chapter, each state agency shall dispose of and acquire surplus property only by participating in the division's program.

Section 114. Section **63C-8-101** is amended to read:

63C-8-101. Definitions.

As used in this chapter:

[~~(2)~~] (1) "Accredited clinical education program" means a clinical education program for a health care profession that is accredited by the Accreditation Council on Graduate Medical Education.

[~~(1)~~] (2) "Accredited clinical training program" means a clinical training program that is accredited by an entity recognized within medical education circles as an accrediting body for medical education, advanced practice nursing education, physician assistance education, or doctor of pharmacy education.

(3) "Council" means the Medical Education Council created under Section 63C-8-103.

(4) "Health Care Financing Administration" means the Health Care Financing Administration within the United States Department of Health and Human Services.

(5) "Health care professionals in training" means medical students and residents, advance practice nursing students, physician assistant students, and doctor of pharmacy students.

(6) "Program" means the Medical Education Program created under Section 63C-8-102.

Section 115. Section **76-8-508** is amended to read:

76-8-508. Tampering with witness -- Retaliation against witness or informant -- Bribery -- Communicating a threat.

(1) A person is guilty of a third degree felony if, believing that an official proceeding or

investigation is pending or about to be instituted, he attempts to induce or otherwise cause a person to:

(a) testify or inform falsely;

(b) withhold any testimony, information, document, or item;

(c) elude legal process summoning him to provide evidence; or

(d) absent himself from any proceeding or investigation to which he has been summoned.

(2) A person is guilty of a third degree felony if he:

(a) commits any unlawful act in retaliation for anything done by another as a witness or informant;

(b) solicits, accepts, or agrees to accept any benefit in consideration of his doing any of the acts specified under Subsection (1); or

(c) communicates to a person a threat that a reasonable person would believe to be a threat to do bodily injury to the person, because of any act performed or to be performed by the person in his capacity as a witness or informant in an official proceeding or investigation.

Section 116. Section **76-9-704** is amended to read:

76-9-704. Abuse or desecration of a dead human body -- Penalties.

(1) For purposes of this section, "dead human body" includes any part of a human body in any stage of decomposition, including ancient human remains.

(2) A person is guilty of abuse or desecration of a dead human body if the person intentionally and unlawfully:

(a) fails to report the finding of a dead human body to a local law enforcement agency;

(b) disturbs, moves, removes, conceals, or destroys a dead human body or any part of it;

(c) disinters a buried or otherwise interred dead human body, without authority of a court order;

(d) dismembers a dead human body to any extent, or damages or detaches any part or portion of a dead human body; or

(e) commits, or attempts to commit upon any dead human body sexual penetration or intercourse, object rape, sodomy, or object sodomy, as these acts are described in [~~Title 76,~~] Chapter

5, Offenses Against the Person.

(3) A person does not violate this section if when that person directs or carries out procedures regarding a dead human body, that person complies with:

[~~(f)~~] (a) Title 9, Chapter 8, Part 3, Antiquities[~~.~~];

[~~(c)~~] (b) Title 26, Chapter 4, Utah Medical Examiner Act;

[~~(b)~~] (c) Title 26, Chapter 28, Uniform Anatomical Gift Act;

[~~(e)~~] (d) Title 53B, Chapter 17, Part 3, Use of Dead Bodies for Medical Purposes; [~~or~~]

[~~(a)~~] (e) Title 58, Chapter 9, Funeral Services Licensing Act; or

[~~(d)~~] (f) Title 58, Chapter 67, Utah Medical Practice Act, which concerns licensing to practice medicine[~~;~~].

(4) (a) Failure to report the finding of a dead human body as required under Subsection (2)(a) is a class B misdemeanor.

(b) Abuse or desecration of a dead human body as described in Subsections (2)(b) through (e) is a third degree felony.

Section 117. Section **76-10-105.1** is amended to read:

76-10-105.1. Requirement of direct, face-to-face sale of tobacco products.

(1) As used in this section:

(a) (i) "Cigarette" means any product which contains nicotine, is intended to be burned under ordinary conditions of use, and consists of:

(A) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or

(B) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in Subsection (1)(a)(i).

(ii) "Cigarette" does not include a standard 60 carton case.

(b) "Cigarette tobacco" means any product that consists of loose tobacco that contains or delivers nicotine and is intended for use by consumers in a cigarette. Unless otherwise stated, the requirements pertaining to cigarettes shall also apply to cigarette tobacco.

(c) "Retailer" means any person who sells cigarettes or smokeless tobacco to individuals for

personal consumption or who operates a facility where vending machines or self-service displays are permitted under this section.

(d) "Self-service display" means any display of cigarettes or smokeless tobacco products to which the public has access without the intervention of a retail employee.

(e) "Smokeless tobacco" means any product that consists of cut, ground, powdered, or leaf tobacco that contains nicotine and that is intended to be placed in the oral cavity. "Smokeless tobacco" does not include multi-container packs of smokeless tobacco.

(2) (a) Except as provided in Subsection (3), a retailer may sell cigarettes and smokeless tobacco only in a direct, face-to-face exchange between the retailer and the consumer. Examples of methods that are not permitted include vending machines and self-service displays.

(b) Subsection (2)(a) does not prohibit the use or display of locked cabinets containing cigarettes or smokeless tobacco if the locked cabinets are only accessible to the retailer or its employees.

(3) The following sales are permitted as exceptions to Subsection (2):

(a) mail-order sales, excluding mail-order redemption of coupons and distribution of free samples through the mail; and

(b) vending machines, including vending machines that sell packaged, single cigarettes, and self-service displays that are located in a separate and defined area within a facility where the retailer ensures that no person younger than [~~under~~] 19 years of age is present, or permitted to enter, at any time, unless accompanied by a parent or legal guardian.

(4) Any ordinance, regulation, or rule adopted by the governing body of a political subdivision or state agency that affects the sale, placement, or display of cigarettes or smokeless tobacco that is not essentially identical to the provisions of this section and Section 76-10-102 is superceded.

(5) A parent or legal guardian who accompanies a person younger than 19 years of age into an area described in Subsection (3)(b) and permits the person younger than 19 years of age to purchase or otherwise take a cigar, cigarette, or tobacco in any form is guilty of furnishing tobacco as provided for in Section 76-10-104 and the penalties provided for in that section.

(6) Violation of Subsection (2) or (3) is a:

(a) class C misdemeanor on the first offense;

(b) class B misdemeanor on the second offense; and

(c) class A misdemeanor on the third and all subsequent offenses.

Section 118. Section **76-10-803** is amended to read:

76-10-803. "Public nuisance" defined.

(1) A public nuisance is a crime against the order and economy of the state and consists in unlawfully doing any act or omitting to perform any duty, which act or omission:

(a) annoys, injures, or endangers the comfort, repose, health, or safety of three or more persons;

(b) offends public decency;

(c) unlawfully interferes with, obstructs, or tends to obstruct, or renders dangerous for passage, any lake, stream, canal, or basin, or any public park, square, street, or highway;

(d) is a nuisance as defined in Section 78-38-9; or

(e) in any way renders three or more persons insecure in life or the use of property.

(2) An act which affects three or more persons in any of the ways specified in this section is still a nuisance regardless of the extent [~~of~~] to which the annoyance or damage inflicted on individuals is unequal.

Section 119. Section **76-10-1305** is amended to read:

76-10-1305. Exploiting prostitution.

(1) A person is guilty of exploiting prostitution if he:

(a) procures an inmate for a house of prostitution or place in a house of prostitution for one who would be an inmate;

(b) encourages, induces, or otherwise purposely causes another to become or remain a prostitute;

(c) transports a person into or within this state with a purpose to promote that person's engaging in prostitution or procuring or paying for transportation with that purpose;

(d) not being a child or legal [~~defendant~~] dependent of a prostitute, shares the proceeds of

prostitution with a prostitute pursuant to their understanding that he is to share therein; or

(e) owns, controls, manages, supervises, or otherwise keeps, alone or in association with another, a house of prostitution or a prostitution business.

(2) Exploiting prostitution is a felony of the third degree.

Section 120. Section **76-10-1902** is amended to read:

76-10-1902. Definitions.

As used in this part:

(1) "Bank" means each agent, agency, or office in this state of any person doing business in any one of the following capacities:

(a) a commercial bank or trust company organized under the laws of this state or of the United States;

(b) a private bank;

(c) a savings and loan association or a building and loan association organized under the laws of this state or of the United States;

(d) an insured institution as defined in Section 401 of the National Housing Act;

(e) a savings bank, industrial bank, or other thrift institution;

(f) a credit union organized under the laws of this state or of the United States; or

(g) any other organization chartered under Title 7, Financial Institutions, and subject to the supervisory authority set forth in that title.

(2) "Conducts" includes initiating, concluding, or participating in initiating or concluding a transaction.

(3) (a) "Currency" means the coin and paper money of the United States or of any other country that is designated as legal tender, that circulates, and is customarily used and accepted as a medium of exchange in the country of issuance.

(b) "Currency" includes United States silver certificates, United States notes, Federal Reserve notes, and foreign bank notes customarily used and accepted as a medium of exchange in a foreign country.

(4) "Financial institution" means any agent, agency, branch, or office within this state of any

person doing business, whether or not on a regular basis or as an organized business concern, in one or more of the following capacities:

(a) a bank, except bank credit card systems;

(b) a broker or dealer in securities;

(c) a currency dealer or exchanger, including a person engaged in the business of check cashing;

(d) an issuer, seller, or redeemer of travelers checks or money orders, except as a selling agent exclusively who does not sell more than $150,000 of the instruments within any 30-day period;

(e) a licensed transmitter of funds or other person engaged in the business of transmitting funds;

(f) a telegraph company;

(g) a person subject to supervision by any state or federal supervisory authority; or

(h) the United States Postal Service regarding the sale of money orders.

(5) "Financial transaction" means a transaction:

(a) involving the movement of funds by wire or other means or involving one or more monetary instruments, which in any way or degree affects commerce; or

(b) involving the use of a financial institution that is engaged in, or its activities affect commerce in any way or degree.

(6) The phrase "knows that the property involved represents the proceeds of some form of unlawful activity" means that the person knows or it was represented to the person that the property involved represents proceeds from a form of activity, although the person does not necessarily know which form of activity, that constitutes a crime under state or federal law, regardless of whether or not the activity is specified in Subsection [~~(13)~~] (12).

(7) "Monetary instruments" means coins or currency of the United States or of any other country, travelers checks, personal checks, bank checks, money orders, and investment securities or negotiable instruments in bearer form or in other form so that title passes upon delivery.

(8) "Person" means an individual, corporation, partnership, trust or estate, joint stock company, association, syndicate, joint venture, or other unincorporated organization or group, and

all other entities cognizable as legal personalities.

(9) "Proceeds" means property acquired or derived directly or indirectly from, produced through, realized through, or caused by an act or omission and includes any property of any kind.

(10) "Property" means anything of value, and includes any interest in property, including any benefit, privilege, land, or right with respect to anything of value, whether real or personal, tangible or intangible.

(11) "Prosecuting agency" means the office of the attorney general or the office of the county attorney, including any attorney on the staff whether acting in a civil or criminal capacity.

(12) "Specified unlawful activity" means any unlawful activity defined as an unlawful activity in Section 76-10-1602, except an illegal act under Title 18, Section 1961(1)(B), (C), and (D), United States Code, and includes activity committed outside this state which, if committed within this state, would be unlawful activity.

(13) "Transaction" means a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition. With respect to a financial institution, "transaction" includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected.

(14) "Transaction in currency" means a transaction involving the physical transfer of currency from one person to another. A transaction that is a transfer of funds by means of bank check, bank draft, wire transfer, or other written order that does not include the physical transfer of currency is not a transaction in currency under this chapter.

Section 121. Section **77-19-11** is amended to read:

77-19-11. Who may be present -- Photographic and recording equipment.

(1) At the discretion of the executive director of the Department of Corrections or his designee, the following persons may attend the execution:

(a) the prosecuting attorney, or his designated deputy, of the county in which the defendant committed the offense for which he is being executed;

(b) no more than two law enforcement officials from the county in which the defendant

committed the offense for which he is being executed;

(c) the attorney general or his designated deputy; and

(d) religious representatives, friends, or relatives designated by the defendant, not exceeding a total of five persons.

(2) The persons enumerated in Subsection [~~(2)~~] (1) may not be required to attend, nor may any of them attend as a matter of right.

(3) The executive director of the department or his designee shall permit the attendance at the execution of a total of nine members of the press and broadcast news media named by the executive director of the department in accordance with rules of the department, provided that the selected news media members serve as a pool for other members of the news media as a condition of attendance.

(4) (a) Photographic or recording equipment is not permitted at the execution site until the execution is completed, the body is removed, and the site has been restored to an orderly condition. However, the physical arrangements for the execution may not be disturbed.

(b) A violation of this subsection is a class B misdemeanor.

(5) All persons in attendance are subject to reasonable search as a condition of attendance.

(6) (a) The following persons may also attend the execution:

(i) staff as determined necessary for the execution by the executive director of the department or his designee; and

(ii) no more than three correctional officials from other states that are preparing for executions, but no more than two correctional officials may be from any one state, as designated by the executive director of the department or his designee.

(b) Any person younger than 18 years of age may not attend.

(7) The department shall adopt rules governing the attendance of persons at the execution.

Section 122. Section **77-20-8.5** is amended to read:

77-20-8.5. Sureties -- Surrender of defendant -- Arrest of defendant.

(1) (a) The sureties may at any time prior to a forfeiture of their bail surrender the defendant and obtain exoneration of their bail by filing written requests at the time of the surrender.

(b) To effect surrender, certified duplicate copies of the undertaking shall be delivered to a peace officer, who shall detain the defendant in his custody as upon a commitment, and shall in writing acknowledge the surrender upon one copy of the undertaking. This certified copy of the undertaking upon which the acknowledgment of surrender is endorsed shall be filed with the court. The court may then, upon proper application, order the undertaking exonerated and may order a refund of any paid premium, or part of a premium, as it finds just.

(2) For the purpose of surrendering the defendant, the sureties may arrest him at any time before they are finally exonerated and at any place within the state.

(3) A surety acting under this section is subject to the provisions of Title 53, Chapter [~~10~~] 11, Bail Bond Recovery Act.

Section 123. Section **77-32-401** is amended to read:

77-32-401. Indigent Defense Funds Board -- Members -- Administrative support.

(1) There is created within the Division of Finance the Indigent Defense Funds Board composed of the following nine members:

(a) two members who are current commissioners or county executives of participating counties appointed by the board of directors of the Utah Association of Counties;

(b) one member at large appointed by the board of directors of the Utah Association of Counties;

(c) two members who are current county attorneys of participating counties appointed by the Utah Prosecution Council;

(d) the director of the Division of Finance or his designee;

(e) one member appointed by the Administrative Office of the Courts; and

(f) two members who are private attorneys engaged in or familiar with the criminal defense practice appointed by the members of the board listed in Subsections (1)(a) through (e).

(2) Members shall serve four-year terms; however, one of the county commissioners, and one of the county attorneys appointed to the initial board shall serve two-year terms and the remaining other members of the initial board shall be appointed for four-year terms.

(3) A vacancy is created if a member appointed under:

(a) Subsection (1)(a) no longer serves as a county commissioner or county executive; or

(b) Subsection (1)(c) no longer serves as a county attorney.

(4) When a vacancy occurs in the membership for any reason, a replacement shall be appointed for the remaining unexpired term in the same manner as the original appointment.

(5) The board may contract for administrative support for up to $15,000 annually to be paid proportionally from each fund.

(6) (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 board 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.

[~~(6)~~] (7) Per diem and expenses for board members shall be paid proportionally from each fund.

[~~(7)~~] (8) Five members shall constitute a quorum and, if a quorum is present, the action of a majority of the members present shall constitute the action of the board.

Section 124. Section **77-37-3** is amended to read:

77-37-3. Bill of Rights.

(1) The bill of rights for victims and witnesses is:

(a) Victims and witnesses have a right to be informed as to the level of protection from intimidation and harm available to them, and from what sources, as they participate in criminal justice proceedings as designated by Section 76-8-508, regarding witness tampering, and Section 76-8-509, regarding threats against a victim. Law enforcement, prosecution, and corrections personnel have the duty to timely provide this information in a form that is useful to the victim.

(b) Victims and witnesses, including children and their guardians, have a right to be informed and assisted as to their role in the criminal justice process. All criminal justice agencies have the duty to provide this information and assistance.

(c) Victims and witnesses have a right to clear explanations regarding relevant legal proceedings; these explanations shall be appropriate to the age of child victims and witnesses. All criminal justice agencies have the duty to provide these explanations.

(d) Victims and witnesses should have a secure waiting area that does not require them to be in close proximity to defendants or the family and friends of defendants. Agencies controlling facilities shall, whenever possible, provide this area.

(e) Victims are entitled to restitution or reparations, including medical costs, as provided in Title 63, Chapter [~~63~~] 25a, Criminal Justice and Substance Abuse, and Sections [~~77-27-6,~~] 62A-7-122, [~~and~~] 76-3-201, and 77-27-6. State and local government agencies that serve victims have the duty to have a functional knowledge of the procedures established by the Utah Crime Victims' Reparations Board and to inform victims of these procedures.

(f) Victims and witnesses have a right to have any personal property returned as provided in Sections 77-24-1 through 77-24-5. Criminal justice agencies shall expeditiously return the property when it is no longer needed for court law enforcement or prosecution purposes.

(g) Victims and witnesses have the right to reasonable employer intercession services, including pursuing employer cooperation in minimizing employees' loss of pay and other benefits resulting from their participation in the criminal justice process. Officers of the court shall provide these services and shall consider victims' and witnesses' schedules so that activities which conflict can

be avoided. Where conflicts cannot be avoided, the victim may request that the responsible agency intercede with employers or other parties.

(h) Victims and witnesses, particularly children, should have a speedy disposition of the entire criminal justice process. All involved public agencies shall establish policies and procedures to encourage speedy disposition of criminal cases.

(i) Victims and witnesses have the right to timely notice of judicial proceedings they are to attend and timely notice of cancellation of any proceedings. Criminal justice agencies have the duty to provide these notifications. Defense counsel and others have the duty to provide timely notice to prosecution of any continuances or other changes that may be required.

(j) Victims of sexual offenses have a right to be informed of their right to request voluntary testing for themselves for HIV infection as provided in Section 76-5-503 and to request mandatory testing of the convicted sexual offender for HIV infection as provided in Section 76-5-502. The law enforcement office where the sexual offense is reported shall have the responsibility to inform victims of this right.

(2) Informational rights of the victim under this chapter are based upon the victim providing his current address and telephone number to the criminal justice agencies involved in the case.

Section 125. Section **78-3a-905** is amended to read:

78-3a-905. Expungement of juvenile court record -- Petition -- Procedure.

(1) (a) Any person who has been adjudicated under this chapter may, after the expiration of one year from the date of termination of the continuing jurisdiction of the juvenile court or, in case he was committed to a secure youth corrections facility, one year from the date of his unconditional release from the facility, petition the court for the expungement of his record in the juvenile court.

(b) (i) Upon the filing of a petition, the court shall set a date for a hearing and shall notify the county attorney or, if within [~~the~~] a prosecution district, district attorney, and the agency with custody
of the records of the pendency of the petition and of the date of the hearing.

(ii) The county attorney or district attorney and any other person who may have relevant information about the petitioner may testify at the hearing.

(2) (a) If the court finds upon the hearing that the petitioner has not been convicted of a

felony or of a misdemeanor involving moral turpitude since the termination of the court's jurisdiction or his unconditional release from a secure youth corrections facility and that no proceeding involving a felony or misdemeanor is pending or being instituted against him, and if the court further finds that the rehabilitation of the petitioner has been attained to the satisfaction of the court, it shall order sealed all records in the petitioner's case in the custody of the juvenile court and any records in the custody of any other agency or official pertaining to the petitioner's adjudicated juvenile court cases, except fingerprint records. Fingerprint records shall be retained in the custody of the juvenile court and any other agency or official. Copies of the order shall be sent to each agency or official named in the order and any entity notified of the original adjudication under Subsection 78-3a-118(1)(b). To avoid destruction or sealing of the records in whole or in part, the agency or entity receiving the expungement order shall only expunge all references to the petitioner's name in the records pertaining to the adjudicated juvenile court cases. The petitioner, based on good cause, may petition the court to expunge the records in whole or in part.

(b) Upon the entry of the order, the proceedings in the petitioner's case shall be considered never to have occurred and the petitioner may properly reply accordingly upon any inquiry in the matter. Inspection of the records may thereafter only be permitted by the court upon petition by the person who is the subject of the records, and only to persons named in the petition.

Section 126. Section **78-3c-4** is amended to read:

78-3c-4. Disclosure of confidential communications.

The confidential communication between a victim and a sexual assault counselor is available to a third person only when:

(1) the victim is a minor and the counselor believes it is in the best interest of the victim to disclose the confidential communication to the victim's parents;

(2) the victim is a minor and the minor's parents or guardian have consented to disclosure of the confidential communication to a third party based upon representations made by the counselor that it is in the best interest of the minor victim to make such disclosure;

(3) the victim is not a minor, has given consent, and the counselor believes the disclosure is necessary to accomplish the desired result of counseling; or

(4) the counselor has an obligation under Title 62A, Chapter [~~4~~] 4a, Child and Family Services, to report information transmitted in the confidential communication.

Section 127. Section **78-3g-102** is amended to read:

78-3g-102. Foster Care Citizen Review Board Steering Committee -- Membership -- Chair -- Compensation -- Duties.

(1) There is created within state government the Foster Care Citizen Review Board Steering Committee composed of the following members:

(a) a member of the Board of Child and Family Services, within the Department of Human Services, appointed by the chair of that board;

(b) the director of the division, or his designee;

(c) a juvenile court judge, appointed by the presiding officer of the Judicial Council;

(d) a juvenile court administrator, appointed by the administrator of the courts;

(e) a representative of the Utah Foster Parents Association, appointed by the president of that organization;

(f) a representative of a statewide advocacy organization for children, appointed by the chair of the committee;

(g) a representative of an agency or organization that provides services to children who have been adjudicated to be under the jurisdiction of the juvenile court, appointed by the chair of the committee;

(h) the guardian ad litem director, appointed pursuant to Section 78-3a-911, or the director's designee;

(i) the director or chief of the child protection unit within the Office of the Attorney General, or his designee;

(j) one person from each region who is a member of a board, appointed by the chair of the committee; and

(k) a private citizen, appointed by the chair of the committee.

(2) The persons described in Subsection (1) shall annually elect a chair of the committee from among themselves.

(3) A majority of the members of the committee constitutes a quorum. The action of the majority of a quorum represents the action of the committee.

(4) (a) Members of the committee 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.

(b) 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 board at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(c) 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.

(d) Members of the committee may decline to receive per diem and expenses for their services.

(5) The committee shall:

(a) within appropriations from the Legislature, appoint members of boards in each juvenile court district;

(b) supervise the recruitment, training, and retention of board members;

(c) supervise and evaluate the boards;

(d) establish and approve policies for the boards; and

(e) submit a report detailing the results of the boards to the Legislative Health and Human Services and Judiciary Interim Committees and the Board of Juvenile Court Judges, on or before December 31 of each year.

(6) (a) The Department of Human Services shall provide fiscal management services, including payroll and accounting services, to the committee.

(b) Within appropriations from the Legislature, the committee may hire professional and

clerical staff as it considers necessary and appropriate.

(7) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the committee may make rules necessary for:

(a) recruitment, appointment, and training of board members;

(b) supervision and evaluation of boards; and

(c) establishment of policy for boards.

(8) The committee may receive gifts, grants, devises, and donations. If the donor designates a specific purpose or use for the gift, grant, devise, or donation, it shall be used solely for that purpose. Undesignated gifts, grants, devises, and donations shall be used for foster care citizen review boards in accordance with the requirements and provisions of this chapter.

Section 128. **Repealer.**

This act repeals:

Section **26-8-15, Violation of chapter a misdemeanor -- Calling ambulance when not needed a misdemeanor.**

Section **78-32-12.3, Pilot program -- Purpose -- Evaluation of pilot program -- Exceptions.**